



Structuring Investments into Malaysia – Tax Issues

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December 2011

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Agenda

- ❖ Overview of Malaysia
- ❖ Corporate Tax
- ❖ Tax Incentives
- ❖ Other Taxes
- ❖ Example: Malaysia as a Holding Company
- ❖ Labuan
- ❖ Example: Structuring leasing activities through Labuan
- ❖ Recent Tax Developments – The 2012 Malaysian Budget



Overview of Malaysia

- ❖ Total area: 330,000 square kilometres
- ❖ Political structure : 13 states (12 in Peninsular Malaysia and 2 in Malaysian Borneo) and 3 Federal Territories
- ❖ Population: ~28 million
- ❖ Major ethnic group: Malay, Chinese, Indian
- ❖ Major languages: Malay, English, Mandarin, Tamil
- ❖ Climate: Tropical – warm and sunny throughout the year



Overview of Malaysia

❖ Key economic indicators:

	2010	2011 *
GDP	US\$159.1 bn	US\$192.0 bn
GDP growth	7.2%	5-6%
Per capital income	US\$8,140	US\$9,204
Inflation rate (CPI)	1.7%	2.5%-3.5%
Labour force	12.2 million	12.5 million
Foreign direct investments (FDIs)	US\$7 bn	>US\$10 bn

* Forecast

Source: Malaysian Industrial Development Authority



- ❖ **Business friendly**
- ❖ **Tax regime relatively simple**
- ❖ **Self-assessment income tax system**
- ❖ **Local equity rules for specific strategic sectors**
- ❖ **On-going liberalisation of various sectors in line with WTO requirements and AFTA**
- ❖ **Stable political environment**
- ❖ **Economic Transformation Programme launched in 2010 – developed nation status by 2020**
- ❖ **Active approach to granting special tax incentives**
- ❖ **Pre-packaged incentive scheme**



Corporate Tax

- ❖ **Territorial scope of charge – only income accruing in or derived from Malaysia is subject to tax except for banks, insurance & shipping activities**
- ❖ **Exemption on foreign-sourced income**
- ❖ **Corporate tax rate of 25% ; Personal tax rates 0%-26%**
- ❖ **Business losses – can be carried forward indefinitely**
- ❖ **Withholding tax:**
 - ❖ Dividend – NIL
 - ❖ Interest – 15%
 - ❖ Royalty – 10%
 - ❖ Technical/other fees – 10%
- ❖ **Treaty network – 70 effective DTAs**
- ❖ **No CFC rules and no rules on beneficial ownership**



- ❖ **General anti-avoidance provision in Section 140 Income Tax Act**
- ❖ **Transfer pricing**
 - ❖ Specific legislation since 2009
 - ❖ Transactions with associated persons must be at arm's length
 - ❖ Onus of proof lies with the taxpayer
 - ❖ Guidelines - based on OECD Transfer Pricing concepts
 - ❖ Advance Pricing Arrangements
- ❖ **Thin capitalisation rules**
 - ❖ Specific legislation since 2009
 - ❖ No specific debt-equity ratio requirements at present
 - ❖ Application deferred to 1 January 2013



- ❖ **Tax incentives available:**
 - ❖ **Pioneer Status** – partial or full tax exemption on income
 - ❖ **Investment Tax Allowance** – additional allowance on qualifying capital expenditure to be set off against income
 - ❖ **Double Deduction** – 200% deduction on qualifying expenses
- ❖ **Available for investments in various industries including:**
 - ❖ Manufacturing of promoted products
 - ❖ Research and development activities
 - ❖ Hotel and tourism
 - ❖ High technology and multimedia activities
 - ❖ Operational Headquarters
 - ❖ International Procurement Centres
 - ❖ Regional Distribution Centres



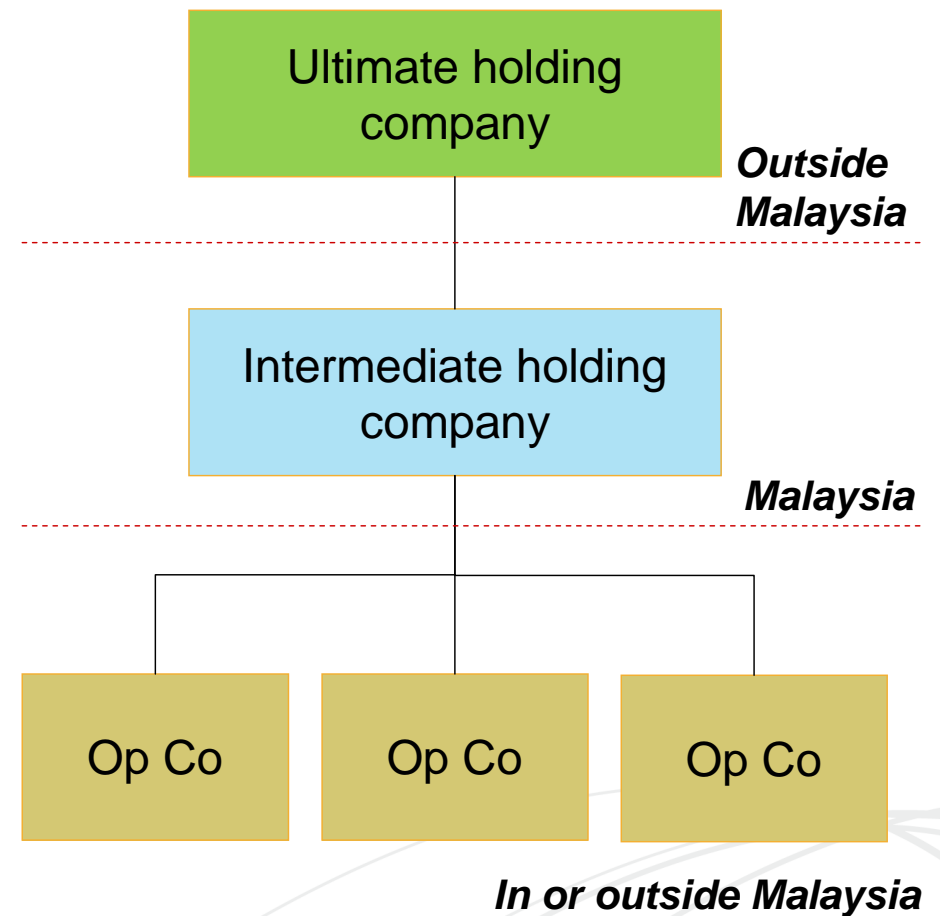
- ❖ **No capital gains tax**
- ❖ **Real property gains tax : 0% - 10% depending on holding period**
- ❖ **Indirect tax**
 - ❖ Service tax – 6% on prescribed services
 - ❖ Sales tax – 0% - 10% on taxable goods manufactured locally and/or imported
 - ❖ Import duties – 0% - 60% on various imported goods
 - ❖ Excise duties – generally imposed on liquor, cigarettes and motor vehicles
- ❖ **Goods and services tax (GST)**
 - ❖ Expected to replace the current sales tax and service tax regime
 - ❖ Proposed rate of 4%
 - ❖ Implementation has been delayed – effective date yet to be announced



Example: Malaysia as a Holding Company Location

❖ Tax advantages

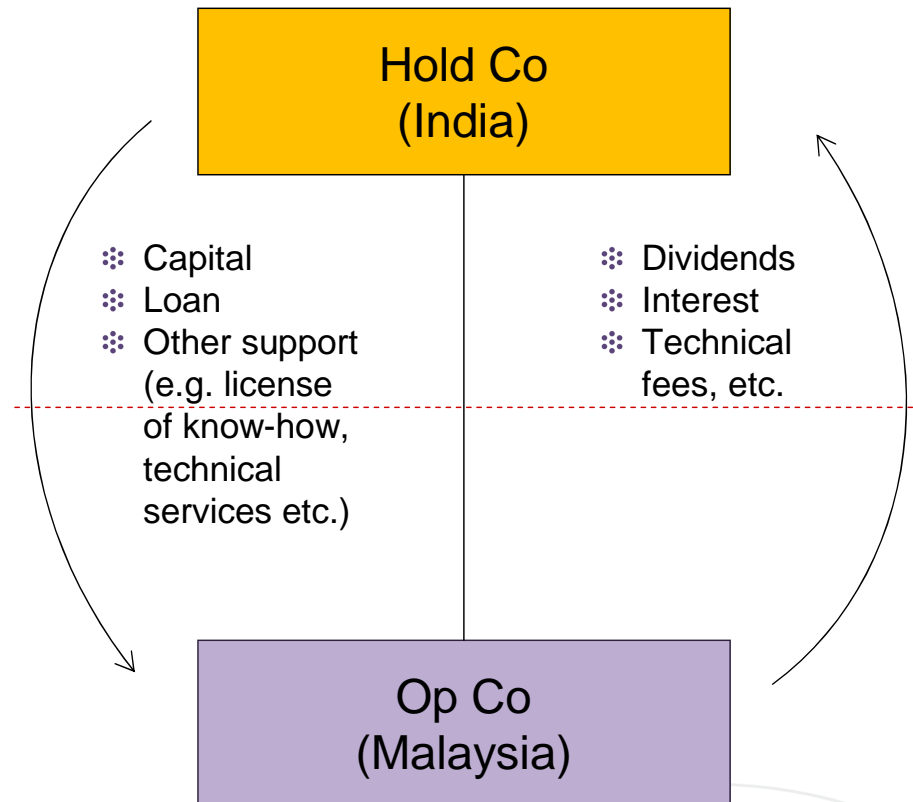
- ❖ Dividends distributed by Op Cos (foreign sourced income) – tax exempt
- ❖ Dividends distributed by Malaysia Hold Co to ultimate Hold Co – no dividend withholding tax
- ❖ Wide treaty network – possible reduced withholding tax rates for other payments
- ❖ No capital gains tax on the disposal of Op Cos
- ❖ Real property gains tax only applies to the disposal of shares in Op Cos if they own significant real properties situated in Malaysia



Example: Investment into Malaysia from India

❖ Tax implications

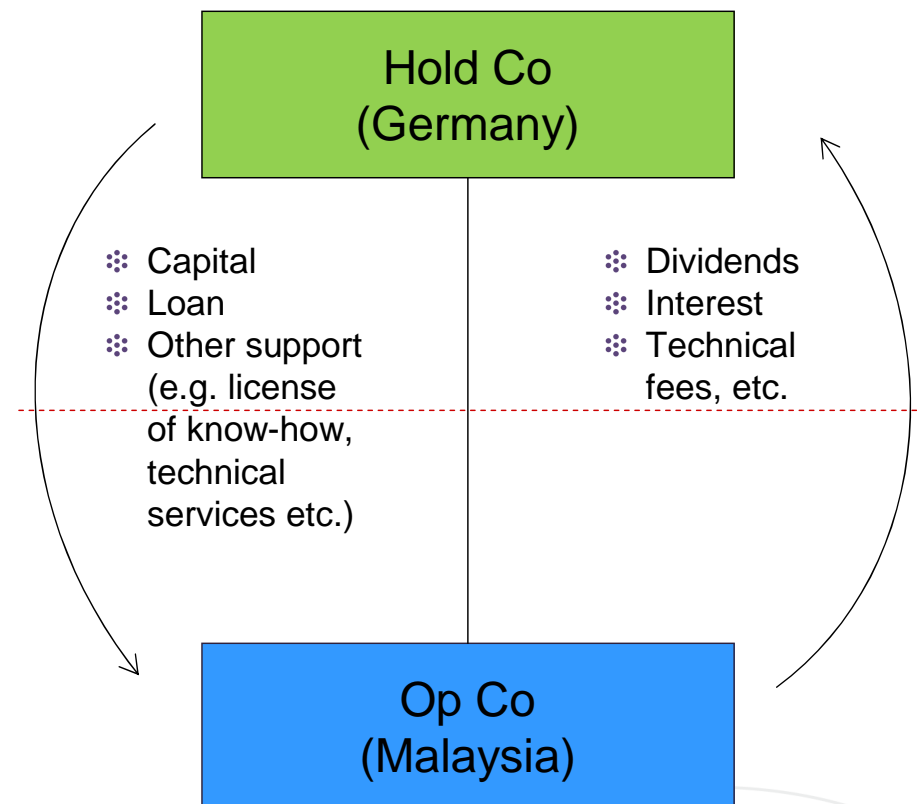
- ❖ Withholding tax
 - ❖ Dividends – NIL
 - ❖ Interest – 15%, reduced to 10% based on DTA
 - ❖ Royalties – 10%
 - ❖ Technical fees – 10%
- ❖ No further tax for Hold Co on income derived from Malaysia, unless it has a PE in Malaysia
- ❖ No capital gains tax on the disposal of Op Co shares
- ❖ Real property gains tax only applies to the disposal of shares in Op Co if it owns significant real properties situated in Malaysia



Example: Investment into Malaysia from Germany

❖ Tax implications

- ❖ Withholding tax
 - ❖ Dividends – NIL
 - ❖ Interest – 15%, reduced to 10% based on DTA
 - ❖ Royalties – 10%, reduced to 7% based on DTA
 - ❖ Technical fees – 10%, reduced to 7% based on DTA
- ❖ No further tax for Hold Co on income derived from Malaysia, unless it has a PE in Malaysia
- ❖ No capital gains tax on the disposal of Op Co shares
- ❖ Real property gains tax only applies to the disposal of shares in Op Co if it owns significant real properties situated in Malaysia



- ❖ **Federal Territory in East Malaysia**
- ❖ **Preferential tax regime**
- ❖ **Non-trading activity / Holding of investments – Not chargeable to tax**
- ❖ **Trading activity – 3% of net audited profits or RM20,000 (~ US\$6,400) annually**
- ❖ **General conditions** - Business must be carried on in Labuan in a currency other than Malaysian currency with non-residents or another Labuan company (exceptions apply)
- ❖ **Common establishments in Labuan:**
 - ❖ Banking and insurance
 - ❖ Fund management
 - ❖ Trusts
 - ❖ Leasing



❖ Other tax benefits:

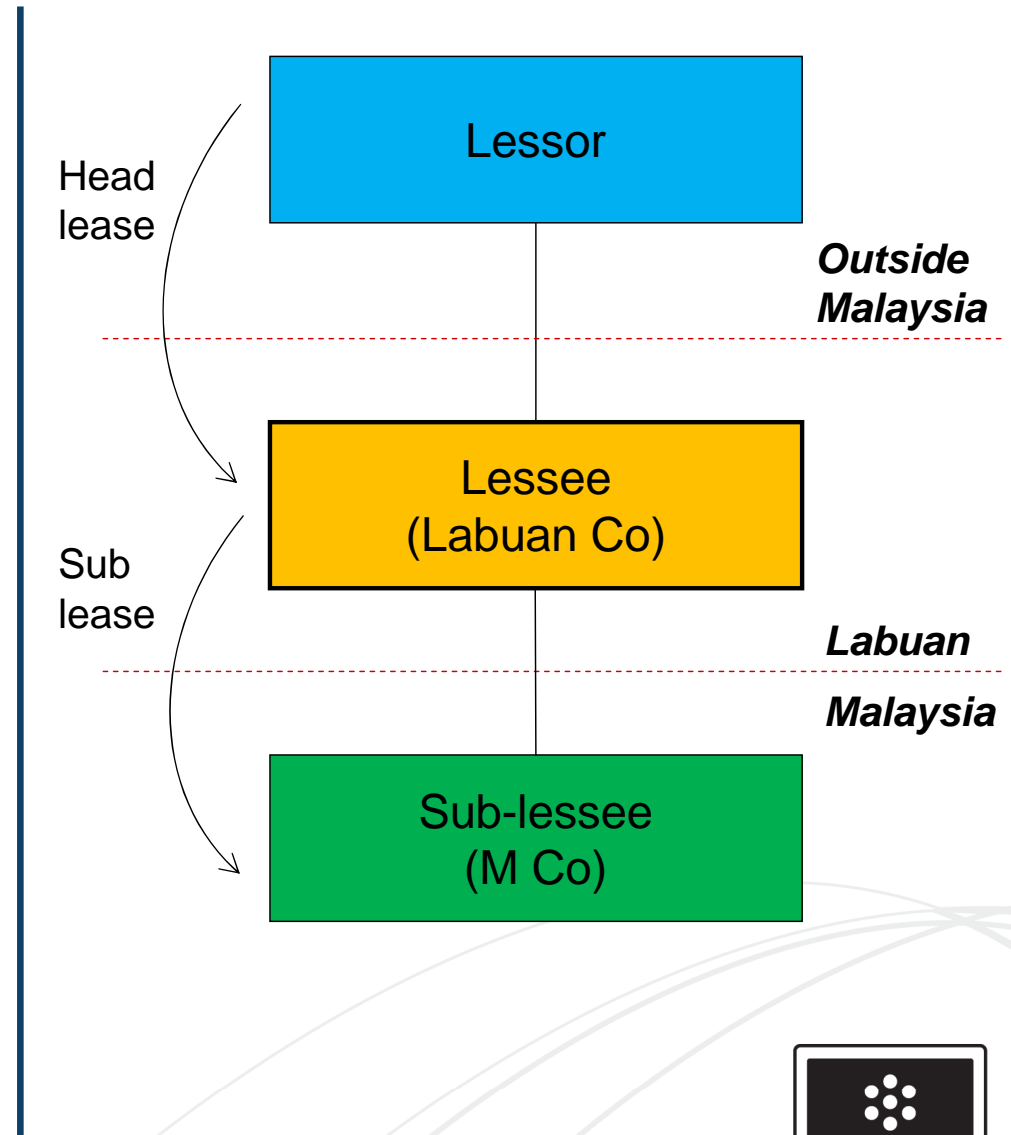
- ❖ Dividends received by Labuan companies are not taxable
- ❖ The following income received from Labuan companies are not taxable:
 - ❖ Dividends paid out of income derived from Labuan business activity or income exempt from tax
 - ❖ Distributions from Labuan trusts
 - ❖ Royalties
 - ❖ Interest
 - ❖ Rental for moveable property and payments for technical services



Example: Structuring leasing activities through Labuan

❖ Tax advantages

- ❖ Leasing business – may be carried out with Malaysian residents
- ❖ Labuan Co – 3% of net audited profits or RM20,000
- ❖ Lease payments from M Co to Labuan Co – no withholding tax
- ❖ Lease payments from Labuan Co to Lessor – no withholding tax
- ❖ Lessor – leasing income not chargeable to Malaysian tax



Key tax proposals during the recent 2012 Budget Announcement

- ❖ **Tax incentives for Treasury Management Centres (TMC):**
 - ❖ Income tax exemption of 70% for 5 years
 - ❖ Withholding tax exemption on interest for funds raised
 - ❖ Stamp duty exemption on all loan and service agreements
 - ❖ Expatriates working in TMCs only taxed on portion of income attributable to number of days they are in Malaysia



Key tax proposals during the recent 2012 Budget Announcement

- ❖ **Tax incentives for Kuala Lumpur International Financial District (KLIFD):**
 - ❖ **KLIFD Status Companies** – Income tax exemption of 100% for 10 years and stamp duty exemption for loans and service agreements
 - ❖ **KLIFD Marquee Status Companies** – Industrial building allowances and capital allowances
 - ❖ **Property developers in KLIFD** – Income tax exemption of 70% for 5 years



Key tax proposals during the recent 2012 Budget Announcement

- ❖ Tax incentives also proposed for profit-oriented private and international schools industrial design services and 4-5 star hotels in Peninsular Malaysia
- ❖ Compensation of 2% per annum from the Inland Revenue Board on the amount of tax refunded late
- ❖ Time bar for tax audits is reduced from 6 to 5 years after the end of a particular year



Thank You

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