

**ENGAGEMENT AND DIALOGUE SESSION WITH INLAND REVENUE BOARD OF  
MALAYSIA, SARAWAK AND AAS CENTRAL**  
**12<sup>TH</sup> SEPTEMBER 2023**  
**2:30PM TO 4:30PM**  
**GRAND MARGHERITA HOTEL, KUCHING SARAWAK**

No.	ISSUES	COMMENTS/REMARKS
1	<p><u>Reflection of Market Value</u></p> <p>In some districts, market value is not reflected in Notis Taksiran for adjudication of stamp duty relating to Probate matters.</p>	<p><b><u>Seksyen Duti Setem</u></b></p> <p>Berikut adalah kategori yang tidak perlu dikemukakan kepada JPPH bagi tujuan penilaian adalah;</p> <p>(i) Kes lelongan dan (ii) kes pemaju.</p> <p>Bagi kes benifisiari, penilaian JPPH adalah berdasarkan kes iaitu;</p> <p>(i) kes ada wasiat atau "next-of-kin" yang dipatuhi, yang dikenakan duti tetap, penilaian oleh pihak JPPH adalah tidak diperlukan.</p>
2	<p><u>Splitting of Memorandum of Transfer</u></p> <p>In some districts, it was the practice that Advocates are allowed to split the Memorandum of Transfer depending on the number of Purchasers. However, some disallow this practice. What is the actual position?</p>	<p><b><u>Seksyen Duti Setem</u></b></p> <p>Langkah Penyeragaman telah diambil berkuatkuasa 17/07/2023; dengan menerima semua permohonan yang berkaitan dengan "split" MOT, kecuali bagi kes yang melibatkan Pengecualian / Peremitan dan pindah Milik Benefisiari.</p>
3.	<p><u>Settlement Agreement to be stamped under Security</u></p> <p>Settlement Agreement is not a security, it is just a memo between parties for certain arrangements. Therefore should only attract nominal stamp duty.</p>	<p><b><u>Seksyen Duti Setem</u></b></p> <p>Untuk makluman, Perjanjian Penyelesaian atau <i>Settlement Agreement</i> adalah salah satu jenis perjanjian Sekuriti. Tiada interpretasi yang diberikan oleh Seksyen 2 berkenaan sekuriti. Definisi sekuriti diperolehi dari keputusan mahkamah dalam kes <u>Jones v Commissioners of</u></p>

		<p>Inland Revenue (1895) 1 QB 484 yang mana mahkamah memutuskan sekuriti bermakna mana-mana tanggungan yang diwujudkan oleh mana-mana surat cara dan surat cara itu mengandungi satu akujanji yang jelas untuk:-</p> <ul style="list-style-type: none"> <li>a) membayar wang; atau</li> <li>b) membayar balik wang; atau</li> <li><b>c) menjamin bayaran wang; atau</b></li> <li>d) menjamin pembayaran balik wang.</li> </ul> <p>Untuk menentukan sama ada Perjanjian Penyelesaian atau mana-mana perjanjian di bawah Sekuriti adalah dikenakan duti nominal atau advalorem, duti ditentukan berdasarkan isi kandungan atau kesan undang-undang terhadap sesuatu surat cara dan bukan atas tajuk yang diberikan. Oleh itu, semakan Pegawai Duti Setem dibuat bagi mentaksir sekiranya terdapat akujanji untuk balasan Wang sepertimana maksud suratcara Sekuriti tersebut di bawah Butiran 22(1)(a), Jadual 1, Akta Setem 1949. Sekiranya didapati hasil semakan kandungan dan maksud perjanjian terdapat AKUJANJI dan IKATAN JANJI (BOND/COVENANT) bagi mana-mana nilai balasan atau bayaran atau bayaran balik atau jaminan untuk membayar balik dalam bentuk sejumlah wang bagi mengikat perjanjian kepada pihak-pihak dalam terma perjanjian, suatu balasan/pampasan/ikatan wang dibayar dalam tempoh/tempoh-tempoh perjanjian tersebut adalah tertakluk duti advalorem sebagaimana duti sewajarnya dikenakan di bawah But. 22(1)(a), Jad. 1 Akta Setem 1949.</p>
--	--	--

4.	<p><u>For Adjudication for Beneficiary Transfer</u></p> <p>While Beneficiary Transfer is submitted for adjudication, in some districts the supporting document required is “Letter of Consent” - the same letter used for applying for a Letter of Administration.</p> <p>Now, we are required to produce a Letter issued by Clan Association / Kapitan. The Associations in Sibu do not provide such service.</p>	<p><b><u>Seksyen Duti Setem</u></b></p> <p>Pihak kami mengambil maklum cadangan yang dikemukakan. Sebagai penambahbaikan pengesahan Senarai Waris (“next of kin”) dari pihak peguam (advocate) / pesuruhjaya Sumpah akan diterima pakai.</p>
5.	<p><u>Pemungut Duty Setem v Lee Koy Eng [2022] 3 CLJ 252</u></p> <p>The Court of Appeal has affirmed that a memorandum of transfer of landed property to give effect to a renunciation of an entitlement to the estate of a person who died intestate is not subject to <i>ad valorem</i> stamp duty as a “release or renunciation by way of gift” under item 66(c) of the First Schedule of the Stamp Act 1949, but rather to nominal duty of RM10.00 as a conveyance “of any kind not otherwise specifically charged with duty” under item 32(i) of the First Schedule of the said Act.</p> <p>What is the take of LHDN?</p>	<p><b><u>Jabatan Undang-Undang</u></b></p> <p>The law has been amended by inserting Item 32(h)(ii) of First Schedule in Stamp Act 1949 where a transfer among the beneficiaries to the administrator will be taxed at nominal duty of RM10.00 effective from 1 January 2024.</p>
6.	<p><u>Tenancy with Option to renew</u></p> <p>It was raised that Tenancy with Option to renew (at the increased rental) has been charged with <i>ad valorem</i> of the “future” rental rate.</p> <p><u>Policy reconsideration:</u></p>	<p><b><u>Seksyen Duti Setem</u></b></p> <p>Isi kandungan perjanjian sewa perlu diteliti. Jika perjanjian sewa dibuat dengan “option to renew” menyatakan dengan jelas tempoh dan bayaran (future rental), maka keseluruhan duti <i>ad valorem</i> perlu dikenakan mengikut butiran 49(a) Akta Setem 1949.</p> <p>Sekiranya “option to renew” tidak menyatakan tempoh dan bayaran (future rental), maka hanya duti untuk sewa semasa (mengikut) perjanjian</p>

		sahaja dikenakan duti. Mengikut subseksyen 24(3) Akta Setem 1949, surat cara pajakan yang mengandungi nilai balasan dan disetamkan berdasarkan nilai tersebut, disifatkan telah disetamkan dengan sempurna kecuali dibuktikan bahawa nilai tersebut adalah tidak betul.
7.	<p><u>CKHT</u></p> <p>On the matter of CKHT 502, payment is being made by individual advocates for and on behalf of the clients. Issue arising is the implication this may have upon the individual advocates. Whether LHDN could allow for a legal firm to pay on behalf of clients instead.</p>	<p><b><u>Seksyen CKHT</u></b></p> <p>Jabatan Teknologi Maklumat in the midst of developing a system for a legal firm so pending to the said upcoming system, the legal firms are still required to submit the E-CKHT or CKHT 502 using my tax until the system is ready to use.</p>
8.	<p><u>Distribution by Adat</u></p> <p>The natives are allowed to distribute according to customs. What are the supporting documents required for adjudication of beneficiary transfer?</p>	<p><b><u>Seksyen Duti Setem</u></b></p> <p>Senarai dokumen diperlukan:</p> <ol style="list-style-type: none"> <li>1. Surat Cara Asal Pindah Milik Harta Tanah (Borang KTN 14A/DOA/MOT)</li> <li>2. Salinan Suratan Hak milik/Geran tanah/ Carian Rasmi</li> <li>3. Salinan Surat Kuasa Mentadbir( Letter of Adminstation)</li> <li>4. Salinan Perintah Mahkamah dan Senarai Waris</li> <li>5. Salinan Sijil Faraidh(bagi beragama Islam)</li> <li>6. Senarai Aset</li> </ol> <p>*Surat pengesahan dari tuai rumah juga boleh dilampirkan.</p>
9.	<p><u>Real Property Company</u></p> <p>On the interpretation of Paragraph 34A schedule 2 of the RPGT Act, is it the take of LHDN now that if one sells shares in a real property company, one has to pay RPGT even though the gain from the normal disposal is a capital gain which is not taxable</p>	<p><b><u>Jabatan Undang-Undang</u></b></p> <p>Yes, correct. This approach is in accordance with the decision by the Court of Appeal in the Continental Choice Sdn Bhd (Civil Appeal No: W-01(A)-275-04/2018) and the duty payer are subject to RPGT under</p>

	<p>in Malaysia.</p> <p>Is this correct especially after the Court of Appeal decisions on The Continental case?</p>	<p>Paragraph 34A Schedule 2 of the RPGT Act.</p>
10.	<p><u>RPGT vs INCOME TAX</u></p> <p>Is income tax and real property gains tax mutually exclusive if so what is the correct procedure for LHDN to drop the one tax then re issue and raise a new tax.</p>	<p><b><u>Seksyen CKHT</u></b></p> <p>If there is an audit finding from ITA audit section that a gain from the disposal of asset which was originally assessed under RPGT should be subject to ITA instead of RPGT, RPGT section will issue a reduced assessment in full amount on the disposer upon instruction from ITA audit section. The excess amount arising from reduced assessment in RPGT ledger of the disposer by collection section in order to contrast with any additional assessment raised by ITA auditor on the disposer under ITA ledger.</p> <p><b><u>Seksyen Audit Cukai Syarikat &amp; Selain Syarikat</u></b></p> <p>Tax case of <b>Teruntum Theatre vs DGIR (1998)</b>, the court held that Section 20 RPGTA 1976 does not preclude the IRBM from proceeding with an assessment under the ITA, after reviewing the earlier assessment made under the RPGTA.</p> <p><b><u>Jabatan Undang-Undang</u></b></p> <p>Generally, the information from the return form and upon the audit exercise by LHDN will determine whether the gain from the disposal of property is subject to tax under ITA 1967 or RPGTA 1976.</p>

11.	<p><u>Donation</u></p> <p>Is donation received by a charitable organisation, clan association and club from non-member taxable as income under Section 4 (f) of the Income Tax Act 1967?</p>	<p><b><u>Seksyen Audit Cukai Syarikat &amp; Selain Syarikat</u></b></p> <p>Yes, but if the charitable organizations and associations got the exemption on their income (Section 44(6) ITA1967) from the Ministry Of Finance or the government, then the donation received shall be exempted from ITA. So long as they comply with the conditions set in the exemption letter, there should not be any issue on income tax (ie should remain tax exempt).</p>
12.	<p><u>Appeal Practices</u></p> <p>The special commissioners of income tax hearing a tax appeal used to order parties to file their respective petition of appeal in reply to the Petition which enabled issues to be defined. The practice has been discontinued.</p> <p>If IRB agrees that the old practice is better than jointly should for previous practice to be reinstated. The current practice of ordering cause papers (Form Q, statement of agreed issues, statement of agreed facts, bundle of agreed documents and respective parties' facts , issues and documents ) have not really expedite hearing .</p>	<p><b><u>Jabatan Undang-Undang</u></b></p> <p>Petition by Taxpayer and the DGIR's Reply to Petition and Taxpayer's Reply to the DGIR's Reply was an old practice introduced by the former Chairman of the SCIT.</p> <p>The reason it was stopped because it does not have any force of law and it is redundant with Agreed Facts and Issues to Be Determined and the testimony of the witnesses calling by both parties.</p> <p>On top of it has no force of law, it delayed the hearing as well since both parties has to file the petition and the DGIR to reply and taxpayer to reply to the DGIR's reply to the petition.</p> <p>Therefore, we agreed that the current practice should continue as it expedites the appeal process.</p>
13.	<p><u>Dispute in Sarawak</u></p> <p>Although Sarawak IRB is authorized to settle or resolve taxdisputes even after Form Q is filed it seems reluctant or unable to do so. Be good to know their problems.</p>	<p><b><u>Seksyen Audit Cukai Syarikat &amp; Selain Syarikat</u></b></p> <p>IRBM would love to resolve the tax disputes after Form Q if all necessary documents requested are provided by the taxpayer. But, in technical or obvious tax issues, there will not be an</p>

		<p>easy way to negotiate on the tax in a mere layman's negotiation because IRB must have a good basis too before allowing for the tax dispute to be negotiated.</p> <p>IRBM officers are also subject to audit by Jabatan Akauntan Negara and internal auditors from HQ. So, the procedures and discretion by officers remain under watch.</p> <p>However, if indeed there are officers who refused to cooperate, can complain and email to Dr John, State Operation Director of SACS&amp;SS.</p> <p><b><u>Jabatan Undang-Undang</u></b></p> <p>Any negotiation for settlement is on a case by case basis and upon mutual agreement between parties after taking into consideration the interest of the LHDNM.</p>
14.	<p><b><u>Jurisdiction on Costs</u></b></p> <p>Special commissioners have no general costs jurisdiction. Time to provide for it so tax disputes are settled or resolved without having to have done by special commissioners thereby avoiding frivolous appeals and refusal to consider taxpayers' tax claims.</p>	<p><b><u>Jabatan Undang-Undang</u></b></p> <p>The DGIR is always open to discuss on settlement even the case is already fixed for hearing before the SCIT.</p> <p>The reason why no costs is awarded is to minimize the costs to be paid by any aggrieved taxpayers.</p> <p>If the costs could be awarded by the SCIT, more cost will be incurred by the taxpayer in the event the appeal is dismissed by the SCIT in addition to the tax payment.</p> <p>Paragraph 29 Schedule 5 ITA however provides that the SCIT may impose cost up to RM5,000 on the Appellant if the SCIT were in opinion that the appeal was vexatious or frivolous.</p>

15.	<p><u>Place of Hearing</u></p> <p>Hearings are all in Kuching. Under ITA hearing has to be in the town where the tax dispute occurs.</p>	<p><u>Jabatan Undang-Undang</u></p> <p>The determination of place of hearing is under the SCIT purview and not the DGIR. Parties may request from the SCIT to have the hearing be conducted at Kuching or any other place of convenience.</p> <p>For convenient, only hearing will be conducted physically whilst mention of cases is conducted via online.</p>
-----	--	---

**NOTE:**

**SOME RESPONSES BY LHDNM TO THE RESPECTIVE ISSUES RAISED DURING THE ENGAGEMENT SESSION ARE OF GENERAL EXPLANATORY TO THE EXISTING RULES OR PRACTICES UNDER THE APPLICABLE LAWS, REGULATIONS AND/OR CIRCULARS AND SHOULD NOT BE TREATED AS VALID RESPONSES TO ALL CIRCUMSTANCES. BE THAT AS IT MAY, LHDNM RESERVES ITS ABSOLUTE DISCRETION TO VARY SUCH RESPONSES AS AND WHEN IT DEEMS NECESSARY DEPENDING ON SPECIAL CIRCUMSTANCES OR SPECIFIC PECULIARITY OF A PARTICULAR CASE.**

**For any inquiry or complaint, interested parties are advised to directly contact the State Customer Care Officer, Encik Simon Kane Anak Kibes at 082-233532 or e-mail to [simonkane@hasil.gov.my](mailto:simonkane@hasil.gov.my)**