






EXEMPTION ORDERS ON FOREIGN SOURCE INCOME (“FSI”) GAZETTED

Following the Budget 2022 announcement on 29 October 2021, the Ministry of Finance had issued a media release on 30 December 2021 stating that the Government has agreed to exempt certain classes of FSI for individuals and companies/limited liability partnerships (“LLP”) subject to conditions to be detailed in guidelines to be issued by the Inland Revenue Board of Malaysia (“IRBM”). For more details, please refer to our earlier edition of [TaxSnaps dated 31 December 2021](#).



In this connection, the following exemption orders were issued recently –

 <p>For individuals only</p>	<p>Income Tax (Exemption)(No. 5) Order 2022 <click here></p>
 <p>For individuals/ companies/LLP</p>	<p>Income Tax (Exemption)(No. 6) Order 2022 <click here></p>

continued...

The exemption order – what it says (KEY POINTS)

Both the exemption orders state that Malaysian resident taxpayers of the following categories and sources of income are exempted from the payment of income tax for FSI which is received in Malaysia from outside Malaysia in the basis period for a year of assessment –

Taxpayer Category	Income exempted from tax*
 <p data-bbox="458 665 582 696">Individuals</p>	<ul data-bbox="694 588 1232 779" style="list-style-type: none"> Gross income from all sources of income under section 4 of the Income Tax Act 1967 (“ITA”) Excludes income arising from a partnership in Malaysia
 <p data-bbox="444 878 596 940">Companies** LLP</p>	<ul data-bbox="694 893 1232 924" style="list-style-type: none"> Gross income from dividend income only

Note:

(*) These exemptions are effective from 1 January 2022 until 31 December 2026.

(**) Not applicable to companies carrying on the business of banking, insurance or sea or air transport.

“Conditions” - a cause for concern!

However, there are some concerns here as both the exemption orders go on to state that such income exempted needs to have been subjected to tax of a ‘similar character’ to income tax under the law of the territory where the income arises.

Furthermore, for the FSI involving dividend income, the highest rate of tax of a similar character to income tax charged under the law of the territory where the income arises must not be less than 15%.

The FSI is regarded as being subjected to tax of a similar character to income tax if the FSI received in Malaysia by the qualifying taxpayer is in compliance with the conditions imposed as specified in the (proposed) guidelines on tax treatment in relation to income which is received from abroad to be issued by the IRBM.

In addition, it is also stated that any deductions in relation to the income exempted shall be disregarded for the purpose of ascertaining the chargeable income of the qualifying taxpayer. This is also an area of some uncertainty and will need clear guidelines.

Submission of tax return

Do take note that nothing in regards to the abovementioned exemption shall absolve or be deemed to have absolved the qualifying taxpayer from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provisions of the ITA. What is disturbing is that delays or inaccuracies in the reporting and filing of FSI can result in unwarranted penalisation of taxpayers.



Our thoughts on this:

Record-keeping

Taxpayers who qualify for exemption of FSI received in Malaysia during the exemption period must maintain proper record-keeping in respect of the foreign income and taxes paid on such FSI in order to avail themselves of the abovementioned tax exemption on FSI.

Review of potential tax exposures

Taxpayers who do not qualify for the abovementioned exemptions (after the proposed guidelines are issued by the IRB), may need to look at the potential tax exposure and consequences on their tax position in Malaysia and initiate a review of their overall investments and corporate structures overseas to mitigate any negative consequences of such new rules effective from January 2022.

Baker Tilly is here to assist you in this aspect.

Further updates will follow as and when they are made available.

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