



INLAND REVENUE BOARD MALAYSIA

**TAX EXEMPTION ON EMPLOYMENT
INCOME OF NON-CITIZEN INDIVIDUALS
WORKING FOR CERTAIN COMPANIES
IN MALAYSIA**

PUBLIC RULING NO. 12/2011

Translation from the original Bahasa Malaysia text

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CERTAIN COMPANIES IN MALAYSIA**

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CONTENTS	Page
1. Introduction	1
2. Interpretation	1
3. Non-Citizen Individuals Working With Certain Companies	2
4. Computation Of Tax Exempt Income	3
5. Documents Required For Claim Of Exemption	12
6. Effective Date	12

DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**



**TAX EXEMPTION ON EMPLOYMENT
INCOME OF NON-CITIZEN
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1. This Ruling explains the tax treatment of employment income derived by non-citizen individuals working for an Operational Headquarters Company, Regional Office, International Procurement Centre Company or Regional Distribution Centre Company in Malaysia.
2. The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are sections 2, 7, 13, 25 and Schedule 6.
3. The words used in this Ruling have the following meaning:
 - 3.1 “Non-resident” for a basis year for a year of assessment in relation to an employee means an employee other than a resident employee.
 - 3.2 “Non-citizen” means an individual who is a non-Malaysian citizen.
 - 3.3 “Malaysian tax” means tax imposed by the ITA 1967.
 - 3.4 “Employer” in relation to an employment, means –
 - (a) where the relationship of master and servant subsists, the master;
 - (b) where the relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that that person and the employee may be the same person acting in different capacities.
 - 3.5 “Person” includes a company, a co-operative society, a club, an association, a Hindu Joint Family, a trust, an estate under administration, a partnership and an individual.
 - 3.6 “Regional office” means a regional office approved by the Minister of International Trade and Industry.
 - 3.7 “Employee” in relation to an employment, means –
 - (a) where the relationship of servant and master subsists, the servant;
 - (b) where the relationship does not subsist, the holder of the appointment or office which constitutes the employment.
 - 3.8 “Resident of Malaysia” means an individual who is resident in Malaysia for the basis year for a year of assessment by virtue of section 7 of the ITA 1967.
 - 3.9 “Employment” means –
 - (a) employment in which the relationship of master and servant subsists;

- (b) any appointment or office, whether public or not and whether or not that relationship subsists, for which remuneration is payable.
- 3.10 “Statutory income”, in relation to a person, a source and a year of assessment, means statutory income ascertained in accordance with the ITA 1967.
- 3.11 “Chargeable income” in relation to a person and a year of assessment, means chargeable income ascertained in accordance with the ITA 1967.
- 3.12 “Operational headquarters company” means an operational headquarters company approved by the Minister of Finance.
- 3.13 “Regional distribution centre company” means a regional distribution centre company approved by the Minister of Finance.
- 3.14 “International procurement centre company” means an international procurement centre company approved by the Minister of Finance.
- 3.15 “Assessment” means any assessment or additional assessment made under the ITA 1967.
- 3.16 “Basis year” in relation to a year of assessment for an employment source is the basis period for that year of assessment.
- 3.17 “Year of assessment” means calendar year.

4. Non-Citizen Individuals Working With Certain Companies

Non-citizen individuals working at an Operational Headquarters Company, Regional Office, International Procurement Centre Company or a Regional Distribution Centre Company are accorded the following tax treatment:

- (a) Operational Headquarters Company (OHQ) and Regional Office (RO)

From the year of assessment 2003, non-citizen individuals are exempted from the payment of income tax in respect of income derived from an employment with an OHQ or RO exercised outside Malaysia. The amount of income that is exempted is determined according to the formula in paragraph 5.2 below. As such, non-citizen individuals are taxed only on the portion of their chargeable income attributable to the number of days they exercise their employment in Malaysia. [Income Tax (Exemption) (No. 60) Order 2003] [*P.U.(A) 382/2003*].

- (b) International Procurement Centre Company (IPC) and Regional Distribution Centre Company (RDC)

With effect from the year of assessment 2008, the tax treatment accorded to non-citizen individuals working at an OHQ or RO is extended to non-citizen individuals who are employed by an IPC or RDC. The amount of income that is exempted is determined according to the formula in paragraph 5.2 below. Hence, non-citizen individuals are taxed only on the portion of their chargeable income attributable to the number of days they exercise their employment in Malaysia. [Income Tax (Exemption) (No. 2) Order 2008] [*P.U.(A) 101/2008*].

5. Computation Of Tax Exempt Income

5.1 In employment in Malaysia for a period of not more than 60 days

The income of a non-citizen individual from an employment with an OHQ, RO, IPC or RDC exercised by him in Malaysia for a period not exceeding 60 days in a basis year or for each of those basis years, as the case may be, would be tax exempt in accordance with paragraph 21, Schedule 6, ITA 1967 under the following circumstances:

- (a) the employee exercised his employment in Malaysia for a period or periods which together do not exceed 60 days in a basis year for a year of assessment;
- (b) the employee exercised his employment in Malaysia for a continuous period (not exceeding 60 days) which overlaps the basis years for two successive years of assessment; or
- (c) the employee exercised his employment in Malaysia for a continuous period (not exceeding 60 days) which overlaps the basis years for two successive years of assessment and for a period or periods which together with that continuous period do not exceed 60 days.

Example 1

Syafrein, a non-citizen, was employed by an OHQ company in Malaysia from 1.1.2011 to 28.2.2011 (59 days) with a monthly remuneration of RM20,000. His duties included providing services to related companies in the South East Asia region. Syafrein exercised his employment outside Malaysia for 30 days. He left Malaysia on 1.3.2011.

As Syafrein's employment period with the OHQ company in Malaysia did not exceed 60 days in 2011, he was exempted from tax under paragraph 21, Schedule 6 of the ITA 1967.

5.2 In employment in Malaysia for more than 60 days

The income of a non-citizen individual from an employment with an OHQ, RO, IPC or RDC in Malaysia would be subject to tax if his employment is:

- (a) for a period or periods amounting in all to more than sixty days in the basis year; or
- (b) for a continuous period exceeding 60 days which overlaps over two successive basis periods; or
- (c) where the continuous overlapping period together with some other period or periods exceeds 60 days. [Paragraph 22(a), Schedule 6 of the ITA 1967].

However, non-citizen individuals working at an OHQ, RO, IPC or RDC are taxed only on the portion of their chargeable income attributable to the number of days they exercise their employment in Malaysia. The amount of income exempted in respect of the employment exercised outside Malaysia is determined in accordance with the following formula:

$$\frac{A}{B} \quad X \quad C$$

Where,

- A - Number of days in the year of assessment he is in employment with the OHQ, RO, IPC or RDC exercised outside Malaysia;
(The number of days outside Malaysia does not include vacation leave overseas)
- B - Number of days in the year of assessment he is in employment with the OHQ, RO, IPC or RDC;
(The number of days is the entire period of employment inclusive of vacation leave overseas)
- C - Chargeable income for a year of assessment attributable to an OHQ, RO, IPC or RDC.



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For the purpose of this formula a non-citizen individual is deemed to be outside Malaysia for a day if he is outside Malaysia for the whole of that day.

Example 2

Edward, a non-citizen, was employed by an OHQ company in Malaysia from 1.1.2009 to 31.12.2010. His duties included providing services to related companies in the South East Asia region.

Edward's remuneration was RM240,000 annually. In the year 2009, he carried out his duties overseas for a period of 150 days and spent 14 days vacationing in Australia.

Edward, a tax resident in Malaysia for the year of assessment 2009 claimed the following relief:

Personal relief	-	RM8,000
Books	-	<u>RM 700</u>
		<u>RM8,700</u>

The situation is summarised as follows:

Year 2009	
<i>Employment in Malaysia</i>	
<i>Exercised employment in Malaysia (inclusive of vacation leave in and outside Malaysia)</i>	<i>Exercised employment outside Malaysia</i>
215 days	150 days
<i>Chargeable income subject to tax in Malaysia</i>	<i>Chargeable income exempted from tax in Malaysia</i>

Edward's tax computation for the year of assessment 2009 is as follows:

Computation of income exempted from tax In Malaysia	
(i)	<i>Number of days employment was exercised outside Malaysia in the year 2009 (A)</i> 150 days
(ii)	<i>Number of days in employment with the OHQ in the year 2009 (B)</i>

	365 days	
(iii)	Chargeable income for year of assessment 2009 (C)	
	Employment income / Total income	RM 240,000
	Less: Relief	<u>8,700</u>
		<u>231,300</u>
(iv)	Employment income exempted from tax in Malaysia	
	$\frac{150 (A)}{365 (B)} \times 231,300 (C)$	
	= RM95,055	
(v)	Computation of chargeable income after taking into account the amount of employment income exempted from tax	
	Employment income / Total income	RM 240,000
	Less: Relief	<u>8,700</u>
		231,300
	Less: Amount of income exempted	<u>95,055</u>
	Chargeable income	<u>136,245</u>
(vi)	Computation of tax payable	
	Tax on RM100,000	RM 14,325.00
	Tax on 36,245 @ 27%	<u>9,786.15</u>
	Tax payable	<u>24,111.15</u>

Example 3

Same facts as in Example 2 except that in the year 2009, Edward exercised his employment in Malaysia for only 45 days and vacationed in Australia for 14 days. Edward is a tax resident in the year of assessment 2009 under paragraph 7(1)(b) of the ITA 1967.

Edward's employment period was for 2 years with an OHQ in Malaysia. The employment income received by Edward for the duties performed overseas are deemed derived from Malaysia as the overseas duties are incidental to the exercise of his employment in Malaysia by virtue of paragraph 13(2)(c) of the ITA 1967.

Although Edward exercised his employment in Malaysia for 45 days and this period, together with his vacation leave of 14 days (45 days +14 days = 59 days) did not exceed 60 days in the year 2009, he does not qualify for tax exemption under paragraph 21, Schedule 6 of the ITA 1967.

The situation is summarised as follows:

Year 2009	
Employment in Malaysia	
Exercised employment in Malaysia (inclusive of vacation leave in and outside Malaysia)	Exercised employment outside Malaysia
59 days	306 days
Chargeable income subject to tax in Malaysia	Chargeable income exempted from tax in Malaysia

Edward's tax computation for the year of assessment 2009 is as follows:

Computation of income exempted from tax in Malaysia										
(i)	Number of days employment was exercised outside Malaysia in the year 2009 (A) 306 days									
(ii)	Number of days in employment with the OHQ in the year 2009 (B) 365 days									
(iii)	Chargeable income for year of assessment 2009 (C) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right;">RM</td> </tr> <tr> <td>Employment income / Total income</td> <td style="text-align: right;">240,000</td> </tr> <tr> <td>Less: Relief</td> <td style="text-align: right;"><u>8,700</u></td> </tr> <tr> <td></td> <td style="text-align: right;"><u>231,300</u></td> </tr> </table>		RM	Employment income / Total income	240,000	Less: Relief	<u>8,700</u>		<u>231,300</u>	
	RM									
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(iv)	Employment income exempted from tax in Malaysia <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><u>306 (A)</u></td> <td style="width: 10%; text-align: center;">X</td> <td style="width: 60%;">231,300 (C)</td> </tr> <tr> <td>365 (B)</td> <td></td> <td></td> </tr> <tr> <td colspan="3"> = RM193,912</td> </tr> </table>	<u>306 (A)</u>	X	231,300 (C)	365 (B)			 = RM193,912		
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365 (B)										
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(v)	<p><i>Computation of chargeable income after taking into account the amount of employment income exempted from tax</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right;"><i>RM</i></td> </tr> <tr> <td><i>Employment income / Total income</i></td> <td style="text-align: right;"><i>240,000</i></td> </tr> <tr> <td><i>Less: Relief</i></td> <td style="text-align: right;"><u><i>8,700</i></u></td> </tr> <tr> <td></td> <td style="text-align: right;"><i>231,300</i></td> </tr> <tr> <td><i>Less: Amount of income exempted</i></td> <td style="text-align: right;"><u><i>193,912</i></u></td> </tr> <tr> <td><i>Chargeable income</i></td> <td style="text-align: right;"><u><i>37,388</i></u></td> </tr> </table>		<i>RM</i>	<i>Employment income / Total income</i>	<i>240,000</i>	<i>Less: Relief</i>	<u><i>8,700</i></u>		<i>231,300</i>	<i>Less: Amount of income exempted</i>	<u><i>193,912</i></u>	<i>Chargeable income</i>	<u><i>37,388</i></u>
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(vi)	<p><i>Computation of tax payable</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right;"><i>RM</i></td> </tr> <tr> <td><i>Tax on RM35,000</i></td> <td style="text-align: right;"><i>1,525.00</i></td> </tr> <tr> <td><i>Tax on 2,388 @ 12%</i></td> <td style="text-align: right;"><u><i>286.56</i></u></td> </tr> <tr> <td><i>Tax payable</i></td> <td style="text-align: right;"><u><i>1,811.56</i></u></td> </tr> </table>		<i>RM</i>	<i>Tax on RM35,000</i>	<i>1,525.00</i>	<i>Tax on 2,388 @ 12%</i>	<u><i>286.56</i></u>	<i>Tax payable</i>	<u><i>1,811.56</i></u>				
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<i>Tax on 2,388 @ 12%</i>	<u><i>286.56</i></u>												
<i>Tax payable</i>	<u><i>1,811.56</i></u>												

Example 4

Same facts as in Example 1 except that Syafrein returned to Malaysia to take up an employment with a different OHQ company in Malaysia. His employment period with the new company was from 1.4.2011 to 30.9.2011 (183 days) and the monthly remuneration was RM25,000. Syafrein exercised his employment outside Malaysia for 90 days. His tax liability will be reviewed from 1.1.2011 upon the cessation of his employment with the second OHQ company.

Syafrein, a tax resident in Malaysia for the year of assessment 2011 claimed the following relief:

Personal relief	-	RM9,000
Books	-	<u>RM 800</u>
		<u>RM9,800</u>

Syafrein's tax computation for the year of assessment 2011 is as follows:



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INCOME OF NON-CITIZEN
INDIVIDUALS WORKING FOR
CERTAIN COMPANIES IN MALAYSIA**

INLAND REVENUE BOARD MALAYSIA

Public Ruling No. 12/2011
Date Of Issue: 20 December 2011

Computation of income exempted from tax In Malaysia													
(i)	<p>Number of days employment was exercised outside Malaysia in the year 2011 (A)</p> <p>30 + 90 = 120 days</p>												
(ii)	<p>Number of days in employment with the OHQ in the year 2011 (B)</p> <p>59 + 183 = 242 days</p>												
(iii)	<p>Chargeable income for year of assessment 2011 (C)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right; vertical-align: bottom;">RM</td> </tr> <tr> <td>Employment income / Total income</td> <td style="text-align: right;">190,000</td> </tr> <tr> <td>Less: Relief</td> <td style="text-align: right;"><u>9,800</u></td> </tr> <tr> <td></td> <td style="text-align: right;"><u>180,200</u></td> </tr> </table> <p>Employment income: (RM20,000 X 2 months) + (RM25,000 X 6 months) = RM190,000)</p>		RM	Employment income / Total income	190,000	Less: Relief	<u>9,800</u>		<u>180,200</u>				
	RM												
Employment income / Total income	190,000												
Less: Relief	<u>9,800</u>												
	<u>180,200</u>												
(iv)	<p>Employment income exempted from tax in Malaysia</p> $\frac{120 (A)}{242 (B)} \times 180,200 (C)$ <p>= RM89,355</p>												
(v)	<p>Computation of chargeable income after taking into account the amount of employment income exempted from tax</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right; vertical-align: bottom;">RM</td> </tr> <tr> <td>Employment income / Total income</td> <td style="text-align: right;">190,000</td> </tr> <tr> <td>Less: Relief</td> <td style="text-align: right;"><u>9,800</u></td> </tr> <tr> <td></td> <td style="text-align: right;">180,200</td> </tr> <tr> <td>Less: Amount of income exempted</td> <td style="text-align: right;"><u>89,355</u></td> </tr> <tr> <td>Chargeable income</td> <td style="text-align: right;"><u>90,845</u></td> </tr> </table>		RM	Employment income / Total income	190,000	Less: Relief	<u>9,800</u>		180,200	Less: Amount of income exempted	<u>89,355</u>	Chargeable income	<u>90,845</u>
	RM												
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	RM												
Tax on RM70,000	7,125.00												
Tax on 20,845 @ 24%	<u>5,002.80</u>												
Tax payable	<u>12,127.80</u>												

5.3 Income from sources other than employment

If a non-citizen individual has sources of income other than that of employment with an OHQ, RO, IPC or RDC, the chargeable income (C) referred to in paragraph 5.2 above shall be determined in accordance with the following formula:

$$\frac{D}{E} \times F$$

Where,

- D - Gross income from employment with the OHQ, RO, IPC or RDC for a year of assessment;
- E - Total gross income from all sources for a year of assessment; and
- F - Chargeable income for a year of assessment in respect of gross income from all sources.

Example 5

Same facts as in Example 2 except that Edward derived rental income of RM120,000 in the year of assessment 2010 other than his employment income (he worked outside Malaysia for 176 days).

Edwards, a tax resident in Malaysia for the year of assessment 2010 claimed the following relief:

Relief for individuals	-	RM 9,000
Books	-	<u>RM 1,000</u>
		<u>RM10,000</u>

Edward's tax computation for the year of assessment 2010 is as follows:

<i>Computation of chargeable income where there are sources of income other than employment income</i>	
(i)	<i>Gross income from employment (D)</i> <i>Employment income RM240,000</i>
(ii)	<i>Gross income from all sources for a year of assessment 2010 (E)</i>



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INLAND REVENUE BOARD MALAYSIA

Public Ruling No. 12/2011
Date Of Issue: 20 December 2011

	<p style="text-align: right;"><i>RM</i></p> <p><i>Employment income</i> 240,000</p> <p><i>Rental income</i> 120,000</p> <p><i>Gross income</i> <u>360,000</u></p>
(iii)	<p><i>Chargeable income for year of assessment 2010 (F)</i></p> <p style="text-align: right;"><i>RM</i></p> <p><i>Employment income</i> 240,000</p> <p><i>Rental income</i> 120,000</p> <p>360,000</p> <p><i>Less: Relief</i> 10,000</p> <p><i>Chargeable income</i> <u>350,000</u></p>
(iv)	<p><i>The chargeable income (C) as referred to in paragraph 5.2:</i></p> <p>$\frac{240,000 (D)}{360,000 (E)} \times 350,000 (F)$</p> <p>= 233,333</p>

Computation of income exempted from tax in Malaysia	
(i)	<p><i>Number of days employment was exercised outside Malaysia in the year 2010 (A)</i></p> <p>176 days</p>
(ii)	<p><i>Number of days in employment with the OHQ in the year 2010 (B)</i></p> <p>365 days</p>
(iii)	<p><i>Chargeable income for year of assessment 2010 (C)</i></p> <p>RM233,333</p>
(iv)	<p><i>Employment income exempted from tax in Malaysia:</i></p> <p>$\frac{176 (A)}{365 (B)} \times 233,333 (C)$</p> <p>= RM112,511</p>



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INLAND REVENUE BOARD MALAYSIA

**Public Ruling No. 12/2011
Date Of Issue: 20 December 2011**

(v)	<i>Computation of chargeable income after taking into account the employment income exempted</i>	
		<i>RM</i>
	<i>Employment income</i>	<i>240,000</i>
	<i>Rental income</i>	<i><u>120,000</u></i>
	<i>Total income</i>	<i>360,000</i>
	<i>Less: Relief</i>	<i><u>10,000</u></i>
		<i>350,000</i>
	<i>Less: Amount of income exempted</i>	<i><u>112,511</u></i>
	<i>Chargeable income</i>	<i><u>237,489</u></i>
(vi)	<i>Computation of tax payable</i>	
		<i>RM</i>
	<i>Tax on RM150,000</i>	<i>27,325.00</i>
	<i>Tax on 87,489 @ 26%</i>	<i><u>22,747.14</u></i>
	<i>Tax payable</i>	<i><u>50,072.14</u></i>

6. Documents Required For Claim Of Exemption

For audit purposes the documents that may be acceptable to substantiate a claim for exemption pursuant to Income Tax (Exemption) (No. 60) Order 2003 [*P.U.(A) 382/2003*] and Income Tax (Exemption) (No. 2) Order 2008 [*P.U.(A) 101/2008*] are:

- (a) a copy of the employment contract; and
- (b) a confirmation from the employer as to the number of days the employment is exercised in Malaysia and outside Malaysia.

7. Effective Date

This Ruling is effective for the year of assessment 2011 and subsequent years of assessment.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**