



INLAND REVENUE BOARD MALAYSIA

APPEAL AGAINST AN ASSESSMENT

PUBLIC RULING NO. 3/2012

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AN ASSESSMENT**

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DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**

1. This ruling explains the procedure in respect of appeals against assessments made or deemed made and the requirements to be complied with when making appeals.
2. The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are sections 97A, 99, 100, 101 and 102.
3. The words used in this Ruling have the following meaning:
 - 3.1 "Tax agent" means any professional accountant or any person approved by the Minister with effect from 1 January 2007.
 - 3.2 "Person" includes a company, a co-operative society, a partnership, a Hindu Joint Family, a trust, an estate under administration, a club, an association and an individual.
 - 3.3 "The Special Commissioners of Income Tax" (SCIT) and "the Clerk to the SCIT" refer to the Special Commissioners and the Clerk appointed under section 98 of the ITA 1967.
4. **Right Of Appeal And Time To Appeal**
 - 4.1 A person who is dissatisfied with an assessment that has been made, or deemed made, on him by the Director General of Inland Revenue (DGIR) has a right to appeal against that assessment.
 - 4.2 The appeal must be done by submitting Form Q not later than 30 days after the notice of assessment is received or the deemed notice of assessment is deemed to have been received.
 - 4.3 The person making an appeal (the appellant) shall submit 4 copies of Form Q separately for each year of assessment and has to make sure that at least one copy is an original Form Q whereas 3 may be photocopies. The completed Form Q has to be submitted to the Inland Revenue Board of Malaysia (IRBM) branch handling the appellant's income tax file. The Form Q can be downloaded and printed from the IRBM website address <http://www.hasil.gov.my>.

Example 1

Miss A furnishes her Income Tax Return Form (ITRF) for year of assessment 2011 on 30.4.2012. She is chargeable to tax for year of assessment 2011 but disagrees with a specific tax treatment mentioned in the Public Ruling.

In accordance with subsection 90(2) of the ITA 1967, the notice of assessment is deemed to have been served on Miss A on the same day. The appeal should be made not later than 30.5.2012 by submitting Form Q

Example 2

Company B closes its account on 31 December, furnishes its ITRF for year of assessment 2011 to DGIR on 29.7.2012. The company is chargeable to tax but disagrees with a specific tax treatment mentioned in the Public Ruling.

In accordance with subsection 90(2) of the ITA 1967, the notice of assessment is deemed to have been served on the company on the same day. The appeal should be made not later than 28.8.2012

Example 3

Company C closes its account on 31 December. In early 2012 the company is audited by the IRBM. Due to audit findings the company is charged to additional tax for year of assessment 2009 and 2010. The notices of assessment for year of assessment 2009 and 2010 dated 30.6.2012 are served on the company. Company C disagrees with the notices of assessment which are raised for both years of assessment.

The notices of assessment are deemed to have been served on the company on the same day. The appeal should be made not later than 30.7.2012 by submitting Form Q for year of assessment 2009 and 2010 respectively.

- 4.4. In the case of an advance assessment, the appeal must be made within the first three months of the year of assessment following the year of assessment for which the assessment is made.

Example 4

An advance assessment for year of assessment 2012 is made on 15.8.2011 on Mr D as his business (accounts normally closes 31 March) has ceased on 30.6.2011. The final accounts were prepared for the period 1.4.2011 to 30.6.2011.

The year of assessment for which the advance assessment is made is 2012 and the year of assessment following that year of assessment is 2013. The appeal against the assessment should therefore be made not later than 31.3.2013.

5. Appeal Against Notification Of Non-Chargeability

- 5.1 A notification of non-chargeability is deemed to be a notice of assessment and forms the basis of an appeal to the SCIT. A person who has the intention to appeal to the SCIT should submit the appeal within 30 days from the date of the notification.

5.2 Pursuant to the new provision of section 97A of the ITA 1967, a notification of non-chargeability may be issued to a person under the following circumstances:

5.2.1 Audited cases

Where as a result of tax audit:

- (a) no assessment for a year of assessment should be made because there is no adjusted income, statutory income, aggregate income or total income or there is income but the income is exempted under ITA 1967 or the Promotion of Investment Act 1986; or
- (b) an assessment for a year of assessment has been made in respect of that person but the person has no statutory income from a business source;

a notification of non-chargeability together with adjustments to tax computation for the relevant year of assessment will be issued by the branch handling the person's income tax file.

Example 5

Company E has been in manufacturing business activity since 1.2.2008 and closes its accounts on 31 December. The company claims Reinvestment Allowance (RA) for the year of assessment 2012 on qualifying expenditure amounting to RM500,000. In the year of assessment 2012, the company suffers losses from business but receives interest income. The company submits ITRF for the year of assessment 2012 to DGIR on 29.7.2013. The company is audited by DGIR on 13.3.2015. Due to audit findings, adjustments were made to the computation of RA. A notification of non-chargeability with the computation of tax adjustments is issued to the company on 10.6.2015.

The Company does not agree with the adjustments made to the RA claimed and intends to submit an appeal to the SCIT. The revised computation is as follows:

Adjusted income/(adjusted losses) (40,000)		Nil
RA claimed (original amount)	500,000	
Less:		
RA disallowed (audit finding)	<u>100,000</u>	
RA carried forward	<u>400,000</u>	
Interest		<u>6,000</u>
Total income/Chargeable income		<u>6,000</u>

The company may submit an appeal to the SCIT on the RA issue for the year of assessment 2012 using the notification of non-chargeability which contains the computation of tax adjustments.

Form Q shall be submitted within 30 days from the date of issue of notification of non-chargeability i.e not later than 10.7.2015.

5.2.2 ITRF submitted

Where a person who has submitted an ITRF for a year of assessment is not liable to tax or is liable to tax but has no statutory income from a business source and intends to appeal on any tax treatment mentioned in a Public Ruling (PR) or any stand of IRBM, the person has to apply to IRBM in writing for a notification of non-chargeability.

Example 6

Company F closes its accounts on 31 December. The company submits its ITRF for the year of assessment 2008 on 30.6.2009. The company is not liable to tax but disagrees with a specific tax treatment mentioned in the Public Ruling No. 2/2008. The company intends to appeal to the SCIT and applies to the IRBM for a notification of non-chargeability. The IRBM issues a notification of non-chargeability and serves the notification on the company on 20.8.2009.

The appeal to the SCIT shall be submitted by the company not later than 31.3.2013

5.2.3 ITRF not required to be submitted

In the case where an individual is not required to submit an ITRF for a year of assessment under subsection 77(1) of the ITA 1967 but intends to appeal on any tax treatment mentioned in a PR or any stand of the IRBM, the person has to submit the ITRF for that year of assessment and apply to the IRBM in writing for a notification of non-chargeability.

Example 7

Mr G commences his business on 1.2.2009. He is not liable to tax for years of assessment 2009 to 2011 and is not required to submit an ITRF for the three years of assessment. He complies with all the relevant PR in preparing his tax computation for these three years of assessment but disagrees with a specific tax treatment mentioned in Public Ruling No. 5/2005. Mr G intends to appeal to the SCIT.

Therefore, Mr G submits his ITRF for the years of assessment 2009, 2010 and 2011 on 30.3.2012 and writes to the IRBM for a notification of non-chargeability. The IRBM issues a notification of non-chargeability and serves the notification on Mr G on 20.4.2012.

The appeal to the SCIT shall be submitted by Mr F not later than 20.5.2012.

- 5.3 For the purposes of subparagraphs 5.2.2 and 5.2.3 above, the Information Processing Department of the IRBM will issue a notification of non-chargeability and tax computation to the person upon receipt of the application for such notification.

6. Appeal For Partnership Case

For an appeal involving a partnership case, if the issue in dispute is the same for each partner, only one appeal (for one of the partners) needs to be submitted. Although only one appeal is submitted, any decision, whether at the level of SCIT, High Court or Court of Appeal, shall apply to all other partners in the partnership.

7. Late Appeal

- 7.1 If an appeal cannot be submitted within the specified period, application for extension of time for appeal could be made through Form N.
- 7.2 Reasons for application for extension of time should be given. Among the reason which may be considered are circumstances beyond the control of the appellant e.g, hospitalisation for a long period of time, absence from the country, involvement in natural disasters or other acceptable reasons.
- 7.3 Form N has to be sent to the branch office of the IRBM handling the appellant's income tax file. The appellant shall submit two copies of Form N for each year of assessment and ensure that at least one copy is an original Form N while the other one can be a photocopy. The Form N can be downloaded and printed from the IRBM website address <http://www.hasil.gov.my>.
- 7.4 If the IRBM agrees to give extension of time, the IRBM will issue Form CP15A-Pin. 1/2009 informing the appellant the new extended date of submission of Form Q, which is normally 30 days from the date of CP 15A.
- 7.5 If extension of time is not granted, Form N, together with a statement by DGIR giving reasons for rejection, will be submitted to the SCIT. The appellant will be notified in writing and a copy of the DGIR's statement will be attached.

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- 7.6 Within 21 days of receiving of the notification, the appellant may make written representation to the SCIT in respect of his application and the statement by the DGIR.
 - 7.7 If the SCIT agrees to give extension of time, the SCIT will notify the appellant and state that Form Q has to be submitted within the specified period.
 - 7.8 If the application is rejected, the appellant will be notified by the SCIT and the appellant has no right of further appeal. SCIT's decision is final.

8. Grounds Of Appeal

- 8.1 The appeal against an assessment should state the grounds of appeal. Statements such as the **tax is excessive** or the **tax is not computed in accordance with the ITA 1967** will be regarded as vague or lacking in details as they provide no assistance in reviewing the assessment.
- 8.2 The grounds of appeal should be specific, referring to particular items in the tax computation or the notice of assessment with which the appellant disagrees. Appendix of additional information or copies of documents should be provided, if necessary.
- 8.3 Where Form Q has been submitted and the grounds of appeal are found to be vague or lacking in details, the review of the assessment could not be carried out. The appeal will be forwarded to the SCIT without a review of the assessment.

9 Review Of Assessment

- 9.1 A review of assessment under appeal will be made as soon as the Headquarters of the IRBM receives the Form Q from the branch.
- 9.2 The appellant may be required to:
 - (a) provide further information or produce books of account, records or other documents related to the assessment.
 - (b) attend in person (or any other relevant person) to give evidence (under oath, if necessary).
- 9.3 As a result of the review, a proposal may be made to the appellant to settle the appeal by confirming, reducing, increasing or discharging the assessment.
- 9.4 If it appears that an agreement cannot be reached, the case will be forwarded to the SCIT.



10. Disposal Of Appeal

- 10.1 The appellant will be notified in writing when the Form Q is forwarded to the SCIT.
- 10.2 At any time before the hearing, the appellant and the DGIR can still negotiate to reach an agreement, or the appellant can withdraw the appeal.

11. Representation

The appellant can be represented by a lawyer and / or a tax agent at the hearing.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**