

What to know and do about bad debts in Thailand – Part II

In Part I of this two part article we noted the importance for your company to comply with the legal requirements to “write-off” uncollectable or “Bad Debts” so that your company would not be required to pay income tax on these uncollected monies. And we saw that under Section 65 of the Thailand Revenue Code (“RC”) and Ministry of Finance regulation No. 186 (1991) (“MR”) in order for Bad Debts to be written-off they generally may have (1) arisen from your company’s business and (2) it must not be too late to file a court action to collect them.

Now we look at the rest of requirements under the MR to write-off Bad Debts. These additional requirements are further outlined in the following clauses of the MR and in doing so the debts are categorized by amount as follows:

(i) debt(s) by a debtor exceeding Thai Baht 500,000 (Clause 4 MR);

(ii) debt(s) by a debtor between Thai Baht 100,000 and Thai Baht 500,000 (Clause 5 MR); and

(iii) debt(s) by a debtor not exceeding Thai Baht 100,000 (Clause 6 MR)

Different conditions for a write-off are applicable for the different categories. The strictest requirements are applicable to category (i). MR Clause 4 requires:

(1) “[d]emands for payment have been made and the matter has been pursued to the extent suitable to the case of such acts being expressly recorded and yet debts remain unsettled (...)” because “(a) the debtor died, is missing or proved to be missing and has no property to pay the debts or (b) the debtor dissolved his business, and the debt due from him to the other creditors with preceding preferential rights over his entire properties exceed the value thereof”; and either

(2)(a) a civil action has been brought against the debtor and after a court order or injunction the debtor does not have sufficient property to settle the debts; or

(2)(b) a bankruptcy action has been brought against the debtor and a compromise has been reached with the debtor with court approval or the debtor has been adjudged bankrupt and the first lot of the debtor's properties have been shared out.

With regard to category (ii) debts, pursuant to MR Clause 5, the conditions for a write-off are the same as those for category (i) debt but that with regard to the requisite civil court proceedings it is sufficient that the court has accepted the plaintiff. Whereas with regard to the relevant alternative bankruptcy proceedings, the action against the debtor needs only to have been accepted by the court. However, in this case category (ii) debts, it is also required that the director or managing director of the juristic company creditor issue an order within 30 days from the last day of the relevant accounting period authorising the write-off of the Bad Debt.

Finally for category (iii) debts the requirements are the least strict. Pursuant to MR Clause 6, it is not necessary to comply with the requirements in MR Clauses 4 and 5. Court proceedings, for example, are not required. Rather, it is sufficient that "demands for payment have been made and that the matter has been pursued to the extent suitable to the case, and yet debts remains unsettled" provided that any court action in relation to the debt would entail higher costs in relation to the court proceedings than the amount expected to be recovered.

The final requirement is that once the creditor has complied with all above mentioned rules and regulations the creditor must write-off the receivable as a Bad Debt expense in the same accounting period. However, in case of a category (ii) debt, the accounting period in which this must be done is the accounting period when the relevant court accepts the civil complaint or the bankruptcy petition.

To manage the risk of unnecessary tax liabilities in connection with Bad Debts you should continually monitor company's accounts receivable in order to keep abreast of its various debts and determine when and what action is appropriate and as needed competent tax counsel should be consulted directly.

DUENSING KIPPEN is an international law firm specializing in business transaction and dispute resolution matters, with offices in Bangkok and Phuket, Thailand and affiliated offices in 45 other countries. Visit them at: duensingkippen.com