



INLAND REVENUE BOARD OF MALAYSIA

GROUP RELIEF FOR COMPANIES

PUBLIC RULING NO. 2/2025

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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 in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

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

1. Objective

The objective of the Public Ruling (PR) is to explain the tax treatment of group relief for companies which are incorporated and resident in Malaysia.

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 sections 44, 44A, 77A, 114 and subsection 125(2).

3. Interpretation

The terms used in this PR have the following meaning -

- 3.1 “Residual assets” means net assets of the claimant or surrendering company after distribution made to –
 - (a) creditors of that company in respect of commercial loans; and
 - (b) holders of shares other than ordinary share,and where that company has no residual asset, a notional amount of one hundred ringgit (RM100) is deemed to be the residual assets of the company.
- 3.2 “Residual profits” means profits of the claimant or surrendering company after deducting any dividend which is of –
 - (a) a fixed amount or at a fixed rate per cent of the value of the shares of that company; or
 - (b) a fixed rate per cent of the profits of that company, but before deducting any return due to any non-commercial loan creditor which is not of –
 - (i) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or
 - (ii) a fixed rate per cent of the profits of that company,and where that company has no residual profit, a notional amount of one hundred ringgit (RM100) is deemed to be the residual profits of that company.
- 3.3 “Adjusted loss”, in relation to a source and a basis period, means adjusted loss ascertained in accordance with the ITA.

- 3.4 “Operations” in relation to a company, limited liability partnership, trust body or co-operative society means —
- (a) an activity which consists of the carrying on of a business;
 - (b) an activity which consists wholly in the making of investments;
 - (c) an activity which consists of both the carrying on of a business and the making of investments; or
 - (d) an activity which consists of the making of investments prior to the commencement of a business or after the cessation of a business.
- 3.5 “Resident” means resident in Malaysia for the basis period for a year of assessment (YA) by virtue of section 8 of the ITA.
- 3.6 “Equity holder” means any holder of ordinary share in the claimant or surrendering company or any creditor of that company in respect of any non-commercial loan.
- 3.7 “Aggregate income”, in relation to a person and a YA, means aggregate income ascertained in accordance with the ITA.
- 3.8 “Defined aggregate income”, in relation to a YA, means the aggregate income of a claimant company for that year reduced by a deduction made pursuant to paragraphs 44(1)(a), (b), (c) and (d) of the ITA.
- 3.9 “Statutory income”, in relation to a person, a source and a YA, means statutory income ascertained in accordance with the ITA.
- 3.10 “Non-commercial loan” means any borrowing other than a commercial loan.
- 3.11 “Commercial loan” means any borrowing which entitles the creditor to any return which is of only —
- (a) a fixed amount or at a fixed rate per cent of the amount of the borrowing;
or
 - (b) of a fixed rate per cent of the profits of the company.
- 3.12 “Company” means a body corporate and includes any body of persons established with a separate legal identity by or under laws of territory outside Malaysia and a business trust.
- 3.13 “Labuan company” means a Labuan entity as provided under subsection 2B(1) of the Labuan Business Activity Tax Act 1990 (LBATA).

- 3.14 “Ordinary share” means any share other than a share which carries only a right to any dividend which is of –
- (a) a fixed amount or at a fixed rate per cent of the value of the shares; or
 - (b) a fixed rate per cent of the profits of the company.
- 3.15 “Year of assessment” means calendar year.
- 3.16 “Basis period”, in relation to a person, a source of his and a YA, means such basis period, if any, as is ascertained in accordance with section 21 or 21A of the ITA.

4. Introduction

- 4.1 Each company within a group is treated as a separate entity. The tax liability of each company is determined separately from other companies within the same group.
- 4.2 The current year adjusted business losses of a company can be absorbed by its aggregate income which includes income from other business sources and income from non-business sources.
- 4.3 Any unabsorbed adjusted loss from a business source that cannot be absorbed or wholly absorbed in a YA will be carried forward to be deducted from the aggregate of statutory income from a business or businesses in the subsequent YA limited to ten (10) consecutive YAs.
- 4.4 Effective YA 2006, group relief is available to all companies incorporated and resident in Malaysia, subject to the terms and conditions as provided under section 44A of the ITA. The provision of group relief allows a company in a group to surrender (referred to as surrendering company) not more than fifty percent (50%) of its adjusted loss from a business in the basis period for a YA to one or more related companies (referred to as claimant company) within the same group.
- 4.5 Effective YA 2009, subsection 44A(1) of the ITA is amended by Finance Act 2009 [Act 693] to allow a company in a group to surrender its current year adjusted business loss in the basis period for a YA not more than seventy percent (70%) to one or more claimant companies within the same group.

5. Time Limit for Surrendering Adjusted Loss from Business

- 5.1 Effective YA 2019, surrendering company which has just commenced operations can only surrender current year adjusted business losses for the purpose of group relief to the claimant company limited to three (3)

consecutive YAs. The time limit of three (3) consecutive YAs for surrendering current year adjusted business losses is determined as follows –

- (a) immediately following the basis period for a first YA the surrendering company commenced operations, provided that the basis period consists of a period of twelve (12) months; or

Example 1

Company S commenced business operations on 1.1.2019. The accounting period of the company ended on 31.12.2019. Company S intends to surrender its current year adjusted business losses to a related company, Company T. Both companies are eligible for group relief.

Time Limit for Surrendering Adjusted Loss

YA				
2019	2020	2021	2022	2023
Basis period for first YA is twelve (12) months	 1 2 3 Period in which the surrendering company is allowed to surrender current year adjusted business losses to the claimant company			Current year adjusted business losses can no longer be surrendered in YA 2023

- (b) immediately following the second basis period the surrendering company first commences operations (in this paragraph referred to as the “second basis period”), if the basis period for first YA the surrendering company commences operation is less or more than twelve (12) months and the second basis period consists of a period of twelve (12) months.

Example 2

The facts are the same as in Example 1 except Company S has commenced business operations on 1.6.2019.

Time Limit for Surrendering Adjusted Loss

YA					
2019	2020	2021	2022	2023	2024
First basis period other than twelve (12) months	Second basis period - is twelve (12) months	 1 2 3 Period in which the surrendering company is allowed to surrender current year adjusted business losses to the claimant company			Current year adjusted business losses can no longer be surrendered in YA 2024

5.2 Tax treatment for group relief for surrendering company that has commenced business operations prior to the YA 2019 are as follows –

- (a) a surrendering company that has commenced operations in YA 2017 is allowed to surrender current year adjusted business losses for the YA 2019, YA 2020 and YA 2021;
- (b) a surrendering company that has commenced operations in YA 2016 is allowed to surrender current year adjusted business losses for the YA 2019 and YA 2020;
- (c) a surrendering company that has commenced operations in YA 2015 is allowed to surrender current year adjusted business losses until YA 2019; and
- (d) a surrendering company that has commenced operations before YA 2015 are not eligible to surrender current year adjusted business losses.

6. Qualifying Criteria for Group Relief

Qualifying criteria for group relief for any YA -

- (a) both the surrendering and the claimant companies must satisfy the following criteria -
 - (i) incorporated in Malaysia;
 - (ii) resident in Malaysia in the basis year for that YA;
 - (iii) are related companies throughout the basis period for that YA and the twelve (12) months period immediately preceding that basis period;

- (iv) have a paid-up capital in respect of ordinary shares of more than RM2,500,000 at the beginning of the basis period for that YA;
 - (v) have a twelve (12) months basis period ending on the same date;
 - (vi) make an irrevocable election to surrender or claim an amount of adjusted loss from a business in the Income Tax Return Form (ITRF) furnished for that YA under section 77A of the ITA; and
 - (vii) subject to tax at the appropriate rate as specified in paragraph 2 of Part I of Schedule 1 of the ITA; and
- (b) the claimant company must also have a defined aggregate income for that YA. The defined aggregate income of a claimant company in relation to a YA is determined as follows –

	RM	RM
Aggregate income		XX
Less:		
(i) current year adjusted loss from a business [Subsection 44(2) of the ITA]	XX	
(ii) qualifying prospecting expenditure [Schedule 4 of the ITA]	XX	
(iii) qualifying pre-operational business expenditure (approved overseas expenditure) [Schedule 4B of the ITA]	XX	
(iv) gifts and donations [Subsections 44(6), 44(6A), 44(8), 44(9), 44(10), 44(11), 44(11A), 44(11B), 44(11C) and 44(11D) of the ITA]	XX	XX
Defined aggregate income		<u>XX</u>

7. Interpretation of Related Companies and Eligibility for Group Relief

The meaning of **related companies** for the purpose of group relief is provided under subsection 44A(3) of the ITA. Companies in the same group qualify as related companies if at least seventy percent (70%) of the ordinary shareholding level is satisfied. The surrendering and claimant companies must pass eligibility test for group relief as follows -

First level test : Ordinary shareholding requirement under subsection 44A(3) of the ITA; and

Second level test : Beneficially entitled to residual profits and residual assets available for distribution to the company's equity holders under subsection 44A(7) of the ITA.

Please refer to **Appendix 1** for a summary of the steps to be taken in determining whether a surrendering and a claimant company are related and eligible for group relief.

7.1 First level test

The first level test relates to ordinary shareholding requirement (not including treasury shares). For the purpose of group relief, a surrendering and a claimant company are related companies if at least seventy percent (70%) of the paid-up capital in respect of ordinary shares of -

- (a) the surrendering company is owned directly or indirectly (through other companies incorporated and resident in Malaysia) by the claimant company; or
- (b) the claimant company is owned directly or indirectly (through other companies incorporated and resident in Malaysia) by the surrendering company; or
- (c) the surrendering and the claimant company are owned directly or indirectly (through other companies incorporated and resident in Malaysia) by another company incorporated and resident in Malaysia.

Note:

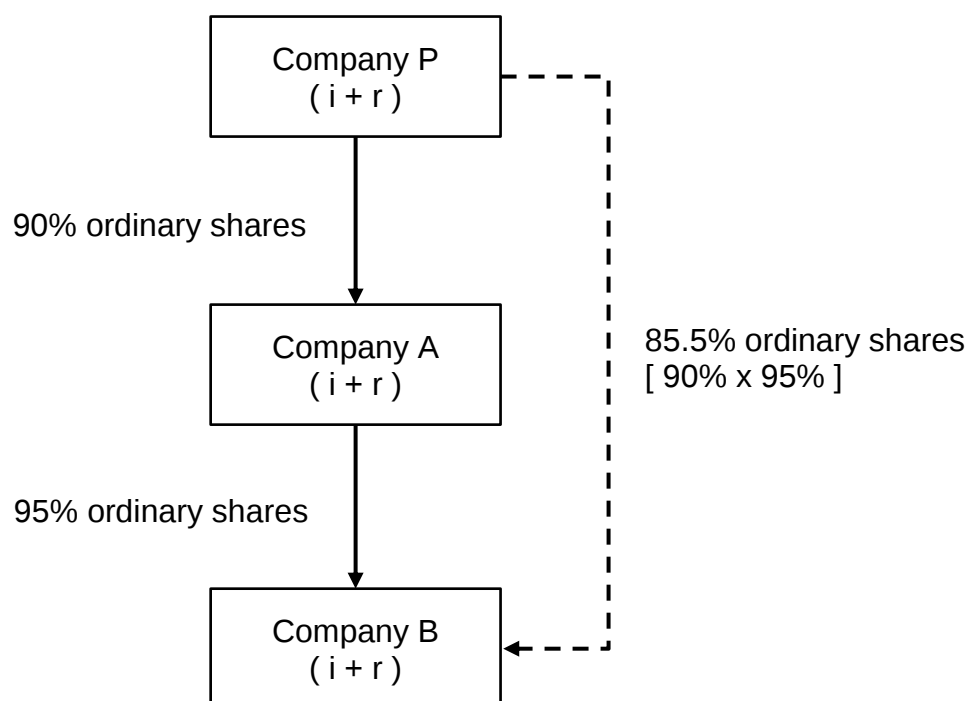
- (i) A Labuan company incorporated under the Labuan Companies Act 1990 [Act 441] is considered incorporated in Malaysia. A Labuan company includes a foreign Labuan company registered under the Labuan Companies Act 1990 [Act 441].
- (ii) In determining the seventy percent (70%) ordinary shareholding threshold, any direct or indirect ordinary shareholdings by companies that are not incorporated and not resident in Malaysia are disregarded.

7.2 Illustrations of first level test to determine related companies for the purpose of group relief are as follows –

Example 3

Company P directly holds 90% of ordinary shares in Company A while Company A directly holds 95% of ordinary shares in Company B. All three companies are incorporated (i) and resident (r) in Malaysia.

Group Structure of the Companies



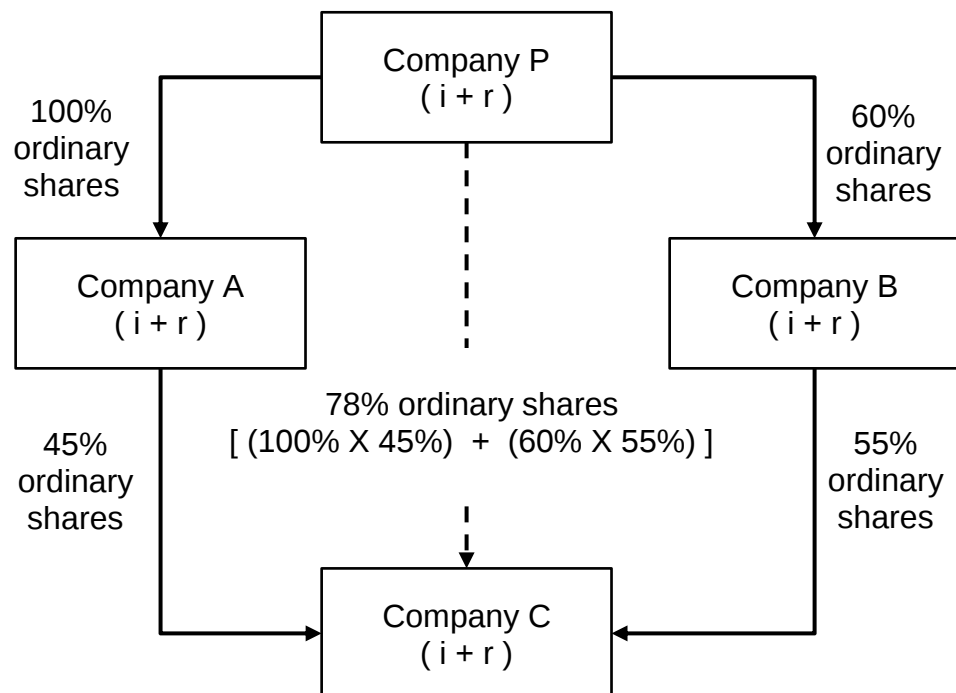
Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
P & A	90%	Directly	Yes
A & B	95%	Directly	Yes
P & B	85.5% = (90% x 95%)	Indirectly	Yes

Company P, Company A and Company B are related companies for the purpose of group relief.

Example 4

Company P directly holds 100% of ordinary shares in Company A and 60% of ordinary shares in Company B. Company A directly holds 45% of ordinary shares in Company C while Company B directly holds 55% of ordinary shares in Company C. All the companies are incorporated (i) and resident (r) in Malaysia.

Group Structure of the Companies



Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
P & A	100%	Directly	Yes
P & B	60%	Directly	No
P & C	78% [(100% X 45%) + (60% X 55%)]	Indirectly	Yes
A & B	P & A = 100% P & B = 60%	Directly Directly	No

A & C	P & A = 100%	Directly	Yes ¹
	P & C = 78%	Indirectly	
	A & C = 45%	Directly	
B & C	P & B = 60%	Directly	No ²
	P & C = 78%	Indirectly	
	B & C = 55%	Directly	

Note:

¹ Although the conditions does not meet for A & C because the shareholding is less than 70%, A & C still related through shareholding exceeding 70% as provided under paragraph 44A(3)(c) of the ITA between P & A and P & C, which is A & C owned by the same company which is company P.

² The condition is not met because the shareholding is less than 70%. The same applies with reference to paragraph 44(A)(3)(c) of the ITA because only P & C hold shares exceeding 70% while P & B hold less than 70%, whereby B & C is not owned 70% by the same company which is Company P.

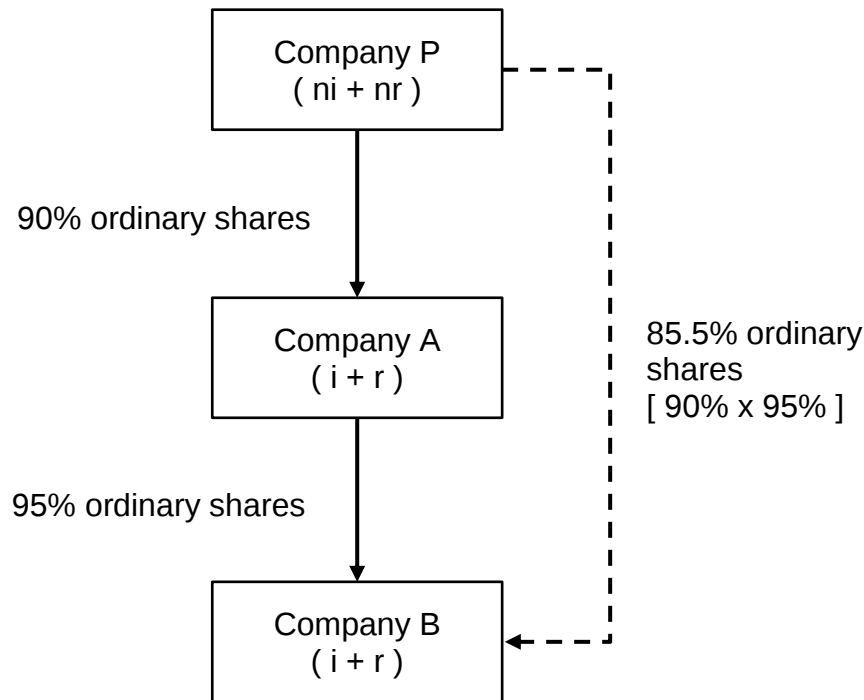
Company P, Company A and Company C are related companies for the purpose of group relief.

Company B does not meet the first level test as Company P only directly holds 60% of ordinary shares in Company B. Therefore, Company B are not related companies for the purpose of group relief.

Example 5

The facts are the same as in Example 3 except that Company P is not incorporated (ni) and not a resident (nr) in Malaysia.

Group Structure of the Companies



Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
P & A	90%	Directly	Disregarded
A & B	95%	Directly	Yes
P & B	85.5% = (90% x 95%)	Indirectly	Disregarded

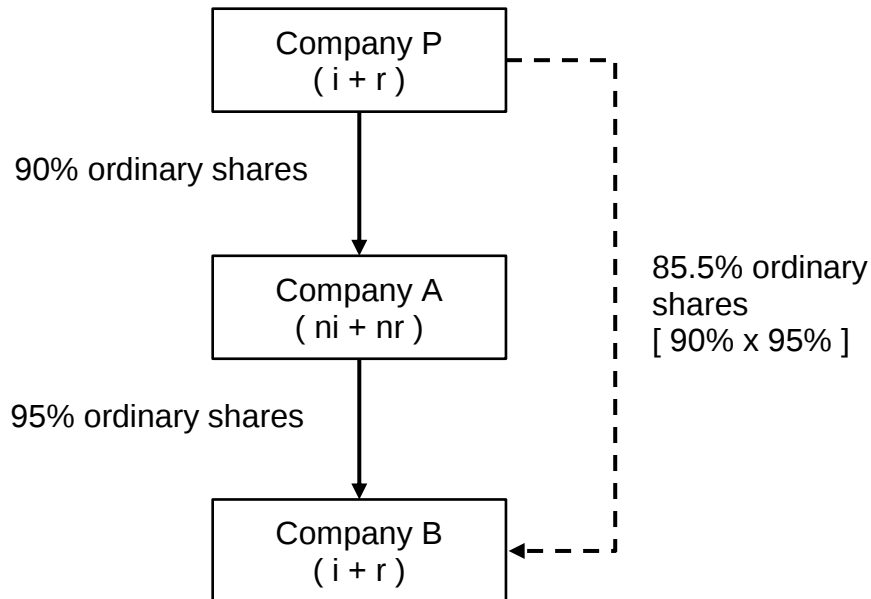
Company A and Company B are related companies for the purpose of group relief.

In determining related companies for the purpose of group relief, any direct or indirect ordinary shareholding by companies not incorporated (ni) and not resident (nr) in Malaysia is disregarded. Company P does not meet the first level test and is not a related company for the purpose of group relief as Company P is not incorporated (ni) and not resident (nr) in Malaysia.

Example 6

The facts are the same as in Example 3 except that Company A is not incorporated (ni) and not a resident (nr) in Malaysia.

Group Structure of the Companies



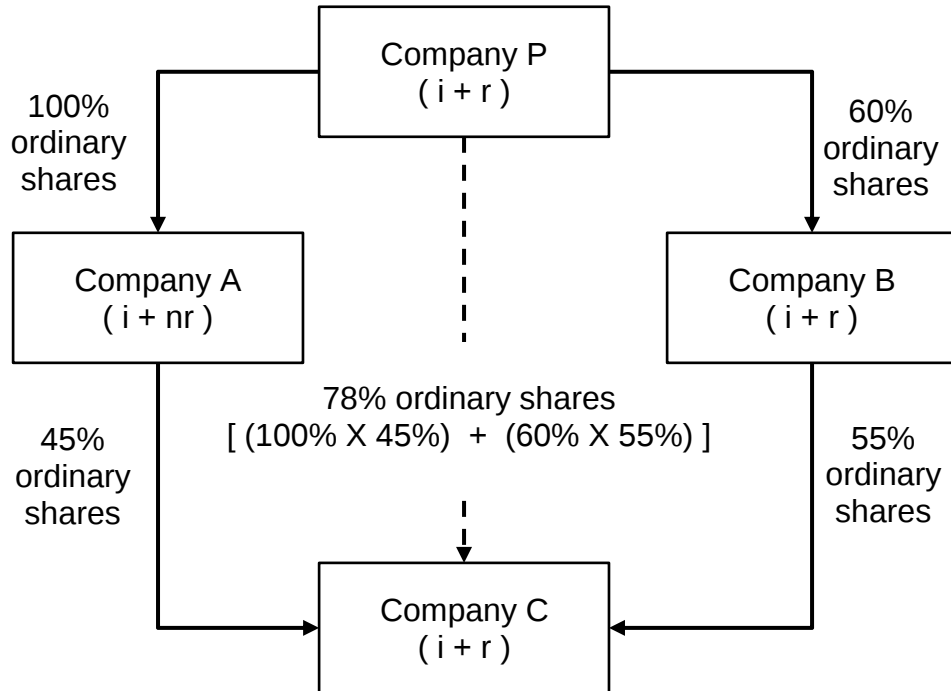
Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
P & A	90%	Directly	Disregarded
A & B	95%	Directly	Disregarded
P & B	85.5% = (90% x 95%)	Indirectly	Disregarded

In determining related companies for the purpose of group relief, any direct or indirect ordinary shareholding by companies not incorporated (ni) and not resident (nr) in Malaysia is disregarded. Company P, Company A and Company B does not meet the first level test and are not related companies for the purpose of group relief as Company A is not incorporated (ni) and not resident (nr) in Malaysia.

Example 7

The facts are the same as in Example 4 except that Company A is incorporated (i) but not resident (nr) in Malaysia.

Group Structure of the Companies



Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
P & A	100%	Directly	Disregarded
P & B	60%	Directly	No
P & C	78% [(100% X 45%) + (60% X 55%)]	Indirectly	Disregarded
Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
A & B	P & A = 100% P & B = 60%	Directly Directly	Disregarded
A & C	P & A = 100%	Directly	Disregarded

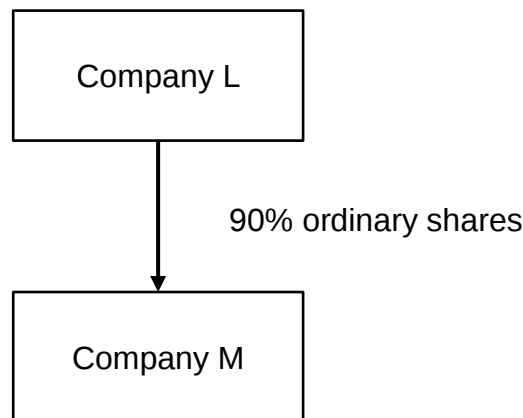
	P & C = 78%	Indirectly	
B & C	P & B = 60%	Directly	Disregarded
	P & C = 78%	Indirectly	

In determining related companies for the purpose of group relief, any direct or indirect ordinary shareholding by companies not incorporated (ni) and not resident (nr) in Malaysia is disregarded. Company P, Company A, Company B and Company C does not meet the first level test and are not related companies for the purpose of group relief as Company A is not resident (nr) in Malaysia. The same situations shall apply if Company A is not incorporated (ni) in Malaysia but a resident (r) in Malaysia.

Example 8

Company L, a Labuan company directly holds 90% of ordinary shares in Company M. Company L had elected to be taxed under the ITA as provided under section 3A of the LBATA with effect from the YA 2014.

Group Structure of the Companies



As Company L had made an election to be taxed under the ITA with effect from the YA 2014, Company L and Company M would qualify under the criteria incorporated (i) and resident (r) in Malaysia for the purpose of group relief.

Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
L & M	90%	Directly	Yes

Company L and Company M are related companies for the purpose of group relief.

7.3 Second level test

Although the surrendering and claimant companies meet the first level test regarding the seventy percent (70%) ordinary shareholding requirement, a second level test regarding beneficial entitlement, directly or indirectly of the surrendering and claimant company, to at least seventy percent (70%) of the residual profits and residual assets available for distribution to the company's equity holders of the other company in proportion to their equity interest in that company needs to be fulfilled.

(a) Residual profits

Holders of ordinary shares must show that they are beneficially entitled, directly or indirectly, to at least seventy percent (70%) of the residual profits of the company available for distribution to the company's equity holders. Equity holders of a company consists of ordinary shareholders and non-commercial loan creditors.

Commercial loans would be a borrowing at a commercial rate. Generally, a lender in a commercial loan agreement would have the following objectives -

- (i) to set out the conditions under which it will be obligated to disburse funds to the borrower under the loan agreement;
- (ii) to enable it to monitor the borrower's financial situation and, when necessary, to take remedial action if the borrower experiences serious financial difficulties; and
- (iii) to provide itself with legally enforceable claim to its funds, or access to other remedies, if the borrower defaults.

If there is a loan agreement between the related parties but there is no remedial clause in the contract, such loans would be considered as non-commercial loans. Any borrowings that do not fall within the interpretation of commercial loans would be considered as non-commercial loans.

Note:

For the purpose of this PR, borrowings would include any financial arrangements. Borrowings between related parties could be labelled under various terminology. All financial transactions would be examined

to determine whether the transaction constitutes borrowings. Records have to be kept for this purpose.

Computation of Residual Profits

Details	RM	RM
Accounting profit (net profit before tax)		XX
Less:		
(i) fixed dividend or dividend at fixed percentage of value of shares; and	XX	
(ii) Dividend at fixed percentage of profit (before deducting any return due to any non-commercial loan creditors where the return due are not subject to a fixed amount or percentage of the loan or profits)	XX	XX
Residual profits that can be distributed to the equity holders		XX ¹

Note:

¹ Where the company has no residual profits that can be distributed to the equity holders, a notional amount of one hundred ringgit (RM100) is deemed to be the residual profits of that company.

(b) Residual assets

Holders of ordinary shares must show that they are beneficially entitled, directly or indirectly, to at least seventy percent (70%) of any residual assets of the company available for distribution to the company's equity holders upon winding up of the company.

Residual assets are net assets -

- (i) available for distribution to equity holders in the event of winding up;
- (ii) after deducting return that are due in time for payment for commercial loans and distribution made to holders of shares other than ordinary shares; and
- (iii) distributed using the ratio used for the purpose of determining residual profits.

Where the company has no residual assets that can be distributed to the equity holders, a notional amount of one hundred ringgit (RM100) is deemed to be the residual assets of that company.

- 7.4 Examples of determining a related company for the purpose of group relief through the first level test regarding ordinary shareholding requirement and the second level test regarding beneficially entitled to residual profits and residual assets -

Example 9: First Level Test – Ordinary Shareholding Requirement

Company Z is incorporated (i) and resident (r) in Malaysia. All shareholders of Company Z, i.e Company A, Company B and Company C are also incorporated (i) and a resident (r) in Malaysia. The shareholding structure of Company Z is shown in the following table –

Type of Shares in Company Z	Right to Share Profits Based on Holding in Share Capital		Fixed Dividend @ 10% on Share Value		Fixed Dividend @ 8% + Right to Share Profits Based on Holding in Share Capital	
	Type I RM'000		Type II RM'000		Type III RM'000	
Shareholders	A	B	A	B	A	C
Paid-up capital	1,800	600	400	400	600	200
Ordinary shares	Yes	Yes	No	No	Yes	Yes
Percentage of shareholding	$\frac{1,800}{3,200} = 56\%$	$\frac{600}{3,200} = 19\%$	Not applicable	Not applicable	$\frac{600}{3,200} = 19\%$	$\frac{200}{3,200} = 6\%$

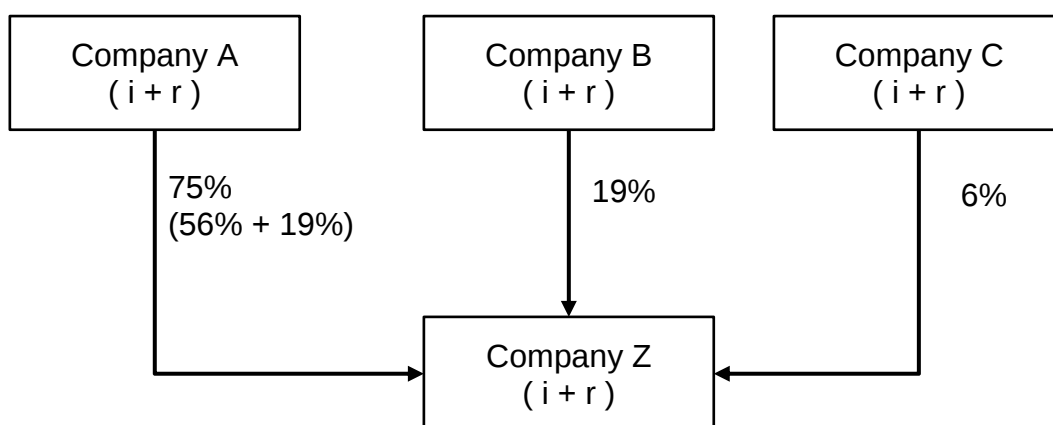
The total shares taken into account for the purpose of determining percentage of shareholding are RM3,200,000 ordinary shares of Company Z, i.e. -

- RM2,400,000 ordinary shares Type I (RM1,800,000 and RM600,000 shares owned by Company A and Company B respectively) that are eligible for company profit ; and
- RM800,000 ordinary shares Type III (RM600,000 and RM200,000 shares owned by Company A and Company C respectively) that are eligible for fixed dividend and company profit.

Therefore, the total percentage of ordinary shares owned by -

- (i) Company A is 75% (56% + 19%)
- (ii) Company B is 19%
- (iii) Company C is 6%

The shareholding of ordinary shares in Company Z can be summarised as follows –



Hence, only Company A meet the first level test regarding the 70% ordinary shareholdings requirement under subsection 44A(3) of the ITA as Company A directly hold 75% ordinary shares in Company Z. Company A and Company Z are related companies for the purpose of group relief.

However, Company A also needs to ensure second level test are satisfied to qualify for group relief, which is Company A must be beneficially entitled, directly or indirectly to at least 70% of the residual profits and residual assets of Company Z.

Note:

Shares that carry a right merely to fixed dividends (e.g Type II) are not eligible to be taken into account for the purpose of the shareholding test.

Example 10: Second Level Test – Beneficially Entitled to Residual Profits and Residual Assets of the Company

The facts are the same as in Example 9 except additional information are as follows -

- (a) Company Z has an accounting profit of RM500,000 after deducting payment of fixed returns on the following two (2) types of loans –

Loan Creditors	Principal Amount RM'000	Rate of Return	Annual Return RM'000
Loan 1 (Company X) Commercial loan	RM1,000	5% per annum	RM50
Loan 2 (Company Y) Non-commercial loan	RM1,400	3% per annum + right to share in profits based on principal loan value	RM42 + any profit participation which is not fixed

Computation of Residual Profits Company Z

Details	RM'000	RM'000	RM'000
Accounting profit (after deducting payment of fixed return on loan i.e RM50,000 and RM42,000)			500
Less:			
Distribution of fixed dividend on Type II shares			
Company A RM400,000 x 10%	40		
Company B RM400,000 x 10%	40	80	
Distribution of fixed dividend on Type III shares			
Company A RM600,000 x 8%	48		
Company B RM200,000 x 8%	16	64	144
Residual Profits			<u>356</u>

The division of residual profits is based on the ratio of distribution amongst the equity holders using the value of ordinary shares and non-commercial loans –

Equity Holder of Company Z	Company A	Company B	Company C	Non-commercial Loans Creditors Company Y	Total
	RM'000	RM'000	RM'000	RM'000	RM'000
Type I ordinary shares	1,800	600	-	-	2,400
Type II ordinary shares	600	-	200	-	800
Principal amount	-	-	-	1,400	1,400
Total	2,400	600	200	1,400	4,600

Equity Holders' Beneficial Entitlement to the Residual Profits of Company Z

Equity Holders of Company Z	Proportion of Residual Profits (RM'000)	Percentage of Residual Profits
Company A	$(2,400 / 4,600) \times 356 = 187$	$187 / 356 = 52\%$
Company B	$(600 / 4,600) \times 356 = 46$	$46 / 356 = 13\%$
Company C	$(200 / 4,600) \times 356 = 15$	$15 / 356 = 4\%$
Non-commercial loan creditor - Company Y	$(1,400 / 4,600) \times 356 = 108$	$108 / 356 = 31\%$

- (b) Assuming Company Z's residual assets amount to RM1,300,000 after deducting payment of commercial loan and payment of dividends at a fixed rate, the computation of the equity holder's beneficial entitlement to the residual assets of Company Z is as follows –

Equity Holders' Beneficial Entitlement to the Residual Assets of Company Z

Equity Holders of Company Z	Proportion of Residual Assets (RM'000)	Percentage of Residual Assets
Company A	$(2,400 / 4,600) \times 1,300 = 678$	$678 / 1,300 = 52\%$
Company B	$(600 / 4,600) \times 1,300 = 170$	$170 / 1,300 = 13\%$
Company C	$(200 / 4,600) \times 1,300 = 56$	$56 / 1,300 = 4\%$
Non-commercial loan creditor - Company Y	$(1,400 / 4,600) \times 1,300 = 396$	$396 / 1,300 = 31\%$

Although Company A holds ordinary shares exceeding 70% in Company Z (as shown in Example 10) but Company A does not have beneficial entitlement to at least 70% of the residual profits and residual assets of Company Z. Hence, Company A and Company Z are not eligible for group relief.

Example 11

The facts are the same as in Example 10 except that the non-commercial loan creditor is Company A. Company A's equity in the form of Type I ordinary shares is now at a value of RM1,400,000 as a non-commercial creditor.

The shareholding structure of Company Z is shown in the following table –

Type of Shares in Company Z	Right to Share Profits Based on Holding in Share Capital		Fixed Dividend @ 10% on Share Value		Fixed Dividend @ 8% + Right to Share in Profits Based on Holding in Share Capital	
	Type I RM'000		Type II RM'000		Type III RM'000	
Shareholders	A	B	A	B	A	C
Paid -up capital	3,000	600	400	400	600	200
Ordinary shares	Yes	Yes	No	No	Yes	Yes

Percentage of shareholding	$\frac{3,000}{4,400}$ = 68%	$\frac{600}{4,400}$ = 14%	Not applicable	Not applicable	$\frac{600}{4,400}$ = 14%	$\frac{200}{4,400}$ = 4%
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The total number of shares taken into account for the purpose of determining the shareholding are RM4,400,000 ordinary shares in Company Z, i.e. -

- (a) RM3,600,000 ordinary shares Type I (RM3,000,000 and RM600,000 shares owned by Company A and Company B respectively) that are eligible for company profit; and
- (b) RM800,000 ordinary shares Type III (RM600,000 and RM200,000 shares owned by Company A and Company C respectively) that are eligible for fixed dividend and company profit.

Therefore, the total percentage of ordinary shares owned by -

- (i) Company A is 82% (68% + 14%)
- (ii) Company B is 14%
- (iii) Company C is 4%

Company Z has the following two (2) types of loans –

Loan Creditors	Principal Amount RM'000	Rate of Return	Annual Return RM'000
Loan 1 (Company X) Commercial loan	RM1,000	5% per annum	RM50
Loan 2 (Company Y) Non-commercial loan	RM1,400	3% per annum + right to share profits based on principal loan value	RM42 + any profit participation which is not fixed

The computation of residual profits of Company Z is as shown in Example 10. The division of residual profits is based on the ratio of distribution amongst the equity holders using the value of ordinary shares and non-commercial loans –

Equity Holder of Company Z	Company A RM'000	Company B RM'000	Company C RM'000	Non-commercial Loans Creditors Company A RM'000	Total RM'000
Type I ordinary shares	3,000	600	-	-	3,600
Type III ordinary shares	600	-	200	-	800
Principal amount	-	-	-	1,400	1,400
Total	3,600	600	200	1,400	5,800

Equity Holders' Beneficial Entitlement to the Residual Profits of Company Z

Equity Holders of Company Z	Proportion of Residual Profits (RM'000)	Percentage of Residual Profits
Company A	$(3,600 / 5,800) \times 356 = 221$	$221 / 356 = 62\%$
Company B	$(600 / 5,800) \times 356 = 37$	$37 / 356 = 10\%$
Company C	$(200 / 5,800) \times 356 = 12$	$12 / 356 = 4\%$
Non-commercial loan creditor - Company A	$(1,400 / 5,800) \times 356 = 86$	$86 / 356 = 24\%$

Assuming Company Z's residual assets amount to RM1,300,000 after deducting payment of commercial loan and payment of dividends at a fixed rate, the computation of the equity holders' beneficial entitlement to the residual assets of Company Z is as follows –

Equity Holders' Beneficial Entitlement to the Residual Assets of Company Z

Equity Holders of Company Z	Proportion of Residual Assets (RM'000)	Percentage of Residual Assets
Company A	$(3,600 / 5,800) \times 1,300 = 807$	$807 / 1,300 = 62\%$
Company B	$(600 / 5,800) \times 1,300 = 134$	$134 / 1,300 = 10\%$

Company C	$(200 / 5,800) \times 1,300 = 45$	$45 / 1,300 = 4\%$
Non-commercial loan creditor - Company A	$(1,400 / 5,800) \times 1,300 = 314$	$314 / 1,300 = 24\%$

Company A's right to the residual profits and residual assets of Company Z are as follows -

- (i) Company A's beneficial entitlement to the residual profits –

$$62\% + 24\% = 86\%$$

Therefore, Company A's beneficial entitlement to the residual profits of Company Z exceeds the 70% requirement.

- (ii) Company A's beneficial entitlement to the residual assets –

$$62\% + 24\% = 86\%$$

Company A would now satisfy the second level test of being beneficially entitled to at least 70% of the residual profits and residual assets of Company Z. Hence, Company A and Company Z are eligible for group relief.

Example 12

The facts are the same as in Example 10 except that Company Z has no residual profits and no residual assets. A notional amount of RM100 is deemed to be the residual profits and residual assets of Company Z.

- (a) **Equity Holders' Beneficial Entitlement to the Residual Profits of Company Z**

Equity Holders of Company Z	Proportion of Residual Profits (RM'000)	Percentage of Residual Profits
Company A	$(2,400 / 4,600) \times 100 = 52$	$52 / 100 = 52\%$
Company B	$(600 / 4,600) \times 100 = 13$	$13 / 100 = 13\%$
Company C	$(200 / 4,600) \times 100 = 4$	$4 / 100 = 4\%$
Non-commercial loan creditor - Company Y	$(1,400 / 4,600) \times 100 = 30$	$31 / 100 = 31\%$

(b) Equity Holders' Beneficial Entitlement to the Residual Assets of Company Z

Equity Holders of Company Z	Proportion of Residual Assets (RM'000)	Percentage of Residual Assets
Company A	$(2,400 / 4,600) \times 100 = 52$	$52 / 100 = 52\%$
Company B	$(600 / 4,600) \times 100 = 13$	$13 / 100 = 13\%$
Company C	$(200 / 4,600) \times 100 = 4$	$4 / 100 = 4\%$
Non-commercial loan creditor - Company Y	$(1,400 / 4,600) \times 100 = 30$	$31 / 100 = 31\%$

Although Company A meets first level test by holding ordinary shares exceeding 70% in Company Z (as shown in Example 10) but Company A does not satisfy second level test to have beneficial entitlement rights to at least 70% of the residual profits and residual assets of Company Z. Hence, Company A and Company Z are not eligible for group relief.

Example 13

Company P, a holding company and all its subsidiaries, i.e. Company A, Company B, Company C, Company D, Company E and Company X except for Company HK are incorporated (i) and resident (r) in Malaysia. Company HK is incorporated and resident in Hong Kong. The group of companies have the same accounting year end i.e. 31 December.

For the YA 2023, Company E has an adjusted loss from business of RM2,000,000 to be surrendered to the claimant companies, i.e. Company A, Company B and Company C. The surrendering company and each of the claimant companies have a twelve month (12) basis period ending on the same day i.e. 31 December for the YA 2023. The paid-up share capital and the ordinary shareholding structure of the group are as follows –

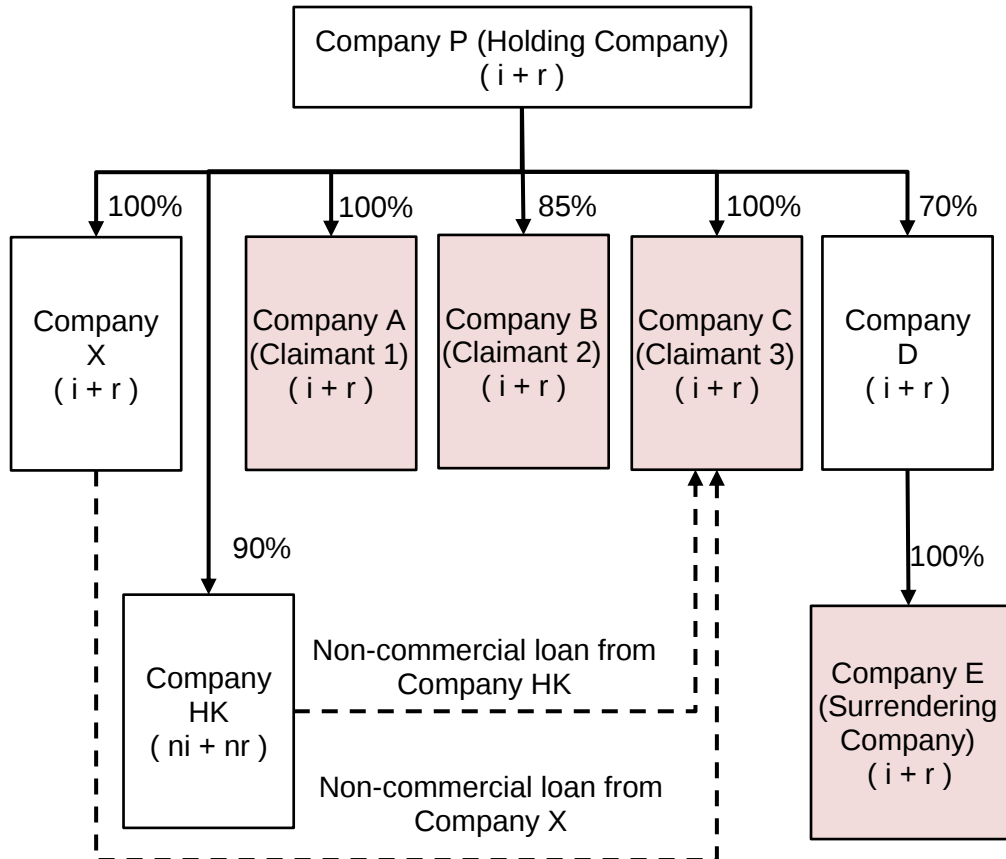
Shareholder / Shareholding	Right to Share Profits Based on Holding in Share Capital					
	Company A	Company B	Company C	Company D	Company X	Company HK
Paid-up capital (RM'000)	3,000	3,000	2,800	900 ²	1,000 ³	4,000 ⁴
Percentage of Company P's shareholding	100%	85%	100%	70%	100%	90%

Shareholder / Shareholding	Right to Share Profits Based on Holding in Share Capital
Company D	Company E
Paid-up capital (RM'000)	5,000
Percentage of Company D's shareholding	100%

Borrowings of Company C with returns not based on a fixed amount or fixed rate of borrowings or profits of the company are as follows -

- (a) RM2,000,000 from Company X;
- (b) RM5,000,000 from Company HK; and
- (c) Advance of RM2,500,000 from its directors with a return not based on a fixed amount or fixed rate of borrowings or profits of the company.

Ordinary Shareholding Structure of the Group of Companies



As Company P and all its subsidiaries have the same accounting year end, therefore the requirement for the surrendering and claimant company to have the same accounting year end has been satisfied.

In order to determine whether the surrendering and the claimant companies in a group are eligible for group relief, the following two tests have to be carried out.

First Level Test

Ordinary shareholding requirement to determine whether companies are related are as follows –

Relationship between Companies	Shareholding of Ordinary Shares		70% Ordinary Shareholding Requirement Met?
	Percentage (%)	Relationship	
P & A	100%	Directly	Yes

P & B	85%	Directly	Yes
P & C	100%	Directly	Yes
P & E	70% [70% X 100%]	Indirectly	Yes

Company A, Company B, Company C and Company E meet the first level test regarding the 70% ordinary shareholdings requirement under subsection 44A(3) of the ITA. Company E (surrendering company) is related company to the claimant companies of Company A, Company B and Company C for the purpose of group relief.

Note:

^{2, 3, 4} Both Company D and Company X are not eligible for group relief as the companies have a paid-up capital in respect of ordinary shares of less than RM2,500,000 each at the beginning of the basis period for the YA2023. Company HK are also not eligible for group relief as it is not incorporated (ni) and not resident (nr) in Malaysia.

The values of ordinary shares, non-commercial loans, residual profits and residual assets of the related companies in the group are as follows -

Company	Value of Ordinary Shares Held by Company P (RM'000)	Value of Non-Commercial Loans (RM'000)	Total (RM'000)	Residual Profits for Distribution ⁶ (RM'000)	Residual Assets for Distributions ⁷ (RM'000)
Company A	3,000	Nil	3,000	100	500
Company B	2,550	Nil	2,550	100	500
Company C	2,800	9,500 ⁵	12,300	100	500
Company E	3,500	Nil	3,000	100	500

Computation of Value of Non-Commercial Loans of Company C

	RM'000
⁵ Non-commercial loans from Company X	2,000
Non-commercial loans from Company HK	5,000
Non-commercial loans from company directors	2,500
	<u>9,500</u>

Note:

^{6, 7} The amount of residual profits and residual assets used are for illustration purposes only.

Second Level Test

Equity holders' beneficial entitlement to a company's residual profits and residual assets are based on the ratio of distribution using the value of ordinary shares and non-commercial loans.

(a) Equity Holders' Beneficial Entitlement to Residual Profits

The proportion of residual profits is determined as follows -

$$\frac{\text{Value of ordinary shares + value of non-commercial loans attributable to an equity holder}}{\text{Value of ordinary shares + value of non-commercial loans attributable to all equity holders}} \times \text{Residual profits of company}$$

Equity Holders of Company A (Direct)	Proportion of Residual Profits (RM'000)	Beneficial Entitlement to Residual Profits (%)
Company P	$(3,000 / 3,000) \times 100 = 100$	$100 / 100 = 100\%$

Equity Holders of Company B (Direct)	Proportion of Residual Profits (RM'000)	Beneficial Entitlement to Residual Profits (%)
Company P	$(2,550 / 3,000) \times 100 = 85$	$85 / 100 = 85\%$
Others	$(450 / 3,000) \times 100 = 15$	$15 / 100 = 15\%$

Equity Holders of Company C (Direct)	Proportion of Residual Profits (RM'000)	Beneficial Entitlement to Residual Profits (%)
Company P	$(2,800 / 12,300) \times 100 = 23$	$23 / 100 = 23\%$
Company X	$(2,550 / 12,300) \times 100 = 16$	$16 / 100 = 16\%$
Company HK	$(2,550 / 12,300) \times 100 = 41$	$41 / 100 = 41\%$
Company directors	$(2,550 / 12,300) \times 100 = 20$	$20 / 100 = 20\%$

Equity Holders of Company E (Indirect)	Proportion of Residual Profits (RM'000)	Beneficial Entitlement to Residual Profits (%)
Company P	Company P & Company D $(70\% \times 100\%) \times 100 = 70$	$70 / 100 = 70\%$

(b) Equity Holders' Beneficial Entitlement to Residual Assets

The proportion of residual assets is determined as follows –

$$\frac{\text{Value of ordinary shares + value of non-commercial loans attributable to an equity holder}}{\text{Value of ordinary shares + value of non-commercial loans attributable to all equity holders}} \times \text{Residual assets of company}$$

Equity Holders of Company A (Direct)	Proportion of Residual Assets (RM'000)	Beneficial Entitlement to Residual Assets (%)
Company P	$(3,000 / 3,000) \times 500 = 500$	$500 / 500 = 100\%$

Equity Holders of Company B (Direct)	Proportion of Residual Assets (RM'000)	Beneficial Entitlement to Residual Assets (%)
Company P	$(2,550 / 3,000) \times 500 = 425$	$425 / 500 = 85\%$
Others	$(450 / 3,000) \times 500 = 75$	$75 / 500 = 15\%$

Equity Holders of Company C (Direct)	Proportion of Residual Assets (RM'000)	Beneficial Entitlement to Residual Assets (%)
Company P	$(2,800 / 12,300) \times 500 = 114$	$114 / 500 = 23\%$
Company X	$(2,000 / 12,300) \times 500 = 81$	$81 / 500 = 16\%$
Company HK	$(5,000 / 12,300) \times 500 = 203$	$203 / 500 = 41\%$
Company directors	$(2,500 / 12,300) \times 500 = 102$	$102 / 500 = 20\%$

Equity Holders of Company E (Indirect)	Proportion of Residual Assets (RM'000)	Beneficial Entitlement to Residual Assets (%)
Company P	Company P & Company D $(70\% \times 100\%) \times 500 = 350$	$350 / 500 = 70\%$

Determination of Eligibility for Group Relief for Surrendering and Claimant Companies Based on the First Level Test and Second Level Test

Surrendering and Claimant Company	First Level Test and Second Level Test	Eligibility for Group Relief
Company A & Company E	(a) Company P directly holds 100% of the ordinary shares in Company A and indirectly holds 70% of the ordinary	Yes

	shares in Company E through Company D. Therefore, the 70% ordinary shareholding in both Company A (claimant company) and Company E (surrendering company) are held directly and indirectly by another company, i.e. Company P which is incorporated and resident in Malaysia. The first level test is satisfied. (b) Company P is beneficially entitled to 100% directly and 70% indirectly of the residual profits and residual assets of Company A and Company E respectively. The second level test is also satisfied.	
Company B & Company E	(a) Company P directly holds 85% of the ordinary shares in Company B and indirectly holds 70% of the ordinary shares in Company E through Company D. Therefore, the 70% ordinary shareholding in both the Company B (claimant company) and Company E (surrendering company) are held directly and indirectly by another company, i.e. Company P which is incorporated and resident in Malaysia. The first level test is satisfied. (b) Company P is beneficially entitled to 85% directly and 70% indirectly of the residual profits and residual assets of Company B and Company E respectively. The second level test is also satisfied.	Yes
Company C &	(a) Company P directly holds 100% of the ordinary shares in Company C and indirectly holds 70% of the ordinary	No

Company E	shares in Company E through Company D. Therefore the 70% ordinary shareholding in both the Company C (claimant company) and Company E (surrendering company) are held directly and indirectly by another company, i.e. Company P which is incorporated and resident in Malaysia. The first level test is satisfied. (b) Company P is beneficially entitled to 70% indirectly of the residual profits and residual assets of Company E through Company D. Company P is beneficially entitled 39% [23% (direct) and 16% (indirect) through Company X] indirectly of the residual profits and residual assets Company C. The second level test is not satisfied. Note: The beneficial entitlement of Company P, 41% indirectly of the residual profits and assets of Company C through Company HK, a foreign incorporated outside Malaysia and not resident in Malaysia is disregarded.	
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Note:

For purposes of ascertaining the beneficial entitlement of an equity holder to the residual profits and residual assets in a company under subsection 44A(7) of the ITA, the non-commercial loans obtained from a non-resident company not incorporated in Malaysia and other intermediary companies have to be taken into account.

8. Ordinary Shareholding Level Must be Maintained

For the purpose of group relief, the ordinary shareholding level must be maintained at or above 70% by both the surrendering company and the claimant company throughout the basis period for a YA and the twelve (12) months period immediately preceding that basis period.

Example 14

Company A (claimant company) directly holds 70% of the paid-up ordinary share capital in Company B (surrendering company), a related company for the basis periods 1.1. 2022 to 31.12. 2022 and 1.1.2023 to 31.12.2023.

Shareholding Position

70% ordinary shares		70% ordinary shares	
1.1.2022	31.12.2022	1.1.2023	31.12.2023

There was no change in the 70% ordinary shareholding in the basis period in the YA 2023 and the 12 months period immediately preceding that basis period.

A second level test on the beneficial entitlement to the residual profits and residual assets of Company B available for distribution to the Company A should be carried out on the date the accounting period closed i.e. on 31.12.2023 to determine whether Company A and Company B satisfy the test.

Example 15

The facts are the same as in Example 14 except that on 2.1.2023 there was a change in Company A's (claimant company) ordinary shareholding from 70% to 78% of the paid-up ordinary share capital in Company B (surrendering company), a related company for the basis periods 1.1.2022 to 31.12. 2022 and 1.1. 2023 to 31.12. 2023 respectively.

Shareholding Position

70% ordinary shares		78% ordinary shares	
1.1.2022	31.12.2022	2.1. 2023	31.12. 2023

The ordinary shareholding test should be done on the date there was a change in the shareholding from 70% to 78%. As the 70% shareholding of ordinary shares has been satisfied for the YA2023, the residual profits and residual assets test should be carried out on the date the accounting period closed i.e. on 31.12. 2023.

Example 16

The facts are the same as in Example 14 except that there was a change in Company A's (claimant company) ordinary shareholding on 2.1.2023 from 70% to 69% of the paid-up ordinary share capital in Company B (surrendering company), a related company for the basis periods 1.1. 2022 to 31.12. 2022 and 1.1. 2023 to 31.12.2023 respectively.

Shareholding Position

70% ordinary shares		69% ordinary shares	
1.1.2022	31.12.2022	2.1.2023	31.12.2023

As the 70% shareholding of ordinary shares was not satisfied in the basis period 1.1. 2023 to 31.12. 2023, both the claimant and the surrendering company are not eligible for the group relief.

9. Computation of Group Relief

Any eligible company having an adjusted loss from business can surrender such loss to a related company for any YA. The amount of adjusted loss from business surrendered is ascertained in accordance with subsection 44A(4) of the ITA where –

- the amount or the aggregate amount of the adjusted loss from business or the excess of that amount of the surrendering company for that YA is ascertained under subsection 44(4) and 44(5) of the ITA;
- the amount of adjusted loss from business surrendered to a claimant company as a deduction in ascertaining the total income of the claimant company is in accordance with subsection 44(1) of the ITA; and
- the amount of adjusted loss from business surrendered cannot exceed the defined aggregate income of the claimant company for that YA.

Example 17

Company A commenced operations on 1.1.2020 and closes its business accounts on 31 December each year. Company A and Company B are related companies eligible for group relief. In YA 2021, Company A incurred losses whilst Company B has a profit. Both companies agreed to make use of group relief where Company A (surrendering company) agreed to surrender 70% of the current year adjusted loss from business to Company B (claimant company). Election for group relief was made for YA 2021.

Assuming Company A has statutory income from rental of RM20,000 (Scenario 1) or RM40,000 (Scenario 2) in YA 2021, the computation of adjusted loss from business surrendered by Company A is as follows –

**Computation of Adjusted Loss from Business Surrendered by Company A
for YA 2021**

Details	Scenario 1	Scenario 2
	RM	RM
Statutory income from business (current year adjusted business losses RM100,000)	Nil	Nil
Statutory income from rental	20,000	40,000
Aggregate income	20,000	40,000
Less:		
Current year adjusted business losses [subsection 44(2) of the ITA]	(20,000)	(40,000)
Total income	Nil	Nil
Excess of current year adjusted business losses [subsections 44(4) and 44(5) of the ITA]	(80,000)	(60,000)
Current year adjusted business losses surrendered to Company B (70% from excess of current year adjusted business losses)	(56,000)	(42,000)
Unabsorbed adjusted business losses carried forward (c/f)	(24,000)	(18,000)

The amount of current year adjusted loss from business surrendered by Company A to Company B in YA 2021 is 70% of the excess of Company A's current year adjusted loss from business after deducting an amount equal to the aggregate income for that YA.

Example 18

Company A commenced operations on 1.1.2020 and closes its business accounts on 31 December each year. Company A and Company B are related companies eligible for group relief. Company A incurred losses for YA 2021, YA 2022, YA 2023 and YA 2024 whilst Company B made profits. Both companies agreed to elect for group relief where Company A (surrendering company) agreed to surrender 70% of the current year adjusted loss from business to Company B (claimant company) for

YA 2021 and YA 2022. Company B agreed to claim the loss. Claim for group relief was made for YA 2021 and YA 2022 respectively.

Computation of Group Relief for YA 2021 (Year 1)

Company A (Surrendering Company)	RM	Company B (Claimant Company)	RM
Statutory income from business I (current year adjusted business losses RM300,000)	Nil	Statutory income from business I	200,000
Statutory income from business II (current year adjusted business losses RM50,000)	Nil	Statutory income from business II	20,000
Aggregate statutory income from business I and II	Nil	Aggregate statutory income from business I and II	220,000
Add: Statutory income from rental	60,000	Add: Statutory income from rental	50,000
Aggregate income	60,000	Aggregate income	270,000
Less: Current year adjusted business losses [subsection 44(2) of the ITA]	(60,000)	Less: Donation [subsection 44(6) of the ITA]	(20,000)

Company A (Surrendering Company)	RM	Company B (Claimant Company)	RM
Less: Donation (RM10,000) [subsection 44(6) of the ITA]	Nil	Defined aggregate income	250,000
	Nil	Less: Current year adjusted business losses	(203,000)

		transferred from Company A	
Total income	Nil	Total income	47,000
Excess of current year adjusted business losses (RM350,000 – RM60,000) [subsection 44(4) dan 44(5) of the ITA]	(290,000)		
Current year adjusted business losses surrendered to Company B (RM290,000 x 70%)	203,000		
Unabsorbed adjusted business losses c/f	(87,000)		
Amount of unabsorbed adjusted business losses of RM87,000 remains in surrendering company			

Computation of Group Relief for YA 2022 (Year 2)

Company A (Surrendering Company)	RM	Company B (Claimant Company)	RM
Statutory income from business I (current year adjusted business losses 200,000)	Nil	Statutory income from business I	50,000
Statutory income from business II	60,000	Statutory income from business II	40,000
Aggregate statutory income from business I and II	60,000	Aggregate statutory income from business I and II	90,000
Less: Unabsorbed adjusted business losses brought forward (b/f) [subsection 43(2) of the ITA]	(60,000)	Add: Statutory income from rental	20,000

Add:	Nil	Defined aggregate income	110,000
Statutory income from rental	50,000	Less:	
		Current year adjusted business losses transferred from Company A	(105,000)
Aggregate income	50,000	Total income	5,000
Less:			
Current year adjusted business losses [subsection 44(2) of the ITA]	(50,000)		
Total income	Nil		

Company A (Surrendering Company)	RM	Company B (Claimant Company)	RM
Excess of current year adjusted business losses (RM200,000 – RM50,000) [subsection 44(4) dan 44(5) of the ITA]	(150,000)		
Current year adjusted business losses surrendered to Company B (RM150,000 x 70%)	105,000		
	(45,000)		
Unabsorbed adjusted business losses b/f (RM87,000 – RM60,000)	(27,000)		
Unabsorbed adjusted business losses c/f	(72,000)		
Amount of unabsorbed adjusted business losses of			

RM72,000 remains in surrendering company		
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For the purpose of group relief, the time limit of three (3) consecutive YAs for Company A to surrender adjusted loss from business to the related companies begins immediately after YA 2020. Therefore, Company A is eligible for group relief for YA 2021, YA 2022 and YA 2023. Company A is no longer eligible to enjoy group relief from YA 2024.

10. More than One Surrendering or Claimant Company

- 10.1 A surrendering company can surrender its adjusted loss from business to one or more related companies (claimant companies). The surrendering company has to surrender the amount of adjusted loss from business to be fully set-off against the amount of defined aggregate income of the first claimant company. Any balance of the loss can then be surrendered to the second claimant company and so on following the order of priority.
- 10.2 A claimant company can also claim adjusted loss from business from one or more related companies (surrendering companies). The adjusted loss from business surrendered by the first surrendering company shall be fully deducted from the defined aggregate income of the claimant company before the adjusted loss from business from the second surrendering company is deducted from the defined aggregate income of the claimant company and so on following the order of priority.
- 10.3 The adjusted loss from business surrendered or claimed has to follow the order of priority. Both the surrendering company and the claimant company has to ascertain the order of priority by making an irrevocable election in the prescribed Form C (RK-S) – Group Relief Form for Surrendering Company and Form C (RK-T) – Group Relief Form for Claimant Company together with the ITRF.
- 10.4 If the adjusted loss from business cannot be effected in accordance with the order of priority specified by any surrendering or claimant company, the amount of adjusted loss from business surrendered or claimed shall be dealt with in such manner as the Director General of Inland Revenue (DGIR) thinks reasonable and proper.
- 10.5 The amount of adjusted loss from business surrendered shall be disregarded for the purpose of ascertaining the aggregate income of the surrendering company under section 43 of the ITA.
- 10.6 The amount of loss that can be transferred is subject to the defined aggregate income of the claimant company. Where any adjusted loss from business is more than the defined aggregate income of the claimant company, the excess

will be retained by the surrendering company as its unabsorbed adjusted loss from business.

- 10.7 This unabsorbed adjusted loss from business can be used to offset statutory income from business of the surrendering company in subsequent YA limited to a period of ten (10) consecutive YAs. For further information on the time limit of unutilised or unabsorbed adjusted business losses carried forward, please refer to PR No 1/2022 titled Time Limit for Unabsorbed Adjusted Business Losses Carried Forward, which is available at www.hasil.gov.my, the official portal of the Inland Revenue Board of Malaysia (IRBM).
- 10.8 If the surrendering company mistakenly surrendered the adjusted loss from business to a claimant company incurring a loss or not having a defined aggregate income, the surrendered loss cannot be transferred to another claimant company but must be returned to the surrendering company.

Example 19

Company A, Company B, Company C, Company X, Company Y and Company Z are all related companies and eligible for group relief. The surrendering and the claimant companies have ascertained the order of priority and made an irrevocable election in Form C (RK-S) and Form C (RK-T).

A summary of the loss surrendered and claimed in order of priority of the surrendering and claimant companies is shown in the table as follows –

Details	Surrendering Company			Claimant Company		
	Company A	Company B	Company C	Company X	Company Y	Company Z
70% adjusted loss from business	(40,000)	(140,000)	(80,000)			
Order of priority	Z – (40,000)	1. X – (65,000) 2. Y – (25,000) 3. Z – (15,000)	Y – (80,000)			
Defined aggregate income				65,000	105,000	55,000
Order of priority				B – (65,000)	1. C – (80,000)	1. A – (40,000)

					2. B – (25,000)	2. B – (15,000)
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For surrendering companies, Company A and Company C, the 70% adjusted loss from business Company A and Company C of RM40,000 and RM80,000 respectively is fully transferred to their claimant companies, i.e Company Z and Company Y.

For Company B, the order of priority is as shown in the table and the balance of the loss of RM35,000 (RM140,000 – RM65,000 – RM25,000 – RM15,000) that cannot be surrendered is to be retained in Company B to be carried forward to the subsequent YA.

Claimant Company X

Details	RM
Defined aggregate income	65,000
Less: Adjusted business losses transferred from Company B	(65,000)
Chargeable income	<u>Nil</u>

Claimant Company Y

Details	RM
Defined aggregate income	105,000
Less: Adjusted business losses transferred from Company C	(85,000)
	25,000
Less: Adjusted business losses transferred from Company B	(25,000)
Chargeable income	<u>Nil</u>

Claimant Company Z

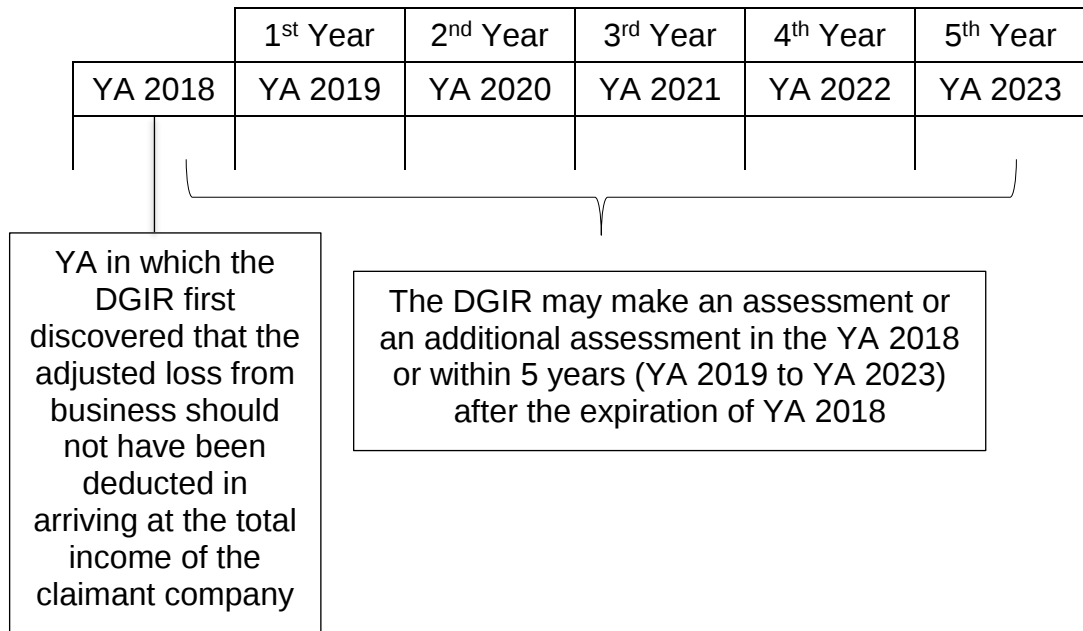
Details	RM
Defined aggregate income	55,000
Less: Adjusted business losses transferred from Company A	(40,000)
	15,000
Less: Adjusted business losses transferred from Company B	(15,000)
Chargeable income	<u>Nil</u>

11. Revision of Adjusted Loss from Business

- 11.1 If a surrendering company has filed a ITRF for a particular YA and if there is a revised tax computation that causes –
- (a) the adjusted loss from business available for surrender after revised tax computation is more than the amount already surrendered to claimant company, the surrendering company is not allowed to revise the loss that is already surrendered to the claimant company. The difference of the loss has to be carried forward by the surrendering company.
 - (b) the adjusted loss from business available for surrender after revised tax computation is less than the amount already surrendered to claimant company, it is the responsibility of the surrendering company to inform the IRBM branch that handles the income tax file of the company.
- 11.2 A claimant company that is affected by the reduced adjusted loss from business available for surrender by the surrendering company is also required to inform the IRBM branch that handles the income tax file of the company.
- 11.3 If a claimant company deliberately claims an amount of adjusted loss from business which exceeds the amount that is surrendered by the surrendering company, the claimant company may be liable to action under subsection 114(1) of the ITA.
- 11.4 If a company initially reports an amount of chargeable income in its ITRF and subsequently, the amount of chargeable income was reduced to an adjusted loss from business (after some adjustments), the company is not allowed to surrender the adjusted loss from business to its related companies.

12. Penalty for Incorrect Information

- 12.1 Pursuant to paragraph 44A(9)(a) of the ITA, where the DGIR discovers that adjusted loss from business should not have been deducted in calculating the total income of the claimant company, the DGIR can, in that year or in the period of five (5) years after the end of that year, raise an assessment or additional assessment on the claimant company to recover the tax lost. This is illustrated in the diagram below –



The DGIR can raise an assessment or additional assessment in the YA 2018 or within five (5) years after the expiration of YA 2018, i.e from the YA 2019 to the YA 2023 if in the YA 2018 the DGIR discovered that the adjusted loss from business should not have been deducted in calculating the total income of the claimant company for the YA 2018.

Note:

If the DGIR discovered that the adjusted loss from business should not have been deducted in calculating the total income of the claimant company for the YA 2018 in the YA 2023, the DGIR can raise an assessment or additional assessment in the YA 2023 or within five (5) years after the expiration of YA 2023, i.e from the YA 2024 to the YA 2028.

- 12.2 Pursuant to paragraph 44A(9)(b) of the ITA, where a surrendering company provides incorrect information in the ITRF on the amount of adjusted loss from business surrendered, the DGIR may impose penalty on the surrendering company, with an amount equal to the amount of tax undercharged by the claimant company.

Example 20

HiQ Sdn Bhd (HiQ) and LBG Sdn Bhd (LBG) are related companies within the same group of companies that have satisfied the conditions to be eligible for group relief. HiQ is the surrendering company whereas LBG is the claimant company. In the YA 2023, HiQ elected to surrender 70% of its current year adjusted business losses to LBG, which elected to claim the said loss.

Surrendering and Claiming of the Adjusted Business Losses for the YA 2023

HiQ Sdn Bhd (Surrendering Company)	RM	LBG Sdn Bhd (Claimant Company)	RM
Statutory income from business I	Nil	Statutory income from business I	145,000
(current year adjusted business losses RM190,000)		Statutory income from business II	36,000

HiQ Sdn Bhd (Surrendering Company)	RM	LBG Sdn Bhd (Claimant Company)	RM
Excess of current year adjusted business losses [subsections 44(4) dan 44(5) of the ITA]	(190,000)	Aggregate income / Defined aggregate income	181,000
Current year adjusted business losses surrendered to LBG (RM190,000 x 70%)	133,000	Less: Current year adjusted business losses transferred from HiQ	(133,000)
Unabsorbed adjusted business losses c/f	(57,000)	Total income	48,000
		Tax charged @ 24% (RM48,000 x 24%)	11,520.00

An audit was carried out by IRBM. The following adjustments were made and a notice of assessment was issued.

Adjustment of Surrendering and Claiming of the Adjusted Business Losses by IRBM for the YA 2023

HiQ Sdn Bhd (Surrendering Company)	RM	LBG Sdn Bhd (Claimant Company)	RM
Statutory income from business I	Nil	Statutory income from business I	145,000

(current year adjusted business losses RM120,000) [after re-examination by IRBM auditor]		Statutory income from business II	36,000
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HiQ Sdn Bhd (Surrendering Company)	RM	LBG Sdn Bhd (Claimant Company)	RM
		Aggregate income / Defined aggregate income Less: Current year adjusted business losses transferred from HiQ after audit adjustment	181,000 (84,000)
Excess of current year adjusted business losses [subsection 44(4) dan 44(5) of the ITA] Therefore, the amount of adjusted business losses that qualifies to be surrendered is RM84,000 and not RM133,000 -	(120,000)	Total income	97,000
Current year adjusted business losses surrendered to LBG (RM120,000 x 70%)	84,000	Tax charged @ 24% (RM97,000 x 24%) Less:	23,280.00
Unabsorbed adjusted business losses c/f	(36,000)	Previous tax charged	11,520.00
		Tax undercharged	11,760.00

After the audit finding -

- (a) a notice of assessment was issued with an additional tax of RM11,760 raised on LBG; and
- (b) a notice (Form G) with a penalty of RM11,760 was issued to HIQ. This notice would be deemed as the notice of assessment for the purpose of appeal if HIQ is dissatisfied with the penalty.

12.3 The surrendering company has the right to appeal against the imposition of the penalty within thirty (30) days of the issue of the notice. The appeal will be dealt with in the same way as an appeal against an assessment. For further information on appeal against assessment, please refer to PR No 7/2020 titled Appeal Against an Assessment and Application for Relief, which is available at www.hasil.gov.my, the official portal of the IRBM.

13. Companies Not Eligible for Group Relief

13.1 Effective YA 2019, paragraph 44(10)(aa) of the ITA was introduced via Finance Act 2018 [Act 812] to provide that the surrendering or claimant company which has unutilized investment tax allowance or unabsorbed adjusted loss from a pioneer business after the incentive period of investment tax allowance or pioneer status has ended, are not eligible for group relief.

13.2 Pursuant to subsection 44A(10) of the ITA, group relief is not applicable to a surrendering or a claimant company for the basis period for a YA where the period during which that company –

- (a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investment Act 1986 (PIA);
- (b) has unutilized investment tax allowance or adjusted loss from a pioneer business under the PIA;
- (c) is exempt from tax on its shipping profits under section 54A, or a ministerial exemption under paragraph 127(3)(b) or subsection 127(3A) of the ITA;
- (d) has made a claim for a reinvestment allowance under schedule 7A of the ITA;
- (e) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006 [P.U.(A) 55/2006];
- (f) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002 [P.U.(A) 63/2002];

- (g) has been granted a deduction under the Income Tax (Deduction for Cost of Acquisition of a Foreign Owned Company) Rules 2003 [P.U.(A) 310/2003]; or
- (h) has made a claim for deduction under any Rules made under section 154, and those Rules provide that section 44A of the ITA shall not apply to that company.

Example 21

Company T, a vehicle component manufacturer has been granted approval for investment tax allowance for a promoted product under section 26 of the PIA on 5.1.2018 for a period of 5 years effective from 11.1.2018 to 10.1.2023. Company T closes its business accounts on December 31 each year.

Company T has made qualifying capital expenditure for investment tax allowance incentive period of RM4,000,000. At the end of the basis period of YA 2024, the unutilized investment tax allowance carried forward by Company T is RM500,000.

Company S and Company T are related companies within the same group of companies that have satisfied the conditions to be eligible for group relief. Company S is the surrendering company whereas Company T is the claimant company. In YA 2024, Company S elected to surrender 70% of its current year adjusted business losses to Company T, which elected to claim the said loss.

Effective from YA 2019, paragraph 44A(10)(aa) of the ITA provides that group relief is not eligible to be claimed if in the same YA, the surrendering or claimant company still has unutilized investment tax allowances or the balance of unabsorbed adjusted loss from pioneer businesses after the investment tax allowance or pioneer status incentive period ends.

Hence, as Company T still has an unutilized investment tax allowance brought forward amounting to RM500,000 in YA 2024, Company S and Company T are not eligible for group relief under section 44A of the ITA in YA 2024.

Example 22

Company S and Company T are related companies within the same group of companies that have satisfied the conditions to be eligible for group relief. Company S is the surrendering company whereas Company T is the claimant company. In YA 2024, Company S elected to surrender 70% of its current year adjusted business losses of RM50,000 to Company T, which elected to claim the said loss.

Company T claimed reinvestment allowance of RM100,000 in the YA 2023 and the unabsorbed reinvestment allowance carried forward to the following YA is RM20,000.

In the YA 2024, Company T claimed group relief of RM50,000, i.e. adjusted business losses surrendered by Company S. Company T did not claim any reinvestment allowance in the YA 2024.

Although Company T had claimed reinvestment allowance in the YA 2023 but it did not claim reinvestment allowance in the basis period for the YA 2024. As such, Company T is entitled to claim group relief in the YA 2024.

Note:

If Company T had claimed reinvestment allowance in the YA 2024, Company T would not be eligible to claim group relief in the same year.

Example 23

The facts are the same as in Example 22 except that in the YA 2024, Company T is exempt from payment of income tax in the basis period for a YA in relation to gains or profits derived, in lieu of interest, from the sukuk wakala in accordance with the principle of *Wakala Bil Istithmar* [Income Tax (Exemption) (No.3) Order 2015 [P.U.(A) 61/2015] under paragraph 127(3)(b) of the ITA.

Company T also wanted to claim group relief i.e. the current year adjusted business losses surrendered by Company S in the YA 2024.

As Company T is exempt from tax on its gains or profits derived, in lieu of interest, from the sukuk wakala under paragraph 127(3)(b) of the ITA for the YA 2024, Company T is not eligible to claim group relief under section 44A of the ITA in the YA 2024.

14. Other Pertinent Matters

- 14.1 A surrendering and a claimant company are required to complete the appropriate columns on losses surrendered or claimed under the group relief provision in ITRF. For the surrendering company, the amount of loss surrendered in the basis period for the current YA and the balance of adjusted business losses carried forward for deduction in the subsequent YA has to be reported.
- 14.2 If a surrendering or a claimant company under the group relief provision has filed its ITRF before the due date for submission of the ITRF without making the election in the relevant columns, the company may write to the IRBM branch that is handling the company file for a review. Request for such review must be made before the due date for submission of the ITRF. The election is irrevocable.

- 14.3 A surrendering or a claimant company is not eligible to make an election to surrender or claim the adjusted business losses if the ITRF is furnished after the due date for submission of the ITRF.
- 14.4 A company which has made a review of its tax computation that results in an adjusted business losses subsequent to the submission of its ITRF under section 77A of the ITA, will not be eligible to surrender its losses.

15. Updates and Amendments

	Amendments	
	The contents of this PR have been updated and amended as follows -	
This PR replaces the PR No. 6/2016 dated 22 August 2016.	Paragraph	Explanation
	1	Paragraph 1 is updated.
	3	New paragraph 3.3, 3.4, 3.5, 3.7, 3.9, 3.12, 3.13 and 3.16 are inserted.
	4	Previous paragraphs 4.1 to 4.2 are amended and renumbered as paragraph 4.1 to paragraph 4.5. Previous paragraph 4.3 is deleted.
	5	New paragraph is inserted. New Examples 1 and 2 are inserted.
	6	Previous paragraph 5 is updated and renumbered as paragraph 6.
	7	Previous paragraph 6 is updated and renumbered as paragraph 7. Paragraph 7.2 is amended. Examples 1 to 6 in the previous PR are amended and renumbered as Examples 3 to 8. Examples 7 in the previous PR is deleted.

		Paragraph 7.3 is updated. Paragraph 7.4 is amended. Examples 8 to 12 in the previous PR are amended and renumbered as Examples 9 to 13.
	8	Previous paragraph 7 is updated and renumbered as paragraph 8. Examples 13 to 15 in the previous PR are amended and renumbered as Examples 14 to 16.
	9	Previous paragraph 8 is updated and renumbered as paragraph 9. Examples 16 to 17 in the previous PR are amended and renumbered as Examples 17 to 18.
	10	Previous paragraph 9 is updated and renumbered as paragraph 10. An Example 18 in the previous PR is amended and renumbered as Example 19.
	11	Previous paragraph 10 is updated and renumbered as paragraph 11.
	12	Previous paragraph 11 is updated and renumbered as paragraph 12. An Example 19 in the previous PR is amended and renumbered as Example 20.
	13	Previous paragraph 12 is updated and renumbered as paragraph 13. New Example 21 is inserted.

		Examples 20 and 21 in the previous PR are amended and renumbered as Example 22 to 23.
	Appendix 1	Previous Appendix 1 is updated.

16. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

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

Appendix 1

Steps to be Taken in Determining Whether a Surrendering and a Claimant Company are Related and Eligible for Group Relief

