LAMPIRAN

1. PERUNTUKAN PINDAAN SEKSYEN 108

Isu 1.1: Takrifan Agregat Perbandingan

In accordance with the new subsection 108(5), "compared aggregate" is defined as the aggregate of the amount:

(i) of the tax paid (if any) and an amount of tax set off under section 110 (if any), restricted to the amount of the tax on the chargeable income of the company, less any rebate under section 6B *(tax rebate on loan to a small company)* or any relief given for a year of assessment under section 132 *(double tax relief)* or 133 *(unilateral relief)*, less any tax refunded to the company under section 111 *(refund of overpayments)*; and

(ii) the balance (if any) carried forward for the credit of the company in accordance with subsection (8).

(Note : The words in italic are our addition.)

The effect of the amendment is that the section 108 credit for the year is based on the actual tax paid instead of the tax chargeable. This is intended to prevent dividends from being distributed by the company, and the section 110 tax credit being claimed by and refunded to the shareholders of the company even if the company has not paid the tax for the relevant year.

However, the formula for calculating the "compared aggregate" appears to be incorrect. As the section 110 set off is equivalent to tax already paid, the restriction to the amount of tax charged and deducting the tax refund would amount to a double deduction in arriving at the compared aggregate.

Clarification is sought on the above matter.

Jawapan:

Amaun cukai yang dipotong di bawah seksyen 110 di hadkan kepada amaun cukai atas pendapatan tercukai bagi suatu tahun taksiran. Cukai yang dibayar balik di bawah seksyen 111 adalah berhubung dengan bayaran ansuran yang terlebih dibayar dan taksiran kurangan di mana amaun cukai yang dihapuskan telah dibayar oleh syarikat.

Isu 1.2: Kredit Seksyen 108

Clarification is sought on the section 108 credit position of a holding company which has received dividends from its subsidiary.

Kindly advise on whether the tax set of under section 110 is included as part of the company's "compared aggregate" at the time the dividends are received by the company from its subsidiary, or only upon the company submitting its tax return wherein the amount of chargeable income and the tax payable are reported.

Jawapan:

Cukai yang dipotong di bawah seksyen 110 diambilkira sebagai sebahagian daripada agregat perbandingan syarikat semasa dividen diterima oleh syarikat daripada subsidiarinya dihadkan kepada amaun cukai atas pendapatan tercukai. Amaun cukai atas pendapatan tercukai bagi suatu tahun taksiran sepatutnya diketahui semasa syarikat mengemukakan penyata di bawah seksyen 108 bagi suatu tahun taksiran.

Isu 1.3: Pengesahan Baki Seksyen 108

1.3.1 The IRB has issued letters to inform the taxpayers of their unabsorbed loss and capital allowance brought forward, exempt income account and section 108 credit balance. However, in certain cases, the section 108 credit balance in the IRB's record differs from that of the taxpayer and request for reconciliation of the difference has not been attended to by the IRB.

It is suggested that the IRB provide a reconciliation of the difference speedily in view that the Income Tax (Amendment) Act, 2000 requires the section 108 credit balance as at December 31, 2000 to be reported in the tax return for year of assessment 2001.

1.3.2 It is also suggested that the IRB provide a service to enable companies to verify or confirm the amount of their section 108 balance at any particular point in time. This should help to pre-empt the necessity of having to invoke section 110(13).

Jawapan kepada Isu 1.3.1 & 1.3.2:

Isu telah dibangkitkan semasa Dialog dengan Bahagian Operasi pada 2 April 2001 yang mana telah diputuskan bahawa ejen cukai perlu mengemukakan pengiraan pelarasan penyata di bawah seksyen 108 dengan memberi penekanan kepada perbezaan-perbezaan yang wujud. Tindakan susulan akan diambil oleh penaksir fail syarikat di peringkat ini.

Isu 1.4: Pengemukaan Penyata di bawah Seksyen 108

The new subsection 108(5) requires that a statement, in the prescribed form showing the compared total and compared aggregated of the company, be furnished to the Director General within 6 months following the close of the company's accounting period. This requirement is to take effect from year of assessment 2001.

The revised section 108 also provides that in relation to year of assessment 2000 on current year basis, the statement is to be submitted to the Director General within 3 months after the end of year of assessment.

1.4.1 The IRB at the dialogue held in November 2000 has confirmed that the extension of time of 2 months (from 6 months to 8 months from the accounting year end) for filing tax returns for year of assessment 2001 will be accorded to the submission of the section 108 statement.

It was also highlighted at the dialogue that companies with accounting period January 1 - December 31, 2000 may encounter problems in submitting the section 108 statement within 3 months after the end of the year of assessment. It was suggested that these companies be allowed to submit the section 108 statement together with Form C and the IRB agreed to look into the matter.

Kindly advise on IRB's decision on this matter.

Jawapan:

LHDN telah menetapkan bahawa penyata seksyen 108 (Borang R) untuk tahun taksiran 2000 (asas tahun semasa) boleh dikemukakan bersama Borang C bagi kes di mana syarikat belum mengemukakan Borang C. Bagi kes syarikat yang telah mengemukakan Borang C, Borang R perlu dikemukakan tidak lewat dari 31 Mei 2001.

Pengemukaan Borang R juga diperlukan bagi kes-kes seperti berikut:-

(i) sekiranya syarikat itu tidak aktif atau telah berhenti beroperasi secara sementara tetapi masih mengemukakan Borang Nyata pada setiap tahun;

(ii) syarikat telah mengemukakan Borang Nyata bagi tahun taksiran 2000;

(iii) syarikat telah atau tidak akan mengagihkan atau mengkreditkan dividen untuk tahun itu.

1.4.2 Kindly advise on the status of the "prescribed form" required under section 108(5) to be furnished to the Director General.

Jawapan:

Borang ditetapkan yang baru beserta dengan nota penerangan, arahan teknikal dan garis panduan sedang dalam proses penyempurnaan.

1.4.3 The IRB has also indicated at the dialogue that it would issue a public ruling on the application of the revised section 108. Kindly advise on the status of the proposed public ruling.

Jawapan:

Ketetapan umum sedang dalam proses penyediaan (tertakluk kepada penyempurnaan borang ditetapkan yang baru).

Isu 1.5: Pengembalian Relif Seksyen 110 daripada Pemegang Saham

The new subsection 110(13) empowers the Director General to recoup a company's taxes from its shareholders where the company has insufficient section 108 credit.

It is suggested that the IRB issue guidelines or public ruling on the exercise of such power by the Director General, having regard to its potential impact on shareholders.

It is also suggested that the Director General's power to recoup the tax shortfall should only be invoked after exhausting all other possible avenues to recoup the tax due.

Jawapan:

Lembaga Hasil Dalam Negeri telah bersetuju bahawa kuasa di bawah subseksyen baru 110(13) hanya akan digunakan sebagai tindakan terakhir.

2. CUKAI PEGANGAN KE ATAS TUNTUTAN BAYARAN BALIK

Isu:

Clarification is sought on whether reimbursements of out-of-pocket expenses (ex. travelling expenses, meals and accommodation), made to a non-resident are subject to withholding tax.

For example, a non-resident consultant comes to Malaysia to perform work for a short term period of time (no PE arises and therefore section 109B applies). The consultant incurs air fare, taxi fare, hotel accommodation and meal expenses, etc. and these expenses are reimbursed by the local entity.

Kindly confirm that withholding tax under section 109B would not apply on the out-of-pocket expenses.

Jawapan:

Tuntutan bayaran balik bagi perbelanjaan "out-of-pocket" (misalnya perbelanjaan perjalanan, makanan dan penginapan) yang dibayar kepada bukan pemastautin di mana seksyen 109B terpakai dianggap sebagai sebahagian daripada bayaran kasar yang patut diberikan kepada konsultan itu. Sekiranya perbelanjaan "out-of-pocket" tidak ditunjukkan sebagai sebahagian dari bayaran kasar, ianya hanya bermaksud bahawa perbelanjaan tersebut telah pun diambilkira dalam pengiraan bayaran kasar yang patut diberikan kepada bukan pemastautin itu. Oleh yang demikian, perbelanjaan "out-of-pocket" seharusnya tertakluk kepada seksyen 109B.

3. CADANGAN-CADANGAN DALAM BELANJAWAN 2001

Isu 3.1: Potongan untuk Derma kepada Institusi yang diluluskan [Seksyen 44(6)]

It was proposed in the 2001 Budget that deduction for gifts of money made by a company to approved institutions is limited to 5% of the company's aggregate income in the relevant year.

The following suggestions have been submitted for IRB's consideration at the dialogue held in November 2000:

(a) Limiting the deduction to 5% may curtail the total amount of contributions that the private sector may wish to make for charitable purposes. In addition the 5% restriction may give rise to practical problems to certain entities / institutions which are under legal obligation (as prescribed in their memorandum and articles of association, etc.) to donate a minimum percentage of their total income for charitable purposes.
It was suggested that the deductible amount be increased, say to 25% of a company's aggregate income.

(b) It was also suggested that in view of the substantial amendment to section 44(6), the IRB issue revised guidelines on application for exempt status under this section.

The IRB indicated that it would consult with the Ministry of Finance regarding the 5% restriction. Kindly advise on the status of this matter and also item (b) above.

Jawapan:

Para (a) **LHDN telah meminta supaya Badan Profesional membawa isu ini ke Perbendaharaan oleh kerana ianya melibatkan isu polisi.**

Para (b) **Garis panduan berkenaan sedang dalam penyempurnaan.**

Isu 3.2: Insentif Cukai untuk Pelaburan dalam Syarikat Teroka

It is proposed in the 2001 Budget that investment in approved venture companies at start-up, seed capital and early stage financing be given a deduction equivalent to the value of the investment. If the company does not have sufficient statutory income to offset the investment, the deductions will be allowed to be carried forward. This incentive is given provided the investor company does not dispose of its equity in the venture company until such time that the venture company is listed.

The professional bodies at the dialogue with the IRB held in November 2000 have expressed the view that the proviso for the incentive will reduce its effectiveness in encouraging investment in the high-risk sector wherein venture companies operate. Not all venture companies aim for listing. In addition, it does not make business sense to prevent a company from selling out its investment in a venture company to a synergistic buyer who is willing to pay a good price.

It was also suggested that the proviso be relaxed such that an investor company will qualify for the incentive on condition that its equity interest in the venture company is held for a prescribed period, say at least 3 years, rather than subject to listing on KLSE.

The IRB has indicated that the matter would be referred to the Ministry of Finance for consideration. Kindly advise on the status of this matter.

Jawapan:

Perkara ini telah dirujuk ke Kementerian Kewangan. "Malaysian Exchange for Securities Dealing and Automated Quotation" (MESDAQ) dan Suruhanjaya Sekuriti (SC) juga telah membangkitkan isu ini dengan Kementerian. Walau bagaimanapun, Kementerian berpendapat bahawa syarat-syarat seperti yang telah dinyatakan dikekalkan.

4. ISU TEKNIKAL

Isu 4.1: Asas Pengiktirafan Keuntungan untuk Pemaju Hartanah (Pembangunan Hartanah) dan Kontraktor (Kontrak Pembinaan)

Property developers are required under approved accounting standards (MAS 7, *Accounting for Property Development Activities*) to recognise profit from property development activities using the percentage of completion method when the following criteria are met:-

(i) the sale of the building unit is transacted;
(ii) building construction activities have commenced;
(iii) the financial outcome of the development activities can be reliably estimated.

Similarly, in accordance with MASB 7 *Construction Contracts*, when the outcome of a construction contract can be measured reliably, the contract revenue and contract costs should be recognised using the percentage of completion method.

In both cases, the stage of completion is normally determined by the proportion that costs incurred for work performed to date bear to the estimated total contract costs.

Companies (housing developers / contractors) which adopt the above method of recognition of profits have frequently been asked by the IRB officers to change the basis of recognition to the "Progressive Profit Method" using the following formula:

$$\text{Progressive Profit} = \frac{\text{Total Progress Payment Received}}{\text{Total Estimated Revenue}} \times \text{Estimated profit}$$

The basis of profit recognition under the "Progressive Profit Method" is not permitted under approved accounting standard. Both MAS 7 and MASB 7 state that progress payments and advances received do not reflect the stage of completion.

In addition, to change the basis of profit recognition from percentage of completion to the "Progressive Profit method" would require a reconciliation of the tax computations between the two methods, which could cause unnecessary delay in the finalisation of the tax assessment.

It is suggested that the IRB accept the basis of profit recognition prescribed by approved accounting standards for tax purposes. Further, there is no loss of revenue to the IRB as the ultimate profit / loss will be fully recognised on completion of the development project or construction contract and tax duly assessed.

Jawapan:

Pekeliling Ketua Pengarah Bil. 2 / 1989 mengarahkan supaya pendapatan pemaju hartanah dikira menggunakan asas "percentage of completion" bagi

setiap projek. Asas ini adalah berkaitan dengan bayaran progresif boleh diterima oleh pemaju. Anggaran keuntungan kasar untuk setiap tahun ialah:-

$$\frac{\textbf{Bayaran diterima dan boleh diterima}}{\textbf{Anggaran jumlah nilai projek}} \quad \times \quad \textbf{Anggaran keuntungan kasar bagi projek}$$

Walau bagaimanapun, dimana pemaju menyediakan akaun atas asas "percentage of completion" berdasarkan kos dibelanjakan berbanding dengan jumlah kos, LHDN akan menerima pakai asas ini.

Haruslah diambil perhatian bahawa "Approved Accounting Standards" yang terpakai untuk tujuan perakaunan tidak semestinya terpakai juga untuk tujuan cukai pendapatan. Contohnya, kerugian yang dijangka perlu ditunjukkan dengan segera dalam akaun sebagai perbelanjaan, hanya terpakai untuk tujuan perakaunan.

Isu 4.2: Elaun Permulaan untuk Perbelanjaaan yang Layak bagi Pembinaan Bangunan (Perenggan 12, Jadual 3)

Paragraph 12 of Schedule 3 to the Income Tax Act 1967 provides that a business can claim initial allowance in respect of qualifying building expenditure incurred for the construction of a building.

In recent years, it is common for small and medium-size enterprises (SMEs) to purchase completed factory units in an industrial estate rather than construct their own factories / buildings. It is unfair that the SMEs are disallowed from claiming initial allowance on the expenditure incurred for the purchase of such factory units.

It is suggested that the provision in Paragraph 12 of Schedule 3 be extended to qualifying building expenditure incurred for the purchase of a completed building.

Jawapan:

Permintaan oleh Badan Profesional telah dipersetujui dan LHDN akan menyusulkan cadangan ini kepada Kementerian.

Isu 4.3: Skim Penstrukturan Semula Hutang Korporat

4.3.1 Kaedah Cukai Pendapatan untuk Perbelanjaan Penstrukturan Semula Hutang Korporat 2000 - Perintah P.U. 46(A) 2000

P.U. Order 46(A) 2000 allows a tax deduction on any expenditure incurred in respect of a corporate debt restructuring scheme completed between October 30, 1999 until December 31, 2000. Hence, (based on the wording of the Order) it would appear that the tax deduction is restricted to companies which completed their debt restructuring schemes on or before December 31, 2000.

However, it is understood that the Corporate Debt Restructuring Committee (CDRC) has taken the view that the tax incentive apply to companies that have signed a Debt Restructuring Agreement (DRA) on or before December 31, 2000, but have yet to complete their debt restructuring schemes. CDRC has also indicated that it has written officially to the IRB on this matter.

Clarification is sought on whether the tax deduction would be extended to the cases described above.

Jawapan:

Perintah P.U. 46(A) sepatutnya dibaca sebagai Perintah P.U. 49. Perkara ini telah dirujukkan kepada Perbendaharaan untuk pengesahan selanjutnya.

4.3.2 Perintah Duti Setem (Pengecualian) (No. 7) 2000 - P.U. (A) 47 / 2000

The above Order grants exemption from stamp duty in respect of all instruments executed pursuant to a corporate debt restructuring scheme competed between October 30, 1999 until December 31, 2000 under the supervision of the CDRC, the Central Bank of Malaysia, or under Pengurusan Danaharta Nasional Berhad.

Clarification is sought on whether the exemption from stamp duty is applicable to companies that have signed a DRA on or before December 31, 2000 but the debt restructuring scheme is not completed yet.

Jawapan:

Sekiranya Perjanjian Penstrukturan Semula Hutang (DRA) disempurnakan pada atau sebelum 31.12.2000, maka pengecualian duti setem tidak terpakai untuk dokumen-dokumen lain yang disempurnakan selepas 31.12.2000.

Perhatian: Isu 4.3.1 dan 4.3.2 adalah berkaitan dan jawapan kepada Isu 4.3.2 akan tertakluk kepada pengesahan selanjutnya ke atas Isu 4.3.1.

Isu 4.4: Takrifan Syarikat Pemegang Pelaburan di bawah Seksyen 60F

In accordance with section 60F of the Income Tax Act, a company whose activities consist **wholly** in the making of investments and whose income is derived therefrom, is an investment holding company (IHC).

However, recently there have been cases where the IRB treated a company having both management services and investment holding activities as an IHC, under section 60F. The IRB has allowed a deduction of the expenses up to the amount of the management fee income earned.

The professional bodies are of the view that a company which is having both management and investment holding activities (i.e. the company is not one whose activities consist **wholly** in the making of investments), is not deemed as an IHC under section 60F but is considered to be carrying on a business subject to tax under section 4(a) of the Income Tax Act.

Kindly confirm whether the above view is correct.

Jawapan:

LHDN memandang serius terdapatnya segelintir syarikat yang telah menjalankan kedua-dua aktiviti pemegang pelaburan dan perkhidmatan pengurusan semata-mata bagi maksud mengelakkan syarikatnya dari tertakluk kepada peruntukan di bawah seksyen 60F, Akta Cukai Pendapatan 1967.

Walau bagaimanapun, LHDN menerima hakikat bahawa terdapat kes-kes sebenar di mana syarikat menjalankan kedua-dua aktiviti pemegang pelaburan dan perkhidmatan pengurusan sebagai aktiviti komersialnya. Bagi kes-kes sedemikian, LHDN akan memberi pertimbangan atas merit setiap kes.

Isu 4.5: Layanan Cukai untuk "Interest-in-Suspense"

Loans outstanding for a period of 6 months or more are classified as non-performing loans and the interest accrued will be credited into the interest-in-suspense account. For years of assessment 1999 and 2000 (preceding year basis), a deduction of 50% of the amount in the interest-in-suspense account was allowed for income tax purposes. For year of assessment 2000 (current year basis), 100% of the interest-in-suspense was allowed as a deduction. The interest-in-suspense deducted will be taxed when realised.

Clarification is sought on whether the above tax concession will be extended to year of assessment 2001.

Jawapan:

Konsesi tidak dilanjutkan kepada tahun taksiran 2001.

5. LAIN-LAIN ISU

Kerjasama di antara LHDN dan Badan Profesional

(a) The professional bodies would like to commend the IRB on its current policy of greater flexibility and transparency in the implementation of the tax law and regulations, especially relating to the new tax system. IRB's willingness to consult with the professional bodies in the development of the new regulations and guidelines proved to be highly beneficial to both the tax practitioners and the revenue authority. The professional bodies believe that this is a step in the right direction for the successful implementation of the self-assessment tax regime.

However, it is noted that certain official publications (i.e. guidelines, orders) are being issued by the IRB without any prior consultation with the professional bodies. It is felt that the consultation process is useful in minimising potential confusion or practical difficulty in compliance with the new requirements.

(b) The professional bodies would also like to seek the IRB's co-operation to inform the professional bodies promptly of any changes to its policies, guidelines or procedures so that the information can be disseminated to the members and their clients. Taxpayers generally do not object to any change in policy by the IRB but they are often unaware of such changes.

(c) It is understood that the IRB is currently looking into the legislative changes necessary for the implementation of the next phase of self-assessment for sole-proprietors, co-operatives and partnerships in year 2003.

The professional bodies would like to offer their assistance in the implementation process.

Jawapan:

Perkara tersebut telah diambil perhatian.