



# Tax Flash



March 2014

## In this issue

- GST – Draft Guides
- Case Law - KPHDN v Scania (Malaysia) Sdn Bhd

## GST – Draft Guides

The Royal Malaysia Customs has recently issued the following draft/revised draft guides on Goods and Services Tax ["GST"] to provide an understanding of GST and its implications on various businesses/matters:-

- Industry Guides
  - Professional Services (draft as at 07.02.2014)
  - Islamic Banking (revised as at 30.01.2014)
  - Manufacturing (revised as at 01.01.2014)
- Specific Guides
  - Transitional Rules (revised as at 21.02.2014)
  - Guide to Enhance Your Accounting Software to be GST Compliant (draft as at 09.03.2014)

## Recent Tax Case

### KPHDN v Scania (Malaysia) Sdn Bhd

*[Whether it is mandatory for the DGIR to forward Forms Q to the SCIT within 12 months from the date of filing of Forms Q - decided on 5<sup>th</sup> March 2013]*

In the case of Ketua Pengarah Hasil Dalam Negeri ["KPHDN"] v Scania (Malaysia) Sdn Bhd ["SMSB"] [Appeal No. R1-14-4-02/2012] [(2013) MSTC 30-059], the Inland Revenue Board ["IRB"] raised notices of additional assessment ["Forms JA"] for the year of assessment ["YA"] 2001 to YA 2003 to the taxpayer, SMSB, on 28<sup>th</sup> September 2007. The taxpayer filed Notices of Appeal ["Forms Q"] with the IRB on 25<sup>th</sup> October 2007 which was subsequently forwarded to the Special Commissioners of Income Tax ["SCIT"] on 8<sup>th</sup> March 2011.

## Hyperlinks

Advent Consulting Group  
Inland Revenue Board

## References

Guide on Professional Services  
Guide on Islamic Banking  
Guide on Manufacturing

Guide on Transitional Rules  
Guide to Enhance Your Accounting Software to be GST Compliant



SMSB contended that the Forms JA were null and void as the Director General of Inland Revenue [“DGIR”] did not comply with Section 102(1) of the Income Tax Act 1967 [“the Act”] to forward the Forms Q to the SCIT within 12 months from the filing of the Forms Q. However, the DGIR contended that there was no provision to the Act which provides a statutory time frame for the DGIR to forward the Forms Q to the SCIT if he is of the opinion that there is no reasonable prospect of coming to an agreement with the appellant in accordance with Section 101 of the Act. The SCIT ruled that the DGIR was late in forwarding the Forms Q to the SCIT and hence, no competent Forms Q were before the SCIT. Dissatisfied with the ruling by SCIT, the DGIR appealed to the High Court.

The High Court agreed with the ruling delivered by the SCIT that Section 102(1) of the Act clearly provides a statutory time frame i.e. 12 months from the receipt of Forms Q or the extended timeline granted by the Minister of Finance for the DGIR to forward the Forms Q to the SCIT if there is no reasonable prospect of settling the matter in accordance with Section 101 of the Act. The Court stated that the word “may” in the provision under Section 102(1) of the Act ought to be read as signifying a mandatory compliance on the part of the DGIR as any other interpretation would defeat the legislative intention of the said provision under the Act. While the Act is silent on the effect of non-compliance of Section 102(1) of the Act, the High Court also agreed with the SCIT to order DGIR to return the additional tax paid by the taxpayer as the additional assessment raised could not be recovered due to failure to comply with Section 102(1) of the Act by the DGIR relying on the principle based on legal maxim “*Ubi Jus Ubi Remedium*” which means that “where there is a right, there is a remedy” established in another case.

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for this advice. Accordingly, Advent Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.