



MINIT DIALOG OPERASI BIL. 1/2010
ANTARA
LEMBAGA HASIL DALAM NEGERI MALAYSIA
DENGAN
PERSATUAN AKAUNTAN

JABATAN OPERASI CUKAI
LEMBAGA HASIL DALAM NEGERI MALAYSIA
8 FEBRUARI 2010

MINIT DIALOG OPERASI BIL. 1/2010
ANTARA LHDNM DENGAN PERSATUAN AKAUNTAN

Tarikh : 8 Februari 2010 (Isnin)
Masa : 9.00 pagi
Tempat : Dewan Perdana
Tingkat 16, Blok 9
Kompleks Pejabat Kerajaan
Jalan Duta, Kuala Lumpur

Kehadiran: Wakil-wakil LHDNM

1.	YBhg Dato' Dr. Mohd. Shukor Bin Hj. Mahfar	Timbalan Ketua Pengarah (Operasi) (Pengerusi)
2.	Encik Sabin @ Sapilin Bin Samitah	Pengarah, Negeri Wilayah Persekutuan Kuala Lumpur
3.	Encik Mahmood Bin Daud	Pengarah, Negeri Wilayah Persekutuan Putrajaya
4.	Encik Sait @ Mohammad Sait Bin Ahmad	Pengarah, Jabatan Operasi Cukai
5.	Puan Nor'aini Bt. Ja'afar	Pengarah, Jabatan Cukai Korporat
6.	Puan Salmah Bt. Kassim	Pengarah, Jabatan Undang-Undang
7.	Cik Puteh Mariah Bt. Harun	Pengarah, Jabatan Pungutan Hasil
8.	Cik Halijah Bt. Bulat	Pengarah, Jabatan Dasar Percukaian
9.	Puan Rozina Bt. Shaik Osman Merican	Pengarah, Jabatan Khidmat Korporat
10.	Encik Hassim Bin Shafiai	Pengarah, Cawangan Penaksiran Jalan Duta, Kuala Lumpur
11.	Cik Ramlot Bt. Keli	Pengarah, Jabatan Pemprosesan
12.	Puan Jamilah Bt. Hj. Hashim	Pengarah, Bahagian Khas Pematuhan dan Pencegahan, Jabatan Siasatan
13.	Encik Mohd Zaiki Bin Ariffin	Pengarah, Bahagian Dasar & Operasi, Jabatan Operasi
14.	Cik Marina Bt. A. Aziz	Pengarah, Jabatan Keutuhan dan Integriti
15.	Encik Sezali Bin Hj. Othman	Pengarah, Cawangan Pungutan, K.L.
16.	Encik Sani Bin Md Taib	Pengarah, Bahagian Aplikasi e-Services, Jabatan Teknologi Maklumat
17.	Puan Nik Melini Bt. Nik Sulaiman	Pengarah, Bahagian Rayuan dan Bantuan Teknikal, Jabatan Pematuhan Cukai
18.	Encik Zulkiflee Bin Md. Tahir	Pengarah, Cawangan Tidak Bermastautin
19.	Encik Musa Bin Othman	Pengarah, Pusat Pengeluaran, Jabatan Operasi Cukai

20.	Cik Norhayati Bt. Mat Kassim	Pengarah, Bahagian Pembangunan Operasi, Jabatan Operasi Cukai
21.	Puan Wan Saodah Bt. Wan Abu Bakar	Pengarah, Bahagian Pengurusan Pelanggan, Jabatan Operasi Cukai
22.	Encik Abd. Rahman Bin Yusof	Timbalan Pengarah, Bahagian Aplikasi e-Services, Jabatan Teknologi Maklumat
23.	Puan Suria Maimun Bt. Mat Jais	Ketua Unit, Unit Pembangunan Sistem Duti Setem, Bahagian Duti Setem, Jabatan Operasi Cukai
24.	Puan Rokiah Bt. Hj. Bakar	Pengarah, Bahagian Analisis Data dan Maklumat, Jabatan Penyelidikan Percukaian
25.	Encik Badri Bin Basiran	Ketua Penolong Pengarah, Bahagian Dasar & Operasi, Jabatan Operasi Cukai
26.	Encik Badarudin Bin Masnon	Penolong Pengarah, Pusat Pengeluaran, Jabatan Operasi Cukai
27.	Encik Ahmad Sauqi Bin Ishak	Penolong Pengarah, Unit e-Filing, Bahagian Aplikasi e-Services, Jabatan Teknologi Maklumat
28.	Cik Saw Guat Eim	Penolong Pengarah, Bahagian Dasar & Operasi, Jabatan Operasi (Setiausaha)
29.	Puan Norhan Bt. Jaafar	Penolong Pegawai Hasil, Bahagian Pengurusan Pelanggan, Jabatan Operasi Cukai

Kehadiran: Wakil-wakil Perbendaharaan Malaysia

1.	Puan Kamsiah Bt. Muhamad	Timbalan Setiausaha, Bahagian Cukai, Bahagian Analisa Cukai, Perbendaharaan Malaysia
2.	Puan Rohani Bt. Mohamad	Timbalan Setiausaha, Bahagian Pengurusan Teknologi Maklumat, Perbendaharaan Malaysia
3.	Cik Zamzalila Bt. Baharuddin	Pegawai Eksekutif, Bahagian Analisa Cukai, Perbendaharaan Malaysia

Kehadiran: Wakil-wakil Persatuan

1.	Encik Khoo Chin Guan	Chartered Tax Institute Of Malaysia (CTIM)
2.	Encik Lim Kah Fan	CTIM
3.	Cik Sim Pei Sheng	CTIM
4.	Encik Lim Kok Seng	CTIM
5.	Puan Lim Gim Kim	CTIM
6.	Encik Beh Tok Koay	Malaysian Institute Accountants (MIA)
7.	Cik Heather Khoo	MIA
8.	Cik Rachel Chee	MIA
9.	Puan Azlina Zakaria	MIA
10.	Puan Theresa Goh	Malaysian Institute of Certified Public Accountants (MICPA)
11.	Puan Tong Siew Choo	MICPA
12.	Encik Foo Yoke Pin	MICPA
13.	Encik Rosalie Bin Md. Usop	Malaysian Association of Tax Accountants (MATA)
14.	Puan Haslinda Bt. Azman	MATA
15.	Encik Ong Whee Tiong	Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)
16.	Cik Nurul Aliza Bt. Abd. Aziz	MAICSA
17.	Encik Lau Haw Chong	Malaysian Association of Company Secretaries (MACS)
18.	Tuan Hj. Osman Bin Ujang	MACS
19.	Encik Alex Lee Lip Sun	MACS
20.	Encik Azmi Bin Jaafar	Institute of Cooperative and Management Accountants (ICMA)

1. Pendahuluan

- 1.1 Mesyuarat dimulakan dengan YBhg Dato' Pengerusi memperkenalkan pegawai-pegawai Perbendaharaan Malaysia yang diundang. Pegawai-pegawai LHDNM seterusnya dijemput memperkenalkan diri dan diikuti oleh wakil-wakil persatuan akauntan.
- 1.2 Tujuan Majlis Dialog Operasi ini adalah untuk membincangkan isu-isu yang dikemukakan oleh CTIM, MIA dan MICPA. Ia juga peluang untuk pegawai-pegawai Perbendaharaan Malaysia berjumpa dengan wakil-wakil persatuan akauntan.

2. Isu-Isu daripada CTIM, MIA dan MICPA

2.1 Filing of Forms E and EA

Column F of CP 8D and Part G of Form EA both require the disclosure of exempt income/benefits received by each employee from the employer. As pointed out in the various meetings previously, this will only increase the operating costs of businesses and will not help much in improving the tax administration.

The requirement has created a lot of issues not previously experienced. For example, an employer may take up a group insurance policy for its staff. What is the amount of benefit enjoyed by the different category of staff (i.e. the chief executive officer, the manager, and the general administrative staff)?

In the case of employee given a petrol card without a car, it may be difficult to distinguish between value of petrol used for travel from home to office and vice versa or travel for official duties. The Institutes would suggest that so long as the total charge is within the maximum limit (i.e. RM2,400 + RM6,000 = RM8,400), it should be fully exempt. This will relieve many employers/employees from keeping and tracing the records.

JAWAPAN:

- (a) *Mengikut peruntukan perenggan 83(1A)(g) Akta Cukai Pendapatan 1967, elaun, perkuisit, hadiah dan manfaat yang dikecualikan cukai perlu dilaporkan dalam Borang EA oleh majikan. Sekiranya majikan dibenarkan untuk hanya melaporkan elaun, perkuisit, hadiah dan manfaat yang dikecualikan cukai dalam Bajet 2009 sahaja, maka amaun yang dilaporkan tidak menggambarkan amaun sebenar dikecualikan cukai yang diberikan oleh majikan kepada pekerja; dan ini akan menjejaskan tujuan serta pelaksanaan audit. Di samping itu, sebahagian daripada elaun, perkuisit, hadiah dan manfaat yang dikecualikan cukai itu telah diberikan sebelum Bajet 2009 tetapi dipinda / diperluaskan skop dan / atau amaun pengecualiannya dalam Bajet tersebut.*

Merujuk kepada Memo bertajuk 'Borang C.P. 8A – Pin. 2008 (Borang EA)' yang dihantar kepada pihak persatuan pada 24 Februari 2009, kelonggaran yang telah diberikan pada tahun 2008 seharusnya memadai bagi membolehkan pihak majikan menyesuaikan sistem mereka dengan keperluan untuk melaporkan elaun, perkuisit, hadiah dan manfaat yang dikecualikan cukai seperti dikehendaki.

Bagi polisi insurans berkelompok, layanannya adalah seperti berikut:-

(i) Polisi Insurans Nyawa Berkelompok

Polisi atas nama : Majikan

Benefisiari : Majikan

Premium insurans yang dibayar oleh majikan bukan merupakan manfaat berupa barangan mahupun perkuisit kepada pekerja.

Manfaat ini TIDAK PERLU dilaporkan.

Majikan boleh menuntut potongan dalam menentukan pendapatan larasan perniagaan, dan bayaran tuntutan insurans yang diterima kelak adalah tertakluk kepada cukai pendapatan.

(ii) Polisi Insurans Nyawa Berkelompok

Polisi atas nama : Majikan

Benefisiari : Pekerja (waris pekerja)

Premium insurans yang dibayar oleh majikan merupakan perkuisit di tangan pekerja yang tertakluk kepada cukai pendapatan.

Perkuisit ini PERLU dilaporkan sebagai sebahagian daripada pendapatan penggajian pekerja tersebut. Amaun manfaat ini ditentukan berdasarkan jumlah premium setahun yang dibayar oleh majikan.

(iii) Polisi Insurans 'Surgical and Hospitalization' Berkelompok

Benefisiari : Pekerja

Premium insurans yang dibayar merupakan sebahagian daripada manfaat perubatan yang tidak dikenakan cukai sebagaimana peruntukan subperenggan 13(1)(b)(i) ACP 1967.

Manfaat ini TIDAK PERLU dilaporkan.

(b) Had Pengecualian Manfaat Petrol Percuma (kad petrol tanpa kereta)

Perenggan 2.3.4(iii)(b) dalam Tambahan Ketiga kepada Ketetapan Umum No. 2/2004, dan pengumuman 'Pengecualian Cukai Ke Atas Manfaat Berupa Barangan' pada 10 Julai 2009 oleh Jabatan Dasar Percukaian (dengan persetujuan Kementerian Kewangan) adalah dirujuk.

Sekiranya majikan tidak dapat menentukan amaun nilai petrol percuma yang diberikan kepada pekerja bagi perjalanan antara rumah dan tempat kerja, dan / atau perjalanan untuk tugas rasmi, manfaat petrol percuma yang dikecualikan adalah terhad kepada maksimum RM6,000.

2.2 Liquidation cases

For purposes of statutory filing of the accounts to Companies Commission Malaysia (CCM), companies are not required to file audited accounts in respect of the last period before the commencement of liquidation (termination accounts) if the commencement of the liquidation is within 15 months of the last AGM. The companies will only file the Declaration of Solvency which contains the Statement of Asset and Liabilities of the companies before the commencement of liquidation. The Institutes were informed that in the past, the IRB had given clearance to cases where the accounts for the last period before the commencement of liquidation were not audited.

In view of the above situation, the Institutes would appreciate if the IRB could clarify this operational issue. The Institutes are of the view that the concession be continued to be given to companies to expedite the liquidation process and reduce costs of liquidation.

JAWAPAN:

Di bawah STS, akaun tidak perlu dikemukakan ke LHDNM bersama borang cukai pendapatan. Walau bagaimanapun, pendapatan dan perbelanjaan yang dilaporkan hendaklah berdasarkan kepada akaun-akaun yang beraudit. Bagi kes-kes syarikat yang akan dibubarkan, akaun beraudit hendaklah disediakan bagi tujuan laporan pendapatan kepada LHDNM bagi syarikat yang masih beroperasi.

Kelonggaran boleh diberi kepada syarikat yang dormant atau yang tidak lagi beroperasi dan tidak menerima apa-apa pendapatan.

2.3 e-Filing

2.3.1 Loss of data

The Institutes have noticed that all the data keyed in the draft e-forms in IRB's e-Filing system (i.e. forms pending submission) have disappeared from the system recently (being discovered by users in the morning of 7 January 2010). Most of the draft forms are for FYE 30.6.2009 cases which are due for submission by end of January 2010. Upon enquiry, the IRB personnel at the Customer Service Department said that it was a server problem but offered no further clarification/solution nor any indication of whether the information can/will be restored.

The Institutes wish to point out that the service of software service providers (SSP) is important in such a situation. It can be noted that for tax agents using integrated software provided by the SSP (or developed themselves), the problem is not as great as compared to those who manually enter the data into the IRB e-Filing system. This is because the integration software of SSP bridges the gap between the IRB's e-Filing system and the tax agents' tax computation system. The integration software allows tax agents to keep the data of their clients' tax returns in their own servers. In such a case of data loss in the IRB's server, the integration software can easily re-load the e-returns with the full information intact. For those who are not using any integration software, they will have to re-key in all the information/data in the e-Filing system, i.e. a repeat of the entire e-Filing process, causing them a tremendous strain on their resources in order to incur additional time and effort in checking through the files and rekeying of data for those e-returns affected by the disruption.

Learning from this incident, it reflects the importance of the integration software for e-Filing. The higher the level of integration could be, the more cost effective and convenient it is for the tax agents to use the IRB e-Filing system. However, at this juncture, most of the SSPs currently choose to provide a simple integration to the IRB e-Filing system (instead of providing a fully integrated software) where the software only integrates the e-return forms and not for the entire e-Filing system, i.e. the integration does not start from the logon page. During the recent disruption, users of these tax softwares would still have to logon to the e-Filing system manually and search for the relevant e-forms (i.e. manual operation from logon page up to the "Isi Borang" button), before an automated reload of information can be performed. In order to achieve higher level of integration, the collaboration between the IRB and the SSPs must be enhanced.

The Institutes would therefore urge the IRB to allow greater collaboration with the software service providers and tax agents so that enhanced integration software can be developed by the software service providers, in order to promote e-Filing among tax agents and thus making the e-Filing a greater success. To begin with, the Institutes would like to request that more information be

communicated to the SSPs and tax agents in respect of any planned changes and bug fixes to the e-Filing system as well as the planned date for the next SPTA meeting particularly on the Client-To-Host e-Filing project.

2.3.2 Notification of disruption

The Institutes regret that they were not notified on a timely basis when a disruption occurred. The Institutes are often being notified by the IRB only after the system had been restored back to normal. This has caused lots of confusion and uncertainties to the members of the Institutes. Prompt notification from the IRB would also help to reduce the enquiry calls to the IRB's call centre.

The Institutes would like to stress that their roles are as information disseminating centres and co-ordinators between the IRB and the members. The timely notification from the IRB on any occurrence of disruption in e-Filing services will enable the professional bodies to defuse the confusion and assist in damage control. The notification from the IRB should come in 3 phases:

- (i) A description of the disruption, when it started and what should the users do. It will be fine if the solution has not been found or put in place. This will facilitate the damage control and also to defuse the confusion.
- (ii) A comprehensive narration and crucial information of the disruption, and more importantly what is the estimated time required by the IRB to fix the problem. This will enable the tax agents to manage their work as well as to plan for their own work-around solution.
- (iii) A notification to inform once the system has been restored and is available for use. Further information such as the extent of damage etc. should also be provided if possible.

JAWAPAN KEPADA ISU-ISU NO. 2.3.1 DAN 2.3.2:

Kesulitan yang dihadapi oleh ejen-ejen cukai akibat kehilangan sementara data dari draf e-Borang bagi Borang C 2009 adalah dikesali.

Selepas penerimaan laporan pertama daripada ejen cukai / persatuan akauntan pada 7 Januari 2010, siasatan dijalankan dan didapati bahawa terdapat masalah dengan 'staging database'. Tindakan pertama LHDNM ialah memastikan kemasukan data baru masih dapat dilakukan. Pada 8 Januari 2010 e-mel pemakluman dihantar kepada ahli-ahli DESIRE Working Group. Pemulihan 'backup' dilakukan berdasarkan kes yang dilaporkan supaya dapat memastikan hanya 'backup' terkini dipulihkan. Pada 13 Januari 2010, 'backup'

sepenuhnya bagi data bertarih 5 Januari 2010 telah dijalankan. Setelah 'backup' tersebut, tiada lagi aduan dan laporan diterima.

LHDNM telah melaksanakan langkah-langkah pencegahan supaya kejadian yang sama tidak berulang. Ejen cukai / pihak persatuan dinasihatkan supaya melaporkan dengan segera kepada LHDNM sekiranya masih terdapat kehilangan data.

Status Projek 'Client-To Host Integration'

Kelulusan untuk menjalankan projek ini telah diperoleh daripada Kementerian Kewangan. Tarikh Mesyuarat SPTA ('Software Provider for Tax Agent') yang akan datang bergantung kepada kelulusan teknikal oleh pihak MAMPU (Unit Pemodenan Tadbiran dan Perancangan Pengurusan Malaysia) dan dijangka akan diadakan pada 12 Februari 2010.

YBhg Dato' Pengerusi memaklumkan bahawa 'Client-To Host Integration' ini akan bermula dengan Borang B 2009.

2.3.3 Extension of time for filing Forms C & R

According to item 2.3 of the Minutes of the Operations Dialogue held on 25 February 2009, the administrative concession granted to companies with March and December year-ends to submit their tax returns on or before 14 days after the stipulated deadline without the imposition of late filing penalty, is not extended to companies which file their Forms C & R via e-Filing.

In line with the IRB's effort to encourage e-Filing, members of the Institutes are requesting that a similar concession be extended to companies and tax agents who file their Forms C & R via e-Filing. The Institutes are of the opinion that in view of the frequent disruptions in the e-Filing environment, which increases the risk exposure, the extension of time would serve as a risk buffer, particularly to tax agents, who do e-Filing. In a disruption, a tax agent loses time to prepare the filing of tax returns, incurred additional time to check and salvage damage, etc. However, the extension of time to be granted can be shorter than 14 days.

The Institutes also wish to bring to the attention of IRB that individual taxpayers will be filing form BE/M on or before 30 April each year. Unlike manual filing, there will be a competition for the use of IRB server during this peak period of e-Filing. The Institutes would therefore suggest that a concession of 14 days extension be given to tax agents (i.e. until 14 May) to e-file their clients' tax return Forms BE/M of which the statutory deadline is 30 April. This concession would avoid over-burden of the IRB server and relieve the tax agents from anxiety to hook on the limited capacity of IRB server.

JAWAPAN:

Tambahan Masa ('Grace Period') untuk mengemukakan borang kertas (TIDAK TERMASUK borang yang dihantar melalui media elektronik)

*Tambahan masa sebanyak 7 hari selepas tarikh akhir * ('due date') pengemukaan borang dibenarkan untuk borang kertas yang dikemukakan melalui pos.*

*Penalti tidak dikenakan sekiranya borang kertas diterima dalam tempoh 7 hari selepas tarikh akhir * pengemukaan borang. Sebagai contoh, borang kertas diterima pada atau sebelum 7 September 2010 daripada syarikat dengan tempoh perakaunan berakhir 31 Januari 2010.*

*Di mana penalti telah dikenakan bagi borang kertas yang diterima selepas tempoh 7 hari tersebut, rayuan boleh dipertimbangkan jika terbukti tarikh pengeposan borang kertas itu adalah pada atau sebelum tarikh akhir * pengemukaan borang. Contoh: Jika syarikat dengan tempoh perakaunan berakhir 30 April 2010 dapat mengemukakan bukti bahawa borang nyatanya dihantar pada atau sebelum 30 November 2010.*

Tambahan masa ini juga terpakai bagi bayaran baki cukai di bawah subseksyen 103(1) ACP 1967 dan hutang kepada Kerajaan di bawah Peruntukan Kecualian dan Peralihan Akta-Akta Kewangan 2007 dan 2009 (Akta 683 dan Akta 693).

Tambahan masa tersebut diberikan sehingga dimaklumkan sebaliknya oleh LHDNM.

Permohonan Lanjutan Masa untuk mengemukakan borang kertas:

- *hendaklah diterima oleh LHDNM sekurang-kurangnya 15 hari sebelum tarikh akhir * pengemukaan borang.*
- *hendaklah disertakan dengan alasan yang munasabah dan kukuh.*

*Permohonan akan dipertimbangkan berdasarkan merit kes. Bagi kes lanjutan masa di mana kelulusan hanya diberikan untuk pengemukaan borang nyata sahaja, maka bayaran baki cukai dan hutang kepada Kerajaan hendaklah dibuat pada atau sebelum tarikh akhir * pengemukaan borang.*

** 'Tarikh akhir' adalah tarikh seperti ditetapkan dalam ACP 1967.*

2.4 Tax refund

2.4.1 Deemed notice of assessment for e-filing cases

We understand that for e-Filing cases, notices of assessment are deemed issued upon submission of tax returns. However, there are instances where the Assessment Branch is unable to review and finalise the e-filed returns as these returns cannot be viewed in their system until and unless these e-filed returns are processed. This has caused a delay in the process of tax refunds.

In this regard, the Institutes hope that the IRB could look into the above matter so that the tax refund process could be expedited.

JAWAPAN:

Kes pembayaran balik memang diutamakan oleh LHDNM. Bagi kes e-Filing, pembayaran balik boleh diproses dalam tempoh 30 hari dari tarikh pengemukaan borang dengan syarat data itu tidak bermasalah. Pembayar cukai / ejen cukai diminta melaporkannya sekiranya terdapat kes di mana bayaran balik tidak dapat diproses.

2.4.2 Request for replacement of cheque

There were instances where refund cheques were returned to the IRB for replacement due to closure of bank account. The IRB replied that replacement of cheque will only be processed after the expiry date of the cheque and the amount being credited in their ledger.

As the cheque has already returned to IRB, there is no necessity to wait till expiry date of the cheque. The Institutes would like to request that the replacement of cheques be processed immediately once the original cheque is returned by taxpayer.

JAWAPAN:

Mengikut prosedur, cek gantian boleh diproses apabila cek asal dikembalikan kepada LHDNM tanpa menunggu tarikh luput cek.

Pembayar cukai adalah bertanggungjawab untuk memaklumkan penutupan akaun banknya kepada LHDNM dengan segera.

2.5 Submission of revised tax computation and / or Return Form C

The Institutes were informed that recently the Assessment Branch requires taxpayers who submitted revised tax returns to the Assessment Branch of the IRB after 30 days from the respective date of deemed assessment to file in Borang N (*Application for Extension of the Period for Making an Appeal to the Special Commissioners of Income Tax*) under Section 100(1) of the Act.

The Institutes wish to confirm whether the above requirement to submit Borang N is a new procedure for submitting appeals for revised tax returns (whether tax position is impacted or otherwise) and the rationale behind the new procedure. The Institutes also note from the IRB's website that there is a Borang CP15C (*Application for Relief in respect of Error or Mistake*) for appeal under Section 131 of the Act.

JAWAPAN:

Jika seksyen 99 diguna pakai, rayuan hendaklah dibuat dalam tempoh yang ditetapkan dan jika rayuan telah melangkaui tempoh tersebut, maka permohonan untuk lanjut tempoh rayuan (borang N) perlu dikemukakan.

Jika permohonan untuk relif di bawah seksyen 131 dibuat, maka tempoh permohonan adalah 6 tahun dari tahun taksiran tersebut.

Kebilehterimaan sebagai kesilapan mengikut seksyen 131 adalah tertakluk kepada sebab-sebab pindaan berlaku.

2.6 Shortage of printed forms at branch level

Penang members have faced difficulties in getting manual income tax forms from the local IRB branch especially for companies that e-filed in the previous year. They were told that the branch does not have the forms and requested the members to get it from KL.

The Institutes would like to request the IRB to look into the issue and ensure the branches maintain an adequate stock of manual forms.

JAWAPAN:

Stok borang kertas dibekalkan kepada cawangan dari semasa ke semasa atas permintaan. Cawangan telah diingatkan supaya membuat tempahan sebelum kehabisan stok borang kertas berkenaan.

LHDNM sentiasa menyarankan penggunaan kemudahan e-Filing untuk mengemukakan borang nyata dan ejen cukai memainkan peranan yang penting ke arah itu. Untuk mengelakkan pembaziran, borang kertas tidak dikeluarkan kepada pembayar cukai yang pernah mengemukakan borang nyata melalui e-Filing bagi tahun taksiran sebelumnya. Oleh itu, syarikat yang pernah mengemukakan borang nyata melalui sistem e-Filing seharusnya terus menggunakan kemudahan tersebut.

2.7 General Issue of tax return forms

The calendar on the website of IRB has indicated that general issue of tax return form for year of assessment 2009 will be on 28 February, 2010. The Institutes understand that the return forms are already finalised.

The Institutes are of the view that the date of issuing of printed forms is too late. We would like to know the rationale behind this change of practice as it will seriously affect the tax agents in preparing for tax filing.

JAWAPAN:

Pada kebiasaannya, borang nyata diposkan lebih awal daripada tarikh yang dinyatakan dalam surat iringan borang nyata.

Dengan itu, disahkan bahawa Borang-borang Nyata BE, B, M, P, TP, TJ dan TF bagi Tahun Taksiran 2009 dikeluarkan mengikut jadual yang ditetapkan. Pembayar cukai (kecuali pembayar cukai yang mengemukakan borang nyata tahun taksiran sebelumnya melalui e-Filing) harus menerima borang nyata masing-masing sebelum bulan Mac 2010.

2.8 Imposed under Section 113(2) of Income Tax Act 1967 (ITA)

Following a tax audit, tax adjustments are made with a penalty imposed under section 113(2) of ITA. It is observed that this continues to be a practice with the IRB even when the tax adjustments involve a technical interpretation.

Some examples of situations where penalty under section 113(2) continues to be maintained even after appeals are as follows:

- (i) Reinvestment allowance – definition of a factory in the YAs prior to the issue of PR in 2008
- (ii) Deductibility of expenses (where sufficient evidence is adduced for the claim for deduction)
- (iii) Recognition of income (sufficient and credible reasons given for a decision taken by the taxpayer to recognise income in a particular year)

A technical adjustment generally arises from differing interpretation of the tax legislation by the taxpayer, either due to a provision not being clearly defined or due to the existence of conflicting case law.

Under a self-assessment environment, it is understandable if penalties are imposed under section 113(2) in clear-cut and blatant instances of understatement of income, e.g. if a clear-cut capital expenditure is claimed as a revenue expense or a non-compliance with a PR (effective from the date of the PR).

It has been agreed at previous dialogues and statements made by the IRB management that penalties would not be imposed for understatement of income arising from arithmetical errors and/or technical adjustments. Given that the imposition of penalty is dependent on the facts and circumstances of each case, it has been found that the imposition of penalty varies from branch to branch with some branches taking a more aggressive stance.

Although the appeal process is still available to the taxpayer, the amount of penalty can be very punitive with taxpayer having to settle the amount while the case goes through the appeal process.

The Institutes therefore propose that penalties under section 113(2) be imposed only for clear-cut cases of understatement and not those involving technical interpretations where taxpayers have taken reasonable care.

JAWAPAN:

Penentuan pengenaan penalti dipertimbangkan berdasarkan merit dan fakta setiap kes. Bukan mudah untuk memberi contoh pelarasan-pelarasan teknikal yang tidak dikenakan penalti sebagai garis panduan umum kerana fakta dan merit setiap kes berbeza. Sekiranya tidak berpuas hati dengan penalti yang dikenakan oleh cawangan, pembayar cukai boleh mengemukakan surat rayuan ke peringkat Ibu Pejabat LHDNM atau memfailkan rayuan ke Pesuruhjaya Khas Cukai Pendapatan.

Walau bagaimanapun, perkara ini diambil perhatian oleh LHDNM.

2.9 Clearance letter

The Institutes were informed that the recent income tax clearance letters (ITCL) issued by the Inland Revenue Board (IRB) to expatriate employees who have left Malaysia contained the following clause which reads:-

Your officer should furnish the Return Form for the Year of Assessment (YA) 2009 (Note: assuming the expatriate employee left Malaysia in YA 2009) on / before 30th April 2010 if he does not have business source of income or on / before 30th June 2010 if he has business source of income to determine the actual tax payable.

We have sought clarification from the IRB pertaining to the above and were made to understand that the above clause is a standard clause used for ITCL issued to all taxpayers (i.e. expatriates and local employees).

Generally, in cases of expatriate leavers, their tax returns (i.e. Forms BE/B/M) for the relevant YA (including the last YA) would have been filed and assessed by the IRB before the issuance of ITCL.

Although the said clause may be applicable to local employees, the Institutes are of the opinion that it should be excluded in the ITCL issued to expatriate employees to avoid misunderstanding (especially to those expatriate employees who have left Malaysia permanently). It has been misconstrued as though the expatriate leavers have not filed their tax returns where in actual fact, their assessments have already been raised by the IRB based on the tax returns furnished.

Furthermore, in cases of expatriate leavers mentioned above, when there are changes in their actual tax payable, revised tax returns and / or income tax computations will be submitted to the IRB. That is to say, under no circumstances that a new return form has to be submitted. Thus, we are of the view that the ITCL should be amended accordingly to suit the case of each taxpayer.

JAWAPAN:

Klausa ini dipotong dalam SPC (surat penyelesaian cukai) yang dikeluarkan oleh Cawangan Tidak Bermastautin, LHDNM. Klausa ini adalah suatu klausa kecualian ('saving clause') dan boleh diabaikan sekiranya tidak terpakai bagi seseorang pekerja itu.

2.10 E-filing - Non compliance with Public Rulings (PRs)

When there is non-compliance to any of the PRs, taxpayers would need to inform the IRB the reason for non-compliance. With e-Filing, how will the taxpayer inform the IRB accordingly?

The Institutes would suggest that the reason for non-compliance with the PR be manually filed to the Corporate Branch upon e-Filing of the tax returns.

JAWAPAN:

Alasan kerana tidak mematuhi Ketetapan Umum boleh dikemukakan ke cawangan yang mengendalikan fail cukai pendapatan pembayar cukai berkenaan.

2.11 Real property gains tax (RPGT)

2.11.1 Remittance of 2% of total consideration retained by the acquirer to the IRB

Section 21B of the RPGT Act stipulates that “where on a disposal to which Section 13 applies, the consideration consists of wholly or partly of money, the acquirer shall retain the whole of that money or a sum not exceeding 2% of total value of the consideration, whichever is the less (RPGT Act, Section 21B amount) andhe shall within sixty days after the date of such disposal pay that amount to the Director General of IRB (DGIR).”

The Real Property Gains Tax (Exemption) (No.2) Order 2009 stipulates that disposals of asset held for more than 5 years will be exempted from RPGT. There are also other cases whereby gains from disposal are exempt. In such a situation, there does not appear to be any provision allowing for a waiver of the 2% withholding of sale proceeds. Such a requirement to withhold tax would be inappropriate for such disposals and would create hardship for taxpayers.

The Institutes are of the view that there should be provisions incorporated into the Real Property Gains Tax Act, 1976 to waive the requirement to withhold RPGT in cases where the period of holding is in excess of 5 years or where the disposal is clearly exempt from RPGT.

In the meantime, the Institutes would like know when the detailed Guidelines on this matter will be available. Situations which are anticipated include:

- (i) where the disposal results in a *no gain no loss* position as outlined in Schedule 2, or
- (ii) where the disposal is a disposal of a private residence under Schedule 3, or
- (iii) where the disposer is subjected to income tax rather than the RPGT, or
- (iv) where the disposal results in a loss, or
- (v) where the purchase is from a developer or persons holding the real property as trading stock

The Institutes would suggest that the IRB, upon application by the disposer, to:

- (a) waive the collection of the retention amount from the acquirer

The Institute would suggest that administrative concession be given to acquirer from withholding 2% of the total consideration. Guidelines for the concession be issued stating conditions for concession, such as the requirement to provide documents to prove the exemption (e.g. original Sale and Purchase Agreement showing period of holding is more than 5 years, etc.) so that the acquirer is aware of the ability to dispense with this withholding requirement where applicable; or

- (b) grant an extension of time to the acquirer to remit the 2% retention sum until the IRB has determined whether RPGT is applicable.

Alternatively, the Institutes propose that the IRB by administrative guidelines require both the acquirer and the disposer to file the RPGT returns within 30 days from the date of disposal and the 2% *retention sum* is to be withheld by the acquirer's lawyers until the disposer has obtained the RPGT clearance/notice of assessment from the IRB.

Both the disposer and the IRB will not be worse off if the IRB is efficient enough to process the RPGT cases within 30 days. In both cases, the IRB will receive the RPGT due within 60 days.

- (c) in the case of (iii) above, and where the 2% has been remitted, the amount so remitted shall be automatically credited to the disposer's income tax account and the monthly instalments be reduced accordingly.

JAWAPAN:

- (a) & (b)** *Sila rujuk kepada borang-borang CKHT dan Garis Panduan Cukai Keuntungan Harta Tanah (CKHT) yang telah dimasukkan dalam laman web pada 23 Januari 2010 dan 3 Februari 2010 masing-masing.*

Garis Panduan CKHT menyatakan tiga keadaan seperti berikut di mana 2% daripada harga balasan atau kesemua wang balasan, yang mana lebih rendah, tidak perlu dipegang simpan dan diremitkan kepada LHDNM iaitu:-

- (i) Aset yang dilupuskan telah dimiliki lebih daripada lima (5) tahun; atau*
- (ii) Pelupus membuat pemilihan pengecualian cukai untuk pelupusan kediaman persendirian di bawah Perenggan 9 Jadual 3 (Seksyen 8) Akta Cukai Keuntungan Harta Tanah (ACKHT) 1976; atau*
- (iii) Pelupusan asset adalah dengan cara pemberian tanpa balasan di bawah Perenggan 12 Jadual 2 ACKHT 1976.*

Bagi kes di luar daripada tiga keadaan di atas, pemeroleh dikehendaki memegang simpan dan meremitkannya.

- (c)** *Pada amnya, kredit dalam akaun CKHT akan digunakan untuk menyelesaikan tunggakan cukai dan ansuran anggaran cukai di bawah seksyen 107c ACP 1967.*

2.11.2 Refund of RPGT overpaid

With respect to the “withholding” and remittance of the *RPGTA Sec 21B amount*, it is the desire of all parties concerned that the RPGT transaction be finalised and the matter determined as quickly as possible. However, in practice, the determination of whether a transaction is subject to income tax or RPGT may take a long time.

In this respect, it is important that any refund should be made expeditiously. The IRB needs to provide detailed procedures and timeline on the “refund process”.

JAWAPAN:

- (i)** *Sesuatu kes yang biasa boleh diproses dalam tempoh 7 hari dari tarikh penerimaan borang berserta maklumat dan dokumen yang lengkap untuk menentukan sama ada ia tertakluk kepada ACP 1967 ataupun ACKHT 1976, kecuali kes yang rumit di mana tindakan audit mungkin perlu diambil untuk menentukannya.*

(ii) Bayaran balik boleh diproses dalam tempoh 90 hari dari tarikh penerimaan borang berserta maklumat dan dokumen yang lengkap.

Bagi (i) dan (ii) di atas, borang berserta maklumat dan dokumen yang lengkap hendaklah dikemukakan ke cawangan LHDNM yang betul.

2.11.3 Certificate of non-chargeability

Section 21A of The RPGT Act 1976 states that the Director General of Inland Revenue shall issue a certificate of non-chargeability to the disposer in the prescribed form where he is satisfied that no chargeable gain has arisen.

The Institutes would like to know the detailed process and procedures for the issuance of such a certificate. Is there a time frame for the issuance of such a certificate? For the purpose of clarity and transparency, the Institutes request the IRB to issue guidelines on the matter as soon as possible.

JAWAPAN:

Mengikut prosedur biasa, sesuatu kes boleh diproses dalam tempoh 3 bulan dari tarikh borang berserta maklumat dan dokumen yang lengkap dikemukakan ke cawangan LHDNM yang betul.

2.12 Website updates

The Institutes note that the website of IRB is not updated and user friendly as is intended. For example, the Second Addendum to Public Ruling No. 04/2005 (Withholding Tax on Special Classes of Income) was issued recently. However, visitors to the website will not be aware unless he/she browses through every page on the website to find out, which is very time consuming.

The various updates on stamp duty levied on service agreements can only be found on the website of the Ministry of Finance (MOF) and not the IRB's website, even though the IRB is the agency that administers it. Similarly, the updates on RPGT can only be found on MOF's website.

The Institutes would suggest that the IRB's website be updated with current issues relating to taxation which are under the purview of IRB and indicates the latest updates on the Home page so that visitors/users can easily find the information. The Institutes suggest that old documents which may be useful for reference should also be archived and kept on the website for public access, for example, IRB press statements, concession letters, filing programmes, etc.

JAWAPAN:

Komen / cadangan pihak persatuan diambil perhatian. Maklumat Duti Setem dan CKHT sedang dikemas kini.

LHDNM akan memastikan bahawa pemakluman dimasukkan dalam ruangan 'Maklumat Terkini' sekiranya terdapat kemasukan baru atau pindaan terkini pada kandungan maklumat termasuk tarikh kemas kini / semakannya.

*Penambahbaikan sentiasa dilakukan pada laman web dan LHDNM telah menyediakan ruangan RSS * Feed di laman web bagi memudahkan suapan maklumat percukaian terkini kepada pelanggan ('subscriber').*

** 'RSS' - Really Simple Solution / Really Simple Syndication*

3. Perkara-Perkara Lain Yang Dibangkitkan Oleh Pihak Persatuan

- (a) Menurut pihak CTIM, HelpIT LHDNM seringkali menghantar pemakluman berkenaan versi perubahan terkini pada sistem *e-Filing* tetapi tidak memaklumkan di mana dan apa perubahan yang dibuat.

JAWAPAN:

LHDNM mengambil perhatian tentang komen tersebut.

- (b) Pihak persatuan menanyakan bila sistem *e-Filing* boleh digunakan bagi pengemukaan borang BE, B, M, E dan P pada tahun ini.

JAWAPAN:

YBhg Dato' Pengerusi memaklumkan bahawa sistem e-BE, e-B, e-M, e-E dan e-P boleh digunakan mulai 1 Mac 2010.

4. Sistem Maklumat Pengurusan Cukai – Permohonan lesen ejen cukai (baru dan pembaharuan) secara atas talian

YBhg Dato' Pengerusi merangkap Pengerusi Mesyuarat Ejen Cukai di peringkat LHDNM, memaklumkan bahawa terdapat dua jenis permohonan iaitu permohonan secara manual dan atas talian. Dalam tempoh peralihan sehingga Jun 2010, permohonan secara manual masih diterima. Mulai 1 Julai 2010, kesemua permohonan hendaklah dibuat secara atas talian.

Wakil Perbendaharaan Malaysia menyatakan bahawa permohonan secara manual berbanding permohonan secara atas talian adalah 95% dan 5% sejak Mei 2008. Di

Perbendaharaan Malaysia, hanya dua orang kerani dipertanggungjawabkan untuk memasukkan data permohonan manual ke dalam sistem. Melalui aplikasi sistem atas talian ini, proses meluluskan permohonan dapat dipercepatkan. Ejen cukai boleh mengimbas dokumen dan menghantarnya secara atas talian. Akuan terima permohonan akan dihantar melalui e-mel dan ejen cukai juga boleh menyemak status permohonan dan mengemas kini maklumat seperti alamat.

Menurut pihak CTIM, tiada pengumuman bahawa aplikasi sistem tersebut boleh digunakan. Wakil Perbendaharaan Malaysia menyatakan bahawa satu demo telah disampaikan kepada pihak persatuan sebelum pelancarannya dan terdapat pengumuman di laman web Perbendaharaan Malaysia. Atas cadangan YBhg Dato' Pengerusi wakil-wakil Perbendaharaan Malaysia bersetuju menghantar surat pemakluman kepada pihak persatuan berkenaan aplikasi sistem ini.

Pihak persatuan membangkitkan pertanyaan berkaitan 'CPD (Continuing Profesional Development) points' daripada Seminar Bajet yang mesti dianjurkan oleh LHDNM, CTIM dan / atau MATA, serta topik khusus berkenaan percukaian. Pihak persatuan dimaklumkan bahawa permohonan hendaklah dikemukakan kepada Kementerian Kewangan sekiranya MIA dan MICPA ingin dimasukkan sebagai badan yang diluluskan untuk menganjurkan seminar bajet. Menurut Ybhg Dato' Pengerusi, sekurang-kurangnya 90% daripada topik khusus mestilah berkenaan percukaian.

5. Penutup

YBhg Dato' Pengerusi mengucapkan terima kasih kepada semua yang hadir dan mesyuarat ditamatkan pada pukul 12.30 tengah hari.