



TAX:

WILL PROPOSED NEW S.106A EFFECTIVELY ENABLE THE INLAND REVENUE BOARD TO ACCESS TAXPAYERS' BANK DETAILS WITHOUT WARNING?

INTRODUCTION

On the 15th of December 2021, the Finance Bill 2021 (the “Bill”) was passed in the House of Representatives with a simple majority voice vote. The Bill was presented and laid before the House by YB Dato' Indera Mohd Shahar bin Abdullah, the Deputy Finance Minister. Among the many provisions made in the Bill, one in particular catches the attention of the masses.

NEW SECTION 106A

S.106A – Power to call for bank account information for purpose of making garnishee order application

Under the Bill, a new provision has been proposed for inclusion in the Income Tax Act 1967 (ITA). The new s.106A appears to grant sweeping powers to the Inland Revenue Board of Malaysia or Lembaga Hasil Dalam Negeri Malaysia (‘IRB’) to access a taxpayer’s bank account information for the purpose of obtaining a Garnishee Order from the Court without having to inform the respective taxpayer by notice to the banks requiring them to comply.

For easy reading, s. 106A is produced below:

“Power to call for bank account information for purpose of making garnishee order application

106A. (1) Where civil proceedings have been instituted against a person under section 106 and a judgement has been obtained against the person, the Director General may by notice under his hand require any financial institution to furnish within a time specified in the notice, the bank account information of that person, if any, for the purpose of making an application to court for a garnishee order.

(2) Where a financial institution is required to furnish bank account information in accordance with subsection (1), that financial institution shall not disclose to any person that such request was made to the financial institution.

(3) In this section, “financial institution” means—

- (a) any person licensed under the Financial Services Act 2013 to carry on a banking business in Malaysia; Finance 17
- (b) any person licensed under the Islamic Financial Services Act 2013 to carry on an Islamic banking business in Malaysia; or
- (c) any development financial institution prescribed under the Development Financial Institutions Act 2002 [Act 618].”

IMPLICATIONS OF THE NEW PROVISION

Previously, in the event the IRB makes a request for a taxpayer’s bank statements and the taxpayer does not have it with him, he is given time to obtain the statements for submission to the IRB. The IRB will only be given access to a taxpayer’s bank account details from financial institutions if the IRB had obtained a consent form from the respective taxpayer as this was governed under the Personal Data Protection Act 2010 (PDPA).

However, with the new provision in place, when a financial institution is requested by the IRB to furnish the bank account information, the financial institution is prohibited from disclosing to the customer that such request has been made. It must be highlighted that from the reading of the new provision, power is only granted to the IRB to access bank account information for the purpose of making a garnishee order application¹. This should mean that civil proceedings must have already been instituted and a judgment obtained against the taxpayer for the IRB to be able to obtain the bank account information of that person from the financial institution. The new s.106A does not appear to permit or extend the power to the IRB to obtain information for other purposes.

Failure to comply with s.106A(2) would expose the banks to a fine or imprisonment for a term of six months or both under s.120A of the ITA.

The IRB obviously hopes that the introduction of the new provision will assist in the recovery proceedings leading to better tax compliance. Nevertheless, issues on data protection do arise. Therefore, there is a need for the IRB to be more transparent in the procedures undertaken when obtaining sensitive information from financial institutions. Allowing tax authorities access to bank information does not necessarily jeopardise the confidentiality of the information as long as the disclosure is subject to stringent controls on how the information is used. Therefore, the IRB has a legal obligation to ensure that any information obtained is used solely for the purpose set out in s.106A.

Further, a quick look at the tax authority’s powers in foreign jurisdiction would show that these authorities also have, to a certain extent, powers to access banking information of taxpayers. For example, in Indonesia, confidentiality of bank customers’ personal data can be bypassed in certain situations such as for taxation purposes.

¹ Garnishee proceeding is a form of judgment enforcement procedure used to pursue judgment debts.

CONCLUSION

Whilst the argument for better compliance by taxpayers can be appreciated, a proper balance needs to be reached between enforcement and data protection to ensure the confidence of the people, hence it is imperative that the IRB must act professionally at all times and ensure the provision is used as it was intended and not abused.

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