

(Translation from the original Bahasa Malaysia text)

Public Ruling No. 3/2001

APPEAL AGAINST AN ASSESSMENT

1.0 TAX LAW

This Ruling applies in respect of sections 99, 100, 101 and 102 of the **Income Tax Act 1967** . It is effective for the year of assessment 2001 and subsequent years of assessment.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers:

- 2.1 the provisions of the Income Tax Act 1967 [hereinafter referred to as *the Act*] relating to appeals against assessments made or deemed to be made; and
- 2.2. the requirements to be complied with when making an appeal.

3.0 HOW THE TAX LAW APPLIES

3.1 Right of appeal & time to appeal

3.1.1A person who is dissatisfied with an assessment that has been made, or is deemed to have been made, on him by the Director General of Inland Revenue [hereinafter referred to as *the DG*] has a right to appeal against that assessment.

3.1.2The appeal must be submitted in writing not later than 30 days after he has received the notice of assessment or is deemed to have received the deemed notice of assessment.

Example 1

An assessment is made on an individual for year of assessment 2001 and notice of assessment is received by him on 15.05.2002.
The appeal should be made not later than 15.06.2002.

Example 2

A company which normally closes its accounts on 31 March furnishes its return to the DG for year of assessment 2001 on 27.09.2001. Under section 90(1A) of the Act, notice of assessment is deemed to have been served on the company on that same date.

The appeal should be made not later than 27.10.2001.

3.1.3 In the case of an advance assessment, the appeal must be made within the first three months of the year of assessment [*the Y/A*] following the year of assessment for which the assessment is made.

Example

An advance assessment is made on 15.08.2001 on an individual for Y/A 2002 as his business (accounts normally closed 31 March) has ceased on 30.06.2001. The final accounts were prepared for the period 01.04.2001 to 30.06.2001.

The Y/A for which the assessment is made is 2002; the Y/A following that is 2003. The appeal against the assessment should therefore be made not later than 31.03.2003.

3.1.4 In the case of a deemed assessment where a person, in the course of making a self-assessment, has complied with a ruling with which he does not agree, the notice of appeal should be filed together with the return.

3.2 Late appeal

3.2.1 If an appeal is made after the expiry of the period allowed [*see paragraphs 3.1.2 and 3.1.3*], the reason(s) for the late appeal must be given. An acceptable reason would be circumstances beyond the control of the person making the appeal [*the appellant*]: for e.g., hospitalization for a long period because of a serious illness.

3.2.2 If the reasons for the late appeal are not accepted, the appellant will be requested to submit an application for extension of the period for making an appeal (in the prescribed Form N).

3.2.3 Form N should be sent to the branch office of the Inland Revenue Board [*the IRB*] where the income tax file of the appellant is located.

3.2.4 Form N, together with a statement by the DG as to why the appellant's reasons for the late appeal have not been accepted, will be forwarded to the Special Commissioners of Income Tax [*the SCIT*]. The appellant will be notified in writing about this, and a copy of that statement will be furnished to him.

3.2.5 Within 21 days of receipt of the notification, the appellant may

make written representation to the SCIT in respect of his application and the statement by the DG.

- 3.2. If the application is refused, the appellant will have no further
6 right of appeal. The decision by one of the SCIT is final.

3.3 Appeal to be made in writing

3.3.1 An appeal must be made in writing. A telephone call or an electronic message (e-mail) is not considered sufficient notice of appeal.

3.3.2 The prescribed form (Form Q) should be used for this purpose. The completed Form Q should be sent to the IRB branch office where the income tax file of the appellant is located.

3.3.3 An appeal made by way of a letter is also acceptable, and will be dealt with as if Form Q had been received. If it subsequently becomes necessary to forward the case to the SCIT [*see paragraph 3.6 below*], the appellant will be requested to complete Form Q accordingly.

3.4 The grounds of appeal

3.4.1 The appeal against an assessment (whether in the form of a letter or Form Q) should state the reasons for or the grounds of the appeal. Statements such as "the tax is excessive" or "the tax is not computed in accordance with the Act" will be regarded as vague or lacking in necessary detail as they provide no assistance in reviewing the assessment.

3.4.2 The grounds of appeal should be specific, referring to particular items in the tax computation or the assessment with which the appellant disagrees and stating the reasons for doing so. Additional information or copies of documents should be provided if necessary.

3.4.3 Where the appeal is made by way of a letter and the grounds of appeal are found to be so vague or so lacking in necessary detail that a review of the assessment is not possible [*see paragraph 3.4.1 above*], the appellant will be notified in writing to submit, within 30 days, specific grounds of appeal in the prescribed Form Q. If the appellant fails to furnish Form Q (with or without the specific grounds of appeal required) within the period allowed, the appeal would be considered a late appeal [*see paragraph 3.2 above*].

3.4.4 Where Form Q has been submitted and the grounds of appeal are found to

be so vague or so lacking in necessary detail that a review of the assessment is not possible [*see paragraph 3.4.1 above*], the case will be forwarded to the SCIT without a review of the assessment [*see paragraph 3.5 below*].

3.5 Review of the assessment

- 3.5.1 On receipt of the appeal (*subject to paragraph 3.4 above*), the assessment under appeal will be reviewed.
- 3.5.2 If necessary, the appellant may be required to provide further information or to produce books of account or records or other documents relevant to the assessment.
- 3.5.3 The appellant (or any other relevant person) may also be required to attend in person to give evidence (under oath if necessary).
- 3.5.4 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.
- 3.5.5 If the proposal referred to in paragraph 3.5.4 is made orally, a written confirmation will be issued to him and he will have 21 days to reject it in writing.
- 3.5.6 If the proposal referred to in paragraph 3.5.4 is made in writing, he will have 30 days to reject it in writing.
- 3.5.7 If the proposal (written or oral) is not rejected within the period of time allowed, it will be deemed that there is an agreement in writing, and the assessment will be treated as having been confirmed, reduced, increased or discharged according to the agreement.
- 3.5.8 Within 30 days after the agreement is deemed to have been come to, the appellant may apply to the SCIT to set aside the deemed agreement. The decision by one of the SCIT is final

3.6 Where agreement cannot be reached

- 3.6.1 Where it appears unlikely that an agreement can be reached, the case will be forwarded to the SCIT. If the appeal had been made in the form of a letter [*see paragraph 3.3.3 above*], the appellant will be requested to complete Form Q accordingly.
- 3.6.2 The appellant may at any time request the DG in writing to forward the appeal to the SCIT.

3.7 Disposal of appeal

3.7.1 An appeal must be forwarded to the SCIT within 12 months from the date of receipt. If the review [*see paragraph 3.5 above*] cannot be completed within that period, the DG may apply, not later than 30 days before the expiry of the 12-month period, to the Minister of Finance for an extension of that period. The extension period will not be more than 6 months.

3.7.2 The appellant will be notified in writing when the Form Q is forwarded to the SCIT.

3.7.3 The place and date for hearing of the appeal will be fixed by the Clerk to the SCIT, who will give notice of at least 28 days to the appellant.

3.7.4 At any time before the hearing, the appellant and the DG can still come to an agreement, or the appellant can withdraw the appeal.

3.8 Representation

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

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 "Tax agent" means a legally authorized auditor of companies, a professional accountant approved by the Minister of Finance and any other person approved by the Minister.

4.2 "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.

4.3 "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 Act.

(Date of issue: 18 January 2001)