

Kellee K. Khoo

From: Saffuan Mohd Saparti <saffuan@hasil.gov.my>
Sent: 17 March 2016 2:47 PM
To: kellee@tjh.com.my
Cc: Halijah Bulat; Norazipah Babjee
Subject: RE: MINITS DIALOG BERSAMA CTIM- LHDNM PULAU PINANG

Salam Sejahtera.

Sukacita dimaklumkan Puan boleh menyampaikan Minits ini kepada semua ahli CTIM.

STK.

SAFFUAN BIN MOHD SAPARTI

PEGAWAI EKSEKUTIF PENAKSIRAN | PPN PULAU PINANG | LEMBAGA HASIL DALAM NEGERI MALAYSIA

☎ : 04-261 0003 Samb.184 | 📠 : 04-261 0089

📞 : 1-800-88-5436 (LHDN)

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ANDALAH WIRA NEGARA!

HASIL Teman Keceriaan Anda

From: Kellee K. Khoo [<mailto:kellee@tjh.com.my>]
Sent: Thursday, 17 March, 2016 1:47 PM
To: Saffuan Mohd Saparti
Subject: RE: MINITS DIALOG BERSAMA CTIM- LHDNM PULAU PINANG

Salam Sejahtera Encik Saffuan

Terima kasih untuk masa yang diluangkan untuk mengesahkan Minits ini.

Boleh saya mengesahkan bahawa Minits ini boleh disampaikan kepada semua ahli CTIM?

STK

Best regards

Kellee Khoo Kee Lee

Tax & Business Consultant / Director

Tax Agent Approval No.: 01/5269/09/2016

GST Agent Approval No.: 01/0567/09/2016

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Northern Region Branch Chairman
Chartered Tax Institute of Malaysia (CTIM)



Business Solutions Made Easy



From: Saffuan Mohd Saparti [<mailto:saffuan@hasil.gov.my>]
Sent: 17 March 2016 10:02 AM
To: kellee@tjh.com.my
Subject: MINITS DIALOG BERSAMA CTIM- LHDNM PULAU PINANG

Salam Sejahtera,

Dear Kellee Khoo Kee Lee,

Saya diarah merujuk kepada perkara di atas.

2. Dialeog yang telah diadakan bersama pihak tuan pada 17 Disember 2015 adalah berkaitan.
3. Bersama-sama ini disertakan minit dialog yang telah disemak oleh Puan Pengarah Negeri LHDNM Pulau Pinang untuk perhatian dan tindakan puan.

Sekian, terima kasih dan sila hubungi saya jika ada sebarang pertanyaan.

SAFFUAN BIN MOHD SAPARTI

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HASIL Teman Kecewaan Anda

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MINUTES OF DIALOGUE BETWEEN CTIM NORTHERN BRANCH AND LHDN NEGERI PULAU PINANG (CAWANGAN PULAU PINANG AND BUKIT MERTAJAM)

Date: 17 December 2015 (Thursday)
 Time: 9.00 am – 12.30 pm
 Venue: Bilik Mesyuarat Tingkat 10, Bangunan Dewan Perniagaan Melayu

<u>Name of Attendees</u>	<u>Organisation</u>	<u>Position</u>
Ms Kellee Khoo	T & K Tax Savvy Sdn Bhd	CTIM Northern Region Branch Chairman
Dr Paul Ang	ASC Tax Consultants	CTIM Northern Region Branch Deputy Chairman
Ms Kao Pei Ting	PricewaterhouseCoopers Taxation Services Sdn Bhd	CTIM Northern Region Branch Committee
Mr Teh Kheng Siong	Grant Thornton	CTIM Northern Region Branch Committee
Mr Khoo Choon Keat	KCK & Associates	CTIM Northern Region Branch Committee
Mr Richard Oon	TY Teoh	CTIM Northern Region Branch Committee
Mr Chang Kong Foo	Chang Kong Foo & Co (Kedah)	CTIM Northern Region Branch Committee
Cik Halijah Bulat	LHDN Cawangan Pulau Pinang	Pengarah Negeri Pulau Pinang
Encik Che Muhammad Sukri bin Che Hussin	LHDN Cawangan Pulau Pinang	Pengarah Cawangan Pulau Pinang
Mr Silvarajan Vedanayagam	LHDN Cawangan Bukit Mertajam	Pengarah Cawangan Bukit Mertajam
Encik Mohamad Zin bin Yaacob	LHDN Cawangan Bukit Mertajam	Timbalan Pengarah
Puan Noor Liah binti Allapitchay	LHDN Cawangan Pulau Pinang	Timbalan Pengarah
Encik Zaidan bin Zulkifli	LHDN Cawangan Bukit Mertajam	Ketua Penolong Pengarah
Encik Mhd Noor bin Lebai Man	LHDN Cawangan Pulau Pinang	Ketua Penolong Pengarah
Puan Lazita binti Abdullah	LHDN Cawangan Bukit Mertajam	Ketua Penolong Pengarah
Ms Boon Kiat Eng	LHDN Cawangan Pulau Pinang	Ketua Penolong Pengarah
Encik Muhammad Awis bin Idris	LHDN Cawangan Pulau Pinang	Ketua Unit AMSG
Ms Thian Joon Fah	LHDN Cawangan Pulau Pinang	Ketua Penolong Pengarah
Ms Yong Mei Sim	LHDN Cawangan Pulau Pinang	Penolong Pengarah (Kontrak)
Puan Norazipah binti Babjee	LHDN Cawangan Pulau Pinang	Pengarah Bahagian Penyelarasan Pejabat Pengarah Negeri Pulau Pinang
Encik Saffuan Mohd Saparti	LHDN Cawangan Pulau Pinang	Pegawai Eksekutif (Penaksiran) Gred 41

DISCUSSION

1. Both CTIM and LHDN agreed on the objective of having such meetings/dialogues as a platform for collaboration and co-operation between both parties (CTIM representing tax agents) as we are all working towards the same goals ie. to assist taxpayers to comply with tax laws and pay their share of taxes which is fair to both taxpayer and to our country.
2. Ms Kellee Khoo suggests on behalf of CTIM to organise such dialogues in future and will extend an invitation to other professional bodies such as MIA and MATA for a joint session.
3. It is agreed that CTIM will prepare Minutes of the Dialogue and send to LHDN for verification prior to distribution to all members of our professional body.
4. Cik Halijah Bulat and Ms Kellee Khoo took the lead to go through issues from members that were submitted to LHDN prior to the dialogue. However, Cik Halijah informed with regrets that some of these issues relating to policy decision and law needs to be brought up to HQ level because such issues affect all Branches; therefore it is not within the jurisdiction of the Pengarah Negeri to make a final decision regarding such matters. Cik Halijah suggests that CTIM should bring up such issues at the next DESIRE meeting in Kuala Lumpur. Please refer to the following:-

Appendix A: Issues which were concluded during the dialogue

Appendix B: Issues which need to be brought up in the next DESIRE meeting (CTIM Northern Branch will forward these issues to CTIM HQ for their further action)

5. LHDN Penang and Bukit Mertajam Branch also requested for CTIM to disseminate messages to all tax practitioners / members of professional bodies. Please refer to Appendix C.
6. LHDN Penang and Bukit Mertajam Branch requested whether CTIM is able to provide a short GST briefing to their officers on:-
 - (a) GST impact on income tax pertaining to the new Budget proposals on disallowances of input tax and output tax; and
 - (b) Property developers.

Ms Kellee Khoo and Dr Paul Ang agreed to coordinate with CTIM KL Council member to provide such training and will liaise with LHDN to fix a date.

APPENDIX A - ISSUES CONCLUDED DURING DIALOGUE WITH IRB PENANG – 17 DEC 2015

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS	CONCLUSION / LHDN'S COMMENTS
1	<p><u>Motor Vehicle Expenses</u></p> <p>In recent field audits of companies (Sdn Bhd), many members have encountered disallowances of motor vehicle expenses such as petrol, road tax, insurance and upkeep for both company and non-company asset vehicles. In some cases, capital allowances were disallowed as well. Some cases – disallowances is on the full expenses and some cases is based on 1/3 or 2/3 rules. There are inconsistencies amongst IRB officers on such disallowances.</p>	<p>Such disallowances are not specifically mentioned in any Public Rulings or dialogues. Members are confused about which instances should they now disallow such expenses when preparing tax computations in order to avoid adjustments during field audit. We would appreciate some internal guidelines from IRB if Public Rulings are not available with specific examples at the moment.</p>	<p>We seek confirmation from IRB on the following stand:-</p> <p>a) Company asset vehicles (reflected in Balance Sheet) and disclosed as BIK in employee or directors' Form EA: All expenses to be allowed in full</p> <p>b) Non company asset vehicles (not in Balance Sheet) owned by employees and service directors and BIK not disclosed in EA Form: All expenses to be allowed in full because the Company is reimbursing employees for usage of their vehicles for business purposes in lieu of mileage claims</p> <p>c) Non company asset vehicles (not in Balance Sheet) owned by ordinary directors or related employees and BIK not disclosed in EA Form: To apply 1/3 (eg. Finance Director) or 2/3 (Sales Director) rules depending on roles and responsibilities of employee and the usage of vehicles in the business</p> <p>d) Fully disallow such expenses in the Company tax computation: No need to report as perquisites in related employees' or ordinary directors' Form EA and no penalty will be imposed for non-disclosure</p>	<p>a) Bersetuju kecuali perbelanjaan berbentuk peribadi dan bukan untuk tujuan perniagaan.</p> <p>b) Bersetuju.</p> <p>c) Sama ada syarikat atau bukan syarikat perlu menyimpan rekod yang lengkap. Semua perbelanjaan akan ditambah balik kecuali pembayar cukai boleh membuktikan perbelanjaan dilakukan untuk perniagaan berdasarkan rekod yang disimpan. Pembayar cukai dinasihatkan menyimpan rekod berasingan untuk tujuan peribadi dan perniagaan. Walau bagaimanapun sebagai pemakaian pembahagian akan digunakan bagi kes-kes bukan syarikat berdasarkan asas-asas yang boleh dipercayai (reliable) dan munasabah.</p> <p>d) BIK tidak timbul kerana kenderaan bukan milik syarikat.</p>

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2	<p><u>Motor Vehicle On The Road Price</u> Para 5.2 (a)(i) of Public Rulings 6-2015 states that road tax and insurance does not qualify for capital allowances claims.</p> <p>We seek clarifications based on IRB's standard stand during a tax audit in order to be consistent with IRB's view and avoid differing interpretation of the law.</p>	<ol style="list-style-type: none"> 1. Para 5.2 (a)(i) of the Public Rulings 6-2015 mentioned these are allowable expenses under Section 33(1). Please confirm that such deduction is also applicable for the first year road tax and insurance. 2. Schedule 3 (2)(2) mentioned that for new motor vehicles, if "total cost of the motor vehicle" if does not exceed RM150,000, qualifying expenditure is limited to RM100,000. Is the first year insurance and road tax as mentioned in #1 considered as part of total cost? Some vehicles if excluding road tax and insurance = below RM150,000 but including road tax and insurance = exceeds RM150,000. 	<ol style="list-style-type: none"> 1. We are of the view that first year insurance and road tax is also deduction under Section 33(1) because these are annual recurring expenses and not one-off registration fees which provide an enduring benefit. 2. Total cost of motor vehicle for the purpose of determining qualifying expenditure should exclude first year insurance and road tax based on the following:- <ol style="list-style-type: none"> (a) Paragraph 4.5 of Public Rulings 3-2013 mentioned that cost of motorcar <u>excludes</u> insurance and road tax when new. (b) Para 5.2 (a)(i) of the Public Rulings 6-2015 mentioned that road tax and insurance are recurring expenses allowable under Section 33(1). If these are revenue expenses, they will not fall under capital expenditure and hence is not part of cost of motor vehicle (asset). Please confirm. 	<ol style="list-style-type: none"> 1. Bersetuju kerana perbelanjaan tersebut adalah perbelanjaan dalam menghasilkan pendapatan. 2. Bersetuju kerana perenggan 5.2 (a) Ketetapan Umum 6 Tahun 2015 jelas menyatakan bahawa perbelanjaan tersebut adalah berulang-ulang. Oleh itu, isu perbelanjaan permulaan tidak berbangkit.

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3	<p><u>Income of Religious Organizations</u> Schedule 6, paragraph 13 (b) exempts a religious institution or organization which is not operated or conducted primarily for profit and which is established in Malaysia exclusively for the purposes of religious worship or the advancement of religion.</p> <p>Special provision relating to paragraph 13 of Schedule 6: Notwithstanding any other provision of the principal Act, where a person is exempt by virtue of the exemption under paragraph 13 of Schedule 6 before the coming into operation of the amendment to that paragraph in section 26 of this Act, that exemption shall cease from the year of assessment 2003 for the basis period ending in that year: Provided that such exemption shall continue, under paragraph 13 of Schedule 6 as amended in this Act, where an approval is granted to such person upon an application made under section 44(6) of the principal Act.</p>	<p>We are not clear on whether the income of a religious institution or organization which is not approved under section 44(6) is exempt from tax according to paragraph 13 (b) Schedule 6 if they fulfill the criteria stated in 13 (b).</p> <p>Otherwise, does it mean that all donations given by the public to such organizations are subject to tax?</p>	<p>Schedule 6 paragraph 13 specifically mentioned 2 situations where the income is exempted:</p> <ol style="list-style-type: none"> 1) Approved institutions; or 2) Religious institution <p>If the intention of the Act is meant for religious institutions falling under Para 13 (b) to also obtain approval under Section 44(6), it is not necessary to mention both situations in (a) and (b). Para 13 can just mention income of all approved institution is exempted from tax as stated in (a).</p> <p>Therefore, we are of the view that donations given by public to such organization are exempted from tax as long as the conditions stated in Paragraph 13(b) can be proven; without the requirement of having an approved status under Section 44(6).</p> <p>We would like to seek confirmation from IRB whether our view is correct.</p>	<p>LHDN confirmed that income received by religious institutions or organizations is exempted from tax under Schedule 6, paragraph 13 (b) as long as the following conditions are met (onus on taxpayer to prove):-</p> <ol style="list-style-type: none"> (a) Not operated or conducted primarily for profit; and (b) Established in Malaysia exclusively for the purposes of religious worship or the advancement of religion. <p>If the above conditions are met, the religious organization is not required to obtain Section 44(6) approval in order to enjoy tax exemption on its income. If the above conditions are not met, all income received by the religious organization including donations from public are subject to income tax.</p> <p>However, this provision is only applicable to religious institutions. The income of other non-religious charitable organizations (including donations from the public) is subject to income tax if the organization is not approved under Section 44(6).</p>

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4	<p><u>Flexibility for Written Agreement to Field Audit Issues</u></p> <p>When taxpayer has agreed to accept IRB's treatment on certain items/issues after a tax audit, the taxpayer is required to sign and submit a letter of agreement.</p>	<p>The letter of agreement is based on a template issued by the IRB and it requires the taxpayer to admit that it has under declared its income. Some issues under dispute with the IRB are due to difference in interpretation of the Act and it was not the intention of the taxpayer to under declare its income. In practice, some IRB officers usually refused to accept other form of letter of agreement and have informed taxpayer that they will not accept the agreed resolution unless the letter of agreement (in IRB standard format) is signed. Some taxpayers especially MNCs are not comfortable to sign an agreement confirming that they have under-declared their income if they do not intentionally do so.</p>	<p>We believe that this standard template requirement only arise from the discounted penalties period up to November 2015.</p> <p>We propose that post-discount period, IRB will accept any form of agreement from the taxpayer so long as it is in writing stating the additional tax liability that the taxpayer has agreed to pay :-</p> <ul style="list-style-type: none"> - By letter, email or fax is acceptable - Agreement clearly states acceptance of the issues involved even though it is on a non-prejudice basis - Agreement can be signed by either taxpayer or appointed tax agent <p>We seek confirmation from IRB whether our above proposal is acceptable.</p>	<p>Tiada surat perjanjian khusus untuk penyelesaian kes-kes audit.</p> <p>'Surat Aku Janji' yang dimaksudkan adalah berkaitan tawaran pengurangan penalti dan tawaran penghapusan kenaikan cukai dan hanya terpakai bagi kes audit yang diselesaikan dalam tempoh bermula 1 Mei 2015 sehingga 30 November 2015.</p> <p>LHDN mengesahkan surat persetujuan yang diminta hanya bagi tujuan pentadbiran sahaja dan tidak terikat kepada peruntukan undang-undang.</p> <p>LHDN menerima-pakai sebarang bentuk surat perjanjian yang dikemukakan oleh pembayar cukai.</p>

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5	<p><u>Facilitate Contact with IRB Officer and Delays in Handling of Tax Files Due to Absence of Officers</u></p> <p>Sometimes when tax agent tries to contact an IRB officer regarding a letter or in relation to standard notices, we will call up the general line or department and will need to trouble the officer who picked up the phone to help us check who is in charge of the file or issue the letter and pass the phone to the correct officer.</p> <p>Sometimes tax agent encountered such delays regarding application for latest tax position statement, request for transfer of RPGT paid to income tax account, desk audit in order to obtain tax clearance or from revision of tax returns etc. Such delays are <u>not</u> common but some tax agents face them from time to time.</p>	<p>Sometimes the phone is passed to an extension where is rang but nobody pick up the phone. Tax agent will have to call up general line again or simply try any known officers' extension. This not only disrupt the work of other officers to try to find out which officer is in charge but it will also waste unnecessary time for tax agent to locate the officer in charge.</p> <p>In addition, the officer may be away on audit or courses or on leave and tax agent will have to keep trying to call every day until they reach the officer without knowing that the officer may be away for a week for example. Sometimes the waiting period can be from 5 months to more than 1 year without any feedback from the officer.</p> <p>We hope to explore ways to mitigate the impact of officers going for long leave in order to reduce the timeframe for handling of tax files</p>	<p>We propose that all letters and standard notices – if possible, to state the IRB officer extension and email address so that we can directly ask or reach the correct officer.</p> <p>If we are unable to reach the officer by phone, at least we can drop an email with our query to the officer. We propose for IRB to set a standard reasonable timeframe to reply or acknowledge receipt of tax agent's email such as 3 working days for example.</p> <p>In addition, if the IRB officer is away for more than 1 month, we suggest for:-</p> <p>(a) IRB to set procedure for all officers to put out-of-office response to state the period they are away and when they will return and if possible, to provide a colleague or superior alternative contact for urgent matters.</p> <p>(b) IRB to keep tax agent informed of the delay and when is expected feedback so that tax agent will not have to keep calling every week and disrupt the work of other officers who pick up the call</p> <p>(c) The cases under such officers (which exceeds the timeframe) to be re-allocated to other officers.</p>	<p>LHDN akan melaksanakan cadangan tersebut. Walau bagaimanapun, tidak semua pegawai mempunyai alamat email.</p> <p>Bagi surat-surat seperti notis pengenaan kenaikan cukai atau cukai tertunggak adalah <i>computer generated</i>. Oleh itu surat-surat tersebut tidak mempunyai butir-butir lengkap pegawai untuk dihubungi dan surat tersebut ditandatangani oleh Ketua Pengarah Hasil.</p> <p>LHDN mempunyai Piagam Pelanggan (boleh diperolehi daripada Website Hasil) yang mana pegawai-pegawai perlu mematuhi tempoh-tempoh yang ditetapkan untuk pengendalian surat tertentu yang dikemukakan oleh pembayar cukai. Walau bagaimanapun, dalam keadaan tertentu tempoh-tempoh yang telah ditetapkan tidak dapat dipatuhi kerana ketiadaan pegawai dalam tempoh masa yang panjang seperti berkhusus, cuti sakit dan lain-lain. Cawangan akan memantau dan membuat agihan semula kepada pegawai-pegawai lain.</p>

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6	<p><u>Timeframe for Appeal Against Penalties</u></p> <p>Tax agents face delays (sometimes up to 1 year) in obtaining a written response to appeals against penalties such as late payment penalties, under-estimation penalties etc.</p> <p>During this period, tax agents will usually call to follow up or send repeated reminder letters.</p>	<p>We understand that IRB is very bogged down with many such appeals. All the follow up phone calls and repeated reminder letters will also add to IRB's workload / interrupt officers' work.</p> <p>However, if tax agent does not call to follow up, the result of the appeals will take even longer or the appeal was not attended at all based on our experience (the appeal letter may be misplaced for example). In addition, if we do not send repeated reminder letters – the taxpayers will be chasing tax agents for not doing their job to follow up.</p> <p>We hope to find a win-win solution for both tax agent and IRB to reduce the timeframe to attend to appeal against penalties.</p>	<p>We propose the following in order to reduce the timeframe for appeals:-</p> <ol style="list-style-type: none"> 1. The department or person in charge of recording and distributing appeal letters can confirm receipt of the appeal either by letter, email or phone call to tax agent. The contact of the IRB officer in charge of the appeal can also be provided. This will avoid tax agent calling up to confirm receipt of their appeal and IRB officer have to search for the file or letter to check if the appeal has been received or not. 2. Some appeals are very straight-forward – such as late payment of balance of tax which are only credited by bank the day after due date. This can be easily proven via bank in slip. For straight-forward cases (refer to LHDNM Guidelines GPHDN 3/2008 for situations where remission of penalties may be considered), perhaps IRB can consider reducing the level of approval (for eg. no need for Pengarah Cawangan to approve such appeal) in order to expedite the appeal review process. 3. Suggest for IRB to set reasonable time frame as a Guide for IRB officers to follow. If these time frame can also be shared with tax agents just like how the time frame for tax audits are shared in the Tax Audit Framework, it would greatly assist tax agents to have an idea of how long it takes for their appeal to be processed. Such time frame can also be shared with taxpayers so that taxpayers won't chase tax agents to constantly follow up with IRB. This will also prevent tax agent from calling up IRB numerous times before the agreed time frame to follow up for results of appeal and disrupt IRB's work. 	<p>LHDN took note of the proposals and will improve on the procedures.</p> <p>LHDN informed that at Branch or State level, they have the authority to make a decision for penalties under Section 112 (late filing) except for waiving of tax, Section 103 (late payment of tax) and Section 107C (late payment of instalments and under-estimation). However, a decision regarding Section 113 penalties (incorrect return) can only be made by Ketua Pengarah based on recommendation by LHDN Branches, so a decision on the appeal against Section 113 penalties will take a longer time. LHDN Branches also agreed to update tax agents / taxpayers if such appeals have been forwarded to HQ.</p> <p>Please refer to reply in Item #5 pertaining to acknowledgement of receipt of correspondences. In addition, the Client Charter also states that all appeals/objections other than Form Q will be resolved within 60 days provided that complete information is received.</p> <p>Pengarah Negeri and both Pengarah Cawangan also informed that tax agents can email a reminder (but not original appeal) to the respective department / officer and cc the appeal (excluding supporting documents) to them if any such appeals are not resolved within 75 days.</p>

APPENDIX A - ISSUES CONCLUDED DURING DIALOGUE WITH IRB PENANG – 17 DEC 2015

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS	CONCLUSION / LHDN'S COMMENTS
7	<p><u>Late Receipt of IRB's Letter</u></p> <p>Tax agents sometimes will receive IRB's letters later than the date stated on the letter such as:-</p> <ul style="list-style-type: none"> - Form J/JA (appeal/pay within 30 days) - Desk audit information request (submit docs within 21 days) - Notice of late payment penalty, notice of under-estimation penalty etc (pay within 14 days) <p>The late receipt ranges from 1 day to more than 15 days from our experience.</p>	<p>All these letters contained a deadline for taxpayers to take action. Late receipt of such letters will cause the following difficulties:-</p> <ul style="list-style-type: none"> - Tax agent will have to incur unnecessary time to call or write in for extension of time and IRB also have to incur unnecessary time to attend to such requests - Taxpayer may be late in making payment and may be subject to late payment penalties and have to incur additional work to appeal against such penalty. IRB also have to incur unnecessary time to review such appeals. - Taxpayers are unhappy with tax agent for sending the letters late to them and make them rush to compile documents/make payment etc. Then after tax agent explained that the letters are received late, taxpayers does not have a good impression of IRB. 	<p>We propose for IRB to review your mailing procedures; a few suggestions as follows:-</p> <ol style="list-style-type: none"> 1. To make it a procedure to post-date certain standard notices by say 5 working days. We believe no harm in giving taxpayers a few extra days if these letters are received early 2. To set procedures for all letters to be physically delivered to your mailing department within 1-2 days from date of post-dated letter. And all letters to be posted by mailing department say fixed at twice a week. 3. For urgent letters such as Form J/JA:- <ul style="list-style-type: none"> - Resulting from tax audit: The letter of conclusion of field audit normally state that Form JA will be issued – if possible, to state the date of Form JA so that tax agent is aware of the date of Form JA. Otherwise, tax agent will have to call up constantly to check when/whether Form JA has been issued - Suggest for a copy of the Form JA to be emailed or faxed to tax agent in case of postal delay 	<p>LHDN confirmed that it has been their practice all these while to post-date correspondences where such letters are issued by officers. However, most of the letters which are received late relates to notification of increased tax payable or outstanding taxes and these letters are generated and sent directly by HQ (even though the letterhead states Penang/BM Branch), therefore it is not within the control of Penang and BM Branch. LHDN suggest that CTIM bring up this issue at HQ level.</p> <p>Notwithstanding the above, Pengarah Negeri and Pengarah Cawangan took note of CTIM proposals and will review the mailing procedures in order to further reduce late receipts of correspondences.</p> <p>Pengarah Negeri and Pengarah Cawangan has also agreed to inform all officers to email or fax urgent correspondences to tax agents prior to sending them out by post. It has been the procedure all these while, just that maybe not all officers are following the procedures.</p>

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NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS	CONCLUSION / LHDN'S COMMENTS
8	<p><u>Deadline for Filing of Form Q</u></p> <p>Under section 99(1), a person aggrieved by an assessment made in respect of him may appeal against the assessment within thirty days after the service of the notice of assessment a written notice of appeal in the prescribed form</p>	<p>In practice, letters/notice of assessments is usually received by taxpayers 1 week or even 2 weeks later. When would be the deadline for the submission of Form Q in the following scenario? "Notice of Additional Assessment (Form JA) dated 1 October 2015 but received by tax payer on 15 October 2015."</p>	<p>We seek confirmation whether the time frame or the due date to submit Form Q would be:-</p> <p>(i) on or before 15 November 2015 (30 days from the date of receipt of Form JA) or</p> <p>(ii) on or before 31 October 2015 (30 days from the date stated in Form JA)</p> <p>Section 99 (1) mentioned that appeal is to be made within 30 days after the <u>service</u> of the notice of assessment; it did not mention within 30 days from the date of the notice of assessment. Therefore, referring to Item 4 Page 8 of the DESIRE Meeting Minutes held on 7 April 2015, we propose that the due date should be (i) above if it can be proven that the Form J/JA is received late. The ways to prove will be as stated in the Meeting Minutes. Please also refer to the Minutes of Dialogue with IRB Johor Branch on 25 March 2015 Item 20 which confirmed that the 30 days period starts from the date of receipt of Form J/JA if this date can be proven.</p> <p>In addition, if the 30th day falls on a Saturday or Sunday, the last day for appeal will fall on the following Monday as agreed by IRB Johor Branch. Will IRB Penang and BM Branch also agree to this stand?</p>	<p>LHDN Penang and Bukit Mertajam Branch confirmed that they will agree and follow the decisions on any matters which are made in any DESIRE meetings.</p> <p>LHDN also pointed out Section 145 of the Act mentioned that a notice which is sent by post shall be deemed to be served on the person on the next day on which the notice would have been received in the ordinary course of post (interpreted as the day after the date of the notice). Therefore, the due date to submit Form Q in the given example would be within 30 days from 2 October 2015 (ie. 1 November 2015) unless it can be proven that the Form J/JA is received late in accordance with the DESIRE Meeting Minutes. In this case, the due date for the Form Q falls on 14 November 2015.</p> <p>Item 4 Page 8 of the DESIRE Meeting Minutes held on 7 April 2015 referred to time frame required to reply letters issued by audit officers and not to Form Q.</p>

APPENDIX A - ISSUES CONCLUDED DURING DIALOGUE WITH IRB PENANG – 17 DEC 2015

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS	CONCLUSION / LHDN'S COMMENTS
8			<p>Similarly, if the 30th day falls on a Public Holiday will IRB agree that the last day for appeal falls on the following working day? If the Public Holiday falls on a Friday, then the last day should be on the following Monday.</p>	<p>'Days' seperti yang terkandung dalam subseksyen 145 (2) ACP 1967 adalah merujuk kepada hari bekerja dan cuti. Mengikut peruntukan tersebut notis di anggap telah diserahkan sehari selepas notis dikeluarkan dan tempoh 30 hari untuk mengemukakan Borang Q bermula dari tarikh tersebut. Dalam keadaan pembayar cukai mempunyai tarikh selain daripada tarikh notis dianggap diserahkan mengikut peruntukan undang-undang, adalah menjadi tanggungjawab pembayar cukai untuk membuktikan tarikh berkenaan adalah tarikh notis diserahkan.</p> <p>Bagi maksud pengiraan 30 hari untuk penerimaan Borang Q, ianya termasuk hari cuti. Sebagai contoh sekiranya Borang Q telah melangkaui had masa tempoh penerimaan (32 hari pada hari Isnin), Borang Q dianggap dikembalikan di luar tempoh yang dibenarkan. Rayuan hendaklah dikemukakan dengan alasan yang munasabah di atas kelewatan tersebut. Pembayar Cukai dinasihatkan merancang pengemukakan Borang Q dan tidak melengah-melenghakkannya hingga ke saat terakhir.</p>

APPENDIX A - ISSUES CONCLUDED DURING DIALOGUE WITH IRB PENANG – 17 DEC 2015

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS	CONCLUSION / LHDN'S COMMENTS
9	<p><u>Application for Tax Clearance</u></p> <p>There are some cases where IRB insist for the companies seeking tax clearance to submit audited report for the final YA.</p>	<p>Normally secretarial firms try to minimize costs for companies which intend to close down by only requiring the accounts of these companies to be audited ONLY if the management accounts are not accepted by SSM during strike-off application.</p> <p>As some of the companies are insolvent or ceased operations due to financial difficulties, the requirement for their accounts to be audited will be a burden to taxpayer to incur more cost for audit fees.</p>	<p>We propose for IRB to accept management accounts declared as true and accurate as signed by directors for the final YA tax returns without the need for these accounts to be audited. If SSM is able to accept management accounts for the year of cessation of business, we hope that IRB can also follow the same.</p> <p>In the event that IRB is not comfortable to issue tax clearance to the companies (on a case by case basis), IRB may request for source documents to be delivered to IRB's office for a tax audit.</p>	<p>Agreed by LHDN to accept management accounts or Form 75 for liquidation cases.</p> <p>The incident where LHDN officer insist for audited accounts is an isolated case.</p>

APPENDIX B - ISSUES TO BE RAISED TO LHDN HQ

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS
1	<p><u>Approved Institutions Under Section 44(6)</u></p> <p>Currently we need to verify from the list of approved institutions from LHDN's website in order to confirm whether the tax exempt donation receipt is valid.</p>	<p>The name of the approved institution will be removed from the listing when the expected donated amount as stated in the application for approval under Section 44(6) is exceeded.</p> <p>Tax agents face problems to confirm whether the donation receipt is valid or not. By the time the tax computation is prepared, it may be 6 to 12 months from the date of the receipt and by then, the name of the institution may have been removed.</p>	<p>We propose for LHDN to keep a separate listing of approved institutions removed from the listing together with the effective date of withdrawal.</p> <p>In this case, the donation receipt is valid if it is dated before the effective date of withdrawal.</p>
2	<p><u>Late Receipt of IRB's Letter</u></p> <p>Tax agents sometimes will receive auto-generated notifications such as penalties or outstanding taxes which are generated and sent directly by HQ.</p> <p>The late receipt ranges from 1 day to more than 15 days from our experience.</p>	<p>All these letters contained a deadline for taxpayers to take action. Late receipt of such letters will cause the following difficulties:-</p> <ul style="list-style-type: none"> - Tax agent will have to incur unnecessary time to call or write in for extension of time and IRB also have to incur unnecessary time to attend to such requests - Taxpayer may be late in making payment and may be subject to late payment penalties and have to incur additional work to appeal against such penalty. IRB also have to incur unnecessary time to review such appeals. - Taxpayers are unhappy with tax agent for sending the letters late to them and make them rush to compile documents/make payment etc. Then after tax agent explained that the letters are received late, taxpayers does not have a good impression of IRB. 	<p>We propose for LHDN HQ to review your mailing procedures; a few suggestions as follows:-</p> <ol style="list-style-type: none"> 1. To make it a procedure to post-date such auto generated letters by say 5 working days. We believe no harm in giving taxpayers a few extra days if these letters are received early. 2. To set procedures for all letters to be physically delivered to your mailing department within 1-2 days from date of post-dated letter. And all letters to be posted by mailing department say fixed at twice a week.

APPENDIX B - ISSUES TO BE RAISED TO LHDN HQ

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS
3	<p><u>Companies Trading in Properties vs RPGT</u></p> <p>In recent years, it is common for companies to acquire properties either for capital appreciation or rental income. At point of acquisition, it may not be known whether the properties are for long term investment or not, especially for SME. For example, a Company will purchase a few properties over time for investment with hope to rent it out. It may not be able to find a tenant and subsequently when buyers' offers to buy at a good price, some of the properties will be sold over the years.</p>	<p>Nowadays we understand that IRB will seek to tax sales of properties under income tax instead of RPGT if a number of properties are sold over the years. Taxpayers will have to defend their position based on Badges of Trade.</p> <p>Tax agent faces difficulties:-</p> <ol style="list-style-type: none"> 1. To determine when a Company will be considered as trading in properties because no guidelines are available. 2. For example – Year 1 sells 1st property, then Year 4 2nd property and Year 7 3rd property. We may not consider the sales of the first 2 properties as a trading business but when the 3rd property is sold – the Company may be considered as trading in properties. Will IRB view the trading business starting in Year 6 or go back to Year 1 (what if Year 1 is already time-barred)? 3. Once it is determined that the Company is trading in properties and if IRB view the trading business started in earlier YA based on #2, can the tax agent go back to voluntarily revise prior year's tax returns to subject the gains to income tax and the revision can be considered as technical adjustments without any penalties if the revision is not a result of tax audit? 	<ol style="list-style-type: none"> 1. We suggest for HQ to issue a Public Rulings on trading in properties vs RPGT to provide clarity to both LHDN officers and tax agents on whether to subject a Company to trading in properties or not during a tax audit. This will also ensure that the tax returns or voluntary revised returns can be correctly submitted. This will reduce IRB's workload during a tax audit as tax audits are meant to assist taxpayer to comply with tax requirements and not as an exercise to intentionally 'catch mistakes' and penalize good taxpayers. 2. We seek IRB's confirmation that penalty under Section 113 for incorrect returns will not be imposed for such voluntary disclosure made in good faith because during earlier YsA, the Company does not fulfill the Badges of Trade yet. 3. We suggest no revision of tax returns relating to disposal of properties in time barred years. For non-time barred years, we hope that the Public Rulings will provide more clarity on LHDN's stand; whether to revise tax returns (without penalty) or not. 4. Notwithstanding the above, we propose for LHDN policy makers to streamline and simplify income tax vs RPGT laws in the next Budget to tax all disposals of real properties by corporate bodies under income tax at a pre-determined flat rate which may fluctuates depending on holding period of the property. This will avoid all the issues arising from RPGT vs Income Tax for relating to real properties, which comprised of the majority of disputes that went to Court.

APPENDIX B - ISSUES TO BE RAISED TO LHDN HQ

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS
4	<p><u>Section 99 Applicability to Form J Issued under Section 90(3)</u></p> <p>The application of Section 99 of the Income Tax Act, 1967 on best judgment assessment (Form J) made under Section 90(3)</p> <p>Under Section 99, the taxpayer would need to file Form Q and state detailed reasons / grounds of appeal if want to appeal against Form J. For cases where assessments are raised under Section 90(3), the reason / ground is obvious i.e. the taxpayer has failed to furnish its tax return.</p> <p>With the introduction of Section 77A (4), returns furnished must be based on accounts audited. With that, we can anticipate that taxpayers who have not completed the audit of their accounts would not be submitting their returns.</p>	<p>At the point where Form Q's filing date is due but the accounts have not been audited, what reason the taxpayer can give to demonstrate that he/she is aggrieved by the assessment made? According to Paragraph 4.3 (b) of Public Rulings 7-2015, procedures under Section 99 of the Act also apply to Form J issued under Section 90(3).</p> <p>Does that mean, all such instances would need to apply for an extension of time? A letter will do or is it compulsory to use Form N?</p> <p>Although an application can be made for extension of time through Form N, similarly, reasons and grounds for application is also required. Is unavailability of audited accounts sufficient reason / ground?</p> <p>The purpose of our appeal is to ensure that in future, when the audited accounts is available, taxpayer still have a right to submit tax returns and pay taxes (with penalties) based on actual accounts regardless of whether the actual tax liability is more or lesser than Form J under Section 90 (3).</p>	<ol style="list-style-type: none"> 1. We seek confirmation from LHDN to exclude appeal against Form J raised under Section 90(3) from Section 99. This means that no need for taxpayer to submit Form Q to appeal against the Form J because such Form Q without finalized audited accounts or tax returns will be rejected anyhow. This will reduce administrative workload for LHDN officers to review and reject the Form Q. 2. We propose instead for tax agent to write a normal objection letter within 30 days stating that we object against the Form J issued under Section 90(3) and we appeal for IRB to review the tax returns which will be submitted when the audited accounts are available and will issue a Form JA or JR as necessary. The letter shall also state the reason why the audited accounts are not available on time or why the tax returns are not submitted on time and to include the proposed timeline to submit the tax returns, if possible. We seek IRB's confirmation on our proposal. 3. We also seek IRB's confirmation that as long as tax agent can prove that the objection letter is delivered to IRB (eg. courier receipt or IRB's acknowledgement stamp) within 30 days from date of Form J, IRB will accept the submitted tax returns in future and will issue a Form JA/JR without the need to submit a Form N or Form Q at all.

APPENDIX B - ISSUES TO BE RAISED TO LHDN HQ

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS
5	<p><u>Incorrect Particulars in Form e-C</u></p> <p>Proposed new Section 120(1)(h) of the Income Tax Act, 1967. We raised this issue in our dialogue because the implementation of this new proposal will be conducted by the Assessment Branch in future.</p> <p>As tax agent, we try our best to ensure tax returns are correctly submitted and usually our focus is to ensure that the tax liability is correctly computed. Other particulars in Form C which does not impact tax liability or unabsorbed balances may contain typo errors or careless mistakes sometimes. It will greatly assist tax agents to put more focus on areas which IRB considered as not acceptable to have errors. Due to the volume of our work especially during peak period, we hope that IRB can be lenient on areas which there is no tax impact or no impact to IRB's data collection such as typo errors in directors' name for eg.</p>	<ol style="list-style-type: none"> Under what circumstances a person would be regarded as having failed to furnish correct particulars? <ul style="list-style-type: none"> Missed out particulars such as company registration number, new director, date of commencement of operations etc – particulars which are not mandatory (if mandatory we are unable to proceed with the e-filing) Typo errors due to careless mistakes such as wrong company registration number (one of the digit typed wrongly), director's salary typed in the box under wrong director Wrongly complete the date of incorporation as the date of commencement of operation Leaving an item/box blank because it is not applicable <p>e.g. Left cells F2(a) and F2(b) of the Form C is left blank as it is not applicable because the Company does not have any pioneer losses</p> <ul style="list-style-type: none"> Wrong classification of data in Part L of the Form C <p>e.g. professional fees classified under "Contract payments" instead of "Professional, technical, management and legal fees"</p> What excuse would be regarded as "reasonable"? 	<ol style="list-style-type: none"> We propose for LHDN to issue a Public Ruling to provide clarify on what constitute acceptable errors vs errors which will be compounded under Section 120 (1) (h) taking into account our proposals below. We propose that the following errors to be excluded from Section 120 (1)(h) - careless mistakes such as typo or missing information or not updated information especially information which can be obtained from SSM or IRB and which does not impact the tax liability or data collection for example:- <ul style="list-style-type: none"> Company registration number Employer's number Accounting period Registered address Business address Directors' particulars Major shareholders' particulars Bank account Exempt account Foreign equity in comparison with paid-up capital (%) We propose for IRB to identify which item/boxes in the tax returns which is mandatory to be correct (not even careless mistakes, missing information or not updated information) and share the list with tax agents and tax payers. Any errors in these items/boxes will be subject to penalty under the new Section 120(1)(h). We propose for IRB to provide specific examples and situations where the excuse for providing incorrect particulars can be regarded as "reasonable" or "unreasonable".

APPENDIX B - ISSUES TO BE RAISED TO LHDN HQ

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS
6	<p><u>Leniency on Penalty for Late Payment of Instalments</u></p> <p>Sometimes, taxpayers unintentionally paid one or two monthly instalments late due to reasons such as change of accounts clerk, manager hospitalized, overlook new instalment scheme etc.</p> <p>Recently, IRB has been sending reminder letters for late payment of monthly instalments and some even call up tax agents or taxpayers directly to remind them and we would like to thank IRB for that.</p>	<p>Although unintentional, penalties for late payment of instalments are usually imposed.</p> <p>We hope for leniency from IRB Collections Unit in imposing such penalties or at least when attending to appeal for waiver of such penalties – please consider if our suggestion is fair and reasonable if the taxpayers have good faith and intention to make up for the lateness.</p>	<p>We propose the following for those taxpayers who realized their mistake in late payment of instalment scheme and would like to proactively take action to make up for the lateness and avoid penalty if possible.</p> <p>We propose for LHDN to consider not to impose late payment penalties if taxpayer can make up/pay back for the number of days of late payment by paying their future instalments earlier than due date. For such situation, LHDN will not “lose out” at all.</p> <p>For example – September 2015 instalment of RM10,000 was paid on 30 September instead of 15 September (late 15 days). For October and November 2015 instalments, taxpayer paid both instalments on 10 October 2015 (Oct – early by 5 days; Nov – early by 35 days). By doing so, the taxpayer demonstrate good faith to make up for the late payment of September 2015 instalments.</p> <p>We seek LHDN’s confirmation whether our proposal will be accepted, provided that the taxpayer cannot pay one month late, one month early etc at their whim and fancy (“suka-suka”). If accepted – at least we can inform taxpayer who really paid instalments late in good faith that they still have a chance to avoid late payment penalties. We believe that penalties are meant to deter taxpayers from intentionally not comply with law but not to be strictly implemented for ‘good faith’ cases.</p> <p>If our proposal is accepted, we suggest for LHDN to provide for such remission in Operational Guideline GPHDN 3-2008.</p>

APPENDIX B - ISSUES TO BE RAISED TO LHDN HQ

NO.	BACKGROUND	ISSUES / PROBLEMS	PROPOSED RECOMMENDATION / SOLUTIONS
7	<u>Transfer Pricing</u> Recent focus on transfer pricing by IRB	Most SME taxpayers are unable to afford to pay for proper TP documentation and most of their SME tax agents are not familiar or experienced with TP work. Some tax agents have not even seen a complete TP documentation before. SME taxpayers may also request for samples to understand what they are required to prepare, with hopes of saving cost by preparing themselves.	We propose whether LHDN can assist SME by providing standard templates and sample complete TP documentation as a framework.
8	<u>Completion of Form e-C</u> “Not Applicable” items /boxes in return form (Form e-C)	For items/boxes in Form e-C which are not applicable to taxpayers, do they leave it blank or should it be completed with a “zero”? For eg. A company does not have any pioneer losses - so do they leave box F2(a) and F2(b) of the Form e-C blank or should it be completed with a “zero”?	We propose for LHDN to accept either one of the following methods as long as the e-filing program allows tax agent to proceed to the next page because different tax agents may have different methods. If restricted to just one method – tax agents will have to incur unnecessary time to change their procedures and review strictly to make sure the standard is being followed even though there is no tax impact:- <ul style="list-style-type: none"> (a) Insert “-“ (dash/hyphen) (b) Insert o (zero) (c) Leave blank <p>So this means that in a Form e-C, for “Not Applicable” items/boxes, some box can be left blank, some o, some -.</p>

APPENDIX C: MESSAGE FROM LHDN TO TAX PRACTITIONERS

1. Correct Completion of Tax Return Forms

LHDN wish to remind tax practitioners to correctly complete the tax return forms by not omitting information such as related party transactions amount and amounts owing to/from directors. Otherwise, LHDN has a right to reject the tax return on the basis that it is considered as incomplete return which may be subject to penalty under Section 112 for late filing.

2. Proper Records of GST

LHDN request for tax practitioners to remind their clients (tax payers) to keep proper records of all GST input tax which is charged out as expenses in the Profit and Loss accounts. Taxpayers will have to support a tax deduction for such GST expense; to support that the tax payer is not eligible claim back from Customs.

3. Emailing Attachments to LHDN

LHDN request for co-operation from tax practitioners to limit their email attachments (to all LHDN officers) to less than 2MB in size. Otherwise, it will take a long time to download the attachments. If there is a high volume of documents to be submitted to LHDN, it is advisable to make copies and submit them directly to LHDN office.

4. E-Filing for Employers Return (Form E) and Tax Estimates (Form CP204/CP204A)

LHDN wish to remind tax practitioners that manually submitted Form E and CP204 / CP204A is no longer accepted as announced in 2016 Budget from the year of assessment 2016 onwards. Therefore, such Forms must be submitted via e-filing facilities available from LHDN's website.

5. Professional Conduct of Tax Agents

LHDN highlighted that some tax agents are un-cooperative during a tax audit and may 'ganggu' the audit officer. For example, by refusing to furnish documents or answer questions. LHDN would like to request for all tax practitioners to conduct themselves professionally when dealing with LHDN officers. In addition, CTIM has informed LHDN that LHDN is able to make a report to CTIM HQ if they feel that the behaviour of any tax practitioner is not professional. CTIM HQ will investigate this matter if the tax practitioner is a member of CTIM.

6. Contact Details to be Stated in All Correspondences to LHDN

LHDN highlighted that sometimes they receive appeals written or printed on blank A4 paper without any letterhead. Such appeal letters also do not state the contact details such as phone number or email of the sender. This makes it difficult for LHDN to contact the tax agent to request for additional information or clarifications. LHDN request for co-operation from tax practitioners to ensure that the contact number or email of the person in charge is stated in all correspondences to LHDN.

7. Notification of Change of Tax Agents: New Appointments and Terminations

Lastly, LHDN seek tax practitioners co-operation to keep them informed by letter addressed to the Branch or email to Customer Care Officers of the relevant Branch if there is a change of tax agents for taxpayers:-

- (a) New clients transferred from other tax agents: To inform LHDN of the appointment, enclosing the appointment letter stating effective date of appointment
- (b) Termination of existing clients: To inform LHDN of termination stating the latest correspondence address, contact person name and phone number (if possible) for easy reference