



**INLAND REVENUE BOARD MALAYSIA**

**BILATERAL CREDIT AND  
UNILATERAL CREDIT**

**PUBLIC RULING NO. 11/2011**

*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 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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

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

1. This Ruling explains bilateral credit and unilateral credit that may be claimed by a person who has been charged to tax on the same income in Malaysia and in another country.
2. The relevant provisions of the Income Tax Act 1967 (ITA 1967) are sections 7, 8, 131, 132, 133, Schedules 6 and 7.
3. The words used in this Ruling have the following meaning:
  - 3.1 “Foreign tax” means any tax on income (or any other tax of a substantially similar character) chargeable or imposed by or under the laws of a territory outside Malaysia.
  - 3.2 “Malaysian tax” means tax charged under the ITA 1967.
  - 3.3 “Bilateral credit” means credit in respect of foreign tax which, by virtue of any arrangements having effect under section 132 of the ITA 1967, is to be allowed as a credit against Malaysian tax.
  - 3.4 “Unilateral credit” means credit in respect of foreign tax payable under the laws of a territory outside Malaysia with respect to which no arrangements under section 132 of the ITA 1967 are in force.
  - 3.5 “Person” includes a company, a co-operative, a Hindu Joint Family, a trust, an estate under administration, a club, an association and an individual.
  - 3.6 “Resident” means resident in Malaysia for the basis year for a year of assessment by virtue of section 7 or section 8 of the ITA 1967.
  - 3.7 “Foreign income” means –
    - (a) income derived from outside Malaysia; or
    - (b) in the case of bilateral credit, includes income derived from Malaysia charged to foreign tax.
  - 3.8 “Basis year” -
    - (a) in relation to a source of a person other than a company, trust body or co-operative society, means the basis period for that year of assessment; or
    - (b) in relation to a source of a company, trust body or co-operative society, means the basis period for that year of assessment.
  - 3.9 “Year of assessment” means calendar year.

3.10 "Assessment" means any assessment or additional assessment made under the ITA 1967.

#### **4. Double Taxation Agreement**

4.1 Double taxation occurs when two countries impose income tax with respect to the same income on the same taxable person.

4.2 To mitigate the effects of double taxation on its residents deriving income from outside its own national boundary, many countries including Malaysia have entered into Agreements for the Avoidance of Double Taxation (DTA).

4.3 If a DTA has been concluded with the other country, the appropriate provisions of schedule 7 of the ITA 1967 shall apply in respect of allowing the foreign tax payable as a bilateral credit relief pursuant to section 132 of the ITA 1967.

4.4 In cases where there is no DTA with the other country, a relief from Malaysian tax is given unilaterally pursuant to section 133 of the ITA 1967.

#### **5. Bilateral Credit**

Under a DTA, if the income remains taxable in both countries, relief is given by way of credit known as bilateral credit. The general rules that govern bilateral credit are:

(a) Eligibility to claim

Bilateral credit can be claimed by a person resident in Malaysia for the basis year for a year of assessment.

(b) Foreign income in respect of a period that overlaps the basis period for a year of assessment

In the case of foreign income charged to foreign tax in respect of a period which overlaps the basis period for a year of assessment, only that amount of the income which overlaps the relevant period is to be taken into account. Bilateral credit can only be allowed in respect of the income of the overlapping period that falls into the basis period for the appropriate year of assessment.

(c) Bilateral credit is allowed only once

In the case where foreign income is charged to Malaysian tax or foreign tax more than once, bilateral credit may be allowed for the year of assessment in respect of the total amount of foreign tax charged on that foreign income. Credit so allowed must not exceed the total amount of Malaysian tax charged on that foreign income and if any credit has been allowed for the

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year of assessment for foreign tax, no further credit is given for the same tax for any other year of assessment.

- (d) Bilateral credit must not exceed Malaysian tax payable on foreign income

Bilateral credit for a year of assessment must not exceed so much of the Malaysian tax payable for that year of assessment.

- (e) Total bilateral credit must not exceed the total Malaysian tax

The total bilateral credit for any year of assessment must not exceed the total Malaysian tax payable on chargeable income for that year of assessment before the allowance of any bilateral credit.

- (f) Election not to be given relief

No bilateral credit will be given if a person decides not to make a claim for a year of assessment.

- (g) Time limit to claim for relief

Bilateral credit for a year of assessment has to be claimed within two years after the end of that year of assessment. The claim has to be made in writing to the Director General of Inland Revenue Board Malaysia (DGIR).

### **Example 1**

Adam, an employee of a Malaysian engineering company was seconded to work in the United Kingdom (UK) from 1.6.2010 to 31.3.2011. He was taxable on the same income in Malaysia and in the UK. When Adam filed his Income Tax Returns in Malaysia for the year of assessment 2010 on 30.4.2011, he did not make a claim for any bilateral credit as he had lost all the relevant information and documentation on the tax paid in the UK.

*If Adam managed to obtain the necessary information and documentation, a claim for bilateral credit relief can be made by 31.12.2012, that is, 2 years after the end of year of assessment 2010.*

- (h) Bilateral credit is excessive or insufficient

If the bilateral credit allowed is excessive or insufficient because of adjustments made to the amount of Malaysian tax or foreign tax, the normal time limit under the ITA 1967 for making assessment, application for relief or for giving notice of appeal is not applicable. It is to be noted that the time limit of six years to raise an assessment or an additional assessment after the end of the year of assessment is not applicable for cases where an adjustment in respect of bilateral credit has to be made. This is because there are no provisions in the ITA 1967 that limits the time for making an

assessment due to excessive or insufficient bilateral credit allowed because of any adjustment of the amount of Malaysian tax or foreign tax.

When a assessment or an amended assessment is made due to the amount of bilateral credit rendered excessive or insufficient as a result of any adjustment of the amount of any Malaysian tax or foreign tax, an application for relief or a notice of appeal may be made or given not more than two years after the time that such assessment, adjustments or determinations have been made (paragraph 10 of Schedule 7, ITA 1967).

### **Example 2**

The facts are the same as in Example 1 except that Adam obtained the necessary information to make a claim for the bilateral credit relief. A desk audit was conducted by the Inland Revenue Board Malaysia on the assessment (self assessment system) made by Adam for the year of assessment 2010. After auditing, it was found that Adam had under declared his income. The documentation forwarded for the bilateral credit claim only substantiated part of the amount of tax paid in the UK. An additional assessment was raised on 31.7.2011 and the bilateral credit relief allowed was less than the amount claimed by Adam.

*If Adam is able to furnish the necessary documentation to prove the amount of foreign tax paid as claimed, he may make an application for relief or file a notice of appeal for insufficient bilateral credit allowed before 31.7.2013 i.e within 2 years after 31.7.2011.*

- (i) Appeal against amount of credit

Pursuant to paragraph 9 of Schedule 7 of the ITA 1967, a person may apply to the DGIR for a bilateral credit. If the person is aggrieved by the decision of the DGIR on the application, he may appeal within 6 months after being informed of the decision and request the DGIR to send the application to the Special Commissioners of Income Tax (SCIT) in accordance with subsection 131(5) of the ITA 1967.

### **Example 3**

The facts are the same as in Example 2 except that Adam was dissatisfied with the additional assessment raised and the bilateral credit relief allowed on 31.7.2011. He decided to exercise his right to appeal to the SCIT.

*Adam has to file an appeal to the SCIT within six months from 31.7.2011.*

- (j) Excess credits

Unutilised foreign tax credits cannot be carried forward to subsequent years of assessment for relief.

(k) Amendment to the definition of foreign income

The amendment to the definition of foreign income in relation to bilateral credit, with effect from the year of assessment 2007, seeks to include income **derived from Malaysia** that has suffered foreign tax. Prior to year of assessment 2007, no bilateral credit was available for such income.

**Example 4**

Mega Sdn Bhd, a resident company in Malaysia, provides engineering consultancy services. For the year ended 31.12.2010, the company provided engineering consultancy to MGR Pte Ltd, a resident company in India. Mega Sdn Bhd does not have a permanent establishment in India. The entire consultancy services were carried out in Malaysia.

The payment for the services amounting to RM75,000 was paid by MGR Pte Ltd on 30.10.2010 and this amount was subjected to withholding tax of 10% in India. The same income of RM75,000 was also taxed in Malaysia as it was deemed derived from Malaysia. As the same income was taxed twice, once in Malaysia and again in India, Mega Sdn Bhd qualifies for a double taxation relief under the DTA between Malaysia and India. Prior to the amendment, bilateral credit under section 132 of the ITA 1967 is only allowed if the foreign income is derived from outside Malaysia (the income of Mega Sdn Bhd is considered derived from Malaysia).

*With the amendment which takes effect from the year of assessment 2007, Mega Sdn Bhd qualifies for the double taxation relief under section 132 of the ITA 1967 because Malaysian income which is subject to foreign tax is considered as foreign income.*

(l) Computation of bilateral credit

The formula is as follows:

$$\frac{\text{Foreign income (statutory income)}}{\text{Total income}} \times \text{Malaysian tax payable before bilateral/unilateral credit}$$

Or

Foreign tax charged in respect of the foreign income includes income derived from Malaysia and charged to foreign tax, whichever is lower.

**Example 5**

In Example 4, the income of Mega Sdn Bhd for the purpose of computing bilateral credit is as follows:

	RM
Gross business income from India (withholding tax in India 10%)	75,000
Gross business income from Malaysia	500,000
Rental income [paragraph 4(d) of the ITA 1967]	25,000
Allowable business expenses	80,000

**Computation of tax payable for the year of assessment 2010**

	RM
<i>Gross business income from India</i>	<i>75,000</i>
<i>Gross business income from Malaysia</i>	<i>500,000</i>
<i>Gross business income</i>	<i>575,000</i>
<i>Less: Allowable expenses</i>	<i>80,000</i>
<i>Statutory income from business</i>	<i>495,000</i>
<i>Add:</i>	
<i>Rental income</i>	<i>25,000</i>
<i>Total income</i>	<i>520,000</i>
<i>Income tax charged (25%)</i>	<i>RM130,000</i>
<i>Withholding tax in India (10%)</i>	<i>RM7,500</i>

**Steps to determine bilateral credit**

- (i) *Computation of the proportion of statutory income in respect of foreign income*

*The formula is as follows:*

$$\frac{\text{Foreign income (gross)}}{\text{Foreign (gross) and Malaysian income (gross) in respect of the same source}^1} \times \text{Statutory income in respect of the same source}$$

$$= \frac{75,000}{575,000} \times 495,000$$

$$= 64,565$$

<sup>1</sup>*Observation*

*In this case, Mega Sdn Bhd received foreign income and Malaysian income from business sources. As such, both incomes are from the same source.*

(ii) *Computation of bilateral credit*

$$\frac{\text{Foreign income (statutory income)}}{\text{Total income}} \times \text{Malaysian tax payable before bilateral /unilateral credit}$$

$$= \frac{64,565}{520,000} \times 130,000$$

$$= \text{RM}16,141.25$$

*Or*

*RM7,500,*

*whichever is lower.*

*The bilateral credit allowed for the year of assessment 2010 is therefore RM7,500.*

**Example 6**

BBB Insurance Bhd, a Malaysian resident company, carries on a general insurance business. The company's annual accounts closes on 31 December and the information extracted from the accounts for the year ended 31.12.2010 are as follows:

	RM
Net premiums	140,000,000
Allowable expenses	100,000,000
Investment income:	
Rental	34,000,000
Dividend (tax at source @25% 7,000,000)	28,000,000
Interest (Malaysia)	9,000,000
Interest (UK) (taxed in UK RM100,000)	1,000,000

***Computation of tax payable from all sources***

	RM
<i>Net premiums</i>	<i>140,000,000</i>
<i>Less: allowable expenses</i>	<i>100,000,000</i>
<i>Statutory income from business</i>	<i>40,000,000</i>
<i>Rental</i>	<i>34,000,000</i>
<i>Dividend</i>	<i>28,000,000</i>
<i>Interest (Malaysia)</i>	<i>9,000,000</i>
<i>Interest (UK)</i>	<i>1,000,000</i>
<i>Total income</i>	<i><u>112,000,000</u></i>
 <i>Income tax charged (25%)</i>	 <i>RM28,000,000</i>
 <i>Withholding Tax In UK (10%)</i>	 <i>RM100,000</i>

***Computation of bilateral credit***

$$\begin{aligned}
 & \frac{\text{Foreign income (statutory income)}}{\text{Total income}} \times \text{Malaysian tax payable before bilateral /unilateral credit} \\
 & = \frac{1,000,000}{112,000,000} \times 28,000,000 \\
 & = \text{RM250,000} \\
 & \text{Or} \\
 & \text{RM100,000,} \\
 & \text{whichever is lower.}
 \end{aligned}$$

*The bilateral credit allowed for the year of assessment 2010 is RM100,000.*

**6. Unilateral Credit**

Where there is no DTA between Malaysia and a foreign country, a person who is resident in Malaysia for the basis year for a year of assessment and who is charged to tax in Malaysia and has suffered tax in respect of the same income in that foreign country in which the income arose, may claim unilateral credit. The general rules that govern unilateral credit are:

(a) Similar to rules governing bilateral credit

Unilateral credit can be allowed in the same way as bilateral credit. Paragraphs 5(a) to 5(l) above refer.

(b) Eligibility to claim

Unilateral credit can be claimed by a person resident in Malaysia in the basis year for a year of assessment.

However, unilateral credit relief may be allowed to an employee who is charged Malaysian tax and foreign tax in respect of the same income from an employment exercised outside Malaysia, irrespective of whether or not he was resident for the basis year for the year of assessment.

(c) Computation of unilateral credit

The formula is as follows:

$$\frac{\text{Foreign income}^2}{\text{Total income}} \times \text{Malaysian tax payable before unilateral / bilateral credit}$$

Or

$\frac{1}{2}$  X foreign tax,

whichever is lower

<sup>2</sup>Foreign income means income derived from outside Malaysia

The tax credit is limited to one-half of the foreign tax payable on the foreign income for the year or the Malaysian tax chargeable in respect of the foreign income, which is also taxed, whichever is lower.

- (d) An employee who pays Malaysian tax and foreign tax on employment exercised outside Malaysia may claim a unilateral credit for the foreign tax, whether or not he is a tax resident of Malaysia (Paragraph 15 of Schedule 7, ITA 1967).

**Example 7**

Johan, an engineer with an oil & gas company in Malaysia was seconded to a related company in the United States (US) from 1.1.2009 to 31.12.2010. Johan's remuneration of RM100,000 was paid by his employer in Malaysia and he was also paid an allowance of RM40,000 from the company in US.

Johan was subject to tax in Malaysia and in the United States as follows:

Period	Tax Paid In Malaysia (RM)	Tax Paid In The United States (RM)
1.1.2009 - 31.12.2009	18,525	35,000
1.1.2010 – 31.12.2010	18,375	35,000

- (i) *Computation of unilateral credit for the year of assessment 2009*

$$\frac{\text{Foreign income (gross)}}{\text{Total income}} \times \text{Malaysian tax payable before unilateral / bilateral credit}$$

$$= \frac{40,000}{140,000} \times 18,525 = \text{RM5,293}$$

OR

$$\frac{1}{2} \text{ of RM35,000} = \text{RM17,500,}$$

*whichever is lower.*

*The unilateral credit for the year of assessment 2009 is RM5,293.*

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(ii) *Computation of unilateral credit for the year of assessment 2010*

$$= \frac{40,000}{140,000} \times 18,375 = RM5,250$$

OR

$\frac{1}{2}$  of RM35,000 = RM17,500,

*whichever is lower.*

*The unilateral credit for the year of assessment 2010 is RM5,250.*

## **7. Foreign Sourced Income And Remittances**

- (a) Pursuant to paragraph 28(1) of Schedule 6 of the ITA 1967, income of any person, other than a resident company carrying on the business of banking, insurance and sea or air transport for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia are exempt from tax.
- (b) In view of the above, bilateral credit and unilateral credit are relevant only to a Malaysian resident:
  - (i) who is carrying on the business of banking, insurance and sea or air transport; and
  - (ii) whose foreign income, although considered as derived from Malaysia, has suffered foreign tax.
- (c) Tax residents of Malaysia in receipt of foreign sourced remittances which are exempt from tax pursuant to paragraph 28 of Schedule 6 of the ITA 1967 are not eligible to claim bilateral credit or unilateral credit as the remittance had not been subject to Malaysian tax.

## **8. Documents Required For Double Taxation Relief Claim**

Any of the following documents may be submitted to substantiate the foreign tax suffered by taxpayers to compute bilateral or unilateral credit:

- (a) notice of assessment from the foreign tax authority or receipt for the tax paid; or
- (b) statement from the foreign tax authority setting out the particulars that would normally be recorded on a notice of assessment or receipt for payment.



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UNILATERAL CREDIT**

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**INLAND REVENUE BOARD MALAYSIA**

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**9. Effective Date**

This Ruling is effective for the year of assessment 2011 and subsequent years of assessment.

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