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Tarikh : 31 Mei 2015

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Tuan ,

EDARAN MINIT DIALOG LHDNM JOHOR BERSAMA MIA, CTIM & MATA JOHOR 2015

Dengan hormatnya saya merujuk kepada perkara di atas.

2/..

2. Bersama ini dilampirkan minit Dialog LHDNM Johor Bersama MIA, CTIM dan MATA Johor yang telah diadakan pada 25 Mac 2015 untuk makluman dan rujukan pihak tuan.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"
"BERSAMA MEMBANGUN NEGARA"

[MD DAUD BIN AB RAHMAN]
Pengarah Negeri
Pejabat Pengarah Negeri Johor
b.p Ketua Pegawai Eksekutif/Ketua Pengarah Hasil Dalam Negeri
Lembaga Hasil Dalam Negeri
MALAYSIA

MINIT DIALOG
DI ANTARA LHDNM JOHOR DENGAN MIA, CTIM & MATA JOHOR

Tarikh : 25 Mac 2015 (Rabu)

Masa : 10.00 pagi

Tempat : Dewan Persidangan Tingkat 14,
Menara HASiL
Johor Bahru, Johor

Kehadiran : Wakil-wakil LHDNM Johor

1	En. Md Daud b. Ab Rahman	Pengarah Negeri Johor (**Pengerusi**)
2	Pn. Robiah bt. Muhamad	Pengarah Cawangan Johor Bahru
3	En. Shuhaimi b. Salleh	Pengarah Cawangan Siasatan Johor Bahru
4	En. Mohd Zamari b. Ngah	Pengarah Cawangan Muar
5	En. Md Kamal b. Johan	Pengarah Cawangan Kluang
6	Pn. Patimah bt. Osman	Pengarah Bahagian Penyelarasan PPNJ
7	Cik Norhayati bt. Mat Kassim	Pengarah Bahagian Pembangunan Operasi, JOC
8	Pn. Kalthom bt. A Hamid	Timbalan Pengarah Cawangan Johor Bahru
9	Pn. Mas bt. Abdul	Timbalan Pengarah Cawangan Siasatan Johor Bahru
10	Pn. Habibah bt. Md Sood	Ketua Penolong Pengarah Cawangan Johor Bahru
11	Pn. Mary Lorette Pereira	Ketua Penolong Pengarah Cawangan Johor Bahru
12	Pn. Hasnah bt. Mohd Angsor	Ketua Penolong Pengarah Cawangan Muar
13	Pn. Rokiah bt. Mohd Sani	Ketua Penolong Pengarah Cawangan Johor Bahru
14	Pn. Kamariah Noor bt Mohd	Ketua Penolong Pengarah Cawangan Johor Bahru
15	Cik Jamilah bt. Maidu	Ketua Penolong Pengarah Cawangan Kluang

16	En. Yee Choon Lin	Ketua Penolong Pengarah Cawangan Muar
17	Pn. Rusni bt. Ismail	Ketua Penolong Pengarah Cawangan Kluang
18	Pn. Siti Samiah bt Miskon	Ketua Penolong Pengarah Cawangan Kluang
19	Pn. Kartini bt Jali	Ketua Penolong Pengarah Cawangan Siasatan Johor Bahru
20	En. Nor' Azam bin Sulaiman	Ketua Penolong Pengarah Cawangan Johor Bahru
21	Pn. Maizatul bt Othman	Penolong Pengarah Cawangan Siasatan Kluang
22	Pn. Sharifah Hani Suraya bt. Syed Mustapha	Penolong Pengarah Cawangan Johor Bahru
23	En. Dzu Irman b. Jahrudin	Penolong Pengarah Cawangan Kluang
24	Pn. Siti Aisyah bt Muhammad	Penolong Pengarah Cawangan Muar
25	En. Abdul Jaafar b. Abdul Rahman	Penolong Pengarah Cawangan Johor Bahru

Kehadiran : Wakil-wakil Persatuan

1	En. Huang Shze Jiun	Malaysian Institute of Accountants (MIA), Johor RO Committee
2	En. Sam Soh Siong Hoon	MIA
4	Cik Helen Tang	MIA
5	Cik Lee Li Ming	MIA
6	Cik Thean Szu Ping	MIA
7	Cik Hin Juat Chin	MIA
8	Datuk Chua Teck Hwee	MIA
9	En. Kee Yang Khiaw	MIA
10	En. Jesudason a/l Arulsamy	MIA
11	En. Kunathasan Chelliah	MIA

12	Cik Lim Soh Keng	MIA
13	Pn. Norafiza bt. Abdul Rahman	MIA
14	En. Phang Kok Kwen	MIA
15	En. Pang Ah Kow	MIA
16	En. Pee Che Hong	MIA
17	Cik Sharmila Keraishnasamy	MIA
18	Pn. Navarajoh D/O Supramaniam	MIA
19	En. Wong Wen Tak	MIA
20	En. Azman b. Md Taib	Malaysian Association of Tax Accountants (MATA)
23	En. Mohd Shafie b. Sian	MATA
24	Pn.Hajah Anizah bt. Ishak	MATA
25	Cik Suria bt. Haron	MATA
26	Cik Teoh Siew Hoon	Chartered Tax Institute of Malaysia (CTIM)
27	Cik Tan Lay Beng	CTIM

Urusetia

1	En. Syaiful Izam b. Othman	Penolong Pengarah Pejabat Pengarah Negeri Johor
2	Pn. Azreena bt. Hassan	Penolong Pegawai Hasil Pejabat Pengarah Negeri Johor
3	Puan Chan Hua Seng	Pengurus MIA Cawangan Johor Bahru

1. Pendahuluan

Pengerusi mengalukan kehadiran wakil-wakil MIA, CTIM dan MATA, Pengarah-Pengarah Cawangan LHDNM di Negeri Johor dan Pegawai-Pegawai Kanan LHDNM ke Majlis Dialog LHDNM Johor Bersama Badan-Badan Profesional.

Beliau mengharapkan pertemuan ini dapat mengeratkan lagi hubungan pihak pengurusan LHDNM Johor dengan pengamal-pengamal percukaian di Negeri Johor. Dialog hanya membincangkan isu-isu operasi yang telah dikemukakan secara bertulis sebelum ini.

2. Perbincangan Isu-Isu Berbangkit

(Sila Rujuk Lampiran - Lampiran)

3. Penutup

Pengerusi mengucapkan terima kasih kepada semua yang hadir dan beliau berharap dialog kali ini dapat memberi manafaat kepada kedua-dua belah pihak. Sesi dialog ditamatkan pada pukul 01.15 petang.

ISU-ISU DARIPADA MIA, CTIM & MATA JOHOR 2015

1. Submission for "E" number

For companies which have already applied and obtained "C" number when they first commenced activities (but did not apply for "E" number previously), a seperate manual form submission is required to apply for "E" number.

Proposal: Could IRB consider e-application be made available for companies which previously did not apply for "E" number.

Jawapan LHDNM :

Pendaftaran no E melalui perkhidmatan e-Daftar dalam perancangan pembangunan LHDNM.

2. Filing of CP 204 for New Company

A newly incorporated company is exempted from filing of CP 204 for the first two year. As the LHDN system is unable to differentiate non filing of CP204 for new company or failure to file CP204, in one of the past dialogues it was suggested for new companies to file the CP 204 but with "NIL" tax amount. However, this resulted in another problem that a new company is being issued penalty for under estimation of tax when there is tax payable in the first two years.

It is regrettable that while the initial intention of this measure was to lessen the burdens of a new company, it causes more work for a new company by requiring the filing of CP204 and also to write in to explain and request for waiver of the tax penalty.

Proposal : We hope IRB can address this issue.

Jawapan LHDNM :

Bagi kes SME, syarikat hendaklah menyatakan dengan lengkap butiran dalam borang CP204 termasuk tahun taksiran berkenaan. Kenaikan kerana terkurang anggar tidak akan dikenakan. Syarikat diminta memaklumkan kepada LHDNM bagi kes terlibat untuk semakan.

3. Form C requires the Company to indicate whether "Dokumentasi pindahan harga disediakan /Transfer Pricing Documentation Prepared".

However what is the relevance of this matter if the Company is dormant, IHC or totally do not have any related parties transactions.

Query: In such situations can the above be left blank?

Jawapan LHDNM :

Merujuk kepada ruang R4 (Transfer Pricing Document Prepared) seperti dijelaskan dalam Buku Panduan BNCP Syarikat semenjak TT2014, jika perkara ini tidak berkenaan dengan syarikat, sila tandakan "X" dalam petak untuk "Tidak".

4. <u>Application of Company e-filing pin by director.</u>

In certain cases (especially for dormant companies), the director may opt to file the e-C Form online under their own name instead of using TAeF in order to save cost. However, the IRB insists that the directors must be present themselves in order to receive the temporary efiling pin to be issued and will not issue to the Tax Agent (who handles the filing of other related companies using TAeF)

This causes inconvenience to the directors who have to come down personally to obtain the Pin number.

Proposal: We propose that applications on behalf of directors by Licenced Tax Agents to be accepted and the temporary pin numbers are to be issued to Tax Agents directly without having the directors to be present.

Jawapan LHDNM :

Tatacara permohonan nombor PIN boleh diperolehi dari Portal Rasmi LHDNM >> ezHasil >> menu hubungi kami atau guna Borang Maklumbalas yang terdapat pada Postal Rasmi LHDNM. Pemohon tidak perlu hadir ke cawangan.

5. <u>Submission of Company ITRF via Electronic Medium or Electronic Submission</u>

Effective from YA 2014, a company shall furnish its ITRF on an electronic medium or by way of electronic transmission to the LHDNM [S.77A(1A) of ITA 1967]. Those company makes "manual submission" of ITRF (paper return) does not comply with ITA 1967 and the return is deemed not received. In relation to the above, we wish to highlight as an example the IRB system maintenance which was held on 28 February 2015, this caused a lot of problem for smaller firm practitioners where the submission was only successful after 12 midnight, which would then fall on 1 March 2015. This resulted in late tax submission to a lot of their June year-end clients, which involves huge amount of penalty.

Proposal: Refering to the above, we suggest that routine IRB system maintenance should be scheduled on a day other than end of the month to enable the last minute submission of tax return via e-filing.

Jawapan LHDNM :

Permohonan untuk penghapusan penalti akan dipertimbangkan. LHDNM akan mengambil maklum saranan ejen cukai perkara tersebut agar perkara sama tidak berulang. Pihak ejen cukai juga dinasihatkan agar tidak mengemukakan BNCP pada saat-saat akhir. Dalam kes ini ianya berlakukan pada saat akhir masa tambahan satu bulan (dari due date) bagi pengemukaan secara e-filing.

6. Payments

The tax filing programme issued by IRB states the following: -

"This grace period also applies to payment of the balance of tax under subsection 103(1) of ITA 1967."

However for payments made vide cheque deposit, penalties were still imposed even though payment was made during the grace period.

For example: Payment made via cheque deposit at Public Bank on 15 July 2014 5:54pm was imposed penalty of 10% on the total tax payable and additional 5% penalty on the 10% penalty imposed.

Query: While it is acknowledged that the cheque deposit slip stated that deposits made after 4pm would be processed in the following working day, however this does not change the fact that the payment was made within the grace period and therefore penalty should not be applied. From the perspective of the tax payer, the cheque has been deposited at a bank authorized by IRB within the time allowed in the filing programme. Can IRB consider to waive the penalty in such circumstances?

Jawapan LHDNM :

Pembayar cukai digalakkan membuat bayaran secara elektronik kerana bayaran yang akan direkodkan dalam lejar pembayar cukai adalah tarikh penerimaan bayaran di bank ejen. Bagi bayaran yang dibuat melalui mesin deposit cek, tarikh

bayaran adalah berbeza dengan tarikh dibukukan ke lejar. Tarikh bayaran adalah berdasarkan tarikh LHDNM terima data dari bank (pada hari bekerja berikutnya). Pembayar cukai perlu mengemukakan slip pembayaran bagi membuktikan bayaran dibuat dalam tempoh apabila mengemukakan rayuan kenaikan cukai.

7. Company under the process of winding-up

Example (extracted from Page 3, Company Return Form Guidebook 2014)

A company with accounting period from 01.01.2013 to 31.12.2013, commences its winding-up on 15.03.2013.

YA	Accouting period	Basis Period
2013	01.01.2013 - 14.03.2013	01.01.2013 - 31.12.2013
2014	15.03.2013 - 14.03.2014	15.03.2013 - 14.03.2014

Queries:

1) Pursuant to Section 77A(4) of ITA 1967, a company needs to submit its Income Tax Return Form based on the audited accounts. From the above example:
- can the company submit YA 2013 ITRF based on Management accounts? (since no audit is carried out after winding up); and
- can the company submit YA2014 and the following YAs ITRF based on Form 75?

2) With reference to the Filing Programme for ITRF in the Year 2015, does a company under the process of winding-up still need to submit Form E?

3) Once the SPC is issued, does the company still need to submit the ITRF? From the above example, say SPC was issued on or before 14.03.2014, does the company still need to file the YA2014 ITRF including of Form E)?

Jawapan LHDNM :

1. **Berkaitan dengan syarikat yang di dalam proses penggulungan, Seksyen 77A ACP 1967 tidak sesuai digunakan kerana ianya untuk syarikat yang menjalankan operasi biasa (ie bukan syarikat dalam proses penggulungan) dan seksyen tersebut dikaitkan dengan subseksyen 174(1) dan (2) Akta Syarikat 1967 yang berkaitan dengan peranan dan tugas juruaudit syarikat.**

   Disebaliknya syarikat di dalam proses penggulungan tertakluk kepada Companies (Winding Up) Rules 1972 dan di bawah tanggungjawab pelidikuasi (liquidator). Syarikat dalam proses penggulungan perlu menyediakan setiap 6 bulan Borang 75 (Liquidator's Account Of Receipts & Payments And Statement Of The Position In The Winding Up). Borang ini dan Buku tunai

syarikat dalam proses penggulungan akan di audit oleh Official Receiver dan Committee of Inspection. Jika winding up by court, ianya tertakluk di bawah Seksyen 158 & 159 Companies (Winding Up) Rules 1972. Jika voluntary winding up, ianya tertakluk di bawah Seksyen 156 Companies (Winding Up) Rules 1972.

Bagi tujuan percukaian, setiap syarikat dalam proses penggulungan perlu menyedia dan menyimpan akaun seperti mana yang dinyatakan di bawah peruntukan Seksyen 82 dan 82A ACP 1967. LHDN tiada halangan jika akaun syarikat dalam proses penggulungan di audit oleh mana-mana juruaudit luar atau mana-mana pihak di bawah mana-mana peruntukan undang-undang yang sedia ada. Management Account dan Borang 75 adalah tertakluk di bawah kedua-dua sekysen ini.

2. **Adalah menjadi tanggungjawab syarikat untuk mengemukakan Borang E bagi memaklumkan LHDNM bahawa ia mempunyai pekerja atau tidak selagi syarikat tidak dibatalkan pendaftarannya oleh Suruhanjaya Syarikat Malaysia (SSM).**

3. **Syarikat yang telah menerima SPC dari LHDNM masih perlu mengemukakan BNCP selagi ia belum mengemukakan Borang 69 atau pendaftaran syarikat tersebut belum dibatalkan oleh SSM.**

8. IRB carried out field audit on Company A. Company A paid travelling expenses to a non-resident. During the audit visit, the IRB officer did not discuss with Company A the issue and did not request for any supporting documents pertaining to the transaction. Subsequently, IRB issued a letter informing that the amount will be disallowed in the tax computation on the basis that the travelling expenses were for the purpose of expanding Company A's overseas market share and that the travelling expenses is non-allowable as it is capital in-nature. The tax agent of Company A called to explain the nature of expenses and follow up with a written reply together with supporting documents. The explanation was rejected because the officer said the information provided is insufficient. Company A requested to meet with the IRB officer to discuss and get a better understanding of why the information provided is not acceptable. The IRB officer refused to meet and issued Form JA.

Proposal: The IRB officer should agree to meet with Company A to discuss and make an effort to fully understand the transaction before disallowing the expenses.

Jawapan LHDNM :

Dalam Rangka Kerja Audit Cukai membenarkan tempoh masa 21 hari dari tarikh Surat Pemberitahuan Penemuan Audit untuk pembayar cukai merayu dengan mengemukakan maklumat tambahan dan bukti-bukti untuk menyokong bantahannya.

Pegawai Audit seharusnya berjumpa dengan Syarikat A untuk berbincang dan memahami keseluruhan transaksi terlibat sebelum tidak membenarkan perbelanjaan berkenaan.

Sila kemukakan maklumat terperinci kepada Pengarah Cawangan / Pengurus Audit untuk semakan lanjut.

9. Following a desk audit, the IRB requested for supporting documents from Company B namely statutory accounts, tax computation and approval letter for incentive claims. Company B submitted all the documents (complete set of documents) required by the IRB on 31 December 2014. However, on 12 January 2015, the IRB issued their tax computation and disallowed Company B's pioneer status claim on the basis that Company B did not meet all the conditions stated in the MIDA's approval letter. The IRB did not request for further information or supporting documents to verify the numbers in the MIDA's approval letter after the submission on 31 December 2014.

Proposal: The IRB officer should carry out proper verification of information against the documents submitted and assess whether the Company has fully complied with the requirement / conditions set in the approval letter before arriving at the conclusion on whether to disallow such pioneer claims by issuing their tax computation and imposing penalties.

Jawapan LHDNM :

Dalam Surat Pengemukaan Akaun Terperinci, Pengiraan Cukai & Dokumen Sokongan, ada dinyatakan pada Lampiran 1 No 7 : Surat Kelulusan/Borang Tuntutan insentif cukai berserta pengiraan terperinci bagi tuntutan, perlu dikemukakan oleh pembayar cukai.

Oleh itu, Pembayar Cukai perlu mengemukakan surat kelulusan insentif berserta dengan dokumen sokongan yang berkaitan bagi membuktikan kelayakannya menuntut insentif.

Sila kemukakan maklumat terperinci kepada Pengarah Cawangan / Pengurus Audit untuk semakan lanjut.

10. In relation to a desk audit case, the tax payer was asked to submit documents in August 2014. The appointed tax agent followed up closely with the tax officer by making phone calls for any audit findings and possible adjustments since then. However, the tax officer refused to inform us of the audit progress and told us 'first come first serve'. The tax payer was not convinced and they chose to call to IRB office directly in November 2014. Surprisingly, the tax payer was able to get more information that the tax agent and was informed that the tax officer was on two months maternity leave starting November 2014. It gave a bad impression to the tax payer that either the tax agent or the tax officer is not doing his/her job.

Proposal: We urge the IRB to consider to adopt communication best practices to ensure that information such as the audit progress and maternity leave are communicated to tax agent and/or tax payer in timely and consistent manner.

Jawapan LHDNM :

Pihak LHDNM ambil maklum. Arahan dan peraturan telah sedia ada dan Pegawai Audit perlu mematuhinya.

Sila kemukakan maklumat terperinci kepada Pengarah Cawangan / Pengurus Audit untuk semakan lanjut.

11. <u>Insurance premiums disallowed in field audit findings:</u>

Insurance premiums on public liability and money in transit policies had been disallowed in the audit findings of some tax payers. A prudent businessman would take up such policies to protect his business from possible losses that may arise due to circumstances beyond his control. It is similar to taking out a fire policy on a building or stock, or a medical policy on his staff.

Q1: Please clarify whether disallowing the above expenditure is a standard practice adopted by LHDN.

Q2: If such expenditures are to be disallowed, we seek LHDN's confirmation that any pay-outs from the insurance company under such policies would not be taxable.

Jawapan LHDNM :

1. **No. It is on a case by case basis. Expenses incurred on Public Liability and Money-In-Transit Policy can be allowed as deduction if the taxpayer's**

business is constantly under potential risks. For example a Karate expert training his students faces risks of injuries.

2. **Yes, any payout will not be taxed if such expenditure is disallowed.**

12. <u>Tax Audit Finalizations</u>

While finalizing a tax field audit case, the officer in charge requested additional information and documentation pertaining to IRB's query raised by them in their tax field audit findings letter. Accordingly the requested documents were forwarded together with the tax payer's explanation. However, when the tax agent tried to follow up with the officer on a daily basis on the status of the letter and documents, the officer was not reachable for more than a week.

Subsequently the officer contacted the tax agent and requested for further additional documents to be submitted to the IRB the very next day (Thursday). When the tax agent asked for an extension of time (till Monday), the officer informed that the case has to be finalized as soon as possible as she has a deadline to her superior and thus she did not grant us the extension of time.

This seems very unfair to the tax payer as the tax agent had been trying to reach the officer for more than a week and was unable to do so but when the officer contacted the tax agent the officer gives an unreasonable timeline to respond.

IRB should consider the timing involved in requesting the documents from the tax payer to submit to the IRB and be reasonable in the deadline for the tax agent to respond to IRB. In addition, we would suggest that the IRB officers include their email address in the official letter to enable tax agents to contact them rather than for the tax agent to be powerless where the officers are not contactable via phone.

Jawapan LHDNM :

Pihak LHDNM tiada halangan bagi pegawai audit memberikan alamat e-mel kepada pembayar cukai dan agen cukai. Pegawai Audit LHDNM Johor akan diminta menyatakan alamat emel dalam surat menyurat kepada pembayar cukai/ejen cukai. Pembayar cukai / agen cukai adalah dinasihatkan menghubungi Pengurus Audit berkaitan sekiranya tidak dapat menghubungi pegawai audit berkenaan.

13. Manner of submitting revisions of tax computations in the following situations :

1. Company being approved of pioneer status/investment tax allowance in relation to prior years of assessments (e.g MIDA/MITI approvals will be obtained upon submission of Borang 1 and Borang 2 which in certain cases can only be submitted in future years of assessment)
2. Company being approved of R&D incentive under section 34A.
3. Company wanting to claim deduction on payments to non-residents upon payment of withholding tax in future years of assessment (when the expense was incurred, a deduction was not claimed because of section 39(1)(f),(i) or (j)).

Description

Currently, under the ITA, only three sections provide taxpayers with avenue to revise tax returns: section 99 (Form Q), section 131 (Form CP15C on error or mistake) and section 77B (amended return, applicable only when the original assessment's chargeable income "has been or would have been wrongly repaid" i.e. in cases of understatement).

The three situations described above, in most cases, are not appealable within the scope of the above three sections. In practice, the IRB accepts revisions made by taxpayers whereby affected taxpayers submit a revised tax computation and tax returns. No statutory or prescribed forms are required to be submitted in these cases.

Query: Please confirm if this method is acceptable to the IRB.

Proposal: If it is not acceptable, will the IRB work with the relevant ministries and lawmakers on introducing new legislation to cover these situations to ensure that additional rights of taxpayers are protected and responsibilities of both the IRB and taxpayers are created?

Jawapan LHDNM :

Peruntukan Seksyen 131 Akta Cukai Pendapatan 1967 adalah terpakai. Pembayar cukai boleh membuat permohonan bertulis sama ada melalui surat arau Borang CP 15C (digalakkan) kepada Cawangan LHDNM yang mengendalikan fail cukai pendapatannya dan Cawangan LHDNM berkenaan akan mempertimbangkan untuk meminda taksiran tersebut sekiranya semua syarat dalam peruntukan tersebut dipenuhi.

14. Taxpayer committed an error or mistake when he submitted his tax return. He omitted (by forgetting) to claim the investment tax allowance on one qualifying machine of significant value.

The original tax return's tax payable amount is nil. The revised tax return after the error is rectified is also nil, but there would be a carried forward balance for investment tax allowance.

The Company benefits from investment tax allowance (100% on qualifying expenditure against 100% of statutory income). What avenue of appeal is available to the taxpayer?

Description

Section 131(1) states that "if any person who has paid tax for any year of assessment alleges that an assessment relating to that year is excessive by reason of some error or mistake… he may within five years… make an application… for relief".

The above limits the relief in respect of error or mistake for claimants who have paid tax. In the situation described to the left, the taxpayer had paid no tax (because of unabsorbed balances) in that particular year of assessment. Thus he technically cannot make a claim for relief in respect of this mistake.

In Singapore's section 93A of the Income Tax Act,

"1) If any person alleges that for any year of assessment —
(a)an assessment is excessive; or
(b)any unabsorbed loss, allowance or donation that may be carried forward ought to be of a higher amount than that set out in an assessment,

by reason of some error or mistake —

(i)in the return or statement made by him for the purposes of the assessment; or
(ii)where he is exempted from liability to furnish a return under section 62(2), in the notice of assessment served on him,

he may, at any time not later than 6 years (if the year of assessment within which the assessment was made is 2007 or a preceding year of assessment) or 4 years (if the year of assessment within which the assessment is made is 2008 or a subsequent year of assessment) after the end of the year of assessment within which the assessment was made, make an application in writing to the Comptroller for relief.

Based on the above, in Singapore, there is no requirement for the taxpayer to have paid tax before the taxpayer could claim a relief in respect of error or mistake.

Query: Will the IRB accept a claim of relief in respect of error or mistake in spite of the nil tax paid under existing legislation?

Proposal: If not, will the IRB work with the relevant ministries and lawmakers on amending section 131 to something similar to Singapore's section 93A so that taxpayers who are non-tax paying could also claim relief under this section?

Jawapan LHDNM :

Peruntukan Seksyen 131 Akta Cukai Pendapatan 1967 tidak terpakai kerana pembayar cukai tidak tertakluk kepada cukai pendapatan bagi tahun taksiran yang berkenaan. Pihak LHDNM ambil maklum cadangan berkenaan dan tindakan sewajarnya akan diambil bagi menangani isu ini.

15. Assessments raised for years of assessment which have been time-barred by section 91(1) where sections 91(3) and 91(4) are not applicable.

Description
Under section 91(1), the IRB is empowered to raise assessments within five years after the expiration of a year of assessment unless in cases where there is fraud, willful default or negligence (section 91(3)) and determination, revocation, withdrawal or cancellation (of the matters described in section 91(4)).

However, taxpayers are often served notices of additional assessment beyond the five year limit even though sections 91(3) and 91(4) are not applicable.

Query: How does the IRB plan to comply with the law under section 91(1) so that notices of assessments are no longer issued when the year of assessment is already time-barred?

Jawapan LHDNM :

Pemakaian peruntukan subseksyen 91(1) ACP hanyalah bagi BNCP yang dikemukakan dalam tempoh masa ditetapkan (within due date) dan BNCP yang dikemukakan telah diisi dengan lengkap dan betul.

Sekiranya terdapat maklumat baharu atau tambahan sama ada dikemukakan oleh pembayar cukai (PC) atau pihak ketiga, selepas BNCP dikemukakan kepada LHDNM, BNCP berkenaan dianggap dikemukakan di luar tempoh yang ditetapkan (lewat) disebabkan PC telah memberikan maklumat yang tidak betul (incorrect return and information) di dalam BNCP yang telah dikemukakan itu.

Dalam hal ini, peruntukan subseksyen 91(3) ACP adalah terpakai di mana taksiran atau taksiran tambahan boleh dibangkitkan tanpa had masa

16. Time taken to issue notices of non-chargeability and to inform taxpayers on the outcome of Form N.

Description

Under section 97A the IRB may issue a notification of non-chargeability (Form NL). Based on paragraph 5.22 of the Public Ruling No. 3/2012 on Appeal against an Assessment, it is provided that "where a person who has submitted an ITRF for a year of assessment is not liable to tax or is liable to tax but has no statutory income from a business source and intends to appeal on any tax treatment mention in a Public Ruling (PR) or any stand of IRBM, the person has to apply to IRBM in writing for a notification of non-chargeability".

Under section 100, a taxpayer may request for extension of time to file Form Q by submitting Form N.

Appeals via Form N and requests for Form NL seem to take unreasonably long. We have cases where these have not been decided on/ issued after two years.

Query: Will the IRB work with us on expediting the specific submissions of Form N and requests of Form NL which we will be pleased to share privately so that the submissions and requests can be processed timely?

Jawapan LHDNM :

ACP 1967 tiada memperuntukkan secara khusus tempoh masa bagi mengendalikan permohonan lanjutan masa melalui Borang N atau permohonan pemberitahuan tidak kena cukai. Oleh itu, KPHDN akan mengendalikan permohonan tersebut mengikut *case by case basis* dan dikendalikan dalam tempoh masa yang munasabah. Sila kemukakan nombor rujukan untuk semakan lanjut cawangan.

17. Application of offsets and refunds when Assessment Branch is the Multinational Tax Branch

Description

Subsequent to the decentralisation of certain functions of the Collections Branch in Kuala Lumpur, refund and offset applications would be submitted to and processed by the local Collections Branch wherein a taxpayer's Assessment Branch is located.

A taxpayer's Assessment Branch whose transfer pricing matters are being audited will usually be transferred to the Multinational Tax Branch in Cyberjaya.

Only when we contacted the Multinational Tax Branch we understand that refund and offset applications for such taxpayers should be submitted to and processed by the Large Taxpayer Branch (Cawangan Pembayar Cukai Besar) at Jalan Duta, KL.

Q1: How would those taxpayers (where Assessment Branch now transferred to the Multinational Tax Branch) are expected to know that the collection matters are to be addressed to the Large Taxpayer Branch at Jalan Duta, KL as this is not the location where the Multinational Tax Branch is located?

Q2: Can the IRB confirm that refund and offset applications should be submitted and processed by the Large Taxpayer Branch at Jalan Duta for taxpayers whose Assessment Branch is the Multinational Tax Branch?

Q3: Will the Multinational Tax Branch continue to be the Assessment Branch such that any appeals filed by taxpayers (other than collection matters) be made to it? – see also next issue.

Q4: Will taxpayers be notified when the Assessment Branch is transferred back to its original Assessment Branch when the transfer pricing audit has been finalised?

Jawapan LHDNM :

1. **Pembayar cukai akan menerima pemakluman pemindahan fail ke Cawangan Cukai Multinasional (CCM). Apa-apa permohonan untuk bayaran balik berkaitan fail yang dikendalikan oleh CCM hendaklah ditujukan kepada CCM. CCM kemudiannya akan merujuk permohonan bayaran balik ini kepada Unit Pungutan di Cawangan Pembayar Cukai Besar (CPCB) untuk memproseskan bayaran balik. Syarikat juga boleh menyemak dengan Pusat Khidmat Pelangan LHDNM (PKP) untuk mengetahui lokasi fail pungutan mereka jika ingin berhubung terus dengan Unit Pungutan.**
2. **Fail Pungutan dan CKHT yang berkaitan dengan CCM akan dipindahkan ke Cawangan Pembayar Cukai Besar. Sila rujuk Kenyataan Media bertarikh 14 Januari 2015 para 3.2 di laman web hasil.**
3. **Ya, rayuan cukai juga perlu dikemukakan kepada CCM.**
4. **Selagi syarikat itu masih ada transaksi antara syarikat berkaitan seperti dilaporkan dalam BNCP, fail itu akan kekal di CCM.**

18. Submission of tax revisions/ Form Q/ CP15.C/ Form N/amended returns when Assessment Branch is the Multinational Tax Branch

Description

In usual cases, tax revisions/ Form Q/ CP15.C/ Form N/amended returns would be submitted to and processed by the Assessment Branch.

A taxpayer’s Assessment Branch whose transfer pricing matters are being audited will usually be transferred to the Multinational Tax Branch.

Q: To which IRB branch a taxpayer who wishes to file tax revisions/ Form Q/ CP15.C/ Form N/amended returns should submit for taxpayers whose Assessment Branch is the Multinational Tax Branch?

Jawapan :

Apa-apa rayuan Form Q/ Form N/ CP15.C/ Borang Nyata Terpinda hendaklah dikemukakan ke cawangan yang mengendalikan fail syarikat berkenaan, iaitu Cawangan Culai Multinasional (CCM).

19. Practices of IRB Johor on the enforcement of section 153(1)

Description

Section 153 prohibits a person from holding himself out as a tax agent, tax consultant or a tax adviser in Malaysia unless he is a tax agent approved by the Minister or registered lawyer. In late 2014, there was news about enforcing this section strictly. It was proposed that only tax agents (and lawyers) can meet and correspond with the IRB in matters relating to taxpayers they represent.

In early February 2015, we understand that this requirement is now relaxed and the IRB now requires the following:

1. Letters to the IRB can only be signed by persons whose specimen signatures have been submitted to the IRB

2. Meetings with the IRB can only be attended by persons who possess a letter of authorization signed by tax agents

3. Tax agents are required to submit a letter to the IRB to assume responsibility on the acts of their employees

Q: To what extent the above procedures would apply to the IRB Johor?

Q: Please clarify if the following would require additional procedures:

1. A tax agent’s dispatch submitting Form Q to the IRB (cover letter is signed by authorized signatory whose specimen signature has been submitted to the IRB)

2. Refund and offset application letters

3. E-mails to request for extension of time (by a junior staff of tax agent not specifically made known to the IRB)

4. Submission of documents requested by IRB via e-mails (by a junior staff of tax agent not specifically made known to the IRB)

Jawapan LHDNM :

1. **Borang Q perlu dihantar oleh ejen cukai sendiri atau staf yang diberikan kuasa (butiran dan spesimen tandatangan staf dikemukakan kepada LHDNM) , kerana semakan lengkap Borang Q perlu dibuat dengan pegawai LHDNM yang menerima Borang Q tersebut.**
2. **Surat mohon bayaran balik atau 'offset' bayaran cukai perlu ditandatangani oleh ejen cukai atau staf yang diberikan kuasa (butiran dan spesimen tandatangan staf dikemukakan kepada LHDNM).**
3. **Permohonan lanjutan masa perlu dilakukan oleh ejen cukai atau staf yang diberikan kuasa (butiran dan spesimen tandatangan staf dikemukakan kepada LHDNM)**
   [Permohonan perlu dibuat dalam surat 'letterhead' ejen cukai dan diemelkan melalui lampiran (attachment) kepada LHDNM]

4. **Tiada halangan bagi staf ejen cukai mengemukakan melalui emel, jika yang dikemukakan adalah dokumen yang diminta oleh LHDNM.**

20. <u>Deadline for filing of Form Q</u>

Description
Under section 99(1), an aggrieved taxpayer may submit Form Q within 30 days after the service of the notice of assessment.

Under section 145, a notice relating to tax is deemed to have been served on the person on the day succeeding the day on which the notice would have been received in the ordinary course of post.

In Malaysia, letters sent by way of ordinary or registered post would be received within 3-7 days.

Q: In practice, what is the deadline applied by the IRB for the submission of the Form Q in the following situation?

1. Notice of assessment is dated 2 February 2015 (Tuesday)
2. Notice is received by taxpayer's tax agent on 4 February 2015 (Wednesday)

In our view, the deadline is 8 March 2015 (Sunday). The 30 day period calculated from 5 February 2015 (the day succeeding 4 February) falls on 7 March 2015 which is a Saturday. Hence the deadline is on the following working day in accordance with section 54(b) of the Interpretation Acts 1948 and 1967 on the computation of time. The deadline is not 4 March 2015.

Will the IRB reject Form Q submitted within the above timeframe (i.e. 4 February 2015 to 7 March 2015)?

Jawapan LHDNM :

Mengikut subseksyen 145(2) ACP 1967 notis taksiran dianggap telah diserahkan sehari selepas tarikh notis keluarkan dan tempoh 30 hari untuk mengemukakan Borang Q bermula dari tarikh tersebut. Sekiranya pembayar cukai mempunyai bukti tarikh notis taksiran diserahkan kepadanya maka tempoh 30 hari untuk mengemukakan Borang Q dikira daripada tarikh pembuktian tarikh notis tersebut diserahkan.

Sekiranya tempoh 30 hari jatuh pada hari Sabtu maka tarikh akhir pengemukaan Borang Q akan dilanjutkan kepada hari Isnin iaitu hari bekerja berikutnya (next working day) selari dengan *Interpretation Act 1948*.

21. A Company has its first account closed in 2013. Due to overlapping period, the due date for submission of Form C & R for YA 2013 is the same with those of Form C & R for YA 2014 as both need to rely on the same set of audited report with closing year end in 2014.
This is similar to Example 5 of Public Ruling No:8/2014(on page 5). Form J under section 90(3) was issued with 112(3) penalty imposed.

Query: How should we inform IRD the filing of Form C & R for YA 2013 is due to overlapping of basis period? Can IRD waive the penalty?

Jawapan LHDNM :

Syarikat yang baru memulakan perniagaan dikehendaki mengemukakan CP204 dalam tempoh 3 bulan dari tarikh mula operasi. Syarikat dikehendaki mengisi Tempoh Perakaunan, Tempoh Asas Tahun Taksiran Pertama, Tempoh Asas Tahun Taksiran Berikutnya. Jika syarikat dikenakan penalti walaupun telah mengisi maklumat berkaitan dalam CP204, rayuan boleh dipertimbangkan berdasarkan merit kes.

Rayuan akan dipertimbangkan setelah BNCP bagi tahun yang berkaitan dikemukakan kepada LHDNM. Pembayar cukai dinasihatkan untuk memberitahu LHDNM sebaik sahaja BNCP dikemukakan.

22. Fact : Company changed the accounting year end from 31 Dec to 31 March with effect of 31 Mar 2015 .

YA	Accounting period	Basis period
2014	01.01.2014 – 31.03.2015	01.01.2014 -31.08.2014
2015	01.01.2014 – 31.03.2015	01.09.2014 – 31.03.2015

In respect of YA 2015, 6th month revised is due on 28th February 2015. However, we are unable to submit form CP204A via e-filing due to the no. of installments is less than 12. It is also stated that currently, the e-CP204A system only accept CP204A with complete 12 installments. Please refer to the appendix.

Suggestion: We hope that IRB can rectify this matter so that company with less than 12 installments can submit form CP204A e-filing.

Jawapan LHDNM :

Pada masa ini, system e-filing kes CP204A hanya di benarkan bagi kes CP204 lengkap tempoh asas 12 bulan. Pengemukaan secara manual/borang kertas perlu di buat bagi kes dimana tempoh asas tidak lengkap 12 bulan. Penambahbaikan iaitu pindaan kepada system akan dilakukan oleh LHDNM

23. We refer to recent conversation with a few members which had failed in their Tax Agent License Interview session. We hope IRB JB may share with us what your view of latest candidate performances. Also, What and How they can improve and equip themselves for next interview?

Jawapan LHDNM :

LHDNM Johor bertanggungjawab membuat penilaian ke atas hasil kerja percukaian dan menemuduga pemohon bagi menilai tahap kefahaman dan kemahiran pemohon dalam bidang percukaian sebelum laporan dikemukakan kepada Ibu Pejabat LHDNM. Ini bagi memastikan pemohon dapat menjadi ejen cukai yang bertanggungjawab, kompeten dan professional disamping dapat melindungi kepentingan pelanggan serta LHDNM.

Tahap persediaan pemohon begitu penting bagi memastikan keupayaan memberi jawapan yang betul dan munasabah semasa temuduga. Soalan-soalan yang ditanya semasa temuduga meliputi perkara :

- **i.** **Kod etika ejen cukai/pengetahuan am percukaian**
- **ii.** **Percukaian selain syarikat**
- **iii.** **Percukaian syarikat**

iv. Prosedur di bawah STS
v. Audit/Penyiasatan
vi. Bajet Tahunan
vii. Insentif Cukai

Dalam tahun 2015 sehingga Mac 2015, terdapat 7 permohonan yang diterima dan ditemuduga oleh Panel Temuduga Ejen Cukai LHDNM Johor. Secara keseluruhan semua pemohon dapat memberikan jawapan yang baik dan berjaya dalam sesi temuduga berkenaan.

24. Lately, we noted IRB Field Audit very active and highly determine to complete the audit works within 3 months audit period. Somehow, some Officer may forget to apply the 3M (Mesra, Membantu dan Memuaskan) or as per 2014 Theme – HasiL Teman Keceriaan Anda.

Jawapan LHDNM :

Pegawai Audit LHDNM Johor sentiasa diingatkan supaya memberikan perkhidmatan yang terbaik kepada pelanggan. Bagaimanapun LHDNM Johor mengambil maklum berhubung aduan ini. Sila kemukakan maklumat terperinci kepada Pengarah Cawangan / Pengurus Audit untuk semakan lanjut.

25. Proposal to have open gathering or sports activities or events among LHDM & members from Professional Bodies i.e. MIA, CTIM, IEM, BAR Council etc.

Jawapan LHDNM :

LHDNM Johor menyambut baik cadangan yang dikemukakan. Bagaimanapun perbincangan lanjut dan terperinci perlu dilakukan secara bersama bagi merealisasikan cadangan ini.

Disediakan oleh :

Lembaga Hasil Dalam Negeri Malaysia
Pejabat Pengarah Negeri Johor
31 Mei 2015