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Guideline on deduction for expenses relating to secretarial and tax filing fees

The Inland Revenue Board (IRB) has issued its guideline dated 8 February 2017 on the tax deduction of secretarial and tax filing fees under the *Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014* (“the Rules”).

The guideline explains the tax treatment for deduction of secretarial and filing fees. The salient points of the guideline are as follows:

1. Scope of secretarial and tax filing fees

- Secretarial fees which qualify for deduction comprise secretarial fees paid to company secretarial companies registered under the Companies Act, and which are related to secretarial services provided to comply with the requirements of the Companies Act.
- Tax filing fees are fees relating to the filing of tax forms.
- The guideline provides the following as examples of items which are included / excluded as part of secretarial or tax filing fees accordingly:

	Included	Excluded
Secretarial fees	<ul style="list-style-type: none"> • Advisory services in relation to company meetings • Preparation of director's resolution • Share issuance • Submission of forms under the Companies Act • Other company matters 	<ul style="list-style-type: none"> • Reimbursement / out of pocket expenses, telephone & fax charges, printing, stationery, postage, travel and accommodation • Expenses for the company's general meeting
Tax filing fees	<ul style="list-style-type: none"> • Filing of tax forms under the Income Tax Act 1967, e.g. forms for tax estimates, income tax return form • Filing of GST-03 return form 	<ul style="list-style-type: none"> • Reimbursement / out of pocket expenses, telephone & fax charges, printing, stationery, postage, travel and accommodation • Tax agent's advisory services • [Services in] computing the company's taxes (Note (a))

Note (a)

Based on the guideline, tax filing fees are those specifically for filing tax forms only, and does not include advisory services or computation of the company's taxes. The professional bodies are seeking further clarification from the IRB on this matter.

2. Incurred and paid

- The fees have to be incurred and paid in a basis period to be deductible. Paragraphs 2(1)(a) & (b) of the Rules states “*a deduction shall be allowed for expenses for secretarial fee / tax filing fee...which is incurred and paid ...in the basis period for that year of assessment*”.
- However, the guideline explains in example 2 that where secretarial fees are incurred in YA 1 and is subsequently paid in YA 2, a claim for tax deduction can be made in YA 2. This is in line with the clarification provided by IRB during the Dialogue on Joint Memorandum on Issues arising from the 2015 Budget & Finance Bill (No. 2) 2014 & Other Technical Matters held on 4 February 2015.

3. Tax treatment for secretarial fees which are pre-paid

- Example 3 explains the tax treatment for fees which are pre-paid prior to the services being rendered.
- Where the fees are pre-paid in YA 1 but relates to services to be rendered in YA 2, the claim for deduction will only be allowed in YA 2.

4. Claiming of tax filing fees

- Tax filing fees for tax estimates in respect of YA 2016 which are paid and incurred in the basis period for YA 2015 will be allowed a deduction in the YA 2015 (as services have been rendered). This is in line with paragraph 2(1)(b)(ii) of the Rules.
- However, the IRB appears to take the position that the deduction allowed for tax filing fees under paragraph 2(1)(b)(i) of the Rules only applies to the filing of the income tax return forms for YA 2016 onwards. In example 4, where a company incurs the fees in YA 2016 in respect of the income tax return for YA 2015, and makes payment for the fees in YA 2017, the claim for deduction is not allowed.

This is not in line with paragraph 2(1)(b)(i) and 1(3) of the Rules which provides tax deduction for the fees incurred from YA 2016 onwards for the preparation and submission of income tax returns of the preceding YA. The professional bodies are seeking further clarification from the IRB on this matter.

A copy of the guideline can be downloaded from the IRB's website at www.hasil.gov.my (Internal Link > Technical Guidelines).

Guideline for submission of tax estimates under Section 107C of the Income Tax Act 1967

The IRB has recently issued the operational guideline GPHDN 1/2017 dated 23 February 2017, which explains the procedure for submission of tax estimates under section 107C of the Income Tax Act 1967 (ITA) for the following categories of taxpayers:

- a) Company, co-operative society, trust body and Limited Liability Partnership (LLP).
- b) Company with paid-up capital in respect of ordinary shares of RM2.5 million and below at the beginning of the basis period for a year of assessment (YA).

Non-resident companies which are fully subjected to withholding tax under section 107A of the ITA are only required to complete the relevant fields in the Form CP204 and are not required to make instalment payments.

The salient points of the guideline are as follows:

Compulsory e-filing

- Compulsory e-Filing of Forms CP204 and CP204A is require from YA 2018 for companies and from YA 2019 for co-operative societies, trust bodies and LLPs.

Tax estimate less than minimum amount

- Section 107(3) provides for the estimate of tax payable submitted to be not less than 85% of the tax estimate / revised tax estimate for the immediately preceding YA.

The submission of a lower tax estimate than the above minimum amount is to be carried out as follows:

- a) E-filing: The estimate is to be filed via e-CP204 with an estimate of not less than 85% of the prior YA's estimate together with an appeal letter for a lower tax estimate and supporting documents, not later than 30 days before the beginning of the basis period.
- b) Manual filing: Form CP204 is to be filed with the reduced tax estimate together with an appeal letter and supporting documents, not later than 30 days before the beginning of the basis period.

Reasons which may be considered in approving lower estimates

The list of reasons which may be considered by the IRB in approving a lower tax estimate is similar to the list provided in the earlier guideline GPHDN 2/2008 on submission of tax estimates lower than the required minimum. The reasons includes amongst others:

- Cessation of business,
- Significant reduction or cessation of an income source, for example extraordinary events or transactions which result in increased operating costs and a significant reduction of profit margin,
- Company being under liquidation or going through a mergers & acquisition process.

Please refer to paragraph 3.1.6 of the guideline for the full list.

Revision of tax estimates

- Under normal circumstances, tax estimates can be revised in the 6th and / or 9th month in a basis period.

Revision for late / non-submissions

- Late submission of tax estimate is allowed if the submission is still within the basis period for the YA. Thereafter, revision of the tax estimate is also allowed in the 6th and/ or 9th month.
- Where there is a non-submission of Form CP204, revision of the tax estimate can be made in the 6th and / or 9th month provided a CP205 has been issued by the IRB.

Revision of CP205 issued by IRB

- The following are examples of circumstances where the IRB may direct the payment of tax instalments (via CP205) pursuant to section 107C(8) of the ITA:
 - a) Failure to submit the Form CP204 within the stipulated deadline of 30 days before the beginning of the basis period for a YA.
 - b) The tax estimate submitted is less than 85% of the revised estimate or original estimate (if there is no revised estimate) for the preceding year.
 - c) Notification of change in accounting period is made in a month other than the 6th or the 9th month of the basis period and a revised tax estimate is submitted for the YA.
- The appeal to revise the CP205 has to be submitted before the first instalment payment due date for cases where the tax estimated is less than the minimum amount.

Change of accounting period

- Notification of the change of accounting period is to be made via manual submission of Form CP204B one month before:
 - the first day of the new accounting period for shortened accounting periods, or
 - the last day of the original accounting period for extended accounting periods.

- Where the notification of change in accounting period and revision of tax estimate is to be made concurrently, it is to be submitted in the 6th or 9th month of the basis period. Where it is submitted in a month other than in the 6th or the 9th month of the basis period, justification has to be provided if:

- the new revised estimate is less than the revised estimate or original estimate (if there is no revised estimate),
- the instalments for the new basis period are less than the revised instalments or original instalments (if there are no revised instalments).

- The guideline also sets out the types of justification which would be considered in an appeal for lower tax estimates and instalment payments (please refer to paragraphs 5.3.2 and 5.3.4).

**Other
matters**

• Other matters covered in the guideline include:

- Submission procedures,
- Information required in the form,
- Payment schedules and submission deadlines,
- Calculation of the revised instalments amount,
- Appeal procedures for lower tax estimates and lower instalment payments,
- Illustrations for change of accounting period, and
- Increase in tax for late payments of instalments and where the final tax payable under an assessment exceeds the tax estimate by more than 30% of the tax payable.

A copy of the guideline can be downloaded from the IRB's website at www.hasil.gov.my (Internal Link > Operational Guidelines).

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