



TAX FLASH

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PR No. 5/2019 – Perquisites from Employment

The Inland Revenue Board [“IRB”] has recently issued the *Public Ruling [“PR”] No. 5/2019 dated 19th November 2019 – Perquisites from Employment* to provide clarification on the tax treatment on perquisites from an employment received in respect of having or exercising the employment in Malaysia. This PR replaces the previous PR No. 2/2013 issued on 28th February 2013.

The new PR is broadly the same as the previous PR, apart from inclusion of a new paragraph on taxability of a perquisite given to an employee as follows:-

- Payment in Lieu of Notice or Buy-out Payment (Paragraph 6.17 of the new PR)
 - Payment in lieu of notice or buy-out payment is made by the employer to a new employee to reimburse the amount to be paid to his/her former employer as immediate compensation at an amount equal to that employee would have earned as salary or wages by working through the whole notice period. In some cases, these payments could be made directly to the previous employer by the new employer.

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- Such payment made on behalf of the employee is considered as a perquisite to the employee and treated as gross income from employment under Section 13(1)(a) of the Act and subject to income tax.

Note: For further information on the previous PR No. 2/2013 issued on 28th February 2013, please refer to our [Tax Flash – April 2013 issue](#).

PR No. 6/2019 – Tax Treatment on Expenditure for Repairs and Renewals of Assets

The IRB has recently issued the [PR No. 6/2019 – Tax Treatment on Expenditure for Repairs and Renewals of Assets](#) to explain the tax treatment on expenditure for repair and renewal of an asset from a gross income of a person.

Salient points of the abovementioned PR include:-

- Generally, repairs and renewals expenses are claimed as deductions from a person’s gross income from a business or rental source.
- An expenditure on repair can be allowed as a deduction if that expenditure is wholly and exclusively incurred in the production of gross income under Section 33(1) of the Income Tax Act 1967 [“the Act”].
- The word "repair" is not defined in the Act. Based on the definition in The Shorter Oxford English Dictionary On Historical Principles - Third Edition, the word “repair” means to restore (a composite, structural and others) to good condition by renewing or replacing the damaged parts. In general, repair is a situation where an asset is restored to its original state by renewing or replacing the parts which cannot be used or are damaged to its original condition without any element of improvement, addition and alteration.
- Categories of repair expenses are as follows:-

a.	Repair to restore assets to their original condition	<ul style="list-style-type: none"> • Expenditure incurred in maintaining an asset (which has no element of improvement) to enable it to function properly and efficiently is allowed as a deduction in ascertaining the adjusted income from that source.
b.	Initial repairs	<ul style="list-style-type: none"> • When an asset is acquired in a state of disrepair or an asset has not been used for a long time and is in need of repairs before it can be effectively used, the expenditure incurred for the repairs is an initial expense. • An expenditure on repairs which is incurred to place an asset that has just been acquired into a commercially-usable state is considered as initial expense and is not allowed as a deduction in ascertaining the adjusted income. • The defects in an asset arose from the operations of a previous business and expenditure on repairs on those defects should be allowed against the previous business income. Where there are accumulated repairs required to be carried out on an asset prior to the date the asset is used in the current business, the cost of such repairs are considered as initial repairs and thus capital in nature.

c.	Replacement of the entirety or part of the entirety	<ul style="list-style-type: none"> • A repair involves the replacement of a subsidiary part of the entire asset. Renewals, on the other hand, is the replacement of most parts of the entire asset. • For example, if a building is an entirety, then the doors, windows, walls and stairs are part of the entirety. Typically, an expense which involves replacement of the entire asset is a capital expenditure while replacement of some part of a larger asset is a revenue expenditure. • If a replacement of that part resulted in a change to the entire asset / involves replacement of the whole asset, the expenses incurred shall be regarded as capital expenditure and shall not be allowed as a deduction.
d.	Replacement or improvement	<ul style="list-style-type: none"> • Replacement of part of an asset which is damaged is allowable as a deduction if the original structure of the asset is retained without any improvement. • Where repair or replacement involves improvement which caused changes to the asset, the expenditure is capital in nature and shall not be allowed as a deduction. • However, there is a situation where replacement and repair could cause changes to the asset but as long as the repair does not alter the original function of the asset and simply restores to the original use of the asset in the business, the expenditure shall be allowed.
e.	Implements, utensils or articles with a life span of less than 2 years	<ul style="list-style-type: none"> • Assets which have some of the features of plant may nevertheless have a short anticipated lifespan. Such assets, if their anticipated lifespan is not more than 2 years will not be treated as qualifying plant for the purposes of capital allowances. However, the expenditure incurred can be dealt with on the replacement basis. • The determination of the life span of an asset will be based on the facts of each case and a person who wishes to claim a deduction on the asset is responsible for determining its life span. • Examples of such assets are dishes, spoons, forks, knives and pots. • The above tax treatment is applicable to all types of business.

Tax Clearance Letter Application for Companies, LLP and Labuan Entities

The IRB has recently issued the [Operational Guidelines No. 2/2019 - Tax Clearance Letter \["SPC"\] Application for Companies, Limited Liability Partnerships \["LLP"\] and Labuan Entities](#). The Operational Guidelines provide guidance on the procedures and requirements for application of SPC for Companies, LLP and Labuan Entities as follows:-

- To apply for SPC, a company / LLP / Labuan entity is required to submit the Income Tax Return and the Return Form of Employer until the latest year of assessment.
- If the electronic return form (for tax clearance letter purposes) for the latest year of assessment has not been made available, the electronic return form for the previous year of assessment can be used by amending the year of assessment. The completed form has to be submitted together with the SPC application letter/form to the IRB branch / Labuan Entities Unit that handles the relevant income tax file. This also applies for the Return Form of Employer.
- The relevant documents as specified in Appendices A, B and C to the Operational Guidelines are required to be submitted together with the SPC application letter/form.

The SPC will be issued by the IRB after all relevant and complete documents are received, income tax (including the employees' monthly tax deductions) are fully paid and no legal action being taken for criminal and/or civil cases.

After issuance of the SPC, the applicants are required to submit the relevant documents as specified in the Operational Guidelines for closure of the income tax files.

The above Operational Guidelines No. 2/2019 dated 12th November 2019 replaces the previous Operational Guidelines No. 3/2016 issued on 31st July 2016.

Note: For further information on the previous Operational Guidelines No. 3/2016, kindly refer to our [Tax Flash – September 2016 issue](#).

Sales Tax Guide

The [Guide on Sales Tax Deduction Facility](#) as at 30th October 2019 was published by Royal Malaysian Customs Department on 21st November 2019.

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