



INLAND REVENUE BOARD OF MALAYSIA

**FAILURE TO FURNISH INFORMATION
WITHIN A STIPULATED PERIOD**

PUBLIC RULING NO. 3/2015

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

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1. Objective

The objective of this Public Ruling (PR) is to explain the income tax treatment of a taxpayer who fails to furnish information within a stipulated period.

2. Relevant Provisions of the Law

- 2.1 This PR takes into account laws which are in force as at the date this PR is published.
- 2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are section 2, subsections 33(1) and 39(1A), sections 81, 82 and 82A.

3. Interpretation

The words used in this PR have the following meanings:

- 3.1 "Director General" means the Director General of Inland Revenue and includes such other employees of the Inland Revenue Board who are duly authorised by him.
- 3.2 "Notice" means a letter of notification issued to a taxpayer under section 81 of the ITA.
- 3.3 "Taxpayer" or "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole.
- 3.4 "Corporation sole" has the ordinary meaning which refers to an office held from time to time by different individuals.
- 3.5 "limited liability partnership" means a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [Act 743].
- 3.6 "Company" means a body corporate and includes any body of persons established with a separate legal entity by or under the laws of a territory outside Malaysia and a business trust.

4. Application of the Law

- 4.1 Subsection 39(1A) of the ITA which is effective from the year of assessment 2014 provides that in ascertaining the adjusted income of a taxpayer, no deduction of expenses from the gross income shall be allowed if the person fails to comply with a notice issued by the Director General (DG) under section 81 of the ITA which requires the taxpayer to furnish information in respect of such deduction claimed by the taxpayer within a specified time or such extended time as may be allowed by the DG.

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In exercising his authority under Section 81, the DG will specifically identify the types of expenses for which he requires information and will specify the verification documents required to be submitted to the DG so that the taxpayer can submit the documents accurately.

- 4.2 Deduction is only allowed if the taxpayer submits the records or documents that meets the requirement as specified in the notice issued by the DG under section 81 of the ITA.

Example 1

AZT Sdn Bhd is a supplier of food product in Kuala Lumpur. The company claimed a deduction of RM50,000 for the transportation cost incurred to deliver goods to customers.

During an audit, AZT Sdn Bhd could not provide any supporting documents to support the claims. Therefore, a notice under section 81 of the ITA was issued to AZT Sdn Bhd to furnish the invoices, receipts and payment vouchers related to the claims within the period of time stipulated by the DG.

If the company is able to furnish the supporting documents as requested in the notice within the period of time stipulated by the DG, the expense of RM50,000 will be allowed as a deduction.

Example 2

The facts are the same as in Example 1 except that AZT Sdn Bhd failed to furnish the invoices and receipts. The company only submitted payment vouchers to support the claims. The expense of RM50,000 will not be allowed as a deduction under subsection 39(1A) of the ITA.

Example 3

The facts are the same as in Example 1 except that AZT Sdn Bhd failed to furnish the receipts and payment vouchers. The company only submitted invoices to support the claims. The expense of RM50,000 will not be allowed as a deduction under subsection 39(1A) of the ITA.

5. Power to Call for Information

The DG has the authority to request from a taxpayer any information and particulars as may be required by him. Information and particulars can be obtained either orally or in writing within the specified time.

Information and particulars for the purpose of this PR are records and supporting documents consisting of -

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- (a) books of accounts which record receipts and payments or income and expenditure;
- (b) invoices, vouchers, receipts and such other documents to verify the entries in the books of accounts;
- (c) materials which are kept in electronic form that can be referred to easily and are convertible into written form. Documents should be retained in its original form if these documents are kept in a manual form and subsequently converted into an electronic form; and
- (d) any other records and documents as may be specified by the DG.

6. Duty to Keep Records and Documents

Every taxpayer is required to keep records and documents for the purposes of ascertaining his chargeable income and tax payable. During a tax audit, these records and documents are required to support the claim of expenses that has been made in the income tax return form (ITRF) and submitted to the DG.

According to sections 82 and 82A of the ITA, records and documents shall be retained for a period of seven years from the end of the year of assessment in which the ITRF is furnished.

Further information can be obtained from the following PRs:

- (a) PR No. 4/2000 (Amended) – Keeping Sufficient Records (Companies & Co-operatives);
- (b) PR No. 5/2000 (Amended) – Keeping Sufficient Records (Individuals & Partnerships); and
- (c) PR No. 6/2000 (Amended) – Keeping Sufficient Records (Persons other than Companies, Co-operatives or Individuals).

7. Records and Documents Not Furnished within a Stipulated Period

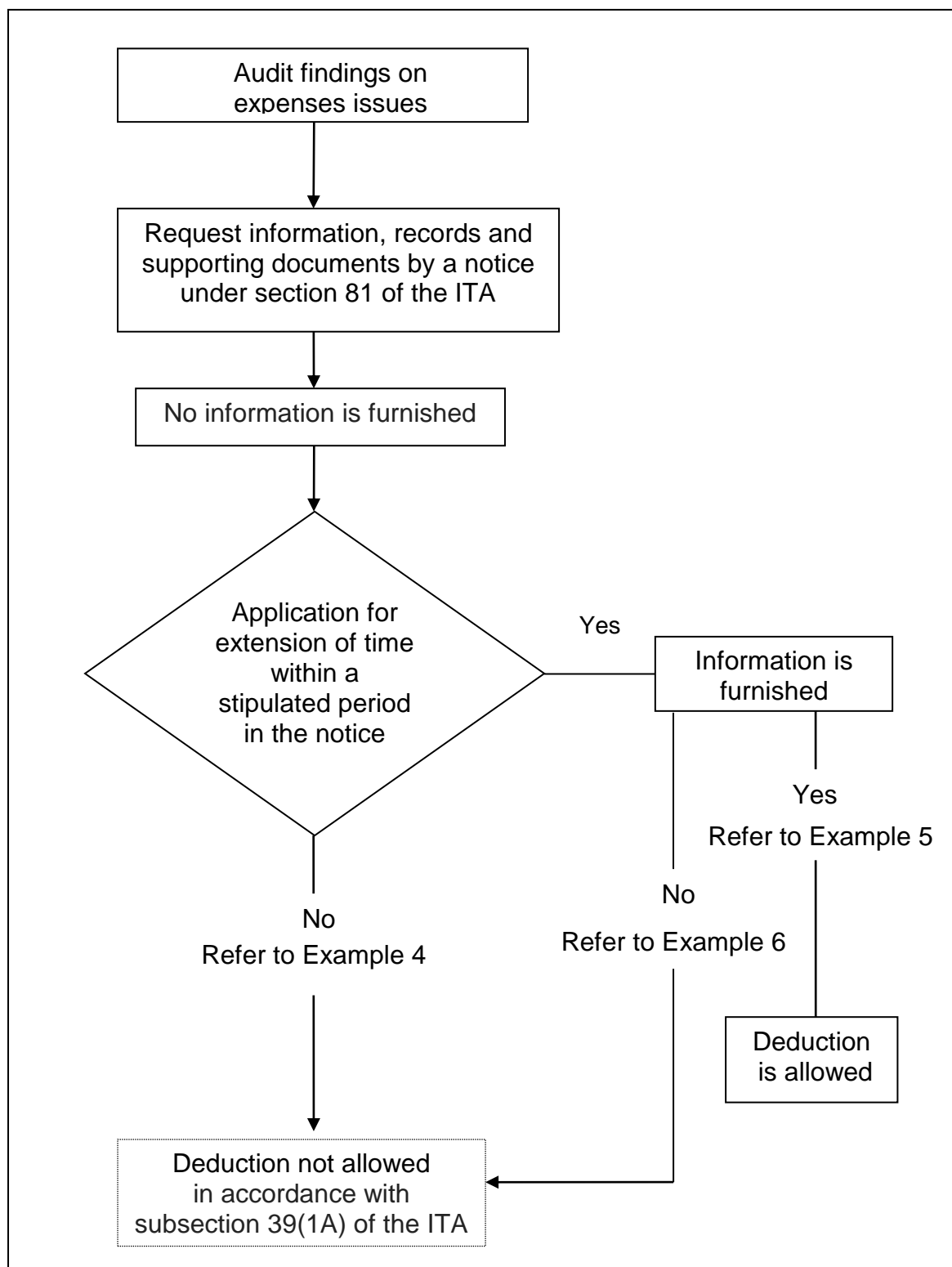
Subsection 39(1A) of the ITA is a specific provision to disallow expenses claimed by a taxpayer if the taxpayer fails to provide supporting records and documents in respect of such expenses within the time specified in a notice made under section 81 of the ITA.

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- 7.1 In an audit case, a taxpayer will be required to prepare and provide supporting records and documents of expenses within the time specified in a notice. Failure by the taxpayer to provide such records and documents within the time specified in the notice may result in the expenses being disallowed for deduction.
- 7.2 Application for an extension of time may be granted and depends on the merits of the case if:
- (a) an application is made before the time specified in the notice expires; and
 - (b) the reason given is reasonable and acceptable.
- 7.3 If an application for extension of time is not made before the time specified in the notice expires or extension of time has been given but the taxpayer still fails to provide the records and documents requested by the DG, the expenses claimed will not be allowed for deduction.
- 7.4 The notification for extension of time will also be issued in the form of a notice under section 81 of the ITA which will state whether the application for extension of time requested by the taxpayer is approved or otherwise and the period of the extension of time approved by the DG to submit the supporting records and documents.

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An Illustration of Failure to Furnish Information within a Stipulated Period is depicted as follows:



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Example 4

Rania Beauty Sdn Bhd (RBSB) sponsored an arts, cultural and heritage activity approved by the Ministry of Information, Communication and Culture held at the Istana Budaya in 2014. The expense incurred in sponsoring the activity was RM250,000 and RBSB claimed a deduction for the expense as provided under paragraph 34(6)(k) of the ITA.

During an audit, RBSB could not provide the sponsorship approval letter from the Ministry of Information, Communication and Culture (the supporting document). Therefore, a notice under section 81 of the ITA was issued and RBSB was given a period of time to furnish the supporting document as requested by the DG.

After the expiry of the time stipulated in the notice, RBSB still failed to furnish the supporting document. Therefore, the expense of RM250,000 will not be allowed as a deduction under subsection 39(1A) of the ITA.

Example 5

The facts are the same as in Example 4 except that RBSB requested for an extension of time.

RBSB gave a reason that the supporting document was stored in the branch office of RBSB and time was needed to obtain it. RBSB's reason was admissible and the application for an extension of time was allowed.

RBSB furnished the supporting document within the extended time. Thus, RBSB is allowed to claim the payment of RM250,000 as sponsorship expense for arts, cultural and heritage activities in the year of assessment 2014.

Example 6

The facts are the same as in Example 5 except that the supporting document was not furnished.

RBSB failed to furnish the supporting document within the time specified in the notice of extension of time. Therefore the expense of RM250,000 will not be allowed as a deduction under subsection 39(1A) of the ITA.

8. Consideration for Circumstances not within Control

For circumstances beyond the control of the taxpayer i.e. if the records and documents cannot be furnished because they are lost or destroyed as a result of natural disasters from fire and flood, theft, embezzlement of cash and so on, the

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taxpayer must prove the occurrence of circumstances beyond his control by submitting the following records or documents:

- (a) newspaper clippings, photographs and police reports;
- (b) other proofs that are appropriate and reasonable; or
- (c) records or documents from third parties.

The DG may give due consideration to allow a deduction of expenses if the taxpayer has made every endeavour to submit one of the records or documents as mentioned above.

However, the submission of the above records or documents is subject to approval by the DG who must be satisfied that there is no other avenue for the company to obtain the requested records or documents.

If the taxpayer is able to submit the supporting evidence and reasonable grounds for his inability to produce the records or documents as requested, the DG will give consideration to allow the deduction of expenses claimed.

Note : The necessary supporting evidence for the loss of records or documents that are caused by theft or embezzlement of cash may be referred to in PR No. 4/2012 titled "Deductions for Loss of Cash and Treatment of Recoveries".

Example 7

Fresh Sdn Bhd is a supplier of fresh coconut milk in the Klang Valley and claimed a deduction of RM25,000 for the maintenance of an automatic milking machine. The company failed to provide the invoices within the time specified in a notice on the grounds that all invoices were destroyed in a fire at the storage room where the company's documents were kept.

The Company submitted a police report and photographs of the premise on fire as evidence. A report of the list of assets and documents which were destroyed in the fire was prepared and submitted to the DG as supporting evidence.

The expense may be considered for deduction as the company is able to prove that the invoices cannot be submitted because of circumstances beyond the company's control and the DG is satisfied with the reason that there was no other avenue for the company to obtain the invoices.

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The report of the list of assets and related documents may be accepted in lieu of the invoices on maintenance and the expense is deductible under subsection 33(1) of the ITA.

Note : If the DG discovers that the supporting documents can be obtained from a third party but the company has not endeavoured to get them, then the report will not be accepted as a substitute for the invoices on maintenance expense. Therefore, the maintenance expense of RM25,000 will not be allowed as a deduction under subsection 39(1A) of the ITA.

Example 8

Eubos Engineering Sdn Bhd purchased a “key-man” term life policy on the life of its managing director with an annual premium of RM35,000. The company claimed the premium expense as a deduction from the gross income.

The company failed to submit a copy of the “key-man” insurance policy and the receipt confirming the payment of the premium on the grounds that all documents were destroyed in a flash flood that occurred in the office area. The Company submitted newspaper clippings as evidence that the surrounding areas including the company's factory were affected by the flood. No extension of time was made by the company within the time specified in the notice.

The DG is of the view that the reason given by the company is not reasonable because the company can obtain the documents from the insurance company that issued the policy.

Although the company could prove that the document could not be submitted because of circumstances beyond the company's control but the company did not endeavour to get those documents from a third party namely the insurance company. Therefore, the expenses of RM35,000 is not allowable as a deduction under subsection 39(1A) of the ITA.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**