



**INLAND REVENUE BOARD MALAYSIA**

**RESIDENCE STATUS OF COMPANIES  
AND BODIES OF PERSONS**

**PUBLIC RULING NO. 5/2011**

*Translation from the original Bahasa Malaysia text*

**DATE OF ISSUE: 16 MAY 2011**



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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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.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 provides an explanation on the determination of the residence status of companies and bodies of persons.
2. The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are section 8 and subsection 61(3).
3. The words used in this Ruling have the following meaning:
  - 3.1 “Body of persons” means an unincorporated body of persons (not being a company), including a co-operative society, a club, an association, a trust and a Hindu Joint Family but excluding a partnership.
  - 3.2 “Non-resident” means other than a resident in Malaysia by virtue of section 8 and subsection 61(3) of the ITA 1967.
  - 3.3 “Hindu Joint Family” means what in any system of law prevailing in India is known as a Hindu Joint Family or coparcenary.
  - 3.4 “Person” includes a company, a body of persons and a corporation sole.
  - 3.5 “Resident” means resident in Malaysia by virtue of section 8 and subsection 61(3) of the ITA 1967.
  - 3.6 “Company” means a body corporate and includes any body of persons established with a separate legal entity by or under the laws of a territory outside Malaysia.

**4. Significance Of Residence Status**

- 4.1 Residence status is a question of fact and it is one of the main criteria that determines the tax treatment and tax consequences of a company or body of persons.
- 4.2 A resident and a non-resident company in Malaysia is taxed in the same manner in respect of any gains or profits accrued in or derived from Malaysia.
- 4.3 The distinct differences in the tax treatment of a resident and non-resident company are as follows:

<b>Item</b>	<b>Resident</b>	<b>Non-Resident</b>
Scope of charge	a) Companies carrying on business of banking, insurance, shipping and air transport – income is taxable on a world	Income accrued in or derived from Malaysia.

	<p>income scope.</p> <p>b) Other companies – income accrued in or derived from Malaysia.</p>	
Business income	Taxable if deemed derived from Malaysia.	Taxable on business income accruing in or derived from Malaysia if there is a permanent establishment in Malaysia.
Derivation of dividends	<p>Dividends distributed by a resident company are deemed derived from Malaysia.</p> <p>With the introduction of the single-tier system with effect from 1.1.2008, single-tier dividends are exempt from tax in Malaysia. However, franked dividends derived from Malaysia are still subject to Malaysian tax.</p> <p>Beginning from 1.1.2014, all dividends distributed by a resident company are exempt from tax in Malaysia.</p>	Dividends distributed by a non-resident company are not deemed derived from Malaysia.
Section 108 ITA 1967 account to franked dividends	<p>A resident company is required to deduct tax under section 108 ITA 1967 from dividends deemed derived from Malaysia under the imputation system.</p> <p>With the introduction of the single tier system which is fully implemented on companies from 1.1.2014, section 108 ITA 1967 is not applicable.</p> <p>However, during the</p>	Not applicable.

	transitional period from 1.1.2008 to 31.12.2013, companies with a credit balance in their section 108 ITA 1967 accounts at 31.12.2007 are allowed to utilise these credits to pay franked dividends to shareholders up to and including 31.12.2013.	
Able to enjoy tax treaty benefits	Applicable.	Applicable.
Double taxation relief	Applicable.	Not applicable.
Incentives available under ITA 1967 and Promotion of Investment Act 1986	Applicable.	Not applicable.
Tax rates	<p>1) As specified in paragraph 2 of part 1, Schedule 1, ITA 1967.</p> <p>2) Tax rate for companies with a paid up capital of RM2.5 million and less at the beginning of the basis period (as provided under paragraph 2A of part 1, Schedule 1, ITA 1967) is as follows:</p> <p>i) for every ringgit of the first RM500,000 - 20%; and</p> <p>ii) for every ringgit exceeding RM500,000 - 25% (with effect from year</p>	As specified in paragraph 2 of part 1, Schedule 1, ITA 1967.

	<p>of assessment 2009).</p> <p>However, pursuant to paragraph 2B of part 1, Schedule 1, ITA 1967 which was introduced with effect from the year of assessment 2009, a company will not qualify for the above preferential tax rates if more than 50% of the paid up capital in respect of ordinary shares of –</p> <ul style="list-style-type: none"><li>a) that company is owned directly or indirectly by a related company;</li><li>b) the related company is owned directly or indirectly by that company; or</li><li>c) that company and the related company is owned directly or indirectly by another company.</li></ul> <p>Related company means a company whose paid up capital in respect of ordinary shares exceeds RM2.5 million at the beginning of the basis period for a year of assessment.</p> <p>3) The tax rate applicable for an insurer from inward re-insurance business or offshore insurance business is as specified in paragraph 3, part 1 of Schedule 1, ITA 1967.</p>	
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	<p>4) The tax rate applicable for a life fund other than income arising from life re-insurance business and inward life re-insurance business, of a resident or non-resident insurer is as specified in part VIII of Schedule 1, ITA 1967.</p> <p>5) The tax rate applicable for a family fund referred to in section 60AA of the ITA 1967 other than income arising from family solidarity re-takaful business and inward family solidarity re-takaful business, of a resident or non-resident operator is as specified in part XII of Schedule 1, ITA 1967.</p>	
Withholding tax	Not applicable.	<p>Certain receipts may be subject to withholding tax such as:</p> <ul style="list-style-type: none"> <li>i) Interest<sup>1</sup> (except as exempted) (withholding tax under section 109 of the ITA 1967 – final tax at the rate as specified in part II of Schedule 1, ITA 1967);</li> <li>ii) Royalties<sup>1</sup> (withholding tax under section 109 of the ITA 1967– final tax at the rate as specified in part II of Schedule 1, ITA 1967);</li> <li>iii) Special classes of</li> </ul>



		<p>income<sup>1</sup> under section 4A of the ITA 1967 (withholding tax under section 109B of the ITA 1967 – final tax at the rate as specified in part V of Schedule 1, ITA 1967);</p> <p>iv) Service portion of contract payments (withholding tax under section 107A of the ITA 1967);</p> <p>v) Distribution of income from a Real Estate Investment Trust<sup>1</sup> (REITs) exempted under section 61A of the ITA 1967 (withholding tax under section 109D of the ITA 1967 – final tax at the rate as specified in part X of Schedule 1, ITA 1967);</p> <p>vi) Distribution of income of a family fund, family re-takaful or general fund under section 60AA of the ITA 1967 (withholding tax under section 109E of the ITA 1967 at the rate as specified in part XI of Schedule 1, ITA 1967); and</p> <p>vii) Other income<sup>1</sup> falling under paragraph 4(f) of the ITA 1967 (withholding tax under section 109F of the ITA 1967 – final tax at the rate as specified in part</p>
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		XIII of Schedule 1, ITA 1967).
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<sup>1</sup>Reference has to be made to the relevant agreements for the avoidance of double taxation for any variation in tax rates, if applicable.

- 4.4 The distinct differences in the tax treatment of resident and non-resident bodies of persons are as follows:

<b>Category</b>	<b>Resident</b>	<b>Non-Resident</b>
Hindu Joint Family	<p>Personal relief of RM9,000 can be claimed.</p> <p>Taxed at scale rates which are applicable to resident individuals in accordance with paragraph 1 of part I, Schedule 1, ITA 1967.</p>	<p>Personal relief is not applicable.</p> <p>Taxed in accordance with the general provisions of the ITA 1967 applicable to non-residents and at the rate of tax as specified in paragraph 1A of part 1, Schedule 1, ITA 1967.</p>
Trade Association	<p>Income tax exemption is applicable to the statutory income derived from members' subscription fees.</p> <p>Taxed at scale rates which are applicable to resident individuals in accordance with paragraph 1 of part 1, Schedule 1, ITA1967.</p>	<p>Income tax exemptions are not applicable.</p> <p>Taxed in accordance with the general provisions of the ITA 1967 applicable to non-residents and at the rate of tax as specified in paragraph 1A of part 1, Schedule 1, ITA 1967.</p>
Trust Body	<p>Tax rate is as specified in paragraph 2, part I of Schedule 1, ITA 1967.</p>	<p>Taxed in accordance with the general provisions of the ITA 1967 applicable to non-residents and at the rate of tax as specified in paragraph 1A of part 1, Schedule 1, ITA 1967.</p>
Co-operative Societies	<p>Taxed at scale rates which are applicable to a Co-operative Society as</p>	<p>Taxed in accordance with the general provisions of the ITA 1967 applicable to</p>

	specified in part IV of Schedule 1, ITA 1967.	non-residents and at the rate of tax is as specified in paragraph 1A of part 1, Schedule 1, ITA 1967.
Clubs, Association, Societies	Taxed at scale rates which are applicable to resident individuals in accordance with paragraph 1 of part I, Schedule 1, ITA 1967.	Taxed in accordance with the general provisions of the ITA 1967 applicable to non-residents and the rate of tax is as specified in paragraph 1A of part 1, Schedule 1, ITA 1967.

## 5. Determination Of Residence Status Of Companies Or Bodies Of Persons

Companies and bodies of persons must meet certain criteria to be considered a resident in Malaysia. Section 8 of the ITA 1967 provides for the determination of residence status in respect of companies and bodies of persons (except trust bodies) whereas subsection 61(3) of the ITA 1967 provides for the determination of residence status of a trust body.

### 5.1 Residence status of a Hindu Joint Family

Pursuant to paragraph 8(1)(a) of the ITA 1967, a Hindu Joint Family is resident in Malaysia for the basis year for a year of assessment if the manager or karta is resident for that basis year. As such, if the manager or karta is a non-resident, the Hindu Joint Family is deemed a non-resident in Malaysia.

### 5.2 Companies or bodies of persons carrying on a business

Pursuant to paragraph 8(1)(b) of the ITA 1967, a company or a body of persons (not being a Hindu Joint Family) carrying on a trade or business is resident in Malaysia for the basis year for a year of assessment if at any time during the basis year the management and control (as explained in paragraph 5.5 of this Ruling) of its business or of any one of its businesses are exercised in Malaysia.

#### Example 1

Jet Ltd, a company incorporated in Hong Kong has businesses in Hong Kong, Singapore and Malaysia. All the businesses of the company are managed and controlled by the head office in Hong Kong except for a brief period in the year 2008 when the management and control was exercised in Malaysia. This is because one of the board of directors meeting was held in Kuala Lumpur, where important policy decisions were made, on 28.6.2008 which falls in the basis year for the year of assessment 2008.

*Jet Ltd is resident in Malaysia for the basis year for the year of assessment 2008 as the management and control which involved important policy making decisions was exercised in Malaysia in 2008. Therefore the income derived from the business carried on in Malaysia is subject to tax in Malaysia for the year of assessment 2008.*

Note: If the company is not a resident in Malaysia, it would still be taxable on its income derived from Malaysia. Non-resident companies and persons other than resident companies carrying on the business of banking, insurance or sea or air transport are exempted from tax on income derived from sources outside Malaysia and received in Malaysia.

### **Example 2**

Simon Inc., was incorporated in the USA on 2.1.2000 and shortly after its incorporation, it registered as a foreign company in Malaysia on 2.3.2000. Simon Inc. (Malaysia) then commenced the business of provision of management and consultancy services in Malaysia. Its revenue was largely from fees charged for management, consultancy and other services provided to a related company, Simon (Malaysia) Sdn Bhd.

The Board of Directors of Simon Inc. (Malaysia) comprised of an American citizen who held the post of the president and 4 Malaysians who held the posts of a general manager, director (2 persons) and an accountant. However, the management and control of Simon Inc. (Malaysia) has been carried on in the USA since incorporation by the board of directors in the USA.

The financial accounting period of Simon Inc. (Malaysia) is the calendar year. The company claimed to be a resident in Malaysia in the year of assessment 2008 as the board of directors meeting was held in Kuala Lumpur on 30.11.2008. An audit finding indicated that a board of directors meeting was not held on the said date but a promotional and marketing session was held instead.

*Since a board of directors meeting was not held in Malaysia on 30.11.2008, the management and control of the company was not exercised in Malaysia in the year of assessment 2008. Therefore, Simon Inc. (Malaysia) is not a resident in Malaysia for the year of assessment 2008.*

### 5.3 Any other company or body of persons

Pursuant to paragraph 8(1)(c) of the ITA 1967, any other company or body of persons (not being a Hindu Joint Family) is resident in Malaysia for the basis year for a year of assessment if at any time during the basis year the management and control (as explained in paragraph 5.5 of this Ruling) of its affairs are exercised in Malaysia by its directors or other controlling authority, e.g. a board of management / directors. As for investment holding companies, the management and control of its affairs includes the management and important decisions in respect of investments.

### Example 3

Smart Holdings Sdn Bhd (SHSB), an investment holding company was incorporated in Malaysia on 2.1.2006. SHSB is wholly owned by Smart Holding Ltd, the holding company in the British Virgin Islands. This holding company is wholly owned by Smart Construction Holding Ltd, the ultimate holding company in Bermuda.

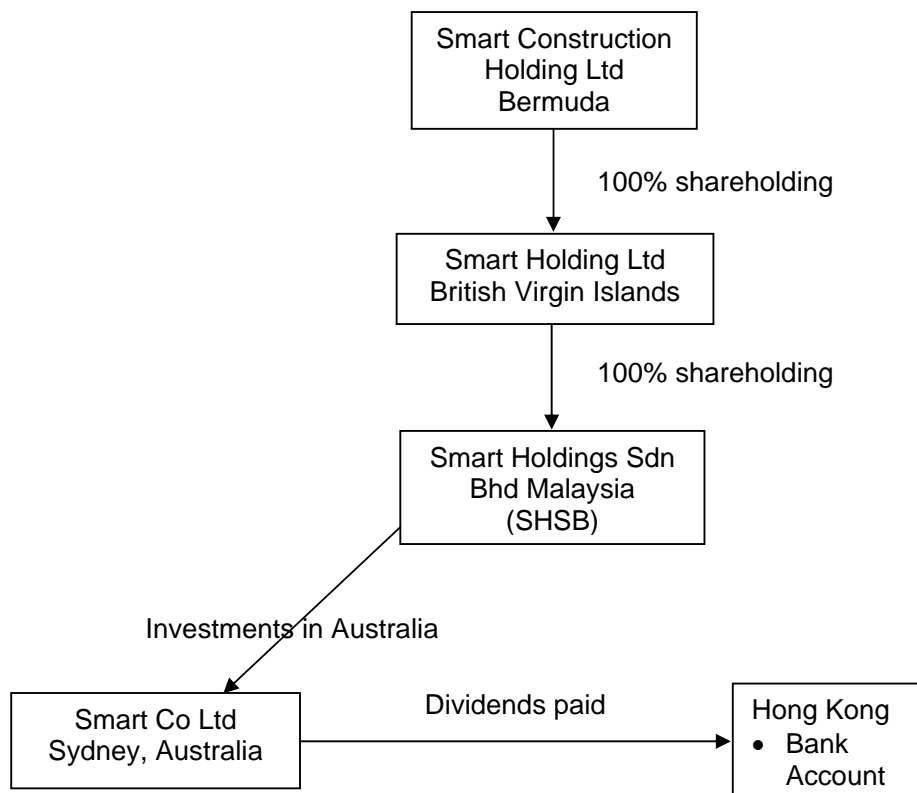
The board of directors of SHSB comprises of 7 directors, 5 of whom are citizens and residents of Hong Kong while the remaining 2 are Malaysians. The board of directors meetings are held in both Hong Kong and Malaysia. The meetings that were held in Hong Kong were only attended by the 4 directors from Hong Kong who have vast experience in investment and finance. Meetings were also held in Malaysia but were attended by the 2 Malaysian directors and communication with the directors from Hong Kong were through video conferencing and telephone. From the minutes of the meetings, it was noted that all decisions regarding investments, share management, finance and administration of SHSB were resolved in Hong Kong by the 4 directors in Hong Kong. The meetings held in Malaysia merely reported what had been decided in Hong Kong.

SHSB does not have a business premise in Malaysia. Its dividend income is from investments in an Australian company, Smart Co. Ltd in Sydney and interest income is from fixed deposits in various countries. None of SHSB's income has been remitted to Malaysia. SHSB does not have a bank account in Malaysia and all its income has been remitted to a bank account in Hong Kong.

SHSB claimed to be a resident in Malaysia from the year of assessment 2006 onwards as the management and control of its affairs were exercised in Malaysia by its directors.

Note: If SHSB is a tax resident of Malaysia, the dividend income from Australia should be subject to tax at 15% on gross in accordance with Article 10 of the Avoidance of Double Taxation Agreement between Malaysia and Australia instead of the 30% tax rate levied by the Australian Tax Authorities based on the Australian domestic tax laws.

The above situation can be summarised as follows:



*Although SHSB claimed that there were board of directors meeting held in Malaysia but the meetings were not related to policy decisions that had to be followed by SHSB. All the decisions relating to investments, share management, finance and administration were made by the directors in Hong Kong at the board of directors meeting held in Hong Kong. As such, the management and control of the affairs of SHSB are not considered exercised in Malaysia and SHSB is not a tax resident of Malaysia from the year of assessment 2006.*

5.4 Residence status of a subsidiary or a branch of a foreign company in Malaysia

Foreign corporations normally extend their business activities to Malaysia by incorporating a subsidiary in Malaysia or registering a branch in Malaysia. The residence status of subsidiaries of foreign corporations would be determined by paragraphs 8(1)(b) and 8(1)(c) of the ITA 1967. Branches of foreign corporations in Malaysia are generally treated as non-residents in Malaysia unless it can be established that the management and control of its

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affairs or of its businesses or of any one of its businesses is exercised in Malaysia.

5.5 Management and control

- (i) Management and control is the key factor used to ascertain the residence status of a company in Malaysia. The management and control refers to the controlling authority which determines the policies to be followed by the company. The management and control is considered to be exercised where the directors meet to conduct the company's business / affairs irrespective of where the company might be incorporated. The management and control of a business of a company would depend upon how the business is managed.

If, at any time during the basis year for a year of assessment at least one meeting of the board of directors is held in Malaysia concerning the management and control of the company, even though all other meetings are held outside Malaysia, then the company is resident in Malaysia for that basis year.

**Example 4**

The facts are the same as in Example 1.

*The management and control is considered exercised in Malaysia on 28.6.2008 when the board of directors held their meeting in Kuala Lumpur. Although only one board of directors meeting was held in Malaysia in the year of assessment 2008, Jet Ltd. is considered a resident in Malaysia as the management and control was exercised in Malaysia in the basis year for the year of assessment 2008.*

- (ii) The location of the trading activities or the place of physical operations may not necessarily be the place of management and control. A company engaged in trading activities in Malaysia will not be resident in Malaysia if it is found that not only the trading activities, e.g. manufacturing or producing and selling are controlled abroad but also that the meetings of the shareholders and directors, at which all its important affairs are conducted and controlled, are also held abroad.

**Example 5**

Ching Mart Stores Inc. is a Chinese retail store dealing with luxury products in China. It has set up a business in Kuala Lumpur that deals with trading activities but the management and control is exercised by the parent company in China.

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*Although the physical operations of the company was carried on in Malaysia but the management and control of the company was exercised outside Malaysia. Therefore, the company is not a resident in Malaysia.*

- (iii) The appointment of a local director or local board of directors in Malaysia does not determine the residence status of a company. If the controlling authority is exercised by the directors who are at the company's head office overseas, then the company is not a resident in Malaysia.

#### **Example 6**

The facts are the same as in Example 2 except that the two local directors from Malaysia are not involved with policy decisions that control and direct the company. The 2 directors merely perform formal functions delegated by the controlling directors who are in the USA.

*Although two local directors from Malaysia have been appointed to be on the board of directors but the policies and decisions are all made by the board of directors at the head office in USA. Therefore, the management and control is not exercised in Malaysia and the company is not a resident in Malaysia.*

- (iv) Control by the directors determines the management and control of a company. The directors exercise their powers in the management of the company's affairs by virtue of the powers conferred upon them under the Articles of Association. On the other hand, control by the shareholders is not relevant for the determination of the management and control as share-holders exercise their power over the company by virtue of their voting power at formal meetings of shareholders.
- (v) The residence status of a director does not determine the residence status of a company.

#### **5.6 Residence status of trust bodies**

Pursuant to subsection 61(3) of the ITA 1967, a trust body is deemed a resident in Malaysia for the basis year for a year of assessment only if any trustee of the trust is a resident in that basis year. However, a trust body will not be regarded as a resident if:

- (i) the trust was created outside Malaysia by a person or persons who were not citizens;
- (ii) the income of that trust body for that basis year is wholly derived from outside Malaysia;



- (iii) the trust is administered for the whole of that basis year outside Malaysia; and
- (iv) at least one-half of the number of the member trustees are not resident in Malaysia for that basis year.

## 6. Residence Status To Continue Once Established

Pursuant to subsection 8(2) of the ITA 1967, when it has been established by the Director General of the Inland Revenue Board Malaysia that a company is resident in Malaysia for a given year of assessment, that company is considered a resident in Malaysia for each subsequent year of assessment until the contrary is proved.

### Example 7

Rich Ltd, a company incorporated in Taiwan has its business in Taiwan, Singapore and Malaysia. The financial accounting year of the company is 30 June. All major decisions affecting the company are made at the Board of Directors meetings, all of which are held in Taiwan except for one which is held in Kuala Lumpur on 15.5.2009.

*As there was one Board of Directors Meeting held in Kuala Lumpur on 15.5.2009, the management and control is considered exercised in Malaysia and the company is resident in Malaysia for the year of assessment 2009. It will continue to be considered a resident in Malaysia for the year of assessment 2010 and subsequent years of assessment until the the contrary is proved.*

## 7. Dual Residence Status And Agreements For The Avoidance Of Double Taxation (DTA)

- 7.1 Malaysia has entered into agreements with a number of countries that avoid double taxation by allocating taxing rights over bilateral income flows between the respective treaty partners.
- 7.2 Dual residence is avoided between Malaysia and countries with which Malaysia has tax treaties. These treaties provide a tie-breaker residence article to determine a single country of residence. The provision of the tie breaker varies from treaty to treaty.
- 7.3 The Article on residence is normally Article 4 of the DTA which states the test for residence and the tie breaker for dual residence. The tie breaker test in an agreement provides that a dual resident be treated solely as a resident of the treaty partner country for purposes of the agreement. The terms of the relevant DTA should be referred to when determining tax liability. However, Malaysian resident status is still applicable for purposes of the general application of the domestic law, so that the income of companies and bodies of persons remain assessable to Malaysian tax.

## 8. Required Documentation To Determine The Residence Status Of a Company





When trading and management and control are exercised outside Malaysia but certain directors' meetings are held in Malaysia, the following documentation may assist to determine the company's residence status:

- (i) Articles and Memorandum of Association to ascertain where the company is registered and whether or not there are any provisions regarding residence in the articles;
- (ii) if the articles do give a place of management and control, whether the articles are being implemented;
- (iii) the company's letter head;
- (iv) minutes of directors' meetings that indicates where the meetings were held and what decisions relating to management and control were taken; and
- (v) minutes of general meetings that shows where such meetings have been held and what transpired at these meetings.

**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.**