



INLAND REVENUE BOARD OF MALAYSIA

**TAXATION OF
FOREIGN FUND MANAGEMENT
COMPANY**

PUBLIC RULING NO. 6/2014

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a public ruling in relation to the application of any provisions of the ITA.

A public ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General of Inland Revenue 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 ruling.

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

1. Objective

The objective of this Public Ruling (PR) is to explain the tax treatment of income received by a foreign fund management company that provides fund management services to foreign and local investors. This PR is not applicable to a foreign fund management company that issues, offers or makes an invitation to subscribe or purchase units of conventional unit trust funds.

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 section 2, paragraph 6(1)(h), section 60G and Part IX of Schedule 1.
- 2.3 Relevant subsidiary law referred to in this PR are P.U.(A) 199/2007 and P.U.(A) 255/2008.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Individual" means a natural person;
- 3.2 "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole;
- 3.3 "Foreign investors" –
 - (a) in relation to an individual means individuals who are not resident and not citizens of Malaysia;
 - (b) in relation to a company means companies where the entire issued share capital is beneficially owned, directly or indirectly by persons who are not resident and not citizens of Malaysia; and
 - (c) in relation to a trust fund means trust funds where the entire interest in the fund is beneficially held, directly or indirectly by foreign investors, where –
 - (i) the fund is created outside Malaysia; and
 - (ii) the trustees of the fund are not resident and not citizens of Malaysia.
- 3.4 "Local investors" are individuals, companies or trust funds that are not foreign investors.

4. Foreign Fund Management Companies In Malaysia

- 4.1 A foreign fund management company is a company incorporated in Malaysia and licensed under the Capital Markets and Services Act 2007 [Act 671].
- 4.2 Among the conditions stipulated by the Securities Commission Malaysia (SC) for the licensing of the foreign fund management company is that more than 50% of the paid-up capital must be owned by foreign equity.
- 4.3 A foreign fund management company is basically a company incorporated to provide fund management services to its clients. The SC has issued the following guidelines and documents for the establishment of foreign fund management companies in Malaysia:
- (a) Guidelines for the establishment of foreign fund management companies (Revised on 1.7.2000);
 - (b) Application for the establishment of foreign fund management companies under the special scheme (Revised on 24.12.2007); and
 - (c) The SC licensing handbook (as amended on 26.11.2009).

For further information on the guidelines and documents, please refer to the SC's website at www.sc.com.my.

5. Basis Of Assessment

The basis period for a year of assessment of a foreign fund management company will be its financial accounting period and this is determined in accordance with the provisions of sections 20 and 21A of the ITA.

Example 1

A foreign fund management company commenced operations on 1.11.2010 and made up its accounts up to 30.6.2011. The company makes up its subsequent accounts up to 30 June annually.

The basis periods for the following years of assessment are:

Year of Assessment	Basis Period
2010	1.11.2010 to 31.12.2010
2011	1.01.2011 to 31.12.2011
2012	1.07.2011 to 30.06.2012
2013	1.07.2012 to 30.06.2013

6. Tax Treatment

(a) Special tax treatment

A foreign fund management company that provides fund management services to foreign investors are accorded special tax treatment under section 60G of the ITA.

(b) Income of a foreign fund management company

A foreign fund management company that carries on the business of providing fund management services to foreign and local investors derives management fees for its services. As the management fee is received in the course of carrying on a business, it is treated as business income by virtue of paragraph 4(a) of the ITA. Where a foreign fund management company provides fund management services to both foreign investors and local investors, the income derived from the provision of such services to each of these categories of investors will be treated as arising from separate and distinct business sources.

[subsection 60G(1) of the ITA]

(c) Provision of fund management services to foreign investors - Computation of chargeable income

The chargeable income from a source consisting of the provision of fund management services to foreign investors for a year of assessment is the statutory income from that source reduced by unabsorbed losses brought forward from earlier years from the same source.

[subsection 60G(2) of the ITA]

(d) Income of a foreign fund management company other than income from fund management services provided to foreign investors - Computation of chargeable income

The chargeable income derived from a source or sources other than the source consisting of the provision of fund management services to foreign investors for a year of assessment shall be the statutory income from that source or the aggregate of the statutory income from each of those sources, as the case may be, reduced by any deductions for brought forward losses and current year loss from other business sources (other than losses from the provision of fund management services to foreign investors).

In other words, the brought forward losses and the current year business loss from the provision of fund management services to foreign investors are not deductible against the income from the provision of fund management services to local investors and other sources of income of the fund. Similarly, brought

forward losses and the current year business loss from the provision of fund management services to local investors and other business sources are not deductible against the income from the provision of fund management services to foreign investors.

[subsection 60G(3) of the ITA]

(e) Funds of foreign investors managed according to *Syariah* principles

Foreign fund management companies which manage funds of foreign investors according to *Syariah* principles are exempted from the payment of income tax in respect of statutory income derived from a business of providing fund management services to foreign investors in Malaysia. The *Syariah* funds shall be certified by the SC for each year of assessment during the exempt period. The exemption applies for the year of assessment 2007 until the year of assessment 2016.

[Income Tax (Exemption) (No.15) Order 2007 [P.U.(A) 199/2007]

(f) Funds of local investors managed according to *Syariah* principles

Foreign fund management companies which manage funds of local investors according to *Syariah* principles are exempted from the payment of income tax in respect of statutory income derived from a business of providing fund management services to local investors in Malaysia. The *Syariah* funds shall be certified by the SC for each year of assessment during the exempt period. The exemption applies for the year of assessment 2008 until the year of assessment 2016.

[Income Tax (Exemption) (No. 6) Order 2008 [P.U.(A) 255/2008]

(g) Tax rates

The tax rates applicable to a foreign fund management company are as follows:

Shareholding Of A Foreign Fund Management Company	Type Of Investors	Tax Rate (%)
100% foreign equity	Foreign	10
At least 30% local equity	Foreign	10
At least 30% local equity	Local	Prevailing domestic tax rates applicable to residents

[Part I and Part IX of Schedule I to the ITA]

(h) Exempt account

Prior to 1.1.2014, a resident company providing fund management services to foreign investors shall credit the net amount of its chargeable income from the source (after deduction of tax @ 10%) to an exempt account. With the full implementation of the single-tier tax system effective from 1.1.2014, the foreign fund management company no longer needs to maintain the exempt account.

(i) A summary of tax treatment accorded to a foreign fund management company is shown in the Appendix.

(j) Determination of chargeable income of a foreign fund management company

Example 2

ABC International Asset Management Group, one of the world's largest asset managers incorporated a wholly owned subsidiary in Malaysia, ABC International Asset Management Malaysia Sdn Bhd in 2008. ABC International Asset Management Malaysia Sdn Bhd was established as a foreign fund management company and had received the SC's approval to provide fund management services to both foreign and local investors.

The service and other charges which can be specifically identified are allocated entirely to the respective funds. Common charges of the group are allocated to individual sub-funds in the ratio of their net asset values at the end of each quarter.

As ABC International Asset Management Malaysia Sdn Bhd provides fund management services to both foreign and local investors, the income from the provision of such fund management services to foreign investors shall be treated as a separate and distinct business source of income from the provision of fund management services to local investors.

Example 3

The facts are the same as in Example 2 and the following incomes were reported in the Profit and Loss Account of ABC International Asset Management Malaysia Sdn Bhd for the years ended 31.12.2012 and 31.12.2013.

Provision Of Fund Management Services To Foreign Investors

Year Ended	31.12.2012 RM	31.12.2013 RM
Management fees	200,000	500,000
Allowable expenses	210,000	100,000
Capital allowances	20,000	10,000

Provision Of Fund Management Services To Local Investors

Year Ended	31.12.2012 RM	31.12.2013 RM
Management fees	RM250,000	RM100,000
Allowable expenses	RM100,000	RM120,000
Capital allowances	RM10,000	RM5,000

The computation of chargeable income for the year of assessment 2012 for the provision of fund management services to foreign and local investors are as follows:

Year Of Assessment 2012 – Foreign Investors

Management fees		RM 200,000
Less: allowable expenses (restricted)		<u>200,000</u>
Adjusted income (Adjusted loss – RM10,000)		<u>NIL</u>
Current year unabsorbed losses c/f	-	10,000 ¹
Current year unabsorbed capital allowances c/f	-	20,000 ²

The chargeable income for the provision of fund management services to foreign investors for the year of assessment 2012 is Nil.

Year Of Assessment 2012 - Local Investors

	RM
Management fees	250,000
Less: allowable expenses	<u>100,000</u>
Adjusted income	150,000
Less: Capital allowance	<u>10,000</u>
Statutory income / Chargeable income	<u>140,000</u>

The chargeable income for the provision of fund management services to local investors for the year of assessment 2012 is RM140,000. The tax payable for the provision of fund management services to local investors is as follows:

Chargeable income	-	RM140,000
Tax payable	-	RM35,000.00 (RM140,000 @ 25%)

The computation of chargeable income for the year of assessment 2013 for the provision of fund management services to foreign and local investors are as follows:

Year Of Assessment 2013 - Foreign Investors

		RM
Management fees		500,000
Less: allowable expenses		<u>100,000</u>
Adjusted income		400,000
Less: unabsorbed capital allowances b/f	20,000 ²	
capital allowance (current year)	<u>10,000</u>	<u>30,000</u>
Statutory income		370,000
Less: Unabsorbed loss b/f		<u>10,000¹</u>
Chargeable income		<u>360,000</u>

The chargeable income for the provision of fund management services to foreign investors for the year of assessment 2013 is RM360,000. The tax payable for the provision of fund management services to foreign investors is as follows:

Chargeable income	-	RM360,000
Tax payable	-	RM36,000.00 (RM360,000 @ 10%)
Exempt account	-	RM324,000 (RM360,000 less RM36,000)

Year Of Assessment 2013 – Local Investors

	RM
Management fees	100,000
Less: allowable expenses (restricted)	<u>100,000</u>
Adjusted income	<u>NIL</u>
(Adjusted loss - RM20,000)	

	RM
Current year unabsorbed loss c/f	- 20,000
Current year unabsorbed capital allowance c/f	- 5,000

The chargeable income for the provision of fund management services to local investors for the year of assessment 2013 is Nil.

Observation

- (1) The unabsorbed capital allowance of RM20,000² and unabsorbed adjusted loss of RM10,000¹ from the provision of fund management services to foreign investors for the year of assessment 2012 are to be carried forward to the year of assessment 2013 and subsequent years and to be set-off only against the same source of income i.e. from the provision of fund management services to foreign investors. It is to be noted that the unabsorbed loss and capital allowance from the provision of fund management services to foreign investors in the year of assessment 2012 are not allowed to be set-off against the income from the provision of fund management services to local investors.
- (2) Similarly, in the year of assessment 2013 the unabsorbed loss and capital allowances from the provision of fund management services to local investors are to be carried forward to the year of assessment 2014 and subsequent years to be set-off only against the same source of income i.e. from the provision of fund management services to local investors. The unabsorbed loss and capital allowances are not allowed to be set-off against the income from the provision of fund management services to foreign investors.

Example 4

Good Fund Management Sdn Bhd was incorporated in Malaysia on 1.1.2005 with a local equity of 30%. The Fund was approved by the SC to provide fund management services to both foreign and local investors. The income of Good Fund Management Sdn Bhd for the year ended 31.12.2012 and 31.12.2013 are as follows:

	Fund Management Services To Foreign Investors RM	Fund Management Services To Local Investors & Other Sources RM
Year of Assessment 2012		
Adjusted income	570,000	2,830,000
Capital allowance	10,000	30,000
Rental		35,000
Year of Assessment 2013		
Adjusted income (loss)	(250,000)	3,332,000
Capital allowance	9,000	32,000
Rental		38,000

Donations made to approved institutions for the basis years 2012 and 2013 are RM2,000 and RM3,000 respectively. The loss brought forward from the year of assessment 2011 for fund management services to foreign investors was RM60,000.

Computation Of Chargeable Income

	Fund Management Services To Foreign Investors RM	Fund Management Services To Local Investors & Other Sources RM
Year of Assessment 2012		
Adjusted income	570,000	2,830,000
Capital allowance	<u>10,000</u>	<u>30,000</u>
Statutory income	560,000	2,800,000
Less: Loss b/f	<u>60,000</u>	<u>Nil</u>
	500,000	2,800,000
Rental	<u>NIL</u>	<u>35,000</u>
Aggregate income	500,000	2,835,000
Less: Donation	<u>NIL</u>	<u>2,000</u>
Total income/Chargeable income	<u>500,000</u>	<u>2,833,000</u>
Tax rate	10%	25%
Tax payable	50,000	708,250
Exempt account	450,000	-

	Fund Management Services To Foreign Investors RM	Fund Management Services To Local Investors & Other Sources RM
Year of Assessment 2013		
Adjusted income	Nil	3,332,000
Capital allowance	<u>Nil</u>	<u>32,000</u>
Statutory income	Nil	3,300,000
Rental	<u>Nil</u>	<u>38,000</u>
Agregate income	Nil	3,338,000
Less: Donation	<u>Nil</u>	<u>3,000</u>
Total income/Chargeable income	<u>Nil</u>	<u>3,335,000</u>
Tax rate	10%	25%
Tax payable	Nil	833,750.00
Exempt account	-	-
Loss c/f – RM250,000		
Capital allowance c/f – RM9,000		

Example 5

Sturdy Investments (Malaysia) Sdn Bhd is a company incorporated in Malaysia as a fund management company and approved by the SC. The business commenced on 1.1.2008. The Profit and Loss Account and the Balance Sheet for the year ended 30.9.2013 are as follows:

Profit and loss account for the year ended 30.9.2013

Income		RM
Management fee - Foreign investors fund		2,685,579
Expenses		
Professional fee	40,000	
Wages and salary	1,500,000	
Rental	120,000	
Maintenance and repairs	1,000	
Advertising	1,000	
Travelling and accommodation	60,000	
Other expenses	<u>583,929</u>	<u>2,305,929</u>
Net profit		<u>379,650</u>

Balance Sheet as at 30.9.2013

	RM
Liability	
Current liabilities	
Other creditors	16,000
Other current liabilities	<u>851,670</u>
Total current liabilities	867,670
Shareholder's equity	
Paid up capital	1,500,000
Appropriation account	
Opening balance at 1.10.2012	3,196,485
Net profit	<u>379,650</u>
Closing balance at 30.9.2013	<u>3,576,135</u>
Total equity	<u>5,076,135</u>
Total liabilities and equity	<u>5,943,805</u>
Assets	
Current assets	
Other debtors	250,000
Bank and cash balance	50,000
Other current assets	<u>5,643,805</u>
Total assets	<u>5,943,805</u>

The disallowable expenses and capital allowances are RM18,637 and RM2,000 respectively.

Computation Of Income Tax - Year Of Assessment 2013

Fund management services to foreign investors

	RM
Net profit	379,650
Add: expenses disallowed	<u>18,637</u>
Adjusted income	398,287
Less: capital allowance	<u>2,000</u>
Statutory income / Chargeable income	<u>396,287</u>
Tax on 396,287 @ 10%	<u>39,628.70</u>
Tax payable	<u>39,628.70</u>

Example 6

The facts are the same as in Example 5 except that Sturdy Investments (Malaysia) Sdn Bhd provides fund management services of a *Syariah* compliant fund (certified by the SC) to both foreign and local investors. The statutory income derived from a business of providing fund management services of *Syariah* compliant funds to foreign and local investors was RM396,287 and RM85,000 respectively.

Computation Of Income Tax - Year Of Assessment 2013

Fund management services to foreign investors

The statutory income amounting to RM396,287 derived by Sturdy Investments (Malaysia) Sdn Bhd from a business of providing fund management services of *Syariah* compliant funds to foreign investors in Malaysia in the year of assessment 2013 is tax exempt.

Fund management services to local investors

The statutory income amounting to RM85,000 derived by Sturdy Investments (Malaysia) Sdn Bhd from a business of providing fund management services of *Syariah* compliant funds to local investors in Malaysia in the year of assessment 2013 is tax exempt.

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

Summary Of Tax Treatment Accorded To A Foreign Fund Management Company

