



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

Telefon: 03-62091000

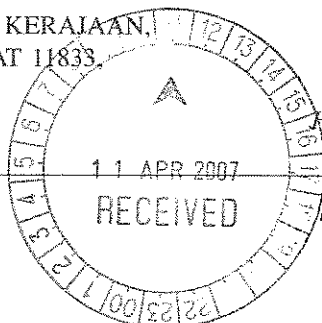
Fax: 03-62011179

03-62039834

03-62031369

03-62018891

Homepage LHDN: <http://www.hasil.org.my>



Fail Kami: LHDN.01/36/193/21

Tarikh: 4 April 2007

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

(u.p: Tn. Hj. Abdul Hamid b. Mohd Hassan)

Tuan,

**MINIT MESYUARAT MAJLIS DIALOG AUDIT CUKAI
SEISI 1/2006 ANTARA LEMBAGA HASIL DALAM NEGERI
DAN PERSATUAN AKAUNTAN BERTAULIAH**

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Bersama-sama ini disertakan minit dialog bertariikh 14 Disember 2006 untuk rujukan dan tindakan tuan.

Sekian, terima kasih.

**“ BERKHIDMAT UNTUK NEGARA”
“MESRA, MEMBANTU, MEMUASKAN”**

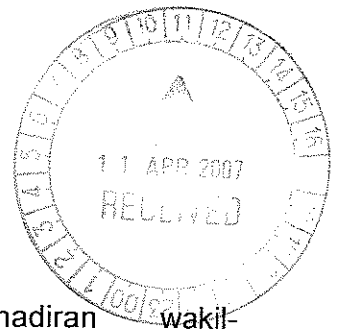
Saya yang menurut perintah,

(CHE OMAR BIN A. RAHAMAN)

Timbalan Ketua Pengarah (Pematuhan)
b.p. Ketua Pegawai Eksekutif/ Ketua Pengarah Hasil Dalam Negeri
Lembaga Hasil Dalam Negeri
MALAYSIA

BERSAMA KE ARAH SISTEM TAKSIR SENDIRI

(Sila rujuk Fail kami apabila menjawab)



Pendahuluan

Ketua Eksekutif / Ketua Pengarah LHDNM mengalu-alukan kehadiran wakil-wakil dari MIA, MIT, MICPA, MAICSA dan MATA ke Majlis Dialog Audit Cukai dan Penyiasatan Sesi 1/2006 ini. Beliau berharap agar majlis dialog ini dapat memberikan manfaat kepada LHDNM dan juga persatuan Ejen Cukai Bertauliah serta pembayar cukai keseluruhannya.

Seterusnya beliau meminta agar pihak ejen cukai memainkan peranan sewajarnya dengan memberi nasihat kepada pembayar cukai supaya dapat mematuhi undang-undang percukaian. Jika terdapat salah laku di kalangan pegawai audit, beliau berharap pihak ejen cukai dapat memberikan maklumat yang telus kepada LHDNM agar tindakan sewajarnya dapat dilakukan. Seterusnya majlis dialog ditangguhkan untuk jamuan ringan.

Majlis dialog disambung selepas jamuan ringan dengan dipengerusikan oleh Timbalan Ketua Pengarah (Pematuhan) En. Che Omar Bin A. Rahaman. Beliau memperkenalkan pegawai-pegawai dari LHDNM yang hadir dalam mesyuarat dan beliau menjemput wakil Persatuan dan ejen cukai bertauliah memperkenalkan wakil masing-masing dan seterusnya menjemput wakil rakan dialog untuk membentangkan isu-isu yang ingin dibincangkan.

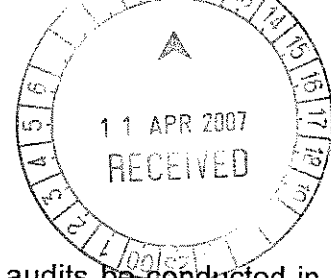
Isu-isu yang dibangkitkan

1. Approach to tax audits

1.1 Conduct of tax audits

The Institutes have been informed that there is a lack of transparency and consistency in the IRB's approach to tax audits. There are cases where different treatments were adopted on the same subject matter which is handled by different officers. The professional bodies have also been informed that the IRB officers have been known to have reversed their past confirmations and verbal promises made during the course of tax audits.

Members of the Institutes have reported that some of the tax audit officers are not conducting the tax audit in a professional manner. Most of them have a preconceived mindset that the taxpayers are already guilty and their visit is more to confirm the "offence". In such cases, the officers will not conclude the audit until and unless they make an adjustment although this may be based on dubious grounds.



The Institutes would like to request that tax audits be conducted in a consistent and professional manner. The Institutes hope that a friendlier and professional atmosphere is established and maintained during tax audits. The IRB officers should not be hostile and the Institutes believe that taxpayers will assist the IRB officers willingly in carrying out the tax audits if they are treated professionally and respectfully.

Jawapan :

LHDNM memaklumkan bahawa objektif audit adalah untuk menggalakkan pematuhan cukai secara sukarela, iaitu memastikan pembayar cukai melaporkan pendapatan yang betul mengikut Akta Cukai Pendapatan dan Peraturan LHDNM dan memberi pendidikan kepada pembayar cukai. Oleh itu semua kerja-kerja pengauditan dikehendaki dijalankan mengikut prosedur dan garis panduan yang ditetapkan. Penemuan audit yang dibuat perlulah mempunyai asas dan akan dimaklumkan kepada pembayar cukai melalui surat. Sekiranya pembayar cukai tidak bersetuju dengan penemuan audit, pembayar cukai boleh membuat bantahan ke atas penemuan itu dalam tempoh masa yang dibenarkan mengikut undang-undang. Pembayar cukai juga diminta melaporkan secara telus kepada LHDNM jika terdapat salahlaku di kalangan pegawai audit ketika menjalankan kerja pengauditan.

1.2 Accounting Knowledge

Members of the Institutes have also reported that in some audit cases, the IRB officers are not familiar and knowledgeable in bookkeeping transactions and accounting principles. This has created a lot of difficulties to our members as they need to spend unnecessary time in explaining the bookkeeping transactions to the IRB officers. There are also instances where some of the IRB officers tend to treat different companies in the same manner notwithstanding the different nature of the business /industry/ commercial environment in which the taxpayers are involved in. Some of the IRB officers are unwilling to accept commercial justification even though detailed explanations with supporting documents were provided. A few examples of the above scenarios are enclosed in Appendix 1.

In this regard, the Institutes would be grateful if the IRB tax audit officers could be adequately trained and equipped with bookkeeping and accounting knowledge before they are assigned to conduct any tax audit. The professional bodies hope that the



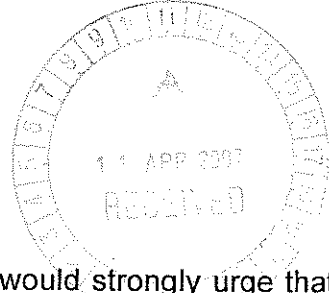
IRB officers would appreciate the way the businesses are carried out, be mindful of business operations and the rationale for carrying out such transactions so that they can make fair and reasonable conclusions.

Jawapan:

LHDNM mengambil maklum atas komen yang diberikan dan memaklumkan bahawa usaha yang berterusan telah dan sedang dilakukan bagi memastikan supaya pegawai audit dilengkapi dengan pengetahuan dan kemahiran teknikal termasuk dari aspek perakaunan. Mesyuarat juga dimaklumkan bahawa semua pegawai audit terdiri daripada pegawai-pegawai yang berkecualan dari segi akademik, berpengalaman serta telah dilatih bagi menjalankan kerja-kerja pengauditan. Kerjaya pegawai di LHDNM bermula dengan proses pengambilan pegawai yang mempunyai kecekapan akademik yang berkaitan seperti perakaunan dan diwajibkan menghadiri latihan asas dan lanjutan berkaitan dengan undang-undang percukaian dan juga perakaunan yang dikendalikan di Akademi Percukaian Malaysia. Bagi memantapkan kemahiran dan pengetahuan pegawai yang diserap sebagai pegawai audit, pihak pengurusan LHDNM juga telah mengambil langkah menubuhkan Pusat Latihan Audit (PULADIT) yang memfokuskan kepada aspek latihan audit secara praktikal dan amali. Pendekatan ini adalah merupakan usaha berterusan pihak LHDNM dalam memastikan tahap pengetahuan dan kemahiran pegawai sentiasa dipertingkatkan dari masa ke semasa. Pada masa yang sama juga, semua kes audit adalah tertakluk kepada penyeliaan ketua kumpulan dan pengurus audit masing-masing. Pelarasan cukai adalah berdasarkan kepada peruntukan undang-undang dan tidak semestinya mengikut amalan sesuatu perniagaan. Lazimnya amalan komersial sentiasa diambil kira dalam membuat sesuatu keputusan.

1.3 Rationale for tax audit adjustments

The IRB informed in the previous dialogue held on 10 May 2005 that all the tax adjustments are made based on valid reasons and the rationale will be explained to taxpayers via letters and during the discussion with the taxpayers. Nevertheless, the Institutes have been informed that some of the IRB officers are still making tax adjustments without explaining the rationale for making such adjustments and the adjustments made are based on findings by the IRB officers which are not backed by valid evidence.



In this regard, the professional bodies would strongly urge that the IRB officers explain to taxpayers in writing the reason/rationale for each tax adjustment which must be supported by the law so as to be fair to taxpayers.

Jawapan:

LHDNM bersetuju dan sememangnya telah menjadi arahan bahawa semua penemuan audit mestilah dimaklumkan secara rasmi kepada pembayar cukai. Perkara tersebut adalah terkandung di dalam arahan dan garis panduan yang dikeluarkan kepada pegawai audit. Disamping itu pembayar cukai juga diberi peluang untuk memberi maklumbalas sebelum pelarasan mengenainya dilakukan. Jika masih terdapat kes seperti yang dinyatakan, pihak pembayar cukai / Ejen Cukai dinasihatkan supaya membuat pengaduan kepada pihak LHDNM untuk tindakan lanjut.

1.4 Involvement of tax agent

With the reference to page 5 of the minutes of the previous dialogue with the Compliance Division held on 10 May 2005, it was stated that the IRB always welcomes the attendance of tax agents together with the taxpayers during the discussion. Nevertheless, members of the Institutes have reported that there are cases where the tax audit officers advised the taxpayers not to ask their tax agents to be present during the tax audit. Some of the tax agents are even told by the IRB officers that their firms would be blacklisted and all their clients would be in trouble. On the other hand, we have also been informed that in certain instances, the audit officers have proposed to taxpayers the names of particular tax agents to represent them.

The Institutes would like to reiterate that the success of the self assessment system depends on the collaboration among taxpayers, tax agents and the IRB. As the tax agents have been appointed to take care of the tax related matters of their clients, it is imperative the tax agents should be informed and invited to attend the discussion/ meeting during the course of tax audits.

Jawapan:

LHDNM berpendapat bahawa perkara tersebut tidak sepatutnya berlaku. Pembayar cukai adalah bebas malah



digalakkan untuk membawa bersama ejen cukai yang dilantik ketika perbincangan berkenaan penemuan audit dijalankan. Jika terdapat kes seperti yang dinyatakan di atas, LHDNM berharap supaya pihak ejen cukai dapat memaklumkan kepada Pengarah Cawangan yang berkenaan untuk tindakan lanjut.

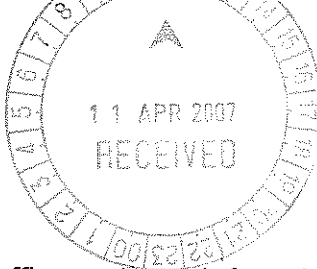
In view of the above, the Institutes would like to reiterate that the primary objectives of tax audits are to educate taxpayers and to assist taxpayers in complying with the tax legislation to arrive at the right amount of tax payable. Hence, the professional bodies urge the IRB to look into the approach to tax audits seriously and 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 appreciative of business operations and commercial practices.

Jawapan:

LHDNM sekali lagi menegaskan bahawa objektif utama audit cukai ialah untuk menggalakkan pematuhan secara sukarela terhadap undang-undang dan peraturan percukaian dan memastikan bahawa pendapatan yang betul telah dilaporkan dan cukai telah dibayar mengikut undang-undang dan peraturan percukaian. Sehubungan dengan itu LHDNM berharap agar pandangan serta persepsi negatif masyarakat terhadap aktiviti audit cukai yang dijalankan oleh LHDNM akan berubah. Perkara ini juga akan ditekankan didalam Rangka Kerja Audit Cukai yang akan dikeluarkan.

2. Time frame and scope of a tax audit

- 2.1 During the dialogue with the Compliance Division of the IRB held on 10 May 2005, the IRB stated that tax audit cases should be finalized within 3 months from the date of commencement of the audit. However, members of the Institutes have reported that some IRB officers have delayed the finalization of some tax audit cases and taken more than a year to finalise them. There are instances whereby additional assessments were raised after a long period of time even though the IRB's field audit officers had completed the field audit and issues raised were agreed by both parties much earlier. There are also instances where the IRB disagrees with the explanation given by the taxpayers and disapproves the appeal after 5 months has lapsed from the provision of the explanation



/appeal. Some IRB officers also ask for additional documents after the field audits have been concluded and refuse to close cases although no findings have been made on any specific issues.

The Institutes hope that the IRB would look into this matter seriously and improve its efficiency in order to finalise tax audit cases by issuing letters on a timely basis, so that the outcome of the tax audits can be made known to taxpayers.

Jawapan:

Berdasarkan kepada keadaan biasa, kes audit hendaklah diselesaikan dalam tempoh 3 bulan. Walau bagaimanapun terdapat kes-kes audit yang memerlukan masa yang lebih untuk diselesaikan kerana beberapa sebab seperti saiz perniagaan pembayar cukai yang besar, tiada kerjasama dari pembayar cukai, pembayar cukai tidak menyimpan rekod dengan lengkap dan isu audit yang rumit. Sekiranya terdapat kes yang melebihi 3 bulan untuk diselesaikan, pembayar cukai mempunyai hak untuk mendapatkan penjelasan dari LHDNM.

LHDNM tidak nampak sebarang justifikasi bagi seseorang pegawai audit sengaja melambat-lambatkan penyelesaian kes kerana ianya akan menjejaskan prestasi pegawai audit tersebut. Sebarang persetujuan dicapai akan disahkan secara bertulis. Surat cadangan pelarasan cukai dengan penjelasan terperinci akan dikeluarkan terlebih dahulu sebelum notis taksiran tambahan dikeluarkan. Pembayar cukai mempunyai hak untuk membuat bantahan dalam tempoh masa yang dibenarkan.

LHDNM juga berpendapat bahawa pembayar cukai juga perlu memberikan kerjasama untuk menyegerakan penyelesaian satu-satu kes dengan memberikan maklumbalas terhadap semua pertanyaan dan juga dokumen yang diperlukan oleh pegawai audit.

- 2.2 On the other hand, when the 3 months period is drawing to a close, members have reported that on-going cases are hurriedly "closed" through the issuance of the notice of additional assessment. The taxpayers are then required to file a Form Q as an avenue of appeal.

The Institutes would like to highlight the following :-



- The requirement for audit cases to be settled within a fixed time frame has resulted in cases being hurriedly closed with no proper justification for certain adjustments. Taxpayers have no other avenue but to file a Form Q. Audit cases should be settled within a reasonable time frame with the proper procedures being followed and not merely finalised due to time constraints.
- If there are no findings by the IRB, the case should be closed and not left unresolved.

Jawapan:

Seperti penjelasan di para 2.1.

- 2.3 The Institutes have been informed by members that, as part of the process of finalizing an audit, they/ their clients are required to sign a letter of agreement /declaration stating that they have under-declared a specific amount of income.

The Institutes are of the view that such a declaration is not necessary. A tax audit is not a tax investigation which requires an agreement before a composite assessment is issued. One of the purposes of a tax audit is to educate taxpayers and such a declaration does not support that purpose.

Jawapan:

LHDNM menegaskan bahawa penemuan audit tidak memerlukan persetujuan pembayar cukai. Sehubungan dengan itu jika sebarang pertimbangan atau bayaran ansuran telah dibenarkan atas permintaan pembayar cukai, maka adalah wajar pembayar cukai diminta memberi persetujuan terhadap pelarasan cukai secara bertulis.

- 2.4 Members of the Institutes have reported that some IRB officers have raised some issues and asked for documents to "time barred" years.

The Institutes are of the view that no issues should be raised beyond the period of 6 years as taxpayers are only required to keep their records for 7 years under the legislation. Hence, taxpayers are unable to respond effectively when the relevant supporting documents requested by the IRB goes beyond the time-barred years.



Jawapan:

Pada kebiasaannya isu-isu yang dibangkitkan dalam kes-kes audit hanya meliputi tempoh 1 hingga 3 tahun sahaja. Sebarang permintaan dari pegawai audit terhadap dokumen-dokumen bagi tahun-tahun sebelumnya adalah bertujuan membantu memahami isu berkenaan secara menyeluruh. Seperti contoh, kes pemaju dan kontraktor, adalah mustahil mengaudit kes pemaju jika tidak lihat dari permulaan sesuatu projek itu. Walaupun begitu, isu dan dokumen yang telah melebihi tempoh masa tidak akan dibangkitkan.

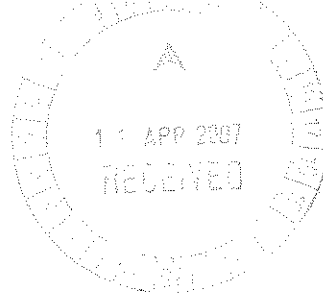
3. Imposition of penalties

- 3.1 In the previous dialogue, the IRB informed that the penalty imposed on tax investigations are higher than tax audit. However, a lower penalty may be imposed in certain cases which involve substantial amount of tax. On the other hand, for tax audits which involve only one or two years of assessment and which are carried out on a basis which is not as detailed as compared to tax investigations, the penalties are fixed at a minimum of 60%.

The professional bodies are of the view that the IRB justification for a lower penalty in investigation cases as explained above is unreasonable as it would mean that the higher the amount of tax a taxpayer had evaded and the more years that are involved, the taxpayer will be rewarded with a lower penalty whereas in a case of tax audits, more tax would be recovered by way of a higher penalty merely because of a small amount of understatement of tax for 1 or 2 years. In this regard, the professional bodies are of the opinion that tax investigation cases which would involve tax evasion and considered to be a more serious offence are certainly different from tax audits which generally involve technical adjustments and/or other compliance issues. Hence, the Institutes would be grateful if the IRB could review and revise the penalty structure for tax audits. In the case of a technical adjustment, there should not be any penalty (also see Paragraph 3.3 below)

Jawapan:

Pada keseluruhannya penalti yang dikenakan bagi kes-kes penyiasatan adalah lebih tinggi dari penalti kes-kes audit. Penalti bagi kes audit sebanyak 60% adalah lebih rendah berbanding penalti kes penyiasatan yang boleh mencapai kadar 100%. Walaupun terdapat penalti kes penyiasatan yang kurang dari 60%, ianya adalah kes terpencil.



- 3.2 The professional bodies have been informed that the IRB issues letters to taxpayers to inform them that if the audit adjustments are accepted, the penalty imposed would be 60% (for the first offence as per IRB guidelines). If the adjustments were not accepted, the IRB would issue an additional assessment together with a penalty of 80%. The usual reply given by the IRB for the higher penalty is that the taxpayer has not been co-operative. In certain instances, the additional assessment is raised with a 60% penalty without allowing the taxpayer to appeal against the audit findings. In addition, members have also encountered situations where installment payments are allowed after an imposition of penalties of 10% and 5% is incorporated.

The Institutes would like to seek clarification on the basis of imposition of penalties. The Institutes are of the opinion that disagreements over the audit adjustments should not be viewed as a sign of non-cooperation of the part of the taxpayers and hence the penalty rate of 80% should not be imposed on such a basis.

Jawapan:

Kadar penalti 80% tidak wujud lagi. Pembayar cukai mempunyai hak untuk membuat bantahan terhadap sesuatu taksiran dengan mengemukakan Borang Q. Penalti sebanyak 10% dan 5% hanya akan dikenakan jika berlakunya kegagalan di pihak pembayar cukai mengikuti bayaran ansurannya. Kadar penalti ini tidak diambilkira dalam taksiran sebagai asas penyelesaian kes audit.

- 3.3 In addition, members of the Institutes have also informed that there are cases where the audit findings are clearly technical adjustments and penalties continue to be imposed. There are cases where the taxpayers had made a voluntary disclosure regarding mistakes or omissions made in prior years and submitted the revised tax computations to the IRB but the maximum penalty is still imposed. There are also instances where the Notices of Assessments are raised by the IRB even in the midst of negotiations and discussions and while the relevant information is still pending.

The rationale for a tax audit is to gauge the degree of compliance under self assessment, to ensure compliance and also in the process to educate taxpayers on compliance. Whilst the Institutes can understand that the rationale for imposing a penalty is to discourage cases on non-compliance, the Institutes are of the view that the authorities should be flexible when imposing penalties. Penalties should not be imposed where genuine mistakes are

made and the taxpayer voluntarily submits revised tax computations or where it involves contentious issues of which adequate disclosure has been made by the taxpayers. As agreed by the IRB and stated on Page 27 of the minutes of the dialogue with the Revenue Management Department of the IRB held on 16 February 2005, no penalty should be imposed if a taxpayer adopts a differing position from that taken by the IRB if this is disclosed by the taxpayer when submitting his tax return.

Jawapan:

Perkataan teknikal selalunya disalah ertikan. Jika undang-undang adalah jelas dan pembayar cukai tidak membuat pelarasan yang sewajarnya atau menyembunyikan tuntutan, ia adalah satu kesalahan dan wajar dikenakan penalti. Dalam hal ini LHDNM juga setuju bahawa penalti tidak patut dikenakan ke atas kes-kes yang melibatkan interpretasi perundangan percukaian yang tidak jejas. Tindakan yang sama harus juga diambil bagi kes dimana pembayar cukai telah tidak menyembunyikan apa-apa perkara atau telah melaporkan secara keseluruhan perkara-perkara yang menyebabkan kedudukan perbezaan sesuatu pendapatan semasa pengemukaan Borang Nyata. Di mana pembayar cukai membuat pengakuan secara sukarela, maka kadar penalti akan dikenakan mengikut jadual sedia ada. Mengenai kes taksiran dikeluarkan semasa rundingan masih berjalan, pihak ejen cukai perlu rujuk kes tersebut kepada Pengarah Cawangan berkenaan untuk membuat bantahan.

- 3.4 Based on the previous minutes, the penalty structure as stated in the IRB's Guide on Tax Audits is applied in situations where the taxpayer co-operates with the IRB will make the relevant changes in the Guidebook to avoid misunderstanding by the taxpayers. Currently, paragraph 5 of the Guidebook states, "The penalty rates are dependent on the time that has lapsed between omission and voluntary disclosure". Any changes in the position on the IRB should be first publicly disclosed or disseminated and only then, should it take effect.

The Institutes are of the view that penalties should be structured based on culpability. The IRB should be transparent in the imposition of penalties. If one discovers his mistake and voluntarily notifies the IRB, a penalty should not be imposed as there is no culpability involved in such a case. The penalty rate should be reviewed so that the rates are imposed based on culpability. The maximum penalty rate of 60% should only be imposed when there

is a proven intention to understate tax liability or under-declare income i.e. culpability must be proved.

Jawapan:

Kadar penalti bagi kes-kes audit termasuk kes pengakuan secara sukarela akan dimasukkan dalam Rangka Kerja Audit Cukai yang baru.

- 3.5 In addition, the Institutes would like to suggest that special powers be allowed for the Pengarah Cawangan / Pengarah Negeri to be able to reduce the amount of penalty imposed. An independent panel made up of 2 or 3 members (not involved in the tax audit) should be established to allow taxpayers to present their case in instance where the penalty is felt to be unjustly imposed.

Jawapan:

Pihak Pengarah Cawangan boleh mencadangkan agar tiada penalti dikenakan bagi sesuatu isu audit berdasarkan kepada bukti-bukti audit yang ditemui.

4. Documents /records taken in a tax audit

It is reported by some members that documents and files have been requested verbally or through a phone call after the field audit at a taxpayer's premises. These were not returned pending finalisation even after one year. In some instances, the IRB officers have insisted on taking copies of everything instead of reviewing the source documents at the business premises and some of the IRB officers did not even look at the source documents provided but just selected journal entries based on the general ledger listing and requested the taxpayer/ tax consultant to make copies of the journal entry and source document. There are also cases where the IRB officer failed to make copies of the documents but took possession of the original documents and retained them for a long period before returning those documents to the taxpayer. On the other hand, there are some IRB officers who refuse to look at the source documents (for example the sales invoices) but instead focused on the bank statements in determining the turnover of a company. This is inconsistent with what was stated in the minutes of the last dialogue that records are only to be taken where it is absolutely necessary and that these should be returned to the taxpayers as soon as possible.

The Institutes hope that the IRB could return the records taken within a stipulated time frame say three months or immediately after the tax audit



cases are finalised, whichever is earlier. It is also hope that the IRB is more flexible in carrying out tax audits for genuine cases where the supporting documents were incomplete but there are sufficient grounds to make reasonable judgements on the issue and the IRB officers should accept reasonable explanations from taxpayers.

Jawapan:

Pegawai audit tidak dibenarkan mengeledah dan merampas rekod-rekod pembayar cukai. Semakan rekod hanya akan dilakukan di premis pembayar cukai. Sekiranya perlu pegawai audit hendaklah dibenarkan membuat salinan rekod dan dokumen yang berkaitan.

Walau bagaimanapun, dalam keadaan di mana suasana dan tempat yang disediakan oleh pembayar cukai untuk menjalankan kerja-kerja audit tidak sesuai serta tiada kemudahan mesin penyalin, pegawai audit boleh meminta kebenaran untuk meminjam dokumen dan rekod pembayar cukai untuk dibawa balik dan disemak di pejabat. Setelah selesai disemak, rekod dan dokumen tersebut akan dikembalikan kepada pembayar cukai dengan secepat mungkin.

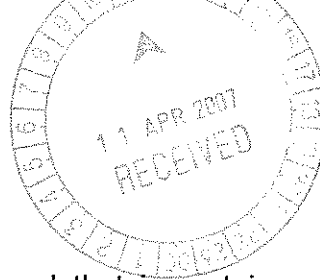
5. Request for audit working papers or other confidential information.

The IRB has stated in the previous dialogue held on 10 May 2005 that the audit working papers are required to assist the field audit officers to expedite the finalisation of the tax audit cases as most of the explanations are available in the audit working papers. However, the IRB is unable to understand why such a long period is required for the following of the audit working papers if only one or two cases are requested.

The professional bodies would like to emphasise that a longer time frame should be given to auditors to retrieve the audit working papers as the files which are related to prior years could be stored in an offsite storage location and the auditor would need more time to make arrangements to retrieve the said information.

Jawapan :

Kertas kerja audit biasanya diminta jika keadaan memerlukan. Ianya diperlukan bagi membantu pegawai audit menyemak dan menentukan jumlah perbelanjaan atau perolehan yang diselaraskan oleh juruaudit kewangan pembayar cukai terutama bagi kes-kes dimana pembayar cukai tidak menyimpan rekod dengan lengkap dan pembayar cukai sendiri tidak dapat memberikan penjelasan berkenaan pelarasan yang dilakukan.



The Institutes have been informed that in certain cases, audit working papers continue to be requested by the audit officers at the initial stage.

The Institutes would like to highlight that one of the objectives of a tax audit is to verify the information that the taxpayer has submitted in their annual tax returns. Hence, the audit working papers should not be requested as the first source of documents even before the commencement of any tax audit by the IRB officers.

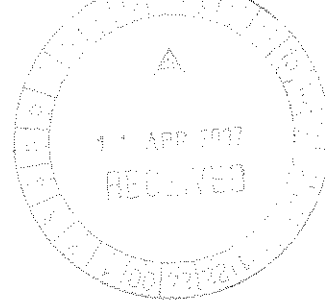
In this regard, the Institutes are of the view that audit working papers should not form the starting point for an audit as the format of audit working papers are not consistent and would differ between auditors. The reliance on audit working papers (which are not comprehensive in terms of coverage of all aspects) may result in a biased interpretation against the taxpayers. Therefore, access to working papers should only be relied upon if it is absolutely necessary, after going through the records available from the taxpayer. The Institutes also hope that the IRB could set a reasonable time frame for returning the audit working papers to the auditors as audit working papers are crucial in carrying out the current year annual statutory audit. We would recommend a time frame of three (3) months.

The Institutes also wish to highlight that the volume of documentation requested by the audit officers has increased. This has resulted in taxpayers incurring higher costs in complying with the officers request to produce this documentation. We wish to request that the IRB abide by the original intention of an audit i.e the verification of the tax return documents rather than seeking to find fault and pursuing a revenue target.

Jawapan:

Adakalanya sebelum pengauditan dijalankan, pihak LHDNM telah dimaklumkan oleh pembayar cukai mengenai pelarasan yang dilakukan pada akaun asal. Sehubungan dengan itu, untuk mengurangkan banyak persoalan dan pertanyaan dibangkitkan ketika sesi temuduga dan pengauditan, maka kertas kerja audit diperlukan untuk persediaan awal kerja-kerja pengauditan.

LHDNM bersetuju bahawa pengauditan tidak hanya berasaskan kepada kertas kerja audit semata-mata. Pembayar cukai boleh membuat bantahan sekiranya penemuan dan juga penyelesaian kes yang dibuat oleh pegawai audit adalah semata-mata berasaskan kepada kertas kerja audit sahaja



6. Timing of audits

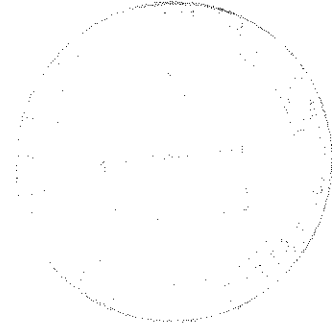
The Institutes have been informed that there are cases where taxpayers receive the field audit notification letter less than 14 days. There are some cases whereby only 2 or 3 working days notice is given before the actual visit. The taxpayers face difficulties in preparing the documents required prior to the commencement of the tax audit due to the short notice given. Most taxpayers are only give 14 days from the date of the IRB's letter to make available all documents requested (in actual fact it is not exactly 14 days as by the time the taxpayer receives the letter, 1 week would have passed). Members have also informed that taxpayers were often given unreasonable deadlines when the IRB requests documents in relation to the prior years records. Taxpayers may need to locate documents from the stores or even from the head office. The IRB officers sometimes get very upset when information is not provided immediately and presume that the taxpayers have something to hide.

The Institutes have also been informed that there is a lack of appreciation of the fact that taxpayers may have their own reporting deadlines and other business objectives to attend to. Sometimes, it may be not be practical to immediately comply with the IRB request as taxpayers could be in the midst of an annual internal/ external / business audit, or attending to the Custom's audit or group internal reporting, etc. Hence, the finance personnel may not be available to attend to the IRB officers. As the IRB audit is not the only audit the taxpayer has to attend to, any request for an extension of time due to the above situation should be viewed favorably by the IRB to accommodate the taxpayer's time constraints.

In view of the above , the professional bodies would like to request that the notification of tax audit visits be sent out much earlier so that these are received by taxpayers at least 14 days prior to the commencement of the tax audits. More time should be given to the taxpayers to locate the relevant documents if more documents especially prior years record are required. This will assist the IRB officers in conducting the tax audit in a more efficient manner as all the documents would be ready for audit purposes and the IRB officers do not need to spend more time at the taxpayer's business premises to extract the documents. In addition, the Institutes also urge the IRB to consider the taxpayer's request for a reasonable extension of time and not merely stick to a pre-fixed timetable.

Jawapan:

Dalam kebanyakan kes, LHDNM sentiasa memberi perhatian terhadap permintaan pembayar cukai untuk menangguhkan kerja-kerja pengauditan jika terdapat alasan yang manasabah.



7. Presence of senior IRB officer

The Institutes have been informed that some senior IRB officer are reluctant to meet with taxpayers/tax agents in resolving the disputes arising from tax audits. Some taxpayers are facing difficulty in arranging for discussions with the senior IRB officers to discuss issues raised during the tax audits. There were a few occasions where the pre-arranged meetings with the senior IRB's officers were cancelled at the very last minute even though they had confirmed their attendance for the meetings. This has upset the taxpayers, especially the outstation/overseas taxpayers, as they have made the necessary arrangements and incurred substantial time and costs to travel for the said meeting with the senior IRB officers in order to settle the case.

The Institutes would like to request that the senior IRB officers be more approachable and in the event that if there is any particular senior officer who cannot attend the pre-arranged meeting, a substitute for the IRB officer with the same level of authority (and whose decisions are equally binding) be made so that the particular case can proceed and be concluded without any further delay.

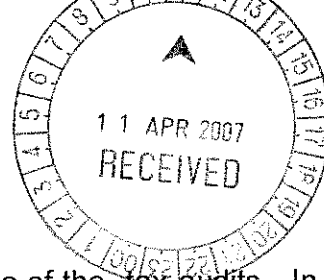
Jawapan:

Pegawai kanan LHDNM di cawangan sentiasa mengalu-alukan kehadiran pembayar cukai bagi mempercepatkan proses penyelesaian satu-satu kes. Pembayar cukai boleh hadir ke pejabat LHDNM tanpa diminta untuk berbuat demikian bagi mendapatkan penjelasan berkenaan perkembangan proses audit atau memberikan maklumat lanjut bagi mempercepatkan penyelesaian audit. Jika keadaan memerlukan, pembayar cukai boleh berhubung dengan pengurus audit untuk membincangkan isu audit yang dibangkitkan. Pegawai audit akan disertai oleh sekurang-kurangnya seorang pegawai kanan di dalam setiap sesi perbincangan dengan pembayar cukai.

8. Settlement and appeal

As provided under paragraph 3.5 of the "IRB Guide on Tax Audit", it is stated that if there are no adjustments, a letter will be issued to inform that the audit has been finalized without any adjustments.

The Institutes have been informed that some IRB officers are very reluctant to issues such a letter in practice. There is undue delay in issuing such a letter after completion of the tax field audit as a result of the



frequent changes in the IRB officers in charge of the tax audits. In some cases, there was no feedback from the IRB for 6 to 8 months. On completion of an audit, there is sometimes no response from the IRB but instead the taxpayer is expected to make an offer to settle the case. There is no instance whereby three companies within the same group were being audited and for two of the companies, there were no tax adjustments made to the assessments. However, the IRB refused to issue the "Letter of Clearance" to them because the third company had filed a Form Q on the adjustments made to its tax computation.

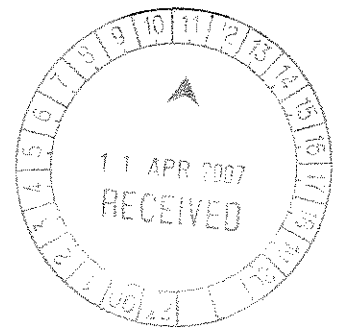
IRB officers should also adopt a positive attitude- that if no adjustments are required to a tax return submitted by the taxpayer, it is a good sign that the taxpayer had complied fully with tax laws, rules and regulations and the taxpayer should be congratulated. IRB officers should be made to understand that it is NOT an offence to comply fully with the tax law.

The Institutes have also been informed that the IRB officers revisit other issues and request for additional documents after the field audit is completed. This has created an unnecessary burden and disruption to the taxpayer's business as most of the files may have been returned to the store and the taxpayer has to incur additional time and cost to retrieve these files.

In this regard, the Institutes strongly urge that the benefit of doubt should be given to taxpayers in genuine cases and the clearance letter be issued immediately once the tax audit is finalised even without any tax adjustments. Response from the IRB should be expedited once the information requested is provided to the IRB officers. The IRB officers should not refer to prior notice years records and keep on checking if they are unable to find any tax adjustments for the years of assessment which are subject to tax audit.

Jawapan:

Setiap kes audit yang telah selesai akan dimaklumkan kepada pembayar cukai samada terdapat pelarasan atau sebaliknya.



9. Proposed Framework for tax audits

With reference to page 10 of the minutes of the previous dialogue held on 10 May 2005, the IRB stated that the framework is found in the booklet "IRB Guide on Tax Audit" dated November 2000 and requested the professional bodies to refer to that booklet and give their comments on areas which are considered to be incomplete or need improvement.

Jawapan :

Rangka Kerja Audit Cukai sedang disediakan dan akan dilancarkan serta berkuatkuasa mulai 01 Januari 2007.

10. Penutup

Tuan Pengerusi mengucapkan terima kasih di atas perbincangan yang diadakan antara pegawai pegawai LHDNM dan wakil Persatuan Akauntan.

Mesyuarat ditangguhkan pada pukul 5.30 petang.