

TECHNICAL

Direct Taxation

PUBLIC RULING 2/2018 – TAX INCENTIVE FOR RETURNING EXPERT PROGRAMME

This Public Ruling (PR) is dated 2 May 2018.

Objective (Paragraph 1)

The objective is to explain the tax treatment of incentives available under the Returning Expert Programme (REP) to attract Malaysian citizens who work overseas as professionals to return to work in Malaysia.

The following is a summary of the contents of the PR:

| Paragraph # | Heading and Summary |
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| 2 | Relevant Provisions of the Law This PR is based on provisions of the Income Tax Act 1967 (ITA), (S2, S13, S45(2) and Part XV of Sched. 1) and the Income Tax (Determination of Approved Individuals and Specified Year of Assessment Under Returning Expert Programme) Rules 2012 [P.U.(A) 151/2012] (All sections cited below refer to sections from the ITA unless otherwise stated.) |
| 3 | Interpretation Provides the meanings of words used in this PR. (Meanings of words underlined below are found in this paragraph.) |
| 4 | <u>Returning Expert Programme (REP)</u> The REP was introduced to attract Malaysians who work overseas (“ <i>highly skilled workers</i> ”) to return to Malaysia to contribute to national development. It is administered by <u>Talent Corporation Malaysia Bhd</u> (TalentCorp) from 1 Jan 2011 and is applicable to individuals whose employment commences on or after 1 May 2011. Incentives available to individuals approved under REP are explained in para. 6. |
| 5 | Eligibility Requirements for Incentive Application |
| 5.1 | The following are conditions for approval for the preferred tax rate under the REP: <ul style="list-style-type: none"> (a) Malaysian citizen who is <u>resident</u> in Malaysia; (b) Made an application under the REP (during the period from 12 April 2011 to 31 Dec 2020) and approved by the Minister for tax purposes under Part XV of Sched. 1. (c) Is an expert in the field determined by the Minister (Refer para. 5.2); (d) Has not derived any <u>employment</u> income in Malaysia for at least 36 consecutive months prior to the date of application. (e) A REP’s application has never been approved before. Other conditions are: <ul style="list-style-type: none"> (i) The applicant should submit the REP application while still living and working abroad. (ii) Employment income shall be received from a person resident in Malaysia. (iii) Not bound by any bond (financial or legal) with other government companies or agencies to return to Malaysia. |

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| | | (iv) Not under bond of outstanding scholarship or loan payments with the Malaysian government or its agencies. The individual is considered as an 'approved individual' (AI) upon fulfillment of above conditions. (Example 1) |
| | 5.2 | The table under this para. shows the areas of expertise that are given consideration for REP which are industries recognized under the National Key Economic Areas. |
| | 5.3 | Applicants working overseas who wish to return to work in Malaysia with a company in the same group must meet the criteria [(a) to (e)] listed in this paragraph . (Example 2) |
| 6 | Tax Incentives After obtaining approval, an AI is given 2 years to obtain the Surat Akuan Terima Kembali from TalentCorp and then return to Malaysia to commence his work and claim the benefits of the REP. | |
| | An AI may opt – i. to be taxed at a flat rate of 15% on his chargeable income; ii. to be taxed at the 15% rate at the beginning of the year of assessment (YA) in which he returns to Malaysia or in the subsequent YA. (If he does not opt during that period he is deemed to reject the REP incentives.) (Examples 3 & 4) | |
| | The AI is eligible for the flat rate of tax (15%) for 5 consecutive years from the first YA in which AI opts to claim the incentive. (Examples 5 and 6 show the comparison of tax chargeable under the flat rate (15%) and under scale rates (if the AI does not opt for REP incentive). The AI has to make the right choice in order to benefit from tax savings.) | |
| | If an AI has employment income from more than one source (i.e. he has an additional job / employment) the flat rate of 15% applies to both sources of employment income. (Example 7) | |
| | If an AI changes jobs during the incentive period, he is still eligible for the 15% tax rate on any employment income received during the specified incentive period, provided that his new job is in line with his expertise as approved under the REP incentive. (Examples 8, 9 & 10) | |
| | Examples 11 & 12 illustrate the following situations: | |
| | Example | |
| | 11 | AI has income from an employment source as well as a non-employment source. – Shows how chargeable income (CI) is apportioned to compute the portion of the CI from an employment source (taxed at 15%) and the portion of CI from a non-employment source (taxed at scale rates). |
| | 12 | Case of a specialist doctor granted REP incentive which is subject to the condition that any payment to locum doctors cannot be deducted in ascertaining his CI that is taxed at the preferential rate (15%). |
| 7 | Tax Computation Examples 13 to 16 show tax computations for an AI under the following scenarios: | |
| | Example | |
| | 13 | AI has one source of income. |
| | 14 | AI has more than one source of income. |
| | 15 | Joint assessment – AI with <i>one</i> source of income opts for combined assessment with husband / wife under S45(2). |
| | 16 | Joint assessment – AI with <i>more than one</i> source of income opts for combined assessment with husband / wife. |

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| 8 | <p>Income Tax Return for Resident Expert Worker</p> <p>The Return Form to be filed by an individual who has obtained approval for REP incentive are as follows:</p> <ul style="list-style-type: none"> - If he opts for the incentive, he should declare his income in the Return Form BT. - If he does not opt for the incentive, his return of income should be made on the Form BE/ B. <p>The above does not apply to an individual who is eligible to elect not to furnish a return for the relevant YA under S77C. (Example 17)</p> |
| 9 | <p>Opt Out From REP Incentives</p> <p>An AI may opt out from enjoying the preferential tax rate of 15% at any time during the specified incentive period. The incentive approval is deemed invalid starting from the YA in which the termination is made. (Example 18)</p> |
| 10 | <p>Termination of Employment in Malaysia</p> <p>If an AI's employment in Malaysia is terminated and he moves out of the country, (e.g. the individual is transferred to work outside Malaysia by his employer) the 15% tax rate will expire upon the termination of employment in Malaysia. The incentive that has been claimed for the period that he was working and residing in Malaysia would not be withdrawn. (Example 19)</p> |

Please read the PR in full at the website 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 No. 2/2018](#) so that we may raise them to the LHDNM.

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