

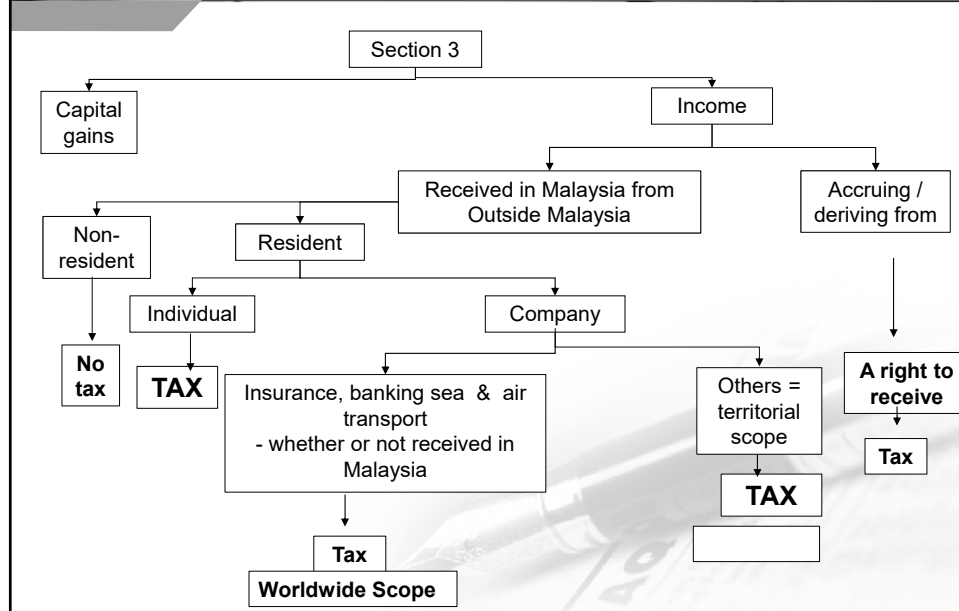
Company  
LOGO

# MALAYSIAN TAX SYSTEM

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## CHARGING SECTION



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## ***Tax Treatment in relation to Income received from Abroad***

- ❖ Effective from 1 Jan 2022, foreign income received in Msia by a resident is taxable.
- ❖ Effective from 1 July 2022, taxed at prevailing tax rates
- ❖ Deductible expenses and tax credits (bilateral and unilateral) in respect of withholding and foreign tax paid - claimable
- ❖ Exemptions for resident individuals –
  - all foreign income other than partnership income received in Msia from 1 Jan 2022 until 31 Dec 2026 provided the income has been subject to tax in the country of origin or is exempt in the country of origin due to certain reasons

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## ***Tax Treatment in relation to Income received from Abroad***

### **❖ Exemption for companies –**

**Foreign dividend income received in Msia during 1 Jan 2022 to 31 Dec 2026 provided :**

- The dividend has been subject to tax in the country of origin
  - The highest tax rate (headline tax) in the country of origin is not less than 15%
  - Comply with economic substance requirement
- ❑ **The dividend is subject to tax in the country of origin –**
- income tax or withholding tax paid in the country of origin or income has been subject to underlying tax; or
  - where no tax is imposed due to unabsorbed losses or capital allowances, arising from capital gains, enjoyed tax incentives or under tax consolidation system

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## Tax Treatment in relation to Income received from Abroad

### ❖ Exemption for companies (continue) –

#### ❑ The headline tax rate is not less than 15% -

- » Refers to highest corporate tax rate in the country of origin in the year the dividend is taxed, and not necessary the actual tax rate imposed on the foreign dividend income

#### ❑ Economic substance if it has employed adequate number of employees with necessary qualifications and incur adequate amount of operating expd to carry out the specified economic activities in Msia

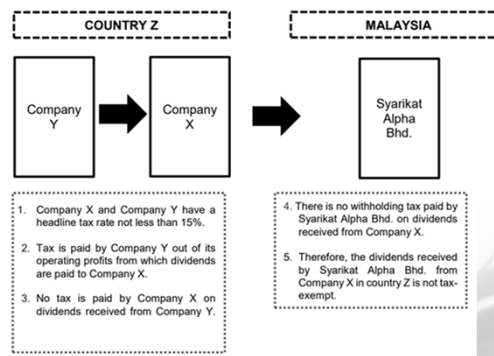
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## Tax Treatment in relation to Income received from Abroad (continue)

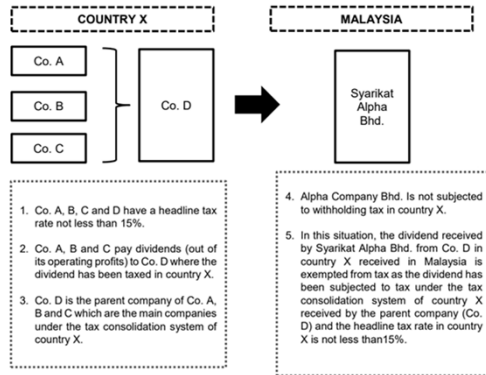
### ❖ Illustration from Guidelines



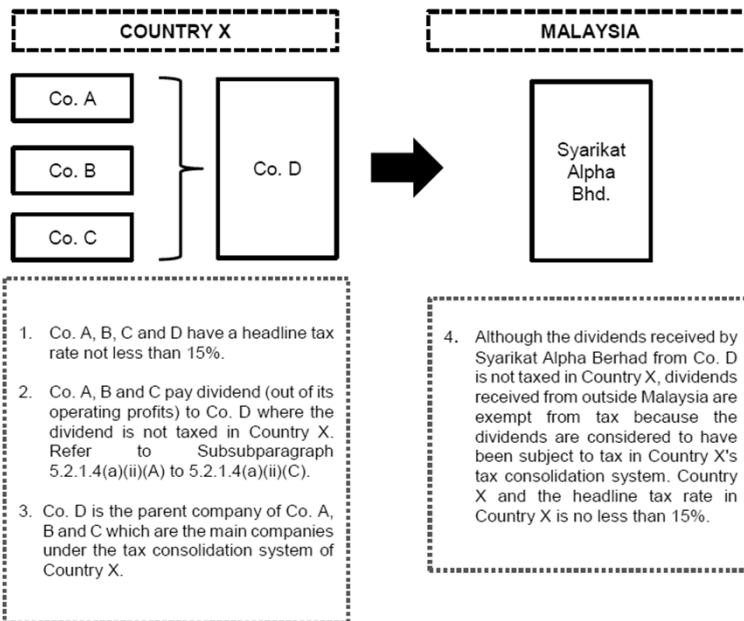
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## Tax Treatment in relation to Income received from Abroad (continue)

### ❖ Illustration from Guidelines



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## *CLASSES OF INCOME*

### Section 4

- (a) Business income
- (b) Employment income
- (c) Dividends, interests or discounts
- (d) Rentals, royalties or premiums
- (e) Pensions, annuities or other periodical payments
- (f) Gains or profits

### Section 4A

- Special classes of income

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## *CLASSES OF INCOME*

### Section 4B

- For the purpose of section 4, **gains or profit from a business shall not include any interest** that first becomes receivable by a person in the basis period for a year of assessment other than interest where subsection 24(5)(*interest from stock in trade securities*) applies.

### Section 4C

- For the purpose of paragraph 4(a), gains or profits from a business **shall include an amount receivable arising from stock in trade parted with by any element of compulsion** including on requisition or compulsory acquisition or in a similar manner.

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## *Business Income - Definition*

- Defined in Section 2
  - Profession
    - Eg. Doctor, surgeon etc
  - Vocation
    - A person passes his life. Eg. Dramatist or writer
  - Trade (Illegal activities)
    - Eg. Prostitution, gambling activities
  - Every manufacture, adventure or concern in the nature of trade
  - Exclude employment

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## *Business Income - Definition*

Trade would include the following features:

- ✓ *involves buying & selling*
- ✓ *Consists of a series of transactions, having continuity & repetition of buying & selling or manufacturing or selling*
- ✓ *Includes isolated transaction ie one purchase & one sale or one purchase & many purchases*
- ✓ *Whether a trade exists or not, one must examine the intention at the time of acquisition ie whether it was acquired with the intention to make profit*
- ✓ *The intention of trade may change through time but such change must be documented.*

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## Business Income - Derivation

Attributable to a **place of business** in Malaysia( **wef 27.12.2018**)

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse;
- (g) a building site, or a construction, an installation or an assembly project;
- (h) a farm or plantation; and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources,

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## Business Income - Derivation



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## Business Income - Derivation

A person shall also be deemed to have a place of business in Malaysia if that person—

- (i) carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project; or*
- (ii) has another person acting on his behalf who—*
  - (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;*
  - (b) habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or*
  - (c) regularly fills orders on his behalf.*

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## Business Income - Derivation

- S12(1)(b) applies specifically to business like manufacturing, plantation & mining . The gross income is either based on:
    - (i) sale value of the article, product or produces sold overseas*
    - (ii) Market value of the article,product or produce sold overseas in the event the sale value does not apply*
- Eg 13.12, 13.13 pg 221,222*

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## Single or separate businesses

- Important as utilisation of CA cannot be set off against income from another business source
- Depend entirely on the nature and interdependence of such activities
- Case law: *'if one or two activities cannot be stopped without affecting the framework of the other ->same business'*

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## Single or separate business

Whether sharing the same characteristics of the following:

- Core ingredient of the existing business
- Overall control and management
- Manufacturing processes is entirely/almost the same?
- Using the same equipment and expertise?

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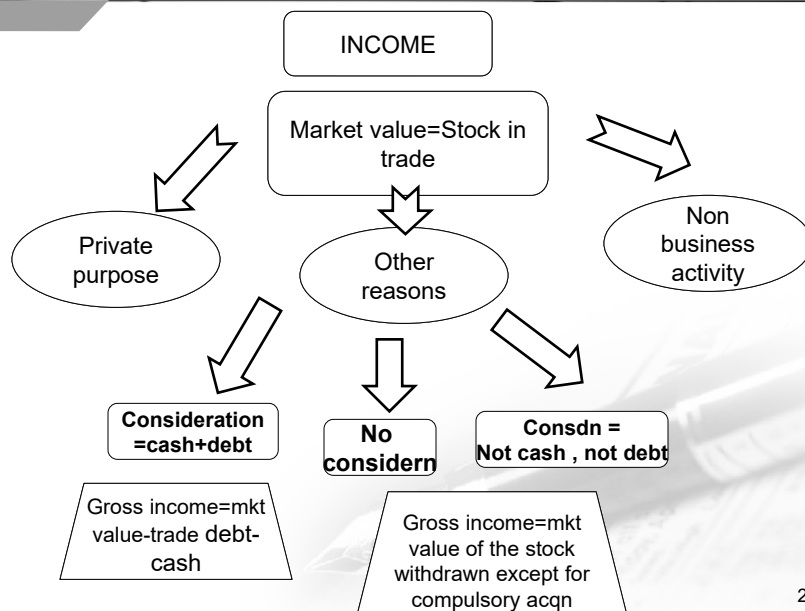
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## Business Income – Gross income

- **Gross income from business**
  - All liquidated debts arising in the course of carrying on the business iro. goods and services rendered
  - Advances received
  - Insurance receipts (S22(2))
    - **Trading stock**
    - **Defalcation of employees**
    - **Repairs to assets**
    - **Replacement of assets**
      - **Selling price = Compensation received**
      - **Balancing charge or balancing allowance**
  - Compensation / commission / discount = Circulating capital
  - Withdrawal of stock for own use = Market value of the stock at the time of withdrawal (*Makok Development Sdn Bhd V DGIR*)
  - Bad debts written off recovered

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## Stock withdrawn Section 24



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## *Business Income – Gross income*

- Market value of the goods exported in the course of carrying on the business – Section 24(6)
- Recovery of a bad debt which has previously been allowed as a deduction in ascertaining the adjust income – Section 30(1)
- Waiver of debts by creditors which pertaining to any amount of expenditure previously allowed as a deduction in ascertaining the adjust income – Section 30(3)
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## *GROSS INCOME : ANY SUM RECEIVED AND A DEBT OWING THAT ARISES IN RESPECT OF SERVICES TO BE RENDERED*

- WEFYA 2016, any sum received by the Company in the course of carrying on a business in respect of any **services to be rendered** or the **use or enjoyment of any property to be dealt with** in the relevant period or in any following basis period, shall be treated as gross income for the relevant period notwithstanding that no debt is owing to the Company in respect of such services or such use or enjoyment of any property.
- The sum received -> any debt, deposit or advance payment received in respect of future services to be rendered or the use or enjoyment of any property to be dealt with.
- If the deferred income / advance receipts that had been brought to tax is refunded in a basis period for a YA in the future, such refunded amount shall be allowed a deduction from the gross income in the year of refund. EG 10 PR 4/2020

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**GROSS INCOME : ANY SUM RECEIVED AND A DEBT OWING THAT ARISES IN RESPECT OF SERVICES TO BE RENDERED**

**Treated as gross income if :**

**Step 1 :** Debt owing to a person in respect of any services to be rendered regardless if the sum received

Eg 1,3, 4 ,6,7,8 PR 4/2020

**Step 2:** Any sum received by a person in respect of any services to be rendered

Eg 2, 5 PR 4/2020

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**GROSS INCOME : ANY SUM RECEIVED AND A DEBT OWING THAT ARISES IN RESPECT OF SERVICES TO BE RENDERED**

Services That are Not Subject to Paragraph 24(1)(b) and Subsection 24(1A) of the ITA:

- services that are governed by separate Income Tax Rules
- Not applicable to income under section 4A of the ITA
- Deposits for any service received by a service provider upon the signing of an agreement where the deposits are refundable upon completion of the service

Deposits that are forfeited would be part of the gross income of the service provider's business under the provisions of paragraph 4(a) of the ITA.

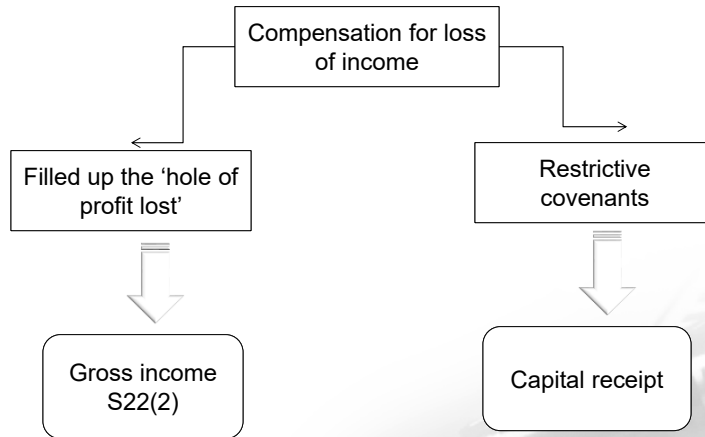
Eg 11,12,13 of PR 4/2020

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## Business Income – Gross income



Eg13.19, 13.20,pg 228

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## Business Income – Badges of Trade

- Badges of trade (PANTOMIME)

	<u>Badges of trade</u>	<u>Case Law</u>
<b>P</b>	<b>Profit seeking motive</b>	<b>Rutledge V C.I.R. (1,000,000 toilet rolls)</b>
<b>A</b>	<b>Acquisition methods</b> - Inheritance - Gifts - purchase	
<b>N</b>	<b>No. / Frequency of transaction</b> - Same type of object repeatedly bought and sold	<b>Pickford V Quirke</b>

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## Business Income – Badges of Trade

- Badges of trade (PANTOMIME) (Con't)

	<u>Badges of trade</u>	<u>Case Law</u>
<b>T</b>	<b>Type of an asset</b> - Purchaser's own use or the use of his family / friend - Resale at a profit - Investment <ul style="list-style-type: none"> <li>o Yield profit</li> <li>o Aesthetic pleasure</li> </ul>	<b>Martin V Lowry</b> (34,000,000 aircraft linen)
<b>O</b>	<b>Organisation of sales</b> - Any form of organised activity designed to promote a sale	<b>Martin V Lowry</b>

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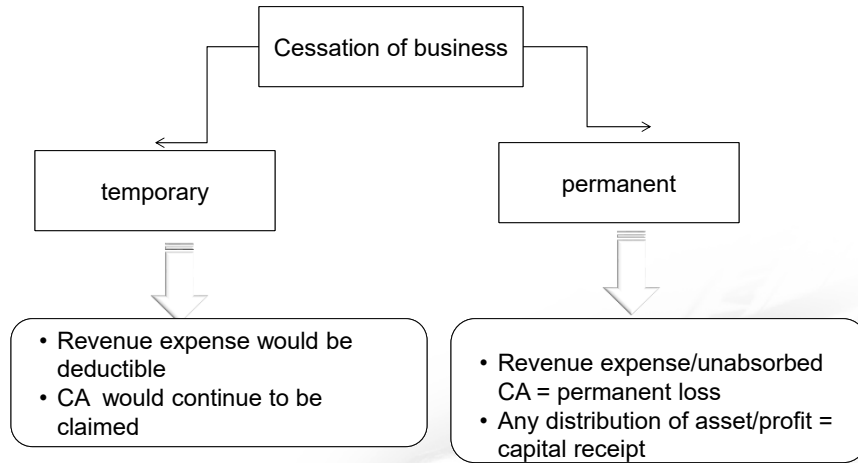
## Business Income – Badges of Trade

- Badges of trade (PANTOMIME) (Con't)

	<u>Badges of trade</u>	<u>Case Law</u>
<b>M</b>	<b>Modification of assets</b> - Supplementary work eg. processing, packaging, renovating of the item sold	<b>Cape Brandy Syndicate V C.I.R.</b>
<b>I</b>	<b>Interval between purchase and sale / period of ownership</b>	
<b>M</b>	<b>Method of finance</b> <i>Method employed in disposing a property</i>	
<b>E</b>	<b>Existence of trading interests in similar field</b> <i>Eg 13.1 pg 221 Eg 13.3, pg 224 Eg 13.2 pg 223</i> <i>Summary (pg 229,CKF) Eg 13.8,13.9 pg 217</i>	<b>Cape Brandy Syndicate V C.I.R.</b>

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## Cessation of business



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## Temporary Cessation of business

- If the assets are under working conditions & constant upkeep & maintenance
- Company intends to operate the business as & when any opportunity arises
- A min number of staff is continued to be employed

FRS 38 - 30

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## **Tax Rebate For Companies and LLP**

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## **Tax Rebate For Companies and LLP**

**Tax rebate = K expenditure & operating expenditure (KOE)  
restricted to RM20,000 for each YA for 3  
consecutive YAs upon commencement ,**

**= KOE > Income tax charged, any excess disregarded**

**Effective date : YA2021**

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## Tax Rebate For Companies and LLP

### Criteria

- Incorporated/registered in M'sia and qualify as a tax resident in M'sia
- PUC/total contribution of capital of  $\leq$  RM2.5 million as at the beginning of the basis period for the YA;
- Having a gross income from source or sources consisting of a business of  $\leq$  RM50m for the basis period for the YA
- Commenced operation during 1.7.2020 to 31.12.2021 (extended to 31.12.22)
- Other conditions to be prescribed under Statutory Order

Tax Rebate = RM20,000 for each YA for 3 consecutive YAs starting Y2021, any excess disregarded

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## Tax Rebate For Companies and LLP

	First YA	2 <sup>nd</sup> YA	3 <sup>rd</sup> YA
Not fulfilling the prescribed conditions for 1 <sup>st</sup> YA	Not eligible for tax rebate	Not eligible for tax rebate	Not eligible for tax rebate
Fulfills the prescribed conditions for the first YA but does not fulfill such conditions for the 2 <sup>nd</sup> YA (including the situation where such conditions are fulfilled for the 3 <sup>rd</sup> YA)	Eligible for tax rebate	Not eligible for tax rebate	Not eligible for tax rebate
Fulfills the prescribed conditions for the 1 <sup>st</sup> & 2 <sup>nd</sup> YA but does not fulfill such conditions for the 3 <sup>rd</sup> YA	Eligible for tax rebate	Eligible for tax rebate	Not eligible for tax rebate

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## SME

Chargeable income(RM)	Rate (%)	Income tax(RM)
100,000	15	22500
450000	17	76500
>600,000	24%	

- Can claim CA on small value assets and not limited to RM20,000 per YA
- Exempted to file tax estimate for first two YAs

SME= incorporated in Msia;+

= Tax resident in Msia;+

= PUC at the beginning  $\leq$  2.5million;+

= Gross income from business  $\leq$  RM50 million;+

=NO related companies having PUC > 2.5.million

FRS 38 - 35

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## SME

- With effect from YA 2024, the above preferential tax rate will not apply to a SME if more than 20% of its paid-up capital in respect of ordinary shares at the beginning of the basis period for a YA is directly or indirectly owned by a company or companies incorporated outside Malaysia or an individual or individuals who are not Malaysian citizens.

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