e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

e-CTIM TECH-DT 42/2017 **31 May 2017**

TO ALL MEMBERS

TECHNICAL

Direct Taxation

PUBLIC RULING NO. 11/2016 – TAX BORNE BY EMPLOYERS

This Public Ruling (PR) was issued on 8 December 2016. (Please refer to our e-CTIM TECH-DT 107/2016 dated 13 December 2016). Its objective is to explain the computation of the amount of an employee's income from perquisite relating to income tax borne by his employer as well as the tax payable by the employee.

This PR supersedes PR No. 2/2006. The contents of this PR are summarized below.

Para-graph #	Summary	
1 & 2	The objective of the PR and the relevant provisions of the law are stated in paragraphs 1 and 2 respectively.	
3	Provides definitions of terms used in the PR. (The meanings of words underlined in this table are provided in para.3.)	
4	*Basis period* • Effective from year of assessment (YA) 2016, employment income receivable in respect of any particular period is treated as gross income of the employee in the period in which it is received, under S25(1) of the ITA (as amended). (All sections referred to hereinafter refer to sections of the ITA.) • Prior to YA 2016, employment income in respect of a particular period (the relevant period) is treated as gross income of the employee for the relevant period when received by the employee. If the relevant period exceeds 4 YAs, the income is treated as gross income of the basis year (BY) for the YA the income is received and the immediately preceding 4 YAs.	
5	*Income tax borne by employer is a perquisite* When the income tax liability of an employee is paid by the employer, the benefit falls within the meaning of perquisite and is part of gross income from an employment under S13(1)(a).	
6	*Tax treatment of income tax borne by employer*	Example # in PR
6.1	• Income tax borne by an employer is treated as income of the employee in the BY when the actual amount of tax for that YA can be ascertained, i.e. in the following BY.	1
6.2	• If there is a revision of the chargeable income of the employee which results in a reduced assessment for a YA, the tax for that YA and the following YA (regardless of whether it results in an additional or reduced assessment) must be recomputed to determine the actual tax payable which is borne by the employer.	2

6.3	• If there is a revision of the chargeable income of an employee which results in an additional assessment for a YA, the tax for that YA and the following YA (regardless of whether it results in an additional or reduced assessment) must be recomputed to determine the actual tax payable which is 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 and will not be related back to the YA concerned but is regarded as employment income under S13(1)(a) for the YA in which the additional assessment is made.	3
6.4	• If the employer bears only a portion of the tax liability of the employee, only the portion of tax that is borne by employer is treated as employment income of the employee under S13(1)(a).	4
6.5	• If an employee fails to furnish an income tax return form (ITRF) or is late in furnishing a return for a YA, which results in the imposition of a penalty under S112(3), and the amount of penalty is also borne by the employer, the total amount of tax and penalty imposed which is paid by the employer will be treated as gross income of the employee under S13(1)(a).	5
6.6	• If an employee who is entitled to a benefit which is a perquisite under S13(1)(a) has left or intends to leave Malaysia, S25(6) must be applied, as follows: Where an employee – - has left or will be leaving Malaysia in the BY for a YA; - is not resident in Malaysia for the BY for the following YA and does not derive pension from Malaysia for that BY; and - ceases to derive gross employment income 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 BY of the YA following the relevant year is deemed to be received in the BY in which he leaves Malaysia. • The employee may make a written request to the DGIR for S25(6) NOT to be applied, in which case the income relating to the year following his departure from Malaysia (the following year) shall be treated as income of the following year. • For "leaver cases", computation of tax for the final year in which the employee is in Malaysia must be done twice, first to compute the tax allowance, and next, to determine finally the actual amount of tax payable by the employee which includes tax on the final tax allowance. (Please refer to examples)	6, 7 & 8
7	*Monthly tax deductions* All "perquisites" received by an employee are subject to monthly tax deductions (MTD) and the tax to be charged on the perquisite must be deducted from the employee's remuneration in the month in which the perquisite is paid. Details of penalties for failure to comply, and application procedure for payments by instalments in the case where an employee's tax is partially borne by the employer and the employee's salary is insufficient to absorb the MTD are given in paragraph 7. (Please refer.)	

8	*Employee's responsibilities* • Paragraph 8 gives an explanation of the employee's duty to give notice of chargeability as well as comply with requirements relating to the filing of an ITRF and payment of tax. (para. 8.1) • Details of penalties to be imposed for failure to submit a return, or failure to give notice of chargeability are found in para. 8.2. • An individual whose tax is borne by his employer is not eligible to make an election not to furnish an ITRF for the relevant YA (S77C(1)(d)).
9	*Employer's responsibilities* • Para. 9.1 explains the duty of the employer to – (a) notify the DGIR and provide details relating to an employee – (i) who is newly employed (new employee) and is or is likely to be chargeable to tax in respect of his income from employment; (ii) who has or is about to cease employment and is or likely to be chargeable to tax in respect of his employment income except where the employment income is subject to MTD and where it is known to him that the employee is not retiring from employment; (iii) who is about/ intending to leave Malaysia for a period exceeding 3 months and is/ likely to be chargeable to tax in respect of his employment income. (b) withhold monies payable to the employee referred to in items (ii) and (iii) above. • Para. 9.2 set out the penalties for non-compliance with the above requirements which include the imposition of a fine, or imprisonment or both, upon conviction of an offence for failure to comply with the relevant provisions of the law, and the incurrence of the liability (under S107(4)) by the employer to pay the full amount of tax due from the employee as a debt due to the government. (Please refer to the PR for details of compliance requirements relating to items (a) and (b) above, and of penalties for non-compliance.)

Members may read the PR in full at the websites of the Institute and the LHDNM.

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the PR so that we may raise them to the LHDNM.