



KETUA PEGAWAI EKSEKUTIF/KETUA PENGARAH HASIL DALAM NEGERI
(CHIEF EXECUTIVE OFFICER/DIRECTOR GENERAL OF INLAND REVENUE)
IBU PEJABAT LEMBAGA HASIL DALAM NEGERI MALAYSIA
MENARA HASIL, ARAS 18
PERSIARAN RIMBA PERMAI
CYBER 8
63000 CYBERJAYA
SELANGOR

Telefon : 03-83138888
Faks : 03-83137801
: 03-83137802
: 03-83137803
: 03-83137804
: 03-83137805
: 03-83137806

Laman Web: <http://www.hasil.gov.my>

Ruj. Kami: LHDN.01/32.1/193/31/1

Tarikh: 2/Julai 2016

Pengarah Eksekutif
Chartered Tax Institute Of Malaysia (CTIM),
Unit B-13-2, Block B, 13th Floor, Megan Avenue II,
No. 12, Jalan Yap Kwan Seng,
50450 Kuala Lumpur.

Pengarah Eksekutif,
Institut Akauntan Malaysia (MIA),
Dewan Akauntan No. 2,
Jalan Tun Sambanthan 3, Brickfields,
50470 Kuala Lumpur.

Pengarah Eksekutif,
Institut Akauntan Awam Bertauliah Malaysia (MICPA),
15, Jalan Medan Tuanku,
50300 Kuala Lumpur.

Presiden,
Persatuan Akauntan Percukaian Malaysia (MATA),
Pejabat Sekretariat MATA,
27-1, Blok 1D, Jalan Wangsa Delima 12, Wangsa Link, Pusat Bandar Wangsa Maju,
53300 Kuala Lumpur.

Presiden,
Persatuan Institut Setiausaha dan Pentadbir Berkanun Syarikat (MAICSA),
No. 57, The Boulevard, Mid Valley City,
Lingkaran Syed Putra,
59200 Kuala Lumpur.

Presiden,
Persatuan Setiausaha Syarikat Malaysia (MACS),
No. 23A, 1st Floor,
Jalan SS 24/11, Taman Megah,
47301 Petaling Jaya, Selangor.

Presiden,
Institute of Cooperative and Management Accountants (ICMA)
No. 14M, Jalan Zirkon E7, Seksyen 7
40000 Shah Alam
Selangor

Bekas Pegawai Hasil
Unit 19A-23-5, Business Suite, OUA Centre
19 Jalan Pinang,
50450 Kuala Lumpur
CPA Australia
Suite 10.01, Level 10, The Gardens South Tower, Mid Valley City
Lingkar Syed Putra, 59200 Kuala Lumpur, Malaysia

Tuan/Puan,

**MINIT MESYUARAT WORKING GROUP LHDNM DENGAN PERSATUAN
AKAUNTAN – DIALOG DESIRE BIL. 1/2016**

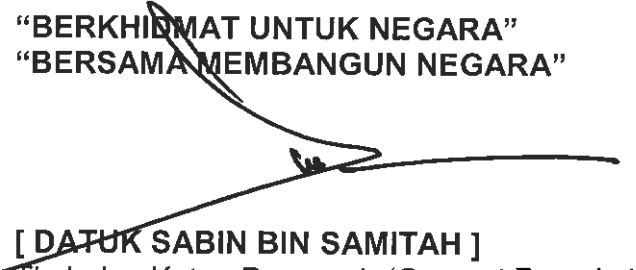
Saya dengan hormatnya merujuk kepada perkara di atas.

2. Lanjutan daripada Mesyuarat Working Group Lembaga Hasil Dalam Negeri Malaysia (LHDNM) Dengan Persatuan Akauntan – Dialog DESIRE Bil.1/2016 pada 19 Mei 2016, bersama ini dikemukakan minit tersebut untuk perhatian dan tindakan selanjutnya oleh pihak tuan.

3. Kesediaan Persatuan memberikan kerjasama untuk membuat hebahan perkara ini amatlah dihargai dan didahului dengan ucapan terima kasih.

Sekian, terima kasih.

“BERKHIDMAT UNTUK NEGARA”
“BERSAMA MEMBANGUN NEGARA”



[DATUK SABIN BIN SAMITAH]

Timbalan Ketua Pengarah (Operasi Percukaian)
b.p. Ketua Pegawai Eksekutif / Ketua Pengarah Hasil Dalam Negeri
Lembaga hasil Dalam Negeri Malaysia

**MINIT MESYUARAT *WORKING GROUP* LHDNM BERSAMA PERSATUAN
AKAUNTAN DAN PENGAMAL PERCUKAIAN-
DIALOG DESIRE BIL. 1/2016**

Tarikh : **19 Mei 2016 (Khamis)**
Masa : **9:30 pagi**
Tempat : **Bilik Mesyuarat Bendahara, Aras 1, Menara Hasil, Cyberjaya.**

Kehadiran:

1. WAKIL LHNDM		
1.	YBhg. Datuk Sabin Bin Samitah	Timbalan Ketua Pengarah (Operasi Percukaian) (Pengerusi)
2.	En. Abdul Manap Bin Dim	Pengarah Jabatan Pematuhan Cukai (JPC)
3.	Pn. Nor'aini Ja'afar	Pengarah Jabatan Dasar Percukaian(JDP)
4.	En. Mohd Jaafar Bin Embong	Pengarah Jabatan Pungutan Hasil (JPH)
5.	Cik Marina Aziz	Pengarah Jabatan Khidmat Korporat (JKK)
6.	En Mohammed Noor Ahmad	Pengarah Jabatan Percukaian Antarabangsa (JPCA)
7.	En. Abu Tariq Jamaluddin	Pengarah Jabatan Resolusi & Pertikaian (JRP)
8.	Pn. Hazlina Hussain	Pengarah Jabatan Sekretariat Lembaga dan Advisori Perundangan (JSLAP)
9.	Pn. Mardziah Musir	Pengarah Bahagian Pemantauan dan Perancangan Operasi (BPPO JOC)
10.	En. Sohaimi Sabri	Pengarah Bahagian Operasi Dasar (BDO JOC)
11.	Pn. Halimah Ismail	Wakil Pengarah Cawangan Cukai Multinasional (CCM)
12.	YM Raja Kamarul Zaman bin Raja Musa	Wakil Pengarah Jabatan Sivil & Pendakwaan (JSP)
13.	Pn. Umi Kalsom Harun	Pengarah Bahagian Dasar Pungutan (BDP JPH)
14.	En. Rushdan Abdullah	Wakil Pengarah Jabatan Siasatan (JS)

15.	Cik Norhayati Mat Kassim	Pengarah Bahagian Pemodenan Sistem BPS JOC
16.	Pn. Haifa Amanatul	Penolong Pengarah, JPS
17.	En. Mohamad Nizar Mokhtar	Urus setia Mesyuarat
18.	Pn. Piramanayaki Arunachalam	Urus setia Mesyuarat
2. WAKIL PERSATUAN		
1.	En. Aruljothi Kanagaretnam	Wakil CTIM
2.	Pn. Seah Siew Yun	Wakil CTIM
3.	Pn. Phan Wai Kuan	Wakil CTIM
4.	Pn. Theresa Goh	Wakil CTIM
5.	En. Lim Kok Seng	Wakil CTIM
6.	En. Thong Vee Kean	Wakil CTIM
7.	Pn. Yamuna Supperamaniam	Wakil CTIM
8.	Pn. Woon Yoke Lee	Wakil MICPA
9.	En. Tai Lai Kok	Wakil MICPA
10.	Pn. Ng Chai Yee	Wakil MICPA
11.	Pn. Tan Yu Yin	Wakil MICPA
12.	Pn. Carol Eng	Wakil MIA
13.	En. Sam Soh Siong Hoon	Wakil MIA
14.	Pn. Wong Yok Chin	Wakil MIA
15.	En. Simon Tay Pit Eu	Wakil MIA
16.	Pn. Azlina Zakaria	Wakil MIA
17.	En. Peter Lim Thiam Kee	Wakil MAICSA
18.	En. Ong Whee Tiong	Wakil MAICSA
19.	En. Eric Yong Siew Meng	Wakil MAICSA
20.	En. Lau Haw Chong	Wakil MACS

21.	En. Kok Lee Wing	Wakil MACS
22.	En. Mohd Salimi Ahamad	Wakil MACS
23.	Pn. Fatimah Ariffin	Wakil MATA
24.	Pn. Noor Shamsiah Ahmad	Wakil MATA
25.	Datuk Harpal Singh	Wakil ExREVENUE
26.	Datuk Shamin Ta	Wakil ExREVENUE
27.	En. Surin Segar	Wakil CPA Australia
28.	En. Gabriel Teo	Wakil CPA Australia
29.	Cik Sherry Ooi	Wakil CPA Australia

1. UCAPAN PENDAHULUAN Pengerusi

- 1.1. Pengerusi memulakan sesi dialog dengan menjemput Encik Aruljothi Kanagaretnam, Presiden CTIM sebagai Pengerusi Bersama. Beliau memaklumkan bahawa sesi dialog ini adalah satu kerjasama antara Badan profesional dan LHDNM. Oleh itu, kedua-dua pihak adalah sama taraf dan tidak mahu ianya seolah-olah di dominasi oleh pihak LHDNM.
- 1.2. Pengerusi Bersama mengucapkan terima kasih ke atas jemputan dan berjanji akan memikul tanggungjawab tersebut.
- 1.3. Dialog ini adalah bertujuan untuk menambahbaik sistem penyampaian perkhidmatan LHDNM kepada pembayar cukai dan mewujudkan *tax ecosystem* yang sihat.
- 1.4. Bengkel yang diadakan pada 9 Mei 2016 telah menyelesaikan dan memutuskan isu-isu yang dibangkitkan oleh pihak Badan profesional. Catatan deraf jawapan maklum balas/keputusan ke atas isu-isu tersebut telah diedarkan melalui emel pada 18 Mei 2016 untuk mendapatkan persetujuan daripada ahli bengkel.
- 1.5. Pengerusi Bersama memaklumkan bahawa pihak CTIM dan MIA telah mengemukakan beberapa isu-isu baharu pada 25 April 2016.
- 1.6. Pengerusi meminta wakil-wakil daripada badan profesional dan LHDNM untuk memperkenalkan diri dan jawatan masing-masing.
- 1.7. Peranan yang dimainkan oleh badan profesional adalah amat penting kepada kerajaan, terutamanya LHDNM kerana mereka mempunyai hubungan yang lebih rapat dengan pembayar cukai yang merupakan pelanggan utama LHDNM. Badan profesional diharap dapat membantu kerajaan dan LHDNM dengan memberikan penerangan kepada pembayar cukai berhubung dengan sistem-sistem percukaian dan perkhidmatan baru yang diperkenalkan sebagai kemudahan kepada pembayar-pembayar cukai.

- 1.8. Pengerusi juga meminta badan profesional agar memandang pengurusan dan pentadbiran percukaian dari sudut perspektif LHDNM juga dan bukan mempunyai pandangan hanya dari sudut pembayar cukai sahaja.
- 1.9. LHDNM sentiasa menyediakan ruang kepada badan profesional untuk membincangkan sebarang isu-isu percukaian yang dibangkitkan dari segi perundangan atau peraturan-peraturan yang baru serta sistem penyampaian perkhidmatan kepada pembayar cukai. Pengerusi berharap melalui dialog seperti ini, kita akan lebih saling memahami masalah yang dihadapi oleh kedua-dua belah pihak demi untuk kepentingan kebaikan kepada pembayar cukai.
- 1.10. Pengerusi juga berharap pihak badan profesional dapat memberi input untuk penambahbaikan sistem percukaian supaya cadangan pindaan ke atas peruntukan undang-undang, penambahbaikan peraturan-peraturan atau proses-proses yang baru yang hendak dilaksanakan oleh LHDNM mendapat kerjasama dan sokongan padu daripada semua pihak.
- 1.11. Pengerusi Bersama memaklumkan bahawa maklum balas awal jawapan secara bertulis berhubung isu-isu DESIRE Bil. 1/2016 telah disediakan dan dihantar kepada badan profesional untuk dibincangkan.

2. PERBINCANGAN ISU-ISU BERBANGKIT

A. CTIM Memorandum on Non-Technical Operational & Compliance Issues for Working Group LHDNM & Professional Bodies Dialogue – DESIRE No. 1/2016

FILING ISSUES

1. Return Form : Form C YA 2015 Part A12 – Dividends

The Form C for YA 2015 has removed the row for “dividend income” from the total income (Part A34 based on Form C for YA 2014) as we are no longer in the imputation system. However, the row for dividend income is now inserted in Part A12 of the Form C for YA 2015 under “Other Statutory Income”.

Our comments:

We would like to know the reason for inserting the row for dividend income in Part A12 of the Form C for YA 2015 as dividend income is exempted from tax.

Jawapan LHDNM:

‘Dividen’ dimasukkan di Ruang A12 selaras dengan seksyen 4(c) Akta Cukai Pendapatan 1967 kerana terdapat syarikat yang dikenakan cukai atas pendapatan berdasarkan ‘world scope’ dan menerima dividen.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

2. New Items in YA 2015 Form C

i. Part J: Income of preceding year not declared

Additional fields on the “Type of Income” and “Year of Assessment (YA)” are required to be filled in Part J of the YA 2015 Form C. However, the relevant worksheet “HK-J” does not provide any field for the information of “Type of Income”.

Our comments:

Part J of the YA 2015 Form C only allows entry of one YA and a box for filling up “Type of Income”. What would be the advice in filling up Part J of the YA 2015 Form C where the preceding year income not declared involve more than one type of income and relate to more than one YA?

For example: Preceding year income not declared are rental income for YA 2013 and commission received for YA 2012.

Jawapan LHDNM:

Sekiranya pembayar cukai mempunyai pendapatan tahun kebelakangan melebihi satu tahun taksiran, surat makluman hendaklah dikemukakan kepada cawangan yang mengendalikan fail.

Cadangan diambil maklum untuk penambahbaikan kepada Bahagian J dan “HK-J”.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

- ii. P18: Total loan to directors and P19: Total loan from directors

Explanations in the Guidebook are “Total loan to these directors as per the sequence in P10” and “Total loan from these directors as per the sequence in P10” respectively.

Our comments:

We noted that P10 is “Other address if P9 does not apply”. Hence, the above explanations should be “Total loan to these directors as per the sequence in P11” and “Total loan from these directors as per the sequence in P11” respectively.

Further, we would like to seek clarification on whether the amount of “Total loan to/from directors” is referring to the “total amount of loans given without taking into account any repayment made during the basis period” or “the outstanding amount as per the Balance Sheet”.

Jawapan LHDNM:

Pindaan telah dibuat pada ruangan P10 dalam Buku Panduan Bahasa Inggeris.

Amaun “Total loan to/from director” merujuk kepada “the outstanding amount as per the Balance Sheet”.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

3. Part R of Form C – Item No. R4 : Transfer Pricing Documentation Prepared

With effect from year of assessment (YA) 2014, the Company is required to give a ‘yes’ or ‘no’ response for the above.

However, the relevance of the above is not clear in the case where the Company is dormant, is an investment holding company or totally does not have any related-party transaction.

Our comments:

We would like to seek confirmation on whether “tick the box” can be left blank.

Jawapan LHDNM:

Sila tandakan “tidak” sekiranya tidak berkenaan seperti yang dinyatakan dalam Buku Panduan.

Pengerusi memberikan penjelasan bahawa “tick the box” tersebut adalah untuk memberikan pengesahan bahawa syarikat sama ada atau tiada menyediakan dokumentasi untuk Pindahan Harga. Sekiranya ia tidak berkenaan, syarikat hanya perlu menandakan ‘tidak’ pada kotak tersebut.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

4. Application of Company e-filing pin number by director

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 LHDNM insists that the directors must be present themselves in order to receive the temporary e-filing pin number 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.

Our comments:

It is proposed that applications on behalf of directors by Licensed Tax Agents be accepted and the temporary pin numbers be issued to Tax Agents directly without having the directors to be present.

Jawapan LHDNM:

Ejen cukai boleh memohon no. PIN bagi pihak pengarah syarikat dengan menyertakan surat kebenaran bertulis menggunakan kepala surat syarikat, salinan pengenalan diri Pengarah Syarikat, Borang CP55B dan salinan Borang 49.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

5. Form C for dormant companies - business code

We understand that the business code is not required to be filled if the column for revenue under Part A is not filled with ‘value’ in the e-Form C for dormant companies.

If the amount of Statutory Business Income under item A1, Part A is filled in with a value, such as zero (“0”), the business code under items A1 and L1 as well as the value under L2 are required to be completed.

We have tested by leaving the 2 columns under Part A and item L1 (even though item L1 is marked with an asterisk (*) as a mandatory field) blank and the e-filing system allowed us to proceed.

Our comments:

We would like to seek confirmation from the LHDNM that where a dormant company left column L1 (which is marked with an asterisk (*) as a mandatory field) blank it will not be penalized for not furnishing the particular under item L1.

Jawapan LHDNM:

Penalti tidak akan dikenakan jika syarikat dorman tidak mengisi Ruangan L.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

6. Revision of tax return prior to YA 2014

In recent cases, tax returns prior to YA 2014 were revised because the accounts had just been finalised and there were changes in the figures.

Where there was a reduction in tax due to the lower figures in the finalised accounts, the LHDNM did not accept the revision on the grounds given that tax returns prior to YA 2014 should have been submitted based on audited accounts and hence the figures should not change.

However, where there was an increase in tax due to the higher figures in the finalised accounts, the LHDNM imposed penalties for late filing and incorrect return.

Our comments:

The above revised tax return which resulted in a reduction in tax should not have been rejected due to the following mitigating factors:-

- The taxpayer had done his duty and acted in good faith by submitting the original tax return on time even though the accounts had not been finalised. Furthermore, the taxpayer paid more taxes as the original tax return was prepared using higher figures.
- The requirement for a tax return to be prepared based on audited accounts was legislated with effect from YA 2014.
- The change in the wording of the declaration in the Form C for YA 2014 compared to the Form C prior to YA 2014, to declare that the tax return has been prepared based on audited accounts, supports the contention that there is no requirement to prepare the tax return prior to YA 2014 based on audited accounts.

We would like to seek clarification on the rationale for rejecting the above revised tax return which resulted in a reduction in tax but accepting the above revised tax return which resulted in an increase in tax.

Jawapan LHDNM:

Peruntukan subseksyen 77A(4), Akta Cukai Pendapatan 1967 (ACP) mengkehendaki pendapatan yang dilaporkan dalam Borang Nyata Cukai Pendapatan (BNCP) berasaskan akaun beraudit berkuatkuasa mulai TT 2014.

Apa-apa pindaan kepada pendapatan/perbelanjaan/elaun yang dilaporkan selepas BNCP dikemukakan wajar diterima dan taksiran dipinda dengan suci hati.

Walau bagaimanapun, memandangkan BNCP yang dikemukakan terdapat perbezaan dari taksiran asal, pegawai audit akan mengambil tindakan audit dan boleh mengeluarkan notis dibawah subseksyen 82(5), ACP 1967 untuk mendapatkan akaun beraudit.

Tambahan daripada perkara yang disebut di atas, Persatuan juga membangkitkan isu-isu berikut:-

- i. isu penalti dikenakan di bawah S.112 ke atas taksiran tambahan;
- ii. kelewatan LHDNM mengeluarkan taksiran kurangan;
- iii. kes pindaan BNCP yang mengakibatkan pengurangan cukai yang tidak diterima oleh LHDNM; dan,
- iv. notis tidak kena cukai di bawah S.97A.

Ini adalah untuk kes-kes bagi tahun taksiran 2013 kebelakang dan tahun taksiran 2014 seterusnya, di mana syarikat mengemukakan BNCP dengan melaporkan pendapatan tidak berasaskan akaun beraudit terlebih dahulu dan kemudian melaporkan pindaan ke atas pendapatan dan pengiraan cukai yang berasaskan akaun beraudit. Ini mengakibatkan penalti S.112 dikenakan apabila berlaku taksiran tambahan.

LHDNM menjelaskan bahawa BNCP yang dikemukakan perlu berasaskan akaun beraudit di bawah peruntukan subseksyen 77A(4) ini terpakai mulai tahun taksiran 2014.

Pengerusi menjelaskan kelewatan mengeluarkan taksiran kurangan adalah kerana pihak LHDNM perlu mengambil tindakan mengkaji terlebih untuk mengenalpasti punca pengurangan pendapatan yang dilaporkan.

Pihak persatuan memohon pertimbangan yang saksama daripada LHDNM berhubung penalti yang dikenakan kerana pembayar cukai tidak berniat untuk terkurang lapor dan telah melaporkan pendapatan (walaupun tidak berasaskan akaun beraudit) tepat pada masa yang ditetapkan untuk mengelakkan kelewatan pengemukakan BNCP. LHDNM juga dipohon agar dapat mengeluarkan surat pengesahan kepada pembayar cukai berhubung kelewatan pengeluaran taksiran kurangan.

Pengerusi mencadangkan isu tersebut dibawa untuk perbincangan lanjut dalam **bengkel** yang akan diadakan dalam bulan Jun nanti dan dipersetujui oleh pihak persatuan.

7. Non-resident branch / permanent establishment with income partially subject to withholding tax

Reference is made to Question 2 on page 12 of the LHDNM Minutes of Operation & Technical Dialogue No.1-2014 held on 17 February 2014, where the LHDNM clarified that a non-resident branch / permanent establishment with income partially subject to withholding tax is required to file the Form CP204 with the tax estimate amount for the portion of the income which is not subject to withholding tax.

In respect of the above, the Institute had sought confirmation from the LHDNM that the amount to be completed under Part C2 [*Less: Instalment payments made*] of the Form C would be the aggregate of the tax estimate amount paid under the Form CP204 as well as the amount of the tax withheld under Section 107A. In view that the Form C does not have a field for the withholding tax deducted under Section 107A to be set-off against the total income tax charged in Part B8 of the Form C, the inclusion of the withholding tax amount in Part C2 of the Form C would avoid the automatic computation by the system of the penalty for under-estimation of tax payable under Section 107C(10).

The LHDNM had replied as follows:

“Pihak LHDNM akan meneliti isu yang dinyatakan. Penambahbaikan sistem dan Borang CP204 akan dibuat bagi mengatasi isu tersebut. Dicadangkan pembayar cukai memaklumkan dalam

borang CP204 bagi kes tertakluk di bawah seksyen 107A sama ada sebahagian atau sepenuhnya. Borang CP204 akan ditambah baik.”

Our comments:

The recent revision to the Form CP204 to include a check box on whether the non-resident entity's income is fully subject to withholding tax has not addressed the above-mentioned issue. As such, we would like to request the LHDNM to look into the matter as soon as possible.

Jawapan LHDNM:

Borang CP204 telah dipinda dengan mengadakan *check box* bagi pembayar cukai tidak bermastautin melaporkan pendapatan yang layak sepenuhnya di bawah cukai pegangan.

Pengerusi mencadangkan isu tersebut dibawa untuk perbincangan lanjut dalam **bengkel** yang akan diadakan dalam bulan Jun nanti dan dipersetujui oleh pihak persatuan.

8. Proposal to furnish the Form CP204 by way of electronic submission

Pursuant to the new Subsection 107C(7A) as inserted by the Finance Act 2015, Form CP204 is required to be furnished by way of an electronic submission (i.e. e-Filing) effective from YA 2018. We have received feedback from members that the e-filing system does not have a record of the latest revised tax estimate amount in the Form CP204A for the immediately preceding YA which was submitted manually. As such, the taxpayer is unable to enter a lower estimate of 85% of that revised tax estimate

amount in the Form e-CP204 for the current YA as permitted under Section 107C(3) of the ITA.

Our comments:

We would request that the e-filing system be updated with the latest tax estimate or revised tax estimate of the immediately preceding YA that has been submitted electronically or manually.

Jawapan LHDNM:

Pengemukaan CP204 secara e-Filing telah mengambilkira amaun anggaran pindaan atau amaun anggaran jika tiada amaun anggaran pindaan dikemukakan. Sekiranya maklumat adalah tidak sama pembayar cukai perlu menghubungi terus Pusat Pemprosesan Maklumat.

Pihak persatuan dimaklumkan bahawa mulai tahun 2018, pembayar cukai boleh memasukkan anggaran cukai kurang dari 85% dari pindaan anggaran cukai dalam e-CP204 melalui eFiling.

9. Submitting the Form E through e-filing

We refer to above subject matter on the requirement to submit a Form E through e-filing for YA 2016 with effect from 1 January 2017.

Our member has obtained clarification from the LHDN Bahagian Majikan, Jalan Duta Branch that all employers are required to submit the Form E through e-filing using the following options:-

1. Using the E-Organisasi password to access to the company's e-Form E; or
2. The authorized payroll personnel to access to the company's e-Form E using the password that he uses for his personal income tax filing i.e e-Form BE or e-Form B.

We wish to highlight that from a company's perspective both of the above options are not practical and not possible for implementation.

As you know, information on employees' salaries are highly private and confidential (P&C). To allow access to e-Form E using E-Organisasi is not practical as other personnel that uses E-Organisasi for e.g for e-filing of Form C, CP204/204A will also have access to these highly P&C information since the same password is being used.

Using the individual password of the authorized payroll personnel to have access to the e-Form E is also not practical as it mixes the company's e-filing records with individual's e-filing record. Problems may arise when the payroll personnel resigns from the company where he will still have access to the company's e-filing records. Furthermore, for control and checking purposes, normally data entry in filling up the e-Form E will be done by a clerk while the e-filing will be authorized by an accountant or manager. It is not practical for the manager to allow the clerk to have access to the e-Form E using the manager's personal password.

Our Comments:

We suggest that a separate access to be allowed specifically for e-filing of Form E under Majikan (Employer) page in the LHDN website. This will definitely help companies in maintaining and securing highly P&C information while complying to the e-filing requirements.

Jawapan LHDNM:

Pengarah dinasihatkan untuk menggunakan katalaluan yang berbeza bagi sijil digital individu dan sijil digital organisasi.

Sekiranya berlaku pertukaran pekerja yang mengendalikan Borang E, Pengarah perlu menukar katalaluan sijil digital organisasi.

Pihak persatuan memahami penjelasan lisan dari LHDNM.

10. Submission of tax return based on audited accounts

The entity involved is a Malaysian branch of a USA company. The Branch has already ceased its business operations in March 2015 and the office was officially closed in August 2015. The Notice by Foreign Company of Cessation of Business (Form 90) has been duly submitted to the Companies Commission of Malaysia ("CCM").

Pursuant to Section 77A(4) of the Income Tax Act, 1967, a company must file its income tax return form ("ITRF") based on an audited accounts. However, based on the LHDNM's announcement dated 19 March 2014, a company is able to file its ITRF based on final accounts if there are provisions under the Companies Act 1965 which state that a company need not submit audited accounts to the CCM.

Based on Section 340(1) of the Companies Act, 1965, the Branch is not required to prepare and submit the audited account for financial year ended 31 December 2015 as the deadline to hold annual general meeting falls after the cessation date.

Section 340(1) of the Companies Act, 1965 states that:-

*"If a foreign company ceases to have a place of business or to carry on business in Malaysia, it shall, within seven days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged **its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease**, and the Registrar shall, upon the expiration of twelve months after lodging of the notice, remove the name of that foreign company from the register."*

An application was submitted to the LHDNM to seek concession for the Branch to file its YA 2015 tax return based on the management accounts pursuant to the above facts and thereafter to request for tax clearance. However, LHDNM's officer from Jabatan Dasar Percukaian, informed that the Branch is still required to file its tax return for YA 2015 based on audited accounts unless the Branch is able to obtain a written approval from CCM stating that the Branch is not required to lodge the audited accounts with CCM.

Ambiguity in the LHDNM's requirement has caused the delay in obtaining tax clearance. The additional requirement by the LHDNM (which is not stated in the announcement) to obtain written confirmation from the CCM has resulted in additional complication in obtaining tax clearance.

Our Comments:

LHDNM to clarify, pursuant to its announcement dated 19 March 2014, whether a taxpayer which falls under section 340 of the Companies Act 1965 is still required to submit its ITRF based on audited accounts or such taxpayer are required to obtain written confirmation from the CCM before it can submit its ITRF based on its final account (i.e. not based on audited accounts).

In addition, the LHDNM to clarify if there is any other situations which require similar written confirmation from the CCM.

Jawapan LHDNM:

Memandangkan subseksyen 340(1) Akta Syarikat 1965 memperuntukkan bahawa syarikat asing yang menamatkan perniagaan (ceased business) di Malaysia dan telah mengemukakan Borang 90 kepada SSM, syarikat berkenaan tidak perlu mengemukakan apa-apa dokumen kepada SSM. Maka, pembayar cukai (cawangan syarikat asing/*foreign branch*) boleh memfailkan BNCP bagi TT 2015 berasaskan kepada akaun akhir (final account) yang muktamad (walaupun akaun tidak beraudit).

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

11. The electronic Form E

The electronic Form E, Bahagian A

A5 - bilangan pekerja yang berhenti kerja untuk meninggalkan Malaysia

A6 - telah melaporkan kepada LHDNM (jika A5 berkaitan)

If A5 relates to foreign workers/locals who did not reach the chargeable income threshold, then technically, there is no requirement to notify the LHDNM. But A6 has just 2 options - Ya or Tidak - if this is not completed, we understand that you cannot go to the next page to complete the electronic form E as it is a mandatory field.

Our comments:

We suggest to LHDNM to have a third option – “Not applicable”.

Jawapan LHDNM:

Majikan perlu mengisikan ruangan A5 bagi semua pekerja yang berhenti kerja untuk meninggalkan Malaysia sama ada layak atau tidak dikenakan cukai.

Ruangan A6 adalah berkaitan jika ruangan A5 diisi.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

12. Completion of Form e-C

Reference is made to the “Not Applicable” items /boxes in the 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 example, can a company which does not have any pioneer losses leave box F2(a) and F2(b) of the Form e-C blank or should it be completed with a “zero”?

Our comments:

We propose for LHDNM to accept the following methods for cases such as the above so that the e-filing system allows the tax agent to proceed to the next page because different tax agents may have different methods:-

- (a) Insert “-“ (dash/hyphen)
- (b) Insert 0 (zero)
- (c) Leave blank

Jawapan LHDNM:

Sesuatu ruangan itu boleh diinput dengan nilai 0 (*zero*) atau *blank*. Dash (-) adalah tidak diterima oleh logik sistem LHDNM. Syarikat hanya perlu membiarkan ruangan tersebut *blank* sekiranya item tersebut tidak berkaitan dengan operasi perniagaan syarikat.

Pihak persatuan tiada bantahan dan bersetuju dengan jawapan LHDNM.

PENALTY ISSUES

13. Tax penalty issues arising from change in basis period

The tax agent submitted a Form CP204B to inform the LHDNM of a company’s change of financial year end which had implications on the basis period for YA 2014. Subsequently, the LHDNM determined the basis period for YA 2014 but it was based on the old provisions of Section 21A of the ITA prior to YA 2014. The YA 2014 Form e-C [with basis period determined in accordance with the new provisions of Section 21A (effective from YA 2014) and the Public Ruling No. 8/2014] was filed on time pursuant to Section 77A(2) of the ITA. However, the LHDNM’s system treated it as a late filing and Section 112(3) penalty was imposed.

Our comments:

We would request the LHDNM to look into the above matter to prevent such situations from arising.

Jawapan LHDNM:

Dimaklumkan bahawa sistem telah ditambahbaik pada bulan Jun 2014.

Pihak persatuan tiada bantahan dengan jawapan LHDNM.

14. Penalty for not providing correct particulars

The new Section 120(1)(h) as inserted by the Finance Act 2015 states:-

Any person who without reasonable excuse fails to furnish the correct particulars as required by the Director General under paragraph 77(4)(b) or 77A(3)(b), shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Our comments:

The LHDNM has clarified in its letter dated 19 August 2015 to CTIM that the completion of the date of commencement of operations in the Form C for YA 2015 onwards is not mandatory. In this respect, if the date of commencement of operations was completed in the Form C and subsequently found to be incorrect, would the new Section 120(1)(h) as inserted by the Finance Act 2015 apply in view that the completion of that information in the Form C is not mandatory?

Jawapan LHDNM:

Perenggan 120(1)(h), ACP1967 adalah terpakai kerana maklumat asal yang dikemukakan adalah salah.

LHDNM menjelaskan bahawa ruangan tarikh permulaan operasi perniagaan adalah tidak mandatori dan pembayar cukai mempunyai pilihan untuk mengisinya. Sekiranya maklumat yang diisi di ruangan tersebut adalah salah, maka perenggan 120(1)(h) adalah terpakai.

Pihak persatuan tiada bantahan dan mamahami jawapan LHDNM.

15. Compound fine for under deduction of MTD

Compound fine is imposed for under deduction of MTD, even for RM0.05 or RM0.02 per month. The compound fine is RM200 for such small sum.

Our comments:

We suggest that LHDNM sets a minimum amount that will trigger the compound fine.

Jawapan LHDNM:

Kekurangan sebanyak RM0.05 dan RM0.02 telah menyebabkan Potongan Cukai Bulanan tidak dapat dibukukan ke dalam lejar semua pekerja. Tindakan menghubungi majikan perlu diambil untuk menambah bayaran yang terkurang. Majikan dinasihatkan membuat kiraan yang betul dan jumlah yang tepat apabila membuat bayaran PCB.

LHDNM menjelaskan bahawa amaun yang kecil tersebut berpunca dari perbezaan yang dilaporkan oleh majikan untuk PCB pada Borang CP39 dengan bundaran amaun bayaran yang diremitkan oleh majikan.

Pengerusi mengambil maklum perkara ini dimana pertimbangan yang sewajarnya akan dibuat oleh LHDNM. Untuk sementara waktu, pendirian dan amalan sedia ada masih kekal.

Pihak persatuan mengambil maklum penjelasan jawapan LHDNM.

TAX PAYMENT / REFUND ISSUES

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

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 where 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 at Jalan Duta, KL.

Our comments:

We would like to enquire on the following:-

- i. How would taxpayers (where the Assessment Branch has been transferred to the Multinational Tax Branch) be expected to know that the collection matters are to be addressed to the Large Taxpayer Branch at Jalan Duta, KL as this is not where the taxpayer's Assessment Branch is located?**

Jawapan LHDNM:

Taxpayers whose assessment branch has been transferred to Cawangan Cukai Multinasional will be notified of the transfer via letter addressed directly to them or their tax agents. Any enquiries pertaining to collection matters submitted to Cawangan Cukai Multinasional will be redirected to respective Cawangan Pungutan and tax payer will be duly informed. We take note of your concern and tax payers will be notify of the location of Cawangan Pungutan that handle their tax matters.

- ii. Can the LHDNM 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?**

Jawapan LHDNM:

LHDNM confirmed that refund and offset applications should be submitted and processed by Cawangan Pembayar Cukai Besar or their original Collection Branches for tax payers whose Assessment branch is the Cawangan Cukai Multinasional.

iii. 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?

Jawapan LHDNM:

Tax payers whose file is transferred to Cawangan Cukai Multinasional will need to submit appeals with regards to their assessment matters to Cawangan Cukai Multinasional until they received notifications that their assessment branch has changed.

iv. 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:

Tax payers will be notified of the transfer of their Assessment Branch if their assessment matters are no longer handle by Cawangan Cukai Multinasional.

Surat makluman kepada pembayar cukai dikeluarkan mengikut alamat terkini yang dilaporkan oleh pembayar cukai melalui e-Filing BNCP. Salinan akan dikemukakan kepada ejen cukai.

Implikasi dari salinan surat kepada ejen cukai yang dikhuatiri telah ditamatkan perkhidmatannya oleh pembayar cukai dan lewat/tanpa dimaklumkan kepada LHDNM yang masih menyimpan rekod ejen cukai tersebut dalam pangkalan data. Pengerusi menyarankan satu kajian dari sudut perundangan perlu dilakukan berhubung implikasi tersebut.

17. Statement of tax position

There have been cases where the amount of tax payable/repayable stated in the Statement of Tax Position is not accurate as the LHDNM's system has not been updated.

Our comments:

We would suggest that the LHDNM update its online system (i.e. e-Lejar) so that the taxpayer can check the updated amount of tax payable/repayable via e-Lejar.

Jawapan LHDNM:

Mulai 1 Mac 2016 LHDNM telah menambah baik sistem e-Lejar di mana melalui sistem ini pembayar cukai dapat menyemak kedudukan baki cukai mereka samada terlebih bayar atau terkurang bayar. Baki cukai positif menunjukkan baki terkurang bayar. Manakala baki cukai negative menunjukkan baki terlebih bayar.

Pihak persatuan tiada bantahan dan mamahami jawapan LHDNM.

18. Excess tax paid - LHDNM's system not updated

There are instances where excess tax paid is not allowed to be set-off against future tax instalments as the excess tax paid has not been updated in the LHDNM's system although several months have passed since the statutory deadline for submitting the tax return.

Our comments:

We would request that the LHDNM's system be updated on a timely basis.

Jawapan LHDNM:

Perkara ini diambil maklum dan akan diberikan pertimbangan yang sewajarnya untuk penambahbaikan.

Isu lebihan bayaran cukai telah dibincangkan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

19. Payment of balance of tax payable by instalments

The LHDNM issued a letter to an expatriate, approving the payment of the balance of tax payable in the YA 2014 tax return by instalments from May 2015 to December 2015. Subsequently, the LHDNM issued another letter in October 2015 to the expatriate to pay the instalments from October 2015 to December 2015 by 30 November 2015 otherwise a penalty would be imposed on the balance of tax payable amount.

Our comments:

As the payment arrangement for the balance of tax payable had been approved by the LHDNM, we would like to enquire on the basis for the following:-

- The payment arrangement to be changed subsequently; and**
- The penalty to be imposed if the new payment arrangement was not complied with.**

Jawapan LHDNM:

Isu ini tidak menjelaskan sama ada ansuran atas baki cukai layak dikenakan kenaikan cukai atau tidak. Sekiranya layak, kenaikan cukai boleh di hapuskan sekiranya semua bayaran telah dijelaskan pada atau sebelum 30 November selaras dengan tawaran penghapusan kenaikan cukai tahun 2015.

Penjelasan LHDNM berhubung perkara ini diambil maklum oleh pihak persatuan.

20. Utilisation of tax credits to set-off against future tax instalments

We refer to the LHDNM's practice of allowing taxpayers to utilise their tax credits arising from excess tax paid to set-off against their future tax instalments.

In recent months, our members have raised their concerns to the Institute on the LHDNM's practice in respect of the application for tax credit set-off which are listed in the attached

Appendix A (*Issues submitted by CTIM members regarding the LHDNM's current practice on the application for tax credit set-off – see page 23*) and summarised as follows:

- Since the beginning of October 2015, the LHDNM did not give approval on the spot for the application for tax credit set-off submitted which they used to do previously. The LHDNM mentioned that they would not allow the set-off if the quantum exceeded a certain amount which was not disclosed. Several applications for tax credit set-off which would have been approved in the past were rejected.
- Since the beginning of January 2016, the LHDNM will not approve any set-off of tax credit exceeding RM500,000. Hence, taxpayers are required to submit another application to set-off against the next instalment payments up to RM500,000.

Our comments:

We would like to enquire on the reason for the above-mentioned practice as all the excess tax paid should be allowed as a set-off against the current/future tax instalments. We would also like to know if this practice is only a short term measure. If yes, how long will the practice be expected to continue.

Jawapan LHDNM:

Bagi kes kredit yang boleh di bayar balik, syarikat dibenarkan untuk set-off dengan mana-mana cukai tambahan atau baki cukai yang dibangkitkan dalam tahun semasa. Permohonan syarikat untuk set-off dengan ansuran bayaran pendahuluan (CP204) dan PCB adalah tidak dibenarkan.

Kredit tersebut akan dibayar balik sepenuhnya atau secara berperingkat berdasarkan peruntukan Tabung Bayaran Balik Cukai. LHDNM tidak mengamalkan kelulusan set-off terhadap kepada RM500,000 saja dan amalan tidak membenarkan syarikat menggunakan kredit cukai terlebih bayar untuk set-off mana-mana bayaran pendahuluan (CP204) adalah sementara sahaja.

Isu lebihan bayaran cukai telah dibincangkan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

OTHER ISSUES

21. Avenue to revise tax returns

Revised tax computations and tax returns would need to be submitted in the following situation:

- Company wanting to claim deduction on payments to non-residents upon payment of withholding tax for previous years of assessment (when the expense was incurred, a deduction was not claimed because of Section 39(1)(f), (i) and (j) of ITA 1967).

Currently, under the ITA, only three sections provide taxpayers with avenues 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 tax assessment chargeable income “has been or would have been wrongly repaid” i.e. in cases of understatement).

In the situation described above, in most cases, it is not appealable within the scope of the above three sections. In practice, the LHDNM 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 this case.

Our comments:

- i. Please confirm that this method is acceptable to the LHDNM.
- ii. If it is not acceptable, will the LHDNM be working with the relevant ministries and lawmakers on introducing new legislation to cover these situations?

Jawapan LHDNM:

Isu yang dibangkitkan ialah mengenai mekanisma yang tepat untuk pembayar cukai membuat rayuan untuk menuntut perbelanjaan WHT untuk tahun-tahun ke belakang. Jawapan kepada isu ini ialah LHDNM mengesahkan bahawa pembayar cukai hendaklah menggunakan peruntukan seksyen. 131, ACP 1967 untuk menuntut perbelanjaan WHT bagi tahun-tahun kebelakang. Pembayar cukai boleh menggunakan dua cara menuntut perbelanjaan tersebut, iaitu sama ada dengan menulis surat atau mengisi Borang 15C.

Oleh itu, Borang Q di bawah seksyen 99 ACP 1967 tidak terpakai. Sehubungan itu, dengan pengesahan yang diberikan, komen CTIM mengenai perkara (ii) adalah tidak relevan.

Pengerusi mencadangkan isu tersebut dibawa untuk perbincangan lanjut dalam bengkel yang akan diadakan dalam bulan Jun nanti dan dipersetujui oleh pihak persatuan.

22. Grace period for e-filing Form e-C

The facts are similar to Example 9 of the Public Ruling No. 8/2014 (Page 9), which is in relation to a change in accounting period for more than 12 months and ending in the third year. In this case, a company which normally closes its accounts on 31 December each year, changes its accounting period to 31 January (more than 12 months) in the third year. The details are as follows:

Year of Assessment	Accounting Period	Period
2013	1.1.2013 – 31.12.2013	12 months
Failure year	1.1.2014 – 31.1.2015	13 months
	1.2.2015 – 31.1.2016	12 months

The basis periods for the company are:

Year of Assessment	Basis period	Period	Filing Deadline
2013	1.1.2013 – 31.12.2013	12 months	31.7.2014
2014	1.1.2014 – 31.7.2014	7 months	31.8.2015*
2015	1.8.2014 – 31.1.2015	6 months	31.8.2015
2016	1.2.2015 – 31.1.2016	12 months	31.8.2016

* Pursuant to Section 77A(2) of the ITA, the filing deadline for YA 2014 is the same as YA 2015 as both need to rely on the same set of audited accounts for the accounting period from 1 January 2014 to 31 January 2015.

Pursuant to the LHDNM's 2015 Tax Filing Programme, a grace period of 1 month is given for the e-filing of the company's YA 2015 Form e-C.

Our comments:

Reference is made to page 14 of the LHDNM's Minutes of Desire Meeting No.1-2014 held on 10 June 2014, on the LHDNM's reply to the Institute's appeal for the grace period to file the YA 2013 Form e-C to be the same as the grace period to file the YA 2014 Form e-C. In this situation, the basis periods for YA 2013 and YA 2014 overlapped due to a change in accounting period and the filing deadlines for both YAs fall on the same date as both need to rely on the same set of audited accounts. The LHDNM replied that where there are overlapping basis periods, the Institute's appeal would be considered prospectively from YA 2014 onwards.

In view of the above, we would like to seek the LHDNM's confirmation that, for the above case, the grace period to file the YA 2014 Form e-C would be the same as the grace period to file the YA 2015 Form e-C and that this can be applied prospectively from YA 2014 onwards for similar cases.

Jawapan LHDNM:

Pemahaman CTIM diberikan pengesahan.

Merujuk kepada Program Percukaian, tambahan masa diberikan kepada pembayar cukai mengemukakan Borang Nyata Cukai Pendapatan (BNCP) melalui e-Filing selepas tarikh akhir pengemukakan BNCP.

Namun, sekiranya terdapat pertindihan tempoh perakaunan, pembayar cukai hendaklah merujuk kepada Program Menfailkan BNCP dan Ketetapan Umum No.8/2014.

Pihak persatuan tiada bantahan dan mamahami jawapan LHDNM.

23. Verification of passport for leaver – determining residency status

Reference is made to item 2.6 on pages 9 and 10 of the [LHDNM's Minutes of Operations Dialogue No. 1/2009](#) on 25 February 2009 in relation to the above matter wherein the LHDNM gave the following reply:

Mengikut amalan berhubung kes 'LEAVER', borang nyata bagi tahun taksiran yang dikenakan hendaklah dikemukakan bersama CP21. Bagi penentuan taraf mastautin, pas pekerjaan memadai jika tempoh permit pekerjaan melebihi 182 hari. Sekiranya tempoh permit pekerjaan adalah kurang daripada 182 hari, dokumen tambahan seperti pasport boleh dijadikan sebagai asas bagi menentukan taraf mastautin.

Our comments:

As the abovementioned practice had been confirmed earlier by the LHDNM, it needs to be reflected as such in the LHDNM Operational Guidelines No.2/2016 on Application Procedure for Individual Tax Settlement Letter (SPC).

Jawapan LHDNM:

Perkara ini akan diberikan pertimbangan yang sewajarnya.

24. Registration of tax file for expatriates

For first year filing (i.e. Assignee commenced employment in year 2014), the tax agent encountered problems relating to the registration of the assignee's e-return. However, matters were resolved after clarification was sought from LHDNM E-Filing Help Desk.

However, problem arose during the settlement of tax payable through the LHDNM's authorised bank collection agent. The assignee's income tax reference number was not recognised by the bank system (i.e. invalid). Subsequently, we were made to understand by the LHDNM, Collection Branch that for new taxpayers, the tax reference number will only be updated by the LHDNM authorised payment agent within a month from the date it was updated in the LHDNM's system.

As the balance of tax payable in this case is below RM25, the LHDNM assured that late payment penalty is not applicable.

In the case of significant balance of tax payable, taxpayer was advised to pay via cheque and courier to LHDNM, KL Collection.

Our comments:

We would appreciate if the tax reference number is updated on a timely basis, both in the LHDNM system and payment agent system to avoid unnecessary complication for taxpayers to pay their taxes.

Jawapan LHDNM:

LHDNM telah mengemukakan maklumat kesemua pembayar cukai aktif kepada pihak bank ejen.

Bagi pembayar cukai baharu, data akan diberikan kepada bank ejen setiap hari Sabtu untuk bank ejen memuatnaik data selewat-lewatnya pada hari Ahad. Data tersebut hanya boleh digunakan pada hari Isnin.

Untuk mengatasi kelewatan bayaran, pembayar cukai baharu perlu membuat bayaran di kaunter bayaran sama ada di Pusat Bayaran Kuala Lumpur, Cawangan Kuching atau Cawangan Kota Kinabalu.

Disamping itu, LHDNM juga akan mengemukakan data pembayar cukai setiap suku tahun iaitu pada setiap 25 Mac, 25 Jun, 25 September dan 25 Disember untuk pihak bank menukar ganti (*overwrite*) data yang sedia ada.

Sekiranya terdapat pembayar cukai yang mempunyai masalah untuk membuat bayaran di bank, pembayar cukai bolehlah menghubungi Pusat Panggilan atau Cawangan untuk bantuan dengan memaklumkan masalah yang dihadapi oleh pembayar cukai.

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

25. Passport verification to substantiate residency status claim

- a) For leaver cases, the expatriate is required to perform passport certification / verification at the tax office prior to their departure from Malaysia as it is part of tax clearance procedures.

Actual scenario:

The expatriate had resigned from the Company and returned to his home country and hence unreachable. In addition, the Immigration Department was unable to generate his travelling records as there is no record captured in their system or the records missing travel date.

Our comments:

We would suggest that the LHDNM accept a copy of employment pass issued by the Immigration Department which stated the expatriate employment period in Malaysia (e.g. 2 years from date 1 to date 2) to substantiate the residency status claims if the period is more than 182 days.

Jawapan LHDNM:

Pihak LHDNM di peringkat cawangan termasuk Cawangan Bukan Mastautin tiada kes atau isu berhubung scenario yang dibangkitkan oleh CTIM.

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, no rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

Isu telah dibincang dan diputuskan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

b) Documents to substantiate business trips out from Malaysia

An LHDNM officer in the Petaling Jaya Branch requested us to provide internal “business trip form” that the expatriate has completed and approved by the Company to substantiate the overseas business trips. Instead, we have submitted a confirmation letter issued by the Company confirming that the expatriate has travelled out from Malaysia for business trips for the relevant period as well as an email from the Company to its travel agent requesting for booking of flight ticket for the overseas business trips.

Nevertheless, the tax officer refuses to grant the confirmation of tax resident status for the expatriate and insisted us to submit the business trip form. We have highlighted to the LHDNM officer that the internal business trip form contains client’s private and confidential (P&C) information which should not be disclosed to external parties. But, the LHDNM officer was insistent that such document must be submitted.

Our comments:

We would suggest that the LHDNM to accept a confirmation letter from the Company as sufficient evidence to substantiate expatriate overseas business trips for the purposes of residency status claim.

Jawapan LHDNM:

Untuk menyokong isu yang dibangkitkan, pihak CTIM hendaklah mengemukakan maklumat terperinci/lengkap kes yang mengandungi nama pembayar cukai, no rujukan fail cukai dan tahun taksiran kes yang dirujuk untuk penelitian lanjut oleh LHDNM.

Isu telah dibincang dan diputuskan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

26. Changes in the e-filing system / prescribed forms for e-filing and other similar system changes

Matters discussed during DESIRE meetings may lead to changes in the e-filing system / prescribed forms for e-filing and other similar system changes. IT service providers will also need to effect corresponding system changes to their e-filing platforms in order to be synchronised with LHDNM’s system. In order to do so, the IT service providers need to liaise with the relevant IT personnel from LHDNM. However, recently the IT service providers have been facing difficulties in contacting the relevant IT personnel from LHDNM. Consequently, the IT service providers are unable to effect corresponding system changes and this results in e-filing issues.

Our comments:

We would suggest that LHDNM provide the contact details of its IT personnel who will be responsible for communicating with IT service providers on changes in the e-filing system / prescribed forms for e-filing and other similar system changes. This would re-establish the technical dialogues with IT service providers, and develop an action plan, with an aim to:

- Providing a more secure and consistent means/method to transfer information into the e-filing system.
- Develop processes to ensure that changes are managed and tested.

Jawapan LHDNM:

Pihak LHDNM telah menyediakan e-mel group iaitu helpitef@hasil.gov.my bagi isu-isu teknikal berkenaan e-filing.

- e-Bas telah disediakan melalui Sistem e-Filing Ejen Cukai (TAeF) bagi penghantaran data secara kelompok
- Pihak LHDNM mengambil maklum dan akan melakukan penambahbaikan kepada proses sedia ada pada masa akan datang.

Mesyuarat Working Group LHDNM – JOC & JTM bersama *Software Providers for Tax Agents* (SPTA) akan dijalankan sedikit masa nanti.

27. List of Approved Institutions under Section 44(6) ITA 1967

We refer to the list of approved institutions under Section 44(6) of the ITA 1967, which is available on the LHDNM's website. There are instances where the tax exempt donation receipts are counter checked against the approved institution listing.

Our comments:

In view of the above, the Institute would like to request LHDNM to maintain the name of institutions which are no longer approved under S.44(6) in the above-mentioned list on the LHDNM's website for a certain period of time with a note to indicate the effective date of withdrawal of their approval under S.44(6).

Jawapan LHDNM:

LHDNM mengambil maklum cadangan CTIM ini. Kajian lanjut akan dibuat dari segi pelaksanaannya.

28. Late Receipt of LHDNM's Letter

Tax agents receive auto-generated notifications such as penalties or outstanding taxes which are generated and sent by LHDNM. There have been instances where the notifications have been received just before the stipulated deadline. As a result, taxpayers have not been able to comply with the requirements in the notifications on a timely basis and this may result in additional administrative work for all parties concerned.

Our comments:

We suggest that LHDNM review its mailing process and time frame to avoid additional burden to taxpayers and LHDNM on the above matters.

Jawapan LHDNM:

Sila rujuk minit Dialog DESIRE bil.1/2015.

Isu telah dibincang dan diputuskan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

29. Companies Trading in Properties vs RPGT

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.

Nowadays we understand that LHDNM 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.

The issues are as follows:-

- To determine when a Company will be considered as trading in properties because no guidelines are available.
- 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 LHDNM view the trading business starting in Year 6 or go back to Year 1 (what if Year 1 is already time-barred)?
- Once it is determined that the Company is trading in properties and if LHDNM view the trading business started in earlier YA based on #2, can taxpayers 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?

Our comments:

The Institute would like to request LHDNM to issue a Public Ruling to provide certainty and clarity on the above RPGT issues/treatments.

Jawapan LHDNM:

Secara umum sama ada sesuatu urusaniaga tertakluk kepada ACP atau ACKHT adalah persoalan fakta. Ianya bergantung kepada fakta setiap kes dengan menggunakan petunjuk-petunjuk sama ada wujud ciri-ciri usaha bercorak perdagangan (badges of trade) yang relevan. Jabatan Dasar Percukaian akan mempertimbangkan keperluan untuk mengeluarkan Garis Panduan atau Ketetapan Umum (jika perlu).

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

30. Appeal under Section 99 against Form J issued under Section 90(3)

With the introduction of Section 77A(4), tax returns furnished by companies must be based on audited accounts. As such, companies are unable to file their tax returns if the audit of their accounts has not been completed. Thus, when a Form J under Section 90(3) is raised for failure to furnish the tax return, the taxpayer will seek to appeal against the assessment to ensure that in future, when the audited accounts is available, the taxpayer still has a right to submit tax returns and pay taxes (with penalties) based on the actual audited accounts regardless of whether the actual tax liability is more or lesser than Form J under Section 90(3).

Under Section 99, the taxpayer would need to file a Form Q and state detailed reasons / grounds to appeal against an assessment (Form J) which includes a best judgment assessment made under Section 90(3). However, it is noted that Form Q which are submitted without finalised audited accounts or tax returns have been rejected by LHDNM.

Our comments:

Instead of submitting a Form Q in the above situation, we propose that the tax agent submit an objection letter within 30 days from the date of the Form J under Section 90(3) objecting to the assessment and appealing to LHDNM to review the tax returns which will be submitted when the audited accounts are available and issue a Form JA/JR where 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 LHDNM's consideration on our proposal.

Jawapan LHDNM:

Cadangan untuk mengemukakan surat bantahan adalah bertentangan dengan peruntukkan Seksyen 99 Akta Cukai Pendapatan 1967 dan Ketetapan Umum No. 3/2012 yang memerlukan penggunaan Borang Q untuk semua rayuan yang difailkan. Borang Q hendaklah diterima oleh pihak LHDNM walaupun tanpa Akaun Beraudit.

Pengerusi menyarankan isu tersebut dibawa untuk perbincangan lanjut dalam **bengkel** yang akan diadakan dalam bulan Jun nanti dan dipersetujui oleh pihak persatuan.

31. Form E : Status of Business (Item No.4)

4 Status Perniagaan	1 = Beroperasi 2 = Belum Beroperasi 3 = Dorman 4 = Dalam Proses Pembubaran
---	---

The above box is required to be filled with the relevant status of business. The definition of *Beroperasi*, *Dorman* and *Dalam Proses Pembubaran* is available.

Our comments:

The Institute would like to seek clarification from the LHDNM on the definition of *Belum Beroperasi* for the purpose of completing the above.

Jawapan LHDNM:

Definasi 'Belum Beroperasi' bermaksud operasi perniagaan belum mula dijalankan walaupun telah diperbadankan dan ada niat bahawa perniagaan akan dijalankan. Ruangan tersebut telah dimansuhkan sebagai pindaan bagi Borang 2016.

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

32. Closing of Companies

The closing of companies include the following:-

- Company de-registration
- Voluntary winding up
- Third party winding up

A company under de-registration normally has no assets and liabilities. The tax clearance letter (SPC) has been issued by LHDNM, all taxes have been paid and all returns up to the current year have been submitted. It would take a year or more for the *Suruhanjaya Syarikat Malaysia (SSM)* to de-register the company and strike it off from the company list.

Our comments:

The Institute would like to seek clarification on whether the above-mentioned company is required to file returns during the duration that the SSM takes to de-register the company and strike it off from the company list.

Jawapan LHDNM:

Syarikat tidak perlu mengemukakan BNCP hanya sekiranya ia dibubarkan sepenuhnya dan fail cukai telah dimatikan oleh LHDNM. (Sila rujuk isu no. 14 di muka surat 14 & 15 minit Dialog Operasi & Teknikal Bil. 1/2014 pada 17 Februari 2014.)

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

33. E-filing of individual tax returns

It has been brought to our attention by members who are involved in the e-filing of individual tax returns that the notification "*If the total income is more than >450,000 please go to the nearest LHDNM branch for further enquiry*" appears on the e-filing screen in the course of completing the individual tax return as per the screen shot below. The said individual tax return can be completed but cannot be submitted online.

MAKLUMAN

Sekiranya jumlah pendapatan adalah > 450,000 sila hadir ke cawangan LHDNM yang berhampiran pada waktu pejabat untuk semakan lanjut.

NOTIFICATION

If the total income is more than > 450,000 please go to the nearest LHDNM branch for further inquiry

Keluar

Our comments:

The Institute would like to seek clarification on the rationale for the above-mentioned procedure and how should the tax practitioners handle these cases.

Jawapan LHDNM:

Prosedur ini adalah untuk mengelakkan kesilapan memasukkan jumlah pendapatan yang sering dilakukan oleh pembayar cukai.

Prosedur sekatan ini tidak terpakai bagi pembayar cukai yang sebelum ini mempunyai jumlah pendapatan melebihi RM450 ribu dan ejen cukai yang membuat e-Filing untuk pelanggan mereka melalui TAeF.

Isu telah dibincang dan diputuskan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

LHDNM akan membuat makluman perkara tersebut melalui Portal Rasmi LHDNM dalam masa terdekat.

34. Confirmation/clarification sought in relation to a company which is winding up

We understand from the Inland Revenue Board of Malaysia's (LHDNM) reply on page 14 and 15 of the [minutes of Operational & Technical Issues Dialogue 1/2014 on 17 February 2014](#) that a company is not required to file the Income Tax Return Form (ITRF) only if it has completed the liquidation process and its income tax file has been closed by the LHDNM.

Our comments:

In view of the above, please confirm the following:-

1. A company is required to submit the Form C via e-filing for the period from the commencement of winding up its operations.
2. The commencement of the winding up would result in the company failing to close its accounts on the same date as the immediately preceding accounting period. In such a case, the Director General will determine the basis periods for the year of assessment (YA) in which the failure occurs and the following YA,

pursuant to S.21A(3) and S.21A(4) of the Income Tax Act (ITA) 1967 and based on paragraph 5 of the Public Ruling No. 8/2014.

3. Based on item 2 above, the basis period for the YA in which the winding up commences will consist of the accounting periods of the first and second Form 75. The statutory due date for the submission of the Form C will be within seven months of the close of the accounting period of the second Form 75, pursuant to S.77A(1) of the ITA 1967. The grace period for submission of Form C via e-filing in the LHDNM's Filing Programme for ITRF for the relevant year is also applicable to winding up cases.

Jawapan LHDNM:

Pengesahan diberikan ke atas pemahaman CTIM.

Tanggungjawab pengemukaan BNCP adalah di bawah seksyen 77/seksyen 77A ACP 1967. Ketetapan untuk menfailkan BNCP bagi syarikat dalam penggulungan untuk mematuhi seksyen 77 atau 77A, ACP 1967.

It is stated in the LHDNM's Filing Programme for ITRF in the year 2015 that companies, limited liability partnerships, trust bodies and co-operative societies which have not commenced operation need not furnish Form CP204. Where a company is winding up its operations, it would be difficult to determine the estimate of its tax payable for the purposes of S.107C of the ITA 1967 e.g. after the deadline for the ninth month revision of the estimate, the company which did not have any income, may suddenly receive bad debts recovered or income from sale of stock/scrap (these examples are not exhaustive).

Our comments:

Please clarify whether the company is required to comply with the provisions of S.107C of the ITA 1967 for the YA in which the winding up commences and the subsequent YAs.

Jawapan LHDNM:

Secara am, syarikat yang dalam penggulungan, akan ada liquidator yang mengendalikan syarikat. Liquidator akan menjual semua aset syarikat di mana penerimaan wang akan agihkan kepada penerima/pemiutang mengikut senarai keutamaan. Bagi kes ini di mana jika ada hasil jualan stok/skrup atau hutang lapok pulih, perincian kes hendaklah dikemukakan untuk penelitian lanjut pihak LHDNM.

Sekiranya pendapatan yang diterima tersebut daripada faedah simpanan tetap atau penerimaan sewa, ia boleh dikenakan cukai dan pembayar cukai perlu meminda CP204.

Oleh itu, syarikat dalam proses penggulungan masih perlu mengemukakan anggaran cukai.

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

[Refer to item no.20]

Issues submitted by CTIM members regarding the LHDNM's current practice on the application for tax credit set-off

Date received	Members' issues												
7 January 2015	Our member gathered that the IRB did not approve full tax credit set-off against the tax instalment in one of her cases. The summary is as follows: 1. Only partial tax credit is allowed by the Cawangan Pembayar Cukai Besar 2. However, full tax credit allowed by other Cawangan.												
22 January 2015	Recently, we have obtained several letters from the IRB approving the utilisation of tax credit where the applications were submitted to the IRB a few weeks before. However, based on the approval letters, the amount approved by the IRB for each tax credit set-off is not the same as per the application letter. The IRB did not fully utilise the tax credit to set-off the amount of tax instalment. Instead, only a portion of the credit was approved for set-off against first and second instalments payments. <u>Please refer to the illustration below for an application made by the tax agent:</u> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;"></th><th style="width: 30%; text-align: right;">RM</th></tr> </thead> <tbody> <tr> <td>Total tax credit available from YA 2013 and 2014</td><td style="text-align: right;">6,300,000.00</td></tr> <tr> <td>Less: Application for set-off against YA 2016 [Feb 2016 to Jan 2017] instalments [(RM177,083 X 11) + 177,087]</td><td style="text-align: right;">(2,125,000.00)</td></tr> <tr> <td></td><td style="text-align: right;">-----</td></tr> <tr> <td>Balance to be refunded</td><td style="text-align: right;">4,175,000.00</td></tr> <tr> <td></td><td style="text-align: right;">=====</td></tr> </tbody> </table> <u>Approval letter from IRB</u> In the IRB's reply letter, the IRB has only approved the utilisation of RM354,166.00, which is equivalent to two months of instalments (i.e. RM177,083.00 X 2 months) instead of the full RM2,125,000.00. As we called up the IRB, we were given to understand that: • The IRB will not approve any set-off of tax credit exceeding RM500,000. Hence, taxpayers are required to submit another application to set-off against the next instalment payments up to RM500,000. • The IRB officer explained that this measure is based on the IRB's current internal practice. • The IRB officer further informed that the above practice would continue to apply until IRB received its budget allocation for this year. Based on the above scenario, the IRB officer has suggested that the taxpayer submit another set-off application against the third instalment onwards however up to RM500,000 only.		RM	Total tax credit available from YA 2013 and 2014	6,300,000.00	Less: Application for set-off against YA 2016 [Feb 2016 to Jan 2017] instalments [(RM177,083 X 11) + 177,087]	(2,125,000.00)		-----	Balance to be refunded	4,175,000.00		=====
	RM												
Total tax credit available from YA 2013 and 2014	6,300,000.00												
Less: Application for set-off against YA 2016 [Feb 2016 to Jan 2017] instalments [(RM177,083 X 11) + 177,087]	(2,125,000.00)												

Balance to be refunded	4,175,000.00												
	=====												
21 October 2015	From October 2015 onwards, there have been applications for excess tax credit set-off that were rejected by the IRB although similar applications had been approved in the past.												

Date received	Members' issues
10 December 2015	The IRB did not give approval on the spot for the application of tax credit set-off which they used to do previously. Based on the verbal communication from the IRB officer at the counter, the IRB will not allow the set-off with quantum exceeded a certain amount. However, the quantum was not disclosed. In addition, members have also received emails from the IRB this week on rejection of tax credit set-off.

B. MIA & MICPA Memorandum for DESIRE Working Group Meeting (No. 1/2016)

1. RIGHTS OF THE IRB OFFICERS NOT TO ACCEPT DOCUMENTS SUBMITTED BY TAXPAYERS/TAX AGENTS

The Institutes were informed that of late, there were a few incidents where the IRB officers **refused to accept application letters on utilisation of tax credit to set-off against instalment payments submitted by taxpayers/tax agents.**

Below is an actual case encountered by one of the tax agents:-

- Submission of application letter to utilise the tax credit of RM1.1 million to set off against Year of Assessment (YA) 2016 tax instalments.
- The IRB officer at the counter rejected the said application letter verbally on grounds that the amount utilised for set-off was more than RM500,000.
- The IRB officer counter suggested to re-submit an application letter with a set-off amount below RM500,000.
- Resubmission of application letter was accepted and approved.

In this respect, the Institutes would like to clarify whether the IRB officers can choose not to accept any document(s) submitted by taxpayers/tax agents, especially in circumstances where there are statutory deadlines to be complied with under the provision of the tax laws.

Jawapan LHDNM:

Bagi kes kredit yang boleh di bayar balik, syarikat dibenarkan untuk set-off dengan mana-mana cukai tambahan atau baki cukai yang dibangkitkan dalam tahun semasa. Permohonan syarikat untuk set-off dengan ansuran bayaran pendahuluan (CP204) dan PCB adalah tidak dibenarkan. Kredit tersebut akan dibayar balik sepenuhnya atau secara berperingkat berdasarkan peruntukan Tabung Bayaran Balik Cukai.

Isu telah dibincang dan diputuskan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

2. TAX REFUND DELAY

The Institutes were informed that the IRB had delayed the refund of a huge sum of tax credit on grounds that the IRB is still waiting for fund allocation before the refund can be processed. For example, an application for a refund of tax credit for YA 2011 to YA 2014 (totalling around RM11.8 million) have been delayed for about a year and is still outstanding as at to date. The refund of tax credit is due to taxes overpaid.

To assist taxpayers with their cash flow, it is proposed that a pre-agreed arrangement such as refund of tax credit be made by instalments be entered into between the IRB and the taxpayer.

Jawapan LHDNM:

LHDNM sedang memproses kes-kes bayaran balik berdasarkan amaun kredit yang boleh dibayar balik. Bagi kes yang mempunyai amaun kredit yang besar, LHDNM akan memproses kredit tersebut secara berperingkat.

Isu telah dibincang dan diputuskan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

3. GENERAL GUIDELINES TO THE PUBLIC AND PRIVATE SECTORS: SECTION 107A – WITHHOLDING TAX LEGISLATION – NON-RESIDENT CONTRACTORS

We are made to understand that the abovementioned Guidelines were issued way back in 1983. The said Guidelines are attached for your reference.

In this regard, the Institutes are of the view that there is a need to update the Guidelines to take into consideration the latest updates and subsequently, uploaded on the IRB's website for the purpose of achieving higher compliance rate by taxpayers.

We hope that the IRB would look into the above request.

Jawapan LHDNM:

Cadangan diambil maklum untuk penambahbaikan.

4. PENALTIES IMPOSED ON TRANSFER PRICING AUDITS

In transfer pricing audits resulting in a reduction of unabsorbed capital allowances or business loss carried forward, the subsequent years' tax returns are affected. Upon a voluntary revision of these returns for the post audit period, the IRB has imposed penalties on the additional tax payable.

The Institutes are of the view that penalties should not be imposed as such adjustments are a result of a transfer pricing audit adjustment for prior years, not for these years that the adjustments are made.

A request is made for the IRB to reconsider their stand on this to be fair and equitable to taxpayers.

Jawapan LHDNM:

Penalties imposed under Section 113(2) of the Income Tax Act, 1967 on additional assessments raised subsequent to a transfer pricing audit are in accordance to paragraph 26 of the Malaysian Transfer Pricing Guidelines 2012 and paragraph 10.3, Transfer Pricing Audit Framework 2013.

Penalties are imposed on assessments subsequent to an audit because these assessments are as a result of the prior year's audit adjustments

which impacted the balances of capital allowance or losses carried forward.

LHDNM menjelaskan pertimbangan ke atas rayuan penalti adalah berasaskan 'case-by-case basis' oleh CCM mengikut merit kes pelarasan audit tersebut. Walau bagaimanapun, pembayar cukai atau ejen cukai boleh membuat rayuan untuk pertimbangan LHDNM.

Pihak persatuan mengambil maklum dan mamahami jawapan LHDNM.

5. WAIVER OF TAX INCREASE UNDER SECTION 107C(10) OF THE ITA

Reference is made to the 2016 Tax Amnesty [Media release (dated 17 February 2016) and Operational Guidelines (dated 10 February 2016)]

To further explain or clarify the timing of application for the waiver / reduction of tax increase under Section 107C(10) of the ITA. For e.g. when a taxpayer discovers that there will be underestimation penalty for a particular of YA even before the tax return is submitted to the IRB, when should the taxpayer apply for the waiver / reduction of the tax penalty?

To clarify about the offer by the IRB, i.e. whether it would be a 100% waiver on the underestimation penalty or reduction based on a specific rate.

Jawapan LHDNM:

Penghapusan kenaikan cukai dibenarkan bagi kes tunggakan hasil yang mana cukai telah dikenalpasti.

Bagi kes pengakuan secara sukarela, pembayar cukai hendaklah mengemukakan BNCP terlebih dahulu untuk menikmati tawaran pengurangan penalti atau penghapusan kenaikan cukai supaya penalti/kenaikan yang dikenakan dapat ditentukan.

Pihak persatuan mengambil maklum jawapan LHDNM.

6. TAX REFUND / UTILISATION OF TAX CREDIT

It is noted that an approval from a higher level within the IRB is now required for application of the utilisation of tax credit against future tax instalment payment and hence, no written approval will be issued immediately by the IRB (past practice – approval would be given immediately at the counter). Please clarify the reason for the change in the practice.

Please also clarify the time frame to process the tax refund in respect of tax deducted from dividends credited prior to the single tier system cases (on the assumption that all supporting documents have been submitted to the IRB).

The Institutes would recommend that the IRB update the tax agent/the taxpayer on the status of the audit (for e.g. the expected time frame to conclude the case or to highlight any other additional issues or to request additional supporting documents).

In this regard, the Institutes would suggest that the IRB issue a media release or detailed guidelines /framework for tax refund to clarify the issues/procedures of the tax refund.

Jawapan LHDNM:

Bagi kes kredit yang boleh di bayar balik, syarikat dibenarkan untuk set-off dengan mana-mana cukai tambahan atau baki cukai yang dibangkitkan dalam tahun semasa. Permohonan syarikat untuk set-off dengan ansuran bayaran pendahuluan (CP204) dan PCB adalah tidak dibenarkan. Kredit tersebut akan dibayar balik sepenuhnya atau secara berperingkat berdasarkan peruntukan Tabung Bayaran Balik Cukai.

Isu telah dibincang dan diputuskan dalam Bengkel Non-Technical Operational & Compliance Bil.1/2016 pada 9 Mei 2016.

Pihak persatuan mengambil maklum jawapan LHDNM.

7. IRB'S LETTERS TO NOTIFY THE OUTSTANDING AMOUNT OF TAX PAYABLE (e.g. FORM CP226, CP226X)

Currently, the notification letter issued by the IRB does not explain/clarify the detailed breakdown of the outstanding amount of tax payable.

As such, the Institutes would suggest that the IRB to include a detailed statement of the breakdown of the outstanding amount (including from which YA and arising from which items).

Jawapan LHDNM:

Surat yang dikeluarkan adalah seperti baki yang tertera di lejar. Semakan boleh dibuat pada e-Lejar. Mulai 1 Mac 2016 LHDNM telah menambah baik sistem e-Lejar di mana melalui sistem ini pembayar cukai dapat menyemak kedudukan baki cukai.

e-Lejar untuk syarikat akan dilancarkan dalam bulan september 2016.

Pihak persatuan mengambil maklum jawapan LHDNM.

8. SUBMISSION OF FORM e-CP204 for SME CORPORATIONS

A Malaysian resident company need not submit the estimate of tax payable in Form CP204 for the first 2 YAs in which it first commences operations, provided it is a SME [Section 107C(4A) of the ITA].

However, the IRB indicated that it is unable to identify a SME and hence, the IRB has amended the Form CP204 to allow a taxpayer to inform the IRB of its "SME" status without furnishing the estimate of tax payable. A similar amendment was made in the e-Filing version of the Form. The Tax Collection Framework (Amendment Ver. 1/2015) also indicated that a SME should submit the Form CP204 without furnishing the estimate of tax payable.

The Institutes would like to highlight to the IRB that the taxpayer would not be able to submit the Form e-CP204 if the e-CP204 is not complete, i.e. the taxpayer is required to complete the column 'amount of the estimate of tax payable', taxpayer is not allowed to leave it blank. This issue should be rectified the soonest possible especially for the YA 2018 when the submission of Form CP204 via e-Filing is mandatory for the companies.

Jawapan LHDNM:

Syarikat SME yang baru beroperasi perlu mengemukakan CP204 tetapi tidak perlu mengisi butiran amaun anggaran cukai kena dibayar dan pengiraan ansuran bulanan. Amaun anggaran cukai telah dinyatakan *default* '0' oleh sistem bagi kes SME.

Pengerusi menyarankan isu CP204 untuk SME dan penalti ke atas bukan mastautin bayaran cukai pegangan S.107A akan dibawa untuk perbincangan lanjut dalam **bengkel** yang akan diadakan dalam bulan Jun nanti dan dipersetujui oleh pihak persatuan.

3. LAIN-LAIN HAL

3.1 Permohonan Lanjutan Masa untuk pengemukaan BNCP.

LHDNM telah membuat ketetapan melalui Program Menfailkan BNCP Tahun 2016 yang telah dipaparkan dalam Portal Rasmi LHDNM berhubung LANJUTAN MASA BERKAITAN PENGEMUKAAN BNCP.

Lanjutan masa TIDAK lagi dibenarkan bagi pengemukaan BNCP berikut:-

Borang	Tarikh Kuat Kuasa
Borang E, BE, B, BT, M, MT, P, TP, TJ dan TF (termasuk borang elektronik)	Mulai TT 2015
Borang e-C, C1, PT, TA, TC, TR dan TN	Mulai TT 2016

4. PENUTUP

Pengerusi Bersama mengucapkan ribuan terima kasih kepada semua yang hadir kerana penglibatan dalam dialog ini juga penghargaan kepada Pengerusi yang telah menjemput beliau untuk mempengerusikan sesi dialog ini.

Pengerusi turut merakamkan penghargaan kepada pihak persatuan yang telah memberikan input dan maklumbalas kepada LHDNM melalui sesi ini. Oleh itu, beliau berharap segala maklumat yang dibentangkan oleh kedua-dua belah pihak hendaklah sama-sama menjaga kerahsiaannya sehingga catatan dialog telah dimuktamadkan dengan persetujuan kedua-dua belah pihak.

Seterusnya, Pengerusi mengumumkan bengkel selanjutnya akan diadakan dalam bulan Jun nanti.

Mesyuarat ditamatkan pada jam 12.35 tengah hari.

LEMBAGA HASIL DALAM NEGERI MALAYSIA.

Tarikh: 26 Mei 2016

For purposes of accounting, two separate cheques (one cheque in respect of the 15% and one cheque in respect of 5%) are to be forwarded to Ketua Pengarah, Collection Branch, Inland Revenue Department, P.O. Box 1061, Kuala Lumpur. A special form for this purpose will be available shortly. Meanwhile, payments to the Inland Revenue Department can be made under a covering letter giving the following particulars:

- (a) Name of payer.
- (b) Address of payer.
- (c) Income Tax File reference number, if any of the non-resident contractor.
- (d) Name and postal address of the non-resident contractor.

6. Who Must Withhold The Tax

The person liable to pay a non-resident contractor is the person who must withhold the tax. Where the payer is the Government/Statutory Body or other Government Agency, the responsibility to withhold the tax is upon the Government Department/Government Agency paying to a non-resident contractor.

Where payments are made outside Malaysia through a bank or other agency, suitable arrangements must be made by the payer for tax to be withheld and paid to the Director-General.

7. Service Portion of A Contract

The deduction of 20% (15% and 5%) is only in respect of the service portion of a contract payment paid to a non-resident contractor. The cost of plant and machinery and materials must be excluded.

Example:

The Government enters into a contract with A Ltd (a non-resident contractor) to build a road in Malaysia. The total contract price is \$10,000,000. Assume that \$7,000,000 is in respect of plant and machinery and materials. The service part of the contract is, therefore, \$3,000,000.

In the circumstance, the 20% (15% and 5%) deduction is confined to the services part of the contract, that is, \$3,000,000. The deduction should be \$600,000 (20% X 3,000,000).

8. Leasing/Rentals of Equipment

Where a person leases equipment directly from a non-resident contractor no deduction is required to be made, subject to circumstances in paragraph 9.

Example:

C Ltd, leases a ship from A Ltd (a non-resident contractor) at \$1,000,000 per annum. There is no requirement for any deduction.

9. Meaning of Services Under A Contract

In determining the service portion of a contract, the payer must include the cost of equipment leased by a non-resident contractor from another contractor.

Example:

The Government enters into a contract with H Ltd (a non-resident contractor) to build a bridge. The total value of the contract is \$500,000,000. The cost of materials is \$300,000,000. The service portion is \$200,000,000 (before adjustment). H Ltd leases some equipment from C Ltd (a non-resident contractor) for \$1,000,000 per annum.

In the above circumstances, the service portion of the contract must be adjusted to \$201,000,000, arrived at as follows:

Service portion \$ 200,000,000
Cost of Lease of Equipment \$ 1,000,000
Total Service Portion \$ 201,000,000

The 20% deduction is \$40,200,000 (20% X 201,000,000).

The lease of equipment in the above circumstance is considered part of the service portion of a contract.

10. Who Determines The Service Portion of A Contract

The Payer must determine the service portion of a contract. Where necessary the Inland Revenue Department may require clarification on the basis of determination of the service portion.

11. Professional Services

Professional Services performed in Malaysia by a non-resident contractor also attract the tax deduction provisions of Section 107A.

"Professional Service" is defined in Section 107A(5) to include any advisory, consultancy, technical, industrial, commercial or scientific service.

Professional Services rendered must be in relation to or in connection with a contract project. This term has been defined as including:

"Any undertaking, project or scheme being an undertaking, project or scheme carried on, carried out or performed in Malaysia."

An example on the scope of withholding tax in respect of professional services is as follows:

Example:

Encik X, a non-resident architect, acts as a consultant (not an employee) to the Government in respect of a building project in Malaysia. The architect's services are performed in Malaysia.

In the circumstance, any payment made to Encik X would be subject to 15% withholding tax.

12. Partnerships

Payments to Partnerships need special attention. Before any payment to a partnership is made it must be found out if any of the partners are non-resident. The 20% deduction (15% and 5%) would only apply to non-resident partners. Therefore, if there are two partners, A and B and if B is non-resident, the 20% deduction is only in respect of B.

Example:

A and B are partners styled A & B Company. A is a resident individual. B is a non-resident. The profit sharing ratio is 60% to A and 30% to B.

A payer of contract payments in respect of services under a contract must deduct 20% of 30% of the payment. Thus, if a payer pays \$100,000 to A & B Company, 20% of \$30,000, that is, \$6,000 must be deducted.

13. Joint Ventures

(a) If a joint venture between a resident and non-resident is conducted by way of a company Ltd resident in Malaysia, no deduction is required.

Example:

C Ltd (Resident) and D Ltd (non-resident) enter into a joint venture by

incorporating another company C Ltd. If C Ltd is resident in Malaysia, no deduction is necessary.

(b) If a joint venture between a resident and a non-resident is conducted by way of a partnership then payments to the partnership to the extent of the share of the non-resident partner is subject to withholding tax.

Example:

C Ltd (Resident) and D Ltd (non-resident) enter into a joint venture and conduct their business by way of a partnership, say C & D Company. The receipts are shared in the ratio of 60% to C Ltd and 40% to D Ltd. C & D Company has a contract project with the Federal Government for a total value of \$100,000,000. The service portion is, say, \$40,000,000. The 20% deduction (15% and 5%) is confined to a percentage of the service portion of the contract, i.e. 40%, since that is the "equity" participation of D Ltd (non-resident contractor). 40% of \$40,000,000 (service portion of contract) is \$16,000,000. 20% (15% and 5%) of \$16,000,000 is \$3,200,000.

The payer must, therefore, ascertain whether a partner is non-resident and his share of the receipts.

14. Banks

Where a bank, whether resident or non-resident is the payer, is obliged to deduct tax at 20% (15% and 5%) in respect of contract payments to a non-resident contractor in respect of services under contract.

Where a non-resident bank is the recipient of payments in respect of contract payments in respect of services under a contract, the withholding tax provisions of Section 107A are not to be applied.

15. When must the tax withheld or deducted be remitted to the Director-General

A payer must upon paying or crediting such contract payment deduct tax at 20% (15% and 5%) and whether or not the tax is so deducted, pay the Director-General within one month of the date of payment or date of crediting.

Example:

A payer pays on 1.3.1983 \$100,000 to X Ltd (a non-resident contractor).

The payer must within one month of 1.3.1983 pay to the Director-General \$20,000. (20% of \$100,000 ; assuming the \$100,000 to be the service portion of the contract).

16. Extension of time for tax withheld to be paid over

The Director-General has powers under proviso (ii) of Section 107A(1) to allow an extension of time for tax deducted to be paid over to the Director-General. A payer, requiring an extension of time must apply to the Director-General for an extension of time.

17. Penalty for not withholding tax under Section 107A

Where a payer under Section 107A fails to deduct tax as required, the amount of tax that would have been deducted will be a debt due to the Government and shall be payable forthwith to the Director-General.

In addition to the above, a new paragraph (i) has been introduced to Section 39 of the Income Tax Act, 1967 to disallow in the accounts of a payer any contract payment if tax has not been deducted therefrom.

Paragraph (h) of subsection (1) of Section 18 of the Petroleum (Income Tax) Act, 1967 has also been amended to have the same consequence under that Act.

18. Non-Resident Contractors

The withholding tax provisions only apply to non-resident contractors. In cases of doubt as to whether a contractor is resident or non-resident, contact the Inland Revenue Department, giving the name, address and income tax reference number, if any, of the contractor.

19. Refund of 5% withheld

Under Section 107A(3)(b), the Director-General shall refund the 5% withheld as and when the Director-General deems appropriate. To facilitate early refund of the 5% withheld, a non-resident contractor should forward:

- (i) Names and addresses of all employees employed in the contract project. A separate list of foreign employees, whether resident or non-resident, must be given;
- (ii) Details of gross employment income (salary, benefits in kind etc.) paid or payable to each employee;
- (iii) The income tax reference numbers, if any, of the employees;
- (iv) Completed forms CP22 in respect of all new employees, in particular foreign employees;
- (v) Evidence of voluntary arrangements to deduct tax from emoluments paid to employees, in particular foreign employees.

The above information should be forwarded to:

Senior Assistant-Director
Non-Resident Branch
Inland Revenue Department
Block 8A, 16th Floor,
Government Complex,
Jalan Duta
KUALA LUMPUR

Tel: 947778 (Direct) or 940022 (Office)