

Ruj Tuan :

Ruj Kami: LHDN.01/35/(S)/42/51/20-117

Tarikh: 23 Disember 2022

Pengerusi Jawatankuasa Teknikal
Chartered Tax Institute of Malaysia (CTIM)
Unit B-13-1, Megan Avenue II
No.12, Jalan Yap Kwan Seng,
50450 Kuala Lumpur
(U.P: Mr. Thenesh Kannaa)

Tuan,

**CTIM MEMBERS' ISSUES ARISING FROM HASIL's RESPONSES TO JOINT
MEMORANDUM ON POST- 2022 BUDGET ISSUES AND GAZETTE ORDERS**

Dengan hormatnya saya merujuk kepada perkara di atas dan surat tuan bertarikh 13 Jun 2022 melalui emel bertarikh 14 Jun 2022 adalah berkaitan.

2. Dilampirkan bersama-sama ini maklumbalas Lembaga Hasil Dalam Negeri Malaysia (LHDNM) berkaitan isu-isu yang dibangkitkan untuk perhatian dan makluman pihak tuan.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

"BERSAMA MEMBANGUN NEGARA"



(SALAMATUNNAJAN BINTI BESAHAH)

Pengarah

Jabatan Dasar Percukaian

b.p. Ketua Pegawai Eksekutif/Ketua Pengarah Hasil Dalam Negeri

Lembaga Hasil Dalam Negeri Malaysia

s.k.

- 1) Y.Bhg Datuk Mohd Jaafar Bin Embong**
Timbalan Ketua Pegawai Eksekutif (Dasar)
Lembaga Hasil Dalam Negeri Malaysia
Menara Hasil Aras 18
Persiaran Rimba Permai
Cyber 8, 63000 Cyberjaya
Selangor

- 2) YBhg. Dato' Che Nazli binti Jaapar**
Setiausaha Bahagian Cukai (SBC)
Bahagian Cukai, Kementerian Kewangan Malaysia
Pejabat Setiausaha Bahagian Cukai
Aras 6, Blok Tengah
Kompleks Kementerian Kewangan
No. 5 Persiaran Perdana, Presint 2
Pusat Pentadbiran Kerajaan Persekutuan
62592 WP Putrajaya



MEMBERS' ISSUES ARISING FROM:

- 1. HASIL'S RESPONSES TO JOINT MEMORANDUM ON POST-2022 BUDGET ISSUES;
&**
- 2. GAZETTE ORDERS**

13 June 2022

Prepared by:

Technical Committee – Direct Tax I

Chartered Tax Institute of Malaysia

CONTENTS

		Page No.
1	HASiL’s responses to Joint Memorandum on Post-2022 Budget Issues	
	1.1 Part B, Item 1.9 - Income Tax Relief on Medical Treatment Expenditure – Amendment of S.46(1)(h)	3
	1.2 Part B, Item 5.2 - Appendix 34 – Extension of Tax Incentive for Renovation and Refurbishment of	4
	1.3 Part B, Item 5.5 - Appendix 29 – Extension of Tax Incentive for the Purchase of Tourism Vehicles	5
	1.4 Part C, Item 2.6 - Issues arising from Transitional Provisions [New S.6(1)(p) and Part XX of Schedule 1 (w.e.f. 1 January 2022 to 30 June 2022)]	6
	1.5 Part F, Item 2 - Tax Measures proposed under Economic Stimulus Packages 2021 which has not been gazetted	7
2	Gazette Orders	
	2.1 Income Tax (Restriction on Deductibility of Interest) (Amendment) Rules 2022 [P.U. (A) 27/2022]	8
	2.2 Income Tax (Conditions for the Grant of Rebate under Subsection 6D(4)) Order 2021 [P.U. (A) 504/2021]	9
	2.3 Income Tax (Exemption) Order 2022 [P.U. (A) 96/2022] and Paragraph 2(2), Part 1 of Schedule 1 of the Income Tax Act 1967	10

CTIM MEMBERS ISSUES

1. HASIL'S RESPONSES TO JOINT MEMORANDUM ON POST-2022 BUDGET ISSUES

1.1 Part B, Item 1.9 - Income Tax Relief on Medical Treatment Expenditure – Amendment of S.46(1)(h)

- a. Does the COVID-19 detection test in S.46(1)(h)(ii) also include the COVID-19 detection test done by a laboratory which provides medical testing services such as Pathlab Laboratory Malaysia without going through a registered medical practitioner?

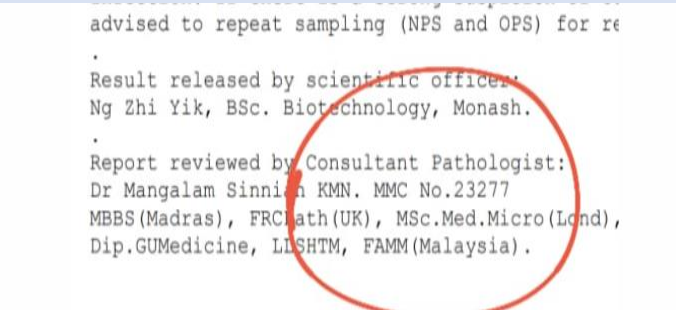
Maklum Balas LHDNM:

Tuntutan pelepasan cukai di bawah subperenggan 46(1)(h)(ii) ACP atas amaun yang dibelanjakan bagi fi bayaran ujian pengesanan COVID-19 hanya boleh dibenarkan sekiranya perbelanjaan dapat dibuktikan dengan resit yang dikeluarkan oleh pihak hospital atau klinik atau pengamal perubatan yang berdaftar dengan Majlis Perubatan Malaysia manakala pembelian kit ujian sendiri perlu disokong dengan resit. Oleh itu, merujuk kepada fakta yang diberikan, perbelanjaan ini adalah tidak dibenarkan.

CTIM Comments:

Kindly advise if the test report indicated that it is being reviewed by a medical practitioner registered under the Malaysia Medical Council, is this sufficient for the relief?

Example as below:



advised to repeat sampling (NPS and OPS) for re
.
Result released by scientific officer:
Ng Zhi Yik, BSc. Biotechnology, Monash.
.
Report reviewed by Consultant Pathologist:
Dr Mangalam Sinniah KMN. MMC No.23277
MBBS (Madras), FRCPath(UK), MSc.Med.Micro(Lond),
Dip.GUMedicine, LDSHTM, FAMM (Malaysia).

Maklum balas LHDNM:

Laporan Ujian Pengesanan Covid-19 yang telah disemak/disahkan oleh pengamal perubatan yang berdaftar dengan Majlis Perubatan Malaysia boleh diterima sebagai bukti bagi tujuan tuntutan cukai di bawah subperenggan 46(1)(h)(ii) ACP.

CTIM MEMBERS ISSUES

1. HASIL'S RESPONSES TO JOINT MEMORANDUM ON POST-2022 BUDGET ISSUES

1.2 Part B, Item 5.2 - Appendix 34 – Extension of Tax Incentive for Renovation and Refurbishment of Business Premises

- c. Can the certification of the renovation and refurbishment by external auditor cost be dispensed with since any wrongful claims will be subject to tax adjustment and penalties during tax audit? The certification by an auditor incurs additional cost and time by the company which is not efficient and not in line with the principle of allowing companies to claim an additional cost.

Maklum Balas LHDNM:

Memandangkan kos pengubahsuaian ini merupakan potongan khas yang terdiri daripada perbelanjaan yang tidak dibenarkan di bawah peruntukan subseksyen 33(1) ACP, potongan elaun modal di bawah Jadual 2 atau di bawah Jadual 3 ACP, maka adalah wajar potongan khas ini mestilah diperakui oleh juruaudit luar seperti yang disebut dalam Kaedah 2, P.U.(A) 381/2020.

CTIM Comments:

Kindly advise whether the certification fee of the renovation and refurbishment cost by an external audit is tax deductible.

Maklum balas LHDNM:

Yuran perakuan juruaudit luar bagi mengesahkan perbelanjaan yang dilakukan oleh pembayar cukai ke atas tuntutan pengubahsuaian dan pembaharuan tidak dibenarkan potongan di bawah seksyen 33(1) ACP kerana perbelanjaan tersebut bukan dalam menghasilkan pendapatan perniagaan sepertimana dinyatakan dalam Perenggan 6, Soalan Lazim Potongan Bagi Kos Pengubahsuaian dan Pembaharuan (R&R) Premis Perniagaan di bawah P.U.(A) 381/2020 dan 481/2021 bertarikh 31 Oktober 2022 adalah juga di rujuk.

CTIM MEMBERS ISSUES

1. HASIL'S RESPONSES TO JOINT MEMORANDUM ON POST-2022 BUDGET ISSUES

1.3 Part B, Item 5.5 - Appendix 29 – Extension of Tax Incentive for the Purchase of Tourism Vehicles

Comments:

For tourism vehicles purchased through hire purchase financing arrangement, kindly confirm that even though the hire purchase financing agreement was entered before YA 2020, the qualifying tour operator is still eligible to claim accelerated capital allowance on the capital portion of instalment payments made during the qualifying period.

Maklum Balas LHDNM:

Bagi bas persiaran yang diperoleh dengan kaedah perjanjian sewa beli, galakan ini terpakai bagi bayaran prinsipal yang dibuat dalam tempoh asas suatu tahun taksiran 2020 sehingga 2024 ke atas bas persiaran yang diperoleh dalam tempoh galakan tersebut.

Perundangan subsidiari berkaitan adalah Kaedah-kaedah Cukai Pendapatan (Elaun Modal Dipercepat) (Bas Persiaran) 2021 [P.U.(A) 291/2021] dan Kaedah-kaedah Cukai Pendapatan (Elaun Modal Dipercepat) (Bas Persiaran) (Pindaan) 2022 [P.U.(A) 9/2022].

CTIM Comments:

Kindly confirm that this P.U. Order would only be applicable to excursion bus acquired, through hire purchase agreement, within the year of assessment (YA) 2020 to YA 2024. If the excursion bus is acquired prior to YA 2020, no accelerated capital allowance (ACA) is allowed on the capital repayment portion made within YA 2020 to YA 2024.

Maklum balas LHDNM:

Ya. Pandangan di atas adalah betul dan teratur. P.U.(A) 9/2022 telah memasukkan subsubkaedah 2(2)(d) yang menjelaskan bahawa bas persiaran yang diperoleh secara sewa beli yang layak bagi tuntutan insentif ini adalah yang diperoleh dalam tempoh tahun taksiran 2020 hingga tahun taksiran 2024.

CTIM MEMBERS ISSUES

1. HASIL'S RESPONSES TO JOINT MEMORANDUM ON POST-2022 BUDGET ISSUES

1.4 Part C, Item 2.6 - Issues arising from Transitional Provisions [New S.6(1)(p) and Part XX of Schedule 1 (w.e.f. 1 January 2022 to 30 June 2022)]

- 2.6 Suppose a company receives FSI during the first half of 2022 and is taxed at 3%, a further FSI in the second half of 2022 and is taxed at 24%. Will the former FSI be included in the total income for Cukai Makmur? Under this circumstance, how would the double tax relief be computed for the first FSI if based on the current S.132, which is calculated based on the proportion to the taxable income?

Will the IRB issue a public ruling providing guidance on the mechanism?

Maklum Balas LHDNM:

Pendapatan FSI yang diremitkan ke Malaysia tidak diambilkira dalam pengiraan pendapatan bercukai bagi Cukai Makmur.

CTIM Comments:

Kindly confirm that the exclusion is also applicable to a Malaysian resident company carrying on the business of banking, insurance, shipping or air transport.

If the answer is no to the above, kindly advise the basis for the non-application. Please refer to similar comments in item 2.3 of this Paper.

Maklum balas LHDNM:

Syarikat pemastautin Malaysia yang menjalankan perniagaan perbankan, insurans, perkapalan atau pengangkutan udara adalah tertakluk kepada skop pengenaan cukai di bawah *worldwide scope*.

Oleh yang demikian, pendapatan FSI yang berkaitan dengan aktiviti perniagaan perbankan, insurans, perkapalan atau pengangkutan udara yang diterima oleh syarikat pemastautin Malaysia yang menjalankan perniagaan perbankan, insurans, perkapalan atau pengangkutan udara adalah dikenakan cukai di Malaysia tanpa mengambilkira sama ada pendapatan FSI diremit atau tidak ke Malaysia. Sehubungan itu, pendapatan FSI ini akan turut tertakluk kepada peruntukan di bawah perenggan 6(1)(p) dan Bahagian XX Jadual 1 ACP.

Bagi pendapatan FSI **selain aktiviti perniagaan** perbankan, insurans, perkapalan atau pengangkutan udara yang diterima oleh syarikat pemastautin Malaysia yang menjalankan perniagaan perbankan, insurans, perkapalan atau pengangkutan udara, pendapatan FSI ini dikenakan cukai Malaysia apabila pendapatan tersebut diremitkan ke Malaysia. Oleh itu, pendapatan FSI ini tidak tertakluk kepada cukai makmur sepertimana yang diperuntukkan dibawah P.U.(A) 96/2022.

CTIM MEMBERS ISSUES

1. HASIL'S RESPONSES TO JOINT MEMORANDUM ON POST-2022 BUDGET ISSUES

1.5 Part F, Item 2 - Tax Measures proposed under Economic Stimulus Packages 2021 which has not been gazetted

2. Tax deduction for employers under the *Program Imunisasi Industri COVID-19 Kerjasama Awam-Swasta (PIKAS)* for expenses incurred on equipment and services for providing its' premises as vaccination centres as announced under PEMULIH.

Maklum Balas LHDNM:

Tiada perundangan subsidiari berhubung perkara ini.

CTIM Comments:

Kindly confirm this deduction can be claimed pursuant to S.33 of Income Tax Act 1967 in arriving at adjusted income for the relevant source.

Maklum balas LHDNM:

In relation to expenses incurred on equipment and services for providing its' premises as vaccination centres deduction can be claimed under P.U.(A) 269/2021, Income Tax (Deduction For Expenses In Relation To The Cost Of Personal Protective Equipment) Rules 2021.

2. GAZETTE ORDERS

2.1 Income Tax (Restriction on Deductibility of Interest) (Amendment) Rules 2022 [P.U. (A) 27/2022]

2.1.1 Effective date of the Income Tax (Restriction on Deductibility of Interest) (Amendment) Rules 2022 [“amendment Rules”]

The Income Tax (Restriction on Deductibility of Interest) Rules 2019 [P.U. (A) 175/2019] [“principal Rules”] come into operation on 1 July 2019.

The amendment Rules come into operation on 1 February 2022.

CTIM Comments:

Based on Rule 2(1) of the principal Rules and HASiL’s Guidelines on Restriction on Deductibility of Interest issued on 5 July 2019, the principal Rules shall apply to a person in the scenario where the basis period for a YA commences on or after 1 July 2019 and subsequent basis periods.

Pending any release of the revised Guidelines on Restriction on Deductibility of Interest on further details of the amendment Rules, we would like to seek a confirmation that the amendment Rules will be applicable to a person in respect of the basis period for a YA beginning on or after 1 February 2022 and subsequent basis periods. If the answer is no, how should the tax EBITDA for non-January year-end tax computation for YA 2022 be calculated, where 1 February 2022 falls within the basis period?

Maklum balas LHDNM:

P.U. (A) 27/2022 will take effect based on the basis period starting on or after 1 February 2022. The revised guideline will provide a further example to explain these changes.

2.1.2 Meaning of “qualifying deduction”

The Income Tax (Restriction on Deductibility of Interest) (Amendment) Rules 2022 re-defines the phrase “qualifying deduction” that is included in the formula to ascertain the tax-EBITDA. Rule 5(2) provides the following:

“qualifying deduction” means—

(a) where there is business expenditure incurred in the profit and loss account is allowed as deduction under the Act and the amount of the deduction allowed exceeds the amount of the business expenditure incurred, an amount equal to the difference between the amount of the deduction allowed and the amount of the business expenditure incurred in the profit and loss account; or

2. GAZETTE ORDERS

(b) where there is no business expenditure incurred in the profit and loss account, the amount of deduction allowable under the Act.

CTIM Comments:

We would like to request HASiL to provide further explanation on Rule 5(2)(b). We would appreciate it if HASiL could provide a few examples too. It would be good that the [Guidelines](#) on HASiL's website are updated to incorporate this latest amendment.

Maklum balas LHDNM:

An example of rule 5(2)(b) has been included in the revised guidelines. It will be made available on the HASiL's website once approved.

2. GAZETTE ORDERS

2.2 Income Tax (Conditions for the Grant of Rebate under Subsection 6D(4)) Order 2021 [P.U. (A) 504/2021]

Confirmation sought on conditions for the grant of rebate under Rule 2(1)(b) and Rule 2(1)(d) of the above Order

Rule 2(1)(b) of the Order provides that the operations of the qualifying company or qualifying limited liability partnership (LLP) shall be carried out in a different premise from its related company or its related LLP.

Rule 2(1)(d) of the Order provides that the employee of the qualifying company or qualifying LLP, except for its chief executive officer and director, shall be different from its related company or its related LLP.

CTIM Comments:

- a. We would like to seek confirmation that the requirements of “different premises” under Rule 2(1)(b) of the Order would be satisfied in the following situation:

Where the operations of a qualifying company / LLP are located on different levels or different units within the same building.

- b. We would like to seek confirmation that the requirement under Rule 2(1)(d) of the Order would be satisfied in the following situation:

Where a qualifying company / LLP which has no employees of its own but utilises its related company's / LLP's resources under a staff pooling arrangement where management fee will be charged by the related company or related LLP to the qualifying company / LLP.

Maklum balas LHDNM:

- a. Berdasarkan situasi diberikan, syarat subsubperenggan 2(1)(b) P.U (A) 504/2021 boleh dipenuhi. Hasrat pemberian rebat 6D ACP adalah kepada syarikat/LLP baharu dan syarat-syarat di dalam subperenggan 2(1) P.U(A) 504/2021 dimasukkan bagi memastikan hasrat tersebut dapat dicapai. Di dalam keadaan semakan audit cukai dibuat dan bukti audit mendapati berlaku manupulasi dimana syarikat/LLP bukan syarikat yang baharu dan berasingan daripada syarikat/LLP berkaitannya dari segi aktiviti dan pengoperasian perniagaannya, rebat boleh ditarik balik.
- b. Syarikat berkongsi pekerja yang sama dengan syarikat berkaitannya. Oleh itu syarat dibawah subsubperenggan 2(1)(d) P.U.(A) 504/2021 tidak dipenuhi.

2. GAZETTE ORDERS

2.3 Income Tax (Exemption) Order 2022 [P.U. (A) 96/2022] and Paragraph 2(2), Part 1 of Schedule 1 of the Income Tax Act 1967

CTIM Comments:

We would like to seek clarification from HASiL on whether the above P.U. Order is applicable to a Malaysian resident company carrying on the business of banking, insurance, shipping or air transport in respect of its:-

- (i) Business income that is taxed from wherever accruing or derived, i.e. worldwide basis, regardless of whether its foreign source income is remitted into Malaysia (example, income from foreign branch); and
- (ii) Non-business income that is taxed upon remittance into Malaysia.

If Item (i) is affirmative, we would like to seek confirmation that the foreign business income accrued from 1 July 2022 for YA 2022 will be deemed remitted into Malaysia in YA 2022, and will be excluded from Cukai Makmur computation purposes.

Maklum balas LHDNM:

- i) P.U.(A) 96/2022 **tidak** terpakai.
- ii) P.U.(A) 96/2022 terpakai.

Mohon rujuk maklum balas LHDNM pada item 1.4.