

CHAPTER THREE : EMPLOYMENT INCOME I

Chapter Topic List:

Introduction

1. Meaning of Employment
2. Tax Implication of Employment
3. Derivation of Employment Income

Learning Outcome:

On completion of this chapter, learners should be able to:

1. Define employment, employer and employee;
2. Explain the difference between employment and self-employment;
3. Explain the different types of employment income under Section 13(1); and
4. Explain the rules for derivation of employment income under Section 13(2).

Introduction

One of the major source of revenue for the Government is income tax. It is assessable under Section 4(b) of the Act. Employment income relates to an employee for any consideration paid for services rendered.

1. Employment, Employee and Employer

Employment is defined in Section 2 to mean:

- (a) employment in which the relationship of master and servant subsists;
- (b) any appointment or office, whether public or not and whether or not that relationship subsists, for which remuneration is payable.

Employee means:

- (a) where the relationship of master and servant subsists, the servant;
- (b) where that relationship does not subsist, the holder of the appointment or office which constitutes the employment.

Employer means:

- (a) where the relationship of master and servant subsists, the master;
- (b) where the relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that person and the employee may be the same person acting in different capacities.

2. Employment Income versus Business Income

Employment income	Self employed
<ul style="list-style-type: none"> - EPF contributed by employer - Eligible for medical benefits, sick pay an leave pay assured - Gratuity and compensation for loss of employment are entitled for exemption - Non-resident employees are eligible for exemption*. What is the condition? 	<ul style="list-style-type: none"> - Eligible for deduction - Capital allowances are available - Any unabsorbed loss can be utilised

3. Derivation of employment income

Section 13(2):-

“Gross income in respect of gains or profits from an employment –

- (a) for any period during which the employment is exercised in Malaysia;
 - (b) for any period of leave attributable to the exercise of the employment in Malaysia;
 - (c) for any period during which the employee performs outside Malaysia duties incidental to the exercise of the employment in Malaysia;
 - (d) for any period during which a person is a director of a company and that company is resident in Malaysia for the basis year for a YA and within that basis year that period or part of that period falls; or
 - (e) for any period during which the employment is exercised aboard a ship or aircraft used in a business operated by a person who is resident in Malaysia for the basis year for a YA and within that basis year that period or part of that period falls,
- shall be deemed to be derived from Malaysia.”

Find the meaning of these terminologies:-

- (i) ‘deemed derived’
- (ii) ‘exercising employment’
- (iii) ‘attributable to’
- (iv) ‘incidental to’

Section 13(3):-

“Gross income in respect of gains or profits from an employment in the public services or the service of a statutory authority –

- (a) for any period during which the employment is exercised outside Malaysia, or
 - (b) for any period of leave attributable to the exercise of the employment outside Malaysia,
- shall be deemed to be derived from Malaysia if the employee is a citizen.”

4. Exemption of employment income

(i) W.e.f. YA 2007, income of employees that worked on board of a ship (used in business) is exempted from income tax provided a tax resident owns the business.

(ii) '60 days exemption' for:-

(a) _____; and

(b) _____

(iii) W.e.f. YA 2004, foreign source employment income is tax exempt.