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## **Tax Espresso**

New Operational Guidelines No. 5/2019 on Imposition of Penalty for Failure to Furnish Return and the ACA Rules on Development Cost for Customised Computer Software

*November 2019*

# Greetings from Deloitte Malaysia Tax Services

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## Takeaways:

- [New Operational Guidelines No. 5/2019 on Imposition of Penalty for Failure to Furnish Return](#)
- [ACA Rules on Development Cost for Customised Computer Software](#)

## Upcoming events:

- [2019 Employer's Income Tax Reporting Seminar](#)

## Important deadlines:

| Task  | 2019 Due Date |            |
|---|---------------|------------|
|   | 30 November   | 1 December |
| 1. 2020 tax estimates for companies with December year-end                              |               | ✓          |
| 2. 6 <sup>th</sup> month revision of tax estimates for companies with May year-end      | ✓             |            |
| 3. 9 <sup>th</sup> month revision of tax estimates for companies with February year-end | ✓             |            |
| 4. Statutory filing of 2019 tax returns for companies with April year-end               | ✓             |            |
| 5. Due date for 2019 CbCR notification for companies with November year-end             | ✓             |            |

## **New Operational Guidelines No. 5/2019 on Imposition of Penalty for Failure to Furnish Return**

The Inland Revenue Board of Malaysia (IRBM) has recently released the new '[Operational Guidelines No. 5/2019](#): Imposition of Penalty under Section 112(3) of ITA, Section 51(3) of PITA and Section 29(3) of the RPGTA' (\*).

*\*Available in Bahasa Malaysia only*

The purpose of the new Operational Guidelines is to explain the imposition of penalty on a taxpayer who is late in furnishing, or fails to furnish a return form within the period stipulated under the Income Tax Act 1967 (ITA), Petroleum (Income Tax) Act 1967 [PITA] and the Real Property Gains Tax Act 1976 (RPGTA).

The new Operational Guidelines supersedes the '[Operational Guidelines No. 1/2015](#): Imposition of Penalty under Section 112(3) of ITA'. Although the new Operational Guidelines is dated 16 October 2019, it is **effective from 1 October 2019**.

According to the new Operational Guidelines, the IRBM in practice will impose a penalty ranging from 15% to 45% (depending on the extent of lateness) of the tax payable (which is before any set-off, repayment or relief available under the Act) for that year of assessment (YA):

| Submission of late filing (*)        | Penalty rate (%)      |                       |                        |
|--------------------------------------|-----------------------|-----------------------|------------------------|
|                                      | Section 112(3) of ITA | Section 51(3) of PITA | Section 29(3) of RPGTA |
| <b>Within 12 months</b>              | 15                    | 15                    | 15                     |
| <b>&gt; 12 months to ≤ 24 months</b> | 30                    | 30                    | 20                     |
| <b>&gt; 24 months</b>                | 45                    | 45                    | 25                     |

\* Please take note that grace period/extension of time will not be taken into consideration in determining the lateness if the taxpayer fails to furnish a return within the grace period/extension of time granted by the IRBM.

In the event a taxpayer fails to submit the return form within the stipulated period, the IRBM may raise an estimated assessment along with the following penalty:

| Relevant legislation | Relevant provision in raising the estimated assessment | Relevant penalty section | Penalty rate (%) |
|----------------------|--|--------------------------|------------------|
| <b>ITA</b>           | Section 90(3)  | Section 112(3)           | 45               |
| <b>PITA</b>          | Section 38(3)  | Section 51(3)            | 45               |
| <b>RPGTA</b>         | Section 14(2)  | Section 29(3)            | 25               |

The new Operational Guidelines also states that with effect from YA 2019, where a company, limited liability partnership (LLP), trust body or co-operative society fails to notify the IRBM about a change in its accounting period in accordance with Section 21A(3A) of the ITA, any penalty imposed under Section 112(3) for the failure to furnish a return that is based on the original accounting period shall continue to be recoverable. The relevant provisions, i.e. Section 21A(3A) and Section 112(3A) of the ITA had been introduced earlier via the Finance (No. 2) Act 2017.

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### **ACA Rules on Development Cost for Customised Computer Software**

The [Income Tax \(Capital Allowance\) \(Development Cost for Customised Computer Software\) Rules 2019](#) were gazetted on 3 October 2019 and have effect from YA 2018. According to the Rules:

- 1) A Malaysian resident who incurred “development cost for customised computer software” in the basis period for a YA is eligible for:
  - initial allowance equal to 20% of the “development cost for customised computer software”; and
  - annual allowance equal to 20% of the “development cost for customised computer software”.
- 2) “Development cost for customised computer software” means consultation fee, payment for rights of software ownership and incidental fee relating to the development of customised computer software.
- 3) The “development cost for customised computer software” incurred in the basis period for a YA or relevant YA, shall be deemed to be incurred by the person in the basis period for a YA on which the customised computer software is capable of being used for the purpose of his business.
- 4) The Income Tax (Deduction for Information Technology-Related Expenditure) Rules 2000 [P.U.(A) 51/2000] are revoked with effect from YA 2018.

Please also refer to the non-application provision under Rule 6.

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## Tax Team - Contact us

| Service lines / Names                         | Designation              | Email  | Telephone      |
|---|--------------------------|--|----------------|
| <b>Business Tax Compliance &amp; Advisory</b> |                          |  |                |
| Sim Kwang Gek                                 | Managing Director        | <a href="mailto:kgsim@deloitte.com">kgsim@deloitte.com</a>             | +603 7610 8849 |
| Tan Hooi Beng                                 | Deputy Managing Director | <a href="mailto:hooitan@deloitte.com">hooitan@deloitte.com</a>         | +603 7610 8843 |
| Stefanie Low                                  | Executive Director       | <a href="mailto:gelow@deloitte.com">gelow@deloitte.com</a>             | +603 7610 8891 |
| Thin Siew Chi                                 | Executive Director       | <a href="mailto:sthin@deloitte.com">sthin@deloitte.com</a>             | +603 7610 8878 |
| Choy Mei Won                                  | Director                 | <a href="mailto:mwchoy@deloitte.com">mwchoy@deloitte.com</a>           | +603 7610 8842 |
| Suzanna Kavita                                | Director                 | <a href="mailto:sukavita@deloitte.com">sukavita@deloitte.com</a>       | +603 7610 8437 |
| <b>Business Process Solutions</b>             |                          |  |                |
| Julie Tan                                     | Executive Director       | <a href="mailto:jultan@deloitte.com">jultan@deloitte.com</a>           | +603 7610 8847 |
| Shareena Martin                               | Director                 | <a href="mailto:sbmartin@deloitte.com">sbmartin@deloitte.com</a>       | +603 7610 8925 |
| <b>Capital Allowances Study</b>               |                          |  |                |
| Chia Swee How                                 | Executive Director       | <a href="mailto:swchia@deloitte.com">swchia@deloitte.com</a>           | +603 7610 7371 |
| Sumaisarah Abdul Sukor                        | Associate Director       | <a href="mailto:sabdulsukor@deloitte.com">sabdulsukor@deloitte.com</a> | +603 7610 8331 |
| <b>Global Employer Services</b>               |                          |  |                |
| Ang Weina                                     | Executive Director       | <a href="mailto:angweina@deloitte.com">angweina@deloitte.com</a>       | +603 7610 8841 |
| Chee Ying Cheng                               | Executive Director       | <a href="mailto:yichee@deloitte.com">yichee@deloitte.com</a>           | +603 7610 8827 |
| Michelle Lai                                  | Director                 | <a href="mailto:michlai@deloitte.com">michlai@deloitte.com</a>         | +603 7610 8846 |
| <b>Government Grants &amp; Incentives</b>     |                          |  |                |
| Tham Lih Jiun                                 | Executive Director       | <a href="mailto:ljtham@deloitte.com">ljtham@deloitte.com</a>           | +603 7610 8875 |
| Thin Siew Chi                                 | Executive Director       | <a href="mailto:sthin@deloitte.com">sthin@deloitte.com</a>             | +603 7610 8878 |
| Peggy Wong                                    | Director                 | <a href="mailto:pwong@deloitte.com">pwong@deloitte.com</a>             | +603 7610 8529 |

**Indirect Tax**

|                       |                    |  |                |
|-----------------------|--------------------|--|----------------|
| Tan Eng Yew           | Executive Director | <a href="mailto:etan@deloitte.com">etan@deloitte.com</a>               | +603 7610 8870 |
| Senthuran Elalingam   | Executive Director | <a href="mailto:selalingam@deloitte.com">selalingam@deloitte.com</a>   | +603 7610 8879 |
| Chandran TS Ramasamy  | Director           | <a href="mailto:ctsramasamy@deloitte.com">ctsramasamy@deloitte.com</a> | +603 7610 8873 |
| Larry James Sta Maria | Director           | <a href="mailto:lstamaria@deloitte.com">lstamaria@deloitte.com</a>     | +603 7610 8636 |
| Wong Poh Geng         | Director           | <a href="mailto:powong@deloitte.com">powong@deloitte.com</a>           | +603 7610 8834 |

**International Tax & Value Chain Alignment**

|               |                          |  |                |
|---------------|--------------------------|--|----------------|
| Tan Hooi Beng | Deputy Managing Director | <a href="mailto:hooitan@deloitte.com">hooitan@deloitte.com</a> | +603 7610 8843 |
|---------------|--------------------------|--|----------------|

**Mergers & Acquisitions**

|               |                   |  |                |
|---------------|-------------------|--|----------------|
| Sim Kwang Gek | Managing Director | <a href="mailto:kgsim@deloitte.com">kgsim@deloitte.com</a> | +603 7610 8849 |
|---------------|-------------------|--|----------------|

**Private Wealth Services**

|               |                    |  |                |
|---------------|--------------------|--|----------------|
| Chee Pei Pei  | Executive Director | <a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>   | +603 7610 8862 |
| Gooi Yong Wei | Executive Director | <a href="mailto:ygooi@deloitte.com">ygooi@deloitte.com</a>     | +603 7610 8981 |
| Chan Ee Lin   | Director           | <a href="mailto:eelchan@deloitte.com">eelchan@deloitte.com</a> | +604 218 9888  |

**Tax Audit & Investigation**

|               |                    |  |                |
|---------------|--------------------|--|----------------|
| Chow Kuo Seng | Executive Director | <a href="mailto:kuchow@deloitte.com">kuchow@deloitte.com</a> | +603 7610 8836 |
| Stefanie Low  | Executive Director | <a href="mailto:gelow@deloitte.com">gelow@deloitte.com</a>   | +603 7610 8891 |
| Anston Cheah  | Director           | <a href="mailto:kcheah@deloitte.com">kcheah@deloitte.com</a> | +603 7610 8923 |
| Kei Ooi       | Director           | <a href="mailto:soooi@deloitte.com">soooi@deloitte.com</a>   | +603 7610 8395 |
| Wong Yu Sann  | Director           | <a href="mailto:yuwong@deloitte.com">yuwong@deloitte.com</a> | +603 7610 8176 |

**Transfer Pricing**

|                     |                    |  |                |
|---------------------|--------------------|--|----------------|
| Theresa Goh         | Executive Director | <a href="mailto:tgoh@deloitte.com">tgoh@deloitte.com</a>             | +603 7610 8837 |
| Subhabrata Dasgupta | Executive Director | <a href="mailto:sudasgupta@deloitte.com">sudasgupta@deloitte.com</a> | +603 7610 8376 |
| Philip Yeoh         | Executive Director | <a href="mailto:phyeh@deloitte.com">phyeh@deloitte.com</a>           | +603 7610 7375 |

|                   |          |  |                |
|-------------------|----------|--|----------------|
| Gagan Deep Nagpal | Director | <a href="mailto:gnagpal@deloitte.com">gnagpal@deloitte.com</a>       | +603 7610 8876 |
| Justine Fan       | Director | <a href="mailto:jufan@deloitte.com">jufan@deloitte.com</a>           | +603 7610 8182 |
| Vrushang Sheth    | Director | <a href="mailto:vsheth@deloitte.com">vsheth@deloitte.com</a>         | +603 7610 8534 |
| Anil Kumar Gupta  | Director | <a href="mailto:anilkgupta@deloitte.com">anilkgupta@deloitte.com</a> | +603 7610 8224 |

| Sectors / Names | Designation | Email | Telephone |
|-----------------|-------------|-------|-----------|
|-----------------|-------------|-------|-----------|

### Automotive

|              |                    |  |                |
|--------------|--------------------|--|----------------|
| Stefanie Low | Executive Director | <a href="mailto:gelow@deloitte.com">gelow@deloitte.com</a> | +603 7610 8891 |
|--------------|--------------------|--|----------------|

### Consumer Products

|               |                   |  |                |
|---------------|-------------------|--|----------------|
| Sim Kwang Gek | Managing Director | <a href="mailto:kgsim@deloitte.com">kgsim@deloitte.com</a> | +603 7610 8849 |
|---------------|-------------------|--|----------------|

### Financial Services

|                       |                    |  |                |
|-----------------------|--------------------|--|----------------|
| Chee Pei Pei          | Executive Director | <a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>         | +603 7610 8862 |
| Gooi Yong Wei         | Executive Director | <a href="mailto:ygooi@deloitte.com">ygooi@deloitte.com</a>           | +603 7610 8981 |
| Mark Chan             | Executive Director | <a href="mailto:marchan@deloitte.com">marchan@deloitte.com</a>       | +603 7610 8966 |
| Mohd Fariz Mohd Faruk | Director           | <a href="mailto:mmohdfaruk@deloitte.com">mmohdfaruk@deloitte.com</a> | +603 7610 8153 |

### Oil & Gas

|               |                    |  |                |
|---------------|--------------------|--|----------------|
| Toh Hong Peir | Executive Director | <a href="mailto:htoh@deloitte.com">htoh@deloitte.com</a>   | +603 7610 8808 |
| Kelvin Kok    | Director           | <a href="mailto:kekok@deloitte.com">kekok@deloitte.com</a> | +603 7610 8157 |

### Real Estate

|               |                    |  |                |
|---------------|--------------------|--|----------------|
| Chia Swee How | Executive Director | <a href="mailto:swchia@deloitte.com">swchia@deloitte.com</a> | +603 7610 7371 |
| Tham Lih Jiun | Executive Director | <a href="mailto:ljtham@deloitte.com">ljtham@deloitte.com</a> | +603 7610 8875 |
| Gan Sin Reei  | Director           | <a href="mailto:sregan@deloitte.com">sregan@deloitte.com</a> | +603 7610 8166 |

### Telecommunications

|               |                    |  |                |
|---------------|--------------------|--|----------------|
| Thin Siew Chi | Executive Director | <a href="mailto:sthin@deloitte.com">sthin@deloitte.com</a> | +603 7610 8878 |
|---------------|--------------------|--|----------------|

| Other Specialist Groups / Names | Designation        | Email  | Telephone      |
|---------------------------------|--------------------|--|----------------|
| <b>Chinese Services Group</b>   |                    |  |                |
| Tham Lih Jiun                   | Executive Director | <a href="mailto:ljtham@deloitte.com">ljtham@deloitte.com</a>         | +603 7610 8875 |
| <b>Japanese Services Group</b>  |                    |  |                |
| Mark Chan                       | Executive Director | <a href="mailto:marchan@deloitte.com">marchan@deloitte.com</a>       | +603 7610 8966 |
| <b>Korean Services Group</b>    |                    |  |                |
| Chee Pei Pei                    | Executive Director | <a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>         | +603 7610 8862 |
| Lily Park Sung Eun              | Associate Director | <a href="mailto:lipark@deloitte.com">lipark@deloitte.com</a>         | +603 7610 8595 |
| Branches / Names                | Designation        | Email  | Telephone      |
| <b>Penang</b>                   |                    |  |                |
| Ng Lan Kheng                    | Executive Director | <a href="mailto:lkng@deloitte.com">lkng@deloitte.com</a>             | +604 218 9268  |
| Au Yeong Pui Nee                | Director           | <a href="mailto:pnauyeong@deloitte.com">pnauyeong@deloitte.com</a>   | +604 218 9888  |
| Everlyn Lee                     | Director           | <a href="mailto:evelee@deloitte.com">evelee@deloitte.com</a>         | +604 218 9913  |
| Monica Liew                     | Director           | <a href="mailto:monicaliew@deloitte.com">monicaliew@deloitte.com</a> | +604 218 9888  |
| Tan Wei Chuan                   | Director           | <a href="mailto:wctan@deloitte.com">wctan@deloitte.com</a>           | +604 218 9888  |
| <b>Ipoh</b>                     |                    |  |                |
| Mark Chan                       | Executive Director | <a href="mailto:marchan@deloitte.com">marchan@deloitte.com</a>       | +603 7610 8966 |
| Lam Weng Keat                   | Director           | <a href="mailto:welam@deloitte.com">welam@deloitte.com</a>           | +605 253 4828  |
| Patricia Lau                    | Director           | <a href="mailto:palau@deloitte.com">palau@deloitte.com</a>           | +605 254 0288  |
| <b>Melaka</b>                   |                    |  |                |
| Julie Tan                       | Executive Director | <a href="mailto:jultan@deloitte.com">jultan@deloitte.com</a>         | +603 7610 8847 |
| Gabriel Kua                     | Director           | <a href="mailto:gkua@deloitte.com">gkua@deloitte.com</a>             | +606 281 1077  |



**Johor Bahru**

|                |                    |  |                |
|----------------|--------------------|--|----------------|
| Chee Pei Pei   | Executive Director | <a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>   | +603 7610 8862 |
| Thean Szu Ping | Director           | <a href="mailto:spthean@deloitte.com">spthean@deloitte.com</a> | +607 222 5988  |

**Kuching**

|                    |                    |  |                |
|--------------------|--------------------|--|----------------|
| Tham Lih Jiun      | Executive Director | <a href="mailto:ljtham@deloitte.com">ljtham@deloitte.com</a> | +603 7610 8875 |
| Philip Lim Su Sing | Director           | <a href="mailto:suslim@deloitte.com">suslim@deloitte.com</a> | +608 246 3311  |
| Chai Suk Phin      | Director           | <a href="mailto:spchai@deloitte.com">spchai@deloitte.com</a> | +608 246 3311  |

**Kota Kinabalu**

|                |                    |  |                |
|----------------|--------------------|--|----------------|
| Chia Swee How  | Executive Director | <a href="mailto:swchia@deloitte.com">swchia@deloitte.com</a> | +603 7610 7371 |
| Leong Sing Yee | Assistant Manager  | <a href="mailto:sleong@deloitte.com">sleong@deloitte.com</a> | +608 823 9601  |



**Sim Kwang Gek**



**Tan Hooi Beng**



**Stefanie Low**



**Thin Siew Chi**



**Julie Tan**



**Chia Swee How**



**Ang Weina**



**Chee Ying Cheng**



**Tham Lih Jiun**



**Tan Eng Yew**



**Senthuran  
Elalingam**



**Chee Pei Pei**



**Gooi Yong Wei**



**Mark Chan**



**Chow Kuo Seng**



**Theresa Goh**



**Subhabrata  
Dasgupta**



**Philip Yeoh**



**Toh Hong Peir**



**Ng Lan Kheng**



**Choy Mei Won**



**Suzanna Kavita**



**Shareena Martin**



**Michelle Lai**



**Peggy Wong**



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Ramasamy**



**Larry James  
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**Chan Ee Lin**



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**Gagan Deep  
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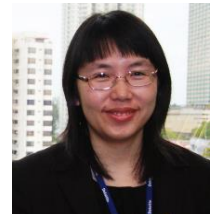
**Mohd Fariz  
Mohd Faruk**



**Kelvin Kok**



**Gan Sin Reei**



**Au Yeong  
Pui Nee**



**Everlyn Lee**



**Monica Liew**



**Tan Wei Chuan**



**Lam Weng Keat**



**Patricia Lau**



**Gabriel Kua**



**Thean Szu Ping**



**Philip Lim  
Su Sing**



**Chai Suk Phin**



**Sumaisarah  
Abdul Sukor**



**Lily Park  
Sung Eun**



**Leong Sing Yee**



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