
Malaysia: IRB releases public ruling regarding taxation of income from employment aboard a ship

February 22, 2017

In brief

The Inland Revenue Board of Malaysia (IRB) issued Public Ruling No. 12/2016 on December 9, 2016 to explain the tax treatment of income derived by individuals exercising employment aboard ships. The ruling provides clarity on how the provisions under Section 13(2)(e) and Paragraph 34, Schedule 6 of the Malaysian Income Tax Act, 1967 (the Act), respectively, should be interpreted and applied in relation to such individuals. Employers should review this new guidance prior to deploying globally mobile employees working aboard all types of vessels and ensure that proper income reporting and necessary documentation are in place before applicable tax exemptions are claimed.

In detail

Income earned while exercising employment on board a ship

Malaysia's tax system operates on a territorial basis, which means that income arising from the exercise of an employment in Malaysia and jurisdictional territories is taxable in Malaysia.

The income derivation rule for an individual exercising employment aboard a ship is specifically addressed under Section 13(2)(e) the Act, which states that employment income is deemed derived from Malaysia if the employment is exercised aboard a ship used in a business that is operated by a Malaysian resident. Additionally, the IRB uses the common term 'seafarers' to

refer to an individual working aboard a ship but this term is not stated or defined in the current legislation.

For the purpose of the above provision, and in the absence of a clear definition of 'employment exercised aboard a ship' and 'seafarer' in the Act, the public ruling attempts to clarify the following:

<p>The types of vessels that would fall within the ambit of the term ‘ship’ used in the relevant provisions</p>	<p>Definition of ‘seafarer’</p>
<p>A ship is a sea-going ship that sails on international waters and engages in transportation of passengers and cargo. It does not include the following vessels:</p> <ul style="list-style-type: none"> • ferry • barge or lighter • tug-boat • supply vessel • crew boat • dredger • fishing boat • ships trading or operating exclusively within ports in Malaysia • offshore vessels used to house drilling operations for the exploration, exploitation or production of resources beneath the sea bed (and not ordinarily engaged in navigation or international voyages) • floating production storage and offloading • warships or naval auxiliaries, and • ships belonging to or in the employment of sovereign governments. 	<p>A definition has now been provided to categorically eliminate casual work on board ships. The term ‘seafarer’ means any person who is employed or engaged aboard a ship, issued with a seafarer card identifying him/her as a seafarer and has the necessary qualifications upon successful completion of training at a maritime academy.</p> <p>A seafarer excludes the following employees:</p> <ul style="list-style-type: none"> • pilot / navigator of the ship in or out of a port • superintendent, surveyor, auditor, inspector • scientist, researcher, diver, specialist offshore technician, whose work is not part of the routine business of the ship • a person who works on board the ship solely within a port or at a port facility • repair and maintenance technician • non-marine personnel which are employed under an outsourced service agreement, the terms of which determine conditions under which the service provider will supply the necessary personnel • military and armed personnel, and • temporary riding crew.

Given the above definitions, it follows that only ‘seafarers’ working on board a ‘sea-going ship’ operated by a Malaysian resident company would be deemed to be deriving employment income in Malaysia regardless of whether the ship sails within Malaysian waters and/or outside Malaysian waters. Such income would be fully taxable in Malaysia.

Furthermore, with respect to the derivation of such income, this public ruling makes clear the following points that were implicit in the past:

- If the employee is not a ‘seafarer’ or the vessel in question does not fall within the definition of ‘sea-going ship’ as above, the

employee’s income earned aboard the vessel would only be taxable if the employment is exercised in Malaysian waters. In this instance, if the employment period is temporary in nature, the 60-day exemption rule can be explored to see if it applies.

- If the operator of the ship is a non-resident company, income earned by the ‘seafarer’ from employment exercised aboard the ‘sea-going ship’ is not deemed to be derived from Malaysia and as such, not subject to Malaysian tax.

Criteria for exemption of income from employment on board a ship

Paragraph 34, Schedule 6 of the Act provides the conditions for complete

exemption of income derived by an individual exercising employment aboard a ship operated by an owner of a Malaysian flag ship. The specific conditions stipulated under Paragraph 34 are:

- that ship is used in a business operated by a Malaysian resident and
- the operator the business owns at least a ship which is registered under the Merchant Shipping Ordinance (MSO), 1952.

As the exemption is not automatic, the seafarer will be required to substantiate his claim for the tax exemption by providing the following

documents to the Malaysian Inland Revenue Board (MIRB) as evidence:

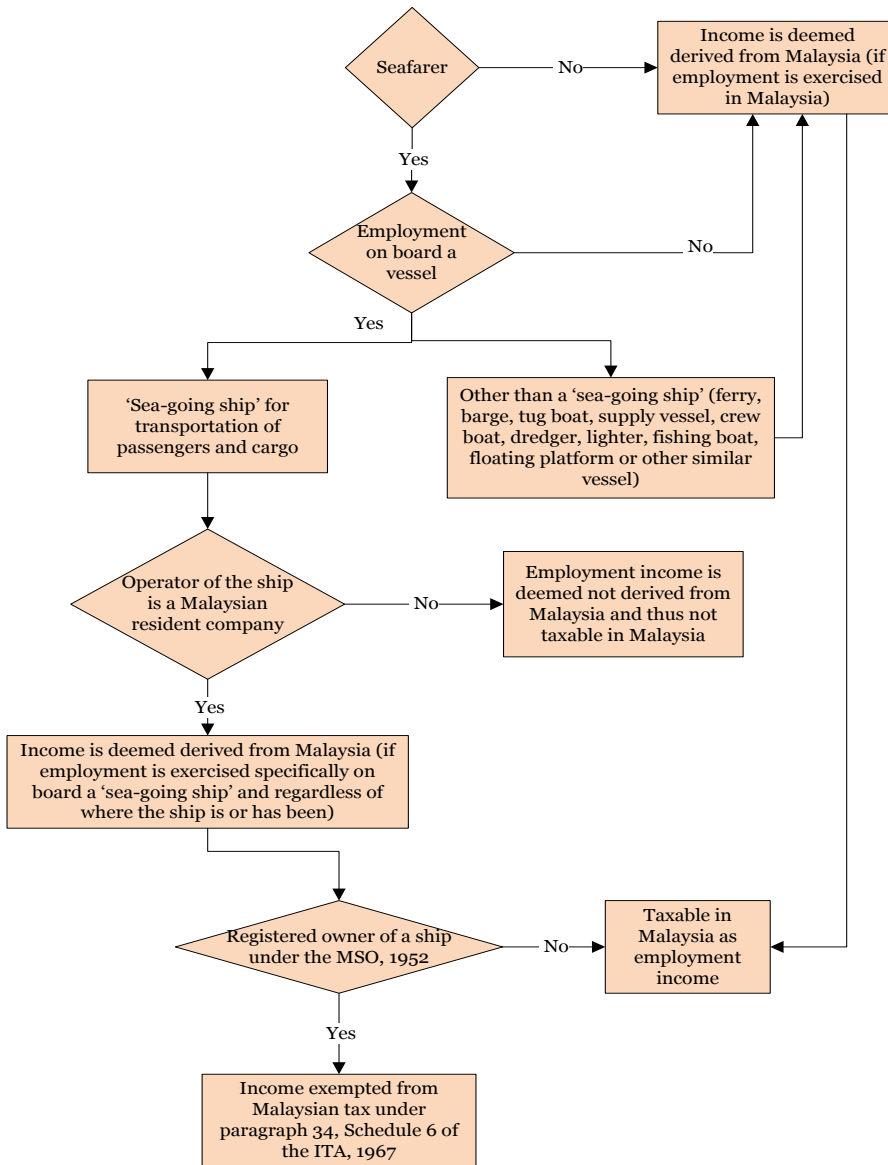
- seafarer card
- seaman’s book (record of services on board all the vessels to which

he/she is assigned to, under this employment)

- employment contract / letter of appointment
- registration certificate of his/her employer under the MSO 1952

- other relevant documentation showing the name and type of vessel, ship route or voyage during said period of employment, etc.

Summary of the income and exemption provisions covered in this public ruling



The takeaway

This public ruling provides clarity on how the income derivation rule should apply to individuals working aboard sea-ships.

As the income of the seafarer aboard a ship departing Malaysia might be taxable also in the country of the destination port, exemption or relief from double tax can be explored, provided that the conditions within the Double Taxation Agreement (DTA) between Malaysia and the

destination country (if available) can be met.

The exemption claim application process can be arduous given the more extensive documentation required for seafarer exemptions. Employers would be advised to review all derivation and exemption conditions thoroughly in the planning stage prior to deploying globally mobile employees working aboard all types of vessels and to ensure that proper income reporting and necessary documentation are in place

before the applicable tax exemptions are claimed.

Separately, employers will also be required to adhere to their statutory employer obligations which include amongst other things, the deduction and remittance of tax under the Monthly Tax Deduction (MTD) Rules, if the employee's circumstances do not allow him or her to meet the exemption criteria stipulated in either the ITA 1967, or in the DTA between Malaysia and the destination country.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your Global Mobility Services engagement team or one of the following team members:

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