

GMS Flash Alert

2020-243 | May 22, 2020



Malaysia - Special Tax Concessions for Individuals Due to COVID-19

In light of the global COVID-19 pandemic, the Malaysian Inland Revenue Board (“MIRB”) has provided guidance on the tax treatment of cross-border employment income, the tax residency status of individuals, and permanent establishment issues.¹

WHY THIS MATTERS

Many international assignees that were in Malaysia performing duties in respect of their overseas employment/ assignments and their employers are concerned about the impact that their temporary presence – and additional unplanned days spent – in Malaysia may have on their Malaysia tax residency status, cross-border employment income, and possible permanent establishment issues. The guidance issued by the MIRB provides clarity in cases where individuals have needed to spend additional days in Malaysia due to COVID-19-related travel and “stay at home” restrictions where the MIRB’s tax treatment of such individuals and their employment income are concerned.

Tax Treatment of Cross-Border Employment Income Due to COVID-19

In Brief: Employment Income When Employment Is Exercised in Malaysia

Generally, employment income is deemed derived from Malaysia if employment is exercised in Malaysia, regardless where the remuneration is paid. The employment income derived from Malaysia would be subject to Malaysian tax unless it can be exempted under the “60 days rule” or pursuant to a tax treaty.

Tax Concession for Income Paid by Overseas Employers

MIRB announced that, if individuals who are working overseas have returned to Malaysia temporarily and are working remotely from Malaysia for their overseas employers due to travel restrictions, that income would not be deemed to be

derived from Malaysia. The employment income will not be taxable in Malaysia. This is provided the following conditions are met:

- a. there is no change in the contractual terms governing their overseas employment before and after they return to Malaysia; and
- b. this is a temporary work arrangement due to COVID-19 travel restrictions.

Nonresident Individuals Work Remotely in Malaysia: Are They Exercising Employment in Malaysia?

The MIRB will not treat the nonresident individuals who have been working remotely in Malaysia for their overseas employers because of COVID-19 travel restrictions as exercising employment in Malaysia provided:

- a. the period of their temporary presence is for a period of not more than 60 days; and
- b. the work they have done during their temporary presence is not connected to their assignment in Malaysia and would have been performed overseas if not due to COVID-19 travel restrictions.

Permanent Establishment

Further, where a nonresident individual who may qualify for tax exemption under the double taxation agreement (“DTA”) between Malaysia and his country of residence, the period of temporary presence in Malaysia because of COVID-19 travel restrictions will not create a permanent establishment (“PE”) in Malaysia for his foreign employer, provided the following criterias are met:

- a. the foreign company does not have a PE in Malaysia before the existence of COVID-19 travel restrictions;
- b. there are no other changes to the economic circumstances of the company;
- c. the temporary presence of the employees in Malaysia is solely due to travel restrictions relating to COVID-19; and
- d. the activities performed by the employees during their temporary presence would not have been performed in Malaysia if not for the COVID-19 travel restrictions.

Tax Residency Status Due to COVID-19

The general rule for individuals to qualify as tax residents in Malaysia, is that they be physically present in Malaysia for at least 182 days in a calendar year. However, individuals can still qualify as tax residents under other rules if they are physically present in Malaysia for less than 182 days in a calendar year provided they fulfill certain conditions.

Tax Concession

MIRB announced that, if the individuals are temporarily absent from Malaysia because of COVID-19 travel restrictions, the period of temporary absence from Malaysia because of COVID-19 travel restrictions shall be taken to form part of their period or periods in Malaysia for the purpose of determining their tax residency. Likewise, if nonresident individuals are temporarily present in Malaysia due to COVID-19 travel restrictions, the period of temporary presence in Malaysia shall not be taken to form part of their period or periods in Malaysia for the purpose of determining their tax residency.

KPMG NOTE

The individual and/or company should keep relevant documentation and records (e.g., travel documents, local authority travel restrictions guidelines (other countries guideline may be required), etc.) and be prepared to provide the relevant information to MIRB upon request.

FOOTNOTE:

1 For Frequently Asked Questions on International Tax Issues Due to COVID-19 Travel Restrictions, see http://lampiran1.hasil.gov.my/pdf/pdfam/FAQ_on_International_Tax_Issues.pdf .

* * * *

Contact us

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



Long Yen Ping
Tel. +60 (3) 77217018
yenpinglong@kpmg.com.my



Fong Chooi Lian
Tel. + 60 (3) 77217263
chooilianfong@kpmg.com.my



Wee Chong Eng
Tel. + 60 (3) 77217262
chongengwee@kpmg.com.my

The information contained in this newsletter was submitted by the KPMG International member firm in Malaysia.

© 2020 KPMG Tax Services Sdn Bhd., a company incorporated under the Malaysian Companies Act, 1965 and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2020 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint ventures. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP’s Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.