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GES NewsFlash

Malaysia — Public Ruling No. 12/2012



January 31, 2013

PR No. 12/2012 on “Share schemes benefit for cross-border employees”

Background

The Malaysian Inland Revenue Board (MIRB) issued a new public ruling (PR) on 24 December 2012, i.e., PR No. 12/2012 on “Share schemes benefit for cross-border employees.”

Overview

This PR explains the tax treatment with respect to a benefit arising from an employee share scheme received by:

- Employees from Malaysia who are seconded to work overseas; and
- Foreign national employees who are seconded to Malaysia.

Salient highlights of the PR

Tax treatment of share scheme benefits for cross-border employees

1. Chargeability of the share scheme benefit

It is now clearly indicated that an employee can be taxed in Malaysia at a later date even when he or she is no longer employed in Malaysia. This is on the basis that the share scheme benefit has arisen as income from employment in Malaysia.

2. Timing of taxation of share benefit

Where a share scheme is considered to be derived from employment exercised in more than one country, it will be necessary to determine the portions of the share scheme derived from the employment exercised in each country.

The benefit attributable to the share scheme should be considered to be derived from Malaysia in proportion to the number of days, including leave days, during which employment has been exercised in Malaysia to the total number of days during which the employment services from which the share scheme derived has been exercised.

a. Formula

Market value of share on the date the scheme is exercisable or market value of share on the

RM

xxx

date the scheme is exercised (whichever is lower)

Less: Price paid for the share (if any)	xxx
Perquisite under paragraph 13(1) (a) of the Income Tax Act 1967	<u> </u> xxx <u> </u>

- b. Allocation of the share benefit where employment is exercised in more than one (1) country.

Determination of the portions of the share scheme derived from employment exercised in each country will be necessary by using the formula as below :

$$\text{Share scheme benefit from date of offer to exercisable date} \times \frac{\text{No. of working days in Malaysia (including leave days)}}{\text{No. of working days from date of offer to exercisable date}}$$

A critical point to note is the guide that determines the number of working days in a year provided in **Appendix 1** in this PR. The guide at present shows the working days in the Federal Territory. A recomputation to the number of working days will be required for the relevant states in Malaysia if the employee was not based in the Federal Territory.

3. Employees from Malaysia seconded to work overseas

It was reiterated that a charge to Malaysian tax will continue to arise even where the schemes offered to the employees working in Malaysia are exercised after the employees stopped working in Malaysia.

4. Foreign nationals seconded to work in Malaysia

Determination of the share benefit with respect to employment exercised in Malaysia or home country overseas is necessary when the foreign nationals are offered share schemes by their employers overseas prior to their secondment in Malaysia.

A charge to Malaysian tax is likely to arise on:

- Employment income derived if the duties of an overseas employment are exercised in Malaysia;
- The benefit from exercising the share schemes offered by the overseas employer prior to his or her secondment but exercised while in Malaysia; or
- The benefit from exercising the share schemes offered by the overseas employer prior to his or her secondment but only exercised after his or her return to his overseas office.

Subject to the provisions of the relevant Double Taxation Agreement, the charge to Malaysian tax upon exercise will be limited to the proportion of the option gain that relates to working days in Malaysia.

Responsibility of the employee (Cross-border cases)

- Under the Self-Assessment System, an employee is required to keep track of the number of days of his or her physical presence in Malaysia in order to determine the appropriate amount of income assessable to Malaysian tax.
- The share scheme offered prior to an expatriate employee's Malaysian assignment will also need to be tracked.
- The employee is required to make an assessment vide personal tax return forms and to pay taxes in relation to the benefit of the share scheme

Responsibility of the employer (Cross-border cases)

The Malaysian employer is required to:

1. Keep track of all employees (including nonresident employees and expatriates) who worked in Malaysia during a tax year and had exercised the share option either in Malaysia or overseas.
2. Keep record of the employees' days of physical presence in Malaysia.

Examples are provided in the PR to illustrate the factors mentioned above.

Deloitte's view

There is now more clarity and guidance from the MIRB in the determination of the tax treatment on the benefits arising from an employee share scheme received by the cross-border employees. This will enable them to determine the taxable benefit from the share scheme by using the formula provided in the PR.

The formula to apportion the taxable benefit is based on the number of working days indicated in **Appendix 1** of this PR and only applies to employees in the Federal Territory. Complication will arise in circumstances where employees have duties in multiple states in Malaysia. The PR also highlights the tighter controls required over the tracking of the exercise of shares after the cessation of Malaysian employment.

People to contact

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