



KETUA PEGAWAI EKSEKUTIF/KETUA PENGARAH HASIL DALAM NEGERI
(CHIEF EXECUTIVE OFFICER/DIRECTOR GENERAL OF INLAND REVENUE)
LEMBAGA HASIL DALAM NEGERI MALAYSIA
(INLAND REVENUE BOARD OF MALAYSIA)
TINGKAT 15 BLOK 9
KOMPLEKS BANGUNAN KERAJAAN
JALAN DUTA PETI SURAT 11833
50758 KUALA LUMPUR
MALAYSIA

Telefon: 03-62091000

Fax: 03-62011179

03-62013798

03-62031369

03-62018891

03-62034076

Laman Web : <http://www.hasil.gov.my>

Ruj. Kami : LHDN.01/32.1/193/31

Tarikh : 26 Julai 2011

Kepada,

Seperti Di Lampiran A

Tuan,

ISSUES FOR DESIRE MEETING NO 2/2011

Saya dengan hormatnya merujuk perkara di atas yang dihantar melalui e-mel pada 14 Jun 2011 dan isu tambahan pada 20 Jun 2011.

2. Berikut adalah jawapan kepada empat isu yang dibangkitkan oleh CTIM:

General Filing Issues

Changes in Form CP204

Section 107C(4A) provides, where a company first commences operation in a year of assessment, it is exempted from furnishing estimated tax payable in the prescribed form, provided that at the beginning of the basis period for the year of assessment, the paid-up capital of the company in respect of ordinary shares is two million five hundred thousand ringgit and less and that the company is not controlled by a company the paid-up ordinary shares capital of which is more than two million five hundred thousand ringgit.

We noted that the Form CP204 has been amended recently. Note (c) of the Form CP204 indicates that new SME under category Section 107C(4A) does not need to complete items 2 and 6 of the Form. This gives rise to two issues:

- (i) It implies that new SMEs are required to furnish Form CP204 which contradicts the statutory provision of Section 107C(4A).
- (ii) The change has not been announced, will the taxpayers be penalised for not complying with the IRB's requirements? The professional bodies will like to recommend the IRB to look into the procedures for amending forms, guidelines or uploading any changes so that the public will not be caught by surprises.

JAWAPAN

Persatuan akauntan telah dimaklumkan melalui e-mel berkaitan pindaan borang pada 14 Jun 2011. Pindaan dibuat bagi tujuan mengenal pasti kes SME dengan awal supaya mengelakkan kenaikan cukai di bawah Seksyen 107C(10) dan pengeluaran kompaun kerana gagal mengemukakan CP204.

II YA 2010 Filing Issues

Changes in tax return form during the filing period

We noted that there are changes being made to the income tax return form during the filing period. Although the changes may be cosmetic to the taxpayers, the software service providers have to test their systems as a result of the change and amend their systems accordingly. This has to be done in the peak filing period and tax agents' work schedule will be affected as a result.

The constant disruption in the e-filing system has undermined the confidence of tax agents in adopting full fledge e-filing. The professional bodies would like to suggest that there should not be changes to the income tax return forms during the filing period. The amendment should be restricted to removing the bugs only. Strictly speaking, the income tax return forms are prescribed forms and there cannot be two prescribed forms for the same year of assessment!

JAWAPAN

1. ***Bagi program pengembalian Borang Tahun Taksiran 2010, pindaan hanya dilakukan bagi ruang "Pekerja Berpengetahuan". Ia berdasarkan maklum balas Kementerian Kewangan di mana, bagi Tahun Taksiran 2010, hanya seorang pekerja sahaja yang diluluskan***

sebagai pekerja berpengetahuan. Oleh yang demikian, selepas 30/4/2011, ruangan berkenaan ditutup buat sementara waktu bagi mengelakkan pembayar cukai yang tidak layak tersalah membuat tuntutan.

- 2. Sesetengah ejen cukai yang menggunakan perisian tertentu tidak dapat membuat cetakan menggunakan objek butang. Setelah ujian dibuat, penukaran jenis objek kepada "hyperlink" dapat menyelesaikan masalah tersebut.*
- 3. Terdapat juga masalah di mana pembayar cukai telah mengisi perkataan "Negeri" di dalam ruangan "Negara" menyebabkan sistem menganggap kes tersebut sebagai kes beralamat luar negara. Bagi mengatasi masalah ini, senarai negara disediakan dalam bentuk drop "downlist."*
- 4. Segala usaha akan diambil bagi mengelak pindaan di pertengahan musim pemfailan berlaku pada masa akan datang. Harap kejadian seperti ini tidak juga mematahkan semangat pihak tuan dalam penggunaan e-Filing.*

III YA 2011 Filing Issues

Form C for YA 2011

The IRB has uploaded YA2011 Form C on its website for reference before it was launched. We would like to commend on the practice as it gives the taxpayers/tax agents/software service providers some time to familiarise with the new form.

In respect of the YA2011 Form C, there are changes relating to Capital Allowance (CA). A new item E.11 is inserted to identify accelerated capital allowance (ACA) absorbed in the current year and the amount of ACA to be carried forward. CTIM has written to the IRB for clarification as the requirement gives rise to the issue of priority of set-off but the law does not distinguish between CA and ACA.

The IRB has clarified promptly that this change is only for Form C and was introduced for the purpose of management information. It has also confirmed

that there is no fixed priority / order of set-off for the normal CA, ACA and other allowances. It is up to the company but a proper and consistent record must be kept in respect of the information required to be furnished.

The IRB clarified that the requirement is applicable to qualifying assets acquired in YA 2011. Assets acquired prior to Y/A 2011 on which the claim for accelerated capital allowance have not been fully absorbed need not be taken into account for Y/A 2011 and subsequent years of assessment.

Issues:

- (i) The professional bodies are of the view that since it is up to the company to decide the priority or order of set-off for CA and ACA, the data collected will not be in a standard manner and hence will be of little significance. Further, this requirement is not applicable to partnership and the individual taxpayers who are also entitled to ACA. It is not economical to increase the compliance costs without a justified objective. In this respect, the professional bodies would like to know the IRB's purpose so that an amicable solution may be reached to achieve the objective without increasing the compliance costs.
- (ii) The professional bodies are concerned about the trend that the authority is trying to gather information via the process of filing of tax return. The requirement of Form E is another example. As a matter of policy, the Government is trying to simplify compliance procedures and reducing compliance costs. The IRB is also in the process of simplifying the tax return forms and is also promoting e-filing to reduce compliance costs. However, such trend would complicate tax return forms and increase compliance costs. The professional bodies are of the view that to be cost-effective, the information should be collected via a separate channel and not through tax filing.

JAWAPAN

LHDNM mengambil maklum pandangan persatuan dan akan berbincang dengan Kementerian Kewangan dan jabatan yang berkaitan.

Supplementary issue for discussion at DESIRE meeting No 2/2011

Notices of Assessment for YA2010 have been issued by the IRB Assessment Branches recently to taxpayers who filed their Borang BE 2010 after 30 April 2011. The notices of assessment issued were solely to impose a penalty for late filing of Borang BE. However, it is noted that the assessments were issued under Section 90(3) of the ITA which states:

Where a person for a year of assessment has not furnished a return in accordance with Section 77 or 77A, the Director General may according to the best of judgment determine the amount of the chargeable income of that person for that year and make an assessment accordingly:

Provided that the making of an assessment in respect of a person under this subsection shall not affect any liability otherwise incurred by that person by reason of his failure to deliver the return.

It appears that the assessments were incorrectly issued as in these cases where the assessments were issued solely to impose the penalty, returns were filed to the IRB but not on time.

Also, it is noted that the penalty was imposed under Section 112(3) of the ITA which provides that the amount of penalty shall not exceed 3 times the tax payable. Previously, it is noted that the penalty was also imposed under Section 112(3) of the ITA but the rates used follow the rates prescribed under Section 112(1) of the ITA which is between RM200 to RM2,000, with a minimum penalty of RM200 for the first offence and RM2,000 for the 10th offence. Although a penalty of 20% of tax payable does not exceed 3 times the tax payable prescribed under Section 112(3) of the ITA, it is nevertheless excessive and has become a tremendous burden to taxpayers with only a salary income.

Enquiries were made by tax agents to the Ketua Unit Penaksiran of the IRB Kuala Lumpur Bandar Branch to understand the basis and rationale for the imposition of the penalty and was informed of the following:-

- All IRB Branches received an instruction from Ketua Audit Negara to impose a penalty under Section 112(3) of the ITA for late filing of tax returns.
- The new instruction was issued on 1 June 2011 and taxpayers who filed the Borang BE after 30 April 2011 (i.e., from **1 May 2011 onwards**) are affected.
- Currently, the penalty for late filing of tax returns has been set at 20% of total tax payable in the IRB's computer system, e.g. if the total tax payable

is RM100,000, then the penalty for late filing would be RM20,000. The penalty is not based on the balance of tax payable after the monthly tax deduction amount.

- The IRB has received a lot of complaint calls from taxpayers and tax agents. However, their hands are tied and there is nothing they (i.e., the IRB Branches) could do about it as the penalty has been pre-set in their computer system.
- They will need to wait for further instruction from Jabatan Audit Negara in order to reduce or waive the penalty.
- Appeals for the attention to Ketua Pengarah of IRB can be made. However, there is no guarantee that the appeal will be successful.

Many tax agents have received notices of assessment for YA 2010 of their clients with a 20% penalty imposed. These notices of assessments were issued by the IRB Branches such as Kuala Lumpur Bandar, Shah Alam, Miri, Kuala Terengganu, etc.

The professional bodies would like know the rationale for imposing such high penalties on tax payers regardless of the number of offences previously committed. In this respect, the professional bodies respectively request the IRB to revert to the penalty rates previously prescribed ranging from a minimum penalty of RM200 to RM2,000 to a maximum penalty of RM2,000 to RM20,000 depending on the number of offences previously committed.

JAWAPAN

Bagi kes gagal atau lewat mengemukakan Borang Nyata Cukai Pendapatan (BNCP), sesuatu taksiran boleh dibangkitkan di bawah peruntukan Subseksyen 90(3) Akta Cukai Pendapatan 1967 (ACP 1967) sekiranya BNCP tidak dikemukakan dalam tempoh seperti ditetapkan di bawah Seksyen 77 atau 77A ACP 1967.

Mulai 1 Jun 2011, penalti dikenakan bagi kes tersebut mengikut kadar yang ditetapkan bergantung kepada tempoh masa diambil untuk mengemukakan BNCP selepas tarikh yang ditetapkan dan bukan lagi berdasarkan bilangan kelewatan mengemukakan BNCP. Tidak seperti kenaikan cukai di bawah Seksyen 103 ACP 1967, penalti yang dikenakan di bawah Subseksyen 112(3) Akta yang sama tidak mengambil kira bayaran cukai yang telah dibuat.

Rayuan boleh dibuat sekiranya pembayar cukai mempunyai alasan yang munasabah atau terdapat taksiran dikurangkan yang menyebabkan penalti dikenakan melebihi tiga kali ganda cukai dikenakan. Walau bagaimanapun, kegagalan atau kelewatan di pihak akauntan / ejen cukai tidak boleh diterima sebagai alasan untuk tidak dikenakan penalti.

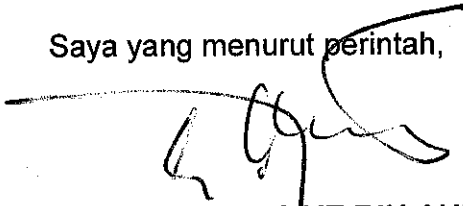
LHDNM tidak akan berpatah balik kepada arahan asal kerana arahan baru adalah hasil kajian melebihi dua tahun dan semua fakta sudah diberi pertimbangan. Ia juga selari dengan "best practice" antarabangsa di mana kesalahan lewat atau gagal mengemukakan BNCP dipandang amat serius sehingga boleh diambil tindakan di bawah AMLA.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

"BERSAMA MEMBANGUN NEGARA"

Saya yang menurut perintah,



(MOHAMMAD SAIT BIN AHMAD)

Timbalan Ketua Pengarah (Operasi Percukaian)

b.p. Ketua Pegawai Eksekutif/Ketua Pengarah Hasil Dalam Negeri

Lembaga Hasil Dalam Negeri Malaysia

Pengarah Eksekutif,
Institut Percukaian Malaysia (CTIM),
Unit B-13-2, Block B, 13th Floor, Megan Avenue II
No. 12, Jalan Yap Kwan Seng
50450 Kuala Lumpur.

Pengarah Eksekutif,
Institut Akauntan Malaysia (MIA)
Dewan Akauntan No. 2
Jalan Tun Sambanthan 3, Brickfields
50470 Kuala Lumpur

Pengarah Eksekutif,
Institut Akauntan Awam Bertauliah Malaysia (MICPA)
15, Jalan Medan Tuanku
50300 Kuala Lumpur

Presiden
Persatuan Akauntan Percukaian Malaysia (MATA)
Pejabat Sekretariat MATA
27-1, Blok 1D Jalan Wangsa Delima 12, Wangsa Link
Pusat Bandar Wangsa Maju
53300 Kuala Lumpur.

Presiden
Persatuan Institut Setiausaha dan Pentadbir Berkanun Syarikat (MAICSA)
No. 57, The Boulevard, Mid Valley City Lingkaran Syed Putra
59200 Kuala Lumpur

Presiden
Persatuan Setiausaha Syarikat Malaysia (MACS)
No. 23A, 1st Floor Jalan SS24/11, Taman Megah
47301 Petaling Jaya, Selangor

Presiden
Institute of Cooperative & Management Accountants (ICMA)
No. 14M, Jalan Zirkon E7, Seksyen 7
40000 Shah Alam.