



INLAND REVENUE BOARD OF MALAYSIA

**APPEAL AGAINST AN ASSESSMENT AND
APPLICATION FOR RELIEF**

PUBLIC RULING NO. 12/2017

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

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

1. Objective

The objective of this Public Ruling (PR) is to explain:

- 1.1 procedures with regard to appeal and application for relief are in line with the provisions in the Income Tax Act 1967 (ITA);
- 1.2 Form Q and Form N appeal procedures; and
- 1.3 procedure and application for relief.

2. Relevant Provisions of the Law

- 2.1 This PR takes into account laws which are in force as at the date this PR is published.
- 2.2 The provisions of the ITA related to this PR are sections 97A, 99, 100, 101, 102, 131 and 131A.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Tax agent" means any professional accountant or any person approved by the Minister of Finance.
- 3.2 "Notice of assessment" means best judgement assessment, 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).
- 3.3 "Person" includes a company, a body of persons, a limited liability partnership, a corporation sole.
- 3.4 "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.

4. Right of Appeal and Time for Appeal

- 4.1 Section 99 of the ITA provides that a person who is aggrieved by an assessment which has been made on him for any year of assessment by the

Director General of Inland Revenue (DGIR) is entitled to appeal against that assessment.

4.2 However, 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. Examples of known stand, rules and practices are as follows:

- (i) private rulings or advanced rulings;
- (ii) guidelines by the Inland Revenue Board of Malaysia (IRBM);
- (iii) cases that have been decided by the SCIT and the court; or
- (iv) any other written evidence.

4.3 Therefore section 99 of the ITA shall only apply for appeal on notice of assessment made for any year of assessment for cases below:

- (a) Assessment/additional assessment /advanced assessment which are made by the DGIR as a result of desk audit or field audit findings; or
- (b) Best judgement assessment made without ITRF or late submission of ITRF under subsection 90(3) of the ITA

4.4 An appeal must be made by submitting Form Q not later than thirty (30) days after the notice of assessment has been served as provided under subsection 99(1) of the ITA.

Example 1

Sarah is a medical doctor and has her own clinic. She has furnished the ITRF for the year of assessment 2015 on 2.5.2016. Additional assessment for the year of assessment 2015 dated 10.4.2017 was made by the DGIR based on field audit findings and it was served on 15.4.2017. Sarah may appeal against the additional assessment if she is not satisfied with the assessment made by the DGIR by submitting Form Q not later than 15.5.2017.

Example 2

Marina is an employee who receives employment income and she did not furnish the ITRF for the year of assessment 2015. Best judgement assessment was made by the DGIR and it was served on 15.10.2016. Marina may appeal against the assessment if the tax made by the DGIR exceeds the actual tax payable by submitting Form Q not later than 14.11.2016. For the purpose of reviewing, Marina shall furnish her ITRF for the year of assessment 2015.

Example 3

Alpha Enterprise Sdn Bhd is engaged in the business of manufacturing (closes accounts on 31st December). In addition, the company has interest and rental income. The company furnished the ITRF for the year of assessment 2015 on 15.6.2016. Pursuant to subsection 90(2) of the ITA, the deemed notice of assessment shall be deemed to have been served on Alpha Enterprise Sdn Bhd on 15.6.2016. Alpha Enterprise Sdn Bhd complied with all PRs but disagreed with the tax treatment on the interest expenses as stated in PR No. 2/2011. The company may appeal against the assessment not later than 15.7.2016 by submitting Form Q.

- 4.5 Reduced assessment is not defined under section 2 of the ITA. 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.

Example 4

Hamzah Dollah Sdn. Bhd. was audited by the IRBM in 2016 on its ITRF for the year of assessment 2014. Some expenses claimed were not allowed. The company has been granted an approval in 2016 for double deduction on research expenditure under section 34A of the ITA which is unclaimed for the year of assessment 2014. When audit adjustments were made, the double deduction on research expenditure has exceeded the amount of adjustments added back in the tax computation and notice of reduced assessment was issued. The company may make an appeal in respect of the notice of reduced assessment if it disagrees with the audit findings.

- 4.6 Section 99 of the ITA shall not apply to a composite assessment provided under section 96A of the ITA as the assessment is made after an agreement between the taxpayer and the DGIR.

4.7 Appeal Against Advanced Assessment

Based on subsection 99(1), in the case of an advanced assessment, the appeal must be made within the first three (3) months of the year of assessment following the year of assessment in which the assessment was

made (or within such extended period as regards those days, or months as may be allowed under section 100 of the ITA).

Example 5

An advanced assessment for the year of assessment 2016 is made on 15.8.2015 on Mr Daud as his business (accounts close on 31st March) ceased on 30.6.2015. The final accounts are prepared for the period of 01.4.2015 to 30.6.2015.

The year of assessment in which the advanced assessment is made is 2016 and the following year of assessment is 2017. Appeal against the assessment must therefore be made not later than 31.3.2017.

4.8 Appeal Against a Non-Chargeability Case

4.8.1 Pursuant to the provision of subsection 97A(1A) and 97A(2) of the ITA, an appeal may be made by a person in the following circumstances:

- (a) ITRF has been furnished

If a person who has furnished an ITRF pursuant to subsection 77(1) or 77A(1) of the ITA (within the stipulated period) for a year of assessment in which he has no chargeable income, the ITRF furnished is deemed to be a notification made by the DGIR to that person on the date the ITRF was furnished. If he is not satisfied with the tax treatment mentioned in any PR or any known stand, rules and practices made by the DGIR, he may appeal against the deemed notification within thirty (30) days from the date of being so notified.

Example 6

Faz Enterprise Sdn Bhd (closes accounts on 31st December) furnished its ITRF for the year of assessment 2016 on 30.6.2017. The company reports interest income and losses from business for the year of assessment 2016. Faz Enterprise Sdn Bhd has no chargeable income because the amount of current year loss exceeded the interest income. The ITRF furnished is deemed to be a notification made by the DGIR on 30.6.2017. The company complied with all relevant PR but disagrees with a specific tax treatment mentioned in the PR No. 2/2011. The company intended to appeal to the SCIT.

The appeal to the SCIT must be submitted by the company not later than 30.7.2017.

However, if a person furnishes an ITRF not in accordance with subsection 77(1) or 77A(1) of the ITA (not within the stipulated period), he is not entitled to appeal under section 97A of the ITA.

Example 7

The facts are the same as in Example 6 except that Faz Enterprise Sdn Bhd only furnished the ITRF for the year of assessment 2016 on 30.9.2017. Since the ITRF is not furnished within the stipulated period, Faz Enterprise Sdn Bhd is not entitled to appeal to the SCIT under Section 97A of the ITA.

(b) ITRF not required to be furnished

In the case where an individual is not required to furnish an ITRF for a year of assessment under subsection 77(1) of the ITA but intends to appeal on any tax treatment mentioned in a PR or any known stand, rules and practices made by the DGIR, the person must furnish the ITRF for that year of assessment and submit an appeal in writing within thirty (30) days after the submission of the ITRF or after receiving the Notice of Non-Chargeability (NONC).

Example 8

Mr. Ganeson is a sole-proprietor and commenced his sundry shop business on 1.2.2014 (closes accounts on 31st December). He has no chargeable income for the years of assessment 2014 to 2016. As an individual tax payer, he was not required to furnish ITRFs for the three (3) years of assessment. He complied with all the relevant PRs in preparing his tax computations for the three (3) years of assessment but disagreed with a specific tax treatment mentioned in the PR No. 4/2012.

Mr. Ganeson intends to appeal to the SCIT. Mr Ganeson furnished his ITRFs for the years of assessment 2014, 2015 and 2016 on 30.6.2017 and write a letter to IRBM to get the NONC.

IRBM issued the NONC for the years of assessment 2014 and 2015 at 20.7.2017 but for the year of assessment 2016, the ITRF furnished is deemed to be a notification by DGIR to Mr Ganeson under subsection 97A (1A) of the ITA.

Mr. Ganeson may appeal to SCIT for the year of assessment 2016 not later than 30.7.2017 and for the years of assessment 2014 and 2015 not later than 20.8.2017.

(c) Audit cases

Where as a result of tax audit:

- (i) no assessment for a year of assessment needs to 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 the ITA or the Promotion of Investments Act 1986; or
- (ii) 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 written notification will be issued by IRBM on:

- a) no assessment shall be made for any year of assessment and calculation in relation to it for subparagraph 4.8.1(c)(i) of this PR; or
- b) the adjustments made in respect of the statutory income from the business source and the calculation in relation to it for subparagraph 4.8.1(c)(ii) of this PR.

Any appeal to the SCIT on such notification shall be submitted within thirty (30) days after the notification is served on him.

Example 9

Evergrow Sdn Bhd has run the manufacturing business since 1.2.2011 (closes accounts on 31st December). For the year of assessment 2015, the company reported interest income and losses from business. Evergrow Sdn Bhd has no chargeable income as the current year loss exceeded the interest income. The company claimed Reinvestment Allowance (RA) on a qualifying expenditure amounting to RM500,000. The company furnished ITRF for the year of assessment 2015 to the DGIR on 29.7.2016. The company was audited by the IRBM on 13.3.2017. As a result of the audit findings, adjustments were made to the computation of RA as the company has no chargeable income. A NONC with the computation of RA adjustments for the year of assessment 2015 has been served to the company on 10.6.2017.

The company disagreed with the adjustments of RA and intends to submit an appeal to the SCIT.

The company may submit an appeal to the SCIT for the year of assessment 2015 by using the NONC which has the computation for RA adjustments.

The company must submit an appeal to the SCIT within thirty (30) days from the date of issuance of the NONC, not later than 10.7.2017.

5. Appeal for Partnership Cases

For an appeal in a partnership case, only one (1) appeal required to be submitted if the issue in dispute is the same for each partner. Whatever decision, whether at the SCIT, High Court, Court of Appeal or Federal Court level shall apply to all other partners in the partnership.

6. Appeal Procedure (Form Q)

- 6.1 The person who appeals (appellant) has to submit four (4) copies of Form Q for each year of assessment and must ensure that at least one (1) copy is an original Form Q whereas the other three (3) copies may be photocopied.
 - 6.2 Form Q and attachments (if any) submitted by the appellant must not be attached with other documents. A completed Form Q with grounds of appeal must be submitted to IRBM's branch office handling the appellant's income tax file. Form Q can be downloaded and printed from the IRBM official portal at <http://www.hasil.gov.my>.
 - 6.3 A completed Form Q must contain the following informations:
 - (a) Date and amount of tax payable(Amount of tax payable refers to the notice of assessment in dispute);
 - (b) Detailed grounds of appeal containing other particulars as may be required by that form; and
 - (c) Form Q must be signed by the appellant who is the person assessed and chargeable to tax. In the case of companies and limited liability partnerships, Form Q must be signed by a person authorized under sections 75 and 75B of the ITA respectively.
 - 6.4 Form Q cannot be signed by a tax agent or a lawyer.
 - 6.5 Incomplete Form Q shall be returned to the appellant.
-

7. Grounds of Appeal

- 7.1 The appellant shall state the reasons why he disagreed with the notice of assessment which was issued. The appellant does not have to submit supporting documents with the Form Q. However, if necessary, DGIR may request the appellant to submit relevant supporting documents when reviewing the Form Q.
- 7.2 The appellant must submit the evidence related to the known stand, rules and practices of the DGIR which he disagreed together with Form Q.

8. Late Appeal Procedure (Form N)

- 8.1 If an appeal has not been submitted within the specified period, an application for extension of time for appeal can be made by way of Form N.
- 8.2 The appellant must give a good reason in the application for extension of time. One of the reason which may be considered is circumstances beyond the control of the appellant, for example: the appellant has been hospitalised for a long period of time, absence from the country, victim of natural disaster or other acceptable and valid reasons.
- 8.3 Form N must be sent to IRBM's branch office handling the appellant's income tax file. The appellant must submit two (2) copies of Form N for each year of assessment and ensure that at least one (1) copy is an original Form N while the other one (1) copy may be photocopied. Form N can be downloaded and printed from the IRBM's website.
- 8.4 If the application for extension of time is allowed, the IRBM will issue Form CP15A-Pin.1/2009 informing the appellant the extended date for submission of Form Q, which is thirty (30) days from the date of CP15A.
- 8.5 If the application for extension of time is not allowed, Form N together with a statement of the reasons for rejection by the DGIR (Form CP15B) will be forwarded to the SCIT. Once Form N and the statement of the reasons are forwarded to the SCIT, the DGIR will inform the appellant in writing and shall furnish together a copy of the statement of the reasons.
- 8.6 Within twenty (21) days of receiving the notification, the appellant may make a written representation to the SCIT in respect of his application and the statement by the DGIR.
- 8.7 If the SCIT agrees to allow an extension of time, the SCIT will notify the appellant and state the date Form Q has to be submitted.
- 8.8 If the application is rejected, the appellant will be notified by the SCIT and the appellant has no right to further appeal. The decision of the SCIT is final.

9. Review of Assessment

- 9.1 The period of time for reviewing the assessment is within twelve (12) months from the date of receiving the notice of appeal. The Minister of Finance may extend the period not exceeding six (6) months if the DGIR requires more time to review.
- 9.2 For the purpose of reviewing the assessment by the DGIR, the appellant may be required to:
- (a) provide further information or books of accounts, records or other documents related to the assessment; and
 - (b) attend in person or by representative 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 an agreement cannot be reached, the appeal will be forwarded to the SCIT.

10. Disposal of Appeal at IRBM Level

- 10.1 The appellant will be notified in writing when the Form Q is forwarded to the SCIT.
- 10.2 Before the hearing is fixed, the appellant and the DGIR may negotiate to either reaching an agreement, or withdrawing the appeal.

11. Representation

The appellant may be represented by a qualified lawyer and/or a tax agent appointed under provision of section 153 of the ITA at the hearing of the Form Q appeal at the SCIT and court levels.

12. Review of Assessment Through Application for Relief

12.1 In Respect of Error or Mistake Under Section 131 of the ITA

- 12.1.1 Apart from an appeal under section 99 of the ITA, a taxpayer may make an application for relief under section 131 of the ITA in respect of error or mistake in the ITRF made by him. The determination whether a taxpayer has made an error or mistake is a question of fact and law.

- 1212 Definition of error or mistake is not provided in the ITA. Thus, the meaning of error or mistake is interpreted with reference to the literal meaning or from precedent cases.
- 1213 The literal meanings of error or mistake are as follows:
- (a) an unintentional act, omission or error arising from ignorance, imposition or misplaced confidence;
 - (b) a belief in the existence of a thing which does not exist or ignorance of a relevant thing, or both;
 - (c) an error, misconception, misunderstanding and erroneous belief.
- 1214 The meaning of error or mistake from precedent cases can be summarized as follows:
- (a) error of omission such as failure to deduct an allowable expense;
 - (b) error of commission such as computational or arithmetical error;
 - (c) error arising from a misunderstanding of the law;
 - (d) erroneous statement of fact; or
 - (e) omission made not by design but by mischance.
- 1215 Some examples of error or mistake made in the ITRF are:
- (a) total income reported in the income column;
 - (b) income for the previous year of assessment is reported in the current year of assessment;
 - (c) forgot to claim relief under sections 45 to 49 of the ITA such as insurance, children, books, housing loan interest, etc; or
 - (d) did not claim deductions such as zakat, approved donations, levy and so on.
- 1216 The onus of proving that there is an error or mistake shall be on the taxpayer. The DGIR will review the assessment only if he is satisfied that the taxpayer has made an error or mistake in the ITRF or statement made by him for the purposes of the ITA which is furnished to the DGIR.

121.7 The conditions under subsections 131(1) and (4) of the ITA are:

- (a) Application for relief under Section 131 of the ITA will not be considered if the ITRF is made in accordance with the known stand, rules and practices of the DGIR prevailing at the time when the assessment is made.
- (b) The taxpayer must pay all taxes that have been made for the relevant year of assessment.
- (c) The taxpayer must make a written application by way of a letter or Form CP15C to the DGIR within five (5) years after the end of the year of assessment in which the assessment is deemed.

Example 10

Maria has furnished her ITRF for the year of assessment 2015 on 30.4.2016. On 15.8.2016, Maria realized that she forgot to claim a deduction for the purchase of books amounting to RM920.00 which she incurred in 2015.

Maria may apply for the relief not later than 31.12.2021.

Example 11

Aman Harmoni Sdn. Bhd. has furnished the ITRF for the year of assessment 2015 on 30.6.2016. As the ITRF was furnished without claiming the capital allowance, the company wanted to revise the tax computation for the year of assessment 2015. Application for relief may be submitted to the DGIR under section 131 of the ITA.

12.2 In Respect of Non-Error or Mistake Under Section 131A of the ITA

1221 A taxpayer may make an application for relief for non-error or mistake in the ITRF made by him.

1222 The conditions for the relief application are:

- (a) Taxpayers must furnish ITRF in accordance with subsection 77(1) or 77A(1) of the ITA.
- (b) The taxpayer shall pay all taxes that have been made for the year of assessment.

- 1223 The relief application of the non-error and mistake cases is allowed for the following circumstances:
- (a) any exemption, reliefs, remissions, allowance or deduction granted under the ITA or any written law gazetted after the year of assessment in which the ITRF is furnished; or
 - (b) approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the ITRF is furnished; or
 - (c) a deduction not allowed in respect of payment not due to be paid under subsection 107A(2) or 109(2), section 109A, or subsection 109B(2) or 109F(2) on the day the ITRF is furnished.
- 1224 The period of time for the application for relief is as follows:
- (a) For subparagraphs 12.2.3(a) and (b), within five (5) years after the end of the year in which the exemption, relief, remission, allowance or deduction is published in the Gazette, or the approval is granted, whichever is the later; and
 - (b) For subparagraph 12.2.3(c), within one (1) year after the end of the year in which payment is made.

Example 12

Muhibbah Jaya Sdn. Bhd. (closes accounts on 31st December) applied for pioneer status and letter of approval was granted on 15.10.2018 for the period starting from 1.4.2016 until 31.3.2021. The company has furnished the ITRF for the year of assessment 2016 on 29.7.2017. Since the ITRF was furnished without claiming the pioneer status, the company intended to revise the tax computation for the year of assessment 2016. Application for relief can be submitted to the IRBM before 31.12.2023.

Example 13

Resipi Jenderam Sdn Bhd (closes accounts on 31st December) does not claim royalty expense paid to Sedap Recipe Ltd. for the year of assessment 2016 because the withholding tax for the expenditure is due as a debt on 31.12.2016 and is payable and paid on 30.9.2017. The Company may apply for relief to amend the assessment for the year of assessment 2016 before 31.12.2018.

12.3 In respect of Non-Taxable Case Under Section 97A(5) of the ITA

1231 A person who has furnished the ITRF to the DGIR and has no chargeable income for that year of assessment may make an application for relief to the DGIR in writing:

- (a) to amend the ITRF in the event of any errors or mistakes as specified in subparagraph 12.1.4 of this PR; or
- (b) in the event of non-error or mistake as specified in subparagraph 12.2.3 of this PR.

1232 The period of time for the above application is as follows:

- (a) For subparagraph 12.3.1(a) within six (6) months from the date of the ITRF is furnished; and

Example 14

Safiq has furnished ITRF for the year of assessment 2016 on 30.6.2017 where no chargeable income was reported. Since the ITRF was furnished without the allowable donation claim, Safiq may submit an application for relief to DGIR before 30.12.2017.

- (b) For subparagraph 12.3.1(b) within the period as specified in subparagraph 12.2.4 of this PR.

Example 15

MyKleen Corporation Sdn Bhd (closes accounts on 31st December) commenced business on 1.1.2016 and has furnished the ITRF for the year of assessment 2016 on 31.7.2017 and has no chargeable income. The Company has filed an application for pioneer status and approval is only granted on 15.1.2018 for the period from 1.7.2016 until 30.6.2021. The Company may submit an application for relief to the DGIR to amend the tax for the year of assessment 2016 before 31.12.2022.

13. Application for Relief Procedure

13.1 An application for relief can be made either by a letter or Form CP15C by stating the reasons in detail relating the application.

13.2 In the event of the letter of Form CP15C do not filled in with the correct details, the application shall be returned to the taxpayer to enable the taxpayer to submit a new application.

- 13.3 If the application for relief is approved by the DGIR, the assessment will be amended and a reduced assessment will be issued.
- 13.4 If the application for relief is rejected by the DGIR, a rejection letter together with the grounds of rejection will be issued to the taxpayer.
- 13.5 If the taxpayer disagree with the decision, he may request via a letter to the DGIR to send the application for relief (which was submitted earlier to the SCIT) within six (6) months from the date of the rejection. The DGIR shall forward the application to the SCIT within three (3) months from the date of receipt of the request.
- 13.6 In cases where a deemed assessment on ITRF or amended ITRF is made in accordance with the known stand, rules and practices of the DGIR prevailing at the time, the taxpayer's application for relief under sections 97A and 131 of the ITA will not be considered even though the taxpayer can prove that there is an error or mistake unless the error is arithmetical or computational.

14. Comparison Between an Appeal and an Application for Relief

Refer Appendix 1.

15. Updates and Amendments

<p>This PR replaces the PR No. 8/2015 dated 22 October 2015.</p>	<p style="text-align: center;">Amendments</p> <p>Provide information on new provisions coming into force from 1.1.2017:</p> <ul style="list-style-type: none"> (i) Appeals and relief application against non-taxable cases under section 97A of the ITA; and (ii) The relief application not in respect of error or mistake under section 131A of the ITA.
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**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

APPENDIX 1

Comparison between an appeal under section 99 of the ITA and an application for relief under sections 97A, 131 and 131A of the ITA

	Appeal Against an Assessment Section 99 of the ITA	Application for Relief
Forms to be submitted	Within time: Form Q Out of time: Form N	Letter or Form CP15C
Conditions or qualifications	<ol style="list-style-type: none"> 1. Assessment / additional assessment / advanced assessment which is made by the DGIR as a result of audit findings; 2. Best judgement assessment made without ITRF or late submission of ITRF under subsection 90(3) of the ITA; or 3. Deemed assessment and deemed amended assessment where the taxpayer does not agree with the tax treatment stated in any PR made under section 138A of the ITA or known stand, rules and practices of the DGIR prevailing at the time when the assessment is made 	<p>Deemed assessment for by ITRF or amended ITRF or notification of non-chargeability (NONC) and taxpayers agree with the tax treatment set out in the PR, or the known stand, rulings and practices of the DGIR at the time the ITRF was submitted.</p> <p>An application for relief may be made for the deem assessment as below:</p> <ol style="list-style-type: none"> i. section 131 of the ITA in respect of errors or mistake. ii. section 131A of the ITA if in respect of non-error or mistake. <p>For non-taxable cases, an application for relief may be made under section 97A of the ITA.</p>
Payment of tax	Payment of tax must be made (if any).	Tax has been paid for cases under sections 131 and 131A of the ITA.