
TECHNICAL

Direct Taxation

LHDNM CLARIFICATION AND UPDATES ON ADVANCE RULING

In a recent [Media Release](#) on the application of an advance ruling, the Inland Revenue Board of Malaysia (LHDNM) clarified that an arrangement that involves the interpretation of Double Taxation Avoidance Agreement such as the determination of permanent establishment **does not fall** within the scope of an advance ruling in accordance with subrule 2(1) of the Income Tax (Advance Ruling) Rules 2008 [P.U. (A) 41/2008] which states the following:-

Scope of advance ruling

2. (1) *The Director General shall, on an application made by any person, make an advance ruling on how any provision of the Act applies or would apply to the person and to the arrangement for which the advance ruling is sought.*

The LHDNM has also updated the [Guidelines on Advance Rulings](#) as highlighted in red in the table below as follows:-

Paragraph	Contents
6.1	<p>Scope of an Advance Ruling</p> <p>A request for an advance ruling has to be one where the issue requires an interpretation of the income tax law provision in the ITA and not one seeking to know what the law already clearly provides, for example the determination of residence status of a person. Request that involves the interpretation of Agreement for the Avoidance of Double Taxation including determining whether a person has a permanent establishment in Malaysia does not fall within the scope of advance ruling.</p>
7.(h)	<p>Circumstances where an Advance Ruling is not issued</p> <p>The DGIR is not obligated to issue an advance ruling for all applications. There are circumstances whereby the DGIR shall not make an advance ruling. The circumstances are as follows:-</p> <p>h. the matter on which the advance ruling is sought involves transfer pricing, an advance pricing arrangement or a tax avoidance scheme;</p>

Members may read the Media Release at the websites of the [Institute](#) and the [LHDNM](#). Members may also read the updated Guidelines on Advance Rulings at the websites of the [Institute](#) and the [LHDNM](#).

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