

Ghana Revenue Authority issues Practice Notes on various tax issues

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Executive summary

The Commissioner-General (CG) of the Ghana Revenue Authority (GRA), the officer responsible for the day-to-day administration of the GRA affairs and answerable to the Board for the performance of the functions of that office, has issued multiple practice notes on the interpretation of certain provisions in some tax laws pursuant to sections 100 and 101 of the *Revenue Administration Act, 2016, Act 915* (RAA).

This Alert highlights the key interpretations set forth in the practice notes.

Detailed discussion

Section 100 of the RAA empowers the CG to issue practice notes setting out the interpretation he places on certain provisions of the tax laws. Consequently, the CG has issued a number of practice notes covering the following:

1. Taxation of clothing allowance under the *Income Tax Act, 2015, Act 896* (as amended) (ITA)
2. Extension of time for paying tax under the RAA
3. Order of paying tax under the RAA
4. Extension of time for filing tax return under the RAA

5. Acceptance of security under the RAA
6. Bad debt under the ITA

These practice notes were issued in April 2020.

The key points in the practice notes are:

1. Practice Note (DT/2020/001) on clothing allowance under the ITA

This practice note was issued on 28 April 2020.

Following the promulgation of the ITA in 2015, a controversy arose as to whether the clothing allowance provided to employees in certain sectors was taxable. The practice note clarifies and provides guidance on the tax treatment of the clothing allowance pursuant to sections 4(2)(a)(iii), 4(2)(b)(iii) and 130(1)(c) of the ITA.

Personal allowances included in the ascertainment of the profits or gains of an individual from employment for a year of assessment or part of that year pursuant to section 4(2)(a)(iii) of the ITA, includes a clothing allowance. Section 130(1)(c) of the ITA provides that the expenditure incurred by an individual on him/herself in relation to clothing, except clothing not suitable for wearing outside of work, is recognized as a domestic expenditure. Domestic expenditure does not include a payment or benefit provided to the individual which is included in the calculation of the income of the individual, or where the employee provides consideration equal to the market value of the benefit, or where the amount of the expenditure is so small as to make it unreasonable or administratively impracticable to account for (Section 130(2) of ITA).

What is considered as “clothing not suitable for wearing outside of work” is not specifically addressed by the ITA. Consequently, the CG has provided his interpretation of the following as *clothing not suitable for wearing outside of work pursuant to section 130(1)(c)*:

- ▶ The employer’s logo is clearly embossed on the uniform, dress or clothing (a detachable badge is not sufficient to make it a uniform)
- ▶ It is customized with the name of the employer written on it
- ▶ It is safety clothing
- ▶ It is ceremonial clothing of the employer/organization (e.g., Friday wear)
- ▶ The employee would readily be recognized as wearing a uniform by a person in the street

The following examples are stated in the practice note as clothing not suitable for wearing outside of work. These are uniforms provided by the employer and worn by Police Officers, Army Officers, Fire Officers, Prison Officers, Customs Officers, Nurses, Pilots, Cabin Crew, Immigration Officers and such institution with prescribed uniforms and dress code such as gowns and wigs of Judges. According to the CG, official attire which may be worn off-duty cannot be considered as clothing not suitable for outside work unless the rules of the employer/organization restricts its usage outside of work or has duality of purpose.

Taxpayers who prior to the issuance of this practice note have treated all clothing allowances including those suitable for wearing outside of work as non-taxable allowances should review their calculations and pay the applicable tax to the GRA.

2. Practice Note (RAA/2020/02) on extension of time for paying tax under the RAA

This practice note was issued on 30 April 2020.

It provides direction and guidance on the interpretation and application of section 47 of the RAA, which provides the processes of applying for extension of time for payment of tax liabilities, conditions for granting extension of time for payment of tax and circumstances under which an installment agreement will be revoked.

This practice note mainly covers:

- ▶ What constitutes good cause shown for the purposes of extension of time for paying tax
- ▶ Terms and conditions for extension of time for payment of tax
- ▶ Thresholds for extension of time for paying tax

In accordance with section 47 of the RAA, a taxpayer may apply, in writing, to the CG for an extension of time to pay tax under the tax law. Upon receipt of the application, the CG may, where a good cause is shown, extend the date on which the tax is payable on the terms and conditions the CG considers appropriate including the payment of a security deposit, and notify the applicant of the decision.

A person who intends to apply for extension of time for payment of tax liabilities should note and comply with the following conditions:

- a) Show good cause
- b) Terms and conditions for extension of time for paying tax

c) Notification/Agreement

d) Thresholds for the extension of time for paying tax

e) Breach of installment agreement

a) Show good cause

The CG considers the following as factors to be considered in determining whether good cause is shown. These are:

- ▶ Taxpayer's previous compliance status
- ▶ Weak cash flow position, resulting from indebtedness to third parties including the Government
- ▶ Disasters (fire, flood, etc.)
- ▶ Incapacitation due to ill health (applicable to sole proprietors)
- ▶ Burglary

b) Terms and conditions for extension of time for paying tax

An applicant must comply with the following:

- ▶ Complete application form for extension of time for payment
- ▶ Possess a Taxpayer Identification Number (TIN)
- ▶ Provide evidence of lack of liquidity (e.g., bank statement, cash flow statement of debts, etc.)
- ▶ May be required to deposit security in line with Section 8 of the RAA
- ▶ File all tax returns up to date
- ▶ The extension of time for payment of tax should not apply to currently maturing debt
- ▶ Further application for extension of time for paying a rescheduled debt should be made before the end of the extended period
- ▶ The extension of time granted to a taxpayer to pay a debt shall not exceed 12 months in aggregate
- ▶ Agreement to make timely payments
- ▶ Provide accurate information
- ▶ Interest on the overdue tax shall be calculated on the outstanding tax in line with Section 71 of the RAA and added to the principal debt

c) Notification/Agreement

A taxpayer whose application is approved will be issued with Notification/Agreement and a schedule of payment forms containing the details of the agreement and the date of payments.

d) Thresholds for the extension of time for paying tax

The following individuals may provide certain thresholds for the extension of time to pay the tax.

No.	Office	Approving duration
1.	Office manager/ Sector commander	Not more than 4 months
2.	Deputy Commissioner	Not more than 6 months
3.	Commissioner	Not more than 9 months
4.	CG	Not more than 12 months

e) Breach of installment agreement

Finally, default of the installment agreement by a taxpayer will result in the whole balance of the tax outstanding becoming payable immediately.

3. Practice Note (RAA/2020/06) on order of paying tax under the RAA

This practice note was issued on 30 April 2020.

It provides for uniformity in the application of order of payment by the taxpayer by way of:

- ▶ Giving priority to payment of third-party taxes (withholding taxes and Value-Added Tax (VAT))
- ▶ Addressing the scenario of aged liabilities ignored for current ones
- ▶ Resolving non-collection of interests and penalties imposed
- ▶ Notifying taxpayers on the order of payment of multiple tax liabilities

Section 49 of the RAA requires the CG to determine the order of priority of payments where a taxpayer is liable to pay more than one type of tax under a tax law or several tax laws, and the payment made is less than the total amount of tax outstanding.

Per the CG's direction, a person with multiple tax liabilities is required to note and comply with the order of payment as follows:

- ▶ Third party taxes¹
- ▶ Principal liability according to age of the debt (older debt must be settled before current debt)
- ▶ Penalty
- ▶ Interest

4. Practice Note (RAA/2020/01) on extension of time within which to file a tax return under the RAA

This practice note was issued on 30 April 2020.

It provides guidance on granting extension of time within which to file a return under Section 30 of the RAA.

According to section 30, a taxpayer may apply to the CG for an extension of time to file a return before the due date for filing of the return. The application must be in writing and state the reasons for which the extension is sought.

In line with the above provision of the law, the CG has provided grounds upon which an extension may be approved or refused by the GRA as summarized below.

a) Request for an extension of time to file a tax return

A request for an extension of the period for filing a return must state the reasons for failure to file the return within the requisite timeframe.

Failure by a taxpayer to give detailed reasons will result in the refusal of the extension application for the period concerned.

An example of reasonable grounds is where the delay was caused by circumstances beyond the taxpayer's control. However, office managers of the GRA are required to handle the request on a case-by-case basis.

b) Refusal to grant an extension

An application for a grant of extension of time to file a tax return may be refused due to any of the following reasons:

- ▶ Application made after the due date for submission of a return
- ▶ Absence of a taxpayer's representative
- ▶ Taxpayer's failure to file all prior period returns
- ▶ Ignorance of the law regarding the due date for filing a return
- ▶ Taxpayer's failure to make any arrangement to settle outstanding tax liabilities
- ▶ Taxpayer's failure to provide reasonable cause

c) Procedure for applying for an extension

The taxpayer is required to complete and submit the application form to the GRA. The application form must contain the following details of the applicant:

- ▶ TIN

- ▶ Name
- ▶ Address
- ▶ Taxpayer's Tax Office
- ▶ Reasons for the request for extension

d) Limitation on the extension of time to file a tax return

A taxpayer may be granted multiple extensions for the filing of a tax return not exceeding in total 60 days from the date the tax return was originally due to be filed.

e) Granting of multiple extensions

i. Multiple extension for a single tax return

A taxpayer may apply for extension of time to file a tax return under the ITA (i.e., Personal Income Tax (PIT) return).

The extension granted may be 20 days from the due date for the filing of the return.

The taxpayer may apply for a further extension (i.e., when he or she is unable to file within the 20 days).

The taxpayer may be granted a further extension of 30 days starting from the end of the 20 days.

The taxpayer may again apply for a further extension of time to file the PIT return (when he or she is unable to file by the extended 30 days).

The taxpayer may be allowed a further extension of another 10 days only starting from the end of the 50 days, resulting in a total extension of time not to exceed 60 days.

II. Multiple extension for different tax returns

A taxpayer may apply for extension of time to file a tax return under a tax law (e.g., VAT return). The taxpayer may be granted an extension of 35 days from the due date for filing the return. The taxpayer may apply for extension of time to file another tax return - the CIT return - and the taxpayer may be allowed an extension of 30 days. The taxpayer may again apply for extension of time to file an Excise tax return and he or she may be granted an extension of 40 days. This means the total extensions for each tax type should not exceed 60 days.

f) Capacity of persons who may grant extension of time to file a tax return

The granting of extension of time to file a return must be approved by the Head of the GRA tax office.

5. Practice Note (RAA/2020/05) on payment of tax refund under the RAA

This practice note was issued on 30 April 2020.

It provides direction and guidance on the interpretation and application of sections 66 to 68 of the RAA which provides for payment of tax refund.

a) *Payment of tax refund*

Where the CG is satisfied that a refund is due to a taxpayer, he shall:

- ▶ Use the refund to reduce any outstanding tax liability (all tax types) of the taxpayer.
- ▶ Pay any excess after the reduction above to the taxpayer within 90 days from the date of making the decision.

b) *Prescribed rules for payment of tax refund under the RAA*

- ▶ A refund process may be initiated through an application by a taxpayer within three years of the relevant date or at the instance of a court order.
- ▶ The CG must be satisfied that a person has paid excess taxes through a verification process which may include a tax audit.
- ▶ The CG shall, within 60 days of receipt of an application for a refund consider and make a decision that the CG considers appropriate and shall communicate the decision of the CG to the applicant in writing.
- ▶ Upon establishing that the applicant has paid excess tax, the CG shall,
 - Apply the excess to defray any outstanding tax liability of the applicant; and
 - Refund the remainder to the person within 90 days of making the decision.
- ▶ An overpayment established under a particular tax type may be used to defray a liability of another tax type in an order of payment to be determined by the CG.
- ▶ Where the CG is not satisfied that the applicant has paid excess tax, the CG may request further information as may be necessary in order to make a final decision on the application.
- ▶ Where the CG refunds tax in error, the CG may recover the refund as a tax liability.
- ▶ Where the CG fails to refund the excess tax within 90 days, the CG is liable to pay interest on the amount to the taxpayer.

6. Practice Note (RAA/2020/03) on accepting security under the RAA

This practice note was issued on 30 April 2020.

It provides direction and guidance on the interpretation and application of section 8 of the RAA which provides for accepting securities for an obligation under the tax law on terms and conditions specified by the CG.

a) *Forms of securities and their meanings*

The security acceptable for an obligation under the RAA may take the following forms:

- ▶ Bank deposit or banker's draft²
- ▶ Cash deposit³ or the equivalent of a cash deposit⁴
- ▶ Bond⁵ or guarantee⁶
- ▶ Undertaking by an authorized economic operator⁷
- ▶ Charge⁸, lien⁹, mortgage¹⁰ or other fixed interest over property
- ▶ Letters of credit¹¹
- ▶ A combination of (i) to (vi) above/ a combination of securities¹²

b) *Conditions for accepting security*

When providing a security for an obligation under the RAA, the taxpayer shall comply with the following conditions:

- ▶ The taxpayer or the person providing security for the taxpayer shall be duly registered for a TIN.
- ▶ The taxpayer shall be in good standing with respect to compliance with the tax law.
- ▶ The credibility of the taxpayer's guarantor shall be to the satisfaction of the CG.
- ▶ Regarding land and building, the taxpayer shall have a title deed and other proof of ownership and the land and building shall be free from all encumbrances or the taxpayer must have sufficient interest in the property to meet the requirement of the liability.
- ▶ Regarding (b)(iv) above, the land or building shall be valued by a registered valuer at the expense of the taxpayer.
- ▶ Notwithstanding the above conditions, the CG may request for any other conditions where the CG considers appropriate.

c) *Surety of security*

A surety under a bond or other securities taken for the purpose of tax obligation shall be jointly and severally liable with the principal of the bond.

The CG may require a person to execute a new bond or any form of security required by the RAA, where for any reason, in the opinion of the CG the person is unable to satisfy the bond.

d) Release and cancellation of security

The conditions for release and cancellation of a security are set forth in the bond or security agreement.

e) Validity of security

The validity of a security shall be the same validity term set forth in the bond or security agreement.

f) Enforceability of security

The enforceability of a security shall be in accordance with the terms as set forth in the bond or security agreement.

7. Practice Note (DT/2020/002) on bad debts under the ITA

This practice note was issued on 28 April 2020.

It provides clarity and guidance on the tax treatment of bad debts as provided under sections 23(7) and 88 of the ITA to ensure consistency in the administration of the ITA.

The guidance on the treatment of bad debts are divided into (a) bad debts for businesses other than banks, and (b) specific bad debts of a bank.

Bad debts for businesses other than banking business

a) Pursuant to section 23(7) of the ITA, a person shall not be allowed a deduction or debt claim as a bad debt unless the CG is satisfied that:

- i. Reasonable steps have been taken to pursue payment of the debt.
- ii. The bad debt claim or entitlement cannot be satisfied.

Reasonable steps

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

- ▶ Due process followed in respect of the taxpayer's credit policy
- ▶ Issuing reminder notices
- ▶ Use of debt collecting agencies
- ▶ Debt restructuring scheme

- ▶ Rescheduling of debt settlement
- ▶ Negotiation or arbitration of a disputed debt; e.g., legal action (filing of civil suit, obtaining of judgment from the court or and execution of the judgment)

Circumstances when a debt can be considered bad after reasonable steps have been taken

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

Bad debts under banking business

A bank means a body corporate which engages in the deposit-taking business and is issued with a banking license in accordance with the *Banks and Specialised Deposit-Taking Institutions Act, 2016, Act 930*.

a) Specific bad debts

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

The taxpayer may deduct where the CG 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.

b) Conditions for deduction of a bad debt

- ▶ The bad debt write-off must be sanctioned by the Board of Directors and the prior written approval of the Bank of Ghana as condition precedent must be obtained.

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

- Due process followed in respect of the Bank's credit policy
- Issuing Reminder Notices/telephone/mail contact attempted
- Use of debt collecting agencies
- Debt restructuring scheme
- Rescheduling of debt settlement
- Negotiation or arbitration of a disputed debt
- Legal action (filing of civil suit, obtaining of judgment from the court or execution of the judgment)
- ▶ The following conditions must be met in addition to the above:
 - Evidence of efforts made to collect the debt must be documented
 - Due process was followed in granting the loan between the bank and the borrower where direct or indirect relationship exists
 - The collateral provided and checks made to ensure the collateral were not encumbered
 - Whether a valuation was made of any security held against the debt
 - Sale of any seized or repossessed assets to recover the debt in part
- Whether the borrower can be traced or located
- Whether there is any insurance cover for the recovery of the loan
- The age analysis of the loan must be indicated

c) *Security for loans*

A loan may be a:

- ▶ Fully collateralized loan¹³
- ▶ Partially collateralized loan¹⁴
- ▶ Non-collateralized loan¹⁵

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.

d) *General bad debt provision*

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

Endnotes

1. In respect of third-party liabilities, priority should be given to a liability that does not relate to the person (i.e., Pay As You Earn (PAYE), VAT, Communication Service Tax (CST), Withholding Tax (WHT) before others e.g., Company Income Tax (CIT).
2. Bank deposit or banker's draft means a document, ordering the payment of money, drawn by one person or bank on another.
3. Cash deposit means a sum of money lodged as a guarantee for the payment of tax or other sums as may become chargeable.
4. The equivalent of cash deposit means any financial instrument capable of being converted into cash immediately which is acceptable to the CG.
5. Bond means a written and signed promise to pay a certain sum of money on a certain date, or on fulfilment of a specified condition. It is an undertaking in due legal form by which a person binds himself to the CG to do or not to do some specific act.
6. A guarantee means a pledge on a part of a bank or any other financial institution to make a taxpayer's debt good in the event that he or she cannot pay it.
7. Undertaking by an Authorised Economic Operator (AEO) as defined under section 108 of the RAA.

8. Charge means interest in property granted as security for a loan.
9. Lien means a right to keep possession of property belonging to another person until a debt owed by that person is discharged. A lien could also be a charge or encumbrances upon property for the satisfaction of a debt or other duty that is created by the agreement of the parties or especially by operation of law.
10. Mortgage means a lien against a property that is granted to secure an obligation (as a debt) and that is extinguished upon payment or performance according to stipulated terms.
11. Letters of credit are written undertaking by a bank (issuing bank) acting at the request and on the instructions of the taxpayer to make payment to the CG.
12. A combination of securities means where more than one security is accepted to secure an obligation under the tax law, the total security shall be equal to the tax liability.
13. This means 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 write-off would not be accepted as a deduction for tax purposes.
14. This means that 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.
15. Where a loan was given without collateral, the bank should have taken steps to recover the loan.

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