

TECHNICAL

Direct Taxation

PUBLIC RULING NO. 6/2016 – GROUP RELIEF FOR COMPANIES

The above Public Ruling (PR) was issued on 22 August 2016 and reported in our [e-CTIM TECH-DT 75/2016](#) dated 23 August 2016. The [PR](#) explains the tax treatment of group relief for companies which are resident and incorporated in Malaysia.

Definitions

The following are some important terms defined paragraph 3 of the PR:

Word	Meaning
Equity holder	Any holder of ordinary share in the claimant or surrendering company or any creditor of that company in respect of any non-commercial loan.
Defined aggregate income (DAI)	In relation to a year of assessment (YA), means the aggregate income of a claimant company for that year reduced by a deduction made pursuant to paragraphs 44(1)(a), (b), (c) and (d) of the ITA.
Ordinary share	Any share other than a share which carries only a right to any dividend which is of – (a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or (b) a fixed rate per cent of the profits of the company.

The words “residual assets”, “residual profits”, “non-commercial loan”, and “commercial loan” are also specifically defined. Please refer to [paragraph 3](#) for their meanings.

Tax treatment of group relief

The contents of the PR are summarized below:

Para No. in Ruling	Subject Matter & Summary
4	<p><i>Introduction</i></p> <ul style="list-style-type: none"> Each company within a group is treated as a separate entity whose chargeable income/ loss is separately determined. The adjusted loss (AL) of the business of one company can be absorbed by income from other sources of that company only. Any unabsorbed loss must be carried forward to be deducted from the aggregate of statutory income (SI) from its business sources in the following year of assessment (YA). Effective from YA 2006, group relief (GR) is available to all locally incorporated resident companies pursuant to S44A of the ITA. (All sections quoted hereafter refer to sections of the ITA, unless otherwise stated.) GR provisions allow a company in a group (the “surrendering company”

	<p>(Sco.)) to surrender not more than 70% of its AL in the basis period (BP) for a YA to one or more related companies (the “claimant company” (Cco.)) within the same group.</p> <ul style="list-style-type: none">Companies engaged in approved food production projects which have been allowed GR prior to YA 2006 under Sched. 4C (now deleted) can continue to enjoy this special tax treatment.																					
5	<p><i>Qualifying criteria</i></p> <ul style="list-style-type: none">Both the Sco. and the Cco. must meet the following conditions to qualify for GR:<ul style="list-style-type: none">i. Incorporated in Malaysia;ii. Resident in Malaysia in the basis year for that YA;iii. Are related companies throughout the BP for the YA and the 12- month period immediately preceding that BP;iv. Have a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the BP for that YA;v. Have a 12-month BP ending on the same date;vi. Make an irrevocable election to surrender or claim an amount of AL in the return form for that YA (under S77A);vii. Subject to tax at the appropriate rate as specified in paragraph 2 of Pt. 1 of Sched. 1 of the ITA.The Cco. must have DAI for that YA which is computed as follows: <table><tr><td></td><td>RM</td><td>RM</td></tr><tr><td>Aggregate income</td><td></td><td>xx</td></tr><tr><td>Less: (i) current year loss</td><td>xx</td><td></td></tr><tr><td>(ii) qualifying prospecting expenditure (Sched. 4)</td><td>xx</td><td></td></tr><tr><td>(iii) qualifying pre-operational business expenditure (approved overseas expenditure) (Sched. 4B)</td><td>xx</td><td></td></tr><tr><td>(iv) monetary and other gifts, such as approved donations [S44(6) to 11C)]</td><td>xx</td><td>xx</td></tr><tr><td>DAI</td><td></td><td>xx</td></tr></table>		RM	RM	Aggregate income		xx	Less: (i) current year loss	xx		(ii) qualifying prospecting expenditure (Sched. 4)	xx		(iii) qualifying pre-operational business expenditure (approved overseas expenditure) (Sched. 4B)	xx		(iv) monetary and other gifts, such as approved donations [S44(6) to 11C)]	xx	xx	DAI		xx
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6	<p><i>Meaning of “related companies” for purpose of GR [S44A(3)]</i></p> <p>To qualify as “related companies” for purpose of GR, companies in the same group must pass the following tests:</p> <ul style="list-style-type: none"><i>First level (ordinary shareholding requirement (not including treasury shares))</i> <p>A Sco. and Cco are related companies if at least 70% of the paid-up capital in</p>																					

respect of ordinary shares –

- (a) of the Sco. is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the Cco.; or
- (b) of the Cco. is directly or indirectly ((through the medium of other companies resident and incorporated in Malaysia) owned by the Sco.; or
- (c) of the Sco. and the Cco. are directly or indirectly owned by another company resident and incorporated in Malaysia.

In determining the 70% shareholding threshold, any direct or indirect holdings by companies that are not resident and not incorporated in Malaysia are disregarded.

Examples 1 to 7 in the PR illustrate how the test of shareholding requirement as stated above, is applied under different circumstances to determine whether companies in the same group have met the “70% shareholding” requirement. (Please refer to these [examples](#).)

- *Second level (residual profits (RP) and residual assets (RA) requirement)*

Even if the first level requirement is met, a second level test requires that the company concerned must also satisfy the following requirements relating to RP and RA:

- (a) **RP** – Holders of ordinary shares must show that they are beneficially entitled (directly or indirectly) to at least 70% of RP that is available for distribution to the company’s equity holders, which refers to the ordinary shareholders and non-commercial loan creditors. (Please refer to the definitions of “commercial loan” and “non-commercial loan” in [paragraph 3.](#))

RP is computed as follows:

	RM	RM
Accounting profit (net profit before tax)		xx
Less: (i) fixed dividend or dividend at fixed percentage of value of nominal share;	xx	
(ii) dividend at fixed percentage of profit (before deducting any payments to non-commercial loan creditors where the payments are not subject to a fixed percentage on the loan or profits)		
	xx	xx
Residual profits that can be distributed to the equity holders		xx

- (b) **RA** – Holders of ordinary shares must also show that they are beneficially entitled, directly or indirectly, to at least 70% of any RA available for distribution the company’s equity holders upon winding up of the company.

RA are net assets –

	<p>(i) available for distribution to equity holders in the event of winding up</p> <p>(ii) after deducting payment for commercial loans and distribution made to holders of shares other than ordinary shares; and</p> <p>(iii) distributed using the ratio used for the purpose of determining RP.</p> <p>Examples 8–12 illustrate the ordinary shareholding requirement and entitlement to RP and RA test.</p>				
7	<p><i>Maintenance of ordinary shareholding level</i></p> <ul style="list-style-type: none"> For the purpose of GR the ordinary shareholding level must be maintained at or above 70% by both the Sco. and the Cco. throughout the BP for a YA and the period of 12 months immediately preceding that BP. (Refer to Examples 13 – 15) 				
8	<p><i>Computation of GR</i></p> <ul style="list-style-type: none"> According to S44A(4), the amount of adjusted loss for a YA that may be surrendered by a Sco. to a Cco. – <p><u>Subsection</u></p> <p>44A(4)(a) - is the amount or the aggregate amount of the AL or the excess of that amount of the Sco. for that YA as ascertained under S44(4) and 44(5) of the ITA;</p> <p>44A(4)(b) - will be allowed to a Cco. as a deduction in ascertaining total income of the Cco. in accordance with S44(1) of the ITA;</p> <p>44A(4)(c) - cannot exceed the DAI of the Cco. for that YA.</p> <p>Computations of AL surrendered by Sco are found in Examples 16 and 17.</p>				
9	<p><i>More than 1 surrendering or claimant co.</i></p> <ul style="list-style-type: none"> A Sco. / Cco. can surrender / claim AL to / from one or more related companies. <p>The rules relating to the surrender/ claim of AI by the Sco./ Cco. are summarized below:</p> <table border="1"> <thead> <tr> <th>Surrendering Co.</th><th>Claimant Co.</th></tr> </thead> <tbody> <tr> <td colspan="2">Adjusted loss</td></tr> </tbody> </table>	Surrendering Co.	Claimant Co.	Adjusted loss	
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	<table border="1"> <tr> <td data-bbox="410 331 986 683"> <ul style="list-style-type: none"> • Can surrender AL to one or more Cco. • Amount surrendered to be fully set off against the amount of DAI of the first Cco. Any balance of AL can be surrendered to the second Cco. and so on in order of priority. • Amount of AL surrendered is disregarded for purpose of ascertaining aggregate income of Sco under S43. </td><td data-bbox="986 331 1396 683"> <ul style="list-style-type: none"> • Can claim AL from one or more Sco. • Amount surrendered by the first Sco. must be fully deducted from the DAI before deducting AL from the second Sco. and so on in order of priority. </td></tr> <tr> <td colspan="2" data-bbox="410 683 1396 750"><i>Order of priority</i></td></tr> <tr> <td colspan="2" data-bbox="410 750 1396 1041"> <ul style="list-style-type: none"> • Amount to be surrendered / claimed must follow the order of priority as specified by the Sco./ Cco. by making an irrevocable election in the prescribed Form C (RK-S) and Form C(RK-T) together with the Return Form C. • If the order of priority specified by Sco./ Cco. cannot be effected, the AL surrendered/ claimed will be dealt with in such a manner as the DGIR thinks reasonable and proper. </td></tr> <tr> <td colspan="2" data-bbox="410 1041 1396 1108"><i>DAI of Cco.</i></td></tr> <tr> <td colspan="2" data-bbox="410 1108 1396 1400"> <ul style="list-style-type: none"> • Amount of AL that can be transferred is restricted to the DAI of Cco. Any excess of AL over the latter amount must be retained by the Sco. as unabsorbed loss which can be set off against SI of the Sco. in subsequent YA. • Any amount of AL mistakenly surrendered to a Cco. with a loss or without DAI cannot be transferred to another Cco. but must be returned to the Sco. </td></tr> </table> <p>The application of the above rules is illustrated in Example 18</p>	<ul style="list-style-type: none"> • Can surrender AL to one or more Cco. • Amount surrendered to be fully set off against the amount of DAI of the first Cco. Any balance of AL can be surrendered to the second Cco. and so on in order of priority. • Amount of AL surrendered is disregarded for purpose of ascertaining aggregate income of Sco under S43. 	<ul style="list-style-type: none"> • Can claim AL from one or more Sco. • Amount surrendered by the first Sco. must be fully deducted from the DAI before deducting AL from the second Sco. and so on in order of priority. 	<i>Order of priority</i>		<ul style="list-style-type: none"> • Amount to be surrendered / claimed must follow the order of priority as specified by the Sco./ Cco. by making an irrevocable election in the prescribed Form C (RK-S) and Form C(RK-T) together with the Return Form C. • If the order of priority specified by Sco./ Cco. cannot be effected, the AL surrendered/ claimed will be dealt with in such a manner as the DGIR thinks reasonable and proper. 		<i>DAI of Cco.</i>		<ul style="list-style-type: none"> • Amount of AL that can be transferred is restricted to the DAI of Cco. Any excess of AL over the latter amount must be retained by the Sco. as unabsorbed loss which can be set off against SI of the Sco. in subsequent YA. • Any amount of AL mistakenly surrendered to a Cco. with a loss or without DAI cannot be transferred to another Cco. but must be returned to the Sco. 	
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10	<p><i>Revision of AL</i></p> <ul style="list-style-type: none"> • If, as a result of a revised tax computation, the revised AL that is available for surrender is – <ol style="list-style-type: none"> (a) more than the amount that has already been surrendered, the Sco, is not allowed to revise the loss already surrendered. It must carry forward the difference in AL; (b) less than the amount already surrendered, both the Sco. and the Cco. must notify/ inform the IRBM branch that handles the income tax file of the respective companies. • A Cco. that deliberate claims an amount of AL which exceeds the amount surrendered by the Sco. is subject to penalty under S114(1). • If chargeable income initially reported by a company is reduced to an AL (as a result of tax adjustments), the company is not allowed to surrender that AL to its related companies. 										

11	<p><i>Penalty for incorrect information (S44A(9))</i></p> <ul style="list-style-type: none"> Under S44A(9)(a), where the DG discovers that AL should not have been deducted in computing total income of the Cco., he may raise an assessment / additional assessment on the Cco. in that year or within 5 years after the end of that year. (Refer para 11.1 for the diagram that shows how this provision is applied.) Under S44A(9)(b), a Sco. that provides incorrect information in the return form on the amount of AL surrendered, is liable to a penalty of an amount equal to the amount of tax undercharged by the Cco. (Refer Example 19.)
12	<p><i>Companies not eligible for GR</i></p> <ul style="list-style-type: none"> Under S44A(10), GR is not applicable to companies (Sco. or Cco.) which have been granted specific tax incentives for the BP for a YA. Please refer to para. 12 for the full list of legislation granting these incentives. (Refer Examples 20 – 21)
13	<p><i>Other pertinent matters</i></p> <p>The matters dealt with in this paragraph relate to administrative and operational matters on the completion and filing of return forms, and the eligibility to make an election to surrender / claim losses. (Please refer to paragraphs 13.1 to 13.4 for full details.)</p>

Members may view the PR at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any concern or comments you may have on the above [PR](#).

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