

Minit Mesyuarat Majlis Dialog Audit Cukai dan Siasatan Sesi 1/2005

Tarikh : 10 Mei 2005

Masa : 9.30 Pagi

Tempat : Bilik Gerakan, Tingkat 16, Blok 9

Senarai Kehadiran

Bil	Nama	Jabatan/Bahagian/Cawangan Organisasi
1	En. Mohd Saian Bin Hj. Ridzuan	Timbalan Ketua Pengarah (Operasi) (Pengerusi)
2	Pn. Hasmah Bt. Abdullah	Pengarah Persekutuan Kuala Lumpur
3	Pn. Mazidah Bt. Ismail	Pengarah Negeri Selangor
4	Dr. Mohd Shukor Bin Hj Mahfar	Pengarah Jabatan Pengurusan Hasil
5	Dr. Siti Mariam Bte. Che Ayub	Pengarah Jabatan Teknikal
6	En. Quah Sin Hor	Pengarah Jabatan Siasatan
7	Pn Salmah Binti Kassim	Pengarah Bahagian Pendakwaan
8	En. Sait @ Mohamad Sait Bin Ahmad	Pengarah Cawangan Petaling Jaya
9	En Sabin @ Sapilin Bin Samitah	Pengarah Cawangan Syarikat
10	Cik Nurul Aim Bt. Ahmad	Pengarah Cawangan Shah Alam
11	Encik Kamaruzzaman Bin Hj. Ab. Salleh	Pengarah Cawangan Jalan Duta
12	En Joseph Teoh Hang Meng	Pengarah Cawangan Wangsa Maju
13	En. Wan Abdul Jamil Bin Wan Abdul Rashid	Pengarah Pusat Penyiasatan & Perisikan Shah Alam
14	En. Azhar Bin Sulaiman	Pengarah Pusat Penyiasatan & Perisikan Kuala Lumpur
15	En. Asokumaran Savandiah	Ketua Unit, Unit Khas Pematuhan Dan Pencegahan
16	En. Sivararajah Arasu	Pengarah Pusat Latihan Siasatan (PLAS)
17	Pn. Noor Azian Bt. Abdul Hamid	Pengarah Pusat Latihan Audit (PULADIT)

Bil	Nama	Jabatan/Bahagian/Cawangan/ Organisasi
18	En. Mohd Muhye Bin Ambiyah	Pengarah Bahagian Siasatan Jabatan Siasatan
19	Pn Josephine Ak Hilary Dom @ Josephine John P.P.S	Pengarah Cawangan Cheras
20	Pn Wan Azni Bt. Wan Hassan	Pengarah Cawangan Klang
21	En. Hassim Bin Shafiai	Pengarah Cawangan Kuala Lumpur Bandar
22	Pn. Er Lee Keng	Pengarah Bahagian Audit Jabatan Pematuhan
23	Pn. Lee Swee Yin	Ketua Penolong Pengarah Jabatan Pematuhan
24	Pn K. Maligah Krishnasamy	Ketua penolong Pengarah Jabatan Siasatan
25	Dr. Veerinderjeet Sungh	MIA
26	En. Raymond Liew	MIA
27	En. Sam Soh Siong Hoon	MIA
28	Cik Cheong Li Wei	MIA
29	En. Lee Yat Kong	MIT
30	En Harpal Singh Dhillon	MIT
31	En Chris Low	MIT
32	Cik Eow Siew Lee	MIT
33	En. Beh Tok Koay	MICPA
34	En. Poon Yew Hoe	MICPA
35	Pn Melissa Yeoh	MICPA
36	En Tang Kok Kee	MAICSA
37	Cik Kulwant Kaur	MAICSA
38	En Peter Lim	MAICSA

Bil	Nama	Jabatan /Bahagian / Cawangan / Organisasi
39	En. Danial Bin Badderon	MATA
40	En Mohamed Zamani Bin Ismail	MATA
41	En Imran Bin Tumiron	MATA
42	En Nik Shahron Anuar Nik Omar	MATA

Tidak Hadir Dengan Maaf :

1	En Othman Bin Abdullah	Pengarah Jabatan Undang-Undang
2	En Che Omar Bin A. Rahaman	Pengarah Jabatan Pematuhan
3	En David Victor A/L Sinnappan	Pengarah Pusat Penyiasatan & Perisikan Petaling Jaya
5	En Muhamad Mustafa Bin Said	Ketua Penolong Pengarah Pejabat Ketua Pengarah

Urusetia :

1	Pn Cheong Peck Lian	Ketua Penolong Pengarah Jabatan Siasatan
2	Cik Boon Kiat Eng	Ketua Penolong Pengarah Jabatan Siasatan
3	Cik Norma Bt A. Rahman	Ketua Penolong Pengarah Jabatan Pematuhan
4	Pn Noraini Bte Mohd Ali	Penolong Pengarah Jabatan Pematuhan

1. Pendahuluan

1.1 Tuan Pengerusi mengalu-alukan kehadiran wakil-wakil dari MIA, MIT, MICPA, MAICSA dan MATA ke majlis dialog ini. Beliau memperkenalkan pegawai-pegawai dari LHDN yang hadir dalam mesyuarat. Seterusnya beliau menjemput wakil persatuan memperkenalkan wakil masing-masing.

1.2 Tuan Pengerusi seterusnya menjemput wakil rakan dialog untuk membentangkan isu-isu yang ingin dibincangkan.

2. Isu-isu yang dibangkitkan

2.1 Approach to tax audits

The three professional bodies have received feedback from members on how tax audits are being carried out by the IRB officers. The Institutes have been informed that in some cases, the IRB officers do not adopt a friendly approach and have a perception that taxpayers are deliberately under paying or declaring their taxes. The methodology adopted by the IRB officers in conducting tax field audits seems to be geared towards meeting the IRB's targets in collecting taxes rather than on dealing with technical issues on a fair and reasonable basis. We list below some situations which the Institutes have been informed about.

- (i) In some cases, the IRB officers refuse to accept business reasons and issue additional assessment as well as impose a penalty merely because the gross profit margin in a current year has dropped as compared to the previous year's profit margin.

The Institutes are of the view that the above practice is inappropriate as there are various reasons affecting the reduction of gross profit margins and one cannot assume that such a drop constitutes an under-declaration of income.

Jawapan

Bukan menjadi amalan LHDN membuat pelarasan cukai berdasarkan untung kasar kecuali pembayar cukai tidak menyimpan rekod bagi membolehkan pegawai audit menjalankan audit. Peninggalan cukai yang didapati bersalahan dengan Undang-undang akan dikenakan penalti.

Pembayar cukai yang tidak menyimpan rekod telah melakukan satu kesalahan di bawah Seksyen 82 Akta Cukai Pendapatan 1967 dan boleh didakwa kerana tidak menyimpan rekod.

Sehubungan dengan itu, ejen cukai perlu memberi nasihat kepada pelanggan mereka mengenai pentingnya menyimpan rekod yang lengkap.

- (ii) Members of the Institutes have also reported that in some cases the IRB officers do not fully appreciate the way businesses are carried out. For example, deduction of bad debts is disallowed merely because no legal action was taken despite the fact that all other necessary steps had been pursued.

In this regard, the professional bodies would be grateful if the IRB officers could appreciate the business rationale for not pursuing any legal action against debtors, for instance to secure future or on going projects with the said debtor or its related party.

Jawapan

Hutang lapuk hanya dibenarkan sekiranya hutang tersebut didapati benar-benar lapuk. Pembayar cukai perlu menunjukkan bukti bahawa tuntutan telah dibuat seperti tindakan undang-undang atau pun usaha-usaha tertentu telah diambil. Hutang tidak boleh dianggap lapuk sekiranya urusan niaga masih berlaku dengan pihak berkenaan. Pembayar cukai boleh merujuk kepada Ketetapan Umum No. 1/2002 yang telah dikeluarkan pada 2/4/2002.

- (iii) The Institutes have also been informed that some of the IRB officers insist on a detailed breakdown of a particular expense item and have the pre-conceived idea that certain disallowable items have been included in that item. Where a taxpayer does not have the detailed analysis, an arbitrary amount is disallowed by the IRB.

The Institutes would like to highlight that a taxpayer may not have the detailed analysis as when a service is rendered, the service provider may only invoice a single amount. Hence, it is unreasonable if the IRB penalises the taxpayers based on such presumptions and disallows the said expenses simply because no analysis is available.

In addition, the Institutes would suggest that IRB officers should understand that businesses may not have complete documents on specific matter and if the taxpayer can explain verbally the trend and any variations based on his experience, then it should be sufficient to prove that the expense item or accruals have been arrived on a reasonable basis. Taxpayers have been asked to get third party information which, in most situations, are not publicly available. For example, an IRB officer asked a taxpayer to provide evidence of prices and margins of another

business/competitor to demonstrate that the taxpayer's purchases have not been excessively priced. Such sensitive information in most cases is not publicly available and taxpayers may find difficulty in getting such information.

The Institutes have been informed that there have been instances where the IRB has taken a stand to disallow expenses on the basis that no documents exist to support it or the available documents are not good enough to support it as they are internally prepared.

Jawapan

Analisis terperinci diperlukan bagi mengesahkan tuntutan yang dibuat dan ada kemungkinan terdapat perbelanjaan yang tidak dibenarkan. Kebiasaannya tuntutan yang tidak dibenarkan adalah merupakan tuntutan yang tidak berasas atau berpatutan. Ketetapan Umum No. 1/2005 boleh dirujuk. Bukan menjadi polisi LHDN untuk mencampurbalik perbelanjaan hanya disebabkan oleh pembayar cukai tidak mempunyai rekod. LHDN hanya akan membuat pelarasan sekiranya sesuatu tuntutan yang dibuat oleh pembayar cukai itu tidak berasas dan LHDN mempunyai asas tertentu apabila membuat pelarasan ke atas tuntutan tersebut. Walau bagaimana pun tindakan pendakwaan boleh diambil ke atas pembayar cukai yang tidak menyimpan rekod kerana gagal menepati peruntukan di bawah Sek 82 Akta Cukai Pendapatan.

Di dalam Garispanduan Pindahan Harga, pembayar cukai dikehendaki menyimpan rekod berhubung dengan polisi harga selangan, iaitu kaedah harga selangan yang ditentukan berasaskan pihak setanding. Adalah menjadi tanggungjawab pembayar cukai mendapatkan perniagaan setanding dalam menentukan harga selangan.

- (iv) Some members have also reported that the requests from the IRB officers are difficult to understand. For example, some IRB officers perceive that there is tax avoidance just because the accounting treatment was not carried out in the manner the IRB thinks it should be done. The IRB officer insists that the accounting treatment should be carried out in a specific manner to reflect certain transactions when the taxpayer is able to show that even an alternative accounting treatment could produce the same end result.

There are also some instances where the taxpayer does not agree to the proposed audit adjustment(s) and the IRB officers imply that a higher penalty rate will be imposed if the agreement to the audit adjustment is not given within a short period of time.

The Institutes are of the opinion that this practice is unacceptable as every taxpayer has a right to be given a reasonable amount of time (i.e. 30 days from the date of the letter) to object to the proposed audit adjustment(s) and under no circumstances should an IRB officer impose a higher penalty merely because the taxpayer disagrees with the proposed audit adjustment(s).

Jawapan

Pelarasan cukai tidak dibuat hanya berdasarkan pendekatan perakaunan sahaja tetapi dibuat juga sekiranya pembayar cukai tidak melaporkan cukai dengan betul sama ada dari segi keuntungan atau tidak mematuhi akta dan ketetapan umum percukaian.

Pada kebiasaannya, pembayar cukai akan diberi masa yang munasabah untuk membuat rayuan. Lanjutan tempoh juga diberi atas sebab atau alasan yang tertentu. Oleh itu pembayar cukai perlu memberi maklumbalas dengan segera untuk mengemukakan rayuan (dalam tempoh 14 hari) dan bukannya menunggu di saat akhir tempoh yang dibenarkan untuk memberi maklumbalas kemudian memohon lanjutan masa.

Penalti dikenakan atas peninggalan cukai yang bersalah dan kadar penalti adalah standard mengikut struktur seperti yang terdapat di dalam garis panduan. Walau bagaimana pun, struktur penalti yang terdapat di dalam garis panduan hanyalah terpakai kepada pembayar cukai yang bekerjasama di dalam menyelesaikan kes audit. Bagi pembayar cukai yang telah melakukan kesalahan dan tidak bekerjasama, penalti yang lebih tinggi daripada apa yang telah ditetapkan di dalam garis panduan boleh dikenakan.

- (v) The professional bodies have also been informed that in some instances tax adjustments are made by the IRB without explaining the rationale for making such adjustments or by giving a response that the IRB officer is not convinced by / disagrees with the explanation given or that the explanation given is not reasonable or cannot be accepted.

In this regard, the Institutes would like to emphasize that the IRB officer should give valid and justifiable reasons for making tax adjustments and the explanations must be supported by law and well-documented so as to be fair to taxpayers.

In view of the above, the Institutes urge the IRB to look into the approach to tax audits which are conducted by the IRB officers and would like to highlight that the primary objective of a tax audit is to collect the right amount of tax payable and to assist the taxpayer in gaining a correct

understanding of the law. The Institutes are of the view that the IRB officers should give the taxpayers the benefit of doubt in genuine cases instead of having the pre-conceived mindset that taxpayers are under-declaring their tax liability. It is hoped that every taxpayer will receive fair, courteous and professional treatment from the IRB officers who in turn should be technically sound in accounting principles and familiar with the business operations and commercial practices.

Jawapan

Objektif audit adalah untuk menggalakkan pematuhan cukai secara sukarela, iaitu memastikan pembayar cukai melaporkan cukai dengan betul mengikut akta dan peraturan LHDN dan memberi pendidikan kepada pembayar cukai. Oleh itu semua penemuan audit akan dimaklumkan terlebih dahulu kepada pembayar cukai. Pembayar cukai diberi tempoh selama 14 hari untuk memberi maklumbalas dan lanjutan masa akan diberi sekiranya pembayar cukai benar-benar memerlukannya. Oleh itu pembayar cukai perlu memberi alasan dan menunjukkan bukti kerja-kerja yang telah dilakukan sehingga tempoh yang dipohon.

Semua pelarasan cukai yang dibuat mempunyai asas dan ianya akan diperjelaskan kepada pembayar cukai melalui surat dan perbincangan. Oleh itu pembayar cukai perlu tampil memberi kerjasama dan mendapatkan penjelasan daripada pegawai audit. LHDN sentiasa mengalu-alukan kehadiran agen cukai dalam perbincangan dan pembayar cukai perlu hadir bersama semasa perbincangan diadakan.

Pertimbangan yang sewajarnya akan diberi kepada pembayar cukai. Namun begitu bagi peninggalan cukai yang bersalah wajar dikenakan penalti. Ia merupakan suatu pengajaran kepada pembayar cukai supaya kesalahan yang sama tidak berulang. Sekiranya penalti tidak dikenakan, terutama di bawah STS pembayar cukai akan cuba mencari peluang untuk mengelakkan cukai.

2. Time frame and scope of a tax audit

(refer to Minutes of Tax Audit and Investigation dialogue held on 2 October 2003)

The IRB informed in the previous dialogue held on 2 October 2003 that the time frame for conclusion of a tax audit generally is about 3 months. However, the Institutes have been informed by its members that in some cases, the tax audits are only concluded well over the stipulated time frame of three months.

As taxpayers are eager to know the outcome of the field audit and to avoid further disruption to the business operation of the taxpayers, the Institutes urge that the tax audit be concluded within the agreed time frame i.e. 3 months from the date of commencement of the audit. The Institutes are also of the view that a clearance letter to show that the audit has been concluded for the relevant years of assessment should be issued to taxpayers upon the finalisation of each tax audit whether or not there is additional tax liability.

The Institutes have also been informed that in some cases the IRB officers had done a tax audit for two years of assessment as stated in the initial notification letter and having found no discrepancy, the officers proceed to audit a further two years of assessment (which are not stated in the initial notification letter of the tax audit).

The Institutes are of the view that such practices are not appropriate in carrying out a tax audit under the Self Assessment System.

Jawapan

Kes perlu diselesaikan dalam tempoh 3 bulan. Oleh itu pembayar cukai perlu memberi kerjasama yang sepenuhnya dalam usaha untuk menyelesaikan kes dan bukannya melengahkan penyelesaian kes. Pegawai audit akan menganalisis kes yang dipilih untuk diaudit yang melibatkan tahun semasa dan juga tahun-tahun yang berisiko tinggi untuk satu atau dua tahun sahaja. Walaubagaimana pun, jika ada asas yang nyata untuk tahun-tahun kebelakang, audit atau penyiasatan boleh dilakukan.

Jika tidak terdapat sebarang penemuan semasa audit, kes akan ditutup dan surat penyelesaian audit akan dikeluarkan. Bukan menjadi polisi dan amalan LHDN untuk sengaja mengesan isu sehingga pembayar cukai dapat dicukai. Sebaliknya jika ada pelarasan yang mengakibatkan kurangan cukai, taksiran kurangan akan dikeluarkan.

3. Penalty imposed

According to the minutes of the technical dialogue on 17 June 2002, the IRB confirmed that no penalty will be imposed in the event of a pure technical adjustment as this would not involve an intention to evade taxes. Whether a transaction is merely a technical adjustment or an intentional act to evade tax will very much depend on the circumstances of each case and will vary on a case to case basis.

Some of our members have reported that there are a number of audits where the taxpayers had been issued with technical adjustments and penalties continued to be imposed. The Institutes are of the view that

issues relating to taxability / deductibility under the law would constitute technical issues. In this respect, the professional bodies would like the IRB officers to take this into consideration and not to impose penalties unnecessarily. The Institutes would be grateful if the IRB officers could explain to the taxpayers the reasons for any penalty imposed and how it will be calculated as well as highlight to the taxpayers any matters that will assist the taxpayers to understand and meet their taxation obligations in the future.

The members of the Institutes have indicated that there are situations where certain investigation cases are subject to a penalty lower than 60% whereas in the case of a field audit, a minimum penalty rate of 60% is imposed.

In this respect, the professional bodies are of the view that a tax investigation case would involve tax evasion and it is a more serious offence, whereas tax audits which generally involve technical adjustments or compliance issues should have much lower penalty rates or even no penalties, depending on culpability. In this regard, the Institutes would be grateful if the IRD could review and revise the penalty structure for the tax audits.

Jawapan

Perkataan teknikal selalunya disalah ertikan. Sekiranya undang-undang adalah jelas dan pembayar cukai tidak membuat pelarasan atau menyembunyikan tuntutan, ia adalah satu kesalahan dan wajar dikenakan penalti. Alasan tidak mengetahui undang-undang tidak boleh diterima. Terdapat kes yang diwakili oleh agen cukai dan telah membuat tuntutan yang jelas pada pengetahuan agen cukai bertentangan dengan undang-undang atau ketetapan LHDN, dikatakan sebagai isu teknikal. Penalti tidak dikenakan sekiranya undang-undang tidak jelas dan boleh dipersoalkan.

Kadar penalti atas penyiasatan adalah lebih tinggi daripada audit. Penyiasatan mengenakan penalti yang rendah hanya pada kes tertentu sahaja yang melibatkan jumlah cukai yang besar. Sebaliknya, kes audit adalah kecil dan melibatkan 1 atau 2 tahun sahaja. Isu yang ditemui adalah berasaskan rekod yang diberi sahaja dan tidak dilihat secara mendalam dan terperinci ke atas rekod yang dirampas atau disembunyikan seperti mana kes penyiasatan.

4. Records taken in a tax audit

As stated in note 3.4: Examination of Records in the booklet "IRB guide on Tax Audits", the IRB will not search for or take possession of any record unless absolutely necessary.

The Institutes have been notified by our members that in some cases, the IRD officers take possession of the taxpayers' original accounting documents/records and take these back to the IRB office.

In view of the above, the Institutes would like to seek clarification on the following matters:

- (a) whether it is the practice of the IRB to take taxpayers' accounting records to their office for further scrutiny after the field audit visit to the taxpayers' premises.
- (b) Under what circumstances will it be considered as "absolutely necessary" for the IRB officer to take possession of the taxpayers' accounting records.

To minimise the disruption to the business operations of taxpayers, tax agents and the auditors, the Institutes propose that the IRB officers should complete an audit at the business premises of the taxpayer within the stipulated time frame. If deemed absolutely necessary, the IRB officers can make copies of the records with the agreement of the taxpayer or give a written receipt for any records collected during the interview or tax audit and return the records upon completion of the audit (i.e. within 3 months from the date of commencement of the audit).

Jawapan

Rekod tidak diambil kecuali di dalam keadaan berikut:

- (a) Pembayar cukai tidak mempunyai tempat yang sesuai bagi pegawai audit menjalankan audit dan telah memperoleh kebenaran daripada pembayar cukai untuk mengambil rekod berkenaan bagi tujuan audit dilakukan di pejabat LHDN.
- (b) Tanpa mengambil rekod boleh menjejaskan penemuan audit.

Semua rekod yang diambil atas persetujuan pembayar cukai akan dibuat senarai dan akan dikembalikan dengan segera kepada pembayar cukai.

5. Request for audit working papers or other confidential information

In certain instances, members of the Institutes have reported that notice of request by the IRB officers for audit working papers or other confidential information of the taxpayers to the external auditors or tax agents is not served in writing. The Institutes would like to highlight that in carrying out their professional obligations, it is important that all members of the professional bodies should be given a written notice of such requests, which clearly stipulates the relevant Section(s) in the Income Tax Act, 1967, as members owe a duty of care to their clients.

The Institutes are of the view that access to such working papers should only be requested, if absolutely necessary, after going through the records made available by the taxpayer. Where it is deemed absolutely necessary, then the professional bodies would request that the IRB officers provide a minimum notice period of seven days in writing to have access to the external auditor's working papers or other confidential information of the taxpayers.

Jawapan

Kertas kerja audit diperlukan bagi membantu kerja kerja audit oleh pegawai LHDN. Kes audit dapat diselesaikan dengan segera dengan adanya kertas kerja audit kerana semua penjelasan audit terdapat di dalamnya. Surat rasmi akan dikeluarkan tetapi LHDN tidak nampak mengapa masa yang begitu lama diperlukan sekiranya ia melibatkan 1 atau 2 kes sahaja.

6. Proposed framework for tax audits

In view of the issues raised above, the professional bodies believe that it is important to have a framework set up under which tax audits would be carried out. In this respect, the Institutes have prepared a proposed framework for tax audits which outline the objectives and general principles of tax audits, the rights and obligations of the IRB officers as well as the taxpayers, the procedures involved, penalties and avenues of complaints in the event of a tax audit. The objectives of the proposed framework for tax audits are mainly to assist the IRB officers to carry out their task efficiently and effectively and assist the taxpayers in fulfilling their obligations. A copy of the proposed framework for tax audits is enclosed in the Appendix for your consideration.

Please be informed that the proposed framework principles have been developed and adapted, where necessary, from the guidelines issued by the Australian Tax Office (ATO), entitled '*IF you're subject to enquiry or audit*', which is available on the website of the ATO. In view of this, kindly note that the utilisation of such guidelines of the ATO will need the consent from the relevant authorities before these can be utilised in preparing the Malaysian framework.

The professional bodies sincerely hope that the IRB will take up this framework and issue it out as an official document so that everyone is guided in carrying out his/her responsibilities in the event of a tax audit. We are prepared to have separate discussions on the suggested framework so that a final version can be agreed upon and issued for the benefit of all parties.

Jawapan

LHDN telah pun mempunyai rangka kerja sendiri seperti yang terdapat di dalam Buku "Panduan Audit Cukai LHDN" bertarikh November 2000. Sila rujuk kepada buku tersebut dan beri komen sekiranya tidak lengkap.

RUMUSAN

Semua jawapan di atas merupakan polisi audit cukai. Pembayar cukai atau agen cukai perlu memaklumkan kepada Jabatan Pematuhan sekiranya polisi dan peraturan tersebut tidak dipatuhi oleh pegawai audit.

MEMORANDUM ON ISSUES RELATED TO TAX INVESTIGATIONS

1. REQUEST FOR ADVANCE/UPFRONT PAYMENT

The Institutes have been informed by members that certain investigation branches of the IRB insist on the taxpayers paying an upfront payment, which is estimated on the spot (i.e. during the inspection visit). Taxpayers are given the option to pay the amount (sometimes immediately and sometimes by way of a few instalments) or may face a higher penalty rate. The amount of upfront payment requested for certain investigation cases have been reported to be rather high.

The Institutes are of the opinion that requesting for an upfront payment is not a correct procedure of tax investigation. If the upfront payment is determined based on a valid basis, it must be explained clearly to the taxpayer. Whether a taxpayer pays an advance payment to the Collections Branch, it should be totally voluntary on the part of the taxpayer. The taxpayer should not be coerced in any way to make the advance payment.

Jawapan

LHDNM akan meneruskan amalan menasihati pembayar cukai supaya membuat bayaran pendahuluan sekiranya terdapat bukti yang jelas mengenai peninggalan pendapatan / pengeluaran cukai.

Perkara-perkara yang perlu diambil perhatian dan pertimbangan dalam tindakan ini:

- (a) Tindakan adalah lebih berbentuk pentadbiran semata-mata.
- (b) Bayaran adalah secara sukarela sebagai tanda komitmen terhadap tanggungan cukai yang sepatutnya telah dibayar pada masa yang lepas.
- (c) Terdapat bukti yang kukuh mengenai peninggalan pendapatan / pengeluaran cukai.
- (d) Amaun yang diminta untuk bayaran hendaklah munasabah berdasarkan kepada jumlah peninggalan pendapatan
- (e) Pembayar cukai diberi masa yang munasabah untuk membuat bayaran.
- (f) Meringankan bebanan kewangan apabila pembayar cukai perlu menjelaskan Bayaran Permulaan sekali gus apabila sampai keperingkat penyelesaian kes.

2. APPROACH TO TAX INVESTIGATIONS

The Institutes have been informed that the IRB officers from the Investigation Unit in the Kuching Branch are not very co-operative. One officer refused to provide the details of the adjustments made by the IRB. This had caused undue delay as the taxpayers and the tax agent faced difficulties in reconciling the figures as they were not aware of the basis of the proposed adjustments made by the IRB.

The Institutes would like to request that the investigation officers of the IRB adopt a more co-operative stance in carrying out their duties so that all parties can conclude the particular case more effectively.

Jawapan

LHDNM mengambil pendekatan yang telus dan profesional. Ini bermakna kedua - kedua pihak LHDN dan pembayar cukai perlu mencapai persetujuan terlebih dahulu mengenai asas penyelesaian sebelum perjanjian ditandatangani. Perkara-perkara yang perlu mencapai persetujuan ialah berkaitan dengan Pengiraan Pendapatan Kurang / Tidak Dilapor, Pengiraan Cukai dan Penalti serta kaedah bayaran.

Perkara yang dibangkitkan seperti diatas adalah suatu kes terpencil dan Pusat Penyiasatan berkenaan telah diberi nasihat sewajarnya.

3. FINALISATION OF TAX INVESTIGATION CASES

The IRB has indicated in the previous dialogue held on 2 October 2003 that tax investigation cases are to be finalised within 3 months as per the announcement by the DGIR.

However, some members in Johor Bahru had encountered instances where taxpayer had signed the agreements for settlement and paid the settlement amount but have been informed that the cases have not been reviewed nor approved by the IRB headquarters. Some of these cases have been outstanding for more than a year since the agreements were signed. However, the investigating officers continue to retain the records of taxpayers and the working papers of the auditors. This has caused a lot of inconvenience to all parties.

The institutes hope that such cases could be expedited so that the issues can be resolved and finalised as soon as possible.

Jawapan

3.1. Langkah-langkah telah diambil untuk mempercepatkan tempoh kelulusan penyelesaian kes:

- (a) Menambahkan bilangan pegawai di Ibu Pejabat
- (b) Menurunkan sebahagian kuasa meluluskan penyelesaian kes kepada Pengarah Negeri.

3.2. Tempoh penyelesaian kes diperingkat Pusat Penyiasatan adalah melibatkan tiga (3) pihak:

- (a) Kerjasama pembayar cukai
- (b) Peranan Agen Cukai
- (c) Peranan Pegawai Penyiasat.

Sekiranya ketiga-tiga pihak bekerjasama, masa yang diambil untuk penyelesaian kes akan lebih singkat.

- 3.3. Rekod-rekod yang tidak berkaitan dengan penyelesaian kes boleh dikembalikan walaupun penyelesaian tersebut belum diluluskan.

4. **PENALTY IMPOSED IN TAX INVESTIGATION**

The Institutes have been informed that in some of the tax investigation cases, penalties had been imposed on certain technical adjustments which involved different interpretations of the law and regulations.

The Institutes are of the opinion that no penalty should be imposed on any additional taxes arising from the technical adjustments which do not involved any intention to evade taxes.

Jawapan

Tindakan tidak melaporkan pendapatan adalah satu kesalahan. Oleh itu semua maklumat mengenai pendapatan yang terdapat kesamaran perlu diisytiharkan dengan jelas terlebih dahulu dalam Borang Retan.

Keputusan sama ada cukai tertakluk kepada penalti adalah mengikut fakta kes masing-masing.

5. **CRIMINAL INVESTIGATION**

To further promote effective enforcement of compliance with the tax legislation, the IRB has established the Criminal Investigation Division (CID). Its main objective is to prove whether an offence has been committed, to ascertain the person(s) responsible for the offence and to take the necessary action.

In relation to the above, the professional bodies would like to get more information about the CID as to its current plans and future developments. The Institutes understand that some aspects of the implementation may require amendment to the current tax legislations. In this respect, the professional bodies would like to highlight that it may be good to coordinate any amendments to the Income Tax Act, 1967 with other relevant legislations such as the Companies Act, 1965. The Institutes would be willing to contribute ideas/inputs in the amendments to the Income Tax Act, 1967 on the above matter.

Jawapan

Undang-undang yang ada pada masa ini adalah mencukupi, seperti seksyen-seksyen 112, 113, dan 114 Akta Cukai Pendapatan. Sebarang pindaan yang dibuat hanya semata-mata untuk menguatkan lagi peruntukan undang-undang yang sedia ada. Pindaan undang-undang akan dimaklumkan apabila telah diluluskan.

6. PROPOSED FRAMEWORK FOR TAX INVESTIGATIONS

In view of the issues raised above, the professional bodies believe that it is important to set up a framework for tax investigations. In this respect, the Institutes have prepared a proposed framework for tax investigations which outline the objectives and general principles of tax investigations, the rights and obligations of the IRB officers as well as the taxpayers, the procedures involved, penalties and avenues of complaints in the event of tax investigations. The objectives of the proposed framework for tax investigations are mainly to assist all parties in fulfilling the obligations. A copy of the proposed framework for tax investigations is enclosed in the Appendix for your consideration.

Please be informed that the proposed framework principles have been developed and adapted, where necessary, from the guidelines issued by the Australian Tax Office, the Inland Revenue Department of New Zealand and the Inland Revenue Department of the United Kingdom, which are available on their respective websites. In view of this, kindly note that the utilisation of such guidelines will need the consent from the relevant authorities before these can be utilised in preparing the Malaysian framework.

The professional bodies sincerely hope that the IRB will take up this framework and issue it out as an official document so that everyone is guided in carrying out his/her responsibilities in the event of a tax investigation. We are prepared to have separate discussions on the suggested framework so that a final version can be agreed upon and issued for the benefit of all parties.

Jawapan

Pihak LHDNM sedang merangka satu rangkakerja penyiasatan yang menyeluruh yang meliputi hak dan tanggungjawab semua pihak yang terlibat, iaitu:

- (a) Pembayar Cukai
- (b) Agen Cukai
- (c). LHDNM

Semua pihak perlu profesional dalam menjalankan tanggungjawab masing-masing.

Cadangan-cadangan yang sesuai yang dikemukakan oleh pihak Institusi akan diambilkira dalam penyusunan semula rangkakerja ini. Walau bagaimanapun terdapat kelemahan-kelemahan dalam *framework* yang dikemukakan terutamanya isu-isu yang dibangkitkan adalah tidak jelas dan sebahagiannya memang sudah dijadikan amalan pada masa ini.

7. Penutup

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

Mesyuarat ditangguhkan pada 1.00 tengahari