



Malaysia

Introduction

Residents and nonresidents in Malaysia are taxed on employment income accruing in or derived from Malaysia. Residence status only affects the amount of tax paid.

Income tax in Malaysia is territorial in scope and based on the source principle regardless of the tax residency of the individual in Malaysia. The source of employment income is the place where the employment is exercised.

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Key messages

Extended business travelers who are in Malaysia for more than 60 days are likely to be taxed on employment income attributable to their Malaysian assignments.

Income tax

Liability for income tax

Generally, an individual becomes a tax resident for a year of assessment if the aggregate number of days the individual stays in Malaysia during the basis year is 182 days or more. Income derived from Malaysia by residents and nonresidents is subject to Malaysian tax, irrespective of where the employment contract is made or where the remuneration is paid. Employment income is regarded as Malaysian-derived income if the employment activities are exercised in Malaysia.

Definition of source

Malaysian-sourced income is defined as income accruing in or derived from Malaysia. Employment income is generally treated as Malaysian-sourced compensation where the individual performs the services while physically located in Malaysia.

Tax trigger points

A nonresident individual who exercises employment in Malaysia for not more than 60 days is exempt from Malaysian tax. An individual whose employment period in Malaysia exceeds 60 days would be taxable unless the individual is able to seek exemption from Malaysian tax under the dependent personal services article of the relevant double tax treaty.

Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income and other Malaysian-sourced income.

Tax rates

A tax-resident individual would be subject to tax at graduated rates ranging up to 26 percent after the deductions of personal reliefs (such as relief for oneself, dependent spouse, life insurance premiums, and so on). The maximum tax rate is currently 26 percent (with effect from year of assessment (YA 2010)) on chargeable income above 100,000 Malaysian ringgit (MYR) for residents.

A non-tax-resident individual would be taxed at a flat rate of 26 percent (with effect from year of assessment (YA) 2010). Non-tax-residents are not entitled to personal relief deductions.

Social security

Liability for social security

The Social Security Organization (SOCSO) is a scheme to provide certain benefits to employees in cases of employment injury, including occupational diseases and invalidity and for certain other matters in relation to employment. Employees covered by this scheme are those whose wages do not exceed MYR 3,000 per month. The current rates of contribution vary from MYR 0.10 to MYR 14.75 per month for the employee and from MYR 0.40

to MYR 51.65 per month for the employer. Foreign employees are generally not required to contribute to SOCSO as their wages generally exceed MYR 3,000 per month. Employees of Malaysian nationality or of permanent residence status are required to contribute to the Employees Provident Fund (EPF). The employee's and employer's contributions to the EPF are 11 percent and 12 percent, respectively, of the employee's wages. Foreign employees have the option of becoming members of the EPF. The minimum statutory contribution by the foreign employee and employer is 11 percent of the foreign employees' wages and MYR 5, respectively.

Compliance obligations

Employee compliance obligations

The tax year, commonly called the year of assessment (YA), runs from January 1 to December 31. Tax returns must be filed by April 30 of the following year. For individuals who derive business income, the filing deadline is June 30 of the following year.

Employer compliance obligations

An employer is required to notify the MIRB via Form CP22 of the commencement of employment of its employees in Malaysia within one month of the date of commencement of employment.

An employer must declare the total remuneration paid to employees for employment performed in Malaysia on Forms E and EA. This is regardless of whether the employee's salary and/or allowance are paid in or outside Malaysia.

An employer is also required to notify the MIRB of the cessation of employment of an employee who is liable for tax. In the case of an expatriate employee, the notification is required when the expatriate's assignment in Malaysia ends or the expatriate ceases employment in Malaysia. The notification (via Form CP21) must be submitted to the MIRB not less than one month before the expected date of departure or date of cessation of employment of the expatriate, whichever is earlier. The employer is required to withhold any money in the employer's possession owing to the expatriate who has ceased or is about to cease employment until 90 days after the MIRB receives the Form CP21 or upon receipt of the tax clearance letter, whichever is earlier. The employer can then release the balance of money withheld from the employee after the settlement of the outstanding taxes (if any) as shown in the tax clearance letter.

Employer reporting and withholding requirements

Tax withholdings from employment income are covered by the monthly tax deductions (MTD) system. Under the MTD system, it is mandatory for an employer to deduct tax from an employee's monthly cash remuneration (whether it is paid in Malaysia or outside Malaysia) and perquisites of each of the employees, based on the MTD schedule issued by

the MIRB. The tax deducted during a calendar month must be remitted to the MIRB not later than the 10th day of the following calendar month via the Statement of Tax Deduction by an Employer (Form CP39). Employees may submit certain completed prescribed forms to elect for claim of deduction and rebates in the relevant months or to include benefits-in-kind (BIK) and value of living accommodation (VOLA) as part of the monthly remuneration to be subject to MTD. Both elections are subject to the approval of the employer.

It should also be noted that the MTD applicable to an employee who is not resident or not known to be resident shall be at the rate of 26 percent of the employee's cash remuneration and perquisites.

Other

Work permit/visa requirements

An individual entering Malaysia may or may not require a visa, depending on the citizenship of the individual. The type of work permit required will depend on the purpose of the individual's entry into Malaysia.

Double taxation treaties

Malaysia has entered into double tax treaties with 73 countries. The treaties prevent double taxation and allow cooperation between Malaysia and overseas tax authorities in enforcing their respective tax laws. Qualification for treaty relief is not automatic. An application must be made to the MIRB by providing proof that an individual is able to qualify for tax exemption under treaty relief.

Permanent establishment implications

A permanent establishment could potentially be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

Indirect taxes

Service tax is chargeable on the value of taxable services provided by a taxable person. The rate was increased from 5 percent to 6 percent effective January 1, 2011. The tax applies throughout Malaysia except for Langkawi, Labuan, Tioman, the Joint Development Area (JDA), and Free Zones.

The government originally indicated that goods and services tax (GST) would be implemented anytime from the middle of 2011. However, the government announced on October 13, 2010 that the implementation of GST has been postponed. The GST will replace the current sales tax and service tax regime.

Transfer pricing

Malaysia has a transfer pricing regime. Transfer pricing and tax implications could arise where an employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction. This would also be dependent on the nature and complexity of the services performed.

Local data privacy requirements

Malaysia has data privacy laws.

Exchange control

The present exchange control regime applies uniformly to transactions with all countries except Israel, against which special restrictive rules apply.

Nondeductible costs for assignees

Employment costs are generally deductible by the employer, except for certain prohibited costs such as those in relation to overseas leave passage, entertainment allowance, and employer's contribution to pension/provident fund that is not approved by the MIRB. Such costs are nondeductible. (However, 50 percent entertainment allowance is tax deductible.)

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