Chapter 4
Employment Acquisition

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Definition of Employment

According to dictionary.com, “employment” is defined as an occupation by which a person earns a living.
Definition of Employment

- The ITA, 1967 defined employment as the following:

  Employment is said to be taken place when:

  (a) The relationship of master and servant subsists and/or

  (b) Any appointment or office subsists, for which remuneration is payable. Office is a position or post to a person and he can vacate and a new person can be appointed to replace him.
Definition of Employment

- Employee is defined as the servant and/or the holder of the appointment or office and employer is defined as the person responsible for paying any remuneration to the employee.
Definition of Employment

- An employer must have control over his/her employees in terms of how they perform their duties. On the other hand, an employee is responsible to execute duties as required and instructed by employer. This is due to the fact that, employee are paid in the form of wages or salaries for the works which employee have performed.
According to dictionary.com, an employer is a person or business that employs one or more people especially for wages or salary.
Employer

- According to ITA 1967:

(a) Where the relationship of master and servant subsists, the master; and

(b) Where the relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has employment, notwithstanding that person and the employee may be the same person acting in different capacities.

- Employer is the master in an employment agreement. An employer can be an individual or an entity.
Employee

According to the Merriam Webster online dictionary, an “employee” could be defined as a person working for another person or a business firm for pay.
Employee

• According to ITA 1967:
Employee

- Employees are servants who deliver services to their employers. In line with that, wages, salaries and allowances will be given for services rendered.
“Profession” is not clearly defined under the Act.
Profession

From The CIR vs Maxse (1991) (12 TC 41) case, profession should include employment which requires intellectual skills or hand skills such as artistic carving skills or surgeon knowledge and skills controlled by consumers’ intellectual. Thus in line with this, we can say that profession is different from employment. It is also known as call or commodity sales.
Principles to Identify Employment or Profession
Importance of Differentiate Employment & Profession

- Why are the differences between profession and employment so vital? Well, we can say that those two could make a big difference in terms of chargable tax.
Importance of Differentiate Employment & Profession

- Employment is taxable in accordance with the following section:

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**Section 4(b), ITA, 1967:**

(a) Tax exemptions will be given for gratuity and compensation for loss of employment.

(b) For non-resident employee, exemptions for employment income received will be exempted if the employment period is not more than 60 days in a calendar year.

(c) Income is taxable based on graduated tax rate.

(d) Scheduled tax deduction.
Importance of Differentiate Employment & Profession

- Profession is taxable as business income which are stated in the following:
Acquisition from Employment Income

- An employment income would only be taxed in Malaysia under the following circumstances:
Income Deemed Derived from Malaysia

- Section 13(2), ITA, 1967: Now, we are going to have a closer look at Section 13(2) of the ITA, 1967.
Income Deemed Derived from Malaysia

- **Section 13(2)(a), ITA, 1967**

  The scope of this section covers employee who is working in Malaysia. If foreign company employs employees to work in its branch in Malaysia, the employment income is deemed derived in Malaysia even though the salary is being paid out by parent company which is not in the country.
Income Deemed Derived from Malaysia

- **Section 13(2)(b), ITA, 1967**

  If an employee is doing his/her employment in Malaysia, any employment income received for the period the employee is off for work, is deemed derived in Malaysia.
Income Deemed Derived from Malaysia

- This subsection also includes non-resident employee who executes his/her employment in Malaysia, and off from work either to visit home country or to go for vacation in other countries. The employee is taxable in Malaysia for employment income received throughout his/her vacation period as it relates to his/her work in Malaysia.
Income Deemed Derived from Malaysia

- **Section 13(2)(c), ITA, 1967**

  This subsection is meant for employment income in which works are done outside Malaysia in line with employment in Malaysia.
Income Deemed Derived from Malaysia

For example, an engineer who works in Malaysia but has to go to overseas for discussions with foreign engineers regarding an ongoing projects to be managed in Malaysia. So the income received while in overseas is also deemed derived from Malaysia.
Income Deemed Derived from Malaysia

- **Section 13(2)(d), ITA, 1967**

- Rewards received from managing director who is a resident in Malaysia is deemed derived in Malaysia. However, this subsection differs from Section 13(2)(a)-(c) in which the director must not necessarily be working in Malaysia.
Income Deemed Derived from Malaysia

- Section 13(2)(e), ITA, 1967
- This subsection is subjected to income received by employees who work in airline companies or shipping companies, resident in Malaysia. For example, MAS, AirAsia, MISC, just to name a few.
Income Deemed Derived from Malaysia

- **Section 13(3), ITA, 1967**
- **Section 13(3) of the ITA, 1967** has to say. Well, it states the following: