



**INLAND REVENUE BOARD OF MALAYSIA**

**TAX TREATMENT OF  
MALAYSIAN SHIP  
PUBLIC RULING NO. 10/2012**

*Translation from the original Bahasa Malaysia text*

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#### **DIRECTOR GENERAL'S PUBLIC RULING**

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.

**Director General of Inland Revenue,  
Inland Revenue Board of Malaysia.**

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1. **Objective**

This Ruling explains the tax treatment of a Malaysian Ship and the exemption of shipping income in respect of a person resident in Malaysia prior to the year of assessment 2014.

2. **Related Provisions**

The provisions of the Income Tax Act 1967 (ITA 1967) and Income Tax Orders to this Ruling are as follows:

- 2.1 Subsection 44A(10), sections 52, 54 and 54A and paragraph 28, Schedule 6 of the ITA 1967,
- 2.2 Income Tax (Exemption) (No. 29) Order 1998 [P.U. (A) 473/1998], and
- 2.3 Income Tax (Exemption) (No. 2) Order 2012 [P.U. (A) 167/2012].

3. **Application Of Tax Laws**

- 3.1 Sections 54A(1) and 54A(2) of the ITA 1967 have been amended under section 11 of the Finance Act 2012 [Act 742]. However, implementation of the amendments has been deferred for two years from the year of assessment 2012 to the year of assessment 2014 by virtue of the Income Tax (Exemption) (No. 2) Order 2012 [P.U. (A) 167/2012].
- 3.2 This Ruling covers the tax treatment prior to the year of assessment 2014.
- 3.3 In this Ruling, any reference to subsection 54A(1) or 54A(2) or paragraph 54A(1)(a), 54A(1)(b), 54A(2)(a) or 54A(2)(b) of the ITA 1967 shall be interpreted as a reference to such subsection or paragraph of the ITA 1967 prior to the amendments under section 11 of the Finance Act 2012.

4. **Interpretation**

The words used in this Ruling have the following meaning.

- 4.1 "Malaysian Ship" means a sea-going ship registered as such under the Merchant Shipping Ordinance 1952 (MSO 1952), other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.
- 4.2 "Cargo" includes mail, currency, specie, livestock and all kinds of goods.
- 4.3 "DGIR" refers to the Director General of Inland Revenue.
- 4.4 "Person" includes a company, a co-operative society, a partnership, a club, an association, a Hindu Joint Family, a trust, an estate under administration and an individual.

4.5 “Resident” means resident in Malaysia for the basis year for a year of assessment by virtue of section 7, section 8 or subsection 61(3) of the ITA 1967.

4.6 “Source” means a source of income.

## 5. Malaysian Ship

A shipping or sea transport undertaking has been accorded special tax treatment under sections 54 and 54A of the ITA 1967.

A resident person who operates a Malaysian Ship which has the same meaning as in subsection 54A(6) of the ITA 1967 is eligible for tax exemption provided that the qualifying criteria under subsection 54A(1) of the ITA 1967 are satisfied.

### 5.1 Definition of Malaysian Ship

5.1.1 Malaysian Ship as defined under subsection 54A(6) of the ITA 1967 means a sea-going ship registered as such under the MSO 1952, other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.

5.1.2 To qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967, a vessel has to be:

- (a) registered as a **Malaysian Ship** under the MSO 1952,
- (b) a sea-going ship, and
- (c) not a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.

All the 3 conditions above have to be fulfilled. If any one of them is not fulfilled, the vessel will not be a Malaysian Ship.

### 5.2 Registration under MSO 1952

5.2.1 A vessel registered as a **Malaysian Ship** with the Certificate of Registry under the MSO 1952 is not necessarily a Malaysian Ship under the ITA 1967 because the definition of Malaysian Ship in the MSO 1952 differs from that in the ITA 1967.

5.2.2 In order to qualify for Malaysian Ship status under the ITA 1967, a vessel has to be a sea-going ship that goes beyond port limits besides being registered as a **Malaysian Ship** under the MSO 1952. In addition, it should not fall within the exclusion clause of “... a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel”.

5.2.3 A vessel that is not registered or has been deregistered under the MSO 1952 does not qualify for Malaysian Ship status under the ITA 1967.

### 5.3 Sea going ship

5.3.1 Sea-going ship is not defined in the ITA 1967. In line with the MSO 1952, a sea-going ship refers to any ship going beyond port limits. Port limits vary in accordance with the by-laws of each port.

5.3.2 A vessel used exclusively for navigation on the lakes, canals, rivers or coastal waters is not a sea-going ship.

5.3.3 A vessel that is not a sea-going ship does not qualify for Malaysian Ship status under the ITA 1967.

### 5.4 Exclusion clause “... a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel”

5.4.1 Vessels which fall within the above exclusion clause are specifically excluded from the definition of Malaysian Ship under subsection 54A(6) of the ITA 1967.

#### Example 1

A Sdn Bhd owns a barge which has been registered as a **Malaysian Ship** under section 11 of the MSO 1952. As a result of advancement in the shipping industry, that barge is not merely a support vessel but possesses huge engine power enabling it to be used in the deep sea. It is used to carry cargo from Malaysia to other Asian countries as far as Korea. A Sdn Bhd claims the barge to be a Malaysian Ship for income tax purposes.

Since a barge is specifically excluded from the definition of Malaysian Ship under subsection 54A(6) of the ITA 1967, A Sdn Bhd's barge does not qualify for Malaysian Ship status for income tax purposes in spite of the fact that it is capable of being used in the deep sea.

5.4.2 A vessel similar in type, category or functions to a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger or fishing boat is also excluded from the definition of Malaysian Ship under the ITA 1967.

#### Example 2

B Sdn Bhd is the owner of two vessels which are registered as **Malaysian Ships** under the MSO 1952. The first vessel, as

described in the Certificate of Malaysian Registry, is a maintenance support vessel with a cargo capacity of 500 tons and 270 cabins for accommodation. It is used for transporting goods, supplies and equipment to the offshore oil platform, in addition to providing accommodation and other facilities for the workers. The second vessel, a landing craft capable of transporting cargo between the ports, is used to carry the necessities for the purposes of oil platform operation.

Both vessels are similar in category and functions to the supply vessels specifically excluded from the definition of Malaysian Ship. Consequently, both are not Malaysian Ships within the context of subsection 54A(6) of the ITA 1967.

### **5.5 Ships not in exclusion clause**

Examples of ships which are not in the exclusion clause are the ocean liners, petroleum or oil tankers, LNG carriers, container ships, chemical tankers, etc.

These ships have to be sea-going ships and registered under the MSO 1952 in order to qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967.

## **6. Exemption Of Shipping Income From Malaysian Ship**

### **6.1 Qualifying person and business**

6.1.1 Pursuant to subsection 54A(1) of the ITA 1967, where a person who is resident in Malaysia for the basis year for a year of assessment carries on the qualifying business of –

- (a) transporting passengers or cargo by sea on a Malaysian Ship, or
- (b) letting out on charter a Malaysian Ship owned by him on a voyage or time charter basis,

the statutory income for that year of assessment from that business shall be exempt from tax.

6.1.2 “Person” includes a partnership as specified in subsection 54A(6) of the ITA 1967.

6.1.3 “Malaysian Ship” has the same meaning as described in paragraph 5.1 above.

**6.2 Business of transporting passengers or cargo by sea**

6.2.1 In accordance with paragraph 54(2)(a) of the ITA 1967, the gross income of a resident person from the business of transporting passengers or cargo by sea shall be ascertained by reference to his income from wherever derived or accrued. It means the income of a resident person from the business of transporting passengers or cargo by sea is ascertained on the world income scope basis.

6.2.2 Income of a resident person from the business of transporting passengers or cargo by sea from wherever derived or accrued includes -

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

**Example 3**

C Sdn Bhd, a company resident in Malaysia, carries on the business of transporting cargo by sea between Westports in Klang, Malaysia and Port of Shenzhen as well as other ports in China. The company's income statement for the year ended 31.12.11 is as follows:

No.	Freight		Gross Income (RM'000)		Total (RM'000)
	From	To	Remitted To Malaysia	Not Remitted To Malaysia	
i	Shenzhen Port China	Westports Malaysia	6,000	2,000	8,000
ii	Westports Malaysia	Shenzhen Port China	4,600	-	4,600
iii	Shenzhen Port China	Other ports in China	500	3,000	3,500
iv	Other ports in China	Shenzhen Port China	200	1,000	1,200
Total (RM'000)			11,300	6,000	17,300

The total gross income of the resident company from the business of transporting cargo by sea for the year ended 31.12.11 equals to RM17,300,000.



6.2.3 The world income of a resident person from the business of transporting passengers or cargo is taxable within the scope of subsection 4(a) of the ITA 1967, unless it qualifies for exemption under paragraph 54A(1)(a) of the ITA 1967.

6.2.4 To qualify for exemption under paragraph 54A(1)(a) of the ITA 1967, the business of transporting passengers or cargo by sea has to be carried on by a resident person on a Malaysian Ship.

The Malaysian Ship can be owned or chartered by the resident person.

The exemption has effect for the year of assessment 1984 and subsequent years of assessment.

6.2.5 A resident person carrying on the business of transporting passengers on a ferry does not qualify for exemption because a ferry is not a Malaysian Ship for income tax purposes.

Even though a ferry is required to be registered as a **Malaysian Ship** under the MSO 1952, tax exemption under paragraph 54A(1)(a) of the ITA 1967 shall not be given since a ferry is specifically excluded from the definition of Malaysian Ship under subsection 54A(6) of the ITA 1967.

#### **Example 4: Non-Malaysian Ship and not qualifying business**

D Sdn Bhd provides services for off-shore petroleum industry in Malaysia and overseas. The services rendered include works like examination, installation, repair and maintenance of oil platforms and pipe lines. D Sdn Bhd has a work force comprising professional divers and technical groups. The ships owned by D Sdn Bhd are used as platforms for bringing down the divers and unloading the equipment. The ships have been registered under the MSO 1952. Certificates issued by the Registrar of Malaysian Ships show that these ships are survey and support vessels. D Sdn Bhd applies for exemption of income derived from its services.

Although the ships concerned are registered as **Malaysian Ships** under the MSO 1952 and carry out the activities beyond the port boundary, D Sdn Bhd does not qualify for exemption as the ships concerned are not Malaysian Ships. They are similar in category or functions to the supply vessel which falls within the exclusion clause "... a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel" in the definition of Malaysian Ship. Apart from that, the services rendered do not constitute a qualifying business within the context of paragraph 54A(1)(a) of the ITA 1967.

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**Example 5: Not qualifying business**

E Sdn Bhd is the owner of a ship registered under the MSO 1952. It possesses the Domestic Shipping Licence which permits its ship to call at any port in Malaysia to carry on its business. Its business activities involve the transferring of cargo at the port from the supply vessels into its ship and from its ship to other ships. Its operation now focuses on the Johor Port region. E Sdn Bhd applies for exemption in respect of its income derived from its business activities.

The activities of transferring cargo between the ships at the port are more inclined to supporting services provided by using feeder vessels. The services rendered by E Sdn Bhd do not fall within the ambit of the qualifying business under paragraph 54A(1)(a) of the ITA 1967. As such, no exemption is granted.

**6.3 Letting out Malaysian Ship on voyage or time charter**

6.3.1 With effect from the year of assessment 1999, tax exemption is extended to a resident person carrying on the business of letting out on charter a Malaysian Ship owned by him on a voyage or time charter basis by virtue of paragraph 54A(1)(b) of the ITA 1967.

6.3.2 In addition, the Income Tax (Exemption) (No. 29) Order 1998 [P.U.(A) 473] provides retrospective exemption for the years of assessment 1984 to 1998.

6.3.3 In short, effective from the year of assessment 1984, where a person who is resident for the basis year for a year of assessment carries on the qualifying business of letting out on charter a Malaysian Ship owned by him on a voyage or time charter basis, the statutory income for that year of assessment from that business shall be exempt from tax.

6.3.4 The Malaysian Ship must be owned by the resident person for this particular exemption to apply.

**Example 6**

F Sdn Bhd, a company resident in Malaysia, does not own any ships but carries on the business as a ship operator and hirer. It charters from another company 5 cargo ships which qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967. Under the agreement, F Sdn Bhd supplies the crew and maintains the Malaysian Ships. The Malaysian Ships are then let out to other companies on a voyage charter basis for the purpose of transporting cargo by sea. F Sdn Bhd applies for exemption under section 54A of the ITA 1967.

Exemption shall not be granted because the Malaysian Ships are not owned by F Sdn Bhd. For the business of letting out Malaysian Ship on a voyage charter basis, the Malaysian Ship must be owned by F Sdn Bhd in order to qualify for exemption.

### 6.3.5 Time charter and voyage charter

Time charter and voyage charter are not defined in the ITA 1967.

Generally, time charter refers to the chartering of a ship based on a specific period of time for the use of the ship.

Voyage charter in general refers to the chartering of a ship based on a particular voyage from one port or place to another.

The word **voyage** refers to the whole time and the whole distance between the ship's port of place of **departure** and her final port or place of **arrival**.

For both time and voyage charters -

- (a) the ship owners normally supply the crew and provide the services of equipping, bunkering and maintaining the ship,
- (b) possession and control of the ship remain in the hands of the ship owners, and
- (c) the word **charter** refers to the chartering of the whole ship and not part of the ship.

#### Example 7

G Sdn Bhd is a company resident in Malaysia. It owns two ships which qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967. Under the charter-party contract, both ships were chartered together with crew to another shipping company H Sdn Bhd for the purpose of transporting cargo. The first ship was let out for a year from 1.1.11 to 31.12.11 during which -

- (a) G Sdn Bhd managed the first ship while H Sdn Bhd gave orders for the use of the first ship and directed the first ship where to go, and
- (b) H Sdn Bhd paid for the hire, fuel and port charges to G Sdn Bhd on a monthly basis.

The second ship was let out for freight charges based on a series of voyages between certain ports. G Sdn Bhd applies for tax exemption in respect of the business income derived from letting out the two ships.

In this case, since the first and second ships owned by G Sdn Bhd were let out on the basis of time and voyage charter respectively, G Sdn Bhd is eligible for exemption under paragraph 54A(1)(b) of the ITA 1967.

#### 6.4 Letting out Malaysian Ship on bareboat charter

6.4.1 A bareboat charter, also referred to as a demise charter, is different from a voyage charter or time charter. Under a bareboat charter, a ship is normally let out by the ship owner without crew while the responsibilities of supplying the crew and maintaining the ship lie with the charterer. Possession and control of the ship are in the hands of the charterer who has the exclusive use of the ship for a period of time or for a voyage.

6.4.2 Letting out a ship based on a bareboat charter basis is not a qualifying business under paragraph 54A(1)(b) of the ITA 1967.

#### Example 8

J Sdn Bhd is a company resident in Malaysia. It owns 3 ships which qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967. These ships are let out without crew, administration or technical maintenance to another shipping company who has the possession and control of the ship along with the legal and financial responsibility for it. J Sdn Bhd applies for tax exemption in respect of the income derived from letting out its Malaysian Ships.

No exemption is granted as the ships are let out on bareboat charter basis. To qualify for exemption, the Malaysian Ships have to be let out on a voyage or time charter basis.

#### 6.5 Business of operating cruise tours

Profits derived from the business of operating cruise tours on board a Malaysian Ship shall not qualify for exemption under paragraph 54A(1)(a) of the ITA 1967. The primary activity and purpose of the business are not transportation of passengers or cargo but recreation or leisure.

#### 6.6 Both Malaysian ship and non-Malaysian Ship are used in business

Where exemption under section 54A of the ITA 1967 applies and both Malaysian Ship and non-Malaysian Ship are used in the business of a resident person, exemption is restricted to the income derived from the Malaysian Ship only.

**Example 9: Container ships and barge are used**

K Sdn Bhd, a resident company, owns three container ships and a barge. All the vessels are registered under the MSO 1952 and are used in the company's business of transporting general goods by sea between Malaysia and Japan. K Sdn Bhd claims for exemption in respect of its income derived from the sea transport business.

Exemption is only granted in respect of the statutory income derived from operating the business on the three container ships which qualify for Malaysian Ship status. However, since the barge is excluded from the definition of a Malaysian Ship, income derived from operating the business on the barge is not tax exempt.

**Example 10: Malaysian Ships and foreign ship are used**

L Sdn Bhd, a company resident in Malaysia, does not own any ships but carries on the business of transporting crude palm oil by sea. It charters four ships which qualify for Malaysian Ship status under sub-section 54A(6) of the ITA 1967 from its parent company. In addition, it charters a foreign ship which is not registered under the MSO 1952 from an overseas client. All the ships are used in the company's business.

L Sdn Bhd is eligible for exemption in respect of the income derived from operating the business on the Malaysian Ships. However, income derived from operating the business on the foreign ship is taxable.

**6.7 Summary of exemption of shipping income**

<b>Exemption Of Shipping Income From Malaysian Ship Under Section 54A</b>	
Qualifying person	A person resident in Malaysia
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 year of assessment 1984

**7. Exemption Of Statutory Income**

Where the business of a person who is resident for the basis year for a year of assessment qualifies for exemption under section 54A of the ITA 1967, tax exemption is given in respect of 100% of the statutory income for that year of assessment from that business.

**Example 11**

M Sdn Bhd, a company resident in Malaysia with paid up capital of more than RM2.5 million, carries on the business of specialising in ocean transport of gas and crude oil on LNG carriers and oil tankers plying between Malaysia and Europe. These ships are registered under the MSO 1952. The following is the income statement of the company for the year ended 31.12.2011:

	<b>RM'000</b>	<b>RM'000</b>
(a) Shipping business		
Gross income from wherever derived or accrued		120,000
(b) Interest – section 4(c)		<u>600</u>
		120,600
Less: Expenditure		
Salary & wages	20,000	
Repair & maintenance of ship	16,000	
Bunkering	30,000	
Insurance	2,000	
Port and canal charges	1,000	
Other allowable operating expenses	3,000	
Depreciation	<u>5,000</u>	<u>77,000</u>
Net Profit		<u>43,600</u>

Other information

- (i) Capital allowance allowed for the year of assessment 2011 is RM800,000.
- (ii) The ships used in the business qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967.

**Tax Computation For The Year Of Assessment 2011**

	<b>RM'000</b>	<b>RM'000</b>
Shipping business		
Net profit	43,600	
Less: Other income - Interest	<u>600</u>	
	43,000	
Add: Depreciation	<u>5,000</u>	
Adjusted income	48,000	
Less: Capital allowance	<u>800</u>	

Statutory income	<u>*47,200</u>
*Amount credited to the exempt account	
Other income: Interest – section 4( c)	<u>600</u>
Aggregate / Chargeable income	<u>600</u>
Tax charged = RM150,000.00 (RM600,000 @ 25%)	

100% of the statutory income of shipping business is tax exempt.

**8. Capital Allowance Deemed Claimed**

Where the business income of a resident person is exempt, by virtue of subsection 54A(1A) of the ITA 1967, the capital allowance for every asset owned and used in the business is deemed to have been claimed and given, effective from the year of assessment 2009. This provision has the effect of reducing the exempt income.

**Example 12**

N Sdn Bhd, a resident company, commenced operation in the year 2008 and owns a general cargo ship **Anggerik** which qualifies for Malaysian Ship status under subsection 54A(6) of the ITA 1967. The company carries on the business of letting out Anggerik on a time charter basis and qualifies for exemption under section 54A of the ITA 1967. However, the company did not claim capital allowance for the years of assessment 2008 and 2009. The particulars of the company's assets used in its business are as follows:

<b>Cost Of Assets Acquired In The Year 2008</b>	<b>RM</b>
(a) Ship	50,000,000
(b) Motor vehicle and machinery	1,000,000

Computation of residual expenditure for the year of assessment 2010:

<b>Malaysian Ship: Anggerik</b>			
		<b>Ship</b>	<b>Motor Vehicle &amp; Machine</b>
<b>Year Of Assessment</b>	<b>Cost (RM)</b>	<b>50,000,000</b>	<b>1,000,000</b>
2008	Notional allowance (20%)	<u>10,000,000</u>	<u>200,000</u>
	Residual expenditure	40,000,000	800,000
2009	Annual allowance * (20%)	<u>10,000,000</u>	<u>200,000</u>
	Residual expenditure	30,000,000	600,000



2010	Annual allowance (20%)	<u>10,000,000</u>	<u>200,000</u>
	Residual expenditure	20,000,000	400,000

\* Capital allowance is deemed to have been claimed and made for the purpose of ascertaining statutory income exempt under section 54A of the ITA 1967 with effect from the year of assessment 2009.

## 9. Malaysian Ships As A Single Source

### 9.1 Business income from two or more Malaysian Ships

Where there is more than one Malaysian Ship in determining the income of a person exempt under section 54A of the ITA 1967, the business income derived from all the Malaysian Ships shall be treated as one source.

#### Example 13

P Sdn Bhd, a resident company, owns and operates three chemical tankers and a barge. All the vessels are registered as **Malaysian Ships** under the MSO 1952 and used in the company's business of transporting industrial chemicals and other goods by sea between Malaysia and Japan. All the vessels except the barge qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967. The adjusted income and capital allowances for the Year of Assessment (YA) 2010 are as follows:

<b>Business Of Transporting Industrial Chemicals And Other Goods</b>				
<b>YA 2010</b>	<b>Malaysian Ships</b>			<b>Non-Malaysian Ship</b>
	<b>Chemical Tanker 1 (RM'000)</b>	<b>Chemical Tanker 2 (RM'000)</b>	<b>Chemical Tanker 3 (RM'000)</b>	<b>Barge (RM'000)</b>
Adjusted Income	100,000	50,000	70,000	14,000
Capital Allowance	3,000	1,000	4,000	2,700



**Tax Computation For The Year Of Assessment 2010**

Shipping income exempt under section 54A	<b>RM'000</b>
Adjusted income from Malaysian Ships	220,000
Less: Capital allowance	<u>8,000</u>
Statutory income exempt from tax	<u>*212,000</u>
* Amount credited to the exempt account	
Shipping income assessable to tax	<b>RM'000</b>
Adjusted income from non-Malaysian Ship (barge)	14,000
Less: Capital allowance	<u>2,700</u>
Statutory income	<u>11,300</u>
Aggregate / Chargeable income	<u>11,300</u>

Business income from all the Malaysian Ships is treated as one source in the computation of exempt income.

**9.2 Capital allowance of Malaysian Ships**

Pursuant to paragraph 54A(2)(a) of the ITA 1967, in determining the income of a person under section 54A, 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 ITA1967.

**Example 14**

Q Sdn Bhd is a company resident in Malaysia and owns two container ships, Tanjung I and Tanjung II. The ships are registered under the MSO 1952 and used in the company's business activity of transporting cargo by sea between Johor Port and Vietnam. Both ships qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967. Details of the income and expenditure of the company for the year ended 31.12.2009 are as follows:

Year Of Assessment 2009	Business Of Transporting Cargo By Sea On Malaysian Ships	
	Tanjung I	Tanjung II
Gross income (RM)	27,950,000	28,500,000
Direct cost (RM)	24,024,358	25,975,642
Depreciation (RM)	400,000	600,000
Profit (RM)	3,525,642	1,924,358

Other information

- (a) Indirect cost of RM5,000,000 is allocated on gross income basis and accepted by the DGIR.

Tanjung I:  $RM5,000,000 \times 27,950,000 / 56,450,000 = RM2,475,642$

Tanjung II:  $RM5,000,000 \times 28,500,000 / 56,450,000 = RM2,524,358$

- (b) Capital allowances allowed for the year of assessment 2009 are as follows:

	<b>Tanjung I</b>	<b>Tanjung II</b>
Current year	RM 250,000	RM 450,000
Brought forward	RM 500,000	-

**Tax Computation For The Year Of Assessment 2009**

<b>Business Of Transporting Cargo By Sea</b>	<b>Malaysian Ships</b>	
	<b>Tanjung I (RM)</b>	<b>Tanjung II (RM)</b>
Profits	3,525,642	1,924,358
Add: Depreciation	400,000	600,000
Less: Indirect cost	(2,475,642)	(2,524,358)
Adjusted income	1,450,000	Nil
Less: Capital Allowance		
Tanjung I Current year	250,000	
Brought forward	500,000	
Tanjung II Current year	450,000	
	1,200,000	
Statutory income exempt under sec. 54A *Amount credited to the exempt account	* 250,000	Nil

Capital allowance of RM450,000 claimed in respect of **Tanjung II** is deductible against the income from **Tanjung I**.

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### 9.3 Balance of capital allowance of Malaysian Ships

- 9.3.1 Where exemption under section 54A of Chapter 8 in Part III of the ITA 1967 applies, special treatment is accorded to the capital allowance and adjusted loss of a Malaysian Ship. Such special treatment is covered by section 52 of the ITA 1967.
- 9.3.2 Section 52 of the ITA 1967 provides that in the application of section 54A, provisions regarding ascertainment of chargeable income in Chapters 1 to 7 in Part III of the ITA 1967 (foregoing chapters) shall also apply but shall be modified to the extent necessary to conform with section 54A. Where there is any inconsistency between section 54A and the foregoing chapters, the foregoing chapters shall be void to the extent of the inconsistency.
- 9.3.3 The following paragraphs 9.3.4, 9.4.3 and 9.6.2 of this Ruling illustrate the applications of section 52 in relation to the operation of special treatment of capital allowance and adjusted loss in respect of a Malaysian Ship under section 54A of the ITA 1967.
- 9.3.4 By virtue of paragraph 54A(2)(a) of the ITA 1967, the unabsorbed capital allowance of a Malaysian Ship shall not be available as a deduction against other income. It shall only be deducted against the income exempt under section 54A.

As a consequence, where both Malaysian Ship and non-Malaysian Ship are used in the business, the unabsorbed capital allowance in respect of the Malaysian Ship for a year of assessment is not deductible against the taxable income of the non-Malaysian Ship. The unabsorbed capital allowance has to be carried forward to the following year of assessment to be deducted against the exempt income only.

The above treatment deviates from the normal treatment of capital allowance in respect of a business source. Under the normal treatment where section 54A does not apply, the unabsorbed capital allowance of a ship used in a business would have been deductible against the income of other ship used in the same business for the year of assessment.

#### **Example 15**

The facts of this case are the same as Example 14. In the year 2010, the company purchased a barge for its business use. The adjusted income and capital allowance of the business for the years of assessment 2010 and 2011 are as follows:

YA	Business Of Transporting Cargo By Sea			
		Malaysian Ships		Non-Malaysian Ship
		Tanjung I	Tanjung II	Barge
2010	Adjusted income	1,000,000	-	700,000
	Capital allowance	750,000	800,000	40,000
2011	Adjusted income	2,000,000	1,000,000	890,000
	Capital allowance	300,000	400,000	60,000

**(a) Computation For The Year Of Assessment 2010**

Shipping income exempt under section 54A

	RM
Adjusted income of Malaysian Ships	
Tanjung I	1,000,000
Tanjung II	<u>Nil</u>
Total adjusted income	1,000,000
Less: Capital Allowance <sup>(1)</sup>	
Tanjung I	750,000
Tanjung II	<u>800,000</u>
	1,550,000
	<u>1,000,000</u>
Capital allowance carried forward <sup>(2)</sup>	
= 550,000 (1,550,000 – 1,000,000)	
Statutory income exempt under section 54A	<u>Nil</u>
Shipping income assessable to tax	
Adjusted income of non-Malaysian Ship	700,000
Less: Capital allowance	<u>40,000</u>
Statutory income	<u>660,000</u>
Aggregate / Chargeable income	660,000

<sup>(1)</sup> Capital allowance of RM800,000 claimed in respect of **Tanjung II** is deductible against the exempt income of **Tanjung I**.

(2) The unabsorbed capital allowance of RM550,000 in respect of Malaysian Ships is not deductible against the taxable income of non-Malaysian Ship used in the shipping business. It is carried forward to the following year of assessment to be deducted against the exempt income of Malaysian Ships.

**(b) Computation For The Year Of Assessment 2011**

Shipping income exempt under section 54A

	<b>RM</b>
Adjusted income of Malaysian Ships	
Tanjung I	2,000,000
Tanjung II	<u>1,000,000</u>
Total adjusted income	3,000,000
Less: Capital Allowance	
(i) Current year	
Tanjung I	300,000
Tanjung II	400,000
(ii) Brought forward <sup>(3)</sup>	<u>550,000</u>
Statutory income exempt under section 54A	<u>*1,750,000</u>

\*Amount credited to the exempt account

	<b>RM</b>
Shipping income assessable to tax	
Adjusted income of non-Malaysian Ship	890,000
Less: Capital allowance	<u>60,000</u>
Statutory income	<u>830,000</u>
Aggregate / Chargeable income	<u>830,000</u>

(3) The balance of capital allowance RM550,000 in respect of Malaysian Ships brought forward from the year of assessment 2010 is deducted against the exempt income of Malaysian Ships for the year of assessment 2011.

**9.4 Adjusted loss of Malaysian Ships**

9.4.1 Pursuant to paragraph 54A(2)(b) of the ITA 1967, in the ascertainment of income under section 54A, an adjusted loss incurred in respect of the operation of a Malaysian Ship for any year shall only be deducted against the income exempt under section 54A of the ITA1967. The balance of such loss for any year shall not be available as a deduction against other income.

9.4.2 As a consequence, in the ascertainment of income from a qualifying business under section 54A of the ITA 1967:

- (a) The adjusted loss suffered in the operation of a Malaysian Ship is deductible against the income of other Malaysian Ships exempt under section 54A.
- (b) The unabsorbed adjusted loss of the operation of a Malaysian Ship in the basis year for a year of assessment is prohibited from deducting against the non-exempt income for that year of assessment from –
  - (i) non-Malaysian Ships used in the business, or
  - (ii) other sources of income.
- (c) The unabsorbed adjusted loss of the operation of a Malaysian Ship in a basis year has to be carried forward to the following year of assessment to be deducted against the income exempt under section 54A of the ITA 1967.
- (d) The unabsorbed adjusted loss of the operation of a Malaysian Ship brought forward from the previous year of assessment is prohibited from deducting against –
  - (i) the income from non-Malaysian Ships used in the business, or
  - (ii) the aggregate of statutory income from all business sourcesfor that year of assessment.

9.4.3 The treatment of adjusted loss in respect of the operation of a Malaysian Ship under paragraph 54A(2)(b) of the ITA 1967 deviates from the normal treatment of adjusted loss from a business source under subsections 43(2) and 44(2) of the ITA 1967. The differences are as follows:

- (a) Under subsection 44(2) of the ITA 1967, the adjusted loss from a business source for the basis year for a year of assessment can be set off against the aggregate income from all sources for that year of assessment.

However, under paragraph 54A(2)(b) of the ITA 1967, the adjusted loss suffered in the operation of the Malaysian Ship in the basis year for a year of assessment is prohibited from being deducted against the aggregate income from all sources for that year of assessment.

- (b) Under subsection 43(2) of the ITA 1967, the unabsorbed adjusted loss of a business brought forward from the previous year of assessment is deductible against the aggregate of statutory income from all businesses for a year of assessment.

However, the unabsorbed adjusted loss of a Malaysian Ship brought forward from the previous year of assessment is prohibited from being deducted against the aggregate of statutory income from all businesses for a year of assessment.

- 9.4.4 The special treatment of adjusted loss in respect of Malaysian Ships under paragraph 54A(2)(b) of the ITA 1967 is covered by section 52 of the ITA 1967 as mentioned in paragraph 9.3.2 of this Ruling.

**Example 16**

R Sdn Bhd, a resident company, owns three ships (Dolphin I, Dolphin II and Dolphin III) which are registered as **Malaysian Ships** under the MSO 1952. Certificates of Malaysian Registry issued by the Marine Department show that these ships are tanker ships. All three of them are let out by R Sdn Bhd, on either voyage or time charter basis, to another shipping company for transporting cargo between Malaysia and other Asian countries. All the tanker ships qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967.

R Sdn Bhd also carries on the business of lorry transport in Malaysia. The adjusted income and capital allowances for the years of assessment 2009 to 2011 are as follows:

YA		Types Of Business			
		Business Of Letting Out Of Own Malaysian Ships On Voyage Or Time Charter Basis			Business Of Lorry Transport
		Dolphin I	Dolphin II	Dolphin III	
		RM	RM	RM	RM
2009	Adjusted income	3,500,000	(500,000)	(300,000)	Nil
	Capital allowance	700,000	300,000	200,000	Nil

2010	Adjusted income	1,300,000	(700,000)	(200,000)	500,000
	Capital allowance	300,000	300,000	100,000	50,000
2011	Adjusted income	2,700,000	(600,000)	(100,000)	990,000
	Capital allowance	400,000	100,000	100,000	90,000

**(a) Computation For The Year Of Assessment 2009**

	RM	RM
(i) Shipping income exempt under Section 54A		
Adjusted income from Malaysian Ships	3,500,000	
Less: Capital allowance		
Dolphin I	700,000	
Dolphin II	300,000	
Dolphin III	<u>200,000</u>	<u>1,200,000</u>
		2,300,000
Less: Adjusted loss <sup>(4)</sup>		
Dolphin II	(500,000)	
Dolphin III	<u>(300,000)</u>	<u>(800,000)</u>
Statutory income (Exempt)	<u>*1,500,000</u>	Nil
*Amount credited to an exempt account		
(ii) Other business income (Lorry Transport)		
Adjusted income		Nil
Less: Capital allowance		<u>Nil</u> <u>Nil</u>
(iii) Aggregate / Total / Chargeable Income		<u>Nil</u>

(4) Adjusted loss in respect of **Dolphin II** and **Dolphin III** is deducted from the exempt income of Malaysian Ships.



(b) Computation For The Year Of Assessment 2010

	RM	RM
(i) Shipping income exempt under section 54A		
Adjusted income from Malaysian Ships	1,300,000	
Less: Capital allowance		
Dolphin I	300,000	
Dolphin II	300,000	
Dolphin III	<u>100,000</u>	
		<u>700,000</u>
		600,000
Less: Adjusted loss <sup>(5)</sup>		
Dolphin II	(700,000)	
Dolphin III	<u>(200,000)</u>	
	(900,000)	
	Restricted	<u>(600,000)</u>
Basis year adjusted loss c/f: <sup>(6)</sup>		
= 300,000 (900,000 – 600,000)		
Paragraph 54A(2)(b)		
Statutory income (Exempt)		<u>Nil</u>
(ii) Other business income (Lorry Transport)		
Adjusted income	500,000	
Less: Capital allowance		
		<u>50,000</u>
		<u>450,000</u>
(iii) Aggregate of statutory income from businesses		450,000
Less: Business losses b/f – Subsection 43(2)		<u>Nil</u>
(iv) Aggregate income		450,000
Less: Basis year adjusted loss from businesses <sup>(6)</sup> Subsection 44(2)		<u>Nil</u>
(v) Total / Chargeable income		<u>450,000</u>

<sup>(5)</sup> Adjusted loss in respect of **Dolphin II** and **Dolphin III** is deducted from the exempt income of Malaysian Ships.

<sup>(6)</sup> The balance of adjusted loss (RM300,000) of **Dolphin II** and **Dolphin III** in the basis year cannot be utilised to set off against the aggregate income from all sources in the basis year under subsection 44(2) of the ITA 1967. It is carried forward to the following year of assessment 2011 to be deducted against the exempt income of Malaysian Ships only.

(c) Computation For The Year Of Assessment 2011

	RM	RM
(i) Shipping income exempt under section 54A		
Adjusted income: Malaysian Ships	2,700,000	
Less: Capital allowance		
Dolphin I	400,000	
Dolphin II	100,000	
Dolphin III	<u>100,000</u>	<u>600,000</u>
		2,100,000
Less: Adjusted loss		
Current year		
Dolphin II	(600,000)	
Dolphin III	(100,000)	
Less: Adjusted loss b/f: <sup>(7)</sup>	<u>(300,000)</u>	<u>(1,000,000)</u>
Paragraph 54A(2)(b)		
Statutory income (Exempt)	* <u>1,100,000</u>	
*Amount credited to exempt account		
(ii) Other business income (Lorry Transport)		
Adjusted income	990,000	
Less: Capital allowance	<u>90,000</u>	<u>900,000</u>
(iii) Aggregate of statutory income from businesses		900,000
Less: Business losses b/f – Subsection 43(2)		<u>Nil</u>
(iv) Aggregate income		900,000
Less: Basis year adjusted loss from businesses Subsection 44(2)		<u>Nil</u>
(v) Chargeable Income		<u>900,000</u>

<sup>(7)</sup> The unabsorbed adjusted loss amounting to RM300,000 brought forward from the previous year of assessment 2010 cannot be utilised to set off against the aggregate of statutory income from all businesses under subsection 43(2) of the ITA 1967. It is deductible against the exempt income of Malaysian Ships for the year of assessment 2011.

**9.5 Disposal of a Malaysian Ship**

Where exemption under section 54A of the ITA 1967 applies and one of the Malaysian Ships is disposed of, any balancing allowance in relation to that Malaysian Ship is deductible against the exempt income of the Malaysian Ships. Any unabsorbed allowance of that Malaysian Ship shall be carried forward to be deducted against the exempt income of Malaysian Ships.

If the disposal results in a balancing charge, the amount of balancing charge shall not exceed the total amount of capital allowance given in respect of that Malaysian Ship pursuant to paragraph 37 of Schedule 3 of the ITA 1967. The amount of balancing charge is not affected by the amount of capital allowance absorbed or utilised in respect of that Malaysian Ship in the years of assessment prior to the year of assessment in which that Malaysian Ship is disposed of.

**Example 17**

S Sdn Bhd is a resident company carrying on the business of transporting cargo by sea on two Malaysian Ships (MS I and MS II) and qualifies for exemption under section 54A of the ITA 1967. The Malaysian Ships were purchased in 2010 as follows:

Year Of Purchase: 2010	MS I	MS II
Purchase Price (RM'000)	60,000	40,000

The adjusted income of the Malaysian Ships are as follows:

YA	Adjusted Income Of Malaysian Ships (RM'000)	
	MS I	MS II
2010	20,000	15,000
2011	12,000	7,000
2012	22,000	(1,000)

One of the Malaysian Ships, MS II, is sold in 2012 at the market price of RM43,000,000.

**(a) Computation For The Year Of Assessment 2010**

	<b>RM'000</b>	<b>RM'000</b>
Adjusted income of Malaysian Ships		
MS I	20,000	
MS II	<u>15,000</u>	35,000
Less: Capital allowance		
MS I - IA 20% x 60,000	12,000	
- AA 20% x 60,000	12,000	
MS II - IA 20% x 40,000	8,000	
- AA 20% x 40,000	<u>8,000</u>	
	<u>40,000</u>	<u>35,000</u>
Capital allowance c/f	5,000	
Statutory income (exempt under section 54A)		<u>Nil</u>

**(b) Computation For The Year Of Assessment 2011**

	<b>RM'000</b>	<b>RM'000</b>
Adjusted income of Malaysian Ships		
MS I	12,000	
MS II	<u>7,000</u>	19,000
Less: Capital allowance		
Brought forward (MS I & MS II)	5,000	
MS I - AA 20% x 60,000	12,000	
MS II - AA 20% x 40,000	<u>8,000</u>	
	<u>25,000</u>	<u>19,000</u>
Capital allowance c/f	6,000	
Statutory income (exempt under section 54A)		<u>Nil</u>

<b>Computation Of Schedule 3 Allowance</b>						
YA		Rate	MS I		MS II	
			RM'000	RM'000	RM'000	RM'000
2010	IA	20%		60,000		40,000
	AA	20%	12,000		8,000	
	RE		<u>12,000</u>	<u>24,000</u>	<u>8,000</u>	<u>16,000</u>
				36,000		24,000
2011	AA	20%		<u>12,000</u>		<u>8,000</u>
	RE			24,000		16,000
2012	AA	20%		<u>12,000</u>	Sales	<u>43,000</u>
	RE			12,000		<u>27,000</u>
					Balancing Charge = 24,000	
					Para 37, Sch 3, ITA 1967	

IA, AA and RE mean initial allowance, annual allowance and residual expenditure respectively.

**(c) Computation For The Year Of Assessment 2012**

	<b>RM'000</b>	<b>RM'000</b>
Adjusted income of Malaysian Ships		
MS I	22,000	
MS II	<u>Nil</u>	22,000
Add: Balancing charge MS II		<u>24,000</u>
		46,000
Less: Capital allowance		
Brought forward (MS I & MS II)	6,000	
Annual allowance (MS I) 20% x 60,000	<u>12,000</u>	<u>18,000</u>
		28,000
Less: Adjusted loss of MS II		<u>(1,000)</u>
Statutory income (exempt under section 54A )		<u>*27,000</u>

\*Amount credited to the exempt account

**9.6 More than one qualifying business activity**

9.6.1 Besides carrying on the business activity of transporting cargo or passengers by sea, a resident person who owns more than one Malaysian Ship may also carry on the activity of letting out his Malaysian Ship on a voyage or time charter basis. In such a case, pursuant to paragraph 54(1)(a) of the ITA 1967, the activities shall be deemed to be two separate and distinct business sources of that person.

9.6.2 When a resident person carries on two business activities in respect of which his income is exempt under section 54A of the ITA 1967, in determining the exempt income, the capital allowance 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 in accordance with paragraphs 54A(2)(a) and 54A(2)(b) of the ITA 1967.

Such treatment deviates from the normal treatment under the provisions of the forgoing chapters but is covered by section 52 of the ITA 1967 as mentioned in paragraph 9.3.2 of this Ruling.

**Example 18**

T Sdn Bhd, a resident company, owns two ships which qualify for Malaysian Ship status under subsection 54A(6) of the ITA 1967. One ship is used in the company's business of transporting cargo by sea. The other ship is let out to another company on a voyage charter basis.

The adjusted income and capital allowance for the year of assessment 2011 are as follows:

Year Of Assessment 2011	Qualifying Business Activities	
	Transporting Cargo By Sea On Malaysian Ship	Letting Out Malaysian Ship On Voyage Charter
Adjusted Income / (Loss) (RM)	(600,000)	2,300,000
Capital Allowance (RM)	100,000	200,000

**Computation For The Year Of Assessment 2011**

	<b>RM</b>
Shipping income exempt under section 54A	
Adjusted income: Letting out Malaysian Ship	2,300,000
Less: Capital allowance	
Letting Out Malaysian Ship	200,000
Transporting Cargo	<u>100,000</u>
	<u>300,000</u>
	2,000,000
Less: Adjusted loss: Transporting Cargo	<u>(600,000)</u>
Statutory income exempt from tax	* <u>1,400,000</u>
* Amount credited to the exempt account	

**10. Separate Accounts For Malaysian Ships**

- 10.1 Where a person carries on a business in respect of which his income is exempt under section 54A of the ITA 1967, he is required to maintain a separate account for the income derived or deemed to be derived from each Malaysian Ship from that business pursuant to paragraph 54A(3)(a) of the ITA 1967.
- 10.2 Expenses directly attributable to a Malaysian Ship shall be ascertained for each Malaysian Ship.
- 10.3 Where the general and administrative expenses incurred are not directly attributable to a Malaysian Ship, these expenses are categorized as common expenses and have to be apportioned among the ships based on gross income. If the DGIR is of the opinion that the common expenses are not apportioned on a reasonable and fair basis, the DGIR may allocate as expenses to a particular ship such amounts as might reasonably and properly have been incurred in the normal course of the business in respect of such ship.
- 10.4 Interest expenses incurred on the purchase of more than one ship are not common expenses. Such interest expenses are directly attributable to each ship.

**11. Exempt Income, Exempt Account And Dividend**

- 11.1 Pursuant to paragraph 54A(3)(b) of the ITA 1967, the exempt income of a Malaysian Ship has to be credited to an exempt account.
- 11.2 Dividend, if paid out of exempt income, is debited to the exempt account. Where the credit in an exempt account is less than the dividend paid, the debit to the account shall be equal to the amount of the credit in accordance with paragraph 54A(3)(c) of the ITA 1967.

**Example 19**

U Sdn Bhd, a shipping company, has an exempt income of RM200,000 under section 54A of the ITA 1967 for the year 2010. The company paid a dividend of RM150,000 and RM90,000 in June and December 2010 respectively. The exempt account is as follows:

<b>Exempt Account</b>		
Dividend – June	150,000	Balance (Exempt income) 200,000 for year 2010
Dividend – December (restricted)	<u>50,000</u>	
	<u>200,000</u>	<u>200,000</u>

In the above example, the second dividend of RM90,000 was paid in December 2010 when the credit balance in the account was only RM50,000. The maximum amount that could be debited to the account should not exceed RM50,000. As only a dividend of RM50,000 could be regarded as tax exempt being paid out of the company's exempt income, the balance of dividend RM40,000 would be taxable in the hands of the shareholders.

- 11.3 Dividend paid, credited or distributed out of the exempt account is exempt from income tax in the hands of the shareholders under paragraph 54A(3)(d) of the ITA 1967.
- 11.4 Pursuant to paragraph 54A(3)(e) of the ITA 1967, where the recipient of a dividend is a company, any dividend paid by that company to its shareholders is also exempt from tax in the hands of the shareholders, provided the DGIR is satisfied that the dividend so paid is paid out of such exempt income.
- 11.5 Subsection 54A(5) of the ITA 1967 provides that if any income of a person or a dividend in the hands of a shareholder ought not to have been exempt, then –
  - (a) assessments or additional assessments upon that person or shareholder must be made to recover the loss of tax, and
  - (b) the exempt account must be debited with such amount.

**12. Non-Application**

Group relief for companies under section 44A of the ITA 1967 shall not apply to a company for the basis year for a year of assessment during the period in which the company enjoys exemption of shipping income under Section 54A of the ITA 1967.



**13. Income Derived From Sources Outside Malaysia**

- 13.1 By virtue of paragraph 28, Schedule 6 of the ITA 1967, income of any person, other than a resident company carrying on the business of banking, insurance or sea or air transport, for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia is exempt from tax.
- 13.2 Sea transport or shipping is not defined in the ITA 1967. Under the ITA 1967, the specific provisions with regard to sea transport or shipping are sections 54 and 54A. In line with these two provisions, sea transport or shipping carried on by a person is construed to include the business of –
- (a) transporting passengers or cargo by sea on a Malaysian Ship, or
  - (b) letting out on charter a Malaysian Ship owned by him on a voyage or time charter basis.
- 13.3 Consequently, a resident company which enjoys exemption of income under section 54A of the ITA 1967 is a resident company carrying on the business of sea transport or shipping within the context of paragraph 13.1 above. It is not eligible for exemption of other income derived from sources outside Malaysia and received in Malaysia.

**Example 20**

V Sdn Bhd, a resident company, carries on the sea transport business of carrying cargo by sea on a Malaysian Ship plying between Sabah and Manila. The following information was submitted by the company for the year ended 31.12.2011:

<b>Statutory Income</b>	<b>RM</b>
Sea transport business	2,500,000
Other business income from Manila, The Philippines	360,000
Income from investment in Manila, The Philippines	708,000

**Additional information**

- (a) Income from the sea transport business is based on the world-wide income from wherever accrued or derived, including amounts not remitted to Malaysia.

V Sdn Bhd qualifies for exemption under section 54A of the ITA 1967 in respect of the income derived from the sea transport business.

- (b) V Sdn Bhd also operates an employment agency business in Manila. In 2011, 90% of such business income was remitted to Malaysia.
- (c) Income from investment in Manila consists of dividend income. Only 1/3 of the dividend income was remitted to Malaysia in the year 2011.

#### Computation For The Year Of Assessment 2011

	RM
Statutory income from sea transport business	
2,500,000 <sup>(8)</sup> (tax exempt under section 54A)	Nil
Other business income from outside Malaysia	
360,000 x 90% <sup>(9)</sup>	324,000
Dividend from outside Malaysia	
708,000 x 1/3 <sup>(10)</sup>	<u>236,000</u>
Aggregate / Total / Chargeable Income	<u>560,000</u>

- (8) Income from the business activity of transporting cargo by sea is based on the income from wherever accrued or derived, irrespective of whether it is remitted to Malaysia, pursuant to paragraph 54(2)(a) of the ITA 1967.
- (9) & (10) Income derived from sources outside Malaysia and received in Malaysia by a resident sea transport company does not qualify for exemption under paragraph 28, Schedule 6 of the ITA 1967.

13.4 Where income from sources outside Malaysia is subject to tax in Malaysia and a foreign country, double taxation relief may be available for foreign tax suffered pursuant to section 132 or 133 and Schedule 7 of the ITA 1967. The bilateral and unilateral credits are discussed in detail in the Public Ruling No. 11/2011 issued on 20 September 2011.

#### 14. Payments To A Non-Resident

A resident shipping operator may make rental or other payments to a non-resident. Matters regarding withholding tax on such payments are described in the Publing Ruling no. 4/2005 and its Addendum issued on 12.9.2005 and 30.11.2007 respectively.

#### 15. Documents Required For Claim For Exemption

15.1 In the event of a tax audit, a shipping operator would be required to substantiate a claim for exemption of shipping income by providing documentary evidence to prove the operator –

- (a) is resident in Malaysia, and
- (b) carries on the qualifying business for the purposes of section 54A of the ITA 1967.

15.2 In addition, the following documents may also be required:

- (a) certificates issued by the Marine Department, e.g. the Certificate of Registry and Domestic Shipping Licence
- (b) port clearance issued by the Royal Malaysian Customs Department
- (c) documents pertaining to shipping routes
- (d) charter-party contracts or agreements, if any, made between the ship owner and charterer for the use of a ship, or
- (e) any other relevant documents.

**Director General of Inland Revenue,  
Inland Revenue Board of Malaysia.**