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Tax department notifies income-tax return forms for financial year 2019–20

Overview

In May 2020, the Malaysian Inland Revenue Board (MIRB) released guidance on international tax issues arising from the COVID-19 travel restrictions. An updated guidance was then released in July 2020 to provide additional details and clarification.

This guidance, amongst others, addresses tax residence status, cross-border employment income, and the potential creation of a permanent establishment in Malaysia. Please note that these measures undertaken by the MIRB are solely due to COVID-19-related situations and are subject to change due to the evolving situation.

What is the change?

Tax residence status of an individual: When determining an individual's tax residence where the COVID-19 travel restriction causes:

1. A temporary absence from Malaysia: Such period of temporary absence from Malaysia shall form part of the period or periods in Malaysia for the purpose of determining the residence status of a tax resident.
    a. To prove one's temporary absence from Malaysia, relevant documentation/records and information (*e.g.*, travel documents, local authority travel restrictions guidelines) must be readily available to be provided to the MIRB upon request.
2. A temporary presence in Malaysia: Such period of temporary presence in Malaysia shall not form part of the period or periods in Malaysia for the purpose of determining the residence status of a nontax resident.
    a. The temporary presence in Malaysia due to COVID-19 travel restrictions refers to the Movement Control Order (MCO) period in Malaysia (*i.e.*, 18 March 2020 to 31 August 2020).
    b. Relevant documentation and records (*e.g.*, travel documents, local authority travel restrictions guidelines) must be readily available to be provided to the MIRB upon request.

Cross-border employment income: The MIRB has also addressed the tax treatment of cross-border employment income in view of the COVID-19 travel restrictions, under the following scenarios:

Individuals who have been exercising employment outside Malaysia but have to temporarily work in Malaysia due to COVID-19 travel restrictions	Such individuals will be treated as not exercising employment in Malaysia (*i.e.*, the individual's employment income for such a period will not be taxable in Malaysia), if the following conditions are met: 1. There is no change in the contractual terms governing the individual's employment overseas before and after his or her return to Malaysia; and 2. This is a temporary work arrangement due to COVID-19 travel restrictions. If either of the above conditions are not met, normal tax rules will apply to determine the taxability of the individual's employment income for work done in Malaysia. The above will apply to all cross-border employment situations.
For individuals who have been exercising employment in Malaysia but have to temporarily work outside Malaysia due to COVID-19 travel restrictions	Such individuals are regarded to be exercising employment in Malaysia (*i.e.*, the individual's employment income is deemed derived from Malaysia and, therefore, will still be taxable in Malaysia). However, individuals may be subject to taxation in the locality where they are temporarily present if no special tax measures for COVID-19 are provided by that locality's tax authority. Generally, for individuals who are present in a foreign country for less than 183 days: 1. If that foreign country has a tax treaty with Malaysia, they will not be taxable in that country. 2. If that foreign country has no tax treaty with Malaysia, they might be subject to tax. In such case, the individual may apply for credit relief under the Income Tax Act 1967.

Nonresident individuals who arrived in Malaysia for a company assignment or on vacation before the COVID-19 travel restrictions and is now working remotely from Malaysia for their overseas employer due to COVID-19 travel restrictions	Such individuals are considered as not exercising employment in Malaysia for the period of their temporary presence in Malaysia, if the following conditions are met: 1. The period of temporary presence is due to COVID-19 travel restrictions; 2. The work done during the temporary presence in Malaysia is not related to the assignment in Malaysia and would not have been performed in Malaysia if not for COVID-19 travel restrictions; 3. Employment remains with the same overseas employer prior to COVID-19 travel restrictions; and 4. The individual leaves Malaysia immediately after the travel restriction on COVID-19 ends in Malaysia. Relevant documentation and records (*e.g.*, passport information, travel schedule, work order/instructions from the employer, and any information to prove compliance with criteria 1 to 4) must be readily available to be provided to the MIRB upon request. The temporary presence in Malaysia due to COVID-19 travel restrictions refers to the MCO period in Malaysia.

Permanent establishment (PE): For a nonresident company in Malaysia, the MIRB will consider that its employee's or personnel's temporary presence in Malaysia caused by COVID-19 travel restrictions does not lead to a creation of a PE in Malaysia, provided the nonresident company meets the following criteria:

1. The company does not have a PE in Malaysia before the existence of COVID-19 travel restrictions;
2. There are no other changes to the economic circumstances of the company;
3. The temporary presence of the company's employees in Malaysia is solely due to travel restrictions relating to COVID-19; and
4. The activities performed by the company's employees during their temporary presence in Malaysia would not have been performed in Malaysia if not for COVID-19 travel restrictions.

The nonresident company should keep relevant documentations and records (*e.g.*, employee passport information, travel schedule, work order/instructions from the employer, and any information to prove compliance with criteria 1 to 4) must be readily available to be provided to the MIRB upon request.

The above applies to all enterprises, including partnerships and limited liability partnerships.

Note:

1. "Economic circumstances" are the principal activities and business model of the company, the nature of the business operations, and the conduct of the business in Malaysia and elsewhere, and the usual locations in which the company operates.
2. "The temporary presence of the employees in Malaysia is solely due to travel restrictions relating to COVID-19" refers to the MCO period in Malaysia.

What does the change mean?

Employees: As an individual's tax residence status determines the quantum of tax payable in Malaysia, the concession in the counting of days will alleviate any unexpected changes in the tax residence status due to COVID-19 travel restrictions.

Generally, employment income will be considered Malaysian-sourced and subject to Malaysian tax if an individual is exercising employment in Malaysia. If an individual exercises employment overseas, such income is not considered Malaysian-sourced, unless it is linked to employment in Malaysia.

The MIRB has now clarified the following:

1. Individuals who have been exercising employment outside Malaysia but who have to temporarily work in Malaysia due to COVID-19 travel restrictions will be treated as not exercising employment in Malaysia and are, therefore, not subject to Malaysian income tax, subject to the conditions as stated above. An example of the above would be for employees who normally reside in in Johor Bahru, Malaysia, but who commute daily to work in Singapore. This will also apply to individuals who arrived in Malaysia prior to the travel restrictions for either a vacation or a short-term assignment and who are now currently working from Malaysia for their overseas employer.
2. Individuals who have been exercising employment in Malaysia but who have to temporarily work outside Malaysia due to COVID-19 travel restrictions will be regarded to be exercising employment in Malaysia and will remain taxable in Malaysia. However, they would need to consider the tax implications of the country they are currently stranded in, as well. This is applicable to individuals working for a Malaysian employer but who left Malaysia prior to the travel restrictions and are now currently working outside Malaysia. Such individuals would be deemed to be working in Malaysia during that period and will continue to be subject to Malaysian tax. In addition, they should also review if they have any tax exposure outside Malaysia based the tax laws or tax treaty or similar special tax measures for COVID-19 as provided by that foreign country's tax authority.

Individuals would need to review their situation, especially during the MCO period, keep relevant documentations and records (*e.g.*, passport information, travel schedule, work order/instructions from the employer, local authority travel restrictions guidelines), and be able to provide the relevant information to the MIRB upon request.

Employers: Employers are not required to report the income for employees who are temporarily working in Malaysia for their overseas employer due to COVID-19 travel restrictions.

PE: Generally, where an employee of a nonresident company exercises his or her employment in Malaysia, there may be potential corporate tax implications (*i.e.*, PE exposures) for the foreign company, depending on the employee's activities and duration of stay in Malaysia.

Where an employee of a foreign company remains in Malaysia due to the travel restrictions and is able to meet all the conditions mentioned above, the foreign company must retain the relevant documentation and records and provide this information to the MIRB upon request.

Deloitte's view

In these unprecedented times, these are welcomed measures by the MIRB for employers and employees who have been affected by the COVID-19 travel restrictions in Malaysia. They will eliminate or reduce the additional tax responsibilities, which all may be unprepared for, caused by the closing of Malaysian borders.

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Sweden:
Taxation in Sweden of funds transferred from 401(k) to IRA account

Overview

On 27 March 2019, the Supreme Administrative Court (the "Court") ruled that funds that are transferred from a 401(k) plan to an individual retirement account (IRA) in the United States are considered as taxable pension income in Sweden, and the taxable event occurs at the time of transfer to the IRA.

Background

The case concerns a 67-year-old Swedish tax resident who made a rollover from a 401(k) plan to an IRA and, later that year, also made two withdrawals from his IRA.

The question in the case is regarding when the taxable event occurs. The Court established in the judgement that the taxable event occurs when the rollover from the 401(k) to the IRA takes place.

The Court concludes that the tax treatment and tax-triggering event in the United States are not relevant for the Swedish tax analysis, and that the taxable event should be determined in Sweden regardless of the tax treatment in the United States.

Further, the Court concludes that the funds in the 401(k) are managed by a trust that is linked to the employer, and that the individual therefore cannot be deemed to have sufficient access to or control over the funds at that time. Hence, the taxable event cannot occur at the time of contribution to the 401(k) plan. Instead, the Court concluded that the taxable event occurs at the time of the rollover from the 401(k) to the IRA, considering that the IRA is in the name of the individual and that the individual can access the funds in the IRA without limitations.

The entire value of the transferred funds from the 401(k) is deemed as pension income in Sweden. The tax treaty between the United States and Sweden does not limit Sweden's taxation right over the pension income for an individual who is a Swedish tax treaty resident at the time of the rollover.

Deloitte's view

The Court found that the taxable event occurs at the time of the transfer when funds are transferred from a 401(k) plan to an IRA. This means that if the individual is a Swedish tax treaty resident at the time of the rollover, Sweden has the right to tax the entire value subject to the rollover as pension income.

The ruling should be a clarification of existing legislation and may therefore be applied retroactively. The court ruling was broad, meaning that it may be applied in similar cases even when the specific facts deviate from this case.

Because the Swedish tax analysis is applied without considering the tax treatment in the United States, the transferred funds may be fully taxable in the United States at the point of withdrawal from the IRA without the United States allowing a foreign tax credit for the Swedish taxes paid at the time of the rollover. This means that a double tax situation may occur.

Due to this uncertainty and the negative impact this taxation may have on an individual, we recommend that individuals take the ruling into account when planning moves to Sweden—and that they always seek guidance from Deloitte before transferring any funds to an IRA while being considered a Swedish tax treaty resident.

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