



MOORE Advent

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PR No. 2/2024 – Investment Holding Company

The Inland Revenue Board ["IRB"] has recently issued the [Public Ruling \["PR"\] No. 2/2024 – Investment Holding Company \["IHC"\]](#) to provide guidance on tax treatment in respect of an IHC resident in Malaysia. This new PR replaces the PR No. 10/2015 issued on 16th December 2015.

The pertinent updates included in the new PR are as follows:-

i. Expenses and Deduction Related to Single-Tier Dividend

- Pursuant to Paragraph 12B, Schedule 6 of the Income Tax Act 1967 ["ITA 1967"], dividend income that is not entitled to deduct tax at source is exempted from tax and any deductions related to such dividend income shall be disregarded in determining chargeable income (effective year of assessment ["YA"] 2017).
- In line with the above, expenses related to dividend income, any allowances under Schedule 3 of the ITA 1967 and other deductions including *zakat*, donations and other expenses related to the dividend income shall be disregarded in calculating the statutory/chargeable income.

ii. Time Limit for Unabsorbed Adjusted Business Losses Carried Forward

- Any unabsorbed current year adjusted business losses arises in a year of assessment can be carried forward up to 10 consecutive years of assessment commencing immediately following that year of assessment (effective YA 2019).
- Any balance of unabsorbed adjusted business losses after the end of the period of 10 consecutive years of assessment is to be disregarded.

Note : For further details on the previous PR No. 10/2015, kindly refer to our [Tax Flash – February 2016](#).

Tax Investigation Framework 2024

The IRB has issued the [Tax Investigation Framework 2024](#) ["2024 Framework"] to replace the previous Tax Investigation Framework issued on 1st January 2023.

The salient amendments included in the 2024 Framework are as follows:-

i. Investigation Procedure [Paragraphs 7.1, 7.2 and 7.5 of 2024 Framework]

- Application for Documents and Information
 - Investigation can be carried out by issuing an application letter to request for documents and information from the taxpayers, tax agents and third parties for review.
 - Taxpayers may be requested to be present at the IRB's office to provide information and explanation orally or in writing.
- Inspection Visit
 - Investigation can also be carried out by conducting an inspection visit without prior notice to the taxpayer's business premises or residence, tax agent, third parties and other necessary places where the inspection visit will be conducted professionally and ethically.
- Closure of Tax Investigation Cases
 - Once the investigation procedure is completed, the IRB will issue the letter of tax investigation findings to the taxpayer.
 - If the tax investigation findings are agreed upon, an agreement / letter of undertaking will be signed. The tax investigation case is considered completed after approval from the DGIR is obtained and assessment is raised.

- If the taxpayer disagrees with the tax investigation findings, the solution is as follows:-
 - (a) the assessment with penalties will be raised based on the DGIR's authority; or
 - (b) the case will be withdrawn if there are facts or evidence which supports the taxpayer's argument.
- For cases decided for prosecution as per situation (a) above, the case will be submitted to the Legal Department.
- For cases that are compounded and not continued with prosecution, the assessment will be raised based on the agreed tax calculation.

ii. Offences, Punishment and Penalties [Paragraphs 10.1.3 and 10.2.2 of 2024 Framework]

- If no prosecution action is initiated in relation to failure of the taxpayer to submit the income tax return form, the DGIR may impose a penalty equal to treble the amount of tax charged as provided under Section 112(3) of the ITA 1967.
- If no prosecution action is initiated in relation to income tax return form or incorrect information, the DGIR may impose a penalty equal to the amount of the tax undercharged as provided under Section 113(2) of the ITA 1967.

iii. Payment Procedure [Paragraph 11 of 2024 Framework]

- The penalty imposed can be collected by the DGIR from the taxpayer as part of the tax.
- However, the taxpayer may make an instalment application to pay the taxes and penalties. If the taxpayer is allowed to pay by instalments, proof of initial payment of at least 25% of the total tax and penalty must be submitted on the date the agreement / letter of undertaking is signed. The remaining payment must be paid according to the instalment scheme allowed by the DGIR.
- Taxpayers who fail to comply with the instalment scheme will be subjected to increase of tax as provided under Section 103(7) of the ITA 1967.
- In the case of taxpayers who have been convicted of the offence, the court will decide the amount of fines and special penalties to be paid. Assessment will be raised after the order is obtained and the amount of tax payment that has to be paid to the DGIR.
- For compounded cases, tax payments must be made based on the assessment raised according to the agreed tax calculation.

iv. Appeal on Assessment [Paragraph 12.1 of 2024 Framework]

- Section 97A(2) of the ITA 1967 and Section 99 to Section 102 of the ITA 1967 allow taxpayers to appeal in relation to assessments raised by the DGIR.
- The taxpayer may appeal on the assessment raised based on the tax investigation findings.
- All appeals against assessments must be made through the completed Form Q to the Department / IRB States / Special Branch which raised the assessment.
- Section 99(1) of the ITA 1967 provides that taxpayer aggrieved by an assessment that has been made for any year of assessment by the DGIR is entitled to appeal to the Special Commissioner of Income Tax ["SCIT"] within 30 days after the delivery of the notice of assessment.
- If there are any parties who are not satisfied with the SCIT's decision, whether the IRB or the taxpayer, the dissatisfied party can appeal so that the case shall be heard by a higher court.
- However, Section 99 of the ITA 1967 does not apply to a composite assessment under Section 96A of the ITA 1967 because the assessment is issued after an agreement made between the taxpayer and the DGIR.

The above 2024 Framework takes effect from 31st May 2024.

Note : For further information on the previous Tax Investigation Framework 2023, kindly refer to our [Tax Flash – February 2023](#) issue.

Updates on Tax Exemption of Foreign-Sourced Dividend Income Received by Companies, LLP and Individuals

The Income Tax (Exemption) (No. 6) Order 2022 provides tax exemption on dividend income which is received in Malaysia from outside Malaysia by a resident company, limited liability partnership ["LLP"] and individual (through a partnership business in Malaysia) [collectively referred to as "qualifying person"] from 1st January 2022 until 31st December 2026.

Following the above, the [Income Tax \(Exemption\) \(No. 6\) Order 2022 \(Amendment\) Order 2024](#) ["the Amendment Order"] has been gazetted on 7th June 2024 to expand the scope of qualifying person and provide relaxation of eligibility criteria for the exemption of foreign-sourced dividend income.

The salient points of the Amendment Order are as follows:-

i. Definition of Qualifying Person

- The definition of "qualifying person" has been expanded to include a company incorporated under the Labuan Companies Act 1990 that has made an election under Section 3A of the Labuan Business Activity Tax 1990 to be charged to tax in accordance with this Act.
- The above is deemed to have effect from YA 2022.

ii. Eligibility Criteria

- The dividend income exempted from tax is subject to fulfilment of the following conditions:-
 - Option A ("participation exemption requirement")
 - the dividend income has been subjected to tax in the country of origin which the income arises ["subject to tax condition"]; and
 - the headline tax rate in the country of origin is not less than 15% ["headline tax rate condition"]; or
 - Option B ("economic substance requirement ["ESR"] condition")
To comply with the requirements as follows:-
 - employ adequate number of employees to carry out the specified economic activities in Malaysia; and
 - incur adequate amount of operating expenditure to carry out the specified economic activities in Malaysia.
- The above is deemed to have come into operation on 1st January 2024.

It is noteworthy that subsequent to the issuance of the above Amendment Order, the Chartered Tax Institute of Malaysia has clarified with the Ministry of Finance that the choice to comply with the eligibility criteria i.e. either the participation exemption requirement or ESR condition will be applied with retrospective effect from 1st January 2022 until 31st December 2026.

Following the above, the IRB has issued the [Guidelines on Tax Treatment in Relation to Income Received from Abroad \(Amendment\) on 20th June 2024](#) to reflect the above changes made. In addition, the aforementioned Guidelines has further provided explanation in relation to the ESR as follows:-

• Specified Economic Activities

- "Specified economic activities" refers to, in the case of:-
 - An investment holding entity:-
 - Holding and managing its equity participation in other entities; or
 - Making necessary strategic decisions in respect of any assets the entity acquires, holds or disposes of and managing and bearing principal risks in respect of such assets;
 - Other than investment holding entity:-

- In the case of a company, LLP or individual (through a partnership business in Malaysia) ["IIP"] carrying out a trade profession or business in Malaysia, specified economic activities refer to the business operations carried out.
- Outsourcing of specified economic activities is permitted provided that the following conditions are complied with:-
 - the specified economic activities are carried out by the outsourced entity in Malaysia;
 - a company / LLP / IIP has exercised adequate monitoring and control in respect of the specified economic activities carried out by the outsourced entity;
 - the outsourced entity is generally expected to charge the company / LLP / IIP a fee for the specified economic activities performed subject to the application of transfer pricing rules;
 - the number of qualified employees employed and the amount of operating expenditure incurred by the outsourced entity in Malaysia are in line with the level of specified economic activities carried out by the outsourced entity; and
 - if the outsourced entity provides services to more than one company / LLP / IIP, a computation of expenditure must be apportioned accordingly.
- **Service / Non-service Director**
 - A service director can be considered as an employee if he/she is employed based on a contract of service and not a contract for service.
 - A non-service director is not considered as an employee.

Note : For further details, kindly refer to our [Tax Flash – August 2022](#), [Tax Flash – November 2022 \(Special Edition\)](#) and [Tax Flash – June 2024](#) issues and our [News Update dated 17th January 2023](#).

Guidelines on Tax Treatment of Hybrid Instrument

The IRB has recently issued the [Guidelines on Tax Treatment of Hybrid Instrument](#) to provide guidance on the determination of nature of hybrid instruments and tax treatments related to the distribution or profit on the hybrid instrument for the holder and issuer of the hybrid instrument.

The salient points of the above Guidelines are as follows:-

i. Introduction to Hybrid Instruments

- Hybrid instruments refer to a financial instrument that exhibits both equity and debt features.
- The determination of tax treatment of the distribution or profits for financial instrument depends on the nature of the instrument i.e. whether it is classified as an equity or debt.

ii. Classification of Hybrid Instruments

- The determination of whether a hybrid instrument is equity or debt involves determining the real economic value of an instrument through the examination of legal rights and obligation, the substance and the combination of equity/debt characteristics.
- The factors to be considered to determine the nature of the hybrid instrument include:-

Factors	Characteristics of an Equity	Characteristics of Debt
The source from which the principal will be repaid and the distribution or profits will be paid	Dependent on retained earning or restricted reserve	• Not subjected to the instrument issuer's profits (regardless of the financial well-being) and liability to pay is accumulative; or • Payment of distributions or profits is mandatory and/or cumulative

The order in which principal and the distribution or profits will be repaid in case of liquidation or dissolution	• Lower as compared to that of a general creditor or a holder of subordinated debt; or • To assume responsibility for any potential losses incurred by the issuer of the instrument such as reduction of principal amount of the instrument to compensate for the losses	Similar to that of a general creditor or a holder of subordinated debt
Right to enforce payment of distributions or profits and repayment of principal by instrument holder	The instrument holder has no means to enforce payment of distributions or profits and repayment of principal	The instrument holder has the absolute authority to demand payment of distributions or profits, as well as the repayment of the principal amount, on a fixed date and at a fixed amount
In the event of a default	No right or conditional right to recover the principal or the accumulated distributions or profits	A step-up feature exist where the instrument issuer is obligated to reimburse the principal amount
Maturity date of Instrument	No fixed repayment date	Has a fixed repayment date
The ability of the issuer to obtain loan and makes payment on an arms' length transaction	The instrument's terms and conditions are unreasonable and no independent creditor will provide a similar loan with such terms	The issuer has the capability to secure a loan and fulfills the payment obligations through an arm's length transaction
Involvement in the management	Has voting right at the general meeting	Has no voting right at the general meeting
Benefit to the instrument holder	Expects participation in profits and long-term capital appreciation of the value of the investment	Expects a return on the sum invested regardless of the profitability of the entity and seeks to secure a steady stream of recurring income over the life of the investment

The factors above are arranged in orders of priority in determining the nature of instrument. However, the presence of a single factor is insufficient to determine the hybrid instrument as equity or debt and a combination of facts and circumstances need to be taken into account.

iii. Islamic Hybrid Instrument

The Guidelines also provide features of Islamic hybrid instruments and factors to determine whether the Islamic hybrid instrument is equity or debt in nature.

iv. Tax Treatment

The tax treatment for hybrid instruments for instrument holders and instrument issuers are as follows:-

Nature of Hybrid Instrument (For Tax Purposes)	Payment Arising from Instrument	Tax Treatment	
		Instrument Holder	Instrument Issuer
Equity	Treated as profit distributions	- Dividends received from a company resident in Malaysia is tax-exempt under Paragraph 12B, Schedule 6 of the ITA 1967 - Foreign dividend income received in Malaysia from 1st January 2022 until 31st December 2026 may qualify for tax exemption under Income Tax (Exemption) Order (No. 6) 2022 - Distributions on instrument issued by real estate investment trust are taxable depending on unit holders' activities - In all other cases, financial instruments are assessable to tax in accordance with the relevant current tax treatment in Malaysia and provided not specifically exempt	Any payment made in relation to the instrument is not an allowable deduction under Section 33(1) of ITA 1967 or other similar provision of any tax laws in Malaysia
Debt	Treated as interest	Receipt of interest arising from the instrument is taxable in the hands of the instrument holder unless granted tax exemption which includes:- - non-resident companies for ringgit denominated <i>sukuk</i> (other than convertible loan stock) approved by the Securities Commission Malaysia (Paragraph 33A, Schedule 6 of ITA 1967); - any person for non-ringgit <i>sukuk</i> originating in Malaysia (other than convertible loan stock) and approved by the Securities Commission Malaysia or Labuan Financial Services Authority (Paragraph 33B, Schedule 6 of ITA 1967); - any individual, unit trust and listed close-end fund in respect of debentures or <i>sukuk</i>, other than convertible loan stock approved by the Securities Commission Malaysia (Paragraph 35, Schedule 6 of ITA 1967)	Any sum payable in relation to the instrument is allowed as deduction under:- - Section 33(1) of ITA 1967 and subject to restriction under Section 33(2) of ITA 1967 and other provisions under the ITA 1967; or - similar provisions involving any tax laws in Malaysia

Guidelines on Malaysia Digital Tax Incentive for Expansion Incentive and New Investment Incentive

Malaysia Digital ["MD"] tax incentive is a new outcome-based tax incentive scheme offered to eligible MD companies that undertake or propose to undertake qualifying activity by utilising any of the following promoted tech enablers:-

- artificial intelligence and/or big data analytics;
- internet of things;
- cybersecurity;
- cloud;
- blockchain;
- drone technology;
- creative media technology including extended reality and/or mixed reality;
- integrated circuit design with embedded software;
- robotics and/or automation; and/or
- advanced network connectivity and/or telecommunication technology.

The Malaysia Digital Economy Corporation ["MDEC"] has recently issued the [Guidelines on MD Tax Incentive \(Expansion Incentive\)](#) and [Guidelines on MD Tax Incentive \(New Investment Incentive\)](#) setting forth the overview of the MD status, eligibility criteria and application procedures for the two (2) categories of tax incentives i.e. expansion incentive and new investment incentive offered to eligible MD companies.

The incentives offered under the categories of expansion and new investment are as follows:-

	Expansion Incentive	New Investment Incentive
Reduced tax rate	15% on qualifying intellectual property ["IP"] income and non-IP income for 5 years	0% on qualifying IP income and 5% or 10% on non-IP income for 10 years
Investment tax allowance	30% or 60% of qualifying capital expenditure against up to 100% of statutory income for 5 years	60% or 100% of qualifying capital expenditure against up to 100% of statutory income for 5 years

Among others, the eligibility criteria for an applicant company to apply for the expansion incentive and new investment incentive are:-

- i. The company must be incorporated or deemed to be registered under the Companies Act 2016 and resident in Malaysia.
- ii. The company is proposing to undertake the qualifying activity in Malaysia.
- iii. Must not be granted any tax incentive by the Government of Malaysia in relation to the qualifying activity.
- iv. Has a minimum paid up capital of RM250,000 and RM50,000 for the expansion incentive and new investment incentive respectively.
- v. The company must have been in operation for at least 36 months for the expansion incentive.
- vi. For the expansion incentive, the company must be an MD or Multimedia Super Corridor Malaysia Status company whereas for the new investment incentive, the company must have made an application for the award of MD Status.
- vii. For both the expansion incentive and new investment incentive, the company must not have issued any sales invoice for the qualifying activity in Malaysia prior to the date the tax incentive application is received. However, there is a relaxation for new investment incentive where there are at least 60% direct or indirect Malaysian equity ownership in the applicant company, it must not have issued any sales invoice for the qualifying activity in Malaysia more than 12 months prior to the date the tax incentive application is received.

For the expansion incentive, applications must be received by MDEC from 1st January 2024 until 31st December 2027. For the new investment incentive, it is applicable to a company that has been awarded MD Status starting 1st July 2022 and applications must be received by MDEC no later than 31st December 2027.

Service Tax Guides

The Royal Malaysian Customs Department ["RMCD"] has published the following service tax guides recently:-

- [Guide on Hire Passenger Vehicles Services](#) dated 14th June 2024 (in *Bahasa Malaysia*); and
- [MySST User Manual for Online Return and Payment Module \(Same Service Type with Different Tax Rate\)](#) published on 27th June 2024.

Sales Tax Form

The RMCD has uploaded the [Cancellation Application Form for Exemption Certification](#) under Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 to the MySST Portal on 1st July 2024.

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