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PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

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DAY 1 : Tuesday, 12 August 2014

Topic : Dispute Resolution

Speaker : Abu Tariq Bin Jamaluddin
Director
Dispute Resolution Department



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2014

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BACKGROUND

“ It is also timely for Lembaga Hasil Dalam Negeri Malaysia, to find the best method to deal with disputes raised by taxpayers in respect of assessment. The new mechanism is aimed at resolving dispute without resorting to court process. As such, this would reduce cost and time of the parties concerned. I am glad to announce that Lembaga Hasil Dalam Negeri Malaysia has setup a new department, known as **Dispute Resolution Department (DRD)** in order to carry out the said objective. This Department is directly under the purview of the CEO’s Office....”

Kolonel (K) Tan Sri Dato’ Dr. Mohd Shukor Hj. Mahfar
Opening Address NTC 2013



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OVERVIEW

Source of Dispute

Right of Appeal

Procedure of Appeal

Dispute Resolution Process

Legal Status

Benefits

Issues Resolved

Topic : Dispute Resolution

Speaker : Abu Tariq Bin Jamaluddin



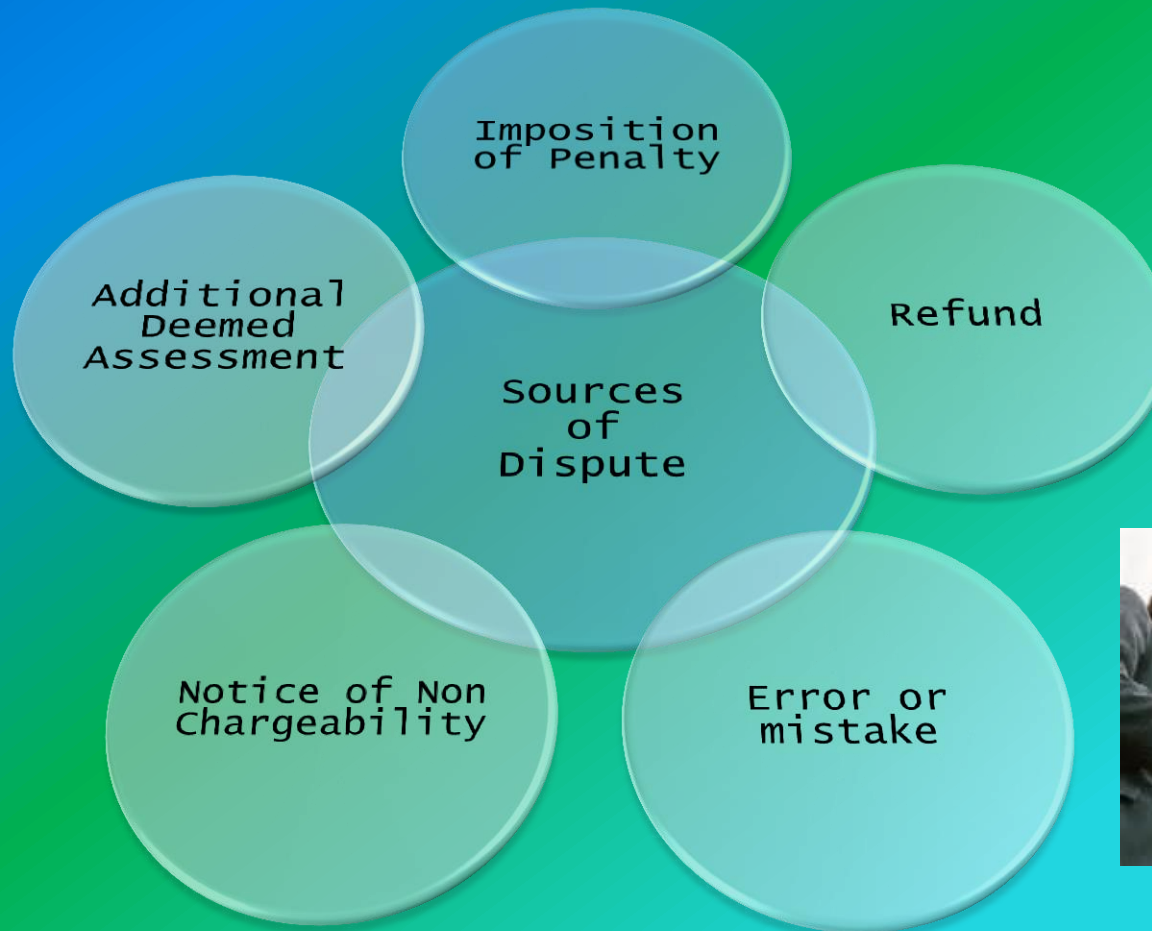
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SOURCES OF DISPUTE



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Right of Appeal - Case Law

Sun Mun Tobacco Co. Ltd. v. Government of Malaysia [1972] 2 MLJ 163

“It is open to a taxpayer to go before them (the Special Commissioners) and prove that he is not liable to assessment. The doors of justice are not shut to him merely because the claimant is the Government, but he has to enter the doors of the Special Commissioners first to raise the plea of non observance of the principle of natural justice or to establish that the Director General acted arbitrarily and in a non judicial manner. It is only after he was availed himself of that remedy as laid down by the law that he has right to come to the Court.”

Federal Court



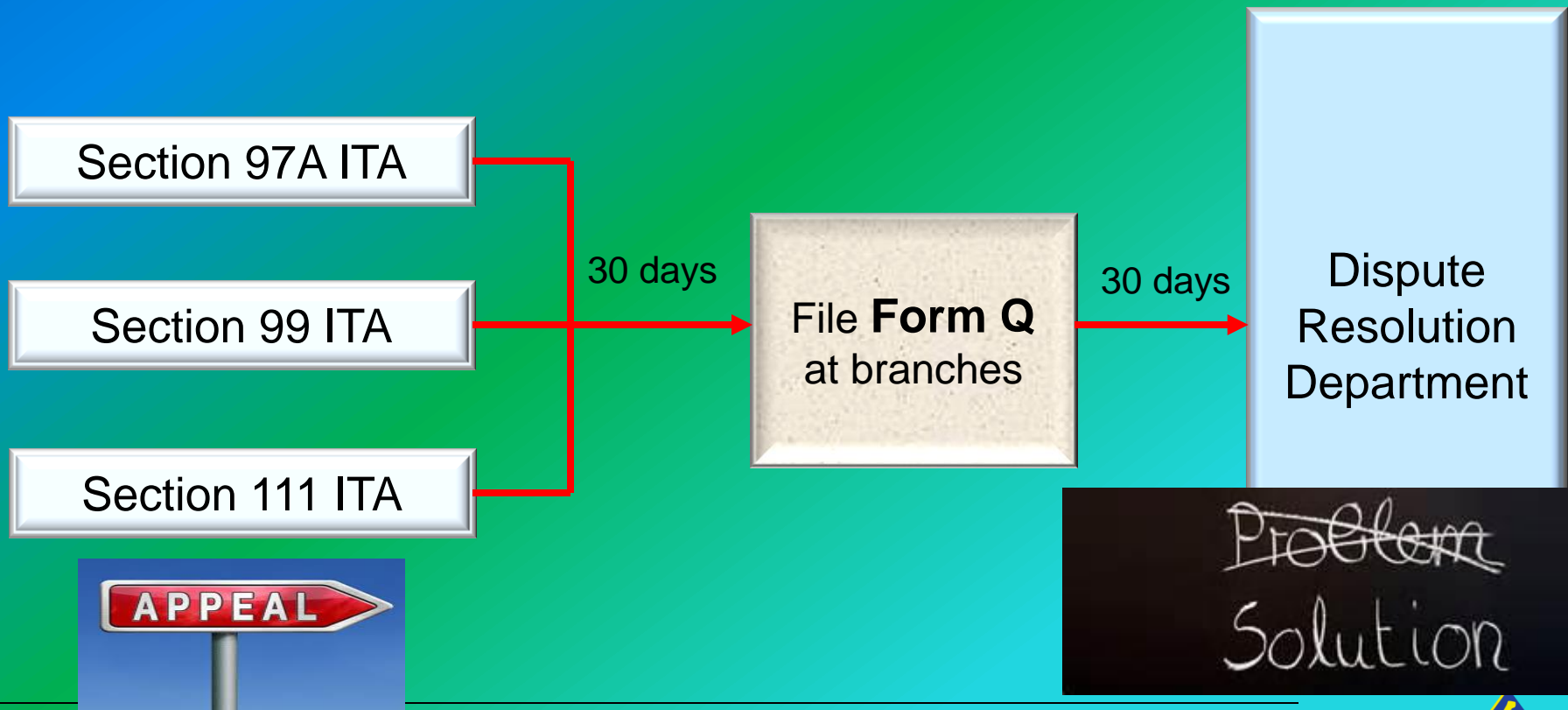
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2014

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RIGHT OF APPEAL/APPEAL PROVISIONS



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NATIONAL TAX CONFERENCE

2014

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ERROR OR MISTAKE – RELIEF APPLICATION

Error or
mistake in the
return or
statement



Application in
writing to the
DGIR
(Branches)



Decision by the
DGIR
(Branches)



Request DGIR
to forward to
SCIT
(Branches)



Dispute
Resolution
Department



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NATIONAL TAX CONFERENCE
2014

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PRESCRIBED FORM - FORM Q

Public Ruling No 3/2012

All appeal must be in the prescribed form, letter of objection is no longer accepted:

Aston Villa Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri Q2-14-19-10/2011

Medan Prestasi Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri R1-14-18/2011

Taxpayer is required to furnish a complete and correct Form Q

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NATIONAL TAX CONFERENCE

2014

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EXTENSION OF TIME – FORM N

APPLICATION FOR EXTENSION OF TIME : FORM N

DGIR's Decision
(whether taxpayer is prevented from giving notice within time)

Allowed the
extension



Disallowed the
Extension

Forward
to SCIT

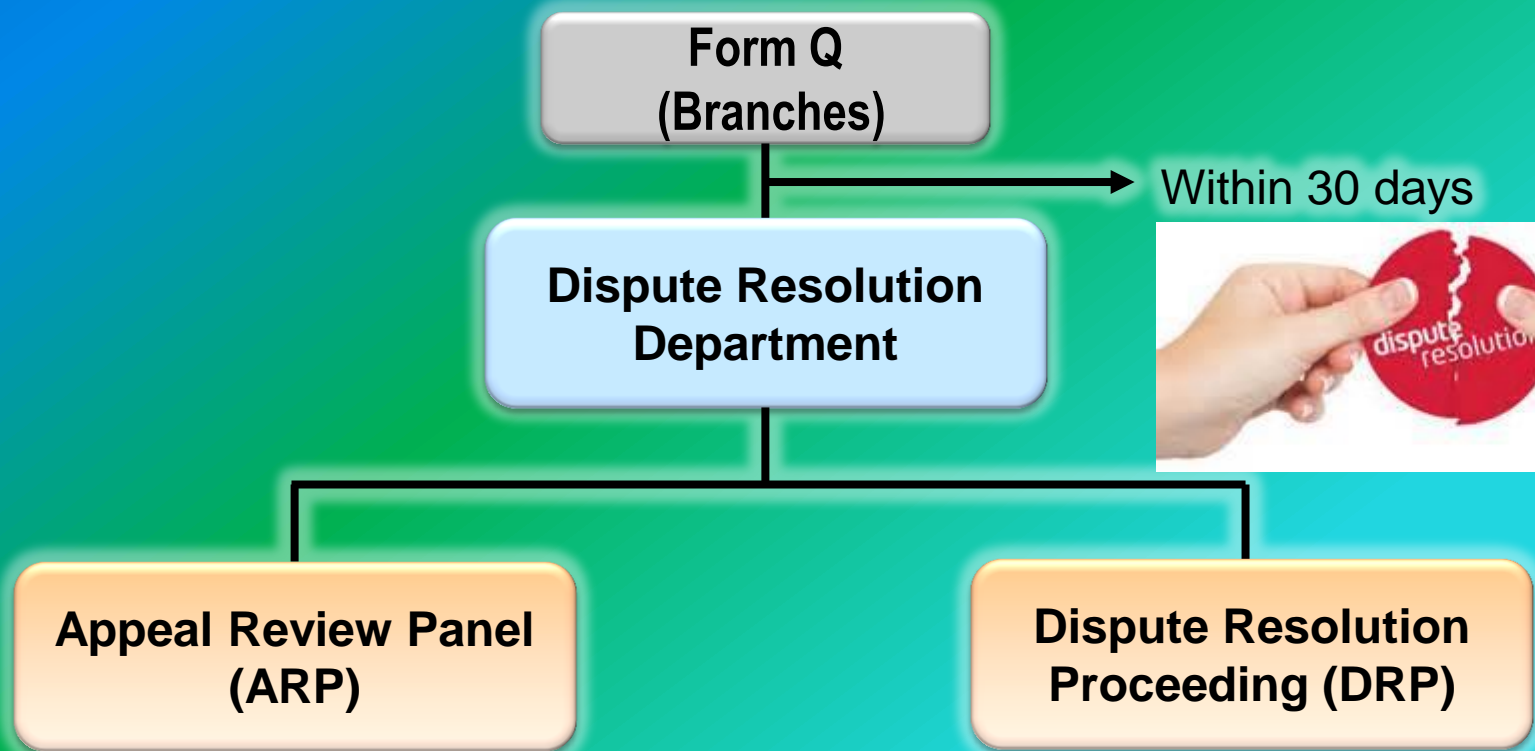
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DISPUTE RESOLUTION PROCESS



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2014

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WHEN APPEAL REVIEW PANEL (ARP) IS PREFERRED

Appeal suitable for ARP:

- Appeal is on the same issue which is still pending in court;
- Appeal is on the same issue that has been decided by court;
- Appeal is solely on question of law;
- Appeal in respect of public ruling.



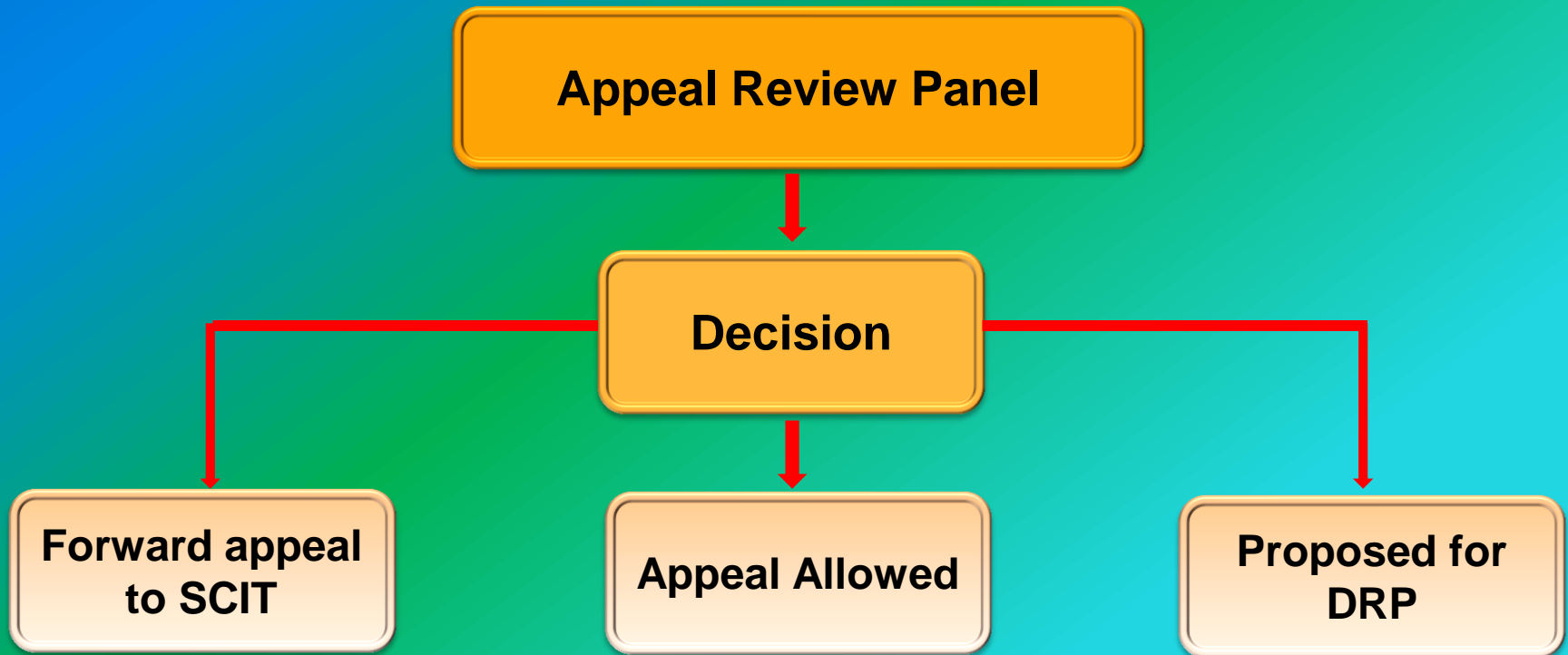
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NATIONAL TAX CONFERENCE

2014

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DISPUTE RESOLUTION PROCESS – Cont'd



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NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

WHEN DISPUTE RESOLUTION PROCEEDING (DRP) IS PREFERRED

APPEAL SUITABLE FOR DRP:

Appeals involving mainly question of facts- transfer pricing

Further clarification is needed on the issues or facts in dispute

Appeal involving wide range of issues

There is misunderstanding or disagreement over how the facts ought to be weighted in coming into decision

Appeal would be of little or limited precedent value

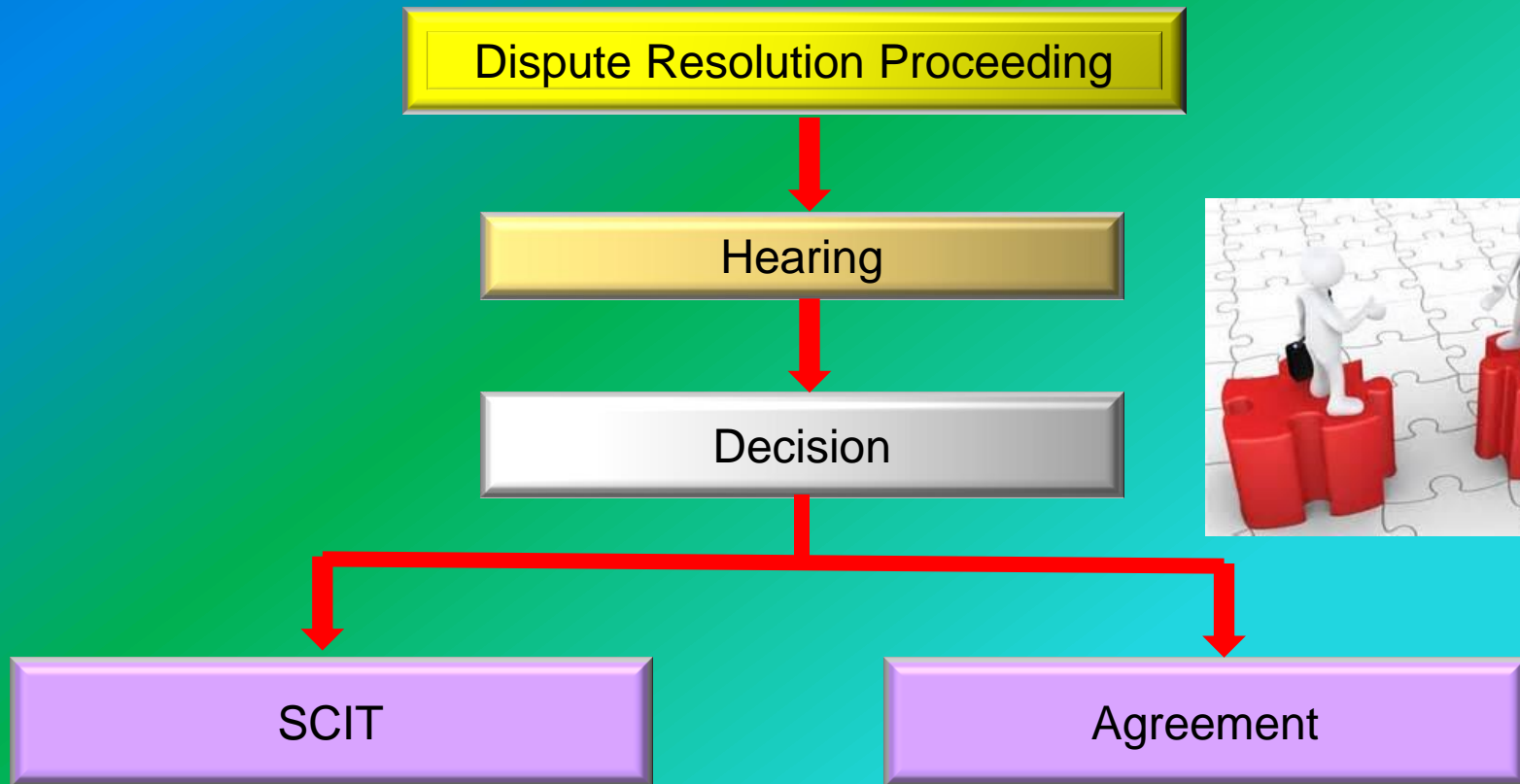
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NATIONAL TAX CONFERENCE

2014

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DISPUTE RESOLUTION PROCESS –Cont'd



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NATIONAL TAX CONFERENCE

2014

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DISPUTE RESOLUTION PROCEEDINGS - OBJECTIVE

Objectives of DRP

Resolve or limit the issues in dispute

Be accessible

Use resources efficiently

Resolves disputes as early as possible

Produce outcomes that are lawful, effective and acceptable to the parties

Enhance the satisfaction of the parties

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DISPUTE RESOLUTION PROCEEDING - PROCEDURE

PARTIES

- Taxpayer/tax agent/lawyer
- DRP Panel –3 persons headed by a legally qualified officer



PLACE OF PROCEEDING

- Branches all over Malaysia which is convenient to the tax payer



CONDUCT

- Informal



DRESS CODE

- Formal attire



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2014

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DISPUTE RESOLUTION PROCEEDING - PROCEDURE

RULE ON EVIDENCE

- Not strictly followed



RULE GOVERNING THE PROCEEDING

- Confidential
- Without prejudice basis



COST

- Parties bear their own cost



TIME FRAME

- Decision will be given within one month after the proceeding



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NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

DISPUTE RESOLUTION PROCEEDING - PROCEDURE

Role of taxpayer

Present the issues and facts

Elaborate on the grounds of appeal

Highlight relevant documents

Submit on the relevant laws or cases

Propose any settlement (if any)



Role of DRP's Panel

Analyze issues and facts presented

Evaluate strength and weaknesses of the case

Explore any settlement on the issue raised



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NATIONAL TAX CONFERENCE

2014

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DISPUTE RESOLUTION PROCEEDING - DECISION



Possible outcome :

Panel agreed fully with the appeal by the taxpayer (agreement entered by parties pursuant to section 101 ITA)

Taxpayer agreed to withdraw the appeal

Panel/ taxpayer agreed partly on the issue under appeal. The appeal is to be forwarded to the SCIT (agreement recorded before the SCIT)

Panel fully disagree with the appeal. The appeal is to be forwarded to the SCIT

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NATIONAL TAX CONFERENCE

2014

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LEGAL STATUS – SECTION 101 ITA

Requires Taxpayer (TP) to furnish particulars



Requires TP to produce books & documents



DGIR to Review Appeals (12 months)



Examine any person on oath/otherwise



Summons any person to give evidence

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2014

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LEGAL STATUS – SECTION 101 ITA

Agreement in writing



Assessment



Confirmed

Reduced

Increased

Discharged

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NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

LEGAL STATUS – SECTION 101 ITA

Oral Agreement

Failure to reply to DGIR's
Proposal

Deemed Agreement



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12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

FAILURE TO FORWARD TO SCIT

SECTION 102 ITA 1967

- Where there is no prospect of coming into agreement the DGIR may within 12 months from the receipt of the notice of appeal (Form Q) forwarded the same to the SCIT
- Minister may extend the 12 months period not exceeding 6 months;
- Failure to forward appeal within the 12 months period, the DGIR is deemed to have accepted the appeal and the assessment will be discharged.

Case: KPHDN v. Scania (Malaysia) Sdn Bhd R1-14-4-02/2012

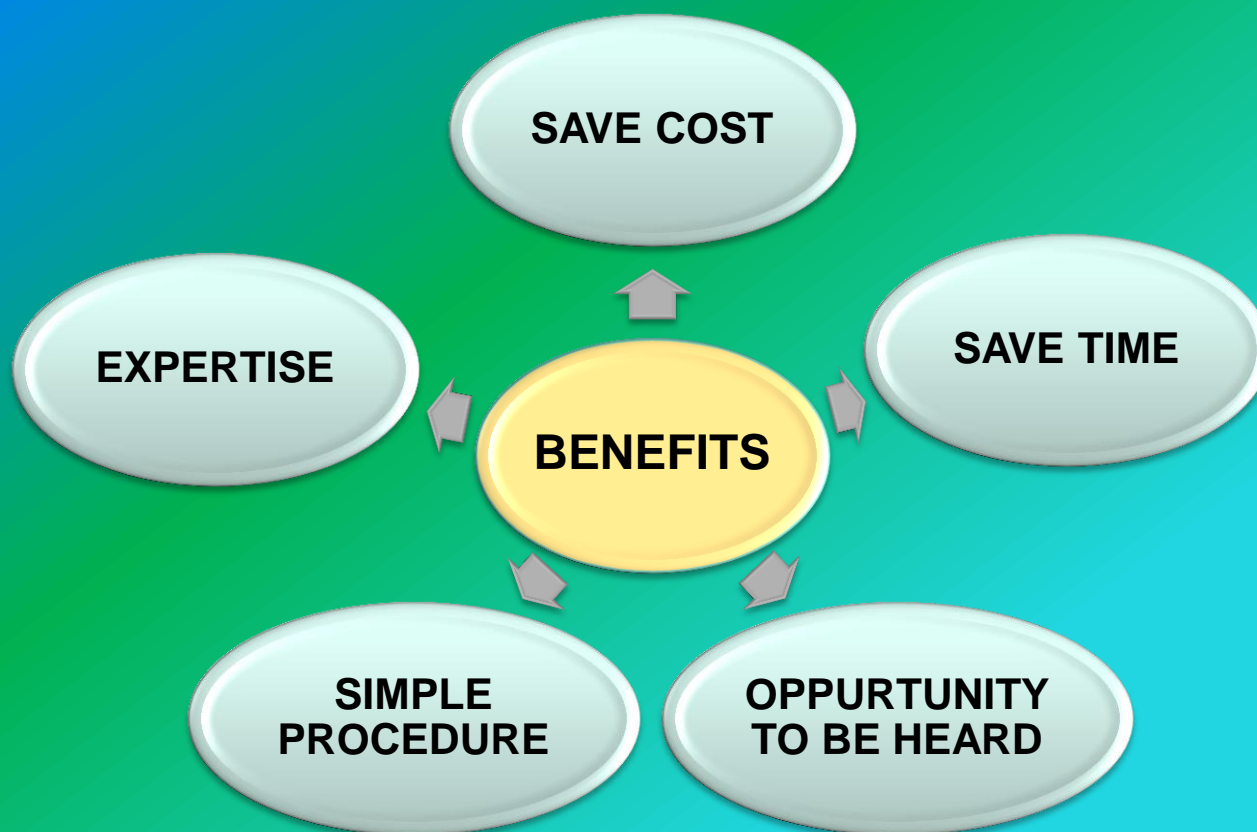
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NATIONAL TAX CONFERENCE

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12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

BENEFITS



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NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

DISPUTE RESOLUTION DEPARTMENT'S STATISTIC



Number of Form Q
131

38 cases selected for DRP

25 cases
settlement

2 SCIT

11 pending
decision



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ISSUES RESOLVED

Whether profit from disposal of 12 lots of land are subjected to RPGT or ITA where the consideration for the disposal is in the nature of shares and 28 units of shop houses

Whether the taxpayer has complied with all the conditions to be eligible for OHQ tax incentive.

Whether expenses incurred in respect of insurance payment is deductible under section 33 ITA

Whether penalty is correctly imposed under section 113 ITA



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NATIONAL TAX CONFERENCE

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12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

ISSUES RESOLVED

Whether amount of donation received from outside Malaysia is subject to tax under the ITA

Whether income in respect of delivery order fee and bill of lading part of shipping income and exempted under section 54A ITA

Whether research expenditure comprises of cost for producing shoe sampling is deductible under section 33 ITA

Whether a company incorporated outside Malaysia is a tax resident company of Malaysia and thus enjoy 20 per cent special tax rate for the first RM500,000.

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE

2014

12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

COMPARATIVE STUDIES



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12 & 13 AUGUST 2014 | KUALA LUMPUR CONVENTION CENTRE

FINAL THOUGHT

“.....discourage litigation, persuade your neighbors to compromise whenever you can. Point out to them how the normal winners often a loser in fees, expenses, cost and time....

Justice delayed is justice denied

Abraham Lincoln

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THANK YOU

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