

Our Ref: TC-DT/S.25(1) - Ltr to LHDNM

3 February 2016

BY Courier and Fax

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Dear Puan Faizah Aman,

AMENDMENT TO SECTION 25(1) OF THE INCOME TAX ACT 1967 WITH EFFECT FROM THE YEAR OF ASSESSMENT 2016 – REQUEST FOR CONFIRMATION

We refer to the phone conversation on 21 January 2016 between yourself and Mr. Thong Vee Kean from our Technical Department regarding confirmation sought by the Institute on the amendment to S.25(1) of the Income Tax Act (ITA) 1967 which is listed in the Finance Act 2015 and has effect from the year of assessment (YA) 2016.

1. The amended S.25(1) of the ITA 1967 states:

*Subject to this section, where gross income from an employment is receivable in respect of **any particular period**, it shall, when received in **the relevant period**, be treated as the gross income of the relevant person for **the relevant period**.*

In view of the above, the Institute would like to seek your confirmation that our understanding as follows is correct:

- Where “the relevant period” is the year ending 31 December 2016, “any particular period” refers to any period which may not necessarily be the year ending 31 December 2016. Hence “any particular period” may include any period prior to and after the year ending 31 December 2016.
- Employment income receivable in the year ending 31 December 2015 which is received in January 2016 should be taken into account as part of gross income for the year ending 31 December 2016 (YA 2016), and hence is taxable in YA 2016.
- Employment income receivable in the year ending 31 December 2017 which is received in December 2016 should be taken into account as part of gross income for the year ending 31 December 2016 (YA 2016), and hence is taxable in YA 2016.

2. Item 2 on page 1 of the Guide Notes for filling out the Form EA (Statement of Remuneration from Employment) for the year ended 31 December 2015 states:

*The amount to be specified is the gross income paid **and/or payable** to the employee or on behalf of the employee in respect of his employment for the year ended 31 December 2015.*

An extract of the above is attached for your reference. If our understanding in item 1 of this letter is correct, then the above statement should not include the wording "and/or payable" as the employment income payable in the year ended 31 December 2015 is not part of gross income for the year ended 31 December 2015 (i.e. it should be the gross income for the year in which it is received). We would be pleased if you could convey this to the relevant LHDNM department so that the Guide Notes can be updated accordingly.

We look forward to receiving an early reply to our request above so that we can update the Institute's members accordingly.

Thank you.

Yours sincerely,



Aruljothi A/L Kanagaretnam
President
CHARTERED TAX INSTITUTE OF MALAYSIA

Enclosure

GUIDENOTES FOR FILLING OUT THE FORMS C.P. 8A (EA) AND C.P. 8C (EC)

In accordance with subsection 83(1A) of the Income Tax Act (ITA) 1967, the Form C.P. 8A and C.P. 8C must be prepared and rendered to the employees on or before **29 February 2016** to enable them to complete and submit their respective Return Form within the stipulated period.

1. If the employer is a company or a body of persons, manager or principal officer, partner and sole proprietor, is deemed as an employer for the purpose of this return.
2. The amount to be specified is the gross amount paid and/or payable to the employee or on behalf of the employee in respect of his employment for the year ended 31 December 2015.
3. Under the provision of subsection 13(1) ITA 1967, the gross income from employment includes:

(a) Paragraph 13(1)(a)

Wages, salary, overtime pay, remuneration, leave pay, fee, commission, bonus, gratuity, tip, perquisite, tax allowance/tax borne by the employer, award, reward or allowance (whether in money or otherwise). For the purpose of Forms C.P. 8A and C.P. 8C, subsistence allowances which are exclusively reimbursements for expenditure incurred by the employee in the course of performing his duties are excluded. (Please refer to the Public Ruling No. 2/2013 - Perquisites From Employment).

(b) Paragraph 13(1)(b)

BIK are benefits/amenities not convertible into money. These benefits are provided by/on behalf of the employer for the personal enjoyment by the employee, wife, family, servants, dependents or guests of that employee. (Please refer to the Public Ruling No. 3/2013 – Valuation of Benefits-In-Kind).

(c) Paragraph 13(1)(c)

An amount in respect of the use or enjoyment by the employee of living accommodation in Malaysia provided by or on behalf of the employer rent free or otherwise. (Please refer to the attached Guidelines for the Valuation of Benefit/Value of Living Accommodation Provided).

(d) Paragraph 13(1)(d)

So much of any amount received by the employee from an unapproved pension or provident fund, scheme or society (employer's portion only) as would not have been so received if his employer had not made contributions in respect of the employee to the fund, scheme or society or its trustees.