

## **PRACTICE NOTE NO. 4/2020**

### **CLARIFICATION ON DETERMINING THE GROSS INCOME FROM BUSINESS SOURCES OF NOT MORE THAN RM50 MILLION OF A COMPANY OR LIMITED LIABILITY PARTNERSHIP**

1. This Practice Note is issued pursuant to the amendment of the Income Tax Act 1967 [Act 53] (ITA 1967) by the Finance Act 2019 [Act 823]. Effective from Year of Assessment 2020, this amendment is applicable to:
  - (i) A company resident and incorporated in Malaysia to be eligible for the tax treatment under paragraphs 2A, Part 1, Schedule 1 of the ITA 1967 and subparagraph 19A(3), Schedule 3 of the ITA 1967; or
  - (ii) A limited liability partnership (LLP) resident and incorporated in Malaysia to be eligible for the tax treatment under paragraphs 2D, Part 1, Schedule 1 of the ITA 1967.
  
2. The amendment provides that, other than the requirement of having a paid-up capital in respect of ordinary shares of up to RM2.5 million for a company or a total capital contribution of up to RM2.5 million for a LLP, as an additional criteria the company/ LLP must also have gross income from business sources not exceeding RM50 million.
  
3. This Practice Note clarifies that the additional criteria for a company/ LLP to have gross income from all business sources shall be determined as follows:
  - 3.1 Subject to sections 22, 24 and 30 of the ITA 1967 - for companies/ LLPs engaged in manufacturing/trading/service activities; or
  - 3.2 Subject to specific provisions under the ITA 1967 or specific regulations for certain industries - for companies/ LLPs carrying out activities such as banking/ insurance/ developers/ contractors.
  
4. Issues arising on the implementation of the additional criteria:

<b>NO.</b>	<b>ISSUES</b>	<b>TAX TREATMENT</b>
1.	Company is an Investment Holding Company	<p>For a company which is an investment holding company and is;</p> <ul style="list-style-type: none"> <li>(i) subject to section 60F of the ITA 1967, a company which is an investment holding not listed on Bursa Malaysia, is deemed to have no gross income from a business source and is not eligible for tax treatment under paragraphs 2A, Part 1, Schedule 1 and subparagraph 19A (3), Schedule 3 of ITA 1967;</li> <li>(ii) subject to section 60FA of the ITA 1967, a company which is an investment holding listed on Bursa Malaysia, is deemed to have gross income from a business source and is eligible for tax treatment under paragraphs 2A, Part 1, Schedule 1 and subparagraph 19A (3), Schedule 3 of ITA 1967.</li> </ul>
2.	Company/ LLP which does not have gross income from business sources but have other incomes such as rent and interest.	<p>If other incomes such as rent and interest are not assessed as income from the source of a business under paragraph 4(a) of the ITA1967, the company/ LLP is deemed to not have gross income from a business source and subject to tax treatment as follows:</p> <ul style="list-style-type: none"> <li>(i) the company is not eligible for tax treatment under paragraphs 2A, Part 1, Schedule 1 and subparagraph 19A (3), Schedule 3 of ITA 1967;</li> <li>(ii) the LLP is not eligible for tax treatment under paragraphs 2D, Part 1, Schedule 1 of ITA 1967.</li> </ul>

NO.	ISSUES	TAX TREATMENT
3.	Company/ LLP carrying on a business but does not have gross income from business sources due to current year business losses.	<p>In cases where a company/ LLP carries out a business activities and incurring expenses related to that business such as purchase of stock, payment of salaries, rental of premises, promotional expenses or any other allowable expenses under subsection 33(1) of the ITA 1967, but suffering loss due to not receiving any gross business income during the year, the company/ LLP is deemed to have gross income from a business source equivalent to NIL.</p> <p>Therefore, the tax treatment are as follows:</p> <ul style="list-style-type: none"> <li>(i) the company is eligible for tax treatment under paragraphs 2A, Part 1, Schedule 1 and subparagraph 19A (3), Schedule 3 of ITA 1967; or</li> <li>(ii) the LLP is eligible for tax treatment under paragraphs 2D, Part 1, Schedule 1 of ITA 1967.</li> </ul>
4.	Company/ LLP which does not have gross income from business source due to current year business loss caused by temporary closure of business operation.	<p>A company/ LLP that temporarily close its business operation but still incurring expenses related to the business such as payment of salaries, utilities, maintenance, rental of premises or any other allowable expenses under section 33(1) of the ITA 1967 is deemed to have gross income from a business source equivalent to NIL.</p> <p>Therefore, the tax treatment are as follows:</p> <ul style="list-style-type: none"> <li>(i) the company is eligible for tax treatment under paragraphs 2A, Part 1, Schedule 1 and subparagraph 19A (3), Schedule 3 of ITA 1967; or</li> <li>(ii) the LLP is eligible for tax treatment under paragraphs 2D, Part 1, Schedule 1 of ITA 1967.</li> </ul>

<b>NO.</b>	<b>ISSUES</b>	<b>TAX TREATMENT</b>
5.	Company/ LLP which has gross income from foreign business sources.	Gross income from foreign business sources shall be taken into account in determining gross business income not exceeding RM50 million.
6.	Company/ LLP enjoying certain incentives/ tax incentives such as pioneer status or investment tax allowance.	Exempted gross income from business source shall be taken into account in determining gross business income not exceeding RM50 million.

5. This Practice Note replaces the Practice Note No. 3/2020 dated 18 May 2020.

**Director General of Inland Revenue**

**Inland Revenue Board of Malaysia**

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