



GRA

GHANA REVENUE AUTHORITY

Practice Note on Bad Debts under the Income Tax Act, 2015 (ACT 896)

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1.0 TAX LAW

The Commissioner-General of the Ghana Revenue Authority is empowered under Sections 100 and 101 of the Revenue Administration Act, 2016 (Act 915) to issue Practice Notes setting out the interpretations placed on provisions of the tax laws. Accordingly, this Practice Note is issued in respect of Sections 23(7) and 88 of the Income Tax Act, 2015 (Act 896).

2.0 INTERPRETATION

In this Practice Note, unless the context requires otherwise, the word "Act" means the Income Tax Act, 2015 (Act 896).

Definitions and expressions used in this Practice Note, unless the context requires otherwise, have the same meaning as they have in the Act.

3.0 THE PURPOSE OF THIS PRACTICE NOTE

The purpose of this Practice Note is to give clarity and provide guidance to Officers of the Ghana Revenue Authority, Tax Practitioners, Consultants, Taxpayers and the General public on tax treatment of Bad Debts as provided under Sections 23(7) and 88 of the Act to ensure consistency in the administration of the Act.

4.0 APPLICATION OF THE LAW

The provisions of Sections 23(7) are in respect of Bad Debt for Businesses other than Banks and 88 in respect of Specific Bad Debts of a Bank as defined under Section 156 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

4.1 Bad Debts for Businesses other than Banking Business

Section 23(7) of Act 896 provides that a person shall not be allowed a deduction or debt claim as bad debt unless the Commissioner-General is satisfied that;

- (a)** Reasonable steps have been taken to pursue payment of the debt;
- (b)** The Bad Debt claim or entitlement cannot be satisfied.

4.1.1 Reasonable Steps

All reasonable steps based on sound commercial considerations taken to recover the debt and satisfactory to the Commissioner-General will include one or more of the following:

- a. Due process followed in respect of the taxpayer's credit policy;
- b. Issuing Reminder Notices;
- c. Resort to Debt Collecting Agencies;
- d. Debt Restructuring Scheme;
- e. Rescheduling of Debt Settlement;
- f. Negotiation or Arbitration of a disputed debt; eg. Legal action (filing of civil suit, obtaining of judgement from the court or and execution of the judgement).

4.1.2 Circumstances When a Debt can be Considered Bad

After reasonable steps for recovery [see paragraph 4.1.1 above] have been taken, a debt can be considered bad on the occurrence of any one of the following:

- a. The debtor has died without leaving any assets from which the debt can be recovered;
- b. The debtor is a bankrupt or in liquidation and there are no assets from which the debt can be recovered;
- c. The debt is statute-barred;
- d. The debtor cannot be traced despite various attempts and there are no known assets from which the debt can be recovered;
- e. Attempts at negotiation or arbitration of a disputed debt have failed and the anticipated cost of litigation is prohibitive; or
- f. Any other circumstances where there is no likelihood of cost-effective recovery.

4.2 Bad Debts under Banking Business

4.2.1 Definition of Bank

According to section 156 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) bank means a body corporate which engages in the deposit – taking business and is issued with a banking licence in accordance with Act 930.

4.2.2 Specific Bad Debts

Section 88 of Act 896 provides that the Commissioner-General shall allow a deduction of a bad debt in the calculation of chargeable income where a person conducting a banking business makes a specific provision for a debt claim and the debt was previously included in calculating income from the business and the Commissioner-General is satisfied that the debt is bad.

Also, the Commissioner-General may deduct where the Commissioner-General is satisfied that the debt is bad and the debt claim constitutes the advance of a principal sum in the case where the cost of the debt claim is reduced by an equal amount.

4.2.3 Conditions for Deduction of a Bad Debt

The bad debt write-off is sanctioned by the Board of Directors and the prior written approval of the Bank of Ghana as condition precedent:

In addition to the above, the Commissioner-General shall be satisfied when the following reasonable steps are taken by a person:

- a. All reasonable steps based on sound commercial considerations taken to recover the debt and satisfactory to the Commissioner-General will include one or more of the following:
 - i. Due process followed in respect of the Bank's credit policy
 - ii. Issuing Reminder Notices/telephone/mail contact attempted;
 - iii. Resort to Debt Collecting Agencies
 - iv. Debt Restructuring Scheme;
 - v. Rescheduling of Debt Settlement;
 - vi. Negotiation or Arbitration of a disputed debt;
 - vii. Legal action (filing of civil suit, obtaining of judgement from the court or execution of the judgement).

- b. In addition to the above, the following conditions must be met;**
- i. Evidence of efforts made to collect the debt must be documented
 - ii. Whether due processes were followed in granting the loan between the bank and the borrower where direct/indirect relationship exists.
 - iii. The collateral provided and what checks were made to ensure the collateral was not encumbered
 - iv. Whether a valuation has been made of any security held against the debt
 - v. Sale of any seized or repossessed assets to cover the debt in part
 - vi. Whether the borrower can be traced
 - vii. Whether there is any insurance cover for the recovery of the loan
 - viii. The Age analysis of the loan must be indicated

4.2.4 Security for Loans

A loan may be fully collateralized, partially collateralized or not collateralized.

(a) Fully Collateralized loan

Where a loan is fully collateralized, that is the borrower uses an asset as security for the loan. The bank should have liquidated the security in settlement of the loan amount and any write off would not be accepted as a deduction for tax purposes.

(b) Partially collateralized Loan

Where a loan is partially collateralized, that is the borrower uses an asset as security for the loan, but the value of the security is lower than the loan amount. The bank should have liquidated the security in settlement of the loan amount and any residual outstanding after the liquidation of the collateral, can then be written off if it satisfies the other conditions herein.

(c) Non collateralized Loan

Where a loan was given without collateral, the bank should have taken steps to recover the loan,

Example:

- a. Where the loan has been insured and the event of incapacitation or death occurs then the total recovery is expected from the insurance company and cannot qualify for a write-off.

- b. In all other cases of non-collateralized loans, if it is proven that the Banks have pursued collection using reasonable steps outlined in paragraph 4.2.3, then the amount shall be allowed as deductible.

D. Effective Date of Deduction of Approved Write-off

The effective date of deduction of an approved bad debt write-off is the date of approval by the Bank of Ghana on or before the due date for submission of the Annual Return of the relevant year of Assessment

Example 1:

A bank submitted a list of bad debt write-off to the BOG for authorisation on 21st November, 2018 and the BOG approved it on 30th December, 2018. The bad debt write-off approved will be deductible in 2018 Year of Assessment.

Example 2:

A bank submitted a list of bad debt write-off to the BOG for authorisation on 21st November, 2018 and the BOG approved it on 20th February, 2019. The bad debt write-off approved will be deductible in 2018 Year of Assessment, since it falls within the due date for furnishing of return for 2018.

Example 3:

A bank submitted a list of bad debt write-off to the BOG for authorisation on 21st November, 2018 and the BOG approved it on 30th June, 2019. The bad debt write-off approved will be deductible in 2019 Year of Assessment, since the Bank would have filed its return for 2018 already.

Example 4:

A bank submitted a list of bad debt write-off to the BOG for authorisation on 1st May, 2019 in respect of bad debt that was written-off in 2018 Year of Assessment and the BOG subsequently approved it on 30th June, 2019. The bad debt write-off approved will not be deductible in 2018 Year of Assessment, since the Bank would have filed its return for 2018 already. However, this will be allowed in 2019 Year of Assessment.

4.2.5 General Bad Debt Provision

General or specific impairment provided for under accounting standards (IFRS) are normally not tax deductible for tax purposes.

5. ILLUSTRATIONS

5.1 Illustration 1:

The results of XYZ Bank Ltd indicated the following in the Tax Return (Financial Statements) for 2018 Year of Assessment.

General provision for Impairment.....	GH¢ 200,000.00
Specific Provision for Impairment.....	GH¢ <u>1,000,000.00</u>
Total Impairment.....	GH¢ <u>1,200,000.00</u>

A further analysis by tax auditors revealed that the specific provision for impairment was given approval by the Board of Directors and subsequently by the Bank of Ghana on all the Loss category and a review of this by the tax audit confirmed the loan write-off of GH¢ 250,000.00.

Required: Indicate which adjustments you will make in arriving at the Chargeable/Assessable Income of the Bank for 2018.

Solution to illustration 1:

Computation of Chargeable Income for 2018 Y/A

Profit before Tax.....GH¢ xxxxxx

Add Back:

Non Deductible Expenses.....GH¢ xxxxxxx

General Provision..... GH¢ 200,000.00

Specific Impairment..... GH¢1,000,000.00

Allowable Bad Debts GH¢ 250,000.00

Non-Allowable Specific Impairment GH¢750,000.00

The Bad Debt Write-off of GH¢250,000.00 which was approved by the Board of Directors and authorised by the BOG has been allowed as deductible. Specific Impairment of GH¢750,000.00 which was not approved by the Board of Directors and authorised by the BOG has been added back for tax purposes.

5.2 Illustration 2:

The results of XYZ Bank Ltd indicated the following in the Tax Return (Financial Statements) for 2018 Year of Assessment.

General provision for Impairment.....GH¢ 200,000.00

Specific Provision for Impairment.....GH¢ 1,000,000.00

Total Impairment..... GH¢ 1,200,000.00

A further analysis by tax auditors revealed that the specific provision for impairment was given approval by the Board of Directors and subsequently by the Bank of Ghana on all the Loss category but a review by the tax audit confirmed that out of the write-off of GH¢ 250,000.00, only GH¢ 150,000.00 was actual bad debt.

Required: Indicate which adjustments you will make in arriving at the Chargeable/Assessable Income of the Bank for 2018.

Solution to illustration 2:**Computation of Chargeable Income for 2018 Y/A**

Profit before Tax GH¢ xxxxx

Add Back:

Non Deductible Expenses.....	GH¢ xxxxxxx
General Provision.....	GH¢ 200,000.00
Specific Impairment.....	GH¢1000,000.00
Allowable Bad Debts	<u>GH¢150,000.00</u>
Non-Allowable Bad Debts	GH¢ 850,000.00

In this illustration only GH¢150,000.00 out of the GH¢250,000.00 Bad Debt Write-off is allowed by the Commissioner General because it satisfies the conditions stated in 4.2.3

5.3 Illustration 3:

A schedule obtained from HRM Bank Ltd from Specific provision for Bad Debts for 2018 year of Assessment revealed the following:

Name of Company/Person	Amount	Remarks
BBBT Ltd	GH¢ 400,000.00	Final demand Notice issued.
Nsat Cold Store	GH¢ 100,000.00	Customer cannot be located
DFCK Ltd	GH¢ 270,000.00	Legal action initiated against borrower
Densay Ent.	GH¢ 250,000.00	Client is the nephew of the MD who obtained the loan at a concessionary rate of 5% and failed to pay up instalments as they fall due
No Problem Company Ltd	GH¢ 120,000.00	Loan payment has been rescheduled and the term of loan keeps running up to 31/12/2022
Lalala Explorer Co Ltd	200,000.00	Awaiting payment from government contract
Zuma Company Ltd	100,000.00	Branch management are following up on the customer
Alakpato Company Ltd	GH¢ 40,000.00	Customer referred to loan recovery unit of the Bank
Total	GH¢ 1,480,000.00	

Required: Explain how you would deal with each case to arrive at the adjustment to income for the 2018 Year of assessment.

Solution to Illustration 3

The position of the Commissioner-General is indicated in Column 4 in the table below

Name of Company/Person	Amount	Remarks by the Bank	Commissioner General's Position
BBBT Ltd	GH¢ 400,000.00	Final demand Notice issued.	Not sufficient grounds to be allowed as a deduction for tax purpose because recovery process is not exhaustive.
Nsat Cold Store	GH¢ 100,000.00	Customer cannot be located	This cannot be enough grounds for a write-off. The Bank should pursue all available means to locate the borrower or fall on the collateral if any.
DFCK Ltd	GH¢ 270,000.00	Legal action taken	If the bank initiates a legal process then CG may allow as bad debt.
Densay Ent.	GH¢ 250,000.00	Client is the nephew of the MD who obtained the loan at a concessionary rate of 5% and failed to pay up instalments as they fall due	Transaction did not meet the Arms-length Standard principle and therefore the bad debt shall not be allowed.
No Problem Company Ltd	GH¢ 120,000.00	Loan payment has been rescheduled and the term of loan keeps running up to 31/12/2022	The Bank should pursue repayment. Amount cannot be accepted as write-off
Lalala Explorer Co Ltd	GH¢ 200,000.00	Awaiting payment from government contract	Depending on the duration of the debt the CG may consider.
Zuma Company Ltd	GH¢ 100,000.00	Branch management are following up on the customer	Not sufficient grounds to be allowed as a deduction for tax purpose because recovery process is not exhaustive.

Alakpato Company Ltd	GH¢ 40,000.00	Customer referred to loan recovery unit of the Bank	Not sufficient grounds to be allowed as a deduction for tax purpose because recovery process is not exhaustive.
Total	GH¢ 1,480,000.00		

Signed 

Date: 28/5/20

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