

**TECHNICAL**

**Direct Taxation**

**PUBLIC RULING NO. 7/2015 ON APPEAL AGAINST AN ASSESSMENT AND APPLICATION FOR RELIEF**

The Inland Revenue Board of Malaysia (LHDNM) issued the Public Ruling (PR) [No. 7/2015](#) on 22 October 2015 to replace the PR No. 3/2012 dated 4 May 2012.

Salient points from [PR 7/2015](#) are highlighted below:

Para. No. in the PR	Subject and Summary
1	<p><i>Objectives</i></p> <p>The objective is to explain the procedures for making an appeal (submission of Form N and Form Q) and application for relief (under <a href="#">S.131</a> of the ITA) in accordance with provisions in the Income Tax Act 1967 (ITA) commencing 24 January 2014.</p>
2 & 3	<p><i>Relevant Provisions of the Law &amp; Interpretation</i></p> <p>Lists the sections of the ITA relating to appeals and relief for error or mistake as well as definition of some terms used in the PR.</p>
4	<p><i>Right of Appeal And Time for Appeal</i></p> <ul style="list-style-type: none"> <li>From 24 January 2014, the right of appeal against an assessment under <a href="#">S.99</a> of the ITA would not apply to a deemed assessment under <a href="#">S.90(1)</a> of the ITA or a deemed assessment for amended Income tax Return Form under <a href="#">S.91A</a> of the ITA, unless the taxpayer disagrees with the treatment stated in a PR, or any known stand, rules and practices of the DGIR prevailing at the time the assessment is made. (Refer para. 4.2 for examples of “known stand, rules and practices”.)</li> <li><a href="#">S.99</a> of the ITA would only apply to an assessment/additional assessment /advance assessment /notice of non-chargeability issued by the DGIR as a result of a field/desk audit, or a “best judgment” assessment made under <a href="#">S.90(3)</a> of the ITA.</li> <li>An appeal must be made by submitting Form Q within 30 days after service of the notice of assessment (NA). (Examples 1, 2 &amp; 3)</li> <li>No appeal can be made in respect of; <ul style="list-style-type: none"> <li>1. A notice of reduced assessment because such a notice is not an assessment (Note), except when there are issues in the notice which are disputed by the taxpayer (refer Example 4). (Note: Members may refer to a differing view on the issue held by the High Court in a recent case <i>Malayan Banking Berhad v Ketua Pengarah Hasil Dalam Negeri</i> [(2015) MSTC 30-096].)</li> </ul> </li> </ul>

	<p>2. A composite assessment made under <a href="#">S.96A</a> of the ITA (refer para. 4.6) because it is made after reaching an agreement with the taxpayer.</p> <ul style="list-style-type: none"> <li>• Appeals can be made against the following types of “assessments” (please refer to the designated paragraph for details): <ol style="list-style-type: none"> <li>1. Advance assessment [para. 4.7 (Example 5)]</li> <li>2. Notification of non-chargeability (para. 4.8 [Examples 6 - 8])</li> </ol> </li> </ul>
5	<p><i>Appeal for Partnership Cases</i></p> <p>For an appeal for partnership cases, only one appeal needs to be submitted if it is the same issue in dispute by each partner. The decision of the court shall apply to all other partners in the partnership.</p>
6 – 7	<p><i>Appeal Procedure (Form Q) [Para.6]</i></p> <p>4 copies of Form Q must be submitted for each YA and the completed Form Q must contain the following information:</p> <ol style="list-style-type: none"> <li>1. Date and amount of tax payable (as shown in the NA);</li> <li>2. Detailed grounds of appeal;</li> <li>3. Signature of the appellant who is the person chargeable to tax. In the case of companies and limited liability partnerships, Form Q must be signed by a person authorized under <a href="#">sections 75</a> and 75B of the ITA respectively.</li> </ol> <p>Please refer to para. 6 for other details of procedural requirements.</p> <p><i>Grounds Of Appeal [Para.7]</i></p> <p>The appellant must state the reasons for disagreeing with the NA as well as submit evidence related to “known stand, rules and practices of the DGIR” with which he does not agree, together with the Form Q.</p>
8	<p><i>Late Appeal Procedure (Form N)</i></p> <p>Application for extension of time to appeal is made on Form N. Para. 8 details the procedure for submitting Form N and processing of the application by the LHDNM. (Please refer to para. 8.1- 8.4)</p> <p>If the application for extension of time is not approved by the DGIR, the Form N together with a statement of the reasons for its rejection will be forwarded to the Special Commissioners of Income Tax (SCIT) and the appellant will be notified (with a copy of the statement of the reasons) by the DGIR. The appellant may, within 21 days of receiving the notification, make a written representation in respect of his application and the DGIR’s statement to the SCIT. The appellant will be notified by the SCIT whether they agree or reject his representation. If the application is rejected, the appellant has no further right of appeal.</p> <p>(Refer Example 9)</p>
9 - 11	<p><i>Review Of Assessment [para. 9]</i></p> <p>Outlines the process of reviewing the taxpayer’s appeal by the DGIR. The timeframe for review by the DGIR is 12 months from the date of receipt of the notice of appeal, but this may be extended by a period not exceeding 6</p>

	<p>months by the Minister of Finance.</p> <p><i>Disposal Of Appeal [para. 10]</i></p> <p>If agreement with the taxpayer cannot be reached after the review process by the DGIR is completed, the appeal will be forwarded to the SCIT and the taxpayer will be notified in writing accordingly. At any time before the hearing before the SCIT, the appellant and DGIR may negotiate to reach an agreement or the appellant may withdraw the appeal. The taxpayer may be represented by a lawyer or tax agent at the hearing before the SCIT (para. 11).</p>
12 - 13	<p><i>Review of Assessment Through Application For Relief In Respect of Error Or Mistake Under Section <a href="#">131</a> Of the ITA [para. 12]</i></p> <ul style="list-style-type: none"> <li>• Para. 12.2 to 12.4 deal with the interpretation of the phrase “error or mistake” with reference to its literal meaning as well as case law precedents. The latter has established that the following may come within the meaning of the phrase: <ul style="list-style-type: none"> <li>a. Error of omission such as failure to deduct an allowable expense;</li> <li>b. Error of omission such as a computational or arithmetical error;</li> <li>c. Error arising from a misunderstanding of the law;</li> <li>d. Erroneous statement of fact;</li> <li>e. Omission made not by design but by mischance.</li> </ul> </li> <li>• The onus of proving that there is error or mistake is upon the taxpayer.</li> <li>• The conditions for granting relief are found in <a href="#">S.131(1)</a> and <a href="#">S.131(4)</a> of the ITA (please refer to para. 12.7 and 12.8 and Examples 10 to 12).</li> </ul> <p><i>Application For Relief Procedures [para. 13]</i></p> <p>An application for relief must be made either by letter or Form CP15C, detailing reasons for the application. Para. 13.2 to 13.6 provide details of the requirements to be observed in submitting an application and the manner in which the application will be processed by the LHDNM.</p> <p>If the application is rejected and the taxpayer does not agree to that decision, he may request in writing for the DGIR to forward the application to the SCIT within 6 months from the date of the rejection. The DGIR will forward the application to the SCIT within 3 months from the date of receipt of the request.</p> <p>A table showing the comparison between an appeal under <a href="#">S.99</a> of the ITA and an application for relief under <a href="#">S.131</a> of the ITA is found in Appendix 1.</p>

Members may view the PR at the [Institute website](#) and the [LHDNM website](#).

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