Nicholas Mark Pereira
尼古拉斯•佩雷拉

Tax, Corporate & Commercial
税务、企业&商业

WHAT TO DO WHEN YOU RECEIVE A TAX ASSESSMENT?

Your company has just received a tax assessment from the Inland Revenue Board ("**IRB**") demanding a payment of a huge sum in additional taxes and penalties. The notice of assessment says that this sum must be paid within 30 days. What do you do?

Challenging the Assessment

The first thing to note is that if you want to challenge an assessment, you will need to file an appeal to the Special Commissioners of Income Tax ("**SCIT**") within 30 days from the date you receive the assessment. This is done via the filing of a form known as "Form Q". It is important to file the appeal to the SCIT – if not, the assessment will be deemed final.

As an alternative to filing an appeal to the SCIT, an application for judicial review ("**JR Application**") could be filed at the High Court. However, before you can proceed to argue the JR Application on its merits, leave (i.e. permission) of the High Court must be obtained. The Courts typically only grant leave to taxpayers to commence judicial review proceedings in exceptional cases i.e. where there is:

1. a clear lack of jurisdiction on the part of the IRB;

2. a blatant failure by the IRB to perform some statutory duty; or

3. a serious breach of the principles of natural justice.

Payment

The Income Tax Act 1967 ("**ITA**") provides for a "pay first, appeal later" scheme. Section 103 of the ITA provides that where an assessment is made, the sum has to be paid whether or not the person appeals against the assessment. Further, section 106 of the ITA provides that:

1. tax due and payable may be received by the Government by civil proceedings as a debt due to the Government; and

2. in such civil recovery proceedings, the court shall not entertain any please that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.

The IRB frequently initiates civil suits against taxpayers to recover unpaid taxes imposed under an assessment.

What to do?

Thus, when your company receives an assessment, it is imperative to:

1. identify why the assessment was raised;

2. prepare to file the notice of appeal the SCIT;

3. consider whether there are exceptional circumstances for a JR Application to be made instead together with a prayer for a stay against the payment of taxes; and

4. consider whether an application for payment to be made in instalments should be made to the IRB.

The above suggestions are not exhaustive – it is important for taxpayers to obtain professional advice before making any decision.

It is also crucial to act quickly due to the tight timeline. An appeal has to be made within 30 days. Payment has to be made within 30 days. If a JR Application is made, you would want to obtain a stay order within 30 days. It would therefore be prudent to start preparing even before the assessment is raised. In most cases, the taxpayer will know that an assessment is coming as the assessment would be issued as a result of an audit or investigation carried out by the IRB on the taxpayer.