



INLAND REVENUE BOARD OF MALAYSIA

**RECOVERY FROM PERSONS LEAVING
MALAYSIA**

PUBLIC RULING NO. 12/2015

Translation from the original Bahasa Malaysia text.

DATE OF PUBLICATION: 17 DECEMBER 2015



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Inland Revenue Board of Malaysia

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CONTENTS	Page
1. Objective	1
2. Relevant Provisions of the Law	1
3. Interpretation	1
4. Introduction	2
5. Preventing Taxpayer from Leaving the Country	3
6. Allowing Taxpayer to Leave the Country	3
7. Payment Method	5
8. Consequences of Leaving or Intending to Leave the Country Without Payment of Tax and Debts	5
9. Responsibility of Taxpayer	5

DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

The objective of this Public Ruling (PR) is to explain the circumstances and procedures for recovering tax and debts due from taxpayers who will be leaving Malaysia.

2. Relevant Provisions of the Law

- 2.1 This PR takes into account laws which are in force as at the date this PR is published.
- 2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 75A, 104, 115 and 139.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Director General" means the Director General of Inland Revenue referred to in section 134 of the ITA.
- 3.2 "Immigration Officer" means a public officer having official duties in connection with the control of immigration into Malaysia or any part of Malaysia.
- 3.3 "Taxpayer" means an individual or a company director.
- 3.4 "Director" means any person who:
 - 3.4.1 is holding the post of director (by whatever name called), including any person who is concerned in the business management of the company; and
 - 3.4.2 by himself or with his associates as defined in subsection 139(7) of the ITA:
 - a) holding not less than 20% of the ordinary share capital of the company; or
 - b) controls directly or indirectly of not less than 20% of ordinary shares capital of the company.
- 3.5 "Director of Immigration" means the Director of Immigration in Sabah, Sarawak or Peninsular Malaysia.
- 3.6 "Commissioner of Police" includes a Chief Police Officer.
- 3.7 "Stoppage order" means preventing a person from leaving Malaysia if he fails to pay all the tax, sums and debts so payable.

4. Introduction

4.1 Under section 104 of the ITA, if the Director General (DG) is of the opinion that a taxpayer is about to leave Malaysia without paying:

4.1.1 all tax payable by him (whether or not due or due and payable);

4.1.2 all sums payable by him in relation to:

(a) increase in tax charged for late payment of tax [subsection 103(1A), (3), (4), (5), (6), (7) or (8) of the ITA]; or

(b) increase in tax charged for late payment of tax by instalments [subsection 107B(3) or subsection 107C(9) of the ITA]; or

(c) increase in tax charged in the case where the amount of the difference between the tax payable under an assessment for that year of assessment and the total of the instalments payable exceeds thirty per cent [subsection 107B(4) of the ITA]; or

(d) increase in tax charged in the case where the amount of the difference between the tax payable under an assessment for a year of assessment and the revised estimate or deemed revised estimate, whichever is later, or no such revised estimate is furnished or there is no such deemed revised estimate exceeds thirty per cent [subsection 107C(10) of the ITA]; and

4.1.3 all debts payable by him on withholding tax from:

(a) contract payment [subsection 107A(2) of the ITA];

(b) interest and royalties [subsection 109(2) of the ITA];

(c) special classes of income [subsection 109B(2) of the ITA]; or

(d) miscellaneous income [subsection 109F(2) of the ITA].

derived from Malaysia and payable to a non-resident person.

The DG may issue a certificate to a Commissioner of Police or a Director of Immigration requesting for that taxpayer to be prevented from leaving Malaysia until he has paid all the tax, sums and debts so payable or furnishes security to the satisfaction of the DG for the payment.

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- 4.2 The certificate that invokes stoppage order contains details of the tax, sums and debts so payable. A Commissioner of Police or a Director of Immigration upon receiving such a certificate must take steps to prevent that taxpayer from leaving Malaysia, including the use of such reasonable force and the seizure, removal or retention of any certificate of identity and any passport, exit permit or other travel document relating to that taxpayer in order to enforce the request of DG.
- 4.3 For the purposes of section 104 of the ITA, the DG does not have to prove that a taxpayer intends to leave the country permanently.

Example 1

A certificate under section 104 of the ITA preventing taxpayer from leaving Malaysia was issued by the DG to Mr Kumaresan on 14.02.2014 for not settling his outstanding income tax of RM195,688. The certificate was delivered to him by registered post. On 18.07.2014, he went to the Immigration Department of Malaysia (IDM) to renew his passport that would be expiring on 02.10.2014. His application for passport renewal was rejected by the IDM because he was prevented from leaving Malaysia under the stoppage order.

5. Preventing Taxpayer from Leaving the Country

- 5.1 A certificate to invoke stoppage order is issued to an individual or a company director who is liable under section 75A of the ITA.
- 5.2 Stoppage order can be imposed in the following situations:
- 5.2.1 an individual who will be leaving Malaysia without paying all his tax, sums and debts so payable; or
 - 5.2.2 a company director who will be leaving Malaysia without paying company tax and debts or monthly tax deduction (MTD) of employees.
- 5.3 The certificate will be served to the taxpayer by personal service or by registered post.
- 5.4 The date of issuance of the certificate is the effective date of stoppage order.
- 5.5 The taxpayer must pay all the tax, sums and debts so payable in full based on the certificate issued.

6. Allowing Taxpayer to Leave the Country

- 6.1 A taxpayer will be allowed to leave the country if the amount of tax or debts due on the certificate has been settled in full. Documentary evidence or

receipt must be submitted to show that the payment has been made. For immediate cancellation, the payment receipt is to be submitted to the Inland Revenue Board of Malaysia (IRBM) branch office that handles his income tax file. For payment by cheque, taxpayer is allowed to leave the country after the cheque has been cleared by the bank. A revocation letter will then be issued to the taxpayer.

Example 2

Mr. Smith William, a foreigner working in Malaysia was issued a certificate under section 104 of the ITA as he had tax arrears of RM45,900. He would soon return to his home country after the expiry of his contract of service in Malaysia. He will be allowed to leave the country if he settled all the tax arrears and submit document to prove that payment has been made.

- 6.2 A taxpayer (excluding foreign nationals) who cannot settle fully his tax liability and debts will be allowed to leave the country with certain conditions.
- 6.3 The conditions are as follows:
- 6.3.1 Making payment of at least 50% (or a rate as determined by the DG) of the amount of the claim in the certificate issued under section 104 of the ITA.
 - 6.3.2 Payment is to be made in cash or bank draft to enable a letter for temporary release to be issued to the taxpayer. Documentary evidence or receipt must be submitted to show that payment has been made.
 - 6.3.3 Payment by installments for the balance of tax and debts must be arranged for resolving the outstanding amount.
 - 6.3.4 A taxpayer who fails to comply with the schedule of payments is not eligible to be considered for subsequent application for temporary release to leave Malaysia.
- 6.4 A letter for temporary release will be issued and the period a taxpayer is allowed to travel out of the country will be stated in the letter.

Example 3

Mr. Zafran Ahmad, a Malaysian was imposed stoppage order under section 104 of the ITA as his sole-proprietorship business had tax arrears of RM48,800. He intended to travel to Australia for ten (10) days. To get temporary release from the IRBM, he is required to settle at least RM24,400. IRBM also agreed that he had to settle his outstanding tax balance with six (6) installments upon returning to Malaysia.

Example 4

Mr. Ahmad Jabbar, a director of Maju Shah Sdn Bhd was imposed stoppage order under section 104 of the ITA because the company had tax arrears of RM76,500. He wanted to travel out of the country on business for one (1) week. To get temporary release from the IRBM, he made partial payment of RM40,000 by bank draft. He was allowed a period of temporary release followed that of his travel period abroad. IRBM agreed the balance of RM36,500 was to be paid in three (3) installments.

6.5 Information on the revocation of stoppage order and temporary release will be made available on the IDM website.

7. Payment Method

Payment for outstanding tax and debts can be made by cash, bank draft, money order or postal order at the IRBM payment counters, payment via internet at IRBM ByrHASiL and IRBM ByrHASiL credit card, via internet banking or at the counters of banks that are appointed as agents of IRBM. Further details can be obtained from the official website of the IRBM at www.hasil.gov.my.

8. Consequences of Leaving or Intending to Leave the Country Without Payment of Tax and Debts

8.1 A taxpayer who leaves Malaysia voluntarily or attempts to leave Malaysia without making payment for all tax, sums and debts so payable mentioned in the certificate, if convicted, will be liable to:

- i. a fine of not less than two hundred ringgit (RM 200) and not more than twenty thousand ringgit (RM20,000); or
- ii. imprisonment for a period not exceeding six (6) months; or
- iii. both.

8.2 A police officer or an immigration officer may arrest, without warrant, any person whom he reasonably suspects of committing or is about to commit an offence by not complying with a certificate issued under section 104 of the ITA.

9. Responsibility of Taxpayer

9.1 A taxpayer is responsible to inform in writing of any change of his address (correspondence, residential and business premise) to the IRBM branch office that handles his income tax file. Issuance of the certificate by the DG is deemed to have been served on the taxpayer according to the latest address known to the DG.



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- 9.2 Taxpayers are advised to check and settle their arrears of tax and debts before planning to go abroad.
- 9.3 Taxpayers can check on the status of the imposition of stoppage order on the official website of IDM at www.imi.gov.my. Foreign nationals are advised to contact the IRBM branch office or IRBM call centre regarding their status.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**