



INLAND REVENUE BOARD OF MALAYSIA

TAX BORNE BY EMPLOYERS

PUBLIC RULING NO. 11/2016

Translation from the original Bahasa Malaysia text.

DATE OF PUBLICATION: 8 DECEMBER 2016



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Published by
Inland Revenue Board of Malaysia

Second edition

First edition on 17.1.2006

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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 computation of –

- (a) perquisite relating to income tax of an employee borne by an employer; and
- (b) tax payable by the employee who is entitled to this perquisite.

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 2, 7, 13, 21, 25, 46, 47, 48, 49, 77, 77C, 83, 107 and Part 1 of Schedule 1.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 “Resident”, in relation to an employee, is an employee resident in Malaysia for the basis year for a year of assessment (YA) by virtue of section 7 of the ITA.
- 3.2 “Non-resident” for a basis year for a year of assessment in relation to an employee means an employee other than a resident employee.
- 3.3 “Individual ” means a natural person.
- 3.4 “Employer”, in relation to an employment, means –
 - (a) where the relationship of master and servant subsists, the master;
 - (b) where that relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that that person and the employee may be the same person acting in different capacities.
- 3.5 “Employee”, in relation to an employment, means –
 - (a) where the relationship of servant and master subsists, the servant;
 - (b) where that relationship does not subsist, the holder of the appointment or office which constitutes the employment.

3.6 "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 remuneration is payable.

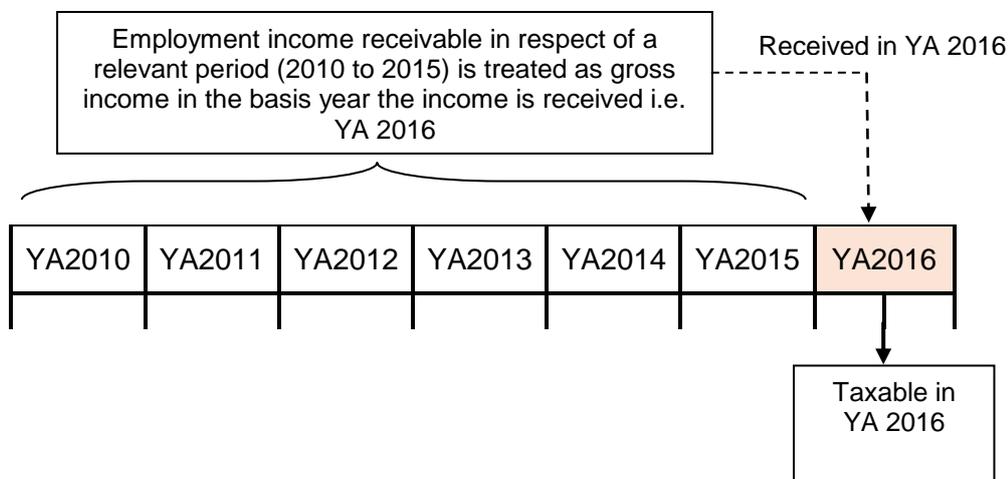
3.7 "Perquisite", in relation to an employment means benefits in cash or in kind that are convertible into money received by an employee from the employer or third parties in respect of having or exercising the employment.

3.8 "Basis year", in relation to a YA for an income from employment source is the basis period for that YA.

3.9 "Year of assessment" means the calendar year.

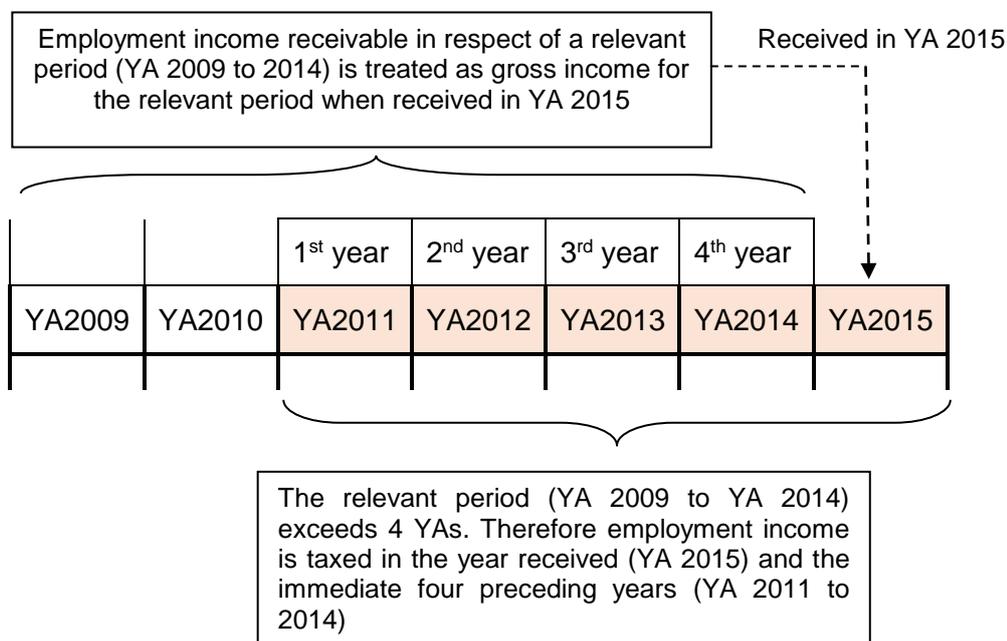
4. Basis Period to which Employment Income is Related

Effective YA 2016, with the amendment to section 25 of the ITA, employment income receivable in respect of a relevant period is treated as gross income of the employee in the period it is received. In other words, gross income from an employment which is receivable for any basis year for a YA is taxed in the basis year it is received. This is summarised in the following diagram:



Prior to the YA 2016, employment income receivable in respect of a relevant period was treated as gross income of the employee for the relevant period when received by an employee. Where income received relates to a particular period which exceeds four YAs, the income will be treated as gross income of the basis

year for the YA the income is received and the immediate preceding four YAs. This is summarised in the following diagram:



5. Income Tax of the Employee Borne by the Employer - A Perquisite to the Employee

Income tax is a personal monetary liability of an employee. The **agreement by the employer to pay** the income tax of the employee **does not relieve the employee from tax liability** on the amount of income tax borne by the employer. The full or partial amount of the employee's income tax may be paid by the employer. When the income tax liability of an employee is paid by the employer, this benefit falls within the definition of **perquisite** and is part of the gross income from employment under paragraph 13(1)(a) of the ITA.

6. Tax Treatment of Employee's Tax Borne by the Employer

The tax treatment of income tax of the employee borne by the employer is as follows:

6.1 Computation of perquisite in relation to income tax borne by the employer

The income tax of an employee borne by his employer for a basis year for a YA is treated as income of that employee in that basis year when the actual amount of tax for that YA can be ascertained, that is in the following basis year. As such, an employee would not be taxed on the benefit in the basis year when his employment commences as the benefit only arises in the following year.

Example 1

Hendrik, a citizen of Sweden who is married and has a preschool child, arrived in Malaysia on 25.3.2015 to commence employment on 1.4.2015. The terms of his employment contract were as follows:

- (a) period of employment in Malaysia is for 2 years;
- (b) salary of RM20,000 per month for the first 9 months and after that an annual increment of RM12,000 until the cessation of the employment contract on 31.3.2017;
- (c) entitled to receive bonus based on the company's performance; and
- (d) Hendrik's income tax is borne entirely by the employer.

Hendrik's employer declared bonus for 2015 in 2016 and he received a sum of RM40,000 for the year ended 31.12.2015 on 30.8.2016. In January 2017, bonus arrears amounting to RM10,000 in respect of 2016 is received by Hendrik. Hendrik is a tax resident for the YA 2015 and 2016. He is not a tax resident for the YA 2017.

The computation of Hendrik's tax payable for the years of assessment 2015 to 2016 are as follows:

Year of Assessment 2015

	RM	RM
Salary RM20,000 X 9 (1.4.2015 - 31.12.2015)		180,000
Less:		
Deduction for self (section 46 of the ITA)	9,000	
Deduction for wife (section 47 of the ITA)	3,000	
Deduction for child (section 48 of the ITA)	<u>1,000</u>	<u>13,000</u>
Chargeable income		<u>167,000</u>
		RM
Tax on the first RM100,000		11,900.00
Tax on the balance RM67,000 @ 24%		<u>16,080.00</u>
Tax payable ¹		<u>27,980.00</u>

¹Hendrik's tax payable for the YA 2015 is RM27,980. The tax borne by Hendrik's employer is a perquisite to Hendrik. This perquisite is treated as part of Hendrik's gross income from employment under paragraph 13(1)(a) of the ITA for the basis year 2016 (YA 2016).

Year of Assessment 2016

	RM	RM
Salary RM21,000 X 12 (1.1.2016 - 31.12.2016)		252,000
Bonus receivable for 2015 but received in 2016		40,000
Tax for YA 2015 borne by the employer ¹		<u>27,980</u>
Total income		319,980
Less:		
Deduction for self	9,000	
Deduction for wife	4,000	
Deduction for child	<u>2,000</u>	<u>15,000</u>
Chargeable income		<u>304,980</u>
Tax on the first RM250,000		47,900.00
Tax on the balance RM54,980 @ 24.5%		<u>13,470.10</u>
Tax payable ²		<u>61,370.10</u>

²Hendrik's tax payable for the YA 2016 is RM61,370.10. The entire tax payable is borne by Hendrik's employer, which is a perquisite to him and is treated as part of his gross income from employment under paragraph 13(1)(a) of the ITA for the YA 2017 and is taxable in the YA 2017. The bonus arrears of RM10,000 receivable for the YA 2016 but received in the YA 2017 is taxable in the YA 2017.

6.2 Computation of perquisite if there is a reduced assessment

Where there is a change in taxable income or chargeable income which results in a reduced assessment for a YA, the tax for that YA and the following YA (regardless whether it results in an additional or reduced assessment) has to be recomputed to ascertain the actual tax payable which should be borne by the employer.

Example 2

Same facts as in Example 1 and Hendrik makes an appeal against the assessment for YA 2015 and 2016 under section 131 of the ITA. Hendrik had overlooked a claim for a deduction in respect of life insurance premiums under section 49 of the ITA amounting to RM6,000 per year which had been expended.

The tax payable for the respective YA must be recomputed to ascertain the tax payable which is borne by the employer. The recomputation is as follows:

Year of Assessment 2015 - Reduced Assessment

	RM	RM
Salary RM20,000 X 9 (1.4.2015 - 31.12.2015)		180,000
Less:		
Deduction for self	9,000	
Deduction for wife	3,000	
Deduction for child	1,000	
Deduction for life insurance premium (section 49 of the ITA)	<u>6,000</u>	<u>19,000</u>
Chargeable income		<u>161,000</u>
Tax on the first RM100,000		11,900.00
Tax on the balance RM61,000 @ 24%		<u>14,640.00</u>
Tax payable ³		26,540.00
Less: Original assessment for YA 2015 ¹		<u>27,980.00</u>
Tax discharged as a result of the claim for life insurance premium		<u>1,440.00</u>

³The revised tax payable for YA 2015 which was borne by the employer after taking into account the deduction for life insurance premium claimed by Hendrik is reduced to RM26,540.00. Hendrik's tax payable for YA 2016 must also be recomputed as the tax borne by the employer has been revised.

Year of Assessment 2016 – Reduced Assessment

	RM	RM
Salary RM21,000 X 12 (1.1.2016 - 31.12.2016)		252,000
Bonus receivable for 2015 but received in 2016		40,000
Tax for YA 2015 borne by the employer ³		<u>26,540</u>
Total income		318,540
Less:		
Deduction for self	9,000	
Deduction for wife	4,000	
Deduction for child	2,000	
Deduction for life insurance premium	<u>6,000</u>	<u>21,000</u>
Chargeable income		<u>297,540</u>
		RM
Tax on the first RM250,000		47,900.00
Tax on the balance RM47,540 @ 24.5%		<u>11,647.30</u>
Tax payable ⁴		59,547.30
Less: original assessment for YA 2016 ²		<u>61,370.10</u>
Tax discharged as a result of the claim for life insurance premium and revised tax allowance for YA 2015		<u>1,822.80</u>

⁴The revised tax payable for YA 2016 which was borne by the employer after taking into account the life insurance premium claimed by Hendrik and the revised perquisite (tax allowance for YA 2015) is reduced to RM59,547.30. This amount is treated as part of Hendrik's gross income from employment for the YA 2017.

6.3 Computation of perquisite if there is an additional assessment

Where there is a change in taxable income or chargeable income which results in an additional assessment for a YA, the tax for that YA and the following YA (regardless whether it results in an additional or reduced assessment) has to be recomputed to ascertain the actual tax payable which should be borne by the employer.

If there is additional tax for a YA which is borne by the employer, this additional tax is an additional perquisite to the employee. This additional perquisite will not be related back to the YA concerned but is regarded as the employee's gross income from employment under paragraph 13(1)(a) of the ITA for the YA in which the additional assessment is made.

Example 3

Same facts as in Example 1 and Hendrik's employer omitted to include the rental of RM5,000 per month paid by the company for living accommodation in the Statement of Income (Form EA) for the year ended 31.12.2015. This information was reported in 2017 in the Form EA for the year ended 31.12.2016 and the additional assessment on the living accommodation for YA 2015 was made in 2017. The employer did not provide living accommodation for YA 2016 and YA 2017.

As Hendrik's employment ceases on 31.3.2017, his tax payable is computed in accordance with paragraph 6.6 of this PR. For the purpose of this example, it is assumed that Hendrik makes an election that subsection 25(6) of the ITA is not to be applied in relation to his gross income from employment.

The tax payable for the YA 2015 must be recomputed to ascertain the tax payable which is borne by the employer. The recomputation of the tax payable for YA 2015 and the computation of the tax payable for YA 2017 are as follows:

Year of Assessment 2015 – Additional Assessment

	RM	RM
Paragraph 13(1)(a) of the ITA		
Salary RM20,000 X 9 (1.4.2015 to 31.12.2015)		180,000

Paragraph 13(1)(c) of the ITA	
30% X RM180,000 = RM54,000	
Or	
Defined value of accommodation = RM5,000 X 9 =	
RM45,000	
Whichever is lower	<u>45,000</u>
Gross/adjusted/statutory income from employment/total income	225,000
Less:	
Deduction for self	9,000
Deduction for wife	3,000
Deduction for child	<u>1,000</u>
Chargeable income	<u>212,000</u>

	RM
Tax on the first RM100,000	11,900.00
Tax on the balance RM112,000 @ 24%	<u>26,880.00</u>
Tax payable ⁵	38,780.00
Less original assessment for YA 2015 ¹	<u>27,980.00</u>
Additional tax	10,800.00
Penalty under section 113(2) of the ITA (25%)	<u>2,700.00</u>
Additional tax payable ⁶	<u>13,500.00</u>

⁶The additional tax payable of RM13,500 for the YA 2015 is borne by the employer and is an additional prerequisite to Hendrik. This additional prerequisite is only determined in 2017 and therefore must be treated as gross income from employment under paragraph 13(1)(a) of the ITA for the YA 2017, i.e the year in which the additional assessment is made.

For further information on the penalty rates, please refer to the Tax Audit Framework (Amendment 1/2015) dated 1.2.2015 obtainable from Inland Revenue Board of Malaysia (IRBM) website at <http://www.hasil.gov.my>.

Year of Assessment 2017 – Non-Resident

Computation of tax allowance for the purposes of the final computation

	RM
Salary RM22,000 X 3 (1.1.2017 to 31.3.2017)	66,000
Bonus arrears receivable for 2016 but received in 2017	10,000
Tax for YA 2016 borne by the employer ²	61,370
Additional tax for YA 2015 borne by the employer ⁶	<u>13,500</u>
Total income/Chargeable income	<u>150,870</u>

Income tax payable RM150,870 @ 28% = RM42,243.60⁷

Final computation

	RM
Salary RM22,000 X 3 (1.1.2017 to 31.3.2017)	66,000
Bonus arrears receivable for 2016 but received in 2017	10,000
Tax for YA 2016 borne by the employer ²	61,370
Additional tax for YA 2015 borne by the employer ⁶	13,500
Tax for YA 2017 borne by the employer ⁷	<u>42,244</u>
Total income/Chargeable income	<u>193,114</u>

Income tax payable RM193,114 @ 28% = RM54,071.92

The tax payable of RM54,071.92 for the YA 2017 is borne by the employer.

6.4 Computation of perquisite where an employee's tax is partially borne by an employer

Where an employer agrees to pay only a portion of the employee's tax for a YA, only that portion of tax borne by the employer is a perquisite and treated as gross income from employment of the employee under paragraph 13(1)(a) of the ITA.

Example 4

Miyamoto, a Japanese citizen commenced employment in Malaysia with Co. A on 1.1.2014. The terms of the employment contract were as follows:

- (a) period of employment in Malaysia is for 2½ years;
- (b) salary of RM18,000 per month;
- (c) half (½) of Miyamoto's income tax liability was borne by his employer; and
- (d) benefits provided are –
 - (i) handphone (one unit) registered under Miyamoto's name and monthly bills will be paid by the employer;
 - (ii) car for personal use and for work purposes (a brand new car is purchased for RM200,000 in 2014);
 - (iii) petrol (actual value of petrol paid by the employer was RM12,000, RM13,000 and RM7,000 respectively for YA 2014, 2015 and 2016). Miyamoto does not keep records of his work related trips in 2014. He subsequently keeps records which shows that the cost of petrol relating to work amounts to RM9,000 and RM7,000 for YA 2015 and 2016 respectively;

and

- (iv) free living accommodation. The rent paid by the employer for the accommodation is RM5,000 per month.

The value of the benefits provided above are as follows:

No.	Benefit	Tax Treatment	Reference
1.	Handphone and Monthly bills	Exempted from tax	Income Tax (Exemption) Order 2009 [P.U.(A) 152] and PR No. 2/2013 (Paragraph 8.4.1 and 8.4.2)
2.	⁸ Car	If the prescribed value is used to determine the value of the benefit-in-kind, there is no abatement if the car is used for business purposes. The value of the Benefit in kind should be adjusted appropriately in accordance to the period the car is provided.	PR No. 3/2013 Paragraph 7.1.3 and 7.1.8 Paragraph 7.1.5
3.	⁹ Petrol	An employee is given an option to – (i) determine the amount of free petrol to be taxed based on the annual prescribed value of petrol as per Appendix 2 of PR 3/2013; or (ii) Enjoy the exemption on	PR No. 3/2013 Paragraph 9.2.12 Income Tax (Exemption)

		<p>the amount of petrol used as follows:</p> <p>Petrol allowance is exempted up to a maximum of RM6,000 a year (if the employer is unable to identify the value of petrol related to private and business purposes)</p> <p>If the employer is able to identify the usage of petrol allowance exceeding RM6,000 per year for the business of the employer based on records kept by the employee, the actual sum of the allowance expended for business purposes may be exempted.</p>	<p>Order 2009 [P.U.(A) 152] and PR No. 2/2013 [Paragraph 8.2.1 (b) – (e)]</p>
4.	¹⁰ Living accommodation	The value has to be determined.	Subsection 32(2) of the ITA and PR No. 3/2005 and Addendum to the PR No. 3/2005

Miyamoto is a resident for the YA 2014 to 2016.

The computation of tax payable by Miyamoto for YA 2014 and 2015 are as follows:

Year of Assessment 2014

	RM	RM
Paragraph 13(1)(a) ITA		
Salary RM18,000 X 12 (1.1.2014 - 31.12.2014)		216,000
Paragraph 13(1)(b) ITA		
Car (prescribed value method) ⁸	7,000	
Petrol (prescribed value method) ⁹	<u>1,800</u>	8,800
Paragraph 13(1)(c) ITA		
30% X 216,000 = RM64,800 ¹⁰		

Or	
Defined value of accommodation = RM5,000 X 12 = RM60,000	
Whichever is lower	<u>60,000</u>
Gross/adjusted/statutory income from employment/total income	284,800
Less :	
Deduction for self	<u>9,000</u>
Chargeable income	<u>275,800</u>

	RM
Tax on the first RM100,000	13,850.00
Tax on the balance RM175,800 @ 26%	<u>45,708.00</u>
Tax payable ¹¹	<u>59,558.00</u>

As the employer agreed to bear half of the tax payable by Miyamoto, only RM29,779¹² (1/2 X ¹¹RM59,558) is considered a perquisite. This perquisite is regarded as part of Miyamoto's gross income from employment under paragraph 13(1)(a) of the ITA for basis year 2015 (YA 2015).

Year of Assessment 2015

	RM	RM
Paragraph 13(1)(a) ITA		
Salary RM18,000 X 12 (1.1.2015 - 31.12.2015)		216,000
Tax for YA 2014 that is partially borne by the employer ¹²		<u>29,779</u>
		245,779

Paragraph 13(1)(b) ITA		
Car (prescribed value method) ⁸	7,000	
Petrol (prescribed value method) ⁹	<u>1,800</u>	8,800

Paragraph 13(1)(c) ITA
30% X RM245,779 = RM73,734¹⁰

Or	
Defined value of accommodation = RM5,000 X 12 = RM60,000	
Whichever is lower	<u>60,000</u>
Gross/adjusted/statutory income from employment/total income	314,579
Less :	
Deduction for self	<u>9,000</u>
Chargeable income	<u>305,579</u>

	RM
Tax on the first RM250,000	47,900.00
Tax on the balance RM55,579 @ 24.5%	<u>13,616.85</u>
Tax payable ¹³	<u>61,516.85</u>

Miyamoto's employer bears half of the tax payable by Miyamoto for the YA 2015 ie. RM30,758.43¹⁴ (1/2 X ¹³RM61,516.85), which is considered a

perquisite. This amount is regarded as part of Miyamoto's gross income from employment for the YA 2016.

The computation of tax payable for the YA 2016 is shown in Example 7 under paragraph 6.6.2 of this PR.

Note

If with effect from YA 2016, Miyamoto's taxes are no longer borne by his employer, the portion of tax borne by the employer for YA 2015 will still be regarded as part of Miyamoto's gross income from employment under paragraph 13(1)(a) of the ITA for YA 2016. Miyamoto will have to fully bear his tax payable for the YA 2016. Since Miyamoto's tax for YA 2016 is not borne by his employer, therefore there would not be any tax borne by the employer for YA 2016 to be assessed as gross income from employment under paragraph 13(1)(a) of the ITA in YA 2017.

6.5 Computation of prerequisite where an employee defaults in furnishing the Income Tax Return Form

Where an employee has defaulted or has not furnished the Income Tax Return Form (ITRF) Form B, BE or M within the stipulated time, the tax payable by the employee includes the penalty imposed on him under subsection 112(3) of the ITA. If the amount of penalty is borne by the employer as well, the total amount of tax payable by the employer is a prerequisite to the employee and must be treated as gross income from employment under paragraph 13(1)(a) of the ITA.

Example 5

Same facts as in Example 4 except that Miyamoto files the Form BE 2015 late on 31.7.2016 instead of on the due date ie. 30.4.2016. He is charged a penalty under subsection 112(3) of the ITA for late submission of the ITRF. Miyamoto's income tax and penalty for the YA 2015 is partially borne by the employer.

The computation of tax payable and penalty are as follows:

Year of Assessment 2015

Tax payable by Miyamoto must include the penalty imposed on him.

	RM
Tax payable as computed in Example 4 ¹³	61,516.85
Penalty under subsection 112(3) of the ITA (20%)	<u>12,303.37</u>
Tax payable ¹⁵	<u>73,820.22</u>

Miyamoto’s employer bears half of the tax payable for the YA 2015 ie. RM36,910.11 (1/2 X ¹⁵RM73,820.22), which is considered a perquisite that arises as a benefit in the following YA i.e. in YA 2016.

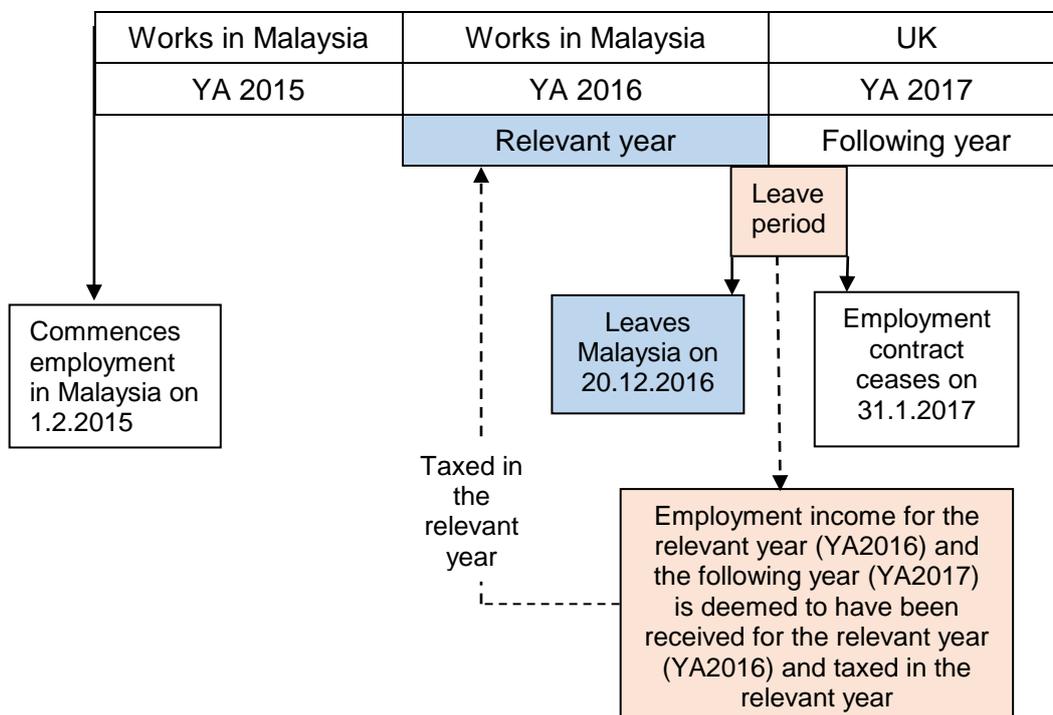
6.6 Computation of perquisite in cases where the employee has left or will be leaving Malaysia

6.6.1 In the case of an employee who has left or intends to leave Malaysia and is entitled to a tax benefit which is considered a perquisite under paragraph 13(1)(a) of the ITA, the provisions of subsection 25(6) of the ITA must be applied as follows:

Where an employee –

- (i) has left or will be leaving Malaysia in the basis year for a YA;
- (ii) is not resident in Malaysia for the basis year for the following YA and does not derive any pension from Malaysia for that basis year; and
- (iii) ceases to derive gross income from employment from Malaysia on the expiration of a period of leave following his departure from Malaysia,

the employment income receivable for the relevant year or for the basis year of the YA following the relevant year shall be deemed to have been received in the basis year in which he leaves Malaysia.



However, the employee may elect to make a written request to the Director General of Inland Revenue (DGIR) that subsection 25(6) of the ITA is not to be applied in relation to his gross income from the employment. This election can be made via a letter at the time the employee files his ITRF for the relevant YA before his departure from Malaysia. In other words, the employee may make a request by writing a letter to the DGIR stating that the gross income for the following YA (YA 2017) be taxed in that following year (YA 2017) and not to be treated as deemed to have been received in the year (YA 2016) he leaves Malaysia.

For further explanation on the determination of the residence status of individuals, refer to PR No.6/2011 dated 16.5.2011 titled "Residence Status of Individuals" which can be obtained from the IRBM website at <http://www.hasil.gov.my>.

6.6.2 For leaver cases as mentioned in paragraph 6.6.1 above, the computation of tax has to be made twice for the final year in which the employee is in Malaysia. The computation is to be carried out as follows:

Step 1 - Computation of the tax allowance; and

Step 2 - Final computation to determine the actual amount of income tax payable by the employee which includes tax on the final tax allowance.

Example 6

Same facts as in Example 1 except that Hendrik's employment contract is terminated effective 31.1.2017 and he leaves Malaysia on 1.12.2016. All remunerations from 1.12.2016 to 31.1.2017 is paid to him in 2017. A notification by employer of employee's departure from Malaysia (Form CP21) is submitted by the employer to the IRBM's branch office handling Hendrik's file on 30.11.2016. When the Form CP21 is filed to the IRBM, Hendrik would be required to complete the ITRF for the relevant YA.

Subsection 25(6) of the ITA applies as Hendrik –

- (a) leaves Malaysia on 1.12.2016;
- (b) is not resident in Malaysia for the following basis year (2017);
- (c) does not derive pension from Malaysia for the following basis year (2017); and
- (d) ceases to receive gross income from employment from Malaysia at the end of the leave period (1.12.2016 to

31.1.2017) following his departure (1.12.2016) from Malaysia.

The following are taxed in the year Hendrik leaves Malaysia i.e YA 2016:

- (i) Tax payable by Hendrik for YA 2016 which is borne by his employer (which should be treated as a perquisite and part of the gross income from employment under paragraph 13(1)(a) of the ITA for the basis year 2017) is considered as income for the basis year 2016 for the YA 2016 in which he leaves Malaysia;
- (ii) Gross income from employment for the period 1.1.2017 to 31.1.2017 is deemed to have been received in 2016; and
- (iii) Bonus arrears of RM10,000 in respect of 2016 received in 2017 is deemed received in 2016.

Year of Assessment 2015

(As computed in Example 1)

Year of Assessment 2016

Computation of tax allowance for the purposes of the final computation

	RM	RM
Paragraph 13(1)(a) ITA		
Salary RM21,000 X 12 (1.1.2016 - 31.12.2016)		252,000
Salary RM22,000 X 1 month (1.1.2017 – 31.1.2017)		22,000
Bonus receivable for 2015 but received in 2016		40,000
Bonus arrears receivable for 2016 but received in 2017		10,000
Tax for YA 2015 that is entirely borne by the employer ¹		<u>27,980</u>
Total income		351,980
Less :		
Deduction for self	9,000	
Deduction for wife	4,000	
Deduction for child	<u>2,000</u>	<u>15,000</u>
Chargeable income		<u>336,980</u>
		RM
Tax on the first RM250,000	47,900.00	
Tax on the balance RM86,980 @ 24.5%	<u>21,310.10</u>	
Tax payable ¹⁶	<u>69,210.10</u>	

Final Computation

	RM	RM
Paragraph 13(1)(a) ITA		
Salary RM21,000 X 12 (1.1.2016 – 31.12.2016)		252,000
Salary RM22,000 (1.1.2017 – 31.1.2017)		22,000
Bonus receivable for 2015 but received in 2016		40,000
Bonus arrears receivable for 2016 but received in 2017		10,000
Tax for YA 2015 that is entirely borne by the employer ¹		27,980
Tax for YA 2016 that is entirely borne by the employer ¹⁶		<u>69,210</u>
Total income		421,190
Less :		
Deduction for self	9,000	
Deduction for wife	4,000	
Deduction for child	<u>2,000</u>	<u>15,000</u>
Chargeable income		<u>406,190</u>
	RM	
Tax on the first RM400,000	84,650.00	
Tax on the balance RM6,190 @ 25%	<u>1,547.50</u>	
Tax payable	<u>86,197.50</u>	

Hendrik's tax payable for the YA 2016 amounting to RM86,197.50 is entirely borne by the employer. A clearance letter is issued to the employer to remit the full sum to IRBM.

However, if Hendrik makes an election in writing stating that subsection 25(6) of the ITA is not to be applied, his income tax payable would be computed as follows:

Year of Assessment 2015

(As computed in Example 1)

Year of Assessment 2016

	RM	RM
Paragraph 13(1)(a) ITA		
Salary RM21,000 X 11 (1.1.2016 - 30.11.2016)		231,000
Bonus receivable for 2015 but received in 2016		40,000
Tax for YA 2015 that is entirely borne by the employer ¹		<u>27,980</u>
Total income		298,980
Less :		
Deduction for self	9,000	
Deduction for wife	4,000	
Deduction for child	<u>2,000</u>	<u>15,000</u>
Chargeable income		<u>283,980</u>

	RM
Tax on the first RM250,000	47,900.00
Tax on the balance RM33,980 @ 24.5%	<u>8,325.10</u>
Tax payable ¹⁷	<u>56,225.10</u>

Year of assessment 2017 – Non-resident

Computation of tax allowance for purposes of the final computation

	RM
Salary RM21,000 X 1 (1.12.2016 - 31.12.2016)	21,000
Salary RM22,000 X 1 (1.1.2017 - 31.1.2017)	22,000
Bonus arrears receivable for 2016 but received in 2017	10,000
Tax for YA 2016 borne by the Employer ¹⁷	<u>56,225</u>
Total income / Chargeable income	<u>109,225</u>

Income tax payable RM109,225 @ 28% - 30,583¹⁸

Final computation

Salary RM21,000 X 1 (1.12.2016 - 31.12.2016)	21,000
Salary RM22,000 X 1 (1.1.2017 - 31.1.2017)	22,000
Bonus arrears receivable for 2016 but received in 2017	10,000
Tax for YA 2016 borne by the employer ¹⁷	56,225
Tax for YA 2017 borne by the employer ¹⁸	<u>30,583</u>
Total income / Chargeable income	<u>139,808</u>

Income tax payable RM139,808 @ 28% RM39,146.24¹⁹

Hendrik's tax payable for the YA 2017 is RM39,146.24.

A tax clearance letter is issued to Hendrik's employer to remit the tax borne by them. Hendrik has to ensure that his taxes are settled before his departure from Malaysia in 2016.

Although there was an agreement between Hendrik and his employer that his taxes would be borne entirely by his employer, Hendrik is not relieved of his tax liability should the employer fail to remit the tax payable to IRBM.

It is to be noted that the employer must ensure that –

- (i) Hendrik's last month's salary and any monies due to him are withheld until a tax clearance letter is issued by the DGIR or 90 days after notifying IRBM of his cessation; and

- (ii) the tax payable is settled in full regardless of who bears the tax.

Example 7

Same facts as in Example 4. Form CP 21 is submitted by the employer to the IRBM's branch office handling Miyamoto's file on 31.5.2016.

Half of the tax payable by Miyamoto for the YA 2015 that is borne by his employer is treated as income for the basis year 2016 in which he left Malaysia, i.e. YA 2016.

The tax payable by Miyamoto for the respective years of assessment is computed as follows:

Years of Assessment 2014 and 2015

(As computed in Example 4)

Year of Assessment 2016 (1.1.2016 to 30.6.2016) – Resident

Computation of tax allowance for purposes of the final computation

	RM
Paragraph 13(1)(a) ITA	
Salary RM18,000 X 6 months (1.1.2016 - 30.6.2016)	108,000
Tax for YA 2015 partially borne by the employer ¹⁴	<u>30,758</u>
	138,758
Paragraph 13(1)(b) ITA	
Car (prescribed value method) ⁸	
(RM7,000 X 6/12 months)	3,500
Petrol (prescribed value method) ⁹	
(RM1,800 X 6/12 months)	<u>900</u>
	4,400
Paragraph 13(1)(c) ITA	
30% X RM138,758 = RM41,627 ¹⁰	
Or	
Defined value of accommodation = RM5,000 X 6 months = RM30,000	
Whichever is lower	<u>30,000</u>
Total income	173,158
Less:	
Deduction for self	<u>9,000</u>
Chargeable income	<u>164,158</u>

	RM
Tax on the first RM100,000	11,900.00
Tax on the balance RM64,158 @ 24%	<u>15,397.92</u>
Tax payable ²⁰	<u>27,297.92</u>

Computation of tax partially borne by Co. A for purposes of final computation

$$\frac{1}{2} \times 27,297.92^{20} = 13,648.96^{21}$$

Final computation

		RM
Paragraph 13(1)(a) ITA		
Salary RM18,000 X 6 months (1.1.2016 - 30.6.2016)		108,000
Tax for YA 2015 partially borne by Co. A ¹⁴		30,758
Tax for YA 2016 partially borne by Co. A ²¹		<u>13,649</u>
		152,407
Paragraph 13(1)(b) ITA		
Car (prescribed value method) ⁸		
(RM7,000 X 6/12 months)	3,500	
Petrol (prescribed value method) ⁹		
(RM1,800 X 6/12 months)	<u>900</u>	4,400
Paragraph 13(1)(c) ITA		
30% X RM152,407 = RM45,722 ¹⁰		
OR		
Defined value of accommodation = RM5,000 X 6 months = RM30,000		
Whichever is lower		<u>30,000</u>
Total income		186,807
Less:		
Deduction for self		<u>9,000</u>
Chargeable income		<u>177,807</u>

	RM
Tax on the first RM100,000	11,900.00
Tax on the balance RM77,807 @ 24%	<u>18,673.68</u>
Tax payable ²²	<u>30,573.68</u>

Tax partially borne by Co. A when Miyamoto's employment ceased on 30.6.2016

$$\frac{1}{2} \times 30,573.68^{22} = 15,286.84$$

Tax partially borne by Miyamoto

$$\frac{1}{2} \times 30,573.68^{22} = 15,286.84$$

Miyamoto's income tax payable for the YA 2016 is RM30,573.68²². A tax clearance letter is issued to the Co. A to remit half of the tax payable amounting to RM15,286.84²³ ($\frac{1}{2} \times \text{RM}30,573.68^{22}$) borne by them, with the remainder of the tax payable (borne by Miyamoto) deducted from Miyamoto's final monies withheld under subsection 83(5) of the ITA.

Example 8

Same facts as in Example 4 and 7 except that Miyamoto commences employment on 1.11.2016 with a second employer, Co. B in the same year he ceases employment with the first employer, Co. A. His contract with Co. B is from 1.11.2016 to 31.12.2017 and his monthly remuneration is RM50,000. Miyamoto's tax payable will be borne entirely by Co. B.

The tax for YA 2016 would have to be recomputed to take into account gross employment income from Co. B. The amount of tax partially borne by Co. A, the amount fully borne by Co. B and the tax partially borne by Miyamoto would have to be ascertained as follows:

Year of Assessment 2016 (1.1.2016 to 31.12.2016)

Computation of tax on employment income received from Co. A and Co. B

	RM
Paragraph 13(1)(a) ITA	
Salary RM18,000 X 6 months (1.1.2016 - 30.6.2016)	108,000
Tax for YA 2015 partially borne by Co. A ¹⁴	30,758
Tax for YA 2016 partially borne by Co. A ²³	<u>15,287</u>
	154,045
Salary RM50,000 X 2 months (1.11.2016 - 31.12.2016)	<u>100,000</u>
	254,045
Paragraph 13(1)(b) ITA	
Car (prescribed value method) ⁸	
(RM7,000 X 6/12 months)	3,500
Petrol (prescribed value method) ⁹	
(RM1,800 X 6/12 months)	<u>900</u>
	4,400
Paragraph 13(1)(c) ITA	
30% X RM154,045 = RM46,213.50 ¹⁰	
Or	

Defined value of accommodation = RM5,000 X 6 months = RM30,000	
Whichever is lower	30,000
Total income	<u>288,445</u>
Less:	
Deduction for self	9,000
Chargeable income	<u>279,445</u>

	RM
Tax on the first RM250,000	47,900.00
Tax on the balance RM29,445 @ 24.5%	<u>7,214.02</u>
Tax payable ²⁴	<u>55,114.02</u>

Computation of tax borne by Co. B

		RM
Tax for YA 2016	-	55,114.02 ²⁴
Less:		
Tax partially borne by Co. A (as per clearance letter)	- 15,286.84 ²³	
Tax partially borne by Miyamoto (employment with Co. A)	- <u>15,286.84</u>	<u>30,573.68²²</u>
Tax borne by Co. B		<u>24,540.34²⁵</u>

Miyamoto's income tax payable for the YA 2016 is RM55,114.02²⁴. The tax payable amounting to RM24,540.34²⁵ which is attributable to Miyamoto's employment with Co. B is fully borne by Co. B and is considered a perquisite by virtue of paragraph 13(1)(a) of the ITA for the YA 2017.

Although there is an agreement between Miyamoto and both his employers that his taxes would either partially or fully be borne by them, Miyamoto is not relieved of his tax liability should Co. A or Co. B fail to remit the tax borne by them to IRBM. Miyamoto must ensure that his taxes are settled before his departure from Malaysia.

It is to be noted that the employer must ensure that Miyamoto's last month's salary and any monies due to him are withheld. The monies must be withheld until a clearance is issued or 90 days after notifying IRBM of his cessation and the tax payable is settled in full regardless of who bears the tax.

7. Monthly Tax Deduction

Where an employee receives a perquisite from his employment, the employer must ensure that the tax to be charged on the perquisite is deducted from the employee's remuneration based on Schedule (Rule 3) of the Monthly Income Tax Deductions under the Income Tax (Deduction From Remuneration) Rules in the month in which the perquisite is paid. Failure to comply with the requirements in the Rules would make an employer, upon conviction, liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding six months or to both.

In the case where an employees' tax is partially borne by the employer and the salary of the employee is not sufficient to absorb the monthly tax deductions on the perquisite, the employee has to obtain the approval of IRBM's Payment Centre to pay tax on the perquisite by installments with the issuance of the Directive of tax Deduction (CP38).

8. Responsibility of Employee

8.1 Notification of chargeability and filing of ITRF

An employee is required to –

- (a) give notice to the DGIR within two months of his arrival in Malaysia during a particular YA that –
 - (i) he is chargeable to tax for that particular YA; or that he is not chargeable to tax for that particular year; or
 - (ii) that he is not chargeable to tax for that particular year but is chargeable to tax for the YA following that particular year;
- (b) make an assessment for the basis period in which employment income is received;
- (c) furnish for each YA an ITRF i.e Form BE, BT, M or MT not later than 30 April (if the person does not carry on a business) or Form B not later than 30 June (if the person carries on a business) in the year following that YA;
- (d) specify the chargeable income and the amount of tax payable (if any) on that chargeable income for that YA;
- (e) make a payment of the tax payable under an assessment for a YA that is due and payable by the due date whether or not an appeal has been made against the assessment; and

- (f) furnish such particulars as may be required by the DGIR.

8.2 Non-compliance

An individual who is chargeable to tax and fails to submit a return to the DGIR within the due date or fails to notify the DGIR that he is liable to tax shall be guilty of an offence. He shall upon conviction be liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding six months or to both. In the case where there is a default in filing a return or notification of chargeability, and prosecution has not been instituted, the DGIR may require the individual to pay a penalty not exceeding three times the amount of income tax chargeable. This penalty will be included in the notice of assessment issued to the individual.

8.3 Non-application of deduction of tax as final tax

It is to be noted that pursuant to paragraph 77C(1)(d) of the ITA, where an individual's tax is borne by his employer, the individual is not eligible to make an election not to furnish an ITRF for the relevant YA. In other words, an individual is required to submit his ITRF for a YA if his taxes are borne by his employer for that YA.

9. Responsibility of Employer

9.1 Notification and withholding of money payable to employee

An employer is required to –

- (a) notify the DGIR by furnishing details of –
- (i) a new employee who is or is likely to be chargeable to tax in respect of gains or profits from employment not less than one month after the employment has commenced. A notification is made by completing Form CP22;
 - (ii) an employee where the employer is about to cease to employ that employee who is or is likely to be chargeable to tax in respect of gains or profits from employment except where the income of the employee is subject to MTD and where it is known to him that the employee is not retiring from his employment. A notification is made by completing Form CP22A and has to be submitted not later than one month before the cessation of the employment; and
 - (iii) an employee who is about to leave or intending to leave Malaysia for a period exceeding three months and is or is likely

to be chargeable to tax in respect of gains or profits from employment. A notification is made by completing Form CP21 which has to be submitted not later than one month before the expected date of the employee's departure.

All the notifications (Forms CP22, CP22A and CP21) are to be submitted to the branch office of the IRBM that handles the employee's file. The above mentioned forms can be downloaded from IRB's website at <http://www.hasil.gov.my>.

- (b) withhold any monies payable to an employee who has ceased or is about to cease to be employed or is about to leave Malaysia for a period of more than three months. The employer is required to withhold all monies due to the employee until 90 days has lapsed after the receipt by the DGIR of the relevant notifications (Forms CP22A or CP21).

9.2 Non-compliance by employer

- (a) An employer who without any reasonable excuse fails to comply with the above requirements as provided in subsections 83(2), (3), (4), (5) and section 107 of the ITA with respect to an employee of his without reasonable excuse is guilty of an offence. The penalty on conviction is a fine of not less than RM200 and not more than RM20,000 or imprisonment for a term not exceeding six months or to both.
- (b) An employer who fails to comply with the requirements under subsections 83(2), (3), (4), (5) and 107 of the ITA with respect to an employee of his shall be liable to pay the full amount of tax due from his employee. The amount due from the employer shall be a debt due to the Government and may be recovered by way of civil proceedings.

10. Updates and Amendments

The contents of PR No. 2/2006 have been rewritten, rearranged and updated. Some examples have been deleted and some new examples have been inserted.

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