

eNewsletter 03/2023: DIGITAL NOMAD PASS -TAX IMPLICATION

Although modern mobile workers go by many names — digital nomad, cross-border telecommuter, extended business traveller, or accidental expat — one thing is clear: they have come to constitute a crucial part of the workforce in many countries. The continued evolution of the mobile modern workforce has resulted in multifaceted compliance concern involving immigration, tax and employment law challenges.

Malaysia has recently launched digital nomad visa which will serve as a special residence permit supported by the MDEC or the Malaysia Digital Economic Corporation, the agency tasked with promoting the country's digital economy. Under the De Rantau program, qualified digital nomads can live in Malaysia from three months to one year, with the option to renew for an additional twelve months.

To be eligible for the Malaysia digital nomad visa or DE Rantau pass, the individual must meet certain conditions, which include the following:

A digital freelancer or independent contractor with an active contract from local or foreign-based companies.

Remote workers with an active employment contract from local or foreign-based companies.

Working within the IT industry, including digital marketing, digital content development, and digital creative content.

Earns at least USD 24,000 each year.

De Rantau is open to foreign and local digital professionals. For foreigners, they will receive a Professional Visit Pass, which will allow them to stay in Malaysia from three up to twelve months, after which it can be renewed for an additional twelve months. Immediate family members (i.e. spouse and child/children) are also eligible to apply.



TAX IMPLICATIONS

Mobile workers need to be aware that there are tax concerns when they are working in a foreign country and the requirement to be compliant with local tax rules and regulations.

In Malaysia, the source of employment income is by reference to where the individual exercises his employment. Exercising employment means discharging the duties of employment.

The phrase exercising employment, which is not defined in the Income Tax Act, 1967 (ITA), is generally understood to mean employment is exercised at the place where the individual is physically present when performing the activities for which the employment income is paid.

Therefore, during the period the individual is exercising employment in Malaysia, the salary paid by the employer would be taxable in Malaysia.

For those individuals living in Malaysia who may be working for a foreign employer, there is a possibility that the individuals living in Malaysia may be brought to tax on the foreign income on the basis that the income is sourced from Malaysia or arises in Malaysia.

If an individual is located in Malaysia and is performing his duties of employment in Malaysia for a foreign employer, then such individual will be regarded to be exercising his employment in Malaysia, and the whole of his income (attributable to that employment) will be taxed in Malaysia as the source of that income is derived from Malaysia. An individual exercising an employment in Malaysia is taxable on his full income, notwithstanding that part or whole of his income may be paid to him outside Malaysia.

Under normal circumstances, an individual whose stay in Malaysia for less than 182 days in a calendar year would be treated as a non-resident for tax purposes and his gross income will be taxed at a flat rate of 30% without any reliefs being given. However, if his period of stay in Malaysia in a calendar year is more than 182 days or he qualifies as a resident in Malaysia as prescribed under Section 7 of the ITA, he will be treated as a tax resident and eligible to claim tax reliefs and his chargeable income will be taxed at progressive tax rates. Tax-residency rules also apply to contractors and part-time workers, especially in regards to reporting taxes.

In the case where an individual has a dual contract with separate employment contracts for duties performed in Malaysia and overseas, the tax position will follow the same tax treatment. The taxpayer has to prove that the contract relating to the foreign employment was fully performed overseas and not related to any of the activities undertaken in Malaysia.

If you do not declare/report your income you may face severe consequences. Here are some common risks and issues which may arise from not declaring/reporting taxes:

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| Inland Revenue Board Malaysia (IRBM) imposes penalty and/or late payment penalty on what you owe to them; | IRBM imposes travel restrictions on those with outstanding tax arrears i.e., the individual will be barred from leaving/ entering the country until tax issues have been resolved. | There is a possibility of double taxation i.e., the same income being taxed in both Malaysia and home country |
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TAX EXEMPTION/ RELIEFS

In a situation where the period of stay in Malaysia is less than 60 days, employment income can be exempted from Malaysia income tax as provided under the domestic tax law - Exemptions under Para 21, Schedule 6, of the ITA. Where the individual's stay in Malaysia is more than 60 days but less than 182 days, he/she may claim relief pursuant to a Double Taxation Agreement (DTA). The exemption/relief are not automatically given. A claim for exemption/relief must be made at the time of submission of the Income Tax Return Form. It is necessary for foreign nationals claiming the exemption /tax treaty relief to prove to the IRBM that they do indeed qualify for the exemption/relief.

For those individuals who do not meet the conditions to qualify for the relief/exemption, they are likely to be taxed on employment income attributable to their Malaysian assignments.

FOREIGN EMPLOYER'S PERSPECTIVE

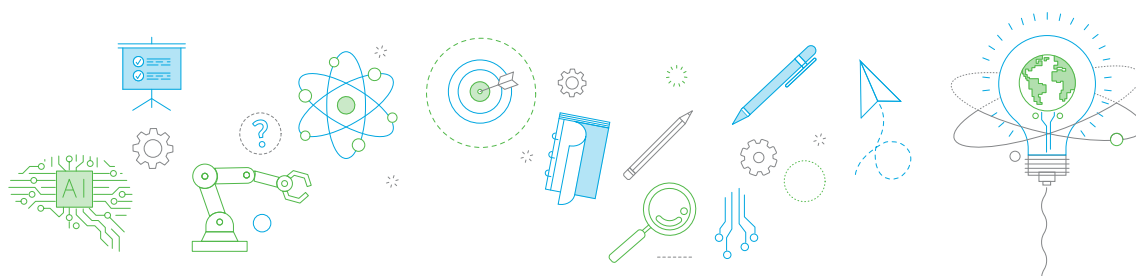
The presence of an employee in Malaysia (host country) of a foreign employer could give rise to risk of a taxable presence for the employer entity, and result in such entity being subject to Malaysian Corporate Income Tax on profits which are attributable to the Permanent Establishment ("PE"). There are several factors to determine if a PE or business presence is triggered in Malaysia by virtue of an employee's presence in Malaysia. These include but are not limited to whether the foreign entity has a fixed place of business at its disposal through which it partially or wholly carries on its business (i.e., Fixed Place PE); or if the employee habitually plays the principal role leading to the conclusion of contracts in the name of the enterprise (i.e., Dependent Agent PE).

Generally, the use of a home office should in itself not trigger a Fixed Place PE if the employer does not require the employee to work in the host country, does not offer an office for the employee, and does not rent and maintain a home office/co-working space for the employee.

With regard to a Dependent Agent PE, it is important to ensure that the activities and functions carried out by the employee does not include any activities which would give rise to a PE or business presence risk for the foreign entity in Malaysia (e.g. contract negotiation, conclusions of contract, supervisory activities etc.).

CONCLUSION

It is crucial for the applicants or the foreign employer to take into consideration the tax consequences that may arise as a result of remote work. It is also important to study and analyse such tax issues thoroughly to reduce any potential tax risk.



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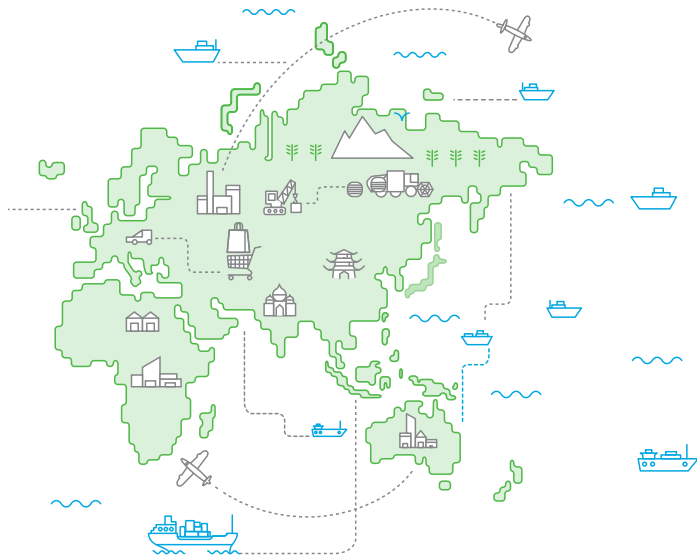
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