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Public Ruling 2/2018 – Tax incentive for Returning Expert Programme

The Inland Revenue Board (IRB) has issued Public Ruling 2/2018 – Tax Incentive for Returning Expert Programme (“PR 2/2018”), dated 2 May 2018. PR 2/2018 explains the tax treatment of the tax incentive for the Returning Expert Programme (REP).

The salient points of PR 2/2018 is as follows:

1. PR 2/2018 sets out the conditions to be fulfilled to be an approved individual, which include:
 - Malaysian citizen and resident,
 - The application under the REP has been approved by the Minister of Finance, and was submitted on or after 12 April 2011 but not later than 31 December 2020, when the applicant is still living and working abroad,
 - Expert in the specified fields,
 - Has not derived any employment income in Malaysia for at least 36 consecutive months prior to the date of application,
 - Employment income shall be received from any person resident in Malaysia,
 - No bond with other government companies / agencies to return to Malaysia, and
 - No bond of outstanding scholarship or loan payment with the Malaysian government or its agencies.
2. The fields of expertise considered for the REP are the following 12 fields / industries under the National Key Economic Areas:
 - Health care
 - Communication and infrastructure
 - Electronics and electrical
 - Education
 - Wholesale and retailing
 - Tourism
 - Agriculture
 - Palm oil and rubber
 - Greater Kuala Lumpur / Klang Valley
3. The public ruling also sets out additional criteria to be met for applicants of the REP who are returning to Malaysia to work with a company under the same group. These are:
 - The person must have worked for at least 5 years abroad with a company under the same group.
 - He is not working overseas on a secondment, assignment or project.
 - His employment overseas was through a direct hire by that company abroad.
 - His salaries are paid by that company abroad and in the currency of the country which the company is based in.
 - He is not financially or legally bound to return to work in Malaysia under the same group of companies.
4. Approved individuals must opt to be taxed at the flat rate of 15% in the year of assessment in which he returns to Malaysia or in the subsequent year of assessment, otherwise he is deemed to reject the REP incentive.

5. PR 2/2018 also provides examples and illustrations to explain the application of the incentive under various scenarios, including:
- Situations where the 15% tax rate is more advantageous compared to scaled rates and vice versa
 - When there is more than one source of employment income or other sources of income
 - Change of employer
 - Separate and joint assessments
 - When (timing) a share option scheme is considered as employment income derived from Malaysia

The PR 2/2018 is available at www.hasil.gov.my (Legislation > Public Rulings).

Revised Tax Investigation Framework

The IRB has issued a revised Tax Investigation Framework dated 15 May 2018. This replaces the earlier framework dated 1 October 2013. The salient changes are as follows:

Item	Changes
Applicable provisions	Section 39(1A) [deduction disallowed if information requested is not furnished within specified timeframe] and section 97A(2) [Appeals to Special Commissioners] of the Income Tax Act 1967 (ITA) have been added to the list of provisions applicable in a tax investigation.
Investigation activities	New para 3.2 and 3.3 have been inserted which specify: <ul style="list-style-type: none"> • IRB may obtain information from anyone to assist in the investigation. • The taxpayer can be charged in court for tax evasion.
Recording of statement	New para 7.3.2 has been inserted to specify that lawyers are permitted to be present when statements are being recorded.
Settlement of investigation	Para 7.4 has been updated to provide more clarity on the procedure for cases settled out of the court, which is as follows: <ul style="list-style-type: none"> • IRB will issue a letter of settlement to the taxpayer • Where settlement is agreed, a letter of undertaking will be signed. • The investigation is complete only upon approval and issuance of assessment by the IRB. • The taxpayer will be placed under monitoring thereafter.
Rights of taxpayer	The old para 8.2.4 in the framework dated 1 October 2013, which allows taxpayers to appoint a lawyer when the investigation / charges are carried out, has been removed. The new framework makes no mention of this.
Offences and penalties	Para 10 has been expanded and updated to reflect the current offences and penalties under sections 112(1), 112(1A), 112(3) [failure to furnish a tax return], 113 [incorrect returns] and 114(1) [wilful evasion] of the ITA.

Item	Changes
Payment procedures	<p>Para 11 has been expanded to provide clarity on the payment procedure which is as follows:</p> <ul style="list-style-type: none"> • The tax and penalties have to be made in one payment, otherwise an application for instalment payments can be made. • For instalment payment, the first instalment has to be 25% of the tax and penalties and paid upon signing of the letter of undertaking. • Post-dated cheques are required for the instalments. • Higher penalties will be imposed for longer instalment periods.
Appeal	<p>Para 12 has been expanded to explain the appeals procedure briefly.</p> <ol style="list-style-type: none"> 1) Appeals against assessment <ul style="list-style-type: none"> • All appeals are to be made via a Form Q submitted to the relevant investigation branch. • Appeals to the Special Commissioners are to be made within 30 days of receiving the notice of assessment. • Any party not satisfied with the decision of the Special Commissioners may appeal further to a higher court. • Section 99 is not applicable for composite assessments made under section 96A of the ITA. 2) Appeal against conviction – a taxpayer not satisfied with the decision of a court may appeal to a higher court.
Investigation for money laundering, etc.	<p>Para 13.2 and 13.6 have been updated to reflect the current penalties under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA), i.e. fines up to RM3 million or a jail term up to 5 years.</p> <p>Para 13.4 now states that an IRB office may use the powers under the AMLATFPUAA.</p>

MIDA revised guideline on private healthcare

MIDA issued the following revised guideline in relation to private healthcare incentives:

1) Guideline for tax incentive for promotion of healthcare travel

The guideline has been revised following the proposal in Budget 2018. The salient changes are:

- The application period is extended to application received by MIDA no later than 31 December 2020.
- Revisions of conditions:
 - (a) qualified healthcare travellers shall comprise at least 10% of the total patients for each year of assessment (YA), and
 - (b) at least 10% of gross income of each YA is generated from healthcare travellers.

However, the above changes have not be gazetted in any gazette order.

2) Guideline for verification of plant, machinery, medical devices and facilities for private healthcare facility

This guideline has been amended to reflect the changes to the application period as above and to specify that the Ministry of Health will verify medical devices worth more than RM50,000 as stipulated in P.U.(A) 203/2017 – Income Tax (Exemption) (No. 3) Order 2017. Previously, it was stated as “medical devices as described under the Medical Device Act 2012”.

MIDA revised guideline on green technology incentives

MIDA has issued a revised guideline for green technology (GT) incentives. This guideline replaces the version dated 10 December 2015 and applies to applications submitted from 1 April 2017 onwards. The salient features of the incentive are set out below (new information are indicated in colour):

	Incentive	Application deadline
GT (project) <i>The previous guideline did not make a distinction between new and existing company</i>	<i>New company</i> Investment Tax Allowance (ITA): 100% on qualifying capital expenditure (QCE) incurred from 25 Oct 2013 for a maximum of 5 years or until 31 December 2020.	
	ITA to be set of against 70% of statutory income (SI). <i>Approval may be granted retrospectively from a date not earlier than 3 years from date of application.</i>	
GT (services)	<i>Existing company</i> ITA: 100% on QCE incurred from date of application received on or after 1 April 2017 until 31 December 2020.	Received by MIDA by 31 December 2020
	ITA to be set of against 70% of statutory income (SI). <i>Qualifying projects are:</i> <ul style="list-style-type: none"> <i>Investment for own consumption/ project based; or</i> <i>New business activity which generates new separate income from existing operations</i> 	
GT (asset)	Income Tax Exemption: 100% of SI from qualifying GT services from YA where date of application received is on or after 1 April 2017 until YA 2020. <i>The existing eligibility criteria have been expanded to specify that companies undertaking GT services must provide integrated services and employ at least 5 full time employees.</i>	Received by MGTC by 31 December 2020

MIDA revised Domestic Investment Strategic Fund (DISF) guideline

The DISF is a **matching grant** for qualifying activities carried out by companies in qualifying sectors. The **scope** of the qualifying sectors has been **expanded**. The current list of qualifying sectors is set out below:

Manufacturing

- Aerospace;
- Medical Devices;
- Pharmaceuticals;
- Advanced Electronics;
- Machinery and Equipment;
- Other industries, on a case by case basis.

Services

- Design and Development
- Research and Development
- Testing / Calibration
- Quality and Standard Certification
- Architectural (New) / Engineering Services
- Technical and/or skills training
- Logistics Service Providers (3PL)
- ICT Solutions Providers related to Automation and Industry 4.0 **(New)**
- Integrated Green Technology Project **(New)**

IRB launches QR Code initiative

The IRB has recently issued a [Media Release](#) to inform the public of its latest digital initiative through the use of QR Codes.

The QR codes directs the public to general tax information that are found on the IRB's website. These include income tax payment for individuals, individual business income, stamp duty, travel restriction, etc.

Currently, such QR codes can be found on physical leaflets on general tax information. These are leaflets commonly placed at the IRB's offices – waiting areas, etc. The QR code directs users to the online version of the physical leaflets.

Deduction for contributions to Tabung Harapan Malaysia

As announced by the Honourable Finance Minister, contributions made to Tabung Harapan Malaysia are tax deductible under section 44(6) of the Income Tax Act 1967. There is no limit on the amount of deduction allowed for contributions made to the Government.

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Let's talk

Our offices	Name	Email	Telephone
Kuala Lumpur	Jagdev Singh	jagdev.singh@my.pwc.com	+60(3) 2173 1469
Penang / Ipoh	Tony Chua	tony.chua@my.pwc.com	+60(4) 238 9118
Johor Bahru	Benedict Francis	benedict.francis@my.pwc.com	+60(7) 218 6000
Melaka	Benedict Francis Au Yong	benedict.francis@my.pwc.com paik.hup.au@my.pwc.com	+60(7) 218 6000 +60(6) 283 6169
Labuan	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828

Our services	Name	Email	Telephone
Corporate Tax Compliance & Advisory			
▪ Consumer & Industrial Product Services	Margaret Lee Steve Chia	margaret.lee.seet.cheng@my.pwc.com steve.chia.siang.hai@my.pwc.com	+60(3) 2173 1501 +60(3) 2173 1572
▪ Emerging Markets	Fung Mei Lin	mei.lin.fung@my.pwc.com	+60(3) 2173 1505
▪ Energy, Utilities & Mining	Lavindran Sandragasu	lavindran.sandragasu@my.pwc.com	+60(3) 2173 1494
▪ Financial Services	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828
▪ Technology, Media, and Telecommunications	Heather Khoo	heather.khoo@my.pwc.com	+60(3) 2173 1636
GST / Indirect Tax	Raja Kumaran Yap Lai Han Chan Wai Choong	raja.kumaran@my.pwc.com lai.han.yap@my.pwc.com wai.choong.chan@my.pwc.com	+60(3) 2173 1701 +60(3) 2173 1491 +60(3) 2173 3100
International Tax Services / Mergers and Acquisition	Frances Po	frances.po@my.pwc.com	+60(3) 2173 1618
Transfer Pricing, Tax Audits & Investigations	Jagdev Singh	jagdev.singh@my.pwc.com	+60(3) 2173 1469
International Assignment Services	Sakaya Johns Rani Hilda Liow	sakaya.johns.rani@my.pwc.com hilda.liow.wun.chee@my.pwc.com	+60(3) 2173 1553 +60(3) 2173 1638
Corporate Services	Lee Shuk Yee	shuk.yee.lee@my.pwc.com	+60(3) 2173 1626
Japanese Business Consulting	Yuichi Sugiyama Clifford Yap	yuichi.sugiyama@my.pwc.com clifford.eng.hong.yap@my.pwc.com	+60(3) 2173 1191 +60(3) 2173 1446
China Desk	Lorraine Yeoh	lorraine.yeoh@my.pwc.com	+60(3) 2173 1499

pwc.com/my

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