



TaxSnaps

The Impact Of Residence Status On Foreign Sourced Income Remitted To Malaysia

In the Budget 2022 announcement on 29 October 2021, you would have noted that an income tax exemption for foreign-sourced income (“FSI”) received in Malaysia by a Malaysian **resident** person (which includes individuals, companies, etc.) will no longer be applicable from 1 January 2022. This means that, moving forward, the exemption for this FSI would only be applicable to a **non-resident** person in Malaysia.

The FSI would possibly include a wide spectrum of classes of income – from foreign-sourced business income, employment income and other income, such as commission income, etc. to foreign-sourced passive income, such as dividend, interest and rental income, etc.

In this issue of TaxSnaps, we will look at the circumstances determining the **residence** status of individuals.

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Most people would have heard of the 182-day test, that is, an individual must be present physically in Malaysia for 182 days or more in a basis year for a particular year of assessment (“YA”), to determine if the individual is a Malaysian tax resident.

However, the 182-day test is not the only test provided in the Income Tax Act 1967 (“ITA”).

There are, in fact, 3 further tests that we need to consider in order to determine the residence status of an individual in Malaysia. These tests include the “travelling patterns” of the individual’s “in/out” of Malaysia that covers preceding YAs and even, “future” YA!

Here are a few pertinent questions that a tax expert would ask in helping you to determine your tax residence status:

			
Were you in Malaysia for 182 days or more in the basis year for a particular YA?	Is your presence of less than 182 days in a particular YA linked by/to a period of 182 or more consecutive days in the immediate preceding or following YA?	Have you been in Malaysia for 90 days or more in a particular YA; and if yes, were you a resident in Malaysia, or have been in Malaysia for 90 days or more, in each of any 3 out of 4 YAs immediately preceding that particular YA?	Were you a resident in Malaysia for the basis years of 3 immediate preceding YAs, as well as the immediate YA following a particular YA in question?

These tax residence tests are intricate, and it is possible for individuals who are not familiar with the nitty-gritty of the Malaysian income tax law to “wrongly” determine their residence status in Malaysia for FSI purposes. It is therefore important to engage tax experts for a proper determination of your tax residence status.

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