

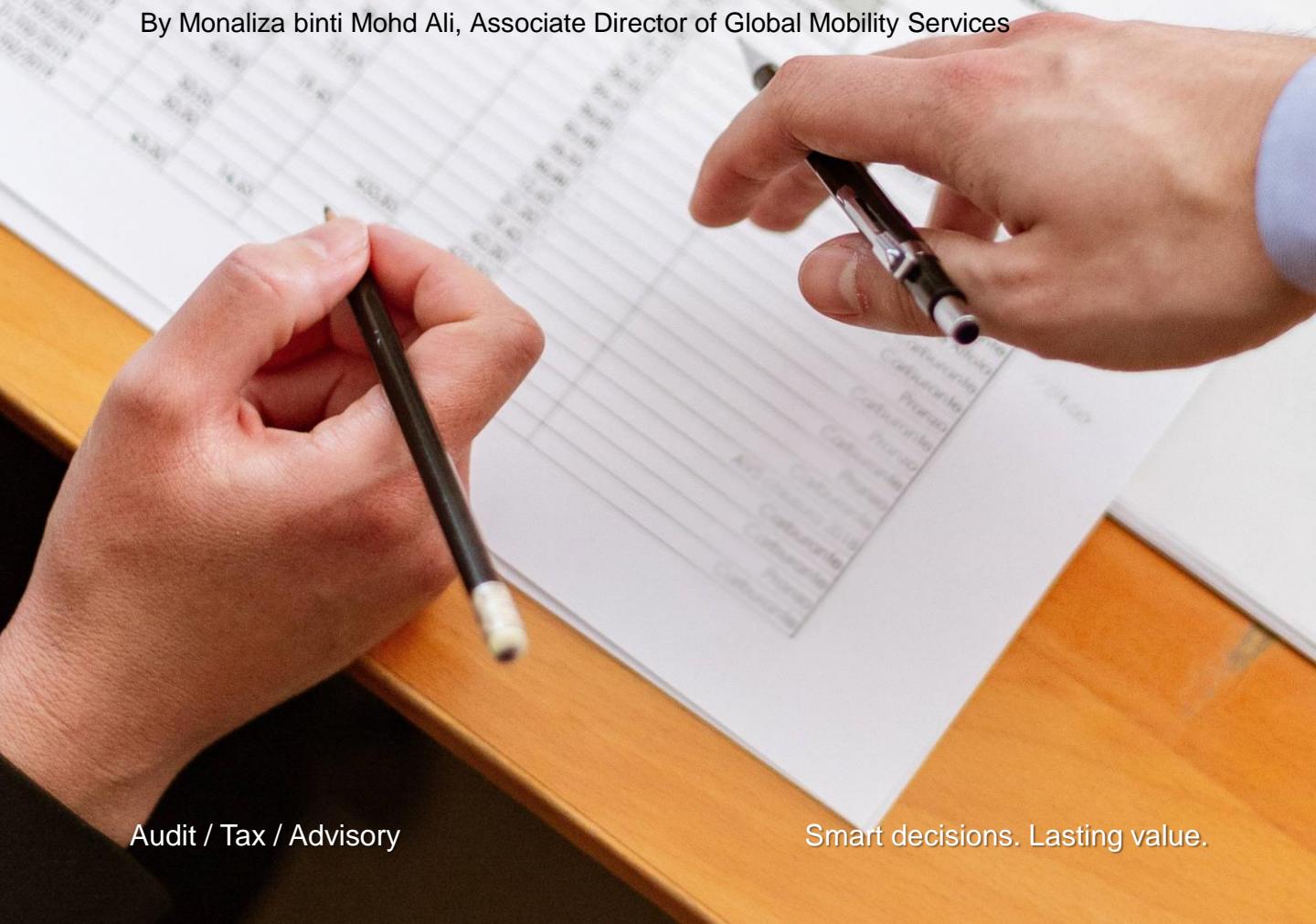


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Tax Awareness for Employers in Malaysia

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What will be the IRBM's next course of action in reforming the tax system to address tax leakages, reduce the existing tax gap and explore new sources of revenue to increase tax collections? Will the IRBM place more emphasis on employers' audits?

Tax awareness for employers

Employers should get ready and be prepared for an audit before it is too late. Having an in-depth understanding of the tax obligations of an employer in Malaysia is important due to the increasingly stringent tax laws and tax audits carried out by the IRBM. Employers' tax obligations in Malaysia are clearly spelled out under Section 83 of the ITA and Income Tax (Deduction From Remuneration) Rules 1994, 2015 and 2017. A brief summary is as follows:-

Act	Description	Deadline	Forms
83(1)	Obligation to submit employer's return	31 March of the following tax year	E/ e-E
83(1A)	Provide the employee with the Statement of Remuneration	By end of February of the following tax year	EA/ EC
83(2)	Notify the new commencement of employee	Within one (1) month from the date of commencement	CP22
83(3)	Notify the cessation of employment	Not less than one (1) month before the cessation date	CP22A/ CP22B
83(4)	Notify on employee leaving Malaysia	Not less than one (1) month before the expected date of departure	CP21
83(5)	Moneys withheld due to cessation	Date of last drawn salary	-
83(6)	Deemed employer shall also be responsible under Section 83 of the ITA and Income Tax (Deduction From Remuneration) Rules	-	-
Rules 1994, 2015, 2017	Monthly Tax Deductions (MTD) System	By 15 th of the following month	e-CP39

Most employers are aware of the annual and monthly submissions that are required to be submitted by them to the IRBM and employees, i.e. Forms E, EA and MTD. However, some employers may face difficulties in executing the IRBM's requirements in accordance with the relevant legislation due to various practical issues. The following are some of the practical issues that may be faced by employers:-

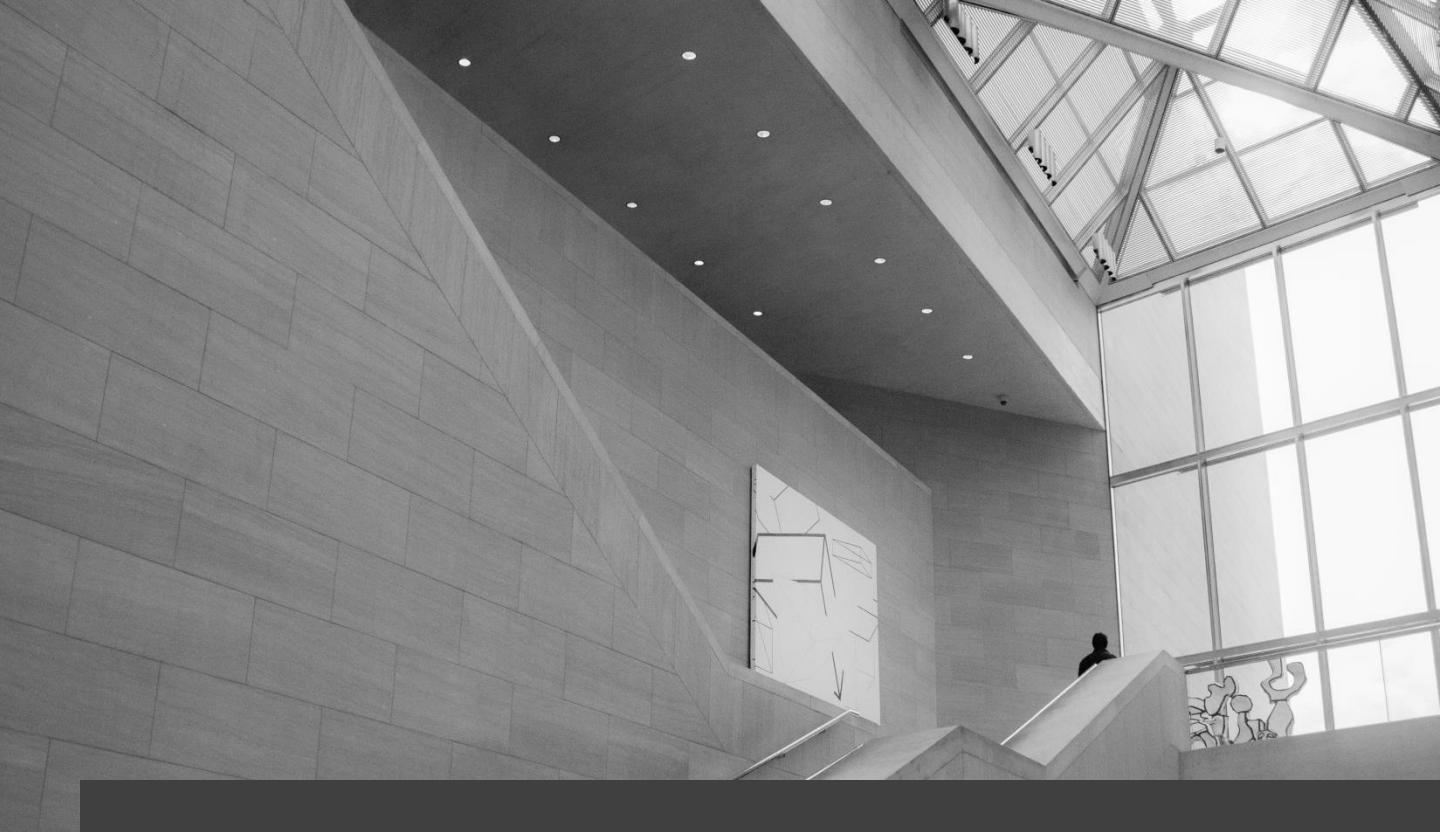
Section 83(2) of the ITA: Notify the new commencement of employee

Most employers are not aware of the requirement to notify the IRBM on the commencement of new employees even though the new employee already has an income tax file number (especially for Malaysian employees). It is often assumed that the reason for notifying on the new employees to the IRBM is for the purpose of obtaining an income tax file number for the new employees. However, this is not the case. An employer needs to notify the IRBM on the new commencement of employee even though the employee has an income tax file number.

HOW ABOUT

- Are employers required to notify the IRBM on the new commencement of non-Malaysian employees i.e. expatriate employees, foreign workers and independent consultants?
- When will be the date of commencement? Will it be as per the employment contract signed or date of performing duties or date of work permit issued?





Section 83(3) of ITA: Notify the cessation of employment (terminate/ retire/ death)

Based on the ITA, employers are not required to notify the cessation of employment if the employer deducts MTD, monthly remuneration is below the threshold of MTD and the employee is not retiring from employment. Nevertheless, employers must notify the IRBM if the employee ceases employment due to retirement, termination of contract or death if the employee's employment income is likely to be chargeable to tax. However, a few IRBM branches have advised employers to notify on the cessation of employment for all scenarios of cessation. In this regard, it is advisable for employers to clarify and confirm with their respective IRBM branches on this matter before notifying on the cessation of employment.

Section 83(4) of ITA: Notify on employees leaving Malaysia

In order to notify on employees leaving Malaysia, the employers must prepare a proper checklist to be completed by the employee in order to identify whether the employee will be leaving Malaysia or not (i.e. for a period exceeding three (3) months).

HOW ABOUT

- If the employer is not aware of the cessation of the employee due to an international assignment, how is the employer going to fulfil his obligations?
- If the employee's remuneration cannot be finalised within one (1) month before the cessation date, how is the employer going to report his remuneration?

Most employers are not aware that they are considered as “deemed employers” especially if they are sponsoring any work permit (e.g. Professional Visit Pass) for their third party vendors. In this case, they will still be the “deemed employer” even though the third party vendors’ employees’ remuneration are paid from their home country.

Nevertheless, further analysis may be required in order to determine the “deemed employer” status. A “deemed employer” must be aware that its tax responsibilities are the same as those of an employer.

Section 83(6) of ITA: Deemed employer

Employers are considered as “deemed employers” if they employ:

- Trainees/ Interns (including non-Malaysian citizen);
- Temporary staff;
- Contract workers;
- Third party vendors (especially non-Malaysian citizens);
- Sponsoring any work permit for non-Malaysian citizens; and
- Employees from head office/ subsidiary on temporary assignment/ frequent business travelers.

Consequences for non-compliance

In the event that an employer fails to comply with Section 83 of the ITA, the employer will be liable for prosecution and if found guilty, shall, on conviction be liable to a fine of not less than RM200 and not more than RM20,000, or to imprisonment for a term not exceeding six (6) months, or to both.

Incorrect submission of the Form E is an offence and shall on conviction



Fine

not less than RM200
not more than RM20,000

or



Imprisonment

not exceeding 6 months

or Both

under subsection 120(1) of the MITA

In conclusion, all employers need to be prepared for an employer’s audit which may be conducted by the IRBM in the near future. Employers must be prepared with all the information/ documents required to be presented during an audit. It is also advisable for employers to lay out their internal processes and procedures in order to be in compliance with all the employer’s tax obligations.



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