

GROUP RELIEF

To enhance private sector investment, Group Relief incentive is provided under the Income Tax Act 1967 to all locally incorporated resident companies. Subject to Section 44A of Income Tax Act 1967, a company may surrender not more than 70% of its adjusted loss in the basis period of a year of assessment to one or more **related companies**, within the same Group.

WHO ARE RELATED COMPANIES

Related companies are companies related in the context of Section 44A if at least:

- 1) 70% of the paid up ordinary capital of the **Surrendering Company** is directly or indirectly owned by the **Claimant Company**.
- 2) 70% of the paid up ordinary capital of the **Claimant Company** is directly or indirectly owned by the **Surrendering Company**.
- 3) 70% of the paid up ordinary capital of both the **Surrendering Company** and **Claimant Company** are directly or indirectly owned by another company resident and incorporated in Malaysia.

“Indirectly owned” means through the medium of other companies, resident and incorporated in Malaysia.

Related companies comprise of Surrendering Company and Claimant Company. Surrendering Company refers to a company that has an adjusted loss in the basis period for a year of assessment. Claimant Company refers to a company that has an aggregate income in the basis period for a year of assessment.

DEVELOPMENT OF GROUP RELIEF

Group Relief incentive was introduced in year of 2006, which only allowed the incentive to be applicable to companies that invest in approved food production, forest plantation, biotechnology, nanotechnology, optics and photonics. These companies are allowed to set-off their income against 100% of the losses incurred by the subsidiaries.

However, this legislation has been repealed whereby Group Relief has been provided to all locally incorporated resident companies. The rate of current year losses allowed for set off for Group Relief is limited to 50% only.

With effect from Year of Assessment 2009, the rate of current year losses allowed for set-off for Group Relief was increased to 70%.

CRITERIA FOR ENTITLEMENT FOR GROUP RELIEF

To be entitled for Group Relief incentive, both the Surrendering and Claimant Company must fulfill the following conditions / criteria:

- 1) Both companies must have paid-up share capital of more than RM2.5 million at the beginning of the basis period for the year of assessment of claim;
- 2) The shareholding (direct or indirect) in the Group must not be less than 70% throughout the relevant basis period as well as in the 12 months preceding that basis period;
- 3) Both companies must have the same 12 month accounting period ending on the same day;
- 4) Both companies must be incorporated and resident in Malaysia for the basis period for the year of assessment of claim;
- 5) Both companies must be subject to tax at the full rate ie not at the reduced rate of 20%;
- 6) The Surrendering Company must have an adjusted loss in the basis period for YA of claim;
- 7) The Claimant Company must have a defined aggregate income for YA of claim.

COMPANIES NOT ELIGIBLE FOR GROUP RELIEF

Group relief incentive would not be applicable for companies that are currently enjoying certain tax incentives such as:

- 1) is a pioneer company;
- 2) claimed for a reinvestment allowance or investment tax allowance;
- 3) claimed for a deduction respect of an approved food production under ITA 1967;
- 4) is exempt from tax on its income under Section 54A of ITA 1667 (Exemption of shipping profits);
- 5) granted deduction for expenditure for acquisition of proprietary rights or a foreign owned company; and
- 6) has made a claim for deduction under any rules made under Section 154 (Power to make rules) and those rules provide that this section shall not apply to that company.

APPLICATION PROCEDURE

Companies that wish to avail themselves of the Group Relief incentive must make an irrevocable election to surrender or claim an amount of adjusted loss in the Tax Return (Form C) furnished for the year of assessment of claim.

The Surrendering Company must submit Form C (RK-S) while the Claimant Company must submit Form C (RK-T).

EXAMPLE OF COMPUTATION

EXAMPLE 1 – FOR ONE RELATED COMPANY

Tax computation before application of Group Relief incentive

	Y (Claimant Co) RM	Z (Surrendering Co) RM
Adjusted business income/(loss)	2,500,000	(1,200,000)
Less : Capital allowances	(500,000)	-
Statutory income	2,000,000	NIL
Add : Interest income	300,000	200,000
Aggregate income	2,300,000	200,000
Less : Current year loss	-	(200,000)
Chargeable income	2,300,000	NIL
Tax payable (25%)	575,000	-
Business loss c/f	-	(1,000,000)

Tax computation after application of Group Relief incentive

Company Z has an amount of adjusted loss available for surrender, calculated as follows:

Business losses available for Group Relief	<u>(1,000,000)</u>
Adjusted loss available for surrender (70% x RM1,000,000)	<u>(700,000)</u>

	Y (Claimant Co) RM	Z (Surrendering Co) RM
Adjusted business income/(loss)	2,500,000	(1,200,000)
Less : Capital allowances	(500,000)	-
Statutory income	2,000,000	NIL
Add : Interest income	300,000	200,000
Aggregate income	2,300,000	200,000
Less : Current year loss	-	(200,000)
	2,300,000	-
Less : Adjusted loss surrendered of Co Z	(700,000)	-
Chargeable Income	1,600,000	-
Tax payable (25%)	400,000	-
Tax saving (RM575,000 - RM400,000)	175,000	-
Business losses c/f	-	300,000

EXAMPLE 2 – FOR MORE THAN ONE RELATED COMPANY

Tax computation before application of Group Relief incentive

	A (RM)	B (RM)	C (RM)	H (RM)
Business adjusted income/(loss)	-	480,000	-	(265,000)
Capital allowance-current year and previous year	-	280,000	-	150,000
Unabsorbed losses brought forward	-	450,000	-	-
Dividends	100,000	-	65,000	-
Interest	-	17,000	-	25,000
Approved donation	30,000	2,000	-	10,000

Tax computation after application of Group Relief incentive

Company H has an amount of adjusted loss available for surrender calculated as follows:

	H RM
Adjusted loss	265,000
Aggregate income	(25,000)
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	240,000
Adjusted loss available (70%)	168,000

	A RM	B RM	C RM	H RM
Adjusted business income		480,000		
Less : Capital allowances		(280,000)		
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		200,000		
Unabsorbed losses carried forward		(200,000)		
Statutory income				
Dividend and interest income	100,000	17,000	65,000	25,000
Aggregate income	100,000	17,000	65,000	25,000
Less : Current year loss	-	-	-	(25,000)
Approved donation	(30,000)	(2,000)	-	-
Defined aggregate income	70,000	15,000	65,000	-
Less: Adjusted loss surrendered by Surrender Company (H)	(70,000)	-	-	-
Chargeable Income	-	15,000	65,000	-
Tax Payable (25%)	-	3,750	16,250	-
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Business losses c/f	-	-	-	170,000

A, B and C are eligible to be Claimant Companies.

If there is more than one Surrendering Company, or more than one Claimant Company, the companies themselves may decide to elect for set-off.

EXAMPLE OF APPLICATION

Holding Co Sdn. Bhd. holds 100% of the equity of all subsidiaries.

Criteria	Holding Co	A Sdn Bhd	B Sdn Bhd	C Sdn Bhd	D Sdn Bhd	E Sdn Bhd
1) Paid up capital more than RM2.5 million	√	-	-	-	-	-
2) The shareholding in the group more than 70%	-	√	√	√	√	√
3) Have the same 12 month accounting period	√	√	√	√	√	√
4) Incorporated and resident in Malaysia.	√	√	√	√	√	√

In conclusion,

Holding Co Sdn. Bhd. IS NOT entitled for Group Relief Incentive because only Holding Co Sdn. Bhd. has paid-up share capital of more than RM2.5 million. Meanwhile the paid-up share capital of all the subsidiaries companies are less than RM2.5 million.

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