

PENGUMUMAN BERHUBUNG DRAF KETETAPAN UMUM DIMUATNAIK KE LAMAN SESAWANG HASIL UNTUK MAKLUM BALAS ORANG AWAM (PUBLIC CONSULTATION)

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INLAND REVENUE BOARD OF MALAYSIA

BENEFITS IN KIND

PUBLIC RULING NO. /2019

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

The objective of this Public Ruling (PR) is to explain -

- (a) The tax treatment in relation to benefit in kind (BIK) received by an employee from his employer for exercising an employment, and
- (b) The method of ascertaining the value of BIK in order to determine the amount to be taken as gross income from employment of an employee.

2. Related Provisions of the Law

- 2.1 This PR takes into account the law in force at the date it is issued.
- 2.2 The provisions of the Income Tax Act 1967 (ITA) in relation to this Act are paragraphs 13(1)(b), 13(1A) and subsection 32(1).
- 2.3 The relevant subsidiary legislation referred to in this Act is the Income Tax (Exemption) Order 2009 - [P.U. (A) 152/2009]

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Members of his/her immediate family" means his wife or wives and his children, or her husband and her children.
- 3.2 "Child" means a legitimate child or step-child of an individual or his wife, or a child proved to the satisfaction of the Director General to have been adopted by the individual or his wife in accordance with any law.
- 3.3 "New" in relation to a motorcar means a motorcar including a reconditioned motorcar at the time when it was first registered in Malaysia.
- 3.4 "Motorcar" means a motor vehicle other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers.
- 3.5 "Cost of motorcar" means actual cost of the motorcar inclusive of accessories but excluding bank charges, insurance premium and road tax at the time when it was new.
- 3.6 "Cost of leave passage" means cost of fares.
- 3.7 "Employer" in relation to an employment means –
 - a) The master, where the relationship of master and servant subsists,

- b) Where the relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that the person and the employee may be the same person acting in different capacities.

3.8 “Employee” in relation to an employment means-

- a) The servant, where the relationship of servant and master subsists,
- b) Where the relationship of servant and master does not subsist, the holder of the appointment or office which constitutes the employment.

3.9 “Employment” means –

- a) Employment in which the relationship of master and servant subsists,
- b) Any appointment or office, whether public or not and whether or not that relationship subsists, for which the remuneration is payable.

3.10 “Perquisites” means benefits that are convertible into money received by an employee from the employer or third parties in respect of having or exercising the employment.

4. BIK

4.1 Paragraph 13(1)(b) of the ITA provides that the gross income of an employee from an employment also includes any amount equivalent to the BIK provided to the employee by/on behalf of his employer to be personally enjoyed by that employee.

4.2 BIKs are benefits not convertible into money, even though they have monetary value. The phrase **not convertible into money** means that when the benefit is provided to the employee, that benefit cannot be sold, assigned or exchanged for cash either because of the employment contract or due to the nature of the benefit itself.

4.3 All BIKs received by an employee are taxable. However, benefits described in paragraph 8 of this PR are exempt from tax.

4.4 In the case of accommodation provided by/on behalf of the employer to his employee, this benefit is not covered under paragraph 13(1)(b) of the ITA. Instead, it is specifically dealt with under paragraph 13(1)(c) of the ITA and will be explained in detail in a separate PR. These benefits are described in detail in the Public Ruling No. 3/2005: Living Accommodation Benefit Provided for the Employee By the Employer and the Addendum to PR No. 3/2005.

- 4.5 The same applies to benefits that are convertible into money. They represent perquisites from the employment of an employee and are taxable under paragraph 13(1)(a) of the ITA. These benefits are explained in detail in Public Ruling No 2/2013: Perquisite From Employment dated 28 February 2013.

5. Ascertainment of the Value of BIK

- 5.1 Subsection 32(1) of the ITA provides that the value of BIK to be taken as gross income from an employment of an employee is an amount which is just and reasonable in the circumstances. Two methods may be used to determine the value of BIK provided to the employee by the employer. The methods are:

- (a) The formula method, and
- (b) The prescribed value method.

5.2 The Formula Method

- 5.2.1 Under this method, each benefit provided to the employee is ascertained by using the formula below:

$$\frac{\text{Cost of the asset that is provided as benefit/amenity}}{\text{Prescribed average life span of the asset}} = \text{Annual value of the benefit}$$

Here, cost means the actual cost incurred by the employer.

- 5.2.2 For the purposes of applying the formula method, the prescribed average life span of the various assets are as in Appendix 1.

Example 1

Employee A is provided with a refrigerator. The cost of the refrigerator is RM2,000 and the prescribed average life span of the asset is 10 years.

Based on the above formula, the annual value of the BIK for refrigerator is:

$$\frac{\text{RM2,000}}{10} = \text{RM200}$$

The amount of RM200 must be taken into account as part of Employee A's gross income from employment and this amount should be reported by the employer in the employee's CP8A (EA) / CP8C (EC).

- 5.2.3 The prescribed average life span of the assets as tabulated in Appendix 1 must be applied for any benefit/amenity provided regardless whether the asset is old or new.

5.2.4 The value of BIK based on the formula method provided to the employee by the employer can be abated if the BIK is –

- (a) Provided for less than a year, or/and
- (b) Shared with another employee, or/and
- (c) Used for purpose of the business of the employer.

5.3 The prescribed value method

5.3.1 As a concession, the prescribed value method can be used as an alternative to determine the value of the BIK provided by the employer to his employee.

5.3.2 The schedules for the prescribed values of the benefits commonly provided to the employee are as in Appendix 2.

5.3.3 The value of BIK based on the prescribed value method provided to the employee by the employer can be abated if the BIK is –

- (a) Provided for less than a year, or/and
- (b) Shared with another employee

Under the prescribed value method, there is no abatement for business usage on the BIK provided to the employee.

5.4 Consistency

Whichever method is used in determining the value of the benefit provided, the basis of computing the benefit (whether the formula method or the prescribed value method) must be consistently applied throughout the period of the provision of the benefit for each unit of asset.

6. Particulars of BIK

6.1 Motorcar and other related benefits

6.1.1 Where a motorcar is provided, the benefit to be assessed is the private usage of that motorcar and the petrol provided. A motorcar which is provided to the employee is regarded to be used privately if–

- a) It is used for travelling between the office and the employee's home, and
 - b) It is kept at the employee's home where the motorcar can be used by the employee or his family at any time.
-

However, toll fees which are paid by the employer is regarded as inclusive in the value of the BIK on the motorcar. Maintenance costs such as servicing, repairs, annual road tax and annual insurance premium are not regarded as part of the benefit of the employee.

- 6.1.2 The computation of BIK in respect of a motorcar should be based on the formula method. Under this method an abatement of 20% is given, which is deemed to be the value of the motorcar at the time when it is returned to the employer by the employee. Hence, the formula to be applied in respect of BIK on a motorcar is as follows:

$$\frac{\text{Cost of the motorcar}}{8 \text{ (Prescribed Average Life Span)}} \times 80\% = \text{Annual value of benefit of the motorcar}$$

Example 2

Employee B is provided with a new Honda City. The benefit is provided to him throughout the year 2018. The cost of the motorcar is RM81,000.

The annual value of BIK in respect of the motorcar which is taxable as part of Employee B's gross income from employment for the year of assessment 2018 is as follows :

$$\frac{81,000}{8} \times 80\% = \text{RM8,100}$$

- 6.1.3 However, as a concession, the prescribed value method can be used. The prescribed value for a motorcar is given as in Appendix 2. Under the prescribed value method, the valuation of the benefit will be based on the cost of the motorcar at the time when it was new. This treatment is also applicable to :

- (a) A secondhand motorcar, and
- (b) A leased / rented motorcar

Example 3

The facts are the same as in Example 2.

Using the prescribed value method, the annual value of BIK in respect of the motorcar which is taxable as part of Employee B's gross income from employment for the year of assessment 2018 is RM3,600.

Example 4

Employee C is provided with a used car which was purchased by his employer for RM120,000. The cost of the motorcar when new was RM205,000.

Using the prescribed value method, the annual value of BIK in respect of the motorcar which is taxable as part of Employee C's gross income from employment for the year of assessment 2018 is RM9,000 instead of RM5,000.

Example 5

Employee D is provided by his employer with a new car which is leased from a leasing company. The cost of the motorcar when new is RM90,000. The employer paid a monthly lease rental of RM3,000 for 48 months.

Using the prescribed value method, the annual value of BIK which is taxable as part of Employee D's gross income from employment for the year of assessment 2018 is RM3,600. Payment for the lease rental is ignored.

6.1.4 Where an employee enjoys the benefit of a motorcar with free petrol, the value of BIK in respect of petrol to be included as part of the employee's gross income from employment will depend on the method used to value the BIK of the motorcar. The benefit on free petrol to be declared is:

- (a) The actual amount of petrol expenditure incurred by the employer, or
- (b) The prescribed value as provided in Appendix 2 of this PR - The prescribed value of motorcar and its related benefits.

Example 6

Throughout the year 2018, Employee E is provided with a 3 year-old used car which was purchased by his employer for RM180,000 together with the amenity of free petrol. The cost of the motorcar when new was RM206,000. The petrol bill incurred by the employer in respect of this motorcar in the year 2018 was RM6,000.

The annual value of BIK in respect of the motorcar and petrol which are taxable as part of Employee E's gross income from employment for the year of assessment 2018 are as follows:

Type Of BIK	Based On The Formula Method (RM)	Based On The Prescribed Value Method (RM)
Motorcar	$\frac{\text{Cost of motorcar}}{\text{Average life span of the motorcar}} \times 80\%$ $= \frac{180,000}{8} \times 80\% = 18,000$	9,000
Petrol	6,000 (actual value of petrol)	2,100

- 6.1.5 Where the motorcar is not provided throughout the calendar year, the value should be adjusted appropriately based on months or days in accordance to the period provided.

Example 7

Employee F is provided with a new motorcar costing RM120,000 for the period of January to September 2018. He is also provided with the amenity of free petrol. The cost of petrol incurred by his employer for this period on the motorcar is RM2,700.

The annual value of BIK in respect of the motorcar and petrol which are taxable as part of Employee F's gross income from employment for the Year of Assessment 2018 are as follows:

Type Of BIK	Based On The Formula Method (RM)	Based On The Prescribed Value Method (RM)
Motorcar	$\frac{120,000}{8} \times 80\% \times \frac{9}{12} = 9,000$	$5,000 \times \frac{9}{12} = 3,750$
Petrol	2,700 (actual value of petrol)	$1,500 \times \frac{9}{12} = 1,125$

- 6.1.6 Where the motorcar is shared with another employee, the value of the BIK in respect of the motorcar and petrol will be reduced proportionately.

Example 8

Using the Example 7, the motorcar is shared with another employee.

The annual value of BIK in respect of the motorcar and petrol which are taxable as part of Employee F's gross income from employment for the year of assessment 2018 will be as follows:

Type Of BIK	Based On The Formula Method (RM)	Based On The Prescribed Value Method (RM)
Motorcar	$9,000 \times \frac{1}{2} = 4,500$	$3,750 \times \frac{1}{2} = 1,875$
Petrol	$2,700 \times \frac{1}{2} = 1,350$	$1,125 \times \frac{1}{2} = 562.50$

6.1.7 In case where different cars are provided during a calendar year, the appropriate values for the respective periods should be ascertained in arriving at the annual value of the benefit.

Example 9

Employee G is provided with a new motorcar costing RM120,000 for the period from January to September 2018. For the period from October to December 2018, he is given the benefit of another new and bigger motorcar. The old car was given to another employee. The cost of this new motorcar is RM180,000. Employee G enjoys the benefit of free petrol throughout the year. The cost incurred by the employer in respect of petrol for each car for the respective period from January 2018 to September 2018 and October 2018 to December 2018 in relation to Employee G is as follows:

- Old car - RM2,700
- New car - RM1,200

The annual value of BIK which are taxable as part of Employee G's gross income from employment for the Year of Assessment 2018 are as follows:

Type Of BIK	Based On The Formula Method (RM)	Based On The Prescribed Value Method (RM)
Motorcar		
Jan-Sept 2018	$120,000/8 \times 80\% \times 9/12 = 9,000$	$5,000 \times 9/12 = 3,750$
Oct-Dec 2018	$180,000/8 \times 80\% \times 3/12 = 4,500$	$7,000 \times 3/12 = 1,750$
Petrol		
Jan-Sept 2018	2,700 (actual value of petrol)	$1,500 \times 9/12 = 1,125$
Oct-Dec 2018	1,200 (actual value of petrol)	$1,800 \times 3/12 = 450$

6.1.8 Where the prescribed value method is applied to value the BIK in respect of the motorcar provided and where the motorcar provided is more than 5 years old, the annual value of the BIK in respect of that motorcar can be reduced to half (1/2) of the prescribed value.

However, the value of the BIK in respect of petrol remains unchanged.

(Note: This abatement is not applicable if the value the BIK in respect of the motorcar is determined under the formula method.)

Example 10

Employee H is provided with a 7-year old Volvo with free petrol throughout the year 2018. The cost of the Volvo when new was RM285,000. His employer has incurred RM6,000 on petrol in respect of this Volvo.

The annual value of BIK in respect of the Volvo and petrol which are taxable as part of Employee H's gross income from employment for the year of assessment 2018 are as follows:

Type Of BIK	Based On The Formula Method (RM)	Based On The Prescribed Value Method (RM)
Motorcar	$\frac{285,000}{8} \times 80\% = 28,500$ <p>(there is no entitlement to reduce the BIK in respect of the motorcar to $\frac{1}{2}$ even if the motorcar provided is more than 5 years old)</p>	$15,000 \times \frac{1}{2} = 7,500$ <p>(value of BIK in respect of motorcar can be reduced to $\frac{1}{2}$ if the motorcar provided is more than 5 years old)</p>
Petrol	6,000	2,400

6.1.9 However, where the BIK in respect of the motorcar and its related benefit are valued under the formula method, a reduction in the value of the benefits can be made if the -

- (a) Motorcar is used partly for business purposes, or/and
- (b) Employee is required to pay a sum of money to his employer for the benefit provided.

6.1.10 In order to substantiate claims made for business purposes, sufficient records must be kept by the employee as evidence for purpose of verification in the case of an audit.

Example 11

Employee J is provided with a 6-year old motorcar with free petrol throughout the year 2018. The motorcar was purchased by the employer at a cost of RM200,000. The total mileage of the motorcar

in the year 2018 is 36,000 km out of which 12,000 km is in respect of J's private use. His employer has expended RM8,400 on petrol in respect of this motorcar. J is required to pay his employer RM1,200 to subsidize the cost of petrol that is incurred by his employer. The cost of the motorcar when new was RM280,000.

The annual value of BIK which are taxable as part of Employee J's gross income from employment for the Year of Assessment 2018 are as follows:

Type Of BIK	Based On The Formula Method (RM)	Based On The Prescribed Value Method (RM)
Motorcar	<p>Steps –</p> <p>(i) $200,000/8 \times 80\% = 20,000$</p> <p>(ii) $20,000 \times 12,000/36,000 = 6,667$ The value to be included as gross income from employment = RM6,667.</p> <p>(There is no abatement to reduce the value to $\frac{1}{2}$ of the prescribed value although the motorcar is > 5 years old. However, a reduction is given for business use.)</p>	<p>$15,000 \times \frac{1}{2} = 7,500$</p> <p>The value to be included as gross income from employment is RM7,500.</p> <p>(The value in respect of the motorcar is reduced to $\frac{1}{2}$ of the prescribed value since the motorcar is > 5 years old.)</p>
Petrol	<p>Steps –</p> <p>(i) $8,400 \times 12,000/36,000 = 2,800$</p> <p>(ii) $2,800 - 1,200 = 1,600$</p> <p>The value to be included as gross income from employment is RM1,600.</p> <p>(Abatement/deduction can be given in respect of: (i) the business use of the benefit, and (ii) expenses paid by the employee.)</p>	<p>2,400</p> <p>The value to be included as gross income from employment is RM2,400.</p> <p>(There is no abatement for business use or payment made by the employee.)</p>

6.1.11 Further explanation on the benefits of tax exemption on free petrol is described in paragraph 8.2.12.

6.2 Petrol provided without car

The benefit that is taxable is the total value of petrol provided to the employee.

6.3 Driver provided

Where a driver is provided, the value of this benefit to be included as gross income from employment is fixed at RM600 per month. In the case where a driver is not specifically provided to any employee but he comes from a pool of drivers provided by the employer solely for business purposes, no benefit will be taxable on the employee.

6.4 Household furnishings, apparatus and appliances

6.4.1 The formula method as given in paragraph 5.2 is to be used to determine the value of any BIK related to household furnishings, apparatus and appliances provided to the employee by his employer. As a concession, the prescribed value method may be used. However, if this method of valuation is chosen, there will be no further deduction for any expense incurred by the employee in acquiring the benefit. The prescribed value in respect of these benefits is given in Appendix 2 under the heading of Prescribed value of household furnishings, apparatus and appliances.

6.4.2 The value may be adjusted by reference to whether any or all of the above categories of furnishings are provided.

Example 12

Employee K is being provided with all the benefits related to household furnishings, apparatus and appliances as stated in Appendix 2 except for those in Category 1.

He will be assessed on the value of these BIKs amounting to RM2,520 (RM3,360 - RM840).

6.4.3 The values may also be adjusted suitably by reference to the period provided.

Example 13

Employee Z is provided with all the benefits under Category 1 with effect from 1.4.2018.

The value of the BIK in respect household furnishings, apparatus and appliances of for the year of assessment 2018 is RM630 (RM840 x 9/12).

- 6.4.4 An adjustment on the value of the BIK may also be made if the furnishing / apparatus / appliances are shared with other employees.

Example 14

The facts are the same as in Example 13 and Employee Z is required to share the benefits provided to him with another employee. The value of these BIK for the year of assessment 2018 will be RM315 (RM630 X ½).

- 6.4.5 Fans and water heaters are disregarded as they are treated as forming part of the residential premises.

- 6.5 The output tax imposed on the BIK is borne by the employer

Subsection 13(1A) of the ITA is introduced to explain the tax treatment on goods and services tax (GST) involving BIK, perquisites and value of living accommodation. GST taxes are supposed to be borne by employees because they receive benefits in the form of goods, but are borne by employers as part of those benefits.

This tax treatment is effective from year of assessment 2015. However, GST has been repealed as of 1st June 2018.

Example 15

Bluewave Enterprise is registered with the Royal Malaysian Customs Department. A mobile phone of Sony Xperia worth of RM2,000 was spent on Ms Mira on the appointment as a new Marketing Director. Output tax has been charged on the mobile phone for RM300.

Bluewave Enterprise is only entitled to claim RM2,000 as a business expense under section 33 of the ITA. Whereas the output tax related to the price of the cell phone is not eligible for claim under paragraph 39(1)(p) of the ITA.

The mobile phone, which includes an output tax amounting RM2,300, is BIK which should be reported in Ms Mira's annual income statement.

(Further explanation on this benefit are described in detail in the Public Ruling 3/2017: Income Tax Treatment of Goods and Services Tax Part III – Employee Benefits: GST Borne by An Employer.)

- 6.6 Other assets

Other assets provided to the employees for entertainment, recreation or other purposes such as piano, organ, television, stereo set, swimming pool and

others will constitute as additional benefits and should be separately assessed based on the formula.

7. Other Benefits

7.1 The prescribed value for other benefits are listed in Appendix 2 under the heading of : Prescribed values of other benefits.

7.2 Other benefits not listed should be valued based on the formula:

$$\frac{\text{Cost of asset provided as benefit}}{\text{Prescribed average life span of the asset}} = \text{Annual value of the benefit}$$

8. Tax Exemption On BIKs Received By An Employee

8.1 BIK received by an employee pursuant to his employment are chargeable to tax as part of gross income from employment under paragraph 13(1)(b) of the ITA.

8.2 However, there are certain benefits-in-kind which are either exempted from tax or are regarded as not taxable.

8.2.1 Dental benefit

8.2.2 Child-care benefit

Child care centres provided by employers to their employees' children.

8.2.3 Food and drink provided free of charge

8.2.4 Free transportation between pick-up points or home and the place of work (to and from)

8.2.5 Insurance premiums which are obligatory for foreign workers as a replacement to SOCSO contributions

8.2.6 Group insurance premium to cover workers in the event of an accident.

8.2.7 Benefit consisting of –

- (a) Leave passage in Malaysia of not more than 3 times in one calendar year, or
- (b) Overseas leave passage of not more than once in any calendar year limited to a maximum amount of RM3,000.

The exemption of this benefit is only applicable if it is provided to the employee and members of his immediate family.

- 8.2.8 Benefits used by the employee solely for purposes of performing his employment duty.
- 8.2.9 Discounted price for consumable business products of the employer and discounted price for services provided by the employer.

8.2.9.1 Goods and services offered at discounted prices are not taxable if it is proven that the goods and services -

- (a) Are not convertible into money by the employee even though they have money's worth. The meaning of **not convertible into money** is that when the benefit is provided to the employee, it cannot be sold, assigned or transferred either due to the contract of employment or the type of benefit which is provided,
- (b) Must be for the benefit of the employee and is used by the employee personally, and
- (c) Are provided to employees as a whole and not provided specifically to a certain group of employees only.

8.2.9.2 Tax treatment

- (a) Discounted price for consumable business products of the employer
 - (i) The value of the discount on goods will be exempted up to a maximum of RM1,000. If the value of the discount exceeds RM1,000, only the amount exceeding RM1,000 will be taxable. The goods can be provided to the employee either free of charge (fully discounted) or at a partly discounted price. The value of the goods is based on the sales price.
 - (ii) Goods which are consumable business products of the employer include either goods manufactured by the employer or goods which are trading stocks of the employer.

Example 16

Pro Mesra Sdn Bhd which sells toiletries gives each of their employees free toiletries items

which are valued at RM1,200 in the year 2018. In year 2019 the employees are given toiletries items at a discounted price. The value of the discount given to each employee is RM700.

The employees are exempted from tax on the discounted value of goods received up to an amount of RM1,000 whereas the excess of RM200 will be charged to tax in the year of assessment 2018.

In the year of assessment 2019 the employees are exempted from tax on the amount of discount received which is RM700.

- (b) Discounted price for services provided by the employer

Discounted price for services provided by the employer for the employee's benefit is fully exempted from tax.

Example 17

A dentist who operates a private dental clinic provided free dental treatment to his dental assistant in the year 2018. The dentist's normal charge for dental treatment is RM100.

His assistant is exempted from tax on the discounted value of services received i.e. RM100 from the employer in the year of assessment 2018.

Example 18

A bank provides free investment consultation services to its employees in the year 2018. The bank also provides its employees with a discounted amount for purchase of its newly launched investment product.

The employees qualify for exemption from tax on the discounted value of investment consultation services received from the employer. However, the employees will be taxed on the value of discounted investment product received from the employer since the product does not fall under the meaning of consumer product of the employer or services provided by the employer.

- (c) Only benefits received by an employee from his employer, either in the form of consumable business products or services, is exempted from tax.

Benefits received by an employee from a company within the same group of companies as its employer are not exempted from tax. For this purpose, a holding company and all its subsidiaries are regarded as companies within the same group regardless of whether the companies are in Malaysia or outside Malaysia.

Example 19

Michael and Wong are both employees of Food Manufacturing Sdn Bhd which manufactures biscuits. Michael received free biscuits manufactured by his employer, valued at RM500, in the year 2018. Whereas, Wong received cakes manufactured by Confectionery Sdn Bhd, worth RM500, in the year 2018. Confectionery Sdn Bhd is a related company of Food Manufacturing Sdn Bhd.

Michael is fully exempted from tax on the discounted value of goods received in the year of assessment 2018 but Wong does not qualify for exemption in the year of assessment 2018 because the goods are not products of his employer.

- (d) Benefits provided to a spouse or unmarried children of the employee (children in respect of whom an employee is eligible to claim for a deduction under section 48 of the ITA) is considered to be benefits received by the employee.

8.2.10 Modern medicine, traditional medicine and maternity

- a) The medical treatment benefit exempted from tax is in respect of modern medicine, traditional medicine and maternity. Traditional medicine means Malay Traditional Medicine, Chinese Traditional Medicine and Indian Traditional Medicine. Examples of the treatment are malay traditional massage, ayurvedic or acupuncture.
- b) Traditional medicine can be defined as alternative health practices, approaches, knowledge and belief incorporating plant, animal and/or mineral based medicines, spiritual therapies,
-

manual techniques and exercises applied singularly or in combination to maintain well-being, as well as to treat, diagnose or prevent illness.

- c) Traditional medicine which qualifies for the exemption is treatment given by a medical practitioner registered with bodies which are certified or registered in accordance with the rules, governing traditional medicine as laid down by the Ministry of Health. Some of the qualifying bodies are as below:
- (i) Malay Traditional Treatment
Gabungan Pertubuhan Pengamal Perubatan Tradisional Melayu Malaysia
 - (ii) Indian Traditional Treatment
Pertubuhan Perubatan Tradisional India Malaysia
 - (iii) Chinese Traditional Treatment
Persatuan Tabib Tionghoa Malaysia
 - (iv) Homeopathy Treatment
Majlis Pertubuhan Homeopathy Malaysia
 - (v) Chiropractic and Osteopathy Treatment
Gabungan Pertubuhan Perubatan Komplementari dan Alami Malaysia
 - (vi) Islamic Medical Practice
Persatuan Perubatan, Pengubatan dan Kebajikan Islam Malaysia
- d) Complementary medicine is not included in this exemption. Some examples of complementary medicine are aromatherapy, reflexology, spa and Thai traditional massage.
- e) Maternity expense which qualifies for the exemption is for treatment in respect of pregnancy or child birth. The treatment has to be given by:
- Certified medical doctors who practice modern medicine, or

- Medical practitioners registered with bodies which are certified or registered in accordance with the rules, governing traditional medicine as laid down by the Ministry of Health.

8.2.11 Benefit on free petrol

- a) Benefit on free petrol, whether in the form of petrol card provided by the employer or petrol bill paid by the employer, is BIK received by an employee pursuant to his employment. The benefit that is taxable is the total value of petrol provided to the employee and is chargeable to tax as part of gross income from employment under paragraph 13(1)(b) of the ITA.
- b) Paragraph 6.1.4 of this PR states that if an employee enjoys the benefit of a motorcar with free petrol, the value of benefit on petrol to be included as part of gross income from employment will depend on the method used to value the benefit on motorcar. The benefit on free petrol to be declared is:
 - (i) The actual amount of petrol expenditure incurred by the employer, or
 - (ii) The prescribed value as provided in Appendix 2 of this PR.
- c) Tax exemption on petrol benefits

An employee is given an option to –

- (i) Determine the amount of free petrol to be taxed based on the annual prescribed value for petrol as per Appendix 2 of this PR without any exemption given, or
- (ii) Enjoy the exemption on free petrol benefit but limited to RM6,000 per year for travelling in exercising an employment and the excess exceeding RM6,000 to be chargeable to tax.

However, if an employee receives free petrol exceeding RM6,000 in exercising his employment, a claim for deduction for official duties can be made by the employee in computing his employment income. Records pertaining to the exempted amount and the claim for official duties should be kept for a period of 7 years for audit purposes.

Example 20

Simon is provided with a 3 year-old used car which was purchased by his employer for RM180,000 together with the amenity of free petrol. The cost of the motorcar when new was RM206,000. The petrol bill incurred by the employer in respect of this motorcar in the year 2018 was RM8,900.

The annual value of BIK on car and petrol for the year of assessment 2018 is computed as follows:

Types Of BIK	Based On The Formula Method (RM)	Based On The Prescribed Value Method (RM)
Motorcar	$\frac{180,000}{8} \times 80\% = 18,000$	9,000
Petrol	8,900 (actual value of petrol)	2,100

Simon is given the option to declare the value of the benefit on petrol as follows:

- Chargeable to tax on RM2,100 i.e the prescribed value for petrol as per Appendix 2 of this PR, or
- Apply the exemption on free petrol benefit limited to RM6,000 for travelling in exercising his employment and the excess exceeding RM6,000 is chargeable to tax i.e RM2,900.

(iii) The exemption is not applicable to the benefit on motorcar. Therefore, the value of benefit on motorcar chargeable to tax is determined based on the formula method or the prescribed value method on motorcar i.e. as per Appendix 2 of this PR.

Example 21

Based on Example 20, if the car is provided by the employer in the year 2018, the value of benefit on motorcar chargeable to tax is :

- RM18,000 based on the formula method.
- RM9,000 based on the prescribed value method.

8.3 Non-application

8.3.1 The above tax exemption does not apply if the employee who was given BIK by the employer has control over his employer. Thus, the BIK received by that director or employee is taken to be part of his gross income from employment and taxable under paragraph 13(1)(b) of the ITA.

8.3.2 For the purposes of this PR, control over his employer means:

8.3.2.1 For a company, the power of an employee to control is through the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first mentioned company are conducted in accordance with the wish of the employee

8.3.2.2 For a partnership, the employee is a partner of the employer, or

8.3.2.3 For a sole proprietor, the employee and the employer is the same person

9. Employer's Responsibilities

9.1 In accordance with subsection 83(1) of the ITA, the employer is required to report in the employee's statement of remuneration (Form EA and EC) and Form E for the employer, all payments in respect of services provided by the employee including all types of BIKs. This includes the benefits provided for the spouse, family, servants, dependent or guest of the employee. The failure by the employer to comply with this subsection will render the employer liable to prosecution under subsection 120(1) of the ITA.

9.2 In accordance with section 82 of the ITA, the employer is also required to keep records and receipts pertaining to all claims on expenses incurred on the employees. These records and receipts must be kept for a period of seven (7) years from the end of the year to which any income from that business relates for the purposes of verification during a tax audit. However, where the employer has failed to furnish its Income Tax Return Form (ITRF) for a year of assessment, the employer shall keep and retain those records that relate to that year of assessment for a period of seven years after the end of the year in which the ITRF is furnished. The failure by the employer to comply with this section will render the employer liable to prosecution under section 119A of the ITA.

- 9.3 An employer is responsible to prepare a detailed list of all BIKs received and tax exempted by each employee in the respective Employee's Salary Statement for each year of assessment.

10. Employee's Responsibilities

- 10.1 In accordance with subsection 77(1) of the ITA, the employee is required to report in the ITRF BE or B (whichever is applicable) all payments received in respect of having or exercising the employment including all types of BIKs received from the employer or third parties. This includes benefits received for the spouse, family, servants, dependent or guest of the employee. The failure by the employee to comply with this section will render the employee liable to prosecution or penalty under section 112 of the ITA. Where the employee under declares his income, he is liable to prosecution or penalty under section 113 of the ITA.
- 10.2 In accordance with section 82A of the ITA, the employee is required to keep records and documents pertaining to all receipts from the employer or third parties in respect of having or exercising an employment including the receipts of BIKs. Such records or documents must be kept for a period of seven (7) years from the end of the year of assessment the ITRF is furnished for purposes of verification during a tax audit. However, where the employee has failed to furnish his ITRF for a year of assessment, the employee shall keep and retain those records that relate to that year of assessment for a period of seven years after the end of the year in which the ITRF is furnished.

11. Monthly Tax Deduction (MTD)

Where an employee receives a BIK from his employment, the employer must ensure that the tax to be charged on the BIK is deducted from the employee's remuneration based on the Schedule (Rule 3) of the monthly Income Tax Deductions under the Income Tax (Deduction From Remuneration) Rules in the month in which the BIK is paid. In the case where the salary of the employee is not sufficient to absorb the monthly income tax deduction on the BIK, the employer is required to obtain the approval of the LHDNM for payment of MTD on the BIK by instalments.

12. Deduction Claim

12.1 Deduction claim by employers

Capital expenditure incurred by the employer to provide the BIK to employees are entitled to capital allowances and industry building allowances [paragraph 42A(2)] under Schedule 3 of the ITA other than the expenses specified under Income Tax (Deduction for Benefit and Gift From Employer to Employee) Rules 2009 [P.U.(A) 153/2009], where employers are entitled to special deductions in ascertaining the adjusted income from its business in the basis period for a year of assessment.

12.2 Deduction claim by employees

A claim for a deduction can only be made in respect of the formula method. Any claim for deduction in respect of official use of any BIK must be made by the employee himself in his ITRF. Records pertaining to the claims must be kept for a period of seven years for purpose of audit.

13. Updates and Amendments

This PR replaces the PR No. 3/2013 dated 15 March 2013.

No.	Paragraph	Remarks
1.	6.5 and 11	New paragraph inserted
2.	8.2.9.2, 8.2.10, 8.2.11, 8.2.12 and 12	These paragraphs are amended
3.	Appendix 2	This appendix is amended

14. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

**Director General Of Inland Revenue,
Inland Revenue Board Of Malaysia**

APPENDIX 1
**PRESCRIBED AVERAGE LIFE SPAN OF VARIOUS ASSETS
PROVIDED BY EMPLOYERS TO EMPLOYEES**

ASSETS	PRESCRIBED AVERAGE LIFE SPAN (YEARS)
1. Motorcar	8
2. Furniture and fittings: (i) Curtains and carpets (ii) Furniture, sewing machine (iii) Air conditioner (iv) Refrigerator	5 15 8 10
3. Kitchen equipment (i.e. crockery, rice cooker, electric kettle, toaster, coffee maker, gas cooker, cooker hood, oven, dish washer, washing machine, dryer, food processor etc.)	6
4. Entertainment and recreation: (i) Piano (ii) Organ (iii) TV, video recorder, CD/ DVD player, stereo set (iv) Swimming pool (detachable), sauna	20 10 7 15
5. Miscellaneous	5

APPENDIX 2
PRESCRIBED VALUE OF BENEFITS IN KIND COMMONLY PROVIDED BY EMPLOYERS TO EMPLOYEES
1. THE PRESCRIBED VALUE OF MOTORCAR AND ITS RELATED BENEFITS

Cost Of Motorcar (New) RM	Annual Prescribed Benefit Of Motorcar RM	Annual Prescribed Benefit Of Petrol RM
Up to 50,000	1,200	600
50,001-75,000	2,400	900
75,001-100,000	3,600	1,200
100,001-150,000	5,000	1,500
150,001-200,000	7,000	1,800
200,001-250,000	9,000	2,100
250,001-350,000	15,000	2,400
350,001-500,000	21,250	2,700
500,001 and above	25,000	3,000

2. PRESCRIBED VALUE OF HOUSEHOLD FURNISHINGS, APPARATUS AND APPLIANCES

CATEGORY	TYPE OF BENEFIT	ANNUAL PRESCRIBED VALUE OF BIK PROVIDED (RM)
1	Semi-furnished with furniture in the lounge, dining room or bedroom.	840
2	Semi-furnished with furniture as in Column 1 and one or two of the following: <ul style="list-style-type: none"> ▪ air-conditioners ▪ curtains and alike ▪ carpets 	1,680
3	Fully furnished with benefits as in Columns 1 and 2 as above plus one or more of kitchen equipment, crockery, utensils and appliances	3,360
4	Service charges and other bills such as water and electricity.	Service charges and bills paid by the employer.

APPENDIX 2 (Continuation)

(i) PRESCRIBED VALUE OF OTHER BENEFITS

ITEM	TYPE OF BENEFIT		VALUE OF BIK PER YEAR
1	Telephone (including mobile phone)		(i) Hardware - fully exempt for one unit for each asset category (ii) Bills - fully exempt in respect of one unit per asset excluded in paragraph (i) above.
2	Recreational club membership	a) Individual membership – Membership subscription paid or reimbursed by employer	Tax treatment on the benefit received on the employee as follows- (i) Entrance fee for club membership - taxed under paragraph 13(1)(a) of the ITA (ii) Monthly/annual membership subscription fees for club membership - taxed under paragraph 13(1)(a) of the ITA (iii) Term membership - taxed on the amount of payment made under paragraph 13(1)(a) of the ITA
		b) Corporate membership – Membership subscription paid by employer	Tax treatment on the benefit received on the employee as follows- (i) Entrance fee - not taxable (ii) Monthly/annual membership subscription fees for club membership - taxed on the prescribed value under paragraph 13(1)(b) of the ITA
3	Gardener		RM3,600 per gardener
4	Household servant		RM4,800 per servant



INLAND REVENUE BOARD OF MALAYSIA

**TAX TREATMENT ON REPAIRS AND
RENEWALS OF ASSETS**

PUBLIC RULING NO. /2019

Translation from the original Bahasa Malaysia text.

DATE OF PUBLICATION: 2019



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INLAND REVENUE BOARD OF MALAYSIA

**Public Ruling No. /2019
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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 (ITA) provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

The objective of this Public Ruling (PR) is to explain the deductibility of a repair and renewal expense of an asset from a source of income of a person.

2. Relevant Provisions of the Law

- 2.1 This PR takes into account laws which are in force as at the date this PR is published.
- 2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 33 and 39.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Building" includes any structure erected on land (not being plant or machinery).
- 3.2 "Rent" or "rental income" or "income from letting" includes any amount received for the use or occupation of any real property or part thereof including premiums and other receipt in connection with the use or occupation of the real property.

4. Introduction

Generally, under subsection 33(1) of the ITA, an expense which is wholly and exclusively incurred in the production of gross income from a source is allowable as a deduction against gross income from that source. However, the allowable expenses under subsection 33(1) of the ITA is subject to specific prohibition under subsection 39(1) of the ITA.

5. Expenses on Repairs

Generally, a repair and renewal expense is claimed against a person's gross income from a business source or a rental source.

Paragraph 33(1) of the ITA allows a deduction for the expenses wholly and exclusively incurred for:

- a) the repair of premises, plant, machinery or fixtures employed in the production of gross income; or
- b) the renewal, repair or alteration of any implement, utensil or article employed in the production of gross income from that source other than implements,

utensil or article on which the expenditure would be qualifying plant expenditure for the purposes of Schedule 3 of the ITA.

However, the cost of reconstructing or rebuilding:

- a) any premises, building, structures or works of a permanent nature;
- b) any plant or machinery, or
- c) any fixtures

are not allowed as a deduction against the gross income in ascertaining the adjusted income from that source.

6. Categories of Repair Expenses

An expenditure on repair can be allowed as a deduction, if that expenditure is wholly and exclusively incurred in the production of gross income under subsection 33(1) of the ITA. Where the expenditure on repair is not wholly and exclusively incurred in the production of gross income, such expenditure shall not be allowed as a deduction.

The word 'repair' is not defined in the ITA. According to the definition in the dictionary, the word 'repair' means to restore (a composite, structural and others) to good condition by renewing or replacing the damaged parts. In general, repair is a situation where a structure or a building is restored to its original state by renewing or replacing the parts which cannot be used or are damaged to its original condition without any element of improvement, addition and alteration. It is an expenditure incurred solely to put the asset in its existing condition which would enable it to function properly to its previous efficiency. However, repair should not involve the reconstruction or rebuilding of an entire asset or a substantial part of the entire asset. An asset needs repair when the efficiency of the asset is not at its original condition as it has already been used in the operations of the business.

6.1 Repairs to restore assets to their original condition

Expenditure incurred in maintaining an asset (which is employed in generating income from a source) to enable it to function properly and efficiently, is allowed as a deduction in ascertaining the adjusted income from that source.

Example 1

Syarikat Binajaya provides railway services that carry passengers to enjoy the different sights in the city. The company continuously performs the repairs and maintenance to ensure that the rails and tracks are in good condition. In 2018, the company discovered that the rails had been damaged and were dangerous to be used. The rails could not be repaired and instead, the

company had to replace them. Syarikat Binajaya claimed a deduction on the expenses incurred for replacing the rails.

The expenditure for replacing the railway rails is an expenditure for repair and therefore a permissible deduction against the gross income of the business. It is because the replacement of railway rails has no element of improvement but instead, the replacement is to restore the railway to its original state and to allow the company to continue generating its revenue and not to create a new asset.

Example 2

Syarikat Ispahan runs a business of providing rail services and incurred expenses on repairs on several of the railway tracks owned by the company. In doing the repairs, the company replaced the original rail tracks made of steel with iron tracks to increase the weight of the track.

The expenditure incurred on the repairs of the railway track is not merely restoring the asset to its original condition but it has caused significant alteration to the character of the line. The track is not repaired but instead it is replaced with a track made of a higher quality material. The repairs has caused alteration to the tracks and it is an improvement to the asset. The expenditure on repairs is capital in nature which is not allowed as a deduction against gross business income.

6.2 Initial Repairs

When an asset is acquired in a state of disrepair or an asset has not been used for a long time and is in need of repairs before it can be effectively used, the expenditure incurred for the repairs is an initial expense. Repairs are necessary to put the asset in a state where it can be used in the business operations. The acquirer generally acquired the asset at a lower price due to the physical condition of the asset and repairs are necessary before the asset can be used. An expenditure on repairs which is incurred to place an asset that has just been acquired into a commercially-usable state is an initial expense and is not allowed as a deduction in ascertaining the adjusted income.

The defects in an asset arose from the operations of a previous business and expenditure on repairs on those defects should be allowed against the previous business income. Therefore, where there are accumulated repairs required to be carried out on an asset prior to the date the asset is used in the business, the cost of such repairs may be initial repairs and thus capital in nature.

Example 3

Syarikat Chester purchased a building to be used in its business. The building had not been occupied for a long time and the company needs to restore the building by doing some repair works before the building can be used in the business.

The expenditure for repairs on the building incurred by Syarikat Chester is an initial repair and is not allowed as a deduction. The repairs carried out to restore the building and to enable it to be used in the business was incurred immediately after the building was acquired. When the building was purchased by Syarikat Chester, it was in a bad state of disrepair and was not suitable for occupancy or for use in the business and repairs on the building were required before the building can be used in the business. Therefore, the expenses incurred is an initial expenditure which is capital in nature and is not allowed as a deduction.

Example 4

Permana Sdn. Bhd. owns several chains of convenience stores and the company acquired a dilapidated shop lot to expand its chain. Upon acquiring the lot, Permana Sdn. Bhd. carried out some repairs on that shop lot before it could be used in the business. In addition to that, Permana also did some normal repairs on two of its existing stores. The company claimed the cost of repairs on all of its shop lots as a deduction against the gross income of the business.

The repairs carried out on the shop lot which was newly acquired in order to put the shop lot in the state suitable to be used in the business is an initial expenditure which is not allowed as a deduction. The shop lot which was in a dilapidated state had not been in use for a long time and required significant repairs before it could be used. The cost of repairs includes repair which was accumulated from the past. Therefore, the expenditure incurred to repair the dilapidated shop lot which was newly acquired is an initial expense which is capital in nature and is not deductible. However, the expenditure on repairs done on two existing convenience stores is allowed as a deduction if it is wholly and exclusively incurred in the production of gross income and has no element of improvement and alteration.

6.3 The replacement of the entirety or part of the entirety

6.3.1 A repair involves the replacement of a subsidiary part of the entire asset. Renewals, on the other hand, is the replacement of most parts of the entire asset. However, where a renewal involves replacement of the whole asset, such expenditure would be capital in nature and thus not deductible.

It is important to distinguish between replacing a part of the entire asset and replacing the entire asset (entirety) when allowing a repair expenditure as a deduction. If a building is an entirety then the doors, windows, walls and stairs are part of the entirety. Typically, an expense which involves replacement of the entire asset is a capital expenditure while replacement of some part of a larger asset is a revenue expenditure.

Example 5

Syarikat Hijau owns paddy fields in Alor Setar, Kedah. To ensure that the excess water from the paddy fields is drained to the river, the company installed a few water gates to control the drainage system in the paddy fields. Each water gate is important to ensure the proper functioning of the drainage system as a whole. In year 2018, one of the water gates was damaged which caused a leakage and the company replaced the damaged water gate with a new water gate. Syarikat Hijau claimed a deduction on the installation of the new water gate which replaced the old one that was damaged.

The drainage system is the whole asset while the water gate is part of the drainage system. Installing the new water gate to replace the old one is necessary to ensure the proper functioning of the drainage system as a whole and did not create a new asset. The water gate was installed to maintain the existing drainage system and therefore, the expenditure to install the water gate is incurred in the production of income. The cost of installing a new water gate to replace the old one is an expenditure on repair and is allowed as a deduction in computing the adjusted income of the business.

Example 6

Miracle Bhd. runs a paper processing business. A factory owned by the company which was located in a low-lying area was often flooded during the rainy season. When it rained heavily, the water from a nearby river would rise and would seep into the factory. For that reason, Miracle Bhd. built a wall barrier made of brick to prevent water from seeping in. However, floods which occurred frequently had caused the wall barrier to erode over time and thus allowing water to enter the factory. The company had made a few attempts to repair the eroded wall barrier but that was not effective. In 2018, the company replaced the old wall with a new wall barrier. The new wall was built wider than the old one and the structure of the new wall barrier was made of concrete and steel pipes.

The renewal made by Miracle Bhd. involved an improvement which created a new structure or building which was significantly different when compared to the old wall barrier. The company did not repair

the wall but it made a significant improvement by building a wider wall made of concrete and steel pipe. The new wall is not part of the entire factory but it is the entire asset itself (wall barrier). Therefore, the expenditure on repairs incurred by Miracle Bhd. is capital in nature and is not allowed as a deduction.

Example 7

Harta Sdn. Bhd. is an investment holding company and owns a building which was rented out as a factory. Harta Sdn. Bhd. received rental income which is taxable under paragraph 4(a) of the ITA as the company provides maintenance and support services comprehensively and actively. In 2018, the company made some repairs by replacing the roof of a factory building since the old roof was found to have rusted and had caused leakages which damaged the equipment inside the factory. The company replaced the old roof with a roof that has the same features and quality as the original roof.

The repairs done by Harta Sdn. Bhd. only involve the replacement of part of the building structure and do not involve any improvement which alter the original structure of the building. The factory building is the whole asset (entirety) while the roof of the factory building is a part of the whole building and the repairs done only involve the replacement of part of the entire asset. In addition, the new roof which replaced the old has the same quality as the old one and it does not involve any improvement or renewal. Therefore, the expenses incurred by Harta Sdn. Bhd. to replace the roof of a building which is part of the entire building is revenue in nature and is allowed as a deduction against the rental income under paragraph 4(a) of the ITA.

Note:

If Harta Sdn. Bhd. does not provide maintenance and support services comprehensively and actively and the rental income is taxable under paragraph 4(d) of the ITA, the expenses incurred in replacing the roof would also be allowed as a deduction from that rental income.

Example 8

Coal Star Sdn. Bhd. is a coal mining company in Perak. The company built a chimney in its factory to drain out gas and fume when coal was burned. After 8 years of using it, the chimney became unsafe to be used. To replace the chimney, Coal Star built a new chimney near the old one. The new chimney was built better and bigger than the old one and it would take over the work of the old chimney once the new one is completed. Coal Star Sdn. Bhd. claimed the cost of

construction of the new chimney as a deduction against gross income.

The old chimney was not repaired but instead the company replaced it with a new chimney. The new chimney was built at a little distance from the old chimney. During the construction of the new chimney, the old one was still in use until the new chimney was completed and can be used. The replacement is for the entire asset (entirety), which is the chimney itself and not repairing the old chimney. Therefore, the expenditure to replace the old chimney with a new one cannot be allowed as a deduction because it is capital in nature.

- 6.3.2 Although a part is regarded as part of the entire asset, but if a replacement of that part resulted in a change to the entire asset, the expenses incurred shall be regarded as capital expenditure and shall not be allowed as a deduction.

For example, a company who owns a 3-storey factory building rebuilt the factory roof that was in a bad state of repair. The new roof was built higher and wider than the existing roof and there was an element of improvement in the repairs. Although the roof is part of the entire asset, the replacement of a higher and wider roof has changed the shape of the factory building, which is the entire asset. Therefore, the expenditure is capital in nature and is not deductible.

6.4 Replacement or Improvement

Replacement of part of an asset which is damaged is allowable as a deduction if the original structure of the asset is retained without any improvement. Where repair or replacement involves improvement which caused changes to the asset, the expenditure is capital in nature and shall not be allowed as a deduction. Any expenditure incurred for repair or replacement which involves improvement so that the new structure of the asset differs from the old is regarded as capital expenditure.

However, there is a situation where replacement and repair could cause changes to the asset but as long as the repair does not alter the original function of the asset and simply restores to the original use of the asset in the business, the expenditure shall be allowed. It is important to distinguish whether the repair restores the asset to the existing structure and function or it resulted in the existence of a new asset.

Example 9

Syarikat Macaron runs a paper-processing business and one of the buildings used as a factory has suffered damages where there was a leakage in the roof of the factory. The company did not just repair the roof, but instead the

building was lengthened and heightened and the roof was replaced with a new roof.

Syarikat Macaron incurred an expenditure in making improvement to the building and the roof, which resulted in changes to the original structure of the building. All expenses incurred on lengthening and heightening the building are capital expenditures and are not allowed as deductions. Similarly, the expenditure incurred in replacing the old roof with a new one is not deductible as the expenditure is capital in nature. Furthermore, the repairs of the roof and the building cannot be separated from the overall repairs.

Example 10

Noir Berhad has several cinemas which were used in its business. One of the cinemas ceiling suffered severe damage. The company consulted an architect regarding the damage and after some evaluation made on the damaged ceiling, the architect was of the opinion that normal repair would not restore the ceiling back to its original state. He was of the opinion that repair should involve the replacement of the entire ceiling. Noir Berhad incurred the cost of replacing the damaged ceiling with new modern and quality ceiling.

The repair made by the company involved the replacement of the entire ceiling which was an important structure of the cinema. The replacement of the ceiling did not just meet the need for restoration of the asset but it provided a ceiling with much better features and with no need for repair in the future. The replacement is an improvement to the asset. Therefore, the total cost of replacing the old damaged ceiling to a new ceiling is a capital expenditure and is not allowed as a deduction.

Example 11

Birdnest Sdn Bhd. runs its business in an old building which was leased for 25 years. The lease agreement stated that tenants were not allowed to make any renovations to the building except for the purpose of reinstating the property. In 2017 Birdnest agreed with the lease owner to perform some major repair works to restore the building. The company carried out repairs which involved changes to the roof and part of the interior and the front of the building. The construction materials used for repairs are more modern and of better quality as compared to the original construction materials since the building was an old building.

Birdnest Sdn. Bhd. claimed the expenditure on repairs as a deduction in ascertaining the adjusted income of its business.

The expenditure on repairs incurred by Birdnest Sdn. Bhd. to reinstate the building was revenue in nature and is allowed as a deduction. Although there were some changes in the structure of the building after the repairs were carried out with the use of different building materials, the building was an old

building and the construction technique has also changed if compared to the technique used when the building was first built. The purpose of the company in performing the repairs on the building was to enable it to continue to earn profit from the business and not by creating a new asset. The repairs simply put the building into a state which would enable the company to continue using the building.

6.5 Implements, utensils or articles with a life span of less than two years

Expenditure incurred on the replacement, repairs and renewal of implements, utensils or articles used in the production of income is allowed as a deduction against gross income on a replacement basis. Generally, replacement of implements, utensils or articles that have an expected life span of not more than two years is allowed as a deduction in ascertaining the adjusted income. Normally, expenditure which is allowed on replacement basis is the expenditure on the replacement of small items in terms of size and price. Examples of implements, utensils or articles that can be allowed as a deduction on a replacement basis include dishes, spoons, forks, knives and pots. The determination of the life span of an asset will be based on the facts of each case and a person who wishes to claim a deduction on the asset is responsible for determining its life span. The tax treatment on the replacement of implements, utensils or articles that have an expected life span of not more than 2 year is applicable to all types of business.

However, for expenditure allowed on a replacement basis for implements, utensils or articles used in the production of income, such expenses shall be allowed when it is incurred for the second time. Expenses incurred for the first time on the asset is regarded as capital expenditure and is not allowed as a deduction. The same applies to the estimated provision provided to replace implements, utensils or articles used in the production of income which is not allowed since the expenditure is not incurred.

7. Summary

Generally, the expenditure on repairs and renewals that are capital and revenue in nature are as follows:

REPAIRS	
Revenue expenditure (allowed as a deduction)	Capital expenditure (not allowed as a deduction)
Repair which restores an asset to existing condition	Repairs or replacement with an element of improvements or renewal to assets / altering the original condition of the asset

Repairs which allow businesses to continue	Initial expenditure or repairs on assets immediately after asset is acquired
Replacement of part of the entire asset	Replacement of the entire asset (entirety)
Replacement and renewals of implements, utensils or articles that have an expected life span of not more than two years	

8. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia**