



INLAND REVENUE BOARD MALAYSIA

RESIDENCE STATUS OF INDIVIDUALS

PUBLIC RULING NO. 6/2011

Translation from the original Bahasa Malaysia text

DATE OF ISSUE: 16 MAY 2011



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DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**

1. This Ruling explains the determination of residence status of individuals.
2. The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are section 7 and subsection 7(1B).
3. The words used in this Ruling have the following meaning:
 - 3.1 "Non-resident individual" means an individual other than a resident individual.
 - 3.2 "Resident individual" is an individual resident in Malaysia for the basis year for a year of assessment as determined under section 7 and subsection 7(1B) of the ITA 1967.

4. Significance Of Residence Status

4.1 Residence status for income tax purposes

Residence status is a question of fact and is one of the main criteria that determines an individual's liability to Malaysian income tax. Liability to tax is determined on a year to year basis.

4.2 Tax treatment of resident and non-resident individuals

The residence status of an individual liable to tax in Malaysia determines whether an individual is taxed as a resident or a non-resident of Malaysia. The basic distinction in the tax treatment of an individual who is a resident or a non-resident of Malaysia is as follows:

Item	Resident	Non-Resident
Tax rates	Taxed at the rate as specified in paragraph 1, part 1, Schedule 1 of the ITA 1967.	Taxed at the rate as specified in paragraph 1A, part 1, Schedule 1 of the ITA 1967.
Personal relief	Entitled to claim.	Not entitled to claim.
Rebates	Entitled to claim a rebate under subsection 6A(2) of the ITA 1967 if chargeable income does not exceed RM35,000.	Not entitled to claim.
Withholding tax	Certain receipts may be subject to withholding tax such as:	Certain receipts may be subject to withholding tax such as:

	<p>i) Distribution of income from real estate investment trust (REITs) (withholding tax under section 109D of the ITA 1967 – final tax); and</p> <p>ii) Interest from persons as stated in subsection 109C(4) of the ITA 1967 i.e:</p> <ul style="list-style-type: none"> - Bank or finance company licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983; - registered co-operative society; - Bank Simpanan Nasional; - Bank Pertanian Malaysia; - Lembaga Urusan dan Tabung Haji; - Malaysia Building Society Berhad; or - any other institution that may be approved by the Minister. <p>(withholding tax under section 109C of the ITA 1967 – final tax).</p>	<p>i) Interest¹ (except as exempted) (withholding tax under section 109 of the ITA 1967 – final tax);</p> <p>ii) Royalties¹ (withholding tax under section 109 of the ITA 1967 – final tax);</p> <p>iii) Remuneration or other income in respect of services performed or rendered in Malaysia by a public entertainer (withholding tax under section 109A of the ITA 1967 – final tax);</p> <p>iv) Special classes of income¹ under section 4A of the ITA 1967 (withholding tax under section 109B of the ITA 1967 – final tax);</p> <p>v) Service portion of contract payments (withholding tax under section 107A of the ITA 1967);</p> <p>vi) Distribution of income from a real estate investment trust¹ (REITs) exempted under section 61A of the ITA 1967 (withholding tax under section 109D of the ITA 1967 – final tax);</p> <p>vii) Distribution of income of a family fund, family re-takaful or general</p>
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		<p>fund under section 60AA of the ITA 1967 (withholding tax under section 109E of the ITA 1967); and</p> <p>viii) Other income¹ falling under paragraph 4(f) of the ITA 1967 (withholding tax under section 109F of the ITA 1967 – final tax).</p>
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¹Reference has to be made to the relevant agreements for the avoidance of double taxation for any variation in tax rates, if applicable.

5. Determination Of Residence Status

- 5.1 Generally, the resident status of an individual for a basis year for a year of assessment is determined by reference to the physical presence of that individual in Malaysia and not by his nationality or citizenship. In certain situations, the physical presence for the basis years preceding and following a particular year of assessment has also to be taken into consideration in determining the residence status of an individual.
- 5.2 If an individual resides in Malaysia permanently, the question of determining his residence status would not arise. However, citizens of Malaysia are not automatically tax residents. The rules governing the determination of residence status will still apply.
- 5.3 An individual is considered to be physically present in Malaysia for a whole day although he is present in Malaysia for part(s) of a day.

Example 1

Woods, a senior accountant at a holding company in Australia was sent by his employer to examine and assist in the accounts of the company's branch in Malaysia. His period of stay in Malaysia was as follows:

Date Of Arrival	Date Of Departure	Number Of Days
1.1.2010 (11 p.m.)	11.1.2010 (2 a.m.)	11

Woods was present in Malaysia in the year 2010 for a period of 11 days.

Anil was a non-resident in Malaysia for the basis year for the year of assessment 2010 as he was present in Malaysia for less than 182 days in the year 2010.

6.2 In Malaysia for less than 182 days in a basis year
[Paragraph 7(1)(b) of the ITA 1967]

6.2.1 If an individual is in Malaysia in the basis year for a particular year of assessment for a period of less than 182 days but the period is linked by or to:

- i) another period of 182 or more consecutive days throughout which he was in Malaysia in the basis year for the year of assessment preceding that particular year of assessment; or
- ii) another period of 182 or more consecutive days throughout which he is in Malaysia in the basis year for the year of assessment immediately following that particular year of assessment

that individual qualifies as a resident in Malaysia for the basis year for that particular year of assessment.

6.2.2 In calculating the period of less than 182 days or the period of 182 days or more consecutive days, relaxation is given where the period of temporary absence (period during which an individual is not in Malaysia) shall be taken to form part of that:

- i) period of less than 182 days; and/or
- ii) period of 182 days or more consecutively,

provided that the individual must be in Malaysia immediately prior to and after that temporary absence.

6.2.3 Temporary absences allowed are –

- i) absence which is connected with the individual's service in Malaysia such as attending conferences or seminars or study abroad;
- ii) absence owing to ill-health involving the individual or a member of his immediate family (immediate family means parent, spouse and children); and

- iii) absence in respect of social visits not exceeding 14 days in the aggregate (social visits include any form of vacation outside Malaysia besides vacation to home country).

6.2.4 Prior to the year of assessment 2002, it would have been important for an individual to be physically present in Malaysia on 31 December and 1 January of the following year in order to link up the 2 periods as explained in paragraph 6.2.1 of this Ruling.

With effect from the year of assessment 2002 and subsequent years of assessment, absence in the 2 days is to be disregarded and can be considered as part of the 2 periods mentioned if the temporary absence is due to the circumstances as explained in paragraph 6.2.3 of this Ruling.

Example 5

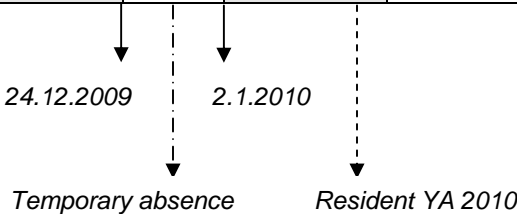
Benson, a medical doctor was in Malaysia to fulfill a contract with a private hospital. His period of stay in Malaysia and in the United Kingdom (UK) was as follows:

Period Of Stay In Malaysia/UK	Number Of Days
15.5.2009 - 23.12.2009 (Malaysia)	223
24.12.2009 - 31.12.2009 (UK)	8 (social visit)
1.1.2010 - 2.1.2010 (UK)	2 (social visit)
3.1.2010 - 31.3.2010 (Malaysia)	88

Benson left Malaysia on 1.4.2010.

The situation is summarized as follows:

Year 2009		Year 2010		
UK	Malaysia	UK	Malaysia	UK
134 days	223 days	10 days	88 days	275 days



Benson was a resident in Malaysia for the year of assessment 2010 as he was in Malaysia for 88 days in 2010 (that period), which is linked by a period of more than 182 consecutive days in 2009 (such period), throughout which he was considered to be in Malaysia

although he was absent temporarily for 10 days on a social visit. His temporary absence is considered part of that period and such period since the social visit did not exceed 14 days and he was in Malaysia immediately prior to and after his temporary absence.

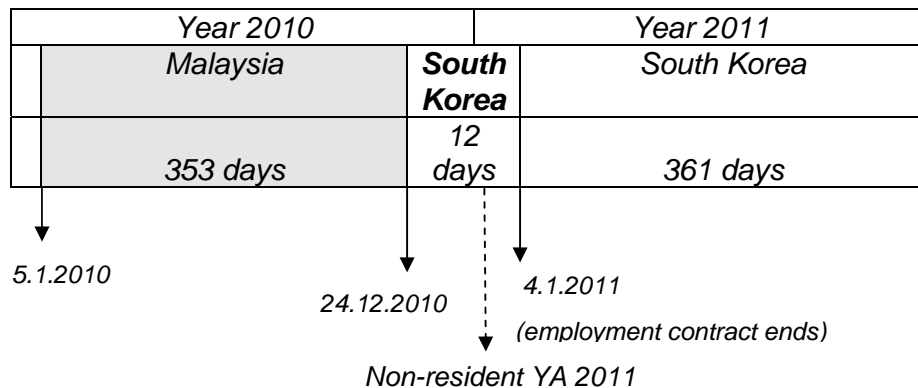
Example 6

Kim, a South Korean arrived in Malaysia on 5.1.2010 to fulfill an employment contract which ended on 4.1.2011. Her period of stay in Malaysia and South Korea was as follows:

Period Of Stay In Malaysia/South Korea	Number Of Days
5.1.2010 - 23.12.2010 (Malaysia)	353
24.12.2010 - 31.12.2010 (South Korea)	8
1.1.2011 - 4.1.2011 (South Korea)	4

Kim left Malaysia on 23.12.2010 and did not return.

The situation is summarized as follows:



Kim was a non-resident in Malaysia for the basis year for the year of assessment 2011 because she was not physically present in Malaysia in 2011.

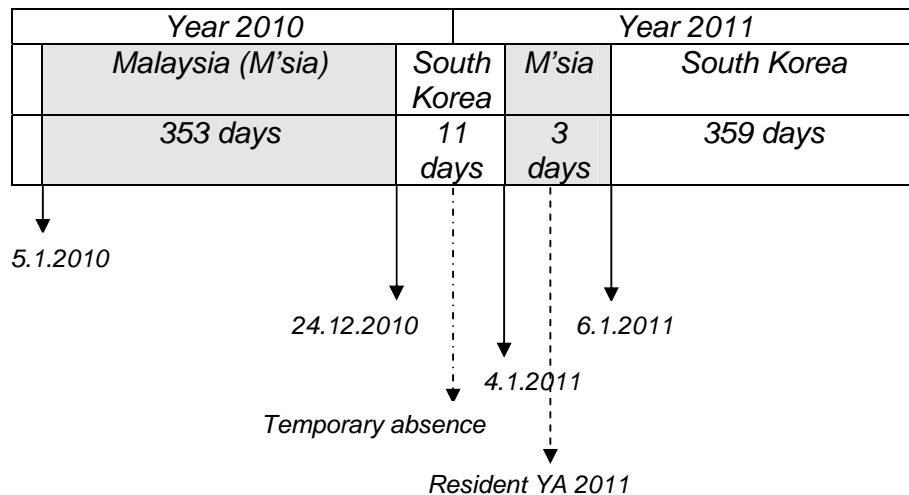
Example 7

The facts are the same as in Example 6 except that Kim returned to Malaysia on 4.1.2011.

Period Of Stay In Malaysia/South Korea	Number Of Days
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5.1.2010 - 23.12.2010 (Malaysia)	353
24.12.2010 - 31.12.2010 (South Korea)	8
1.1.2011 - 3.1.2011 (South Korea)	3
4.1.2011 - 6.1.2011 (Malaysia)	3

The situation is summarized as follows:



Kim was a resident in Malaysia for the basis year for the year of assessment 2011 as she was in Malaysia for 3 days in 2011 (that period), which is linked by a period of more than 182 consecutive days in 2010 (such period) throughout which she was considered to be in Malaysia although she was temporarily absent for 11 days on a social visit. The temporary absence is considered as part of that period and such period as her social visit did not exceed 14 days and she was in Malaysia before and after the temporary absence.

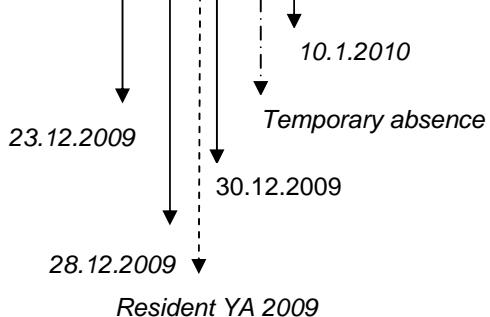
Example 8

Hughes, a researcher from United States of America (USA) had the following period of stay in Malaysia, Singapore and USA:

Period Of Stay In Malaysia/Singapore/USA	Number Of Days
1.12.2009 - 22.12.2009 (Malaysia)	22
23.12.2009 - 28.12.2009 (Singapore)	6 (social visit)
29.12.2009 - 29.12.2009 (Malaysia)	1
30.12.2009 - 31.12.2009 (USA)	2 (social visit)
1.1.2010 - 10.1.2010 (USA)	10 (social visit)
11.1.2010 - 31.12.2010 (Malaysia)	355

The situation is summarized as follows:

Year 2009				Year 2010	
USA	M'sia	S p o r e	M s i a	U S A	Malaysia (M'sia)
334 days	22 days	6	1	12	355 days



Resident YA 2009

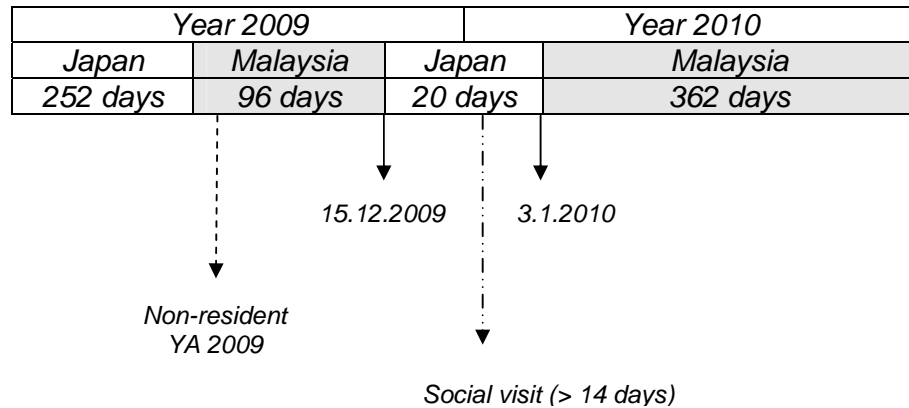
Hughes was a resident in Malaysia for the basis year for the year of assessment 2009 because he was in Malaysia for 1 day (29.12.2009) in 2009 (that period), which is linked to a period of more than 182 consecutive days in the year 2010 (such period), throughout which Hughes was considered to be in Malaysia although he was temporarily absent for 12 days on a social visit. The temporary absence is considered as part of that period and such period as the social visit did not exceed 14 days and Hughes was in Malaysia before and after the temporary absence.

Example 9

Takayama, a university professor from Japan commenced employment on 10.9.2009 at a local university in Malaysia. His stay in Malaysia and Japan was as follows:

Period Of Stay In Malaysia/Japan	Number Of Days
10.9.2009 - 14.12.2009 (Malaysia)	96
15.12.2009 - 31.12.2009 (Japan)	17 (social visit)
1.1.2010 - 3.1.2010 (Japan)	3 (social visit)
4.1.2010 - 31.12.2010 (Malaysia)	362

The situation is summarized as follows:

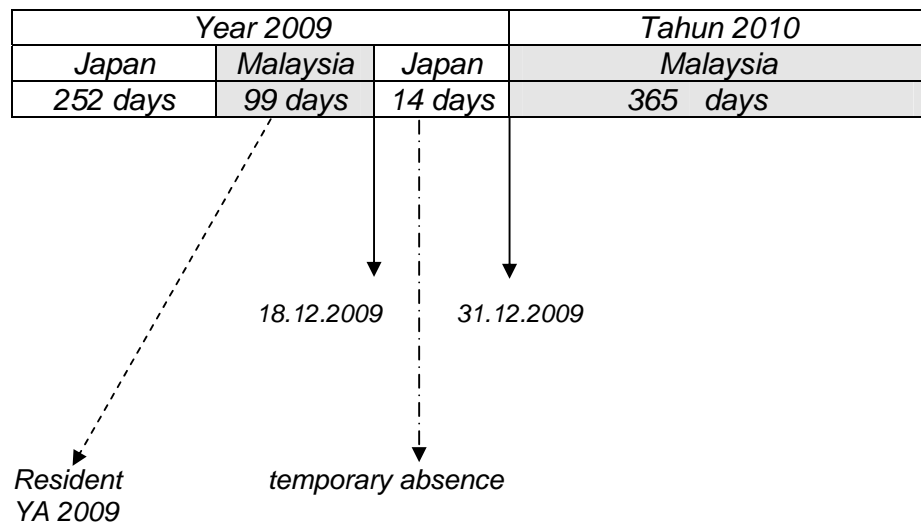


Takayama was a non-resident in Malaysia for the basis year for the year of assessment 2009 as he was in Malaysia for only 96 days in 2009 and that period is not linked to another period of more than 182 days in 2010 since his social visit exceeded 14 days.

Example 10

The facts are the same as in Example 9, except that Takayama left Malaysia on 17.12.2009 and returned to Malaysia on 1.1.2010.

The situation is summarized as follows:



Takayama was a resident in Malaysia for the year of assesment 2009 as he was in Malaysia for 99 days in 2009 (that period), which is linked to a period of more than 182 consecutive days in 2010 (such period), throughout which Takayama was in Malaysia. The temporary absence is considered as part of that period as the social

visit did not exceed 14 days and Takayama was in Malaysia before and after the temporary absence.

Note:

If Takayama had left Malaysia for another social visit not exceeding 14 days within the period from 1.1.2010 to 1.7.2010, then Takayama would not be in Malaysia for a period of more than 182 consecutive days in 2010. The temporary absence in 2010 would not be part of the 182 days or more consecutive days in 2010 as the limit of 14 days for social visits had been utilised in 2009. In such a situation, Takayama will not be considered a resident in Malaysia for the year of assessment 2009.

6.3 In Malaysia for 90 days or more
[Paragraph 7(1)(c) ITA 1967]

6.3.1 If an individual is in Malaysia in the basis year for a particular year of assessment for a period or periods amounting in all to 90 days or more (the days need not be consecutive days), he is resident for that particular year of assessment if in each of any 3 out of 4 years of assessment immediately preceding that particular year of assessment he was either:

- i) resident in accordance with section 7 of the ITA 1967; or
- ii) in Malaysia for a period or periods amounting in all to 90 days or more.

Example 11

Jemina, an advertising director has the following periods of stay in Malaysia:

Year	Period Of Stay	Number Of Days
2006	1.5.2006 - 23.11.2006	207
2007	1.5.2007 - 20. 5.2007	20
2008	1.1.2008 - 30.9.2008	274
2009	1.3.2009 - 30.10.2009	244
2010	1.1.2010 - 20. 2.2010	51 }
	1.4.2010 - 31.5.2010	61 } = 112

The residence status of Jemina is as follows:

Basis Year	Residence Status	Paragraph
2006	Resident	7(1)(a) ITA 1967
2007	Non-resident	-
2008	Resident	7(1)(a) ITA 1967
2009	Resident	7(1)(a) ITA 1967
2010	Resident	7(1)(c)(i) ITA 1967

For the basis year 2010, Jemina was a resident in Malaysia pursuant to subparagraph 7(1)(c)(i) of the ITA 1967 as –

- i. she was in Malaysia for periods amounting to more than 90 days in the basis year 2010 (112 days); and
- ii. for 3 out of the 4 immediately preceding basis years, she was resident in accordance with section 7 of the ITA 1967 (basis years 2006, 2008 and 2009).

Example 12

Watson, a musician has the following periods of stay in Malaysia:

Year	Period Of Stay	Number Of Days
2006	1.10.2006 - 15.10.2006	15
2007	1.3.2007 - 31.3.2007	31
	1.5.2007 - 30.6.2007	61 = 92
2008	1.4.2008 - 15.7.2008	106
2009	1.10.2009 - 31.12.2009	92
2010	1.8.2010 - 30.11.2010	122

The residence status of Watson is as follows:

Basis Year	Residence Status	Paragraph
2006	Non-resident	-
2007	Non-resident	-
2008	Non-resident	-
2009	Non-resident	-
2010	Resident	7(1)(c)(ii) ITA 1967

For the basis year 2010, Watson was a resident in Malaysia pursuant to subparagraph 7(1)(c)(ii) of the ITA 1967 as –

- i. he was in Malaysia for a period amounting to more than 90 days in the basis year 2010 (122 days); and
- ii. for 3 out of 4 immediately preceding basis years, he was in Malaysia for a period or periods amounting in all to 90 days

or more in the basis year in question (basis years 2007, 2008, 2009).

- 6.3.2 An individual need not be resident in Malaysia for all 3 out of 4 immediately preceding basis years and need not be in Malaysia for 90 days or more for all 3 out of 4 immediately preceding basis years. It will suffice if he is resident for 2 of those basis years and present in Malaysia for 90 days or more in one of those basis years or vice versa.

Example 13

Peters, a chef has the following periods of stay in Malaysia:

Year	Period Of Stay	Number Of Days
2006	1.5.2006 - 20.5.2006	20
2007	1.1.2007 - 31.12.2007	365
2008	1.1.2008 - 21.1.2008	21
2009	1.6.2009 - 31.8.2009	92
2010	1.1.2010 - 30.4.2010	120

The residence status of Peters is as follows:

Basis Year	Residence Status	Paragraph
2006	Non-resident	-
2007	Resident	7(1)(a) ITA 1967
2008	Resident	7(1)(b) ITA 1967
2009	Non-resident	-
2010	Resident	7(1)(c) ITA 1967

For the basis year 2010, Peters was a resident in Malaysia by virtue of paragraph 7(1)(c) of the ITA 1967 as:

- i. he was in Malaysia for a period amounting to more than 90 days in the basis year 2010 (120 days); and*
- ii. in 3 out of 4 immediately preceding basis years he was resident (basis year 2007 and 2008) and was in Malaysia for more than 90 days (basis year 2009).*

- 6.4 Not in Malaysia or in Malaysia for a period of less than 90 days in the basis year [Paragraph 7(1)(d) ITA 1967]

An individual is considered to be resident for the basis year for a year of assessment if he is resident for the immediately following basis year and had been resident for the 3 immediately preceding basis years. Therefore, an individual can be a resident in Malaysia pursuant to paragraph 7(1)(d) of the ITA 1967 even though he might never actually have been in Malaysia at all during that basis year.

Example 14

Nicholas, a lecturer from Russia had the following period of stay in Malaysia:

Year	Period Of Stay	Number Of Days
2006	11.10.2006 - 31.12.2006	82
2007	1.1.2007 - 31.12.2007	365
2008	1.1.2008 - 30.9.2008	274
2009	1.4.2009 - 4.4.2009	4
2010	1.4.2010 - 31.12.2010	275

The residence status of Nicholas is as follows:

Basis Year	Residence Status	Paragraph
2006	Resident	7(1)(b) ITA 1967
2007	Resident	7(1)(a) ITA 1967
2008	Resident	7(1)(a) ITA 1967
2009	Resident	7(1)(d) ITA 1967
2010	Resident	7(1)(a) ITA 1967

For the year of assessment 2009, Nicholas was a resident in Malaysia although he was in Malaysia for only 4 days as he:

- i. was a resident in the basis year 2010, that is the following basis year; and*
- ii. had been a resident for each of the 3 immediate preceding basis years i.e. 2006, 2007 and 2008.*

Example 15

Stanley, an accountant from Hongkong has the following periods of stay in Malaysia:

Year	Period Of Stay	Number Of Days
2006	1.1.2006 - 31.10.2006	304

2007	1.1.2007 - 31.12.2007	365
2008	1.1.2008 - 21.1.2008	21
2009	Was not in Malaysia	-
2010	15.5.2010 - 23.12.2010	223

The residence status of Stanley is as follows:

Basis Year	Residence Status	Paragraph
2006	Resident	7(1)(a) ITA 1967
2007	Resident	7(1)(a) ITA 1967
2008	Resident	7(1)(b) ITA 1967
2009	Resident	7(1)(d) ITA 1967
2010	Resident	7(1)(a) ITA 1967

Even though Stanley was not in Malaysia in the basis year 2009, he was a resident in Malaysia for that basis year as he –

- i. was resident for the basis year 2010, that is the following basis year; and*
- ii. was resident for each of the 3 immediately preceding basis years i.e. 2006, 2007 and 2008.*

6.5 Malaysian citizens employed in the public service/statutory authority [Subsection 7(1B) of the ITA 1967]

With effect from the year of assessment 2009, a new subsection 7(1B) of the ITA 1967 was introduced to deem Malaysian citizens as residents in Malaysia for the basis year for a particular year of assessment if he:

- i) is employed in the public services or service of a statutory authority in Malaysia; and
- ii) is not in Malaysia at any day in the basis year for that particular year of assessment by reason of -
 - a) having or exercising his employment outside Malaysia; or
 - b) attending any course of study in any institution or professional body outside Malaysia which is fully sponsored by the employer.

Example 16

Ikmal, a Malaysian ambassador to the USA had the following period of stay in Malaysia/USA:

Period Of Stay In Malaysia/USA	Number Of Days
1.1.2009 - 31.12.2009 (USA)	365
1.1.2010 - 15.1.2010 (Malaysia)	15
16.1.2010 - 31.12.2010 (USA)	350

For the years of assessment 2009 and 2010, Ikmal is deemed a resident in Malaysia pursuant to subsection 7(1B) of the ITA 1967 because he:

- i. is a citizen of Malaysia;*
- ii. is employed in the public services in Malaysia; and*
- iii. is exercising his employment outside Malaysia by virtue of his employment which requires him to carry out his duties overseas.*

Example 17

Farah, a Malaysian citizen was married to a French national in 2003. Since her marriage, she has resided in France and only visited her family in Malaysia for periods of less than two weeks in each year. When the Malaysian Tourism representative office in France needed a French translator, Farah applied for the post and was recruited on 1.3.2008.

For the year of assessment 2008 and subsequent years, Farah is not deemed a resident of Malaysia although she is a Malaysian citizen and working with a Malaysian government agency in France. This is because she was locally recruited in France and is not considered an employee in the public services or a statutory authority in Malaysia.

Example 18

Johan, a Malaysian citizen is an employee of the Malaysia External Trade Development Corporation. He was posted to Chengdu, China to serve at the representative office as a trade commissioner. His period of stay in Malaysia/China was as follows:

Period Of Stay In Malaysia/China	Number Of Days
1.1.2009 - 31.5.2009 (Malaysia)	151
1.6.2009 - 31.12.2009 (China)	214
1.1.2010 - 31.12.2010 (China)	365

For the years of assessment 2009 and 2010, Johan is deemed a resident of Malaysia pursuant to subsection 7(1B) of the ITA 1967 because he:

- i. *is a citizen of Malaysia;*
- ii. *is employed in the service of a statutory authority in Malaysia; and*
- iii. *is exercising his employment outside Malaysia as he is required by his employer, a statutory body in Malaysia, to work in China.*

Example 19

Taufik, an officer with the Ministry of Tourism went on study leave to pursue an MBA course in the United Kingdom (UK). He was sponsored by the Government of Malaysia. His period of stay in Malaysia and UK was as follows:

Period Of Stay In Malaysia/UK	Number Of Days
1.1.2009 - 1.4.2009 (Malaysia)	91
2.4.2009 - 31.12.2009 (UK)	274
1.1.2010 - 31.12.2010 (UK)	365

For the years of assessment 2009 and 2010, Taufik is deemed to be a resident in Malaysia pursuant to subsection 7(1B) of the ITA 1967 because he:

- i. *is a citizen of Malaysia;*
- ii. *is employed in the public services in Malaysia; and*
- iii. *is attending a course outside Malaysia which is fully-sponsored by his employer, the Government of Malaysia.*

Example 20

Su Ling, a Malaysian citizen works in a multinational company in Kuala Lumpur. After working for a few years, she obtained a full sponsorship from her employer to pursue a bachelor's degree course in Australia. Her period of stay in Malaysia and Australia was as follows:

Period Of Stay In Malaysia/ Australia	Number Of Days
1.1.2009 - 30.11.2009 (Australia)	334
1.12.2009 - 31.12.2009 (Malaysia)	31
1.1.2010 - 10.2.2010 (Malaysia)	41
11.2.2010 - 31.12.2010 (Australia)	324

For the years of assessment 2009 and 2010, the residence status of Su Ling is determined in accordance to subsection 7(1) of the ITA 1967. Subsection 7(1B) of the ITA 1967 is not applicable as Su Ling is not an employee in the public services or a statutory authority in Malaysia.

Su Ling is a non-resident in Malaysia for the years of assessment 2009 and 2010 in accordance to subsection 7(1) of the ITA 1967.

7. Dual Residence Status And Agreements For The Avoidance Of Double Taxation

- 7.1 Malaysia has entered into agreements with a number of countries that avoid double taxation by allocating taxing rights over bilateral income flows between the respective treaty partners.
- 7.2 An individual who is a resident in one of the countries for a basis year may also be a resident of that other country for purposes of a double tax agreement. Where an individual is a resident of both countries, the avoidance of double tax agreements (DTA) generally contain certain *tie breaker* tests to establish residence solely in one of the countries for purposes of the agreement.
- 7.3 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 country for purposes of the agreement. The terms of the relevant DTA should be referred to when determining tax liability. However, Malaysian resident status is still applicable for purposes of the general application of the domestic law, so that the individual's income remains assessable to Malaysian tax.

8. Effective Date

This Ruling is effective for the year of assessment 2011 and subsequent years of assessment. This Ruling replaces Appendix A in Public Ruling No. 2/2005 issued on 6 June 2005.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**