

# Crowe Perspectives

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## **TAX: Consequences of not Filing the Income Tax Return Form (ITRF) on Time**

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## Consequences of not Filing the ITRF on Time



Late submission of ITRF will usually result in late submission penalties. There is however another consequence when a company does not file its ITRF within the due date stipulated in the Income Tax Act, 1967 (ITA). The consequence is that the company faces a high possibility that the Inland Revenue Board of Malaysia (IRBM) will issue a best judgement assessment under Subsection 90(3) of the ITA. This happens particularly for companies which have been having tax liabilities for the past years of assessment. The IRBM would presume that the company would also be having tax liability for the backlog year of assessment.

When a company is served with the best judgement assessment, the company may appeal against the assessment if the company finds that the assessment is excessive. This is allowed under Section 99 of the ITA. An appeal must be made by submitting a Form Q [notice of appeal to the Special Commissioners of Income Tax (SCIT)] not later than thirty (30) days after the notice of assessment has been served as provided under Subsection 99(1) of the ITA.



The Form Q must be submitted in four (4) sets together with the grounds of appeal and attachments (if any) to the IRBM's branch office handling the appellant's income tax file. The appellant does not have to submit supporting documents with the Form Q.

If necessary, the Director General of Inland Revenue may request the appellant to submit relevant supporting documents when reviewing the Form Q.





## Consequences of not Filing the ITRF on Time

Of late, when it comes to submitting Form Q for appeals against best judgement assessments, the IRBM has been insisting on the appellant to submit the ITRF, tax computation and audited report together with the Form Q. The rationale for this is, perhaps, that since the appellant is saying that the best judgement assessment is excessive compared to the company's actual tax liability, the appellant then should support its grounds of appeal by producing the ITRF, tax computation and audited report.

However, this may pose a problem for some companies if the non-submission of ITRF is due to a delay in coming up with the signed and attested audited report. Usually there is insufficient time for the appellant to come up with the audited report and prepare the income tax computation within thirty (30) days from receiving the notice of assessment. In practice, the company may have less than thirty (30) days due to delay in postal delivery of the best judgement assessment.



In situations like this, the company could apply for extension of time for the appeal by way of submitting a Form N (i.e. application for Extension of Period for Making an Appeal to The SCIT). The company must give a good reason in the application for extension of time. One of the reasons which may be considered is circumstances beyond the control of the appellant, for example, the appellant has been hospitalised for a long period of time, absence from the country, victim of natural disaster or other acceptable and valid reasons. However, the application for extension of time is subject to the IRBM's approval.

In a worst case scenario where the company is unable to submit the Form N, it would mean that the company has not made an appeal against the best judgement assessment and where no appeal has been made, the best judgement assessment can be deemed as final and conclusive. Consequently, the company will have to accept the best judgement assessment and pay the tax liability as assessed by the IRB. This can be quite detrimental for companies whose actual tax liability for that backlog year of assessment is much lower than the best judgement assessment or which may have actually suffered losses. However, if the company's actual tax liability proves to be much higher than the best judgement assessment, then it may be a good thing for the company to not to appeal against the best judgement assessment.



# Summary

In summary, it is recommended that companies should file their ITRF on time and avoid the unnecessary hassle of having to file an appeal and not mentioning the additional costs of getting professional help on the appeal. There is also the cost of having to pay up the tax liabilities based on the best judgement assessment first even if an appeal by way of Form Q has been submitted.

The IRBM needs time to review the ITRF, tax computation and audited report submitted with the Form Q before it is satisfied that the appellant's actual tax liability is indeed lower than the best judgement assessment and issues the notice of reduced assessment to reflect the actual tax liability of the company. After the notice of reduced assessment is issued, then only a tax refund of the overpaid tax can be made which in itself would take another few months. This may affect the cash flow of the companies.



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