Tax Chat

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Operational Guideline 3/2019 – Procedures for Submission of Amended Tax Return Form

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The Inland Revenue Board of Malaysia (IRBM) issued the Operational Guideline 3/2019 - Procedures for Submission of Amended Return Form (available in Bahasa Malaysia only) on 22 April 2019. This new Guideline replaces the Operational Guideline No. 1/2010 dated 30 November 2010.

This Guideline serves as a guidance to taxpayers who want to make a self-amendment to the Income Tax Return Form which was submitted in accordance to Section 77(1) or Section 77A(1) of the Income Tax Act, 1967 (ITA).

In a nutshell

This new Operational Guideline 3/2019 highlighted that the e-filing system for the Amended Return Forms for Companies had been introduced since year of assessment (YA) 2014. Hence, taxpayers are encouraged to submit the Amended Return Form of Companies via e-filing.

Guideline on Dispute Resolution Proceeding

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The IRBM issued the [Guideline on Dispute Resolution Proceeding (DRP)] on 1 March 2019. The purpose of the guideline is to:

- provide information regarding the implementation of the DRP; and
- spread awareness of the taxpayer's rights and responsibilities in relation to the DRP.

What is the DRP?

It is a platform in which an alternative means of dispute resolution is used to resolve Forms Q or application for relief whereby the Dispute Resolution Department or State Director's Office of the IRBM acts as a neutral party to facilitate the negotiation process in the effort to reach an out of court settlement. This DRP is used to facilitate settlement prior to the parties going to the Special Commissioners.

The DRP process is as follows:

Deduction for Doubtful Debts – Clearing the Myths

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Deduction for Doubtful Debts – Clearing the Myths

Time and again, taxpayers were shocked when they were told that they could not claim tax deduction on the bad debts written off or the provision for doubtful debts in their tax returns. The law on deduction of irrecoverable debt and the Public Ruling (PR) 1/2002 on Deduction For Bad & Doubtful Debts And Treatment of Recoveries are not new and yet many have failed to get their rightful deduction on their bad and doubtful debts.

Let us look at what the law says.

Section 34(2) of the ITA provides deduction for a debt which is reasonably estimated in all the circumstances of the case to be irrecoverable. The words "reasonably estimated" connote that a debt does not have to turn completely bad before a deduction can be taken, for as long as the irrecoverability can be estimated justifiably.

First of all, the debt mentioned in the above legislation is of the kind where the amount of such debt has been included in the gross income of the person for the basis period for the relevant YA or for a prior YA, i.e. trade debts. No deduction can be given to non-trade debts, such as staff advances.

Provision for doubtful debts

A general provision is not tax deductible because it is, more than often, just an amount based on a certain percentage of the total outstanding debts. It is unlike a specific provision whereby each debt is evaluated separately. Even if there is a legal requirement or accounting convention for a particular trade or industry to make such a provision, a general provision is not deductible.

A specific provision, on the other hand, may be deductible. The making of a specific provision for doubtful debts requires determining the likelihood of the recovery of each debt. When evaluating a debt as doubtful, one should look at the period over which the debt has been outstanding, the current financial status of the debtor and the credit record of the debtor.

Deduction for Doubtful Debts – Clearing the Myths

Bad debts written off

In the PR 1/2002, it is stated that a debt can be considered bad on the occurrence of any one of the following:

- The debtor has died without leaving any assets from which the debt can be recovered;
- The debtor is a bankrupt or in liquidation and there are no assets from which the debt can be recovered;
- The debt is statute-barred;
- The debtor cannot be traced despite various attempts and there are no known assets from which the debt can be recovered;
- Attempts at negotiation or arbitration of a disputed debt have failed and the anticipated cost of litigation is prohibitive; and
- Any other circumstances where there is no likelihood of cost effective recovery.

Deduction for Doubtful Debts – Clearing the Myths

In the tax case of *Sasteps Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2017) MSTC*, the High Court decided against the appellant on the grounds that the reason to write off the debt was not *bona fide* because the appellant was able to recover the debt which was owed by a related party but did not do so. The decision to write off the debt was not done based on prudent commercial consideration. As for the legal action taken against the debtor, it was only filed after the debt was already time barred and only for the purpose of the tax appeal. Prior to that, the only action taken to recover the debt was sending a series of notices of demand to the debtor and there were prolonged periods between the demands.

> *"Things only get difficult when any one of these is not fulfilled. In practice, taxpayers usually fail to get tax deduction because they did not take sufficient steps to recover the debts and/ or there is insufficient documentary evidence."*

Ensuring tax deductions

As you can see, it is not difficult to claim tax deduction on bad debts written off and specific provision for doubtful debts provided, of course, the debts are *bona fide*, the reasons are valid, reasonable steps have been taken to recover the debts, and all the relevant supporting evidences are available. Things only get difficult when any one of these is not fulfilled. In practice, taxpayers usually fail to get tax deduction because they did not take sufficient steps to recover the debts and/ or there is insufficient documentary evidence.

However, these failures can be easily overcome. One just needs to have a healthy debt monitoring system to ensure that reasonable steps are taken to recover the debts and good practices are kept in place to archive the documentary evidence along the way. It is good to have an annual exercise at the end of the financial year to review each debt and determine what has become bad and doubtful. One should bear in mind that tax deduction on bad and doubtful debts is rightfully yours since you have already paid tax on your revenue.

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Start the Conversation

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