

TECHNICAL

Direct Taxation

IRB ISSUES PUBLIC RULING (PR) NO. 8/2013

The Inland Revenue Board (IRB) issued [PR No. 8/2013 - Gratuity](#) on 25 June 2013. This PR replaces [PR 10/2011](#) dated 5/12/2011.

The salient points in the PR are summarized in the table below:-

Subject	Paragraph in PR / Notes
<p><i>Objective</i></p> <ul style="list-style-type: none"> The objective of the PR is to explain the method used to characterize lump sum payments to employees upon termination of their employment as gratuity, and tax treatment of gratuity. 	Para 1.
<p><i>Elements of lump sum payment to employees</i></p> <ul style="list-style-type: none"> Sums paid to employees upon termination of employment may consist of 2 elements which are attributable to: <ul style="list-style-type: none"> i) Loss of employment (compensation); ii) Past services of the employee (gratuity). The particular circumstances of each case would determine whether the payment is to be characterized as a gratuity payment or compensation for loss of employment. In making apportionment between gratuity and compensation, consideration is generally given to the employer's normal practice in granting gratuities to employees leaving his service, and the rate or amount of gratuities normally given. 	<p>Para 5, 6 & 7.</p> <p>Examples 1 & 2.</p>
<p><i>Taxation of gratuity</i></p> <ul style="list-style-type: none"> Gratuities are taxed under sec 13(1)(a) of the ITA. Full exemption from income tax is granted under para 25 of Sch. 6 of the ITA, under the following conditions: <ul style="list-style-type: none"> a) if the Director General is satisfied that retirement is due to ill-health; b) if retirement takes place on or after reaching the age of 55, or on reaching the compulsory age of retirement specified under any written law, and in either case, from an employment which has lasted 10 years with the same employer or companies in the same group. c) if retirement takes place on reaching the compulsory age of retirement pursuant to a contract of employment or collective agreement at the age of 50 but before 55, and that employment has lasted 10 years with the same employer or companies in the same group. The amendment to the minimum retirement age (from 55 to 60 w.e.f 1/7/2013) has no effect on the tax treatment of gratuity received. 	<p>Para 8(a) to (c)</p> <p>Example 3</p> <p>Examples 4, 5, 6, 7, 8, 9.</p> <p>Examples 10, 11, 12, 13,</p> <p>Para 8(b)</p>

<ul style="list-style-type: none"> Non-exempt gratuity is taxed as follows: <ol style="list-style-type: none"> spread over the last 6 basis periods (bp) if employment began more than 5 years before the beginning of the bp in which the employment ceased (sec 25(4) of ITA); spread over the period of employment (including employment within the same group); from 1/1/2014, spread over the last 5 bp if employment began more than 4 years before the beginning of the bp in which the employment ceased. 	<p>Para 8(d) Examples 14 & 1. (See Note 1)</p> <p><u>Note 1:</u> Examples 5, 7 & 15 have been 'inserted' in PR 10/2011.</p>
<p><i>Gratuity credited to EPF</i></p> <ul style="list-style-type: none"> Gratuity credited to EPF account accrues as income at the time when payment arises (sec 25(4) of ITA applicable). The amount credited should be the net amount after deducting income tax. Employers are required to file Form CP 22A and obtain clearance letter from IRB prior to payment of money payable to the employee. 	<p>Para 9 Examples 16 & 17. (See Note 2.)</p> <p><u>Note 2:</u> Example 17 is new (not in previous PR).</p>
<p><i>Death gratuities</i></p> <ul style="list-style-type: none"> Sums received as death gratuities or compensation for death or injuries are exempt under para. 14 of Sch. 6 of ITA 	<p>Para 10 (See Note 3 below.) Example 18</p>
<p><i>Retirement benefits (RB)</i></p> <ul style="list-style-type: none"> All RB are taxable unless exempted under Sch. 6 of ITA or Exemption Orders RB from an approved pension fund (under sec 150 of ITA) are exempt. Contributions by an employer to a unapproved pension fund, if received by the employee, are included in gross employment income of an employee [sec 13(1)(d) of ITA]. If the sum received (from an unapproved scheme) includes the employee's own contribution, his employer's contribution and any interest, the interest element is not included as employee's gross employment income. 	<p>Para 11 (See Note 3).</p> <p><u>Note 3:</u> Para 10 & 11 are new (not in previous PR).</p> <p>Example 19 (payment from unapproved scheme credited to EPF account)</p>

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any concern or comments you may have on the Public Ruling.

Disclaimer

This document is only meant for members of the Chartered Tax Institute of Malaysia (CTIM) only. Although the CTIM has taken all reasonable care in the preparation and compilation of the information contained in the CTIM e-circular, the Institute / each party providing the material displayed herein expressly disclaim all and any liability or responsibility to any person(s) for any errors or omissions in the contents of the CTIM e-circular or for anything done or omitted to be done by any such person in reliance whether wholly or partially, upon the whole or any part of the contents of the CTIM e-circular.