

# ▶▶ Tax Flash



*December 2011*

## **PR No. 8/2011 – Foreign Nationals Working in Malaysia – Tax Treatment**

The Inland Revenue Board [“IRB”] has recently issued the Public Ruling [“PR”] No. 8/2011 – Foreign Nationals Working in Malaysia – Tax Treatment. This PR provides guidance on the tax treatment of employment income derived by foreign nationals exercising employment in Malaysia.

Salient points of the abovementioned PR include:-

### i. Tax Treatment of Foreign Nationals Working in Malaysia

- Generally, income from employment is taxed in the country where the services are actually performed, irrespective of the place where the contract is entered into or where the remuneration is paid. In this respect, a foreign national working in Malaysia is liable to tax in Malaysia in respect of his employment income derived from Malaysia.
- An employment income is deemed derived from Malaysia if it arises for any period during which:-
  - the employment is exercised in Malaysia;
  - leave is attributable to the exercise of employment in Malaysia; or
  - the employee performs outside Malaysia duties incidental to the exercise of employment in Malaysia (**Note**).

**Note :** Refer to PR No. 1/2011 – Taxation of Malaysian Employees Seconded Overseas.

- The tax rates applicable to foreign nationals would depend on their tax residency status determined by reference to their physical presence in Malaysia in a basis year for a year of assessment [“YA”]. While residents qualify for reliefs and taxed at scale rate of between 1% to 26%, non-residents are subject to tax, currently at a flat rate of 26% without any reliefs.

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- Income from short term employment of a non-resident individual is exempt from tax if the employment is exercised in Malaysia:-
  - for a period or periods which together do not exceed 60 days in a basis year for a YA;
  - for a continuous period not exceeding 60 days which overlaps the basis years for 2 successive years of assessment; or
  - for a continuous period which overlaps the basis years for 2 successive years of assessment and for a period or periods which together with the continuous period do not exceed 60 days.

The exemption period of 60 days refers to the period of employment in Malaysia which may be under the same or different employers.

ii. Tax Treatment of Foreign Nationals from Treaty Countries Seconded to Malaysia

- When an employment income of an individual is taxed in Malaysia and also in his home country having a tax treaty with Malaysia, the Malaysian tax law provides for a relief in the form of a bilateral credit to that individual who is resident in Malaysia under Section 132 of the Income Tax Act 1967 [“the Act”]. The computation of this credit is as follows:-

$$\frac{\text{Foreign income (statutory income) (Note)}}{\text{Total income}} \times \text{Malaysian tax payable before bilateral credit}$$

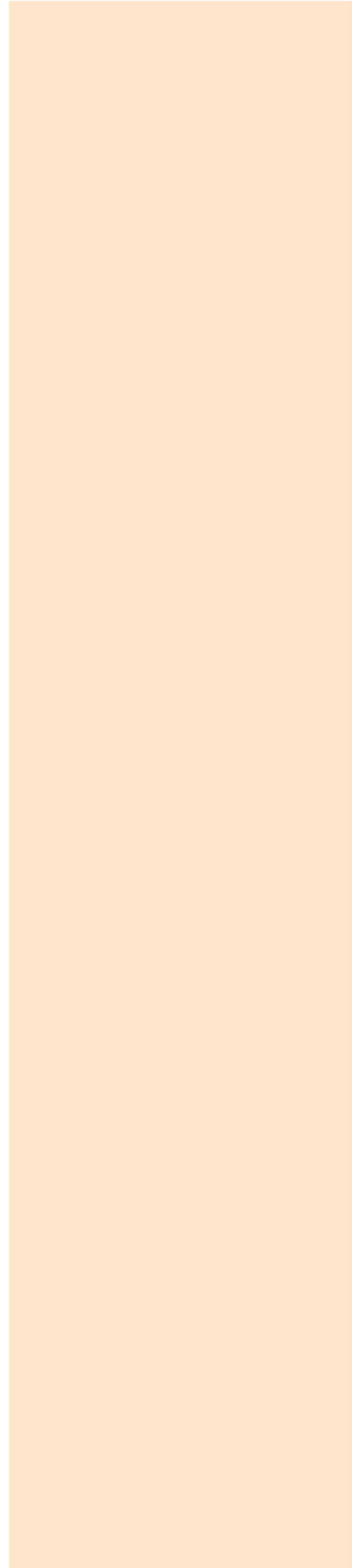
Or

Foreign tax charged in respect of the foreign income charged to tax twice, whichever is the lower

**Note :** *With effect from the YA 2007, foreign income for the purposes of claiming bilateral credit includes income derived from Malaysia and charged to foreign tax.*

iii. Tax treatment of Foreign Nationals from Non-Treaty Countries Seconded to Malaysia

- Pursuant to Paragraph 15 of Schedule 7 of the Act, unilateral credit may be allowed for foreign tax if an employee pays Malaysian tax and foreign tax in respect of any foreign income from an employment exercised **outside** Malaysia, whether or not he was resident in the basis year for the YA for which Malaysian tax was paid. Therefore, where an employment is exercised in Malaysia, such unilateral credit will not be applicable though the income derived from Malaysia may also be liable to foreign tax.



iv. Tax Treatment of Foreign Nationals Participating in the Malaysian Technical Co-operation Programme

- Payment received by a non-citizen and non-resident in Malaysia from participating in the Malaysian Technical Co-operation Programme ["MTCP"] is exempt from tax under the Income Tax (Exemption) Order 2008 (effective YA 2007).
- MTCP means a technical co-operation programme approved by the Economic Planning Unit, Prime Minister's Department of Malaysia with the objective to share development experiences and expertise with other developing countries. Currently, this is administered by MTCP Unit, Ministry of Foreign Affairs.

v. Filing of Income Tax Return Forms

- Foreign nationals deriving income from Malaysia are required to file an Income Tax Form (i.e. Form M for non-resident; Form BE or Form B for resident) for a YA on or before 30<sup>th</sup> April of the following year.

The above PR takes effect from the YA 2011.

**PR No. 9/2011 – Co-operative Society**

The IRB has recently issued the PR No. 9/2011 – Co-operative Society. This PR provides guidance on the tax treatment of a co-operative society registered in Malaysia.

Salient points of the abovementioned PR include:-

i. Co-operative Society

- A co-operative society is defined under the Act as any co-operative society registered under any written law relating to the registration of co-operative societies in Malaysia.
- Certain organisations (not registered under any written law relating to the registration of co-operative societies in Malaysia) are granted the status of co-operative societies within the definition of a co-operative society and accorded special tax treatment under Section 65A of the Act.

ii. Tax Treatment for Co-operative Society

- The chargeable income of a co-operative society is taxed at scale rates.
- In ascertaining the chargeable income of a co-operative society, special deduction is given under Sections 65A(a) and 65A(b) of the Act.

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- Section 65A(a) provides that the amount to be deducted from the total income is the sum which has been transferred or paid by a co-operative society in the basis period for a YA to:-
  - a statutory reserve fund;
  - any educational institution and/or co-operative organisation established for the furtherance of co-operative; or
  - a Co-operative Education Trust Fund.

However, the maximum amount of deduction allowable under this paragraph shall not exceed 25% of the audited net profits for that basis period of the co-operative society.

- Section 65A(b) provides that the amount of deduction is equal to 8% (or such percentage as may be prescribed) of the members' funds as at the first day of the basis period for a YA.
- A newly registered co-operative society is exempted from tax on any income for a period of 5 years commencing from the date of registration pursuant to Paragraph 12(1)(a) of Schedule 6 of the Act.
- A co-operative society which has been registered for more than 5 years is exempted from tax only if the members' funds as at the first day of the basis period for a YA is less than RM750,000 pursuant to Paragraph 12(1)(b) of Schedule 6 of the Act.
- The income of a co-operative society is exempted at the level of chargeable income. Therefore, even though a co-operative society is eligible for tax exemption for a YA, the adjusted income/adjusted loss and capital allowances for every YA has to be ascertained. Any adjusted loss and excess of capital allowances which cannot be absorbed can be carried forward to subsequent years of assessment.
- In addition, an Agro-based Co-operative Society, an Area Farmers' Organisation, a Federal Farmers' Organisation, a State Farmers' Organisation, an Area Fishermen's Association, a Federal Fishermen's Association and a State Fishermen's Association are exempted from the payment of income tax in relation to an approved food production project for a period of 10 consecutive years of assessment, effective YA 2001 (new project) and for a period of 5 consecutive years of assessment, effective YA 2002 (expansion project).

iii. Submission of Income Tax Return Form

- A co-operative Society has to submit the tax return form (i.e. Form C1) within 7 months from the date following the close of accounting period.

iv. Amount Paid, Credited or Distributed by a Co-operative Society

- Any dividend paid, credited or distributed to any member of a co-operative society is exempt under Paragraph 12A, Schedule 6 of the Act regardless whether the co-operative society is exempted from tax.
- Any gains, profits, interest or bonds received by members and non-members who are resident from money deposited with a co-operative society is exempt from tax pursuant to the Income Tax (Exemption) (No. 7) (Amendment) Order 2009.

The above PR takes effect from the YA 2011.

**Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation**

Pursuant to the Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2011, for the purpose of ascertaining the adjusted income of a member institution from its business, there shall be allowed a deduction of an amount equivalent to the first premium or annual premium paid by that member institution to the Malaysia Deposit Insurance Corporation in the basis period for a YA.

The Rules are deemed to have effect from the YA 2005 to YA 2010 in respect of a member institution who is a financial institution under Section 37 of the Malaysia Deposit Insurance Corporation Act 2005; and from the YA 2011 onwards in respect of a member institution who is a financial institution under paragraph 36(1)(b) or a *takaful* operator/an insurance company under Section 36(2) of Malaysia Deposit Insurance Corporation Act 2011.

Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2011

### **Service Tax Exemption for Free Zones, Duty Free Islands and Joint Development Area**

The Ministry of Finance has, in its letter dated 14<sup>th</sup> November 2011, announced that effective 1<sup>st</sup> January 2012, exemption of service tax will be granted on all taxable services:-

- i. provided by any person in free zones and supplied to any person in free zones;
- ii. provided by any person in free zones and supplied to any person in the principal customs area;
- iii. provided by any person in the principal customs area and supplied to any person in free zones; and
- iv. provided by any person in the principal customs area or free zones in connection with any matters in Langkawi, Tioman, Labuan and the Joint Development Area.

Any application for refund of service tax which has been paid before 1<sup>st</sup> January 2012 in respect of the abovementioned taxable services will not be approved. However, service tax which has not been collected before 1<sup>st</sup> January 2012 will be remitted under Section 22 of the Service Tax Act 1975.

All taxable services provided by any person in the principal customs area or free zones to any person in Langkawi, Tioman, Labuan and Joint Development Area will not be subject to service tax with immediate effect.

The abovementioned exemptions shall be granted until the Goods and Services Tax comes into force.

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Service Tax Exemption  
for Free Zones, Duty Free  
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Development Area