



# Tax Flash



*March 2012*

## **Finance Act 2012**

The Finance Act 2012 has been gazetted on 9<sup>th</sup> February 2012 to take effect the proposals made in the 2012 Budget. Compared to the Finance (No. 2) Bill 2011, below are the changes made:-

i. Amendment to the Income Tax Act 1967 [“the Act”]

The following proposed amendments contained in the Finance (No. 2) Bill 2011 have been withdrawn:-

- Section 80(1B) – Power of the Director General [“DG”] to have access to computerised data
- Section 81(2) – Power of the DG to disregard information furnished after the expiry of the time specified in a notice issued by the DG
- Section 81(3) – Any information or particulars disregarded shall not be used by any person to dispute the assessment made under the Act including in any proceeding before the Special Commissioners of Income Tax [“SCIT”] or court
- Section 106(4) – Discretion of the DG to remit interest on judgment debt awarded by the court to the Government
- Section 107D – Directive from the DG for advance payment by instalments in cases where a person fails to furnish a return or makes an incorrect return or gives incorrect information in relation to any matter affecting his own chargeability to tax

It should be noted that the commencement of the amendments to the relevant sections of the Act referred to in Section 3 of the Finance Act 2012 has not been amended accordingly following the withdrawal of the above proposed amendments.

### **Hyperlinks**

Advent Consulting Group  
Inland Revenue Board

### **References**

Finance Act 2012



## ii. Amendment to the Labuan Business Activity Tax Act 1990 ["LBATA"]

In line with the amendment to Section 22A of the LBATA on the disclosure of information in certain circumstances to include tax information exchange arrangements with non-treaty countries, a similar amendment to Section 22(1) of LBATA has been made to allow the DG to call for information for compliance with any information exchange arrangements entered into between Malaysia and non-treaty countries.

### Recent Tax Case

#### MNSB v KPHDN

*[Whether there is a valid appeal in a situation where the prescribed Form Q has not been filed within 30 days from the service of notice of assessment / additional assessment]*

In the case of MN Sdn Bhd ["MNSB"] v Ketua Pengarah Hasil Dalam Negeri ["KPHDN"] [(2011) MSTC 10-027], the Inland Revenue Board ["IRB"] raised notices of additional assessment ["Forms JA"] for the year of assessment ["YA"] 2002 to YA 2004 to the taxpayer, MNSB on 7<sup>th</sup> August 2007 after a field audit conducted. MNSB appealed against the Forms JA by filing a letter of objection on 29<sup>th</sup> August 2007, i.e. within 30 days from the issuance of the Forms JA. The IRB maintained its decision in relation to the additional assessments despite the appeal from MNSB. On 5<sup>th</sup> August 2008, MNSB submitted its appeal in prescribed Form Q appealing against the assessment, which was subsequently forwarded to the SCIT on 27<sup>th</sup> October 2009. The SCIT raised the preliminary issue as to whether the appeal before the SCIT was valid because the taxpayer had failed to lodge its appeal in the prescribed Form Q within 30 days from the date of service of the notices of additional assessment which is in contravention of Section 99 of the Act.

Pursuant to Section 99(1) of the Act, a taxpayer may appeal to the SCIT against an assessment by giving to the DG within 30 days after the service of the notice of assessment a written notice of appeal in the prescribed form (i.e. Form Q). In this instance, MNSB did not submit the Form Q within the stipulated period but had instead filed a letter of objection within the said period in accordance to the Public Ruling ["PR"] No. 3/2001 – Appeal Against An Assessment issued by the IRB on 18<sup>th</sup> January 2001. According to Paragraph 3.3.3 of the said PR, an appeal by way of a letter is also acceptable and will be dealt with as if Form Q has been received. If it subsequently becomes necessary to forward the case to the SCIT, the taxpayer will be requested to complete Form Q accordingly. Both parties jointly submitted that the compliance of Section 99 is not an issue of contention between them and there was a valid appeal before the SCIT.



The SCIT took the view that the PR which states that a letter of objection can become a substitute for the prescribed Form Q could not be relied upon as it was not in conformity with the provisions of the Act. It was held that the appeal was not lodged within 30 days from the issuance of the notices of additional assessment pursuant to Section 99(1) of the Act and thus the appeal is invalid and struck out.

The taxpayer being dissatisfied with the decisions had appealed to the High Court.

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