Tax Dispute Resolution Timelines - Malaysia

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*This content was last reviewed around February 2023.*

# Key contacts

# National Procedures

## Last Updated

1 February 2023

## 1. When is the first appeal deadline following disagreement of the assessment made by the tax authorities?

A taxpayer may initiate an appeal by filing a notice of appeal ("**Form Q**") with the director general of inland revenue (DGIR) no later than 30 days after the service of the notice of assessment. If an appeal is not filed within the stipulated timeline, an application for the extension of the time for appeal can be made by way of Form N, which is subject to the consideration of the DGIR. If the DGIR rejects the taxpayer's extension of time application, the taxpayer may further appeal to the Special Commissioners of Income Tax ("**Special Commissioners**") in respect of the DGIR's decision.

## 2. What is the appealing procedure?

The tax appeal process in Malaysia involves the following stages:

**Review by the DGIR**: Upon filing a Form Q, the DGIR will have 12 months to consider the appeal internally. The Inland Revenue Board (IRB) will review the notice of assessment and the Form Q and may reach out to the taxpayer to discuss the matter in further detail or consider amicable settlement of the matter. If the IRB is of the view that an amicable settlement is unlikely, the IRB will forward the case to the Special Commissioners within 12 months from the date of receipt of the Form Q.

**Special Commissioners**: Once the Special Commissioners receive the Form Q (upon being forwarded by the IRB), the Special Commissioners will fix the matter for mention, case managements, trial and decision.

**High court**: If either the IRB or the taxpayer is unsatisfied with the Special Commissioners' decision, the party may further appeal to the high court to decide whether the decision is correct in law, based on the facts found by the Special Commissioners.

**Court of appeal**: The final appeal of the matter will be before the court of appeal.

An alternative or parallel remedy would be to initiate judicial review proceedings against the DGIR at the high court. However, this is a discretionary remedy by the courts, which is available only in exceptional circumstances where the public authority lacked jurisdiction, or if there was an abuse of power or illegality in coming to its decision.

## 3. What is the average time for reaching a final national decision?

4 - 6 years

Generally, the time taken to resolve tax disputes in Malaysia depends on the complexity of the dispute. Once the taxpayer files the notice of appeal (Form Q), the DGIR has a statutory period of 12 months from the date of the filing of a notice of appeal to consider the appeal. If the IRB is of the view that an amicable settlement is unlikely, the IRB will forward the case to the Special Commissioners. The hearing date is usually fixed within one to three years from when the notice of appeal is forwarded to the Special Commissioners. If the case is litigated all the way at the highest appellate level (court of appeal), it may take up to three to five years to obtain a final determination.

## 4. How do the national tax dispute resolution proceedings interact with the international tax dispute resolution proceedings?

a. **Start:** A taxpayer may pursue a mutual agreement procedure (MAP), whether or not the taxpayer appeals against a notice of assessment, as long as the process is provided for in a double taxation agreement between the governments involved.

However, to preserve the right to appeal against the notice of assessment, it is crucial for the taxpayer to first file a notice of appeal (Form Q) to the DGIR within the 30-day time limit from the receipt of assessment, before making a MAP request.

Upon making an MAP request, the DGIR is prevented under law to forward the notice of appeal to the Special Commissioners pending determination of the MAP request.

However, if the DGIR has forwarded the notice of appeal to the Special Commissioners, the taxpayer may inform the Special Commissioners and ask for an adjournment until the completion of the MAP.

Invoking an MAP will not deprive a taxpayer of its right to appeal under Section 99(1) of the Income Tax Act 1967. However, while the domestic legal remedies are still available, the taxpayer must generally agree to the suspension of these remedies if an MAP request is accepted.

b. **Conduct of the proceedings:**Generally, an MAP involving Malaysia will run parallel with the court proceedings. However, as the DGIR will require that taxpayers "suspend" the appeal, taxpayers typically request for the court proceedings to be stayed pending the resolution of the MAP.

c. **Completion of proceedings:** A mutual agreement between two competent authorities is usually binding on the taxpayer only for the relevant years in question under the MAP and it does not bind future years.

Once the MAP agreement has been reached and accepted by the taxpayer, the implementation shall be made within three months after the determination of the MAP request.

d. **Other actions:** The DGIR may insist on including all years under dispute in its negotiation for an MAP, including the years in which it was time barred. This may not always be acceptable for other countries.

## 5. Are administrative appeal procedures compulsory or optional prior to a judicial procedure?

Compulsory

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# Contributors

## Contact(s)

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