



TAX FLASH

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Guidelines on Tax Treatment of Income Received from Outside Malaysia

In the 2022 Budget, it was announced that effective 1st January 2022, income of a person who is a resident in Malaysia arising from sources outside Malaysia and received in Malaysia will no longer be exempted from tax. The types of foreign-sourced income ["FSI"] received in Malaysia chargeable to tax are as follows:-

- Business income;
- Employment income;
- Dividends, interest or discounts;
- Rents, royalties or premiums;
- Pensions, annuities or other periodical payments; and
- Other gains or profits not falling under any of the above.

Pursuant to the Finance Act 2021, FSI received in Malaysia by a resident in Malaysia will be taxed at the following rates:-

- FSI received from 1st January 2022 to 30th June 2022 – at 3% on gross amount
- FSI received from 1st July 2022 onwards – at the prevailing tax rate of the taxpayers

Exemption from tax for certain categories of FSI received by tax residents during a 5-year period from 1st January 2022 to 31st December 2026 has subsequently been granted as provided under the following legislations:-

i. **Income Tax (Exemption) (No.5) Order 2022**

- Exemption on all types of FSI received by an individual resident in Malaysia from outside Malaysia (excluding a source of income from a partnership business in Malaysia).

- [Moore Malaysia](#)
- [Moore Global](#)
- [Inland Revenue Board](#)

- To qualify for the exemption, the FSI shall have been subjected to tax in the country of origin where the income arises [“subject to tax condition for all FSI”].

ii. **Income Tax (Exemption) (No.6) Order 2022**

- Exemption from tax on dividend income from outside Malaysia received in Malaysia by a person resident in Malaysia who is:-
 - a company incorporated or registered under the Companies Act 2016;
 - a Limited Liability Partnership [“LLP”] registered under the Limited Liability Partnership Act 2012; or
 - an individual who has dividend income received in Malaysia from outside Malaysia in relation to a partnership business in Malaysia registered under the Registration of Businesses Act 1956.
- To qualify for the exemption, the following conditions must be satisfied:-
 - the dividend income shall have been subjected to tax in the country of origin where the income arises [“subject to tax condition for dividend income”]; and
 - the headline tax rate in the country of origin where the income arises at that time is at least 15%.

The Inland Revenue Board [“IRB”] has recently issued the [Guidelines on Tax Treatment of Income Received from Outside Malaysia](#) [“the Guidelines”] (available in *Bahasa Malaysia*) dated 29th September 2022 to provide guidance and clarifications which include the following:-

i. **Definition of “Received in Malaysia”**

The FSI is considered as received in Malaysia if it is transferred or brought into Malaysia:-

- in the form of cash (i.e. bank notes, coins, cheques); and/or
- via electronic transfer (i.e. bank transfer, payment card, electronic money, privately-issued digital assets and central bank digital currency).

ii. **Qualifying Conditions for Exemption of Dividend Received by Resident Companies, LLP and Individual (in Respect of Dividend Income Received through a Partnership Business in Malaysia)**

- “Subject to tax condition for dividend income” in the foreign jurisdiction is considered to have been met if:-
 - Tax has been paid in the country of origin by way of:-
 - income tax or withholding tax on the dividend; or
 - underlying tax (i.e. income tax paid/payable in the country of origin on the underlying profit arising from operating income in the country of origin where the profit after tax is used to pay dividends); or
 - The dividend is paid from underlying profits arising from the operating income in the country of origin where no tax is paid by reasons of:-
 - unutilised losses or capital allowances;
 - profits which are capital in nature;
 - tax incentives granted for substantive business activities carried out in the country of origin; or
 - tax consolidation regime in the country of origin.
- **Headline Tax Rate of at Least 15%**
 - The headline tax rate refers to the highest prevailing corporate tax rate in the year when the dividend is subject to tax in the country of origin which must be at least 15%.
 - The headline tax rate may not be the same as the rate of tax imposed on the dividend income.

iii. **Qualifying Conditions for Exemption of All Sources of FSI Received in Malaysia by Resident Individuals**

- “Subject to tax condition for all FSI” in the foreign jurisdiction is considered to have been met if:-
 - Tax has been paid by way of income tax or withholding tax on the FSI in the country of origin; or
 - Tax has not been imposed on FSI in the country of origin by reasons of:-
 - the income is not taxable due to the jurisdiction’s tax system;
 - the income is below the threshold of income chargeable to tax;
 - the income is granted exemption from tax through tax incentives;
 - the dividend income has been subject to the underlying tax; or
 - the dividend income is paid out of underlying profits not subject to tax due to:-
 - unutilised losses or capital allowances;
 - profits which are capital in nature;
 - tax incentives granted for substantive business activities carried out in the country of origin; or
 - tax consolidation regime in the country of origin.

iii. **Tax Treatment on Expenses Related to FSI Received in Malaysia**

- Expenses incurred in relation to the FSI received in Malaysia which are exempted from tax under the Income Tax (Exemption) (No. 5) Order 2022 and the Income Tax (Exemption) (No. 6) Order 2022 will be disregarded.
- Expenses attributable to taxable FSI received in Malaysia will be allowed for tax deduction.
- Expenses incurred in relation to the FSI received in Malaysia between 1st January 2022 to 30th June 2022 which are subject to tax at 3% on gross amount will be disregarded.

iv. **Bilateral Relief and Unilateral Relief**

- Where the FSI is subject to tax in both the country of origin and in Malaysia, relief will be given by way of:-
 - bilateral credit (if a double taxation agreement [“DTA”] is signed between two countries); or
 - unilateral credit (if there is no DTA)in computing the tax payable on the FSI brought to tax in Malaysia.
- Bilateral credit / unilateral credit is also available for FSI received during the period from 1st January 2022 to 30th June 2022 which is subject to tax at 3% on gross amount.
- Taxpayers claiming the bilateral / unilateral relief are required to keep relevant documents to substantiate that foreign tax has been suffered in respect of the FSI brought to tax in Malaysia.

v. **Exclusion of FSI from Computation of *Cukai Makmur***

- FSI received in Malaysia in the year of assessment [“YA”] 2022 is excluded from the computation of *Cukai Makmur* of 33% for companies (other than Small and Medium Enterprise) with chargeable income exceeding RM100 million and the computation is based on a prescribed formula.
- The above *Cukai Makmur* is only applicable for the YA 2022.

vi. **Documentation Requirements**

- Taxpayers claiming the exemption of tax in respect of the FSI received in Malaysia are required to maintain sufficient documents (i.e. dividend voucher, notice of assessments etc.) to substantiate that the income has been subject to tax in the country of origin.
- Taxpayers are also required to make a declaration in their Malaysian income tax return that the relevant FSI qualifies for tax exemption and provide relevant details such as:-
 - type and amount of the income;
 - country of origin of the income;
 - amount of tax charged in the country of origin;
 - headline tax rate in the country of origin (for companies, LLPs and individuals earning income in relation to a partnership business);

- individual's income which are not subject to tax in the country of origin;
 - dividend income which has been subject to underlying tax;
 - justification on the inapplicability of underlying tax (if relevant); and
 - verification letter or any other documentation to prove that incentive/income tax exemption has been granted by the tax authorities of the foreign jurisdiction.
- The IRB has advised recently that the declaration to be made in the income tax return shall cover the whole basis period for the YA 2022, including the FSI received in Malaysia prior to 1st January 2022. For instance, a Malaysian resident company with a basis period ended on 31st March 2022 must include the FSI it received in Malaysia from 1st April 2021 to 31st December 2021 in Item F9 of the Form C for the YA 2022.

There may be potential practical issues to provide supporting document to substantiate that the FSI / dividend income has been subject to tax for the purpose of claiming the exemption of tax in respect of the FSI received in Malaysia. In regard to this, the professional bodies are currently seeking some clarifications on the above matter. Should there be any development, we will update you accordingly.

Please refer to the Guidelines for detailed explanation and various examples which illustrates the tax treatment and exemption of FSI received by tax residents in Malaysia.

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