ASL
CELEBRATING
50
YEARS

TAXED TWICE? HERE'S HOW TO CLAIM IT BACK: MALAYSIA'S UPDATED DOUBLE TAXATION CREDIT RULES – KEY UPDATES UNDER PUBLIC RULING NO. 3/2026

MONTH :
June 2026

BY :

Sudharsanan Thillainathan &
Tania Kat-Lin Edward

TAXED TWICE? HERE'S HOW TO CLAIM IT BACK: MALAYSIA'S UPDATED DOUBLE TAXATION CREDIT RULES - KEY UPDATES UNDER PUBLIC RULING NO. 3/2026

This article discusses the Inland Revenue Board of Malaysia ("**the Revenue**")'s newly published Public Ruling No. 3/2026 (published on 22 May 2026) ("**the Public Ruling**"), updating its guidance on the availability and computation of bilateral and unilateral credit as relief from double taxation. The Public Ruling supersedes the Revenue's earlier Public Ruling No. 11/2021.

The Public Ruling sets out the circumstances under which a Malaysian tax resident who has been taxed on the same income in both Malaysia and a foreign jurisdiction may claim a credit for the foreign tax paid against his Malaysian tax liability.

Background

Double taxation arises when two countries impose tax on the same income in the hands of the same taxpayer. The classic scenario is a Malaysian tax resident deriving income from a foreign source: the foreign country taxes the income as it arises within its borders, and Malaysia taxes it again as income of the Malaysian resident in accordance with Malaysian tax laws. Following the extension of Malaysia's income tax net to foreign source income ("**FSI**") in 2022, and the introduction of a capital gains tax regime ("**CGT**") in 2024, the population of taxpayers potentially exposed to double taxation has grown significantly, and the Revenue's updated guidance in the Public Ruling is of direct and immediate practical relevance.

The Relief Mechanisms

Malaysian law provides for two routes to double taxation relief, governed respectively by Sections 132 and 133 of the Income Tax Act 1967 ("**ITA**"). For taxpayers, the choice between the two hinges on a single critical question: does Malaysia have an Agreement for the Avoidance of Double Taxation ("**DTA**") in force with the other country?

Where a DTA exists, the taxpayer may claim a bilateral credit under Section 132 of the ITA; where no DTA is in force, a unilateral credit may be claimed under Section 133 of the ITA. Both credits operate by allowing the foreign tax incurred to be set-off against Malaysian tax charged on the same income, but the

quantum of relief available to taxpayers differs materially between the two. The quantum of bilateral credit available to taxpayers is capped at the **lower** of foreign tax charged and the proportionate Malaysian tax on the foreign income whilst unilateral credit is capped at the **lower of half** of foreign tax charged and the proportionate Malaysian tax on the foreign income.

Bilateral Credit

As of 2026, Malaysia has DTAs with over 75 countries. The network spans Malaysia's principal trading partners, including Singapore, China, Japan, India, the United Kingdom, the Gulf Cooperation Council states, and the majority of the EU and ASEAN. The full list is set out in the Revenue's website, linked herein.

In any of the countries wherein a DTA is in force, Malaysian tax residents may claim relief from double taxation equal to the lower of the foreign tax charged on the foreign income and the amount of Malaysian tax proportionately attributable to the same income. There are two (2) steps for a taxpayer to compute the proportionate Malaysian tax attributable to the foreign income (as shown via the following prescribed formulae) before comparing it with the foreign tax suffered in order to ascertain his entitlement to the bilateral credit:

Step 1: to compute the proportion of statutory income in respect of foreign income

$$\frac{\text{Foreign income (gross)}}{\text{Foreign income (gross) and Malaysian income (gross) in respect of the same source}} \times \text{Statutory income (same source)}$$

Step 2: to compute the quantum of credit entitlement

$$\frac{\text{Foreign income (statutory income)}}{\text{Total income}} \times \text{Malaysian tax payable before bilateral credit}$$

A worked example is provided for in the Public Ruling, as follows:

A Malaysian resident company provided consultancy services to a client in India, a fellow DTA country. The company earned a business income of RM500,000 from its Malaysian

operations and RM75,000 from the Indian client, the latter subjected to a 10% withholding tax of RM7,500 in India. After deducting allowable expenses, the company's statutory business income was RM495,000 and statutory rental income was RM25,000, giving a total income of RM520,000 on which Malaysian income tax of RM124,800 was charged.

Step 1: to compute the proportion of statutory income in respect of foreign income

$$\frac{75{,}000}{575{,}000} \times 495{,}000 = \mathbf{64{,}565}$$

Step 2: to compute the bilateral credit entitlement

$$\frac{64{,}565}{520{,}000} \times 124{,}800 = \mathbf{15{,}496}$$

Applying the two-step formula above, the proportionate Malaysian tax attributable to the foreign income amounts to RM15,496; the foreign tax charged amounts to RM7,500. ***As the foreign tax is the lower of the two, the company's bilateral credit is capped at RM7,500.***

It should be noted that both credit regimes presuppose a Malaysian tax liability. Where no Malaysian income tax is payable in a given year of assessment, no bilateral or unilateral credit can be claimed regardless of the foreign tax suffered.

Additionally, since the year of assessment ("**YA**") 2007, the definition of "foreign income" for bilateral credit purposes has been expanded to include income derived from Malaysia that has been subjected to foreign tax. A Malaysian company providing services to a foreign client may therefore face withholding tax in the client's jurisdiction on income that is legally Malaysian-sourced. Provided a DTA is in force and subject to the formulae above, bilateral credit is available to taxpayers to relieve that double charge. Malaysian service providers with cross-border contracts should consider whether withheld amounts may qualify them for credit relief.

Unilateral Credit

Where no DTA is in force with the foreign country, taxpayers are not entirely barred from relief. Section 133 of the ITA provides for relief under the unilateral credit

regime. The unilateral credit regime operates within the same procedural framework as its bilateral credit counterpart, with one (1) key structural difference: unilateral credit, as opposed to bilateral credit, is capped at the lower of the proportionate Malaysian tax on the foreign income and **half** of the foreign tax suffered. In the Public Ruling, the Revenue has, by way of an example, demonstrated the function of the unilateral credit regime in practice:

A taxpayer was seconded to a non-DTA country. The taxpayer earned RM100,000 from his Malaysian employer, and RM40,000 from his foreign host company, subsequently paying RM35,000 in foreign tax each year. The proportionate Malaysian tax attributable to the foreign income of RM40,000 amounts to RM5,293; half of the foreign tax paid amounts to RM17,500. ***As the proportionate Malaysian tax is the lower of the two, the taxpayer's unilateral credit is limited to RM5,293.***

Capital Gains: A New Dimension

With effect from 1 January 2024, profits or gains from the disposal of capital assets situated outside Malaysia, and subsequently received in Malaysia, are now subject to Malaysian tax. The Public Ruling expressly confirms that where such gains have also been subjected to foreign tax, Malaysian resident taxpayers are entitled to relief under either the bilateral or unilateral credit regime. This is a welcome clarification for Malaysian investors and companies holding foreign investments in jurisdictions that impose capital gains tax or equivalent taxes on disposals.

Legal Risks: What Practitioners and Taxpayers Need to Watch

1. Strict Two-Year Claim Deadline

   A claim for bilateral or unilateral credit must be made in writing to the Director General of Inland Revenue within two (2) years after the end of the relevant YA. This deadline runs from the end of the Malaysian year of assessment, not from the date the foreign tax assessment is finalised or determined. A claim submitted even one day late is statutorily barred. In cross-border contexts, where foreign tax assessments are frequently issued well after the Malaysian filing date, taxpayers must monitor foreign proceedings proactively.

2. Excess Unused Credits Are Permanently Lost

   Unutilised bilateral or unilateral credits for a year of assessment

cannot be carried forward to subsequent years. Where the foreign tax rate on the relevant income exceeds the proportionate Malaysian tax attributable to it, the excess is irrecoverable. This is in contrast to business losses and capital allowances, which may generally be carried forward (whether within a prescribed timeframe or indefinitely).

3. 50% Unilateral Cap: A Permanent Cost

The unilateral credit's 50% cap on foreign tax recovery means that businesses operating in non-DTA markets bear a structural tax disadvantage relative to those operating in DTA markets. In markets where the foreign withholding or income tax rate is high, the absence of a DTA means foreign tax incurred above the 50% cap becomes a permanent and unrecoverable cost.

4. Revenue's Unlimited Power to Amend

The normal five-year limitation period for raising additional assessments under the ITA does not apply where a bilateral credit is adjusted as a result of a change to the Malaysian tax or foreign tax position. The Revenue may raise an amended assessment at any time to correct an excessive or insufficient credit. Once an amended assessment has been raised, the taxpayer has two (2) years from that date to apply for relief or to appeal. In practice, this means that a bilateral credit position may remain open to the Revenue's challenge indefinitely, and taxpayers **should retain foreign tax documentation well beyond the standard seven-year period**.

5. Strict Documentation Requirements

A double taxation relief claim **must** be substantiated by either (a) a notice of assessment from the foreign tax authority or a receipt for the tax paid, or (b) a statement from the foreign tax authority setting out the particulars that would ordinarily appear on a notice of assessment or receipt. Informal payroll deduction records or correspondence with a foreign employer are not adequate and should not be assumed to be sufficient, and claims that cannot be substantiated to the Revenue's satisfaction risks being rejected or reduced.

This article was written by our Tax and Customs Team, Sudharsanan Thillainathan and Tania Kat-Lin Edward, with the assistance of Daniel Lim (Pupil). It contains general information only. It does not constitute legal advice or an expression of legal opinion and should not be relied upon as such.