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Public Ruling 12/2017 – Appeal against an assessment and application for relief

The Inland Revenue Board (IRB) issued Public Ruling 12/2017 – Appeal against an assessment and application for relief (“PR 12/2017”) on 12 January 2018. PR 12/2017 replaces Public Ruling 7/2015 – Appeal against an assessment and application for relief.

The following are the salient updates:

Item	Salient changes
Examples of known stand, rules and practices of the DGIR.	<p>A taxpayer may appeal against a deemed assessment if he disagrees with the treatment stated in a public ruling, or known stand or rules and practices of the Director General of Inland Revenue (DGIR).</p> <p>“Slide presentations given by IRB officers” have been removed from the revised PR 12/2017 as an example of the known stand, rules and practices of the DGIR.</p>
Appeal against a non-chargeability case (Paragraph 4.8)	<p>This paragraph has been updated to reflect the new section 97A(1A) of the Income Tax Act 1967 (ITA) effective from 1 January 2017:</p> <ul style="list-style-type: none"> • Under section 97A(1A), the tax return submitted is deemed to be a notification of non-chargeability and the taxpayer is deemed to be notified on the day the tax return is furnished. • Any appeal to the Special Commissioners of Income Tax (SCIT) against the deemed notification is to be made within 30 days from the date of being notified. • PR 12/2017 specifies that if the tax return is not furnished in accordance with sections 77 and 77A of the ITA (i.e. within the stipulated timeframe), the taxpayer is not entitled to appeal under section 97A of the ITA. • Where a taxpayer, e.g. an individual, is not required to submit a tax return under section 77, but intends to appeal against IRB’s position, an income tax return must be submitted in order to appeal to the SCIT.
Grounds of appeal	<p>The revised PR 12/2017 specifies that the grounds of appeal should be stated but supporting documents do not have to be submitted with the Form Q. However, the DGIR may request for supporting documents to be submitted when reviewing the Form Q.</p>

Item	Salient changes										
Relief in respect of non-error or mistake under section 131A (paragraph 12.2)	<p>This new paragraph outlines the conditions and timeframe as stipulated in section 131A of the ITA, for an application for relief in respect of non-error or mistake cases.</p> <p>The tax return must be furnished within the stipulated submission due date and all taxes for the year of assessment (YA) has been paid.</p> <p>The application for relief may be made for the following circumstances and within the following timeframes:</p> <table> <tr> <th>Circumstances</th><th>Timeframe</th></tr> <tr> <td>Where any exemption, relief, remission, allowance or deduction granted under the ITA or law gazetted after the YA in which the tax return is furnished.</td><td>Within 5 years after the end of the year in which the gazette is published or approval is granted (whichever is later)</td></tr> <tr> <td>Where approval for exemption, relief, remission, allowance or deduction is granted after the YA in which the tax return is furnished.</td><td></td></tr> <tr> <td>Where deduction is not allowed for withholding (WHT) and the related increased taxes, which are not due to be paid on the day the tax return is furnished.</td><td>Within 1 year after the end of the year of payment of WHT and the related increased taxes</td></tr> </table>	Circumstances	Timeframe	Where any exemption, relief, remission, allowance or deduction granted under the ITA or law gazetted after the YA in which the tax return is furnished.	Within 5 years after the end of the year in which the gazette is published or approval is granted (whichever is later)	Where approval for exemption, relief, remission, allowance or deduction is granted after the YA in which the tax return is furnished.		Where deduction is not allowed for withholding (WHT) and the related increased taxes, which are not due to be paid on the day the tax return is furnished.	Within 1 year after the end of the year of payment of WHT and the related increased taxes		
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Relief in respect of non-taxable cases under section 97A(5) (paragraph 12.3)	<p>This new paragraph outlines the conditions and timeframe as stipulated in sections 97A(5) & (6) of the ITA:</p> <p>The tax return must be furnished within the stipulated submission due date and there is no chargeable income.</p> <p>The application for relief may be made for the following circumstances and within the following timeframes:</p> <table> <tr> <th>Circumstances</th><th>Timeframe</th></tr> <tr> <td>Where there is an error or mistake in the tax return.</td><td>Within 6 months from the date of furnishing the return</td></tr> <tr> <td>Where any exemption, relief, remission, allowance or deduction granted under the ITA or law gazetted after the YA in which the tax return is furnished.</td><td>Within 5 years after the end of the year in which the gazette is published or approval is granted (whichever is later)</td></tr> <tr> <td>Where approval for exemption, relief, remission, allowance or deduction is granted after the YA in which the tax return is furnished.</td><td></td></tr> <tr> <td>Where deduction is not allowed for WHT and the related increased taxes, which are not due to be paid on the day the tax return is furnished.</td><td>Within 1 year after the end of the year of payment of WHT and the related increased taxes</td></tr> </table>	Circumstances	Timeframe	Where there is an error or mistake in the tax return.	Within 6 months from the date of furnishing the return	Where any exemption, relief, remission, allowance or deduction granted under the ITA or law gazetted after the YA in which the tax return is furnished.	Within 5 years after the end of the year in which the gazette is published or approval is granted (whichever is later)	Where approval for exemption, relief, remission, allowance or deduction is granted after the YA in which the tax return is furnished.		Where deduction is not allowed for WHT and the related increased taxes, which are not due to be paid on the day the tax return is furnished.	Within 1 year after the end of the year of payment of WHT and the related increased taxes
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The PR 12/2017 is available at www.hasil.gov.my (Laws and Regulations > Public Rulings).

Mutual Agreement Procedure guidelines

A revised Mutual Agreement Procedure (MAP) guideline dated 19 December 2017 was issued by IRB recently. The revised guideline replaces the earlier guideline dated 5 December 2014.

The guideline is applicable to Bilateral and Multilateral Advance Pricing Arrangement (BAPA / MAPA) and has to be read with the Advance Pricing Arrangement (APA) guideline. It provides guidance to taxpayers seeking assistance from the Malaysian Competent Authority (CA) to resolve international taxation matters which are not in accordance with tax treaty provisions. The guideline also sets out examples of scenarios where CA assistance is required.

The following are the salient points from the revised guideline:

1) Who may apply for competent authority assistance

- A person, irrespective of the remedies provided under domestic law, may present the case to the relevant CA of either Malaysia or its treaty partner.
- In a case of a BAPA / MAPA application by a Malaysian resident, only the following cases will be considered:
 - a) A taxpayer who is a company which is assessable and chargeable to tax under the ITA.
 - b) Turnover exceeding RM100 million, and
 - c) Value of proposed transaction meets a specified threshold and must relate to income that is chargeable to tax and is not exempted. The current specified threshold are:

Transaction	Threshold
Sales	Exceeds 50% of turnover
Purchases	Exceeds 50% of total purchases
Other transactions	Total value exceeds RM25 million

- d) In cases involving financial assistance, the threshold in the Malaysian transfer pricing guideline applies, which is financial assistance exceeding RM50 million.

2) Time limits

The time limit for presenting a case for CA assistance depends on the terms of the specific tax treaty. However, where a time limit is not specified, the Malaysian CA will follow the time limit specified in the OECD Model Convention on Income, which is three years from the first notification of the action resulting in taxation not in accordance with the provision of the convention.

3) Pre-filing meeting and submitting of a formal request

- Adequate documentation has to be submitted together with a written request, and the taxpayer has to attend and present the issues that requires the CA assistance.
- Following the pre-filing meeting, if the outcome merits consideration for a MAP, the taxpayer will be asked to submit a formal request to the Tax Division of the Ministry of Finance and the Department of International Taxation of IRB.

4) CA proposal

The process the Malaysian CA adopts in resolving the issue is as follows:

- They will endeavour to resolve the case unilaterally with the taxpayer.
- If it cannot arrive at a satisfactory solution, then the case will be resolved by mutual agreement with the CA of the other jurisdiction via a bilateral agreement.

5) Confirmation by taxpayer before agreement

The taxpayer must provide written acceptance within 30 days of being notified of the contents of the proposed agreement that is expected to be reached with the CA of the other jurisdiction.

6) Implementation

Once the agreement has been reached and accepted by the taxpayer, the implementation will be made within 3 months after determination of the case.

7) Interaction between MAP and domestic appeal process

- When a MAP request is made, the taxpayer must provide written notification to the relevant branch. Any concurrent appeal to the Special Commissioner of Income Tax (SCIT) will be subject to the provisions of section 102(1A) of the ITA, whereby the appeal will not be forwarded to the SCIT until the determination of the MAP. The taxpayer will then have 30 days from the determination of the MAP to request for his appeal to be forwarded to the SCIT.
- MAP application is not eligible for cases with a SCIT / court decision given, composite assessment raised under section 96A of the ITA, or with element of tax evasion / avoidance.

Revised Guideline on the Establishment and Operations of Labuan Leasing Business

A revised Guideline on the Establishment and Operations of Labuan Leasing Business dated 29 December 2017 has recently been issued by the Labuan Financial Services Authority (LFSA) which replaces the earlier guideline dated 1 August 2013. The revised guideline is effective from 1 January 2018 except for provisions of paragraph 7.11, which is effective from 1 January 2019.

LFSA has also issued a related Frequently Asked Questions (FAQ) dated 20 February 2018 for the above guideline.

The following are the salient points from to the guidelines and FAQ:

1) Operating requirements (para 7)

The main change is in para 7.11, which sets out the requirements for a Labuan leasing company to establish substantial activities and perform strategic functions in Labuan.

The revised guideline has now included the following examples of substance requirements (non-exhaustive):

- Physical presence – a Labuan operational office is to be maintained. The FAQ clarifies that the address of a company secretary would not be regarded as the operational office of the Labuan leasing company,
- Key leasing activities – core income generating activities should be carried out from the Labuan office,
- Employment – to have adequate number of full-time employees, and
- Annual business spending – to have adequate annual business spending in Malaysia including Labuan. The FAQ clarifies that this should correlate with the expenses incurred to support the operations of the leasing business.

In addition, the FAQ has also clarified that the leasing agreements entered into by the Labuan leasing company must be stamped and endorsed by the Labuan branch of the Stamp Duty Office, IRB.

2) Fees payable

The annual licence fee and approval fee for each subsequent leasing transaction which is payable to the LFSA, now applies to leasing business with both Malaysian residents and non-resident. Previously the fees only applied to leasing business with Malaysian residents.

The guideline is available on the LFSA website www.labuanibfc.com (Guidelines > Other Businesses).

Amendment to Guidelines for Income Tax Treatment of MFRS 5: Non-Current Assets Held for Sale and Discontinued Operations

The IRB has issued an amendment dated 22 January 2018 to the Guidelines for Income Tax Treatment of MFRS 5: Non-Current Assets Held for Sale and Discontinued Operations.

Scenario 3 of the guideline is updated to reflect the tax treatment following the Budget 2018 changes made to para 61A(5) of Schedule 3 of the ITA. Prior to the budget changes, the notional allowance was to be computed in the YA following the YA in which the asset is classified as held for sale. After the amendment, the notional allowance is now to be computed in the YA in which the asset is classified as held for sale.

The amendment and the guideline is available at www.hasil.gov.my (Laws and Regulations > Technical Guidelines).

Common Reporting Standard (CRS) guidance notes

IRB has issued the final Common Reporting Standard (CRS) guidance notes dated 5 February 2018.

The CRS guidance notes are intended to provide guidance to:

- a) Malaysian Financial Institutions (MYFI) in meeting their due diligence and reporting obligations under the CRS.
- b) Clarify the options which Malaysia has adopted in respect to the CRS implementation.

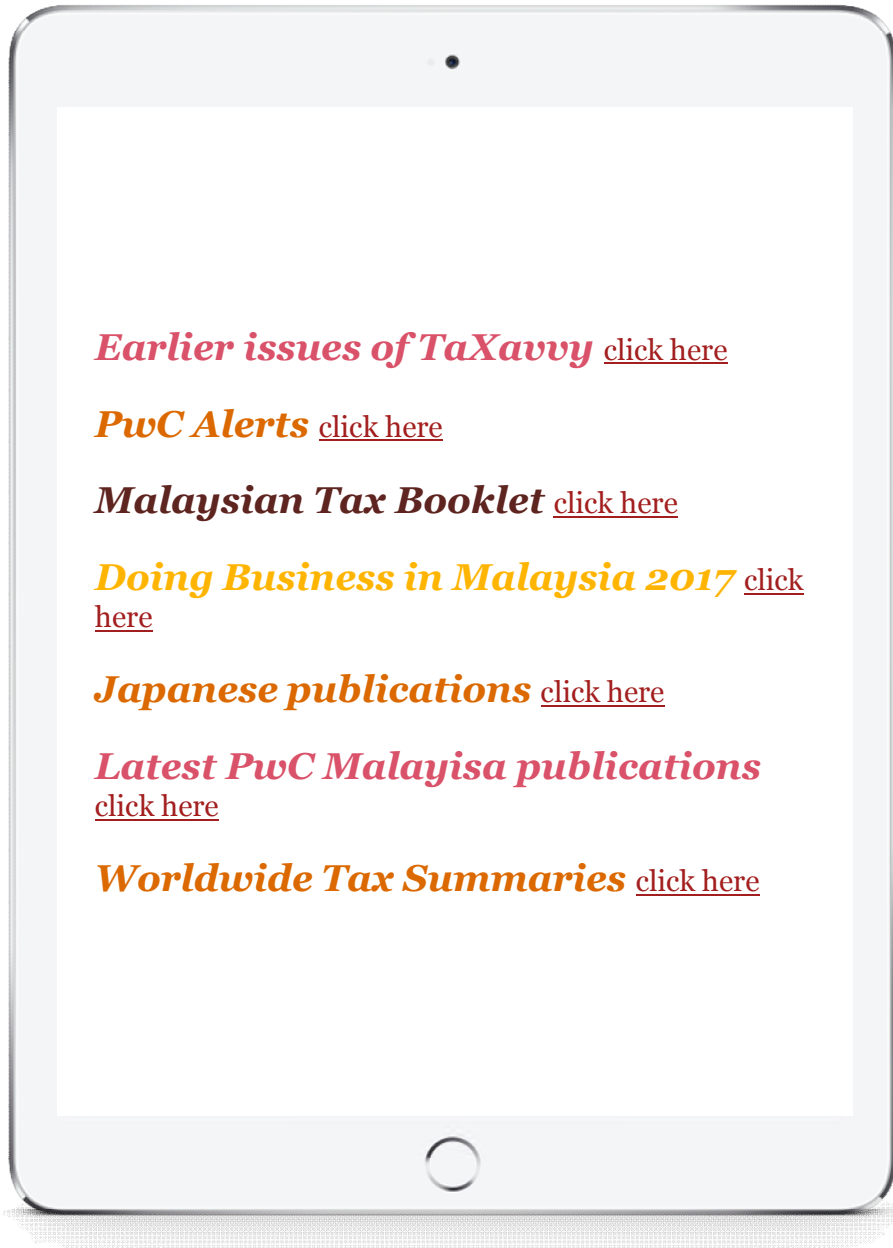
The CRS is a global model of automatic exchange of information which sets out the financial account information to be exchanged, the Financial Institutions (FI) required to report, the different types of accounts and taxpayers covered, as well as due diligence procedures to be followed by FI.

CRS obligations are imposed on MYFI through the operation of the:

- Income Tax (Automatic Exchange of Financial Account Information) Rules 2016,
- Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2017
- Labuan Business Activity Tax (Automatic Exchange of Financial Account Information) Regulations 2018

The CRS guidance notes are available at www.hasil.gov.my (International Taxation > Common Reporting Standard).

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