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Revised forms CP 21, CP 22A and CP 22B

The IRB has recently issued revised forms CP21, CP22A and CP22B.

Form	Notable new information required
CP 21 Notification by Employer of Departure from the Country of an Employee	<ul style="list-style-type: none"> • Date of commencement of employment • Expected date of leaving Malaysia • On emoluments: <ul style="list-style-type: none"> - Compensation for loss of employment - Benefits in kind subject to tax - Value of living accommodation provided by employer - Other payments • Income of preceding years not declared • Amount of MTD and zakat for the year • Employee contributions to EPF
CP 22A Tax Clearance Form for Cessation of Employment of Private Sector Employees	<ul style="list-style-type: none"> • Child relief claimed • Name, address and identification number of deceased's representative • On emoluments: <ul style="list-style-type: none"> - Benefits in kind subject to tax - Other payments • Income of preceding years not declared • Amount of zakat for the year
CP 22B Tax Clearance Form for Cessation of Employment of Public Sector Employees	<ul style="list-style-type: none"> • Child relief claimed • Name, address and identification number of deceased's representative • On emoluments: <ul style="list-style-type: none"> - Rewards - Compensation for loss of employment - Pension from employer - Allowances - Car and driver - Other payments • Income of preceding years not declared • Amount of zakat for the year

The revised forms are effective from 1 January 2016 and can be downloaded from IRB's website www.hasil.gov.my (Forms > Other Forms)

Revised advance ruling guideline

The IRB has recently issued a revised guideline for advance ruling which replaces the guideline previously issued in 2008. The salient changes are:

- Para 4.2b – The 2008 guideline provides that the advance ruling is not binding on the Director General of Inland Revenue (“DGIR”) if there is material omission or misrepresentation in the application for advance ruling. The revised guideline has now included material inaccuracy in the

application of the advance ruling as an additional circumstance in which the advance ruling will not be binding on the DGIR.

- Para 6.3 – Under the 2008 guideline, an advance ruling will only be made if there is an existence of an arrangement which is seriously contemplated. The revised guideline now specifies that an advance ruling will only be made if there is a proposed arrangement which is being seriously contemplated.
- Para 11.5 – Under the 2008 guidelines, the timeframe to submit an application to extend the period applicable in the advance ruling was “within 3 months prior to the end of the period or year of assessment stated in the advance ruling”. The timeframe has now been revised from “**within** 3 months prior to...” to “**at least** 3 months prior to...”

The revised guideline can be downloaded from IRB’s website www.hasil.gov.my (Forms > Other Forms > Form KA)

Revised guideline on the application for automation capital allowance

MIDA has recently revised the guideline on the application for automation capital allowance (“automation CA”).

The following are the key changes to the guideline:

Paragraphs in the guideline	Comments
Categories of automation CA Para 2	The revised guideline has now defined “incurred” for the purposes of automation CA: <i>“Incurred” refers to plant and machinery purchased and used for the purpose of the business in the approved year of assessment.</i>
Submission process Para 6	Previously, the application is submitted separately to MIDA (for non-technical eligibility) and SIRIM (for technical eligibility). Under the latest guideline, submission is only made to MIDA . Based on the approval process workflow, after MIDA has verified the non-technical eligibility of the application, MIDA will send a supporting letter and verification slip to SIRIM for their further verification of the technical eligibility.

Please note that the rules for Automation CA is yet to be gazetted.

MIDA has also issued a revised application form ML-Automation CA and a workflow chart on the approval process. These may be downloaded from MIDA’s website www.mida.gov.my (Forms > Forms and Guidelines > New Incentives Under The 2015 Budget).

Public Ruling 7/2015 – Appeal against assessment and application for relief

The IRB has issued *Public Ruling 7/2015 – Appeal against assessment and application for relief*. This Public Ruling (“PR”) replaces *PR 3/2012 – Appeal against an assessment*. The following are some of the salient points in relation to the latest PR:

1) Objective and scope of the PR

- The PR explains the procedures and the right of appeal under section 99 of the Income Tax Act 1967 (“ITA”), **as well as the application for relief in respect of error or mistake under section 131** of the ITA.
- **The PR relates to appeals commencing from 24 January 2014.**

2) Definitions

New definition

“Notice of assessment” means best judgement assessment, original assessment, additional assessment, deemed assessment, notification of non-chargeability (NONC) (Section 97A of the ITA), notification of refund of over-payment (section 111 of the ITA) and advanced assessment (section 92 of the ITA).

Amended definition

The definition of “person” is amended to be aligned with that under the ITA.

3) Appeal under section 99

- The PR has been amended to take into account section 99(4) of the ITA. Para 4 of the PR explains circumstances / cases in which an appeal under section 99 can be made and otherwise:

*“..commencing 24 January 2014, this provision **shall not apply for the following cases:***
(a) deemed assessment under subsection 90(1) of the ITA, or
(b) deemed assessment for amended Income Tax Return Form (ITRF) under section 91A of the ITA

unless the taxpayer disagrees with the treatment stated in PR or known stand, rules and practices of the DGIR prevailing at the time when the assessment is made.

The PR provides the following examples of known stand, rules and practices:

- private rulings or advanced rulings,*
- guidelines by the Inland Revenue Board of Malaysia (IRBM),*
- slide presentations given by IRBM officers,*
- cases where decisions have been made by the SCIT and the court, or*
- any other written evidence.*

- The IRB has included examples to illustrate the determination of the 30 days after the serving of the notice of assessment in relation to the deadline for submission of the Form Q. The examples include appeals against deemed notice of assessment and notice of reduced assessment where there are issues disputed by the taxpayer.
- The IRB has indicated in para 4.5 of the PR that:

*“No appeal can be made in respect of a notice of reduced assessment because such notice is not an assessment. **However, an appeal may be made in respect of the notice of reduced assessment if there are issues in the notice that are disputed by the taxpayer.**”*

- A notification for non-chargeability (“NONC”) is treated as a notice of assessment and may be issued in situations where a taxpayer has no tax liability or is exempted from tax. An application for a NONC is required where the person intends to appeal against the tax treatment mentioned in any PR **or against any known stand, rules and practices made by the DGIR.**
- The IRB has included more detailed requirements on the particulars to be included in a Form Q, in para 6.3.
- The IRB has provided in the following paragraphs in relation to the grounds of appeal:

“7.1 The appellant shall state the reasons why he disagrees with the notice of assessment which was issued. Attachments of additional information or copies of relevant documents must be provided, if necessary.

7.2 Taxpayers must submit the evidence related to the known stand, rules and practices of the DGIR which he disagrees together with Form Q”

4) Application for relief in respect of error or mistake under section 131

- The IRB has included in para 12 of this PR, the requirements and procedure to apply for relief in respect of error or mistake under section 131 of the ITA. It also explains and provide examples on what constitutes error or mistake.

The public ruling is available on IRB’s website www.hasil.gov.my (Laws and Regulations > Public Ruling).

IRB's press release on transfer pricing and base erosion profit shifting

The IRB has issued a press release sharing the actions taken to overcome transfer pricing (“TP”) and base erosion profit shifting (“BEPS”) issues. These include, amongst others:

- Revising the relevant tax legislations to be aligned with international standards which are applicable and relevant to Malaysia.
- Keeping abreast with the BEPS project by being actively involved in selected BEPS Working Party and setting up of a BEPS Action Committee within the IRB.

The IRB also notes that Malaysia’s tax system and policy goals are different from that of the developed countries. Hence, not all BEPS Action Plan will be relevant to Malaysia. However, Malaysia relies heavily on corporate income tax, especially from multinational corporations. Therefore, it is important for the IRB to follow up closely on the TP and BEPS developments to maintain the basis of taxation and reduce tax leakages.

The press release is available on IRB’s website www.hasil.gov.my (Latest news).

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