



INLAND REVENUE BOARD OF MALAYSIA

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

PUBLIC RULING NO. 7/2015

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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 in line with the provisions in the Income Tax Act 1967 (ITA) commencing 24 January 2014;
- 1.2 Form Q and Form N appeal procedures; and
- 1.3 procedure and application for relief in respect of error or mistake.

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 and 131.

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, 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).
- 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 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. 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) slide presentations given by IRBM officers;
- (iv) cases where decisions have been made by the SCIT and the court; or
- (v) 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 /NONC 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 The appeal must be made by submitting Form Q not later than thirty (30) days after the notice of assessment has been served.

Example 1

Sarah is a medical doctor and has her own clinic. She submitted ITRF for the year of assessment 2012 on 02.05.2013. Additional assessment for the year of assessment 2012 was made by the DGIR and it was served on 15.04.2014 based on field audit findings. Sarah can appeal against the additional assessment if she is not satisfied with the assessment made by the DGIR. Sarah can appeal by submitting Form Q not later than 15.05.2014.

Example 2

Marina is an employee who receives employment income and she did not submit ITRF for the year of assessment 2014. Best judgement assessment was made by the DGIR and it was served on 15.10.2015. Marina can appeal against the assessment if she finds that the tax made by the DGIR exceeds the actual tax payable. Marina may appeal by submitting Form Q not later than 14.11.2015. For the purpose of review, Marina is advised to submit her ITRF as well.

Example 3

Company A is engaged in the business of manufacturing (closes accounts on 31 December). In addition, the company has interest and rental income. The company submitted the ITRF for the year of assessment 2014 on 15.06.2015. Pursuant to subsection 90(2) of the ITA, the deemed notice of assessment is deemed served on company A on 15.06.2015. Company A complied with all PRs but does not agree with the tax treatment on the interest expenses as stated in PR No. 2/2011. The company can appeal against the assessment. The appeal must be made not later than 15.07.2015 by submitting Form Q.

- 4.5 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.

Example 4

Hamzah Dollah Sdn. Bhd. was audited by the IRBM in 2014 on its ITRF for the year of assessment 2012. The company has been granted approval in 2014 for double deduction on research expenditure under section 34A of the ITA for the year of assessment 2012. 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 can make an appeal in respect of the notice of reduced assessment if it does not agree 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 has been reached between the taxpayer and the DGIR.

4.7 **Appeal Against Advance Assessment**

In the case of an advance assessment, the appeal must be made within the first three (3) months of the year of assessment following the year of assessment for which the assessment was made.

Example 5

An advance assessment for the year of assessment 2015 is made on 15.08.2014 on Mr D as his business (accounts close on 31 March) ceased on 30.06.2014. The final accounts are prepared for the period 01.04.2014 to 30.06.2014.

The year of assessment for which the advance assessment is made is 2015 and the following year of assessment is 2016. Appeal against the assessment must therefore be made not later than 31.03.2016.

4.8 **Appeal Against Notification Of Non-Chargeability**

4.8.1 A NONC is treated as if it is a notice of assessment and forms the basis for submitting an appeal to the SCIT. A person who intends to appeal to the SCIT must submit the appeal within thirty (30) days after the notification has been served on him.

4.8.2 Pursuant to the provision of section 97A of the ITA, a NONC may be issued to a person under the following circumstances:

(a) 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 NONC together with adjustments to tax computation for the relevant year of assessment will be issued by the IRBM.

Example 6

Company E has been in the manufacturing business since 01.02.2010 (closes accounts on 31 December). For the year of assessment 2013, the company reported interest income and losses from business. Company E is not liable to tax as the current year loss exceeded that of interest income. The company claimed reinvestment allowance (RA) on a qualifying expenditure amounting to RM500,000. The company submitted ITRF for the year of assessment 2013 to the DGIR on 29.07.2014. The company was audited by the IRBM on 13.03.2015. As a result of the audit findings, adjustments were made to the computation of RA. A NONC with the computation of RA adjustments for the year of assessment 2013 was served on the company on 10.06.2015.

The company does not agree with the adjustments made to the RA claimed and intends to submit an appeal to the SCIT.

The company may submit an appeal to the SCIT in respect of the issue on RA for the year of assessment 2013 by using the NONC which has the computation for RA adjustments.

Form Q must be submitted by the company within 30 days from the date of issue of the NONC, that is not later than 10.07.2015.

b) ITRF has been submitted

If a person who has submitted ITRF for a year of assessment is not liable to tax or is liable to tax on other income such as interest but has no statutory income from a business source and intends to appeal against a tax treatment mentioned in any PR or any known stand, rules and practices made by the DGIR, the person has to apply to IRBM in writing for a NONC.

Example 7

Company F (closes accounts on 31 December) submitted its ITRF for the year of assessment 2013 on 30.06.2014. The company has no statutory income from business source but has interest income. 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 and applied to the IRBM for a NONC. The IRBM issued the NONC based on information in the ITRF and served on the company on 20.08.2014.

The appeal to the SCIT must be submitted by the company not later than 19.09.2014.

(c) 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 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 submit the ITRF for that year of assessment and apply to the IRBM in writing for a NONC.

Example 8

Mr. G is a sole-proprietor and commenced his sundry shop business on 01.02.2011. He was not liable to tax for the years of assessment 2011 to 2013. As an individual tax payer he was not required to submit ITRFs for the three years of assessment. He complied with all the relevant PRs in preparing his tax computations for the three years of assessment but disagreed with a specific tax treatment mentioned in the PR No. 4/2012. Mr. G intends to appeal to the SCIT. Mr G submitted his ITRFs for the years of assessment 2011, 2012 and 2013 on 30.03.2014 and wrote to the IRBM for a NONC. The IRBM issued the NONC and served the notification on 20.04.2014.

The appeal to the SCIT must be submitted by Mr G not later than 20.05.2014.

4.8.3 A person may make an application for NONC and tax computation from any IRBM branch.

5. Appeal For Partnership Cases

For an appeal involving a partnership case, only one appeal needs 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 bound with other documents. Completed Form Q with grounds of appeal must be submitted to the branch office of IRBM that handles the appellant's income tax file. Form Q can be downloaded and printed from the IRBM website at <http://www.hasil.gov.my>.
- 6.3 A completed Form Q must contain the following information:
- (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 such 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 and a lawyer.
- 6.5 Form Q that is incomplete and not signed shall be returned to the appellant.

7. 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.

8. Late Appeal Procedure (Form N)

- 8.1 If an appeal cannot be submitted within the specified period, an application for extension of time for appeal can be made by way of Form N.
- 8.2 Reasons for the application for extension of time must be given. Among the reasons which may be considered are circumstances beyond the control of the appellant, for example hospitalisation 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 the branch office of IRBM that handles 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 website.

- 8.4 If the application for extension of time is approved, 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 approved, 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 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 give 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 appeal further. The decision of the SCIT is final.

Example 9

After an audit by the IRBM, a notice of additional assessment was issued to Warisan Gemilang Sdn. Bhd. as it was discovered that the company failed to deduct and remit withholding tax upon payment of technical fees to a non-resident. The company then remitted the withholding tax due after receiving the notice of additional assessment. In this case, the company has the right to appeal by filing Form Q or Form N (if late) for a review of the assessment.

9. Review Of Assessment

- 9.1 The time frame for review of assessment on receipt of the notice of appeal is twelve (12) months. The period may be extended to a period of not exceeding six (6) months by the Minister of Finance if the DGIR requires more time to carry out the review.
- 9.2 For the purpose of review of assessment by the DGIR, the appellant may be required to:
 - (a) provide further information or books of account, 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

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 may negotiate to reach an agreement, or the appellant can withdraw the appeal.

11. Representation

The appellant may be represented by a lawyer and/or a tax agent at the hearing of the Form Q appeal.

12. Review Of Assessment Through Application For Relief In Respect Of Error Or Mistake Under Section 131 Of The ITA

12.1 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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; and
- (d) did not claim deductions such as zakat, approved donations, levy and so on.

12.6 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.

12.7 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 year of assessment in which an application in respect of the error or mistake is made.
- (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 submitted her ITRF for the year of assessment 2013 on 30.04.2014. On 15.08.2014, Maria realized that she forgot to claim a deduction for the purchase of books amounting to RM920 which she incurred in 2013.

Maria can apply for the relief not later than 31.12.2019.

Example 11

Aman Harmoni Sdn. Bhd. submitted its ITRF for the year of assessment 2013 on 30.06.2014. As the ITRF was submitted without claiming the capital allowance, the company wanted to revise the tax computation for the year of assessment 2013. Application for relief can be submitted to the IRBM under section 131 of the ITA.

- 12.8 Consideration may be given to a person for relief under section 131 of the ITA if at the time of submitting ITRF, the taxpayer has yet to receive approval for any tax benefit. Approval is only obtained after the submission of ITRF.

Example 12

Muhibbah Jaya Sdn. Bhd. applied for pioneer status and approval was granted only on 15.10.2014 after the company had submitted its ITRF for the year of assessment 2013 on 29.07.2014. As the ITRF was submitted without claiming the pioneer status, the company wanted to revise the tax computation for the year of assessment 2013. Application can be submitted to the IRBM for relief under section 131 of the ITA.

13. Application For Relief Procedure

- 13.1 Application for relief can be made either by a letter or Form CP15C detailing reasons related to the application.
- 13.2 The application shall be returned to the taxpayer if the letter or Form CP15C is not filled correctly to enable the taxpayer to submit a new application.
- 13.3 If the application for relief is approved by the IRBM, the assessment will be amended by issuing a reduced assessment.
- 13.4 If the application for relief is rejected by the IRBM, a rejection letter together with the grounds of rejection will be issued to the taxpayer.

- 13.5 If the taxpayer does not agree with the decision for rejecting the application, 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 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 section 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

This PR replaces the PR No. 3/2012 issued on 4 May 2012	Amendments
	(i) To explain the right of appeal under section 99 of the ITA and the procedure; and (ii) Application for relief in respect of error or mistake under section 131 of the ITA and the procedure.

**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 section 131 of the ITA**

	Appeal Against An Assessment Section 99 of the ITA	Application For Relief Section 131 of the ITA
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 / notification of non-chargeability (NONC) 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 	Deemed assessment or deemed amended assessment and the taxpayer agrees with the tax treatment stated in PRs or known stand, rules and practices of the DGIR prevailing at the time when the assessment is made, and made some error or mistake in the ITRF.
Payment of tax	Payment of tax must be made (if any).	Tax has been paid.