

CTIM No.43/2011

11 October 2011

TO ALL MEMBERS

TECHNICAL

2012 Budget

Dear Members

The 2012 Budget was announced on 7 October 2011. No doubt you would have carefully studied and analysed the Budget proposals.

The Institute would like to highlight the following three (3) changes in tax administration which will have a significant impact on the taxpayers that have been proposed in the Finance (No. 2) Bill 2011 and the implications thereon are:

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.

The Institute shall raise these issues to the attention of the authority in the hope that the legislation can be amended to reflect the more specific needs rather than have a general provision with wide powers. Meanwhile, we would be pleased if you could also forward your suggestions, comments and feedback on the 2012 Budget proposals to the Institute as soon as possible. The Technical and Public Practice Committee will review all suggestions, comments and proposals and where appropriate, include them in the Memorandum for submission to the IRB, Royal Malaysian Customs and MOF. Please submit all comments and proposals to kslim@ctim.org.my and Yamuna@ctim.org.my or fax to 03-2162 8990.

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