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### PR No. 7/2015 – Appeal Against an Assessment and Application for Relief

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 7/2015 – Appeal Against an Assessment and Application for Relief. This PR is to replace the PR No. 3/2012 issued on 4<sup>th</sup> May 2012 with updates and additional explanation on the right of appeal under Section 99 of the Income Tax Act 1967 [“the Act”] and the procedure to apply for relief in respect of error or mistake under Section 131 of the Act.

Among others, it is noteworthy of the following updates/additional explanation included in the abovementioned PR:-

- i. Right of Appeal and Time for Appeal (Section 99 of the Act)
  - Pursuant to Section 99 of the Act, a person who is dissatisfied with an assessment which has been made on him for any year of assessment by the Director General of Inland Revenue [“DGIR”] has the right to appeal against that assessment, i.e. for cases below:-
    - Assessment / additional assessment / advanced assessment / notification of non-chargeability which is raised by the DGIR as a result of a desk audit or field audit findings; or
    - Provisional assessment made under Section 90(3) of the Act due to non-submission / late submission of Income Tax Return Form [“ITRF”].

## Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)
  
- [PR No. 7/2015](#)

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## Hyperlinks

- Effective 24<sup>th</sup> January 2014, the provision under Section 99 of the Act shall not apply to the following:-
    - Deemed assessment under subsection 90(1) of the Act; or
    - Deemed assessment for amended ITRF under Section 91A of the Act, except in cases where the taxpayers disagree with the treatment stated in the public ruling or known stand, rules and practices of the DGIR prevailing at the time when the assessment is made.
  - No appeal can be made in respect of a Notice of Reduced Assessment unless there are issues in the notice that are disputed by the taxpayer.
  - Section 99 of the Act shall not apply to a composite assessment provided under Section 96A of the Act which is made after an agreement has been reached between the taxpayer and the DGIR.
  - The time frame for review of assessment on receipt of notice of appeal (Form Q) is 12 months which may be extended up to 6 months if the DGIR requires more time to review.
- ii. Review of Assessment through Application for Relief in respect of Error or Mistake (Section 131 of the Act)
- A person may make an application for relief in respect of error or mistake in the ITRF made by him.
  - Conditions to apply for relief:-
    - The application for relief will not be considered if the ITRF is made in accordance with the known stand, rules and practices of the DGIR prevailing at the time when the assessment is made.
    - The taxpayer must pay all taxes that have been made for the year of assessment in which an application in respect of the error or mistake is made.
    - The taxpayer must make a written application by way of letter or Form CP15C to the DGIR within 5 years after the end of the year of assessment in which the assessment is deemed.
- iii. Procedure for Application of Relief under Section 131 of the Act
- An application for relief can be made by submitting a letter or Form CP15C.
  - If the application is approved, the IRB will issue a Notice of Reduced Assessment.
  - If the application is rejected, the IRB will issue a rejection letter together with the grounds of rejection to the taxpayer.
  - If the taxpayer does not agree with the IRB's decision for rejection of his application, he may request the IRB to forward his application for relief to the Special Commissioners of Income Tax ["SCIT"] within 6 months from the date of rejection.

- The IRB shall then forward the application to the SCIT within 3 months from the date of receipt of the request from the taxpayer.

**Note:** For further information relating to appeal against an assessment, kindly refer to our *Tax Flash – June 2012 issue*.

### Guidelines on Advance Rulings

The IRB has recently issued the Guidelines on Advance Rulings to provide guidance on the application of advance rulings with the aims to ensure clarity and certainty of tax treatment and consistency in the application of the income tax laws. An advance ruling is a written statement by the DGIR to a person giving an interpretation on how any provision of the Act applies to a proposed arrangement describe in an application which is binding upon a person in relation to an arrangement for the period or year of assessment specified in the advance ruling.

Salient points of the abovementioned guidelines include:-

- i. Scope of an Advance Ruling
  - A request for an advance ruling has to be one where:-
    - the issue requires an interpretation of the income tax law and not one seeking to know what the law already clearly provides; and
    - the proposed arrangement is seriously contemplated by the person for implementation in the near future.
- ii. Circumstances where an Advance Ruling May be Declined
  - An application for an advance ruling may generally be declined in the following circumstances:-
    - the matter on which an advance ruling is requested is purely a question of fact;
    - the correctness of the advance ruling would depend on the making of assumptions, whether in respect of a future event or any other matter;
    - the matter on which a ruling is sought is the subject of an appeal, whether in relation to that person or any other person; or
    - the applicant has outstanding debts related to previous advance rulings applications.
- iii. Application Procedure
  - An application for an advance ruling has to be made in the prescribed form [“Borang KA (1/2007)”] and by furnishing the information required.

### Hyperlinks

- [Tax Flash – June 2012](#)
- [Guidelines on Advance Rulings](#)

## Hyperlinks

### iv. Issuance of an Advance Ruling

- An advance ruling will state the following:-
  - the advance ruling is made under Section 138B of the Act;
  - the identity of the person, the provision of the Act and reference to the arrangement in the application;
  - how the provision of the Act applies to the person and to the arrangement;
  - the period of year of assessment for which the advance ruling applies;
  - the material assumptions about future events or any other matters made by the DGIR; and
  - the conditions (if any) imposed by the DGIR.
- A taxpayer may apply in writing for an extension of period or year of assessment applicable under the advance ruling which must be made at least 3 months before the end of the period or year of assessment stated in the advance ruling or any other period approved by the DGIR.

### v. Finality and Disclosure of an Advance Ruling

- Once an advance ruling is issued, no further correspondence or enquiry will be entertained and no appeal can be made against the advance ruling. However, the applicant has the choice of not carrying out the proposed arrangement if the advance ruling is deemed disadvantageous to the applicant.
- If the proposed arrangement is effected, the advance ruling will have to be complied with. The applicant may then make an appeal objecting to the tax treatment stated in the advance ruling under the normal appeal process as provided in Section 99 of the Act.
- A person who has obtained an advance ruling is required to disclose the following information in his relevant ITRF:-
  - the existence of an advance ruling;
  - whether or not he has complied with the advance ruling; and
  - whether there are any material changes made to the arrangement specified in the advance ruling.
- The importance of this disclosure is enforced by penalty that may be imposed for non-compliance with the advance ruling made.

### vi. Withdrawal of an Advance Ruling by the DGIR

- The DGIR has the power to withdraw an advance ruling at any time after it is issued which may be due to changes in the interpretation of the tax laws on new differing decisions made by the Courts.

## Hyperlinks

- If a person has effected the arrangement before the date of withdrawal, then the person is allowed to follow the advance ruling issued to him until the end of the period stated in the advance ruling.
- If a person has not effected the arrangement at the date of withdrawal, then the advance ruling issued is not applicable and the DGIR will not be bound by the advance ruling.

### vii. Fee Structure

- An applicant who intends to apply for an advance ruling will be charged a fee, i.e. an application fee of RM500 and a further fee of RM150 per hour or part thereof after the first 4 hours taken to prepare the advance ruling.
- Reimbursement fee in respect of:-
  - any external professional advice sought by the DGIR, with prior consent from the applicant; or
  - any other reasonable costs incurred by the DGIR.
- The DGIR will at all times ensure that every effort is made to minimize the fees payable.

### viii. Processing Time of Advance Ruling

- Generally, the advance ruling will be issued within the stipulated time frame of 60 days from the date a complete application is submitted.

## **New DTA between Malaysia and the Slovak Republic**

The new Double Taxation Agreement ["DTA"] signed between Malaysia and the Slovak Republic has recently been gazetted.

Salient points of the DTA includes:-

- A building site, a construction, installation or assembly project which exists for more than 12 months will constitute a permanent establishment ["PE"].
- A PE is also deemed to exist if supervisory activities are carried out for more than 6 months within any 12-month period in connection with a building site or a construction, installation or assembly project.

➤ [Double Taxation Relief \(The Government of the Slovak Republic\) Order 2015](#)

## Hyperlinks

- iii. The withholding tax rates applicable on certain payments made to non-residents are as follows:-
- Dividends – 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the shareholding for an uninterrupted period of at least 12 months or 5% in all other cases (*Note*)
  - Interest – 10%. Penalty charges for late payment are not considered as interest
  - Royalties – 10%
  - Technical fees – 5%
  - Section 4(f) income – 10%

The above DTA will enter in force upon ratification.

**Note:** *Currently, there is no withholding tax on outbound dividends under the Act.*

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