

TO ALL MEMBERS

TECHNICAL

Direct Taxation

PUBLIC RULING NO.6/2014 – TAXATION OF FOREIGN FUND MANAGEMENT COMPANY

The above Public Ruling (PR) dated 4 September 2014 was issued by the Inland Revenue Board (IRB) recently. The objective of the PR is to explain the tax treatment of income received by a foreign fund management company (FFMC) that provides fund management services to foreign and local investors. The PR is not applicable to a FFMC that issues, offers or makes an invitation to subscribe or purchase units of conventional unit trust funds.

Important Definitions

“Foreign investors” and “local investors” are defined in Paragraph 3 of the Ruling as follows:

“foreign investor”	“local investor”
<p>(a) In relation to an individual (i.e. natural persons) means individuals who are not resident and not citizens of Malaysia</p> <p>(b) In relation to a company means companies where the entire issued share capital is beneficially owned, directly or indirectly by persons who are not resident and not citizens of Malaysia;</p> <p>(c) In relation to a trust fund means trust funds where the entire interest in the fund is beneficially held, directly or indirectly by foreign investors, where –</p> <p>i. The fund is created outside Malaysia; and</p> <p>ii. The trustees of the fund are not resident and not citizens of Malaysia.</p>	<p>-individuals, companies or trust funds that are not foreign investors.</p>

Foreign Fund Management Companies in Malaysia

The following are features that characterize a FFMC as stated in Para 4 of the Ruling:

- A company incorporated in Malaysia and licensed under the Capital Markets and Services Act 2007;
- One of the conditions for licensing of a FFMC which is stipulated by the Securities Commission (SC) is that more than 50% of the paid-up capital must be owned by foreign equity;
- A FFMC is basically a company incorporated to provide fund management services to its client. Guidelines and documents for the establishment of a FFMC in Malaysia have been issued by the SC (refer to SC’s website).

Tax Treatment

The following is a summary of the tax treatment of income received by a FFMC:

Basis of Assessment (Para 5)	The basis period is the financial accounting period determined in accordance with S20 and S21A of the Income Tax Act 1967 (ITA)
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Tax Rates (Para 6(g))	<p>The rates are found in Part I and Part IX of Schedule I to the ITA as follows:</p> <table border="1"> <thead> <tr> <th><u>Shareholding of FPMC</u></th><th><u>Type of Investor</u></th><th><u>Tax Rate (%)</u></th></tr> </thead> <tbody> <tr> <td>100% foreign equity</td><td>Foreign</td><td>10</td></tr> <tr> <td>At least 30% local equity</td><td>Foreign</td><td>10</td></tr> <tr> <td>At least 30% local equity</td><td>Local</td><td>Prevailing domestic tax rates applicable to residents</td></tr> </tbody> </table>		<u>Shareholding of FPMC</u>	<u>Type of Investor</u>	<u>Tax Rate (%)</u>	100% foreign equity	Foreign	10	At least 30% local equity	Foreign	10	At least 30% local equity	Local	Prevailing domestic tax rates applicable to residents
<u>Shareholding of FPMC</u>	<u>Type of Investor</u>	<u>Tax Rate (%)</u>												
100% foreign equity	Foreign	10												
At least 30% local equity	Foreign	10												
At least 30% local equity	Local	Prevailing domestic tax rates applicable to residents												
Source	Income derived from –	Tax treatment & Ref. (Paragraph No. in Ruling)												
<p>Where a FPMC carries on business in Malaysia of providing fund management services to foreign and local investors, the source of income derived from the provision of fund management services to foreign investors and the source of income derived from the provision of fund management services to local investors shall be treated as separate and distinct business sources of income assessable under S4(a) of the ITA. [S.60G(1), ITA]</p>	<p>Provision of fund management services to foreign investors [S60G(2), ITA]</p>	<p>The chargeable income (CI) is the statutory income (SI) from a source consisting of the provision of fund management services to foreign investors for a YA reduced by unabsorbed losses brought forward (b/f) from earlier years from the same source only. [S.43(2), ITA] [Para 6(c)]</p>												
	<p>Source/s other than the source consisting of the provision of fund management services by a foreign investor for a YA [S60G(3), ITA]</p>	<p>The CI is the SI or the aggregate of the SI from each of those sources other than the source consisting of the provision of fund management services to foreign investors for a YA, reduced by any deductions for b/f losses and current year loss from other business sources (other than the losses from the provision of fund management services to foreign investors) [S.43(2) & 44(1), ITA] [Para 6(d)]</p>												
	<p><i>For examples of tax computations for above, please refer to Examples 2 to 5 in the Ruling.</i></p>													
	<p>FFMC which manage funds of foreign investors in Malaysia according to Syariah principles [P.U.(A) 199/2007]</p>	<p>SI derived from the business of providing fund management services to foreign investors in Malaysia is exempt from income tax from YA 2007 till YA2016 under <i>Income Tax (Exemption) (No. 15) Order 2007</i>. The <i>Syariah</i> compliant funds must be certified by the SC for each year of assessment (YA) during the exempt period. [Para 6(e)]</p>												
	<p>FFMC which manage funds of local investors in Malaysia according to Syariah principles [P.U.(A) 255/2008]</p>	<p>SI derived from the business of providing fund management services to local investors in Malaysia is exempt from income tax from YA 2008 till YA2016 under <i>Income Tax (Exemption) (No. 6) Order 2008</i>. The <i>Syariah</i> compliant funds must be certified by the SC for each year of assessment during the exempt period. [Para 6(f)]</p>												
	<p><i>Refer to Example 6 in the Ruling for the example of tax computation for the above.</i></p>													

Exempt Account

Prior to 1.1.2014, a resident company providing fund management services to foreign investors shall credit the net amount of its CI from the source (after deduction of tax @ 10%) to an exempt account. With the full implementation of the single-tier tax system effective from 1.1.2014, the FFMC no longer needs to maintain the exempt account.

Members may read the Public Ruling in full at the websites of the [IRB](#) and the [Institute](#).

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