

**TECHNICAL**

**Direct Taxation**

**PUBLIC RULING NO.12/2015 – RECOVERY FROM PERSONS LEAVING MALAYSIA**

This Public Ruling (PR) was issued on 17 December 2015 and was reported in our [e-CTIM TECH-DT 87/2015](#) dated 21 December 2015. It explains the circumstances and procedures for recovering tax and debts due from taxpayers leaving Malaysia.

**Important Definitions**

The following are among the terms defined:

Term	Meaning
immigration Officer	A public officer having official duties in connection with the control of immigration into Malaysia or any part of Malaysia
taxpayer	An individual or a company director
Director of Immigration (DOI)	The Director of Immigration in Sabah, Sarawak or Peninsula Malaysia
Commissioner of Police (COP)	Includes the Chief Police Officer
stoppage order	Preventing a person from leaving Malaysia if he fails to pay all the tax, sums and debts so payable

**Rules and Procedures for Recovery**

Para No.	Subject Matter & Summary
4 & 5	<p><i>The law and operation of the law</i></p> <ul style="list-style-type: none"> <li>Under <a href="#">S104</a> of the ITA, where the Director General (DG) he is of the opinion that a taxpayer is about to leave Malaysia without paying: <ol style="list-style-type: none"> <li>all tax payable by him (whether or not due or due and payable);</li> <li>all sums payable by him in respect of increase in tax (penalty) for – <ol style="list-style-type: none"> <li>late payment of tax [<a href="#">S103(1A)</a> and <a href="#">S103(3)</a> to <a href="#">(8)</a>] (<i>Note 1.</i>)</li> <li>late payment of tax by instalments [<a href="#">S107B(3)</a> or <a href="#">S107C(9)</a>];</li> <li>excessive difference, as provided under <a href="#">S107B(4)</a>, between tax payable for a year of assessment (YA) and the total of instalments payable for that YA; (<i>Note 2.</i>)</li> <li>excessive difference, as provided under <a href="#">S107C(10)</a>, between tax payable for a YA and the revised estimate or deemed revised estimate for that YA. (<i>Note 2</i>)</li> </ol> </li> <li>all debts payable by him on withholding tax under the withholding tax requirements as provided under <a href="#">S107A(2)</a>, <a href="#">S109(2)</a>, <a href="#">S109B(2)</a> and <a href="#">S109F(2)</a>.</li> </ol> <p>he may issue a certificate to a COP or a DOI requesting for that taxpayer to be prevented from leaving Malaysia until all tax, sums and debts payable have been paid or security for payment has been furnished to the satisfaction of the DG.</p> <p><i>Notes: (1) All the provisions cited are from the Income Tax Act 1967.</i></p> </li> </ul>

	<p>(2) Please refer to the relevant provisions for calculation of excessive difference.</p> <ul style="list-style-type: none"> <li>Upon receipt of the certificate, the COP or DOI shall take steps to prevent that taxpayer from leaving Malaysia, including the use of reasonable force and the retention or seizure of any certificate of identity and travel documents including passport, exit permit, in order to enforce the DG's request. It is not necessary for the DG to prove that the taxpayer intends to leave the country permanently. (Example 1)</li> <li>A certificate to invoke stoppage order may be issued to: <ol style="list-style-type: none"> <li>an individual (leaving Malaysia without paying tax, sums or debts payable by him); or</li> <li>A company director who is liable under <a href="#">S75</a> of ITA (leaving Malaysia without paying company tax or monthly tax deductions of employees).</li> </ol> </li> <li>The DG shall cause notice of the issue of the certificate to be served personally or by registered post on the taxpayer. The effective date of stoppage is the date of issuance of the certificate. The taxpayer must pay all amounts payable in full based on the certificate.</li> </ul>
6	<p><i>Allowing taxpayer to leave the country</i></p> <ul style="list-style-type: none"> <li>A taxpayer will be allowed to leave Malaysia if the amounts owing as shown on the certificate have been paid in full (evidenced by documentary proof of payment). (Refer to <a href="#">para. 6.1</a> for details of procedures.) (Example 2)</li> <li>A taxpayer (excluding foreign nationals) who cannot settle the amounts due in full, may also be allowed to leave the country subject to certain conditions, one of which is to make payment of at least 50% (or other rate allowed by the DG) of the amount owing as per the certificate. (Refer to <a href="#">para. 6.3</a> for the full list of conditions.) A letter for temporary release will be issued and the period the taxpayer is allowed outside the country will be stated in the letter. (Examples 3 and 4)</li> </ul>
7 – 9	<p><i>Other information</i></p> <ul style="list-style-type: none"> <li><i>Payment</i> can be made by cash, bank draft, money order or postal order at IRBM payment counters, payment via Internet at IRBM ByrHASIL and IRBM ByrHASIL credit card, via internet banking or at the counters of banks acting as agents of IRBM.</li> <li>A taxpayer who leaves or attempts to leave Malaysia without paying the amounts as stated on the certificate issued under <a href="#">S104</a> may suffer the following consequences (para. 8): <ol style="list-style-type: none"> <li>A fine (upon conviction) of not less than RM200 and not more than RM20,000, or imprisonment for not more than 6 months, or both; or</li> <li>Arrest (without warrant) by a police officer or immigration officer if he has reasonable suspicion that an offence has been committed (or about to be committed) by the taxpayer in failing to comply with the certificate issued under <a href="#">S104</a>.</li> </ol> </li> <li>The taxpayer is responsible to inform the IRBM in writing of any change of his address. The certificate issued under <a href="#">S104</a> is deemed to have been served on the taxpayer at the latest address known to the DG. (Para. 9)</li> <li>Taxpayers may check on the status of the imposition of stoppage order at the website of the Immigration Department of Malaysia <a href="http://www.imi.gov.my">www.imi.gov.my</a>. Foreign nationals have to contact the IRBM (call centre or the relevant branch) regarding</li> </ul>

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

You may write to the Institute at [technical@ctim.org.my](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any concern or comments you may have on the above [PR](#).

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