

**MINUTES OF THE POST-BUDGET DIALOGUE WITH
THE TECHNICAL DIVISION OF THE INLAND REVENUE BOARD (IRB)
HELD ON 4 NOVEMBER 2003**

1. Proposed Amendment to Paragraph 28, Schedule 6 of Income Tax Act (ITA) - Exemption of Income Remitted into Malaysia

The 2004 Budget proposed that income remitted into Malaysia from overseas by a resident individual, a trust body, a cooperative and a Hindu Joint family be exempted from income tax effective from year of assessment (Y/A) 2004. The proposal is a measure by the government to encourage resident individuals to remit their income from investments or savings overseas to stimulate domestic investment and consumption.

The professional bodies sought confirmation that there would be no requirement to declare the amount of exempted income remitted from overseas in the annual tax returns of these individuals.

Jawapan LHDN

LHDN berpendapat pendapatan tersebut tidak perlu dilaporkan dalam borang cukai pendapatan. Walau bagaimanapun pembayar cukai perlu menyimpan rekod yang lengkap untuk tujuan audit/penyiasatan.

2. Enhancement of Tax Incentives for Selected Industry / Activity

To further encourage private investment, the 2004 Budget has proposed Improvements / extension of incentives in the form of Pioneer Status and Investment Tax Allowance for the followings areas / industries / activities :

- a. Promoted areas;
- b. Companies which utilise oil palm biomass to produce value added products;
- c. Heavy equipment and machinery industry;
- d. Machinery and equipment industry; and
- e. Cold chain facilities and services for perishable produce.

The professional bodies sought clarification on the following matters:

- i. The method of computing ***“increased statutory income”*** is not stipulated. It is unclear whether the above increase is derived from a comparison of the current year’s statutory income with a base year or with the immediate preceding year or with a moving average or with an average income level over a few years. The professional bodies sought confirmation on the basis for computing the ***“increased statutory income”***.

- ii. For items a & b, it was proposed that companies which have been granted approval for these incentives but have not commenced commercial production or for which applications are currently under consideration are also eligible. In this regard, the professional bodies sought clarification whether the term **“commencement of commercial production”** is the same as that is used for determining the production day for Pioneer Status.

Jawapan LHDN

- i) ***Pada masa ini kaedah pengiraan untuk menentukan “increased statutory income” adalah berdasarkan formula di bawah seksyen 21C Akta Penggalakan Pelaburan 1986. Walau bagaimanapun pihak MOF sedang menimbang untuk mengkaji semula formula tersebut.***
- ii) ***LHDN memaklumkan bahawa bagi perkara (a) & (b), maksud “commencement of commercial production” adalah sama seperti terma yang digunakan semasa penentuan hari pengeluaran bagi Taraf Perintis. Bagi Syarikat yang telah diluluskan sebagai syarikat Taraf Perintis sebelum 13 September 2003 tetapi belum mendapat sijil Taraf Perintis, ianya hanya terpakai kepada syarikat yang telah diluluskan sebagai syarikat Taraf Perintis sebelum 13 September 2003.***

3. Incentive for Researchers for Commercialisation of Research Findings

In order to encourage researchers to undertake research, it has been proposed that researchers be given 50% tax exemption on income such as fees or royalty received from commercialisation of their research findings for 5 years from the date when such payment is first received.

The professional bodies sought clarification on the following matters :

- i As to when the 5-year period should commence as well as the interpretation of the term “received”. In this respect, the Institutes are of the opinion that researchers should be given the choice to decide on the 5-year tax exemption period to allow them to maximize the exemption. This is in line with the Government’s aim to extract value from research undertaken which would otherwise be abortive.
- ii As to whether the incentive be only applicable for new projects or contracts procured in the Year of Assessment (Y/A) 2004 or to the existing projects and contracts.
- iii. As to whether the incentive extend to include research companies engaged by clients to carry out the research.

- iv. The requirements/rules relating to commercialisation of the research findings and the period to effect the commercialisation of the research findings from its inception.
- v. If the effective date for the incentive is Y/A 2004, the Institutes sought confirmation as to whether the last year of the aforesaid incentive is Y/A 2009.

Jawapan LHDN

LHDN memaklumkan insentif ini berkuatkuasa mulai tahun 2004. Tempoh 5 tahun bermula dari tarikh pembayaran mula diterima dan berasaskan kepada "research"/projek. Insentif ini diberi kepada individu yang telah menerima bayaran daripada kajian yang telah dikomersialkan dan mendapat kelulusan daripada Kementerian Sains Teknologi dan Alam Sekitar (MOSTE) mulai tahun 2004.

LHDN juga memaklumkan insentif ini terpakai untuk individu sahaja dan tidak layak untuk syarikat dan seseorang itu boleh mempunyai lebih dari satu projek pada satu-satu masa.

Berkenaan dengan peraturan/syarat kelayakan untuk mendapat insentif ini, LHDN memaklumkan bahawa ianya dibawah bidang kuasa Kementerian Sains Teknologi dan Alam Sekitar dan pembayar cukai diminta merujuk kepada Kementerian berkenaan.

4. Review of Incentives for Operational Headquarters

It has been proposed that income from qualifying services provided by an operational headquarter (OHQ) to its related companies in Malaysia be given tax exemption provided that such income does not exceed 20% of the OHQ income from qualifying services.

The professional bodies sought clarification on the following matters :

- i. The Institute understands that full exemption is given to the '**world income**' from qualifying services of the OHQ if the 20% rule is complied with.
- ii. For OHQs which do not comply with the 20% rule, are they still able to enjoy some form of tax exemption, i.e. on a prorated basis. This is especially for OHQs whose income from Malaysian related companies may exceed the 20% rule, for example, if such income forms 25% of the total income from qualifying services, would an exemption be given to 20% of the income (i.e. to 95% of the total income from such services).

Jawapan LHDN

Pendapatan yang dikecualikan bagi OHQ adalah seperti berikut :-

- (i) Pendapatan daripada penyediaan perkhidmatan yang layak dari syarikat berkaitan di luar negeri; dan**
- (ii) Pendapatan dari penyediaan perkhidmatan yang layak kepada syarikat berkaitan di Malaysia. Penentuan pendapatan dikecualikan dari Malaysia berkaitan insentif ini adalah seperti contoh pengiraan berikut :-**

**Pendapatan kasar daripada penyediaan perkhidmatan = RM 500,000
yang layak dari syarikat berkaitan di luar negeri**

**Pendapatan kasar dari penyediaan perkhidmatan = RM 200,000
yang layak kepada syarikat berkaitan di Malaysia**

Jumlah Pendapatan Kasar = RM 700,000

Pengiraan pendapatan dalam Malaysia yang dikecualikan ialah

Pendapatan luar Malaysia yang dikecualikan RM 500,000 = 80%

Pendapatan Malaysia dikecualikan $\frac{20 \times 500,000}{80} = RM 125,000$

Amaun pengecualian adalah pada peringkat pendapatan berkanun, oleh itu amaun pendapatan dari Malaysia yang dikecualikan dikira seperti berikut :-

Contoh :

**Sekiranya pendapatan statutori yang diterima
di Malaysia = RM 100,000**

**Oleh itu amaun pendapatan dari Malaysia yang dikecualikan
ialah:-**

$\frac{RM 125,000}{RM 200,000} \times RM 100,000 = RM 62,000$

**LHDN memaklumkan bahawa formula pengiraan ini akan
dikeluarkan sedikit masa nanti.**

5. Tax Treatment for Asset-Backed Securities

The 2004 Budget has proposed specific tax treatment for securitisation transactions that involve the issuance of asset - backed securities (ABS).

In this regard, the professional bodies sought clarification on the following matters :

- i. It was proposed that the originator would be taxed on the proceeds from the sale of receivables over the tenure of the securitisation transaction. In circumstances involving hire purchase receivables, the collection period of such receivables may be different from the tenure of the securitisation transaction. Prior to securitisation, the income from the hire purchase receivables would be taxed over the period of the hire purchase.

In this regard, the Institutes sought confirmation that the sales proceeds from hire purchase receivables will be taxed over the period of the securitisation transaction.

- ii. The following issues were not addressed in the Budget proposals:
 - a. Whether a tax deduction will be allowed on the cost of acquisition the receivables to the originators, and which type of expenses incurred to acquire receivables would be deductible.
 - b. The tax treatment on the subsequent income of the special purpose vehicle (SPV) in relation to the receivables and whether the SPV would be considered to be carrying on a business.
 - c. Whether the SPV will be treated as an Investment Holding Company where Section 60F will apply.

The Institutes suggested that to avoid the matter being subjected to various interpretation, it is essential that the authorities issue relevant guidelines on the subject as soon as possible. It is learnt that guidelines or rules would be issued under Section 36 of the Income Tax Act (ITA). In addition, the Institutes also sought clarification as to the type of expenses that are deductible in respect of the securitisation transaction.

Jawapan LHDN

LHDN akan mengeluarkan satu peraturan (regulation) mengenai “Aset Back Securitisation” untuk menjelaskan isu ini. Walau bagaimanapun pada amnya prinsip percukaian yang sedia ada terpakai.

6. Incentive for Investment in Merdeka Bonds

The Finance Bill 2003 introduces a new Paragraph 34A in Schedule 6 to the ITA which exempts interest paid or credited to any individual in respect of Merdeka Bonds issued by the Central Bank of Malaysia from income tax.

In this regard, the professional bodies sought clarification on the following matters:

- i. It is noted in the Prime Minister's speech that the Merdeka Bonds would be issued to pensioners aged 55 years and above who do not have permanent jobs, and also to uniformed personnel who have gone on mandatory retirement. These conditions however, are not stipulated in the Finance Bill 2003. The Institutes requested that the IRB clarify the matter.
- ii. If the conditions mentioned in the Prime Minister's speech apply, the Institutes sought clarification on whether pensioners/retirees who have other passive sources of income, i.e. other interest income or rental income, would still be eligible for the exemption.

Jawapan LHDN

- i) ***Bank Negara akan mengeluarkan "guidelines" berkaitan isu ini. LHDN juga telah dimaklumkan bahawa skim ini akan dilancarkan pada Februari 2004. Akauntan dinasihatkan menghubungi Bank Negara untuk mendapatkan penjelasan lanjut.***
- ii) ***LHDN memaklumkan pengecualian akan diberikan kepada mereka yang layak membeli bon ini. Kelayakan ini ditentukan oleh Bank Negara.***

7. Tax Deduction of Entertainment Expenses

Pursuant to the amendments to Section 39(1) of the ITA, entertainment expenses which are related wholly to sales arising from the business will be given full deduction, while other entertainment expenses in relation to the business will be given 50% deduction.

The professional bodies sought clarification on the following matters:

- i. **Entertainment expenses incurred wholly to generate income from the provision of services should qualify for deduction as well.**
- ii. **As to how in deciding on the type of expenses that qualify for the full deduction or the 50% deduction. The Institutes are of the view that all entertainment expenses are in respect of generating gross income of the business and therefore should be fully deductible.**

- iii. Alternatively, the Institutes suggested that the existing test of “wholly and exclusively” of Section 33 of the ITA be adopted in determining the deduction of entertainment expenses incurred by a business. However, the Institutes stressed the importance of the issuance of guidelines on this matter to avoid confusion among taxpayers.
- iv. As to whether the proposal is extended to the provision of professional services.

Jawapan LHDN

i) & ii) LHDN akan mengeluarkan ketetapan berkaitan isu ini. Walau bagaimanapun LHDN juga memaklumkan bahawa ia telah mengeluarkan draf ketetapan berasaskan undang-undang yang ada sebelum ini, dan mengalu-alukan maklumbalas dari Persatuan Akauntan.

LHDN mengalu-alukan maklumbalas dari persatuan akauntan tentang jenis perbelanjaan keraian berkecualan untuk memudahkan pengeluaran garis panduan.

- iii) *LHDN memaklumkan bahawa perbelanjaan berkecualan perlu melalui ujian di bawah seksyen 33 dahulu sebelum layak diberi pertimbangan di bawah peruntukan ini. Potongan 50% akan diberikan kecuali bagi perbelanjaan keraian yang termasuk di bawah proviso seksyen 39 yang diberi potongan 100%*
- iv) *LHDN memaklumkan bahawa peruntukan ini terpakai untuk semua jenis perniagaan.*

8. Double Deduction of Salaries to Encourage the Hire of Unemployed Graduates

To encourage employers to hire unemployed graduates who are registered with the Economic Planning Unit, it was proposed that double deduction be given for 2 years' salaries paid by an employer that hires such graduates.

The professional bodies sought clarification on the following matters :

- i. The scope of “salary” as it is not defined.
- ii. If the effective date is Year of Assessment (Y/A) 2004, the Institutes sought clarification as whether the above incentive is only valid until the Y/A 2006.

In addition, the professional bodies also requested that the authorities issue guidelines on this matter to avoid confusion which could potentially arise, i.e. if the employee resigns subsequently prior to the expiry of the 2-year term, whether his/her new employer is eligible to claim double deduction on the salaries for the remaining period.

Jawapan LHDN

LHDN memaklumkan bahawa satu peraturan berkaitan isu ini akan dikeluarkan.

LHDN juga memaklumkan bahawa pengertian “salary” bagi tujuan insentif ini ialah untuk perbelanjaan gaji asas sahaja dan tidak termasuk bayaran lain seperti elaun, insentif, bonus, EPF, SOCSO dan sebagainya. Insentif ini diberi untuk tahun 2004 dan 2005 sahaja.

LHDN juga memaklumkan bahawa majikan kedua tidak layak mendapat potongan di bawah peruntukan ini bagi pekerja yang sama walau pun ianya diambil bekerja dalam tempoh dua tahun.

Pengambilan yang layak mendapat potongan dibawah peruntukan ini ialah bagi pekerja yang diambil bekerja pada atau selepas 13 September 2003 (syarat kelayakan seperti berdaftar dengan EPU mesti dipenuhi).

9. Gazette Orders

The professional bodies requested that the authorities stipulate the time frame within which the relevant orders to be issued following the 2004 Budget proposals would be gazetted.

Jawapan LHDN

LHDN memaklumkan bahawa ia dalam proses menyediakan “order” dan akan digazetkan tidak lama lagi melalui MOF. Di antara “order” yang akan dikeluarkan tidak lama lagi ialah :-

- **OHQ**
- **Unemployed Graduate**
- **Venture Capital Management Company**

Setakat ini “order” yang telah dihantar ke MOF dan telah dikeluarkan mengikut tajuk ialah :-

- **Cukai Pendapatan = 7**
- **CKHT = 2**
- **Duti Stem = 5**

Jumlah yang telah dikeluarkan = 14

Jumlah yang belum dikeluarkan = 3

10. Tax Deduction for Incorporation Expenses

It has been proposed that deduction of incorporation expenses be extended to companies with authorized share capital not exceeding RM2.5 million.

Where a company incorporated with an authorised share capital not exceeding RM2.5 million is granted deductions on the incorporation expenses, the professional bodies sought confirmation that the company will be entitled to the deductions even if it subsequently increases its authorised capital beyond RM2.5 million.

Jawapan LHDN

Bagi syarikat yang ditubuhkan dengan modal dibenarkan kurang dari RM2.5 juta dan kemudiannya menambah modal dibenarkan melebihi RM2.5 juta dalam tahun yang sama juga layak mendapat potongan perbelanjaan penubuhannya. Namun begitu, perbelanjaan untuk meningkatkan modal tambahan melebihi 2.5 juta tersebut adalah perbelanjaan modal yang tidak dibenarkan.

11. Deduction for Participation in International Standardisation Activities

The 2004 Budget proposed that tax deduction be allowed on expenses incurred by a company for participation in international standardisation activities approved by the Department of Standards Malaysia. The proposal is a measure by the Government to encourage companies to participate in standardisation activities in enhancing their competitiveness to face the challenges of globalisation.

The professional bodies sought clarification on the scope and nature of “activities” that would qualify under this incentive and the procedure for the application.

Jawapan LHDN

LHDN memaklumkan bahawa semua aktiviti yang mendapat kelulusan dari “Department of Standards Malaysia” akan diterima oleh LHDN bagi tujuan pemberian insentif ini. Oleh itu syarikat dikehendaki mendapatkan kepastian dari “Department of Standards Malaysia” sebelum melakukan aktiviti berkenaan. Aktiviti berkenaan adalah seperti “conference, workshop, seminar, meeting in overseas” dsb yang diluluskan oleh DSM.

Rasional kepada insentif ini adalah untuk menggalakkan syarikat menghantar pegawainya menyertai seminar standard di luar negeri bagi kepentingan pembangunan industri negara ini. Walau bagaimanapun syarikat dinasihatkan agar mendapatkan pengesahan dari DSM sebelum melakukan aktiviti berkenaan.

12. Additional Incentives for Hotels and Tourism Projects

To encourage further upgrading of the country's tourism infrastructure, it is proposed that hotel and tourism project operators who invest in expansion, modernisation and renovation be given another round of incentives for a period of 5 years.

Where a hotel operator has undertaken renovation before 13 September 2003 and the work undertaken is completed after 13 September 2003, the professional bodies sought clarification as to whether the hotel operator would be eligible for the aforesaid incentives. How is the exempt income of the operator ascertained in respect of the qualifying capital expenditure incurred?

Jawapan LHDN

LHDN memaklumkan ubahsuaian yang dimulakan pada atau selepas 13 September 2003 sahaja layak mendapat insentif ini. Jumlah pendapatan yang layak diambil kira dalam pengecualian ialah keseluruhan pendapatan.

13. Increase in Threshold of Chargeable Income For Small and Medium Scale Companies

The 2004 Budget proposed that the threshold for chargeable income with corporate tax rate of 20% be increased to RM500,000, and the corporate tax rate on chargeable income in excess of RM500,000 is maintained at 28%.

The professional bodies sought confirmation that the corporate tax rate of 20% is applicable to the first RM500,000 of the chargeable income for all companies with a paid-up capital of RM2.5 million and below, including subsidiaries within a group of companies.

In addition, the professional bodies also sought clarification that the corporate tax rate of 20% is applicable to the first RM500,000 of the chargeable income of a company which has reduced its paid-up capital from RM3 million to RM2.5 million.

Jawapan LHDN

LHDN mengesahkan bahawa insentif ini terpakai untuk semua entiti termasuk syarikat-syarikat subsidiary dalam satu kumpulan tertakluk kepada modal berbayar tidak melebihi RM2.5 juta pada permulaan tempoh asas.

14. Filing of Tax Returns and Statement of Credit Balance (“Form R”)

It has been proposed in the 2004 Budget that the filing of tax returns and Form R, as well as the settlement of balance of tax payable be extended to 7 months from the date following the close of the accounting period. The Institutes welcomes the proposed change to the legislation.

Jawapan LHDN

LHDN mengambil maklum perkara ini.

B. OTHER TECHNICAL ISSUES

Determination of Residence Status for Individual Under Section 7(1)(b)

The IRB had, in the Technical Dialogue held on 18th July 2003, provided examples on the impact of the amendment to Section 7(1)(b) with regard to temporary absence and the limitation of 14 days social visits.

In Example 3, it was illustrated that the expatriate was considered a non-resident for year of assessment 2002 as his period of absence from Malaysia for 18 days to visit his mother who was ill in Japan exceeded the 14 days allowed under the proviso to Section 7(1)(b) and that period was not considered as temporary absence.

Proviso (ii) to Section 7(1)(b) states that any temporary absence from Malaysia owing to ill-health involving the taxpayer or “a **member of his immediate family**..... shall be taken to form part of such period or that period

The professional bodies sought clarification as to the composition of the members of a taxpayer’s “immediate family”.

Jawapan LHDN

LHDN memaklumkan bahawa “immediate family” termasuk ibu bapa, anak-anak dan suami atau isteri. Pindaan kepada contoh ini telah dibuat dan telah dihantar bersama dengan minit Dialog Teknikal 1/2003 kepada Persatuan Akauntan pada 16 Oktober 2003.