

Malaysia: Updated FAQ for companies and individuals impacted by COVID-19

October 29, 2020

In brief

The Malaysian Inland Revenue Board (MIRB) published an [updated Frequently Asked Questions document \(FAQ\)](#) on its website on October 19, 2020 regarding companies and individuals who have been impacted by COVID-19 travel restrictions. Future updates to the FAQ by the MIRB may be posted to the same URL.

This FAQ deals with the impact that COVID-19 has on a global scale and how the displacement of employees around the world could lead to unwanted or unforeseen tax implications. In this publication, we highlight the main points addressed in the FAQ and the Malaysian income tax implications for companies and individuals.

In detail

To mitigate the unwarranted tax impact that COVID-19 has on companies and individuals due to travel restrictions, the FAQ issued by the MIRB gives clarity with regard to tax concessions in the areas of tax residency, permanent establishment and cross border employment income that are applicable to assignees and travellers from March 18, 2020 until December 31, 2020.

Below is a summary of the concessions provided by the MIRB.

Area	Tax positions clarified for impacted companies and individuals on the basis that they meet conditions of the FAQ
Malaysian individual tax residency status	<p><u>Individuals</u></p> <ul style="list-style-type: none"> • Individuals stranded in Malaysia due to COVID-19 travel restrictions <p>The period of temporary presence in Malaysia because of the travel restrictions will not be taken into consideration for tax residency purposes.</p> <ul style="list-style-type: none"> • Malaysian based employees stranded overseas due to COVID-19 travel restrictions <p>The period of temporary absence from Malaysia shall be taken into consideration as part of the physical presence period in Malaysia for tax residency purposes.</p> <p><i>Note: The individuals affected by the travel restrictions are required to retain relevant records/documents as evidence to prove that the individual's presence/absence from Malaysia is due to COVID-19 travel restrictions, should the MIRB request such documentary evidence.</i></p> <p><u>Companies</u></p> <ul style="list-style-type: none"> • Malaysian resident companies unable to convene their Board of Directors (BOD) meeting in Malaysia due to COVID-19 travel restrictions <p>The MIRB is prepared to presume this company as a Malaysian resident, provided it meets all the following conditions:</p> <ol style="list-style-type: none"> a. The company was a resident in the immediate previous year of assessment; and b. The directors of the company have to attend the BOD meeting held outside Malaysia (either physical meeting or via electronic means). <ul style="list-style-type: none"> • Non-resident companies that convene their BOD meeting in Malaysia due to COVID-19 travel restrictions <p>The MIRB is prepared to presume that the company is not a Malaysian resident if the company is required to hold the BOD meeting in Malaysia due to COVID-19 travel restrictions.</p> <p><i>Note: The company must keep relevant documentation and records including meeting minutes stating why the directors attend the BOD meeting from the respective locations, travel documents, and local and foreign authority travel restrictions, should the MIRB request such documentary evidence.</i></p>

<p>Permanent Establishment (PE) exposure</p>	<p>Companies (including enterprises, partnerships and limited liability partnerships) that are non-resident of Malaysia, but have employees stranded in Malaysia, would not have a PE created in Malaysia if:</p> <ul style="list-style-type: none"> a. No PE was created prior to the travel restrictions imposed; b. There are no other changes to the economic circumstances of the company c. The temporary presence of the employees or personnel in Malaysia is solely due to travel restrictions relating to COVID-19; and d. The activities performed by the employees or personnel during their temporary presence would not have been performed in Malaysia if not for the COVID-19 travel restrictions. <p><i>Note: The company must keep relevant records and documents as documentary evidence that shows that the employees were stranded in Malaysia due to COVID-19. Additionally, this concession is also applicable to companies that are resident in countries without any tax treaty with Malaysia. In such a situation, the company is deemed to have no place of business in Malaysia.</i></p>
<p>Cross-border employment income</p>	<ul style="list-style-type: none"> • Foreign-based employees stranded in Malaysia due to COVID-19 <p>Overseas-based employees who are stranded in Malaysia and are forced to work in Malaysia remotely due to COVID-19 will not be regarded as exercising employment in Malaysia. The employment income earned during this period will not be taxable in Malaysia as it is deemed not derived from Malaysia.</p> <p>The above applies provided that the following conditions are met:</p> <ul style="list-style-type: none"> a. The temporary presence in Malaysia is due to COVID-19 travel restrictions; b. The work performed in Malaysia is not related to a Malaysian assignment and would not have been performed in Malaysia if not for the COVID-19 travel restrictions; c. Employment remains with the same overseas employer prior to the COVID-19 travel restrictions; and d. The individual leaves Malaysia immediately after the travel restrictions on COVID-19 ends in Malaysia. <p><i>Note: Relevant records and documentary evidence supporting that presence in Malaysia is due to COVID-19 travel restrictions are to be kept, should this be requested by the MIRB.</i></p> <ul style="list-style-type: none"> • Malaysian-based employees stranded overseas due to COVID-19 <p>Malaysian-based employees who are stranded overseas and are forced to work overseas due to COVID-19 travel restrictions are deemed to be exercising their employment in Malaysia. Therefore, the employment income earned would be taxable in Malaysia.</p>

The takeaway

The tax concessions accorded by the MIRB in the FAQ help alleviate concerns surrounding pertinent and common issues arising from physical displacements of employees. However, the FAQs merely provide guidance to common scenarios. Given the unique nature of each individual situation, these concessions may not apply if the conditions stated under the concessions are not met.

Companies and individuals who are impacted by COVID-19 should review the FAQ alongside the situation at hand to assess the potential ramifications to the companies/employers and individuals due to the displacements.

Finally, the FAQ issued by the MIRB is generally consistent with the OECD Secretariat's initial analyses on the tax issues arising from cross-border workers impacted by COVID-19, particularly on PE concerns and whether a country could lose its taxing right to the income as a result of the displacement of the individuals. However, complexity arises with cross-border arrangements, as there could be various reasons why the individual still could be displaced (e.g. immigration regulations, personal circumstances). So, each case needs to be analysed thoroughly to see if the concessions apply, and if not, whether there is any recourse for relief or application to the Malaysian tax authorities for them to consider the circumstances of the case.

Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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