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DIALOGUES WITH IRB
(INLAND REVENUE BOARD)



Year 2005 Programme for Submission of Return Forms

1.0 The programme for submission of Income Tax Return Forms was discussed during the dialogue between the Revenue Management Department of the Inland Revenue Board (IRB) and MICPA, MIA, MIT, MAICSA and MATA held on February 16, 2005.

2.0 **Filing Programme for Year 2005**

A copy of the filing programme issued by the IRB (Appendix 1) is attached. Members are advised to take note and comply with the due dates for filing of return forms for the various categories of taxpayers.

All return forms should be submitted to Pusat Pemprosesan of the IRB.

3.0 **Submission of Borang C & Borang R by Companies with Financial Years Ended December 31, 2004**

There will be no penalty imposed by the IRB if Borang C and Borang R of companies with financial years ended December 31, 2004 are received by IRB on or before August 14, 2005. This concession also applies to the payment of the balance of tax payable under section 103(1) or debt due from the company to the Government under section 108 of the Income Tax Act, 1967.

4.0 **Change of Address of Pusat Pemprosesan**

With effect from January 3, 2005, Pusat Pemprosesan of the IRB is located at the following address:

Pusat Pemprosesan
Lembaga Hasil Dalam Negeri
Aras 12-18, Menara C
Persiaran MPAJ, Jalan Pandan Utama,
Pandan Indah, 55100 Kuala Lumpur
Karung Berkunci 11054
50990 Kuala Lumpur

Tel No: 03-42973010 / 42973020 / 42973040 / 42973050 /
42973070 / 42973078

Fax No: 03-42975044

MICPA Circular No. TEC/005/02/2005

Issue Date : February 23, 2005

MICPA Circular No. TEC/018/07/2005

Issue Date : July 18, 2005

Appendix 1

Program Pengembalian Borang Cukai Pendapatan

Kategori	Jenis Borang	Tarikh Pengembalian
Individu pemastautin - perniagaan	Perniagaan	30 Jun 2005
Individu pemastautin - tiada perniagaan	Bukan perniagaan	30 April 2005
Perkongsian	P	30 Jun 2005
Individu tidak bermastautin	M	30 April 2005 - bukan perniagaan 30 Jun 2005 - perniagaan
Harta Pusaka	TP	30 April 2005 - bukan perniagaan 30 Jun 2005 - perniagaan
Pertubuhan	TF	30 April 2005 - bukan perniagaan 30 Jun 2005 - perniagaan
Keluarga Sekutu Hindu	TJ	30 April 2005 - bukan perniagaan 30 Jun 2005 - perniagaan
Syarikat	C (termasuk Borang R)	7 bulan dari tarikh penutupan akaun
Koperasi	C1	7 bulan dari tarikh penutupan akaun
Amanah Unit / Amanah Harta	TC	7 bulan dari tarikh penutupan akaun
Badan Amanah	TA	7 bulan dari tarikh penutupan akaun
Majikan	E	31 Mac 2005

Skim Bayaran Ansuran STS

Keterangan	Borang	Bayaran
Anggaran cukai bagi OG, TP, TF dan TJ.	CP 500	Pada / sebelum Mac 2005, Mei 2005, Julai 2005, Sept. 2005, Nov 2005 dan Jan 2006.
Anggaran cukai disemak bagi OG, TP, TF dan TJ.	CP 502	Permohonan dihantar pada /sebelum 30 Jun
Anggaran cukai bagi C, C1, TC dan TA.	CP 204	10 haribulan
Anggaran cukai disemak bagi C, C1, TC dan TA.	CP 204A	Bulan keenam dan kesembilan

LHDN/Feb2005

B

Dialogues with Technical Division and Revenue Management Department of IRB

- 1.0 A dialogue session was held with the Technical Division of the Inland Revenue Board (IRB) on October 20, 2004, and two dialogue sessions were held with the Revenue Management Department (formerly known as Operations Division) on February 16, 2005 and May 10, 2005.

2.0 ISSUES RELATING TO 2005 BUDGET ISSUES

2.1 Tax Treatment for Trade Associations

It has been proposed that the statutory income from member's subscription fees that is exempted be calculated according to the attributable method by taking into consideration actual expenditure incurred.

The professional bodies would like to seek further clarification on the attributable method to be used as well as when the statutory order will be gazetted.

Answer by IRB

IRB provided an example of a tax computation based on the proposed amendment (refer to Appendix 2) to the professional bodies for comment. The IRB is in the midst of drafting the statutory order and welcomed comments and feedback from the professional bodies before the statutory order is finalised.

2.2 Tax Treatment for Real Estate Investment Trusts (REITs)

The 2005 Budget proposed that REITs approved by the Securities Commission be exempted from income tax on chargeable income distributed to unit holders whereas its undistributed chargeable income is taxed at 28%. The income distributed to unit holders is taxed at their respective tax rates. For a non-resident unit holder, tax payable is at 28% and shall be withheld by REITs. The accumulated income that has been taxed and subsequently distributed is eligible for tax credit in the hands of unit holders.

The professional bodies would like to know whether the IRB will issue any guideline on the administrative provisions relating to the determination of the residence of unit holders, withholding tax, etc. and the time frame within which the guideline will be issued.

It is also noted that tax deductions for a REIT are allowed under Section 33 of the Income Tax Act, 1967. What about deductions relating to Section 34 especially in connection with possible bad debts?

The professional bodies would like to enquire as to the reason why unabsorbed business losses and capital allowances are not allowed to be carried forward. It is suggested that this should be allowed for all property trusts.

In addition, the professional bodies would like to highlight the practical problems which may arise as there is a mismatch between accounting profits and chargeable income. For instance, a REIT may have net profits of RM100 but its chargeable income may be RM120 due to the disallowance of certain expenses. The REIT can only distribute a maximum of RM100. Thus, the balance of RM20 will be taxed at 28%. This may cause a cash flow problem if a REIT makes a full distribution. On the other hand, other problems may also arise on monitoring the undistributed profit and the tax credit attached when distributing from a mixed pool of profits.

In view of the above, the Institutes would suggest that net accounting profits be deemed to be chargeable income so as to avoid the mismatch.

Answer by IRB

IRB will issue a guideline on the administrative procedures with regard to REIT as soon as possible.

Expenses incurred by a REIT will also be allowed under section 34. A review of the proposed legislation will be done to give effect to this intention.

With regards to unabsorbed business losses and capital allowances not being allowed to be carried forward, IRB informed that this treatment is a policy decision. The treatment of rental income of REIT as a business income is a concession. However, it is with limitations i.e. unabsorbed business losses and capital allowances are not allowed to be carried forward. IRB recommended that the professional bodies forward the matter to the Ministry of Finance (MOF) as this is a policy matter.

Regarding the issue of mismatch between net accounting profits and chargeable income which may cause a cash flow problem, IRB is of the view that the net accounting profit is not always lower than chargeable income. In some circumstances, chargeable income is lower than net accounting profit. Thus, this issue may not necessarily cause a cash flow problem. The suggestion that net accounting profits be deemed to be chargeable income would appear to disregard tax law. However, IRB recommended that this issue may also be brought to the attention of MOF.

2.3 Filing of Income Tax Returns for Taxpayers other than Companies

It has been proposed in the 2005 Budget that the deadline to file tax returns by sole proprietors, partnerships, clubs and associations be extended from 30 April to 30 June each year.

The professional bodies welcome the proposed change to the legislation. However, it is proposed that the extension of tax filing deadline of 30 June be extended to include those persons who are not carrying on a business. This will enable a consistent tax filing deadline for all persons other than a company, trust body or co-operative society.

With regard to the Budget proposal, the Institutes would like to seek clarification on the following matters:

- (a) whether the IRB will determine the filing deadline based on OG or SG categories and whether the OG cases will be automatically allowed to file tax returns by 30 June;
- (b) whether an individual who has a SG number but with a commission based business activity will be allowed to file the tax return by 30 June;
- (c) whether an individual who starts a business during the year will be allowed to self-determine the filing deadline or is required to inform/seek approval from the IRB on the 30 June filing;
- (d) whether the filing deadline of the tax return for joint assessment of husband and wife is on 30 June if either party has a business source; and
- (e) whether an individual who has no business source but receives a Form B has to file the tax return on 30 April.

As the proposal is effective from year of assessment 2004, the Institutes would like to seek confirmation that it takes effect for tax returns filed in Year of Assessment 2004. If so, where a sole proprietor filed late on 15 May 2004, would the penalty be waived automatically or would the taxpayer need to pay the penalty and then appeal for a waiver.

Answer by IRB

Filing deadline will depend on whether the individual has business income or non-business income. For the individual with business income, the deadline will be 30 June whilst for an individual with non-business income the filing date remains at 30 April.

IRB confirmed that the above proposal is not applicable to the filing of tax returns in the year 2004.

IRB suggested that operational matters be raised with Jabatan Pengurusan Hasil, LHDN (previously known as Bahagian Operasi).

2.4 Fund for Tax Refund

The 2005 Budget proposed that a portion of the income tax collected be kept in a fund known as “Fund for Tax Refund” to expedite the process of income tax refunds.

The professional bodies welcome the Government’s initiative in setting up such a fund and would like to seek the IRB’s clarification on the following matters:

- (a) whether the fund will be a revolving fund i.e. the initial amount placed in the Fund will be replenished automatically from the tax collections;
- (b) Whether the repayment procedures in the assessment and collection branches will be reviewed to improve the delivery system i.e. the time taken in processing a tax refund;
- (c) Whether the excess credits will be automatically used for set-off against the current year tax instalments or is the taxpayer required to apply to the IRB for such a set-off;
- (d) Whether the IRB will stipulate a time frame within which the tax credits will be refunded;
- (e) Whether the IRB will issue any guideline on the criteria that will be applied in processing refunds and the procedure to be followed in respect of offsets and refunds of tax overpaid. The Institutes believe this is an area that is important in the interests of governance and transparency so that no one gets special treatment;
- (f) Whether there would be any priority given to individuals over other taxpayers or will all the taxpayers be treated equally; and
- (g) Whether the IRB will prepare a refund cheque for an individual taxpayer who has a refund of less than RM10,000 and whether the same treatment will be applied to corporate taxpayers as well or will all cheques be prepared by the Accountant-General’s Department.

Answer by IRB

IRB responded that the above issues be raised with Jabatan Pengurusan Hasil, LHDN (previously known as Bahagian Operasi).

2.5 Gazette Orders

The professional bodies would like to request the authorities to stipulate a time frame for the issuance of the relevant gazette orders for the following 2005 budget proposals:

- Accelerated capital allowance on equipment to maintain quality of power supply
- Accelerated capital allowance for the agricultural sector
- Accelerated capital allowance for renewable energy production
- Double deduction to promote the export of services (extending the scope)
- Incentives for commercialization of public sector research & development
- Mergers of private institutions of higher learning
- Incentive for production of halal food
- Incentive for relocating manufacturing activities to promoted areas

In addition, it is hoped that the gazette orders will be clear especially in listing out the eligible machinery and equipment that will qualify for accelerated capital allowance.

Answer by IRB

All the statutory orders have been drafted for the approval of MOF except for the statutory orders on accelerated capital allowance which are still pending because the list of eligible machinery and equipment have to be furnished by the respective Ministries. The statutory orders for the last two proposals will be issued by MITI.

2.6 Double Deduction on Expenses for Quality Systems and Standards Certification

It is proposed that double deduction be given to a company which incurs expenses in obtaining international quality systems and standards certification, and halal certification with effect from year of assessment 2005.

The professional bodies would like to enquire about the list of certification bodies. It is understood that for halal certification, Jabatan Kemajuan Islam Malaysia (JAKIM) would be the certification body.

Answer by IRB

The list of halal certification bodies as determined by the Minister of Finance are as follows:

Malaysian Islamic Development Department (JAKIM)

State Islamic Religious Departments

State Islamic Religious Councils

The list will be posted on the IRB website.

2.7 Interest in Suspense (IIS)

It has been proposed that effective from Year of Assessment 2001, IIS shall be deemed as a specific provision for bad debts under Section 34(2) of the Income Tax Act, 1967.

For this purpose, “bank” has been defined to mean a bank or a finance company or a banking and finance company licensed or deemed to be licensed under the Banking and Financial Institutions Act 1989 or Islamic Banking Act 1983 or an institution prescribed under the Development Financial Institutions Act 2002.

The professional bodies would like to seek clarification whether the above proposed IIS treatment will apply to a leasing company.

Answer by IRB

The proposed amendment would only be applicable to a bank or finance company licensed under the Banking and Financial Institutions Act 1989 (BAFIA) or Islamic Banking Act 1983 or Development Financial Institutions Act 2002. It is not applicable to a leasing company which is only required to be registered under the Banking and Financial Institutions Act 1989 (BAFIA) and not licensed under the same Act.

2.8 Incentive for Commercialisation of Public Sector Research & Development (R&D)

It is proposed that the above incentive would be provided upon fulfillment of certain conditions. One of the conditions states that only resource-based R&D findings are eligible.

The professional bodies would like to seek clarification on the definition of “resource-based R&D findings”.

Answer by IRB

Currently, the definition of “resource-based R&D findings” as agreed by MOF covers only oil palm, rubber and wood-based products.

2.9 Rebate for Purchase of Personal Computer

The 2005 Budget proposed that the tax rebate given for the purchase of a personal computer be increased from RM400 to RM500.

The professional bodies would like to seek clarification on the definition of “computer”, in particular, as to whether it includes devices which have the same functions as computers such as palmtops, Nokia Communicators, etc.

The professional bodies would nevertheless, suggest that the rebate be given every two years. This will encourage society to keep abreast with the fast-changing Information and Communications Technology world.

Answer by IRB

IRB is of the view that the term personal computer would not include palmtops, Nokia Communicators, etc. For the time being we should follow the existing definition. For the review of the definition, the professional bodies were requested to submit their views on this matter.

2.10 Relief for Purchase of Books

It is proposed that the income tax relief for the purchase of books be increased from RM500 to RM700 for each year.

The professional bodies would like to seek confirmation whether a taxpayer (not in practice) who purchases a handbook issued by professional bodies which includes standards, guidelines, and technical orders relevant to a specific field will be eligible for the relief.

Answer by IRB

IRB confirmed that the above-mentioned purchase will be eligible for the relief.

2.11 Tax Incentive for Modernising the System for Chicken and Duck Rearing

It is proposed that the scope of the above incentive be extended to rearers of parent and grand parent stock of chickens and ducks provided, amongst others, they rear at least 20,000 parent or grand parent stock of chickens/ducks per cycle.

The professional bodies seek to clarify whether the proposed incentive would result in an additional/increase in minimum rearing capacity for the rearers in order to qualify for the incentives.

Answer by IRB

In order to qualify for the above incentive, the following conditions must be met:

- ***minimum rearing capacity of 20,000 parent or grand parent stock of chickens/ducks per cycle; and***
- ***there is a change from the opened to the closed house system.***

This is not an additional condition to the existing incentive related to rearing of layer and broiler chickens and ducks but it is an additional incentive.

2.12 Qualifying Expenditure for Purchased Buildings

The 2005 Budget proposed that the current purchase price of the used building be taken as the qualifying expenditure of the industrial building.

The Institutes welcome the proposed amendment to the legislation as it will simplify the compliance process and reduce the time and effort required in obtaining the relevant information.

The professional bodies hope that the IRB will also simplify other provisions in the laws and regulations in order to improve the efficiency of tax administration under the Self Assessment System.

Answer by IRB

The IRB recommended that the professional bodies provide feedback on the proposal to simplify other provisions of the tax law.

3.0 ISSUES RELATING TO PREVIOUS BUDGET PROPOSALS

With reference to pages 46 to 50 of the 2005 Budget Commentary & Tax Information prepared by the Institutes (see Appendix 3), the Institutes would like to enquire on the status of the issuance of statutory orders or amendment to the existing legislation (where applicable) for the previous budget proposals.

Answer by IRB

The status report is in Appendix 4.

4.0. OTHER MATTERS

4.1 Approved Donations and Permitted Expenses

Currently, the rounding of calculations of both Approved Donations and Permitted Expenses is a matter of practice. Based on the notices from the IRB that has been sent to members concerning incorrect tax computations, it seems that there are very specific rules that are being applied by the IRB.

The professional bodies seek to clarify whether the IRB has specific rules being applied to this matter and when these rules should be applied.

Answer by IRB

The issue raised is not very clear. The professional bodies were advised to clarify the issue and raise it with Jabatan Pengurusan Hasil, LHDN (previously known as Bahagian Operasi).

4.2 Real Property Gains Tax – Keeping of Records

Currently, for RPGT purposes, taxpayers are required to keep records although there is no timeframe mentioned in the RPGT act.

The professional bodies would like to seek confirmation whether the period of record keeping should be standardized to 7 years as required under the Income Tax Act, 1967.

Answer by IRB

IRB will consider including a provision on a time frame for record keeping in the Real Property Gains Tax Act, 1976.

4.3 Stamp Duty for Unquoted Shares Based on Price Earnings Ratio and Par Value

Currently, according to the guidelines issued by IRB in April 2001, the PE ratios applied are fixed and an industrial average PE ratio would not be an accurate assessment of the value of the shares of a company. In the case of a company incurring losses, the use of par value may not be justifiable. It is because accumulated losses have eroded the capital of the company resulting in the value per share being less than par value.

The professional bodies would like to suggest that the use of PE ratio and par value (in respect of loss making companies) for assessment of stamp duty be omitted from the assessment process.

Answer by IRB

IRB takes note of the above concern and welcomes the professional bodies to submit their views and suggestions to the IRB to review the present guideline.

4.4 Submission of Revised Tax Return for Individual (Year of Assessment 2004)

Under the Self-Assessment system of taxation, the IRB is deemed to have raised an assessment on an individual on the date the tax return is submitted. Based on verbal confirmation given by the IRB to a member of the professional bodies, it is understood that any amendments to the 2004 tax return submitted would not attract any penalty so long as the amendments to the tax return are submitted to the IRB before the due date of 30 April 2005.

A situation arises in the case where an individual exercises part of his employment outside Malaysia and his overseas duties are assessed as being incidental to the exercise of his Malaysian employment. Part of his income is thus taxed in the foreign country (a non-treaty country) and in Malaysia. A unilateral credit for foreign tax suffered is due to the individual and a claim for such credit is to be supported by the tax return submitted (due in May of each year) in the foreign country. However, as his Malaysian tax return for the year of assessment 2004 would be due for submission by 30 April 2005, he would not be able to determine the actual foreign tax to be suffered since his foreign tax return would only be filed after April 2005. He may only be able to estimate the foreign tax suffered on his income from the exercise of his overseas duties for the purpose of the claim for unilateral relief at the point of submission of his Malaysian return and submit an amended tax return when the actual foreign tax suffered is determined upon submission of his foreign tax return.

The professional bodies would like to seek clarification whether the individual would be liable to penalty for amending the tax return after the due date for submission of the Malaysian tax return, i.e. after 30th April 2005 under the above circumstance.

Answer by IRB

This issue should be raised during the dialogue with Jabatan Pengurusan Hasil, LHDN (previously known as Bahagian Operasi).

4.5 Previous Dialogues

With regard to the minutes of previous dialogues with the Technical Division, the professional bodies would like to know the status of the issuance of public rulings or guidelines (for example the public ruling on the scope of Section 75A of the Income Tax Act, 1967 and the regulations on the tax treatment for Asset-Backed Securities, etc) which the IRB had indicated would be issued.

Answer by IRB

The IRB has completed drafting some the public rulings. The draft of the Guideline on Tax Treatment for Asset-Backed Securities has been forwarded to Legal Department for review. Public ruling on entertainment will be issued soon whilst the public ruling on section 75A (director's liability) will be issued at a later date.

5.0 ISSUES RELATING TO TAX AUDITS**5.1 Approach to tax audits**

The three professional bodies have received feedback from members on how tax audits are being carried out by the IRB officers. The Institutes have been informed that in some cases, the IRB officers do not adopt a friendly approach and have a perception that taxpayers are deliberately under paying or declaring their taxes. The methodology adopted by the IRB officers in conducting tax field audits seems to be geared towards meeting the IRB's targets in collecting taxes rather than on dealing with technical issues on a fair and reasonable basis. We list below some situations which the Institutes have been informed about.

- (i) In some cases, the IRB officers refuse to accept business reasons and issue additional assessment as well as impose a penalty merely because the gross profit margin in a current year has dropped as compared to the previous year's profit margin.

The Institutes are of the view that the above practice is inappropriate as there are various reasons affecting the reduction of gross profit margins and one cannot assume that such a drop constitutes an under-declaration of income.

Jawapan

Bukan menjadi amalan LHDN membuat pelarasan cukai berdasarkan untung kasar kecuali pembayar cukai tidak menyimpan rekod bagi membolehkan pegawai audit menjalankan audit. Peninggalan cukai yang didapati bersalahan dengan Undang-undang akan dikenakan penalti.

Pembayar cukai yang tidak menyimpan rekod telah melakukan satu kesalahan di bawah Seksyen 82 Akta Cukai Pendapatan 1967 dan boleh didakwa kerana tidak menyimpan rekod.

Sehubungan dengan itu, ejen cukai perlu memberi nasihat kepada pelanggan mereka mengenai pentingnya menyimpan rekod yang lengkap.

- (ii) Members of the Institutes have also reported that in some cases the IRB officers do not fully appreciate the way businesses are carried out. For example, deduction of bad debts is disallowed merely because no legal action was taken despite the fact that all other necessary steps had been pursued.

In this regard, the professional bodies would be grateful if the IRB officers could appreciate the business rationale for not pursuing any legal action against debtors, for instance to secure future or on going projects with the said debtor or its related party.

Jawapan

Hutang lapuk hanya dibenarkan sekiranya hutang tersebut didapati benar-benar lapuk. Pembayar cukai perlu menunjukkan bukti bahawa tuntutan telah dibuat seperti tindakan undang-undang atau pun usaha-usaha tertentu telah diambil. Hutang tidak boleh dianggap lapuk sekiranya urusan masih berlaku dengan pihak berkenaan. Pembayar cukai boleh merujuk kepada Ketetapan Umum No. 1/2002 yang telah dikeluarkan pada 2/4/2002.

- (iii) The Institutes have also been informed that some of the IRB officers insist on a detailed breakdown of a particular expense item and have the pre-conceived idea that certain disallowable items have been included in that item. Where a taxpayer does not have the detailed analysis, an arbitrary amount is disallowed by the IRB.

The Institutes would like to highlight that a taxpayer may not have the detailed analysis as when a service is rendered, the service provider may only invoice a single amount. Hence, it is unreasonable if the IRB penalises the taxpayers based on such presumptions and disallow the said expenses simply because no analysis is available.

In addition, the Institutes would suggest that IRB officers should understand that businesses may not have complete documents on specific matter and if the taxpayer can explain verbally the trend and any variations based on his experience, then it should be sufficient to proof that the expense item or accruals have been arrived

on a reasonable basis. Taxpayers have been asked to get third party information which, in most situations, are not publicly available. For example, an IRB officer asked a taxpayer to provide evidence of prices and margins of another business/competitor to demonstrate that the taxpayer's purchases have not been excessively priced. Such sensitive information in most cases is not publicly available and taxpayers may find difficulty in getting such information.

The Institutes have been informed that there have been instances where the IRB has taken a stand to disallow expenses on the basis that no documents exist to support it or the available documents are not good enough to support it as they are internally prepared.

Jawapan

Analisis terperinci diperlukan bagi mengesahkan tuntutan yang dibuat dan ada kemungkinan terdapat perbelanjaan yang tidak dibenarkan. Kebiasaannya tuntutan yang tidak dibenarkan adalah merupakan tuntutan yang tidak berasas atau berpatutan. Ketetapan Umum No. 1/2005 boleh dirujuk. Bukan menjadi polisi LHDN untuk mencampurbalik perbelanjaan hanya disebabkan oleh pembayar cukai tidak mempunyai rekod. LHDN hanya akan membuat pelarasan sekiranya sesuatu tuntutan yang dibuat oleh pembayar cukai itu tidak berasas dan LHDN mempunyai asas tertentu apabila membuat pelarasan ke atas tuntutan tersebut. Walau bagaimana pun tindakan pendakwaan boleh diambil ke atas pembayar cukai yang tidak menyimpan rekod kerana gagal menepati peruntukan di bawah Seksyen 82 Akta Cukai Pendapatan.

Di dalam Garispanduan Pindahan Harga, pembayar cukai dikehendaki menyimpan rekod berhubung dengan polisi harga selengan, iaitu kaedah harga selengan yang ditentukan berasaskan pihak setanding. Adalah menjadi tanggungjawab pembayar cukai mendapatkan perniagaan setanding dalam menentukan harga selengan.

- (iv) Some members have also reported that the requests from the IRB officers are difficult to understand. For example, some IRB officers perceive that there is tax avoidance just because the accounting treatment was not carried out in the manner the IRB thinks it should be done. The IRB officer insists that the accounting treatment should be carried out in a specific manner to reflect certain transactions when the taxpayer is able to show that even an alternative accounting treatment could produce the same end result.

There are also some instances where the taxpayer does not agree to the proposed audit adjustment(s) and the IRB officers imply that a higher penalty rate will be imposed if the agreement to the audit adjustment is not given within a short period of time.

The Institutes are of the opinion that this practice is unacceptable as every taxpayer has a right to be given a reasonable amount of time (i.e. 30 days from the date of the letter) to object to the proposed audit adjustment(s) and under no circumstances should an IRB officer impose a higher penalty merely because the taxpayer disagrees with the proposed audit adjustment(s).

Jawapan

Pelarasan cukai tidak dibuat hanya berasaskan pendekatan perakaunan sahaja tetapi dibuat juga sekiranya pembayar cukai tidak melaporkan cukai dengan betul sama ada dari segi keuntungan atau tidak mematuhi akta dan ketetapan umum percukaian.

Pada kebiasaannya, pembayar cukai akan diberi masa yang munasabah untuk membuat rayuan. Lanjutan tempoh juga diberi atas sebab atau alasan yang tertentu. Oleh itu pembayar cukai perlu memberi maklumbalas dengan segera untuk mengemukakan rayuan (dalam tempoh 14 hari) dan bukannya menunggu di saat akhir tempoh yang dibenarkan untuk memberi maklumbalas kemudian memohon lanjutan masa.

Penalti dikenakan atas peninggalan cukai yang bersalah dan kadar penalti adalah standard mengikut struktur seperti yang terdapat di dalam garis panduan. Walau bagaimana pun, struktur penalti yang terdapat di dalam garis panduan hanyalah terpakai kepada pembayar cukai yang bekerjasama di dalam menyelesaikan kes audit. Bagi pembayar cukai yang telah melakukan kesalahan dan tidak bekerjasama, penalti yang lebih tinggi daripada apa yang telah ditetapkan di dalam garis panduan boleh dikenakan.

- (v) The professional bodies have also been informed that in some instances tax adjustments are made by the IRB without explaining the rationale for making such adjustments or by giving a response that the IRB officer is not convinced by/disagrees with the explanation given or that the explanation given is not reasonable or cannot be accepted.

In this regard, the Institutes would like to emphasize that the IRB officer should give valid and justifiable reasons for making tax adjustments and the explanations must be supported by law and well-documented so as to be fair to taxpayers.

In view of the above, the Institutes urge the IRB to look into the approach to tax audits which are conducted by the IRB officers and would like to highlight that the primary objective of a tax audit is to collect the right amount of tax payable and to assist the taxpayer in gaining a correct understanding of the law. The Institutes are of the view that the IRB officers should give the taxpayers the benefit of doubt in genuine cases instead of having the pre-conceived mindset that taxpayers are under-declaring their tax liability. It is hoped that every taxpayer will receive fair, courteous and professional treatment from the IRB officers, who in turn should be technically sound in accounting principles and familiar with the business operations and commercial practices.

lawapan

Objektif audit adalah untuk menggalakkan pematuhan cukai secara sukarela, iaitu memastikan pembayar cukai melaporkan cukai dengan betul mengikut akta dan peraturan LHDN dan memberi pendidikan kepada pembayar cukai. Oleh itu semua penemuan audit akan dimaklumkan terlebih dahulu kepada pembayar cukai. Pembayar cukai diberi tempoh selama 14 hari untuk memberi maklumbalas dan lanjutan masa akan diberi sekiranya pembayar cukai benar-benar memerlukannya. Oleh itu pembayar cukai perlu memberi alasan dan menunjukkan bukti kerja-kerja yang telah dilakukan sehingga tempoh yang dipohon.

Semua pelarasan cukai yang dibuat mempunyai asas dan ianya akan diperjelaskan kepada pembayar cukai melalui surat dan perbincangan. Oleh itu pembayar cukai perlu tampil memberi kerjasama dan mendapatkan penjelasan daripada pegawai audit. LHDN sentiasa mengalu-alukan kehadiran agen cukai dalam perbincangan dan pembayar cukai perlu hadir bersama semasa perbincangan diadakan.

Pertimbangan yang sewajarnya akan diberi kepada pembayar cukai. Namun begitu bagi peninggalan cukai yang bersalah wajar dikenakan penalti. Ia merupakan suatu pengajaran kepada pembayar cukai supaya kesalahan yang sama tidak berulang. Sekiranya penalti tidak dikenakan, terutama di bawah STS pembayar cukai akan cuba mencari peluang untuk mengelakkan cukai.

5.2 Time frame and scope of a tax audit

(refer to Minutes of Tax Audit and Investigation dialogue held on 2 October 2003)

The IRB informed in the previous dialogue held on 2 October 2003 that the time frame for conclusion of a tax audit generally is about 3 months. However, the Institutes have been informed by its members that in some cases, the tax audits are only concluded well over the stipulated time frame of three months.

As taxpayers are eager to know the outcome of the field audit and to avoid further disruption to the business operation of the taxpayers, the Institutes urge that the tax audit be concluded within the agreed time frame i.e. 3 months from the date of commencement of the audit. The Institutes are also of the view that a clearance letter to show that the audit has been concluded for the relevant years of assessment should be issued to taxpayers upon the finalisation of each tax audit whether or not there is additional tax liability.

The Institutes have also been informed that in some cases the IRB officers had done a tax audit for two years of assessment as stated in the initial notification letter and having found no discrepancy, the officers proceed to audit a further two years of assessment (which are not stated in the initial notification letter of the tax audit).

The Institutes are of the view that such practices are not appropriate in carrying out a tax audit under the Self Assessment System.

lawapan

Kes perlu diselesaikan dalam tempoh 3 bulan. Oleh itu pembayar cukai perlu memberi kerjasama yang sepenuhnya dalam usaha untuk menyelesaikan kes dan bukannya melengahkan penyelesaian kes. Pegawai audit akan menganalisis kes yang dipilih untuk diaudit yang melibatkan tahun semasa dan juga tahun yang berisiko tinggi untuk satu atau dua tahun sahaja. Walaubagaimana pun, jika ada asas yang nyata untuk tahun-tahun kebelakang, audit atau penyiasatan boleh dilakukan.

Jika tidak terdapat sebarang penemuan semasa audit, kes akan ditutup dan surat penyelesaian audit akan dikeluarkan. Bukan menjadi polisi dan amalan LHDN untuk sengaja mengesan isu sehingga pembayar cukai dapat dicukai. Sebaliknya jika ada pelarasan yang mengakibatkan kurangan cukai, taksiran kurangan akan dikeluarkan.

5.3 Penalty imposed

According to the minutes of the technical dialogue on 17 June 2002, the IRB confirmed that no penalty will be imposed in the event of a pure technical adjustment as this would not involve an intention to evade taxes. Whether a transaction is merely a technical adjustment or an intentional act to evade tax will very much depend on the circumstances of each case and will vary on a case to case basis.

Some of our members have reported that there are a number of audits where the taxpayers had been issued with technical adjustments and penalties continued to be imposed.

The Institutes are of the view that issues relating to taxability/deductibility under the law would constitute technical issues. In this respect, the professional bodies would like the IRB officers to take this into consideration and not to impose penalties unnecessarily. The Institutes would be grateful if the IRB officers could explain to the taxpayers the reasons for any penalty imposed and how it will be calculated as well as highlight to the taxpayers any matters that will assist the taxpayers to understand and meet their taxation obligations in the future.

The members of the Institutes have indicated that there are situations where certain investigation cases are subject to a penalty lower than 60%, whereas in the case of a field audit, a minimum penalty rate of 60% is imposed.

In this respect, the professional bodies are of the view that a tax investigation case would involve tax evasion and it is a more serious offense, whereas tax audits which generally involve technical adjustments or compliance issues should have much lower penalty rates or even no penalties, depending on culpability. In this regard, the Institutes would be grateful if the IRB could review and revise the penalty structure for the tax audits.

Jawapan

Perkataan teknikal selalunya disalah ertikan. Sekiranya undang-undang adalah jelas dan pembayar cukai tidak membuat pelarasan atau menyembunyikan tuntutan, ia adalah satu kesalahan dan wajar dikenakan penalti. Alasan tidak mengetahui undang-undang tidak boleh diterima. Terdapat kes yang diwakili oleh agen cukai dan telah membuat tuntutan yang jelas pada pengetahuan agen cukai bertentangan dengan undang-undang atau ketetapan LHDN, dikatakan sebagai isu teknikal. Penalti tidak dikenakan sekiranya undang-undang tidak jelas dan boleh dipersoalkan.

Kadar penalti atas penyiasatan adalah lebih tinggi daripada audit. Penyiasatan mengenakan penalti yang rendah hanya pada kes tertentu sahaja yang melibatkan jumlah cukai yang besar. Sebaliknya, kes audit adalah kecil dan melibatkan 1 atau 2 tahun sahaja. Isu yang ditemui adalah berasaskan rekod yang diberi sahaja dan tidak dilihat secara mendalam dan terperinci ke atas rekod yang dirampas atau disembunyikan seperti mana kes penyiasatan.

5.4 Records taken in a tax audit

As stated in note 3.4: Examination of Records in the booklet “IRB Guide on Tax Audits”, the IRB will not search for or take possession of any record unless absolutely necessary.

The Institutes have been notified by our members that in some cases, the IRB officers take possession of the taxpayers’ original accounting documents/records and take these back to the IRB office.

In view of the above, the Institutes would like to seek clarification on the following matters:

- (a) Whether it is the practice of the IRB to take taxpayers’ accounting records to their office for further scrutiny after the field audit visit to the taxpayers’ premises.
- (b) Under what circumstances will it be considered as “absolutely necessary” for the IRB officer to take possession of the taxpayers’ accounting records.

To minimise the disruption to the business operations of taxpayers, tax agents and the auditors, the Institutes propose that the IRB officers should complete an audit at the business premises of the taxpayer within the stipulated time frame. If deemed absolutely necessary, the IRB officers can make copies of the records with the agreement of the taxpayer or give a written receipt for any records collected during the interview or tax audit and return the records upon completion of the audit (i.e. within 3 months from the date of commencement of the audit).

Jawapan

Rekod tidak diambil kecuali di dalam keadaan berikut:

- (a) **Pembayar cukai tidak mempunyai tempat yang sesuai bagi pegawai audit menjalankan audit dan telah memperolehi kebenaran daripada pembayar cukai untuk mengambil rekod berkenaan bagi tujuan audit dilakukan di pejabat LHDN.**
- (b) **Tanpa mengambil rekod boleh menjejaskan penemuan audit.**

Semua rekod yang diambil atas persetujuan pembayar cukai akan dibuat senarai dan akan dikembalikan dengan segera kepada pembayar cukai.

5.5 Request for audit working papers or other confidential information

In certain instances, members of the Institutes have reported that notice of request by the IRB officers for audit working papers or other confidential information of the taxpayers to the external auditors or tax agents is not served in writing. The Institutes would like to highlight that in carrying out their professional obligations, it is important that all members of the professional bodies should be given a written notice of such requests, which clearly stipulates the relevant Section(s) in the Income Tax Act, 1967, as members owe a duty of care to their clients.

The Institutes are of the view that access to such working papers should only be requested, if absolutely necessary, after going through the records made available by the taxpayer. Where it is deemed absolutely necessary, then the professional bodies would request that the IRB officers provide a minimum notice period of seven days in writing to have access to the external auditor's working papers or other confidential information of the taxpayers.

Jawapan

Kertas kerja audit diperlukan bagi membantu kerja audit oleh pegawai LHDN. Kes audit dapat diselesaikan dengan segera dengan adanya kertas kerja audit kerana semua penjelasan audit terdapat di dalamnya. Surat rasmi akan dikeluarkan tetapi LHDN tidak nampak mengapa masa yang begitu lama diperlukan sekiranya ia melibatkan 1 atau 2 kes sahaja.

5.6 Proposed framework for tax audits

In view of the issues raised above, the professional bodies believe that it is important to have a framework set up under which tax audits would be carried out. In this respect, the Institutes have prepared a proposed framework for tax audits which outline the objectives and general principles of tax audits, the rights and obligations of the IRB officers as well as the taxpayers, the procedures involved, penalties and avenues of complaints in the event of a tax audit. The objectives of the proposed framework for tax audits are mainly to assist the IRB officers to carry out their task efficiently and effectively and assist the taxpayers in fulfilling their obligations. A copy of the proposed framework for tax audits is enclosed in the Appendix for your consideration.

Please be informed that the proposed framework principles have been developed and adapted, where necessary, from the guidelines issued by the Australian Tax Office (ATO), entitled 'If you're subject to enquiry or audit', which is available on the website of the ATO. In view of this, kindly note that the utilisation of such guidelines of the ATO will need the consent from the relevant authorities before these can be utilised in preparing the Malaysian framework. The professional bodies sincerely hope that the IRB will take up this framework and issue it out as an official document so that everyone is guided in carrying out his/her responsibilities in the event of a tax audit. We are prepared to have separate discussions on the suggested framework so that a final version can be agreed upon and issued for the benefit of all parties.

Jawapan

LHDN telah pun mempunyai rangka kerja sendiri seperti yang terdapat di dalam Buku "Panduan Audit Cukai LHDN" bertarikh November 2000. Sila rujuk kepada buku tersebut dan beri komen sekiranya tidak lengkap.

RUMUSAN

Semua jawapan di atas merupakan polisi audit cukai. Pembayar cukai atau agen cukai perlu memaklumkan kepada Jabatan Pematuhan sekiranya polisi dan peraturan tersebut tidak dipatuhi oleh pegawai audit.

6.0 ISSUES RELATING TO TAX INVESTIGATIONS

6.1 Request for Advance/Upfront Payment

The Institutes have been informed by members that certain investigation branches of the IRB insist on the taxpayers paying an upfront payment, which is estimated on the spot (i.e. during the inspection visit). Taxpayers are given the option to pay the amount (sometimes immediately and sometimes by way of a few instalments) or may face a higher penalty rate. The amount of upfront payment requested for certain investigation cases have been reported to be rather high.

The Institutes are of the opinion that requesting for an upfront payment is not a correct procedure of tax investigation. If the upfront payment is determined based on a valid basis, it must be explained clearly to the taxpayer. Whether a taxpayer pays an advance payment to the Collections Branch, it should be totally voluntary on the part of the taxpayer. The taxpayer should not be coerced in any way to make the advance payment.

Jawapan

LHDNM akan meneruskan amalan menasihati pembayar cukai supaya membuat bayaran pendahuluan sekiranya terdapat bukti yang jelas mengenai peninggalan pendapatan/ pengeluaran cukai.

Perkara-perkara yang perlu diambil perhatian dan pertimbangan dalam tindakan ini:

- (a) **Tindakan adalah lebih berbentuk pentadbiran semata-mata.**
- (b) **Bayaran adalah secara sukarela sebagai tanda komitmen terhadap tanggungan cukai yang sepatutnya telah dibayar pada masa yang lepas.**
- (c) **Terdapat bukti yang kukuh mengenai peninggalan pendapatan/pengeluaran cukai.**
- (d) **Amaun yang diminta untuk bayaran hendaklah munasabah berdasarkan kepada jumlah peninggalan pendapatan.**
- (e) **Pembayar cukai diberi masa yang munasabah untuk membuat bayaran.**
- (f) **Meringankan bebanan kewangan apabila pembayar cukai perlu menjelaskan Bayaran Permulaan sekali gus apabila sampai keperingkat penyelesaian kes.**

6.2 Approach to Tax Investigations

The Institutes have been informed that the IRB officers from the Investigation Unit in the Kuching Branch are not very co-operative. One officer refused to provide the details of the adjustments made by the IRB. This had caused undue delay as the taxpayer and the tax agent faced difficulties in reconciling the figures as they were not aware of the basis of the proposed adjustments made by the IRB.

The Institutes would like to request that the investigation officers of the IRB adopt a more co-operative stance in carrying out their duties so that all parties can conclude the particular case more effectively.

Jawapan

LHDNM mengambil pendekatan yang telus dan profesional. Ini bermakna kedua-dua pihak LHDN dan pembayar cukai perlu mencapai persetujuan terlebih dahulu mengenai asas penyelesaian sebelum perjanjian ditandatangani. Perkara-perkara yang perlu mencapai persetujuan ialah berkaitan dengan Pengiraan Pendapatan Kurang / Tidak Dilapor, Pengiraan Cukai dan Penalti serta kaedah bayaran.

Perkara yang dibangkitkan seperti diatas adalah suatu kes terpercil dan Pusat Penyiasatan berkenaan telah diberi nasihat sewajarnya.

6.3 Finalisation of Tax Investigation Cases

The IRB has indicated in the previous dialogue held on 2 October 2003 that tax investigation cases are to be finalised within 3 months as per the announcement by the DGIR.

However, some members in Johor Bahru had encountered instances where taxpayers had signed the agreements for settlement and paid the settlement amount but have been informed that the cases have not been reviewed nor approved by the IRB headquarters. Some of these cases have been outstanding for more than a year since the agreements were signed. However, the investigating officers continue to retain the records of taxpayers and the working papers of the auditors. This has caused a lot of inconvenience to all parties.

The Institutes hope that such cases could be expedited so that the issues can be resolved and finalised as soon as possible.

Jawapan

6.3.1 Langkah-langkah telah diambil untuk mempercepatkan tempoh kelulusan penyelesaian kes:

- (a) **Menambahkan bilangan pegawai di Ibu Pejabat**

(b) *Menurunkan sebahagian kuasa meluluskan penyelesaian kes kepada Pengarah Negeri.*

6.3.2 *Tempoh penyelesaian kes diperingkat Pusat Penyiasatan adalah melibatkan tiga (3) pihak:*

(a) *Kerjasama pembayar cukai*

(b) *Peranan Agen Cukai*

(c) *Peranan Pegawai Penyiasat.*

Sekiranya ketiga-tiga pihak bekerjasama, masa yang diambil untuk penyelesaian kes akan lebih singkat.

6.3.3 *Rekod-rekod yang tidak berkaitan dengan penyelesaian kes boleh dikembalikan walaupun penyelesaian tersebut belum diluluskan.*

6.4 Penalty Imposed in Tax Investigation

The Institutes have been informed that in some of the tax investigation cases, penalties had been imposed on certain technical adjustments which involved different interpretations of the law and regulations.

The Institutes are of the opinion that no penalty should be imposed on any additional taxes arising from the technical adjustments which do not involve any intention to evade taxes.

Jawapan

Tindakan tidak melaporkan pendapatan adalah satu kesalahan. Oleh itu semua maklumat mengenai pendapatan yang terdapat kesamaran perlu diisytiharkan dengan jelas terlebih dahulu dalam Borang Retan.

Keputusan sama ada cukai tertakluk kepada penalti adalah mengikut fakta kes masing-masing.

6.5 Criminal Investigation

To further promote effective enforcement of compliance with the tax legislation, the IRB has established the Criminal Investigation Division (CID). Its main objective is to prove whether an offence has been committed, to ascertain the person(s) responsible for the offence and to take the necessary action.

In relation to the above, the professional bodies would like to get more information about the CID as to its current plans and future development. The Institutes understand that some aspects of the implementation may require amendment to the

current tax legislation. In this respect, the professional bodies would like to highlight that it may be good to coordinate any amendments to the Income Tax Act, 1967 with other relevant legislations such as the Companies Act, 1965. The Institutes would be willing to contribute ideas/inputs in the amendments to the Income Tax Act, 1967 on the above matter.

Jawapan

Undang-undang yang ada pada masa ini adalah mencukupi, seperti seksyen-seksyen 112, 113 dan 114 Akta Cukai Pendapatan. Sebarang pindaan yang dibuat hanya semata-mata untuk menguatkan lagi peruntukan undang-undang yang sedia ada. Pindaan undang-undang akan dimaklumkan apabila telah diluluskan.

6.6 Proposed Framework for Tax Investigations

In view of the issues raised above, the professional bodies believe that it is important to set up a framework for tax investigations. In this respect, the Institutes have prepared a proposed framework for tax investigations which outline the objectives and general principles of tax investigations, the rights and obligations of the IRB officers as well as the taxpayers, the procedures involved, penalties and avenues of complaints in the event of tax investigations. The objectives of the proposed framework for tax investigations are mainly to assist all parties in fulfilling their obligations. A copy of the proposed framework for tax investigations is enclosed in the Appendix for your consideration.

Please be informed that the proposed framework principles have been developed and adapted, where necessary, from the guidelines issued by the Australian Tax Office, the Inland Revenue Department of New Zealand and the Inland Revenue Department of the United Kingdom, which are available on their respective websites. In view of this, kindly note that the utilisation of such guidelines will need the consent from the relevant authorities before these can be utilised in preparing the Malaysian framework.

The professional bodies sincerely hope that the IRB will take up this framework and issue it out as an official document so that everyone is guided in carrying out his/her responsibilities in the event of a tax investigation. We are prepared to have separate discussions on the suggested framework so that a final version can be agreed upon and issued for the benefit of all parties.

Jawapan

Pihak LHDNM sedang merangka satu rangkakerja penyiasatan yang menyeluruh yang meliputi hak dan tanggungjawab semua pihak yang terlibat, iaitu:

- (a) Pembayar Cukai**
- (b) Agen Cukai**
- (c) LHDNM**

Semua pihak perlu professional dalam menjalankan tanggungjawab masing-masing.

Cadangan-cadangan yang sesuai yang dikemukakan oleh pihak Institusi akan diambilkira dalam penyusunan semula rangkakerja ini. Walau bagaimanapun terdapat kelemahan-kelemahan dalam framework yang dikemukakan terutamanya isu-isu yang dibangkitkan adalah tidak jelas dan sebahagiannya memang sudah dijadikan amalan pada masa ini.

7.0 ADMINISTRATIVE ISSUES**7.1 Section 107C(3) of Income Tax Act, 1967**

(refer to Minutes of Operations dialogue held on 9 March 2004)

The estimated tax payable for a year of assessment should not be lower than the revised estimated tax payable (ETP) for the immediately preceding year of assessment. In view of the lower corporate tax rate of 20% for companies having a paid-up capital of RM2.5million with chargeable income of up to RM500,000, there will be instances where the tax liability may be lower than the revised ETP of the immediately preceding year.

The Institutes would like to seek clarification whether in such cases, submission of ETP would be accepted based on the lower chargeable tax liability and not based on the revised ETP of the immediately preceding year of assessment.

The IRB has stated that Section 107C(3) is applicable. A company has to submit CP204 together with an appeal letter with valid reasons to Pusat Pemprosesan for consideration. Approval is not granted automatically.

In this regard, the Institutes would like to know the reason why the approval cannot be granted automatically.

Jawapan

Pembayar cukai perlu menghantar CP204 bersama surat rayuan yang menyatakan alasan mengenai anggaran cukai kurang daripada amaun yang ditetapkan oleh undang-undang. Rayuan akan dipertimbangkan mengikut merit sesuatu kes.

7.2 Grace Period for Notices of Assessment

(refer to Minutes of Operations dialogue held on 9 March 2004)

The Institutes would like to reconfirm whether the grace period of 14 days is granted for the payment of tax due under a Notice of Assessment. The Institutes would also like to seek confirmation whether the grace period is extended to the payment of Notices of Assessment relating to Real Property Gains Tax (RPGT).

The IRB had explained that a grace period is given to take into consideration the postal delay and had advised taxpayers to submit their tax returns on time to avoid any unnecessary trouble in the future.

The Institutes would like to reconfirm that the concession has not been changed and that penalties will only be imposed on payments received after 44 days from the date of the notice of assessment. The professional bodies would also like to confirm whether this concession is also applicable to notice of assessments for real property gains taxes. The professional bodies also request the IRB to inform them should there be any changes to the concession.

Jawapan

- i. Cukai Pendapatan**
Bagi Cukai Pendapatan, notis taksiran menggunakan tarikh notis dicetak. Kelonggaran diberi kepada pembayar cukai untuk menjelaskan bayaran dalam tempoh tambahan 14 hari selepas tempoh notis.
- ii. Cukai Keuntungan Harta Tanah (CKHT)**
Bagi Cukai Keuntungan Harta Tanah, tarikh notis adalah 14 hari ke hadapan dari tarikh notis sebenarnya dicetak. Oleh itu bayaran hendaklah dibuat dalam tempoh 30 hari dari tarikh notis taksiran.
- iii. Secara keseluruhannya, pembayar cukai diberi masa 44 hari untuk membayar cukai mereka (Cukai Pendapatan dan CKHT).**

7.3 Lost/Misplaced Documents

(refer to Minutes of Operations dialogue held on 9 March 2004)

The Institutes propose that where an original document is lost or misplaced, a certified true copy or a statutory declaration confirming the lost or misplaced document be accepted by the IRB as proof of documentation.

The IRB emphasised that every copy of the document where its original is lost, should be certified by the Companies Commission of Malaysia (CCM) before the copy is submitted to the IRB. If the said document is an agreement, the IRB will review it based on case to case basis.

The professional bodies would like to highlight that certification of misplaced documents by the CCM may not be practical for all the missing documents. It may only be applicable to important documents such as licenses, permits, agreements, etc. For those less important documents such as invoices and receipts, the Institutes propose that a certified true copy or a statutory declaration confirming the loss of the document be sufficient.

lawapan

- i. ***Sekiranya dokumen dikeluarkan oleh Suruhanjaya Syarikat Malaysia (SSM), maka pengesahan dokumen hendaklah dibuat oleh SSM. Manakala untuk dokumen-dokumen lain, salinan hendaklah disahkan oleh pihak yang mengeluarkan dokumen berkenaan.***
- ii. ***Persatuan Akauntan diminta untuk mengemukakan senarai dokumen-dokumen yang memerlukan pengesahan untuk pertimbangan LHDN.***
- iii. ***Pengesahan dokumen-dokumen lain adalah mengikut merit.***

7.4 Fund for Tax Refund

The 2005 Budget proposed that a portion of the income tax collected be kept in a fund known as "Fund for Tax Refund" to expedite the process of income tax refunds.

The professional bodies welcome the Government's initiative in setting up such a fund and would like to seek the IRB's clarification on the following matters:

- a. Whether the fund will be a revolving fund i.e. the initial amount placed in the Fund will be replenished automatically from the tax collections;

- b. Whether the repayment procedures in the assessment and collection branches will be reviewed to improve the delivery system i.e. the time taken in processing a tax refund;
- c. Whether the excess credits will be automatically used for set-off against the current year tax instalments or is the taxpayer required to apply to the IRB for such a set-off;
- d. Whether the IRB will stipulate a time frame within which the tax credits will be refunded;
- e. Whether the IRB will issue any guideline on the criteria that will be applied in processing refunds and the procedure to be followed in respect of offsets and refunds of tax overpaid. The Institutes believe this is an area that is important in the interest of governance and transparency so that no one gets special treatment;
- f. Whether there would be any priority given to individuals over other taxpayers or will all the taxpayers be treated equally; and
- g. Whether the IRB will prepare a refund cheque for an individual taxpayer who has a refund of less than RM10,000 and whether the same treatment will be applied to corporate taxpayers as well or will all cheques be prepared by the Accountant-General's Department.

Jawapan

- a. ***Peruntukan dana dalam Tabung Bayaran Balik Cukai Pendapatan (TBBCP) adalah mencukupi untuk bayaran balik baki kredit.***
- b. ***Secara umumnya, bayaran balik yang disebabkan oleh terlebih bayar (overpayment) tidak akan diaudit. Bagi bayaran balik yang disebabkan oleh kredit cukai Seksyen 110, tindakan audit akan dilakukan.***
- c. ***Jika terdapat baki kredit dalam akaun, bayaran balik akan dilakukan. Walau bagaimanapun, offset akan dibenarkan sekiranya terdapat permohonan daripada pembayar cukai.***
- d. ***Pada keseluruhannya, pembayaran balik diproses dalam tempoh tiga bulan. Untuk mempercepatkan bayaran balik, disyorkan pembayar cukai menggunakan e-filing untuk mengembalikan borang cukai pendapatan.***

- e. ***Tiada garis panduan yang akan dikeluarkan. Sila rujuk jawapan perenggan 7.4 c di atas.***
- f. ***Semua pembayar cukai diberi layanan yang sama dalam urusan percukaian.***
- g. ***Perbincangan dengan Perbendaharaan dan Jabatan Akauntan Negara sentiasa diadakan untuk menentukan mekanisma bayaran balik supaya prosedur bayaran balik dapat berjalan dengan lancar. Buat sementara waktu, amalan sekarang akan diteruskan.***

7.5 Exemption on Retirement Benefits

It is proposed that income tax exemption be given on retirement benefits up to RM6,000 for each completed year of service if the retirement takes place on reaching the compulsory age of retirement pursuant to a contract of employment or collective agreement at the age of 50 but before 55 and that employment has lasted for ten years with the same employer or with companies in the same group.

As the proposal is effective from year of assessment 2003, the Institutes would like to seek confirmation whether the affected taxpayers will have to submit the revised tax returns and apply for the tax refunds individually.

Jawapan

Hanya Tahun Taksiran 2003 sahaja yang terlibat. Pembayar cukai hendaklah mengemukakan rayuan ke cawangan LHDN yang berkenaan supaya taksiran dapat disemak semula.

7.6 Filing of Income Tax Returns for Taxpayers other than Companies

It has been proposed in the 2005 Budget that the deadline to file tax returns by sole proprietors, partnerships, clubs and associations be extended from 30 April to 30 June each year.

The professional bodies welcome the proposed change to the legislation. However, it is proposed that the extension of tax filing deadline of 30 June be extended to include those persons who are not carrying on a business. This will enable a consistent tax filing deadline for all persons other than a company, trust body or co-operative society.

7.6.1 With regards to the Budget proposal, the Institutes would like to seek clarification on the following matters:

- a. whether the IRB will determine the filing deadline based on OG or SG categories and whether the OG cases will be automatically allowed to file tax returns by 30 June;

- b. whether an individual who has a SG number but with a commission-based business activity will be allowed to file the tax return by 30 June;
 - c. whether an individual who starts a business during the year will be allowed to self-determine the filing deadline or is required to inform/seek approval from the IRB on the 30 June filing;
 - d. whether the filing deadline of the tax return for joint assessment of husband and wife is on 30 June if either party has a business source; and
 - e. whether an individual who has no business source but receives a Form B has to file the tax return on 30 April.
- 7.6.2 As the proposal is effective from year of assessment 2004, the Institutes would like to seek confirmation that it takes effect for tax returns filed in Year of Assessment 2004. If so, where a sole proprietor filed late on 15 May 2004, would the penalty be waived automatically or would the taxpayer need to pay the penalty and then appeal for a waiver.

Jawapan

- 7.6.1 Lanjutan masa tidak akan diberi kepada mana-mana kategori pembayar cukai. Borang hendaklah dikemukakan mengikut tarikh yang ditetapkan oleh undang-undang. Sekiranya pembayar cukai tidak menerima borang cukai pendapatan, borang-borang tersebut boleh dimuat-turun dari laman web LHDN. Borang BE juga boleh diisi melalui e-filing.**
- a. **LHDN tidak lagi menentukan tarikh pengembalian borang mengikut jenis fail SG atau OG tetapi mengikut punca pendapatan yang dilaporkan oleh pembayar cukai.**
 - b. **Sekiranya pembayar cukai SG menerima punca pendapatan perniagaan, maka beliau hendaklah mengisi Borang B dan mengembalikannya pada atau sebelum 30 Jun. Untuk menentukan punca pendapatan sama ada perniagaan atau bukan perniagaan, kes berkenaan perlu disemak terlebih dahulu.**
 - c. **Apabila pembayar cukai menerima punca pendapatan dari perniagaan, tarikh akhir pengemukakan borang adalah 30 Jun dan beliau hendaklah menggunakan Borang B. Borang tersebut boleh didapati dari pejabat LHDN atau dimuat turun dari laman web LHDN.**

d. Ya.

e. Ya.

7.6.2 Pembayar cukai hanya akan dikenakan penalti jika mengembalikan borang selepas tarikh yang ditetapkan.

7.7 Submission of Revised Tax Return for Individual (Year of Assessment 2004)

Under the Self-Assessment system of taxation, the IRB is deemed to have raised an assessment on an individual on the date the tax return is submitted. Based on verbal confirmation given by the IRB to a member of the professional bodies, it is understood that any amendments to the 2004 tax return submitted would not attract any penalty so long as the amendments to the tax return are submitted to the IRB before the due date of 30 April 2005.

A situation arises in the case where an individual exercises part of his employment outside Malaysia and his overseas duties are assessed as being incidental to the exercise of his Malaysian employment. Part of his income is thus taxed in the foreign country (a non-treaty country) and in Malaysia. A unilateral credit for foreign tax suffered is due to the individual and a claim for such credit is to be supported by the tax return submitted (due in May of each year) in the foreign country. However, as his Malaysian tax return for the year of assessment 2004 would be due for submission by 30 April 2005, he would not be able to determine the actual foreign tax to be suffered since his foreign tax return would only be filed after April 2005. He may only be able to estimate the foreign tax suffered on his income from the exercise of his overseas duties for the purpose of the claim for unilateral relief at the point of submission of his Malaysian return and submit an amended tax return when the actual foreign tax suffered is determined upon submission of his foreign tax return.

The professional bodies would like to seek clarification whether the individual would be liable to penalty for amending the tax return after the due date for submission of the Malaysian tax return, i.e. after 30th April 2005 under the above circumstance.

Jawapan

Mengikut undang-undang, sekiranya pembayar cukai mengembalikan borang cukai pendapatan pada/sebelum 30 April, ianya dianggap sebagai taksiran disifatkan (deemed assessment). Walau bagaimanapun,

- **LHDN memberi kelonggaran untuk tidak mengenakan penalti sekiranya pembayar cukai membuat pindaan pada atau sebelum 30 April.**
- **Sekiranya pindaan dibuat selepas 30 April, pembayar cukai boleh membuat rayuan dengan menyertakan surat rayuan atau Borang Q bersama-sama borang cukai pendapatan. LHDN akan mempertimbangkan rayuan mengikut merit kes tersebut.**

7.8 Extension of Filing Deadline for December year-end Companies

Members of the Institutes have reported difficulties in coping with the volume of tax returns that need to be filed for December-year-end companies in July every year despite taking various measures such as increasing manpower, etc.

Since taxes are being paid by companies under the instalment scheme, the Institutes would like to request the IRB to grant an administrative concession of an automatic two-week extension of time to file the tax returns for December year-end companies. The two-week extension of time is needed by the tax agents to handle the large volume of tax returns for such companies.

Jawapan

Bagi syarikat yang menutup akaun pada 31 Disember, Borang C (termasuk Borang R) hendaklah dikembalikan mengikut tarikh yang ditetapkan oleh undang-undang (pada atau sebelum 31 Julai 2005). Walau bagaimanapun, jika borang diterima oleh LHDN dalam lingkungan masa 14 hari (pada atau sebelum 14 Ogos 2005), penalti tidak akan dikenakan ke atas pembayar cukai.

7.9 Filing of Revised Tax Return and Revised Form C

Currently, there seems to be no legal basis for a taxpayer to submit a revised tax return and revised Form C in cases where genuine unintentional errors or omissions are made by the taxpayer.

It is proposed that a provision be introduced in the tax legislation to accommodate the revision of a tax return and submission of a revised Form C by taxpayers within 30 days from the date of filing of the original tax return and Form C and no penalty should be imposed under such circumstances.

Jawapan

LHDN berpendapat bahawa peruntukan undang-undang yang sedia ada adalah yang paling sesuai dalam sistem percukaian di Malaysia buat masa ini.

7.10 Tax Payments

Members of the Institutes have faced some problems when making payment at the authorised banks or at the IRB payment counters. The problems faced include the system not being online, wrong coding of payment, incomplete information, etc.

To solve the above problems, the Institutes suggest that a payment system similar to e-banking facilities of commercial banks be introduced for STD payments, tax instalments, final tax payments, etc. The said payment system would allow, where necessary and with authority, the tax agents to access their clients' account (according to authorisation key/password/security electronic card) to make payments, obtain receipts for payments made, print out the report of the outstanding balance and enquire about the status. It will also allow taxpayers to make tax payments more efficiently.

Jawapan

Pembayar cukai boleh menggunakan kemudahan yang telah disediakan oleh bank seperti e-banking: biz-channel.com di Bumiputera Commerce Bank Berhad dan PbeBank.com di Public Bank Berhad. Untuk memastikan kod bayaran dan maklumat yang betul diisi, slip bayaran yang dikeluarkan oleh LHDN seperti CP 501 hendaklah dirujuk semasa bayaran dibuat.

LHDN meminta Persatuan Akauntan menasihati pelanggan mereka, terutamanya majikan dari organisasi yang besar, supaya menggunakan e-banking atau disket untuk bayaran PCB.

7.11 CP200 Instalment Payment for Individual Taxpayers

The Institutes have been notified that the IRB has disallowed an individual taxpayer to offset his clear tax credit (after Form JR had been issued) against the instalment payment as stated in the YA2004 CP200 instalment scheme. The reason given was that any changes to the CP200 had to be made before 30 June 2004. After that, no changes are allowed including offsetting the instalment payment with the tax credit available. According to the IRB officer, the tax credit available has to be carried forward to YA 2005 and only be allowed to be utilized when the new CP200 is issued.

The Institutes are of the opinion that 'no changes after 30 June 2004' should be in respect of the instalment scheme and amounts. In addition, the Institutes would like to seek confirmation on whether the treatment of the tax credit (after Form JR was issued) for a company would also be applicable to an individual taxpayer.

Jawapan

Pindaan terhadap CP500 (dahulu dikenali sebagai CP200) hendaklah dibuat pada atau sebelum 30 Jun dalam tahun asas. Mesyuarat telah bersetuju bahawa isu yang dibangkitkan tidak berlaku lagi.

Pengeluaran Borang JR tidak bermakna terdapat baki kredit dalam akaun pembayar cukai kerana mungkin masih terdapat debit yang tertunggak. Sekiranya terdapat kredit yang jelas (clear credit), selepas Borang JR dikeluarkan, penggunaan kredit tersebut adalah sama bagi syarikat dan individu iaitu sama ada dibayar balik atau offset jika terdapat permohonan dari pembayar cukai.

7.12 Schedular Tax Deductions (STD)

The Institutes have been informed of certain problems and difficulties faced by small companies in implementing the STD as well as the fact that penalties imposed for unintentional mistakes are too severe.

A member has come across a situation whereby a penalty of RM200 was imposed for each mistake irrespective of the amount under deducted. Most of the under deduction was merely RM12 per month due to over-claiming child relief. This was due to the fact that a partially qualified staff was handling the matter as the small company could not afford to employ an accountant. The severe penalty imposed for the unintentional mistakes increases the burden of such companies.

The STD schedule is also not easily understood by some of the accounting staff especially the computation of tax deduction on monthly remuneration including bonus. On the other hand, the IRB officer does not provide guidance on STD to every company. The STD table and forms are not sent to all companies and sometimes it is difficult to obtain the forms from the IRB.

In this regard, the Institutes request the IRB to be flexible and give due consideration in imposing a penalty for the same repeated mistakes. The Institutes are of the opinion that a penalty of RM200 for a mistake of under deduction of RM12 is too severe. Hence, the professional bodies would like to suggest that a penalty based on a reasonable percentage of the total under-deduction be imposed instead of a flat penalty of RM200 for each mistake. It is also hoped that the education campaign be further reinforced.

Jawapan

Mengikut amalan LHDN dalam pengendalian PCB, kompaun yang dikenakan adalah mengikut kesalahan yang dilakukan bagi sesuatu bulan (month to month basis). Tindakan tegas akan dikenakan ke atas majikan jika didapati melakukan kesalahan kerana PCB melibatkan wang pembayar cukai.

Untuk makluman Persatuan:

- i. **Jadual PCB, Formula Pengiraan PCB dan Penerangan tentang PCB boleh dirujuk melalui laman web LHDN;**
- ii. **Jadual PCB dan Borang CP39 boleh diperolehi di semua cawangan LHDN;**
- iii. **Taklimat PCB sentiasa diberikan kepada majikan-majikan dari semasa ke semasa. Majikan yang memerlukan taklimat khas tentang PCB perlu memohon kepada Bahagian Khidmat Korporat supaya pegawai LHDN dapat memberi taklimat dan panduan tentang PCB dan percukaian di premis majikan.**

Unit PCB (UKM dan Penguatkuasaan) Cawangan Pungutan Kuala Lumpur memberi taklimat mengenai PCB dan perisian PCB kepada majikan pada setiap hari Selasa dan Khamis. Manakala di peringkat cawangan juga ada mengadakan taklimat PCB kepada majikan;

- iv. **Adalah menjadi tanggungjawab majikan untuk memastikan pegawai mereka memahami cara-cara pengiraan PCB dilakukan. Jika terdapat sebarang masalah, pegawai LHDN di Cawangan Pungutan sentiasa bersedia memberi penerangan dan bantuan tentang pengendalian potongan dan bayaran PCB.**

7.13 STD Deductions from Bonus or Director's Fee

The Institutes have been informed of problems faced in respect of STD deductions from bonus or director's fees for the year 2003 which is to be paid in year 2004.

The Form CP 39 (another separate Form CP 39 is used for current month salary payment) was used and identified as the STD deduction for payment of director's fee for the year 2003. However, the above payment was keyed in as tax payment for year of assessment 2004 and cannot be reversed/adjusted to reflect it as a payment of additional tax for year of assessment 2003. This could result in a penalty for late payment if it is not keyed in as a payment for the year of assessment 2003.

The Institutes seek clarification from the IRB on the features of the computer system and the inflexibility of the system and the IRB's course of action to resolve this recurrent problem.

Jawapan

Sekiranya majikan tidak mengisi Borang CP 39 dengan lengkap semasa membuat bayaran yuran pengarah atau bonus, maka bayaran akan diresitkan mengikut tahun semasa. Sekiranya terbukti bahawa majikan telah memberi maklumat yang betul tetapi bayaran diresitkan sebagai tahun yang salah, majikan boleh merujuk kepada Cawangan/Unit Pungutan yang berkenaan untuk penyelarasan. Majikan dikehendaki mengikut arahan yang terdapat dalam Nota Penerangan semasa mengisi Borang CP 39.

7.14 Penalties under Section 107C(9) of Income Tax Act, 1967

The IRB confirmed in the previous dialogue held on 9 March 2004 that any penalty imposed under Section 107C(9) for late payments of instalments under CP204/CP204A will be waived if a taxpayer had nil tax payable on submission of the tax return for that year of assessment.

The Institutes would like to seek confirmation whether a penalty will be imposed under Section 107C (9) in cases where there is a tax liability and the instalments were not paid because the instalments that have been paid earlier had exceeded the final tax liability. If a penalty would be imposed under such circumstances, the penalty should be waived upon an appeal by the taxpayer. The Institutes would like to bring to the attention of the IRB that it is unfair and not in the spirit of the self assessment system to subject a taxpayer to penalties for late payment of instalments when the instalment payments paid to date are equal or even more than the actual tax liability.

Jawapan

Pembayar cukai hendaklah membuat rayuan. Pertimbangan akan diberikan mengikut merit kes tersebut.

7.15 Penalties Imposed on Late Tax Payments

The professional bodies note that the IRB has, of late, imposed late payment penalties on payments made a long time ago. In some cases, the penalties were reported to be relating to payments made more than ten years ago. The taxpayers face difficulties in attempting to trace their records due to the long period of time that has passed. Taxpayers have no avenue to appeal as they had difficulties tracing their records to substantiate the appeal or prove that they have made the payments in time.

a) *Tax payments made through banks*

Members of the Institutes have experienced numerous cases where even though payments were made within the stipulated date, sometimes as far back as four months ago, yet compound notices were still being issued by the IRB.

Upon checking with the IRB, our members were told to ignore these compound letters. However, clients of our members are uneasy with such advice as there are no official cancellation letters.

b) *Settlement of tax through instalments*

The Institutes note that the IRB has issued compound letters stating that the tax liability has not been settled, notwithstanding that approval has been granted by the IRB to settle the tax liability through instalments.

c) *Notification of Increase of Income Tax (CP 17) For Y/A 2002*

Members of the Institutes have been receiving CP 17 (in respect of year of assessment 2002) with penalties of 10% and 5% being imposed on the purported tax balance, where taxes for that year of assessment has been fully settled within the stipulated time period.

d) *Late Issue of Tax Payment Receipts*

Payments have been sent by courier service and received by IRB, Cawangan Pungutan KL, within the stipulated time period. However, the receipts were printed at a much later date, resulting in penalties imposed under Section 107B (3) of the Income Tax Act. As a result, documentary evidence had to be forwarded before penalties could be withdrawn causing unnecessary work for the tax agent.

e) *Offsetting of spouse tax credit*

The Institutes have been informed that the IRB has issued compound letters for non-payment of the wife' tax liability, notwithstanding that the IRB had approved an application to offset the tax credit of the husband against the tax liability of the wife.

The Institutes would like to seek clarification from the IRB as to the time frame taken to update its records based on the different scenarios/issues listed in Items (a) to (e) above. In this regard, the professional bodies appeal to the IRB to impose late payment penalties correctly and refrain from imposing penalties on short payments made more than seven years ago.

Jawapan

- a. **Tindakan kompaun diambil berdasarkan tarikh bayaran diterima oleh LHDN. Jika bayaran PCB diterima pada atau sebelum 10hb bulan berikutnya, kompaun lewat bayar tidak akan dikenakan walaupun resit dikeluarkan selepas 10hb.**
- Bagi kes-kes di mana kompaun telah dikenakan walaupun bayaran dibuat dalam masa yang dibenarkan, majikan perlu kemukakan maklumat kes tersebut kepada cawangan yang berkenaan untuk rujukan dan semakan lanjut.**
- b. **Pembayar cukai boleh membuat rayuan dan penalti boleh dibatalkan.**
- c. **Pembayar cukai boleh membuat rayuan dan penalti boleh dibatalkan.**
- d. **Seperti yang dimaklumkan pada Majlis Dialog 9 Mac 2004, penalti dikenakan mengikut tarikh bayaran diterima oleh LHDN dan bukannya mengikut tarikh resit dicetak. Sekiranya penalti telah dikenakan walaupun bayaran telah dibuat dalam tempoh yang dibenarkan, rayuan bersama-sama buktinya boleh dibuat supaya penalti tersebut dibatalkan.**
- e. **Penalti telah dikenakan kerana tiada bayaran dalam akaun isteri. Ini adalah kerana kemungkinan berlaku kelewatan semasa pemindahan kredit dari akaun suami ke akaun isteri. Pembayar cukai boleh membuat rayuan terhadap kes ini supaya penalti dapat dibatalkan.**

7.16 Penalties for Under-Estimation

Our members have noted that penalties are being regularly imposed when, during a tax audit, taxpayers are found to have reported a lower tax liability e.g., where expenses are wrongly claimed resulting in a lower tax liability.

The Institutes had sought clarification on the following:-

Will penalties be imposed if the audit adjustments made by the IRB result in a higher tax payable as compared to the estimate or revised estimate submitted by the taxpayers vide the Form CP204 or CP204A?

According to the minutes of the dialogue with the Tax Audit & Investigation Division on 2 October 2003, the IRB clarified that any penalty for underestimation would be imposed upon comparison with the tax liability per the deemed assessment and the estimate or revised estimate submitted by the taxpayers

vide the Form CP204/CP204A. The Chairman proposed that the above issues be also raised and discussed with the Operations Division of the IRB.

However, the minutes of the dialogue with the Operations Division on 9 March 2004 had erroneously stated that the Tax Audit & Investigation Division had stated the following: 'The IRB clarified that a penalty would be imposed if the tax liability (after audit adjustments made by the IRB) is higher than the deemed assessment and not against the estimate or revised estimate submitted by the taxpayers vide the Form CP204/CP204A'. The IRB Operations Division commented in the minutes of the previous dialogue held on 9 March 2004 that "The above comment is in order".

In this regard, the professional bodies would like to reconfirm that the IRB will not impose any penalties under Section 107C(10) if the audit adjustments result in higher tax payable compared to the estimate or revised estimate of tax liability submitted by the taxpayer via Form CP204/CP204A. The comparison of actual tax liability and estimated tax liability will be based on the actual tax at the time of the submission of the tax returns and will not be based on the revision of the tax liability following a tax audit.

Jawapan

"Cukai sebenar" bagi maksud pengenaan Seksyen 107C(10) adalah mengikut taksiran disifatkan (deemed assessment).

7.17 Waiver of Penalty under Section 107C(11)

Under the provisions of the Income Tax Act, the DG is given the discretionary power under Section 107C (11) to waive penalties for under-estimation of tax on the grounds of "good cause".

It is proposed that guidelines be issued by the DG on instances which the DG would consider as valid "good cause" to waive the penalty for under-estimation of tax.

Jawapan

Jawapan Majlis Dialog pada 9 Mac 2004 dikekalkan. Tiada garis panduan yang akan dikeluarkan. Pertimbangan adalah bergantung kepada merit sesuatu kes.

7.18 Appeal Against an Assessment

The IRB informed in the previous dialogue held on 9 March 2004 that if the taxpayer disagrees with the assessment when submitting the Form C, he could appeal against the assessment by submitting a completed Form C together with an appeal letter and Form Q to the IRB.

The Institutes would like to highlight that according to Paragraph 3.3.3 of Public Ruling 3/2001: Appeal against an Assessment, an appeal made by way of a letter is also acceptable. In this regard, the Institutes would like to seek confirmation whether a letter of appeal is sufficient for this purpose.

lawapan

Surat rayuan adalah mencukupi. Walau bagaimanapun, sekiranya kes rayuan tersebut tidak boleh diselesaikan di peringkat LHDN, Borang Q hendaklah dikemukakan.

7.19 Qualified Tax Agents under Section 153 of the Income Tax Act, 1967

Currently, there are a lot of cases where clients engage the services of unqualified tax practitioners as they are not aware about tax agents as stipulated under Section 153 of the Income Tax Act 1967.

The Institutes suggest that in order to educate taxpayers on the need to engage qualified tax agents, the Institutes propose that the qualification and definition of a tax agent as defined under the above section should be inserted in the tax return forms or in the explanatory notes.

lawapan

Persatuan Akauntan diminta untuk mengemukakan senarai juruaudit berlesen supaya dapat melengkapkan senarai yang ada pada LHDN. LHDN akan memasukkan senarai ejen cukai yang layak ke dalam laman web Hasilnet. Persatuan Akauntan akan mengemukakan senarai firma-firma yang berkenaan.

7.20 Effective Utilisation of Information/Role of Tax Agents

The Institutes have been informed of visits by teams of IRB officers to the office premises of auditors/tax agents in October 2004 to obtain information about taxpayers who have not submitted tax returns. These visits were unannounced and caused disruption to the business activities of members as a lot of time was involved in extracting information and dealing with the IRB officers. In addition, tax agents were busy with finalizing tax returns due for submission at the end of October.

It should be noted that in some cases, the tax agents had ceased to act for some taxpayers and relevant letters had been sent to the IRB. For some, the tax agents themselves did not have the latest information on the whereabouts of some taxpayers. In most cases, a lot of time and effort was involved in searching for the information requested. In some situations, a tax agent was asked to complete a form about the details of clients.

The professional bodies would suggest that the IRB utilises the information that it currently has in its databases and ensure that all correspondence is processed on a timely basis before it resorts to taking action such as visiting audit/tax firms. If the IRB wishes to obtain information from audit/tax firms, it should provide advance written notification so that the firms have adequate time to compile the relevant data without creating undue disruption to business operations. Further, it must be noted that the tax agents are acting for clients and there is a professional duty to communicate with clients before releasing specific information to other parties (including the IRB). Members have no issue with co-operating with the IRB but professionalism and fair play is paramount. In this context, the Institutes are also concerned about the comments attributed to the IRB on the front page of the NST on Sunday, 7 November 2004 which appears to reflect a misperception about the duties of tax agents. It is hoped that all parties are fully aware of the role/duties of tax agents.

Jawapan

Operasi audit yang dilakukan baru-baru ini hanya dilaksanakan ke atas pembayar cukai yang telah gagal mengembalikan borang cukai pendapatan. Manakala premis ejen cukai dilawati kerana semua alamat pembayar cukai yang dirujuk dalam sistem hanya mempunyai alamat ejen cukai tersebut sahaja.

Lawatan tersebut bertujuan untuk mendapat maklumat lebih lanjut tentang pembayar cukai. LHDN berharap agar semua pihak akan lebih berdisiplin dan mematuhi peraturan percukaian yang telah ditetapkan. Sekiranya terdapat pembayar cukai yang enggan mematuhi peraturan, ejen cukai boleh melaporkan kepada LHDN supaya tindakan sewajarnya dapat diambil ke atas pembayar cukai berkenaan.

LHDN akan memaklumkan senarai pembayar cukai dalam tempoh yang mencukupi kepada ejen cukai untuk tujuan audit.

7.21 STD Audit

Currently, the IRB performs a STD audit without any advance notice being given to the taxpayers. This can be disruptive to the business operations of taxpayers.

The Institutes would like to suggest that advance notice be given to taxpayers before a STD audit is performed by the IRB.

Jawapan

Dalam kebanyakan kes, notis akan dikeluarkan kepada majikan sebelum operasi audit dijalankan oleh LHDN. Walau bagaimanapun bagi kes-kes tertentu, LHDN boleh membuat lawatan audit tanpa memberitahu majikan terlebih dahulu.

7.22 Statements of Accounts

Members of the Institutes have been informed by the IRB branch offices that they have been instructed by the IRB, HQ not to print the statement of accounts to enable taxpayers to reconcile their outstanding tax balance.

The Institutes seek clarification from the IRB as to the rationale for this decision.

Jawapan

Akaun atau lejar pembayar cukai adalah untuk urusan dalaman LHDN sahaja. Pada setiap tahun, pembayar cukai akan menerima Penyata Akaun tahunan untuk menyemak transaksi cukai mereka. Sekiranya pelarasan akaun perlu dilakukan, Cawangan/Unit Pungutan akan mengeluarkan penyata pengiraan cukai (tax computation) untuk rujukan pembayar cukai.

7.23 Approved Donations and Permitted Expenses

Currently, the rounding of calculations of various items such as Approved Donations and Permitted Expenses has been done as a matter of practice. Based on the notices from the IRB that has been received by members concerning incorrect tax computations, it seems that there are very specific rules that are being applied by the IRB and that rounding up of numbers does not seem to be the practice now.

The professional bodies seek to clarify whether the IRB has specific rules being applied to this matter and when these rules are applicable.

Jawapan

Ruangan yang disediakan di dalam Borang C bagi Derma dan Perbelanjaan tidak mempunyai ruangan untuk 'sen'. Oleh itu tiada isu tentang sistem akan membulatkannya kepada jumlah yang terdekat. Sekiranya Jumlah Cukai Pendapatan yang dikira oleh pembayar cukai dibulatkan kepada sen yang berbeza dari yang dibaca oleh sistem, satu surat akan dikeluarkan untuk memaklumkan pembayar cukai tentang perbezaan tersebut.

7.24 Filing of Form C

There are some cases filed on time for year of assessment 2003. The Form C is completed except for the designation of the person signing the return. Officers that we have spoken to mentioned that since the "Jawatan" item has not been completed, the return will be deemed incomplete and considered late submission.

The Institutes appreciate it if the IRB can confirm that such trivial matter would deem the return as "incomplete"?

Jawapan

Seperti yang dinyatakan dalam ACP 1967, Borang C hendaklah ditandatangani oleh pegawai yang diberi kuasa dan jawatan pegawai tersebut juga hendaklah dicatat untuk memudahkan rujukan dibuat oleh pegawai LHDN.

7.25 Late Filing of Tax Returns

There are cases where, due to unforeseen circumstances the tax returns could only be filed a few days after the due date.

The Institutes would like to request the IRB to be more lenient by granting a 7 day extension for cases which are genuinely in need of an extension of time.

Jawapan

Semua borang cukai pendapatan (termasuk Borang R) hendaklah dikembalikan mengikut tarikh yang ditetapkan oleh undang-undang.

7.26 Application for Certificate of Residence

Members understand that different IRB officers adopt different procedures in issuing Certificate of Residence (COR). Some prefer the application be made on tax agent's letterhead whilst others insist on taxpayer's letterhead. Also the IRB takes about a week to issue the letter even if all necessary documents e.g. minutes of board meeting have been submitted.

The Institutes would like to request the IRB to standardize the requirement of which letterhead to use and also to issue the COR within 2 days since it is a straightforward matter.

Jawapan

Semasa memohon status bermastautin, pembayar cukai perlu mengemukakan permohonan bertulis berserta dokumen berikut:

- i. Salinan minit mesyuarat syarikat yang menyatakan alamat tempat mesyuarat diadakan;***

- ii. **Minit mesyuarat yang dikemukakan kepada Suruhanjaya Syarikat Malaysia (SSM) yang berkaitan dengan tahun berkenaan;**
- iii. **Memorandum & Articles;**
- iv. **Dokumen-dokumen lain yang dikemukakan ke SSM.**

Sekiranya ejen cukai telah dilantik oleh pembayar cukai, ejen cukai tersebut boleh menggunakan letterhead mereka untuk membuat permohonan bagi pihak pembayar cukai. Sekiranya dokumen yang dikemukakan lengkap, COR boleh dikeluarkan dalam masa 1-2 hari sahaja.

7.27 Registration of New Partnership with the IRB

Members have received information that there has been delay in the allocation of income tax reference numbers for partnerships although certified true copies of the partnership's accounts and the registration form issued by the Registrar of Business have been submitted to the IRB.

The Institutes hoped that the IRB could speed up the indexation process to ensure compliance by taxpayers under the self-assessment system.

Jawapan

LHDN memaklumkan bahawa pendaftaran nombor rujukan cukai bagi pembayar cukai perniagaan akan dibuat dalam tempoh satu minggu.

Dokumen yang diperlukan semasa membuat permohonan:

- i. **Borang Pendaftaran Perkongsian;**
- ii. **Salinan Pendaftaran Perniagaan (Borang D); dan**
- iii. **Salinan kad pengenalan pembayar cukai.**

7.28 Set-Off of Credit Balance

Where a taxpayer has a credit balance due to overpayment of tax, the Collection Branch of the IRB has again reverted to the practice of allowing set off against three monthly instalments for the year of assessment in respect of which estimate of tax has been furnished although the taxpayer has requested the use of all the credit balance to set off against all outstanding monthly instalments.

The Institutes feel that this practice is not only inefficient but also unfair to the taxpayers as it denies the taxpayers' right as to how he should use his money.

Jawapan

Sekiranya pembayar cukai membuat permohonan untuk offset baki kredit ke atas ansuran bulanan, offset akan dilakukan ke atas semua ansuran berkeajaan dan tidak terhad kepada tiga ansuran sahaja. Tetapi sekiranya proses bayaran balik telah dimulakan bagi kes tersebut, maka bayaran balik akan diteruskan dan offset tidak akan dilakukan.

7.29 Incomplete Correspondence Address Not Updated by IRB

The Institutes have been informed by members whereby they have informed IRB on incomplete correspondence address printed on the Form CP 204 but there are still cases where the correspondence address printed on the Form CP 204 is still not updated.

The Institutes hope the IRB can update its records upon receipt of notification of incomplete address from taxpayers/tax agents.

Jawapan

Pembetulan telah dibuat ke atas ralat tersebut. Jika masih terdapat masalah yang sama, sila rujuk ke LHDN.

7.30 Names of Officers Attending to Calls

Some of the IRB officers attending to tax agents' calls refused to disclose their names for future reference because they are not the officer-in-charge. They asserted that they are merely assisting the tax agents to check the name of the officer-in-charge, the status of the file or to print out duplicate Form J upon the tax agents' request etc.

It will be more efficient if the tax agents are informed of the IRB officers' names so that they can contact the same officers whom they spoke to in order to follow-up with them on their request (e.g. the name of the officer-in-charge or to collect the duplicate Form J).

Jawapan

Persatuan Akauntan diminta untuk menyatakan cawangan LHDN yang berkeajaan. Peringatan akan diberikan kepada pegawai-pegawai LHDN supaya memperkenalkan diri apabila menerima panggilan telefon daripada pembayar cukai.

7.31 Dormant Companies

The Institutes have been informed by members that their clients have been issued compound letters for late submission under Section 112 of the Income Tax Act during the period when their clients were dormant. It is to our knowledge that under the self-assessment system, dormant companies are not required to register with IRB to apply for a tax reference number or submit return forms until they commence operations. In a previous dialogue with IRB held on 15 April 2002, IRB informed that return forms are issued to active companies only.

The Institutes would appreciate it if IRB can provide clarification on this matter.

Jawapan

Menurut undang-undang, semua Borang C yang dikeluarkan oleh LHDN hendaklah dilengkapkan dan dikembalikan ke LHDN sama ada syarikat tersebut dormant atau tidak. LHDN hendaklah dimaklumkan secara bertulis sekiranya sesebuah syarikat adalah dormant supaya maklumat tersebut dapat dikemaskinikan ke dalam sistem.

Sekiranya Borang E dikeluarkan kepada majikan yang dormant, borang tersebut hendaklah diisi dan dikembalikan ke LHDN berserta surat iringan yang memaklumkan bahawa syarikat tersebut adalah dormant. Sekiranya kompaun telah dikenakan, pembayar cukai hendaklah membuat rayuan bersama-sama bukti yang menunjukkan LHDN telah dimaklumkan tentang perkara ini. Pertimbangan akan diberikan mengikut merit masing-masing.

Berkenaan dengan makluman Persatuan Akauntan tentang syarikat dormant yang dikenakan kompaun setelah dilawati oleh pegawai LHDN, Tuan Pengerusi meminta Persatuan Akauntan mengemukakan senarai syarikat-syarikat yang berkenaan kepada LHDN.

7.32 Compliance of Public Rulings

It is required of taxpayers to make a disclosure in the return form as to whether they have complied with the relevant Public Rulings. This requirement invests the Rulings with some degree of “power” to compel compliance on the part of taxpayers although it is only intended as a guide. Rulings are issued to provide guidance for the public and officers of the Inland Revenue Board (IRB) and in essence, set out the interpretation of the Director General of the IRB. In instances where there are obvious and longstanding disagreements between IRB’s interpretation and the views held by the profession, the incorporation of IRB’s position into the Ruling would imply that taxpayers should concede to IRB’s view. This presents an unfair dilemma to the taxpayers. Taxpayers should not be penalized or scrutinized if they have different interpretation of the law as long as it is supported by a valid basis.

The Institutes are of the opinion that taxpayers should not be “compelled” to adhere to Rulings for the purpose of completing the return forms as they are meant only for guidance. Taxpayers should be allowed to take differing stands with the relevant supporting bases/documents available in the event of a tax audit. In this respect, the Institutes would like to suggest the removal of the requirement to indicate compliance with the Rulings in the return forms.

Jawapan

Ketetapan Umum perlu dipatuhi oleh pembayar cukai kerana Ketetapan Umum merupakan pendirian dan peraturan LHDN dalam sesuatu isu percukaian.

Sekiranya terdapat sesuatu isu dalam Ketetapan Umum yang tidak dipersetujui oleh pembayar cukai, pembayar cukai boleh memilih untuk melakukan tindakan berikut:

- i. Patuhi Ketetapan Umum (kotak 'Ya' ditanda)**
 - **Pengiraan cukai dibuat berdasarkan kepada Ketetapan Umum.**
 - **Pembayar cukai membuat rayuan terhadap pengiraan cukai tersebut.**
 - **LHDN akan mempertimbangkan rayuan.**
- ii. Tidak Patuhi Ketetapan Umum (kotak 'Tidak' ditanda atau tidak diisi mana-mana kotak)**
 - a) Pengiraan cukai dibuat tidak berdasarkan Ketetapan Umum tetapi pembayar cukai memaklumkan kepada LHDN:**
 - **Pembayar cukai perlu memaklumkan mengenai isu yang tidak dipatuhi dan jumlah pendapatan yang terbabit;**
 - **LHDN akan membangkitkan Taksiran Tambahan dengan tidak mengenakan penalti dan pembayar cukai boleh membuat rayuan.**
 - b) Pengiraan cukai dibuat tidak berdasarkan Ketetapan Umum dan pembayar cukai tidak memaklumkan kepada LHDN:**
 - **Sekiranya kes diaudit dan terdapat cukai tambahan, Taksiran Tambahan akan dibangkitkan dengan penalti.**

MICPA Circular No. TEC/008/03/2005
Issue Date: March 28, 2005

MICPA Circular No. TEC/013/05/2005
Issue Date: May 10, 2005

MICPA Circular No. TEC/017/06/2005
Issue Date: June 20, 2005

EXAMPLE OF TAX COMPUTATION FOR A TRADE ASSOCIATION BASED ON THE PROPOSED AMENDMENT

Based on Current Order - Income Tax (Exemption) (No. 7) Order 2002		Based on Proposed Amendment - Attributable Method	
Business Income		Business Income	
Member's subscription fees	1,000,000	Member's subscription fees	1,000,000
Seminar	500,000	Less: member registration	20,000
Trade Association activities	300,000	common expenses (*)	<u>100,000</u> 120,000
Contribution	<u>200,000</u>	Less: Common capital allowance	<u>175,000</u>
	2,000,000		<u>295,000</u> 705,000
Less:		Seminar	500,000
Expenses		Less: Expenses	
Director's fees	100,000	Rental of seminar hall	130,000
Employees remuneration	50,000	Food	50,000
Consultant fee	100,000	Common expenses (*)	<u>50,000</u>
Rental of seminar hall	130,000		270,000
Food	50,000	Less: Direct capital allowance	100,000
Member registration	20,000	Common capital allowance	<u>87,500</u>
Transport	25,000		<u>187,500</u> 82,500
Stationeries	<u>25,000</u>	Trade Association Activities	300,000
	500,000	Less: Expenses	
	1,500,000	Consultant fee	100,000
		Common expenses (*)	<u>30,000</u>
Less: Capital allowance	<u>500,000</u>		170,000
Statutory Business Income	1,000,000	Less: Direct capital allowance	50,000
		Common capital allowance	<u>52,500</u>
			<u>102,500</u> 67,500
Less:		Contribution	200,000
Amount exempt from tax		Less: Common expenses (*)	<u>20,000</u>
[Statutory Business Income x Gross member's subscription fees]			180,000
Gross business income		Less: Common capital allowance	<u>35,000</u>
[1,000,000 X $\frac{1,000,000}{2,000,000}$ = 500,000]		Amount exempt from tax	705,000
	<u>500,000</u>	Amount taxable	295,000
Amount taxable	500,000		

Computation of common expenses and common capital allowance:**A. Direct expenses attributable to:**

i.	Members' registration fees	-	20,000 (member registration)
ii.	Seminar	-	130,000 (Rental of Seminar Hall) 50,000 (Food)
iii.	Trade Association Activities	-	100,000 (Consultant fee)

Common expenses:

Directors fees	100,000
Employees remuneration	50,000
Transport	25,000
Stationeries	25,000
	<u>200,000</u>

Computation of common expenses attributable to:

**[Common expenses x Gross business income]
Total Gross Business Income**

i.	Members subscription fees:	200,000	X	$\frac{1,000,000}{2,000,000}$	=	100,000
ii.	Seminar:	200,000	X	$\frac{500,000}{2,000,000}$	=	50,000
iii.	Trade Association Activities:	200,000	X	$\frac{300,000}{2,000,000}$	=	30,000
iv.	Contribution:	200,000	X	$\frac{200,000}{2,000,000}$	=	20,000

B. Direct capital allowance attributable to:

I. Seminar	-	100,000 (Equipments)
II. Trade Association Activities	-	50,000 (Equipments)

Common capital allowance: 350,000

Computation of common capital allowance attributable to:

[Common capital allowance x $\frac{\text{Gross income}}{\text{Total Gross Business Income}}$]

Members subscription fees:	350,000	X	$\frac{1,000,000}{2,000,000}$	=	175,000
Seminar:	350,000	X	$\frac{500,000}{2,000,000}$	=	87,500
Trade Association Activities:	350,000	X	$\frac{300,000}{2,000,000}$	=	52,500
Contribution:	350,000	X	$\frac{200,000}{2,000,000}$	=	35,000

A10 GAZETTING OF 1998 TO 2004 BUDGET PROPOSALS

As of the date of this Budget Commentary, most of the 1998 to 2004 Budget proposals announced by the Honourable Finance Minister in the previous Budget Speeches have been gazetted by way of changes to the existing legislation or by issue of statutory orders. The proposals which have not been gazetted are summarised below:

1998

1. Private clinics which provide special wards for lower income earners will be given investment tax allowance of 60% on the qualifying capital expenditure incurred.

1999

1. Repair and maintenance activities for luxury boats and yachts undertaken in Langkawi will be granted tax exemption for a period of 5 years.

2003 Budget

1. Qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubberwood cultivation will be given Accelerated Agriculture Allowance. The write-off period for the relevant expenditure will be accelerated from two years to one year on condition that the company plants at least 10% of its plantation with rubberwood trees.
2. Locally-owned manufacturing companies will be given additional tax incentives as follows:
 - (i) Tax exemption of statutory income equivalent to 30% of increased export value, on condition that the company achieves a significant increase in exports;
 - (ii) Tax exemption of statutory income equivalent to 50% of increased export value, on condition that the company succeeds in penetrating new markets; and
 - (iii) Full tax exemption of statutory income for the company that records the highest increase in exports in a specific category.
3. An approved Regional Distribution Centre (RDC) will be granted the following incentives:
 - (i) Income tax exemption of 100% on statutory income for 10 years;
 - (ii) Dividends paid from the exempt income will be exempted from tax in the hands of the shareholders;

The proposal is subject to the following conditions:

- (i) The RDC is incorporated in Malaysia under the Companies Act 1965;
 - (ii) The RDC achieves a total annual turnover of at least RM100 million;
 - (iii) The RDC is located in the free zones (free industrial zone or free commercial zone) or licensed warehouse (public and private) or licensed manufacturing warehouse; and
 - (iv) The RDC is not permitted to sell more than 20% of its products to the local market.
- The tax exemption on statutory income and dividend in the hands of the shareholders granted to the RDC is also extended to the International Procurement Centre.
4. Operational Headquarters (OHQ) will be exempted from income tax for 10 years and the dividends paid from the exempt income will also be exempted in the hands of shareholders.

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5. A company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land will be allowed a deduction equivalent to the amount of the investment, and the wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land will be exempted from service tax.
6. Locally-owned companies that reinvest in the promoted food processing activity will be given another round of the following incentives:
 - (i) Companies located outside the promoted areas –
 - (a) Pioneer Status with tax exemption of 70% of the statutory income for 5 years; or
 - (b) Investment Tax Allowance (ITA) of 60% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 70% of statutory income in each year of assessment.
 - (ii) Companies located in the promoted areas –
 - (a) Pioneer Status with tax exemption of 85% of the statutory income for 5 years; or
 - (b) ITA of 80% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 85% of statutory income in each year of assessment.
7. New and existing companies that undertake design, R&D and production of qualifying automotive modules or systems will be given the following incentives:
 - (i) Pioneer Status with tax exemption of 100% of the statutory income for 5 years; or
 - (ii) ITA of 60% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 100% of the statutory income in each year of assessment.

The qualifying automotive component modules or systems are as follows:

- (a) front corner module;
- (b) rear corner module;
- (c) instrument panel module;
- (d) strut and absorbers and spring assembly module;
- (e) bumper module;
- (f) front cross member module;
- (g) function integrated door module;
- (h) fuel tank module;
- (i) seat module;
- (j) pedal module;
- (k) door trim module;
- (l) floor console module;
- (m) tyre and wheel module;
- (n) brake system;
- (o) wiper system;
- (p) exhaust system;
- (q) audio system;
- (r) HVAC (Heater Ventilation Air-Conditioning System);
- (s) air bag system;

Appendix 3

- (t) power and signal distribution system;
 - (u) alarm system;
 - (v) seat belt system;
 - (w) exterior lighting system;
 - (x) body in white module; and
 - (y) engine management system, safety system, telemetrics, navigational system, engine fuel injection, vehicle intelligence system.
8. The manufacture of the following categories of machinery and equipment will be classified as a strategic industry:
- (i) Specialised/process machinery or equipment for specific industries;
 - (ii) Packaging machinery;
 - (iii) Plastic extrusion machinery; and
 - (iv) Parts and components for the above machinery and equipment.
9. Companies which invest in knowledge intensive activities will be given the following tax incentives and deductions:
- (i) A company granted "Strategic Knowledge-based Status Company" will be given pioneer status with tax exemption of 100% of statutory income for a period of 5 years or be given investment tax allowance of 60% on the qualifying capital expenditure incurred within a period of 5 years, with the allowance deducted for each year of assessment to be set-off against 100% of statutory income on certain conditions.
 - (ii) Expenditure incurred by a company for drafting the individual Corporate Knowledge-based Master Plan will be allowed as a deduction in the tax computation. The deduction should be claimed when the company begins to implement the Corporate Knowledge-based Master Plan.
10. The existing incentives for the use of biomass as a source of renewable energy will be extended for another 3 years until 31 December 2005. The scope of the existing incentives will be extended to include the use of hydro electric power of not more than 10 megawatts and the use of solar power.

2003 Economic Stimulus Package

1. The requirements of small companies which are eligible for pioneer status with tax exemption of 100% of statutory income are as follows:
 - (i) Equity holding will be reduced from 70% to 60%.
 - (ii) Criteria –
 - Either
 - (a) achieves at least 15% value-added; or
 - (b) the activities of the company contribute to the socio-economic development of the rural population.
2. Group relief will be extended under a pre-packaged scheme to forest plantations, including rubber plantations, and to selected products in the manufacturing sectors such as biotechnology, nanotechnology, optics and photonics.
3. The pre-packaged incentive scheme for Pioneer Status with 100% tax exemption for 10 years, or ITA of 100% for 5 years will be extended such that:
 - (i) The maximum period for Pioneer Status will be extended to 15 years.
 - (ii) The period for ITA will be extended to 10 years.

Appendix 3

4. Expenditure on R&D activities undertaken overseas, including the training of Malaysian staff, will be considered for a double deduction, on a case-by-case basis.
5. R&D companies will be eligible for either a "second round" of the Pioneer status incentive for another 5 years or the ITA for a further 10 years.
6. Hypermarkets and direct selling companies that export locally produced goods will be given income tax exemption on statutory income equivalent to 20% of their increased export value.
7. Existing OHQs will be given 100% income tax exemption for their remaining exemption period.
8. International Procurement Centres which comply with existing criteria will be eligible for income tax exemption for 10 years.

2004

1. Manufacturing, agriculture and tourism companies in the promoted areas will be given the following additional tax incentives:
 - (i) Pioneer Status with tax exemption of 100% of statutory income for a period of 5 years; or
 - (ii) ITA of 100% of the qualifying capital expenditure incurred within a period of 5 years. The allowance can be used to set off against 100% of statutory income in each year of assessment.
2. Locally-owned companies which reinvest in the production of heavy machinery will be given the following additional tax incentives:
 - (i) Companies located outside the promoted areas –
 - (a) Pioneer Status with tax exemption of 70% on increased statutory income arising from reinvestment for a period of 5 years; or
 - (b) ITA of 60% on additional qualifying expenditure incurred within a period of 5 years. The allowance can be set off against 70% of statutory income in each year of assessment.
 - (ii) Companies located in the promoted areas –
 - (a) Pioneer Status with tax exemption of 100% on increased statutory income arising from reinvestment for a period of 5 years; or
 - (b) ITA of 100% on additional qualifying expenditure incurred within a period of 5 years. The allowance can be set off against 100% of statutory income in each year of assessment.
3. Locally-owned companies which reinvest in the production of machinery and equipment, including specialised machinery and equipment and machine tools, will be given the following incentives:
 - (i) Pioneer Status with tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from reinvestment for a period of 5 years; or
 - (ii) ITA of 60% (100% for promoted areas) on additional qualifying capital expenditure incurred within a period of 5 years with the allowance deducted in each year of assessment against 70% (100% for promoted areas) of the statutory income.
4. Companies utilising biomass to produce value added products will be given the following additional tax incentives:
 - (i) For new companies –
 - (a) Pioneer Status with income tax exemption of 100% of statutory income for a period of 10 years; or

Appendix 3

- (b) ITA of 100% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 100% of statutory income in each year of assessment.
 - (ii) For existing companies that reinvest –
 - (a) Pioneer Status with income tax exemption of 100% on increased statutory income arising from reinvestment for a period of 10 years; or
 - (b) ITA of 100% on additional qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 100% of statutory income in each year of assessment.
5. Tax incentives for the venture capital industry will be enhanced as follows:
- (i) For a venture capital company (VCC) –
 - (a) The method to determine the 70% investment requirement in venture companies (VCs) to qualify for tax exemption will be relaxed by taking into account only the value of funds invested and not the total gross fund which includes cash, fixed deposits and interest earned; and
 - (b) The condition that investment in VCs be disposed through the exit mechanism of an initial public offering to qualify for tax exemption will be extended to include any exit mechanisms approved by the Securities Commission.
 - (ii) For a venture capital management company (VCMC) –

The VCMC will be given a tax exemption on income arising from the profit-sharing agreement between a VCMC and a VCC.
6. Income from qualifying services provided by an Approved Operational Headquarters (OHQ) to its related companies in Malaysia will be given tax exemption provided such income does not exceed 20% of the OHQ income from qualifying services.
7. Hotel and tourism project operators who invest in expansion, modernisation and renovation will be given another round of incentives for a period of 5 years as follows:
- (i) Companies located outside the promoted areas –
 - (a) Pioneer Status with tax exemption of 70% of statutory income; or
 - (b) ITA of 60% on qualifying capital expenditure incurred with the allowance deducted in each year of assessment against 70% of the statutory income.
 - (ii) Companies located in the promoted areas –
 - (a) Pioneer Status with income tax exemption increased from 85% to 100%; or
 - (b) ITA increased from 80% to 100% of capital expenditure deducted against 100% of the statutory income in each year of assessment.
8. Locally-owned companies which reinvest in cold chain facilities and services for perishable agricultural produce will be given the following incentives:
- (i) Pioneer status with tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from reinvestment for a period of 5 years; or
 - (ii) ITA of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 70% (100% for promoted areas) of statutory income in each year of assessment.

Appendix 4

SESSI PERBINCANGAN - ISU-ISU BELANJAWAN TAHUN 2005

Issues relating to previous budget proposals (Pages 46 - 50 of Budget Complementary & Tax Information)

Budget Proposal 1998	Answers
1	Special wards for lower income earners provided by private clinics is recognised as an approved service project under Schedule 7B ITA 1967. Therefore, no income tax rules to be issued.
Budget Proposal 1999	
1	The income tax exemption order for the income derived from repair and maintenance activities for luxury boats and yachts in Langkawi - has been discussed with MOF.
Budget Proposal 2003	
(1)	1 The income tax rules for the accelerated agriculture allowance on qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubber wood cultivation - being drafted
(2)	2 The deduction for expenses incurred by a company in sponsoring Family Days falls under the existing section 39(1)(i) ITA1967. Therefore, no income tax rules to be issued.
(4)	3 The income tax exemption order for the value of increased export for locally owned manufacturing under (i), (ii) and (iii) - being drafted.
(5)	4 The income tax exemption order for the income derived from the activities of an approved RDC - being drafted.
(6)	5 The income tax exemption order for the income derived from the activities of an approved OHQ - being drafted.
(7)	6 The income tax rules for a company that invests in the wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land - under discussion.
(11)(ii)	7 The income tax rules for expenditure incurred by a company for drafting the individual Corporate Knowledge based Master Plan - being drafted.

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2003 Economic Stimulus Package		Answers
(2)	1	The income tax exemption order for group relief under pre package incentives i.e forest plantations and selected products such as biotechnology, nanotechnology, optics and photonics - under discussion.
(3)	2	The income tax exemption order for the pre package incentive scheme for pioneer status with 100% exemption for 10 years or investment tax allowance of 100% for 5 years - being drafted.
(4)	3	Application for approval of double deduction on expenditure incurred for R&D activities undertaken overseas has to be made to MOF.
(6)	4	The income tax exemption order for the value of increased export of locally produced product exported by the hypermarket and direct selling companies - being drafted.
(7)	5	The income tax exemption order for the income derived from the activities of a new and existing OHQ are provided under the same exemption order - being drafted.
(8)	6	The income tax exemption order for the income derived from activities of an approved IPC - being drafted.
Budget Proposal 2004		
(5)	1	The income tax exemption order for the income derived from activities of venture capital company and venture capital management company - being drafted.
(6)	2	The income from qualifying services provided to related company in Malaysia by an approved OHQ is exempted under the same income tax exemption order for OHQ under Budget 2003 - being drafted.

Note :**Incentives provided under Promotion of Investments Act (PIA) 1986:**

1. Pioneer status; and
2. Investment tax allowance.

PIA 1986 will be amended and the proposed activities or products will be gazetted as promoted activities or products under the Promotion of Investments Order.