



Tax Espresso A snappy delight

Greetings from Deloitte Malaysia's Tax services group

**Operational Guideline 1/2015: Imposition of
Penalty under Section 112(3) of the Income
Tax Act 1967 (ITA)**

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Takeaways:

Operational Guideline
1/2015: Imposition of
Penalty under Section
112(3) of the Income Tax
Act 1967

Tax Case:

MSE Sdn Bhd v Ketua
Pengarah Hasil Dalam
Negeri (SCIT)

The Inland Revenue Board (IRB) has recently issued and posted the Operational Guideline 1/2015 (the Guideline) on its website.

The Guideline is intended to provide clarification in relation to the imposition of a penalty under Section 112(3) of the ITA on any person who fails to furnish a return within the stipulated time in accordance with Section 77(1) or Section 77A(1) of the ITA.

If no prosecution has been instituted in respect of the default in furnishing a return pursuant to Section 112(1) of the ITA, the Director General is empowered under Section 112(3) of the ITA to impose a penalty of up to three times the tax which, before any set-off, repayment or relief available under the ITA, is payable for that year.

However, for those taxpayers who failed to submit the tax return on the due date, to encourage submission, the IRB in practice will impose a penalty ranging from 20% to 35% (depending on the extend of lateness) of the tax payable (which is before any set-off, repayment or relief available under the ITA) for that year of assessment:

Submission of Late Filing (*)	Penalty Rate (%)
Within 12 months	20
> 12 months to ≤ 24 months	25
> 24 months to ≤ 36 months	30
> 36 months	35

* Grace period / extension of time will not be taken into consideration if the taxpayer fails to furnish a return

Gazette Orders

Income Tax (Exemption)
Order 2015

Income Tax (Exemption)
(Amendment) Order 2015

IRB's Draft Guidance Notes

Foreign Account Tax
Compliance Act

Important deadlines:

Due date for 2016 tax
estimates for companies
with May year-end
(1 May 2015)

6th month revision of tax
estimates for companies
with October year-end
(30 April 2015)

9th month revision of tax
estimates for companies
with July year-end
(30 April 2015)

Statutory filing of 2014 tax
returns for companies
with September year-end
(30 April 2015)

within the grace period / extension of time granted by the IRB.

Pursuant to Section 112(4) of the ITA, the Director General may require any person to pay an additional amount of penalty in accordance to Section 112(3) of the ITA in respect of any additional tax which is payable by that person for a year of assessment.

Note: For taxpayers who failed to submit the tax return on the due date and the tax payable is NIL, the IRB may require the taxpayer to pay a compound up to RM20,000 under Section 124(1) of the ITA if there is no prosecution by the IRB.

Tax Case

MSE Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (SCIT)

Issues

- i) Whether the ex-gratia payment received by the taxpayer under a Termination Agreement is taxable under the ITA;
- ii) Whether the KPHDN had rightly imposed the penalties at the rate of 45% under Section 113(2) of the ITA.

Decision

The Special Commissioners of Income Tax (SCIT) decided in favour of the taxpayer based on the following grounds:

- i) The taxpayer was initially a dormant company until it obtained the distributorship from G to distribute G Products. The Distribution Agreement gave the taxpayer the basis to start its business and its whole organisation had been set up and structured to comply with the terms of the Distribution Agreement as G's sole distributor in Malaysia for the last 9 years.

The whole structure of the taxpayer company had to be closed down upon the termination of the Distribution Agreement. The taxpayer had to surrender the goodwill and reputation plus the trust in the brand name it had built up over the last 9 years to G. Therefore, the Distribution Agreement was the foundation for the whole structure of the taxpayer company and it was the profit-making apparatus of the taxpayer. The Distribution Agreement was only one of a kind related to the whole structure of the taxpayer's profit-making apparatus, it regulated how the taxpayer ran its business and it took away the taxpayer's rights to deal with any other brands.

Hence, the ex-gratia payment that the taxpayer received for the cancellation of the Distribution Agreement which was so fundamental to the taxpayer's trading activities must be regarded as a capital receipt and was not compensation for loss of income, neither was it for any services rendered but merely a goodwill payment for all the work done to establish the name and platform for G's reputation and goodwill and the brand name of G products in Malaysia. Whether the taxpayer is able to obtain another distributorship agreement from another company that enables it to restart its business enterprise or to enter into another venture with another company, it does not change the nature of the ex-gratia payment that it received under the first Distribution Agreement.

- ii) The SCIT discharged the penalty imposed by the KPHDN as there was no negligence on the taxpayer in submitting its returns and no tax was undercharged.

Gazette Orders

Income Tax (Exemption) Order 2015 [P.U.(A) 40/2015]

Effective year of assessment 2014, an individual is exempted from the payment of income tax in respect of his withdrawal from a deferred annuity before reaching the age of fifty-five provided that the deferred annuity was contracted during the period from **1 January 2014 to 31 May 2014** with:

- i) an insurer carrying on a life business and licensed under the Financial Services Act 2013; or
- ii) a takaful operator carrying on family takaful business and licensed under the Islamic Financial Services Act 2013.

Section 109G of the ITA is not applicable to the income exempted under this Order.

Income Tax (Exemption) (Amendment) Order 2015 [P.U. (A) 42/2015]

The Order was gazetted on 9 March 2015 and is deemed to have come into operation on 1 January 2013. It amends paragraph 3 of the Income Tax (Exemption) (No. 3) Order 2014 [P.U. (A) 167/2014] by substituting the following for subparagraph 2:

“(2) The amount of aggregate income which is referred to in subparagraph (1) shall be the amount equal to the amount of investment made by the angel investor in that investee company.”

IRB's Draft Guidance Notes

Foreign Account Tax Compliance Act (FATCA)

The IRB had released draft guidance notes on 15 March 2015 on the compliance requirements for Malaysia-based financial institutions and other persons to meet their due diligence and reporting obligations under the United States (US) FATCA.

The draft guidance notes addresses the following:

- i) key implementation milestones;
- ii) financial institutions that are required to report;
- iii) financial accounts to be reported;
- iv) exempt financial institutions, account holders and financial accounts;
- v) procedures for identification of US reportable accounts;
- vi) information to be reported; and
- vii) timeline for reporting and how to submit the information.

Malaysia reached an agreement on a Model 1 Intergovernmental Agreement (IGA) with the US to implement FATCA on 30 June 2014, and has been included in the US Treasury's list of jurisdictions that are treated as having an IGA in effect with the US. Under the IGA, reporting financial institutions will provide the IRB with the required account information of US persons and the IRB then will exchange that information with the US Internal Revenue Service.

We invite you to explore other tax related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

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