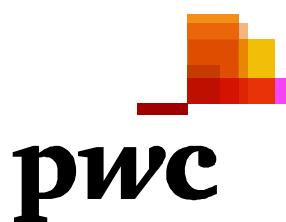
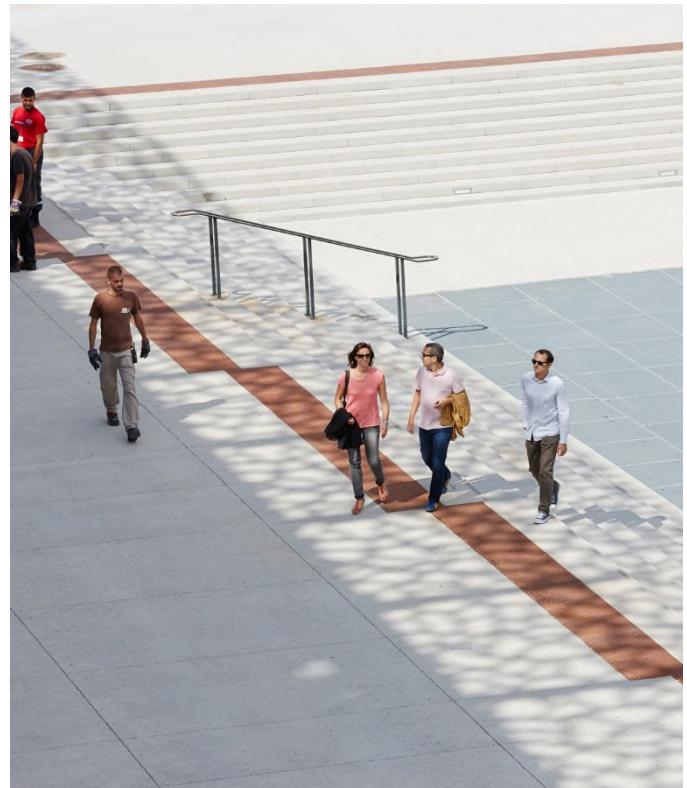


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# **TaXavvy**

## **Stay current. Be tax savvy.**

Bengkel Non-Technical and  
Operational Issues Bil.  
1/2016 and Bil. 2/2016



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## ***Bengkel Non-Technical and Operational Issues Bil. 1/2016 and Bil. 2/2016***

The Inland Revenue Board (IRB) has issued the minutes of the *Bengkel Non-Technical Operational and Compliance Issues Bil. 1/2016 and Bil. 2/2016* (“Bengkel”) which were held on 9 May 2016 and 28 July 2016 respectively. The following are some of the matters discussed.

## ***Appeal against best judgement assessment***

1

### **Issue**

A company is unable to file its tax return because the audited accounts are not available. The Director General of Inland Revenue issued a best judgement assessment for that year of assessment. To appeal against the assessment and reserve the taxpayer's right to submit the tax return when the audited accounts are available, the taxpayer submits a Form Q to the IRB. However, the IRB rejects the Form Q because it is not submitted with audited accounts.

### **IRB's clarification**

The IRB will accept the Form Q which is submitted within the stipulated timeframe even if it is submitted without audited accounts. However, the Form Q will not be processed for purposes of submission to the Special Commissioners of Income Tax until the audited accounts are furnished. The IRB will communicate with their branches to ensure consistent practice is adopted across branches.

## ***Completion and acceptance of Form Q***

2

### **Issue**

Varying practices of accepting or rejecting Form Qs have been encountered by taxpayers at various IRB branches.

### **IRB's clarification**

The IRB provided clarification on the completion and submission of the Form Q which included the following:

- The Form Q can be completed manually (hand-written) as long as the handwriting is clear and legible. The signature can be in any script (e.g. Chinese characters, Arabic or Tamil scripts or thumbprint) as long as the name is written in Romanised characters below the signature.
- If the Form Q is submitted later than 30 days from the date of the notice of assessment, its acceptance will be considered based on the reasons and supporting documents provided by the taxpayer.
- Taxpayers are encouraged to submit the Form Q with an accompanying covering letter, on which the date of receipt will be stamped by the IRB. If the Form Q is found to be incomplete, the IRB will notify the taxpayer and the Form Q will be returned. A new Form Q will have to be submitted within the stated timeframe or a Form N has to be furnished to request for an extension of time.

## Appeal against reduced assessment

3

### Issue

Currently there is no provision in the Income Tax Act 1967 (ITA) to appeal against a reduced assessment.

### IRB's clarification

Where the tax issue arises out of the original assessment, the Form Q is to be submitted based on the original assessment. The Form Q can only be submitted based on the reduced assessment if the tax issue arises out of the reduced assessment (e.g. resulting from an audit adjustment).

## Avenues to revise tax returns

4

### Issue

The avenue to revise the tax return in the following situations is not available as there appears to be no provision in the ITA which caters for the revision:

- a) To claim deduction for payments to non-residents upon payment of withholding taxes, which were previously disallowed in the tax return filed.
- b) To correct errors or mistakes in cases where there is no tax liability. The current provisions only cater for cases where tax has been paid.
- c) To provide certainty of issuance of a notice of non-chargeability for cases with no tax liability as the current provision for appeal only applies to cases with assessment or additional assessment.

- d) To claim tax incentive where the legislation / approval for the incentive is gazetted / granted after the tax return is submitted.

### IRB's clarification

IRB clarified that they would review and consider changes to the current legislative provisions to cater for the above situations.

Note: Changes to the ITA have been proposed in the recent Finance Bill 2016.

5

## Penalty rates for second time audit cases

### Issue

The penalty rates for second time audit of non-Monitoring Deliberate Tax Defaulter (MDTD) cases are not publicly available. It is also not known for cases which were subject to tax investigation or transfer pricing audit, whether a subsequent tax audit on the same company would be considered a second time audit.

### IRB's clarification

- The penalty rates for non-MDTD cases in a second time audit are as per those stated in the Tax Audit Framework.
- If the second time audit is in respect of a MDTD case, the IRB will issue a letter to inform the taxpayer on the applicable penalty structure which would be determined based on the issues found and whether it is a repeated offence. A new guideline and penalty structure will be issued by IRB.
- The penalty for a subsequent tax audit on cases which were previously subject to tax investigation or transfer pricing audit, will be 45%.

## Statement of tax position not issued

6

### Issue

The statement of tax position or tax payment position is not issued together with tax refunds, notice of assessment, reduced assessment or tax clearance letters, for the amounts to be verified and reconciled.

### IRB's clarification

The taxpayer / tax agent may refer to the e-Lejar on IRB's website to verify the tax position. The tax clearance letter issued by the Assessment Branch would also have been verified by the Collections Unit of IRB.

## Compensation for late tax refund

7

### Issue

Taxpayers who file their tax returns by the 'due date' will be eligible for compensation of 2% per annum for any late refund of tax overpaid.

However, there is inconsistent explanation on what 'due date' means, between the *Post 2012 Budget Dialogue* held on 2 April 2012 and the *Guideline on Compensation on Late Refund of Overpayment of Tax* dated 15 May 2014 ("the Guideline").

### IRB's clarification

The eligibility criteria for the compensation is outlined in the Guideline, which supersedes the *Post 2012 Budget Dialogue*. 'Due date' means the statutory due date as stipulated in sections 77 and 77A of the ITA.

## Communication of tax audits with tax agents

8

### Issue

There are instances where the IRB communicates directly with the taxpayers without informing tax agents (e.g. letters on field audits were sent directly to taxpayers).

### IRB's clarification

- In respect of desk audits, the IRB's procedure allows the IRB to communicate directly with the taxpayer via issuance of CP 800/800A, letter or by telephone, email or fax, to request for information.
- The IRB will only issue field audit letters directly to the taxpayer. This is to avoid unauthorised disclosures because the IRB has a duty of care to maintain the confidentiality of all taxpayers' matters.

## Other matters covered

9

Other matters covered in the Bengkel include expatriate tax issues, filing administrative issues, website / system issues, timeframe to process refund of tax withheld under section 107A, and improvements to IRB forms.

The Bengkel minutes are available on the MIA and CTIM websites.

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