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Tuan,

**MAKLUM BALAS TERHADAP ULASAN CTIM KE ATAS GARIS PANDUAN LAYANAN
CUKAI BERHUBUNG PENDAPATAN YANG DITERIMA DARI LUAR NEGARA
(PINDAAN)**

Dengan segala hormatnya saya merujuk kepada surat tuan bertarikh 18 Januari 2023 berkaitan perkara di atas.

2. Berdasarkan ulasan pihak CTIM terhadap garis panduan yang telah dikemukakan pada 18 Januari 2023, bersama-sama ini dikemukakan maklum balas Lembaga Hasil Dalam Negeri seperti di Lampiran.

Perhatian dan kerjasama daripada pihak tuan amat dihargai.

Sekian, terima kasih.

**“MALAYSIA MADANI”
“BERKHIDMAT UNTUK NEGARA”
“BERSAMA MEMBANGUN NEGARA”**

(HISHAMUDIN BIN MOHAMED)

Pengarah

Jabatan Dasar Percukaian

b.p. Ketua Pegawai Eksekutif/Ketua Pengarah Hasil Dalam Negeri

Lembaga Hasil Dalam Negeri Malaysia

HASiL

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Comments on:

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

18 January 2023

Prepared by:

Technical Committee – Direct Tax I

Chartered Tax Institute of Malaysia

CTIM Comments

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CTIM Comments**Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)**

1. Economic substance requirements for foreign dividend income**1.1 Para 5.2.1.3 (c)****(c) Comply with the economic substance requirements**

- (i) A resident company, resident LLP or resident individual in relation to a partnership business in Malaysia shall be regarded as having economic substance if it has:
 - (A) employ adequate number of employees with necessary qualifications to carry out the specified economic activities in Malaysia; and
 - (B) incur adequate amount of operating expenditure for carrying out the specified economic activities in Malaysia.
- (ii) As the mode of operation varies from industry to industry, it is neither feasible nor appropriate to specify any minimum thresholds for the economic substance requirement depends on the fact of each case. Factors that will be taken into account include:
 - (A) the number of employees having regard to the nature of the relevant activities, e.g. whether it is a capital or labour-intensive industry;
 - (B) whether the employees are employed on a full-time or part-time basis; and
 - (C) whether office premises have been used for undertaking the relevant activities and whether the premises are adequate for such activities.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

CTIM Comments:

1. We understand that the economic substance requirements are in line with OECD's direction on countering harmful tax practices. However, we would like to request HASiL to apply the above-mentioned economic substance requirements prospectively with effect from 1 January 2023 to avoid retrospection.

It would not be possible for companies to comply with the requirements retrospectively. Companies with non-December year end such as June year end would have closed accounts by 30 June 2022, i.e. when they were made aware of the economic substance requirements. It would be unjust to introduce these requirements retrospectively as companies were not aware of the requirements and hence could not possibly have complied. The European Union (EU) has only asked for measures to be taken to prevent double non-taxation of foreign source income (FSI) from 1 January 2023, hence there is no need for Malaysia to impose the economic substance requirements retrospectively. Even Hong Kong has introduced these on a going-forward basis, from 1 January 2023. Also, given that the amended Guideline was released at the end of December 2022, HASiL should be aware that companies that are currently non-compliant would require time to put in place the necessary measures to satisfy the requirements, and companies may also be awaiting further guidance from HASiL since the current amended Guideline does not provide a lot of detail. As such, as long as companies are able to demonstrate that sufficient effort has been put in to comply with the requirements and that substance is in place sometime in the year 2023, then it should be evaluated reasonably such that these companies should also qualify for the exemption. There is a need for flexibility on this point simply because of the delay in the release of the amended Guideline.

Further, companies with financial year ended in 2022 would have paid their dividends without factoring in the tax arising as a consequence of not being able to comply with the said economic substance requirements. The dividends can only be paid from the profit after tax if the company has no retained earnings. Therefore, the timing of the issuance of the amended Guideline on 29 December 2022 may also affect the dividend payment by the company.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

Maklum balas LHDNM:

Penentuan tarikh kuat kuasa syarat substantif merupakan satu keputusan polisi di bawah Kementerian Kewangan.

2. Income Tax (Exemption) (No. 6) Order 2022 [P.U. (A) 235/2022] currently does not provide for economic substance requirements. Until the P.U. Order is amended, we propose that HASiL does not encourage taxpayers to amend their tax returns which have already been submitted.

Maklum balas LHDNM:

P.U.(A) 235/2022 tidak akan dipinda. Perenggan 3 dalam P.U.(A) 235/2022 telah jelas menyatakan orang yang layak itu hendakkan mematuhi syarat yang dikenakan oleh Menteri sebagai mana yang dinyatakan dalam garis panduan iaitu di Perenggan 5.2.1.3 (c).

Merujuk kepada Perenggan 7 Kenyataan Media bertarikh 30 Disember 2022, pembayar cukai perlu mengemukakan pindaan BNCP sekiranya tambahan syarat kelayakan substantif ekonomi tidak dipatuhi dan tiada penalti akan dikenakan.

3. Given that Para 5.2.1.3(c)(ii) refers to industry nature and poses questions like 'capital or labour intensive industry', kindly confirm whether the number of employees and operating expenses referred to in Para 5.2.1.3(c)(i) is on an 'entity wide' basis and not limited to investment holding operations.

Maklum balas LHDNM:

Syarat substantif ekonomi adalah tidak terhad kepada operasi pemegangan pelaburan sahaja. Perenggan 5.2.1.3(c)(i) merujuk kepada 'orang yang layak' seperti yang diperuntukkan di bawah perenggan 3 dalam P.U.(A) 235/2022.

4. We would like to seek HASiL's clarification on the following:
 - a. *Specified economic activities in Malaysia (Para 5.2.1.3(c)(i)(A))* –
 - i. We would like to request for a definition of the term 'specified economic activities' and a list of specified economic activities.
 - ii. We would like to ask whether 'relevant activities' in Para 5.2.1.3(c)(ii)(A) has the same meaning as 'specified economic activities' in Para 5.2.1.3(c)(i)(A).

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

Maklum balas LHDNM:

- i. 'aktiviti ekonomi tertentu' bermaksud
 - Memegang dan mengurus penyertaan ekuitinya dalam entiti lain
 - Membuat keputusan strategik yang perlu berkenaan dengan mana-mana aset yang diperolehi, dipegang atau dilupuskan oleh entiti; dan mengurus dan menanggung risiko utama berkenaan dengan aset tersebut
- ii. 'aktiviti yang berkaitan' dalam Para 5.2.1.3(c)(ii)(A) membawa maksud dari segi bahasa iaitu berhubung, bersangkutan atau berkenaan.

b. *Employees (Para 5.2.1.3(c)(i)(A)) –*

- i. Whether company directors (non-service directors) can be viewed as "employees" for the purpose of holding and managing foreign share investments? In cases where the holding and management of investments is relatively passive in nature (e.g. small portfolio, stable investments with no regular divestments or new acquisitions), additional headcount may not be required.

We are of the view that the requirement to have a minimum number of employees in a business that undertakes pure equity holding activities should be exempted, to be in line with the Labuan legislation [P.U. (A) 423/2021] and also consistent with Hong Kong. In this regard, a separate category should be created for pure equity holding companies which should not be required to have employees or office space and still be seen to comply with economic substance requirements generally so long as the Companies Act requirements (e.g., having a resident secretary) are complied with and board of directors' meetings are held in Malaysia.

- ii. We would like to request for outsourcing arrangements (which is allowed in other jurisdictions such as HK) to be considered for the purpose of meeting the requirement on the number of employees. It is not industry friendly to require investment holding companies to have full time employees.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

c. *Capital, labour-intensive industry (Para 5.2.1.3(c)(ii)(A))* – the examples given do not appear to be directly relevant to investment holding or management. We request HASiL to clarify.

d. *Premises (Para 5.2.1.3(c)(ii)(C))* – Would HASiL accept situations where there are no office premises as an office may not be needed for the purpose of holding and managing investments, especially when such activities are relatively passive in nature (mentioned in item 4(b) above)?

Maklum balas LHDNM:

Penentuan bilangan pekerja yang mencukupi dan kegunaan premis pejabat adalah bergantung kepada sesuatu industri yang turut mengambil kira jenis aktiviti yang dilakukan serta fakta sesuatu kes.

5. We appreciate that HASiL provides flexibility to the taxpayers by not stating any minimum threshold for the economic substance requirements. However, this may lead to uncertainty as to what is considered “adequate” in the eyes of HASiL. A company may claim for a tax exemption based on its own judgment that it has economic substance, which may be disagreed or challenged by HASiL during a tax audit. This may result in an increased number of appeals. We request HASiL to provide more guidance to prevent potential disputes.

Further, we request for a mechanism for interested taxpayers to voluntarily seek optional pre-approval from HASiL on satisfaction of the economic substance requirements.

Maklum balas LHDNM:

Tiada *pre-approval* daripada LHDNM. Oleh kerana sistem taksiran percukaian di Malaysia adalah berasaskan sistem taksir sendiri maka tiada keperluan untuk mendapatkan *pre-approval*.

6. If the company does not satisfy the economic substance requirements but other entities within the group (e.g. immediate or ultimate holding company) satisfy the economic substance requirements, there should be flexibility for HASiL to apply economic substance requirements on a ‘jurisdictional basis’.

Maklum balas LHDNM:

Syarat substantif ekonomi adalah terpakai hanya kepada syarikat yang membawa masuk pendapatan secara langsung dari luar negara sahaja dan tidak terpakai kepada entiti lain dalam kumpulan syarikat yang berkaitan.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

1.2 Para 7 of HASiL's Media Release dated 30 December 2022 on additional tax exemption requirements on foreign dividend income received in Malaysia from 1 January 2022 to 31 December 2026

7. Oleh yang demikian, bagi Borang Nyata Cukai Pendapatan (BNCP) yang dikemukakan sebelum atau pada 29 Disember 2022, pembayar cukai perlu mengemukakan pindaan BNCP sekiranya tambahan syarat kelayakan substantif ekonomi tidak dipatuhi dan tiada penalti akan dikenakan.

CTIM Comments:

1. We thank HASiL for its decision not to impose a penalty on the revision of the income tax return form submitted up to 29 December 2022. However, this concession should not be limited to tax returns submitted on or before 29 December 2022. The reason being, even at the time of writing the full context of 'economic substance' may not be clear in many practical cases and time is of the essence where the due date for tax return submission is the end of December, January or even February. Hence, if the decision to impose these economic substance requirements retrospectively is unchanged (for which we appeal otherwise in the preceding points), we request that the flexibility to amend the tax return is granted for a longer window.
2. If the decision is to impose these economic substance requirements retrospectively, we also bring to HASiL's attention the complexities of the CP204A tax estimate revisions and potential underestimation penalties under S.107C (10) of the Act. Consider the examples below:
 - a. A company with financial year-end being 31 December. For YA 2022, the due date to file the CP204A is 30 September 2022 at which the economic substance requirements were unknown. Hence, HASiL may grant this company flexibility to file a revised tax estimate, which involves payment beyond the 13th month of the basis period. Alternatively, to make an administrative policy decision not to impose any 'increase in tax' under S.107C (10) for underestimation arising due to the newly imposed economic substance requirements.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

- b. A company with financial year-end being 30 June. For YA 2022, the due date to submit the CP204A is 31 March 2022. In this case, even a flexibility to revise the tax estimate would not be helpful as it is too close to the due date for submission of the tax return. Hence, there should be an administrative policy decision to waive the S.107C(10) 'increase in tax' that arises when the tax return is filed by January 2023 or February 2023 due to the newly imposed economic substance requirements.

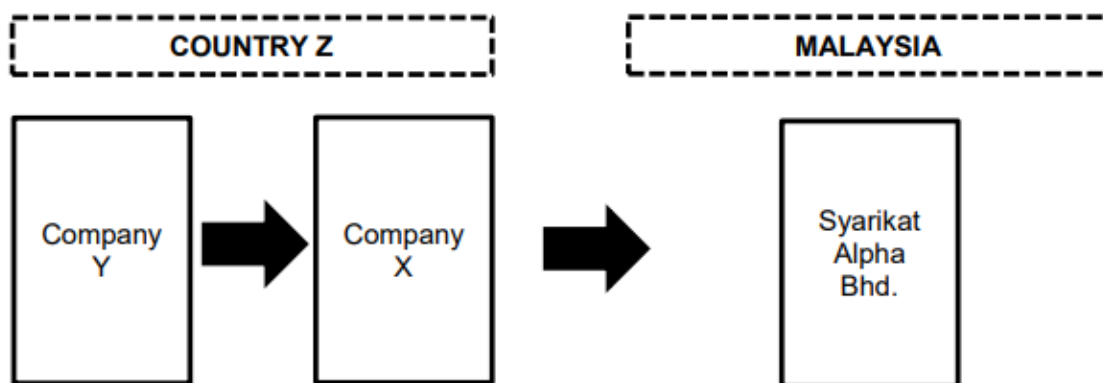
Maklum balas LHDNM:

Syarikat boleh mengemukakan rayuan kepada LHDNM sekiranya dikenakan kenaikan cukai di bawah subseksyen 107C(10).

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

2. **Appendix 1 - Foreign dividends received in Malaysia from foreign companies with a headline tax rate not less than 15%. (Assuming Syarikat Alpha Bhd. has complied with the economic substance requirement)**



1. Company X and Company Y have a headline tax rate not less than 15%.
2. Tax is paid by Company Y out of its operating profits from which dividends are paid to Company X.
3. No tax is paid by Company X on dividends received from Company Y. Refer to Subsubparagraph 5.2.1.3 (a) (i) (B) (II).

4. There is no withholding tax paid by Syarikat Alpha Bhd. on dividends received from Company X.
5. Therefore, the dividends received by Syarikat Alpha Bhd. from Company X in country Z is not tax-exempt.

CTIM Comments:

HASiL’s interpretation of P.U. (A) 235/2022 in the example above has very serious implications for the holding structure of Malaysian groups and multinationals with regional holding companies in Malaysia.

We request that HASiL recognize the fact the dividend ultimately arises from profits that have been subject to tax in a jurisdiction with a headline tax rate of at least 15%.

In particular:

- The dividend paid by Syarikat X is traceable to the operating profits of Syarikat Y which has been subject to tax.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

- The headline tax rate is at least 15%.
Hence, taxpayers should be allowed to take the view that the criteria imposed by P.U. (A) 235/2022 are satisfied.

Restricting the interpretation of the exemption criteria to only the payer of the dividend (i.e. Company X in the example above) will have serious and damaging consequences on industry practices and potentially on the national economy, on which we urge industry consultation to be initiated and we at CTIM are prepared to participate in further deliberation on this topic.

[Maklum balas LHDNM:](#)

[Ianya adalah keputusan polisi di bawah Kementerian Kewangan.](#)

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

3. Para 5.2.1.3(a)(i)(II) - Dividend income is subject to tax in the country of origin which the income arises

3.1 Request to cover practical scenarios in the Guideline

CTIM Comments:

We request for further scenarios to be covered for the guidance of taxpayers. As a reference point, the Inland Revenue Authority of Singapore (IRAS) has specified certain scenarios in its e-Tax Guide on Tax Exemption under Section 13(12) to provide for tax exemption on dividend income under Section 13(12) of the Singapore Income Tax Act. The specified scenarios would cover, amongst others, the following scenarios.

Scenario D

- a) The specified foreign income to be received in Singapore originates from substantive business activities carried out in a foreign tax jurisdiction (say country A) with headline tax rate of at least 15%;
- b) tax was paid in that jurisdiction (i.e. country A);
- c) the income was subsequently moved to or invested in other foreign tax jurisdiction(s) (say country B and then country C in that order); and
- d) the latter tax jurisdictions (i.e. country B and country C) did not levy any tax on such income before or when the income is remitted back to Singapore from the last tax jurisdiction (i.e. country C).

Maklum balas LHDNM:

Dividen yang dipindahkan melebihi satu peringkat adalah tidak diberi pengecualian menurut garis panduan yang ditetapkan. Oleh itu, berdasarkan senario D, dividen yang diterima dari negara C adalah tidak layak mendapat pengecualian cukai.

Scenario E

- a) The foreign-sourced dividend to be received in Singapore originates from profits derived from substantive business activities carried out in a foreign tax jurisdiction;
- b) That tax jurisdiction has a headline tax rate of at least 15%; and
- c) Tax is paid on the originating profits in that jurisdiction.

This scenario covers the following situations:

CTIM Comments**Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)**

- i) where a dividend is paid out of profits derived from substantive business activities carried out in, say, country A and the dividend is then flowed through one or more levels of companies in country A before the dividend is paid to the Singapore resident company;
- ii) where a dividend is paid out of profits derived from substantive business activities carried out in, say, country E to a company in a second jurisdiction (say, country D) and it in turn pays a dividend to a company in a third jurisdiction (say, country C) and so on (say, to a company in country B, then to a company in country A). The company in country A then pays a dividend to the Singapore resident company out of the dividend it receives from country B;
- iii) where substantive business activities are carried out in the foreign tax jurisdiction (say, country E) through a branch instead of a company in that jurisdiction and the branch profits are flowed through one or more levels of companies in country E or elsewhere before the dividend is paid to the Singapore resident company.

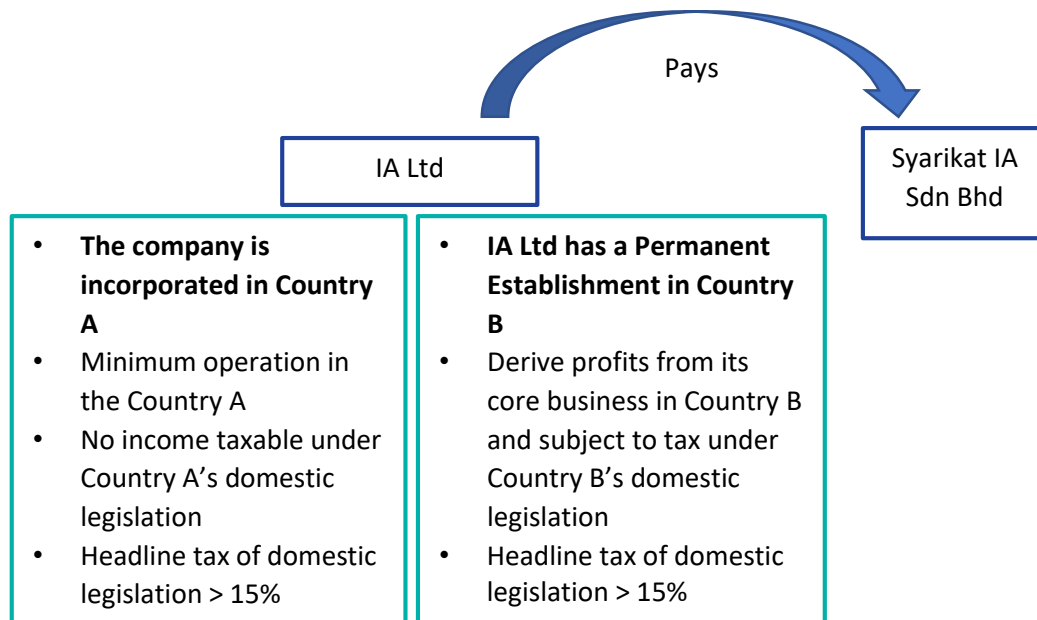
Maklum balas LHDNM:

Dividen yang dipindahkan melebihi satu peringkat adalah tidak diberi pengecualian menurut garis panduan yang ditetapkan. Oleh itu, berdasarkan senario E, dividen yang dipindahkan melebihi satu peringkat adalah tidak diberi pengecualian menurut garis panduan yang ditetapkan.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

3.2 Dividend received from a company in Country A where the profits arise from substantive business activities via a Permanent Establishment in Country B as below:



CTIM Comments:

1. Based on the current reading of the Guideline, it expressly states the underlying tax is limited to the tax paid in the country of origin where the dividend is paid from (*negara asal*). Hence, it is not necessarily clear whether the dividend received from IA Ltd (located in Country A) is exempted as no tax is paid in Country A.

We are of the view that the dividend income received by Syarikat IA Sdn Bhd from IA Ltd should be eligible for exemption as the profits used for the dividend distribution has been subject to tax under the law of the territory in which the income arises i.e. foreign tax paid in Country B.

Maklum balas LHDNM:

Berdasarkan penerangan yang dikemukakan, dividen yang diterima oleh Syarikat IA Sdn. Bhd. daripada IA Ltd. adalah layak untuk mendapat pengecualian cukai. Walau bagaimanapun, pengecualian cukai ini tertakluk kepada fakta kes.

CTIM Comments**Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)**

2. We would like to seek clarification (i.e. additional scenario within the Guideline) for a situation where a company is incorporated in a jurisdiction where the headline tax is less than 15% (e.g. BVI), income is not taxable under BVI's domestic legislation but the profits used for the dividend distribution has been subject to tax under the law of another jurisdiction which the income arises (e.g. the BVI co. paid tax on rental income derived from properties located in the UK). Should the BVI Co. pay dividends to its Malaysian corporate shareholders, kindly clarify on the interpretation the dividend income received by the Malaysian company is exempt provided there is traceability that the BVI company pays the dividend out of the income wholly derived from the rental income from the properties in the UK.

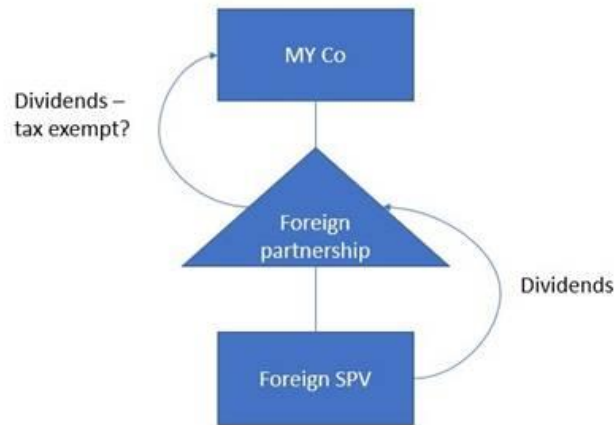
Maklum balas LHDNM:

Berdasarkan penerangan yang dikemukakan, dividen yang diterima oleh Syarikat IA Sdn. Bhd. daripada IA Ltd. adalah layak untuk mendapat pengecualian cukai. Walau bagaimanapun, pengecualian cukai ini tertakluk kepada fakta kes.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

3.3 Investment in a foreign special purpose vehicle (SPV) via a foreign limited partnership



- MY Co invests into a foreign SPV via a foreign limited partnership.
- In this scenario, the foreign partnership is a tax transparent entity (i.e. the dividends distributed by the foreign SPV will not be taxed at the level of the foreign partnership, but instead at the level of the partner, i.e. MY Co).

CTIM Comments:

We note that the Guideline indicate that “underlying tax” is limited to the tax paid by the entity from which the dividend is received. However, based on the scenario above, the foreign partnership is not a person in law and unlike a company it is not a separate and assessable entity for tax purposes. Individual partners (like MY Co) are therefore assessed separately on their respective share of income from the partnership.

Please confirm that in such scenario, MY Co will qualify for the exemption under P.U. (A) 235/2022.

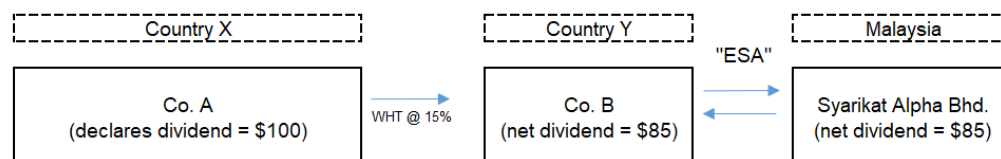
Maklum balas LHDNM:

Berdasarkan senario yang dikemukakan, dividen yang diterima oleh My Co. daripada Foreign SPV adalah layak untuk mendapat pengecualian cukai. Walau bagaimanapun, pengecualian cukai ini tertakluk kepada fakta kes.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

3.4 Equity swap arrangements



1. The headline tax rate in Country X is at least 15%
2. Co. A issues dividend to Co. B. Income tax has been paid in Country X on the underlying profits out of which the dividend is paid.
3. Co. A withholds tax (@15%) on the dividend paid to Co. B
1. The headline tax rate in Country Y is at least 15%.
2. Syarikat Alpha Bhd has entered into an equity swap arrangement (ESA) with Co. B. Under the ESA arrangement, Syarikat Alpha Bhd will receive the net dividend from Co. A for shares held through Co. B.
3. Co. B does not withhold tax on the dividend passed on to Syarikat Alpha Bhd.

CTIM Comments:

We note that the Guideline indicate that “underlying tax” is limited to the tax paid by the entity from which the dividend is received. However, based on the scenario above, under an ESA, Co. B is akin to a nominee company (pass through) who receives the dividend on behalf of Syarikat Alpha Bhd. Kindly confirm that the reference to the country of origin (under Para 5.2.1.3 of the Guideline) in such scenario would be “Country X” and not “Country Y”.

Maklum balas LHDNM:

Berdasarkan senario yang dikemukakan, dividen yang diterima oleh Syarikat Alpha Bhd. daripada Co. A adalah layak untuk mendapat pengecualian cukai. Walau bagaimanapun, pengecualian cukai ini tertakluk kepada fakta yang terdapat dalam dokumen ESA.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

4. Para 5.2.1.3(a)(i) – Dividend income is subject to tax in the country of origin which the income arises

In determining whether dividends have been subjected to tax in the country of origin which the income arises, the conditions are as follows:

(i) Tax has been imposed in the country of origin on foreign dividend income received in Malaysia is as follows:

- (A) Tax paid or payable in the country of origin is either income tax or withholding tax; or
- (B) Foreign dividend income received has been subjected to underlying tax.

Some companies invest in foreign quoted shares via other entities like investment banks. They will not receive the original dividend vouchers so we cannot determine whether the conditions in para 5.2.1.3(a)(i) of the Guideline are met or not, especially when no tax is paid (i.e. reason why no tax is paid). Below are 2 sample dividend vouchers.

Mercury Securities Sdn. Bhd. (113193-W) GST Reg No.: 001741832192

incorporated in Malaysia
 1st Floor, 2nd Floor, 3rd Floor, 4th Floor, 5th Floor, 6th Floor, 7th Floor, 8th Floor, 9th Floor, 10th Floor, 11th Floor, 12th Floor, 13th Floor, 14th Floor, 15th Floor, 16th Floor, 17th Floor, 18th Floor, 19th Floor, 20th Floor, 21st Floor, 22nd Floor, 23rd Floor, 24th Floor, 25th Floor, 26th Floor, 27th Floor, 28th Floor, 29th Floor, 30th Floor, 31st Floor, 32nd Floor, 33rd Floor, 34th Floor, 35th Floor, 36th Floor, 37th Floor, 38th Floor, 39th Floor, 40th Floor, 41st Floor, 42nd Floor, 43rd Floor, 44th Floor, 45th Floor, 46th Floor, 47th Floor, 48th Floor, 49th Floor, 50th Floor, 51st Floor, 52nd Floor, 53rd Floor, 54th Floor, 55th Floor, 56th Floor, 57th Floor, 58th Floor, 59th Floor, 60th Floor, 61st Floor, 62nd Floor, 63rd Floor, 64th Floor, 65th Floor, 66th Floor, 67th Floor, 68th Floor, 69th Floor, 70th Floor, 71st Floor, 72nd Floor, 73rd Floor, 74th Floor, 75th Floor, 76th Floor, 77th Floor, 78th Floor, 79th Floor, 80th Floor, 81st Floor, 82nd Floor, 83rd Floor, 84th Floor, 85th Floor, 86th Floor, 87th Floor, 88th Floor, 89th Floor, 90th Floor, 91st Floor, 92nd Floor, 93rd Floor, 94th Floor, 95th Floor, 96th Floor, 97th Floor, 98th Floor, 99th Floor, 100th Floor

TAX INVOICE / STATEMENT
 Ref No : 270921-01
 Date : 27 Sep 2021
 GST Reg No : 001741832192
 Client Code : HB298

Being Dividend Payment :-


Counter	Share Holdings	Type of Payment	Date of Payment	Gross Amount	Less: Tax 0%	Net Amount
BHP GROUP LTD	2,000	Dividend @ 2.71527	22/09/2021	AUD 5,430.54	AUD 0.00	AUD 5,430.54
Less: Foreign Custodian Fees						AUD 51.10
Net Amount Payable in AUD						AUD 5,379.44
Exchange Rate (AUD)						2.9930
Amount Received in Ringgit Malaysia						RM 16,100.66
Less: Service Charge						RM 70.00
Less: GST @ 0%						RM 0.00
Net Amount Payable in Ringgit Malaysia						RM 16,030.66

188 240 699
 RM 16,030.66

This is a computer generated statement and deemed to have been signed.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)



AFFIN HWANG
CAPITAL

Affin Hwang Investment Bank Berhad (14389-U)
Levels 2,3,4,5 & 7, Wisma Sri Pinang, 60 Green Hall, 10200 Penang, Malaysia
Tel: +604 263 6996 Fax: +604 261 9597 www.affinhwang.com

CREDIT NOTE

CN Ref. : PH097745/15056
CN Date : 2021-05-25
Client : GE099/LEL/006

Re : 2400 GENTING SINGAPORE LTD
FINAL DIVIDEND paid on 2021-05-20

Dividend at SGD 0.010 per share	SGD	24.00	MYR	74.21
Less Charges by Foreign Broker	SGD	.00	MYR	.00
Less Handling Fee			MYR	5.00
Net Dividend			MYR	69.21

@exch 3.0920
Amount credited to client's MYR Trust A/C

Printed : 2021-05-27 07:58:15 tlg/C264B
THIS IS A COMPUTER GENERATED DOCUMENT AND IS DEEMED TO HAVE BEEN SIGNED.

CTIM Comments:

1. We request HASiL to give a concession that dividends from quoted shares (listed companies) can be considered as the condition of "Dividend income is subject to tax in the country of origin which the income arises" has been met since it is a legitimate expectation that listed companies would comply with tax laws.
2. With reference to the example above, there should be simplification on the condition of "Dividend income is subject to tax in the country of origin which the income arises" in scenarios where the Malaysian shareholder has only non-controlling or non-substantial interest.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

Maklum balas LHDNM:

Merujuk kepada cadangan CTIM, syarikat boleh mengemukakan sebarang dokumen bagi membuktikan pendapatan dividen yang diterima telah tertakluk kepada underlying tax seperti yang dinyatakan diperenggan 5.2.4.1 dan 5.2.4.2(f) dalam garis panduan.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

5. Para 5.2.1.3(a)(ii)(C) - Dividend income is subject to tax in the country of origin which the income arises

Qualifying Conditions

(a) Dividend income is subject to tax in the country of origin which the income arises

In determining whether dividends have been subjected to tax in the country of origin which the income arises, the conditions are as follows:

- (ii) Tax is not imposed in the country of origin because foreign dividends are paid out of underlying profits arising from operating income in the country of origin which is not subjected to tax due to:
 - (A) Unabsorbed losses or capital allowances;
 - (B) Arising from capital gains;
 - (C) Enjoyed tax incentives in compliance with substantive requirements in the country; or
 - (D) Tax regulations under the tax consolidation regime in the country of origin (refer to the illustration in **Appendix 2(a)** and **2(b)**).

CTIM Comments:

Guidance is needed from HASiL as to how taxpayers are able to determine whether the requirement of Para 5.2.1.3(a)(ii)(C) above is considered to have been met for the purposes of the P.U. (A) 235/2022. Issues include:

- The substantive requirements may not be explicitly spelt out/expressed as a condition in the respective incentive of the source jurisdiction.
- The substantive requirements may be imposed on a group basis.

In view of the above, we would request that the following be considered:

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

- Where the substantive requirements are not explicitly spelt out in the condition of the incentive, it is sufficient that the operating company is able to demonstrate that it carries out the underlying operations/investment which generates the tax exempt income.
- Where the substantive requirements are imposed on a group basis [e.g. similar to the case of Labuan Leasing companies under P.U. (A) 423/2021], the substance is considered to have been met by the dividend paying company.

Maklum balas LHDNM:

Merujuk kepada cadangan CTIM, syarikat boleh mengemukakan sebarang dokumen bagi membuktikan pendapatan dividen yang diterima telah tertakluk kepada insentif cukai seperti yang dinyatakan diperenggan 5.2.1.3(a)(ii)(C) dalam garis panduan.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

6. Para 5.2.1.3(b)(i) – The headline tax rate in the country of origin is not less than 15%

(b) The headline tax rate in the country of origin is not less than 15%

- (i) The foreign country headline tax rate refers to the highest corporate tax rate in the country of origin **in the year the dividend is taxed**.
- (ii) The tax rate shall not less than 15%.
- (iii) The headline tax rate is not necessarily the actual tax rate imposed on the foreign dividend income.

CTIM Comments:

Please confirm whether “*in the year the dividend is taxed*” refers to:

- i) The year the underlying profit is subjected to income tax in the country of origin; or
- ii) The year the dividend is declared to the holding company, and be subjected to foreign withholding tax / income tax (if any).

Please see the illustration as follows:

ABC Ltd, from Jurisdiction X, derived a profit after tax of RM1 million in the year 2021. ABC Ltd declares a dividend out of the said profit after tax, amounting to RM500,000 to DEF Sdn Bhd in the year 2023. Kindly advise whether DEF Sdn Bhd should look at the headline tax in Jurisdiction X for the year 2021 or the year 2023 in determining whether such foreign dividend is exempted from Malaysian income tax.

Maklum balas LHDNM:

Headline tax merujuk kepada tahun bila dividen tersebut dikenakan cukai pegangan/cukai pendapatan di negara asal.

Berdasarkan kepada fakta yang dikemukakan, tahun dividen tersebut dikenakan cukai merujuk kepada dividen tersebut tertakluk kepada cukai pegangan/cukai pendapatan di *Jurisdiction X* iaitu dalam tahun 2023.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

7. Para 5.2 - Foreign income received in Malaysia which is exempted from tax from 1 January 2022 until 31 December 2026

Kategori Pembayar Cukai	Jenis Pendapatan yang Dikecualikan Cukai	Syarat Kelayakan
<ul style="list-style-type: none"> Syarikat PLT Ahli kongsi Individu (dari perkongsian) <p>Please refer to CTIM Comment 18 below.</p>	Dividen	(i) Dividen telah tertakluk kepada cukai di negara asal; dan (ii) kadar cukai tertinggi (<i>headline tax</i>) di negara asal sekurang-kurangnya 15%
Individu	Semua jenis pendapatan selain daripada pendapatan perkongsian.	Pendapatan telah tertakluk kepada cukai di negara asal.

CTIM Comment 18:

Please confirm the following:

- Scenario 1: Ahmad is a partner of a firm in ARL Associates. Besides that, Ahmad also invests in some foreign companies and will receive foreign-sourced dividend income. **In this scenario, the foreign-sourced dividend income received in Malaysia by Ahmad will be exempted under PUA 234/2022.**
- Scenario 2: Ben is a partner of a firm in BAT PLT. BAT PLT will invest in some foreign companies and earn dividend income. Ben will receive dividend income through the BAT PLT partnership. **In this scenario, the foreign-sourced dividend income received in Malaysia by Ben through BAT PLT will be exempted under PUA 235/2022 where the relevant conditions are met.**

Maklum balas LHDNM:

Senario 1: Pemahaman pihak CTIM adalah teratur.

Senario 2: Mohon penjelasan lanjut berhubung perkara ini.

CTIM Comments:

As mentioned in the scenario, BAT PLT will invest in some foreign companies and earn dividend income. The dividend income earned by the partnership, BAT PLT, will be apportioned among the partners in the same way as profits. Please see the example below:

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

Computation of BAT PLT's adjusted and divisible income			
		RM	RM
	Net profit per partnership's accounts		1,000,000
(Less):	<u>Income separately assessed (non-business sources)</u>		
	Foreign-sourced dividend income	50,000	
	Interest income, rent, etc.	-	(50,000)
Add:	Non-deductible expenses	5,000	
	Partner's salaries	10,000	15,000
	Adjusted income		965,000
(Less):	Partner's salaries		(10,000)
	Divisible income		955,000
Computation of BAT PLT's partner's total income - Ben			
	Profit sharing ratio:		50:50
	Salary		5,000
	Divisible income (i.e. 50%* RM955,000)		477,500
	Adjusted income		482,500
(Less):	Capital allowance		(100,000)
	Statutory income		382,500
Add:	Foreign-sourced dividend income (i.e. 50%* RM50,000)		25,000
	Aggregate / Total income		407,500

Please confirm that the foreign-source dividend income of RM25,000 received in Malaysia by Ben will be exempted under P.U. (A) 235/2022, where the relevant conditions are met.

Maklum balas LHDNM:

Penentuan sama ada Ben boleh mendapat pengecualian cukai di bawah P.U.(A) 235/2022 bergantung kepada jenis perkongsian bagi BAT PLT.

Sekiranya BAT PLT ini merupakan perkongsian liabiliti terhad (PLT), maka agihan yang diterima oleh pekongsi akan tertakluk kepada Perenggan 12C Jadual 6.

Sekiranya BAT PLT adalah perkongsian yang berdaftar di bawah Akta Pendaftaran Perniagaan 1956, maka pemahaman pihak CTIM adalah teratur.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

8. Para 4.2 – "Received in Malaysia" Para 4.4 – "Electronic fund transfer"

"Received in Malaysia" means transferred or brought into Malaysia whether in the form of cash or through electronic funds transfer; or both.

CTIM Comments:

We request HASiL to set out and confirm in the Guideline that the following which does not involve remittance of funds to the taxpayer in Malaysia would not be considered as received in Malaysia:

- Amounts applied in or towards satisfaction of any debt incurred in respect of a trade or business carried on in Malaysia.
- Applied directly to purchase any property in Malaysia or movable property, which is brought into Malaysia.
- Income not remitted into Malaysia as the amount receivable is offset (contra) against the amount payable due to bilateral relationship.

Please insert illustrations / statement to confirm the above exclusions.

Maklum balas LHDNM:

Penjelasan di perenggan 4.2 telah memadai untuk mengesahkan perkara-perkara yang dinyatakan oleh pihak CTIM ini tidak termasuk dalam maksud 'diterima di Malaysia'.

"Electronic fund transfer" means bank transfer (e.g. credit transfer, debit transfer), payment card (debit card, credit card and charge card), electronic money (e-money), privately-issued digital assets (e.g. crypto-assets, stablecoins) and Central bank digital currency (CBDC).

CTIM Comment 4:

1. How does a transaction using payment card (debit card, credit card and charge card) constitute remittance into Malaysia? Kindly elaborate.

Maklum balas LHDNM:

Payment card digunakan di Malaysia yang mana sumber pembiayaan *payment card* tersebut adalah daripada pendapatan luar negara.

2. Is there a "location" of digital assets/cryptocurrency?

Maklum balas LHDNM:

Tiada isu tentang lokasi. Pembiayaan digital assets/cryptocurrency adalah daripada luar negara.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

CTIM Comments:

The information in HASiL's response above is insightful and hence we request for it to be included in HASiL's Guideline so that all taxpayers are informed. If possible, also include examples on its practical application.

Maklum balas LHDNM:

Penerangan tentang "Diterima di Malaysia" dan "pindahan dana elektronik" dalam garis panduan adalah memadai. Walau bagaimanapun, pihak CTIM boleh mengemukakan cadangan contoh yang dimaksudkan.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

9. Para 5.1.4 – Bilateral or Unilateral Tax Credit

5.1.4 Foreign income received in Malaysia that has been taxed by other jurisdiction either through withholding tax or income tax, can claim bilateral or unilateral tax credit under the provisions of sections 132 and 133 of the ITA 1967.

9.1 Whether the Section 132/133 relief is to be computed on a source-by-source, country-by-country or consolidated basis

CTIM Comment 6:

1. Kindly indicate whether the Section 132/133 relief is to be computed on a source-by-source, country-by-country or consolidated basis. For avoidance of doubt, please provide examples with multiple sources from different countries.

CTIM Comments:

HASiL has not provided any response to the above. Kindly clarify.

This is of particular importance to unit trusts that derive dividend and interest sources of income from different countries in a year of assessment (YA).

Maklum balas LHDNM:

Pengiraan Seksyen 132/133 adalah berdasarkan '*source by source, country by country*'. Ini merujuk kepada ruangan dalam borang C yang perlu diisi oleh pembayar cukai yang melaporkan penerimaan dari luar negara.

Sila maklum, "Orang yang layak" mendapat pengecualian cukai adalah berdasarkan P.U.(A) 235/2022 dan ini **tidak termasuk** unit amanah.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

9.2 Whether foreign source income received in Malaysia will be assessed based on the actual (net) amount remitted if the bilateral / unilateral credit is not claimed

- b. CTIM's comment provided to the IRB in the Joint Memorandum on Issues Arising from 2022 Budget Speech & Finance Bill 2021:

(Ref: Page 63 of 90):

Can the MOF / IRB consider allowing taxpayers to assess the above funds remitted to Malaysia to Malaysian tax based on the actual (net) amount remitted if the bilateral / unilateral credit is not claimed?

Maklum balas LHDNM:

LHDNM tiada halangan sekiranya pembayar cukai memilih untuk tidak menuntut kredit cukai bilateral atau unilateral. Walau bagaimanapun transaksi ini masih tertakluk kepada pengauditan LHDNM.]

CTIM Comments:

Please confirm that where no bilateral / unilateral credit is claimed, the taxpayer could subject the actual (net) amount remitted to income tax.

This is particularly important for income that was derived more than 7 years ago, where all the records would have been destroyed.

Maklum balas LHDNM:

Berdasarkan fakta yang dikemukakan, pemahaman pihak CTIM adalah teratur.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

10. Example 1 of the Guideline and Example 6 of Public Ruling No. 11/2021 – Foreign statutory income to compute bilateral/unilateral credit

Example 1 of the Guideline			Example 6 of Public Ruling No. 11/2021		
	RM	RM	Particulars	RM	RM
Statutory income from business (Malaysia) (RM2,500,000 – RM500,000)		2,000,000	Net premiums		140,000,000
Statutory interest income (Malaysia) (RM60,000 – RM10,000)	50,000		Less: Allowable expenses		100,000,000
Statutory interest income from abroad:			Statutory income from business		40,000,000
Interest on loans (country A) (RM30,000 – RM8,000)	22,000		Gross interest income (Malaysia)	11,000,000	
Interest on loans (country B) (RM80,000 – RM20,000)	60,000		Less: Allowable expenses	2,000,000	
Agregate statutory income from interest		132,000	Statutory interest income (Malaysia)		9,000,000
Agregate income		2,132,000	Gross interest income (UK)	1,015,000	
Less: Approved donations		(5,000)	Less: Allowable expenses	15,000	
Total income		2,127,000	Statutory interest income (UK)		1,000,000
Tax at the rate of 24%		510,480	Gross rental income	38,000,000	
			Less: Allowable expenses	4,000,000	
			Statutory rental income		34,000,000
			Aggregate/ Total income		84,000,000
			Income tax charged (24%)		RM20,160,000
			Withholding tax in UK (10%)		RM100,000
			Computation of bilateral credit:		
			Foreign income (statutory income)	X	Malaysian tax payable before bilateral credit
			Total income		
			= 1,000,000	X	20,160,000
			84,000,000		
			= RM240,000		
			Or		
			RM100,000,		
			whichever is lower.		
			The bilateral credit allowed for the year of assessment 2019 is RM100,000 as the same interest income has also been taxed in UK.		

Computation

(a) Bilateral credit (Tax credit under Section 132 of the ITA 1967):

Interest (country A)

(i) Computation of the proportion of statutory income in respect of foreign income:

$$= \frac{\text{Foreign interest income (gross) (RM)}}{\text{Foreign and Malaysian interest income (gross) (RM)}} \times \text{Aggregate statutory income from interest (RM)}$$

$$= \frac{30,000}{(60,000+30,000+80,000)} \times 132,000$$

$$= \frac{30,000}{170,000} \times 132,000$$

$$= \text{RM23,294.12}$$

(ii) Computation of bilateral credit

$$= \frac{\text{Foreign income (statutory income) (RM)}}{\text{Total income (RM)}} \times \text{Malaysian tax payable before bilateral credit (RM)}$$

$$= \frac{23,294.12}{2,127,000} \times 510,480$$

$$= \text{RM5,590.59}$$

Or

foreign tax charged, whichever is lower

$$= \text{RM5,590.59 or foreign tax charges (RM4,500) whichever is lower}$$

$$= \text{RM4,500.}$$

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

CTIM Comments:

In both Example 1 of the Guideline and Example 6 of Public Ruling (PR) No. 11/2021 above, the actual foreign statutory income can be determined (*). However, it is noted that the actual foreign statutory income is only used in Example 6 but not in Example 1 to compute the bilateral credit.

Notwithstanding the above, please confirm that our understanding below is correct:

1. In the case where the actual foreign statutory income can be determined (*), the actual foreign statutory income should be used to compute the bilateral/unilateral credit e.g. Example 6 of PR No. 11/2021.
2. In the case where the actual foreign statutory income cannot be determined (**), then the foreign statutory income used to compute the bilateral/unilateral credit is arrived at based on an apportionment of gross income method e.g. Example 1 of the Guideline.

(*) Actual foreign statutory income refers to gross foreign income minus allowable expenses that are directly attributable to the foreign income source.

(**) Actual foreign statutory income cannot be determined when the allowable expenses are commonly attributable to more than one income source.

Maklum balas LHDNM:

Pemahaman pihak tuan terhadap perkara 1 dan 2 di atas adalah dipersetujui.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

11. Para 5.2.2(b)(i) – Qualifying conditions (under Para 5.2.2 – Foreign income received in Malaysia by a resident individual)

(b) Tax is not imposed in the country of origin due to certain reasons as follows:

(i) Foreign income received in Malaysia is not subject to tax in the country of origin due to the country's taxation system.

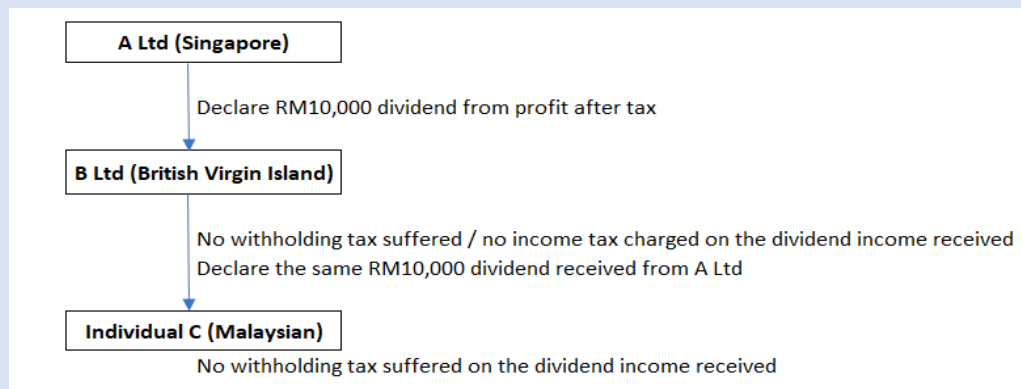
(ii) Foreign income received in Malaysia is not subject to tax in the country of origin because the individual's income does not reach the taxability amount in the country of origin.

(iii) Income is given an exemption through a tax incentive.

(iv) Foreign dividend income received by an individual in Malaysia has been subjected to underlying tax.

CTIM Comments:

11.1 Please refer to the illustration below:



Kindly confirm that Individual C could rely on the para 5.2.2(b)(i) above and be exempted from Malaysian income tax on the foreign dividend income received.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

Maklum balas LHDNM:

Berdasarkan kepada ilustrasi, individual C (Malaysian) tidak layak untuk mendapat pengecualian cukai kerana tidak memenuhi syarat kelayakan seperti di perenggan 5.2.2.2(b)(iv).

11.2 From the reading of Para 5.2.2.2(b)(i), it appears that this qualifying condition would also apply to foreign source dividend income that has not been subjected to tax by virtue of the country of origin's taxation system. For instance,

1. Dividend income paid by a BVI Co out of the BVI Co's profits is not subject to tax in BVI as there is no CIT tax system in BVI.

Maklum balas LHDNM:

Ya.

2. The dividend income paid out of foreign sourced income received by a HK Co is not subject to tax in HK as such foreign sourced income is exempt from tax due to the Foreign Sourced Income Exemption (FSIE) regime of HK.

Maklum balas LHDNM:

Tidak.

Please confirm.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

12. Request for clarification/guidance on treatment of foreign source business income received in Malaysia to be included in the Guideline

2. The examples in the Guidelines are mostly in relation to foreign interest income. We recommend to also include other examples including other types of incomes such as foreign business income and rental income.

3. Based on the examples it would be good to also address the treatment of expenses incurred overseas as well as local expenses incurred in relation to the foreign income. For example, a company takes a loan in Malaysia to finance the acquisition of a property overseas where the company will be deriving rental income. The company in question will be incurring expenses overseas such as assessments, repairs and maintenance, etc. while in Malaysia, the company may have interest expenses payable to Malaysian banks.

5. Time-bar of 2 years on claiming foreign tax credit (FTC) - Please consider allowing taxpayers to appeal for an extended time frame on a case-to-case basis to submit a claim for FTC (current time frame is 2 years).

Maklum balas LHDNM:

4(a)(2) dan 4(a)(3): LHDNM mengalu-alukan cadangan dari pihak CTIM untuk mengemukakan draf seperti mana cadangan yang dikemukakan.

4(a)(5): Garis panduan yang disediakan adalah berdasarkan peruntukan sedia ada di mana had masa tuntutan kredit cukai adalah tertakluk di bawah perenggan 9 Jadual 7, ACP. Tiada isu berbangkit memandangkan had masa ni terpakai selepas pendapatan FSI dilaporkan. Contohnya jika pendapatan dilaporkan pada tahun 2022 maka pembayar cukai diberi masa sehingga tahun 2024 untuk memohon kredit cukai.

CTIM Comments:

The examples in the Guideline do not cover foreign source business income received in Malaysia. Please provide clarification/guidance on this area including, but not limited to, the determination of the gross amount to be taxed in Malaysia i.e. whether the actual amount that is received in Malaysia shall be taken to be the gross taxable amount or a re-computation according to Malaysian tax legislation will be required?

For example, a Malaysian tax resident has a permanent establishment (PE) in a foreign country (e.g. Australia) and the Malaysian tax resident remitted the PE's net profit after tax (e.g. RM1,050 arrived at as follows) into Malaysia. This is the net amount after its foreign corporate income tax is paid at say 30% of the underlying

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

profit (e.g. RM450). For completeness, there is no foreign withholding tax on the net amount of profits remitted to Malaysia. Please refer to the profit & loss account below:

	Amount (RM)
Revenue	10,000
(Less): Cost of sales	(5,000)
Gross profit	5,000
(Less): Expenses	
- Salaries	(2,000)
- Depreciation	(1,000)
- Advertising and promotion	(500)
Net profit before tax	1,500
Tax at 30%	(450)
Net profit after tax	1,050

Kindly confirm which of the following treatment should apply for the purpose of determining the gross taxable income of the Malaysian tax resident from the Malaysian tax perspective:

- i) Gross taxable income = Amount received in Malaysia = RM1,050;
- ii) Gross taxable income = Re-grossed amount received in Malaysia for the foreign underlying tax (i.e. $RM1,050/70\%$) = RM1,500; or
- iii) Recompute taxable income i.e.

Re-grossed amount received in Malaysia for foreign underlying tax	RM1,500
Add: Depreciation (non-deductible under Section 39 of the ITA)	<u>1,000</u>
Taxable income	<u>RM2,500</u>

Maklum balas LHDNM:

Layanan cukai untuk menentukan *gross taxable income* adalah seperti yang dinyatakan di perenggan i).

CTIM Comments

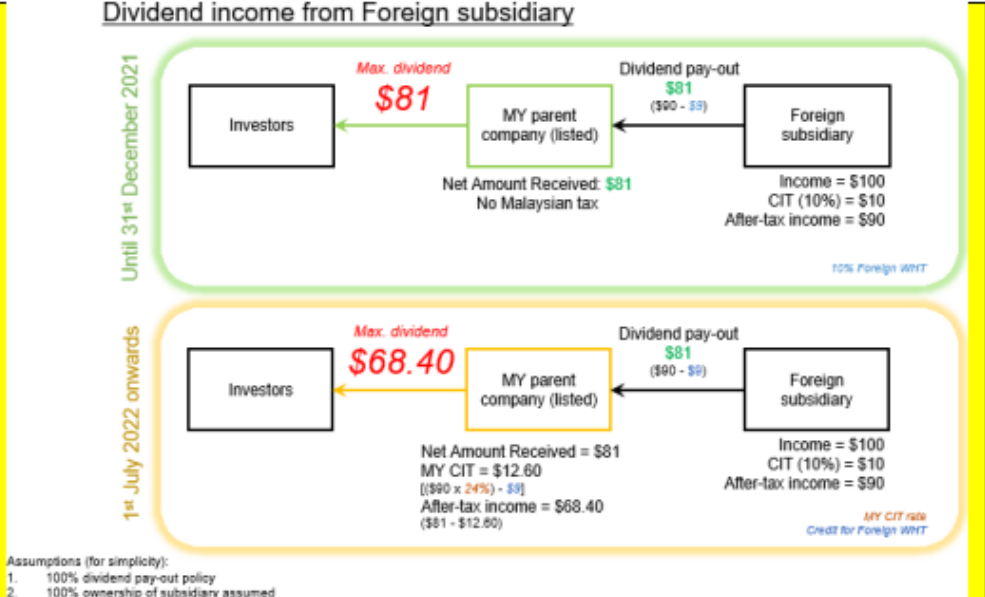
Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

13. Request for example to be included in the Guideline in respect of foreign source dividends received in Malaysia where the headline tax rate in the country of origin is less than 15% and bilateral tax credit is available

2. Scenario 4 (Appendix C) shows that the foreign source dividend has already suffered “foreign corporate tax on the source profits” and “dividend withholding tax imposed by the foreign country upon payment”. Can we ask for an example of the calculation when the exemption is lifted (say due to headline tax rate being less than 15%)?

Maklumbalas LHDNM:
 Bagi pendapatan dividen yang tidak mendapat pengecualian (due to headline tax rate being less than 15%) maka pendapatan dividen yang diterima di Malaysia tertakluk kepada kadar cukai korporat tahun semasa. Contoh adalah seperti ilustrasi pihak CTIM berikan (dividend income from foreign subsidiary seperti di bawah).

A sample of a scenario can be given as below (based on double tax agreement that provides for bilateral tax credit in respect of foreign withholding tax but not on corporate tax on underlying profits):



Maklumbalas LHDNM:
 Cadangan contoh yang dikemukakan oleh CTIM adalah melibatkan negara yang mempunyai ‘headline tax’ kurang daripada 15%. Bagi isu ini, kredit cukai S132 atau S133 boleh diberikan tertakluk kepada syarat kelayakan.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

CTIM Comments:

As HASiL has agreed with the above example involving a country with a headline tax of less than 15% shared by CTIM, we suggest providing the said example in the Guideline for transparency and education.

The example above involves a scenario where the double tax agreement provides for a bilateral tax credit in respect of foreign withholding tax but not on corporate tax on underlying profits (i.e. underlying tax).

For clarity, we would request that another example be provided in the Guideline that deals with a scenario where the double tax agreement provides for a bilateral tax credit in respect of both the foreign withholding tax and the corporate tax on underlying profits (i.e. underlying tax). For example, where a Malaysian tax resident person receives a dividend of 100 in Malaysia from its foreign subsidiary whereby foreign corporate tax at say 30% has been paid by the foreign subsidiary on its profits from which the dividends are paid from (i.e. underlying tax suffered) [let's assume that the dividend was not subjected to any foreign withholding tax]. Kindly confirm which of the following treatment should apply for the purpose of determining the gross taxable income of the Malaysian tax resident.

Scenario 1 - Take the amount received of 100 to be the gross income subject to tax; or

Scenario 2 - Re-gross the amount received in Malaysia for the foreign underlying tax (i.e. 100/70%). Therefore, the gross taxable income is 143.

Maklum balas LHDNM:

Berdasarkan fakta yang dikemukakan, amaun dividen yang diterima adalah 70 (100 – 30). Senario 1 dan 2 adalah tidak terpakai.

Will the taxable income change be depending on whether the underlying bilateral tax credit is available or otherwise? For example, in Scenario 2, Malaysian income tax payable is RM34.32 (24% of the re-grossed amount of RM143) which can be offset by the RM43 underlying tax paid overseas if the double tax agreement provides for a bilateral tax credit in respect of the corporate tax on underlying profits. Whilst for Scenario 1, it applies in a case where the double tax agreement does not provide for a bilateral tax credit in respect of corporate tax on underlying profits or there is no double tax agreement.

Maklum balas LHDNM:

Tidak berkenaan.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

14. Treatment of expenses attributable to foreign source income received in Malaysia which were incurred in YAs prior to the remittance

CTIM Comments:

Attribution of expenses to income received in Malaysia from outside Malaysia

1. Please confirm whether expenses attributable to FSI received in Malaysia which were incurred in YAs **prior to** the remittance of income can be claimed in the YA the said income is assessed to tax.
2. Please list sample supporting documents to substantiate the expenses to be claimed.

Maklum balas LHDNM:

GP telah dipinda dengan memasukkan contoh 4 berhubung isu tuntutan perbelanjaan tahun-tahun sebelumnya. Pihak CTIM dialu-alukan mengemukakan contoh berhubung perkara ini jika ada.

Example 4

The facts are the same as in Example 3 with the additional information that MDP has obtained an overdraft facility from Bank AK to make investments in country S. MDP able to prove that the investment made in country S is fully financed through overdraft and the overdraft interest expense is not claimed in tax computation on interest income in country S. The interest expense incurred by MDP is as follows:

Year of Assessment	Overdraft interest expense related to investment in country S (RM)
2020	10,000
2021	10,000
2022	10,000
2023	10,000

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

Tax computation of MDP for YA 2023 and tax credit under Section 132 of the ITA 1967:

Details	RM	RM
Income from Malaysia		130,000
Statutory income from country S received in Malaysia:		
Interest for YA 2023 Gross interest: RM66,114 Less: Allowable expenses = RM10,000 (RM66,114 – RM10,000)	56,114	
Interest for YA 2022 Gross interest: RM22,038 Less: Allowable expenses = RM2,222 (S\$10,000/S\$45,000 x RM10,000) (RM22,038 – RM2,222)	19,816	
Total statutory income from country S		75,930
Total income		205,930
Computation of tax payable:		
Tax at rate 24% (RM205,930 x 24%)		49,423.20
Less : Section 132 tax credit		
(RM75,930 / RM205,930) x RM49,423.20	18,223.20	
Or		
Total tax in country S for YA 2022 and YA 2023	13,222.80	
Whichever is lower		(13,222.80)
Tax payable		36,200.40

CTIM Comments:

Based on HASiL's response above, we understand that in a scenario where the foreign source income (e.g. interest income) is received in Malaysia from 1 July 2022 onwards but the expenses wholly and exclusively incurred in the production of that income were incurred in the prior YAs (tax deduction was not claimed back then as the corresponding income was not remitted into Malaysia and were not brought to tax under the prevailing Para 28 of Schedule 6 of the Income Tax Act 1967 for prior years), those expenses will be given a deduction in the YA in which the foreign source income will be received and taxed in Malaysia.

CTIM Comments**Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)**

Please confirm that this interpretation of S.33(1) applies in computing adjusted income for both foreign business source and other foreign source income.

Maklum balas LHDNM:

Ya, perbelanjaan yang dibenarkan dalam penentuan pendapatan larasan dalam Contoh 4 garis panduan adalah tertakluk di bawah Subseksyen 33(1).

For example, in 2015, a Malaysian company ("MY Co") obtained a 5-year interest-bearing borrowing from a local bank and advanced the monies to its foreign subsidiary with interest. However, the interest income was not remitted back to Malaysia until YA 2023. From YA 2015 to YA 2020, MY Co did not claim any tax deduction on the interest expenses incurred. Kindly confirm interest expenses incurred in the YA 2015 to YA 2020 can be given a deduction against the foreign source interest income Malaysia in YA 2023.

Maklum balas LHDNM:

Subseksyen 33(1) ACP hanya terpakai sekiranya pembayar cukai dapat mengenal pasti perbelanjaan faedah yang dilakukan bagi tahun 2015 sehingga 2020 yang dapat dipadankan dengan pendapatan tahun 2015 sehingga 2020 masing-masing.

CTIM Comments

Guideline on Tax Treatment in relation to Income which is received from Abroad (dated 29 September 2022 and 29 December 2022)

15. Foreign currency exchange rate for foreign source income received in Malaysia

CTIM Comments:

Can we refer to the monthly rate available via the link published on HASIL's website: [Accountant General's Department of Malaysia \(AGD\) - Foreign Currency Exchange \(anm.gov.my\)](https://www.agd.gov.my/), or must this be based on the date of remittance (e.g. rate available on BNM website)?

Maklum balas LHDNM:

Amaun pendapatan luar negara yang diterima di Malaysia perlu dilaporkan mengikut kadar pertukaran mata wang asing pada tarikh pendapatan tersebut diterima di Malaysia. Pembayar cukai boleh menggunakan kadar tukaran berdasarkan kadar di Portal Rasmi Jabatan Akauntan Negara (AGD) atau jika melalui entiti bank, kadar pertukaran mata wang asing adalah sebagaimana yang digunakan oleh bank tersebut. Penggunaan kadar pertukaran tersebut sama ada AGD atau melalui entiti bank hendaklah konsisten bagi sesuatu tahun taksiran.

CTIM Comments:

1. If the foreign income is remitted into Malaysia but maintained in a foreign currency account with a Malaysian bank, kindly confirm that the exchange rate used in calculation of income tax would be the exchange rate on the day such income is remitted into Malaysia.

1. Maklum balas LHDNM:

Ya, kadar pertukaran adalah pada tarikh pendapatan di bawa masuk /di terima di Malaysia.

CTIM Comments:

We would request that HASIL's responses above be included in the Guideline for transparency and education purposes.

Maklum balas LHDNM:

LHDNM mengambil maklum.