

CTIM No.46/2011

13 October 2011

TO ALL MEMBERS

TECHNICAL

Request for Feedback on e-CTIM No.43/2011

Dear Members

The Institute would like to receive your **feedback** on the issues raised in our **e-CTIM No.43/2011** so that an appropriate response can be submitted to MOF on behalf of the members. Your prompt response will be much appreciated.

For your convenience, we set out below the issues raised in e-CTIM No.43/2011:

1. **New Section 107D [Clause 19, Finance (No. 2) Bill 2011]**

The proposed Section 107D empowers the Director General of Inland Revenue Board (DGIR) to direct a taxpayer to make payment by installments on account of tax which may be payable by that person **before** the making of an assessment or composite assessment under this Act, where the DGIR has reason to believe that the taxpayer makes an incorrect return or gives an incorrect information that affects his own chargeability to tax. Any appeal to vary the direction must be directed to the DGIR.

The issue here is that since there is no written notice of assessment before the collection of tax, this denies the taxpayer the knowledge on how the amount of tax collectible under the direction was arrived at. It follows that the taxpayer has no opportunity to access the proper appeal process immediately which he had previously.

2. **New Section 80(1B) [Clause 14, Finance (No. 2) Bill 2011]**

The proposed Section 80(1B) extends the power of the DGIR to access buildings, documents and materials to computerized data, including provision "with the necessary password, encryption code and decryption code, software or hardware and any other means required to enable comprehension of the computerized data".

The issue is the loss of confidentiality and security as a result of disclosure of the password, encryption code and decryption code. Further, it will give excessive access to the IRB to collect information far beyond its need. For example, intellectual property and trade secrets could be in the same storage system. Such provision may deter the foreign and local private investors who are understandably protective of their intellectual property.

It would be preferable if the authority is given for the IRB to print out the computerized information rather than requiring the taxpayer to handover the password, encryption and decryption codes. Alternatively, the authority is restricted to information pertaining to their audit or investigation.

3. Amendment to Section 81 [Clause 15, Finance (No. 2) Bill 2011]

With the amendment to Section 81(1), the DGIR is empowered to collect from any person any information or particulars which is under his control or possession within a specified time.

The proposed Section 81(2) & (3) further stipulates that the DGIR is empowered to disregard any information or particulars produced after the expiry of the time specified and such information or particulars shall not be used "to dispute the assessment made under this Act, including in any proceeding before the Special Commissioners or Courts".

The Institute is concerned as such information may not be readily retrievable within the specified time or there may be undue delay by a third party. It would be unfair therefore for the taxpayers to be denied the right to furnish the information at a later date. It must be noted that the DGIR is already empowered to issue a notice of assessment based on his best judgment. In addition, the IRB may also impose penalty under Section 120 for not providing the information requested.

The proposed legislation contradicts the principle of collecting the correct amount of taxes. In addition, this legislation would be viewed unfavourably by foreign and local private investors.

Thank you for your support.

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