

# PwC ALERT\*

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## Taxation of Perquisites and Benefits-in-Kind

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# Introduction

With the advent of the Self Assessment System for individuals from the year of assessment 2004, the Inland Revenue Board of Malaysia (IRB) has so far issued 2 Public Rulings (2/2004 and 1/2006) on the taxation of Perquisites and Benefits-in-kind (BIK) respectively. This article aims to highlight the salient points relating to the taxation of these 2 categories of employment income as laid out in the respective Rulings.

## Background

### Taxation of employment income under the Income Tax Act, 1967

Generally, a person who exercises his/her employment in Malaysia would be subject to Malaysian tax under Section 4 (b) of the Malaysian Income Tax Act 1967 ("The Act") on "gains or profits from an employment". Section 13(1) of the Act further groups employment income into 5 categories, namely:

- (a) Any wages, salary, remuneration, leave pay, fee, commission, bonus, gratuity, **perquisite** or allowance (whether in money or otherwise) in respect of having or exercising the employment;
- (b) An amount equal to the value of use or enjoyment by the employee of any **benefit or amenity** (not being a *benefit or amenity* convertible into money), provided for the employee by or on behalf of his employer, excluding:
  - (i) a benefit or amenity consisting of medical or dental treatment or a benefit for child care;
  - (ii) a benefit or amenity consisting of:
    - (A) leave passages for travel within Malaysia not exceeding three times in any calendar year; or
    - (B) one leave passage for travel between Malaysia and any place outside Malaysia in any calendar year, limited to a maximum of three thousand ringgit:Provided that the benefit or amenity enjoyed under this subparagraph is confined only to the employee and members of his immediate family;
  - (iii) a benefit or amenity used by the employee solely in connection with the performance of his duties; and
  - (iv) a benefit or amenity falling under Section 13(1)(c)\*

\*Section 13(1)(c) relates to the taxation of Living Accommodation which is not covered in this Alert

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# Taxability of Perquisites vs BIK

## Perquisites

Perquisites are specifically mentioned in Section 13(1)(a) and basically refer to **benefits given in cash or if given in kind are the type that are convertible into money.**

The relevant Public Rulings provide guidance on the determination of the taxable value of perquisites which in most cases reflect the market value of the items. Market value is defined as *“the price which that thing would fetch if sold in a transaction between independent persons dealing at arm’s length”*. In cases where items may not have an easily attainable market value, the Public Rulings provide that the value of the perquisites is the monetary amount of the perquisites.

### Public Rulings on perquisites

The Public Rulings covering perquisites are as follows:

Public Ruling No and date	Subject matter
4/2004 (9 December 2004)	Employee Share Option Scheme Benefit
1/2006 (17 January 2006)	Taxability of Perquisites
2/2006 (17 January 2006)	Taxability of Tax Borne by Employers

### Distinction between perquisites and BIK

In differentiating perquisites from BIK, the Public Rulings also list certain characteristics of the former.

- |   |   |
|---|---|
| (1) May be received regularly or casually   | (4) May be received by an employee in respect of an employment contract entered into by him, or is given by the employer or a third party voluntarily |
| (2) May be received in cash or in kind  | (5) Paid to the employee in respect of having or exercising an employment   |
| (3) If paid in kind, perquisites must have money’s worth and are convertible into money (can be sold, assigned, transferred or convertible into cash) |   |

It should be noted that the mode of payment does not affect the nature of the receipt e.g., payments may be paid directly to the employee by a third party; paid as reimbursement to the employee; or paid as advance to offset some pecuniary liability.

## BIK

**Whilst perquisites are cash benefits or benefits convertible to cash, BIK refers to benefits that are not convertible into money.** A benefit is deemed to be enjoyed by the employee if it is used or enjoyed by his spouse, family, servants, dependants or guests.

BIK (other than Living Accommodation) are assessable under Section 13(1)(b) of the Act.

Public Ruling No. 2/2004 on BIK provides for the ascertainment of the taxable value of such benefits. The 2 methods prescribed in the Ruling are the “formula” or the “prescribed value” method. The use of either method is acceptable provided that the method chosen is consistently applied.

### Public Rulings on BIK

Public Ruling No. 2/2004 and its Addendums deal with the taxation of BIK (other than Living Accommodation). The following is a summary of subjects covered:

Public Ruling No. and date of issue	Subject matter
No. 2/2004 (8 November 2004)	Clarifications on: (a) Ascertainment of value of BIK (i.e. formula or prescribed value method) (b) Leave Passage (c) Calculation of value of motorcar and other related benefits (d) Household furnishings, apparatus and appliances (e) Telephone benefit
Addendum to Public Ruling 2/2004 (20 May 2005)	Further clarifications on: (a) Recreational club memberships (b) House telephone/utility bills
Second addendum to Public Ruling 2/2004 (17 Jan 2006)	Further clarification on goods and services offered at a discount

# Why distinguish perquisites from BIK?

It is important to distinguish between a Perquisite and a BIK as the receipt of each of these types of employment income will give rise to different tax implications, as shown below:

PERQUISITES	BENEFITS-IN-KIND
1) Taxable as employment income under Section 13(1)(a) of the Act.	1) Taxable as employment income under Section 13(1)(b) of the Act.
2) Included in the calculation of the taxable Value of Living Accommodation. Generally, the “formula” method for calculating the taxable value of living accommodation includes a reference to a percentage of the total remuneration taxable as Section 13(1)(a) of the Act. Therefore, for employees provided with living accommodation, the receipt of perquisites may increase the taxable value of the accommodation provided, and hence total taxable employment income.	2) Not included in the calculation of the taxable Value of Living Accommodation.
3) Subject to tax deduction under the Schedular Tax Deduction (STD) scheme.	3) Not subject to tax deduction under the STD scheme. Tax arising from taxable BIK will be payable upon filing of the employee’s tax return by 30 April in the year following the provision of the benefit.
4) Taxable value based on market value or the actual amount of the perquisite.	4) Taxable value based on either the “formula” method or the “prescribed value” method which may be set at a lower value as a concessionary treatment.

## Examples of Taxable Perquisites and BK

The following are some illustrations of differences in taxation of Perquisites and BIK (please note that the illustrations are not exhaustive):

PERQUISITES (taxable under S13(1)(a))	BENEFITS-IN-KIND (taxable under S13(1)(b))
Assets <b>given to employees</b> for no consideration. The full market value of the asset is a perquisite to the employee.	Household furnishings, apparatus and appliances <b>provided for the employee</b> by or on behalf of the employer. Value of benefit ascertained using the “Formula” or the “prescribed value” method, which may be at lower value (concessionary treatment).
Car <b>allowance</b> paid by employer; and <b>Cost of personal</b> car insurance premiums, road tax, parking fees and car maintenance charges <b>reimbursed</b> by employer.  <b>Employee leases</b> a car and employer pays for the monthly lease rental (either directly to the leasing company or by way of reimbursement to the employee).  The value of perquisites to the employee is the cost incurred by the employer.	<b>Provision of company/leased car and fuel</b> to the employee by employer. The “formula” or the “prescribed value” method, which could be concessionary, is used to determine the value of the benefit to the employee.  Incidental costs paid by employer associated with the car provision e.g. toll fee, parking, maintenance costs such as servicing, repair, road tax, car insurance premium are regarded as inclusive in the above valuation.
Fuel cost <b>incurred by employee</b> and reimbursed by employer is a perquisite to the employee.	<b>Provision of fuel</b> e.g. petrol card without car benefit, is a benefit to the employee and taxable on the actual cost incurred.
Costs incurred by an employee on <b>personal</b> telephone bills including mobile phone bill, reimbursed by employer is a perquisite to the employee.	<b>Provision</b> of telephone (including mobile phone) and telephone charges. Value of benefit ascertained using the “formula” or the “prescribed value” method.





## Non-taxable perquisites and BIK

The following items are not taxable, as provided in the respective Public Rulings:

### PERQUISITES

- 1) Pure gifts or testimonials received by an employee from his employer or third parties purely for personal appreciation or for specific personal reasons which are not related to having or exercising the employment. Some of the examples provided were wedding gifts (e.g. cash, jewellery or other items) and cash given to an employee for passing the professional examination with excellent results (*PR No. 1/2006*).

### BIK

- 1) Annual insurance premiums/contributions paid by the employer for:
  - (a) insurance premium which are obligatory for foreign workers as a replacement to SOCSO contributions.
  - (b) group insurance premiums to cover workers in the event of an injury or accident.
  - (c) insurance premiums on insurance policies under the Aviation Travel Insurance for employees for coverage of employees for travelling on official duties.
  - (d) contributions by employer to the health care management organisation for payment of the medical and treatment costs of employees (*PR No. 1/2006*).
- 2) Goods and services offered to employees (including spouse, family, servants, dependants or guests of the employee) at discounted prices provided the goods and/or services:
  - (a) are not convertible into money by the employee even though they have money's worth;
  - (b) must be for the benefit of the employee and is used by the employee personally;
  - (c) are provided to employees as a whole and not provided specifically to a certain group of employees only; and
  - (d) are consumables, products of the employer, the value of which in total is RM 200 or less (*PR No. 2/2004 and 1/2006*).
- 3) Medical, dental or child-care benefit (*PR No. 2/2004*).
- 4) Benefits used by the employee solely for the purpose of performing employment duties (*Income Tax Act and PR No. 2/2004*).
- 5) Amount of leave passage expended under Section 13(1) (b) (*Income Tax Act and PR No. 2/2004*).
- 6) Food and drink provided free of charge (*PR No. 2/2004*).
- 7) Free to and fro transportation between pick-up points or home and the place of work (*PR No. 2/2004*).



## Some practical implications

Public Rulings (although not law) prescribe certain practices and treatments which the IRB expects taxpayers to comply with. The following are some practical issues relating to the obligation to comply with Public Rulings:

Practical Considerations	Implication on
Is your payroll, claims or administrative processes able to capture the relevant items for declaration and Schedular Tax Deduction?	Payroll/Human Resource/Finance
Do your policies identify and describe the relevant benefits/ perquisites sufficiently?	Human Resource
Should you be looking at reviewing/revamping your employment benefits structure?	Human Resource
Have you sought clarification for doubtful items?	Payroll/Finance/Tax
When do you recognise the perquisite for Schedular Tax Deduction purposes? (e.g. enjoyment of benefit/ reimbursement of expense)	Payroll/Finance/Tax
How do you implement Schedular Tax Deduction for Income Tax borne by employer?	Payroll/Finance/Tax
What are the Employee Provident Fund implications when restructuring your benefits structure?	Human Resource/Payroll/Finance/Tax
How would you determine the market value of a perquisite?	Payroll/Finance/Tax

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## How we can help

At PricewaterhouseCoopers, we have a team of dedicated individual tax and payroll specialists who are able to assist you in ensuring that you have the appropriate systems and processes to ensure corporate/individual compliance. If you have any enquiries relating to the above issues, please contact the following:

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Photo taken by Wong Ai Lee, Senior Manager, Business Development Centre, PricewaterhouseCoopers Malaysia