

▶▶ Tax Flash



December 2010

Guidelines on Procedure for Submission of Amended Return Form

The Inland Revenue Board ["IRB"] has, on 30th November 2010, issued the Guidelines on Procedure for Submission of Amended Return Form, only in Bahasa Malaysia, commencing from the year of assessment 2009.

For submission of Amended Return Form, the following should be noted:-

- a taxpayer must have submitted the original tax return form within the due date.
- the Amended Return Form for self-amendment must be submitted within a period of 6-month after the statutory deadline for submission of the original tax return form.
- self-amendment can only be made once.
- self-amendment is allowed to rectify errors in respect of
 - under-reporting / non-reporting of income;
 - expenses / other deductions over-claimed; or
 - capital allowances / incentives / reliefs over-claimed.
- the additional tax payable arising from the amendment of tax return form is subject to increase in tax as follows:-

<u>Amended Return Form Submitted</u>	<u>Rate</u>
- within 60 days from the statutory deadline for submission of tax return	10%
- after the period of 60 days but not later than 6 months from the statutory deadline for submission of tax return	15.5%

- no amendment of return form is allowed if the Director General of Inland Revenue has issued an assessment / additional assessment under Section 91 of the Income Tax Act 1967 ["the Act"] within a period of 6-month from the statutory deadline for submission of tax return.

Hyperlinks

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Guidelines on Procedure
for Submission of
Amended Return Form



- The tax payable or additional tax payable arising from the self-amendment including the increase in tax shall be due and payable on the day the Amended Return Form is furnished to the IRB. Where the Amended Return Form is submitted within 60 days from the statutory deadline and the tax or additional tax payable is not paid within the 60-day period, an additional 5% penalty will be imposed on the unpaid tax (including the 10% increase in tax).
- The penalty for under-estimation of tax under Section 107C(10) of the Act is also applicable to the Amended Return Form if the actual tax payable exceeds the estimate or revised estimate of tax payable by an amount greater than 30% of the margin allowed.

Increase in Service Tax Rate

Following the 2011 Budget announcement, the Service Tax (Rate of Tax) (Amendment) Order 2010 has been gazetted to provide for the increase in the rate of service tax on all taxable services, except for credit cards, from 5% to 6%.

The above Order shall have effect from 1st January 2011.

Service Tax on Paid Television Broadcasting Services

Following the 2011 Budget announcement, the Service Tax (Amendment) Regulations 2010 have been gazetted to include paid television broadcasting services as a taxable service where the subscription fees charged thereon shall be subject to service tax.

The above Regulations come into operation on 1st January 2011.

Guidelines on Implementation of Charge of Service Tax Based on 2011 Budget Announcement

- Increase in Rate of Service Tax from 5% to 6%

The Royal Malaysian Customs Department has, on 21st December 2010, issued guidelines on the implementation of increase in service tax to provide clarification on the charge of service tax, whether at 5% or 6%, during the transitional period. Generally, whether to charge service tax at 5% or 6% will depend on when the taxable services are rendered and payments for such services are received i.e. before 1st January 2011 or on / after 1st January 2011.

The following will apply for provision of taxable services other than issuance of insurance policies to business organisations, and telecommunication and paid television broadcasting services :-

1. Where taxable services are rendered prior to 1st January 2011, service tax at 5% will apply regardless whether the invoices for such services are issued on or after 1st January 2011.

Service Tax (Rate of Tax)
(Amendment) Order 2010

Service Tax (Amendment)
Regulations 2010

Guidelines on
Implementation of Charge
of Service Tax Based on
2011 Budget
Announcement



2. Where taxable services are rendered on or after 1st January 2011, service tax at 6% will apply except :-
 - a. for full payment that is received prior to 1st January 2011, service tax at 5% will apply; and
 - b. for part payment that is received before 1st January 2011, service tax at 5% will apply for the part payment whereas service tax at 6% will apply for the balance of payment that is received on or after 1st January 2011.
3. Where taxable services are rendered partially before 1st January 2011 and partially on or after 1st January 2011 :-
 - a. for part of the services rendered before 1st January 2011, service tax at 5% will apply; and
 - b. for part of the services rendered on or after 1st January 2011, service tax at 6% will apply. However, if payment for the part of the services rendered on or after 1st January 2011 is received before 1st January 2011, service tax at 5% will apply.

Specific rules are prescribed for other service providers i.e. insurance and telecommunication companies which provide insurance policies to business organisations and telecommunication and paid television broadcasting services respectively on the charge of 5% or 6% service tax during the transitional period.

Furthermore, 2 separate internal tax returns ["Form CJP No. 1"] may need to be submitted for each taxable period to differentiate the service tax rate of 5% or 6% charged to the customers / clients.

Recent Tax Case

KPHDN v TTK

[RPGT – whether disposal price of real property shares included amounts paid to creditors of company]

In the case of Ketua Pengarah Hasil Dalam Negeri ["KHPDN"] v TTK [(2010) MSTC 30-018], the respondent, TTK, was a director and shareholder of TM, a real property company ["RPC"]. In 1999, TTK and another shareholder disposed of 1,000 shares in TM to the purchaser, MR. The sale and purchase agreement reflected a sale price of RM30,295 and also provided that a sum of RM969,705 be paid by the purchaser to the creditors of TM in discharge of the liabilities of TM as reflected in its accounts. The IRB treated the disposal price of the RPC shares as RM1,000,000 (i.e. RM30,295 + RM969,705) and raised a real property gains tax ["RPGT"] in respect of the shares disposed by TTK. TTK appealed against the IRB's assessment to the Special Commissioners of Income Tax which was decided in favour of TTK. Dissatisfied with the decision, the IRB appealed to the High Court. The issue to be determined is whether the disposal price of 1,000 shares in TM of RM30,295, the amount received by the respondent and another shareholder is correct.



The High Court held that the disposal price of the shares was RM1,000,000 (inclusive of amounts paid to creditors of the company), being the amount or value of the consideration in money or money's worth for the disposal of the chargeable asset pursuant to Paragraph 34A, Schedule 2 of the RPGT Act 1976 relying on the fact that the contract for the sale and purchase of shares hinges on the consideration that the purchaser is required to settle the company's debt, i.e. amount owing to the creditors by TM.

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