

Chapter 6

Taxation of Individuals

Introduction

Resident Status

The resident status of an individual determines the rates at which his income is assessed and whether or not he is entitled to personal reliefs. It also determines whether he is liable to tax on remittances of income from sources outside Malaysia.

A non-resident individual is not eligible for any personal reliefs and is taxed at the flat rate of 28% for a year of assessment on net income from all Malaysian sources other than the following income:-

- Interest income is taxed at 15% (on gross income) unless the Double Taxation Agreement specifies a lower rate.
- Royalty and Section 4A income are taxed at 10% on gross income unless the Double Taxation Agreement specifies a lower rate.

A resident individual, on the other hand, is entitled to personal reliefs as a deduction from his assessable income and only the balance is liable to tax, at graduated rates (See Chapter 1).

Determination of Resident Status

The resident status of an individual is determined by his physical presence in Malaysia. An individual may qualify as a resident for the basis year for a particular year of assessment under any one of the following circumstances:-

- He is in Malaysia in the basis year for a period or periods totalling 182 days or more.
- He is in Malaysia for less than 182 days in the basis year provided that period is linked by or to another period of 182 or more consecutive days throughout which he is in Malaysia in the adjoining year. Any temporary absence from Malaysia:-
 - connected with his service in Malaysia and owing to service matters or attending conferences or seminars or study abroad;
 - owing to ill-health involving himself or a member of his immediate family; and
 - in respect of social visits not exceeding 14 days in aggregate;will be taken to form part of the adjoining period.
- He is in Malaysia for a total of 90 days or more in the basis year and in any three out of four immediate preceding basis years he was either resident or in Malaysia for at least 90 days.
- He is present in Malaysia for less than 90 days in the basis year but is resident the following year and has been resident for the immediate preceding three years.

Separate Assessment

Separate assessment is made for a married woman on her income from all sources unless she elects for combined assessment with her husband. Such election must be made every year. With effect from Year of Assessment 2001, the husband will be allowed to elect for combined assessment under the wife's name and in such case, the wife will be given the "husband relief".

Rates of Tax

The rates of tax applicable to a resident and non-resident individual are as set-out in Chapter 1.

Source of Employment Income

Dual Employment

Income from exercising an employment in Malaysia is regarded as sourced in Malaysia. All income attributable to the employment exercised in Malaysia is subject to Malaysian tax irrespective of where the remuneration is paid. Where an employee is required to perform his duties outside Malaysia, the entire remuneration is still chargeable to Malaysian tax as the services rendered outside Malaysia are regarded as incidental to the Malaysian employment.

However, where an individual has regional responsibilities and performs services for the head office or the parent company outside Malaysia under a separate employment, he is thus employed by the overseas company in respect of services performed outside Malaysia. On this basis, that part of the remuneration which is paid by the overseas company is 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.

This 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.

Short Term Visitors

There are provisions for the exemption of employment income of certain casual visitors to Malaysia (See page 77).

Remuneration from Employment

The definition of employment income in the Income Tax Act 1967 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.

Treatment of Benefits

The types of benefits which frequently occur are:-

Leave Passage

The Income Tax Act 1967 specifically excludes from tax, benefits in the form of leave passages within Malaysia (not exceeding three times in a calendar year) and the cost of leave passage between Malaysia and any place outside Malaysia up to a maximum amount of RM3,000 per year (not exceeding one passage in a calendar year).

The benefit is confined to the employee and members of his immediate family.

Medical Benefits

The costs of medical or dental treatment is another employment benefit which is tax-free.

Motor Vehicles

The provision of motor vehicles to senior executives is becoming a popular local practice. It constitutes a taxable benefit, the value of which is determined in accordance with the guidelines issued by the IRB (See page 70).

Accommodation

Living accommodation provided to an employee is regarded as a taxable benefit determined as follows:-

- For rented premises, it is the rental paid for the unfurnished accommodation (reduced by an agreed proportion e.g. if accommodation is shared or required to promote the employer's image or for business entertainment and for this reason is considered too large for his personal requirement), or 30% of his gross remuneration (salary, allowances, etc) whichever is less. This amount determined is further reduced by rent or other expenses reimbursed by the employee.
- In other cases, the rateable value (i.e. 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 those 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 amongst the persons enjoying the benefit respectively.

- Where accommodation is provided in a hotel or similar premises, on a plantation, forest or in an area not subject to public rates, the taxable benefit is 3% of his gross remuneration.

Shares or Share Options

Where rights are granted to an employee by reason of employment or office held by him to take up shares at less than their full market value, the difference between the market and offer prices constitutes a benefit assessable to tax.

Other Benefits

Other benefits such as the use of household furniture are valued at certain rates for inclusion as employment benefits for Malaysian tax purposes. These rates are computed in accordance with the IRB's guidelines (See page 72).

Retirement Benefits and Compensation

Retirement gratuities paid to employees are not taxable provided the retirement is due to ill-health or where retirement takes place at the normal retirement age after at least 10 years service with the same employer or with companies in the same group.

Retirement gratuities paid out of public funds to employees who are permitted by law to retire before the normal retirement age of 55 years are also not taxable.

Compensation paid to an employee for premature termination of an employment contract is not taxable if the termination is due to ill-health. In any other case, the tax exemption is restricted to RM4,000 for each completed year of service with the same employer or with companies in the same group.

Valuation of Benefits-in-Kind Provided to Employees

General

- These guidelines are to be applied from Year of Assessment 1998 (i.e. income year 1997) onwards.
- Generally, the annual value of a given benefit-in-kind in respect of a fixed asset provided is computed by reference to the following formula:-

$$\text{Annual value of benefit} = \frac{\text{Cost of the asset providing benefit/amenity}}{\text{Prescribed average life span of asset}}$$

Cost means the actual cost incurred by the employer or market value of the asset.

- The prescribed life span of the various assets (the list is to be amended from time to time) is as follows:-

<i>Asset</i>	<i>Prescribed Average Life Span (Years)</i>
Motor car	8
Furniture and Fitting	
- Curtains, carpets	5
- Furniture, sewing machine	15
- Air-conditioner	8
- Refrigerator	10
Kitchen Equipment (i.e. crockery, rice cooker, electric kettle, toaster, coffee-maker, gas cooker, cooker hood, oven, dish-washer, washing machine, dryer, food processor, etc)	6
Entertainment and Recreation	
- Piano	20
- Organ	10
- Colour television, video player, stereo set	7
- Swimming pool (detachable), sauna	15
Miscellaneous	
- Mobile telephone	5

Motor Cars and Related Benefits

- In the case of motor cars provided, the benefits to be assessed will be the value of the private use of the car and fuel provided. For simplicity and ease of application, the benefits will be based on the following table:-

<i>Cost of Car (When New)</i>	<i>Annual Value of BIK RM</i>	<i>Fuel Per Annum RM</i>
Up to RM50,000	1,200	600
RM50,001 - RM75,000	2,400	900
RM 75,001 - RM100,000	3,600	1,200
RM100,001 - RM150,000	5,000	1,500
RM150,001 - RM200,000	7,000	1,800
RM200,001 - RM250,000	9,000	2,100
RM250,001 - RM350,000	15,000	2,400
RM350,001 - RM500,000	21,250	2,700
RM500,001 and above	25,000	3,000

Cost here means actual cost or market value of the car including accessories but excluding financial charges, insurance premiums and road tax.

Toll charges borne by employers are deemed to be included in the value of the BIK assessed for the car.

- Where the car provided **is more than 5 years old** the value of the car benefit to be assessed will be equivalent to **half the above rates** but the value of fuel provided will remain unchanged.
- Where a car is not provided throughout the basis year the value should be adjusted appropriately. Employers should indicate in the individual employee's statement of remuneration the type, year and model of the car provided to the employee.
- Employers should report the car and fuel benefits provided to the employees based on the above table. If an employee disputes the value as being excessive, he should take up the matter with the Assessment Branch concerned when submitting his Return. To substantiate the claim for business use, detailed and adequate records must be submitted by him.
- Where a driver is provided to an employee, the value of the benefit for private use is fixed at RM300 per month.
- Where fuel is provided without motor cars, the actual value is treated as a benefit received.

Household Furnishings, Appliances, etc and Others

- To avoid detailed calculations employers may, instead of using the formula stated earlier, determine the values of benefits in the form of household furnishings, equipment and appliances based on the following:-

- | | | |
|------|---|--|
| i. | Semi-furnished with furniture in the lounge, dining room, or bedrooms | RM70 per month
(RM840 per annum) |
| ii. | Semi-furnished with furniture as in (i) above and one or more of the following: <ul style="list-style-type: none">- air-conditioners)- curtains)- carpets) | RM140 per month
(RM1,680 per annum) |
| iii. | Fully furnished with benefits as in (i) and (ii) above plus one or more of kitchen equipment, crockery, utensils and appliances | RM280 per month
(RM3,360 per annum) |
| iv. | Service charges and other bills such as for water, electricity and telephone | Service charges and bills paid by the employer |

- These values may be adjusted suitably by reference to whether any or all of the above categories of furnishings were provided. Thus, an employee provided with all the stated furnishings except those in category (i) will be assessed on the value of RM210 per month (RM280 less RM70).
- Where it is considered that the above values are excessive, the valuation by the employer of the benefit provided may be made by reference to the formula stated earlier on an item-by-item basis.
- Other assets provided to employees for entertainment, recreation or other purposes such as piano, organ, coloured television set, stereo set, swimming pool (detachable), sauna, mobile telephone, etc would constitute additional benefits and should be separately valued based on the formula. If the asset is provided for part of the year or shared with other employees, the value should be adjusted appropriately.
- Fans and water heaters would be treated as forming part of residential premises.

Other Benefits

<i>Types of BIK</i>	<i>Annual Value of BIK</i>
i. Mobile telephone (rental and charges)	RM600
ii. Gardeners	RM3,600
iii. Domestic servants	RM4,800
iv. Interest free loan	Value of interest paid by employer
v. Subsidised loan/interest below the market value rate	Subsidised loan interest paid by employer
vi. Insurance premium	Annual insurance premium paid by employer
vii. School/tuition fees	Actual school/tuition fees paid by employer
viii. Individual membership in recreation clubs	Membership entrance fees and monthly subscriptions paid by employer
ix. Corporate membership in recreation clubs	Monthly subscriptions paid by employer for more than one club

Allowable Deductions

As in the case of business income, only expenses wholly and exclusively incurred in the production of an individual's income qualify for deduction. The deductions allowable against an individual's income are very limited.

Section 33 Deductions in General

The scope of the Section 33 deductions is generally very much restricted as compared with business or trade-related expenses. This restriction stems from the very fact that expenses are deductible only if they are wholly and exclusively incurred in the production of the employment income. This general requirement implies that the expenses must be incurred in the performance of the employment duties. In any event, expenses incurred by an employee in the performance of his duties are more often than not either borne directly or reimbursed by the employer.

Entertainment Expenses Where an employee is given an entertainment allowance (of which the cost is not deductible for the employer), he can claim a deduction under Section 33(1) in respect of expenses incurred by him in entertaining the clients or customers of his employer. Section 38A further provides that the total deduction must not exceed the amount of the entertainment allowance.

In the case of an employee, only if the nature of his employment requires him to entertain clients in the course of performing his duties will deduction of entertainment expenses be allowed. The usual information required by the IRB for considering claims for such expenses includes:-

- Date and place of entertainment;
- Persons entertained on each occasion;
- Amount expended on each occasion; and
- Nature of business discussed and the outcome.

Motor Vehicle Expenses There are instances where an employee is granted a car allowance in respect of his car expenses. Although the car allowance is assessable to tax as part of his employment income, the employee will be permitted a deduction for the actual car expenses incurred in the course of discharging his duties.

Subscriptions Subscriptions to professional institutions are deductible if they are made in order to retain the employee's professional qualifications and to enable him to continue to derive income from this profession. But entrance fees paid by employees to professional societies are not admissible being expenditure of a capital nature.

Personal Reliefs and Tax Rebates

Personal Reliefs

The chargeable income of a resident is arrived at after deducting the following reliefs which are granted according to circumstances existing in the tax year:-

■	Personal allowance	RM8,000
■	Additional personal allowance if taxpayer is disabled	RM5,000
■	Wife relief where wife is living with or maintained by husband	RM3,000
■	Husband relief where husband elects to have his income aggregated with his wife for assessment purposes (Effective from Year of Assessment 2001)	RM3,000
■	Additional wife allowance if she is disabled	RM2,500
■	Medical treatment for parents, actual sum incurred, up to	RM5,000
■	Medical expenses incurred on a taxpayer, his spouse or his children for the treatment of serious diseases. With effect from Year of Assessment 2001, the medical deduction has been extended to include expenses for a complete medical examination incurred by the taxpayer for himself, spouse or children up to a maximum amount of RM500 per year. However, this amount would be included as part of the deduction of RM5,000	RM5,000
■	Costs of purchase of basic supporting equipment for a disabled individual's own use or for the use of his disabled wife, child or parent, up to	RM5,000

In addition to the above, compulsory contributions made as an employee or as a self-employed person to Government or approved provident funds are deductible but subject to the limitation stated below.

- i. For life assurance premiums which are paid on the life of the taxpayer or the life of his wife. The total deduction for provident fund contributions and life assurance premiums is limited to RM5,000 for each individual taxpayer. With effect from Year of Assessment 2001, where a wife elects to have her income aggregated with that of her husband, the further deduction of RM5,000 for the wife is abolished.

- ii. Premiums paid for family assurance conducted according to Islamic principles are given tax relief similar to that given for premiums paid for life assurance.
- iii. There is no mandatory requirement for expatriates to contribute to approved Provident Funds. However, if an expatriate elects to contribute to an approved Provident Fund, his contributions will be subject to the same limitations enumerated above.

In addition, a resident individual is entitled to claim a deduction on premiums paid for educational or medical insurance for himself, his wife or his child up to a maximum of RM3,000. However, if the wife chooses to have a combined assessment with her husband, the further deduction of RM3,000 for the wife is abolished with effect from Year of Assessment 2001.

Relief on premiums paid on all annuities purchased through Employees Provident Fund annuity scheme up to a maximum of RM1,000 would be granted. However, if the wife chooses to have a combined assessment with her husband, the further deduction of RM1,000 for the wife is abolished with effect from 1 January 2001.

Fees up to a maximum of RM5,000 is deductible for education in scientific, technological or vocational fields including courses in information and communication technology. Courses up to post graduate level are also included.

With effect from 1 January 2001, an individual is given a relief of RM500 per annum for the purchase of books, journals, magazines and other similar types of publications including school textbooks for the purpose of enhancing his own knowledge, or that of his wife or child.

Child relief of RM800 each for children under 18 years old or unmarried children receiving full-time education. Child relief may be claimed by either the husband or the wife. Where a child who is over eighteen years of age is receiving full-time education in a local university or an institution of higher learning in Malaysia, the relief may be increased to the actual amount expended on his maintenance and education, up to a maximum of four times the normal relief for that child. In the case where the university is outside Malaysia, the relief available is the actual expenditure, restricted to twice the normal relief for a child who has commenced receiving education prior to 17 October 1997. Children studying at institutions of higher learning abroad after 17 October 1997 qualify for the normal tax relief of RM800 only.

A relief of RM5,000 is given for each physically or mentally disabled child (unmarried) irrespective of the age of the child.

Tax Rebates

With effect from Year of Assessment 2001, the tax rebate is increased to RM350 and it is given to a resident individual whose chargeable income does not exceed RM35,000. A further rebate of RM350 for the spouse is granted where the individual has been allowed a deduction for wife or husband relief and their total chargeable income does not exceed RM35,000.

A rebate is also granted to a resident individual for any obligatory payments of zakat, fitrah or other Islamic dues provided they are evidenced by receipts issued by the appropriate religious authority.

A tax rebate of RM400 is granted to a resident individual once every five years for the purchase of a personal computer. Such a rebate is further restricted to one computer per family.

Fees paid to the government for the issue of an employment pass, temporary employment or work pass could be claimed as a tax rebate.

Where the total amount of rebates exceed the income tax payable for that assessment year, the individual is not entitled to a refund of the excess or to have it set-off against future tax liability.

Exemptions and Concessions

The following categories of income are amongst those exempt from Malaysian income tax:-

- Interest of the kind described in Chapter 8.
- Dividends paid out of exempt income of Malaysian tax-resident companies.
- Income received in Malaysia from sources outside Malaysia by a non-resident.
- Income derived by a non-resident from an employment exercised in Malaysia while in Malaysia for not more than 60 days in a year (or two years if part of the periods of stay straddles two calendar years) excluding income received by a company director or public entertainer.
- Compensation for loss of office (see page 68).
- Retirement gratuity (see page 68).
- The value of leave passages and medical or dental benefits provided by an employer for an employee (see page 67).
- Scholarships.
- Consolidated compensation for death or injuries.
- Sums withdrawn on retirement from approved pension or provident fund or society.
- Pensions derived from Malaysia and paid to a resident who retires at the age of 55 or on reaching the compulsory age of retirement under any law or if the retirement is due to ill-health. The pension must be in respect of employment services rendered in Malaysia and under an approved scheme. If an individual is in receipt of more than one pension, the exemption is limited to the highest pension received.
- Dividends paid or distributed by a co-operative society to its members.
- Income of RM20,000 derived from Malaysia by a resident as a royalty or payment in respect of the publication of, or the use of or the right to use, any literary work or any original painting.
- Income of RM6,000 derived from Malaysia by a resident as a royalty or payment in respect of the publication of, or the use of or the right to use, any artistic work and from royalty in respect of recording discs or tapes.
- Income of RM20,000 received from the translation of books or literary work on the specific request of any agency of the Ministry of Education or the Attorney-General's Chamber.

- Dividend income earned from investment in Amanah Saham Nasional.
- Gratuities paid out of public funds to employees on termination of a contract of services are not taxable on the employee (less the employer's contribution to EPF, if any, and interest thereon).
- Prize money won by professional sportsmen and sportswomen.
- Dividends received by unit holders from gains on disposal of investments by unit trusts.
- Payments received of up to RM20,000 per annum for musical compositions.
- Income of an individual resident in Malaysia in that basis year in respect of his performance in a cultural performance approved by the Minister.
- Cash awards received by scientists, writers and artists.
- Income earned by drivers from car and motorcycle racing events of international standard
- With effect from Year of Assessment 2001, gifts of new computers by companies to their employees will not be regarded as benefits-in-kind for three years until Year of Assessment 2003.
- With effect from 1 July 2001, foreign income remitted to Malaysia by Malaysian citizens working abroad with expertise in the fields of information and communications technology, science and technology, arts, finance and accounting, economics and medical and health will be exempt from tax for a period of two years from the date of their return to Malaysia.

Other Reliefs and Remissions

- Non-resident relief is available to non-resident Malaysian citizens who are in receipt of employment or pension income from Malaysia. With effect from Year of Assessment 1999, the non-resident relief is only available to a non-resident Malaysian citizen by reason of his employment which is exercised outside Malaysia in the public service or the service of a statutory authority.
- Cash donations made to approved public institutions, local authorities or the Government may be deducted from taxable income.
- An amount of up to RM20,000 in respect of cash donations made by an individual (who may not have any business income) is tax deductible. The donation must be for the provision of library facilities for the public as well as in schools and institutions.
- With effect from Year of Assessment 1998, a deduction is given to any person who makes contributions:-
 - i. For healthcare facilities approved by the Ministry of Health (restricted to RM20,000).
 - ii. For setting up facilities in public places for the benefit of disabled persons.
 - iii. Of paintings to the State/National Art Gallery.
- With effect from Year of Assessment 1998, an individual who has paid the expatriate levy for the issuance of either an employment pass or work pass will be entitled to claim it as a tax rebate.
- With effect from Year of Assessment 2001, a tax deduction will be given to individuals who contribute towards the medical expenses of a seriously ill person. That person must have no or insufficient means or in the case of a dependent individual, the parents or guardian must have no or insufficient means, to pay for the cost of the medical treatment required. The individual must be suffering from a serious disease and the donations must be deposited into an account approved by the IRB.

An Example of a Personal Income Tax Computation

Assumptions / Data:

- **Leave Passage** The employer provides the taxpayer and his family with one overseas leave passage annually.
- **Accommodation Provided By Employer** The accommodation is provided for the entire year and the rental of the fully furnished apartment is RM3,500 per month.
- **Motor Vehicle and Fuel** The cost of the motor vehicle is RM70,000 and the petrol is paid by the employer.
- **Utilities** The cost of utilities are paid by the employer and are based on actual expenses incurred.
- **Personal Relief**
The taxpayer is resident in Malaysia.
The taxpayer's wife is not working.
He has three children, the details of which are as follows:-
 - 1st child aged 22 studying in a university in Australia (commenced education outside Malaysia after 17 October 1997)
 - 2nd child aged 20 studying in a university in Malaysia
 - 3rd child aged 16 studying in a secondary school in Malaysia
- **Employees Provident Fund (EPF)** The rate of contribution to the EPF is 11% and 12% by the employee and employer respectively.

Personal Income Tax Computation
Year of Assessment 2002
(Based on Calendar Year 2002)

	<i>RM</i>	<i>RM</i>	<i>RM</i>
Salary		120,000	
		<hr/>	
Section 13(1)(a) Income			120,000
Value of Living Accommodation			
Rental		42,000	
Less: Global value of furnishing		3,360	
		<hr/>	
i. Value of unfurnished accommodation		38,640	
		<hr/>	
ii. 30% of Section 13(1)(a) Income		36,000	
		<hr/>	
Lower of (i) and (ii):		36,000	
Less: Employee Contribution		0	
		<hr/>	36,000
Benefits-in-Kind			
Motor vehicles and fuel		3,300	
Utilities		1,200	
Furnishing		3,360	
Leave Passage	10,000		
Less: Maximum Exemption	3,000	7,000	
	<hr/>	<hr/>	14,860
Gross Dividend Income			10,000
			<hr/>
Total Income			180,860

Less: Personal Reliefs		
Self	8,000	
Wife	3,000	
First Child	800	
Second Child	3,200	
Third Child	800	
EPF (Maximum)	5,000	
	<hr/>	20,800
		<hr/>
Chargeable Income		160,060
		=====
		RM
Income Tax		
On the first RM150,000		27,975.00
On the next RM10,060 at the rate of 27%		2,716.20
	<hr/>	<hr/>
	RM160,060	30,691.20
	=====	
Less: Section 110 set-off		2,800.00
		<hr/>
TAX PAYABLE		27,891.20
		=====

Employer's Obligations

An employment exists where there is a contract or an agreement, whether or not in writing, which establishes the master/servant relationship. Each employee must be furnished by his employer annually a statement of his employment income (called Form EA) which he must attach to his personal tax return form.

An employer who recruits a new employee is required to notify the IRB on Form CP22 within one month of commencement of the employment. In addition, where an employee is about to cease employment or leave Malaysia for more than three months, the employer must notify the IRB not less than one month before the date of cessation or departure on Form CP21. The employer is also required to withhold all monies due to the employee until 90 days has lapsed after the IRB has been notified of the employee's cessation of employment or intention to leave Malaysia or the tax clearance letter has been issued, whichever is the earlier. Where there is a failure to comply with the notification or retention of monies due to the employee, the IRB could recover directly from the employer the full tax liabilities of the employee.