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**THE CONCEPT OF “INCOME”
UNDER THE INCOME TAX ACT 1967:
AN ANALYSIS**

BY

CHOONG KWAI FATT

**INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA**

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THE CONCEPT OF "INCOME"
UNDER THE INCOME TAX ACT 1967:
AN ANALYSIS

BY
CHOONG KWAI FATT

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY IN LAW

KULLIYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
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ABSTRACT

The Income Tax Act 1967 (the Act) imposes tax on "income" transactions while leaving the "capital" receipts tax-free. The distinction between the concept of income and capital has been a contentious issue between taxpayers and tax authorities since the enactment of the Act. Currently, the tax authorities with their expertise and skills will decide whether a transaction is to be taxed by issuing notice of assessment stating the amounts of income tax payable by taxpayers. Taxpayers have the right to appeal to the Director General of Inland Revenue to review and revise such assessment; a further appeal can be referred to Special Commissioners if the taxpayer is not satisfied with the assessment of the tax authorities. Further appeals can be made to the High Court and Court of Appeal on question of law or mixed question of fact and law.

As Malaysia is moving fully into self assessment regime of taxation from 2004, taxpayers assume the primary duty to compute their own income tax and monitor their income tax payable to the tax authorities. It is therefore important for them to be familiar with the concept of income, as employed in the Act and explained in the judicial pronouncements. This study undertakes the task to consolidate the concept of income by researching into the Malaysian tax cases from 1967 till 2002 as well as leading tax cases from overseas.

This study begins with the understanding of the various concepts of income as employed in the Act: beginning with adjusted income, statutory income, aggregate income and total income to arrive at chargeable income. Income tax is levied on chargeable income derived by a taxpayer for a year of assessment. Legal rules as to the characteristic of income and various judicial tests accepted by the courts to distinguish capital receipts and income receipts are discussed and consolidated. Since the Act imposes tax on net income, various specific deductions and the tests prescribed for such deduction have been discussed in detail. The prohibited expenses for deduction have also been identified.

This study then identifies the various judicial guidelines derived from the Malaysian Courts relating to income receipts from landed properties, shares, compensation of business and employment. The concept of income tax is compared with zakāt, a form of Islamic taxation. After carrying out a comparative study between these two parallel systems of taxation, some reforms are suggested to the present concept of tax and taxable income under the Act.

It is submitted that the success of the self assessment system depends on the awareness of taxpayers. This can be brought about by dissemination of information about the tax rules including the rules for ascertainment of taxable transactions. The tax authorities are urged to issue public rulings to incorporate the legal tests as suggested by the courts on various contentious issues relating to taxability of income and deductibility of expenses. This will enhance voluntary tax compliance as well as saving the precious time of all parties by avoiding unnecessary tax appeals.

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خلاصة البحث

بينما يقوم قانون ضريبة الدخل لسنة 1967 بفرض الضرائب على صفقات الدخل، فانه يترك ايصالات رأس المال بدون ضريبة. ولقد اعتبر هذا التفريق بين مفهومي الدخل ورأس المال بمثابة قضية مثيرة للنزاع بين دافعي الضرائب والسلطات منذ تشريع هذا القانون. وتقوم حاليا السلطات المختصة بفرض الضرائب بخبرتهم ومهارتهم بتحديد ما اذا كان لا بد من فرض ضريبة على صفقة عن طريق القيام باصدار ملاحظة تخمين مصرحة بمبالغ ضريبة الدخل المدفوعة من قبل دافعي الضرائب. يوجد الحق لدافعي الضرائب للقيام بمناشدة للمدير العام للايرادات الداخلية بالقيام بمراجعة وتنقيح مثل هذا التخمين. هذا ويمكن ايضا القيام بمحاولة اخرى أو اضافية من الالتماس عن طريق الاشارة الى الوكلاء الخصوصيين ان لم يكن دافع الضريبة راض عن التخمين لضريبة السلطات. ويمكن توجيه الالتماس اخر الى المحكمة العليا ومحكمة الاستئناف للقيام بأسئلة قانونية أو أسئلة ممزوجة بين الحقائق والقانون.

وبينما تتحرك ماليزيا باتجاه نظام التخمين الذاتي لدفع الضرائب ابتداء من عام 2004، فاعن دافعي الضرائب يقومون بالواجب الرئيسي لحساب ضرائب دخلهم المدفوعة الى سلطات الضرائب وكذلك مراقبتها. ولذلك فانه من المهم لهم أن يكونوا على دراية بمفهوم الدخل، كما يظهر في القانون وكما هو واضح من الأحكام القضائية. وتهدف هذه الدراسة الى القيام بترسيخ مفهوم الدخل بواسطة البحث في حالات الضريبة الماليزية من عام 1967 الى عام 2002، بالإضافة الى حالات ضرائب اساسيه من الدول الأخرى

تتناول هذه الدراسة المفاهيم المختلفة للدخل كما تظهر في القانون، فهي تبدأ بمفهوم الدخل المعدل ثم الدخل القانوني ثم الدخل الاجمالي ثم الدخل الكلي بهدف الوصول الى الدخل الموجب للضريبة. تجبى ضريبة الدخل بناء على الدخل الموجب لها والمستمد من دافعي الضريبة للسنة من التخمين. لقد تم في

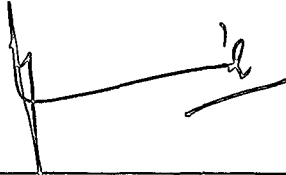
هذه الدراسة القيام بمناقشة وترسيخ الأحكام القانونية المتعلقة بخصائص الدخل والاختبارات القضائية المتنوعة والمقبولة من قبل المحاكم للتمييز بين الايصالات الرأسمالية وايصالات الدخل. وبما أن القانون يقوم بفرض الضرائب على الدخل الصافي، فلقد تم مناقشة الاقطاعات المتنوعة والاختبارات المحددة لمثل هذه الاقطاعات بالتفصيل. ولقد تم تحديد النفقات الممنوعة للاقتطاع.

ولقد قامت الدراسة بعد ذلك بتحديد الخطوط الارشادية القضائية المتنوعة والمستمدة من المحاكم الماليزية المتعلقة باءصالات الدخل من الممتلكات العقارية والأسهم وتعويضات الأعمال والتوظيف. ولقد تمت مقارنة مفهوم ضريبة الدخل مع الزكاة في الشريعة الاسلامية. ولقد تم، بعد ذلك القيام بدراسة مقارنة بين النظامين المماثلين لدفع الضرائب واقتراح بعض التعديلات على المفهوم الحالي للضريبة والدخل الخاضع لهما تحت القانون.

ان من المسلم به هو أن نجاح نظام التخمين الذاتي للضرائب يعتمد على دافعي الضرائب. ووسيلة حدوث هذا الوعي تتم عن طريق نشر المعلومات المتعلقة بقواعد الضريبة والمشملة على قواعد التحقق من الصفقات الخاضعة للضريبة. يحث هذا البحث سلطات الضرائب القيام باصدار أحكام عامة لاءدراج الاختبارات القانونية كما هو مقترح من قبل المحاكم حول القضايا المتنازع عليها والمتعلقة بضرائب الدخل واقتطاع النفقات، حيث سيقوم بتعزيز الامتثال الطوعي لدفع الضرائب وكذلك توفير الوقت الثمين لكل الأطراف عن طريق تجنب التماسات ضريبية غير ضرورية.

APPROVAL PAGE

The thesis of Choong Kwai Fatt has been examined and approved by the following persons:



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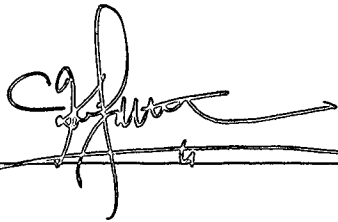


Zaleha Kamaruddin
(Chairperson)

DECLARATION

I hereby declare that this thesis is the result of my investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

Name: Choong Kwai Fatt

Signature:  _____

Date: 17 December 2003

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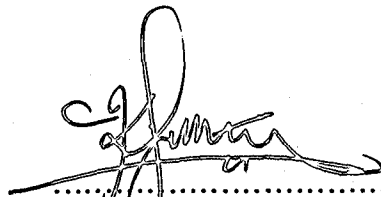
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.....
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.....
Date

For my beloved wife

Tan Lee Mey

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ABBREVIATION

AC	Law Reports (Appeal Cases) from 1891
AIR	All India Reports
AITR	Australian Income Tax Reports
ALJR	Australian Law Journal Reports
All ER	All England Law Reports, from 1936
All ER Rep	All England Law Reports Reprint
ALR.....	Australian Law Reports
AMR	All Malaysia Reports
App. Cas	Appeal Cases
ATD	Australia Tax Decisions, from 1930-1969
ATC	Australian Tax Cases (CCH), from 1969
A.T.C	Annotated Tax Cases, from 1922-1973
ATR	Australian Tax Review
CA	Court of Appeal
Ch	Law Reports, Chancery Division, from 1891 (England)
Ch. App	Chancery Appeal
Ch. D	Law Reports, Chancery Division, 1875-1890 (England)
C.I.R.	Commissioners of Inland Revenue
C.J.	Chief Justice
CLJ.	Current Law Journal (Malaysia)
CLR	Commonwealth Law Reports, from 1904 (Australia)
D.G.I.R.	Director General of Inland Revenue (Malaysia)
DLR.....	Dominion Law Reports (Canada)
DTC	Dominion Tax Cases (CCH Canada), from 1920
FC	Federal Court (Malaysia)
F.C. of T.....	Federal Commissioner of Taxation (Australia)
F.C.J	Federal Court Justice (Malaysia)
HC	High Court
HKLR	Hong Kong Law Reports
HKRC	Hong Kong Revenue Cases

HKTC	Hong Kong Tax Cases
J.C	Judicial Commissioner
KB.....	Law Reports, King's Bench Division, from 1891 (England)
L.J.; L.JJ	Lord Justice; Lord Justices
LJQB	Law Journal Reports, Queen's Bench
MLJ	Malayan Law Journal
M.R	Master of the Rolls
MSTC	Malaysia and Singapore Tax Cases, CCH
MTJ	Malaysian Tax Journal
PC	Privy Council
QB	Law Reports, Queen's Bench Division, from 1875 (England)
QBD	Queen's Bench Division
SC	Supreme Court
Sch.	Schedule(s)
S.C.J.	Supreme Court Judge
STC.....	Simon's Tax Cases (England)
TC.....	Tax Cases, from 1875 (England)
WLR.....	Weekly Law Reports, from 1953 (England)

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