

NEWSLETTER

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1. **Writing off Bad Debt in case of Business Reorganization Plan**1

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1. Writing of Bad Debt in case of Business Reorganization Plan

With the economic downturn, not getting paid from a customer when a price of product or a service fee becomes due is hardly any surprise to those in charge of bill collection in corporate Thailand. In addition to taking a legal action to recover the unpaid amount like filing a civil lawsuit to the court, a company will have to consider the tax treatment of this bad debt.

In the event that a debtor has no ability to pay for whatever reason, the company has to comply with the criteria laid down by the Ministerial Regulations No 186 (B.E. 2534) issued by virtue of the Revenue Code Regarding Writing off Bad Debt from Debtors' Account (the "Ministerial Regulations") prior to writing off the amount of the bad debt as the deductible expense in computation of its net profit (or loss) for a corporate income tax purpose. These Ministerial Regulations lay down the specified course of actions (legal actions) that a company must take first prior to write off any bad debt as deductible expense in computation of its net profit (or loss) under the Revenue Code.

In case any debtor enters the business reorganization process through a Central Bankruptcy Court, creditors, especially unsecured creditors, will be asked to give up (release) part of the debt to enable the debtor to stay afloat under the business reorganization plan. Getting something out of the business reorganization, even 10 cents or 5 cents on one dollar debt, is apparently far better than getting nothing (or almost nothing) from debtor's demise in the bankruptcy.

To protect their own interest, the creditors, particularly unsecured creditors, will normally vote in the meeting of creditors in support of the business reorganization plan to give up (release) part of the original debt. In other words, under the business reorganization plan the unsecured creditors are unlikely to get paid in full.

According to the Ministerial Regulations, once the meeting of creditors approves the business organization plan and the court issues the order approving the business reorganization plan, a creditor company may write off the released (or comprised) amount as bad debt, which is the deductible expense in computation of its net profit (or loss) for the tax purpose.

But the business reorganization plan is subject to change under the bankruptcy law. One revenue ruling sheds some light on how to treat the bad debt when the released (or comprised) amount is changed under the business reorganization plan at a later point.

In this case, initially a creditor was entitled to receive 4.8% of the original debt amount, releasing 95.20% of the original debt amount for the debtor, under the original plan. The plan was later changed. And under the amended plan, this creditor was entitled to receive 7.97% of the original debt amount, releasing 92.03% of the original debt amount for the debtor.

The Revenue Department states that in the year that the court approved the original business reorganization plan, under the Ministerial Regulations, this creditor could write off 95.20% of the original debt amount as the bad debt, which is the deductible expense in computation of its net profit (or loss). With respect to the amended plan, whenever the creditor receives any amount in excess of 4.8% of the original debt amount, the creditor must recognize the exceeded amount as its income in the year that the creditor receives such amount.

For more information, please contact our lawyers for consultation.

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