

CIRCULAR NO: 11/2017

DATE: 20 November 2017

TO: ALL MEMBERS

MONTHLY INCOME TAX DEDUCTION FOR FOREIGN WORKERS

Further to the MPMA Circular 9/2017 dated 28 September 2017, we would like to update members on the following:

- (i) The use of the **2017 Monthly Tax Deduction (MTD) Schedule** for **foreign workers** is effective from **August 2017**.
- (ii) The 2017 MTD Schedule applicable to all foreign workers with an **employment contract** of more than **182 days**, including those with **Pas Lawatan Kerja Sementara (PLKS)** and **expatriates** with monthly income above **RM2,851**. Employers should immediately apply the MTD Schedule for foreign workers that are liable.
- (iii) Employers are required to comply with Section 83(2) on the Income Tax Act (ITA) and submit **Form C22** to notify the Inland Revenue Board (IRB) of all **foreign workers**, both **existing and new recruits, liable (monthly income above RM2,851) or not liable (monthly income below RM2,851)**, and **whether legal or illegal**.
- (iv) **Levy** is considered **income** for the foreign workers under the following circumstances:
 - (a) Levy paid by employer on behalf (by deducting from the salary) of a foreign worker is benefit-in-kind and classified as income to the foreign worker,
 - (b) By 2018, levy payment will revert back to the employer. The levy paid by employer is still classified as benefit-in-kind and income to the foreign worker.
- (v) In the event that foreign worker is **ceasing, has ceased employment and in leaving the country**, Employers shall comply with **Section 83(3) and Section 83(4)** of the **ITA** and shall notify IRB by submitting **Form CP21**. This include foreign workers that are leaving the country for the following reasons:
 - (a) The employment contract has expired;
 - (b) Failed their medical examination and have to be sent back to their source country;
 - (c) Foreign workers that are absconding;
- (vi) For foreign workers whose employment contract is expiring, employers are required to submit **Form CP21** to **IRB one month** before the workers leave the country. The Income Tax Return Form must be submitted together with **Form CP21** to enable IRB to assess the income tax rate before the **Surat Penyelesaian Cukai (SPC) or Tax Clearance Letter** is issued. Employers are advised to withhold the last month salary of foreign workers, the IRB clarified that all types of remuneration due to the worker have to be withheld until the Tax Clearance is issued and taxes are deducted. Please mark on the Tax Return Form "**LABOUR**" so that the processing could be expedited.

- (vii) The correct **Income tax Returns Form** to be submitted to IRB is **Form M** if the worker **has not** attaining **Malaysian resident** status. Employers have to ensure that foreign workers are submitting their income tax returns form on a **yearly basis**.
- (viii) For foreign workers who have absconded, steps (vi) and (vii) must be carried out and:
 - (a) If the **income tax is paid by the worker**, the submission is to provide IRB with a **record of the worker** in the event that he/she returns to work or re-registered in another (new) employer's payroll, the previous employer has no tax liability arising from that worker.
 - (b) If the income tax is **paid by the employer** as per the relevant clause in the contract of employment with the worker, the **employer is liable to pay any tax owing by the IRB**. This tax liability also applies to workers leaving upon expiry of their contract.
 - (c) An employer's **report to the police** on the absconded worker could be used as documentary support if requested by IRB. Otherwise, Form CP21 is sufficient.
- (ix) A foreign worker is eligible to receive all **income tax relief** as accorded to local workers and residents, **where applicable**.
- (x) Employers are advised to register their worker who is liable to pay tax but does not have an income tax file number through e-Daftar at www.hasil.gov.my.
- (xi) Under Section 83(6) and Section 107(4) of the ITA, the party paying wages is deemed as the legal employer and responsible for ensuring that workers fulfil their tax liability. In view of the different scenarios such as outsourcing production and/or procurement of service to manage foreign workers, including payroll handling, IRB advised employers to their nearest IRB Branch Office for further advice.

For further details, employers could call **IRB's helpline 1800-88-5436** for advice.

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Yours sincerely,



ST GIAM
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