



INLAND REVENUE BOARD OF MALAYSIA

ENTERTAINMENT EXPENSE

PUBLIC RULING NO. 4/2015

Translation from the original Bahasa Malaysia text.

DATE OF PUBLICATION: 29 JULY 2015



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**Public Ruling No. 4/2015
Date Of Publication: 29 July 2015**

Published by
Inland Revenue Board of Malaysia

Second edition

First edition on 22.10.2008

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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 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 -

- (a) the tax treatment of entertainment expense as a deduction against gross income of a business; and
- (b) steps to determine the amount of entertainment expense allowable as a deduction.

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 section 18, subsection 33(1) and paragraph 39(1)(l).

3. Interpretation

The words used in this PR have the following meanings:

- 3.1 "Immediate family members" means an employee's wife or wives and his children or an employee's husband and her children.
- 3.2 "Child" means a legitimate child or stepchild of an employee, his wife or her husband or a child proved to the satisfaction of the Director General to have been adopted by the employee, his wife or her husband in accordance with any written law.
- 3.3 "Entertainment" includes:
 - (a) the provision of food, drink, recreation or hospitality of any kind; or
 - (b) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a) above,by a person or an employee of his, with or without consideration paid whether in cash or in kind, in promoting or in connection with a trade or business carried on by that person.
- 3.4 "Entertainment related wholly to sales" means entertainment directly related to sales provided to customers, dealers and distributors but excluding suppliers.
- 3.5 "Employer", in relation to an employment, means:
 - (a) the master, where the relationship of master and servant subsists;

- (b) where the relationship of master and servant 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.

3.6 "Employee", in relation to an employment, means:

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

3.7 "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.

3.8 "Promotion" means an activity to inform and to offer a product or service which is to be marketed to customers, dealers and distributors but excluding suppliers and an activity undertaken to advertise the sale of the product or service.

3.9 "Recreation and hospitality" would include:

- (a) a trip to a theme park or a recreation centre;
- (b) a stay at a holiday resort;
- (c) tickets to a show or theatre; and
- (d) gifts and give-aways.

4. Application of the Law

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 expense under subsection 33(1) of the ITA is subject to specific prohibition under subsection 39(1) of the ITA.

5. Deduction for Entertainment Expense

An entertainment expense that is wholly and exclusively incurred in the production of gross income under subsection 33(1) of the ITA is allowed a deduction of fifty percent (50%) only unless that expense falls within any of the specified categories in provisos (i) to (viii) of paragraph 39(1)(l) of the ITA, then it qualifies for a deduction of one hundred percent (100%).

6. **Principles in Determining the Allowable Entertainment Expense**

In determining whether an entertainment expense can be allowed as a deduction and the amount to be allowed as a deduction, the following steps have to be adhered to:

- (a) Determine whether the expense falls within the definition of entertainment as provided under section 18 of the ITA. No deduction is allowed as entertainment expense if the expenditure does not fall within the definition of entertainment.

Example 1

Megah Jaya Sdn Bhd held an annual dinner for its employees and incurred a cost of RM10,000.

The expense of RM10,000 incurred by Megah Jaya Sdn Bhd is an entertainment expense under section 18 of the ITA.

- (b) If the expense falls within the definition of entertainment provided under section 18 of the ITA, determine whether the expense is wholly and exclusively incurred in the production of gross income under subsection 33(1) of the ITA. If the expense is not wholly and exclusively incurred in the production of gross income, then the expense is not allowed a deduction. The test under subsection 33(1) of the ITA is also applicable to entertainment expense as it is applicable to other expenses.

Example 2

Wendy Sdn Bhd gave its customer a microwave oven as a wedding gift.

The expense incurred on the wedding gift is an entertainment expense but is not allowed a deduction because it is not wholly and exclusively incurred in the production of gross income under subsection 33(1) of the ITA.

Example 3

A real property sales agent made an appointment with Mr. Ravi at a restaurant to discuss the purchase of a house proposed by the agent. The agent incurred the whole cost of lunch for himself and his potential customer, Mr. Ravi.

The expense incurred on lunch provided is an entertainment expense. However no deduction is allowed in relation to the entertainment provided to a potential customer because it is not wholly and exclusively incurred in the production of gross income under subsection 33(1) of the ITA.

- (c) If the entertainment expense is allowable under subsection 33(1) of the ITA, determine whether that expense is included in any of the categories of

entertainment expense specified under provisos (i) to (viii) to paragraph 39(1)(l) of the ITA. If the expense is included in any of those provisos, a deduction of one hundred percent (100%) against gross income is allowed. The remaining entertainment expense which does not fall within the mentioned provisos is allowed a fifty percent (50%) deduction against gross income.

7. Entertainment Expense which Qualifies for a One Hundred Percent (100%) Deduction

Entertainment expense which is wholly and exclusively incurred in the production of gross income under subsection 33(1) of the ITA and falls within any of the provisos (i) to (viii) to paragraph 39(1)(l) of the ITA is fully allowable. The categories of entertainment expense are as follows:

7.1 The provision of entertainment to employees - proviso (i) to paragraph 39(1)(l) of the ITA

Expenditure on food, drink and recreation provided to employees except where such expenditure is incidental to the provision of entertainment for others.

Examples of such entertainment expenses are expenses on free meals and refreshment, annual dinners, outings, family day or club membership for employees.

Example 4

Duyong Emas Sdn Bhd entertains its employees at an annual dinner on 10 December 2014 and some of its suppliers are also present. The cost of the dinner is RM25,000.

The purpose of the annual dinner is to entertain the employees of Duyong Emas Sdn Bhd and the entertainment to its suppliers is only incidental to the provision of entertainment to its employees. As such, the whole amount of entertainment expense incurred amounting to RM25,000 is allowable.

7.2 The provision of entertainment for payment in the ordinary course of business - proviso (ii) to paragraph 39(1)(l) of the ITA

Expenditure on entertainment provided to customers in the ordinary course of business where the payment is imposed for providing that entertainment.

Examples of such entertainment are:

- (a) providing cultural shows by restaurants or hotels at their premises to entertain their customers; and
- (b) meals provided by airlines or other transportation business to its passengers.

7.3 The provision of promotional gifts at trade fairs or trade exhibitions or industrial exhibitions outside Malaysia - proviso (iii) to paragraph 39(1)(l) of the ITA

Expenditure incurred on promotional gifts at trade fairs or trade exhibitions or industrial exhibitions held outside Malaysia for the purpose of promoting exports from Malaysia.

Examples of such entertainment expenses are expenditure incurred on samples of products of the business, small souvenirs, bags, and travel tickets provided as gifts to customers or visitors at the trade fairs or trade exhibitions or industrial exhibitions held outside Malaysia.

7.4 The provision of promotional samples of products of the business - proviso (iv) to paragraph 39(1)(l) of the ITA

Expenditure incurred on promotional samples of products of the business for the purposes of advertising that product.

Examples of such entertainment expense are free samples of products of the business given to schools or for certain other functions.

Example 5

Fatimah Sdn Bhd which manufactures health drinks gave free samples of the health drink to all visitors at a sporting event held at a housing estate.

The expenditure on the promotional samples is fully allowable since it falls within proviso (iv) to paragraph 39(1)(l) of the ITA.

7.5 The provision of entertainment for cultural or sporting events open to members of the public wholly to promote the business - proviso (v) to paragraph 39(1)(l) of the ITA

Expenditure incurred on providing entertainment for cultural or sporting events which are open to members of the public for the purpose of promoting the business. Cultural or sporting events which are only open to members cannot be considered as being open to the public.

Examples of cultural or sporting events and the entertainment expense related to such events are as follows:

Events	Examples of activities	Entertainment expense
Cultural	Promotion of arts such as painting, sculpture, music, drama and dance.	Cost of passage, accommodation, food and drink for the artistes.
Sports	Badminton tournaments, golf tournaments, motor racing and swimming events.	Sponsorship for food, drink, sports attire and sports equipment for sportsmen.

Cultural event under this proviso means an event which is specifically held to promote arts activities. If the event held is not a cultural event, then the provision of entertainment such as music and dance performances as part of that event do not fall within this proviso. For example, the National Day Parade is not considered a cultural event.

7.6 The provision of promotional gifts within Malaysia of articles incorporating the logo of the business - proviso (vi) to paragraph 39(1)(I) of the ITA

Expenditure on promotional gifts within Malaysia consisting of articles incorporating a conspicuous advertisement or logo of the business. Articles given away as promotional gifts need not necessarily be the products of the business. The logo could either be affixed or embossed on those articles. Logo of the business refers to the company's logo or the logo of its products.

The promotional gifts should be given to the public on a non-discriminatory basis. Expensive gifts given to selected persons or to persons who do not have business relationship with the giver is not considered as promotional gifts under this proviso.

Example 6

In conjunction with the company's first anniversary, Irish Sdn Bhd which is a supplier of herbal aromatherapy fragrance organized a 'Treasure Hunt' contest which was opened to the public. The participation was free and limited to the first 100 who registered. Each participant would be given a T-shirt embossed with the company's logo. The winner would be awarded a trophy with the company's logo and a cash prize of RM1,000.

Although the T-shirts and trophy given are not the company's products but both gifts are fully allowable since the provision of gifts falls within proviso (vi)

of paragraph 39 (1)(l) of the ITA. This is because the T-shirts and trophy with the company's logo are given to the public.

No deduction is allowed for the provision of RM1,000 in cash since it does not fall within the definition of entertainment as provided in section 18 of the ITA.

7.7 The provision of entertainment related wholly to sales arising from the business - proviso (vii) to paragraph 39(1)(l) of the ITA

Expenditure incurred on entertainment which is related wholly to sales arising from the business.

Examples of such expenditure are as follows:

- (a) expenses on food and drink for launching of a new product;

Example 7

A real property sales agent provides food and drinks during the launching of a new housing project to existing and potential buyers.

The expenditure on food and drinks provided is fully allowable since it falls within proviso (vii) to paragraph 39(1)(l) of the ITA.

- (b) redemption vouchers given for purchases made;
- (c) cash vouchers, discount vouchers, shopping vouchers, meal vouchers, concert or movie tickets;
- (d) redemption of gifts based on a scheme of accumulated points;

Note:

Vouchers, coupons, tickets, gifts and so on are only allowed as entertainment expenses when customers have redeemed them.

- (e) free gifts for purchases exceeding a certain amount;
- (f) "free" maintenance/service charges or contribution to sinking fund by property developers;
- (g) lucky draw prizes given to customers for purchases made;
- (h) expenditure on trips given as an incentive to dealers for achieving sales target; and

-
- (i) expenditure incurred on refreshment given to its customer while waiting for their cars to be serviced.

Example 8

Arif Auto Service Sdn Bhd carries on a car servicing business which provides light refreshments such as tea, coffee, sandwiches to its customers while waiting for their cars to be serviced. The customers are not charged for the light refreshments provided.

The entertainment expense incurred on the light refreshments by Arif Auto Service Sdn Bhd is allowed a deduction since it is related wholly to sales arising from the business of Arif Auto Service Sdn Bhd.

7.8 The provision of leave passage benefit provided by an employer to its employees - proviso (viii) to paragraph 39(1)(f) of the ITA

Expenditure on leave passage benefit provided by an employer to its employees to facilitate a yearly event within Malaysia which involves the employer, employees and immediate family members of the employees.

Example 9

Era Gemilang Sdn Bhd held a family day trip for its employees at Pulau Manukan, Sabah to foster family values among its employees. The total cost incurred amounted to RM70,000 comprising cost of travel totalling RM40,000 and cost of food, drinks and accommodation totalling RM30,000.

Era Gemilang Sdn Bhd is allowed the following deductions:

- (a) RM40,000 for the cost of leave passage by virtue of proviso (viii) to paragraph 39(1)(f) of the ITA; and
- (b) RM30,000 for the cost of food, drinks and accommodation by virtue of proviso (i) to paragraph 39(1)(f) of the ITA.

8. Entertainment Expense which Qualifies for a Fifty Percent (50%) Deduction

Entertainment expenditure which is wholly and exclusively incurred in the production of gross income under subsection 33(1) of the ITA but do not fall within any of the categories of entertainment expenses specified in provisos (i) to (viii) to paragraph 39(1)(f) of the ITA only qualifies for a fifty percent (50%) deduction against gross income.

Example 10

Restu Sdn Bhd held a dinner to entertain its suppliers on 30 April 2015 and incurred a cost of RM30,000. Some of the company's employees were also present.

Since the purpose of the entertainment is to entertain the suppliers of Restu Sdn Bhd, the entertainment expense does not fall within any of the categories mentioned in the provisos to paragraph 39(1)(l) of the ITA. Fifty percent (50%) of the entertainment expense of RM30,000 is not allowed a deduction whilst the balance of fifty percent (50%) is allowed a deduction.

Example 11

Matrix Sdn Bhd spent RM15,000 to provide hampers for its customers in conjunction with the Chinese New Year celebration to maintain existing business relationship.

Since the entertainment expense to provide hampers to its customers does not fall within any of the categories mentioned in the provisos to paragraph 39(1)(l) of the ITA, only RM7,500, that is fifty percent (50%) of the entertainment expense of RM15,000 is allowed a deduction.

Example 12

A customer of Top Designer Sdn Bhd expands his business by opening a new branch in Shah Alam. In conjunction with the occasion, Top Designer Sdn Bhd gave flowers to the customer.

Since the entertainment expense to provide gift of flowers to the customer does not fall within any of the categories mentioned in the provisos to paragraph 39(1)(l) of the ITA, only fifty percent (50%) of the entertainment expense is allowed a deduction.

9. Promotion Expense is Part of Entertainment Expense

- 9.1 From the year of assessment 2014, entertainment as defined under section 18 of the ITA also includes provision of entertainment incurred for the purpose of-
- (a) promotion which is in connection with a business carried on; and
 - (b) with or without any consideration and paid whether in cash or in kind.
- 9.2 Therefore, the tax treatment for promotional expenses which have an entertainment element is allowed:
- (a) a deduction of 50%; or

- (b) a deduction of 100% if the expense falls under provisos (i) to (viii) of paragraph 39 (1)(f) of the ITA.

Meanwhile promotional expenses which does not have an entertainment element is allowed a full deduction of 100% under subsection 33(1) of the ITA.

Example 13

Akai Sdn Bhd spent advertising cost of RM15,000 to advertise its congratulatory message to a badminton team on winning the Axiata Cup in 2014 and also to promote the company's name with its expertise in interior decoration. The logo and the company's name with types of services were printed in the advertisement. The forms of advertising were by mass media and via a few selected moving vans.

The promotion expense does not have an entertainment element and does not fall within the definition under section 18 of the ITA. Thus, the promotion expense is not an entertainment expense under paragraph 39(1)(f) of the ITA.

However, the logo and the company's name as well as types of services printed in all of its advertisements proved the company's intention to promote the company's services in addition to convey congratulations. Thus, the advertising expense for the purpose of promoting the services of the company is allowable as a deduction under subsection 33(1) of the ITA.

- 9.3 Gifts and samples which are given free as mentioned in paragraph 7.3, 7.4 and 7.6 are promotional expenses containing an entertainment element and do not involve any consideration. They are given to the public or to persons who have a business relationship with the giver.

Example 14

Sunset Sdn Bhd (Sunset) is a company selling electrical goods. Sunset gave promotional gifts of electrical goods costing RM50,000 to suppliers in conjunction with the company's annual dinner. The annual dinner was held for employees, distributors and dealers.

The electrical goods did not have the company's business logo. Sunset claimed a promotional expense of RM50,000 as a deduction under subsection 33(1) of the ITA.

Although the promotional expense falls under the definition of entertainment in section 18 of the ITA, it does not fall within any of the categories of expenses mentioned in the provisos to paragraph 39(1)(f) of the ITA.

Thus, only RM25,000, that is fifty percent (50%) of the entertainment expense of RM50,000 is allowed as a deduction.

Example 15

Lavender Beauty Sdn Bhd (Lavender) carries on a business of selling wedding dresses and accessories. Lavender offered free promotional gifts of brooches and umbrellas which were affixed with the company's logo to customers who made purchases exceeding RM2,000 in a single receipt. Lavender claimed promotional expenses of RM3,000.

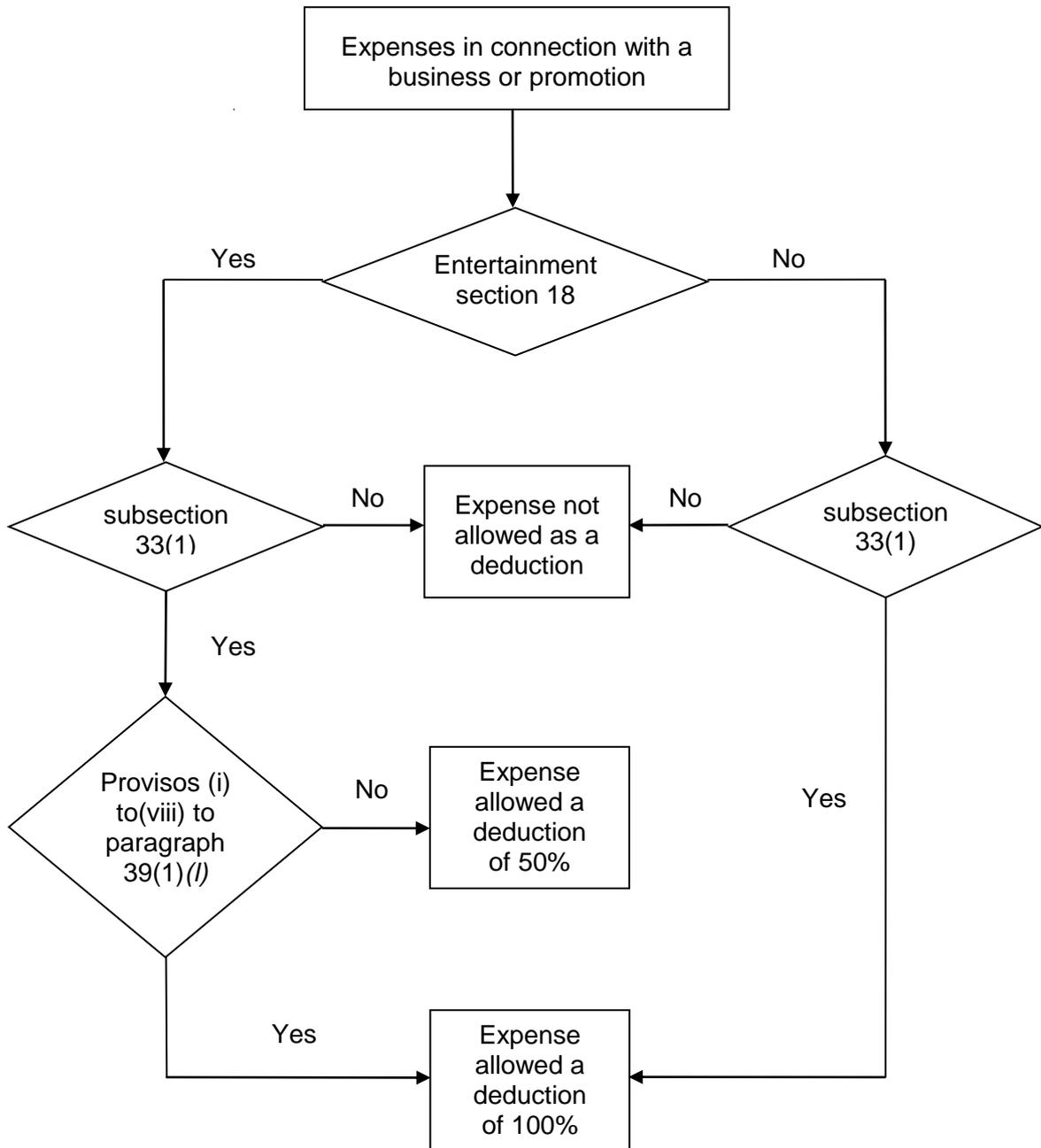
The promotional expenses have an entertainment element which falls under proviso (vi) of paragraph 39(1)(f) of the ITA. Thus, the promotional expenses are allowed a 100% deduction totalling to RM3,000.

Note:

Even though the promotional expenses involves a consideration paid by its customers, the expenses are still considered as entertainment expenses.

- 9.4 Diagram 1 illustrates the steps to be taken in determining whether an expense qualifies as a deduction under entertainment expense and the amount allowable as a deduction.

Diagram 1



10. Steps to Determine Allowable Entertainment Expense

The principles mentioned in paragraph 6 should be applied in determining the amount of allowable entertainment expense. Table 1 illustrates the tax treatment for several examples of entertainment expense:

Table 1:

No	Types of entertainment	Allowed a deduction of		Not allowed a deduction of		ITA Provision
		100%	50%	100%	50%	
1	Entertainment given to a potential customer in a closed transaction			√		Not wholly and exclusively incurred under subsection 33(1) of the ITA
2	Entertainment given to potential or existing customers during the launching of company's new product	√				Proviso (vii) to paragraph 39(1)(f) of the ITA
3	Wedding gift to customer			√		Not wholly and exclusively incurred under subsection 33(1) of the ITA
4	Entertainment to employees of related companies			√		Not wholly and exclusively incurred under subsection 33(1) of the ITA
5	Entertainment for annual general meeting of company			√		Not wholly and exclusively incurred under subsection 33(1) of the ITA
6	Cash contribution for customer's annual dinner			√		Not wholly and exclusively incurred under subsection 33(1) of the ITA
7	Annual dinner for	√				Proviso (i) to

No	Types of entertainment	Allowed a deduction of		Not allowed a deduction of		ITA Provision
		100%	50%	100%	50%	
	employees					paragraph 39(1)(f) of the ITA
8	Gift with business logo for customer's annual dinner	√				Proviso (vi) to paragraph 39(1)(f) of the ITA
9	Gift without business logo for customer's annual dinner		√		√	Not included under provisos (i) to (viii) to paragraph 39(1)(f) of the ITA
10	Free trip as an incentive to sales agent for achieving the sales target	√				Proviso (vii) to paragraph 39(1)(f) of the ITA
11	Gift of flower for customer's opening of new outlet		√		√	Not included under provisos (i) to (viii) to paragraph 39(1)(f) of the ITA
12	Entertainment to suppliers		√		√	Not included under provisos (i) to (viii) to paragraph 39(1)(f) of the ITA
13	Hampers for customers during festive seasons		√		√	Not included under provisos (i) to (viii) to paragraph 39(1)(f) of the ITA

11. Records of Entertainment Expense

Taxpayers are required to keep records in respect of entertainment expense incurred.

12. Updates and Amendments

	Amendment	
This PR replaces the PR No. 3/2008 dated 22.10.2008.	The contents of this PR are essentially the same as the previous PR with the following amendments:	
	Paragraph	Explanation
	3.3	Clarifies the definition of entertainment in section 18 of the ITA. The section is amended by Finance Act 2014 [Act 761] which is effective from the year of assessment 2014.
	7.6	Inserting new Example 6.
	9	The diagram in paragraph 6(d) of the previous PR is amended and renumbered. Inserting new examples 13, 14 and 15.

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