

TECHNICAL

Direct Tax

OPERATIONS GUIDELINES NO. 1/2015 – IMPOSITION OF PENALTY UNDER S.112(3) OF THE INCOME TAX ACT 1967

The above-mentioned Guidelines is dated 5 March 2015 and has been recently uploaded on the website of Inland Revenue Board Malaysia (LHDNM). The following is a summary of the contents:

Para. No.	Summary										
1 & 2	<p><i>Introduction & Objective</i></p> <p>The requirement for the submission of an annual income tax return forms (ITRF) within the stipulated period is found in S.77 and S.77A of the Income Tax Act 1967 (Act). S.77A applies to a company, limited liability partnership, trust body or co-operative society, while S.77 applies to a person other than those mentioned in S.77A. The Guidelines seek to provide clarification on the imposition of penalties under S.112(3) of the Act for the late submission of ITRF.</p>										
3	<p><i>Deadlines for submission of returns</i></p> <table><tr><th>Section</th><th>Taxable person</th><th>Submission deadline</th></tr><tr><td rowspan="2">77</td><td rowspan="2">A person other than those to whom S.77A applies</td><td>Not later than 30 June in the year following that year of assessment (YA) for persons carrying on a business</td></tr><tr><td>Not later than 30 April in the year following that YA for persons who are not carrying on a business</td></tr><tr><td>77A</td><td>A company, limited liability partnership, trust body or co-operative society</td><td>Within 7 months from the date following the close of the accounting period which forms the basis period for that YA</td></tr></table> <p>The different categories of taxpayers, their respective file classifications, and the type of ITRF applicable to each category of taxpayer are listed under paragraph 3.3 of the Guidelines (please refer).</p>	Section	Taxable person	Submission deadline	77	A person other than those to whom S.77A applies	Not later than 30 June in the year following that year of assessment (YA) for persons carrying on a business	Not later than 30 April in the year following that YA for persons who are not carrying on a business	77A	A company, limited liability partnership, trust body or co-operative society	Within 7 months from the date following the close of the accounting period which forms the basis period for that YA
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4.	<p><i>Penalty Rates</i></p> <p>Under S.112(3), the maximum penalty which may be imposed on those found to have failed to comply with S.77(1) or S.77A(1) is 3 times the tax chargeable for that YA.</p> <p>The rates of penalty set by LHDNM are as follows:</p> <table><tr><th>Period for which Return was submitted late</th><th>Rate of penalty (% of tax chargeable)</th></tr><tr><td>Up to 12 months</td><td>20</td></tr><tr><td>> 12 months – 24 months</td><td>25</td></tr><tr><td>> 24 months – 36 months</td><td>30</td></tr><tr><td>> 36 months</td><td>35</td></tr></table>	Period for which Return was submitted late	Rate of penalty (% of tax chargeable)	Up to 12 months	20	> 12 months – 24 months	25	> 24 months – 36 months	30	> 36 months	35
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	Any extension of time granted will not be taken into account if the ITRF was submitted late or not submitted within the extended time allowed for submission.
5	<i>Additional Penalty</i> S.112(4) gives the Director General the power to impose additional penalty in accordance with S.112(3) in respect of any additional tax which is payable for a YA in the case where the ITRF is not furnished by the taxpayer.

Members may read the Guidelines in full at the websites of the [Institute](#) and [LHDNM](#).

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