Planning Your International Secondment: Coming to Malaysia

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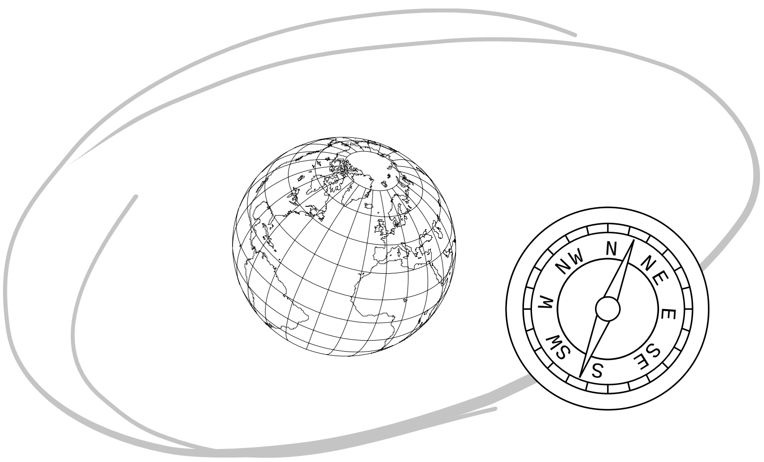
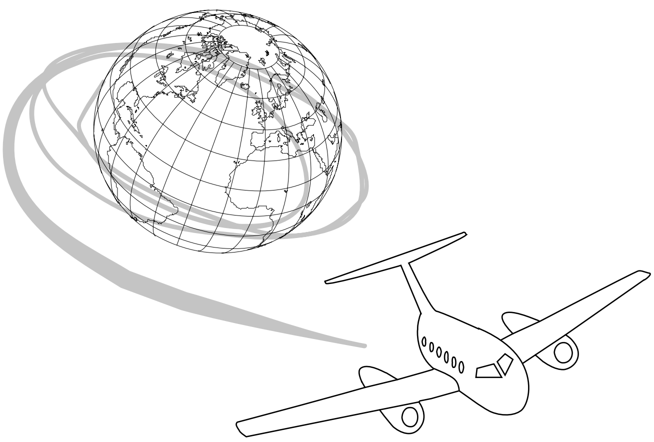


Introduction

This booklet is designed for individuals who are being posted to Malaysia from another country. It will give you a general outline of the practical matters that you and your employer should consider in regard to your posting, as well as important taxation aspects.

How KPMG can help

KPMG offers a full range of services to international executives being transferred between countries. Our goals are to ensure that the international executive settles in Malaysia as quickly as possible and to minimise the transfer costs, including the global tax cost. We hope this booklet will be both helpful and interesting and we would be pleased to discuss any questions you may have. A list of the KPMG offices in Malaysia and the Asia Pacific region is provided at the end of this booklet. Please note that this booklet provides only a general guide to the issues to be considered when transferring to Malaysia. We advise you to seek professional advice in the light of your own personal circumstances.



Entry Requirements

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These passports or travel documents must be valid for at least six months beyond the date of entry into Malaysia. Those who have passports which are not recognised by Malaysia, must apply for a document in lieu of a passport and visa which is issued by Malaysian missions abroad. Entry into Malaysia may or may not require a visa depending on the citizenship of the individual. The Malaysian High Commission, Embassy or Consulate in your home country will be able to advise you on the exact requirements. A visit pass for the purpose of a social or tourist visit or business may be issued at the point of entry. A visit pass (social or tourist) is issued solely for the purpose of a social or tourist visit whilst a visit pass (business) is issued to foreign visitors who enter Malaysia for purposes of conducting business negotiations or inspection of business premises. The business visit pass cannot be used for the purposes of employment or for supervising the installation of new machinery or the construction of a factory. Applications for temporary employment, employment and dependent passes must be made upon arrival in Malaysia. A temporary employment pass is issued to persons who enter Malaysia to take up temporary employment. An employment pass is issued to a person who enters Malaysia to take up a contract of employment. Dependent passes will be issued to the wife and children of any person who has been issued with an employment pass. Applications for temporary employment, employment and dependent passes require sponsorship in Malaysia.

Currency

The Malaysian currency is the Ringgit (RM), which is divided into 100 sen. The external value of the RM is determined in relation to a basket of currencies of countries that are significant trading partners of Malaysia. However, the exchange rate of Malaysia in relation to US dollar has been fixed at US$1.00 = RM3.80. Foreign exchange controls. The present exchange control regime applies uniformly to transactions with all countries except Israel, Serbia and Montenegro, against which special restrictive rules apply. Companies which are accorded with Multimedia Super Corridor (MSC) status continues to enjoy exemption from all exchange control rules. The main exchange control rules of direct relevance to foreign Investors are as follows:

Remittance abroad

Payments to countries outside Malaysia may be made in any foreign currency other than the currencies of Israel, Serbia and Montenegro. Payments within Malaysia must be made in ringgit, the Malaysian unit of currency.

Residents are freely allowed to make payments to non-residents of up to RM10,000 or its equivalent in foreign currency. This limit has been reduced from RM100,000. In addition, residents are required to obtain Bank Negara Malaysia's (BNM) approval in respect of investments abroad or payments in respect of guarantees for non-trade purposes. There was previously no requirement to obtain BNM's approval if the resident had no domestic borrowings.

Other than the above restrictions, residents can, subject to the filing of a Form P, pay in foreign currency amounts exceeding RM10,000 for any purpose (eg. dividends, interest, payments for goods and services) except for the placement of deposits abroad which requires BNM's approval.

Resident and non-resident travellers are allowed to carry ringgit notes up to RM1,000 in person or in their baggage, upon arrival in or departure from Malaysia.

A resident traveller is freely allowed to take out foreign currency notes, including traveller's cheques, up to the equivalent of RM10,000 per person.

Prior permission of the Controller of Foreign Exchange is required for:

(i) a traveller to export or import ringgit notes, or to export foreign currency exceeding the permitted limits; and

(ii) any person other than a traveller to export or import foreign currency or ringgit notes irrespective of amount.

Borrowing from non-residents : the permission of the controller is required for borrowing from abroad where the total foreign borrowing exceeds the equivalent of RM5 million. A resident is not permitted to obtain any credit facility in ringgit from any non-resident.

Office and retail hours

Offices in Malaysia are generally open between 9 am to 5 p.m. from Mondays to Fridays and from 9 a.m. to 1 p.m. on Saturdays. It is becoming increasingly popular for companies to operate on a five day week (Monday - Friday, 8:30 a.m. - 5:30 p.m.). Shopping and entertainment establishments are usually open seven days a week. There are also convenience shops that operate on a 24 hour basis. Three states in Malaysia (Kedah, Kelantan and Terengganu) function on a different five and a half day week, ie, from Saturday to Thursday but with similar hours and Thursday being a half day.

Banking

Banking hours for all states in Malaysia (except the three mentioned above) are generally from 10:00 a.m. to 3:30 p.m. (Mondays to Fridays) and from 9:30 a.m. to 11:30 a.m. (Saturdays). For Kedah, Kelantan and Terengganu, the hours are the same except that they are open on different days (Saturday to Thursday). Most banks issue automatic cash dispenser cards which enable access to funds 24 hours a day.

National health insurance

There is no national health insurance scheme in Malaysia.

Health services

The Malaysian Government provides health care facilities to the lower income group in local general hospitals. The medical and hospitalisation charges are nominal and in some cases free medical care is given to the poor. Medical facilities are good and there are well-equipped government general hospitals in all towns of Malaysia. Private hospitals are also found in major towns. Most private companies in Malaysia provide general medical benefits to their employees through an appointed panel of general practitioners. Some companies also provide hospitalisation and dental benefits to their employees. There are also various private insurance schemes which an employee can join to help cover the cost of consulting a doctor or entering a hospital as a private patient.

Social securiy

In Malaysia, the social security organisation (SOCSO) schemes introduced by the Government provides eligible employees with coverage in the event of invalidity, disablement or death due to employment injury, by way of cash benefits and medical care. Under the existing provisions of the SOCSO Act, all employees whose wages do not exceed RM2,000 at the time of employment must be insured under the scheme. The other existing social security plan in Malaysia is the Employees Provident Fund (EPF) which is set up by the Government to provide Malaysian employees with a lump sum gratuity on their retirement. All Malaysian employees and non-domiciled employees whose monthly wages do not exceed RM2,500 are required to be contributors to the EPF, while non-domiciled employees whose remuneration exceeds RM2,500 per month have the option of becoming members. The rates of contributions for non-domiciled employees who earn less than RM2,500 per month is 11% of the employees remuneration and RM5 from the employer. For all other categories of employees (i.e. Malaysian or foreigners earning more than RM2,500 per month), the employee and the employer are required to contribute a statutory minimum of 11% and 12% respectively of the employee's remuneration to the EPF. Amounts contributed by an employer, up to the maximum of 19%, are fully tax deductible, whilst contributions by the employee are deductible as personal reliefs (subject to a maximum of RM5,000 per annum including premiums paid on life insurance policies for a tax resident). The EPF pays an annual dividend to its members based on the members' account balance. Such dividend is tax exempt.

Schooling

All Malaysian children between the ages of 7 to 15 are required to be in full-time education. The vast majority of children attend public schools, which are administered by the Government, for which nominal fees are payable. For foreign children, admission to a state (public) school is subject to.availability, duration and their parents' assignment to Malaysia. As such, enrolment is not always possible. In addition to public schools, there are private full fee-paying schools, including international schools in which most expatriates enrol their children. Instruction in public schools is in the Malaysian national language, Bahasa Malaysia, and in private schools it is normally in English.

Universities

Applications for undergraduate or post graduate study courses in Malaysian universities, with the exception of the International Islamic University, are generally reserved for Malaysian citizens. Local colleges, in collaboration with foreign universities, conduct 'twinning' programs whereby students attend the first and/or second years of university locally and the rest in the participating overseas universities. Currently, twinning programs are being conducted with universities in countries such as the UK, USA, Australia and New Zealand. The fees for the courses vary from college to college, and from country to country.

Driver's licence

If an individual is a citizen of any Asian country, the home country driving licence is valid in Malaysia. If the individual holds a visitors or temporary visa and is a citizen of a country that is a signatory of the Geneva Convention, then the home country licence or International driving permit is valid in Malaysia for the duration of the visa. However, if the individual was to become a permanent resident or hold a business visa, then he/she would be required to have a Malaysian driving licence.

Making a will

It is advisable to execute a will in your home country to provide for the disposition of your property including that located in Malaysia in the event of your death.

If you die without having made a will, your property could end up being distributed in a way you and your family may not have wished. To avoid potential problems, we recommend that you make a will if you have not already done so. There is no Estate Duty in Malaysia.

Investment in Malaysia

There are no prohibitions against foreign nationals investing in Malaysia through the purchase of stocks, bonds, debentures or other investment accounts. Acquisition of real property in Malaysia by a foreigner has to be approved by the Foreign Investment Committee. The levy of RM100,000, which was previously imposed on foreign interests buying properties in Malaysia has been waived. In addition, the conditions imposed on the acquisition of residential properties by foreign interests have been relaxed, as follows:

(a) 30% quota on sale of condominiums at prices of more than RM250,000, to foreign interests will be increased to 50% for projects which have commenced construction as at 17 October 1997;

(b) each foreign interest will be allowed to acquire 2 units of condominiums, but any further acquisition will be subject to the condition that a company has to be incorporated in Malaysia for the purchase; and

(c) a permanent resident will be allowed to acquire dwellings priced at below RM250,000, but above RM60,000, on condition that the spouse of the acquirer is a Malaysian citizen or has applied for the status of Malaysian citizen.

Introduction

Income tax is levied exclusively by the Federal Government. There are no gift taxes, inheritance or estate duties in Malaysia.

Scope of taxation

Income tax is imposed on a 'territorial' basis, whereby resident individuals of Malaysia are taxed on all income accruing in or derived from Malaysia, as well as on income received in Malaysia from outside Malaysia. Where the foreign income is subject to Malaysian tax, a credit for the foreign taxes paid will be given. Non-residents are only taxed on income derived from Malaysia. Expatriates who have been assigned to Malaysia can be classified either as resident or non-resident taxpayers. The residence status of an individual is determined based on his/her physical presence in Malaysia. A resident individual will be taxed at progressive rates after the deduction of personal reliefs. A non-resident individual will be taxed at a flat rate without the deduction of personal reliefs.

Tax rates and personal reliefs

Income tax is levied at progressive rates on the chargeable income for the year, which is arrived at after deducting personal reliefs which are granted according to circumstances. The tax rates and reliefs are as set out on the card enclosed in the back of this booklet.

Determination of residence status

Generally, an individual becomes a tax resident for a year of assessment if the aggregate number of days he/she stays in Malaysia during the basis year is not less than 182 days. However, under certain circumstances it is possible to be a Malaysian tax resident even if the total number of days he/she stays in the country is less than 182 days.

For the purpose of ascertaining an expatriate's residence status, the Inland Revenue Board (IRB) will request for the travel schedule and original passport for verification. This should cover the period from the commencement of employment in Malaysia until the time of the completion of the assignment. If an expatriate renews his/her passport during the course of his/her employment, the old passport must be retained for the IRB's verification. The sources of income liable to income tax are as follows:

- gains or profits from any trade, business, profession or vocation;
- employment income dividends, interest or discounts;
- rents, royalties or premiums;
- pensions, annuities or other periodical payments;
- gains or profits not falling under any of the above.

The tax year

In Malaysia, the assessment year runs from 1 January to 31 December. Tax is assessed in the assessment year on all income arising in the calendar year (the basis year).

Return of income

Each year, normally around the end of February/ early March, the IRB issues a return form to every employee whose file is registered with them. The return form is required to be completed and submitted within 30 days from the date of issue. If a return form is not issued by that time, the onus lies with the taxpayer to inform the IRB before 14 April of that year of assessment. In the event that the return form cannot be completed within the stipulated time, an extension of time may be given on application.

With effect from year of assessment 1991, the total income of a husband and wife has been assessed separately unless the wife elects to have her total income aggregated with that of her husband and assessed in her husband's name. With effect from Year of Assessment 2001, a husband is allowed to elect for joint assessment under his wife's name, and in such cases, the wife will be granted husband relief of RM3,000. Further, the wife will be given the husband's rebate of RM350, should their combined chargeable income be less than RM35,000 per annum.

Taxation on employment income

Income derived from exercising an employment in Malaysia is regarded as sourced in Malaysia. All income attributable to employment exercised in Malaysia is subject to Malaysian tax, irrespective of where the remuneration is paid.

Where an individual is required to perform duties outside Malaysia, the entire remuneration is still chargeable to Malaysian tax if the services rendered outside Malaysia are regarded as incidental to the Malaysian employment. Where an individual has regional responsibilities and performs services for the head office or parent company outside Malaysia, under a separate contract of employment, he/she is then treated as employed by the overseas company in respect of services performed outside Malaysia. That part of the remuneration which is paid by the overseas company is therefore not assessable to tax in Malaysia provided that:

- it is not charged back to the Malaysian branch or subsidiary directly or indirectly;
- it is not received in or remitted into Malaysia; and
- the employment with the overseas company is exercised exclusively outside Malaysia.

The above arrangement requires two separate contracts of employment which should clearly define the duties and the locations where the respective services should be performed. The allocation of the remuneration between the Malaysian branch/company and the overseas company should be reasonable, taking into account the time spent outside Malaysia and the nature of the services performed. The definition of employment income is fairly comprehensive and covers all forms of remuneration including benefits, whether in cash or in kind, received by an individual for exercising an employment in Malaysia.

Remuneration in respect of Malaysian employment includes salary, fees, and other compensation such as:

- Cost of living allowance and foreign service premium paid to an expatriate.
- Allowance paid for the expatriate's children's education.
- Relocation allowance - an allowance is fully taxable but the expatriate can claim a deduction for actual revenue expenses incurred. However, where the expatriate is reimbursed for revenue expenses this is not a taxable benefit since no benefit or advantage is derived therefrom.
- Employer's contribution to the home country pension scheme unless the scheme is approved by the Malaysian IRB. If it is not an approved scheme, the employer's contribution is taxable but only at the time when received by the employee from the unapproved scheme.

Tax treatment of benefits-in-kind

The tax treatment of the more common benefits-in-kind is as follows:

Leave passages

The cost of leave passages provided to the employee and members of his immediate family are tax free to the extent of three passages to places within Malaysia each year and one passage to any place outside Malaysia, the cost of which is restricted to the maximum of RM3,000 each year.

Medical benefits

The costs of medical or dental treatment is tax-free.

Motor vehicles

The provision of motor vehicles constitutes a taxable benefit and the taxable benefit is assessed at standard rates varying from RM1,200 to RM25,000 per annum depending on the cost of the car when new. In addition, fuel provided is assessed at standard rates varying from RM600 to RM3,000 per annum, also depending on the cost of car when new. Where a driver is provided, the taxable benefit for private use is fixed at RM3,600 per annum.

Accommodation

The assessable benefit of living accommodation provided to an employee is determined as follows:-

- For rented premises, it is the lesser of 30% of the expatriate's cash remuneration (salary plus allowances etc.) or the rental paid for the unfurnished reduced by an agreed proportion (eg, if accommodation is shared, or if it is bigger than the expatriate personally requires because it is used to promote the employer's image or for business accommodation entertainment). The amount determined is further reduced by any rent paid by the employee.

- In other cases, the rateable value (ie, the value as determined for rating purposes) or in its absence ‘economic rent’ is applied. ‘Economic rent’ means the rent that can be obtained from letting the premises provided the lessor pays for fire insurance, public rates, repairs and maintenance.

- Where the accommodation provided is for less than a year, or if it is shared by several employees, the value of the benefit will be apportioned on a time basis or divided amongst the persons enjoying the benefit.

- Where accommodation is provided in a hotel or similar premises, the taxable benefit is 3% of the expatriate’s cash remuneration.

Other benefits

The value of other benefits, such as use of household furniture, is determined at prescribed rates.

Shares or share options

Where options to take up shares in the company, are granted to an employee by reason of his/her employment or office the difference between the market price at the date of grant and option price constitutes a benefit assessable to tax.

Taxation on dividend and interest income

Dividend income derived from Malaysia is taxable in the hands of the recipient on the date the dividend is payable. Dividends received from outside Malaysia are assessable as and when remitted to Malaysia if the recipient is an individual resident for Malaysian tax purposes. Where foreign dividend income is subject to Malaysian tax, a credit for foreign taxes will be given. As all Malaysian dividends are deemed to be paid net of income tax, a shareholder may utilise the tax deemed to be deducted at source to offset his tax liability. Where their effective tax rate is less than the prevailing corporate tax rate, he may recover the excess tax deemed to be deducted at source from the IRB.

Interest income is assessed to tax on a current calendar year basis and on receipt. The interest income receivable by a resident individual from any bank or financial institution is net of 5% withholding tax. This 5% withholding tax is the final tax.

Taxation of income from real property

Income from real property situated in Malaysia is liable to Malaysian income tax regardless of the residence status of the individual concerned.

Schedular tax deduction (STD) system

Under the STD System, it is mandatory for an employer to deduct tax on a monthly basis from the employee’s remuneration, based on the STD tables issued by the IRB, and to remit it to the IRB by the tenth day of the following month. For this purpose, remuneration includes salaries, allowances, arrears, wages, fees, bonus, gratuity, commission and tips, but excludes benefits-in-kind and reimbursements. The tax deducted is to

cover the tax on the salary earned for the month i.e., ‘Pay-As-You-Earn’ (PAYE) for the expatriate employee.

A notice of assessment is issued and if there is any shortfall between the actual tax assessed and the amount of tax deducted under the STD system, the balance is payable within 30 days of the notice of assessment.

Where tax is over deducted, the IRB must be notified and the tax refunded or utilised against future STD deductions.

Real property gains tax

Real Property Gains Tax is a form of capital gains tax in Malaysia and is chargeable on all gains arising from the disposal of real property situated in Malaysia, as well as on gains arising from the disposal of shares in Real Property Companies.

The disposer and acquirer of a chargeable asset must each make a return to the IRB within one month of the date of disposal, using the prescribed forms supported by all the particulars stipulated therein. Where the market value of the asset is to be used, a valuation report from the valuer must also be submitted.

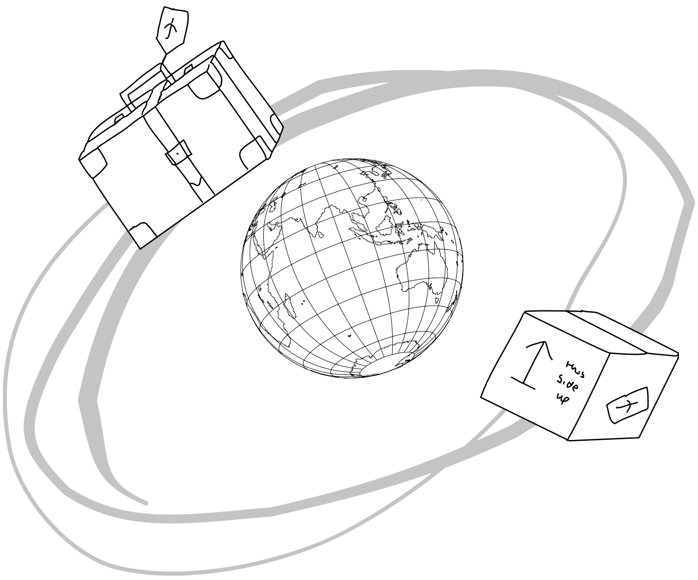
For a non-citizen or a non-permanent resident individual, the chargeable gain arising from the disposal of a chargeable asset acquired after 17 October 1997, is subject to tax at a flat rate of 30% for disposals within five years and 5% for disposals after five years from the date of acquisition of the chargeable asset. For all other individuals, the chargeable gain is assessed at varying rates ranging from 0% to 30% depending on the period of holding. The chargeable gains for corporations however is assessed at rates ranging from 5% to 30%, depending on the period of holding.

Double Tax Treaties

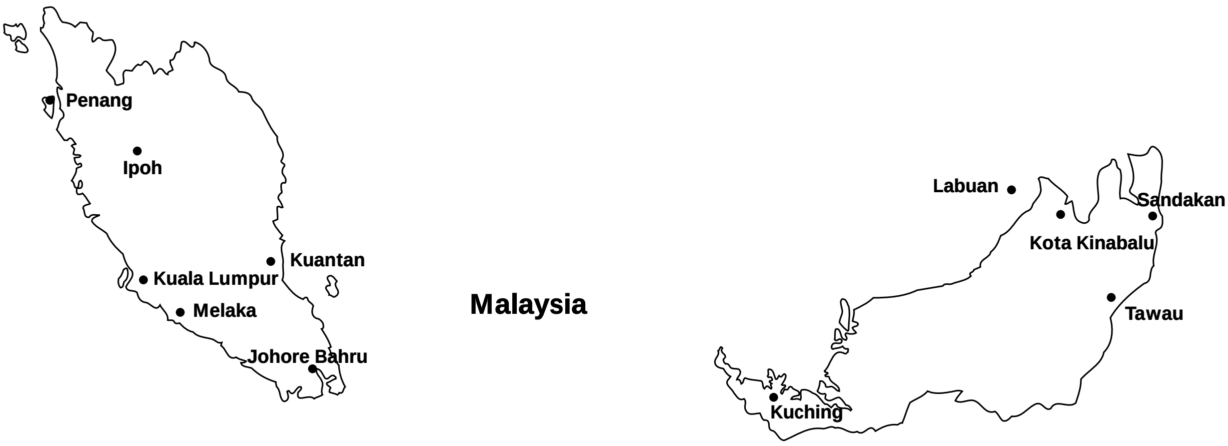
Malaysia has concluded double tax agreements with the following countries:

Albania
Australia
Austria
Bangladesh
Belgium
Canada
China
Denmark
Finland
France
Germany
Hungary
Argentina
Bahrain
Czech Republic
Egypt
Fiji
Taiwan
Indonesia
Italy
Japan
Mauritius
Mongolia
Netherlands
New Zealand
Norway
Pakistan
Papua New Guinea
Philippines
Poland
India
Ireland
Jordan
Malta
Myanmar
Namibia
Russia
Singapore
South Korea
Sri Lanka
Sudan
Sweden
Switzerland
Thailand
United Kingdom
United States of America
Yugoslavia
Zimbabwe
Romania
Saudi Arabia
Turkey
United Arab Emirates
Uzbekistan
Vietnam

These Double Taxation Agreements follow the general principle that the country of source has the primary right to tax and the country of residence provides either a tax exemption or tax credit.



KPMG Offices in Malaysia



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