

# Tax FAQs on appeals against a Tax Assessment by way of Form Q

## Which provision of the law allows the Taxpayer to appeal against a tax assessment?

**Section 99** of the **Income Tax Act 1967 (ITA)** gives the Taxpayer a right to appeal an assessment made by the Inland Revenue Board of Malaysia (IRBM) to the Special Commissioners of Income Tax (SCIT)

### *Right of appeal*

*99. (1) A person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Director General within thirty days after the service of the notice of assessment or, in the case of an appeal against an assessment made under section 92, within the first three months of the year of assessment following the year of assessment for which the assessment was made (or within such extended period as regards those days or months as may be allowed under section 100) a written notice of appeal in the prescribed form stating the grounds of appeal and containing such other particulars as may be required by that form.*

The right of appeal will NOT extend to the following assessments :-

- (a) Section 90(1) – “deemed assessments” i.e. returns filed by the Taxpayer under its self-assessment (Section 77 or 77A)
- (b) Section 91A – “amended deemed assessments” i.e. amended returns filed by the Taxpayer under Section 77B

EXCEPT in cases where the Taxpayer disagrees with the treatment stated in Public Ruling or known stand, rules and practices of the Director-General of Inland Revenue (DGIR) prevailing at the time when the assessment was made.

## What is the time period limited to file an Appeal?

*Generally the ITA provides that an Appeal must be filed within 30 days from the date of service of Notice of Assessment on the Taxpayer.*

## What is the method of filing an Appeal under Section 99?

*"The Taxpayer must prepare and submit 4 copies of Form Q. 1 copy of Form Q is the original and the other 3 copies may be photocopied. Form Q should be filed together with attachment (if any) setting out the grounds of the Appeal. No other documents should be filed together with the Form Q.*

## Who can sign the Form Q?

*The Form Q must be signed by the Taxpayer. A tax agent or lawyer cannot sign on behalf of the Taxpayer.*

## What are the important details to be included in the Form Q?

*The following information must be included in the Form Q:-*

- (a) Date and amount of disputed tax payable; and
- (b) Details of grounds of appeal plus other relevant information.





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## What can the Taxpayer do if it has missed the deadline for filing the Form Q?

The Taxpayer can file an application for extension of time to file the Form Q. The application can be made by way of Form N. In the Form N the Taxpayer should state reasonable grounds for the delay in filing the Form Q.

## Is there a time-limit to file the Form N?

*Beginning from year of assessment (YA) 2020 the Form N must be filed within 7 years from the last date for filing the Form Q.*

## What is the procedure for the Form N application?

*The Form N must be submitted to the IRBM branch office handling the Taxpayer's income tax file. If the application is allowed, the IRBM will issue Form CP15A informing the extended date for filing the Form Q.*

*If the application is rejected, the IRBM must forward the Form N together with a statement of reasons for rejection to the SCIT. The Taxpayer must be informed in writing of the decision by the IRBM together with a copy of the said statement. The Taxpayer may then make a written representation within 21 days of receiving the notice to the SCIT against the decision by the IRBM.*

*If the SCIT grants the extension of time, it will notify the parties of the last date for filing the Form Q. Similarly, if the application is rejected the parties will be informed accordingly. The decision by the SCIT is final and there is no right of appeal against the same.*

## What happens once the Form Q is filed?

*Upon receipt of the Form Q, the DGIR shall review the Form Q within 12 months from the date of receipt of the Form Q. Within the 12 month period the DGIR must either allow the Appeal or (where settlement cannot be reached) forward the Appeal to the SCIT. The DGIR may request a further 6 month extension to review the Form Q from the Minister of Finance. It would appear from Section 101 of the ITA that the said period is mandatory.*

## Who may appear at the SCIT for the Taxpayer?

*The Taxpayer may appear in person or be represented by a qualified tax agent or lawyer. Where the Taxpayer is a business or a body corporate it may be represented by a person authorised in writing to do so.*





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## What is the procedure for the Appeal at the SCIT?

In brief, the Appeal will be fixed for case management at the SCIT where the Court will ask the parties whether the case can be settled amicably. In the event that the case cannot be settled the Court will instruct parties to file its Cause Papers and fix the matter for hearing. During the hearing, the parties may call its witnesses. At the end of the hearing, the parties will be asked to submit its arguments to the Court and a decision date will be fixed.

## Is there a right to appeal the SCIT decision?

*The SCIT decision may be appealed by either party to the High Court and further to the Court of Appeal which is the final appellate court for Form Q appeals.*

## Can a matter be settled amicably once it reaches the SCIT?

*The parties may reach a settlement at any stage during the proceedings. The matter will be handled by the IRBM department in question.*

## Can a deemed assessment be appealed by the Taxpayer?

*As stated above, **Section 99** excludes an appeal by the Taxpayer in the case of a deemed assessment. However, a Taxpayer may file an application for relief under Section 131 of the ITA in respect of error or mistake. The determination whether the Taxpayer has made an error or mistake is a question of fact and law. The onus of proving that there is an error or mistake shall be on the Taxpayer. The Taxpayer may also file an application for relief under **Section 131A** for relief in certain circumstances not falling under error or mistake.*

## "I have already filed an appeal against the assessment but the IRBM still commenced an action against me to recover the tax payable."

*It is important to note that an Appeal is distinct and separate from a recovery action. Under the ITA even though the Taxpayer has filed an Appeal vide Form Q the Taxpayer is still required under the law to make payment of the tax payable within the period required for payment (i.e. within 30 days of receipt of the notice of assessment). The Taxpayer must take precautions to monitor and / or counter any recovery action taken by the IRBM against itself.*







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## How may I find out more about the Form Q appeal?

*For further clarification and information one may refer to Public Ruling No. 7/2020 (Appeal Against an Assessment and Application for Relief) or the IRBM website [HERE](#).*

*Alternatively, the Taxpayer may chose to consult with your friendly tax agent or lawyer for further details.*

**For further details please contact our Tax Partner:**



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