

TECHNICAL

Direct Taxation

PUBLIC RULING NO. 12/2017 – APPEAL AGAINST AN ASSESSMENT AND APPLICATION FOR RELIEF

This [Public Ruling \(PR\)](#) dated 29 December 2017 (please refer to our [e-CTIM TECH-DT 5/2018](#) dated 17 January 2018), replaces [PR No. 7/2015](#).

The main amendment made in PR 12/2017 is the incorporation of information relating to “new provisions” which came into force from 1.1.2017 that relate to appeal and relief application against non-taxable cases under S97A of the Income Tax Act 1967 (ITA) and relief application not in respect of error or mistake under S131A of the ITA.

The contents of PR 7/2015 have been revised with the insertion of minor amendments except for paragraphs 4 and 12, which have been rewritten to include explanations on the applications of S97A(1A) & S97A(2) (in para.4), and S131A & S97A(5) (in para.12). (Please refer to our [e-CTIM TECH DT 80/2015](#) for the summary of PR 7/2015.)

The following table sets out the Contents (headings of the main paragraphs) of this PR. A brief outline of the contents of paragraphs 4.8, 12.2 and 12.3 (not found in the previous PR) is provided.

Para. #	Heading / Summary (Sections cited refer to sections of the ITA, unless otherwise stated.)
1.	Objective
2.	Relevant Provisions of the Law
3.	Interpretation
4.	Right of Appeal and Time for Appeal
4.8	Appeal Against a Non-Chargeability Case Under S97A(1A) and S97A(2) an appeal may be made under the following circumstances:
	(a) ITRF has been furnished If a person has furnished an ITRF under S77(1) or 77A(1) (within the stipulated period) for a year of assessment (YA) in which he has no chargeable income (CI), the ITRF is deemed to be a notification made by the DGIR to that person on the date he furnished that return. He may appeal against the deemed notification within 30 days from the date of being so notified if he is not satisfied with the tax treatment mentioned in any PR, or any known stand, rules and practices by the DGIR. (Examples 6 and 7)
	(b) ITRF not required to be furnished Where an ITRF is not required to be furnished for a YA under S77(1), but the person intends to appeal on any tax treatment mentioned in any PR, or any known stand, rules and practices by the DGIR, he must furnish the

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	<p>ITRF for that YA, and submit an appeal in writing within 30 days after the submission of the ITRF, or after receiving the Notice of Non-chargeability (NONC)</p> <p>(Example 8 – this illustrates the application of (amongst others) S97A(1A) where a taxpayer who was not chargeable to tax for YA 2016, submitted the ITRF for YA 2016 on 30.6.2017, and that ITRF is deemed to be a notification by the DGIR to the taxpayer under S97A(1A) for the purpose of an appeal to the Special Commissioners of Income Tax.)</p>
	<p>(c) Audit cases</p> <p>The IRBM will issue a written notification to the taxpayer where (as a result of a tax audit) it is found, that the taxpayer is not chargeable to tax under specified circumstances. The specific circumstances are mentioned in para. 4.8(c). (items (i) and (ii)) and the contents of the notification are set out under items (a) and (b) of that same paragraph.</p> <p>Any appeal to the SCIT on such notification shall be submitted within 30 days after the notification is served.</p> <p>(Example 9)</p>
5.	Appeal for Partnership Cases
6.	Appeal Procedure (Form Q)
7.	Grounds of Appeal
8.	Late Appeal Procedure (Form N)
9.	Review of Assessment
10.	Disposal of Appeal at IRBM Level
11.	Representation
12.	Review of Assessment Through Application for Relief
12.2	In Respect of <i>Non-error or Mistake Under Section 131A</i> of the ITA
12.2.1	A taxpayer may make an application for relief for non-error or mistake in the ITRF made by him.
12.2.2	<p>The conditions for relief application are –</p> <p>(a) the ITRF has been furnished pursuant to S77(1) or S77A(1);</p> <p>(b) all taxes charged for the YA shall be paid.</p>
12.2.3	This paragraph sets out the circumstances under which relief application for non-error and mistake cases is allowed (Please refer to items (a), (b) and (c)).
12.2.4	<p>The period of time for the application for relief is –</p> <ul style="list-style-type: none"> - For items (a) and (b) under the above paragraph, within 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 - For item (c) under the above paragraph, within 1 year after the end of the year in which payment is made. <p>(Examples 12 and 13)</p>
12.3	In Respect of <i>Non-Taxable Case Under Section 97A(5)</i> of the ITA

Para. #		Heading / Summary
		(Sections cited refer to sections of the ITA, unless otherwise stated.)
	12.3.1	A person who has furnished the ITRF to the DGIR and has no CI for a YA may make an application for relief to the DGIR in writing: (a) to amend the ITRF in cases of errors or mistakes as specified in para. 12.1.4 of this PR, or (b) in cases of non-error or mistake as specified in para. 12.2.3 of this PR.
	12.3.2.	The period of time for the above application is – (i) for (a) above – 6 months from the date of submission of the ITRF (Example 14): (ii) for (b) above – within the period specified in para. 12.2.4 of this PR (Example 15)
	13.	Application for Relief Procedure
	14.	Comparison Between Appeal and Application for Relief
	15.	Updates and Amendments
		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

Members may read the PR in full at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [PR No. 12/2017](#) so that we may raise them to the LHDNM.

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