



**LEMBAGA HASIL DALAM NEGERI
INLAND REVENUE BOARD**

PUBLIC RULING

**DEDUCTION FOR LOSS OF CASH
AND TREATMENT OF RECOVERIES**

Translation from the original Bahasa Malaysia text.

PUBLIC RULING NO. 5/2005

DATE OF ISSUE: 14 NOVEMBER 2005

CONTENTS

	Page
1. Introduction	1
2. Interpretation	1
3. General	1
4. Basis for deductibility	1
5. Deductibility of loss of cash caused by theft, defalcation or embezzlement	2
6. Supporting evidence	4
7. Tax treatment of recoveries	4
8. Effective date	5

DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,
Malaysia**

1. This Ruling explains:
 - (i) the deductibility of loss of cash in the course of business caused by theft, defalcation or embezzlement; and
 - (ii) the income tax treatment of recoveries in respect of the loss of cash which has been given a tax deduction in an earlier year.
2. The related provisions for the deductibility of loss of cash and the assessability of recoveries are sections 33 and 22 of the Income Tax Act, 1967(ITA).
3. The words used in this Ruling have the following meanings:
 - 3.1 "Employee" means a subordinate employee but excludes an employee in a managerial capacity.
 - 3.2 "Recoveries" means monies received in connection with loss of cash caused by theft, defalcation or embezzlement.
 - 3.3 "Director" includes any person who occupies the position of a director or any person in accordance with whose directions or instructions the directors or staff of a company are accustomed to act.
 - 3.4 "Cash" means cash and cheques in respect of trading transactions.

4. General

Loss of cash caused by theft, defalcation or embezzlement is generally allowable as a deduction in computing the adjusted income of a business for the basis period for a year of assessment provided such loss is incidental to the business carried on.

5. Basis for deductibility

To substantiate the claim of loss of cash, sufficient evidence should be made available. All matters relating to the loss of cash should be considered before a decision is taken to claim the loss. Among the factors to be considered are as follows:

- 5.1 the persons involved, that is the employee in the case of embezzlement or defalcation and the employee or third party in the case of a theft or robbery;
- 5.2 the action taken against the person involved namely, police report, termination of service, recovery of loss;
- 5.3 the situation in which the loss occurs, that is the incident is a recognised incident of the taxpayer's business and has to occur in the ordinary course of carrying on the business; and

5.4 the amount of loss should not be out of proportion to the reasonably expected risks of the business.

6. Deductibility of loss of cash caused by theft, defalcation or embezzlement

6.1 Theft or embezzlement by third party

- (i) Where the banking of cash takings is a necessary part of the operations of the business, any loss of cash caused by theft or robbery while in transit to the bank is allowable.

Example 1

Dailymart Sdn Bhd deposits its cash collections daily. The company's van carrying cash of RM50,000 was robbed while on the way to the bank.

The loss of cash of RM50,000 is allowable as a deduction.

- (ii) Where an agent who is assigned to collect the cash embezzles the cash, the loss is allowable as a deduction.

Example 2

Mesti Kaya Sdn Bhd, a furniture company, appoints an agent to collect instalment payments from clients. The agent had collected RM50,000 and misused the cash by investing in the share market. He suffered losses and absconded. The company was unable to trace the agent.

The loss of RM50,000 is allowable as a deduction.

- (iii) Loss of cash caused by theft, burglary, robbery which are not incidental to the business is not allowable as a deduction.

Example 3

Encik Maniam, a money-changer, brought back cash amounting to RM15,000 from his office and kept the cash in the strong room at his house. Thieves broke into his house and stole the cash.

The loss of cash of RM15,000 is not allowable as the loss of cash is not an incident in carrying on Encik Maniam's business. The loss had fallen on Encik Maniam as the owner of the cash which was temporarily not being used for his business.

6.2 Theft or embezzlement by employee

- (i) Loss of cash caused by theft, defalcation or embezzlement by an employee is allowable as it arises directly from the necessity of delegating certain duties of the business to subordinates.

Example 4

A bank clerk had been stealing money from customers' accounts. When detected it was found that RM10,000 had been embezzled. The bank terminated the services of the clerk.

The loss of RM10,000 is allowable as a deduction as the bank clerk embezzled the monies in the course of his duties as an employee and the loss was caused in the course of the business.

Example 5

Susan was employed as a accounting clerk at Beautiful Wear Apparels. The store owner noticed that 9 cheques were missing during the year 2005. It was discovered that Susan had cashed the 9 cheques for RM8,000 with forged signatures. Her services were terminated by the store.

The loss of RM8,000 is an allowable deduction.

- (ii) However, if the employee who is involved in the theft or embezzlement is a relative of the proprietor, and there is clear evidence that the proprietor proposes to overlook the theft and even continues to employ the offender, such a loss would not be regarded as a trade loss and is not deductible.

Example 6

Encik Tan, the owner of a sundry shop, suffered a loss of RM5,000 embezzled by his brother who is his employee. Encik Tan claimed the loss. However, no action was taken against the brother for the recovery of the loss.

The loss of RM5,000 is not an allowable deduction since no action has been taken against the employee to recover the loss.

6.3 Theft or embezzlement by sole proprietor, partner, director or administrator

Loss of cash resulting from defalcation or embezzlement by a sole proprietor, a partner, a director of a company or an administrator of a

deceased person's estate or any person who is in control of the business operations is not allowable as a deduction.

Example 7

A service director of a company had embezzled cash collections of RM10,000. A new director had discovered the loss and the sum was claimed as loss by embezzlement in the profit and loss account.

The loss of RM10,000 is not allowable as a deduction.

7. Supporting Evidence

Any claim for a deduction for loss of cash caused by theft, defalcation or embezzlement should be substantiated by documents, for example, police report, bank statement, responsibility of the staff involved, letter of termination of employment, the minutes of board of directors meeting, proof of recovery action and other relevant documents.

Example 8

Encik Johnson an employee of Syarikat Utama Sdn Bhd, is a door to door salesman selling electrical products. Puan Aminah had bought electrical goods amounting to RM5,000 and the payment was made by cheque. The cheque was embezzled by Encik Johnson and this was discovered by his supervisor. Proof of payment by Puan Aminah was obtained and a police report was made.

The proof of payment and the police report should be kept as evidence of embezzlement by Encik Johnson to substantiate a claim for tax deduction.

8. Tax treatment of recoveries

While the loss of cash has been allowed, recoveries by way of -

- insurance;
- agreement of payment from the staff concerned;
- legal action; and
- other recovery actions,

should be taxed as income of the business when such recoveries are received.

Example 9

Restoran Makanan Segera Sdn Bhd frequently encountered loss of cash through embezzlement by its cashiers. In the year 2005, RM50,000 was embezzled by several cashiers. This loss of cash had been claimed by the company in the year 2005. The company recovered RM40,000 from the insurance company in the year 2006.



**DEDUCTION FOR
LOSS OF CASH AND
TREATMENT OF RECOVERIES**

**LEMBAGA HASIL DALAM NEGERI
MALAYSIA**

**Public Ruling No. 5/2005
Date of Issue: 14 November 2005**

- *The loss of cash of RM50,000 has been allowed as a deduction in calculating the adjusted income from the business for the year of assessment 2005.*
 - *The sum of RM40,000 received from the insurance company should be taxed as income of the business for the year of assessment 2006.*
9. This Ruling is effective for the year of assessment 2005 and subsequent years of assessment.

**Director General
of Inland Revenue**