



INLAND REVENUE BOARD OF MALAYSIA

**TAX INCENTIVE FOR
RETURNING EXPERT PROGRAMME**

PUBLIC RULING NO. 2/2018

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RETURNING EXPERT PROGRAMME**

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

The objective of this Public Ruling (PR) is to explain the tax treatment in respect of tax incentives in relation to the Returning Expert Programme (REP) to attract Malaysian citizens who work overseas as a professional to return to work in Malaysia.

2. Relevant Provisions of the Law

- 2.1 This PR takes into account laws which are in force as at the date this PR is published.
- 2.2 The provisions of the ITA related to this PR are sections 2 and 13, subsection 45(2) and Part XV of Schedule 1.
- 2.3 The relevant subsidiary legislation referred to in this PR is the Income Tax (Determination of Approved Individuals and Specified Year of Assessment Under Returning Expert Programme) Rules 2012 [P.U. (A) 151/2012].

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Chargeable income" in relation to a person and a year of assessment, means chargeable income ascertained in accordance with the ITA.
- 3.2 "Employment" means:
 - (a) employment in which the relationship of master and servant subsists;
 - (b) any appointment or office, whether public or not and whether or not that relationship subsists, for which remuneration is payable.
- 3.3 "Resident" means resident in Malaysia for the basis year for a year of assessment (YA) by virtue of section 7 or subparagraphs 8(1)(b) or 8(1)(c) of the ITA.
- 3.4 "Returning Expert Programme" means a programme managed by the Talent Corporation Malaysia Berhad and approved by the Government.
- 3.5 "Specified Years of Assessment" means:
 - (a) five consecutive years of assessment commencing from the basis period of a year of assessment an option is made by an approved individual to be subject to tax under Part XV of Schedule 1 of the ITA; and

- (b) the option shall be made in the year of assessment or the following year of assessment of the approved individual's return to Malaysia.

3.6 "Talent Corporation Malaysia Berhad" means a company limited by guarantee:

- (a) incorporated under the Companies Act 1965(Act 125) with its registration number of 919577-H and is resident in Malaysia; and
- (b) which promotes and facilitates the return of any Malaysian citizen who works as a professional overseas and to establish a sustainable expert workforce in Malaysia under the Returning Expert Programme.

3.7 "Total income" in relation to a person and a year of assessment, means the total income ascertained in accordance with the ITA.

4. Returning Expert Programme

4.1 Highly skilled workers play an important role in the economic innovation and growth of a country. It is therefore not surprising that global talent migration has become a major concern resulting in brain drain in some developing countries, leading to an increased competition among countries to attract and retain them.

4.2 In this regard, Malaysia has introduced the REP to attract Malaysians who work overseas to return to Malaysia in certain areas of expertise to contribute to national development.

4.3 The REP was administered by Talent Corporation Malaysia Berhad (TalentCorp), a government agency, from 1 January 2011 in accordance with the law applicable to an individual whose employment commences on or after 1 May 2011. Individuals who have been approved under the REP are eligible to enjoy a flat rate of 15 percent preferred tax rate on taxable employment income for a period of 5 consecutive years of assessment starting from the first year of assessment chosen by the individual. Further information on the TalentCorp and the Comprehensive Guidelines for REP can be obtained from the Talent Corporation Malaysia Berhad website at www.talentcorp.com.my.

5. Eligibility Requirements for Incentive Application

5.1 To obtain approval for the preferred tax rate as set out in paragraph 4.3 of this PR, an individual shall comply with the following conditions:

- (a) a Malaysian citizen and resident in Malaysia;

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- (b) has made an application under the REP and the application has been approved by the Minister for tax purposes under Part XV of Schedule 1 of the ITA and the application was made on or after 12 April 2011 but not later than 31 December 2020;
 - (c) is an expert in the field determined by the Minister;
 - (d) has not derived any employment income in Malaysia for at least 36 consecutive months prior to the date of application made under paragraph (b); and
 - (e) an REP's application has never been approved before.

Other terms set by the Minister are as follows:

- (i) The REP application should be submitted when the applicant is still living and working abroad;
- (ii) Employment income shall be received from any person resident in Malaysia;
- (iii) Not having a bond either financially or legally with other government companies or agencies to return to Malaysia;
- (iv) Not having a bond of outstanding scholarship or loan payment with the Malaysian government or its agencies.

Upon fulfilling the above conditions, the individual is considered as an approved individual.

Example 1 : No income earned in Malaysia for at least 36 months consecutively prior to the date of application

Mr. Kasmuri has been with KSP Petroleum Bhd for 10 years. On 01.06.2012, Mr. Kasmuri migrated to Saudi Arabia to work with Riyadh Oil Ltd. However, after 3 years of working, Mr. Kasmuri was attracted to the REP incentives offered by the Malaysian Government and decided to return to Malaysia. On 01.12.2015, Mr. Kasmuri had applied for a REP incentive and has received an offer to serve at Shore Petrochemical Bhd. A review found that Mr. Kasmuri had received the Share Option Scheme from KSP Petroleum Bhd in 2014.

The application of the REP incentive by Mr. Kasmuri can still be considered despite receiving the Share Option Scheme in 2014 as the Share Option Scheme received is related to his previous service which ended in 2012.

- 5.2 Subject to paragraph 3.5 and 5.1(c) of this PR, the areas of expertise to be considered for the REP are the fields/industries recognised under the National Key Economic Areas (NKEAs) as follows:

No.	Fields / Industries
1.	Oil, Gas and Energy
2.	Trading Services
3.	Financial Services
4.	Health care
5.	Communication and Infrastructure
6.	Electronics and Electrical
7.	Education
8.	Wholesale and Retailing
9.	Tourism
10.	Agriculture
11.	Palm Oil and Rubber
12.	Greater Kuala Lumpur/ Klang Valley

- 5.3 For applicants who are working overseas and wish to return to work in Malaysia with a company under the same group, the applicant must meet the following criteria:

- (a) Has served with a company under the same group abroad at least five(5) years;
- (b) Is not assigned overseas for assignment, secondment or project basis;
- (c) Overseas employment is under a direct-hire scheme by overseas entity;
- (d) Salaries are paid by foreign entity and in the currency of the country in which the entity is based; and
- (e) Is not financially or legally bound to return to work in Malaysia under the same group of companies upon completion of overseas assignments.

Example 2 : Not assigned overseas for assignment, secondment or project basis

En Jeremy Lho was offered a job as a special officer to Chairman of LLB Plantation Bhd, Dato' Ang Mo Kio in 2010. At the same time, he was also appointed and seconded as Managing Director of a related company, PT

Minami Plantation based in Indonesia. En Jeremy Lho has been living in Indonesia since 2010. In 2016, he wants to apply for the REP incentive and claimed that his employer is PT Minami Plantation and is not bound to return to work at LLB Plantation Bhd. He also claimed his salary was paid by PT Minami Plantation in Rupiah and his income was subject to income tax in Indonesia.

En Jeremy Lho is not eligible to be considered for the REP incentive as his service in Indonesia is on a secondment basis to PT Minami Plantation.

6. Tax Incentives

- 6.1 An approved individual may choose to be charged a flat tax rate of 15% on the chargeable income from employment as provided under Part XV of Schedule 1 of ITA.
- 6.2 After obtaining an approval, the applicant has a period of two (2) years to obtain the *Surat Akuan Tarikh Kembali* from TalentCorp and subsequently return to Malaysia to commence his work and claim the benefits of the REP.
- 6.3 The approved individuals are given the option to be taxed at the rate of 15% at the beginning of the year of assessment in which he returns to Malaysia or in the subsequent year of assessment. If he does not opt during that period, he is deemed to reject the REP incentives.
- 6.4 The eligibility period of the 15% flat tax rate is for 5 consecutive years from the first year of assessment in which the approved individual opts to claim this incentive.

Example 3: Opts for incentive in the year of return to Malaysia.

Dr Azlisham, a radiologist, has received approval under the REP. He returned to Malaysia on 15.8.2016 and started working on 1.9.2016 with a salary of RM50,000 per month. He has to choose the year for the tax incentive to commence within 2 years from his return date. As his total income in 2016 was high, he chose to implement the incentives in the first year of his return to Malaysia which is the Year of Assessment (YA) 2016.

For implementation purposes, Dr Azlisham is required to inform his employer by submitting the *Surat Akuan Tarikh Kembali* to deduct Monthly Tax Deduction (MTD) at 15% tax rate starting from September 2016 for YA 2016. Dr Azlisham need not submit a copy of the said letter to the Inland Revenue Board of Malaysia (IRBM) but he is required to keep the copy for his own records and audit by IRBM. Thus, the incentive period of five YA starts from YA 2016 to YA 2020.

Example 4: Opts for incentive in the following year

Professor Ramesh, a prominent lecturer in the education field, returned to Malaysia on 1.7.2016 after obtaining approval under the REP. He started his job on 1.8.2016 with a salary of RM15,000 a month. As Professor Ramesh's total income for 2016 is RM75,000, it is more beneficial if he chooses to start the incentive period of five years of assessment from the YA 2017.

For YA 2016, Professor Ramesh must inform his employer to make MTD according to the IRBM's MTD Schedule. For YA 2017, he must inform his employer by submitting the *Surat Akuan Tarikh Kembali* to deduct MTD at 15% tax rate. Professor Ramesh need not submit a copy of the said letter to the IRBM but he is required to keep a copy for his own records and audit by IRBM. Therefore, the incentive period for Professor Ramesh is from YA 2017 to YA 2021.

6.5 15% tax rate versus the scale rates

Example 5 : The 15% tax rate is more advantageous than the scale rates

The facts are the same as in Example 3 and Dr Azlisham's wife is not working and they have 2 children under 18 years old. EPF relief is at maximum amount.

The following is a comparison of the tax rate based on the REP incentives and the scale tax rates, that is, without the REP incentives for the YA 2016:

Income RM		Tax Computation RM	
		Flat Rate 15%	Scale Rates
Employment	200,000	177,000 @ 15% = 26,550	First 100,000 = 11,900 Next 77,000 @ 24% = 18,480
Less: Deductions	23,000		
Chargeable income	177,000		
Total tax payable		26,550	30,380
Difference		30,380 - 26,550 = 3,830	

Dr Azlisham has a tax savings of RM3,830 for the YA 2016 if he chooses to be taxed at the flat rate of 15%.

Example 6 : The scale rates are more advantageous than the 15% tax rate

The facts are the same as in Example 4 and Professor Ramesh's wife is not working and they have 2 children under 18 years old. EPF relief is at maximum amount.

Income RM		Tax Computation RM	
		Flat Rate 15%	Scale Rates
Employment	75,000	52,000 @ 15% = 7,800	First 50,000 = 2,400 Next 2,000 @ 16% = 320
Less: Deductions	23,000		
Chargeable income	52,000		
Total tax payable		7,800	2,720
Difference		7,800 - 2,720 = 5,080	

In this case, Professor Ramesh has a tax savings of RM5,080 if he chooses to be taxed at the scale rates for YA 2016.

Therefore, an approved individual needs to make the right choice to ensure that he benefits from tax savings if he chooses to be taxed at the flat rate of 15%.

6.6 Employment income is from more than one source

In the event that an individual performs an additional job and the source of income is also an employment income, the 15% tax rate applies to both employment incomes.

Example 7

The facts are the same as in Example 3 and in 2016, Dr Azlisham has worked as a locum doctor at a private clinic at night.

Employment income as a locum doctor is also eligible for tax at 15% tax rate.

6.7 Change of employer

If an individual changes jobs during the incentive period, any employment income received during the specified incentive period is still eligible to be taxed at the 15% tax rate, provided that the new job must be in line with his expertise as approved under the REP incentive.

Example 8

Mr. Chee has obtained approval under the REP incentives and commenced employment as an engineer with PTA Industries (M) Sdn Bhd on 1.8.2015. He has chosen YA 2016 as the first YA of the incentive period. Therefore, the incentive period is from YA 2016 to YA 2020. He has changed employer (a resident in Malaysia) on 1.3.2017.

The 15% tax rate still applies to employment income received from the new employer although they are different employers within the five YA.

Example 9

The facts are the same as in Example 8 except that Mr. Chee's new employer is a non-resident in Malaysia.

Therefore, Mr. Chee is not eligible to enjoy 15% flat tax rate for employment income received from the new employer who is not resident in Malaysia and the five YA period for this incentive is considered expired.

Example 10

Mr. Anand, a chartered accountant, has obtained approval under the REP for a 5-year period starting from YA 2012 to YA 2016. He commenced his employment with GKMP (M) Sdn Bhd on 1.1.2012. On 1.9.2013, he had pursued his studies in law at University of Malaya as a part-time student. After completing his studies on 15.7.2016, he decided to change his profession and worked with Hashim Ibramsha & Co. as a lawyer on 1.10.2016.

Mr. Anand is not eligible to enjoy the 15% flat tax rate for employment income received from his new profession for the 3 months period from October to December 2016 as the new profession is not in line with his expertise as approved under the REP incentives and the specified incentive period is considered expired with effect from 1.10.2016.

6.8 Has a source of income other than employment

In the event that an individual has employment income and non-employment income (business income, rental, etc.), the proportion of chargeable employment income which is to be determined based on the proportion of the employment income to the overall aggregate income will be taxed at the rate of 15%. Whereas, the proportion of chargeable non-employment income which is to be determined based on the proportion of the non-employment income to the overall aggregate income is subject to the scale rates.

Example 11

Mr Hijaz Fansuri, a financial advisor, has obtained approval under the REP incentives and has an employment income of RM200,000 for YA 2016. He also has a rental income of RM50,000 for YA 2016. The tax computation of Mr. Hijaz Fansuri is as follows:

Income RM		Tax Computation RM	
		Flat Rate 15%	Scale Rates
Employment	200,000	$\frac{200,000}{250,000} \times 235,000$ $= 188,000 @ 15\%^1$ $= 28,200$	$\frac{50,000}{250,000} \times 235,000$ $= 47,000 @ 24\%^2$ $= 11,280$
Rental	50,000		
Total Income	250,000		
Less: Deductions	15,000		
Chargeable Income	235,000		
Total Tax Payable		28,200 + 11,280 = 39,480	

¹ With the REP incentives, employment income is taxed at 15%.

² Other income is taxed on a scale rate (as appropriate) as if the individual did not get the REP's approval. This means that the tax rate for other income does not start at 0%, but according to the tax rate for the applicable taxable income range.

Tax rate for the chargeable income of RM235,000

First RM100,000 – RM11,900

Next RM150,000 @ 24%

Since the amount of RM47,000 falls in the next taxable income range of RM150,000, the amount of RM47,000 is taxed at 24%.

6.9 Expenses related to employment income

Certain expenses (such as entertainment and travelling expenses) directly related to the production of gross income from employment and discharge of official duties are deductible.

In the case of a specialist doctor who has been granted the tax incentive under the REP i.e. the preferential tax rate of 15%, any payment to locum doctors cannot be deducted in ascertaining his chargeable income that is subject to preferential tax rate. This is condition attached to the REP incentive.

Example 12

The facts are the same as in Examples 3, 5 and 7. In 2016, Dr Azlisham receives entertainment allowances of RM5,000 annually and incurred the following expenses in carrying on his profession as a specialist doctor:

No.	Expenses	Amount RM
1.	National Specialist Registrar (NSR) annual fee	1,000
2.	Annual practising certificate (APC) fee	500
3.	Payment to Dr Brendan Gan (locum)	12,000
4.	Entertainment expenses	2,000
	Total	15,500

He wants to claim a sum of RM15,500 from his employment income.

Under the REP incentives, Dr Azlisham may claim and be given deduction for

- i) the annual fees of RM1,500 in respect of the NSR and APC fees.
- ii) the entertainment expenses of RM2,000. The balance of entertainment allowances of RM3,000 is taxable.

The payment of RM12,000 to the locum doctor is not deductible.

7. Tax Computation

Tax computation depends on the status of a taxpayer, income source and type of assessment.

7.1 Separate Assessment
Example 13: Approved individual has one source of income

Ir Mahmud Zuhdi, an engineer, obtained REP's approval on 1.2.2015 and returned to Malaysia on 1.6.2015. His wife opted for a separate assessment. Income received in the YA 2016 is as follows:

Tax Computation RM			
Husband		Wife	
Employment	450,000	Employment	60,000
Less: Deductions	20,000	Less: Deductions	15,000
Chargeable income	430,000	Chargeable income	45,000
	= 430,000 @ 15%	First 35,000 =	900
		Next 10,000 @ 10% =	1,000
Tax Payable	64,500	Tax Payable	1,900

Example 14: Approved individual has more than one source of income

The facts are the same as in Example 13 and Ir Mahmud Zuhdi has several sources of income other than employment income. His wife still opts for a separate assessment. Computation of tax for husband and wife are as follows:

Income RM		Husband's Tax Computation RM	
		Employment	Other Incomes
Employment	450,000	$450,000 \times 480,000$ 500,000 = 432,000 @ 15% = 64,800	$50,000 \times 480,000$ 500,000 = 48,000 @ 25% = 12,000
Rental	50,000		
Total Income	500,000		
Less: Deductions	20,000		
Chargeable Income	480,000		
Total Tax Payable		64,800 + 12,000 = 76,800	

Income RM		Wife's Tax Computation RM	
Employment	60,000	First 35,000 = 900 Next 10,000 @ 10% = 1,000	
Less: Deductions	15,000		
Chargeable income	45,000		
Total Tax Payable		1,900	

7.2 Joint Assessment

In the case where a wife/husband has employment income and opts for a combined assessment under subsection 45(2) of the ITA, the salary of the wife/husband shall be taken into account in the aggregate income of the husband.

Example 15: Approved individual has one source of income

The facts are the same as in Example 13 and Ir Mahmud Zuhdi's wife has opted for a combined assessment under subsection 45(2) of the ITA. Here are the tax computation:

Income RM		Tax Computation RM	
		Husband's employment income	Wife's employment income
Husband's Employment	450,000		
Wife's Employment	60,000		
Total Income	510,000		
Less: Deductions	24,000		
Chargeable Income	486,000		
		$\frac{450,000}{510,000} \times 486,000$ = 428,824 @ 15% = 64,324	$\frac{60,000}{510,000} \times 486,000$ = 57,176 @ 25% = 14,294
Total Tax Payable		64,324 + 14,294 = 78,618	

Example 16: Approved individual has more than one source of income

The facts are the same as in Example 14 and Ir Mahmud Zuhdi's wife has opted for a combined assessment under subsection 45(2) of the ITA. Here are the tax computation:

Income RM		Tax Computation RM	
		Husband's Employment Income	Other Income
Husband's Employment	450,000		
Wife's Employment	60,000		
Rental (Husband)	50,000		
Total Income	560,000		
Less: Deductions	24,000		
Chargeable Income	536,000	$\frac{450,000}{560,000} \times 536,000$ = 430,714 @ 15% = 64,607	$\frac{110,000}{560,000} \times 536,000$ = 105,286 @ 25% = 26,322
Total Tax Payable		64,607 + 26,322 = 90,929	

8. Income Tax Return Form for Resident Expert Worker

An individual who has obtained the approval of the REP incentive and opted to implement the incentives must file the BT Income Tax Return Form (ITRF) to declare his income for the specified incentive period. However, if the option is not made, he/she must declare his income in BE/B ITRF for the particular YA. This paragraph shall not apply to an individual eligible to make an election not to furnish an Income Tax Return Form (ITRF) for the relevant YA under section 77C ITA.

Example 17

The facts are the same as in Examples 3 and 5 and in 2017, Dr Azlisham took an unpaid leave for 6 months to take care of his mother. Although Dr Azlisham's total income for 2017 is RM100,000, he cannot opt for the scale tax rates for YA 2017 as he is still in the REP's incentive period. Therefore he has to declare his incomes in BT ITRF for YA 2017 until YA 2020 (remaining incentive period of the REP).

9. Opt Out from REP Incentives

If an approved person feels he/she does not enjoy tax savings under the REP incentives, he/she may choose to opt out from enjoying a flat rate of 15% at any time during the specified incentive period. The incentive approval is deemed invalid starting from the year of assessment in which the termination is made.

Example 18

The facts are the same as in Examples 3, 5 and 17 and in 2018 due to the economic downturn, Dr Azlisham finds that his employment income is only RM100,000. Therefore, he decided to withdraw from the REP incentive beginning YA 2018. He can no longer enjoy the REP incentives in the future. Starting from YA 2018, he has to declare his income using BE/B ITRF. He also has to inform in writing to his employer and IRBM of his intention for record purposes and deduction of MTD at the scale rates.

10. Termination of Employment in Malaysia

The REP tax incentives are to encourage experts to return and live in Malaysia. However, there may be situations where:

- (a) An individual stops working because he/she moved to another country before the expiry of the incentive period; or
- (b) An individual is transferred to other countries by his/her employer to work outside Malaysia.

In both cases, the 15% tax rate will expire upon the termination of employment in Malaysia as he no longer resides in Malaysia. The tax incentive that had been claimed for the period he was working and residing in Malaysia would not be withdrawn. This is in line with the intention of the REP incentives where an expert has to work in the country to contribute to Malaysia's economic development.

Example 19

Ms Delisha, a geologist in oil and gas industry, returned to Malaysia on 1.11.2014 after obtaining approval under the REP for a 5-year period starting from YA 2015 to YA 2019. She started working on 1.1.2015 with Cendana Petroleum Bhd. On 1.1.2016, her employer seconds her to United Arab Emirates (UAE) for a period of 2 years to manage a joint venture project with a UAE counterpart. Ms Delisha returns to Malaysia on 1.1.2018 after the secondment period expires.

Ms Delisha is no longer eligible to enjoy the REP tax incentive from YA 2016 to YA 2017 as she did not reside and work in Malaysia as required under this REP incentives. The REP approval is no longer valid with effect from 1.1.2016.



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11. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

