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Special Edition: Tribute to the late Professor John Tiley

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The impact of British colonial rule on the Malaysian income tax system

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Abstract

Malaysia has a long history of colonisation by Europeans dating back to 1511, though this article focuses mainly on the colonisation by Britain from 1786 to 1957. It was during this era of British colonial rule that the first income tax statutes were introduced in the territories that are now Malaysia. Based on historical research methods, this article seeks to gain an understanding of the impact of British colonial rule on the development of Malaysia's tax system. In the face of sustained and strong domestic opposition, the then British colonial governors exerted their power and introduced income tax in both Malaya and Singapore from 1 January 1948. The form of statute adopted was based on the Model Colonial Territories Income Tax Ordinance of 1922. There appeared to be very little, if any, consideration of the jurisdictional context in which it was to apply, either in terms of needs or suitability. That is, it appeared that that 'one size fits all' in respect of taxation in these colonies and taxation without representation was the norm.

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1 INTRODUCTION

Since the Portuguese first captured Malacca in 1511, Malaysia has had a long and chequered history of colonisation by Europeans. Whilst the Dutch also played a part in the history of Malaysia's colonisation (the Portuguese surrendered to the Dutch in 1641), it was the British from 1786 to 1957 that colonised and then controlled the territories that are now Malaysia. This lengthy and more contemporary period of colonial rule by the British had wide reaching impact on the development of Malaysia as a nation, from its constitutional and administrative structure (Gullick, 1981), to its legal and tax systems (Singh, A. 1982) and its culture and society.

The first income tax statutes in these territories were introduced during this era of British rule. However, in spite of it having been recognised that the Malaysian tax system has its roots in the British tax system (Chin, 1997), there does not appear to have previously been an investigation of the extent and nature of this impact over time. This article sets out to address this gap by studying the history of the Malaysian tax system and seeking to gain an understanding of its development and, in particular, the impact of British colonial rule.

The methodological approach used is one typical of historical comparative research where social scientific explanations of major societal processes are sought (Neuman, 2006). In this case, the societal process of first attempting to introduce income tax in Malaysia in the early 1900s took place in a very different cultural context to that of its colonial ruler, and in a quite different era, since Britain had first introduced an income tax in 1799. Thus the dimensions of this study are across time (i.e. the period of British colonisation in Malaysia) and to some extent across nations (i.e. those ruled and the ruler). The 'across nation' dimension is further complicated by the changing composition of the Federation of Malaysia over time. It is by analysis and interpretation of these past events that perspectives on more contemporary issues can be broadened and lessons learned that can inform and shape the future. This is of particular importance in the case of Malaysia as it strives to become a fully developed and united nation by 2020 (Mohamad, 2008), which in turn requires an appropriate, well designed and administered tax system.

This article is presented in five parts. Following on from this introduction the second part traces the historical background of Malaysia to provide an insight into the cultural and political changes that have occurred over time. The revenue raising strategies that existed in Malaysia prior to the 20th century are explored in part 3. In part 4 the events that led to the introduction of an income tax in Malaysia are examined, from the beginning of the 20th century up until 1967, at which time the current income tax legislation first applied. This part also includes some consideration of the impact of British colonisation on Malaysian case law. Concluding comments are made in the final part of the article.

2 TRACING THE HISTORY OF THE NATION OF MALAYSIA

The Federation of Malaysia[3] (generally referred to as Malaysia in this article) today consists of Peninsular Malaysia, and the States of Sarawak and Sabah on the island of Borneo. Malaysia is the successor nation to the former British colonies and protectorates in South East Asia. Peninsular Malaysia previously consisted of three

[3] A summary of the formation of the Federation of Malaysia is included at Appendix I.

British administrative territories, namely the Straits Settlements (comprising the Crown Colonies of Penang, Malacca and Singapore); the Federated Malay States of Perak, Selangor, Pahang and Negeri Sembilan; and the Unfederated Malay States (comprising Kedah, [4] Johor, Kelantan and Terengganu). These three territories, excluding Singapore, emerged as a nation known as the Federation of Malaya, and gained independence from Britain on 31 August 1957. Whilst Singapore was part of the Federation of Malaysia when first formed on 16 September 1963, it subsequently separated and became an independent republic on 9 August 1965 (Shaikha, 1986; Clutterbuck, 1984).

In particular, each of the three territories or states that are currently Malaysia, namely Peninsular Malaysia, Sarawak and Sabah, were subjected to extended and significant influence by the British. Englishman Francis Light first colonised Penang in 1786. There were other British settlements (including Singapore) established in the region, and British control over the entire Malay Peninsular was recognised in 1824 with the signing of the Anglo-Dutch Treaty, which defined the boundary between British Malaya and the Netherlands East Indies (to become Indonesia).

Beyond the Peninsular, James Brooke, an Englishman, became the governor and independent ruler in 1846 of Sarawak in North Borneo.[5] Brooke had helped put down rebellions in the region and, in grateful recognition of his efforts, the Sultan of Brunei ceded the territory to Brooke and his family. The Brooke family ruled Sarawak until it was ceded to Britain in 1945 (Nicol, 1977). Sabah first came under British influence in 1881 when the British North Borneo Company was granted a Royal Charter to govern the State. Sabah became a British colony proper in 1946 (Shaikha, 1986).

3 REVENUE RAISING IN MALAYSIA PRIOR TO THE 20TH CENTURY

It is expected that the changing of boundaries, allegiances and control, as has been evident in the development of Malaysia, would have posed considerable challenges for governments. Raising taxes would have been only one of many issues faced, but still, the need for revenue is fundamental to any government. Going back as far as the 15th century, the then Sultan (or Ruler) of Malacca relied on customs duties as the main source of revenue. Malacca was located on an important maritime trade route between Europe and the Far East, and was at the time the regional trade port of South East Asia. Every commodity imported or exported was required to be weighed in accordance with the port's standard measures and custom duties were payable, with considerably higher duties imposed on imports compared to exports, thereby ensuring a thriving and prosperous trade centre and a steady stream of revenue for the Sultan (Gullick, 1981).

Prior to the introduction of British rule, the largest political unit in the Peninsular was traditionally the state, with each state ruled by a sultan. The political hierarchy usually comprised the village headman, the district chiefs, and above them the sultan who was the supreme ruler (ASEAN Law Association, 2013), while a systematic form of government was already in place in various states since the Malacca Sultanate (Zaki et. al., 2010).

[4] The State of Perlis was then part of Kedah.

[5] Although the British Royal Navy assisted James Brooke against rebels in Sarawak and against pirates in and around the waters of Sarawak, the British Government did not recognise James Brooke as the ruler, nor make Sarawak a British protectorate (Turnbull, 1989).

States were divided into districts which were usually centred at an estuary or section of a river. Each district was ruled by a chief, whose main source of power was the freedom to raise revenue, particularly tolls on traffic passing along the waterways through the districts (Butcher, 1979). The Malay peasants were subjected to certain obligations, such as payment of tithes on land, agriculture or forest products to the sultans (Zaki et. al., 2010). Traditionally, a sultan's other sources of revenue were from such activities as charging port fees, exacting tribute from vassal states within the empire, and taking a share of goods confiscated from passing vessels (Lopez, 2001).

With colonisation the British took over the functions that were previously performed by the district chiefs,[6] including the collection of revenues (Emerson, 1964; Butcher, 1979). Thus, under British rule the existing feudal structures gave way to new British-inspired political and economic arrangements, including state revenue and expenditure being controlled by British-appointed administrators. As a result, the influence of the Malay chiefs was eliminated as they relinquished access to their traditional sources of revenue based on territorial control (Noh, 2010).

Similarly, during the 19th century the authorities in the Straits Settlements relied on excises imposed on the 'vices and pleasures' enjoyed by the local inhabitants. These Settlements did not have the trade advantages of the port of Malacca, hence the need for more tailored strategies such as revenue farming. Revenue (or excise) farming was a system used during this era by which the colonial government auctioned, to private individuals, the right to commercial monopoly over excisable commodities. Payment to the colonial administrators took the form of rent, thus the revenue was 'farmed' without the need for significant investment in bureaucratic administration and infrastructure (Trocki, 2002a). Revenue was thus farmed from a range of commercial activities including the trade in both opium and liquor; prostitution and gambling. Opium farms constituted the largest component of revenue and the most important revenue source of the British colonial government from the early nineteenth century (Trocki, 2002b; Kenji, 2012).

Stamp duties were introduced in the Straits Settlements in 1863 but were abolished in 1867 (Turnbull, 1989). The Federated Malay States in the 19th century relied on port dues and river tolls (these were abolished in 1875), and customs and excise duties (Emerson, 1964; Turnbull, 1989). The bulk of revenue came from tin export duties and from import duties on opium (Turnbull, 1989). Revenue was also raised by taxes imposed on the preparation of cooked opium, the sale of spirits, the running of spirits, gambling and on pawn shops (Sadka, 1970; Butcher, 1979). That is, similar to the Straits Settlements and (to a lesser extent) Malacca, the local population of the Federated Malay States, as consumers (and possibly suffering from a range of addictions), were easy targets for those charged with raising the revenue. During this same era the main sources of revenue in the Unfederated Malay States were import duties and receipts from opium and land revenue (Emerson, 1964). The British administration imposed a unified system of taxation on opium, spirits and gambling (Noh, 2010). This shift to a more centralised system of revenue collection and taxation severely limited the royalty's modes of acquiring wealth (Lopez, 2001).

The revenue raised in Sarawak came mainly from excise farms in opium and spirits, royalties on minerals, and from poll taxes (Andaya & Andaya, 1982; Turnbull, 1989).

[6] The district chiefs collected revenue for the Sultans.

Sabah, under the administration of the Chartered Company of British North Borneo, was managed avowedly for profit. Taxes were minimal and were based on the production of minerals, extraction of forest products and plantation crops such as tobacco and rubber. Tariffs were imposed on imports, such as imported rice in 1885, but were lifted in 1903 (Tate, 1979).

As the 19th century drew to a close, there was no form of income taxation imposed in any of the British colonial territories in Southeast Asia. This may seem unusual given that the taxation of income was a well-established phenomenon in Britain by this time. Indeed, income tax in Britain had been first introduced as early as 1799 (abolished in 1802), albeit as a temporary measure to fund the Napoleonic Wars. It was then reintroduced in 1842 to fund the Crimean wars. Whilst it was intended to be a temporary measure and expected to expire in 1860, this was not to be. Instead its permanency in Britain became more or less accepted by the mid 1870s (Stebbings, 2010; Daunton, 2001).

The British colonial administration was custodial in nature rather than developmental. Its main function was collecting revenue and maintaining law and order (Abdul Khalid, 2008). The British colonial administration sought stability in order to ensure ongoing trade and access to property, and largely played the role of 'advisors' to the sultans (Lopez, 2001). The policy approach by the British tended to be laissez faire regarding trade and taxation, with greater emphasis on law and order and maintaining macroeconomic stability. The income from export of tin, rubber and timber provided ample foreign exchange for the import of consumer goods and repatriation of profits, and generated substantial revenue for the colonial government (Khan, 2002).

Realistically, the collection of customs and excises in the colonies was likely to be less of an administrative challenge than that of collecting a tax on income. Instead of imposing their taxing systems, the British seemed satisfied to simply take control of the age-old systems that were already functioning and presumably generating sufficient revenue. Indeed, to seek to raise additional revenue to fund what were ostensibly European war efforts may not have met with great enthusiasm by the colonies in South East Asia, and could have threatened British control in the region.

4 INTRODUCING INCOME TAX IN MALAYSIA THE 20TH CENTURY

Amongst the most peculiar aspects of British colonial rule of Malaya was the opium trade, where in the late 19th and early 20th centuries, revenue raised formed a major part of colonial government budgets (Bailey & Truong, 2001). In the early 1920s, revenues derived from the government opium monopoly together with import duties on alcohol and tobacco were the three largest components of the colony's revenues of the Straits Settlement, and remained as major sources of revenue until the end of the 1930s.[7]

By the beginning of the 20th century the problem of opium addiction in British Malaya, particularly among the Chinese community, had become a major concern. Under mounting pressure from the Chinese community leaders, an Opium

[7] In 1937 in the Straits Settlements, revenues from opium trade and import duties on alcohol and tobacco accounted for almost 47 per cent of government revenue. In 1923 in the Federated States, revenues from these three sources amounted to around 25 per cent of total revenues, and 20 per cent in 1938. In the Unfederated States, revenue from opium trade in Kedah amounted to more than one third of total revenues from the early 1920s until the late 1930s (Booth, 2011).

Commission was set up in 1907 to investigate the problem and this resulted in the abolition of opium tax farms in 1912 and the subsequent loss of a major source of revenue for the colonial government (Turnbull, 1989; Sugimoto, 2002). In order to address this major loss of revenue, the British colonial administration attempted to introduce income tax in the Straits Settlements.[8]

A Bill to impose a tax on income (effective from 1912) was first introduced in the Straits Settlements Legislative Council in 1910. However, due to strong opposition, the Bill was subsequently withdrawn (Chin, 1997). However, the colonial government was successful in introducing income tax in the Straits Settlements during World War I, but not so in the Federated Malay States. In 1916 a proposal was put forward to supplement the contribution by the Straits Settlements towards the Imperial War Expenditure by means of an income tax. This led to the introduction of Ordinance No. 8 (1917) to impose a tax based on income, effective from 1 January 1917. For the next two years a 'war tax' on income was levied under the War Tax Ordinance of 1918 and that of 1919 (Lee, 1972).

From 1920 to 1922 the 'war tax' was replaced by an income tax, but such was the level of public protest that it was abolished only to reappear in 1940, when two Bills modelled on the War Tax Ordinance (1919) were introduced. One of these Bills was for the Straits Settlements and the other for the Federated Malay States. Both imposed a tax on profits and income, but only for one year effective from 1 January 1941. The objective was to defray war expenditure. Similar Bills were passed in December 1941 for imposition of income tax in 1942, also for war purposes (Lee, 1972). In some respects this linking of taxation to the funding of war efforts is common to many jurisdictions, including Britain and Australia (Frecknall-Hughes & McKerchar, 2013). In contrast to these developed countries, the Malayan population clearly had little tolerance for a tax on income and, at the same time, the extent of colonial power was under threat.

During World War II (1942-45) the Japanese occupied Malaya, Singapore, Sabah and Sarawak. The Japanese military regime did not impose a tax on income, but did set up a Joint Income Tax Organisation to recover arrears on any of the 'war tax' assessed for 1941 and to collect the remaining unassessed taxes for the same year. Further, rather than 'impose' taxes and further aggravate the local population, the Japanese military regime 'invited' them, particularly the Chinese community, to contribute $50 million[9] to the Japanese war effort (Gullick, 1981). The Chinese community considered the contribution as a 'fine', a form of financial retribution. The Chinese community leaders were made responsible for its collection. This was problematic, as many refused to pay. A 'solution' was reached in late 1942 when the Japanese Yokohama Specie Bank lent the money, thereafter to be recovered from the community by the Overseas Chinese Association (War Museum, Penang).

After the Japanese surrendered in August 1945, the British colonies and protectorates in South East Asia were ruled by the British Military Administration (Shaikha, 1986). Prior to World War II, Malaya had a rather fragmented and socially regressive tax

[8] Since no similar tax was to be imposed in the Federated Malay States and Unfederated Malay States, commercial interests in the Straits Settlements were against the discriminatory treatment, leading to the withdrawal of the proposal (Sugimoto, 2002).

[9] The currency in use was known as the Straits Dollar. As an indication of its value, a copy of the Heasman's Report in 1947 was priced at one Straits Dollar or two shillings, 4 pence (the British currency at that time).

system. The Federated Malay States (FMS), Unfederated Malay States (UMS) and the Straits Settlements each imposed their own levies. After the end of World War II it was contended that other than by way of loans, the financing for the post war rehabilitation must be found by taxation and that taxation must be heavy (The Straits Times, 27 July 1946:5). Reliance on indirect taxes, mainly export duties on rubber and tin exports and import duties on rice, was particularly sensitive to conditions prevailing outside the country (The Straits Times, 20 August 1947:2). In addition, the burden of taxation then was inequitably distributed across industries with tin and rubber exporters paying substantial duties whilst the merchant and professional classes had no such impositions. Thus the only way to redress the inequalities and satisfy the need for revenue was seen to be by the imposition of an income tax (The Straits Times, 20 August 1947:1). It was argued that income tax was an established and well understood form of taxation and that it would spread the burden of social responsibility fairly (The Straits Times, 25 November 1947:6).

The British Military Administration was entrusted with the crucial role of integrating and revising the tax system in line with the Colonial Office's financial directive. In addition, when the Labour Party came to power in Britain after World War II, income taxation was officially described as the only practicable and fair method by which sufficient revenues could be raised to meet Malaya's rehabilitation and development goals (Rudner, 1994).

The introduction of income taxation was considered urgent due to the need for additional expenditure on reconstruction and development. A Select Committee was established in 1946 to consider the possibility of re-introducing tax on income in Malaya and Singapore. Although members of the Select Committee were not in favour of an immediate imposition of a tax on income,[10] the Secretary of State for the Colonies appointed Mr R.B. Heasman,[11] a tax expert from the United Kingdom, to advise the governments of the two territories (i.e. Malaya and Singapore) on the subject (Lee, 1972).

Mr. Heasman's terms of reference were (1) to advise whether income tax would be a practical basis for the taxation policy of either territory or both territories; (2) to consult business and other interests which would be affected, before making a recommendation under item (1); (3) if the conclusion was that income tax would be a suitable basis for the taxation policy of both territories, to advise whether there should be a separate income tax department for each territory or a joint one for both; (4) to draft any legislation necessary; and (5) to make recommendations as to the establishment or establishments necessary to operate the legislation (Heasman's Report, 1947:1). Thus Mr. Heasman's terms of reference were specifically confined to whether income would be a practicable basis for the taxation policies of the governments in Malaya and Singapore, and, if so, how it should be introduced and established (The Straits Times, 22 August 1947:4). He was not asked to advise as to whether the need for revenue (and therefore presumably income tax) was urgent; nor

[10] The primary reason was that most businesses had suffered serious losses as a result of the Japanese occupation and it was necessary to make good these losses out of current income. The imposition of income tax would retard that process. In addition, income taxation was a war measure and since the war had ended, it was argued, tax on income should not be imposed.

[11] Mr. Heasman, a tax officer of the UK Inland Revenue Department, was appointed to report to the Governments of Singapore and Malaya on the feasibility of levying income tax. He was subsequently appointed the Comptroller of Income Tax for Malaya and Singapore (The Straits Times, 22 February 1948:5).

whether it was imperative or vital. He was asked whether income would be a practicable basis for taxation, and if his conclusions were that income would be a suitable basis for the taxation policy of both territories, to advise whether there should be a separate income tax department for each territory or a joint one (The Straits Times, 2 September 1947:6).

Mr. Heasman's report and recommendations, including draft legislation and proposals for administration and staffing, were completed within a relatively short period.[12] Heasman's sceptics contended that, even before his appointment, the Colonial Office had already decided that income tax should be imposed on the country (The Straits Times, 3 September 1947:4).

Based on Heasman's recommendations, the governments of both Malaya and Singapore re-introduced income tax in their territories by passing identical ordinances with effect from 1 January 1948, the Income Tax Ordinance No. 48 (1947) (in Malaya) and the Income Tax Ordinance No. 39 (1947) (in Singapore) (Singh, V., 2003). Both ordinances were based on the UK's Colonial Territories Model Income Tax Ordinance (1922) (Wong, 2008) and remained identical, even in respect of amendments, until the middle of the 1950s (Lee, 1972). It was during this same post World War II era that income taxation was first introduced in Sabah and Sarawak, with the passing of the Income Tax Ordinance (1956) and the Inland Revenue Ordinance (1960) respectively.

The Colonial Territories Model Income Tax Ordinance (1922) was said to have been produced by the Imperial Inter-Departmental Committee on Income Taxation, relying on Australian and New Zealand precedents (Singh, A., 1982). By the early 20th century the British Government apparently regarded it as self-evident that colonial governments ought generally to finance themselves by means of an income tax and this Ordinance became the standard form of income tax statute at the time for the smaller colonies (Littlewood, 2010) and was widely enacted (The Straits Times, 4 September 1947:6).

However, there was strong opposition to an income tax in Malaya and Singapore post World War II. Apart from the fact that there was no longer a need to fund the war effort, after the Japanese occupation many companies and businesses were struggling to rehabilitate themselves, as much of their income was being channeled to the restoration of their capital and building of trading reserves (The Straits Times, 25 November 1947:6). There was also a very strong feeling that, despite the strength of opposition to income tax, both the British colonial governments of Malaya and Singapore might enforce direct taxation by decree (The Straits Times, 28 August 1947:7). The European, Chinese and Indian business, mercantile and professional communities as a whole were opposed to the imposition of an income tax (The Straits Times, 9 August 1947:7). The objections to income taxation were (1) the absence of properly constituted legislative bodies, that is, no taxation without representation; (2) there would be evasion on a large scale, which would entail an unfair incidence of the burden of taxation on those who did pay; (3) the major industries (namely tin and rubber) were being rehabilitated with borrowed money; (4) the extravagance on the part of the Government in the administration of the country; and (5) it had not been

[12] Heasman arrived in Malaya in February 1947 (The Straits Times, 19 April 1947:1) and his report was presented on 22 July 1947 [a duration of only six months].

shown by the Government how much of the expenditure was revenue expenditure (The Straits Times, 17 August 1947:3).

Opposition to the proposed income taxation was based more on the alleged unfair incidence of tax, resulting from anticipated evasion and inopportuneness, rather than on matters of principle. There was concern that the cost of setting up a new taxation department would be out of all proportion to the yield of tax and would also accentuate the existing bribery and corruption practices. There was also a lack of confidence in the then government and mistrust based on the issues of evasion, corruption and extravagance (The Straits Times, 16 September 1947:6). Objections were also based on misconceptions and failure (or disinclination) to appreciate the implications of the then very serious post-war financial situation, particularly in relation to the instability of indirect taxes and the abolition of revenue from the opium trade (The Straits Times, 20 August 1947:2).

There was however support for income taxation from organised trade unions which argued strongly that the tax burden be shifted from indirect levies, as indirect taxation invariably placed a greater burden on the poor than on the well-to-do. In addition, the workers' representatives saw in the introduction of income tax some hope of the Malayan Government carrying out the policy of social betterment of the people. Malay nationalist movements and the influential English language newspapers (such as The Straits Times) expressed support for income taxation (Rudner, 1994). Although the Malays agreed to income taxation in principle based on their religious beliefs (The Singapore Free Press, 6 September 1947:5), they were primarily concerned with the political implications of economic policies (The Straits Times, 20 August 1947:2).

Although some sectors of the community were in favour of the imposition of income tax, on the whole, the responses from the business, mercantile and professional communities were hostile. The Government then agreed to set up an ad hoc committee to consider the finances of the country (The Straits Times, 3 September 1947:4).[13] The opponents of the Heasman Report argued that this committee should have sat and reported before Mr. Heasman was asked to make his report, and felt that government was not anxious to have the facts found by an independent committee. Such mistrust was further fueled by the contention that the draft Income Tax Ordinance proposed by Mr. Heasman was the very same one adopted by the Colonial Office as a model Income Tax Ordinance in 1922. That is, it was lying in the Colonial Office in Whitehall long before the name of Mr. Heasman was ever heard of in Malaya (The Straits Times, 4 September 1947:6).

The 1950s and 1960s were quite challenging times politically for the emerging nation of Malaysia. Under the new Federal Constitution in 1963, only the Federal Government had the power to raise income tax.[14] Thus, a process to harmonise the taxation systems in the four territories was put into motion, with the introduction of The Modification of Laws (Income Tax) Order (1964). Although Singapore subsequently separated from Malaysia just two years after the Federation of Malaysia

[13] The terms of reference were to inquire into (1) the financial position; (2) the need for further revenues; (3) the feasibility of further economies in administration; (4) if further revenue was required, whether it could be obtained from the existing sources; and (5) if it could not be so obtained, what adequate new sources of revenue were recommended.

[14] Malaysian Federal Constitution, Article 96 states, "No tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of Federal law".

was formed, the move towards harmonisation of the taxation systems continued for the remaining three territories of the Federation of Malaysia. The income tax statutes of the Federation of Malaya (1947), and of the States of Sabah (1956) and Sarawak (1960) were subsequently repealed by the current Income Tax Act (1967) (Act 53), that has applied to Malaysia as a whole from the year of assessment of 1968 (Subramaniam & Teo, 1989).

Finally, based on the preceding discussion it is clear that the development of tax laws in Malaysia has been dramatically impacted on by British colonisation. Malaysian case law also reflects these same British principles, along with judicial decisions from other Commonwealth countries including Australia. Although such judicial decisions are not binding on the Malaysian judicial system, they nevertheless have had persuasive authority (Singh, V., 1993), and have thus contributed towards the development of tax principles and practices in Malaysia. Although the Federal Court in Malaysia is currently the final court of appeal, it is pertinent to note that prior to 1985, the London based Judicial Committee of the Privy Council was the final court of appeal in the Malaysian hierarchical judicial system. However, for criminal and constitutional cases, effective 1978, appeals to the Privy Council from the Federal Court of Malaysia were abolished. Appeals in civil cases to the Privy Council continued until 1985, after which such appeals were abolished. However, the abolition does not affect the doctrine of binding precedents in respect of past decisions of the Privy Council, which continue to bind all courts in Malaysia below the level of the Federal Court. Since the Malaysian Federal Court is now the final court of appeal, the Privy Council's decisions are considered as persuasive only.

It is noted that there were tax cases among the appeals to the Privy Council, though an analysis of these cases is beyond the scope of this article. Among the landmark Malaysian tax cases decided by the Privy Council were *American Leaf Blending Co. Sdn. Bhd v DGIR* [1979] 1 MLJ 1; *River Estates Sdn. Bhd. v DGIR* [1984] 1 MLJ 1; *AP v DGIR* (1950 – 1985) MSTC 47; *CC & Ors v Collectors of Stamp Duties* (1950 – 1985) MSTC 56; *Lahat Datu Timber Sdn Bhd v DGIR* [1979 – 1996] AMTC 1087 and *Mamor Sdn Bhd v DGIR* [1979 – 1996] AMTC 1037. There is undoubtedly scope to research the impact of these decisions on contemporary Malaysian tax law.

5 CONCLUDING COMMENTS

This article has explored the historical development of taxation, particularly in respect of income, in Malaysia, and the impact of British colonisation. In spite of sustained domestic resistance to its introduction (mainly from the mercantile community), ultimately the British colonial governors[15] vetoed the decision of the business-dominated members of the Legislative Council[16] and effectively adopted income tax in Malaya and Singapore from 1 January 1948. That is, in spite of there being no elected legislative body in Malaya and Singapore at that time, the principle of no tax without representation was ignored by the then British colonial governments in both Malaya and Singapore. The form of statute adopted was based on the Model Colonial Territories Income Tax Ordinance of 1922 which had been designed for the British Colonies some 25 years previously (Singh, V., 2011). There appeared to be very little,

[15] The British colonial administration was headed by two Governors, one for Malaya and the other for Singapore.

[16] Members of the Legislative Council were by appointment.

if any, consideration of the jurisdictional context in which it was to apply, either in terms of needs or suitability.

This desire to transplant the British Colonial Office's Model Income Tax Ordinance throughout the colonies appeared to be based on the notion of 'one size fits all' and failed to consider cultural or societal differences (Likhovski, 2011); or even basic governance principles. Moreover, the processes and capacities of tax administration (i.e. to apply the law properly and fairly) appeared to have been assumed to be equally attainable and this seems to be quite unreasonable in the case of Malaysia, at least immediately post World War II. Indeed, perhaps this is the most important lesson to be learnt from reflecting on the tax history of Malaysia. Having appropriate statute in place is essential, but broader support for tax laws and greater transparency in governance are important if voluntary compliance is to be maximised (Loo et. al., 2012). Society expects government revenue to be well spent and for officials, including tax administrators, to be above and beyond corruption. Trust is a key element in successful modern day tax systems, and Malaysian tax history provides many examples of the unfortunate consequences that can arise when trust is lacking and power is over exerted.

Finally, the extent to which British colonial influence on other colonies has varied from that of Malaysia could indeed be a fruitful area for further research. It may well clarify the degree to which cultural issues or perhaps socio-economic factors play a major role in the degree of acceptance of colonial taxation laws and the success in their implementation across other parts of the Commonwealth.

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[17] "Gent" refers to Sir Edward Gent, the Governor of Malayan Union.

APPENDIX I: FEDERATION OF MALAYSIA: CHRONOLOGY FROM BRITISH INFLUENCE AND RULE TO INDEPENDENCE

1786 - 1942[18]		1946 – 1962 / 1963[19]		1963 – 1965		1965 - current	
Straits	Singapore	British Colony	Singapore		Singapore[20]		
Settlements	Penang		Penang		Penang		Penang
	Malacca		Malacca		Malacca		Malacca
Federated	Perak		Perak		Perak		Perak
Malay	Selangor	Malayan	Selangor	Federation	Selangor	Federation	Selangor
States	Pahang	Union[21]	Pahang	Of	Pahang	Of	Pahang
	Negri Sembilan	(and later)	Negri Sembilan	Malaysia[22]	Negri Sembilan	Malaysia	Negri Sembilan
	Kedah	Federation	Kedah		Kedah		Kedah
Unfederated	Perlis	Of	Perlis		Perlis		Perlis
Malay	Kelantan	Malaya[23]	Kelantan		Kelantan		Kelantan
States	Terengganu		Terangganu		Terangganu		Terengganu
	Johore		Johore		Johore		Johore
British	Sabah	British	Sabah		Sabah		Sabah
Protectorates	Sarawak	Colonies	Sarawak		Sarawak		Sarawak

[18] Perlis was then part of Kedah.
[19] Japanese Occupation (1942 – 1945).
[20] Singapore was separated from the Federation of Malaysia on 9 August 1965.
[21] The British proposal for a Malayan Union was rejected by the Malay community. The Federation of Malaya was formed.
[22] The Federation of Malaysia was formed on 16 September 1963.
[23] The Federation of Malaya gained independence from Britain on 31 August 1957.