MALAYSIAN TAXATION 1

Part 1

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MALAYSIAN TAXATION 1 FIRST EDITION

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Politeknik Ungku Omar
2024

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Preface

We are delighted to introduce our very own Tax eBook for Accounting course. This eBook is written using simple English to enlighten Taxation students regarding Section 7 of Income Tax Act, 1967. This section determines the Resident Status of an individual in Malaysia.

Resident Status, specifically, crucial in Taxation syllabus. Determining the Resident Status will further indicate the tax implication on the tax payor. Thus a in-detailed eBook is produced to assist students to master the topic.

Subsequently, this eBook also provide with the practical examples that will close the gap between theoretical knowledge and hands on application. A step by step answer was provided as a guidance for students to practice and self check their answers.

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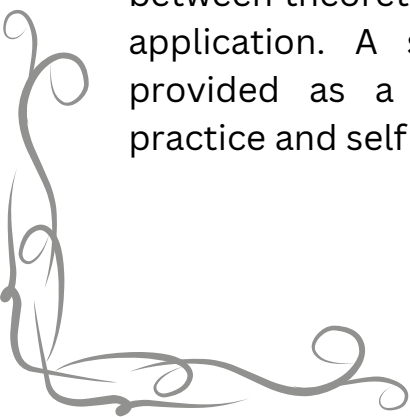# 1.0 Introduction

Individual born in Malaysia is known as citizen. A Malaysian citizen is not necessary to be a resident. The residence status (RS) of an individual is determined by section 7 of ITA 1967.Your paragraph text

CITIZEN ≠ **RESIDENT**

1.1 MEANING OF RESIDENCE STATUS(RS)

- In general, resident status of an individual is determine by **Section 7** of the Income Tax Act (ITA) of 1967*(will be explain in detailed further in the book)*.

- An individual's resident status in Malaysia for tax purposes is determined by the **number of days he spent physically** in Malaysia during a basis period for a year of assessment (YA).

1.2 IMPORTANCE OF RESIDENCE STATUS

WHY RS IS IMPORTANT ?

RS is important in determining the chargeability of a person's income
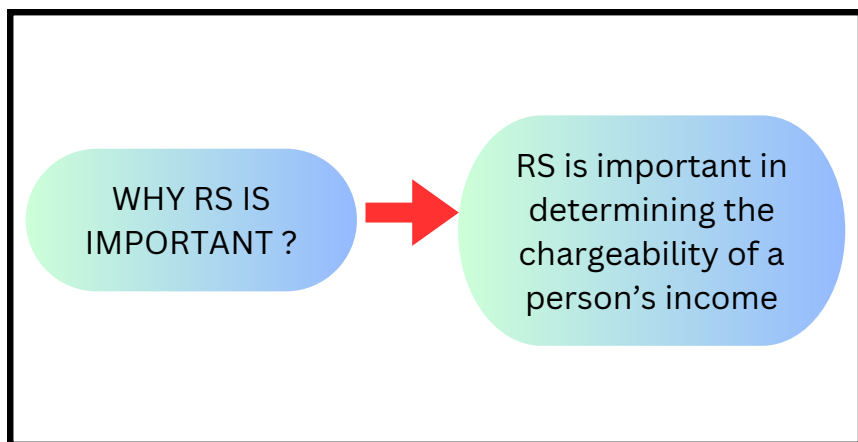
1.3 ADVANTANGE BEING RESIDENT OVER NON-RESIDENT

WHY being Resident is important?

Owing to the various advantages associated with being a resident as opposed to a non-resident as below stated further.

1

- Tax rate for resident individual is progressive tax rate from 0% to 28% base on their chargeable income
- The Tax rate increases as the chargeable income increases
- The tax rate is flexible for Resident Individual

2

- 2nd privilege being a resident is entitled for personal reliefs
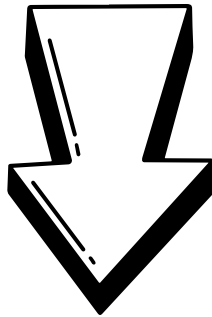- Personal relief is given only for resident individuals. Personal relief will be used to reduce the Chargeable Income, which eventually will reduce the tax rate and tax payable . Examples of Personal reliefs are self relief, wife relief, child relief, etc..

3

- Tax Rebate of RM400 is given if the Chargeable Income is RM35,000 or lower
- Tax Rebate is a deduction from tax payable.

4

- *Exemptions* on certain income such as royalty income
- Exemption mean certain income such as royalty income will *not be taxable* fully or partially

ADVANTAGES

2.0 Determination of Residence Status (RS)

- We have seen the importance of RS in the previous chapter of the book, as subsequent step lets determine the RS.

- RS of an individual is determine from the number of days they reside in Malaysia.

- Determination of RS is bound by **Section 7, of Income Tax Act 1967 (ITA).**

- There are 4 subsections involved in the determination on RS, which are :
  - **Section 7(1)(a)**
  - **Section 7(1)(b)**
  - **Section 7(1)(c)**
  - **Section 7(1)(d)**

Note** Part of a day is still considered as staying full day in Malaysia

2.1 Residence Status Determination Flow

- Determination of RS requires the accessor to thoroughly go through the **sequence from Section 7(1)(a) to 7(1)(d)** in the determination process. They are **not allow to skip** any sections in the flow as shown below:
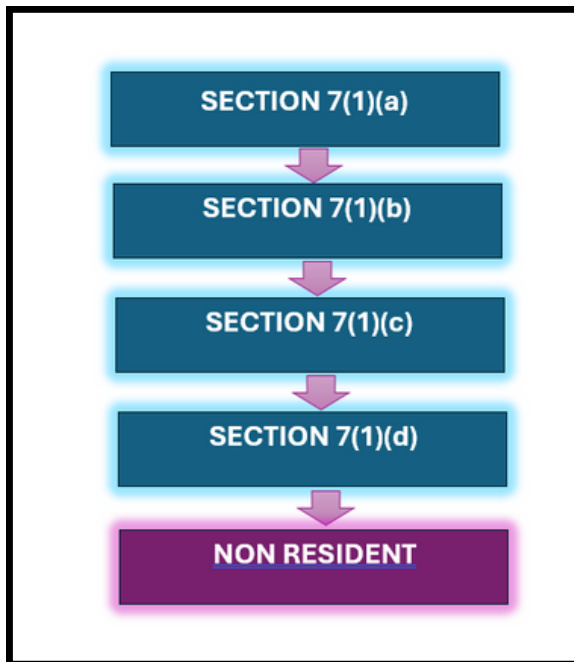
- If they didn't fulfill conditions in any of the sections, they will be treated as a non-resident.

2.2 SECTION 7(1)(a), ITA 1967

- According to Section 7(1)(a), respective individual has to stay in Malaysia for **182 days OR more in a basis year.**

- **182 days can be counted for a period or periods amounting to total of 182 days or more.**

- **Basis Year (BY)** is the year income is received.

- **Year of Assessment (YA)** is the year Tax is computed.

EXAMPLE 1 : S7(1)(a)

Mr Arif was in Malaysia for the following periods:

1/1/2020 - 31/10/2020	304 days
1/1/2021 - 28/02/2021	59 days
1/4/2021 - 31/05/2021	61 days
/8/2021 - 30/09/2021	61 days
1/4/2024 - 30/6/2024	91

Determine the residence status of Mr Arif for years of assessment 2020 and 2021

ANSWER

PERIOD OF STAY	Y/A	NO OF DAYS	RESIDENCE	SECTION
1/1 - 31/10	2020	304	R- S7(1)(a)	7(1)(a)
1/1 - 28/02		59	NR	
1/4 - 31/05	2021	61	NON-RESIDENT	-
1/8 - 30/09		61		
		181		

2.3 SECTION 7(1)(b), ITA 1967

- In Malaysia in that basis year for a period of **less than 182 days** and that period **is linked by or to another period of 182** or **more consecutive days**.

- In counting a period of 182 days or more consecutively, a period of **temporary absence** can be taken, provided that the individual must be in Malaysia before and after the period of temporary absence.

- Temporary absence under **Section 7(1)(b)**

  - Individuals travelling abroad to attend conferences, seminars or courses abroad in relation to their services in Malaysia, or

  - Individuals travelling abroad to visit immediate family members, i.e. parents, spouses, and children, or

  - Individuals travelling abroad for social visits that do not exceed 14 days in aggregate.

- Starting from the year of assessment 2002:

1. Connected includes physical absences on 31/12 and 1/1.

2. The 14-day duration of a social visit can cover two consecutive periods. Example: Social visit period from 28/12/2009 to 5/1/10. However, only the leave in the extension year is taken into account to make up the number of 182 days.

EXAMPLE

Mr. David is coming to Malaysia again from 01/11/18 - 31/08/23. From 23/12/22 to 02/01/23 he returned to the USA for the Christmas holidays. Then he came to Malaysia from 03/01/23 to 31/08/23, where for the period 02/07/23 to 17/07/23 he went on holiday to Singapore.

PERIOD OF STAY	Y/A	NO OF DAYS IN M'SIA	DAYS OUTSIDE M'SIA	RESIDENCE
01/11 - 15/12/18	2018	213	>14	R- S7(1)(a)
30/04 - 31/07/19	2019	93	>14	NR
01/01 - 30/09/20	2020	181	>14	NR
-	2021	-		NR
01/11 - 22/12/22	2022	52		R- S7(1)(b)
23/12 - 31/12/22			9	
01/01 - 02/01/23	2023		2	R-S7(1)(a)
03/01 - 01/07/23		180		
02/07 - 17/07/23			16	
18/07 - 31/8/23		47		

ANSWER

2.4 SECTION 7(1)(c), ITA 1967

He is in Malaysia in that basis year for a period or periods amounting in all to ninety days or more, having been with respect to each of any three of the basis years for the four years of assessment immediately preceding that particular year of assessment either

(i) resident in Malaysia within the meaning of this Act for the basis year in question; or

(ii) in Malaysia for a period or periods amounting in all to ninety days or more in the basis year in question

Meaning ;

- **In malaysia for a period or periods amounting to 90 days or more in a basis year and**

- **in any 3 out of the 4 immediately preceding basis years**
  (i) resident in Malaysia, or
  (ii) in Malaysia for 90 days or More

EXAMPLE 2 : S7(1)(c):

Mr Ahmad was in Malaysia for the following periods:

1/4/2020 - 30/9/2020	183 days
1/1/2021 - 31/3/2021	90 days
1/1/2022 - 30/11/2022	334 days
1/3/2023 - 31/10/2023	245 days
1/4/2024 - 30/6/2024	91

Determine the residence status of Mr Ahmad for years of assessment 2020 until 2024

ANSWER

PERIOD OF STAY	Y/A	NO OF DAYS	RESIDENCE
1/4/2020 - 30/9/2020	2020	183	R- S7(1)(a)
1/1/2021 - 31/3/2021	2021	90	NR
1/1/2022 - 30/11/2022	2022	334	R- S7(1)(a)
1/3/2023 - 31/10/2023	2023	245	R- S7(1)(a)
1/4/2024 - 30/6/2024	2024	91	R- S7(1)(c)

EXAMPLE 3 : S7(1)(d):

Mr Anwar was in Malaysia for the following periods:

2020	210
2021	183
2022	300
2023	0
2024	300

Determine the residence status of Mr Anwar for years of assessment 2020 until 2024

ANSWER

Y/A	NO OF DAYS	RESIDENCE
2020	210	R - S7(1)(a)
2021	183	R - S7(1)(a)
2022	300	R - S7(1)(a)
2023	0	R - S7(1)(d)
2024	300	R - S7(1)(a)

2.5 SECTION 7(1)(d), ITA 1967

He is resident in Malaysia within the meaning of this Act for the basis year for the year of assessment following that particular year of assessment, having been so resident for each of the basis years for the three years of assessment immediately preceding that particular year of assessment.

Meaning ;

- Need not be present in Malaysia in a basis year and
- Resident in Malaysia for the 3 immediately preceding years and is also a resident in the following year

EXAMPLE 2 : S7(1)(d):

Miss Alin has the following pattern of stay in Malaysia

Duration of stay
1/1/2019 - 15/7/2019
16/12/2020- 31/12/2020
1/1/2021 - 15/7/2021
1/4/2022 - 15/7/2022
11/1/2024 - 31/7/2024

Miss Alin left for Australia, on 31/7/2024 when his employment contract expired. Determine the resident status of Miss Alin for each relevant year of assessment

ANSWER		
Y/A	NO OF DAYS	RESIDENCE
2020	196	R - S7(1)(a)
2020	16	R - S7(1)(a)
2021	196	R - S7(1)(a)
2022	106	R - S7(1)(c)
2023	-	R - S7(1)(d)
2024	203	R - S7(1)(a)

2.6 PARAGRAPH 21 SCHEDULE 6

Income of a non resident individual is tax exempt if derived from an employment exercised by him in Malaysia for:

(a) a period or periods which together do not exceed 60 days in the basis year for a year of assessment; or

(b) a continuous period (not exceeding 60 days) which overlaps the basis years for 2 successive years of assessment; or

(c) a continuous period (not exceeding 60 days) which overlaps the basis years for 2 successive years of assessment and for a period or periods which together with that continuous period
do not exceed 60 days.

**** Updated as
13/03/2023**

EXAMPLE 1

Mr. Andrew was in Malaysia for the following periods 01.03.2020 to 31.03.2020 31 days (employment) 01.09.2020 to 15.09.2020 15 days (employment).

Total : 46 days

His employment income for Y/A 2020 is TAX EXEMPT as he is not resident (not physically present in Malaysia for at least 182 days in the basis year) and has exercised his employment for less than 60 days.

EXAMPLE 2

Mr. Baker was employed in Malaysia for the following
01.09.2020
to 30.09 2020 30 days
01.10.2020 to 31.10 2020 31 days

Total : 61 days

He was paid for the period from 01.09. 2020 to 31.10. 2020.
He left Malaysia on the night of 26.10.2020.
27-28.10.2020 are non working days and he was **on vacation leave** from 29 31.10.2020.

As such, he was physically present in Malaysia for **56 days** only .
His income for the period of employment (61 days) will be subjected to tax at the **non-resident tax rate of 28% (paragraph 22 Schedule 6 of ITA 1967).**

RESIDENCE STATUS

You will not be taxable if

•Employed in Malaysia for less than 60 days

•Employed on board a Malaysian ship

•Age 55 years old and receiving pension from Malaysian employment

•Receiving interest from banks

 •Receiving tax exempt dividends If taxable, you are required to fill in M Form .

DETERMINATION OF RESIDENCE STATUS

RECORDS TO BE KEPT :

Certified true copy of passport

List of entries exits

Confirmation by the employer on the period of employment, if required

Copy of departure flight ticket

Other supporting documents

QUESTION 1 : Mr. Roslan is an engineer. His pattern of stay in Malaysia was as follows:

1/12/2016 - 30/12/2016	196
01/01/2017 - 18/03/2017	77 days
19/03/2017-30/06/2017	Seminar at Singapore
01/07/2017 - 31/12/2017	184 days
01/01/2018 - 20/02/2018	51 days
26/11/2018 - 31/12/2018	36 days
01/01/2019 - 15/02/2019	46 days
02/10/2019 - 15/12/2019	75 days
16/02/2021 - 30/11/2021	288 days
01/12/2021 - 31/12/2021	Conference at Japan
01/01/2022 - 10/01/2022	10 days

Note: You are required to prepare the residence status of Mr. Roslan for the related years of assessment and quote the related sections.

CONTINUATION: ANSWER

Date	YA	Day	Total Day	Residence Status (R/NR)	Section
1/12/2016 - 30/12/2016	2016	30	30	R	7(1)(b)
01/01/2017 - 18/03/2017	2017	77	261	R	7(1)(a)
19/03/2017 - 30/06/2017 (TA)		105(TA)			
01/07/2017 - 31/12/2017		184			
01/01/2018 - 20/02/2018	2018	51	87	R	7(1)(b)
26/11/2018 - 31/12/2018		36			
01/01/2019 - 15/02/2019	2019	46	121	R	7(1)(c)
02/10/2019 - 15/12/2019		75			
-	2020	0	0	R	7(1)(d)
16/02/2021 - 30/11/2021	2021	288	288	R	7(1)(a)
01/12/2021 - 31/12/2021		31(TA)			
01/01/2022 - 10/01/2022	2022	10	10	R	7(1)(b)
01/02/2023 - 31/03/2023	2023	59	59	NR	-

Mr. Azim a Singapore citizen, arrived in Malaysia for the first time on 20 May 20219 to work as a lecturer on one of the private institution in Ipoh, Perak. His contract with the institution began on 1 June 2019 and ended on 31 August 2023. He is leaving Malaysia permanently on 30 September 2023. Details of he stay in Malaysia are as follows:

2019 -20 May to 17 July
          19 November to 31 December
2020 -1 January to 15 April
          1 May to 20 August
2021 -10 April to 30 September
          5 November to 12 December
2023 - 1 July to 30 September

Notes:
 1. From 16 April 2020 until 30 April 2020, Mr. Azim was in Tokyo to attend an academic conference, related his career in Malaysia.

2. From 1 October until 25 October 2021 Mr. Azim was in Singapore to visit his sister who was undergoing a medical treatment.

3. He was not in Malaysia in year of assessment 2022.

You are required:

i. To calculate Mr. Azim's number of days in Malaysia

ii. To show the tax residents status of Mr. Azim

iii. To allocate the relevant sub-sections of the Income Tax Act 1967 for the year of assessment 2019 up to year of assessment 2023.

Date	YA	CALCULATION (DAY)	(i) DAY	(ii) STATUS (R/NR)	(iii) SECTION
20/5 - 17/7 19/11 - 31/12	2019	12 + 30 + 17 = 59 12 + 31 = 43	102	R	7(1)(b)
1/1 - 15/41 6/4 – 30/4 1/5 - 20/8	2020	31 + 28 + 31 + 15 = 105 15 (Conference-related working in Malaysia) 31 + 30 + 31 + 20 = 112	217	R	7(1)(a)
10/4 - 30/9 1/10 – 25/10 5/11 - 12/12	2021	21 + 31 + 30 + 31 + 31 + 30 = 174 25 (visit sister – medical treatment) 26 + 12 = 38	212	R	7(1)(a)
	2022	Not in Malaysia	0	R	7(1)(d)
1 /7 - 30/9	2023	31 + 31 + 30 = 92	92	R	7(1)(c)

James, a marketing consultant from Australia was sent by his employer to Malaysia to be the regional manager.

Required :

(a) Determine James's tax residence status for the years of assessment 2017 to 2022, stating the conditions and relevant provision the ITA 1967 to support your answer;

(b) Explain what constitutes 'temporary absence' under Section 7(1)(b) of the ITA 1967.

His record of stay in Malaysia is as follows:-

Year	Period of stay	Place No. of days	No. of days
2017	23 Sept - 31 Dec	In Malaysia	100
2018	1 Jan - 30 Oct 1 Nov - 31 Dec	Not in Malaysia In Malaysia	303 62
2019	1 Jan - 31 March 1 April - 13 April 14 April - 31 July 1 Aug - 31 Dec	In Malaysia Korea (social visit) In Malaysia Not in Malaysia	90 13 109 153
2020	1 Jan - 30 April 1 May - 31 July 1 Aug - 31 Dec	Not in Malaysia In Malaysia Not in Malaysia	121 92 153
2021	1 Jan – 31 Dec	Not in Malaysia	365
2022	1 Jan – 31 July	In Malaysia	212

Year		Period of stay	No. of days	Residence Status	Reasons
2017		23/9 -31/12	100	NR	S7(1)(a) to (d) of the ITA 1967 does not apply.
2018		1/11 – 31/12	62	R S7(1)(b)	In Malaysia for 62 days in basis year 2018 and that period is linked to a period of 182 or more consecutive days in basis year 2019. The temporary absence of 13 days will form part of the 182 or more consecutive days
2019		1/1- 31/3 14/4 – 31/7	90 109 ------ 199	R S7(1)(a)	In Malaysia for 182 days or more

Year	Period of stay	No. of days	Residence Status	Reasons
2020	1/5 - 317	92	R S7(1)(c)	In Malaysia for 90 days or more in basis year 2020 and in 3 immediately preceding years(2017,2018and2019)hewas residentor in Malaysia for 90 days or more
2021	1/1 – 31/12	0	R S7(1)(d)	He was resident for 3 immediately preceding basis years (2018, 2019 and 2020) and resident for following basis year 2022.
2022	1/1 – 31/7	212	R S7(1)(a)	In Malaysia for 182 days or more

(b)   Temporary absence' under Section 7(1)(b) of the ITA 1967 would constitute the following:

  (i)   in connection with his / her service in Malaysia and owing to service matters or attending conferences or seminar or study abroad;

  (ii)   owing to ill health involving himself / herself or a member of immediate family; and

  (iii)   social visits not exceeding 14 days in the aggregate

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MALAYSIAN TAXATION 1 RESIDENCE STATUS OF INDIVIDUAL

9 786297 635705

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(online)