

## Understanding your tax

*The April 30 deadline looms for taxpayers to file their returns. Tax consultant Dr Choong Kwai Fatt from the Faculty of Business, Universiti Malaya, takes you through the basic issues in understanding your tax issues.*

### Income exemption, deduction and relief to individual employee

#### Introduction

Every employee when filing the tax return (Form BE) for year of assessment (YA) 2009 on 30 April 2010 has to understand the concept of income exemption, deduction and relief in order to maximize the tax benefits available under the Income Tax Act 1967 (the Act) prior to paying the legally required amount of income tax.

#### Income Exemption

Generally, any amount paid by the employer to the employee in relation to having or exercising an employment will be taxed. This refers to employment income such as salary, bonus, gratuity, commission, allowance, director fees and many other forms of remunerations as stated in s 13(1) of the Act.

The Government, however, would from time to time legislate through the Act or gazette order [PU(A) Orders] on the category of income paid by the employer where tax exemption will be granted. This carries the meaning that such income will be *excluded* from the income tax computation.

In short, the phrase 'income exemption' refers to employment income that is excluded from taxability.

#### Deduction

Employee can only deduct expenses incurred in carrying out the employee's duties provided allowance has been received from the employer. This generally refers to travelling allowance, entertainment allowance and meal allowance.

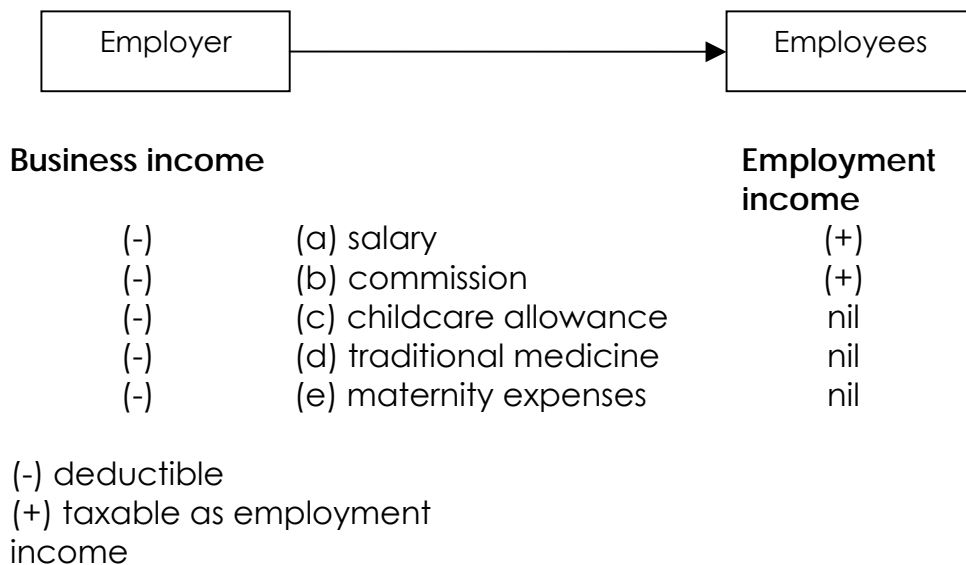
Income tax only imposes tax on net income, ie. after deduction of the required expenses incurred in discharging the performance of the employee's duties. The amount to be taxed is mathematically computed as follow:

	RM
Entertainment allowance received from employer	xx
- Entertainment expenses incurred on customers	(x)
Amount to be taxed	<u>xx</u>

### Confusion between income exemption and deduction

With effect from YA 2008, payments by the employer to the employee in the form of child care allowance, payment of traditional medicine and maternity expenses constitute tax exempt income to the employee. The amount paid in relation to these expenses by the employer is tax deductible against his business income and yet not taxable in the hands of employees.

The relationship between the employer and the employee is illustrated as follow:



If the employee incurred on his/her own child care, medical expenses on traditional medicine or maternity expenses, these expenses are not deductible from the employment income because

- (a) no allowance has been received from the employer on these items;
- (b) it is not related to the carrying on of the employee's work;
- (c) it represents personal expenses which are not permissible under the Act.

The Act only permits the deduction of expenses provided it is incurred 'wholly and exclusively' (the sole objective test) in discharging the performance of employees duties as stated in s 33 of the Act.

*Tax Planning*

Since the expenses are tax deductible to employer, it would be tax efficient for the employee to forgo their bonus in exchange for these benefits as child care allowance, medical expenses on traditional medicine and maternity expenses that is given by the employer to the employee is tax exempt on the employee's hand. Alternatively, employer may consider to provide these employees benefits to the employee at the additional cost to the business but it gives loyalty of employees to the firm in long run.

**Tax relief**

The Act provides a list of items deductible from any income earned by a resident individual in order to relief him/her from tax burden. These expenses are essential to provide welfare to an individual and are given to any resident individual irrespective whether he/she is earning business income, employment income or investment income. The resident individual refers to an individual who has been staying in Malaysia for at least 6 months.

**Article 2**

**Tax Relief**

Individual taxpayer whether exercising business, employment or investment activities are entitled to the following tax relief to reduce their taxable income (in the case of married couple, this tax relief is given to husband and also working wife individually):

- (a) Personal relief RM8,000
- (b) EPF and life insurance premium paid (on life of taxpayer, spouses) max RM6,000

	Expenses incurred on	Taxpayer	Spouse	Child	Parents	Max RM
(c)	Medical / education insurance	✓	✓	✓	—	3,000
(d)	Serious medical disease (include medical	✓	✓	✓	—	5,000

	examination of RM500) e.g: diabetic, highblood, cancer, leukemia etc						
(e)	Education fees in college, universities, professional courses, MBA, PhD (law, accounting, finance, science, technological skills	✓	—	—	—	5,000	
(f)	Disabled	✓	—	—	—	6,000	
(g)	Basic supporting equipment e.g: wheelchairs	✓	✓	✓	✓	5,000	
(h)	Medical expenses for parents (need not be serious disease)	—	—	—	✓	5,000	
			or				
(i)	Child relief	✓	✓	—	—	1,000 / 5,000 per child	
(j)	Books, magazines (excluding newspaper)	✓	✓	✓	—	1,000	
(k)	Personal computer	✓	✓	—	—	3,000	
(l)	Education fund maintain by Skim Pendidikan Nasional	—	—	✓	—	3,000	
(m )	Spouse relief (husband / wife relief) where spouse is not working	✓	or	✓	—	—	3,000
(n)	Interest relief (residential property)						10,000
(o)	Sports 300						equipment

### Article 3

#### Interest Expense on Residential Property (w.e.f YA 2009)

Malaysian citizen (and resident) who acquired any residential property where the sale and purchase agreement has been executed during 10.3.2009 to 31.12.2010 shall be given tax relief on interest cost up to RM10,000 for each YA for 3 consecutive YA beginning from the basis year in which the interest is first expended by that individual.

Residential property means a house, condominium unit, apartment or flat which is built as a dwelling house.

This is however subject to the following restriction:

- (a) the purchase of the residential property is limited to only one unit;
- (b) the individual has not derived any income in respect of that residential property.

In the case of joint ownership, the amount of interest relief available to each individual (shall be proportionate in accordance with the formula:

$$A \times \frac{B}{C}$$

Where:

- A is the total amount of interest relief (max RM10,000) for that year
- B is the total interest expended in the YA by that individual
- C is the total interest expended in that YA by all such individuals

In the event of joint assessment, the amount incurred by the spouse will be given to the other spouse who is taxable.

Example

Melissa and her husband Hun acquired a Taman Tun Semi D for RM1.6 million on 1.6.2009. The interest incurred from 1.6.2009 till 31.1.2.2009 amounts to RM42,000. Melisa only pays 30% of the instalments while Hun paid the 70%.

For YA 2009, Melissa would entitle RM3,000 for interest relief while Hun would get RM7,000 for interest relief. However, if Melissa elects joint assessment with the husband, then RM10,000 would be given to Hun.

## Article 4

### Child Relief

Married couple can claim child relief of maintaining any child during the calendar year 2009 (1.1.2009 – 31.12.2009). The children can be their own child, step child, or legally adopted child.

The amount of child relief will be:

Age	≤ 18	> 18 and study in universities / college
Amount	RM1,000	RM4,000

The children must not be married. Child relief is given for any number of children.

In the event that the child is disabled, the amount of child relief is RM5,000. Additional RM4,000 will be given if such disabled child is studying in universities or college. This would give a total child relief of RM9,000.

To minimize tax payable, child relief should be claimed by either spouse who has the highest taxable income. It should never be divided between husband or wife for domestic fairness.

#### Example

Li and Choo are husband and wife since 2004. They have 3 children all below 18 years. The total income of Li is RM72,000 and Choo RM48,000 for YA 2009. The child relief entitlement is RM1,000 x 3 = RM3,000.

#### Scenario 1: All child relief given to Choo

	Li		Choo		Total
Total income	90,000		60,000		
(Less): Relief					
Personal	8,000		8,000		
EPF 11% (max)	6,000		6,000		
Child relief	-	(14,000)	3,000	17,000	
Chargeable income	<u>76,000</u>		<u>43,000</u>		
Income tax payable	8,715		2,565		11,280

#### Scenario 2: Li claims child relief

	Li		Choo		Total
Total income	90,000		60,000		
(Less): Relief					
Personal	8,000		8,000		
EPF 11% (max)	6,000		6,000		
Child relief	3,000	(17,000)	-	14,000	
Chargeable income	<u>73,000</u>		<u>46,000</u>		
Income tax payable	7,995		2,955		10,950
Tax savings					<u>330</u>

## Article 5

### Income Tax Threshold

In the year of assessment (YA) 2009 (calendar year 1.1.2009 – 31.12.2009), employee is required to file in the Form BE by or before 30 April 2010 either through electronic filing or actual submission of tax return form to the Pusat Pemprosesan at Pandan Indah, Cheras.

The employee is entitled the following tax reliefs:

		RM
Individual		8,000
EPF 11% x annual salary	}	restricted
Life insurance		
Books, magazines	}	restricted to
Medical check up		

The minimum salary for an employee to be liable to income tax for YA 2009 will be RM28,652.

Example 1: Individual with EPF contribution only as relief

		RM
Salary		28,652
(Less): Relief		
Personal	8,000	
EPF (11% x RM28,652)	3,152	<u>(11,152)</u>
		<u>17,500</u>
Income tax payable		400
(Less): Rebate		<u>(400)</u>
		<u>nil</u>

Employee may not require to pay tax for earning employment income exceeded RM28,652 if such individual employee incurred other tax relief on books, medical check up or life insurance premium.

Example 2

Assuming individual with EPF contribution, medical check up RM500, books RM400, life insurance premium RM2,000 may not be paying any income tax if annual salary is RM31,910.

The annual salary will be RM31,910 computed as follows:

		RM
Salary		31,910
(Less): Relief		
Personal	8,000	
EPF (11%)	3,510	
Life insurance	<u>2,000</u>	5,510
Books (max: RM1,000)	400	
Medical check up (max)	<u>500</u>	<u>(14,410)</u>
		<u>17,500</u>
Income tax payable		400
(Less): Rebate		<u>(400)</u>
		<u>Nil</u>

An employee earning annual salary exceeds RM31,910 may continue not liable to pay income tax if they incurred the following expenses:

	RM
(a) expenses for parents	Medical 5,000
(b) or education insurance on taxpayer, spouse, child	Medical 3,000
(c) supporting equipment for taxpayer, spouse, child, parents	Basic 3,000
(d) equipment	Sports 300
(e) relief (on residential property)	Interest 10,000

New employee first commences employment in 2009 earning annual salary in excess of RM28,652 or more in YA 2009 needs to register with the IRB for a tax reference no. with SGxxxxx-xx-xxx.

Employee with existing SG income tax reference number may need to file in nil return on Form BE eventhough their annual salary for YA 2009 is below RM28,652.

## Article 6

### Bonus and director fees for year of assessment 2009

30 April 2010 will see the filing of the return Form BE for individuals who are exercising employment income during calendar year 1 January 2009 till 31 December 2009.

Two important changes are required to be noted; director fees and bonus paid to the employees. With effect from year of assessment 2009, director fees and bonus will be assessed on *receipt* basis notwithstanding the payments are related to prior years of service. This would mean that when director fees and bonus are paid to the employees during the year 2010 in relation to 2009 employment, this amount will only be included as employment income for the year 2010.

Likewise, any director fees or bonus paid in the year 2009 in relation to 2008 or prior years will be treated as income in 2009 and be included in the Form EA for YA 2009.

#### Example 1

Low is a General Manager for Ice Blood Marketing Sdn Bhd since 2007. On 1 March 2009, she was paid

- (a) RM13,000 bonus in relation to the services rendered 1.1.2008-31.12.2008 and
- (b) RM9,000 for bonus in relation to 2007.



Her salary for the year 1.1.2009 to 31.12.2009 was RM84,000. On 28 February 2010, she was paid bonus RM23,000 for the services rendered 1.1.2009-31.12.2009.

The basis period 1.1.2009-31.12.2009 for YA 2009 have to include only the employment income *received* during this period.

Salary				84,000
Bonus	-2008	}	received in 2009	13,000
	-2007			9,000
				106,000

## Article 7

### Compensation for loss of employment

An Employee being retrenched during the year 1 January 2009 to 31 December 2009 who is paid for compensation for loss of employment will be given income tax exemption of RM10,000 for each completed year of service with the employer or companies in the same group.

This includes payment for employee who opted for voluntary separation scheme.

Example:

A is a sales personnel working in Star New Enterprise on 1.8.2007. Due to the economy downturn in 2009, A is being retrenched on 1.11.2009 and paid A compensation of RM25,000 for loss of employment. The amount to be taxed in YA2009 will be:

	RM
Compensation	25,000
(Less): Exemption	
1.8.2007 – 31.7.2008	2 completed
1.8.2008 – 31.7.2009	years of service
	X RM10,000
	(20,000)
	5,000

## Article 8

### Tax Exempt Employee's Benefit : Allowances

Employer provides the following tax benefits to the employees during 1.1.2009 – 31.12.2009 will be tax deductible against their business income and yet exempted from tax on employees.

- (a) Petrol card / petrol allowance / travel allowance

Employer providing petrol card, petrol allowance or travelling allowance to employees to travel from home to work place or office will be allowed up to RM2,400 a year.

- (b) Meal allowance for working overtime, travelling outstation.
  - (c) Parking allowance
- Must be reasonable and justifiable depending on the nature of work and
- (d) Medical treatment to employees, spouse and children to include traditional medicines such as ayurvedic, acupuncture.
  - (e) Interest subsidies on housing, car and education. The total loan amount is restricted to RM300,000.
  - (f) Child care allowance up to RM2,400 a year.
  - (g) Employers' product or services which can be provided
    - a. Free
    - b. At a discount which must not exceed RM1,000 a year

Employer involving in manufacturing of food, car accessories may consider providing its product to employee to release their cost of living in this economic slowdown.

These allowances need to be disclosed in the Form EA as tax exempt benefit although it is not taxable on employees.

## Article 9

### Official Duties – Travelling Allowance

Employer providing petrol card, petrol allowance or travelling allowance to salary personnel, reporter and other employees to carry out official duties. This form of allowance is taxable on the employee and reflected in their respective EA Form.

Employee must keep record on the actual expenses incurred in relation to official duties and set off the amount incurred against the allowance received. This adds burden and responsibility on the employee. The records have to be kept for a period of 7 years.

Employees may end up paying additional tax under the self assessment system if they report the employment income as per EA Form without deducting the actual travelling expenses incurred on official duty to carry out the employers' business.

In the calendar 2009 petrol card, petrol allowance, travel allowance and toll card for official duties up to RM6,000 a year will be tax exempt.

This would mean that employer will exclude RM6,000 a year from the taxable income of employees as reported in the EA Form. However, the employer needs to provide this RM6,000 as tax exempt benefit in the EA Form.

Employees receiving this amount which does not exceed RM6,000 a year will no longer be required to keep the required receipts to substantiate their claim.

However, if the employer providing:

- |     |                      |   |                     |
|-----|----------------------|---|---------------------|
| (a) | Petrol card          | } |                     |
| (b) | Petrol allowance     | } | for official duties |
| (c) | Travelling allowance | } |                     |
| (d) | Toll card            | } |                     |

exceed RM6,000 a year, the employer is required to report in Form EA in two sections:

- |     |         |                                   |                              |
|-----|---------|-----------------------------------|------------------------------|
| (a) |         | Tax exempt benefits               | RM6,000                      |
| (b) |         | Part of taxable employment income |                              |
|     | —       | Salary                            |                              |
|     | —       | Bonus                             |                              |
|     | —       | Entertainment allowance           |                              |
|     | —       | *Petrol/travelling/ toll          | - amount <i>in excess of</i> |
|     | RM6,000 |                                   |                              |

Employee is now facing the dilemma again. She is now required to keep all receipts to substantiate her claims.

#### Example 1

Ming Hui works as marketing agriculture products for Duck Rich Sdn Bhd since 2007. She is given travelling allowance of RM14,000 per year. For the year ended 31.12.2009 (1.1.2009 – 31.12.2009), the company will provide Ming Hui a Form EA to include taxable income of RM8,000 to be part of employment income and tax exempt benefit of RM6,000.

Ming Hui incurred RM9,000 for the travelling to carry out the official duties for the YA 2009. She is required to set off against the amount received from employer of RM14,000 (and not RM8,000). The amount taxable on her is RM5,000 (RM14,000 – RM9,000).

Ming Hui required to maintain the receipts of RM9,000 for a period of 7 years.

## Article 10

### Gratuity

The Government recognizes the importance of the employees contribution to the development and expansion of a company's success. Therefore, gratuity paid for

long service employee who has been worked for at least 10 years will be tax exempted. Employees include directors irrespective whether he/she is also shareholders.

Therefore, the gratuity paid upon the retirement of an employee will be tax exempt under the following conditions will be tax exempt.

- |   | Age     |              |
|---|---------|--------------|
|   | 50 – 54 | 55 and after |
| (i) No of years working in the company / group of companies | 10      | 10           |
| (ii) Compulsory age of retirement                           | -       | 55           |
| (iii) Contract of employment / collective agreement         | ✓       | -            |
- (b) Excellent service award, past achievement award, long service award (exercised at least 10 years with employer) – RM2,000 per year.

## Article 11

### Penalties

Income Tax Act 1967 imposes various penalties for non compliance of the Act. Taxpayer has to be familiar with the penalty regime:

- (a) Non submission of return  
Return Form BE for YA 2009 needs to be submitted by or before 30.4.2010. Non submission of return will result in:
- (i) Penalty 3 times of tax
  - (ii) Fine between RM300 to RM2,000

In practice, the tax authorities however impose 2% - 20% on the tax payable as the penalty instead of the statutory formula of 300%.

- (b) Non payment of final tax  
Employer has deducted the monthly tax of the employees and paid to IRB on the 10<sup>th</sup> of every month. The difference between the actual tax and the total tax deducted by employer must be paid to IRB on / before 30.4.2010.

Actual tax	xx	
(Less): Total 12 monthly tax		
Deducted on employees salary		(xx)
Final tax	<u>xx</u>	

Failure to pay the final tax on 30.4.2010 will result in a late payment penalty of 10% being imposed. Additional 5% will be imposed if such amount of tax or penalty is not paid by 30.6.2010 (60 days after 30.4.2010)



#### Example 1

Yie Lin has submitted her tax return Form BE on 16.4.2010 for YA 2010. The actual tax computed by her for YA 2009 is RM14,000 and the monthly tax deducted by the employer is RM8,000. The final tax of RM6,000 is never paid to IRB.

The imposition of penalty is from 30.4.2010 and not 16.4.2010.

The penalties computation will be:

	RM
Final tax	6,000
Penalty 10% on 1.5.10	<u>600</u>
Tax due	6,600
Additional penalty of 5% on 1.7.2010	<u>330</u>
Amount due to IRB	<u>6,930</u>

Effectively the penalty is 15.5% as the additional 5% penalty is imposed on tax due.

#### (c) Non keeping of sufficient records

Under the self assessment system, employee requires to keep sufficient records on his tax affairs for a period of 7 years. Only the tax return Form BE is submitted to IRB by or before 30.4.2010.

The records of an employee would comprise of copy of Form BE, salary slips, Form EA (Statement of Employment Income), credit card statements in relation to petrol claim, travelling, parking, toll charges incurred in relation to official duties.

The YA 2009 records need to maintain for 7 years, computing from 1.1.2010 that is 31.12.2017.

Failure to maintain sufficient records is an offence and the penalty will be:

- (i) Fine RM300 to RM10,000 or
- (ii) Imprisonment  $\leq$  1 year.