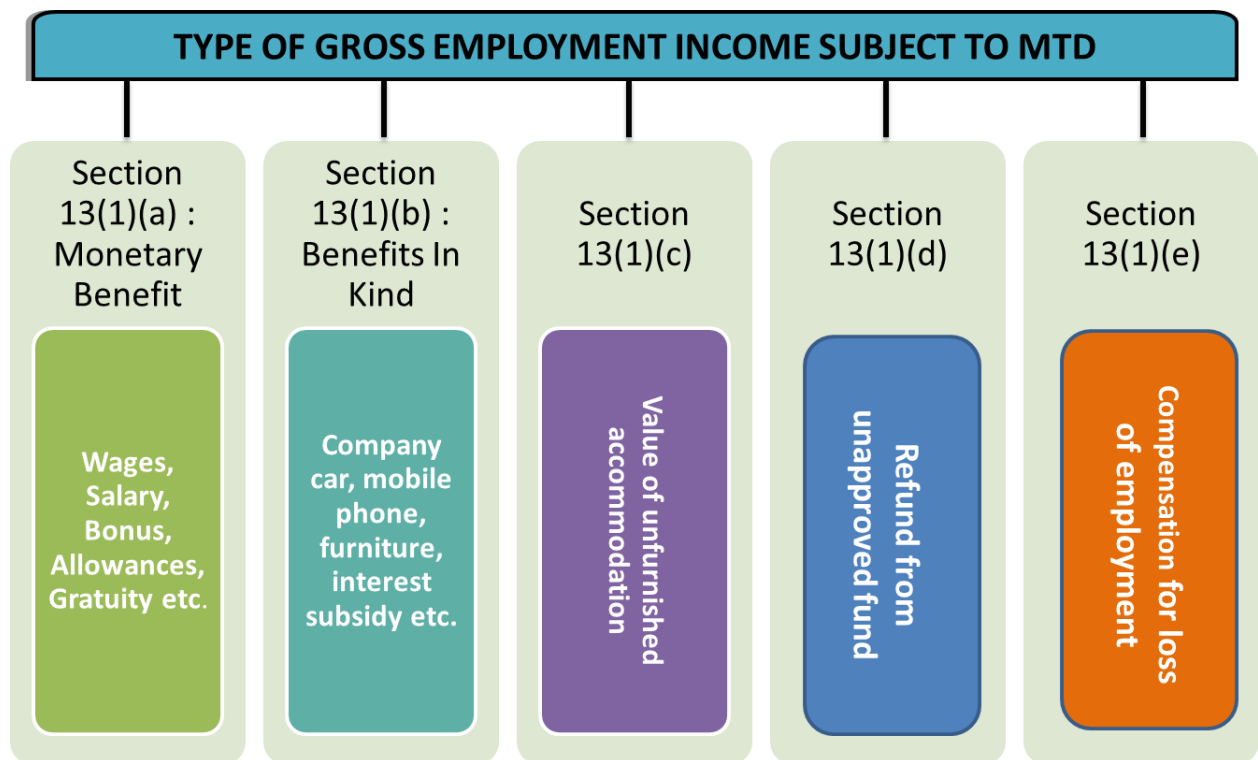


TAXABILITY OF EMPLOYMENT INCOME

Summarised and Contributed by Ms Tai Chai Inn, Tax Department, Melaka Branch

GROSS EMPLOYMENT INCOME

What are the types of income which are taxable and subject to Monthly Tax Deduction (MTD) or, in Bahasa Malaysia, Potongan Cukai Berjadual (PCB)?



Types of income under section 13(1) of the Act states that the gross income of an employee concerning gains or profit from an employment includes:-

1) Section 13(1)(a)

- ❖ covers monetary forms such as **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**
 - ✓ Payment need not be from the **employer** e.g. Tips paid to waiter.
 - ✓ **Payment which are not in respect of taxpayers services** to the company are **not taxable** – e.g. **Award given** to a bank clerk for passing the Institute of Banker Examination

- ✓ Payment to meet **personal distress** such as compensation for house damage is not taxable

➤ Section 13(1)(a) – Salary and wages

- ❖ Both are taxed at gross
- ❖ If EPF has been deducted, it should be added back to bring back to the gross amount.

Example:

Ms Sharon received a net salary of RM6,800 per month after 11% EPF deduction.

Answer: Gross salary $RM6,800 \times 100/89 = RM7,640/$ month

➤ Section 13(1)(a) – Bonus

- ❖ Bonus is not defined in Act
- ❖ Paid in addition to Salary
- ❖ May be contractual or non-contractual
- ❖ Bonus is normally paid on recurring basis.

➤ Section 13(1)(a) – Allowances

- ❖ Fixed allowance are taxable income except for the following:-

Exempted allowance

- ✓ From YA 2009, a travel allowance of RM2,400 per year would be **exempted** for travelling between home and work. (**Only applicable for YA 2009 to 2010**)
- ✓ Travelling allowance, petrol cards, petrol allowance or toll payments which are incurred for the purpose of performing official duties up to RM6,000 per year
- ✓ Child care allowance up to RM2,400 per year
- ✓ Parking rate and parking allowance, meal allowance, payment for traditional medicine and maternity expenses (**reasonable amount**)
- ✓ Meal allowances (**reasonable amount**) covers per diem allowance which are only exempted if they are given based on the rate fixed in the internal circular or written instruction of the employer.
- ✓ Monthly bills for subscription of broadband, fixed line telephone, mobile phone and pager registered under the name of the employee or employer.

(The above exempted allowance does not apply to directors of controlled companies, sole proprietors and partners)

➤ Section 13(1)(a) – Perquisite

- ❖ Perquisites are benefits in cash or in kind which can be converted into money received by an employee from his/her employer or from third parties in respect to having or exercising an employment.
- ❖ Perquisites are taxable under section 4(b) of the ITA as part of the gross income from employment under paragraph 13(1)(a) of the ITA.

Example:-

- ✓ Settlement of employee's pecuniary obligation
- ✓ Share option and share incentive scheme
- ✓ Tips paid to the waiter

Exempted allowance

- ✓ Innovation or productivity award - Paragraph 25C, Schedule 6 of the ITA 1967
 - ✧ Limited to RM2,000 per year of assessment
 - ✧ Past achievement,
 - ✧ Service excellence award, or
 - ✧ Long service on condition that the employee has served with the same employer or with companies within the same group of companies for more than 10 years.
- ✓ Subsidy on interest for housing, education or car loan not exceeding RM300,000

➤ Section 13(1)(a) – Share Option

- ❖ This is a scheme that allows an employee an option to acquire share in the company (where the employee works) at a fixed price and with a right to exercise the option at future dates.
- ❖ If the employee takes up this option, he/she will be taxable on the income under section 13(1)(a).
- ❖ The income is calculated by taking the excess of market price over the option price at the time option was granted and **not at the time option was exercised**

- The two types of tax treatments are as follows:-

Tax Treatment on Share Option Prior To Year of Assessment 2006 (Before YA 2006)

	RM
Market value of shares on the date the option is offered	XXXXX
Less : Offer price of the shares on the date the option is offered	XXXXX
* Note : if the offer is free then the offer price is Nil	
Perquisite under paragraph 13(1)(a) of the ITA 1967	XXXXX

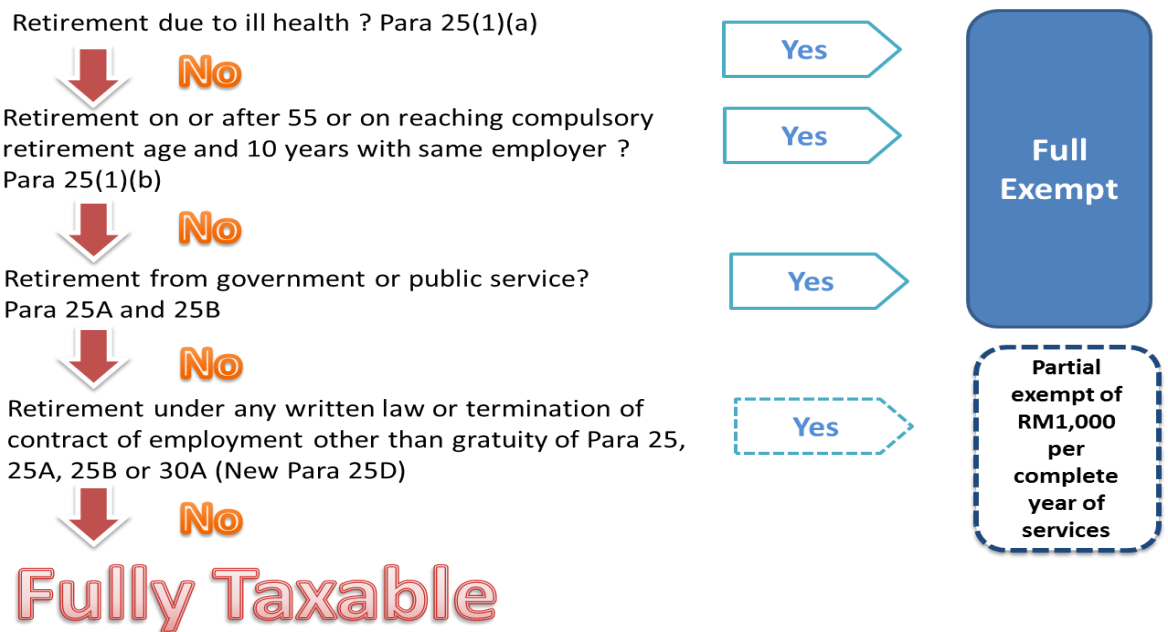
Tax Treatment on Share Option w.e.f. Year of Assessment 2006 (YA 2006 onwards)

	RM
Market value of share on the date the scheme is exercisable	XXXXX
or	
Market value of share on the date the scheme is exercised	
WHICHEVER IS LOWER	
Less: Price paid for the share (if any)	XXXXX
* Note : if the offer is free then the offer price is Nil	
Perquisite under paragraph 13(1)(a) of the ITA 1967	XXXXX

➤ Section 13(1)(a) – Gratuity

- ❖ Lump sum payments
- ❖ In respects of past services rendered by the employee
- ❖ Paid to employee upon resignation or retirement from the employment after serving a long period of service as required by the employer
- ❖ Gratuity must be distinguished from gift

EXEMPT GRATUITY – SCHEDULE 6



❖ TREATMENT OF TAXABLE GRATUITY

✓ **Total period of employment of more than 5 years**

✓ The gratuity is divided (spread back) equally for 6 years when total period of employment commenced more than 5 years of last basis period.

✓ Example: Mr. Cool received a gratuity amounting to RM150,000 on 31 Oct 2012. He has been employed by Mesra Sdn Bhd since 1 June 1999. Mr Cool is 55 years of age on 31 Oct 2012.

✓ **Answer: Total of more than 5 years, thus gratuity spread over 6 years equally**

❖ **Total period of employment for 5 years or less**

✓ Gratuity is spread back over the actual no. of years or months

✓ Example: Based on the previous instance, assuming Mr. Cool was employed by Intan Sdn Bhd since 1 June 1999.

✓ Therefore, the gratuity will be divided over 3 years and 5 months.

YA	Amount of gratuity (RM)
2012	$150,000 \times 10/41 = \text{RM}36,585.36$ (01.01.2012-31.10.2012)
2011	$150,000 \times 12/41 = \text{RM}43,902.44$ (01.01.2011-31.12.2011)
2010	$150,000 \times 12/41 = \text{RM}43,902.44$ (01.01.2010-31.12.2010)
2009	$150,000 \times 6/41 = \text{RM}21,951.22$ (01.06.2009-31.12.2009)

❖ Section 13(1)(a) – Reimbursement

✓ An expense burden that is of the employer but it is initially borne by the employee and subsequent reimbursed made by employer is **not taxable**.

✓ On the other hand, where the employer reimburses the personal expenses of an employee, these will be considered **taxable benefits** for the employee.

✓ For instance, if the employer settles the personal liabilities of the employee (**i.e. reimburse him for the salary of a servant or gardener employed by the employee for personal purposes**) these would be assessable on the employee as gross income under section 13(1)(a)

- Section 13(1)(a) – Leave Pay
 - Leave pay is a cash item taxable under section 13(1)(a).
 - When a person receives leave pay, the amount will be assessable to tax either in year of departure or late depending on conditions provided under section 25(6).

2) Section 13(1)(b) – Benefit In Kind

- i) Gross income from an employment includes an amount equal to the value of the use or enjoyment by the employee of any benefit provided by employer to employee
- ii) BIK is a benefit **not convertible into money even though it has monetary value.**
- iii) Not convertible into money means that these benefits **cannot be sold or exchanged for cash.**

CAR AND PETROL		
<i>(Value of the private use car and fuel provided)</i>		
Cost of Car When New (RM)	Annual Value of BIK (RM)	Fuel Per Annum (RM)
Up to 50,000	1,200	600
50,001 - 75,000	2,400	900
75,001 - 100,000	3,600	1,200
100,001 - 150,000	5,000	1,500
150,001 - 200,000	7,000	1,800
200,001 - 250,000	9,000	2,100
250,001 - 350,000	15,000	2,400
350,001 - 500,000	21,250	2,700
500,001 and above	25,000	3,000

- Example: Marry is a director of a company which provides her with a car costing RM170,000. What is her gross income under section 13(1)(b)?

Answer: As per the BIK Guideline, her gross income under Section 13(1)(b) (Using the Prescribed Value Method) is as follows:-

(a) Car: RM7,000 (b) Fuel: RM1,800

- Example: But the car was acquired and provided to Marry for **7 years**. What is her gross income under section 13(1)(b)?

Answer: As per the BIK Guideline, her gross income under Section 13(1)(b) (Using the Prescribed Value Method) is as follows:-

(a) Car: RM3,500 (RM7,000 x 50%)
(b) Fuel: RM1,800

- Example: The car is provided until September 2014. What is her gross income under section 13(1)(b)?

Answer: As per the BIK Guideline, her gross income under Section 13(1)(b) (Using the Prescribed Value Method) is as follow:-

(a) Car: RM2,625 (RM7,000 x 50% x 9/12 month)
(b) Fuel: RM1,350 (RM1,800 x 9/12 month)

- Example: Peter is a director at company SYZ. He is allowed to use a company car (Costing RM80,000) during office hours but is not allowed to drive it home. What is his gross income under section 13(1)(b)?

Answer: The benefit is **exempted** under the ITA 1967, as the benefit is related to the performance of his official duties.

- Example: David is the director at company, ASA. He is provided with a company car costing RM210,000 (Cost when New) as well as a driver for his sole use. The driver is paid a salary of RM600 per month by the Company. What is his gross income under section 13(1)(b)?

Answer: As per the BIK Guideline, his gross income under Section 13(1)(b) is as follows:-

(a) Car: RM9,000
(b) Fuel: RM2,100
(c) Driver: RM7,200

- Example: David is the director at company, ASA. He is not provided with a company car but the company provides fuel for both business and private use. The actual fuel expenses relating to the private usage is RM8,500 in Year 2014. What is his gross income under section 13(1)(b)?

Answer: As per the BIK Guideline, his gross income under Section 13(1)(b) is as follows:-

(a) Fuel: RM8,500

➤ Furniture and Appliances

- ✓ The Value of household furnishings and appliances **provided by an employer in connection** to an accommodation also provided to the employee is **taxable** as a benefit in kind.
- ✓ The table below indicates that the concessionary annual value of this BIK varies according to the extent of furnishing provided.

	Types of BIK	Annual Value of Bik
(a)	Semi-furnished with furniture in the lounge, dining room or bedrooms.	RM840 (RM70 per month)
(b)	Semi-furnished with furniture as above and one or more of the following:- Air conditioners, curtains and carpets.	RM1,680 (RM140 per month)
(c)	Fully-furnished with benefits as above plus one or more of the following: Kitchen equipment, crockery, utensils and appliances.	RM3,360 (RM280 per month)

➤ Example - Fully Furnished

Farid is a director at company YZ Sdn Bhd. He is provided with a fully furnished accommodation. The rental for the fully furnished accommodation is RM8,500 per month of which RM2,800 is for the furniture. What is his gross income under section 13(1)(b)?

Answer: As per the BIK Guidelines, his gross income under Section 13(1)(b) is as follows:-

(a) Furniture: RM3,360

➤ Example – Furniture: Shared and used for less than 1 Year

Same as the previous example, the house was provided from 01/01/2014 to 31/12/2014. But from 01/07/2017 to 31/12/2014, the house was shared with another employee. Compute the value of household furnishing and appliance for income tax purpose, accruing to Farid .

Answer: 01/01/2014 - 30/06/2014 – RM280 x 6 mths = RM1,680

01/07/2014 – 31/12/2014 – RM280 x 6 x ½ = RM840

Total: RM2,520

➤ Other Benefits In Kind

Item	Types of BIK	Annual Value of BIK
(1)	Handphone From the year of assessment 2008	(i) Hardware - fully exempt (ii) Bills - fully exempt
(2)	Gardener	RM3,600 per gardener
(3)	Household servant	RM4,800 per servant
(4)	Recreational club membership i) Individual membership - Membership subscription paid or reimbursed by employer	Tax treatment on the benefit received on the employee as follows- i) Entrance fee for club membership - taxed under paragraph 13(1)(a) of the ITA 1967 ii) Monthly/annual membership subscription fees for club membership - taxed under paragraph 13(1)(a) of the ITA 1967 iii) Term membership - is taxed on the amount of payment made under paragraph 13(1)(a) of the ITA 1967
	ii) Corporate membership – Membership subscription paid by employer	Tax treatment on the benefit received by the employee as follows- i) Entrance fee - not taxable ii) Monthly/annual membership subscription fees for club membership - taxed on the prescribed

		value under paragraph 13(1)(b) of the ITA
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➤ Exempted Benefit

- ❖ Medical or dental treatment
- ❖ Benefit for child care – Child care centers provided by employers to their employees children.
- ❖ Food and drink provided free of charge
- ❖ Free transportation between pick up points or home and the place of work (to and from)
- ❖ Insurance premium which are obligatory for foreign workers as a replacement to SOCSO contribution
- ❖ Group insurance premium to cover workers in the event of an accident.
- ❖ Benefits consisting:
 - ✓ Leave passage in Malaysia of not more than 3 times in one calendar year, or
 - ✓ Overseas leave passage of not more than once in any calendar year limited to a maximum amount RM3,000
(The exemption of this benefit is only applicable if it is provided to an employee and members of his immediate family.)
 - ✓ a benefit or amenity used by the employee solely in connection with the performance of his duties; and
 - ✓ Discounted price for consumable business products of the employer and discounted price for services provided by the employer.
 - Consumable goods exempt up to RM1,000
 - Consumable services are exempt in full
 - ✓ Benefits and monthly bills for fixed line telephone, mobile phone, pager, personal digital assistant (PDA) and subscription of broadband
 - ✓ Modern medicine, traditional medicine and maternity
- ❖ ***(The above tax exemption does not apply if the employee who was given BIK by the employer has control over his employment which refers to partnership, sole proprietor or director controlled through the holding of shares or the possession of voting power in or in relation to that of any other company, or by virtue of powers conferred by the articles of association. Thus, the BIK received by that director or employee is taken to be part of his gross income from employment and taxable under paragraph 13(1)(b) of the ITA 1967.)***

3) Section 13(1)(c)

- an amount in respect of the **use or enjoyment by the employee via living accommodation in Malaysia** (Including living accommodation in premises occupied by his employer) provided for the employee by or on behalf of the employer rent-free or otherwise.
- ❖ Method of Calculating Assessable Benefits
 - ✓ If accommodation is provided by a company to an employee / service director, the value of unfurnished accommodation are:-
 - Defined value of living accommodation OR
 - 30% of the employee's gross income under section 13(1)(a) whichever lower
 - ✓ If accommodation is provided by a company to a non-service director, the value of unfurnished accommodation is:-
 - The full amount of defined value of accommodation
 - ✓ If accommodation is provided in a hotel, hostel, quarters in plantation or forest by a company to an employee / service director, the value of unfurnished accommodation is:-
 - 3% of the employee's gross income under section 13(1)(a)
 - ✓ If accommodation is provided in a hotel by a company to a non-service director, the value of unfurnished accommodation is:-
 - The actual hotel bill

4) Section 13(1)(d)

- **covers contributions which have been made by an employer to an unapproved pension or provident fund** (i.e. a fund which has not been approved by the DG) which, if they are returned to the employee before or after the employee ceases employment, are to be included as part of the gross income from that employment.

Where a pension or provident fund was previously approved but the approval was subsequently revoked, all contributions made by the employer, if they are received by the employee after the fund loses its approved status, are to be included in the gross employment income of the employee.

- Example:

An employer makes contributions to an unapproved pension fund in respect of an employee for the period 1 January 2004 to 30 March 2012 amounting to RM4,000. The employee ceases employment on 31 March 2012 and received the contribution on 30 April 2012, made on his behalf by the employer i.e. RM4,000 plus interest RM200.

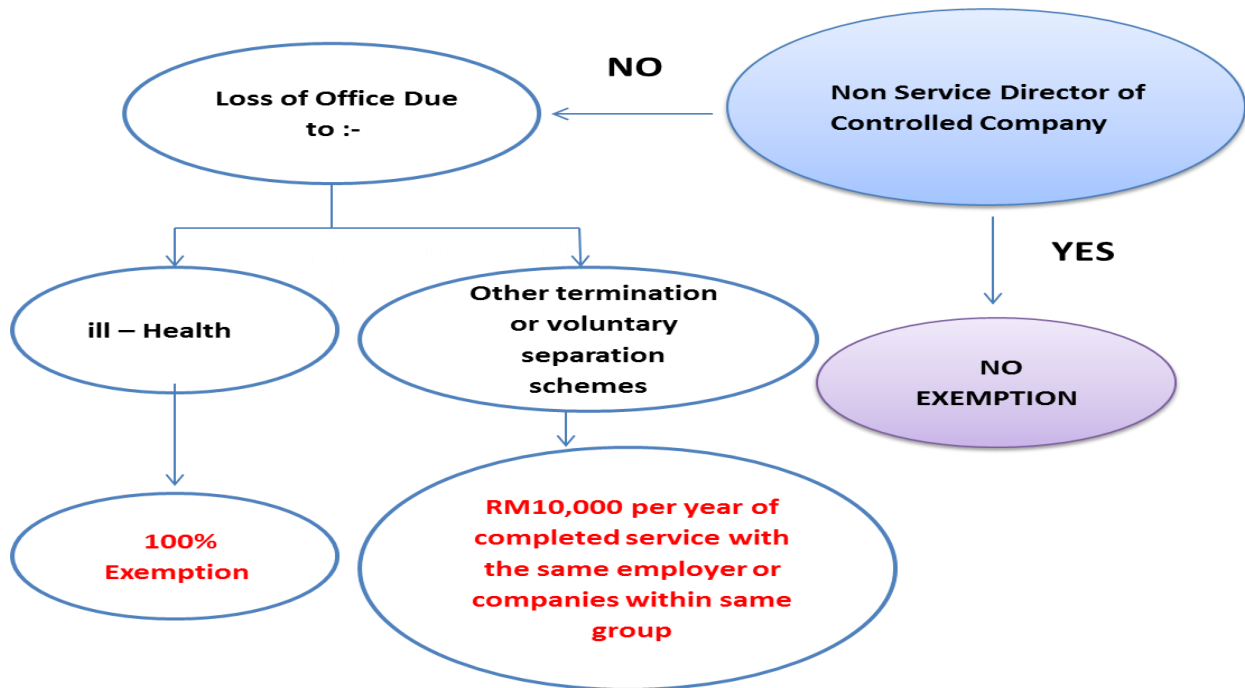
The amount of RM4,000 is to be included as gross income from the employment for the basis period i.e. the Year Ended 31 December 2012. The

interest is not included as gross employment income but would be assessable as interest income under S.4(c).

5) Section 13(1)(e)

- covers any amount paid to an employee (whether before or after his employment ceases) as compensation for loss of the employment, including any amount in respect of a covenant or similar agreement or arrangement entered into by the employee restricting his right after leaving an employment, to engage in an employment of a similar kind This would normally include:
 - ❖ Salary or wages in lieu of notice (that should have been given by the employer to the employee);
 - ❖ compensation for breach of a contract of service by the employer;
 - ❖ a payment to obtain release from a contingent liability under a contract of service;
 - ❖ ex-gratia or contractual payments such as redundancy, retrenchment payments, severance pay, etc; made (when the employment ceases) to employees who have become redundant for reasons beyond their control.
- The payment of compensation for loss of employment may be made:
 - ❖ under a court order in proceedings for wrongful dismissal or otherwise for breach of a contract of employment or by way of a settlement between parties to such proceedings or a settlement of a claim in respect of which such proceedings could have been taken; or
 - ❖ for the extinguishment of any right, the infringement of which is actionable; or
 - ❖ at the discretion of the employer when the employment is terminated prematurely

➤ EXEMPTION FOR SEC 13(1)(e) [Para 15 Sch 6 ITA 1967]



6) Employers Responsibilities

- i) Subsection 83(1) of the ITA 1967 provides that
 - (a) The employer is required to report in the employee's statement of remuneration (Form EA and EC) and Form E for the employer:-
 - » all payments in respect of services provided by the employee including all types of BIKs.
 - » This includes the benefits provided for the spouse, family, servants, dependents or guests of the employee. The failure by the employer to comply with this subsection will render the employer liable to prosecution under subsection 120(1) of the ITA 1967.
- ii) Section 82 of the ITA 1967 provides that
 - (a) The employer is also required to keep records and receipts pertaining to all claims on expenses incurred on the employees.
 - (b) These records and receipts must be kept for a period of seven (7) years from the end of the year of assessment in which the Income Tax Return Form (ITRF) is furnished for the purposes of verification during a tax audit.
 - (c) The failure by the employer to comply with this section will render the employer liable to prosecution under section 119A of the ITA 1967.
 - (d) An employer is responsible to prepare a detailed list of all BIKs received and tax exempted by each employee in the respective Employee's Salary Statement for each year of assessment.

7) Employee's Responsibilities

- i) Subsection 77(1) of the ITA 1967 provides that
 - (a) the employee is required to report in the ITRF BE or B (whichever is applicable) all payments received in respect of having or exercising the employment including all types of BIKs received from the employer or third parties.
 - (b) This includes benefits received for the spouse, family, servants, dependents or guests of the employee.
 - (c) The failure by the employee to comply with this section will render the employee liable to prosecution or penalty under section 112 of the ITA 1967.
 - (d) Where the employee under declares his income, he is liable to prosecution or penalty under section 113 of the ITA 1967.
- ii) Section 82A of the ITA 1967 provides that
 - (a) the employee is required to keep records and documents pertaining to all receipts from the employer or third parties in respect of having or exercising an employment including the receipts of BIKs.
 - (b) Such records or documents must be kept for a period of seven (7) years from the end of the year of assessment in which the ITRF is furnished for purposes of verification during a tax audit.