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**Malaysia – New Guidelines
on Tax Clearances for
Taxpayers Issued**

by KPMG, Kuala Lumpur
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flash Alert

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The Malaysian Inland Revenue Board ("MIRB") has issued Operational Guidelines¹ setting out the Tax Clearance Letter ("TCL") request procedures with respect to employees who are retiring, resigning, departing Malaysia, or who have died. These guidelines serve to provide an explanation of the TCL request procedures from the date the request is received until the TCL is issued.

Why This Matters

Employers need to be aware of the existing procedures regarding the TCL. The new guidelines help to explain and clarify the TCL procedures. Understanding what steps to take and what everyone's respective responsibilities are will help aid in proper compliance and mitigate potential penalties.

Taxpayers are advised to update their current status of tax assessment by submitting the relevant income tax return form to the MIRB promptly in order to expedite the process of issuing the TCL.

The TCL Guidelines: Responsibilities and Action Steps

The TCL is a letter issued by the MIRB to notify the employer of a retiring or resigning employee's tax liability, prior to making the final payment of salary/compensation/gratuity to the employee. The TCL will also indicate if the employee has any outstanding income taxes owing, and if so, the employer is able to settle the outstanding tax from the monies withheld from the employee.

Below we summarize the respective roles, responsibilities, and action steps clarified in the guidelines.

Employers – When to Make the Request

The employer is to make the request for the TCL with the MIRB when the employer retains the salary/compensation/gratuity of an employee as a result of the employee's:

- a) resignation from an employment;
- b) retirement;
- c) leaving Malaysia for a long period of time or forever; or
- d) death.

The request for the TCL must be made within thirty (30) days before the date of termination of employment or date of departure, or in the case of death, within thirty (30) days after the date of death.

KPMG Note

In practice, the MIRB encourages the employer to submit the request within 30 days before the employee's date of termination of employment or date of departure, **whichever is earlier**.

Employers – How to Apply

The application for TCL can be made as follows:

- 1. Through the e-SPC:** Online application by employer.
- 2. Manually:** Submission of the following forms manually to the MIRB branch which handles the employee's income tax file:
 - Form CP21 (Notification by Employer of Departure from the Country of an Employee); or
 - Form CP22A (Tax Clearance Form for Cessation of Employment of Private Sector Employees); or
 - Form CP22B (Tax Clearance Form for Cessation of Employment of Public Sector Employees); and
 - SPC request check-list.

KPMG Note

Generally, income tax files for all categories of taxpayers at all branches of the MIRB are handled by the branches based on the individual's residential address or the employer's business address² as well as taking into account the size of the taxpayer's income or turnover.

Employer Non-Compliance and Penalties

Employers may be subject to penalties if they fail to give timely notification to the MIRB on employees' cessation of employment or retirement or withhold monies owed to the employees upon cessation of employment in accordance with these procedures. Employers may face fines between MYR 200 and MYR 20,000 and imprisonment for up to 6 months in addition to becoming liable for the employees' outstanding tax obligations.

Employees' Tax Obligation

An employee who is about to cease employment, retire, or leave Malaysia for more than three (3) months is required to ensure that his prior years' and current year's tax assessments are accurate and finalized.

An Employee Who Ceases Employment/Retires and Is Eligible for MTD As a Final Tax – An employee who is eligible for the Monthly Tax Deduction ("MTD") as a final tax, is not required to submit the income tax return. However, he is required to submit the income tax return for the year of cessation/retirement in the following year to disclose his income accordingly.

KPMG Note: Example

An individual who derived employment income ceased his employment/retired on 31 January 2016. If he is eligible for MTD as a final tax, he is not required to submit the 2015 income tax return which is due for submission on 30 April 2016. However, he is required to submit the 2016 income tax return which is due for submission on 30 April 2017, to disclose the employment-related income for the period from 1 January 2016 to 31 January 2016 and any income for the subsequent period.

An Employee Who Ceases Employment/Retires and Is Not Eligible for MTD As a Final Tax – An employee who is not eligible for MTD as a final tax is required to submit the income tax returns for the prior years and the current year of cessation/retirement.

KPMG Note: Example

The same scenario as above. If he is not eligible for MTD as a final tax, he is required to submit the 2015 income tax return which is due for submission on 30 April 2016, as well as the 2016 income tax return which is due for submission on 30 April 2017, to disclose the employment-related income for the period from 1 January 2016 to 31 January 2016 and any income for the subsequent period.

An Employee Who Is about to Leave Malaysia for More Than Three (3) Months

- Where he is not eligible for MTD as a final tax, he must submit tax returns for the year of completion of service and the preceding year;
- Where he is eligible for MTD as a final tax, he must submit tax returns for the year of completion of service.

KPMG Note on MTD

MTD is only due on employment income. The Malaysian government introduced MTD as a final tax effective from tax year 2014 and where the employee elects for MTD as a final tax, will waive the requirement of filing an income tax return.

The MTD as a final tax option is, however, only open to a taxpayer who:

- i) has only employment income;
- ii) is employed by the same employer in that year;
- iii) has MTD made by the employer in accordance with the Income Tax (Deduction from Remuneration) Rules 1994;
- iv) does not elect for combined assessment with his/her spouse; and
- v) does not have his/her tax liabilities borne by the employer.

MIRB's Responsibilities

- TCL will be issued within ten (10) working days from the date of receipt of complete documents by the MIRB.
- TCL will be sent to the employer with a copy to the affected employee.
- The MIRB may issue a certificate to a Commissioner of Police or a Director of Immigration requesting that the employee be prevented from leaving Malaysia until he has paid all outstanding tax.
- The MIRB may initiate civil proceedings against the employer for non-remittance of the outstanding tax to the MIRB as instructed in the TCL.

Footnotes:

- 1 For the Operational Guidelines 2/2016, issued on 12 February 2012 (in Malay), see:
http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=7000&bt_sequ=1.
- 2 The employer's business address is used if the taxpayer is staying in a hotel or does not have a permanent mailing address.

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For further information or assistance, please contact your local KPMG Global Mobility Services or People Services practice professional, or one of the following professionals with the KPMG International member firm in Malaysia:

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