INLAND REVENUE BOARD OF MALAYSIA

GROUP RELIEF FOR COMPANIES

PUBLIC RULING NO. 6/2016

Translation from the original Bahasa Malaysia text

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 (ITA) provides that the Director General has the power to make a Public Ruling on the application of any provision of the ITA.

A Public Ruling is issued as a guidance for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law, and the policy as well as the procedure applicable to it.

The Director General may withdraw, either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

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

1. **Objective**

The objective of the Public Ruling (PR) is to explain the tax treatment of group relief for companies which are resident and incorporated in Malaysia.

2. **Relevant Provisions of the Law**

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 44, 44A, 77A, 114 and subsection 125(2).

3. **Interpretation**

The words used in this PR have the following meaning:

3.1 "Residual assets" means net assets of the claimant or surrendering company after distribution made to–

(a) creditors of that company in respect of commercial loans; and

(b) holders of shares other than ordinary share,

and where that company has no residual asset, a notional amount of one hundred ringgit is deemed to be the residual assets of the company.

3.2 "Residual profits" means profits of the claimant or surrendering company after deducting any dividend which is of –

(a) a fixed amount or at a fixed rate per cent of the nominal value of the shares of that company; or

(b) a fixed rate per cent of the profits of that company,

but before deducting any return due to any non-commercial loan creditor which is not of –

(i) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or

(ii) a fixed rate per cent of the profits of that company,

and where that company has no residual profit, a notional amount of one hundred ringgit is deemed to be the residual profits of that company.

3.3 "Equity holder" means any holder of ordinary share in the claimant or surrendering company or any creditor of that company in respect of any non-commercial loan.

3.4 “Defined aggregate income”, in relation to a year of assessment, means the aggregate income of a claimant company for that year reduced by a deduction made pursuant to paragraphs 44(1)*(a), (b), (c)* and *(d)* of the ITA.

3.5 “Non-commercial loan” means any borrowing other than a commercial loan.

3.6 “Commercial loan” means any borrowing which entitles the creditor to any return which is of only –

(a) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or

(b) of a fixed rate per cent of the profits of the company.

3.7 “Ordinary share” means any share other than a share which carries only a right to any dividend which is of –

(a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or

(b) a fixed rate per cent of the profits of the company.

4. Introduction

4.1 Each company within a group is treated as a separate entity and the tax liability of each company is determined separately from other companies within the same group. As such, the adjusted loss from the business source of a company for the current year can only be absorbed by the company’s income from other sources. Any unabsorbed adjusted loss for a year of assessment will be carried forward to be deducted from the agregate of statutory income from business sources in the following year of assessment.

4.2 Group relief is available to all locally incorporated resident companies subject to the terms and conditions as provided under section 44A of the ITA effective from the year of assessment 2006. The provision of group relief allows a company in a group to surrender (referred to as surrendering company) not more than 70% of its adjusted loss in the basis period for a year of assessment to one or more related companies (referred to as claimant company) within the same group.

4.3 Companies carrying on approved food production projects that have been allowed to surrender part or the whole of the current year adjusted business loss to a related company prior to the year of assessment 2006 under the now deleted Schedule 4C of the ITA, can continue to enjoy this special tax treatment.

5. **Qualifying Criteria for Group Relief**

To qualify for group relief for any year of assessment -

a) both the surrendering and the claimant companies must satisfy the following criteria:

   (i) incorporated in Malaysia;

   (ii) resident in Malaysia in the basis year for that year of assessment;

   (iii) related companies throughout the basis period for that year of assessment and the twelve (12) months period immediately preceding that basis period;

   (iv) have a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for that year of assessment;

   (v) have a twelve (12) month basis period ending on the same date;

   (vi) make an irrevocable election to surrender or claim an amount of adjusted loss in the return form furnished for that year of assessment under section 77A of the ITA; and

   (vii) subject to tax at the appropriate rate as specified in paragraph 2 of Part 1 of Schedule 1 of the ITA; and

b) the claimant company must also have a defined aggregate income for that year of assessment. The defined aggregate income of a claimant company in relation to a year of assessment is determined as follows:

		RM	RM
Aggregate income			XX
Less:			
(i)	current year loss	XX	
(ii)	qualifying prospecting expenditure [Schedule 4]	XX	
(iii)	qualifying pre-operational business expenditure (approved overseas expenditure) [Schedule 4B]	XX	
(iv)	monetary and other gifts, such as approved donations [Section 44(6) to (11C)]	XX	XX
Defined aggregate income			XX

6. Definition of Related Companies and Eligibility for Group Relief

For the purpose of group relief, the meaning of **related companies** is provided in subsection 44A(3) of the ITA. Companies in the same group qualify as related companies if the ordinary shareholding level of at least 70% is satisfied. To be eligible for group relief, the surrendering and claimant companies must pass the following tests:

First level test:	Ordinary shareholding requirement under subsection 44A(3) of the ITA; and
Second level test:	Beneficially entitled to residual profits and residual assets available for distribution to the company's equity holders under subsection 44A(7) of the ITA.

Please refer to **Appendix 1** for a summary of the steps to be taken in determining whether a claimant and a surrendering company are related and eligible for group relief.

6.1 First level test

The first level test relates to ordinary shareholding requirement (not including treasury shares). For the purpose of group relief, a surrendering company and claimant company are related companies if at least seventy percent (70%) of the paid-up capital in respect of ordinary shares-

(a) of the surrendering company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the claimant company; or

(b) of the claimant company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the surrendering company; or

(c) of the surrendering company and the claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.

Note:

(i) A Labuan company incorporated under the Labuan Companies Act 1990 [Act 441] is considered incorporated in Malaysia. A Labuan company includes a foreign Labuan company registered under the Labuan Companies Act 1990. A resident under the Labuan Companies Act 1990 in relation to a company is a company who has established a place of business, and is operating, in Malaysia, and includes a company who is resident pursuant to paragraph 214(6)*(a)* of the Financial Services Act 2013 [Act 758]..

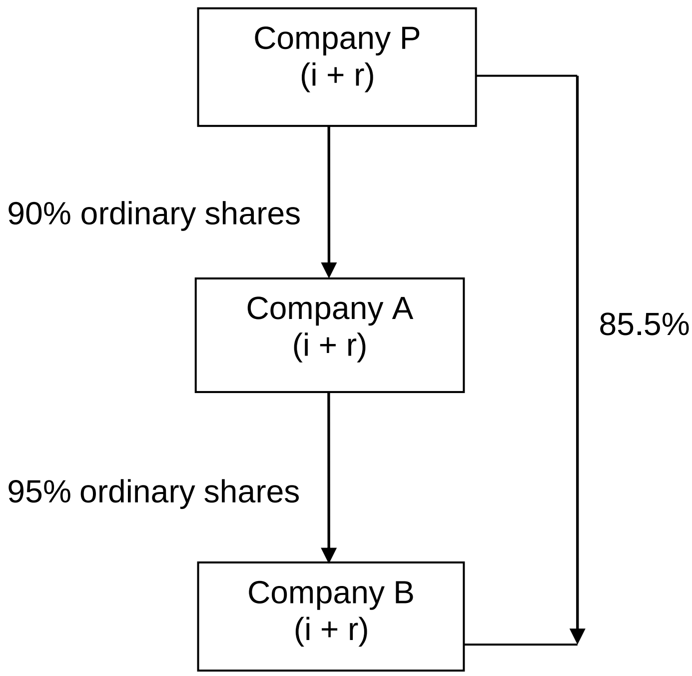
(ii) In determining the 70% shareholding threshold, any direct or indirect holdings by companies that are not resident and not incorporated in Malaysia are disregarded.

6.2 Illustrations to show the group structure of related companies and their shareholdings of ordinary shares:

Example 1

Company P directly holds 90% of ordinary shares in Company A while Company A directly holds 95% of ordinary shares in Company B. All three companies are incorporated (i) and resident (r) in Malaysia.

Group Structure of the Related Companies

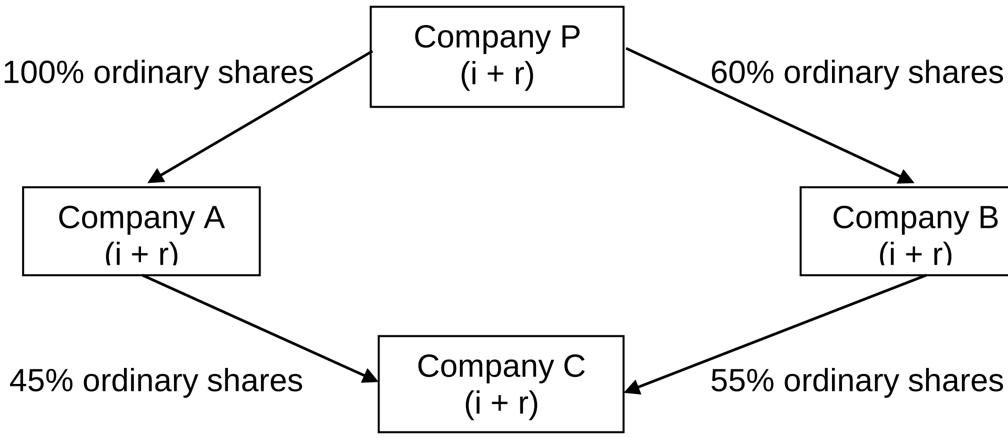


Relationship Between Companies	**Shareholding of Ordinary Shares (Directly or Indirectly) (%)**	**70% Shareholding Requirement Met?**
P & A	90% - directly	Yes
A & B	95% - directly	Yes
P & B	85.5% = (90% x 95%) - indirectly	Yes

Example 2

Company P directly holds 100% of ordinary shares in Company A, and 60% of ordinary shares in Company B. Company A holds directly 45% in ordinary shares in Company C while Company B holds directly 55% of ordinary shares in Company C. All the companies are incorporated and resident in Malaysia.

Group Structure of the Companies

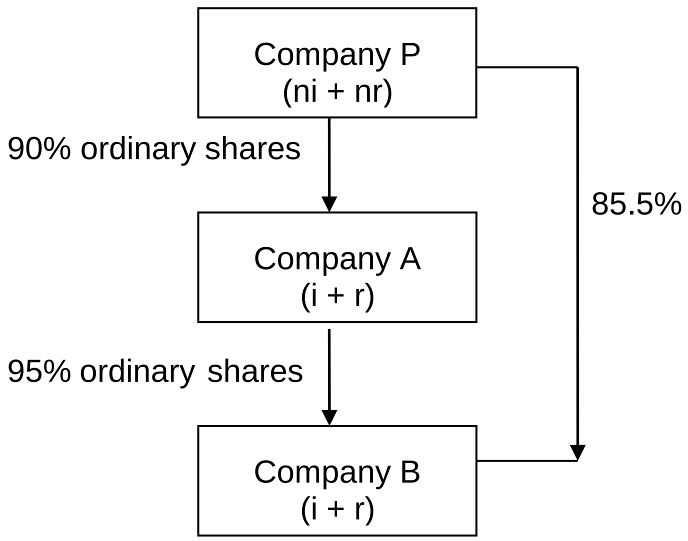


Relationship Between Companies	Shareholding of Ordinary Shares (Directly or Indirectly) (%)	70% Shareholding Requirement Met?
P & A	100% - directly	Yes
P & B	60% - directly	No
P & C	78% - indirectly [(100% X 45%) + (60% X 55%) = 78%]	Yes
A & B	P & A = 100% - directly P & B = 60% - directly	No
A & C	P & A = 100% - directly P & C = 78% - indirectly	Yes
B & C	P & B = 60% - directly P & C = 78% - indirectly	No

Example 3

The facts are the same as in Example 1 except that Company P is not incorporated (ni) and not a resident (nr) in Malaysia.

Group Structure of the Companies

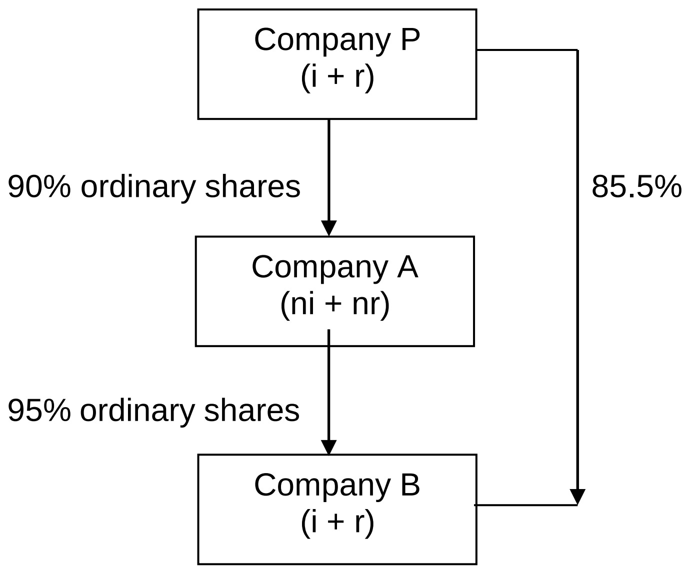


Relationship Between Companies	Shareholding of Ordinary Shares (Directly or Indirectly)(%)	70% Shareholding Requirement Met?
P & A	90% - direct shareholding by a non-resident company not incorporated in Malaysia is disregarded	Disregarded
A & B	95% - directly	Yes
P & B	85.5% = (90% x 95%) – indirect shareholding by a non-resident company not incorporated in Malaysia is disregarded	Disregarded

Example 4

The facts are the same as in Example 1 except that Company A is not incorporated (ni) and not a resident (nr) in Malaysia.

Group Structure of the Companies

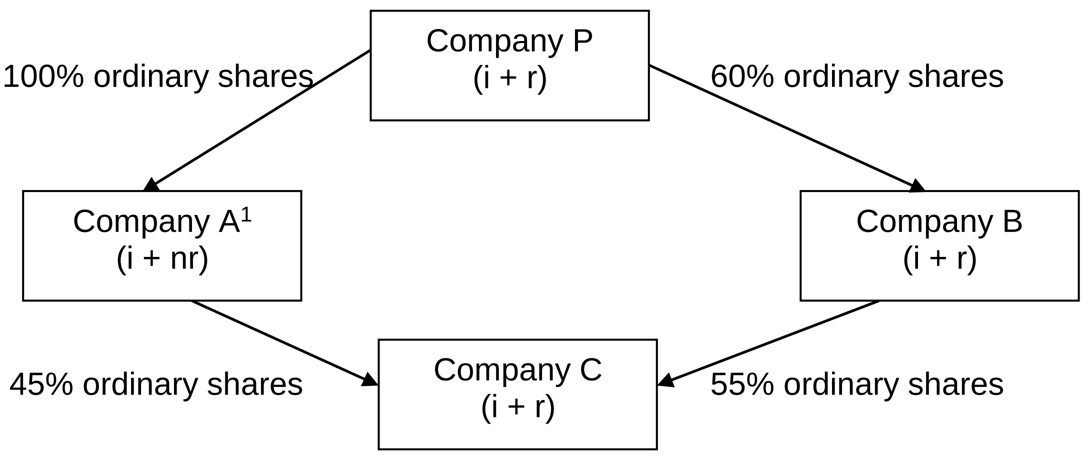


Relationship Between Companies	Shareholding of Ordinary Shares (Directly or Indirectly) (%)	70% Shareholding Requirement Met?
P & A	90% - direct shareholding of a non-resident company not incorporated in Malaysia is disregarded.	Disregarded
A & B	95% - direct shareholding by a non-resident company not incorporated in Malaysia is disregarded.	Disregarded
P & B	85.5% = (90% x 95%) - indirect shareholding via a non-resident company not incorporated in Malaysia is disregarded.	Disregarded

Example 5

The facts are the same as in Example 2 except that Company A is not resident in Malaysia.

Group Structure of the Companies



Relationship Between Companies	Shareholding of Ordinary Shares (Directly or Indirectly) (%)	70% Shareholding Requirement Met?
P & A[1]	100% - direct shareholding of a non-resident company incorporated in Malaysia is disregarded.	Disregarded
P & B	60% - directly	No
P & C	78% - indirect shareholding via a non-resident company incorporated in Malaysia is disregarded. [(100% X 45%)] + (60% X 55%)]	Disregarded
A[1] & B	P & A = 100% - direct shareholding of a non-resident company incorporated in Malaysia is disregarded P & B = 60% - directly	Disregarded
A[1] & C	P & A = 100% direct shareholding of a non-resident company incorporated in Malaysia is disregarded P & C = 78% indirect shareholding via a non-resident company incorporated in Malaysia is disregarded.	Disregarded

Relationship Between Companies	Shareholding of Ordinary Shares (Directly or Indirectly) (%)	70% Shareholding Requirement Met?
B & C	P & B = 60% - directly P & C = 78% - indirect shareholding via a locally incorporated non-resident company is disregarded.	Disregarded

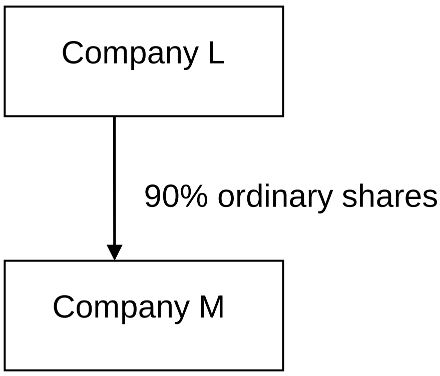
[1]**Note:**

If Company A is resident (r) but not incorporated (ni) in Malaysia, the same situation applies.

Example 6

Company L, a Labuan Company has a direct 90% shareholding of ordinary shares in Company M. Company L had elected to be taxed under the ITA as provided under section 3A of the Labuan Business Activity Act 1990 with effect from the year of assessment 2014.

Group Structure of the Companies



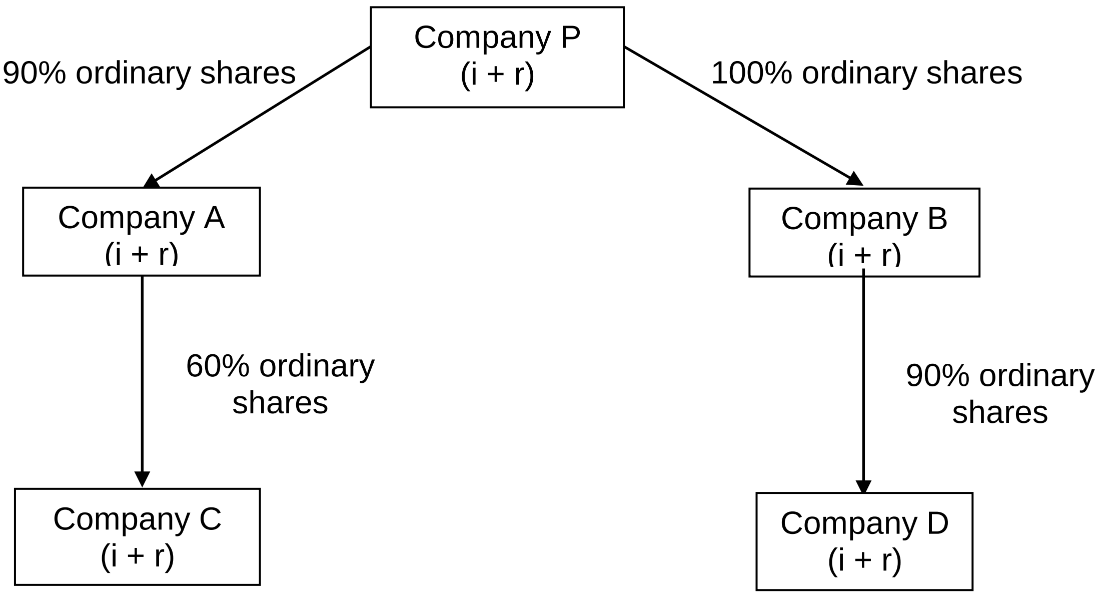
As Company L had made an election to be taxed under the ITA with effect from the year of assessment 2014, Company L and Company M would qualify under the criteria incorporated and resident in Malaysia for the purpose of group relief.

Relationship Between Companies	Shareholding of Ordinary Shares (Directly or Indirectly) (%)	70% Shareholding Requirement Met?
L & M	90% - directly	Yes

Example 7

Company P directly holds 90% of ordinary shares in Company A, and 100% of ordinary shares in Company B. Company A holds directly 60% of ordinary shares in Company C while Company B holds directly 90% of ordinary shares in Company D. All the companies are incorporated and resident in Malaysia.

Group Structure of the Companies



Relationship Between Companies	Shareholding of Ordinary Shares (Directly or Indirectly) (%)	70% Shareholding Requirement Met?
P & A	90% - directly	Yes
P & B	100% - directly	Yes
P & C	54% - indirectly (90% X 60%)	No
P & D	90% - indirectly (100% X 90%)	Yes
A & B	P & A = 90% - directly P & B =100% - directly	Yes
A & C	60% - directly	No
A & D	P & A = 90% - directly P & D = 90% - indirectly	Yes
B & C	P & B =100% - directly P & C = 54% - indirectly	No
B & D	90% - directly	Yes
C & D	P & C = 54% - indirectly P & D = 90% - indirectly	No

6.3 Second level test

Although the 70% ordinary shareholding requirement has been satisfied, it does not mean that the claimant and surrendering companies are eligible for group relief. A second level test requires that the company concerned must also be beneficially entitled (directly or indirectly) to at least 70% of the residual profits and residual assets of the other company in proportion to their equity interest.

(a) Residual profits

Holders of ordinary shares must show that they are beneficially entitled, directly or indirectly, to at least 70% of any residual profits of the company available for distribution to the company's equity holders. Equity holders of a company are ordinary shareholders and non-commercial loan creditors.

Commercial loans would be a borrowing at a commercial rate. Generally, a lender in a commercial loan agreement would have the following objectives:

(i) to set out the conditions under which it will be obligated to disburse funds to the borrower under the loan agreement;

(ii) to enable it to monitor the borrower's financial situation and, when necessary, to take remedial action if the borrower experiences serious financial difficulties; and

(iii) to provide itself with legally enforceable claim to its funds, or access to other remedies, if the borrower defaults.

If there is a loan agreement between the related parties but there is no remedial clause in the contract, such loans would be considered as non-commercial loans. Any borrowings that do not fall within the definition of commercial loans would be considered as non-commercial loans.

Note:

For the purpose of this PR, borrowings would include any financial arrangements. Borrowings between related parties could be labelled under various terminology. All financial transactions would be examined to determine whether the transaction constitutes borrowings. Records have to be kept for this purpose.

Computation of Residual Profits

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

(b) Residual assets

Holders of ordinary shares must show that they are beneficially entitled, directly or indirectly, to at least 70% of any residual assets of the company available for distribution to the company's equity holders upon winding up of the company.

Residual assets are net assets -

(i) available for distribution to equity holders in the event of winding up;

(ii) after deducting payment for commercial loans and distribution made to holders of shares other than ordinary shares; and

(iii) distributed using the ratio used for the purpose of determining residual profits.

6.4 Illustration of ordinary shareholding requirement and entitlement to residual profits and residual assets test:

Example 8

Company Z is locally incorporated and resident in Malaysia. The following table shows the shareholding structure of Company Z.

<table>
<tr><th>Type of Shares In Company Z</th><th colspan="2">Right to Share in Profits Based on Holding in Share Capital (RM1/Share)
'000
(Type I)</th><th colspan="2">Fixed Dividend @ 10% on Nominal Value of Share (RM1/Share)
'000
(Type II)</th><th colspan="2">Fixed Dividend @ 8% + Right to Share in Profits Based on Holding in Share Capital (RM1/Share)
'000
(Type III)</th></tr>
<tr><td>Shares in Company Z owned by Company</td><td>A</td><td>B</td><td>A</td><td>B</td><td>A</td><td>C</td></tr>
<tr><td>Paid-up capital</td><td>1,800</td><td>600</td><td>400</td><td>400</td><td>600</td><td>200</td></tr>
<tr><td>Ordinary shares</td><td>Yes</td><td>Yes</td><td>No</td><td>No</td><td>Yes</td><td>Yes</td></tr>
</table>

Type of Shares In Company Z	**Right to Share in Profits Based on Holding in Share Capital (RM1/Share) '000 (Type I)**		**Fixed Dividend @ 10% on Nominal Value of Share (RM1/Share) '000 (Type II)**		**Fixed Dividend @ 8% + Right to Share in Profits Based on Holding in Share Capital (RM1/Share) '000 (Type III)**	
Percentage of shareholding	$\frac{1,800}{3,200}$ = 56.25%	$\frac{600}{3,200}$ = 18.75%	Not applicable	Not applicable	$\frac{600}{3,200}$ = 18.75%	$\frac{200}{3,200}$ = 6.25%

The total number of shares taken into account for the purpose of determining shareholding are 3,200 ordinary shares in Company Z, i.e.

(a) 2,400 shares (1,800 and 600 shares owned by Company A & B respectively) that are eligible for company profit (Type I); and

(b) 800 shares (600 and 200 shares owned by Company A and C respectively) that are eligible for fixed dividend and company profit (Type III).

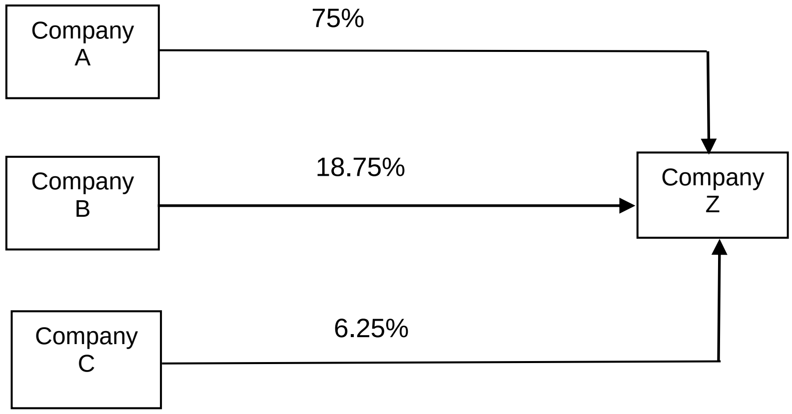
Therefore, the percentage of ordinary shares owned by -

(i) Company A is 75.00% (56.25% + 18.75%)

(ii) Company B is 18.75%

(iii) Company C is 6.25%.

The shareholding of ordinary shares in Company Z can be summarised as follows:



Hence, only Company A is considered related to Company Z as Company A holds 75% of the ordinary shares in Company Z for purpose of group relief. However, Company A also needs to ensure it owns at least 70% of the entitlement in the residual profits and residual assets of Company Z.

Note:

Shares that carry a right merely to fixed dividends are not eligible to be taken into account for the purpose of the shareholding test (Type II).

Example 9

The facts are the same as in Example 8 except that:

(a) Company Z has an accounting profit of RM500 after deducting payment of fixed returns on the following two types of loans –

Loan Creditors	Principal Amount	Rate of Return	Annual Return
Loan 1 (Company X) commercial loan	RM1,000	5% per annum	RM50
Loan 2 (Company Y) Non-commercial loan	RM1,400	3% per annum + right to share in profits based on principal loan value	RM42 + any profit participation which is not fixed

Distribution of Company Z's Profits

<u>Computation of residual profits</u>	RM	RM	RM
Accounting profit (after deducting payment of fixed return on loan i.e. RM50 and RM42)			500
Less:			
Distribution of fixed dividend on Type II shares			
Company A - RM400 x 10% =	40		
Company B - RM400 x 10% =	<u>40</u>	80	
Distribution of fixed dividend on Type III shares			
Company A - RM600 x 8% =	48		
Company C - RM200 x 8% =	<u>16</u>		
		<u>64</u>	<u>144</u>
Residual profits			<u>356</u>

The division of residual profits is based on the following ratio of distribution amongst the equity holders using the value of ordinary shares and non-commercial loans:

		RM
Company A	-	2,400
Company B	-	600
Company C	-	200
Non-commercial loan creditor Y	-	<u>1,400</u>
		<u>4,600</u>

Equity Holders' Beneficial Entitlement to the Residual Profits of Company Z

Equity Holders of Company Z	Proportion of Residual Profits (RM)	Percentage of Residual Profits
Company A	(2,400 / 4,600) x 356 = 186	186/356 = 52.2%
Company B	(600 / 4,600) x 356 = 46	46/356 = 13.0%
Company C	(200 / 4,600) x 356 = 16	16/356 = 4.5%
Non-commercial loan creditor Y	(1,400 / 4,600) x 356 = 108	108/356 = 30.3%

(b) Assuming Company Z's residual assets amount to RM1,300 after deducting payment of commercial loan and payment of dividends at a fixed rate, the computation of the equity holder's beneficial entitlement to the residual assets is as follows:

Equity Holders' Beneficial Entitlement to the Residual Assets of Company Z

Equity Holding of Company Z	Proportion of Residual Assets (RM)	Percentage of Residual Assets
Company A	(2,400 / 4,600) x 1,300 = 678	678/1,300 = 52.2%
Company B	(600 / 4,600) x 1,300 = 170	170/1,300 = 13.0%
Company C	(200 / 4,600) x 1,300 = 57	57/1,300 = 4.4%
Non-commercial loan creditor Y	(1,400 / 4,600) x 1,300 = 396	396/1,300 = 30.5%

Athough Company A holds ordinary shares exceeding 70% in Company Z (as shown in Example 8) but Company A does not have beneficial entitlement to at least 70% of the residual profits and residual assets of Company Z. Hence, Company A and Company Z are not eligible for group relief.

Example 10

The facts are the same as in Example 9 except that the non-commercial loan creditor is Company A instead of loan creditor Y. Company A's equity in the form of Type I ordinary shares is now 3,000 units instead of 1,800 units and at a value of RM1,400 as a non-commercial creditor.

The following table shows the shareholding structure of Company Z:

Type of Shares In Company Z	**Right to Share in Profits Based on Holding in Share Capital (RM1/Share) '000 (Type I)**		**Fixed Dividend @ 10% on Nominal Value of Share (RM1/Share) '000 (Type II)**		**Fixed Dividend @ 8% + Right to Share in Profits Based on Holding in Share Capital (RM1/Share) '000 (Type III)**	
Shares in Company Z owned by Company	A	B	A	B	A	C
Paid-up capital	3,000	600	400	400	600	200
Ordinary shares	Yes	Yes	No	No	Yes	Yes
Percentage of shareholding	$\frac{3,000}{4,400}$ = 68.18%	$\frac{600}{4,400}$ = 13.64%	Not applicable	Not applicable	$\frac{600}{4,400}$ = 13.64%	$\frac{200}{4,400}$ = 4.54%

The total number of shares taken into account for the purpose of determining the shareholding are 4,400 ordinary shares in Company Z, i.e.

(a) 3,600 shares (3,000 and 600 shares owned by Company A & B respectively) that are eligible for company profit (Type I); and

(b) 800 shares (600 and 200 shares owned by Company A and C respectively) that are eligible for fixed dividend and company profit (Type III).

Therefore, the percentage of ordinary shares owned by -

(i) Company A is 81.82% (68.18% + 13.64%)

(ii) Company B is 13.64%

(iii) Company C is 4.54%.

Company Z has the following two types of loans:

Loan Creditors	Principal Amount	Rate of Return	Annual Return
Loan 1 (Company X) Commercial Loan	RM1,000	5% per annum	RM50
Loan 2 (Company A) Non-commercial loan	RM1,400	3% per annum + right to share in profits based on principal loan value	RM42 + any profit participation which is not fixed

The computation of residual profits of Company Z is as shown in Example 9. The division of residual profits is based on the following ratio of distribution amongst the equity holders using the value of ordinary shares and non-commercial loans:

		RM
Company A	-	3,600
Company B	-	600
Company C	-	200
Non-commercial loan creditor Company A	-	1,400
		5,800

Equity Holders' Beneficial Entitlement to the Residual Profits of Company Z

Equity Holders of Company Z	Proportion of Residual Profits (RM)	Percentage of Residual Profits
Company A	(3,600 / 5,800) x 356 = 221	221/356 = 62.08%
Company B	(600 / 5,800) x 356 = 37	37/356 = 10.39%
Company C	(200 / 5,800) x 356 = 12	12/356 = 3.37%
Non-commercial loan creditor - Company A	(1,400 / 5,800) x 356 = 86	86/356 = 24.16%

Assuming Company Z's residual assets amount to RM1,300 after deducting payment of commercial loan and payment of dividends at a fixed rate, the computation of the equity holders' beneficial entitlement to the residual assets is as follows:

Equity Holders' Beneficial Entitlement to the Residual Assets of Company Z

Equity Holding of Company Z	Proportion of Residual Assets (RM)	Percentage of Residual Assets
Company A	(3,600 / 5,800) x 1,300 = 807	807/1,300 = 62.08%
Company B	(600 / 5,800) x 1,300 = 134	134/1,300 = 10.31%
Company C	(200 / 5,800) x 1,300 = 45	45/1,300 = 3.46%
Non-commercial loan creditor - Company A	(1,400 / 5,800) x 1,300 = 314	314/1,300 = 24.15%

Company A's right to the residual profits and residual assets of Company Z are as follows:

(i) Company A's beneficial entitlement to the residual profits -

62.08% + 24.16% = 86.24%

Therefore, Company A's beneficial entitlement to the residual profits of Company Z exceeds the 70% requirement.

(ii) Company A's beneficial entitlement to the residual assets -

62.08% + 24.15% = 86.23%

Company A would now satisfy the second level test of being beneficially entitled to at least 70% of the residual profits and residual assets of Company Z. Hence, Company A and Company Z are eligible for group relief.

Example 11

The facts are the same as in Example 9 except that Company Z has no residual profits and no residual assets. A notional amount of RM100 is deemed to be the residual profits and residual assets of Company Z.

(a) **Equity Holders' Beneficial Entitlement to Residual Profits**

Equity Holders of Company Z	Proportion of Residual Profits (RM)	Percentage of Residual Profits
Company A	(2,400 / 4,600) x 100 = 52.2	52.2/100 = 52.2%
Company B	(600 / 4,600) x 100 = 13	13/100 = 13%
Company C	(200 / 4,600) x 100 = 4.3	4.4/100 = 4.4%
Non-commercial loan creditor Y	(1,400 / 4,600) x 100 = 30.4	30.4/100 = 30.4%

(b) **Equity Holders' Beneficial Entitlement to Residual Assets**

Equity Holders of Company Z	Proportion of Residual Assets (RM)	Percentage of Residual Assets
Company A	(2,400 / 4,600) x 100 = 52.2	52.2/100 = 52.2%
Company B	(600 / 4,600) x 100 = 13	13/100 = 13.0%
Company C	(200 / 4,600) x 100 = 4.4	4.4/100 = 4.4%
Non-commercial loan creditor Y	(1,400 / 4,600) x 100 = 30.4	30.4/100 = 30.4%

Athough Company A holds ordinary shares exceeding 70% in Company Z (as shown in Example 8) but Company A does not have beneficial entitlement rights to at least 70% of the residual profits and residual assets of Company Z. Hence, Company A and Company Z are not eligible for group relief.

Example 12

Co. P, a holding company and all its subsidiaries Co. A, B, C, D, E and X except for Co. HK are incorporated and resident in Malaysia. Co. HK is incorporated and resident in Hong Kong. The group of companies have the same accounting year end i.e. 31 December. For the year of assessment 2015, Co. E has an adjusted loss of RM2,000,000 to be surrendered to the claimant companies Co. A, B and C. The surrendering company and each of the claimant companies have a twelve month basis period ending on the same day ie. 31 December for the year of assessment 2015. The paid-up share capital and the ordinary shareholding structure of the group are as follows:

Shareholder/ Shareholding	**Right to share in profits based on holding in share capital (RM1/Share)**					
Co. P	**Co. A**	**Co. B**	**Co. C**	**Co. D**	**Co. X**	**Co. HK**
Paid-up capital	3,000,000	3,000,000	2,800,000	900,000[2]	1,000,000[3]	4,000,000[4]
Percentage of Co. P's Shareholding	100%	85%	100%	70%	100%	90%

Shareholder/Shareholding	**Right to share in profits based on holding in share capital (RM1/Share)**
Co. D	**Co. E**
Paid-up capital	5,000,000
Percentage of Co. D's Shareholding	100%

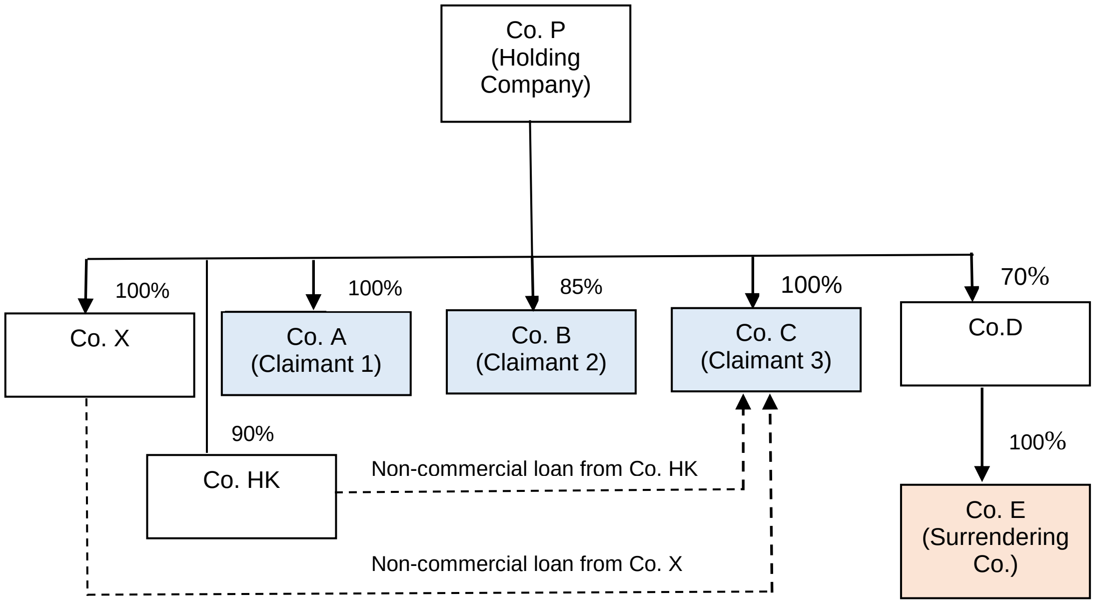
Borrowings of Co. C with returns not based on a fixed amount or fixed rate of borrowings or profits of the company are as follows:

(a) RM2,000,000 from Co. X;

(b) Advance of RM2,500,000 from its directors with returns not based on a fixed amount or fixed rate of borrowings or profits of the company; and

(c) RM5,000,000 from Co. HK.

Ordinary Shareholding Structure of the Group of Companies



As Co. P and all its subsidiaries have the same accounting year end, therefore the requirement for the surrendering and claimant company to have the same accounting year end has been satisfied.

In order to determine whether the surrendering and the claimant companies in a group are eligible for group relief, the following two tests have to be carried out.

First Level Test

Ordinary shareholding requirement to determine whether companies are related are as follows:

Relationship Between Companies	Shareholding Of Ordinary Shares (Directly Or Indirectly) (%)	70% Shareholding Requirement Met?
Co. P & A	100% - directly	Yes
Co. P & B	85% - directly	Yes
Co. P & C	100% - directly	Yes
Co. P & E	70% X 100% = 70% - indirectly	Yes

By virtue of paragraph 44(A)(3)*(c)* of the ITA, Co. E (surrendering company) is related to the claimant companies Co. A, Co. B and Co. C.

Note:

[2,3,4]Both Co. D and Co. X have a paid-up capital in respect of ordinary shares of less than RM2.5 million each at the beginning of the basis period for the year of assessment 2015. Co. HK is not incorporated and not resident in Malaysia. These companies are thus not eligible as a surrendering or claimant company.

The values of ordinary shares, non-commercial loans, residual profits and residual assets of the related companies in the group are as follows:

Company	Value of ordinary shares held by Co. P RM	Value of non-commercial loans RM	Total RM	Residual Profits for Distribution[6] RM	Residual Assets for Distribution[7] RM
Co. A	3,000,000	Nil	3,000,000	100,000	500,000
Co. B	2,550,000	Nil	2,550,000	100,000	500,000
Co. C	2,800,000	9,500,000[5]	12,300,000	100,000	500,000
Co. E	3,500,000	Nil	3,500,000	100,000	500,000

		RM
[5]Non-commercial loans from Co. X	-	2,000,000
Non-commercial loans from Co. HK	-	5,000,000
Non-commercial loans from company directors	-	2,500,000
		9,500,000

[6,7]The amount of residual profits and residual assets used are for illustration purposes only.

Second Level Test

Equity holders' beneficial entitlement to a company's residual profits and residual assets are based on the ratio of distribution using the value of ordinary shares and non-commercial loans.

(a) **Equity Holders' Beneficial Entitlement to Residual Profits**

The proportion of residual profits is determined as follows:

$$\frac{\text{Value of ordinary shares + value of non-commercial loans attributable to an equity holder}}{\text{Value of ordinary shares + value of non-commercial loans attributable to all equity holders}} \times \text{Residual profits of company}$$

Equity Holders of Company A (Direct)	Proportion of Residual Profits (RM '000)	Beneficial Entitlement to Residual Profits (%)
Co. P	(3,000 / 3,000) x 100 = 100	100/100 = 100%

Equity Holders of Company B (Direct)	Proportion of Residual Profits (RM '000)	Beneficial Entitlement to Residual Profits (%)
Co. P	(2,550 / 3,000) x 100 = 85	85/100 = 85%
Others	(450 / 3,000) x 100 = 15	15/100 = 15%

Equity Holders of Company C (Direct)	Proportion of Residual Profits (RM '000)	Beneficial Entitlement to Residual Profits (%)
Co. P	(2,800 / 12,300) x 100 = 22.76	22.76/100 = 22.76%
Co. X	(2,000 / 12,300) x 100 = 16.26	16.26/100 = 16.26%
Co. HK	(5,000 / 12,300) x 100 = 40.65	40.65/100 = 40.65%
Company directors	(2,500 / 12,300) x 100 = 20.33	20.33/100 = 20.33%
Co. P	Co. P & Co. D - (70% X 100%) X 100 = 70	70/100 = 70%

(b) **Equity Holders' Beneficial Entitlement to Residual Assets**

The proportion of residual assets is determined as follows:

$$\frac{\text{Value of ordinary shares + value of non-commercial loans attributable to an equity holder}}{\text{Value of ordinary shares + value of non-commercial loans attributable to all equity holders}} \times \text{Residual assets of company}$$

Equity Holders of Company A (Direct)	**Proportion of Residual Assets (RM '000)**	**Beneficial Entitlement to Residual Assets (%)**
Co. P	(3,000 / 3,000) x 500 = 500	500/500 = 100%

Equity Holders of Company B (Direct)	**Proportion of Residual Assets (RM '000)**	**Beneficial Entitlement to Residual Assets (%)**
Co. P	(2,550 / 3,000) x 500 = 425	425/500 = 85%
Others	(450 / 3,000) x 500 = 75	75/500 = 15%

Equity Holders of Company C (Direct)	**Proportion of Residual Assets (RM '000)**	**Beneficial Entitlement to Residual Assets (%)**
Co. P	(2,800 / 12,300) x 500 = 113.82	113.82/500 = 22.76%
Co. X	(2,000 / 12,300) x 500 = 81.30	81.30/500 = 16.26%
Co. HK	(5,000 / 12,300) x 500 = 203.25	203.25/500 = 40.65%
Company directors	(2,500 / 12,300) x 500 = 101.63	101.63/500 = 20.33%

Equity Holders of Company E (Indirect)	Proportion of Residual Assets (RM '000)	Beneficial Entitlement to Residual Assets (%)
Co. P	Co. P & Co. D - (70% X 100%) X 500 = 350	350/500 = 70%

Whether the surrendering and claimant companies are eligible for group relief based on the first and second level test

Surrendering and Claimant Company	Has the first and second level test been satisfied?	Are the Companies Eligible for Group Relief?
Co. E & Co. A	(a) Co. P owns 100% of the ordinary shares in Co. A (directly) and has an indirect shareholding of 70% in Co. E through Co. D. Therefore, the 70% ordinary shareholding in both Co. A (claimant) and Co. E (surrendering company) are directly and indirectly owned by another company (Co. P) which is resident and incorporated in Malaysia. The first level test has been satisfied. (b) Co. P is beneficially entitled to 100% (directly) and 70% (indirectly) of the residual profits and residual assets of Co. A and Co. E respectively. Therefore the second level test is also satisfied.	Yes
Co. E & Co. B	(a) Co. P owns 85% of the ordinary shares in Co. B (directly) and has an indirect	Yes

	shareholding of 70% in Co. E through Co. D. Therefore the 70% ordinary shareholding in both the Co. B (claimant) and Co. E (surrendering company) are directly and indirectly owned by another company (Co. P) which is resident and incorporated in Malaysia. The first level test has been satisfied. (b) Co. P is beneficially entitled to 85% (directly) and 70% (indirectly) of the residual profits and residual assets of Co. B and Co. E respectively. Therefore the second level test is also satisfied.	
Co. E & Co. C	(a) Co. P owns 100% of the ordinary shares in Co. C (directly) and has an indirect shareholding of 70% in Co. E through Co. D. Therefore the 70% ordinary shareholding in both the Co. C (claimant) and Co. E (surrendering company) are directly and indirectly owned by another company (Co. P) which is resident and incorporated in Malaysia. The first level test has been satisfied. (b) Co. P is beneficially entitled to 70% (indirectly) of the residual profits and residual assets of Co. E through Co. D. Co. P's beneficial entitlement to the residual profits and residual assets of Co. C is 39.02% [22.76% (direct) and 16.26% (indirect	No

	through Co. X)]. The second level test is not satisfied. **Note:** The 40.65% indirect entitlement to the residual profits and assets through Co. HK, a foreign incorporated non-resident company is disregarded.	

Note:

For purposes of ascertaining the beneficial entitlement of an equity holder to the residual profits and residual assets in a company under subsection 44A(7) of the ITA, the non-commercial loans obtained from a non-resident company not incorporated in Malaysia and other intermediary companies have to be taken into account.

7. Ordinary Shareholding Level Must be Maintained

For the purpose of group relief, the ordinary shareholding level must be maintained at or above 70% by both the surrendering company and the claimant company throughout the basis period for a year of assessment and the twelve (12) months period immediately preceding that basis period.

Example 13

Company A (claimant company) directly holds 70% of the paid up ordinary share capital in Company B (surrendering company), a related company for the basis periods 1.1.2014 to 31.12.2014 and 1.1.2015 to 31.12.2015.

Shareholding Position

70% ordinary shares	70% ordinary shares
1.1.2014 — 31.12.2014	1.1.2015 — 31.12.2015

There was no change in the 70% shareholding in the basis period in the year of assessment 2015 and the 12 months period immediately preceding that basis period.

A second level test on the beneficial entitlement of the residual profits and residual assets test of Co. B available for distribution to the Co. A should be carried out on the date the accounting period closed ie. on 31.12.2015 to determine whether Co. A and Co. B satisfy the test.

Example 14

The facts are the same as in Example 13 except that on 1.1.2015 there was a change in Company A's (claimant company) shareholding from 70% to 78% of the paid up ordinary share capital in Company B (surrendering company), a related company for the basis periods 1.1.2014 to 31.12.2014 and 1.1.2015 to 31.12.2015 respectively.

Shareholding Position

70% ordinary shares		78% ordinary shares	
1.1.2014	31.12.2014	1.1.2015	31.12.2015

The ordinary shareholding test should be done on the date there was a change in the shareholding from 70% to 78%. As the 70% shareholding of ordinary shares has been satisfied for the year of assessment 2015, the residual profits and residual assets test should be carried out on the date the accounting period closed i.e. on 31.12.2015.

Example 15

The facts are the same as in Example 13 except that there was a change in Company A's (claimant company) shareholding from 70% to 69% of the paid up ordinary share capital in Company B (surrendering company), a related company for the basis periods 1.1.2014 to 31.12.2014 and 1.1.2015 to 31.12.2015 respectively.

Shareholding Position

70% ordinary shares		69% ordinary shares	
1.1.2014	31.12.2014	1.1.2015	31.12.2015

As the 70% shareholding of ordinary shares was not satisfied in the basis period 1.1.2015 to 31.12.2015, both the claimant and the surrendering company are not eligible for the group relief.

8. Computation of Group Relief

Any eligible company having an adjusted loss can surrender such loss to a related company for any year of assessment. The amount of adjusted loss surrendered is ascertained in accordance with subsection 44A(4) of the ITA where -

(a) the amount or the aggregate amount of the adjusted loss or the excess of that amount of the surrendering company for that year of assessment is ascertained under subsection 44(4) and 44(5) of the ITA;

(b) the amount of adjusted loss surrendered to a claimant company as a deduction in ascertaining the total income of the claimant company is in accordance with subsection 44(1) of the ITA; and

(c) the amount of adjusted loss surrendered cannot exceed the defined aggregate income of the claimant company for that year of assessment.

Example 16

Companies A and B are related companies eligible for group relief. In year of assessment 2015, Company A incurred losses whilst Company B has a profit. Both companies agreed to make use of group relief where Company A (surrendering company) agreed to surrender 70% of the current year loss to Company B (claimant company). Election for group relief was made for year of assessment 2015.

Computation of Adjusted Loss Surrendered by Company A

Details	Scenario 1	Scenario 2
	RM	RM
Statutory income from business (adjusted loss 100,000)	Nil	Nil
Statutory rental income	20,000	40,000
Aggregate income	20,000	40,000
Less:		
Current year loss [sec. 44(2)]	(20,000)	(40,000)
Total income	Nil	Nil

Unabsorbed current year loss	(80,000)	(60,000)
Loss surrendered to Company B (70%)	(56,000)	(42,000)
Loss c/f	(24,000)	(18,000)

The amount of adjusted loss surrendered by Company A to Company B in year of assessment 2015 is 70% of the excess of Company A's current year adjusted loss after deducting an amount equal to the aggregate income for that year.

Example 17

Companies A and B are related companies eligible for group relief. In year of assessment 2014 (year 1) and year of assessment 2015 (year 2), Company A incurred losses whilst Company B has a profit. Both companies agreed to elect for group relief where Company A (surrendering company) agreed to surrender 70% of the current year loss to Company B (claimant company) and Company B agreed to claim the loss. Claim for group relief was made for years of assessment 2014 and 2015 respectively.

Computation of Group Relief for Year of Assessment 2014 (Year 1)

Company A (Surrendering Company)	RM	Company B (Claimant Company)	RM
Statutory income of business I (adjusted loss RM300,000) Statutory income of business II (adjusted loss RM50,000)	Nil Nil	Statutory income of business I Statutory income of business II	200,000 20,000
Aggregate of statutory income of business I and II Add: Statutory rental income	Nil 60,000	Aggregate of statutory income of business I and II Add: Statutory rental income	220,000 50,000
Aggregate income Less: Current year loss [sec. 44(2)]	60,000 (60,000)	Aggregate income Less: Donation [sec.44(6)]	270,000 (20,000)
 Less: Donation [sec. 44(6)]	Nil Nil	Defined aggregate income Less: Loss claimed	250,000 (203,000)

Company A (Surrendering Company)	RM	Company B (Claimant Company)	RM
(RM10,000)			
Total income	Nil	Total income	47,000
Excess of current year adjusted loss in accordance with subsection 44(4) and 44(5) RM (RM350,000-60,000) = (290,000) Surrendered 70% = (203,000) Loss c/f (87,000) Amount of loss (RM87,000) remains in surrendering company.			

Computation of Group Relief for Year of Assessment 2015 (Year 2)

Company A (Surrendering Company)	RM	Company B (Claimant Company)	RM
Statutory income of business I (adjusted loss 200,000) Statutory income of business II	Nil 60,000	Statutory income of business I Statutory income of business II	50,000 40,000
Aggregate statutory income of business I and II Less: Loss b/f [section 43(2)]	60,000 (60,000)[2]	Aggregate statutory income of business I and II Add: Statutory rental income	90,000 20,000
 Add: Statutory rental income	Nil 50,000	Aggregate income/ Defined aggregate income Less: Loss claimed	110,000 (105,000)
Aggregate income Less: Current year loss [section 44(2)]	50,000 (50,000)	Total income	5,000
Total income	Nil		
Loss b/f (not utilised) = (RM27,000) [[2](RM87,000) - (RM60,000)] [excess of subsection 44(4) and 44(5)] RM [(RM200,000)-(RM50,000)] = (150,000)			

Company A (Surrendering Company)		RM	Company B (Claimant Company)	RM
Surrenderred 70%	(105,000)			
	(45,000)			
+ loss b/f(not utilised)	(27,000)			
loss c/f	(72,000)			
Amount of loss (RM72,000) remains in surrendering company				

9. **More than One Surrendering or Claimant Company**

9.1 A surrendering company can surrender its adjusted loss to one or more related companies (claimant companies). The company has to surrender the amount of adjusted loss to be fully set-off against the amount of defined aggregate income of the first claimant company. Any balance of the loss can then be surrendered to the second claimant company and so on following the order of priority.

9.2 A claimant company can also claim adjusted loss from one or more related companies (surrendering companies). The adjusted loss surrendered by the first surrendering company shall be fully deducted from the defined aggregate income of the claimant company before the adjusted loss from the second surrendering company and so on following the order of priority.

9.3 The adjusted loss surrendered or claimed has to follow the order of priority. Both the surrendering company and the claimant company has to ascertain the order of priority by making an irrevocable election in the prescribed Form C (RK-S) and Form C (RK-T) together with the Income Tax Return Form (Form C).

9.4 If the loss cannot be effected in accordance with the order of priority specified by any surrendering or claimant company, the amount of adjusted loss surrendered or claimed shall be dealt with in such manner as the Director General (DG) thinks reasonable and proper.

9.5 The amount of adjusted loss surrendered shall be disregarded for the purpose of ascertaining the aggregate income of the surrendering company under section 43 of the ITA.

9.6 The amount of loss that can be transferred is subject to the defined aggregate income of the claimant company. **Where any adjusted loss is more than the defined aggregate income of the claimant company, the excess will be retained by the surrendering company as its**

unabsorbed loss. This unabsorbed loss can be used to offset statutory income of the surrendering company in subsequent years of assessment subject to the provisions of ITA.

9.7 If the surrendering company mistakenly surrendered the adjusted loss to a claimant company incurring a loss or not having a defined aggregate income, the surrendered loss cannot be transferred to another claimant company but must be returned to the surrendering company.

Example 18

Company A, B, C, X, Y and Z are all related companies and eligible for group relief. The surrendering and the claimant companies have ascertained the order of priority and made an irrevocable election in Form C (RK-S) and Form C (RK-T).

A summary of the loss surrendered and claimed in order of priority of the surrendering and claimant companies is set out in the table below:

	Surrendering Company			**Claimant Company**		
	Co A	**Co B**	**Co C**	**Co X**	**Co Y**	**Co Z**
70% adjusted loss	(40,000)	(140,000)	(80,000)			
Order of priority	**Z - (40,000)**	**1. X - (65,000) 2. Y - (25,000) 3. Z - (15,000)**	**Y - (80,000)**			
Defined aggregate income				65,000	105,000	55,000
Order of priority				**B - (65,000)**	**1.C - (80,000) 2.B - (25,000)**	**1.A - (40,000) 2.B - (15,000)**

For surrendering companies Co. A and Co. C, the 70% adjusted loss is fully transferred to their claimant companies. For Co. B, the order of priority is as shown and the balance of loss RM35,000 that cannot be surrendered is to be retained in Co. B and carried forward to the subsequent years of assessment.

Claimant Co. X

	RM
Defined aggregate income	65,000
Less: loss transferred from Co. B	(65,000)
Chargeable income	Nil

Claimant Co. Y

	RM
Defined aggregate income	105,000
Less: loss transferred from Co. C	(80,000)
	25,000
Less: loss transferred from Co. B	(25,000)
Chargeable income	Nil

Claimant Co. Z

	RM
Defined aggregate income	55,000
Less: loss transferred from Co. A	(40,000)
	15,000
Less: loss transferred from Co. B	(15,000)
Chargeable income	Nil

10. Revision of Adjusted Loss

10.1 If a surrendering company has filed a return form for a particular year of assessment and if there is a revised tax computation and the adjusted loss available for surrender is more than the amount already surrendered, the surrendering company is not allowed to revise the loss already surrendered to the claimant company. The surrendering company has to carry forward the difference of the adjusted loss.

10.2 If a surrendering company has filed a return form for a particular year of assessment and if there is a revised tax computation where the adjusted loss available for surrender is less than the amount already surrendered, it is the responsibility of the surrendering company to inform the Inland Revenue Board of Malaysia (IRBM) branch office that handles the income tax file of the company.

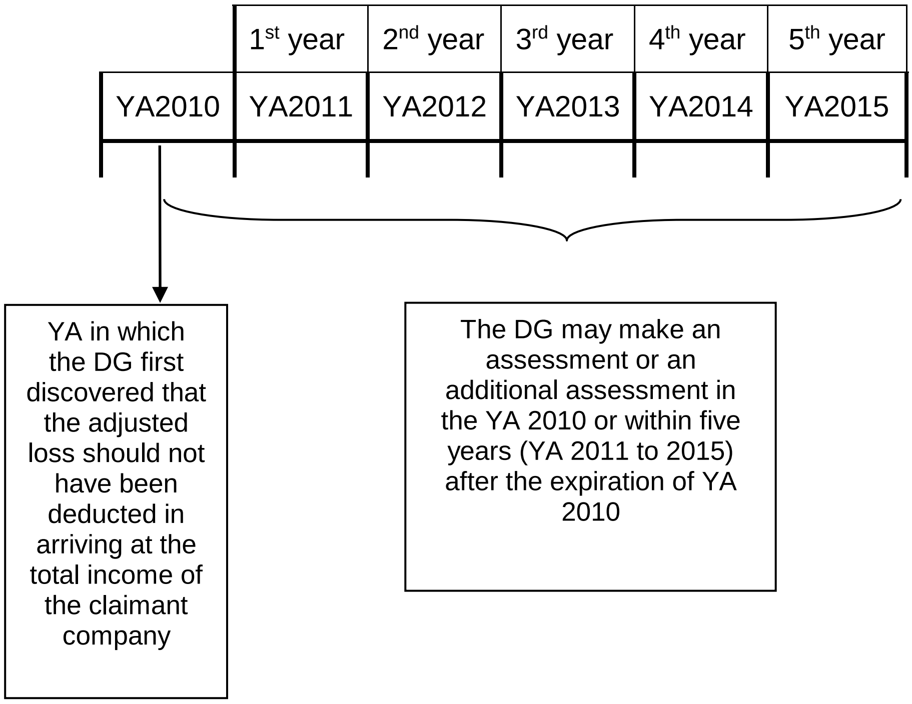
Similarly a claimant company affected by the reduced adjusted loss available for surrender by the surrendering company is also required to inform the IRBM branch office that handles the income tax file of the company.

10.3 If a claimant company deliberately claims an amount of adjusted loss which exceeds the amount that is surrendered by the surrendering company, the claimant company may be liable to action under subsection 114(1) of the ITA.

10.4 If a company initially reports an amount of chargeable income in its return form and subsequently, the amount of chargeable income was reduced to an adjusted loss (after some adjustments), the company is not allowed to surrender the adjusted loss to its related companies.

11. Penalty for Incorrect Information

11.1 Pursuant to paragraph 44A(9)(*a*) of the ITA, where the DG discovers that adjusted loss should not have been deducted in calculating the total income of the claimant company, the DG can, in that year or in the period of five years after the end of that year, raise an assessment or additional assessment on the claimant company to recover the tax lost. This is illustrated in the diagram below:



If in the year of assessment 2010, the DG discovered that the adjusted loss should not have been deducted in calculating the total income of the claimant company for the year of assessment 2007, the DG can raise an additional assessment in the year of assessment 2010 or within five years (YA 2011 to 2015) after the expiration of YA 2010.

Note:

If in the year of assessment 2015, the DG discovered that the adjusted loss should not have been deducted in calculating the total income of the claimant company for the year of assessment 2007, the DG can raise an additional assessment in the year of assessment 2015 or within five years (YA 2016 to 2020) after the expiration of YA 2015.

11.2 Pursuant to paragraph 44A(9)*(b)* of the ITA, where a surrendering company provides incorrect information in the return form on the amount of adjusted loss surrendered, the DG may impose penalty on the surrendering company, with an amount equal to the amount of tax undercharged by the claimant company.

Example 19

HiQ Sdn Bhd (HiQ) and LBG Sdn Bhd (LBG) are related companies within the same group of companies that have satisfied the conditions to be eligible for group relief. HiQ is the surrendering company whereas LBG is the claimant company. In the year of assessment 2015, HiQ elected to surrender 70% of its current year adjusted loss to LBG, which elected to claim the said loss.

Surrendering and Claiming of the Adjusted Loss

Year 2015

HiQ Sdn Bhd (Surrendering Company)	**RM**	**LBG Sdn Bhd (Claimant Company)**	**RM**
Adjusted business loss (RM 190,000)	Nil	Statutory income of business I Statutory income of business II	145,000 36,000
Surrendered to LBG 70% of adjusted loss i.e. RM133,000 whilst another RM57,000 is c/f		Defined aggregate income Less: Loss claimed	181,000 (133,000)
		Total income	48,000
		Tax charged @ 25%	12,000.00

An audit was carried out by IRBM. The following adjustments were made and a notice of assessment was issued.

Year 2015 – adjustments made by IRBM

HiQ Sdn Bhd (Surrendering Company)	**RM**	**LBG Sdn Bhd (Claimant Company)**	**RM**
Adjusted business loss (RM120,000) (after re-examination by auditor)	Nil	Statutory income of business I Statutory income of business II	145,000 36,000
Therefore, the amount of adjusted loss that qualifies to be surrendered is RM84,000 and not RM133,000.		Defined aggregate income Less: Loss claimed (70%) after audit adjustment	181,000 (84,000)
		Total income	97,000
		Tax charged @ 25% Less: Previous tax	24,250.00 12,000.00
		Tax undercharged	12,250.00

After the audit finding-

(a) a notice of assessment was issued with an additional tax of RM12,250 raised on LBG; and

(b) a notice (Form G) with a penalty of RM12,250 was issued to HIQ. This notice would be deemed as the notice of assessment for the purpose of appeal if HiQ were dissatisfied with the penalty.

11.3 The surrendering company has the right to appeal against the imposition of the penalty within 30 days of the issue of the notice. The appeal will be dealt with in the same way as an appeal against an assessment.

12. Companies Not Eligible for Group Relief

Pursuant to subsection 44A(10) of the ITA, group relief is not applicable to a surrendering or a claimant company for the basis period for a year of assessment where the period during which that company –

(a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investment Act 1986;

(b) is exempt from tax on its shipping profits under section 54A, or a ministerial exemption under paragraph 127(3)*(b)* or subsection 127(3A) of the ITA;

(c) has made a claim for a reinvestment allowance under schedule 7A of the ITA;

(d) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006 [P.U.(A) 55/2006];

(e) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of Proprietory Rights) Rules 2002 [P.U.(A) 63/2002];

(f) has been granted a deduction under the Income Tax (Deduction for Cost of Acquisition of a Foreign Owned Company) Rules 2003 [P.U.(A) 310/2003]; or

(g) has made a claim for deduction under any Rules made under section 154, and those Rules provide that section 44A of the ITA shall not apply to that company.

Example 20

Company C is the claimant company whereas Company S is the surrendering company. In the year of assessment 2014, Company C claimed reinvestment allowance (RA) and the unabsorbed RA was carried forward to the following year. However, in the year of assessment 2015, Company C did not claim any RA although the unabsorbed RA was brought forward from the previous year. Company C claimed group relief i.e. the current year loss surrendered by Company S in the year of assessment 2015. Both companies had fulfilled the conditions to qualify for group relief.

Although Company C had claimed RA in the year of assessment 2014 but it did not claim RA in the basis period for the year of assessment 2015. As such, Company C is entitled to claim group relief in the year of assessment 2015.

Note:

If Company C had claimed RA in the year of assessment 2015, it would not be eligible to claim group relief in the same year.

Example 21

The facts are the same as in Example 20 except that in the year of assessment 2015, Company C is exempt under paragraph 127(3)(*b*) of the ITA from payment of income tax in the basis period for a year of assessment in relation to gains or profits derived, in lieu of interest, from the sukuk wakala in accordance with the principle of *Wakala Bil Istithmar* [Income Tax (Exemption) Order 2015 [P.U.(A) 61/2015].

Company C also wanted to claim group relief i.e. the current year loss surrendered by Company S in the year of assessment 2015. Both companies had fulfilled the conditions to qualify for group relief.

As Company C is exempt from tax on its gains or profits derived, in lieu of interest, from the sukuk wakala under paragraph 127(3)(*b*) of the ITA for the year of assessment 2015, it is not eligible to claim group relief under section 44A of the ITA in the year of assessment 2015.

13. Other Pertinent Matters

13.1 A surrendering company and a claimant company are required to complete the appropriate columns in Form C on losses surrendered or claimed under the group relief provision. For the surrendering company, the amount of loss surrendered in the basis period for the current year of assessment and the balance of loss carried forward for deduction in the subsequent year of assessment has to be reported.

13.2 If a surrendering or claimant company under the group relief provision has filed its Form C before the due date for submission of the return form without making the election in the relevant columns, the company may write to the branch office of the IRBM that is handling the company file for a review. Request for such review must be made before the due date for submission of return form. The election is irrevocable.

13.3 A surrendering or claimant company is not eligible to make an election to surrender or claim the adjusted loss if the return form is furnished after the due date for submission of the return form.

13.4 A company which has made a review of its tax computation that results in an adjusted loss subsequent to the submission of its return form under section 77A of the ITA will not be eligible to surrender its losses.

Director General of Inland Revenue
Inland Revenue Board Malaysia

Appendix 1

Steps to be taken in determining whether a claimant company and a surrendering company are related and eligible for group relief