



# Thinking Beyond Borders: Management of extended business travelers - Malaysia



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**01**

**Key message**

Residents and non-residents in Malaysia are taxed on employment income accruing in or derived from Malaysia. Residence status affects the amount of tax paid. Income tax in Malaysia is territorial in scope and based on the principal source, regardless of the tax residency of the individual in Malaysia. The source of employment income is the place where the employment is exercised, regardless of where the employment contract is signed or remuneration is paid.

# 1 Key message

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.

**02**

# **Income tax**

# 2 Income Tax

## 2.1 Liability for income tax

Income derived from Malaysia by residents and non-residents 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-sourced income if the employment activities are exercised in Malaysia. Generally, an individual becomes a tax resident for the tax year if the aggregate number of days the individual stays in Malaysia during the year is 182 days or more.

## 2.2 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.

## 2.3 Tax trigger points

A non-resident 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.

## 2.4 Types of taxable income

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

## 2.5 Tax rates

A tax-resident individual would be subject to tax at graduated rates ranging up to 30 percent, after the deductions of personal reliefs (such as relief for oneself, a dependent spouse, life insurance premiums, etc.). The maximum tax rate is 30 percent<sup>1</sup>.

A non-tax-resident individual would be taxed at a flat rate of 30 percent. Non-tax-residents are not entitled to personal relief deductions.

**03**

# **Social security**

# 3 Social security

## 3.1 Liability for social security

What Malaysia has is a compulsory savings scheme (EPF) and an employee protection scheme (SOCSO) for Malaysian employees.

The EPF is a mandatory savings plan and welfare scheme for all employees who are Malaysian citizens or permanent residents in Malaysia. However, foreign employees are given an option to contribute to the EPF if they wish. The foreign employees may elect to make the contributions at the prevailing rate, with employer's contributions of 5 Malaysian ringgit (MYR) per month.

The SOCSO is a protection scheme introduced to provide certain benefits to the employees in cases of employment related injury such as occupational diseases and disability as well as other matters in relation to the employment. Contributions are capped at the monthly wage of MYR5,000. All Malaysian employees and permanent residents are to contribute irrespective of their amount of wages. The current rate of contribution varies from MYR0.10 to MYR24.75 for the employee and MYR0.40 to MYR86.65 for the employer.

Employers who hire foreign employees working in Malaysia with valid documents shall register their employees with SOCSO and contribute to the Employment Injury Scheme only. The rate of contribution is 1.25 percent of the employees' monthly wages (capped at MYR61.90) and to be paid by the employer only, i.e., the foreign employees are not required to contribute.



**04**

# **Compliance obligations**

# 4 Compliance obligations

## 4.1 Employee compliance obligations

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

Employees whose total income tax is equivalent to the total amount of Monthly Tax Deduction (MTD), may elect not to submit tax returns. The amount of the MTD remitted represents as the final tax paid. This is only applicable if the following conditions are fulfilled:

- the taxpayer only has employment income;
- MTD has been made by the employer in respect of such gains or profits from an employment;
- employed by the same employer for that year of assessment;
- taxes are not borne by the employer; and
- if married, the spouse has not elected for joint assessment.

## 4.2 Employer Compliance Obligations

An employer is required to notify the Malaysian Inland Revenue Board (MIRB) of the commencement of employment of its employees in Malaysia within 30 days from the date of commencement of employment via Form CP22.

An employer must declare the total remuneration paid to employees for employment performed in Malaysia via Forms E and EA. This is regardless of whether the employees' salary and/or allowance are paid in or outside of Malaysia. The deadline for submission of Form E is 31 March and issuance of EA is the last day of February of the following year. Form E must be filed electronically.

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 30 days before the expected date of departure.

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 to the employee after the settlement of the outstanding taxes (if any) as shown in the tax clearance letter.

Effective 1 January 2024, it is mandatory for an employer to submit Form CP22 and Form CP21 through electronic medium.

## 4.3 Employer reporting and withholding requirements

Under the MTD system, it is mandatory for an employer to deduct tax from an employee's total gross monthly remuneration (which includes perquisites, Benefit-in-Kind and accommodation provided, etc.) whether it is paid in or outside of Malaysia and remit it to the MIRB by the 15th of the following month. Payments must be submitted together with a Statement of Tax Deduction by an Employer (e-Form CP39). Further, it is mandatory for the employer to allow an employee to claim allowable deductions and rebate; and make any changes no less than twice via a prescribed form (Form TP1).

It should also be noted that the MTD applicable to an employee who is not a resident or not known to be a resident shall be at the rate of 30 percent of the employee's taxable remuneration.

**05**

# **Immigration**

# 5 Immigration

## 5.1 Work permit/visa requirements

A visitor may or may not require a visa prior to entering Malaysia, depending on the issuance country/jurisdiction of the passport. The Immigration officer at the point of entry to Malaysia usually grants the visitor (except for certain nationalities who require visas applied for in the home country/jurisdiction before entering Malaysia) a social visit pass for social visit purposes only. The duration of the social visit pass granted depends on the issuance country/jurisdiction of the passport. Effective 1 January 2024, visitors coming to Malaysia for social visit purposes must complete the online Malaysia Digital Arrival Card (MDAC) three (3) days before arrival (including travel date). MDAC exemption is given to citizens of Singapore, diplomatic and official passport holders, Malaysia permanent residents and long-term pass holders, Thailand Border Pass holders, Indonesia Cross-border Travel Document (PLB) holders, Brunei Malaysia Frequent Traveler Facility holders, and General Certificate of Identity (GCI) Brunei Darussalam holders.

A visitor is not allowed to work or render professional services under the social visit pass. An Employment Pass (EP) or, Professional Visit Pass (PVP) or Permission to Work for Foreign Professionals with Social Visit Pass (PLS@XPATS) is required for this purpose.

The EP is applied for the visitor who has an employment contract with the Malaysian Company. The duration ranges from 1 to 5 years.

As for the PVP, the visitor is allowed to render professional services (e.g., training, technical expertise, internship). The visitor continues to be employed by the employer in the home country/jurisdiction and the remuneration is paid by the employer in the visitor's home country/jurisdiction. The visitor is entitled to apply a PVP for a maximum duration of 12 months per application to work in one project/assignment. If the company wishes to apply for an extension, the company will need to provide justification why the project/assignment is prolonged or to apply for an EP instead, in accordance with the requirements for EP application.

PLS@XPATS is a newly implemented facility by Immigration Department of Malaysia (IDM) to facilitate foreign professionals to enter Malaysia for implementation of critical and urgent work. The PLS@XPATS allows foreign professionals to carry out the approved work in Malaysia for the sponsoring Malaysian Company, for a maximum thirty (30) days from the date of arrival to Malaysia.

## 5.2 Double Taxation Treaties

Malaysia has concluded double taxation treaties with at least 77 countries/jurisdictions. 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.

Submission of treaty relief can be made in the tax return and to provide documentary proof to the MIRB that an individual is able to qualify for the said tax exemption.

## 5.3 Permanent establishment implication

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.

**07**

# **Indirect Taxes**

# 6 Indirect Taxes

## 6.1 Sales Tax and Service Tax

Sales Tax and Service Tax (2 separate taxes) were implemented in Malaysia on 1 September 2018.

Sales Tax is imposed on all taxable goods imported into Malaysia or taxable goods manufactured by a registered manufacturer. The applicable tax rates are set at 5 percent, 10 percent, exempted (0 percent) or at a specific rate, depending on the HS Tariff code of the goods. Sales Tax on Low Value Goods at the rate of 10 percent is also chargeable by sellers of goods sold online, effective 1 January 2024.

Service Tax, on the other hand, is charged and levied on any prescribed taxable services provided in Malaysia by a registered person or any imported taxable services. Service Tax is also applicable on any digital services provided by a foreign registered person to any consumer in Malaysia. Service Tax rate is at 6 percent or at a specific rate (of RM25 for credit card or charge card service). It was recently announced in the 2024 Budget that the Service Tax rate for taxable services (except for food and beverage, telecommunication services, vehicle parking space services and logistic services) will be increased from 6% to 8% and the effective date is proposed to be on 1 March 2024.

## 6.2 Transfer Pricing

The Malaysian transfer pricing environment is regulated since 1 January 2009 upon the insertion of the arm's length principle into the Income Tax Act, 1967. In 2012, the MIRB released the TP Rules and TP Guidelines as an indication that the Malaysian Government is determined in its enforcement of transfer pricing compliance by Malaysian taxpayers. In 2023, the MIRB released the new TP Rules 2023 to align the local TP requirements with that of Base Erosion and Profit Shifting Action 13 documentation requirements. It is expected that the MIRB will soon publish the updated TP Guidelines to provide further guidance for complying with the TP Rules.

In terms of personal taxation, transfer pricing and tax implications could arise where the company provides interest-free loan with no fixed repayment terms to its directors. The Public Ruling on loans or advances to director by a company published on 30 November 2015 states that if a company obtains a loan from a third party to make loans or advances to directors who are also employees, then the director would be deemed to have a perquisite amounting to the interest costs incurred by the employer to fund the loan.

## 6.3 Local Data Privacy requirements

Personal Data Protection Act 2010 (PDPA) regulates the processing of personal data of individuals involved in commercial transactions.

## 6.4 Exchange Control

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

## 6.5 Non-deductible costs for assignees

Employment costs are generally deductible by the employer, except for certain prohibited costs such as those in relation to leave passages, entertainment expenses (partially), and the employer's contribution to pension/provident funds that are not approved by the MIRB.

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