

CTIM No.187/2012

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TO ALL MEMBERS

## TECHNICAL

### Direct Tax

#### PUBLIC RULING NO. 10/2012 – TAX TREATMENT OF A MALAYSIAN SHIP

The above Public Ruling was issued on 13 December 2012.

#### Objective

The Ruling explains the tax treatment of income of a resident person from a Malaysian Ship prior to the year of assessment (YA) 2014 in accordance to the provisions of section 54A of the Income Tax Act 1967 (ITA) before the amendments by section 11 of the Finance Act 2012. (The implementation of the amendments has been deferred for 2 years. The amendments take effect from YA 2014.)

The following are some salient points made in the Ruling.

#### Meaning of “Malaysian Ship”

A Malaysian Ship is defined under subsection 54A(6) of the ITA as “a sea-going ship registered as such under the Merchant Shipping Ordinance 1952 (MSO), other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel”.

A Malaysian Ship must fulfil *all* the following 3 conditions:

1. registered as a Malaysian Ship under the MSO;
2. a sea-going ship; and
3. not being any of the vessels listed/ referred to in the definition stated above.

Paragraphs 5.2, 5.3 and 5.4 of the Ruling provide further explanation of the above.

#### Exemption of shipping income from Malaysian Ship

Subsection 54A(1) of the ITA grants exemption in respect of statutory income from the operation of a Malaysian Ship where certain qualifying conditions are met. The qualifying conditions and other details are summarised in the following table found under paragraph 6.7 of the Ruling:

Exemption of Shipping Income From Malaysian Ship Under Section 54A	
Qualifying person	A person resident in Malaysia* * "Person" is defined in paragraph 4.4 of the Ruling. (CTIM's note)
Qualifying business	(a) Transporting passengers or cargo by sea on a Malaysian Ship: or (b) Letting out on charter a Malaysian Ship (owned by the person) on a voyage or time charter basis
Exempt income	100% of statutory income
Effective date	Effective from YA 1984

The following are further explanations relating to the exemption granted under subsection 54A(1) of the ITA:

*Business of transporting passengers or cargo by sea* – The gross income of a resident person from this business is ascertained by reference to his income from wherever derived or accrued, i.e. gross income ascertained on a world income scope, and includes:

- (a) income received and receivable in Malaysia, and
- (b) income received and receivable outside Malaysia, irrespective of whether it is remitted to Malaysia.

To qualify for exemption, the business of transporting passengers or cargo by sea must be carried on by a *resident* person on a *Malaysian Ship*, which may be *owned or chartered* by the resident person. Operating a business of transporting passengers on a ferry does not allow the operator to qualify for exemption as a ferry is not a “Malaysian Ship” as defined above.

*Letting out Malaysian Ship on voyage or time charter* – Time charter refers to the chartering of a ship based on a specific period of time for the use of the ship while voyage charter refers to the chartering of a ship based on a particular voyage from one port or place to another. The word “charter” refers to chartering of the whole ship and not part of the ship.

With effect from YA 1984, a resident person carrying on the qualifying business of letting out on charter a Malaysian Ship owned by that person on a voyage or time charter basis for a YA, is exempt from tax on the statutory income from that business for that YA. However, the business of operating cruise tours on board a Malaysian ship is not regarded as a qualifying business as the primary activity and purpose of the business are not transportation of passengers or cargo but recreation or leisure.

### Computation of statutory income

The following are points to be noted in the computation of exempt statutory income under section 54A(1) of the ITA:

- Tax exemption is given in respect of 100% of statutory income (refer to Example 11 in the Ruling).
- The capital allowance for every asset owned and used in the business is deemed to have been claimed and given (subsection 54A(1A), effective from YA 2009). (Refer to Example 12.)
- Where there is more than one Malaysian Ship, the business income derived from all the Malaysian Ships is to be treated as a single source. (Refer to Example 13.)
- In determining the amount of exempt income, the capital allowance claimed or deemed to have been claimed in respect of any Malaysian Ship is deductible against the income of other Malaysian Ships exempt under section 54A of the ITA. (Refer to Example 14.)
- In determining the amount of exempt income, special treatment is accorded to capital allowance (CA) and adjusted loss of a Malaysian Ship. This special treatment is covered by section 52 of the ITA.
- Unabsorbed CA of a Malaysian Ship is not available for deduction against other income, but can only be deducted against income exempt under section 54A. The unabsorbed CA has to be carried forward to the following YA to be deducted against exempt income. (Refer to Example 15)

- An adjusted loss of a Malaysian Ship for a YA can only be deducted against income exempt under section 54A of the ITA for that YA. Any unabsorbed loss is not available for deduction against other income, which include non-exempt income for that YA from:
  - (i) non-Malaysian Ships used in the business; or
  - (ii) other sources of income.
- Any unabsorbed loss of a Malaysian Ship in a basis year has to be carried forward to the following YA to be deducted against income exempt under section 54A of the ITA. (Refer to Example 16.)
- When a Malaysian Ship is disposed of, any balancing allowance in relation to that ship is deductible against exempt income of Malaysian Ships. Any unabsorbed allowance of that Malaysian Ship is carried forward for deduction against exempt income of Malaysian Ships. If a balancing charge arises, the amount of the charge shall not exceed the total amount of CA given in respect of that Malaysian Ship. (Refer to Example 17.)
- Where two business activities which qualify for exemption under section 54A are carried on by one person, in determining exempt income, the CA or adjusted loss in respect of a Malaysian Ship used in one business activity shall be deducted against the exempt income of another business activity. (Refer to Example 18.)

#### Other related matters

The following are other related topics found in the Ruling:

*Separate account for Malaysian ships* – A person carrying on a business deriving income which is exempt under section 54A of the ITA is required to keep separate accounts for income derived or deemed derived from each Malaysian Ship.

*Exempt account and dividend* – Exempt income of a Malaysian Ship is credited to an exempt account. Dividend paid out of the exempt account is exempt in the hands of shareholders. A corporate shareholder receiving such exempt dividend may also pay exempt dividends to its own shareholders out of that exempt income.

*Non-application* – Group relief for companies under section 44A of the ITA shall not apply for the basis year for a YA during the period in which the company enjoys exemption under section 54A of the ITA.

*Income from sources outside Malaysia* – A resident company which enjoys exemption under section 54A of the ITA is not eligible for exemption of other income derived from sources outside Malaysia and received in Malaysia since it is regarded as coming within the words “resident company carrying on the business of.....sea or air transport” (in paragraph 28 of Schedule 6 of the ITA), the income of which is taxed on a world income scope. (Refer to Example 20.)

*Documents required for claim for exemption* – Paragraph 15 of the Ruling lists the documents which are required to be produced in the event of a tax audit. Members may view the Public Ruling at [the IRB website](#).

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