

Q&A DURING SEMINAR PERCUKAIAN KEBANGSAAN 2019

NO.	AMENDMENT (SECTION)	QUESTION	ANSWER
INCOME TAX ACT 1967			
1.	Section 6	<p>1. PRS withdrawal scope of exemption extended to healthcare. Please explain healthcare and how is this different from serious disease.</p> <p>2. Private retirement scheme- exception for reasons: housing (comply criteria Securities Commission guideline) is it the guideline similar with EPF?</p>	<p>1. The scope of healthcare must be referred to SC guidelines. Meanwhile, the scope of serious disease referring to LHDNM's guidelines.</p> <p>2. Kindly referred to the guideline which will be issued by SC soon.</p>
2.	Section 6A	<p>1. Ticket paid by company. Can individual claim Departure Levy?</p> <p>2. For departure levy rebate, is it limited to twice a year or twice in lifetime?</p> <p>3. For departure levy, can we claim the levy incurred for family members as well (e.g. single lady needs a male relative to accompany them)?</p> <p>4. What is considered as other religious pilgrimage? What is the meaning of written certification? Is it to be obtained prior to or after pilgrimage?</p>	<p>1. No</p> <p>2. Twice in lifetime.</p> <p>3. No</p> <p>4. Kindly referred to the Committee for the Promotion of Inter Religious Understanding and Harmony Among Adherents, Prime Minister's Department for further information.</p>
3.	Section 34	<p>1. Tax Deduction on Expenditure Incurred for Maintenance of Historical Building Paragraph 34(6)(h) Does it applicable to hotel operator that uses heritage building for business purpose?</p>	<p>1. Applicable to any person who incurred the expenditure to maintain such building in heritage site. The building must be certified under National Heritage Act [Act 645] and the expenditure must be approved by Minister.</p>

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		<p>2. Does the tax deduction under S34(6)(h) for environmental preservation & conservation projects includes for rivers and lakes?</p> <p>3. Kindly explain further section 34(6)(k) Sponsoring Any Arts, Cultural or Heritage Activity. What are the conditions and documents required to qualify for the deduction?</p> <p>4. Does the Paragraph 34(6)(h) applicable to hotel operator that uses the historical building for hotel business? For information, the building is in the World Heritage Area. Is has been a recent trend for hotel operators to convert heritage buildings to hotels. Expenses have been spent to conserve the buildings on yearly basis.</p>	<p>2. Yes, however the projects are subject to approval by Minister.</p> <p>3. To qualify for the deduction, the expenditure incurred must be related the activity approved by the Minister.</p> <p>4. Kindly referred answer no. 1.</p>
4.	Section 44	<p>1. If a company contributes cash to the Federal Government, how many percent is the deduction from the aggregate income eligible for the company?</p> <p>2. For Gift of Money to Religious Authority is it limited to Muslim Masjid or all temple like Buddhist society? Under Gift of Money to Religious Authority, is donation to Church registered under Persatuan allowed for tax relief for individual?</p> <p>3. For zakat and endowment, how University handle this, do they need set up new company or SPV? Because they are also subjected to the 50% condition?</p> <p>4. Is the deductions for gift of money wakaf and endowment only for Malaysia citizens?</p>	<p>1. No limitation.</p> <p>2. The gift of money is referred to cash contribution in form of <i>wakaf</i> to the Islamic Religious Council or body established to represent the Islamic Religious Council and does not specifically refer to mosques, temples or any other place of worship.</p> <p>3. New guidelines will be issued for cash contribution in form of <i>wakaf</i> and endowment.</p> <p>4. The deductions eligible for any person (not only for Malaysia citizens)</p>

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		<p>5. Donation in cash to Churches qualify for tax deduction?</p> <p>6. Gift of Money 10% & Gift of Money to religious Endowment 10%- 2 separated heads? E.g. aggregate income RM100,000. Deduct RM10,000 for gifts of money AND RM10,000 for endowment gift? Or can only deduct RM10,000 in total?</p> <p>7. Please clarify further on tax exemption (1) Religious institutions (2) CLBG, whether that is automatic exemption or subject to approval under section 44(6) ITA 1967.</p>	<p>5. No, unless the donation in cash given to a fund approved under subsection 44(6).</p> <p>6. Based on eg. Limited to RM10,000.</p> <p>7. Subject to approval. New guidelines will be issued.</p>
5.	Section 46	<p>1. Refer to page 7 – If the receipt is under Adam & Azura’s name. Can both claim for the deduction and how to portion it if both are eligible?</p> <p>2. Deduction for Fertility Treatment- If husband and wife file tax separately and receipts of treatment was issued to both husband and wife (share equally) say total RM12,000 so RM6,000 is it allowable?</p> <p>3. If 2 children, can child care fees submit separately between husband and wife, RM1,000 for each child?</p> <p>4. What kind of child care fees are eligible for deductions?</p>	<p>1. Yes. Half.</p> <p>2. Yes.</p> <p>3. No, for separate assessment, either husband or wife who incurred the expenses is allowed to claim for this deduction limited to RM2,000 provided the child aged 6 years and below.</p> <p>4. Payment of child care fees to a child care centre registered with the Director General of Social Welfare under the Child Care Act 1984 or a kindergarten registered under the Education Act 1996.</p>

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		<p>5. For childcare deduction, what is the maximum age limit?</p> <p>6. Pertaining to deduction for fertility treatment, if a couple undergoing IVF and got 2 separated receipts for RM6,000 under each name. Are both entitle to claim the relief RM6,000 respectively?</p> <p>7. If the child care expense is more than RM2000 and let say is RM8,000 a year for a single child can both parent enjoy RM2,000 deduction? I.e. husband enjoy RM2,000 and wife RM2,000 for the same child.</p> <p>8. For fertility treatment, if the family already have 3 children, then having difficulties in getting 4th children and undergo the fertility treatment, are they qualify for this relief?</p> <p>9. For fertility treatment, receipt from traditional Chinese medicine treatment also acceptable?</p>	<p>5. The child aged 6 years and below.</p> <p>6. Yes, they qualify for this relief.</p> <p>7. No, the deduction only be allowed either to the husband or to the wife.</p> <p>8. Yes.</p> <p>9. Must be certified by a medical practitioner registered with the Malaysian Medical Council.</p>
6.	Section 77B	<p><u>Amended Return Form</u> The due date within 6 months starting from (a) 7 months from closing of accounting period; or (b) 8 months (inclusive of the 1 month grace period via e-filing)</p>	<p>The law is silent on the concession given to those submitted their form through e-filing. That 6 months period is not inclusive of the concession of 1 month grace period.</p>
7.	Section 100	<p>1. How long does it take for LHDN to process a Form N application from taxpayer?</p> <p>2. Form N must be submitted within 7 years. Does it mean that the appeal for extension time will be approved as long it is submitted within 7 years?</p>	<p>1. Form N is not supposed to take longer than 3 months according to the Standard Operating Procedure (SOP).</p> <p>2. The question is not clear and needs further clarification. Nonetheless, it is emphasised that an application for an extension of time must be made within seven years and it is also crucial for taxpayer to state the reasons the</p>

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			applicant/taxpayer in the Form N that is was prevented from giving notice of appeal within the 30 days period. Please refer to section 99,100(2) and Public Ruling No.12/2007.
8.	Section 103	<p>1. Refer to page 10 – What is the difference between assessment raised and notice served</p> <p>2. Merujuk kepada pembatalan 5% penalti seksyen 103, macam mane kita nak menentukan tarikh serahan (Notice served) berbanding dengan tarikh taksiran (Assessment raised)?</p>	<p>1. Assessment raised refers to the date of the assessment whereas notice served is the date when the taxpayer received the notice. Kindly referred to subsection 145(2) in regards to determine the day of service of notice.</p> <p>2. Penerangan lanjut berkaitan penentuan tarikh serahan notis boleh dirujuk di bawah Seksyen 145, ACP 1967.</p>
9.	Section 104	1. Will IRB consider not to issue stoppage order to taxpayer whose case is under appeal and taxpayer is willing to pay an affordable sum by monthly instalment during the appeal process?	1. Yes, provided case to case basis.
10.	Schedule 1	<p>1. Refer to page 13 – Would LHDN consider to widen the 30% difference between estimated tax payable and the final tax since sometimes the gross income in some companies might go above the RM50 million mark after estimation and instead of 17% it will fall into 24% bracket</p> <p>2. Employee who is categorised as non-resident in November 2019 and already paying tax at 28%, do we need to change his tax rate to 30% in January 2020?</p>	<p>1. Yes, provided case to case basis.</p> <p>2. Yes. The 30% rate is applicable to non-resident regardless of their level of income starting from YA 2020.</p>

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		<p>3. For the proposed SME under slide 24(page 13), kindly confirm that SME which form part of a group where there is a direct or indirect control by a related company is not eligible for preferential tax treatment.</p> <p>4. The tax rate for resident individual earning more than RM2 million and non-resident individual has been raised to 30%. When is the cut-off date for the new rate?</p> <p>5. For SME criteria- Mesti memenuhi kedua-dua criteria atau salah satu? Bagaimana kalau syarikat hanya memenuhi salah satu kriteria, adakah dikira sebagai SME?</p>	<p>3. The additional criteria for having gross income not exceeding RM50 million is not applicable to related companies.</p> <p>4. For individual, liability to tax is determined on a year to year basis. Therefore, the new tax rate applicable to income received starting from January 2020.</p> <p>5. Cadangan pindaan Bajet 2020 memperuntukkan syarikat dan PLT (bermastautin) yang layak menikmati kadar cukai di bawah perenggan 2A dan 2D mestilah memenuhi syarat berikut:-</p> <p>a. Mempunyai modal berbayar saham biasa sehingga RM2.5Juta bagi syarikat mastautin; atau sumbangan modal sehingga RM2.5Juta bagi PLT; dan</p> <p>b. Mempunyai pendapatan kasar punca perniagaan tidak melebihi RM50Juta dalam tempoh asas bagi sesuatu tahun taksiran</p> <p>Oleh itu, kedua-dua syarat (a) dan (b) mesti dipatuhi oleh syarikat dan PLT.</p>

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		<p>6. Slide 24. If the paid up capital is less than RM2.5M but the gross income is more than RM50M, still entitle to tax treatment of 17% for first RM600,000 CI and small value asset?</p> <p>7. Slide 24. Gross income from business. Will the gross income taking account the other operation income (for example: capital gains, rental income, dividend income, interest income, gains from forex)?</p> <p>8. Change in SME definition and submission of estimated tax for companies with FY ending Jan 2020. Will the penalty on underestimate be waived if the underestimation is caused by the change?</p> <p>9. Slide 24. Does the gross income net of sales return or before deduction of sales return?</p> <p>10. If gross income more than RM50M, what is the tax rate of the chargeable income of the qualify SME. Is it all chargeable income at 24%?</p> <p>11. Gross income more than 50M. Do you mean sales/turnover more than 50M?</p> <p>12. The SME tax rate has a condition of "gross income from business not exceeding RM50M". Does this include foreign sourced business income?</p> <p>13. Does it mean that condition applies to all other preferential treatments under ITA 1967 to SME?</p>	<p>6. No.</p> <p>7. Gross income from business referred to section 24.</p> <p>8. The penalty may be reviewed based on case to case basis.</p> <p>9. Kindly referred to answer no. 7.</p> <p>10. Yes</p> <p>11. Kindly referred to answer no. 7.</p> <p>12. Kindly referred to answer no. 7.</p> <p>13. No, only applicable to subsection 2(9), Para 2A&2D Schedule 1; and Para 19A Schedule 3.</p>

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		<p>14. Is there any basis to adopt to determine the gross income from business not more than RM50M for SME if the basis period for a year of assessment is not made up of a period of 12 months?</p> <p>15. Does rental income that qualify a biz income included as part of the RM50M?</p> <p>16. Are this new RM50M condition are also applicable to group relief provision? And also treatment meant for SME?</p> <p>17. Under CA 2016, share premium reserve is also now part of issued share capital. In this scenario, will IRB take the issued share capital as paid up capital in determining SME?</p> <p>18. 50M for what time frame 12 months? What happen if there is a change of accounting period?(Threshold of SME).</p> <p>19. What is the definition of SME Company? Is it must be fulfil both conditions? What if the company's share capital is more than RM2.5M but the revenue is less that 50M, is the company under SME?</p> <p>20. For slide no.24, will gross income mean business income after deduction operation cost? Will it include other non-business source income such as rental, dividend too?</p>	<p>14. The gross income from business not more than RM50M for SME is referring to the gross income not exceeding RM50M in a basis period for a year of assessment from all business sources.</p> <p>15. Yes.</p> <p>16. No.</p> <p>17. Yes.</p> <p>18. Kindly referred to answer no. 14.</p> <p>19. Kindly referred to answer no. 5.</p> <p>20. Kindly referred to answer no. 7. Not include other non-business source income.</p>

NO.	AMENDMENT (SECTION)	QUESTION	ANSWER
REAL PROPERTY GAINS TAX ACT 1967			
11.	Schedule 2	<ol style="list-style-type: none"> 1. Now that the market value of real properties is replaced by 1st January 2013 as the acquisition price, would LHDN come out with an express method to settle the RPGT between LHDN and the vendor? If LHDN is to conduct a survey, the cost of a property disposed today is between 85% to 90% (using the 1st January 2013 acquisition price) of today (2019) disposal price. 2. The acquisition price is the market value as at 1st January 2013. Is it applicable to both individual and also company? 3. RPGT – How do we find out the market value as at 1st January 2013? 4. Harga pemerolehan lebih tinggi daripada harga pasaran pada 01.01.2013. Bolehkan originalnya kos digunakan? 5. RPGT Market Value as at 1.1.2013 as acquisition price. What are the supporting documents acceptable to IRB to prove the market value of the property at 1.1.2013? 	<ol style="list-style-type: none"> 1. The amendment explained when a property is acquired prior to 1st January 2013 it would be difficult to prove to LHDN the real acquisition price if the documentations are not properly kept. To solve the problem, it is agreed that the acquisition price will be based on the market value of the property as at 1st January 2013. The market value will be determined by Jabatan Penilaian dan Perkhidmatan Harta (JPPH) 2. Applicable to individual. 3. The market value will be determined by Jabatan Penilaian dan Perkhidmatan Harta (JPPH) 4. Penentuan harga pemerolehan bagi mana-mana harta tanah yang diperoleh sebelum atau pada 1 Januari 2013 adalah mengikut harga pasaran pada 1 Januari 2013. Tiada pilihan diberikan walaupun pembayar cukai ada menyimpan rekod atau sebagainya. 5. LHDNM will be referred to JPPH for valuation of the property.

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12.	Schedule 5	<ol style="list-style-type: none"> 1. Can you define Malaysian citizen? Is an Sdn Bhd considered as Malaysian citizen? What about Sdn Bhd that has 49% or less foreign shareholders? 2. What is RPGT rate for Trustee prior to the amendment? Does it fall under Part I or Part II? If the Trustee is an individual should it be taxed under Part I? 3. RPGT tax rate under Sch 5 was amended to include trustee of trust. What are the tax rates for clubs and associations? 4. Page 17- a new category, "Trustee of a Trust" has been added into Part II, is it means that previously if Trustee is an individual, the Trustee is subject to Individual RPGT rate? 5. RPGT is imposed on individual when dispose property. What if the property was being inherited and disposed? Same rules apply? 6. Page 17. If the Company incorporated in Malaysia is a Foreign Company as defined in the Companies Act, what is the RPGT Rates? Part II or Part III? 	<ol style="list-style-type: none"> 1. For RPGT, the Malaysian citizen status apply to determine the application of tax rate under Part I or III for individual. Meanwhile for company, application of tax rate under Part II or III based whether the company is incorporated in Malaysia or not. If the company is incorporated in Malaysia (even though foreign shareholders), then the company is eligible for the specific rate under Part II. 2. Prior to the amendment, Trustee of a Trust has been taxed under Part II. The amendment made for clarity purposes that the application of tax rate for Trustee of a Trust is under Part II. 3. Clubs and associations are taxed under Part II. 4. Kindly referred to answer no. 2. 5. Yes, according to subsection 2(1) of RPGT Act, dispose means sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law. 6. Part II.

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LABUAN ACT 2018			
1.	Section 71	<ol style="list-style-type: none"> 1. If not meeting substance requirement, you will be taxed at 24%. The 24% is still under LBATA or ITA? 2. How do you prove you meet the substance requirement? 3. Will there be clarification on Labuan Business Activities? 4. A Labuan Co (with financial year end 31 Dec 2019) which does not comply with substantive requirement in Calendar Year 2019, can still select RM20,000 flat tax rate? 5. Substantive test of LBATA, if cannot meet but the company financial year end is 31 March 2020, what will be the cut off? The company has to file tax return under LBATA for April 2019 to Dec 2019, Jan 2020 to Mac 2020 under ITA? 6. It's mentioned that if the company doesn't comply with substance requirements, the company will be subject to penalty of 24%. How's the 24% penalty calculated? 	<ol style="list-style-type: none"> 1. Under LBATA. 2. Kindly referred to P.U.(A) 392/2018. 3. Kindly referred to P.U.(A) 392/2018. 4. No. Labuan regime is still using the preceding year basis. Financial year end 31.12.2019 falls in year of assessment (YA) 2020. A Labuan Co is not eligible to elect the RM20,000 flat tax rate since the election under section 7 of LBATA has been deleted effective from YA 2020 [Finance Act 2019 (Act 823)]. 5. The company has to file tax return under LBATA for YA2021 (basis period from 1 April 2019 to 31 March 2020). Labuan company needs to fulfil substance requirement latest by 30 December 2019 until the end of the basis period which is 31 March 2020. Failure to do so will result that the Labuan company will be taxed at 24%. 6. Based on general rule under P.U.(A) 392/2018, the Labuan entity has to comply the substance requirement throughout the year of basis period. If the substance requirement is not met, the entity will be taxed under LBATA at 24%.

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		<p>7. Slide 43: IP income will be excluded from Labuan non-trading activity & if taxed under ITA wef 1.1.2019. Is the IP income eligible for Schedule 6 exemption & other exemption under existing gazette orders?</p> <p>8. In relation to LBATA, if an entity does not fall within the list of substance requirement under the rules, will the entity be entitled to be regarded as a Labuan Entity and be taxed under the LBATA?</p> <p>9. For LBATA amendment- when you say “in Malaysia” for substantive activity requirement, what is the definition of “Malaysia”? Labuan only or whole of Malaysia?</p> <p>10. Labuan entity deriving IP related income to be taxed under ITA@24% wef 1.1.2019. For co. with year-end, say 30.4.2019 only IP income from Jan-April 2019 to be reported in YA2019 Form C? Or full 12 month?</p> <p>11. So an entity paying tax under LBATA (3%) can now be subject to transfer pricing audit? Because slide 44 says “power to substitute a price”.</p> <p>12. The scope of tax audit for Labuan Business Activity will be subject to current tax audit guidelines. Please advise.</p>	<p>7. Yes if the IP income fulfil the requirements under those exemptions.</p> <p>8. To be entitled as Labuan entity, it must be listed in the schedule and the regulation of PUA 392/2018. If not it is taxable under ITA.</p> <p>9. The current regulations mention in Labuan. Meaning the employees and operating expenses in Labuan.</p> <p>10. Yes only IP income from Jan-April 2019 to be reported in YA2019 Form C.</p> <p>11. Yes. The entity is subject to transfer pricing audit.</p> <p>12. Separate tax audit guideline will be issued.</p>

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		<p>13. A Labuan Company which is taxed under LBATA is not required to submit audited financial statements. Will IRB be auditing the management accounts?</p> <p>14. Does Labuan non-trading activity companies need to comply with the substance requirements? Non-trading activities are holding of investments in security, stocks, shares, etc.</p>	<p>13. Since Labuan entity is still under formal assessment, Labuan entities will be taxed at 3% from net audited profit. Therefore Labuan entities conducting trading activities will have to prepare audited accounts.</p> <p>14. Non-trading activities have to follow the substance requirements as well and only holding company is listed in the regulations. Other non-trading activities not listed is taxable under ITA.</p>