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Dos and don'ts for employees working remotely

Remote work



What is remote work?

Employees who:

- Voluntarily choose to work from a location (e.g. another country) other than the office assigned by his employer.
- With or without the knowledge of his employer



Issues to consider

- ✓ **For the employee**
 - ✓ Income Tax
 - ✓ Immigration (Work visa / permits)
- ✓ **Risk for the employer**
 - ✓ Payroll reporting
 - ✓ Legal
 - ✓ Permanent establishment
 - ✓ Data security





“I’ve successfully worked remotely from Malaysia during the pandemic, so I’d like to continue to do that indefinitely.”

- Employer in Singapore
- Payroll in Singapore
- Work mostly from home in Penang
- Travel to Singapore occasionally when needed
- With or without the knowledge of the employer

Misconception

“No need to pay any tax in Malaysia because my employer and payroll is in Singapore.”

“I am a Malaysian citizen, and I don’t hold any work visa to work in Malaysia. There is no requirement to report to tax.”

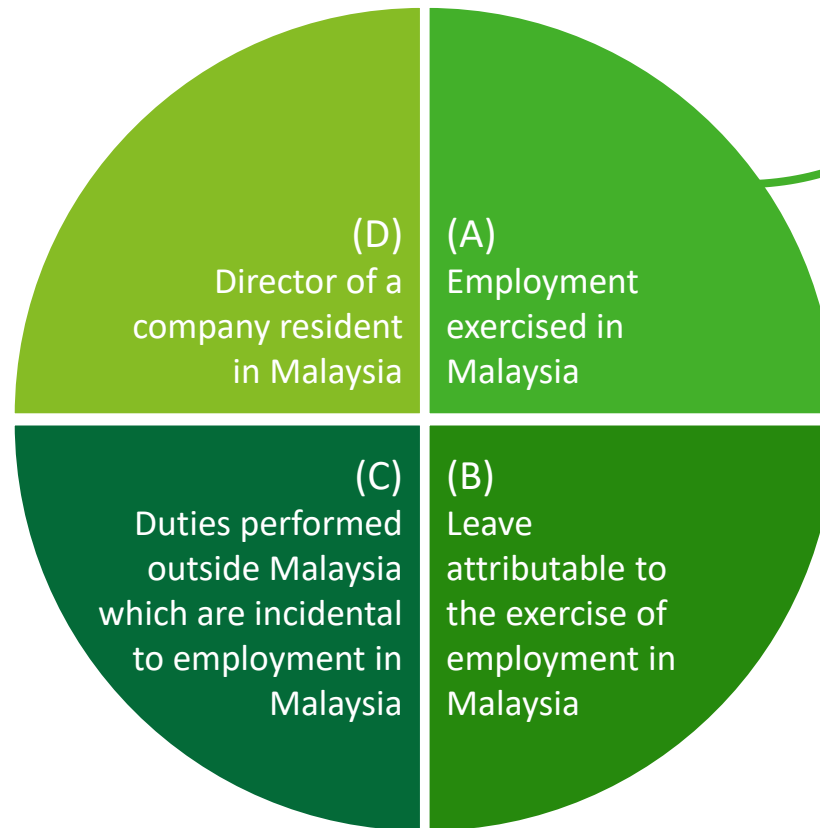


Malaysia Income Tax Legislation

Section 3 of the Malaysian Income Tax Act (MITA)

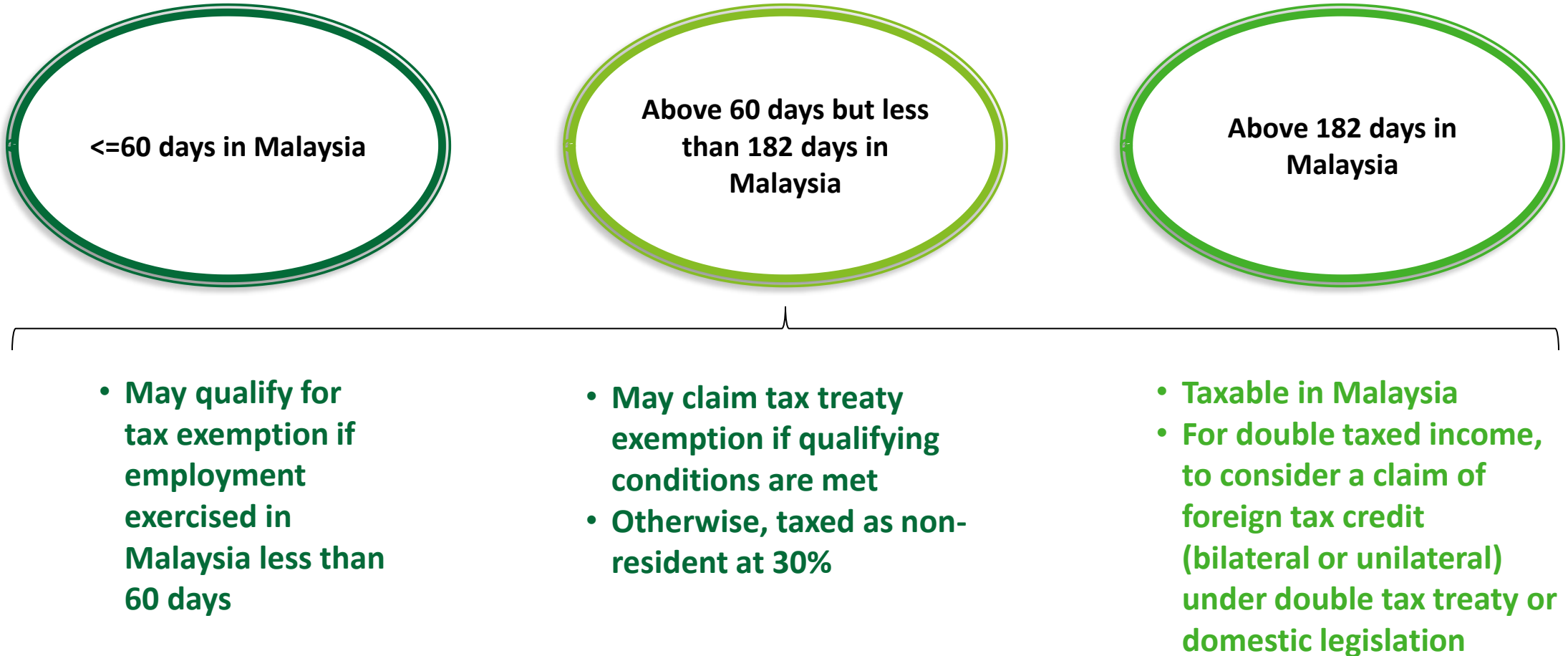
Income Tax is imposed on the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia.

Section 13(2) of the MITA – Employment income derived from Malaysia



“Exercise employment in Malaysia” refers to the place the employee is present to perform activities for which employment income is paid.

Is there scope to leverage treaties to reduce individual income tax burdens?



Deemed Employer's Tax Obligations

Are you a deemed employer?



Extract from Section 83(6) of the Malaysia Income Tax Act:-

*“....., any person to whom or for whose benefit a service is rendered or performed by another person shall be **deemed to be an employer**, whether or not he employs that other person or is responsible for paying remuneration to the other person”.*



Note: The tax filing obligations of an “employer” and a “deemed employer” remains the same.

Remote work impacts for employers and employees

Key Considerations for employer:-

-  **New withholding requirements / payroll registrations** Analysis to determine if withholding and statutory reporting is required both in the remote work location
-  **Corporate/legal implications** Corporate tax exposure including permanent establishment issues

Key Considerations for employee:-

-  **Potential double taxation** Employees that work in countries that do not have a double tax treaty with the “home” country may be subject to double taxation
-  **Risk management** Whether the employee has the right to work in the new (remote) location? Expanded tracking; collaboration between immigration and tax office may result in individual stopped at immigration checkpoint

Take an immediate next step

Consider...

- Insights and lessons learned in operating remote work during COVID-19, for example:
 - Immigration challenges?
 - Tracking employees?
 - Risk of Permanent Establishment?

Discuss if there are employees working remotely

- Evaluate the risks for employer and employees in the circumstances
- Consider the possible next steps to mitigate risks
- If necessary, define a company policy which addresses eligibility, employment terms for remote work



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