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Tarikh : 09 November 2017

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Tuan/Puan,

**MINIT MESYUARAT WORKING GROUP LHDNM DENGAN PERSATUAN
AKAUNTAN – DIALOG DESIRE BIL. 1/2017**

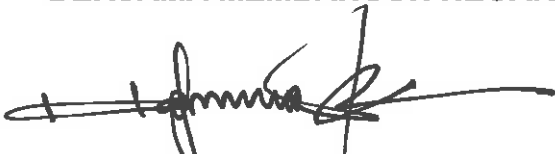
Dengan segala hormatnya perkara diatas adalah dirujuk.

2. Lanjutan daripada Mesyuarat Working Group Lembaga Hasil Dalam Negeri Malaysia (LHDNM) Dengan Persatuan Akauntan – Dialog DESIRE Bil. 1/2017 pada 20 Jun 2017, bersama ini dikemukakan minit tersebut untuk perhatian dan tindakan selanjutnya oleh pihak tuan.

3. Kesiediaan Persatuan memberikan kerjasama untuk membuat hebahan perkara ini amatlah dihargai dan didahului dengan ucapan terima kasih.

Sekian, terima kasih.

**“BERKHIDMAT UNTUK NEGARA”
“BERSAMA MEMBANGUN NEGARA”**



[MAHMOOD BIN DAUD]

Timbalan Ketua Pegawai Eksekutif (Operasi Percukaian)
b.p. Ketua Pegawai Eksekutif/Ketua Pengarah Hasil Dalam Negeri
Lembaga Hasil Dalam Negeri Malaysia

**MINIT MESYUARAT *WORKING GROUP* LHDNM BERSAMA PERSATUAN
AKAUNTAN DAN PENGAMAL PERCUKAIAN -
DIALOG DESIRE BIL. 1/2017**

Tarikh : 20 Jun 2017 (Selasa)
Masa : 9:30 pagi
Tempat : Bilik Mesyuarat Bendahara, Aras 1, Menara Hasil, Cyberjaya.

Kehadiran:

A. WAKIL LHDNM		
1.	Y.Brs. Encik Mahmood Bin Daud	Timbalan Ketua Pengarah (Operasi Percukaian) Pengerusi
2.	En. Mohd Idris Bin Mamat	Pengarah Jabatan Pungutan Hasil (JPH)
3.	Pn. Nor'aini Binti Ja'afar	Pengarah Jabatan Dasar Percukaian (JDP)
4.	Pn. Asriah Binti Shaari	Pengarah Akademi Percukaian Malaysia (APM)
5.	Cik Puteh Mariah Binti Harun	Pengarah Cawangan Pembayar Cukai Besar (CPCB)
6.	Tn. Hj. Adzhar Bin Sulaiman	Pengarah Jabatan Penyelidikan Percukaian (JPP)
7.	En. Mohd Jaafar Bin Embong	Pengarah Jabatan Pematuhan Cukai (JPC)
8.	En. Mohammed Noor Bin Ahmad	Pengarah Jabatan Operasi Cukai (JOC)
9.	Pn. Salamattunnajan Binti Besah	Pengarah Jabatan Percukaian Antarabangsa (JPCA)
10.	Dr. Nik Abdullah Sani Bin Nik Mohamed	Pengarah Cawangan Cukai Multinasional (CCM)
11.	En. Abu Tariq Bin Jamaluddin	Pengarah Jabatan Undang-undang (JUJ)
12.	Pn. Kanaga Devi A/P Shanmugam	Pengarah Cawangan Industri Khas (CIK)
13.	En. Zulkifli Bin Ahmad	Pengarah Jabatan Tindakan Khas (JTK)
14.	Pn. Hazlina Binti Hussain	Pengarah Jabatan Resolusi Pertikaian dan Sekretariat Lembaga (JRPSL)
15.	En. Hajam Bin Lajah Alam	Pengarah Jabatan Perisikan dan Profiling (JPDP)

16.	Tn. Hj. Shamshuddin Bin Mohamad Daham	Wakil Pengarah Jabatan Siasatan (JS)
17.	Pn. Wan Ramiza Binti Wan Ghazali	Timbalan Pengarah JPCA
18.	Pn. Eng Choon Meng	Pengarah Cawangan Tidak Mastautin
19.	En. Abd. Rahman Bin Yusof	Wakil Pengarah Jabatan Teknologi Maklumat (JTM)
20.	En. Mohamad Zain Bin Mohamad Said	Pengarah Bahagian Bantuan Teknikal Audit, JPC
21.	Pn. Normah Binti Md. Zain	Wakil Pengarah Jabatan Dasar Percukaian (JDP)
22.	Cik Norhayati Binti Mat Kassim	Pengarah Bahagian Pemodenan Sistem (BPS), JOC
23.	En. Ammar Bin Johari	Wakil Pengarah Negeri Selangor
24.	Pn. Rahimah Binti Abdullah	Wakil Pengarah Jabatan Khidmat Korporat
25.	En. Wan Zulfikri Bin Wan Abdul Hamid	Pengarah Bahagian Polisi dan Penyeliaan Audit, JPC
26.	En. Nazri Bin Ismail	Wakil Pengarah Negeri WP Kuala Lumpur
27.	Pn. Zubaidah Binti Ahmad	Wakil Pengarah Negeri WP Putrajaya
28.	Pn. Zabidah Binti Abd. Rahman	Pengarah Pusat Pemprosesan Maklumat
29.	Pn. Norlaili Binti Nordin	Ketua Penolong Pengarah BPS, JOC
30.	Pn. Dayangku Salawaty Binti Awg Dzulkarnain	Pegawai Khas TKP (OP)
31.	Pn. Nor Aina Binti Nor Hassan	Penolong Pengarah JPH
32.	En. Mohamad Nizar Bin Mokhtar	Urus setia Mesyuarat
33.	En. Noor Mohamad Bin Zakariah	Urus setia Mesyuarat

B. WAKIL PERSATUAN AKAUNTAN DAN PENGAMAL PERCUKAIAN		
1.	Pn. Seah Siew Yun	Wakil CTIM
2.	Pn. Phan Wai Kuan	Wakil CTIM
3.	Pn. Theresa Goh	Wakil CTIM
4.	En. Mohd. Noor Bin Abu Bakar	Wakil CTIM
5.	En. Lim Kok Seng	Wakil CTIM
6.	En. Thong Vee Kean	Wakil CTIM
7.	Pn. Foo Wai Lan	Wakil MICPA
8.	Pn. Liew Ai Leng	Wakil MICPA
9.	Pn. Woon Yoke Lee	Wakil MICPA
10.	Pn. Tan Yu Yin	Wakil MICPA
11.	Dr. Veerinderjeet Singh	Wakil MIA
12.	Cik Carol Eng	Wakil MIA
13.	En. Sam Soh Siong Hoon	Wakil MIA
14.	Pn. Wong Yok Chin	Wakil MIA
15.	Pn. Azlina Zakaria	Wakil MIA
16.	En. Peter Lim Thiam Kee	Wakil MAICSA
17.	En. Eric Yong Siew Meng	Wakil MAICSA
18.	Pn. Chin Woon Li	Wakil MAICSA
19.	En. Zailan Mohamed	Wakil MACS
20.	En. Mohameed Faisal S. Ibrahim	Wakil MATA
21.	Pn. Fadhlina Bt. Mohd Zakri	Wakil MATA
22.	Datuk Harpal Singh	Wakil ExREVENUE
23.	En. Alan Chung	Wakil CPA AUSTRALIA
24.	Cik Sherry Ooi Mei Lian	Wakil CPA AUSTRALIA

1. UCAPAN PENDAHULUAN PENERUSI

- 1.1. Pengerusi memulakan dengan ucapan salam, selamat pagi dan selamat datang kepada ahli-ahli mesyuarat yang terdiri daripada wakil-wakil badan profesional dan pengarah-pengarah Jabatan yang hadir ke mesyuarat DESIRE yang pertama untuk tahun 2017.
- 1.2. Beliau memohon maaf kerana penangguhan beberapa kali dan kelewatan pihak Ibu pejabat LHDNM menganjurkan mesyuarat tersebut pada tahun ini disebabkan kekangan yang tidak dapat dielakkan. Walau bagaimanapun, untuk tidak mengecewakan pihak badan profesional, mesyuarat kali ini diadakan dalam bulan puasa tahun ini untuk mengelakkan ia tertangguh lagi.
- 1.3. Selanjutnya, Pengerusi memaklumkan tentang rombakan pemegang portfolio beberapa Pengarah Jabatan / Pengarah Negeri dan pengujudan cawangan baharu seperti Cawangan Industri Khas dan Jabatan Perisikan dan Profiling berikutan perubahan struktur organisasi LHDNM. Pengerusi juga memaklumkan bahawa tugas En. Mohamad Nizar Mokhtar sebagai urus setia mesyuarat DESIRE akan berakhir pada 31 Julai 2017 kerana beliau akan ditukarkan ke jabatan lain berikutan kenaikan pangkat. Tugas beliau akan diambil alih oleh pegawai lain.
- 1.4. Seterusnya, Pengerusi meminta barisan pasukan wakil dari LHDNM yang terdiri dari Pengarah / Wakil Pengarah Jabatan / Bahagian / Pengarah Negeri untuk memperkenalkan diri dan jabatan mereka. Ini diikuti oleh wakil-wakil dari Persatuan Akauntan dan Pengamal Percukaian untuk memperkenalkan diri dan memaklumkan persatuan yang mereka wakili.
- 1.5. Pengerusi menjelaskan walaupun badan profesional telah mengemukakan banyak isu untuk mesyuarat kali ini, perbincangan mesyuarat ini akan lebih menekankan kepada isu-isu yang utama. Manakala isu-isu kecil akan diselesaikan di peringkat jabatan yang berkaitan.

- 1.6. Pengerusi menekankan pendirian LHDNM terkini adalah fokus terhadap perkembangan sistem dalam operasi percukaian terutamanya penggunaan data analitik dan tatacara bekerja di sekitar sistem yang sedia ada dan yang akan dibangunkan oleh LHDNM. Ini juga akan mengurangkan penglibatan manusia (human interference) dan meminimumkan kos pentadbiran.
- 1.7. Pengerusi memperkenalkan kepada ahli-ahli mesyuarat bahawa Puan Seah Siew Yun sebagai Presiden CTIM yang baru dilantik dan menggantikan Encik Aruljothi Kanagaretnam yang telah bersara. LHDNM merakamkan penghargaan dan ucapan terima kasih atas sumbangan, komitmen dan sokongan penuh Encik Aruljothi kepada LHDNM sepanjang tempoh perkhidmatannya sebagai Presiden CTIM.
- 1.8. Seterusnya, Puan Seah Siew Yun, Presiden CTIM diminta untuk membentangkan isu-isu yang dibangkitkan oleh pihak CTIM dan ikuti oleh wakil MIA dan MAICSA untuk diberikan maklum balas oleh Pengarah / Wakil Jabatan yang berkaitan.

2. PERBINCANGAN ISU-ISU BERBANGKIT

- A. Lampiran 1 – CTIM MEMORANDUM ON COMPLIANCE AND OPERATIONAL ISSUES dated 3rd APRIL 2017
- B. Lampiran 2 – CTIM MEMORANDUM ON COMPLIANCE AND OPERATIONAL ISSUES (ADDITIONAL ISSUES) dated 26th MAY 2017
- C. Lampiran 3 – MIA & MICPA Joint Operational Issues
- D. Lampiran 4 – MAICSA ISSUES FOR DISCUSSION DESIRE BIL.1/2017 MEETING.
- E. Lampiran 5 – MAICSA ADDITIONAL 5 ISSUES

3. PENUTUP

- 3.1 Sebelum mesyuarat ditangguhkan, Pengerusi memberi peringatan kepada pihak badan profesional untuk mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk menyokong isu yang dibangkitkan sebagai penelitian lanjut oleh LHDNM. Maklumat kes pembayar cukai

tersebut dijamin tidak akan didedahkan oleh pihak LHDNM untuk mengawal kerahsiaan pembayar cukai.

- 3.2 Di masa hadapan, sekiranya badan profesional gagal mematuhi arahan dan peringatan tersebut, LHDNM tidak akan memberi maklum balas kepada isu-isu yang dibangkitkan kerana ia dianggap sebagai tidak berasas.
- 3.3 Sebagai mengakhiri sesi dialog, Pengerusi mengucapkan ribuan terima kasih kepada semua yang hadir kerana penglibatan dalam dialog ini. Beliau juga turut merakamkan penghargaan kepada pihak persatuan yang telah memberikan input dan maklum balas kepada LHDNM melalui sesi ini.

Mesyuarat ditamatkan pada jam 12.55 tengah hari.



MEMORANDUM ON COMPLIANCE AND OPERATIONAL ISSUES

3 APRIL 2017

Prepared by:
Compliance & Operations Working Group (COWG)

COMPLIANCE ISSUES

1. Tax Audit

1.1 General Tax Audit on the Same YA

A taxpayer company was tax audited under General Audit for the years of assessment (YA) 2009 to 2013 in October 2015 by the IRB's Field Audit Unit from Cawangan KL at Menara Olympia, Jalan Raja Chulan. Certain expenses were disallowed by the IRB for YA 2010 to YA 2013 and the company had agreed to the IRB's findings. Additional assessments were raised for YA 2011 and 2012 which the company had paid together with the penalties. No additional assessments were raised for YA 2010 and 2013 as the company was in a tax loss position.

In December 2016, the company's tax agent received a letter from the Desk Audit Unit of the same IRB branch requesting for the tax computation and audited accounts for YA 2010 and 2013 for a desk audit. The tax agent called the IRB officer who wrote the said letter to inform her that the company had already been tax audited by the Field Audit Unit in 2015. However, the tax officer insisted that she still wants to check on the company's accounts. Her reason was that whatever the Field Audit has checked would be different from her Desk Audit unit.

This is totally different for tax audit cases handled by the IRB's Kuantan branch. When the tax agent informed the Desk Audit officer that a company had already been tax audited by the Field Audit Unit, the officer informed the tax agent to disregard his/her letter and would make a note in the file.

Our comments:

According to paragraph 7.6.10 of the Tax Audit Framework (Amendment 1/2015), "*Once the audit case is settled, the audit should not be repeated on the same issues for the same year of assessment. However, if there are new issues to be pursued or new information is received, an audit can be repeated for the same year of assessment.*" The Institute would like to seek clarification on specific situations where it would be necessary for a second time audit to be conducted for the same YAs that had been subjected to tax audit in the previous year.

Jawapan LHDNM:

Keadaan di mana audit boleh dijalankan pada kali kedua dan seterusnya.

- i. Jika terdapat isu baru dalam tahun taksiran yang sama;
- ii. Maklumat baru bagi isu yang sama dalam tahun taksiran yang sama.

Tiada termaktub sebarang peruntukan sebagai halangan untuk LHDNM menjalankan audit kali kedua dan seterusnya sekiranya terdapat asas maklumat baharu atau berlainan yang diterima oleh LHDNM dari sumber-sumber luaran; contohnya dari Jabatan Perisikan dan Profiling, *Taskforce Collection of Information Arrangement* (CIA) antara LHDNM, SSM bersama KDRM dan maklumat *Big Data Analytic* sebagai verifikasi dan pengesahan maklumat melalui dokumen sokongan yang diminta sewaktu audit seterusnya dijalankan ke atas isu dan penemuan yang berbeza dari audit terdahulu. Kesimpulannya, sekiranya untuk sesuatu tahun taksiran yang sudah selesai diaudit dengan isu dan penemuan yang dipersetujui, tiada halangan untuk LHDNM untuk mengulangi proses audit untuk tahun taksiran berkenaan jika terdapat isu dan penemuan yang baharu atau berlainan diperolehi.

Rujuk Perenggan 7.6.10 Rangka Kerja Audit Cukai.

Badan professional diminta untuk kemukakan nama dan nombor rujukan pembayar cukai untuk semakan lanjut cawangan ke atas isu yang dibangkitkan.

Pengerusi bersetuju dengan saranan badan profesional bahawa untuk audit seterusnya, pihak cawangan tidak sewajarnya meminta pembayar cukai mengemukakan dokumen-dokumen yang sama dan sudah dikemukakan sewaktu audit kali pertama dijalankan untuk mengelakkan tambahan bebanan kepada pembayar cukai.

Pegawai audit hendaklah memaklumkan kepada pembayar cukai tujuan audit seterusnya adalah berhubung isu dan penemuan baharu dan berlainan dari audit terdahulu.

1.2 IRB Correspondences and Tax Audit

The following issues were encountered by our members:-

- Many of the IRB correspondences arrived 1 – 3 weeks later from the date of issuance via ordinary post without informing the taxpayer in advance / without emailing the taxpayer a copy of the letter. This creates difficulty in meeting the due date to respond to the IRB as they are usually received a few days before the deadline, or in some cases received after the deadline. Attempts to contact the IRB officer to obtain an extension of time can be difficult especially in cases where there is a change of the officer-in-charge.

Berdasarkan prosedur kerja sedia ada, pegawai akan kemukakan surat yang boleh dikeluarkan sama ada melalui emel, faks atau pos. Pembayar Cukai hendaklah memaklumkan kepada LHDNM sekiranya terdapat perubahan terkini emel / nombor faks / alamat terkini.

Sila kemukakan nama dan nombor rujukan pembayar cukai untuk semakan lanjut cawangan ke atas isu yang dibangkitkan.

Pengerusi menyarankan bahawa amalan masa kini melalui kaedah penggunaan emel ke arah *paperless* adalah selamat untuk urusan surat menyurat khususnya audit (bukan serahan notis dan sebagainya) antara LHDNM dan pembayar cukai. Ia sewajarnya diperkasakan untuk menyelesaikan isu aduan dari berterusan setiap tahun berhubung surat tidak sampai melalui pos dan surat diterima lewat oleh pembayar cukai.

Penaksir akan mengeluarkan *softcopy* surat rasmi LHDNM dalam format PDF dan ia kemudian dihantar melalui emel kepada pembayar cukai dan salinan (*carbon copy email*) kepada ejen cukai menggunakan rekod alamat emel terkini yang sudah dilaporkan dan masih tersimpan dalam sistem LHDNM. Salinan *hardcopy* surat yang dikeluarkan oleh penaksir tidak lagi akan dihantar melalui pos kecuali atas permintaan pembayar cukai.

CTIM comments (070917):

We welcome the IRB's suggestion by using email as a secondary measure to reach out to all taxpayers for purpose of efficiency. However, postal correspondence by sending out hard copies is still the official way as required under the law. Section 145 deals with Service of Notices.

Jawapan LHDNM kepada CTIM (070917):

Berdasarkan keputusan mesyuarat, LHDNM akan menghantar surat melalui emel kepada pembayar cukai yang ada alamat emel dan melalui medium lain iaitu surat atau faks bagi mereka yang tiada alamat emel. Walau bagaimanapun, bagi kes-kes tertentu yang memerlukan bukti penyerahan notis / surat, prosidur seperti di S.145 ACP 1967 boleh digunakan.

Disamping itu, tarikh penghantaran emel LHDNM tersebut boleh dianggap sebagai bukti untuk mengelakkan isu surat diterima lewat atau tidak diterima oleh pembayar cukai.

Oleh itu, pembayar cukai hendaklah bertanggungjawab untuk memaklumkan kepada LHDNM berhubung perubahan sebarang alamat emel rasmi terkini pembayar cukai untuk simpanan sistem rekod LHDNM.

Keputusan kaedah penggunaan emel sebagai satu-satunya jalan penyelesaian utama ke atas kedua-dua isu surat tidak sampai dan surat diterima lewat oleh pembayar cukai dicadang oleh LHDNM dan tidak dibantah oleh badan profesional.

Manakala, surat-surat pembayar cukai yang dihantar kepada LHDNM akan diterima secara berpusat (*centralise*) di Pusat Pemprosesan Maklumat yang akan mengimbas dan memasukkannya ke dalam sistem dan akhirnya akan dikemukakan dalam bentuk *digitalised softcopy* kepada penaksir untuk tindakan lanjut. Ini memudahkan surat tersebut diurus dengan cekap dan mudah untuk dijejaki.

- The IRB contacted the tax agent and the taxpayer to express their intention to conduct an audit for a period of five years before issuing a letter. When the letter was issued subsequently, the IRB officer only scanned their official letter and sent it via email, which never reached the intended recipients. Other than a softcopy sent via email, no hardcopy of the letter was received by the tax agent or taxpayer.

Penghantaran melalui emel merupakan satu kaedah pengeluaran surat. Alamat emel yang digunakan adalah alamat emel terkini yang terdapat dalam Borang Nyata Cukai Pendapatan (BNCP). Pembayar Cukai dinasihatkan untuk sentiasa mengemaskini alamat emel semasa mengemukakan BNCP. Pembayar Cukai atau wakil perlu memastikan alamat surat-menyurat dan emel adalah betul dan terkini.

Sila kemukakan nama dan nombor rujukan pembayar cukai untuk semakan lanjut cawangan ke atas isu yang dibangkitkan.

- Desk audit – The time taken by the IRB to settle tax audit for certain cases are considerably long (> 1 year). In some cases e.g. after 3 years upon the submission of documents, there

are no findings / queries being raised, and the IRB does not issue any closure / clearance letter as per the Tax Audit Framework.

LHDNM mengambil maklum isu yang dibangkitkan dan tindakan peringatan akan dikeluarkan kepada cawangan untuk menyelesaikan kes audit dengan mengeluarkan surat makluman dalam tempoh yang ditetapkan.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

- The tax treatment stated in the Public Ruling is applied retrospectively before the date of the Public Ruling and penalty is imposed on the resulting understatement of tax.

Seksyen 138A Akta Cukai Pendapatan (ACP) 1967 memperuntukkan bahawa Ketua Pengarah mempunyai kuasa untuk membuat Ketetapan Umum berhubung dengan mana-mana peruntukan ACP 1967. Ketua Pengarah boleh menarik balik, sama ada keseluruhan atau sebahagian dari Ketetapan Umum ini melalui notis atau dengan penerbitan Ketetapan Umum yang baharu.

Ketetapan Umum diterbitkan sebagai panduan kepada orang awam dan pegawai LHDNM. Ia menggariskan tafsiran Ketua Pengarah berhubung peruntukan tertentu undang-undang cukai dan polisi serta prosedur yang terpakai mengenainya. Ketetapan Umum menjelaskan pendirian LHDNM mengenai sesuatu perkara berdasarkan undang-undang sedia ada. Oleh itu, tidak timbul persoalan perbezaan layanan cukai secara retrospektif yang mungkin mengakibatkan pendapatan terkurang lapor dan pengenaan penalti.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

- The IRB requested for documents relating to historical years for more than 7 years, e.g. YA 2003 to YA 2009. There are instances whereby the IRB examines time-barred years even though it is stated in the Tax Audit Framework (Amendment 1/2015) that records pertaining to the years of assessment which are already time barred will not be examined. [Please refer to Appendix 1]

Liputan audit boleh melebihi lima (5) tahun seperti dinyatakan di bawah Seksyen 91(3) ACP 1967 bagi kes penipuan, pelarian cukai secara sengaja atau kecuaiian. Walau bagaimanapun, tanggungjawab untuk pembayar cukai menyimpan rekod selama 7 tahun masih tertakluk di bawah Seksyen 82 ACP 1967.

Tujuan permohonan dokumen adalah bagi membolehkan pegawai audit menganalisis sesuatu isu berdasarkan dokumen yang betul bagi menghasilkan keputusan audit yang tepat. Walau bagaimanapun, jika pembayar cukai tidak

mengemukakan BNCP dalam tempoh, dokumen berkenaan perlu disimpan dalam tempoh 7 tahun dari BNCP dikemukakan.

Bagi kes-kes audit di mana terdapat elemen penipuan, pelarian cukai secara sengaja atau kecuaiian, taksiran boleh dibangkitkan di bawah seksyen 91(3) ACP 1967.

Sila kemukakan nama dan nombor rujukan pembayar cukai untuk semakan lanjut.

- The IRB issued an audit findings letter with a time frame of 7 days on the eve of a long public holiday break. The time frame given is inconsistent with the Tax Audit Framework (Amendment 1/2015) of 21 days. Apparently, the matter has not been fully addressed.

Pembayar cukai boleh membuat bantahan secara rasmi dalam tempoh 21 hari dari tarikh Surat Pemberitahuan Pelarasan mengikut para 7.6.6 RKAC 1/2017.

Prosedur Kerja Audit menetapkan pembayar cukai diberi masa dalam tempoh 21 hari untuk mengemukakan maklumbalas terhadap Surat Penemuan Audit kali pertama. Bagi surat lanjutan, pegawai audit boleh menggunakan budibicara ke atas tempoh maklumbalas berdasarkan isu dan maklumat diminta.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

- IRB Sibul requested for Audit Working Paper (AWP) files for a tax audit. The Tax Audit Framework (Amendment 1/2015) states that a tax audit is an examination of a taxpayer's business records and financial affairs. AWP files are not taxpayers' business records and should not be covered under S.81 of the Income Tax Act, 1967. Therefore, it should not have been requested for the purpose of a tax audit.

Bukan amalan LHDNM untuk minta AWP bagi semua kes audit. Ia hanya diminta daripada firma audit bagi kes apabila audit dijalankan di premis perniagaan bagi kes yang perlu, terutamanya yang melibatkan banyak pelarasan semasa pengauditan yang memerlukan penelitian terperinci oleh pegawai audit sebelum penemuan diperjelaskan.

Seksyen 81 ACP 1967, kuasa untuk meminta maklumat seperti berikut:-

“ Ketua Pengarah boleh menghendaki mana-mana orang memberi secara lisan atau boleh melalui notis yang ditandatangani menghendaki mana-mana orang memberi secara bertulis dalam suatu masa yang dinyatakan dalam notis segala maklumat atau butir-butir itu sebagaimana yang diminta oleh Ketua Pengarah bagi maksud-maksud Akta ini dan yang mungkin dalam posesi orang itu:...”

LHDNM mengambil maklum isu yang dibangkitkan dan tindakan makluman peringatan akan dikeluarkan kepada cawangan.

Our comments:

1.2.1 In view of the matters raised above, we seek confirmation that all tax audit should be guided by the Tax Audit Framework (Amendment 1/2015). We would really appreciate it if the matters could be addressed and resolved.

1.2.2 We would also request for the following:-

- The hardcopy of the IRB's letter for a tax audit is still sent to the tax agent regardless of efforts to notify vide other channels.

Amalan biasa adalah, surat akan dikeluarkan terus kepada alamat pembayar cukai sebagai pemakluman audit kecuali pembayar cukai menggunakan alamat ejen cukai. Ini adalah untuk mengelakkan pembayar cukai daripada tidak menerima surat tersebut dan tidak mengetahui pemakluman audit LHDNM sekiranya dihantar terus kepada ejen cukai terutamanya dalam situasi di mana ejen cukai yang lama tidak memanjangkan surat audit tersebut kepada pembayar cukai yang telah menukar ejen cukai yang lain. Ini mengakibatkan pembayar cukai tidak mengetahui bahawa tindakan audit akan dijalankan ke atas mereka. Justeru, amalan biasa sedia ada tersebut dikekalkan.

Pembayar Cukai boleh meminta ejen cukai hadir semasa sesi temuduga dijalankan sebagaimana para 8.3.1 Rangka Kerja Audit Cukai.

Surat menyurat boleh dibuat salinan kepada ejen cukai sekiranya surat lantikan disertakan bersama.

Semua surat-menyurat LHDNM akan dihantar sama ada secara emel, faks atau pos kepada pembayar cukai. Salinan kepada ejen cukai boleh dikeluarkan sekiranya terdapat perlantikan wakil cukai secara rasmi.

Pengerusi menekankan sekali lagi bahawa penggunaan kaedah emel mengikut rekod alamat emel rasmi terkini pembayar cukai dan ejen cukai sehingga makluman kepada LHDNM bahawa ia dibatalkan, untuk penghantaran surat-menyurat audit/siasatan sewajarnya diterima pakai untuk mengatasi isu yang dibangkitkan berulang lagi.

Mesyuarat bersetuju dengan saranan tersebut dan wajar di terima pakai untuk pelaksanaan.

- Postal delivery could take time, can the IRB extend their deadline for the taxpayer to revert by more than the standard time frame of 14/21 days? Perhaps adding 7 days to make up the possible postal delay.

Tempoh 14 hari telah ditambah kepada 21 hari bermula pindaan Rangka Kerja Audit Cukai 2013. Oleh itu, tambahan tempoh 7 hari sebagaimana yang dipohon tidak dipertimbangkan memandangkan kaedah pemakluman surat melalui emel, faks atau pos adalah memadai. Pembayar Cukai hendaklah

memaklumkan kepada LHDNM sekiranya terdapat perubahan alamat pos atau emel terkini.

Tempoh 21 hari yang diberikan adalah tempoh yang munasabah kepada pembayar cukai mengemukakan maklumbalas.

2. Advance Ruling

A private company in Malaysia intends to enter into a trading agreement with a US entity which is a tax resident in the United States of America. The US entity would like to know if such trading transaction would tantamount to the creation of a Permanent Establishment in Malaysia.

The IRB has earlier clarified that an arrangement that involves the interpretation of Double Taxation Avoidance Agreement including the determination of a permanent establishment does not fall within the scope of advance ruling in accordance with subrule 2(1) of the Income Tax (Advance Ruling) Rules 2008 [P.U. (A) 41/2008] which states the following:-

Scope of advance ruling

2. (1) *The Director General shall, on an application made by any person, make an advance ruling on how any provision of the Act applies or would apply to the person and to the arrangement for which the advance ruling is sought.*

Further to subrule 2(1), subrule 3(c)(ii) of the Income Tax (Advance Ruling) Rules 2008 states that the Director General shall not make an advance ruling in the circumstances where the matter on which the advance ruling is sought is being dealt with, or in the Director General's opinion should be dealt with, by one or both competent authorities of the parties to an agreement to avoid double taxation.

At issue now is, both the advance ruling and international tax divisions of the IRB, are unable to provide any reply on the required tax treatment which involves a PE determination and have instead advised the US entity to make the request to the relevant branch office of the IRB after the transactions have been carried out, as the matter will be judged base on the facts of the case.

Without the confirmation or advice from the IRB as the nation's enforcement authority, the foreign entity is unsure of the pricing of the goods and whether there is a need to file the income tax return in Malaysia in order to comply with the Malaysian tax law.

Our comments:

It is imperative that an avenue be made available so that foreign enterprises can continue to seek confirmation from the IRB for now and in the future whether a transaction would give rise to a permanent establishment so as to determine a more competitive pricing and aware of the need to comply with the Malaysian tax law.

In the above- mentioned case, there is no double tax agreement (except for reciprocal exemption of taxes on shipping and air transport income) between Malaysia and USA. As the determination of permanent establishment is not covered under a DTA, subrule 3(c)(ii) of the Income Tax (Advance Ruling) Rules 2008 would not have applied. In this respect, we would like to seek clarification from the IRB on its rationale for declining to make an advance ruling for this case.

Jawapan LHDNM:

Section 138B of the Income Tax Act 1967 (ITA) allows a person to seek for an Advance Ruling (AR) on the application of any provision of the ITA to the person and to the arrangement for which the ruling is sought. AR is a written interpretation of the ITA on how certain issues that arise from a proposed arrangement are to be treated for tax purposes. A ruling request has to be one where there are issues that require the interpretation of the law and not seeking to know what the law clearly provides.

The Income Tax (Advance Ruling) Rules 2008 was issued under paragraphs 154(1)(*eb*) and (*ec*) of the ITA to provide the scope and procedure and to prescribe the fees in relation to the issuance of an AR.

As provided under subrule 2(1), subrule 3(c)(ii) of the Income Tax (Advance Ruling) Rules 2008; the Director General shall not make an advance ruling in the circumstances where the matter on which the advance ruling is sought is being dealt with, or in the Director General's opinion should be dealt with, by one or both competent authorities of the parties to an agreement to avoid double taxation.

Paragraph 4(a) of the said rules further provides that the DGIR may decline to make an advance ruling where question of fact are to be determined.

Section 3 and 12 of ITA 1967 provides that income tax shall be charged on any person upon income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. As such, Malaysia has the right under ITA to tax business profits of a foreign enterprise which are derived from Malaysia. Thus a non-resident carrying on a world-wide trade will be taxed on that part of which it carries on in Malaysia. The determination of the source of the income is a question of fact. There is no definition of PE under the ITA.

Furthermore, IRBM also had issued a media release on 21 Jun 2016 to clarify that an arrangement that involves the interpretation of Double Taxation Avoidance Agreement such as the determination of permanent establishment does not fall within the scope of advance ruling.

For countries with which Malaysia has a DTA, the PE rules in the treaty will govern the treatment of profits of a PE in Malaysia. Business profits earned from Malaysia by a foreign treaty country resident are not subject to Malaysian tax unless the non-resident carries on business activities in Malaysia through a PE. In the absence of a DTA, the chargeability of a foreign enterprise is question of fact to be determine by looking at the fact of each case in accordance with the provision of section 3 and 12 of the ITA above.

CTIM comments on the need for certainty of PE status in order to determine a more competitive pricing for an enterprise is frivolous and vexatious. There are many factors

(external and internal) that affect the pricing strategy of an enterprise. Taxation does not only concern the determination of pricing.

For the US enterprise, IRBM would like to advise the entity to file income tax return form in Malaysia. This is to enable the IRBM to determine whether its income is derived from or accruing in Malaysia based on facts of each cases.

OPERATIONS ISSUES

3. Input Tax Not Claimable from RMCD (Item L26A in the YA 2016 Form C)

Paragraph 3 of the IRB's letter dated 23 September 2016 [Please refer to Appendix 2] states:

Ruang L26A adalah bagi tujuan penyeragaman dengan pelarasan tuntutan cukai input yang ditentukan selepas audit oleh Jabatan Kastam Diraja Malaysia (JKDM), dan tindakan boleh diambil oleh Lembaga Hasil Dalam Negeri Malaysia (LHDNM) untuk meminda taksiran seperti diperuntukkan di bawah subseksyen 91(6) ACP 1967.

Our comments:

The above-mentioned paragraph 3 of the IRB's letter dated 23 September 2016 does not appear to be consistent with the explanatory note on Item L26A in the Guidebook for the 2016 Form C which states:

This refers to the amount of input tax verified by the Royal Malaysian Customs Department (RMCD) after audit as not claimable. This amount of input tax verified as not claimable can be claimed as an allowable expense under the ITA 1967. Enter the amount of input tax or part thereof in respect of the expenditure for the current year of assessment.

Assuming Company A's basis period for the year of assessment (YA) 2016 is from 1 July 2015 to 30 June 2016. RMCD has conducted a GST audit and the amount of GST input tax verified as not claimable under the GST Act 2014 is RM100 which relates to transactions in two YAs as shown below:-

Basis Period	Amount (RM)
1 July 2014 – 30 June 2015 (YA 2015)	20
1 July 2015 – 30 June 2016 (YA 2016)	80
	100

The RM100 GST input tax above (verified by RMCD as not claimable) was charged out as an expense to the profit & loss account for the financial year ended 30 June 2016 (YA 2016) subsequent to the above-mentioned RMCD verification.

In view of the above, please clarify which amount should be disclosed in item L26A of the Form C and in respect of which YA.

Jawapan LHDNM:

Jika GST cukai *input* tidak layak dituntut daripada JKDM dan dapat dikenal pasti berkaitan dengan Tahun Taksiran (TT) 2016 maka dalam senario ini amaun RM80 yang perlu dimasukkan ke ruangan L26A BNCP TT 2016.

Manakala bagi GST cukai input berkaitan dengan TT 2015 iaitu RM20, syarikat A boleh meminda taksiran berdasarkan peruntukan subseksyen 91(6), ACP.

Jika GST cukai *input* yang telah dituntut daripada JKDM tetapi sebenarnya tidak layak dituntut (selaras dengan peruntukan di bawah Akta CPB) dan tidak dapat dikenalpasti berkaitan dengan TT mana maka pindaan akan dibuat dalam TT pelarasan ditemui oleh KPHDN.

Surat maklum balas LHDNM bertarikh 23 September 2016 disediakan secara khususnya untuk menjawab pertanyaan CTIM melalui surat bertarikh 26 Ogos 2016 berhubung senario yang diutarakan; tetapi Buku Panduan Borang C 2016 disediakan untuk tujuan pengisian Borang Nyata Cukai Pendapatan yang berkenaan, dan keterangan yang dimasukkan adalah mengikut kesesuaian.

Walau bagaimanapun, pihak LHDNM mengambil maklum perkara tersebut.

Pengerusi menyarankan perkara 'Input Tax Not Claimable from RMCD' tersebut dibuka untuk perbincangan lanjut dalam mesyuarat dialog teknikal yang akan datang.

4. Loans to/from Related Companies (Items N7 – N10 in the YA 2016 Form C)

The frequently asked questions (FAQ) as listed on the IRB's website in respect of the above states that the original loan amount is required to be filled in the boxes for the above and not the loan amount net of repayments as at the financial year end.

Our comments:

We refer to the following explanatory note of item N7 in the *Guidebook of 2016 Company Return Form*:

"Jumlah pinjaman (termasuk pendahuluan) yang diberi sepanjang tempoh asas"

Based on the above explanation, we understand that the amount of loans required to be reported in item N7 of the Form C is the aggregate of the new loan arising in the current year and the old loan brought forward from the previous year as illustrated in the table below:

Year	New loan taken during the current year (RM)	Amount of loan after repayment	Amount to be disclosed in item N7 of The Form C (RM)
Year 1	1,000,000	1,000,000	1,000,000
Year 2	1,000,000	1,800,000	2,000,000
Year 3	1,000,000	2,500,000	3,000,000

If the above illustration is correct, we would like to highlight that the amount to be disclosed in item N7 can accumulate into a very large amount as repayments during each current year are not to be taken into account, and the figures will not reflect the actual balance sheet position of each financial year. In view of this, the Institute would request that the requirement to exclude repayments be reconsidered.

Jawapan LHDNM:

The amount of loan that a company needs to report in item N7 is the balance of the loan during brought forward from previous year and the amount of loan taken during the current year.

The purpose of N7 is for IRBM to identify the total amount of loans still owing at the beginning of the year and taken up during the whole year. By only reporting only the balance of loan after repayment during current year, will not provide an accurate picture of the amount of controlled financial assistance involved.

5. Closing of Companies

We refer to Item 32 of page 29 to the Minutes of Meeting Working Group IRB & Professional Bodies Dialogue – DESIRE No. 1/2016) as follows:

“ The closing of companies include the following:-

- *Company de-registration*
- *Voluntary winding up*
- *Third party winding up*

A company under de-registration normally has no assets and liabilities. The tax clearance letter (SPC) has been issued by LHDNM, all taxes have been paid and all returns up to the current year have been submitted. It would take a year or more for the Suruhanjaya Syarikat Malaysia (SSM) to de-register the company and strike it off from the company list.”

Our comments:

The Institute would like to seek clarification on whether the above-mentioned company is required to file returns during the duration that the SSM takes to de-register the company and strike it off from the company list.

Jawapan LHDNM:

Syarikat tidak perlu mengemukakan BNCP hanya sekiranya ia dibubarkan sepenuhnya dan fail cukai telah dimatikan oleh LHDNM. (Sila rujuk isu no. 14 di muka surat 14 & 15 minit Dialog Operasi & Teknikal Bil. 1/2014 pada 17 Februari 2014.)

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM. "

Our comments:

The Institute would like to suggest that the sentence, “*Borang C dan R tidak akan dikeluarkan mulai Tahun Taksiran 20XX*” as stated in the standard tax clearance letter [“SPC”] issued to all

companies be reworded to "Borang C tidak perlu dikemukakan mulai Tahun Taksiran 20XX" in line with the current tax legislation. This is to avoid any confusion in view of the fact that pursuant to Section 77A(1A) of the Income Tax Act 1967, effective year of assessment 2014, hardcopy of the tax returns will not be issued as companies must submit their tax returns via e-filing.

Jawapan LHDNM:

Syarikat tidak perlu mengemukakan BNCP hanya sekiranya ia dibubarkan sepenuhnya dan fail cukai telah dimatikan oleh LHDNM. (Sila rujuk isu no. 14 di muka surat 14 & 15 minit Dialog Operasi & Teknikal Bil. 1/2014 pada 17 Februari 2014.)

Berhubung ayat yang dicadangkan di dalam Surat Penyelesaian Cukai (SPC), LHDNM telah membuat pindaan kepada ayat-ayat tersebut.

Pengerusi menjelaskan bahawa pihak LHDNM saling bekerja rapat dengan SSM dalam pertukaran maklumat. Oleh itu, pengesahan sesuatu penggulangan/pembatalan syarikat boleh diperolehi daripada pihak SSM. Oleh itu, sebarang maklumat yang diberikan oleh syarikat yang dibatalkan mestilah selari dengan maklumat sah yang diterima dari pihak SSM.

6. Item No.7 and Item No.9 in the IRB Client Charter

We refer to item no.7 and item no.9 of the IRB Client Charter as follows:

7. *To resolve appeals/objections other than Form Q within 60 days provided complete information is received.*
9. *To take action on letters, faxes, and e-mails by issuing:*
 - i. *acknowledgement letter within 3 working days from the date of receipt*
 - ii. *letter notifying progress status within 7 working days from the issuance of acknowledgement letter if matters raised need further action*

Our comments:

The Institute would like to seek clarification from the IRB on which of the above-mentioned items in the IRB Client Charter would be applicable for the submission of an appeal letter against the tax estimate of a Form CP204 to the IRB's Unit CP204, Pusat Pemrosesan Maklumat.

Jawapan LHDNM:

Piagam Pelanggan LHDNM merujuk kepada butiran nombor 7.

Rayuan yang lengkap dengan alasan dan disokong oleh dokumen yang relevan akan diproses dalam tempoh 60 hari. Keadaan di mana rayuan tidak dapat dijawab dalam tempoh 60 hari adalah:

1. Rayuan yang memerlukan maklumat atau dokumen tambahan dari pembayar cukai yang mana tempoh tersebut bergantung kepada kerjasama yang diberikan oleh pembayar cukai.
2. Terdapat perkara-perkara berkaitan dasar atau arahan tertentu yang memerlukan semakan lanjut dengan pihak Ibu Pejabat. Oleh itu, tempoh tersebut bergantung kepada maklum balas yang diterima dari pihak berkenaan.

If there is no response received from the IRB on the appeal letter, the Institute would like to enquire to whom the taxpayers should contact at the IRB to resolve the issues.

Jawapan LHDNM:

Surat rayuan anggaran cukai dikendalikan sepenuhnya oleh Pusat Pemrosesan Maklumat (PPM). Pembayar cukai yang mempunyai pertanyaan atau kemusykilan serta memerlukan maklum balas berhubung anggaran cukai boleh menghubungi pegawai khidmat pelanggan PPM (maklumat boleh di dapati di laman LHDNM) atau menghubungi terus sambungan kepada Seksyen Meja Bantuan PPM.

7. Other Notifications

Recently, the IRB has auto generated Form CP17 (STS) (relates to balance of tax payable) and Form CP225 (late monthly instalment payment) though most of the taxpayers had already paid up the balance of tax payable before the due date. Some taxpayers had even made the payment earlier than the due date and already received the payment receipt from the IRB.

In January 2017, tax agents received mass mails on Form CP356 to taxpayers (mostly dated in November 2016) requesting the Companies to furnish the remuneration particulars of their employees in accordance with the format provided by the IRB via e-Filing's Data Prefill for the purpose of facilitating the employees' use of the e-Filing system. The contents of CP356 are not generally within the job scope of a tax agent. [Please refer to Appendix 3]

Our comments:

- 7.1 We would like to kindly request the IRB to update all records pertaining to the above and to avoid "auto generation" of notices that could lead to lengthy appeal process.
- 7.2 The requirement of CP 356 to furnish the remuneration particulars of its employees should be directed to taxpayers' correspondence address as per their relevant databases readily available via the monthly PCB filings.

Jawapan LHDNM:

Surat-surat tersebut dikeluarkan kepada alamat surat-menyurat syarikat mengikut rekod LHDNM.

Sekiranya alamat surat menyurat yang dilaporkan adalah menggunakan alamat ejen cukai, adalah menjadi tanggungjawab ejen cukai sendiri menyampaikan CP356 atau surat LHDNM tersebut kepada pelanggannya.

TAX APPEAL ISSUES

8. Transferring of the Taxpayer's File

In a case, when a taxpayer intended to submit a Form Q, he was informed that the file had been transferred from the Large Taxpayer branch (CPCB) to PJ branch (PJB). Subsequent to the finalisation of the tax appeal at the Dispute Resolution Department (DRD) on 24 June 2016, DRD has instructed for the file to be handed to CPCB, for issuance of a Form JR.

Without notifying the taxpayer, CPCB returned the file to PJB. Upon following up at both the IRB counters of CPCB and PJB, the taxpayer and tax agent then realized that the file had again been transferred to PJB (*disebabkan turnover kurang daripada RM30 million*) on 28 November 2016. The company's income tax file had been transferred from CPCB to PJB twice. The Company is confused with the IRB's action to transfer of their income tax file back and forth.

Despite several reminder emails sent to/read by CPCB, the manager of CPCB did not respond to the taxpayer in relation to the Form JR.

Our comments:

We wish to kindly request the IRB to keep the taxpayer informed / updated pertaining to the relocation of their tax files, while the IRB's system should reflect the accurate information on a timely basis.

Jawapan LHDNM:

LHDNM mengambil maklum kes terpencil sedemikian.

Ibu pejabat LHDNM telah mengeluarkan peringatan kepada semua cawangan untuk mengeluarkan surat makluman perpindahan fail kepada PC mengikut alamat surat menyurat terkini setiap kali berlaku perpindahan fail.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

9. Inconsistent Practice on Accepting Form Q Submitted by the Taxpayer

The IRB issued a Notice of Assessment (Form J) for the YA 2014 dated 15 September 2016 subsequent to the issuance of tax audit findings vide a letter dated 30 August 2016 that certain expenditures were not wholly and exclusively incurred in the production of taxpayer's gross income pursuant to subsection 33(1) of the Income Tax Act, 1967 (the Act) were added back to tax.

The taxpayer appealed against the Form J dated 15 September 2016 vide the submission of a Form Q on 14 October 2016 with grounds of appeal stated therein.

The IRB has verbally rejected the submission of the said Form Q on the basis that the IRB had reviewed all documents made available to them during the tax audit unless the taxpayer can provide new supporting documents for the purpose of the submission of the Form Q. After much discussion, the tax agent managed to convince the IRB to accept the Form Q for review and to provide a reply letter on the acceptance of the Form Q.

Our comments:

On this issue, we refer to *Catatan Bengkel Non-Technical Operational & Compliance Issues LHDNM Bersama Persatuan Akauntan Dan Pengamal Percukaian Bil. 1/2016 & Bil. 2/2016*, Item No. 4 (page 12 of 99) on *Appeal under Section 99 against Form J issued under Section 90(3) [Issues raised for Bengkel No 2/2016 by CTIM]*, the IRB has concurred that the practice of some branches not to accept Form Q without supporting document is not expressed in both the relevant legislation and the public ruling. The IRB branches will be instructed to accept a completed Form Q which is filed within 30 days of the date of assessment even though it is without supporting document. The Form Q will be processed by the IRB branch upon receipt of the supporting document.

We wish to kindly request the IRB look into the matter and to expedite the preparation of a checklist / guidelines / procedures on acceptance of Form Q to be made available to the public for guidance. Meanwhile, the IRB should accept any submission of completed Form Q and if further information or supporting document is required, a subsequent letter may be issued by the IRB to the taxpayer. Taxpayer shall also be notified on the acceptance or rejection of the Form Q.

Jawapan LHDNM:

The IRBM branches have been instructed to accept Form Q which is considered complete in accordance with the Public Ruling 7/2015 and it is not a standard procedure of IRBM that taxpayer must submit any supporting document together with Form Q. Once Form Q is accepted, the IRBM may request taxpayer to submit supporting document if it is requested by the IRBM during the review process. Whilst on the a checklist / guidelines / procedures as raised by CTIM, please take note that IRBM has issued a Public Ruling 7/2015 which gives the detail on the procedure of Form Q.

CTIM comments (070917):

The difference in practice on acceptance of Form Q by the IRB branches was discussed on 28 July 2016 in Bengkel No.2-2016 between the IRB and the Professional Bodies. The IRB responded that "*Arahan dalaman berkaitan dengan prosedur penerimaan dan pengendalian rayuan Borang Q dan Borang N telah dikeluarkan untuk rujukan semua Cawangan.*" We wish to kindly request that these guidelines and procedures be made available to taxpayers to facilitate matter.

Jawapan LHDNM:

The guideline referred to is Arahan Teknikal 2/2015 which is the internal ruling of the IRBM. However, the appeal procedure which involves taxpayer is still the same as mentioned in the Public Ruling No. 7/2015 dated 22.10.2015.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh cawangan LHDNM.

TAX REFUNDS / CREDIT SET-OFF AND INSTALMENT PAYMENT ISSUES

10. Tax Refunds

The following issues were encountered by our members in the course of obtaining tax refunds:-

Tax refund cheques issued which differ from the excess tax paid per Form e-C

Taxpayers have received tax refund cheques from the IRB without the statement of tax position. The amount refunded differs from the excess tax paid per the Form e-C. Taxpayers / agents have to call up the IRB officers to seek clarification on the amount in the tax refund cheques. Most of the time, the differing amount is due to the fact that only a part of the excess tax paid is refunded. Such refunds on a piecemeal basis make it difficult for taxpayers / agents to track as these refunds may be combined for several years of assessment (YA) in a single cheque. Additionally, taxpayers also have to wait a significantly longer time for the IRB to approve refunds for several YAs instead of one YA.

Delays in the tax refund process

A tax return was submitted more than a year ago and the tax agent had written twice and constantly called up the IRB to follow up on the refund of excess tax paid. The IRB Assessment Branch informed that they had processed the refund and submitted it to the IRB KL branch for approval but IRB KL had budget constraint to approve the refund.

In another case, the tax agent followed up with the IRB for more than a year for a big sum of tax credit amount to be refunded. The tax credit amount has not been refunded to date and the IRB did not request for supporting documents for audit too.

In some cases, taxpayers received tax credit refund for the later YAs but not the earlier YAs.

There are also delays in processing withholding tax refunds under Section 107A.

Difficulties faced by the taxpayer / agent in engaging with the IRB officers for tax refunds

Some of the IRB officers were uncooperative when taxpayers / agents sought clarification on the discrepancies noted in the tax refund amount as compared to the excess tax paid in the Form e-C. For example, when the IRB officer was contacted to clarify on the difference in the tax refund amount, the IRB officer has made request for the tax agent to email a copy of the tax refund cheque and the letter of appointment as tax agent for the taxpayer before the IRB officer could agree to make further checks.

When attempting to expedite the tax refund process by being pro-active, such as writing in to the IRB with supporting documents, the IRB officers were unable or refused to provide a clear reply on when the taxpayers can expect to receive their tax refund. In some circumstances, the

IRB officers had refused to provide reasons for the delay and merely requested the taxpayers to wait for the approval.

Attempts to contact the IRB officer can be difficult in cases where there is a change of the IRB officer-in-charge without notifying the taxpayer and the tax agent.

Our comments:

10.1 We would like to kindly request for the following to be provided:

- Would appreciate if the IRB can attach a copy of their working or statement of tax position for taxpayers/ agents to verify the amount in the tax refund cheques.
- Would appreciate if the IRB could provide a guideline on the timeframe for tax refunds as cash flow is crucial to any taxpayer in the current challenging economic situation.

10.2 We would also like to seek clarification on the following:

- If no application for refund of tax credit is submitted, will the tax credit be processed for refund? Or will action only be taken if an application is submitted?
- Can the refund process be automatically triggered upon the submission of a tax return?
- The reason and basis for selective tax refund by YA.

10.3 Based on issues raised by the members, the Institute noted that there are inconsistencies in the refund of excess tax paid. In cases where the income tax return form has been submitted electronically, the excess tax paid could be refunded promptly, refunded after some time or has not been refunded to date (even though there is no on-going audit). Furthermore, the refund may be on the entire excess tax paid amount or a part of it. It is also noted that there are inconsistencies when it comes to set-offs of excess tax paid against future tax instalments. The set-offs are allowed in some cases but not in others and the set-off allowed may be in full or in part (even though the excess tax paid amount is less than the future tax instalments amount). We would request that the refund or set-off of excess tax paid be undertaken consistently so that the taxpayer's entitlement to the excess tax paid under S.111(1) of the Income Tax Act, 1967 is not denied.

Jawapan LHDNM:

Proses bayaran balik dilakukan adalah mengikut Piagam Pelanggan bagi kes yang tidak memerlukan semakan audit. Manakala tindakan set-off baki kredit hanya dibuat berdasarkan permohonan pembayar cukai.

CTIM comments (070917):

We would appreciate if the Piagam Pelanggan can be shared with the taxpayers to have better clarity.

Jawapan LHDNM:

Piagam Pelanggan berhubung pengembalian lebih cukai / bayaran balik cukai pendapatan yang lengkap dan betul dari tarikh penerimaan borang terdapat di Laman Rasmi LHDNM.

<http://www.hasil.gov.my/> > Profil Korporat > Piagam Pelanggan

Bayaran balik cukai adalah berdasarkan sumber kewangan dari Tabung Bayaran Balik dari kerajaan. Keutamaan untuk bayaran balik dibuat adalah mengikut ketetapan dan jumlah baki tabung tersebut. Sekiranya tuntutan bayaran balik adalah terlalu melampau (*excessive*) berdasar anggaran cukai yang disediakan, perkara tersebut menjadi perhatian dan perlu diberikan penelitian mendalam oleh LHDNM.

Pengerusi menyarankan agar ahli ahli badan profesional perlu juga memberikan perhatian dan peringatan ke atas perkara tersebut terhadap anggaran cukai pelanggan mereka agar tuntutan bayaran balik adalah tidak terlalu melampaui yang boleh menyebabkan kelewatan bayaran balik dibuat.

LHDNM mengambil maklum isu-isu bayaran balik yang dibangkitkan. Walau bagaimanapun, untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh cawangan LHDNM.

11. Compensation for Overpayment of Tax

Members have written to the IRB for compensation for overpayment of tax under S.111D of the Income Tax Act, 1967 (Act). No response has been received from the IRB.

Our comments:

S.111(1) of the Act accords the rights to the taxpayer who has overpaid tax to have it refunded. In this connection, we would be pleased if the IRB could update taxpayers / agents from time to time on the status of their application to the IRB for compensation for overpayment of tax under S.111D of the Act.

Jawapan LHDNM:

LHDNM mengambil maklum permintaan ini dan akan membuat kredit bayaran pampasan ke dalam akaun pembayar cukai dengan sewajarnya berdasarkan permohonan pembayar cukai.

Pembayar cukai disarankan membuat permohonan melalui surat terlebih dahulu. Kemudiannya permohonan tersebut akan disemak dengan sewajarnya untuk menentukan kelayakan pampasan sebelum lebih bayaran cukai dibuat bayaran oleh LHDNM.

Pengerusi meminta badan profesional agar anggaran cukai CP204 dibuat semakan semula dengan sewajarnya pada bulan ke-sembilan supaya bayaran cukai yang dibuat adalah yang sepatutnya. Ini bagi mengelakkan lebihan bayaran dan tuntutan bayaran balik yang melampau dari pembayar cukai dan menimbulkan keraguan LHDNM.

12. Tax Credit Set-Off

Based on the IRB's letter dated 14 December 2016 to the Institute regarding the above matter, the IRB has made public that utilisation of tax credit against future tax instalment payments will not be allowed. Nonetheless, the applications to utilise tax credits have not been approved by the IRB even before the official announcement was made. We understand that recently, the IRB has approved set-off applications for some companies. An IRB officer informed verbally that applications for tax credit set-off against future tax instalments will be allowed from February 2017.

Our comments:

In view of the uncertainties and challenges in the current economic environment, businesses are facing persistent pressure on cash flow which will affect collections and ability to carry on operations. The practice of denying the utilisation of the tax credit would exacerbate this situation. Furthermore, taxpayers are entitled under S.111(1) of the Income Tax Act, 1967 to have their tax credits refunded (or for that matter be utilised to set-off against their future tax instalments). As such, such entitlement as granted under the legislation should not be denied.

Jawapan LHDNM:

Berdasarkan surat yang dikeluarkan kepada CTIM bertarikh 14/12/2016, LHDNM membenarkan permohonan set-off cukai dalam keadaan berikut:

- a) Menyelesaikan tunggakan cukai pembayar cukai (tidak termasuk ansuran anggaran cukai).
- b) Menyelesaikan tunggakan cukai kategori cukai lain bagi pembayar cukai yang sama seperti baki kredit cukai pendapatan digunakan untuk menjelaskan tunggakan Cukai Keuntungan Harta Tanah (CKHT).
- c) Kes permohonan set-off pembayar cukai dipersetujui sebelum 25/11/2016.

CTIM comments (070917):

All taxpayers should be given their legal rights for entitlement to tax refund as provided under Section 111(1) of the Income Tax Act 1967.

Jawapan LHDNM:

Pemakaian pampasan di bawah seksyen 111(1), ACP 1967 adalah terpakai untuk semua pembayar cukai.

13. Tax Instalment Payments

The following issues were encountered by our members:-

- Sometimes, the IRB did not capture instalment payments made by the taxpayer and issued a late payment letter although the taxpayer had paid the tax instalment payments by the statutory due dates. When the tax agent called the IRB officer to clarify, they would mention it is auto-generated by their system and if the taxpayer had made the payment by the statutory due dates, the letter can be ignored and / or the payment receipt needs to be sent to them for verification / updates to their system. This creates unnecessary trouble for the taxpayer / agent. [Please refer to Appendix 4]
- A taxpayer paid all 12 instalments in the CP204 at one go but it was not captured in the IRB's system. Instead, a notification of non-payment was issued by the IRB to the taxpayer after each monthly instalment due date. [Please refer to Appendix 5]

Our comments:

We would appreciate it if the IRB could look into these matters to resolve the problem.

Jawapan LHDNM:

Pihak LHDNM mengambil maklum mengenai perkara dibangkitkan tersebut dan tindakan penambahbaikan akan dilakukan.

Walau bagaimanapun, untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh cawangan LHDNM.

14. Notification of Civil Proceedings issued after commencement of instalment payment

The IRB issued a Form JA for YA 2015 dated 14 November 2016 to the taxpayer to assess the rental income, without a letter of notification of audit and without requesting for documents/information. According to the taxpayer, the rental income source was in loss position.

The taxpayer received the Form JA on the last day of the 30 days (i.e. on 13 December 2016) from the date of the Form JA which was sent to the old address of the taxpayer. Subsequently, the taxpayer received another letter of notification of outstanding tax dated 17 November 2016 from the IRB. The taxpayer filed an appeal against the assessment on 14 December 2016 and requested for an extension of time. The taxpayer has also once again notified the IRB on the change of address. Note that subsequent letters are continued to be sent to the old address of the taxpayer.

The IRB issued a CP38 dated 23 January 2017 to the taxpayer's employer to deduct the tax according to the Form JA and payments had been made as scheduled. Despite that payments had started to be made via the Form CP38, the IRB issued a "Notification of Civil Proceedings" under S.106 of the ITA 1967 on 14 March 2017 against the taxpayer with a 10% late payment interest being imposed. A strong message on Stoppage Order under S.104 of the ITA 1967 to prevent the taxpayer from leaving the country if the tax is not paid up is also clearly stated in the said letter.

[Please refer to Appendix 6]

Our comments:

Taking the above case as example, we seek the IRB 's clarification on the following matters:

- a) The practice for the IRB to raise an additional assessment without a prior notification of audit or documents/information request from the taxpayer. The taxpayer should be given the opportunity to substantiate the computation of chargeable income and tax payable in the tax return before the IRB proceeds to raise an assessment.

Jawapan LHDNM:

Cawangan boleh membangkitkan taksiran berdasarkan maklumat yang ada. Sekiranya LHDNM memerlukan pengesahan lanjut, pembayar cukai mungkin dipanggil hadir ke pejabat LHDNM untuk ditemuduga - perenggan 8.3.1 Rangka Kerja Audit Cukai.

Seksyen 91 menyatakan "Ketua Pengarah dimana bagi mana-mana tahun taksiran yang didapatinya bahawa tiada taksiran atau tiada taksiran yang mencukupi dibuat ke atas seseorang yang dikenakan cukai, boleh dalam tahun itu atau dalam masa 5 tahun selepas tamat tempoh itu membuat suatu taksiran atau taksiran tambahan, mengikut mana yang berkenaan dengan orang itu, dalam amaun atau amaun tambahan pendapatan tercukai dan cukai atau dalam amaun tambahan cukai itu yang, mengikut kebijaksanaan Ketua Pengarah, taksiran berkenaan orang itu yang patut dibuat bagi tahun itu".

Pembayar Cukai boleh memberikan maklumbalas dalam tempoh masa 30 hari dari tarikh notis.

LHDNM boleh membangkitkan taksiran atau taksiran tambahan sekiranya terdapat maklumat / asas yang kukuh. Pembayar cukai boleh merayu dalam tempoh 30 hari dari tarikh notis.

Pengerusi memperingatkan bahawa taksiran tambahan boleh dibangkitkan mengikut 'best judgement' berasaskan maklumat sah yang diterima daripada pihak ketiga yang kompeten contohnya SSM. Oleh itu, pembayar cukai wajib melaporkan pendapatan yang sebenar dan mengembalikan BNCP untuk mengelakkan penalti dikenakan.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM sebelum tindakan susulan ke atas cawangan yang tidak mematuhi piawaian prosedur operasi.

- b) Concern of timing in receiving a Form J / JA late.

Jawapan LHDNM:

Bagi kes-kes terpecil sebegini Pembayar Cukai boleh membuat rayuan kepada cawangan berkaitan. Pertimbangan akan dibuat berdasarkan merit kes yang dikemukakan.

- c) Update in taxpayer's latest information such as correspondence address when notification has been given.

Jawapan LHDNM:

LHDNM akan mengemas kini maklumat surat-menyurat yang diterima daripada pembayar cukai.

Pembayar cukai digalakkan untuk mengemaskini alamat surat-menyurat terkini melalui e-Kemaskini.

- d) Imposing late payment penalty when payment of instalments has commenced.

Jawapan LHDNM:

Bagi taksiran yang dibangkitkan di bawah seksyen 91, 92, 96A dan subseksyen 90(2A), 90(3), 101(2), kenaikan cukai sebanyak 10% dikenakan di bawah subseksyen 103(5) ke atas baki cukai yang tidak dibayar dalam tempoh 30 hari selepas taksiran disampaikan.

Kenaikan cukai tambahan 5% dikenakan jika baki cukai tidak dijelaskan dalam tempoh 60 hari dari tarikh kenaikan 10% tersebut. Kenaikan cukai tidak dikenakan sekiranya permohonan untuk membayar cukai secara ansuran dibuat dan diluluskan dalam tempoh 30 hari dari tarikh notis taksiran disampaikan. Permohonan selepas tempoh tersebut boleh dibenarkan dengan mengambil kira kenaikan cukai yang layak.

Bagi kes yang dirujuk kenaikan cukai subseksyen 103 telah layak dikenakan pada 14 Disember 2016. CP38 yang dikeluarkan pada 23/01/2017 belum mengambilkira kenaikan cukai tersebut. Kenaikan tersebut dipungut berasingan daripada CP38 yang telah dikeluarkan.

- e) Basis of issuing notification of civil proceedings and how the taxpayer can ensure that he is not in the Stoppage Order list.

Jawapan LHDNM:

Tindakan guaman sivil boleh diambil ke atas pembayar cukai sekiranya pembayar cukai gagal menjelaskan baki cukai dalam tempoh. Tindakan ini diambil di bawah Seksyen 106 dimana baki cukai yang tertunggak merupakan hutang kepada kerajaan yang boleh dipungut melalui tindakan guaman sivil.

Ketua Pengarah Hasil Dalam Negeri mempunyai kuasa yang diperuntukkan di bawah seksyen 104 ACP/seksyen 22 ACKHT untuk mengenakan sekatan perjalanan terhadap seseorang daripada meninggalkan Malaysia sekiranya orang tersebut gagal membayar cukai:

- a) Kesemua cukai yang kena dibayar [sama ada genap masa (*due*) atau tidak]; atau genap masa dan kena dibayar (*due and payable*).
- b) Kesemua jumlah yang kena dibayar di bawah subseksyen 103(1A), (3), (4), (5), (6), (7) atau (8), atau subseksyen 107B(3) atau (4), atau subseksyen 107C(9) atau (10) ACP dan subseksyen 21(4) dan 21B(2) ACKHT.
- c) Kesemua hutang yang kena dibayar di bawah potongan cukai daripada bayaran kontrak [(seksyen 107A(2)] atau faedah/royalti [(seksyen 109(2)], potongan cukai atas bayaran daripada perkhidmatan [(seksyen 109B(2)] atau potongan cukai atas keuntungan daripada pendapatan khusus diterima di Malaysia [(seksyen 109F(2)].
- d) Pembayar cukai boleh buat semakan status sekatan perjalanan melalui <http://sspi2.imi.gov.my/>

CTIM comments (070917):

We appreciate the reply in clarifying the law again. However, we need confirmation from the IRB on the fact that once a CP 38 has been issued to a taxpayer and the payment of instalment has commenced and payment is made in time, the IRB should not issue a notification of civil proceeding anymore.

Jawapan LHDNM:

Amalan Biasa LHDNM mengeluarkan notifikasi tindakan Mahkamah CP91 adalah untuk pembayar cukai yang tidak mematuhi ansuran cukai yang ditetapkan. Walau bagaimanapun, LHDNM mengambil maklum komen CTIM.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM sebelum tindakan susulan ke atas cawangan yang tidak mematuhi piawaian prosedur operasi.

TAX ESTIMATION ISSUES

15. Estimate of tax payable – Appeals for Higher Estimates in the 12th Month

Members had experience of approaching IRB officers whom are unclear of the relevant department / officer to be contacted on a particular case. For example, a taxpayer applied for higher estimate of tax payable in the 12th month. When following up on the status with the taxpayer's IRB home branch, the officer directed the taxpayer to the Processing Department, of which he was informed to contact the IRB General Help Desk instead. The taxpayer eventually received the reply from one of the Processing Department officers. The IRB rejected the application and did not provide any reasons as to why such decision was made despite that the taxpayer has provided valid reasons and supporting documents to substantiate the application.

Appeals for higher estimates in the 12th month have been rejected on the basis of insufficient documentation but the IRB officer was silent in explaining the reason for rejection when enquired what other documents are necessary to support the further appeal.

Our comments:

15.1 We understand that an application for revision of Form CP204 in the 12th month is subject to the IRB's discretion. However, as there is sincere intension of a taxpayer to pay a higher tax, we hope that the IRB could provide the basis for any rejection, so that the taxpayer could know if there is any ground for further appeal.

15.2 As the taxpayer is volunteering to increase the estimate of tax payable and hence pay more taxes, we urge that such application process should be made easier and more flexible.

Jawapan LHDNM:

Syarikat boleh mengemukakan rayuan ke Pusat Pemprosesan untuk dipertimbangkan pindaan anggaran diluar tempoh ansuran. Rayuan yang dikemukakan perlu disertakan dokumen sokongan. Rayuan akan ditolak sekiranya gagal mengemukakan dokumen yang lengkap. Contoh dokumen sokongan adalah seperti berikut:

- 1) Salinan kontrak bagi kes yang mendapat kontrak perniagaan yang baru.
- 2) Invois jualan bagi kes jualan meningkat disebabkan promosi yang dibuat selepas bulan pindaan.
- 3) Surat atau dokumen berkaitan dengan penarikan semula insentif daripada agensi atau badan berautoriti seperti MIDA dan MIDF.
- 4) Dokumen berkaitan pampasan yang diterima.

Antara sebab utama rayuan pembayar cukai tidak dapat dipertimbangkan adalah kerana kegagalan pembayar cukai mengemukakan dokumen yang relevan bagi menyokong alasan yang diberikan.

Setiap kes rayuan adalah tersendiri dan tidak merujuk antara satu dengan yang lain.

FILING ISSUES

16. Tax Return Submitted Prior to YA 2014 Based on Unaudited Accounts

The tax return for YA 2011 was prepared based on unaudited accounts and submitted to the IRB in compliance with S.77A of the Income Tax Act, 1967 (the Act). The taxpayer subsequently prepared and submitted a revised tax return for YA 2011 when the audited accounts were available.

The IRB treated the submission of the revised tax return as a late submission and issued a Form J which included a penalty imposed under S.112(3) of the Act, on the tax in the revised tax return, on the basis that the taxpayer should "*membuat pengiraan cukai berdasarkan akaun beraudit*" as per paragraph 2(b) of the CP5A. [Please refer to Appendix 7]

Our Comments:

The above tax return for YA 2011 which was prepared and submitted based on audited accounts is a deemed assessment pursuant to S.90(2) of the Act. Moreover, at the time of its submission, S.77A(4) of the Act which requires a company to prepare and submit the tax return based on audited accounts had not been enacted and only came into force with effect from YA 2014 onwards. As such, the Form J should not have been issued based on the revised tax return which indicated a higher tax. Instead, a Form JA should have been issued which includes a penalty imposed under S.113(2) of the Act, on the tax understated.

We appreciate the IRB's comment on this to standardize the basis of penalty imposition that should be based on a Form JA.

Jawapan LHDNM:

It is the stand of IRB that failure to provide and complete the particulars requested under subsection 77A (3) ITA would render the return as incomplete as it is not made in accordance with section 77A.

One of the condition for furnishing the return is that the return must be made in accordance with the audited account as required by Director General under paragraph 2(b) of the CP5A. As this condition is not satisfied, the return cannot be deemed as the deemed assessment under subsection 90(2) ITA.

As the revised tax return for YA 2011 was not furnished within the stipulated period under section 77A, the penalty imposed under section 112 ITA is valid.

17. Revising Tax Returns

Where the IRB has made a tax audit adjustment for a year of assessment (YA) which has an impact on the tax returns already submitted for subsequent YAs, and the taxpayer has conceded to the IRB's tax audit adjustment, whether the IRB allows the taxpayer to revise the said tax returns for the subsequent YAs with no adverse consequence to the taxpayer.

Our Comments:

Clarification is sought on whether the IRB will accept the taxpayer's revised tax returns for the subsequent YAs or the IRB will initiate such revision as this arose from a tax audit.

Jawapan LHDNM:

Bagi isu diatas, BNCP yang telah dihantar sebelum tempoh akhir penerimaan BNCP, pembayar cukai boleh membuat semakan semula. Manakala, BNCP yang dikemukakan selepas tempoh akhir penerimaan BNCP, pembayar cukai tidak boleh membuat semakan semula dan semakan audit akan dilakukan bersama-sama dengan tahun sebelumnya. Penalti seksyen 113(2) tetap dikenakan.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.



MEMORANDUM ON COMPLIANCE AND OPERATIONAL ISSUES (ADDITIONAL ISSUES)

26 May 2017

Prepared by:
Compliance & Operations Working Group (COWG)

1. No Acknowledgement Receipt on Copy of Cover Letter for Payment of Tax

We refer to the IRB's notification at the IRB collection counter at Kompleks Bangunan Kerajaan, Jalan Tuanku Abdul Halim, Kuala Lumpur which states the following [Please refer to the Appendix 1]:

Untuk Makluman

Cop terimaan hanya dilakukan ke atas dokumen yang diberikan untuk simpanan kaunter sahaja.

Resit yang dikeluarkan adalah bukti bayaran telah dibuat. Sila semak resit sebelum meninggalkan kaunter.

We understand that the IRB collection counter has changed its practice since 28 April 2017, i.e. no longer stamping acknowledgement receipt on cover letters for payment of tax.

In practice, the dispatch will pass a stack of cover letters with payment cheques to a designated IRB counter for bulk payments. Before the change of practice, the officer will stamp acknowledgement receipt on all copies of the cover letters. The dispatch will return either a day / days later to collect the payment receipts.

Our comments:

We are concerned about the above new practice. With this new practice, there is no proof of receipt on the cover letters especially the payment cheques. In the absence thereof, there will be unnecessary disputes in the event the payment cheques are not processed or lost in process by the IRB collection counter. We would request that the previous practice of stamping acknowledgement receipt on all cover letters for payment of tax be reinstated.

Jawapan LHDNM:

Tiada keperluan untuk LHDNM membuat cop perakuan penerimaan ke atas salinan surat lampiran pembayaran cukai sekiranya resit rasmi bayaran dikeluarkan dan diberikan kepada pembayar cukai/wakil pada hari yang sama selepas bayaran dilakukan. Pengeluaran resit rasmi adalah merupakan pemberitahuan/pengesahan bayaran telah dilakukan.

Cop penerimaan hanya akan dilakukan ke atas salinan dokumen atau surat pembayar cukai/ wakil yang diserahkan di kaunter khas (tingkat 2, Blok 8A). Serahtinggal bermaksud dokumen dan instrumen bayaran (tidak termasuk tunai) ditinggalkan dan tidak diproses pada hari yang sama. Kaunter khas ini diadakan bagi membolehkan kawalan penerimaan dan semakan kecukupan instrumen bayaran yang dibuat adalah lengkap.

Adalah menjadi tanggungjawab pembayar cukai untuk menyimpan setiap resit yang diterima dengan baik.

2. Revision of Estimate of Tax Payable

According to the IRB's Operational Guidelines on "Submission of Estimate of Tax Payable" that was issued in February 2017, IRB has confirmed that revision of estimate of tax payable can be made by company, limited liability partnership, trust body and co-operative society ("the Taxpayers") in the situation whereby these Taxpayers have failed or were late in submitting the original estimate of tax payable for the relevant year of assessment ("YA").

Previously, taxpayer was not allowed to revise its estimate of tax payable if the original estimate was not submitted or submitted late.

Currently, IRB has provided clarification via items 3.2.4 and 3.2.5 of the said Guidelines that a taxpayer may revise his estimate of tax payable if he wishes to. Items 3.2.4 and 3.2.5 are reproduced below for ease of reference:

3.2.4 Pengemukaan CP204 lewat (tetapi masih di dalam tempoh asas)

Syarikat, Koperasi, Badan Amanah dan PLT yang lewat mengemukakan CP204 masih layak membuat pindaan bulan ke-6 atau bulan ke-9 atau kedua-duanya mengikut baki bilangan bulan yang ada.

Sekiranya Syarikat, Koperasi, Badan Amanah dan PLT mengemukakan CP204 (lewat) bersama-sama dengan CP204A dan dikemukakan dalam bulan pindaan di mana Notis Bayaran Ansuran (CP205) telah dikeluarkan, hanya CP204A sahaja yang akan diterima dan diproses.

3.2.5 Tiada pengemukaan CP204

Syarikat, Koperasi, Badan Amanah dan PLT yang gagal membuat pengemukaan CP204, masih layak membuat pindaan bulan ke-6 atau bulan ke-9 atau kedua-duanya dengan syarat Notis Bayaran Ansuran (CP205) bagi Tahun Taksiran berkenaan dikeluarkan.

From the above, it would seem that the revision of estimate of tax payable can only be made by the taxpayer upon the issuance of a Notice of Instalment Payment (Form CP205) by the IRB.

The following are some confirmations verbally obtained by our member from the Unit Pungutan of Jabatan Operasi in Cyberjaya on the issuance of a Form CP205 by the IRB:

	Issue	IRB's confirmation
1	Will IRB's system automatically generate a Form CP205 based on previous year's estimate when the taxpayer failed to submit Form CP 204 within the stipulated timeline?	Yes
2	Will IRB send this Form CP205 to the taxpayer?	Yes

	Issue	IRB's confirmation
3	Can the taxpayer view the Form CP205 online?	No. Request has to be put in to the IRB for them to provide a copy of the Form to the taxpayer.
4	Are there any circumstances whereby IRB's system will not automatically generate a Form CP205?	Yes. The system is unable to automatically generate a Form CP205 for the current YA if the company has failed to submit its tax estimate for the previous YA.
5	If a taxpayer does not have a Form CP205, can the taxpayer file a Form CP204 say in the 6 th month just to get a Form CP205 in order to proceed with the revision in the 6 th month?	Yes. The taxpayer is advised to e-file Form CP204 one day earlier before the Form CP204A is submitted.

Our comments:

Even though the IRB's system is automatically programmed to generate a Form CP205, there could still be situations such as "no estimate was provided by the taxpayer within the timeline", which results in the taxpayers having to manually request for a Form CP205. Furthermore, whether a Form CP 205 has been issued or not, is nowhere to be referred to since the status of issuance is not shown online in the IRB's system.

We would like to suggest that the issuance of a Form CP205 is also made available in the IRB's system similar to the Form e-CP204.

Jawapan LHDNM:

CP205 dikeluarkan secara pos biasa kepada:

- a. Pembayar cukai yang gagal mengemukakan CP204 dalam tempoh yang dibenarkan.
- b. Pembayar cukai yang kemukakan rayuan beserta CP204 dalam tempoh yang dibenarkan.

Pembayar cukai akan mulai membuat bayaran pada bulan kedua tempoh asas (dalam keadaan biasa). Jika pembayar cukai gagal menerima CP205 (akibat gagal kemukakan CP204) pembayar cukai perlu menghubungi Pusat Pemrosesan Maklumat untuk membuat semakan atau mendapatkan salinan CP205 kerana belum ada sistem semakan secara online. CP204 tidak secara automatik dikeluarkan.

Walau bagaimanapun, LHDNM dalam perancangan di mana Sistem MyTAX yang masih dalam pembangunan bagi kes syarikat, akan merangkumi maklumat CP205 DG Direct untuk memudahkan pembayar cukai membuat semakan.

3. Implementation of Security Phrase for Individual and Corporate Login

Security phrase is a new feature in the IRB's e-filing system being implemented to enhance the security of the personal information of the taxpayers.

We wish to share that the following situations were encountered pertaining to corporate login that require urgent attention.

Situation

A principal officer of a company logged in to the IRB's e-filing system to complete his Form BE for YA 2016 (which is the first year where security phrase is needed to be created for personal tax purposes). He was prompted by the e-filing system to create a security phrase which he did and filed his Form BE for YA 2016 successfully.

On the corporate side, the above-mentioned principal officer is responsible for submitting the revised tax estimate (e-CP204A) for YA 2017. He could not do so as the access to the system was not granted. The reason for the decline was due to the automatic change of the security phrase of the said principal officer.

For corporate login, the security phrase has to be the same as his personal login. Changes had been made by the system for the corporate login to be the same as the personal login without the knowledge of the principal officer. Since the username of the corporate login consists of IC number, the security phrase of the corporate login has been changed automatically by the system to be the same as the personal security phrase. All other company staff accordingly need to know the principal officer's personal login details for CP 204 filing.

IRB's response

Verbal clarification was obtained by our member from the e-Filing Unit, Jabatan Operasi, Cyberjaya on the above-mentioned matter.

According to an IRB officer from the said unit, security phrase is tagged to the principal officer's IC number. This results in the system assigning the same security phrase for both corporate and personal digital certificates in relation to the principal officer. However, the corporate and personal login profiles utilise different passwords. If the passwords used for corporate and personal login are the same, then the system will merge both logins under a single taxpayer profile.

Our concerns:

- (a) In the above situation, the principal officer was not prompted with any messages from the IRB's system that his personal security phrase will be aligned with the security phrase for corporate login.
- (b) For companies that do not utilise the services of tax agents to do their income tax filing, it is common that the task of doing the filing is assigned to internal staff. The relevant staff will have to be given the IC number, password and security phrase of the principal officer. This situation gives rise to a potential breach in security of the personal data of the principal officer.
- (c) Even though IRB has indicated that there are two separate profiles of the principal officer, this can potentially be merged into one if the passwords are the same, therefore subjecting it to double risks.

It would be appreciated if the IRB could look into the above-mentioned matters on an urgent basis. Two separate profiles with different passwords and security phrases is of utmost importance for security reasons.

Jawapan LHDNM:

Frasa keselamatan yang ditetapkan adalah mengikut nombor pengenalan, oleh itu pembayar cukai yang mempunyai 2 Sijil Digital akan mempunyai frasa keselamatan yang sama.

Walau bagaimanapun kata laluan adalah mengikut apa yang telah diwujudkan oleh pembayar cukai. Bagi memastikan kerahsiaan, pembayar cukai dinasihatkan agar mewujudkan kata laluan yang berbeza bagi setiap sijil.

4. Company Tax Profile vs Employer Profile – Income Tax Filing vs Employer Tax Filing – Finance vs HR

We are of the view that the reality of the workings of a company has not been factored in to the set-up of the IRB's e-filing system.

Generally, the Human Resource (HR) department is responsible for employer tax filing and managing confidential information regarding pay packages. Whereas, accounting and finance including tax are often covered under the Administration/Finance department.

The current set-up of the IRB's e-filing system does not allow separation of login details for both these generally stand-alone functions. Common username, password and security phrase are required to be used to access to the IRB system for all types of filings.

The following situation was encountered as a result of the above:

Situation

A principal officer holds the organisation digital certificates for 80 companies, with more than 100 E numbers. Technically, only she has the access to do e-filing for Form C and Form E. Due to the sheer number of companies, the task was delegated to her staff.

The staff was given the information on user name, password and security phrase for such purpose by the principal officer herself. However, the staff was unable to log in to do e-filing for some of the Forms E. IRB's system displayed a message saying that these Forms E have been registered under another name (*Borang E telah didaftar di atas nama individu lain*).

Upon checking, the IRB discovered that someone else has logged in to the Form E (using his/her personal profile) and only he/she can do the submission. The staff then proceeded to show to the IRB officer the principal officer's profile and only then the IRB officer was willing to reset the access of the Form E back to the principal officer. However, the IRB officer indicated that the application to reset the access of the Form E may be refused if the previous login was done using tax agent's digital certificate.

Another situation was encountered whereby upon further checking, the IRB has managed to trace the tax agent's digital certificate that is tagged to the Form E but that tax agent is not the company's tax agent for income tax compliance matters. For this Group of Companies, none of their tax agents were engaged to provide services concerning filing of Form E. We are concerned with what could be the cause for this mix up.

Issues:

- a) Normally tax agents are engaged to perform income tax filing but not necessarily for employer's Form E filing. The IRB's system assigns the right to do the employer tax filing to the tax agents despite them having no authority to do so from the taxpayer.
- b) The Form E of a company in the IRB's system can be accessed by anyone using their personal profile as what is required is only the knowledge of the company's employer number. This poses a big security risk as an unauthorised person is able to submit Form E despite having no authority to do so.
- c) Once someone has logged in to complete the Form E, the process has to be finalized all the way as there is no function to save the Form E as draft.

Our comments:

Due consideration should be given on how operations are being run especially for sizeable companies. Having just one username, password and security phrase is not practical and exposes the organization to potential breach of confidential data. We wish to propose that separate corporate login and separate digital certificates be allowed as follows:

- a) Separate organisation digital certificates for both profiles – Corporate and Employer – Finance Manager and HR Manager
- b) Form E can only be submitted via organisation digital certificate instead of personal profile.

Jawapan LHDNM:

Fail E tidak terpakai untuk majikan fail syarikat sahaja. Malah untuk majikan fail Individu.

Sijil digital organisasi tidak boleh digunakan bagi fail E majikan fail individu.

Cadangan akan dikaji semula kerana ia melibatkan kos kepada LHDNM dan pertimbangan untuk penambahbaikan akan dibuat sekiranya perlu.

5. Notification of Visit for Tax Audit

Reference is made to paragraph 7.2.9 of the IRB's Tax Audit Framework 2017 (Revised 1/2017) which reads as follows:-

“Walau apa pun yang dinyatakan di atas, LHDNM boleh, dalam apa jua keadaan, mengadakan lawatan ke mana-mana premis pembayar cukai atau berkaitan pembayar cukai tanpa memaklumkan kepada pembayar cukai terlebih dahulu.”

Our comments:

We understand from the above paragraph that IRB may now perform a surprise audit. This is a departure from the IRB's previous practice of notifying the taxpayer in advance prior to a tax audit visit. This change has inclined to a practice under the tax investigation cases and has impact on businesses. We would like to seek clarification from the IRB on the rationale for this change in practice and believe that this is a serious approach that needs to be resolved in consultation with businesses as a whole.

Jawapan LHDNM:

Pendekatan ini diambil bagi meningkatkan kadar pematuhan. Dari sudut undang-undang, tiada perbezaan dari segi pendekatan lawatan ke premis di antara aktiviti audit dan siasatan.

Bagi kes audit, pendekatan baru ini hanya ditumpukan ke atas kes pembayar cukai tidak bekerjasama atau berisiko tinggi. LHDNM juga mengambil pendekatan berhemah di mana kes tersebut tertakluk kepada garis panduan kawalan dalaman.

Pengerusi menjelaskan, kaedah pendekatan audit tersebut yang lebih terperinci dijalankan untuk pembayar cukai yang berisiko dan serius. Oleh itu pihak badan profesional perlu lebih kolaboratif dengan LHDNM sebagai satu kaedah penyelesaian.

Lampiran 3



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1. **Monitoring Deliberate Tax Defaulters Programme (MDTD)**

Issue:

The IRB introduced the MDTD on 18 April 2014.

The objective of the programme is to monitor taxpayers identified as non-compliant in accordance with the existing rules and income tax laws and to seek to encourage voluntary tax compliance through continuous education and monitoring activity.

As an example, a taxpayer company could be listed as a non-compliant taxpayer upon the finalisation of a field audit for the Years of Assessment (YA) 2011 and YA 2012.

In a specific situation, there was an audit adjustment of RM3,000 made by the IRB to apportion the expenses between the manufacturing business and rental income (passive source). In order to close the audit, the company agreed to the IRB's treatment without any appeal. However, it is unfair to list the company under the MDTD programme.

We understand that the MDTD listing is auto-generated by the IRB's system which seems to be triggered by any audit adjustment made irrespective of the nature and quantum of the adjustment. It is not reasonable to list the Company into the MDTD programme.

The IRB should have a more specific and robust manner of selecting non-compliant taxpayers and a taxpayer should only be placed in the MDTD programme if there is a deliberate attempt to minimise its tax liability. Adjustments could arise due to the differing technical interpretation that may be taken by the IRB and the taxpayer. Hence, a taxpayer's agreement to the IRB's final adjustment should not mean that the taxpayer should be classified as a DELIBERATE TAX DEFAULTER. The term has very serious connotations and a taxpayer cannot be a defaulter just because of an audit adjustment.

Comment:

We appreciate the IRB's objective for implementing the MDTD programme. However, in order to facilitate the implementation of the programme, as well as increase awareness among taxpayers about the programme, we wish to propose that the IRB establish a clearer framework on the programme which outlines the criteria for classifying a taxpayer as a "deliberate tax defaulter".

Jawapan LHDNM:

Secara umumnya, persoalan rayuan teknikal tidak dipertimbangkan oleh LHDNM. LHDNM telah mengeluarkan arahan kepada cawangan setiap penemuan audit yang melibatkan tambahan cukai akan mempunyai elemen penalti. Pelarasan teknikal hanya boleh dipertimbangkan di peringkat mahkamah. Oleh itu, kes pembayar cukai yang mempunyai penemuan audit dan penalti akan dimasukkan ke dalam senarai MDTD.

2. System Capability

Issue

- a. A Small and Medium Enterprise (SME) company is not required to provide its estimated tax liability for the first two years of assessment after the commencement of operations. Notwithstanding this exemption, Form CP 204 has to be submitted to the IRB accordingly. In a specific case, the relevant taxpayer company had paid its tax payable for the relevant years of assessment upon the filing of its tax returns.

The taxpayer later received a statement from the Collections Branch showing penalties for the underestimation of tax.

Comment:

We refer to item no. 8 (page 38 of 43) of the Minutes of DESIRE Dialogue (Bil. 1/2016) held on 19 May 2016 in which the IRB responded that the SME companies are required to submit the prescribed Form CP 204 to notify the IRB of its SME status without having to state the amount of the estimated tax payable for a period of 2 years beginning from the year of assessment in which the SME commenced operation and therefore are not subjected to any penalty for underestimation of tax payable.

During the dialogue, the IRB assured that the system is able to capture the SME status if column 5.1 of Form CP 204 has been ticked.

It appears that the IRB's system has not been able to automatically detect the exemption accorded to an SME company.

In this regard, the Institutes would appreciate it if the IRB could look into this matter again.

Jawapan LHDNM:

Pengenaan kenaikan cukai subseksyen 107C(10) secara kelompok mengambilkira status SME bagi sesuatu tahun taksiran. Sekiranya tahun taksiran tersebut termasuk di dalam tempoh (2 tahun taksiran) yang dikecualikan, kes tersebut tidak dikenakan kenaikan.

Walau bagaimanapun, sekiranya maklumat SME hanya dikemaskini di sistem selepas kenaikan tersebut dijalankan, pembayar cukai boleh membuat permohonan rayuan kepada cawangan.

Sehubungan itu, pembayar cukai dinasihatkan supaya mengemukakan maklumat tersebut semasa melengkapkan borang anggaran cukai atau e-CP204 agar kenaikan secara kelompok dapat dijalankan secara teratur.

- b. A taxpayer company changed its financial year end and this resulted in the accounts being prepared for a period of more than 12 months which ended in 2016. The Form C would only be furnished in the following year, i.e. in July 2017.

Subsequently, the IRB issued a provisional Notice of Assessment for YA 2016. In response, the taxpayer informed the IRB that:

- the tax rate had been wrongly stated as 25% instead of 24% for YA 2016.

- the IRB had directed the basis period for the relevant years of assessment and the due date for filing of the tax returns and the actual due date is July 2017.

Thereafter, the taxpayer notified the IRB to cancel the said Notice of Assessment. However, the IRB responded that the system had no capability to cancel the Notice of Assessment.

The IRB also responded that to enable a cancellation of the Notice of Assessment, the taxpayer is required to produce the audited accounts (which were not available as the audit was still in progress). The taxpayer argued that Form C is only needed to be furnished for the next 5 months.

In addition, the IRB had also imposed a late filing penalty on the taxpayer.

Comment:

We would like to clarify whether the IRB system can be improved to cater for reversal of errors made so that such matters are not repeated.

Jawapan LHDNM:

Sebarang pertukaran tempoh perakaunan hendaklah dilaporkan kepada LHDNM melalui Borang CP204B bagi membolehkan perekodan dilakukan melalui sistem.

Pengeluaran Taksiran Anggaran di bawah peruntukan subseksyen 90(3) ACP 1967 akan mengambil kira perubahan tempoh perakaunan yang telah dilaporkan dalam Borang CP204B.

Tanpa pemakluman pertukaran tempoh perakaunan, sistem akan mengenakan penalti lewat kerana berdasarkan tempoh perakaunan sedia ada dalam sistem.

Untuk menyokong isu yang dibangkitkan, pihak MIA/MICPA hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

3. Tax Administration

- a. Income Tax (Exemption) (No. 60) Order 2003 [P.U. (A) 382] for Non-Citizens working in an Operational Headquarters (OHQ).

The Order provides that a non-citizen individual is exempt from the payment of income tax in respect of income derived from an employment with an operational headquarters company or a regional office. The amount of income exempted is determined in accordance with the formula as specified in the Order.

The processing of all applications for OHQ status comes under the purview of Malaysian Investment Development Authority (MIDA).

Comment:

The Institutes understand that:

- i. Various IRB branches have different requirements that need to be fulfilled in order for the income of the expatriates employed by an OHQ to be allowed an exemption.
- ii. Letters issued by MIDA confirming the OHQ status granted to a company does not specify the names of the expatriates employed by the OHQ.

In this regard, the Institutes would like to request that a consistent treatment on the matter be applied by all IRB branches when a confirmation letter issued by MIDA to the OHQ on its status sufficiently supports the claim for exemption.

Jawapan LHDNM:

Since, the letter issued by MIDA only confirming the OHQ status granted to a company and does not specify the names of the expatriates, therefore in order to qualify for the exemption, the expatriates need to prove that he is employed by an OHQ status company. Thus, to support the claim for exemption, the expatriates need to attach a copy of letter from the OHQ status company (employer) confirming that he is employed by an OHQ status company together with a letter issued by MIDA to the OHQ company (employer) confirming on its status.

In addition, the status of the expatriate and the number of days staying outside Malaysia are the two important documents to support the application of the exemption.

- b. Different Units within an IRB Branch requesting similar documents from the same taxpayer

Some of our members have received letters from different Units of the IRB Branch at Jalan Duta, i.e. (i) Unit Audit Luar, (ii) Unit Khas and (iii) Cawangan Pembayar Cukai Besar requesting for the same types of documents (e.g. audited accounts, tax computation) to conduct a tax audit on the taxpayer.

Comment:

In order to avoid duplication, the Institutes would like to propose for the IRB to look into streamlining its internal processes where various documents requested from taxpayers by certain units in the IRB are shared internally instead of each unit requesting such documents from the IRB.

Jawapan LHDNM:

Fail Pembayar Cukai telah dikategorikan mengikut cawangan masing-masing dan hanya cawangan berkenaan boleh melakukan aktiviti audit termasuklah memohon dokumen. Walau bagaimanapun, fakta kes yang lengkap diperlukan untuk semakan lanjut.

Untuk menyokong isu yang dibangkitkan, pihak MIA/MICPA hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, nombor rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

4. Completion of Withholding Tax Remittance Forms (e.g. Form CP 37D)

Based on Public Ruling No. 1/2014 – Withholding Tax on Special Classes of Income, where withholding tax on payments made to non-resident persons is paid and borne by the payer, that payment is considered to be net of tax. In such a situation, the payment that is received by the non-resident has to be re-grossed to determine the amount of income on which income tax should be charged. It is unclear as to how the Form CP 37D needs to be completed as there are columns for the gross fees, the tax deducted and the payment made.

At one forum, it was mentioned by a senior officer of the IRB that if the invoice is for the equivalent of RM100 and the withholding tax is to be borne by the Malaysian party (as the non-resident expects to be paid the amount stated in the invoice), then the withholding tax is RM10 and the gross fees and actual payment to the non-resident would be RM100.

Comment:

We seek confirmation on the stated above.

Jawapan LHDNM:

The policy on regrossing still stands as stated in the PR No. 1/2014.

The rationale has already been explained by the Jabatan Dasar Percukaian (JDP) to the representatives of CTIM during the CTIM - JDP meeting held on 27/4/2016. JDP is of the opinion that the issue should not be brought up time and again to the inconvenience of all parties concerned.

As provided in Public Ruling No. 1/2014 – Withholding Tax on Special Classes of Income, where withholding tax on payments made to non-resident persons is paid and borne by the payer, the payment that is received by the non-resident is to be re-grossed to determine the amount of income on which income tax should be charged.

In the example quoted based on invoice amount of RM100 and WHT borne by the resident payer, the amount should be re-grossed to RM111.11, resulting in a WHT amount of RM11.11 and net amount of RM100. Accordingly, for purposes of completing Form CP 37D, the gross amount is RM111.11, tax deducted is RM11.11 and net amount paid/credited is RM100.

5. e-Filing of Individual Tax Returns

We refer to item no. 33 of the Minutes of the DESIRE Dialogue (Bil. 1/2016) held on 19 May 2016, on the clarification sought in respect of the following notification involving members who e-file their own tax returns: *“If the total income is more than >RM450,000 please go the nearest LHDNM branch for further enquiry”*.

The IRB had responded that this procedure was put in place to minimise errors by taxpayers in declaring their income. Further, the IRB also clarified that this procedure is not applicable for taxpayers who had previously declared that their income was in excess of RM450,000 and

e-filing was done by tax agents. Based on our records, in the Year of Assessment 2014, the threshold was set at RM1,000,000.

Comment:

We wish to inform that the above procedure creates difficulties and is a hassle for individual taxpayers as they have to make a special trip to the IRB. We wish to propose that instead of having to go to the IRB in person, the taxpayers be prompted to confirm that the amount declared is correct.

We believe that the taxpayers who file their own tax returns via e-filing should be allowed to complete the filing of their tax returns without any interruption.

Jawapan LHDNM:

Bagi pembayar cukai yang tidak dapat hadir ke cawangan, kelonggaran diberi untuk membuat permohonan melalui telefon atau e-mel.

Tindakan tersebut yang dijalankan oleh LHDNM adalah untuk kawalan keselamatan maklumat pembayar cukai sendiri.

6. Desk/Field Tax Audit

The IRB had, on 12 January 2015, released a press statement to inform that the Large Taxpayer Branch of IRB (LTB) will handle Large and High Profile Taxpayer files for the branches in Peninsular Malaysia, whereas the Large and High Profile Taxpayer files in Sabah and Sarawak will be handled by the respective Large Taxpayer Unit in the Kota Kinabalu and Kuching Branches.

We understand that the LTB has requested some taxpayers (residing outside Kuala Lumpur) for certain documents to be sent to the LTB in Kuala Lumpur. Accordingly, this has resulted in inconvenience to those taxpayers.

Comment:

We hope that the IRB could consider the management of such cases such that in the case of a tax audit, it can be performed at relevant branches, near the residence of the taxpayer in order to minimise the logistical and administrative costs that the taxpayer needs to incur.

Jawapan LHDNM:

Dasar LHDNM menetapkan bahawa CPCB hanya mengendalikan fail-fail mengikut ambang (*threshold*) pendapatan yang ditetapkan untuk tindakan audit tanpa mengambil kira walau di mana premis perniagaan pembayar cukai terletak.

LHDNM mengekalkan polisi sedia ada.

**THE MALAYSIAN INSTITUTE OF CHARTERED SECRETARIES
AND ADMINISTRATORS (MAICSA)**

ISSUES FOR DISCUSSION DESIRE BIL.1/2017 MEETING

Issue 1

A company, dormant since incorporation, has made advances to directors. Accordingly deemed interest was calculated on the advances made. Can expenses incurred by the company, such as audit fee, secretarial fee, tax compliance etc be deducted from the deemed interest?

Recommendation/Suggestion

Expenses of a dormant company normally do not rank for deduction. However, Para 6 of Public Ruling No.8/2015 states that if a dormant company made loans or advances to directors, it is deemed to have commenced operations.

As such, logically the expenses of such a dormant company should not be treated as pre-operating expenses and accordingly be qualified for deduction against the deemed interest.

Jawapan LHDNM:

Di bawah subseksyen 21A(8), Akta Cukai Pendapatan 1967 (ACP), "operation" yang diperuntukkan adalah bagi tujuan penentuan tempoh asas sesebuah syarikat yang bermula pada hari/tarikh syarikat mula beroperasi yang merujuk kepada pelbagai aktiviti seperti menjalankan perniagaan atau aktiviti membuat pelaburan atau kedua-duanya sekali.

Oleh itu, bagi syarikat yang belum mula menjalankan aktiviti perniagaan tetapi hanya menjalankan aktiviti membuat pelaburan dan menerima punca pendapatan faedah yang dikenakan cukai di bawah perenggan 4(c), ACP, maka syarikat dianggap telah mula beroperasi bagi aktiviti membuat pelaburan dan perlu menentukan tempoh asas sewajarnya.

Walau bagaimanapun, berkaitan dengan punca perniagaan memandangkan aktiviti perniagaan syarikat yang sebenar belum bermula atau syarikat dorman maka syarikat belum mula beroperasi bagi aktiviti perniagaan. Oleh itu, apa-apa belanja yang berkaitan secara langsung dengan aktiviti perniagaan adalah perbelanjaan praoperasi perniagaan dan tidak layak diberi potongan cukai.

Issue 2

Blocked GST on motor vehicle can be claimed as qualifying capital expenditure for capital allowance purposes.

We wish to seek confirmation whether the cost of GST forms part of the cost of a motor vehicle as illustrated below:

	<u>RM</u>
Cost of car	145, 000
GST	8, 700
Total cost inclusive of GST	153, 700

Remark

The cost of the GST can affect the limit of claim on the qualifying expenditure, that is whether eligible for RM100,000 or RM50,000.

Jawapan LHDNM:

Jumlah kos kenderaan bagi maksud proviso subperenggan 2(2) Jadual 3, ACP merujuk kepada jumlah kos kenderaan (baharu) termasuk CPB. Oleh kerana jumlah kos kenderaan adalah RM153,700 iaitu melebihi RM150,000, maka perbelanjaan modal yang layak bagi tuntutan elaun modal adalah terhad kepada RM50,000.

**THE MALAYSIAN INSTITUTE OF CHARTERED SECRETARIES
AND ADMINISTRATORS (MAICSA)**

Additional Issues

Issue 1

Is LHDNM prepared to review the relief limit of RM6,000 on medical expenses for serious diseases?

Noted the latest review of relief limit was undertaken in Year of Assessment 2015 at an insignificant amount of RM1,000. Hence, the increase in medical expenses which could never be commensurate with the relief limits adjustment.

Maklum balas LHDNM

Keputusan polisi.

Issue 2

Could LHDNM expand the definition of serious diseases (to include cataract operation, heart pacer, stomach ulcer and other critical illnesses) in paragraph 46(1)(g) of the Income Tax Act 1967?

The guide on definition of serious diseases was issued by LHDNM on 4 March 1997 which is more than 20 years ago. Life expectancy has been extended and more critical diseases which were warrant for urgent treatment but were not subject to relief.

Maklum balas LHDNM

Garis Panduan berkenaan dengan Jenis Penyakit Serius bagi Maksud Perenggan 46(1)(g) Akta Cukai Pendapatan 1967 (ACP) yang terkini di laman sesawang LHDNM adalah bertarikh 4 Mei 2011 dan bukan 4 Mac 1997. Maksud penyakit-penyakit serius telah diberi definisi secara khusus di Seksyen 2, ACP.

Issue 3

Could LHDNM provide guideline to claim relief for providing medical equipment to parents or spouse?

Maklum balas LHDNM

LHDNM mengambil maklum.

Issue 4

Are the expenses incurred for poll voting exercise undertaken by listed issuers be allowable?

Paragraph 8.29A of Bursa Listing Requirements had mandated poll voting for all resolutions to be moved at general meeting of listed issuers.

Maklum balas LHDNM

Perbelanjaan ini adalah tidak dibenarkan kerana perbelanjaan ini bukan kesemua dan semata-mata dalam menghasilkan pendapatan kasar.

Issue 5

In the light of Income Tax (Exemption) (No. 2) Order 2017 [P.U.(A) 117/2017] and the examples presented by LHDNM at the 2016 National Tax Seminar held on 27 October 2016, we seek LHDNM's goodwill to verify the correctness of calculation as shown in the attached **Appendix A** for purposes of ascertaining the incremental amount of chargeable income.

Maklum balas LHDNM

LHDNM akan mengeluarkan Garis Panduan.

Pengiraan yang betul adalah seperti berikut:

CONTOH PENGIRAAN DI BAWAH PERENGGAN 4 (2)																						
	Pendapatan yang boleh dikenakan cukai /CI	Kadar cukai sebenar	Kadar Cukai di bawah perintah	Penentuan Pengiraan pengecualian berdasarkan perenggan cadangan																		
Pendapatan Tahun Semasa(a)	530,000 ¹	530,000 x 24% =127,200	480,000 x 24% =115,200 50,000 x 22% =11,000 Cukai TT 2017 <u>126,200</u> <u>Pengurangan cukai bersamaan dengan 127,200-126,200</u> <u>=1,000</u>	<u>4(2)(a) - penentuan peningkatan/amaun beza</u> 530,000 ¹ – 480,000 ² = 50,000 ³ <u>4(2)(b) – peratus amaun kenaikan</u> A - B x 100 B 50,000 ³ x 100 bersamaan 10.41% (peratus nilai peningkatan) 480,000 ² <u>4(3)(c)-penentuan CI yang dikecualikan mengikut formula</u>																		
Pendapatan Tahun Sebelum(b)	480,000 ²	480,000 x 24% = 115,200		<table border="1"> <thead> <tr> <th>PERATUS KENAIKAN</th> <th>PERATUS PENGURANGAN CUKAI</th> <th>KADAR CUKAI SELEPAS PENGURANGAN</th> </tr> </thead> <tbody> <tr> <td>Kurang 5%</td> <td>tiada</td> <td>24%</td> </tr> <tr> <td>5 – 9.99%</td> <td>1</td> <td>23%</td> </tr> <tr> <td>10 – 14.99%</td> <td>2</td> <td>22%</td> </tr> <tr> <td>15 – 19.99%</td> <td>3</td> <td>21%</td> </tr> <tr> <td>20% dan lebih</td> <td>4</td> <td>20%</td> </tr> </tbody> </table>	PERATUS KENAIKAN	PERATUS PENGURANGAN CUKAI	KADAR CUKAI SELEPAS PENGURANGAN	Kurang 5%	tiada	24%	5 – 9.99%	1	23%	10 – 14.99%	2	22%	15 – 19.99%	3	21%	20% dan lebih	4	20%
PERATUS KENAIKAN	PERATUS PENGURANGAN CUKAI	KADAR CUKAI SELEPAS PENGURANGAN																				
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Perbezaan (a) dan (b)/Peningkatan pendapatan	50,000 ³	50,000 x 24% = 12,000																				

				<p>*memandangkan peratus peningkatan 10.41% adalah dalam lingkungan 10 -14.99% kadar cukai yang terpakai adalah 22% bagi maksud formula</p> $\frac{C \times E}{D}$ <p><u>(Amaun beza x kadar semasa) – (amaun beza x kadar insentif) x 50,000</u> (Amaun beza x kadar semasa)</p> $\frac{(50,000 \times 24\%) - (50,000 \times 22\%) \times 50,000}{(50,000 \times 24\%)}$ $\frac{12000-11000}{12000} \times 50000 = 4,166 \text{ (amaun yang dikecualikan di bawah perintah)}$ <p>Pengiraan cukai ke atas amaun perbezaan</p> $50,000^3 - 4,166 = 45,834$ <p>kadar cukai semasa (24%) ke atas 45,834 = 11,000</p> <p>bersamaan dengan 50,000³ dikenakan kadar cukai 22% = 11,000</p> <p>Nota:</p> <ol style="list-style-type: none"> 1 Pendapatan boleh dikenakan cukai TT semasa 2 Pendapatan boleh dikenakan cukai TT sebelum 3 Amaun perbezaan pendapatan boleh dikenakan cukai TT semasa dan TT sebelum
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