

TECHNICAL

Direct Taxation

**PUBLIC RULING NO. 11/2017 – RESIDENCE STATUS OF INDIVIDUALS**

This [Public Ruling \(PR\)](#) dated 22 December 2017 (please refer to our e-[CTIM TECH-DT 98/2017](#) dated 28 December 2017), replaces [PR No. 6/2011](#).

**Objective** (Paragraph 1)

The objective is to explain how residence status of individuals (under the provisions of S7 of the Income Tax Act (ITA)) is determined.

The following table sets out the Contents (headings of the main paragraphs) of the PR. The Synopsis highlights some salient points in the relevant paragraph.

Para. #	Heading and Synopsis (Sections cited refer to sections of the ITA, unless otherwise stated.)
3	<b>Interpretation</b> “Non-resident individual” means an individual other than a resident individual. “Resident individual” is an individual resident in Malaysia for the basis year (BY) for a year of assessment (YA) as determined under S7 of the ITA.
4	<b>Significance of Residence Status</b> For income tax purposes, residence status is a question of fact and is one of the main factors that determines the individual’s liability to Malaysian income tax, which is determined on a year to year basis. - The differences in tax treatment between a resident individual and a non-resident individual are summarized in a table under <a href="#">para. 4.2</a> which sets out the differences in the following that applies to resident and non-resident individuals: <ul style="list-style-type: none"> <li>• Tax rate</li> <li>• Personal relief</li> <li>• Rebates</li> <li>• Withholding tax</li> </ul>
5	<b>Determination of Residence Status</b> The determination of residence status of an individual in the BY for a YA is based on his/her physical presence in Malaysia and not on citizenship or nationality. Citizens of Malaysia are not automatically tax residents. - For the purpose of determining residence status, an individual is considered to be physically present in Malaysia for a whole day if he/she is present in Malaysia for part of a day. (Example 1)
6	<b>Circumstances Determining Residence Status</b> S7 sets out 4 sets of circumstances under which an individual is regarded as being resident in Malaysia.
6.1	<i>In Malaysia for 182 days or more in a BY [S7(1)(a)]</i> An individual is resident in Malaysia in the BY for a YA if in that BY, he/she is in Malaysia for a period or periods amounting in all to 182 days or more. (Examples 2, 3 and 4)
6.2	<i>In Malaysian for less than 182 days in a BY [S7(1)(b)]</i>

	<p>An individual is resident in Malaysia in the BY for a YA if in that BY, he/she is in Malaysia for less than 182 days but that period is linked to another period of 182 or more consecutive days throughout which he/she is in Malaysia –</p> <p>i) in the BY for the YA preceding that YA; or</p> <p>ii) in the BY for the YA immediately following that particular YA.</p> <ul style="list-style-type: none"> <li>In calculating the period of less than 182 days or the period of 182 or more consecutive days, periods of “temporary absence” from Malaysia (period during which the individual is not in Malaysia) are taken to form part of that period of – <ul style="list-style-type: none"> <li>i) less than 182 days; and/or</li> <li>ii) 182 or more consecutive days;</li> </ul> Provided that the individual must be in Malaysia immediately prior to and after that temporary absence.</li> <li>“Temporary absences” that are allowed are listed in <a href="#">para. 6.2.3</a>, one of which is absence on account of social visits not exceeding 14 days in the aggregate.</li> </ul> <p>(Examples 5, 6, 7, 8, 9, 10)</p>
6.3	<p><i>In Malaysia for 90 days or more [S7(1)(c)]</i></p> <p>An individual is resident in the BY for a YA if in that BY, he/she is in Malaysia for a period or periods amounting in all to 90 days or more (need not be consecutive days), and has been, in each of any 3 out of the 4 immediately preceding years of assessment, either –</p> <p>i) resident pursuant to S7; or</p> <p>ii) in Malaysia for a period or periods amounting in all to 90 days or more.</p> <p>The application of the above rule are illustrated in the following examples, where an individual is resident for <b>YA 2017</b> under S7(1)(c) as he/she was in Malaysia in BY 2017 for period(s) amounting to 90 days or more AND –</p> <ul style="list-style-type: none"> <li>was resident under S7 for YA 2013, 2015 and 2016 (Examples 11);</li> <li>was in Malaysia for periods of 90 days or more in BY 2014, 2015 and 2016 (Example 12);</li> <li>was resident under S7 in BY 2014 and 2015, and in Malaysia for more than 90 days in BY 2016. (Example 13);</li> <li>was resident under S7 in BY 2014, 2015 and 2016 (Example 14);</li> <li>was resident under S7 in BY 2014 and 2015 and in Malaysia for more than 90 days in BY 2016 (Example 15).</li> </ul>
6.4	<p><i>Not in Malaysia or in Malaysia for a period of less than 90 days in the BY [S7(1)(d)]</i></p> <p>An individual is resident in the BY for a YA if he/she is resident for the immediately following BY and had been resident for the 3 immediately preceding basis years.</p> <p>(Examples 16 and 17)</p>
6.5	<p>A Malaysian citizen is deemed a resident in Malaysia in the BY for a particular YA if he is –</p> <p>i) employed in the public service or by a statutory authority in Malaysia; and</p> <p>ii) not in Malaysia on any day in the BY for that YA by reason of having or exercising the employment outside Malaysia, or attending any course of study in any institution or professional body outside Malaysia which is fully sponsored by the employer.</p> <p>(Examples 18, 19, 20, 21 and 22)</p>
7	<p><b>Dual Residence Status and Agreements for the Avoidance of Double Taxation (DTA)</b></p> <ul style="list-style-type: none"> <li>An individual who is a resident in one of the countries (which signed the DTA</li> </ul>

	<p>between Malaysia and the treaty partner) for the BY may also be a resident of that other country for purposes of the DTA. Where an individual is a resident of both countries, the DTA generally contains certain <i>tie breaker</i> tests to establish residence solely in one of the countries for purposes of the agreement.</p> <ul style="list-style-type: none"><li>• Article 4 of the Malaysian DTA states the test for residence and the tie breaker for dual residence. The tie breaker test provides that a dual resident be treated solely as a resident of the treaty partner for purposes of the agreement. The relevant DTA should be referred to when determining tax liability, in addition to the domestic law.</li></ul>
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Members may read the PR in full at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at [technical@ctim.org.my](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any suggestions, concern or comments you may have on the [PR No. 11/2017](#) so that we may raise them to the LHDNM.

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