



**LEMBAGA HASIL DALAM NEGERI MALAYSIA
INLAND REVENUE BOARD**

PUBLIC RULING

**TAX TREATMENT OF LEGAL AND
PROFESSIONAL EXPENSES**

Translation from the original Bahasa Malaysia text

**PUBLIC RULING
NO. 6/2006**

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MALAYSIA

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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.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

- 1.1 the deductibility of legal and professional expenses; and
- 1.2 the non-deductibility of legal and professional expenses.

2. The related provisions for the deductibility and non-deductibility of legal and professional expenses are subsections 33(1) and 39(1) of the Income Tax Act 1967 (ITA).

3. The words used in this Ruling have the following meanings:

- 3.1 "Person" includes a company, a co-operative society, a club, an association, a Hindu joint family, a trust, and estate under administration, a partnership and an individual.
- 3.2 "Basis period" in relation to a person, a source of his and a year of assessment, means such basis period, if any, as is ascertained in accordance with section 21 or 21A of the ITA.
- 3.3 "Year of assessment" means a calendar year.

4. **General principle**

- 4.1 Generally, legal or professional expenses are deductible where these are incurred in the maintenance of trade rights or trade facilities, existing or alleged to exist and are not deductible, as being of a capital nature, where incurred for the purpose of acquiring new rights or facilities. The deductibility of expenses incurred to maintain alleged trade rights does not depend upon whether the action is successful or not.
- 4.2 Legal and professional expenses which are not wholly and exclusively incurred in the production of gross income or prohibited from deduction under subsection 39(1) of the ITA are not deductible.

5. **Deductible legal and professional expenses**

This Ruling addresses the specific situations when and how legal and professional expenses may be deducted as an expense under subsection 33(1) of the ITA from the gross income of a person from a source in ascertaining the adjusted income of the person from that source for the basis period for a year of assessment :

5.1 Debt collection

Legal and other expenses incurred by a person in the course of collecting trade debts from customers.

5.2 Renewal of loans

Legal expense incurred by a finance company in renewing existing loans.

5.3 Preparation of accounts

- (a) Ordinary expenses of keeping books and preparing financial records and accounts including charges for accountancy work.
- (b) Statutory audit fees expenditure [P.U.(A) 129 - Income Tax (Deduction For Audit Expenditure) Rules 2006]

5.4 Defending title to property

Legal expenses incurred in connection with defending a person's title to the ownership of an asset that is used in the business. The title to the ownership by the person remains the same and had been maintained with nothing added or taken away.

5.5 Legal expenses incurred by a landlord

Legal expenses including litigation costs incurred on renewal of a lease.

5.6 Defending an action connected with a trade or breach of trading contracts

- (a) Expenditure incurred by a person in resisting a claim that he has broken a trading contract is allowable unless the breach was deliberate and dishonest.

Examples:

- (i) Cost incurred by a money lender in defending an action in connection with a loan made to him by a company (loans are the trading stock of a money lender's business).
 - (ii) Cost to a dairy farmer in successfully defending a charge of adulteration of milk.
- (b) Averting a threat to the goodwill of a business.
 - (c) Preservation and / or protection of a capital asset that does not result in the creation of a new asset.

- (d) Where litigation ensues after a customer withholds payments wholly or in part on the grounds of inferior workmanship, sub-standard material, non-fulfilment of contract requirements or for other reasons, the legal action is regarded as an ordinary incident of trade.
- (e) Litigation against claims for libel arising from published documents in respect of a newspaper or publishing business.
- (f) Defending legal action taken against a professional in respect of negligence in undertaking work for a client.

5.7 Legal cost incurred in disputes over trading contracts when incurred for -

- (a) Enforcement of a contract for the supply to a litigant of goods which would be resold for profit.
- (b) The establishment of an agreement between the litigant and another under which the litigant is entitled to render services for specific remuneration.
- (c) Determination of fares fixed by a transport company for carrying passengers.
- (d) Attempting to recover sums which would have been taxable if received.
- (e) Claims for compensation for trading goods lost in transit.

5.8 Legal or professional expenses incurred by a developer or a dealer in property -

- (a) For obtaining end-financing facility for the benefit of house purchasers.
- (b) For valuation of land.
- (c) Legal fees paid for transfer of land titles, sub-division and conversion of land.
- (d) Survey fees.

5.9 Other legal expenses

- (a) Renewal of leases and licenses.
- (b) Claim for compensation for trading goods destroyed, defective or lost in transit.
- (c) Legal fees and agency fees incurred in connection with employment agreements as well as in connection with preparation of trading contracts or agreements.

6. Non-deductible legal and professional expenses

The following are examples of legal and professional expenses which will not qualify for deduction:

6.1 Debt collection

Legal and other expenses incurred by a person in the collection of non-trade debts and loans of a capital nature.

6.2 Renewal of loan

- (a) Legal expenses incurred by a trading or commercial company.
- (b) Legal expenses on renewal of a mortgage on premises.
- (c) Cost of raising additional capital whether by means of a loan or otherwise (this will also apply to a person carrying on a business of banking or money-lending).

6.3 Annual corporate filings and meeting expenses

- (a) Secretarial fees.
- (b) Annual general meeting expenses.

6.4 Income tax returns

- (a) Cost of filing of tax returns and tax computations.
- (b) Cost of appeal against income tax assessment i.e. to the Special Commissioners of Income Tax and the Courts.

6.5 Legal expense incurred by a landlord

When a property is let for the first time by the owner or lessor.

6.6 Cost of defence in a fraud case

The cost of defending criminal prosecution or in connection with unlawful acts in the operation of a business.

6.7 Legal expenses incurred to vary vehicle licences

A variation of vehicle licences from ordinary lorries to articulated vehicles.

6.8 Legal expenses incurred in connection with:

- (a) The formation, renewal, variation or dissolution of a partnership.
- (b) The transfer of a mortgage on business premises.
- (c) The grant of a lease of business premises unless in connection with the renewal of a lease.



- (d) The acquisition of capital assets or the sale or transfer of capital assets.
- (e) Securing an enduring advantage for a trade or business.
- (f) Obtaining a trading licence.
- (g) Increasing or reducing share capital or altering the Memorandum and Articles of Association of a company.
- (h) Floatation, registration, winding up or liquidation of a company.
- (i) Obtaining new leases, mortgages, loan or credit facilities.
- (j) Valuation charges relating to probate, company reconstruction and change of ownership.
- (k) Legal fees relating to income already earned eg. income tax appeals.
- (l) Costs of legal proceedings incurred in pursuing a claim for unlawful or unjust dismissal by an employee.

6.9 Legal and professional fees incurred by a property developer

- (a) For obtaining bank overdraft, term loan and bridging finance.
- (b) Fees for revaluation of land.

7. Effective Date

This Ruling is effective for the year of assessment 2006 and subsequent years of assessment.

**Director General
of Inland Revenue**