

TECHNICAL

Direct Taxation

REDUCTION OF PENALTIES AND WAIVER OF TAX INCREASE – LHDNM's MEDIA RELEASE AND ISSUE OF GUIDELINES

The Inland Revenue Board of Malaysia (LHDNM) has announced in a [Media Release](#), dated 10 February 2016, that the following offers to taxpayers will be made by the LHDNM in support of measure 6 in the [2016 Budget Recalibration](#) announced on 28 January 2016:

1. Reduction of penalty to specified rates for taxpayers who opt for voluntary disclosure (VD) of non-compliance with requirements as detailed in the Media Release;
2. Waiver of tax increase for taxpayers who wish to settle in full their income tax (IT), petroleum income tax (PIT), real property gains tax (RPGT) or withholding tax (WHT) arrears on or before 15 December 2016.

The penalty and the relevant laws to which the offers are applicable are set out in a [table](#) in the Media Release.

The offers are effective from 1 March 2016 till 15 December 2016 [except audit and investigation cases (see item 2.2 & 2.3 below)]. Eligibility for the offers depends on the merits of each case and is subject to the LHDNM's rules and regulations.

Guidelines

For the purpose of guidance and transparency, the LHDNM has issued [Operational Guidelines 1/2016](#) (Bahasa Malaysia version only) entitled "*Tawaran Pengurangan Penalti Dan Penghapusan Kenaikan Cuka*". It provides information relating to the above offers for settlement of tax arrears but does not supplant the relevant Acts, Rules or LHDNM frameworks.

Highlights of contents

The following are highlights of important information from the Guidelines:

1. Eligibility
 - 1.1. Reduction of Penalty to specified rate for cases of VD is available to
 - a) Taxpayer who yet to submit annual Income Tax Return forms (ITRF) or Petroleum Income Tax Return forms (PITRF) for prior years (late submission of annual returns); and
 - b) Taxpayer who submitted ITRF or PITRF but have furnished incorrect information on income;
 - c) Disposer of chargeable asset who failed to report the sale of a property within the stipulated period; and
 - d) (Payers of stamp duty who) failed to present a stampable instrument for stamping within the stipulated period.
 - 1.2. Reduction of penalty also offered to taxpayers involved in audit or investigation cases.
 - 1.3. Waiver of increase of tax is available to taxpayers who pay up their arrears of IT, PIT, RPGT, or WHT on or before 15 December 2016.

2. Reduction of Penalty

2.1. Cases of VD, the conditions of offer (for all categories of tax files) are:

- a) VD made before commencement of audit or investigation;
- b) Current year and prior years' returns (ITRF & PITRF) which have not been submitted must be submitted within the period of offer for penalty reduction;
- c) Where incorrect information has been furnished (current or prior years), voluntary disclosure and revision must be made within the period of offer for penalty reduction;
- d) Taxpayer must sign the Letter of Undertaking (LU) and agreement to pay.

2.2 Audit cases (AC) – the conditions of offer (for all categories of tax files) are as follows:

- a) Offers are open for audit cases (assessments raised) that are settled during the period 1 January 2016 to 15 December 2016;
- b) Taxpayer receives letter of offer for reduced penalty from LHDNM and agrees to sign LU and agreement to pay.

2.3 Investigation cases (IC)

- a) The taxpayers in the following cases are eligible for consideration:
 - i. Investigation cases which were ongoing on 31 December 2015 and settled by agreement / LU on or before 31 July 2016;
 - ii. Cases where investigation commenced on 1 January 2016 and settled by agreement / LU on or before 15 December 2016;
 - iii. Cases where "Best Judgment" assessments have been raised wherein the taxpayers do not agree with the rates of penalty imposed under [S112\(3\)](#) or [S113\(2\)](#) of the ITA. (Applies even where Form Q has been filed and case "settled" by agreement / LU on or before 15 Dec 2016.)
 - iv. "Predicate cases" investigated in conjunction with cases under the *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001*, that meet the conditions stated in (i), (ii) and (iii) above.
- b) Taxpayers not eligible for consideration:
 - i. Cases settled and agreements / LU signed before the effective date of this offer;
 - ii. Cases rejected by the LHDNM where case settlement by agreement / LU was signed before the effective date of this offer.

2.4 RPGT cases – the conditions of offers are as follows:

- a) A disposer who failed to declare the disposal within the stipulated period must make an application within the effective period of offer for penalty reduction; and
- b) Agree to sign the LU and Letter of Offer of Penalty Reduction.

2.5 Stamp duty cases (SD) – the conditions are:

Stamp duty payers who failed to present an instrument for stamping within the stipulated time period must have the document stamped within the period of offer of penalty reduction.

2.6 Rates of penalty

The rates of penalty which are to be applied in each of the categories of cases referred to above are as follows:

Reference to para. (above)	Provision Applicable	Rate of penalty (%)	Payment period
2.1 Voluntary disclosure (VD)	S112(3) / S113(2) of ITA; S 51(3) / S52(2) of PITA	15	Full payment within 30 days from <ul style="list-style-type: none"> date of notice of assessment (NA) for AC, date LU signed for IC.
		20	Payment by 6 instalments or less from date of NA for AC / date LU signed for IC.
2.2 Audit cases (AC)	Same as above	25	Full payment of increased tax and penalty within 30 days from date of NA
		35	Payment of increased tax and penalty by 6 instalments or less.
2.3 Investigation cases (IC)	S112(3) / S113(2) of ITA	25	Full payment on the date agreement / LU signed by taxpayer.
		35	Initial payment of 50% on the date agreement / LU signed by taxpayer. Balance payable by 6 instalments or less.
	S112(3) / S113(2) of ITA (If VD made within 14 days of the visit for investigation purpose)	20	Full payment on the date LU signed by taxpayer.
		25	Initial payment of 50% on the date LU signed by taxpayer. Balance payable by 6 instalments or less.
2.4 RPGT cases	S29(3) of RPGTA	5	Full payment within 30 days from the date LU signed
		8	Payment by 6 instalments or less from the date LU signed.
2.5 Stamp duty cases	S47A(1) of Stamp Act 1949	5	Stamping (payment of duty) done within period 1/3/2016 to 30/6/2016.
		10	Stamping (payment of duty) done within period 1/7/2016 to 15/12/2016

Note: The penalty rate offer as listed above is subject to final payment of tax / duty including penalty not later than 15 December 2016. This offer of penalty reduction will be cancelled if the taxpayer fails to comply with the LU and agreement to pay.

3. Waiver Of Tax Increase For Settlement Of Tax Arrears (paragraph 4 of the Guidelines)

3.1 Conditions of waiver – those who are eligible to be considered for this offer are taxpayers who:

- have arrears of unpaid tax; or
- have failed to remit WHT plus any increase of tax; or
- have arrears of tax which does not consist of increase of tax only; or
- have been granted an offer previously but have failed to settle payment;
- have not been issued with winding up / bankruptcy Order by the Court.

3.2 Method of implementation

- a) Only the increase of tax as listed in paragraph 4 of the Guidelines will be waived if the taxpayer meets all conditions of eligibility as stated;
- b) Single payment or payments by equal instalments will be given consideration till 15 December 2016;
- c) For cases under civil action, any waiver is subject to full payment of any costs and interest awarded by the Court;
- d) Waiver of tax increase will only take place after all payments have been made in full.

3.3 Examples of waiver of tax increase

Examples of situations in which waiver of tax increase are granted (Examples 1 to 11) are provided in the Guidelines.

The above Media Release and Guidelines were also reported in our [e-CTIM TECH-DT 13/2016](#) dated 11 February 2016. Members may read the Media Release and the Guidelines in full at the websites of the [Institute](#) and the [LHDNM](#).

For more information, members are advised to call the Reduction of Penalty and Waiver of Tax Increase Help Desk (*Meja Bantuan Pengurangan Penalti dan Penghapusan Kenaikan Cukai*) at 03-8313 8885 or Call Centre at 1-800-88-5436.

Note: At a briefing at the Ministry of Finance on 3 March 2016, the LHDNM has agreed that audit cases (assessments raised) prior to 1 January 2016 are included in the offer provided it is settled during the period 1 January 2016 to 15 December 2016. As suggested by the professional bodies, the LHDNM will also look into the penalty rates under the offer in relation to transfer pricing audit cases as well as the wording in the agreement / LU for audit cases and investigation cases.

Members will be updated by e-Circular on any further developments given in writing by the LHDNM in relation to the offer.

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