

FOREIGN SOURCED INCOME 2022

- (a) Scope of charge
 - (i) Territorial scope
 - (ii) Extension of territorial scope
 - (iii) World income scope
- (b) Exclusion of income tax



Book 1



DR CHOONG KWAI FATT

Advocate and Solicitor (High Court of Malaya), Tax Consultant

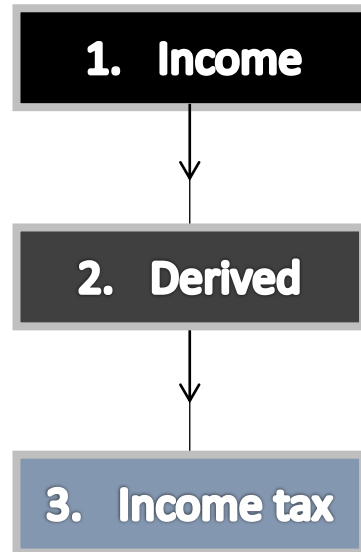
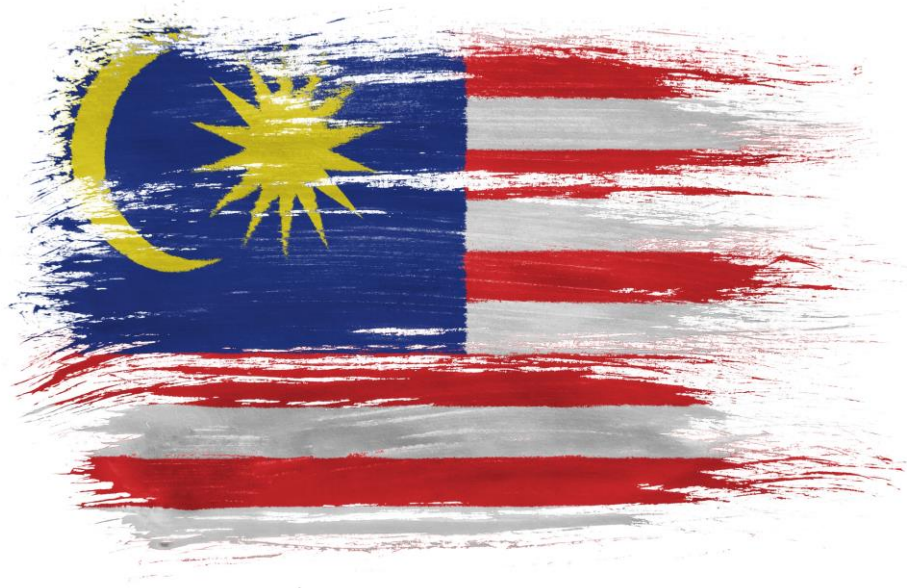
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20 January 2022

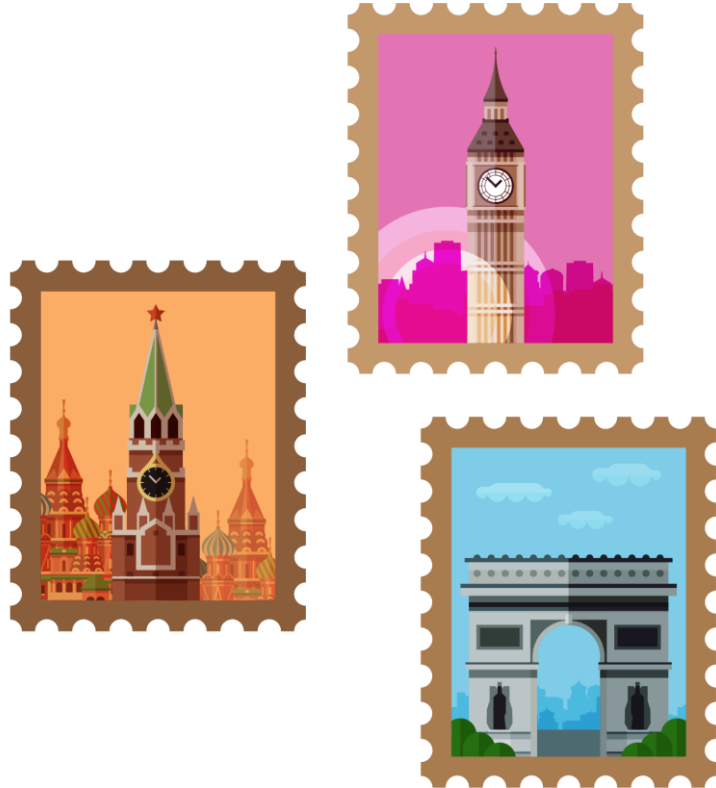
drchoong.seminar@gmail.com

Scope of charge (s 3)

- A. Territorial scope of taxation
 - Malaysian derived income



B. Extension of territorial scope
- Foreign source income



1. Foreign source income



2. Received in Malaysia

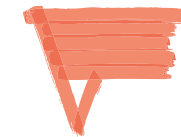


3. Income tax @ 3%

(Part XX, Sch 1)

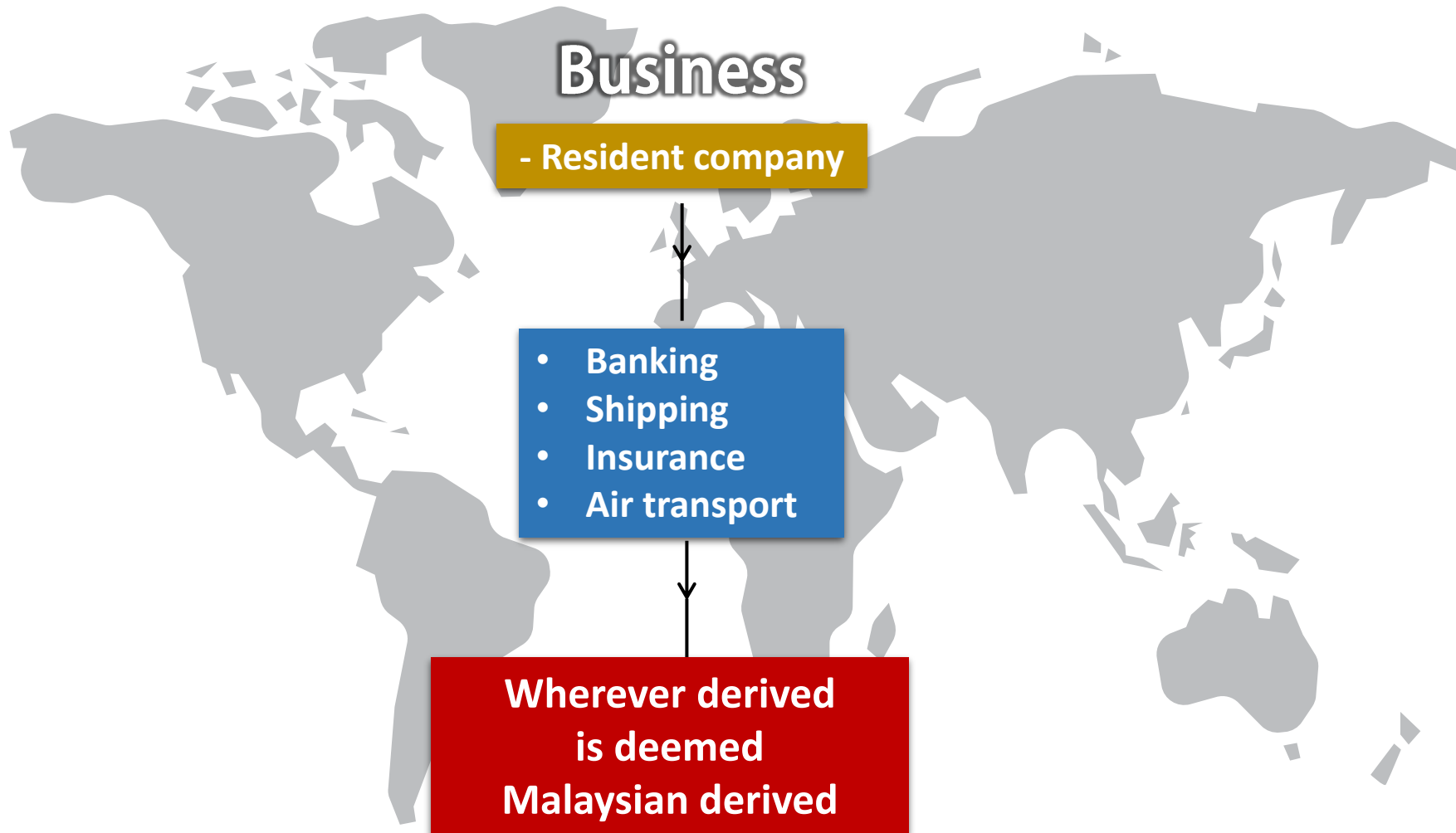


4. 1.1.2022–30.6.2022

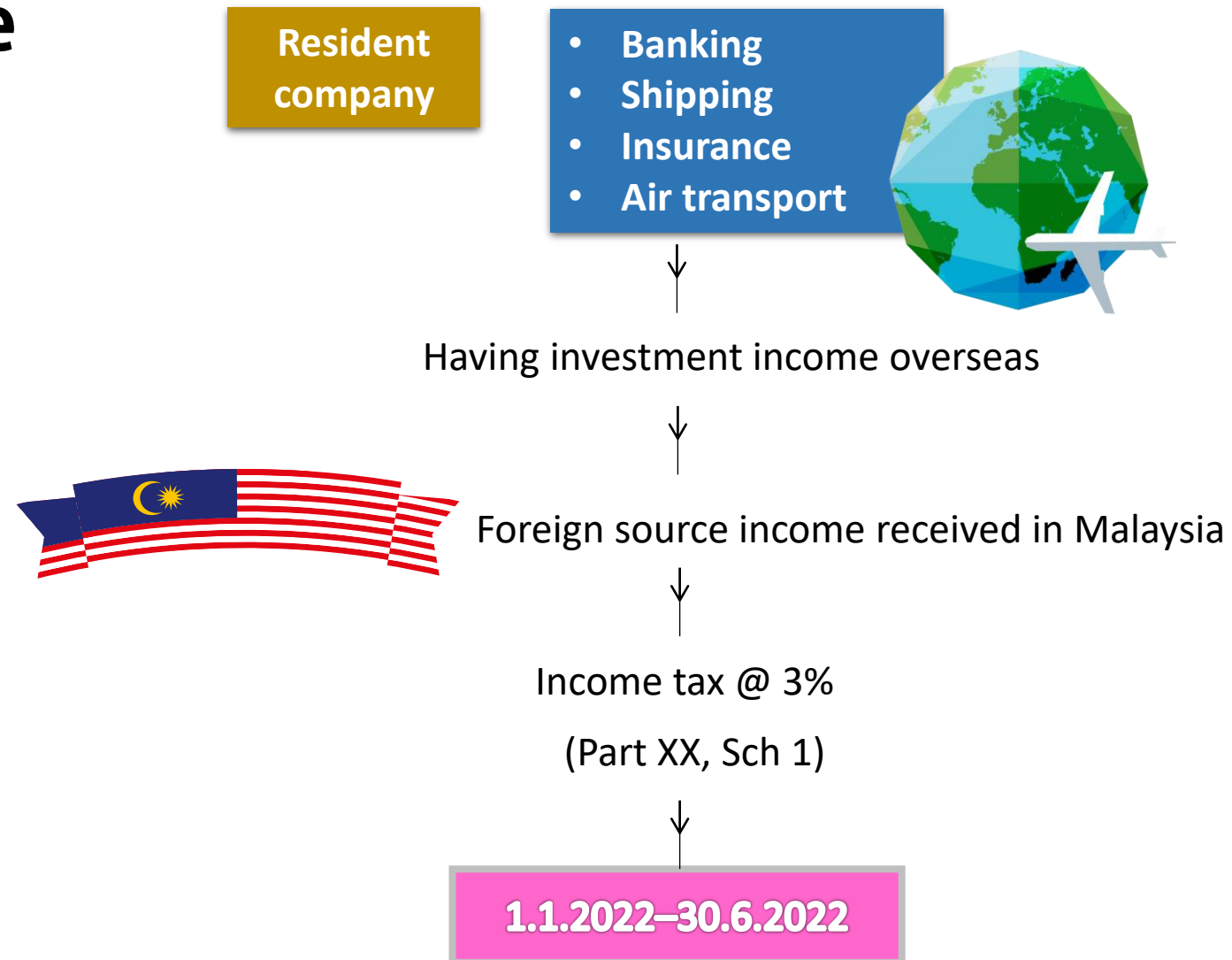


Unless it is exempted

World income scope



Exception to world income scope





Para 28, Sch 6

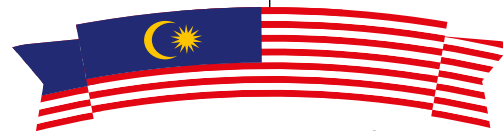
The income arising from sources outside Malaysia and received in Malaysia by any person who is not resident in Malaysia.

w.e.f 1.1.2022

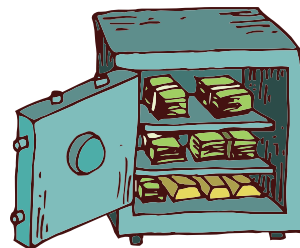
Pre-requisites for exemption



2. Sources outside Malaysia



3. Received in Malaysia

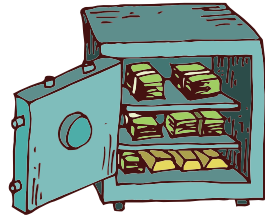


4. Non resident

- At the time of receipt

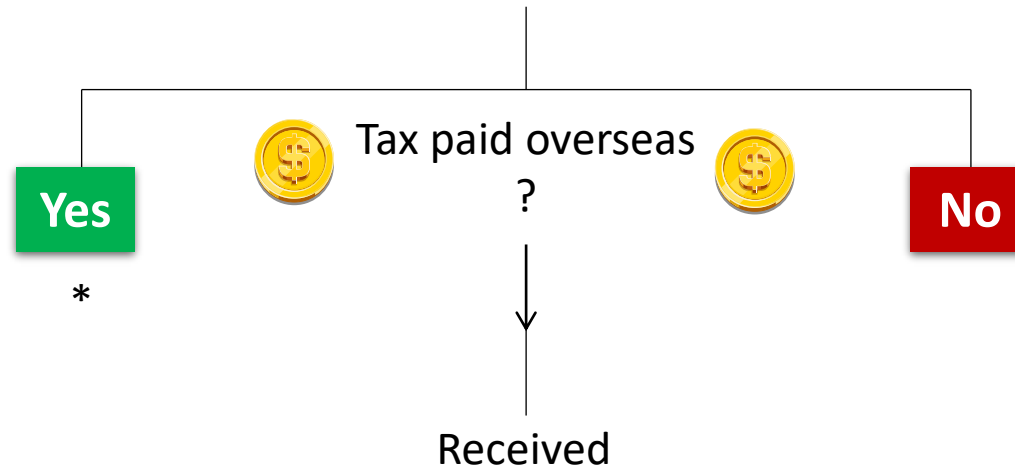
Foreign source income

- Overseas



- Business
- Employment
- Rental
- Interest

- Dividend income



Malaysia

Taxed

xx

Less: Overseas tax paid*

(x)

Net

x

Exclusion of tax

Circumstances 1

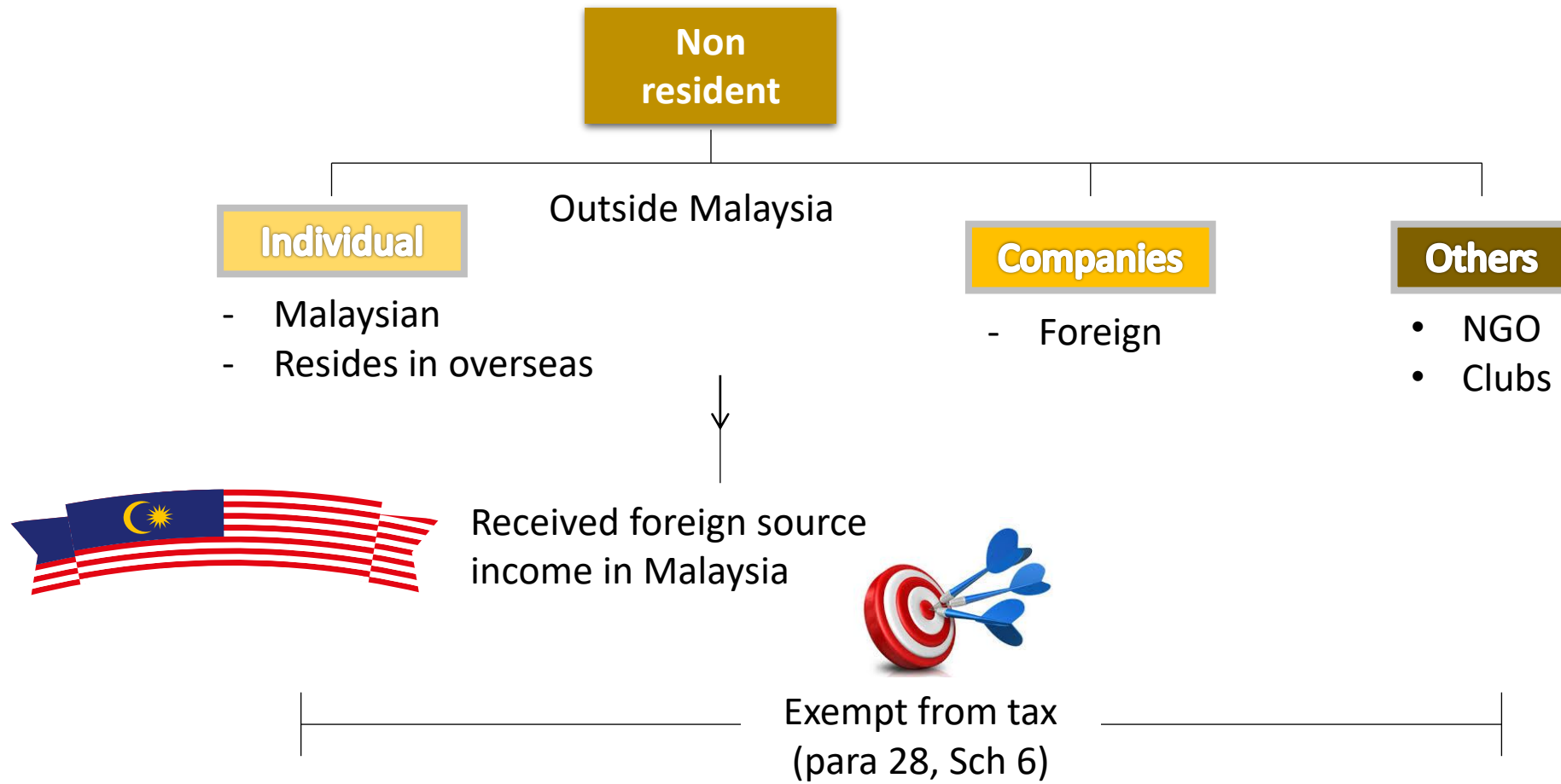
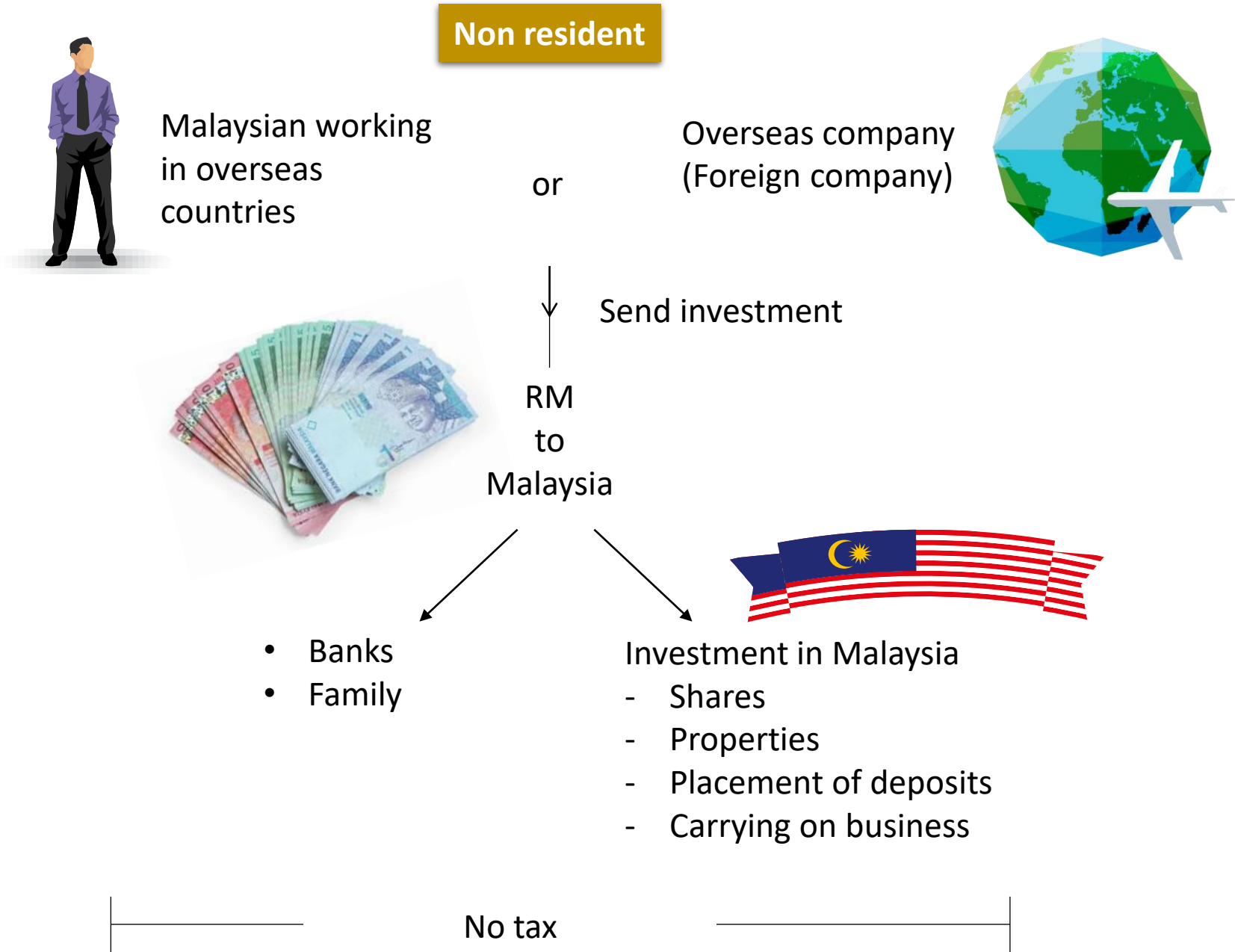
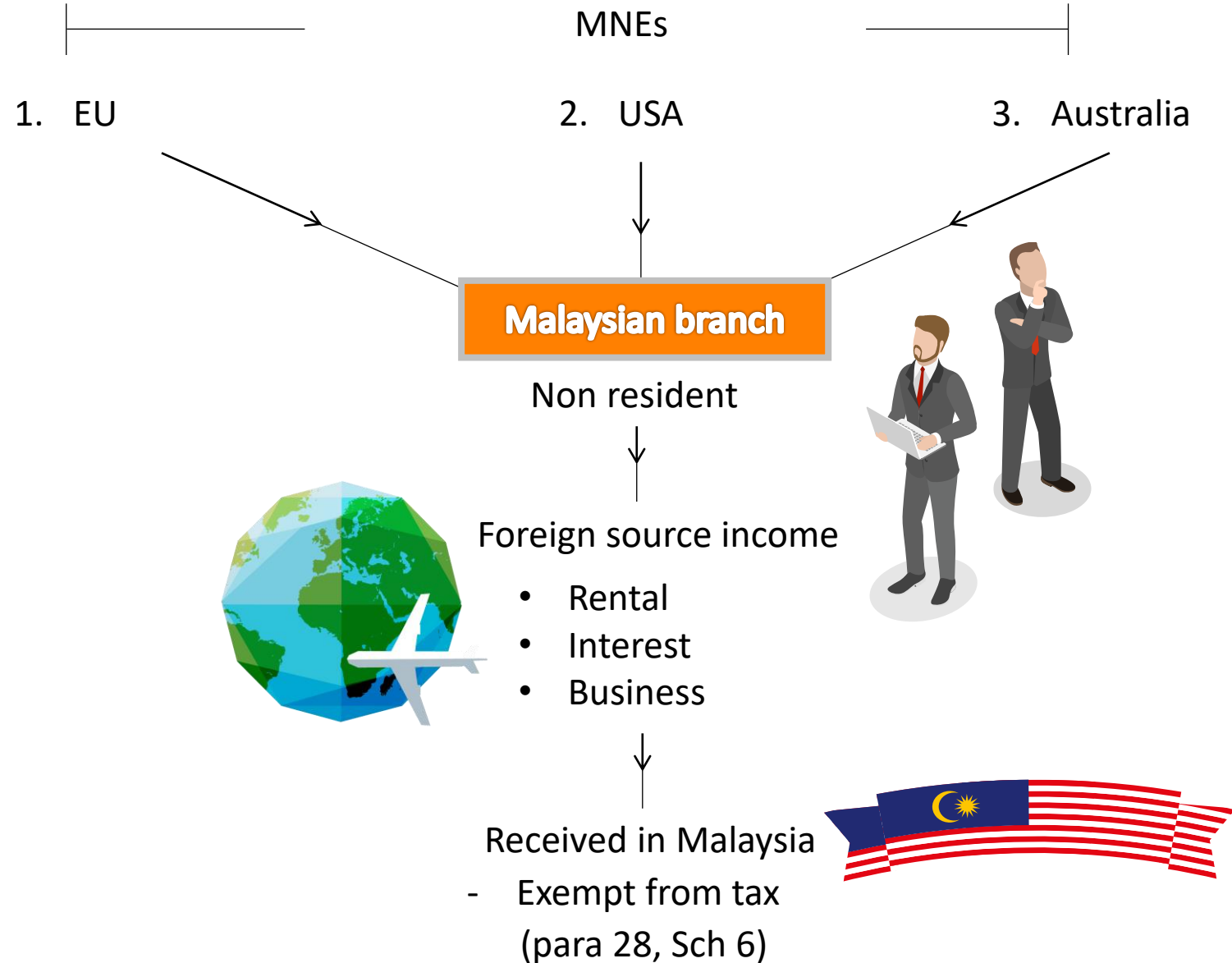


Illustration 1



Non resident Malaysian branch



Branch – implications



Branch



1. Malaysian company
- Resident in Malaysia

Malaysia

Resident

Overseas

Resident

2. Overseas company



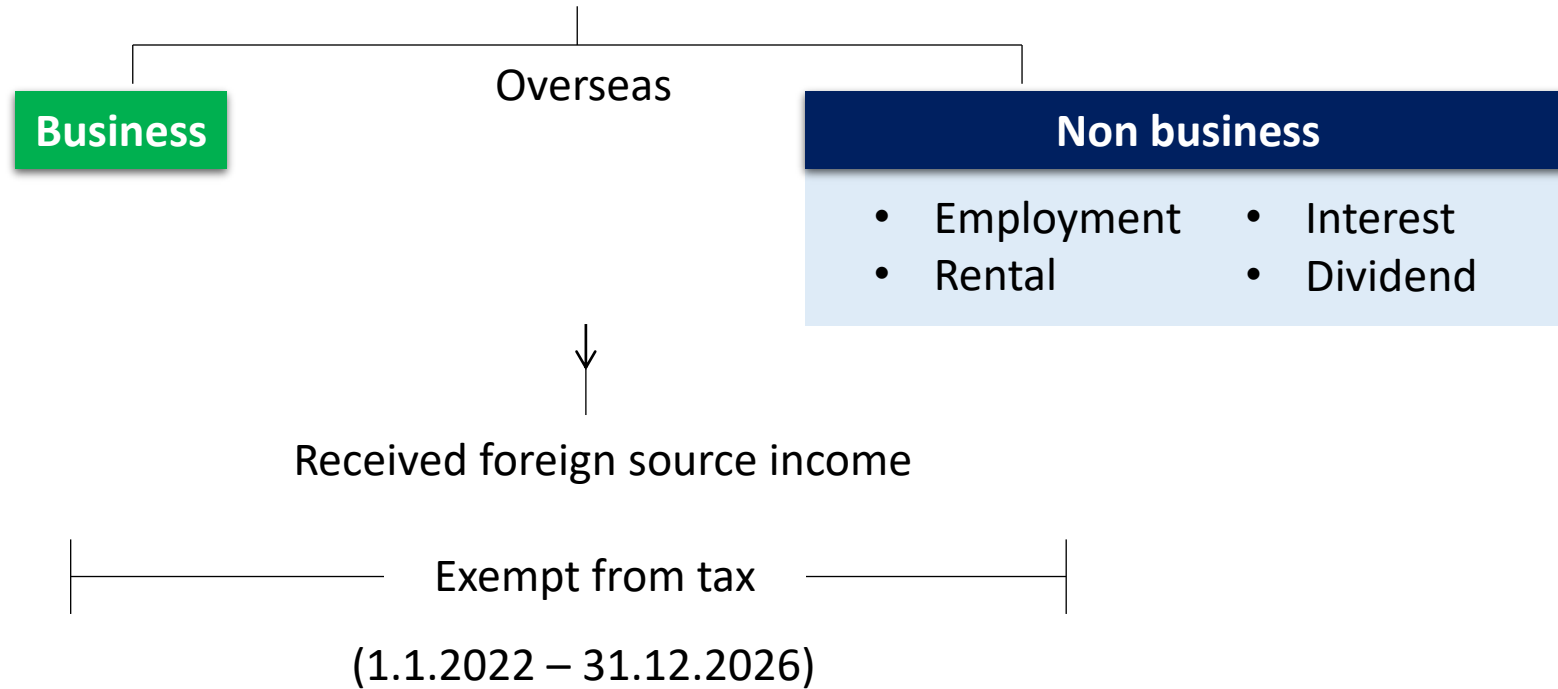
Non resident

N/A

Circumstances 2



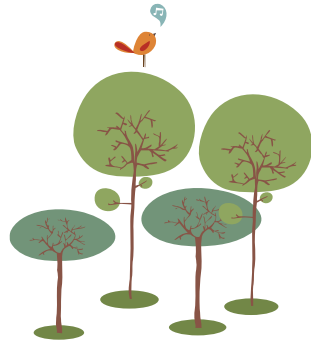
Resident individual



(MOF Media Release dated 30.12.2021)

Illustration 2

Foreign source income
- Scope



2. Rental income from Hong Kong



3. Dividend income from UK



1. Salary from Singapore employment



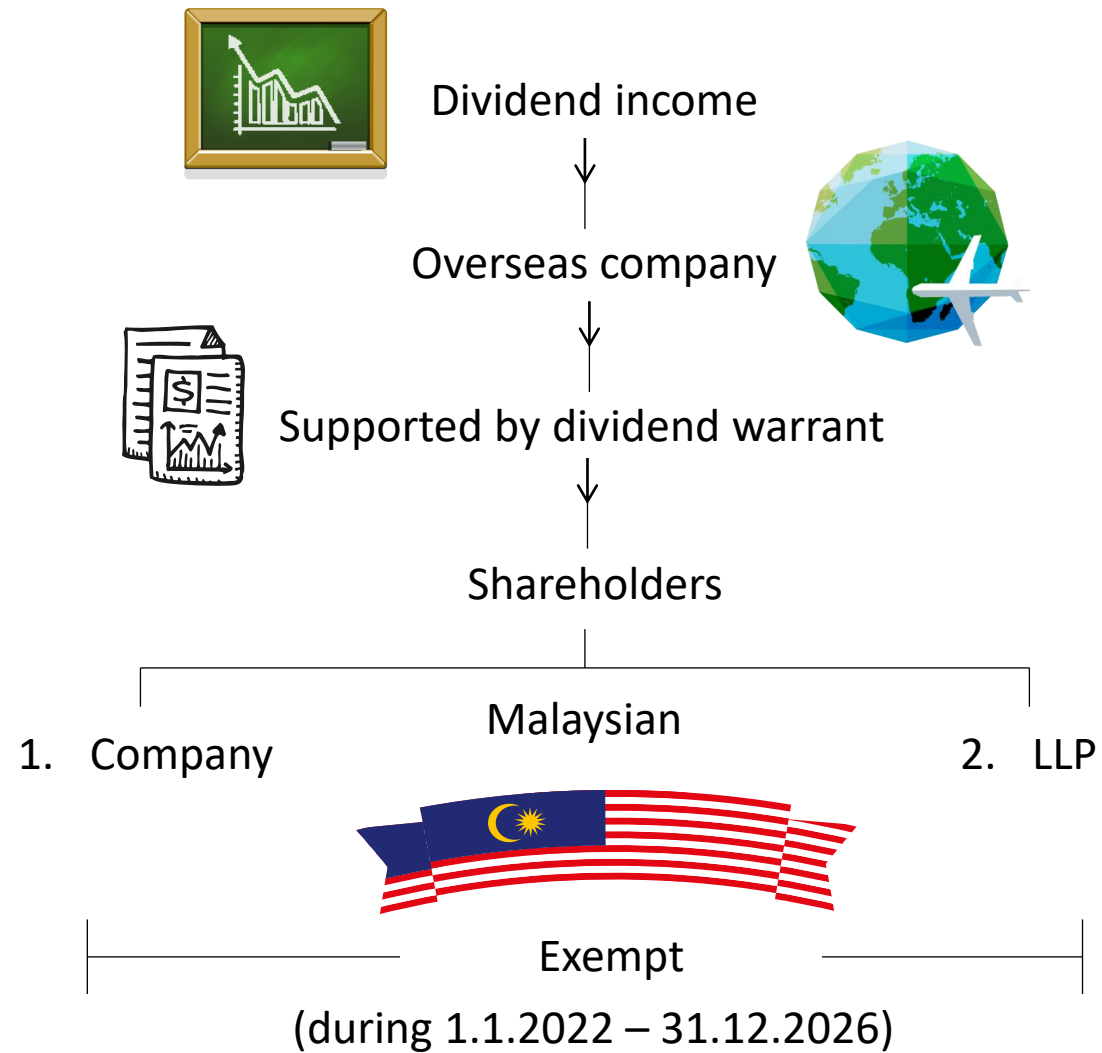
Resident

received in Malaysia

Exempt

Foreign source income

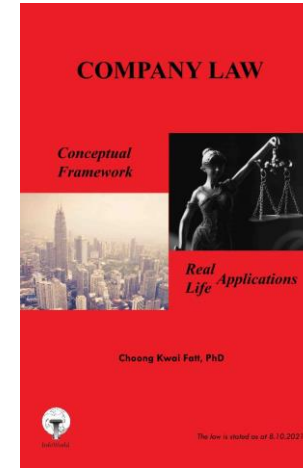
Circumstances 3



(MOF Media Release dated 30.12.2021)

Company LLP

- FSI is tax
- Received



Contact

012 - 2946 470

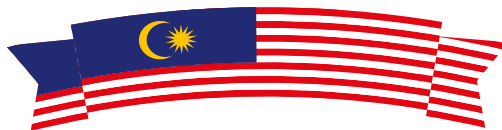


Overseas income



Company

- Received in Malaysia



- i. Business
- ii. Other
- iii. Rental
- iv. Interest
- v. Dividend

Tax

3%

Types of company



Company

Limited by

Shares



Guarantee
(CLBG)

Company

**Private
Sdn Bhd**

**Public
Bhd**

- Dividend to members is prohibited [s 38(4) read with s 45(2)]
- Must be public company [s 11(2)]
- No share capital [s 12]
- Charitable purpose with no commercial object [s 45(1)]

Exempt private

Others

Listed

Non listed



Dividend to shareholders

- Yes
- Interim
- Final



Partnership

Partnership

- Partnership Act 1961
- Carrying on business with a view of profit
- Registered with SSM

Malaysian derived income



Tax

Foreign source income
received in Malaysia



Tax @ 3%

- Company
- LLP
- Partnership



Significant importance



1. Malaysian derived income



2. Foreign source income



3. Company/LLP
- Dividend income

4. Meaning/scope of 'received'

FOREIGN SOURCED INCOME 2022

- (a) The time is now
- (b) Contentious tax issues
- (c) Records retention
- (d) Burden of proof
- (e) Priority of remittance

Book 2



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Global tax development

OECD countries

- Base erosion and profit shifting
- Fair tax practice



Malaysia's action

1. Substance requirements
 - Adequate sum of annual operating expenditure
 - Adequate number of full time employees
2. Minimum income tax rate of 10%
3. Restricted 5 years income tax exemption of 0%
4. Regulated and control on Labuan entity



Global tax development

EU countries

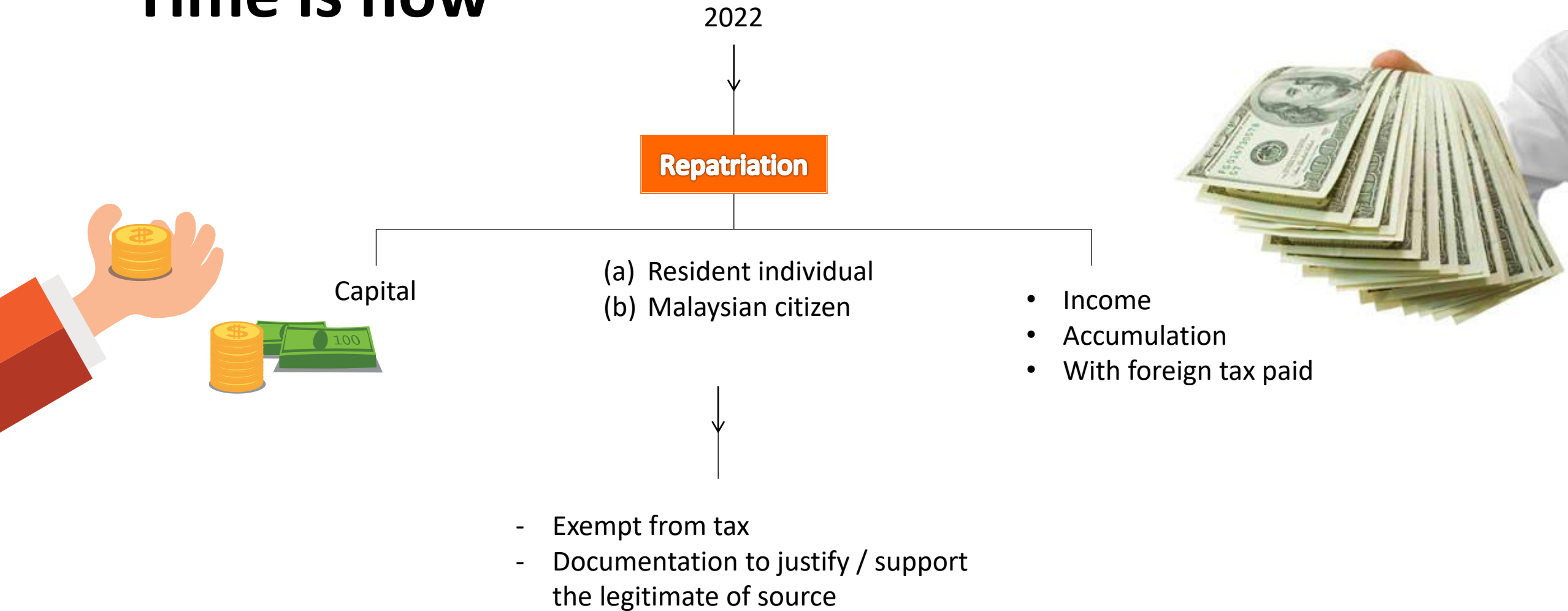
- Harmful foreign source income regime



Malaysia's action

1. Extension of territorial scope
2. Foreign source income is now taxed
3. Concession period 6 months on 3%
4. MOF concession (subject to change)*

Time is now





Time is now



Past years income

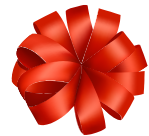
- Employment
 - Interest
 - Rental
- Overseas



Received in 2022



Now is best time



Exempt



Timing is now ...

		SGD 1	UK £ 1	RMB 1
31.12.2020	RM	3.048	5.497	0.618
31.12.2021	RM	3.087	5.635	0.655
18.1.2022	RM	3.102	5.705	0.659

Maximise exchange rate to RM

Currency denomination



Foreign source income



Received in Malaysia

Maintain in foreign currency

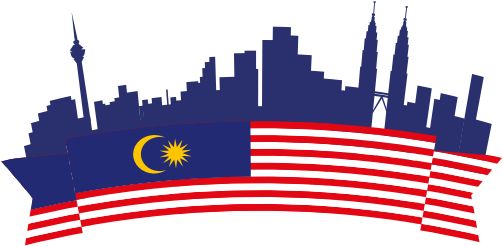
?

Yes

No



To be used in later overseas investment



To focus on Malaysian investment

- Banking shares
- Designated properties
- F&B sectors
- Digital trading



Records retention

- Keep for 7 years
[ss 82(1)(a), 82A(1)]

Non compliance [s 119A]

- (a) Fine RM300 – RM10,000
- (b) Imprisonment \leq 1 year
- (c) Both

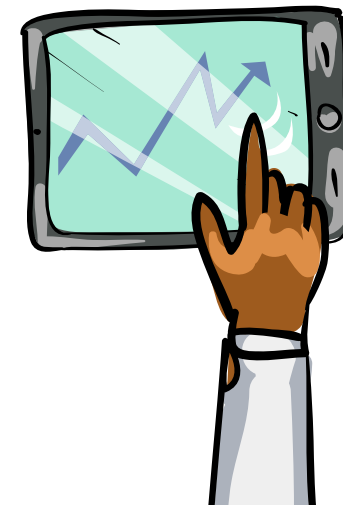
Illustration 3

The year 2022

- 7 years

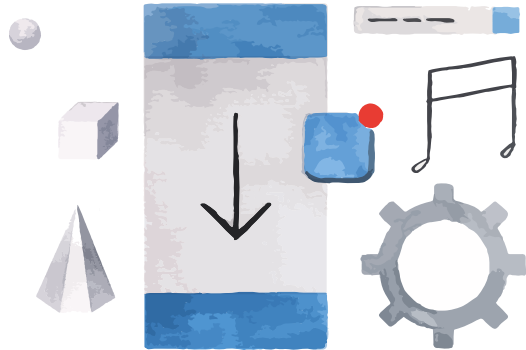
2015

Records need to be maintained from YA 2015.





Burden of proof



- Always lies on taxpayer
- Explanation, justification, documentation
- Capital receipts
- Income earned in overseas, subject to foreign tax
- Unlimited years of retention

Maintenance of records



Records

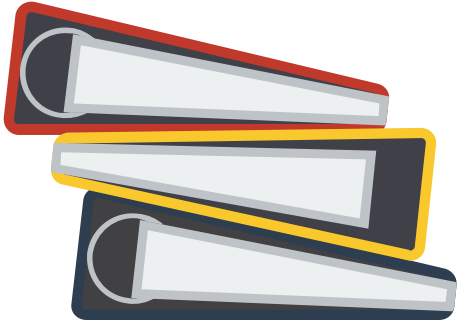
Electronic

Accounting software

- Storage at cloud
- E-copy to customers

Hard copy

Conversion into e-copy



Contentious tax issues



1. CPF sum in Singapore



3. Employment income

2. Pension



4. Rental income



now

Priority of remittance



Fund in Singapore banks

1. Employment income in Singapore
(-) Tax

xx
(x)

xx

Net savings

2. Business operations in Singapore

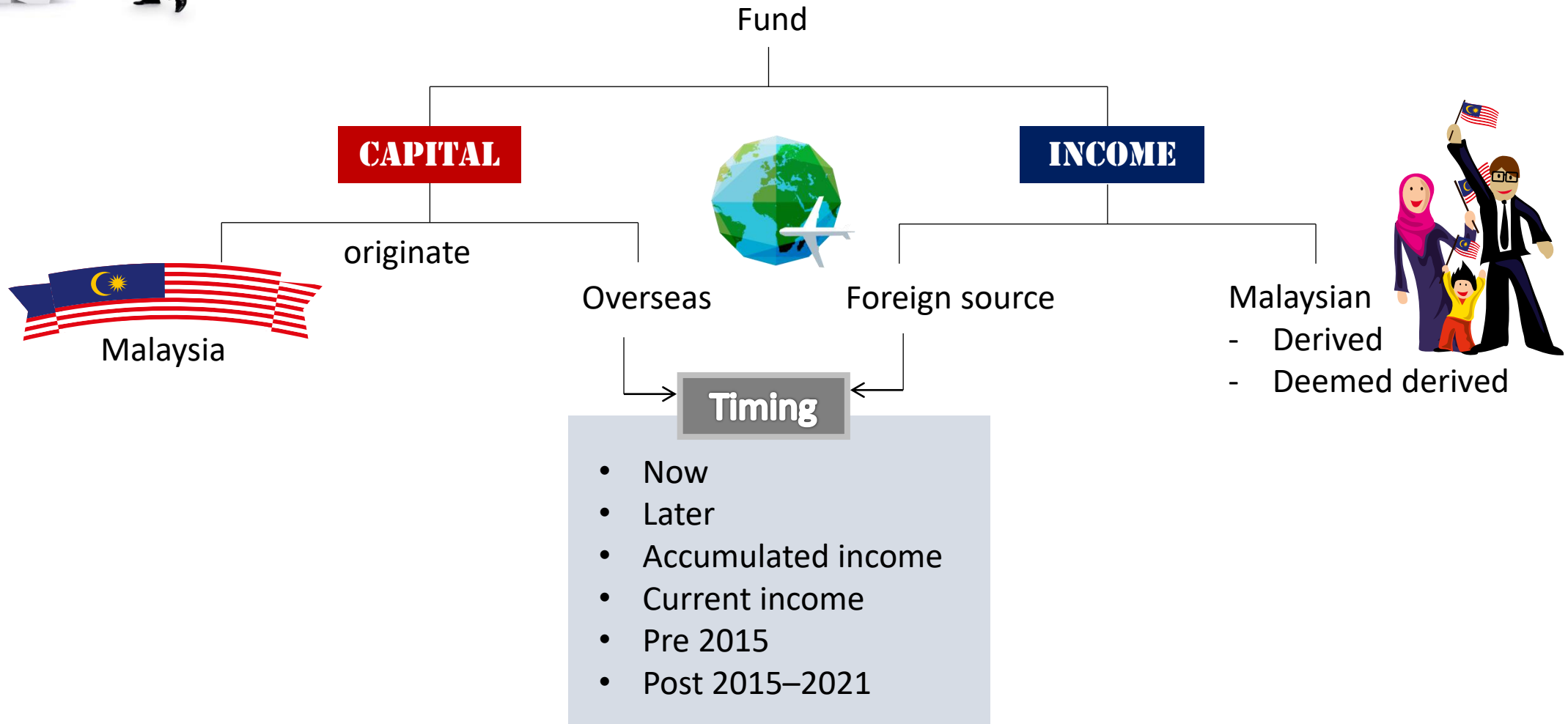
Closure of business



Excess

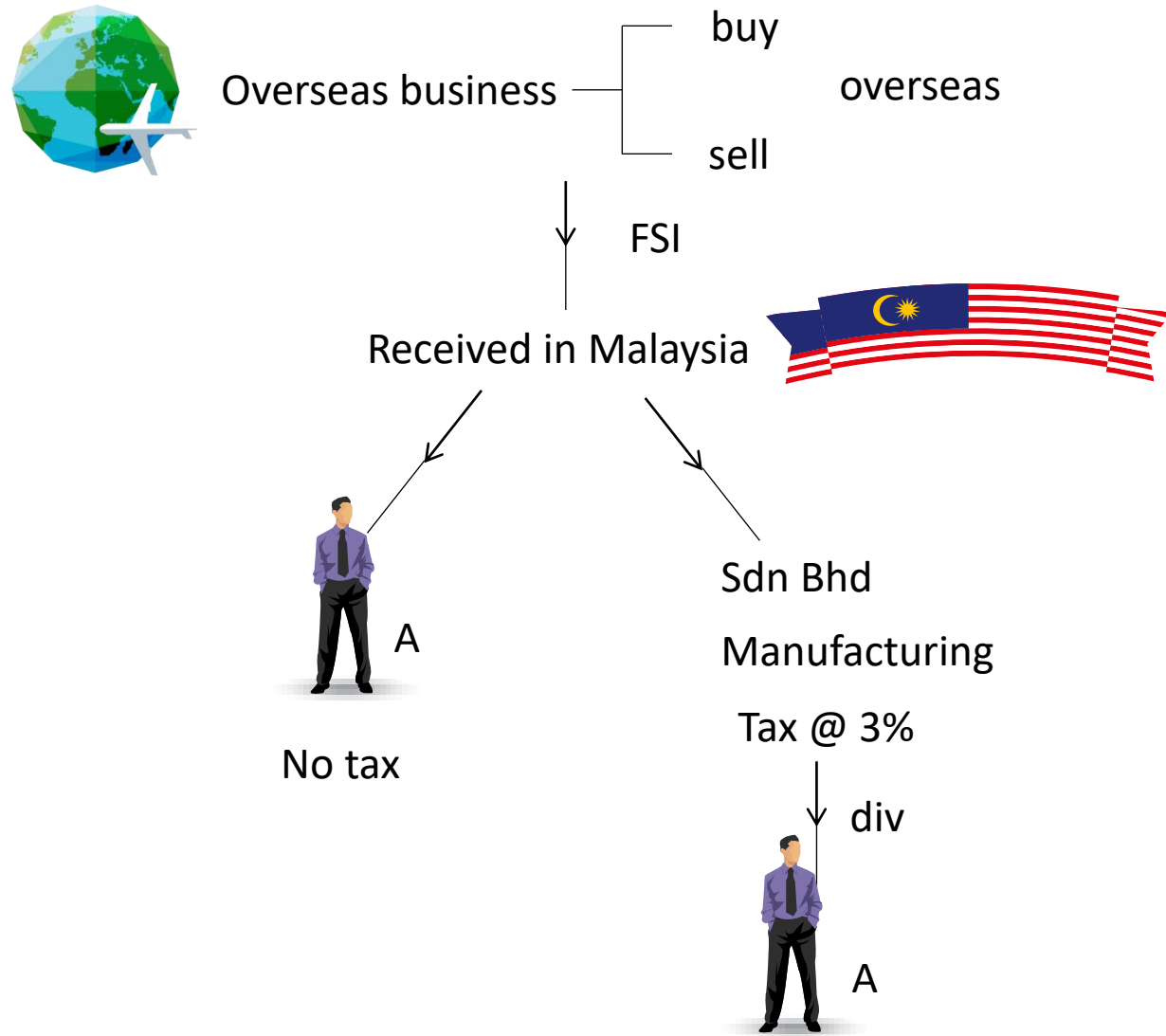


Strategies noting points on repatriation





Where my money comes from?

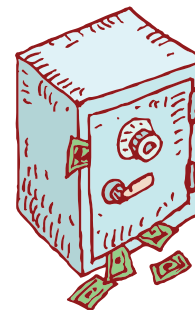
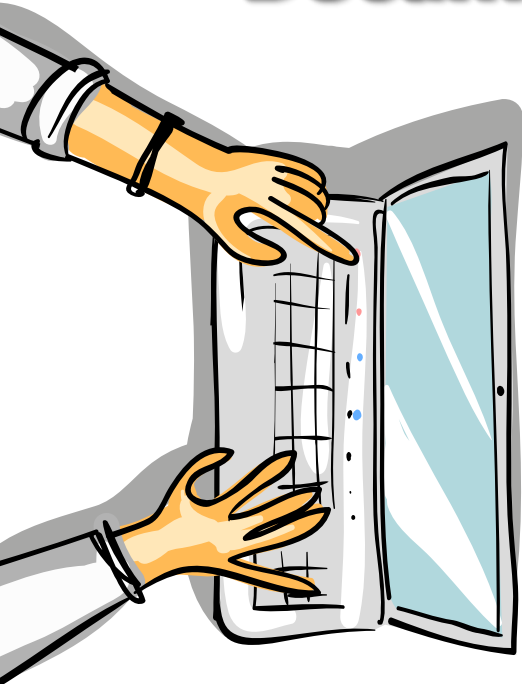
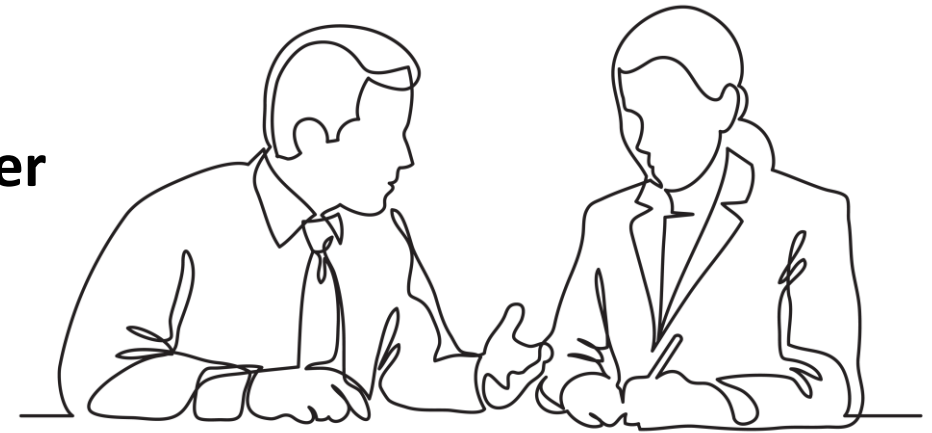


Purchase properties in Malaysia
- Documentary proof

Documentation to support

- Burden of proof is on taxpayer

1. Rental agreement
2. Contract notes on shares
3. Statement of employment income
 - Pay slip
4. Tax return submitted in respective overseas countries
 - With effect from 2015
5. Payment of foreign tax receipt
6. Bank statement



FOREIGN SOURCED INCOME 2022

- (a) Capital receipt
- (b) Capital and income distinction
- (c) Gift of money
- (d) Income turns capital
- (e) Inheritance sum

Book 3



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Gift of money

Scenario 1



Overseas
- Singapore



Gift

Children



Malaysia

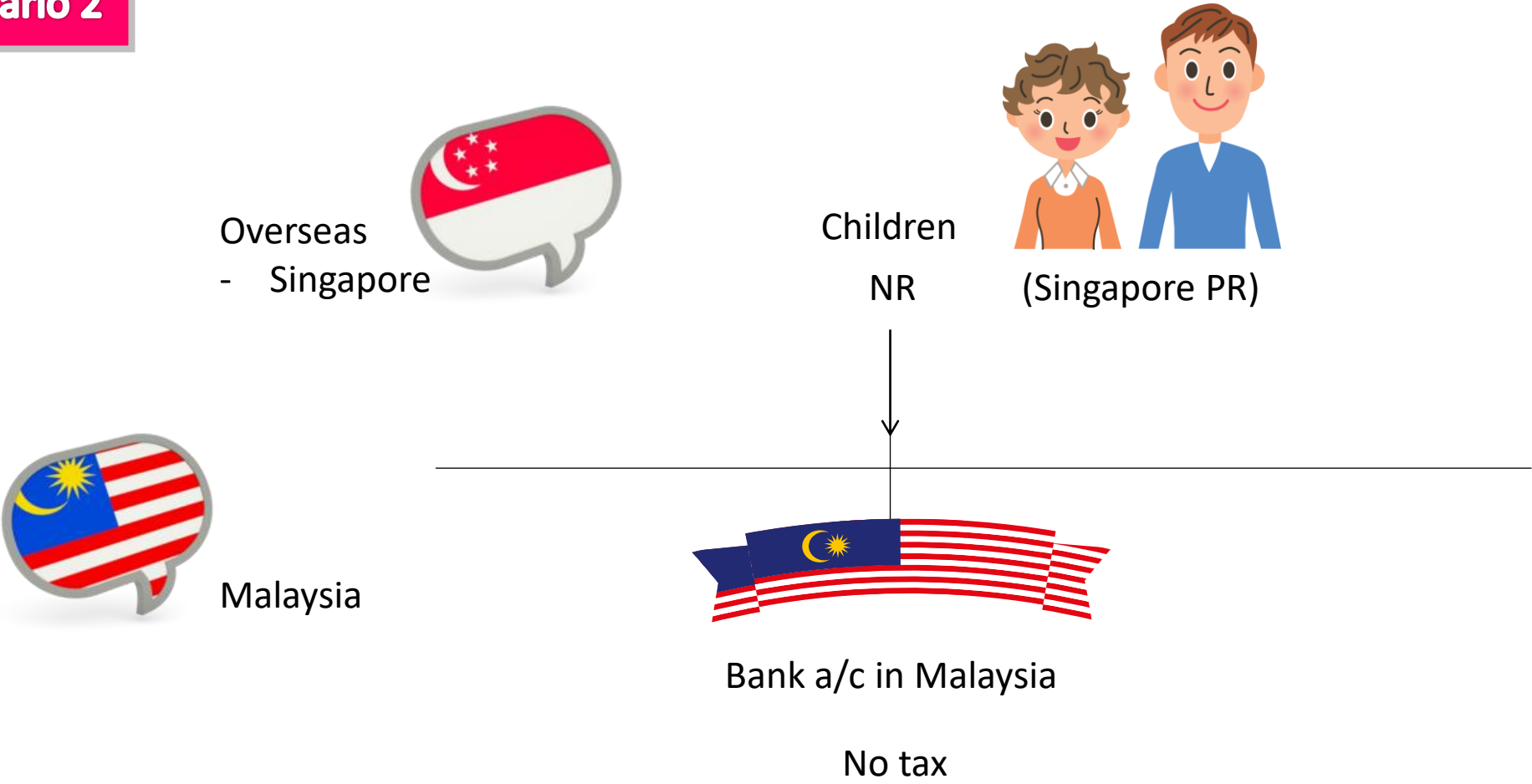
Parents



No tax

Gift of money

Scenario 2

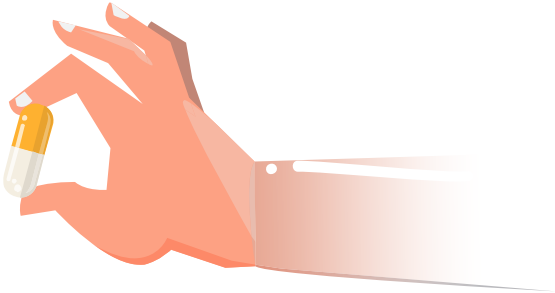


Insurance policy



Insurance policy

- Malaysian insurance company
- Overseas insurance company



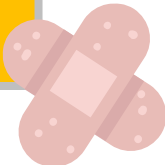
Maturity

- Endowment policy



Crystallisation

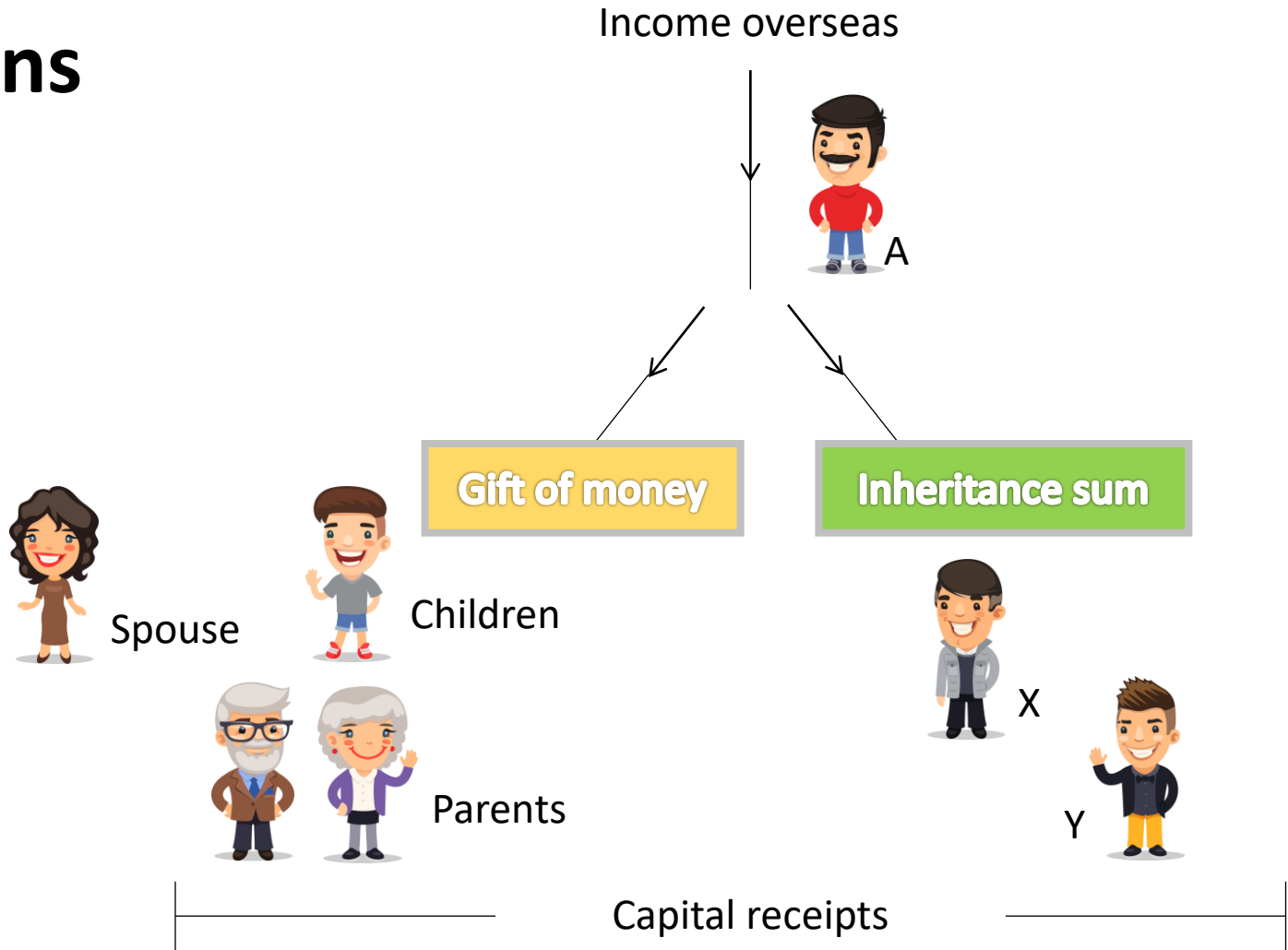
- Death
- Personal injury
- Medical insurance



Capital receipts



Income turns capital



Business alliance with lawyer

Contact number

1. Dylan Chong

- LLP agreement
- Debts recovery
- Tax appeals
- Land disputes

010-290 6674

2. Goh Ngai Chean

- Will writing
- Transfer of properties to children
- Sale and Purchase agreement on properties
- Divorce matters
- Loan agreement
- Bankruptcy matters

012-692 8416

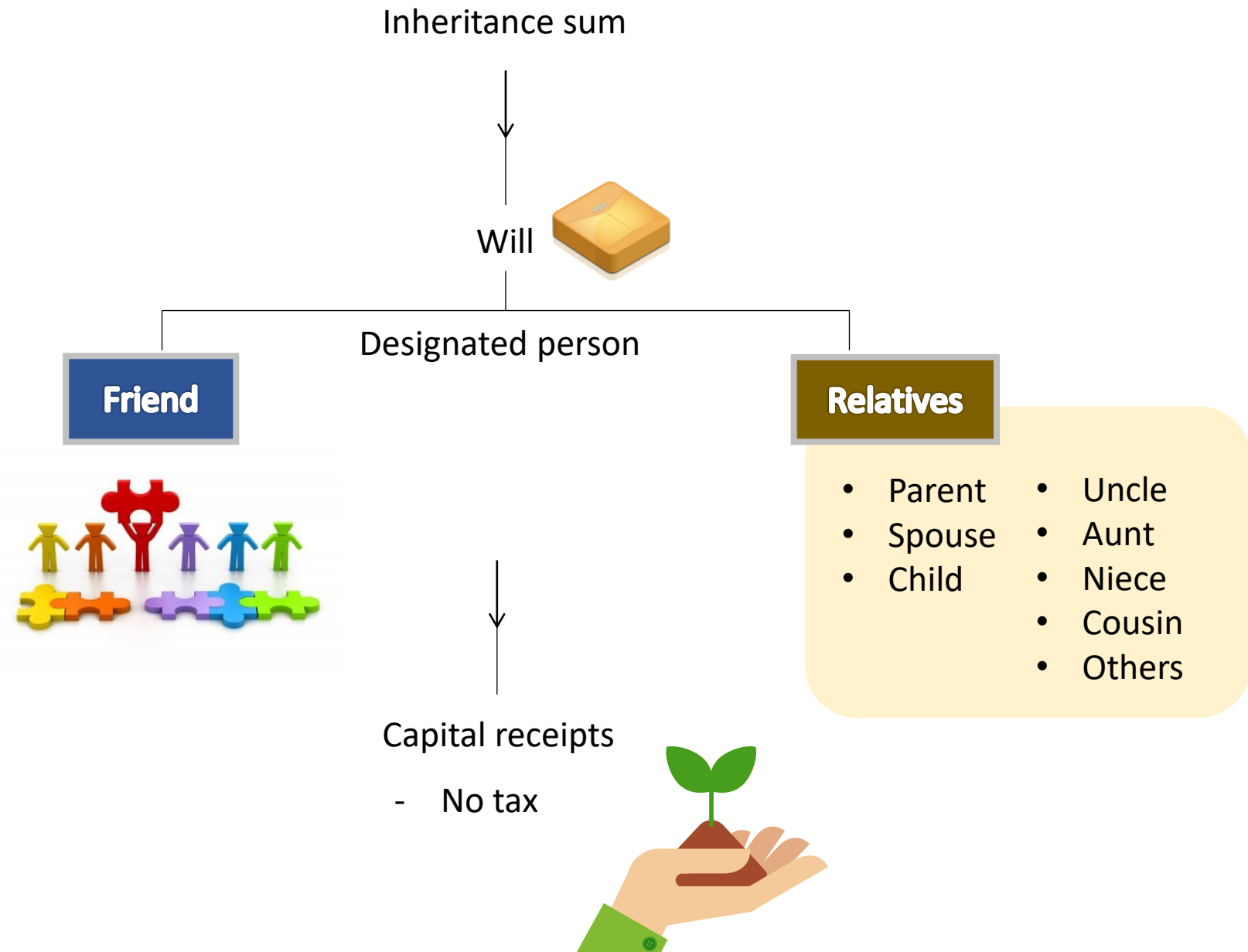
3. Lee Hoe Leong

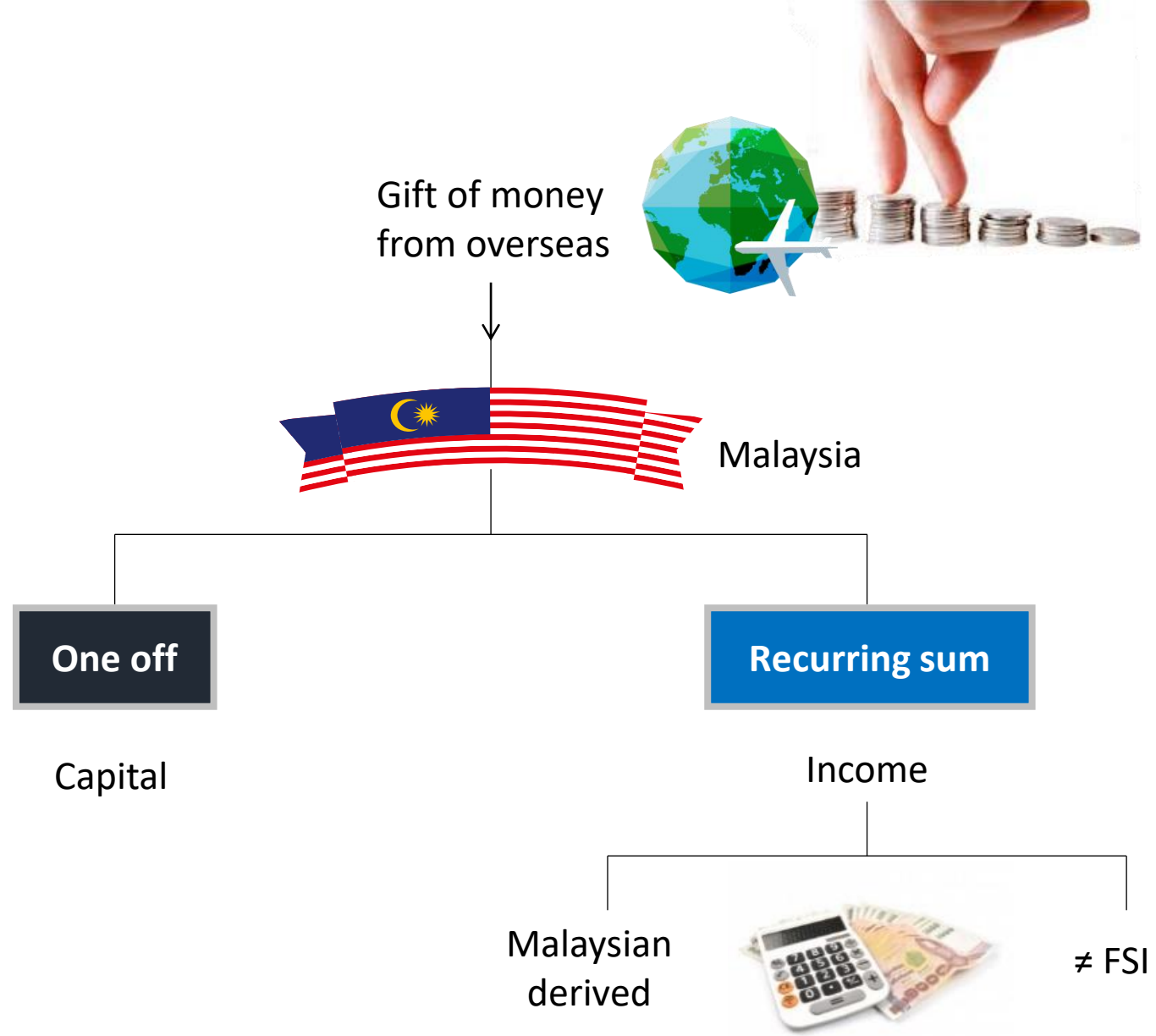
- Company law matters
- Shareholders' disputes
- Tax appeal
- Winding up of company

012-518 1988



Inheritance sum







Gift or services

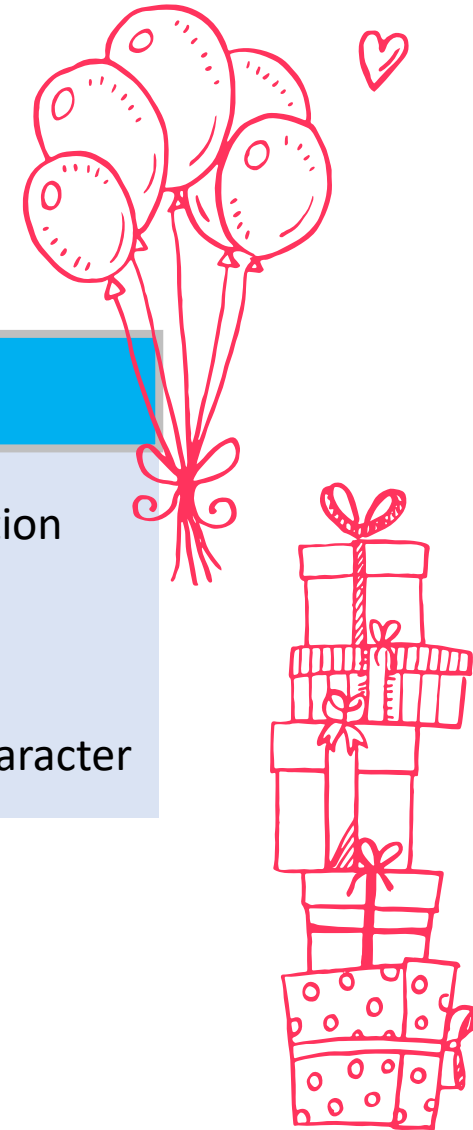
- Distinction

Gift

- Sum out of love and affection
- No expectation of return
- No services rendered
- Based on appreciation
- On personal, individual character

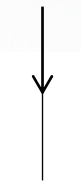
↓
Capital receipts

No tax



Services are income

- Payment with expectation
- Reward of services
- One off or recurring
- Income in nature
- s 4(f) income



Tax



Capital receipt – no tax



Loan repayment
from overseas
related parties



Gift of money

- Parents
- Spouse
- Children

**Capital
receipts**



Malaysian fund
invested overseas
(repatriation on/after
1.1.2022)



Capital gains on realization
of long term investment

- Shares
- Properties
- Other investments



Loan



- Agreement



- Stamp



- Interest rate



- Loan tenure



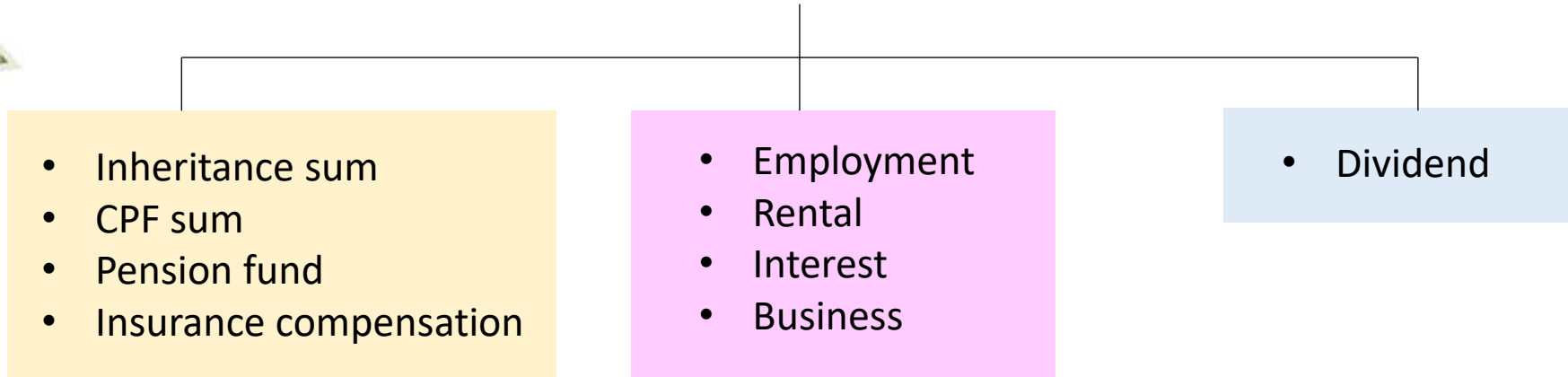
- Repayment sum

Capital and income distinction

- Summary



Funds in overseas



- Inheritance sum
- CPF sum
- Pension fund
- Insurance compensation

- Employment
- Rental
- Interest
- Business

- Dividend

Capital

Income

Income

Taxpayer

- company/LLP
- Individual
- partnership

No
No
No

Yes
No
Yes

No
No
Yes

FOREIGN SOURCED INCOME 2022

Dividend income

- (a) Dividend income is now exempt
- (b) Scope and ambit
- (c) Mechanism



Book 4



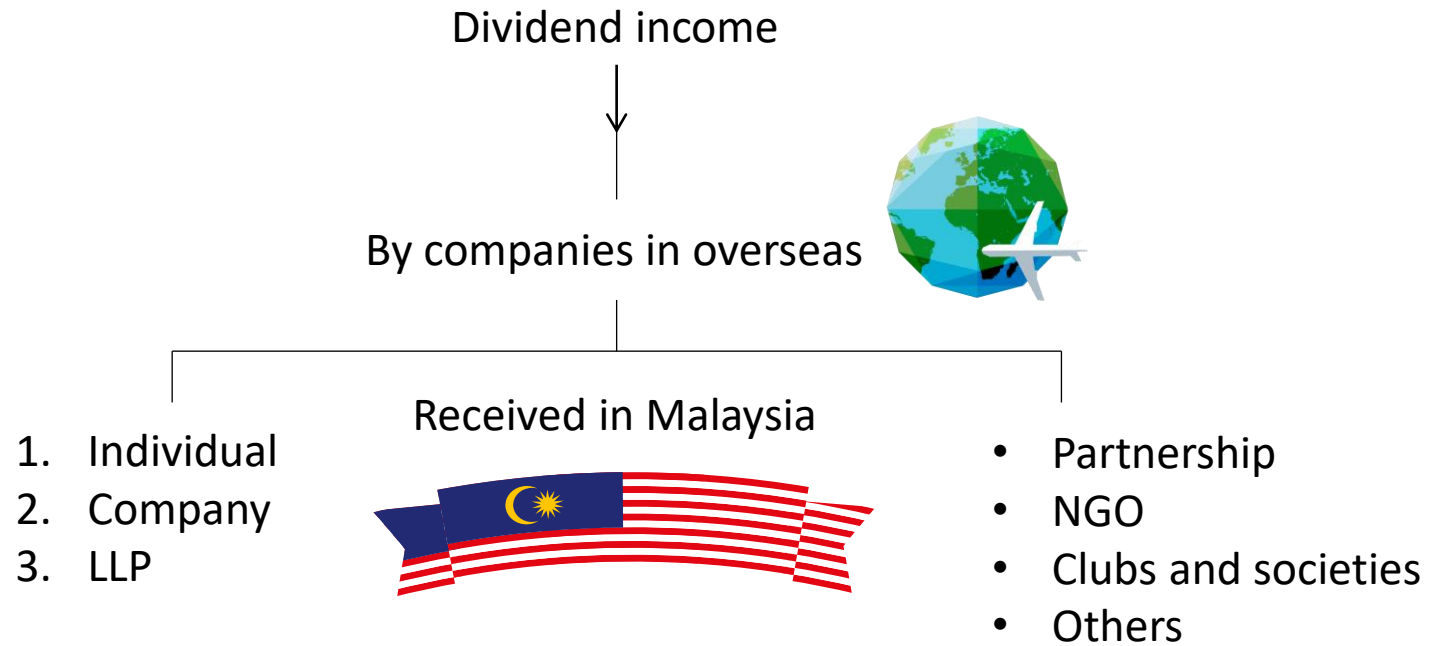
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Exempt from tax

1.1.2022–31.12.2026

 Tax @ 3% 

1.1.2022–30.6.2022

(Part XX, Sch 1)



- Partnership
- NGO
- Clubs and societies
- Others



1.1.2022–30.6.2022

1.7.2022 onwards

Tax rate

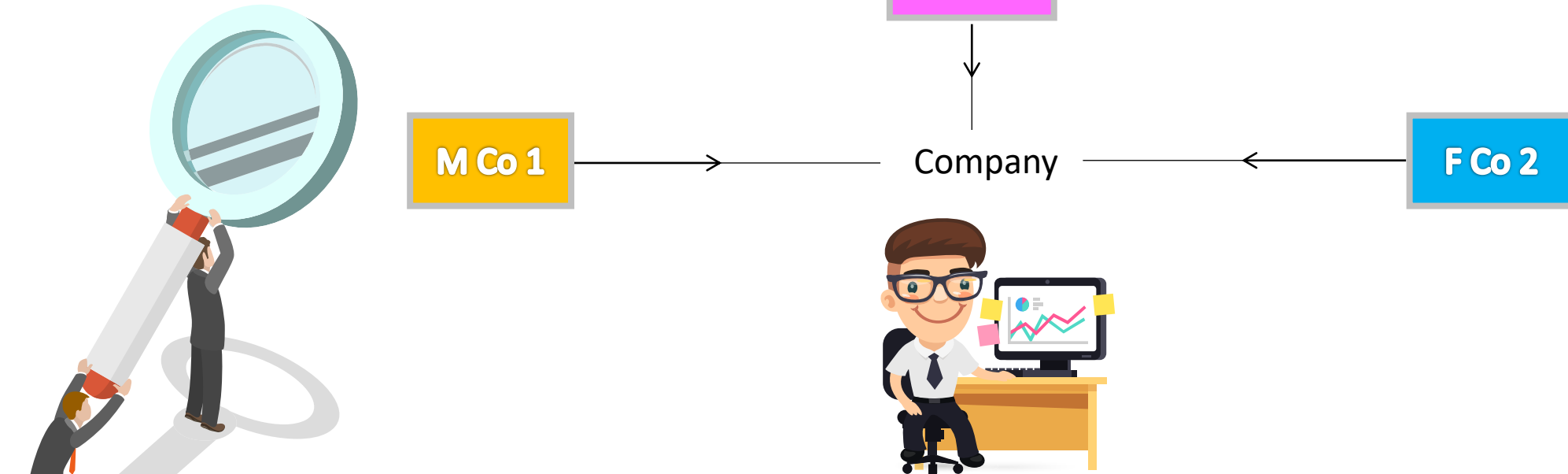
3%

Prevailing tax rate

0% –30%

Dividend income

- Received by company



- Exempt
- Individually counted
- Separate and distinct
- Part of distribution income



Singapore Co



Div-1



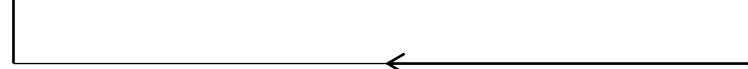
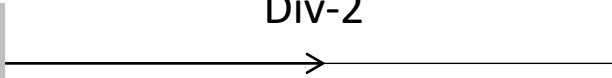
Div-2



Div-3



Div-4



**Dividend income
is now exempt**

- Each dividend is treated separately within each entity company
- Distinct and separate
- Considered it individually





Scope and mechanism Dividend income

A. Overseas company

- Profit distribution
- Based on shares entitlement
- Ordinary shares / preference shares
- It can be in cash / in kind

B. Overseas unit trust

- Distribution by unit trust
- Can be in cash / in unit trust
- Treated as dividend in Malaysia



Scope of dividend



“dividend” is deemed to include income distributed by a unit trust

[s 60F]



Dividend mechanism



Foreign company



Taxable income	xx
(-) tax rate (company tax)	(x)
Net	<u>xx</u>



**Distribution of dividend
(% of shareholding)**



Dividend (gross)	A
(-) withholding tax	(y)
Net	<u>z</u>



Net received in Malaysia



Illustration 5



Indonesia

Taxable income
(-) company tax
Net

xx
(22%)
<hr/>
78%



**Distribution of dividend
(% of shareholding)**



Dividend (gross)
(-) withholding tax
Net

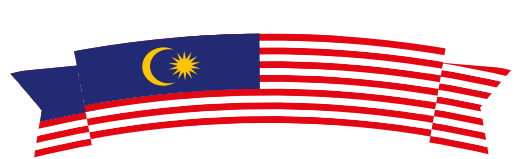
A
(10%)
<hr/>
90%



Net received in Malaysia



Dividend income



Received in Malaysia

Partnership

Others

- Clubs and societies
- NGOs

Taxed

Illustration 6



Withholding tax on dividend received

Example: Indonesia



Gross dividend

Income tax @ 3%

(-) withholding tax on dividend
@ 10% (lower of)

XX

3%

(3%)

-



Illustration 7



No withholding tax on dividend received
Example: Singapore



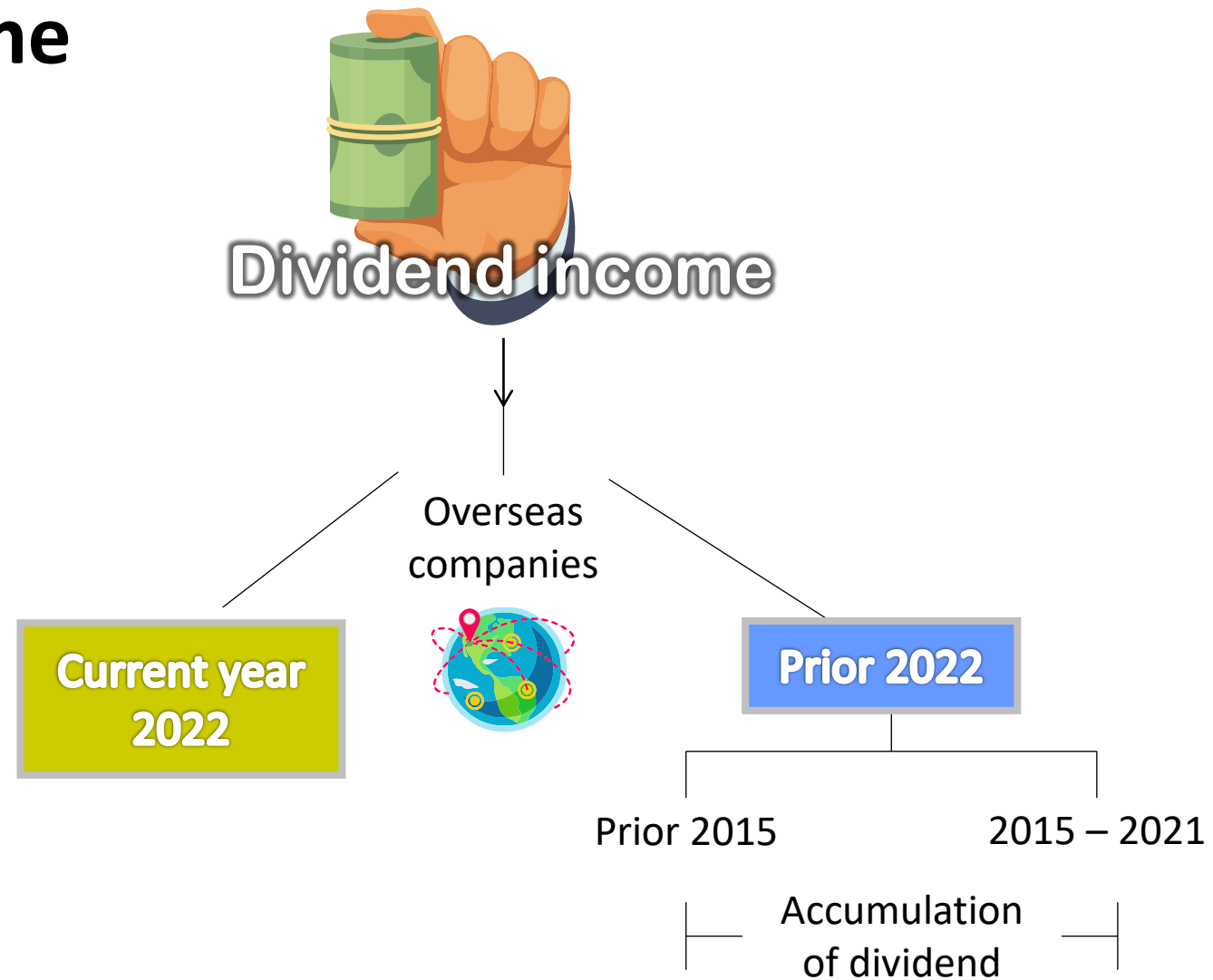
Gross dividend
Income tax @ 3%
(-) withholding tax on dividend

XX
3%
-
3%









Dividend income

- Scope



Withholding tax on dividends

- The countries involved

		Withholding tax on dividend
	1. Australia 	0% (entity directly holds $\geq 10\%$ voting power) 15%
	2. Canada	15%
	3. China 	10%
	4. Indonesia	10%
	5. India 	5%
	6. Korea	10% (beneficial owner is company holds $\geq 25\%$ capital) 15% (others)

Withholding tax on dividends

- The countries involved



7. Nigeria

10%

8. New Zealand



15%



9. Philippines

15% (recipient is company)
25% (others)

10. Taiwan



12.5%



11. Switzerland

5% (recipient is company holds \geq 25% capital)
15% (others)

12. Vietnam



10%

Withholding tax on dividend

FOREIGN SOURCED INCOME 2022

'Received'

- (a) Meaning of received
- (b) Settlement of debt – deemed received
- (c) Extension of 'received'
- (d) Taxability based on exchange conversion at receipt
- (e) Administration

Book 5



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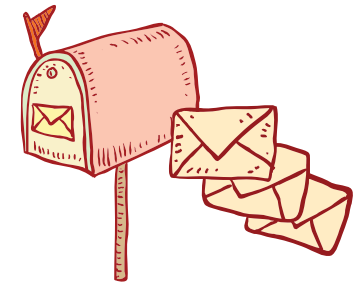
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Received in Malaysia

1. Physically received in Malaysia
 - Withdrawal slip from overseas
 - Payment voucher
 - Bank statement



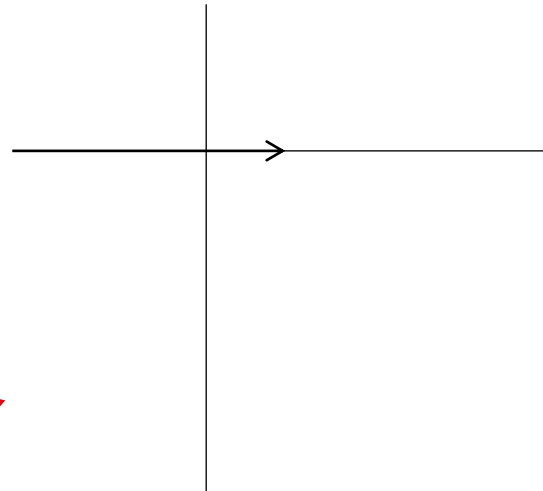
2. Money changer
 - Exchange slip with money changer

Illustration 8



If a Malaysian company receives dividends from Singapore and banks them into an account maintained in Singapore, are the dividends subject to Malaysian tax?

Malaysian company
Resident in Malaysia



Investment in shares in Singapore



Dividend income

Singapore bank





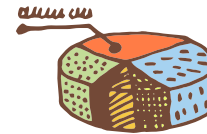
Received in Malaysia



3. Credited into Malaysia bank in Malaysia
 - Local banks



4. Contra debts in Malaysia



Dr Liabilities

Trade creditors x
 Loan creditors x

Cr Income xx

Accounting entries



Interest income – Singapore
 Rental income – UK



Bank in HSBC Bank in Wan Chai



Hong Kong

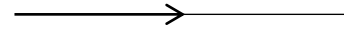
Dr HSBC Bank (overseas a/c)	xx	
Cr Interest income		x
Rental income		x

Mere accounting entry not amounted to ‘received’

Revenue recognition



M-Co
resident



Papua New Guinea



Overseas branch

- Resident in Malaysia

Trading profit xx

Trading Sdn Bhd



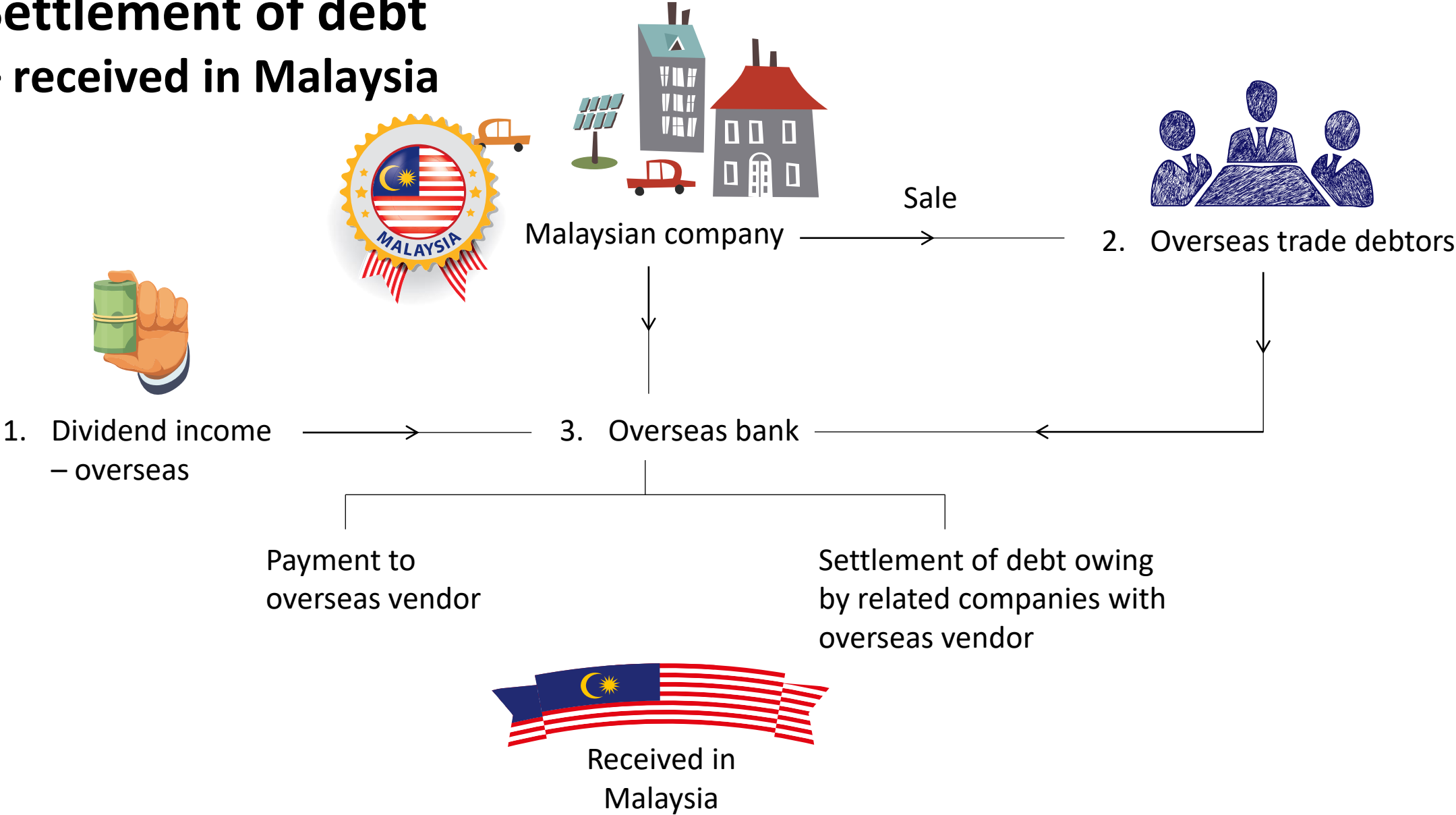
Consolidation of branch profit



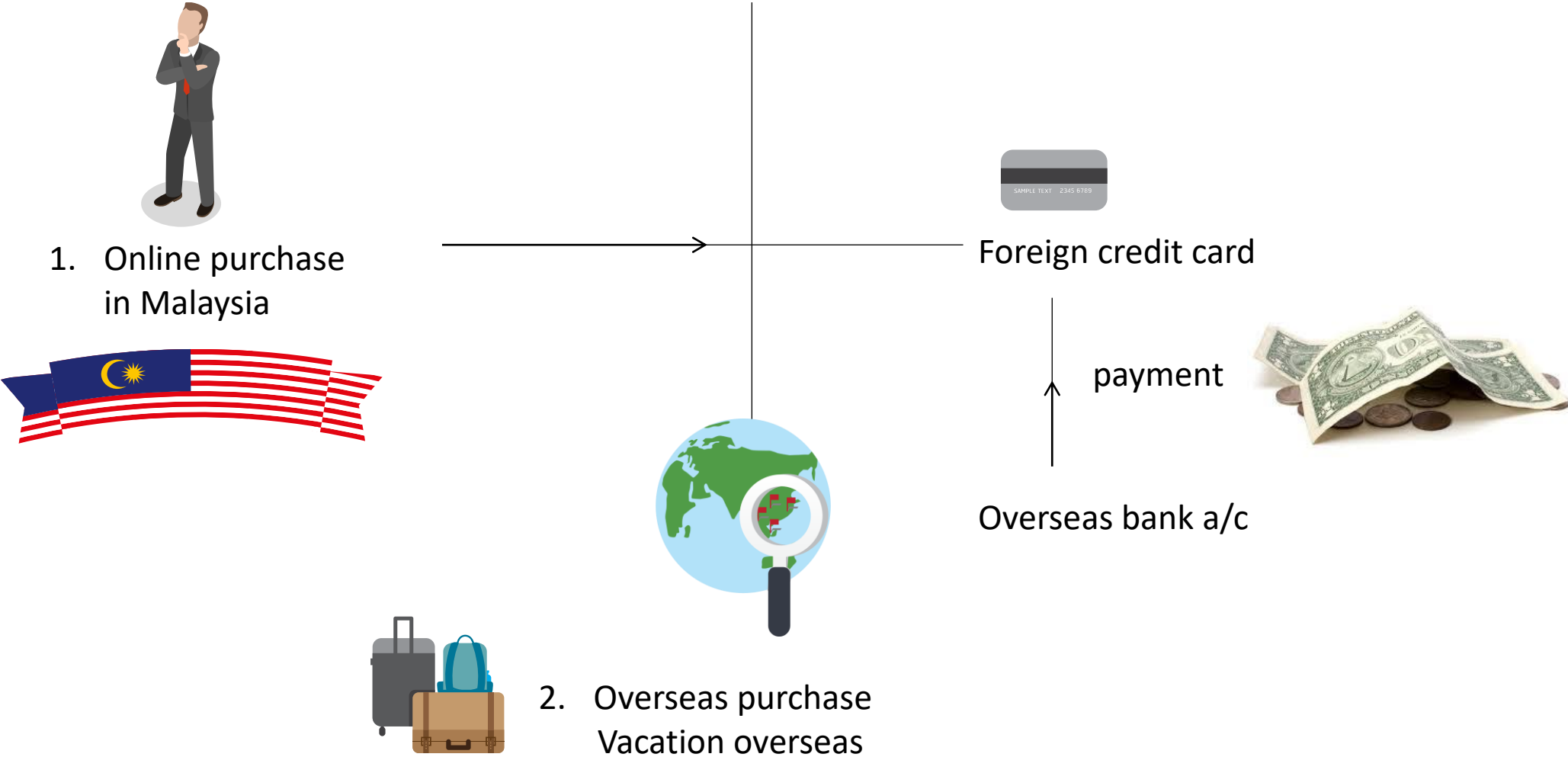
Accounting profit in
income statement

Not 'received' in Malaysia

Settlement of debt – received in Malaysia



Extension of received





Time of conversion



Funds

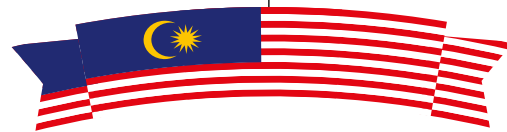


1. Overseas bank

- Dividend income
- Interest income
- Rental income



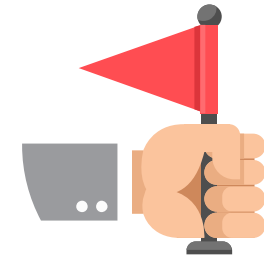
Not received



2. Transferred to local banks in Malaysia

at

Exchange Rate
at time of conversion

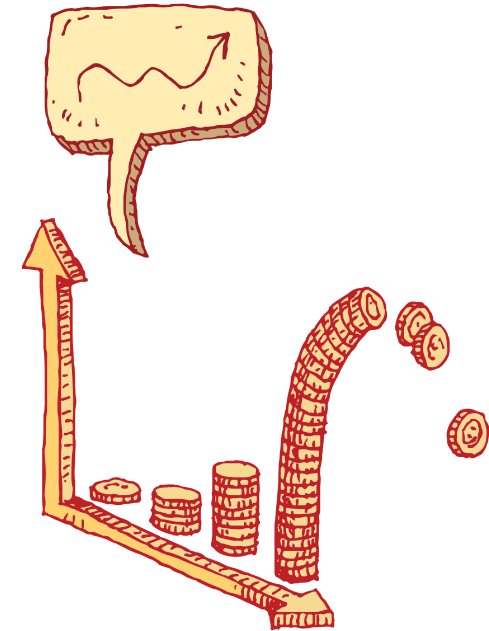


Received



1. Income can only be 'received' once by the same person.
2. Thereafter it is remittance.

3. Any subsequent dealing with the sum of money cannot be construed as 'receipt' of income in Malaysia.
4. Section 3 uses the word 'received' and must be interpreted accordingly.



Pondicherry Railway Co Ltd v CIT (5 ITC 363)
Privy Council

Illustration 9



1. Singapore

Interest income from bonds



2. UK

Rental income



Received in
3. Hong Kong

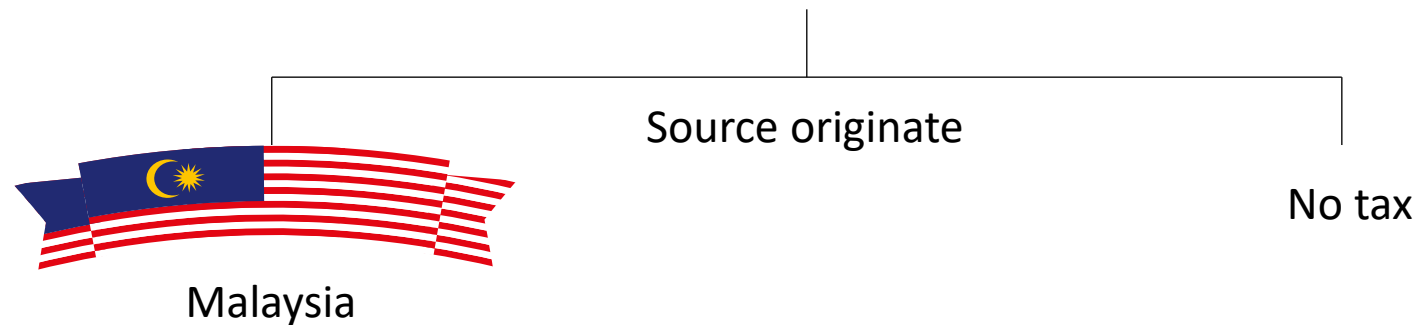


4. Malaysia

Remittance

No tax

Capital repatriation



- The fund remittance to overseas
 - Journal entry
 - Bank statement

Implication and administration



Received



1. Tax return declaration

- Form B
- Form BE
- Form C
- Form PT



2. Tax at 3%



Part XX, Sch 1

Unless exempted by
PU(A) 2022

FOREIGN SOURCED INCOME 2022

- (a) Loan and advances
 - (i) Source of interest income
 - (ii) Money lending complications
 - (iii) Interest income or dividend income – demarcation
- (b) Royalty income
 - (i) Source of royalty income
 - (ii) Computation of bilateral relief

Book 6



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20 January 2022

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Loan/advances to related companies

- The place where the money is lent determines the source of income.
- The borrowers' locality sets the derivation of income source.



The source of the money can be in Malaysia, which remains an irrelevant consideration.

It is the place where the money is lent to would determine the source of interest income.



Interest income derived from lending money to Netherlands related companies is foreign source income despite the source of fund originates from Malaysia.

Ketua Pengarah HDN v Cardinal Health Malaysia 211 Sdn Bhd (HC)

Illustration 10

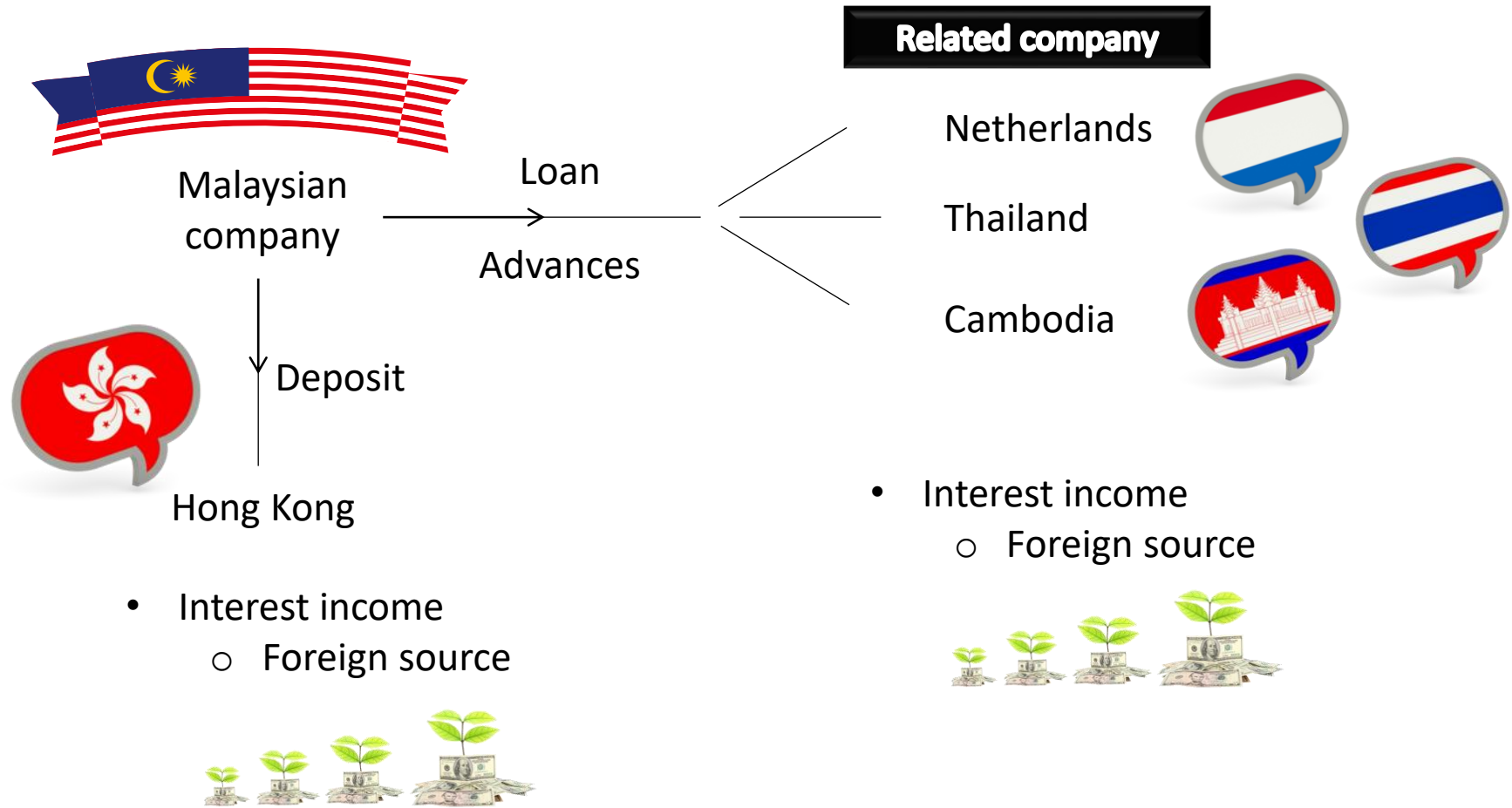
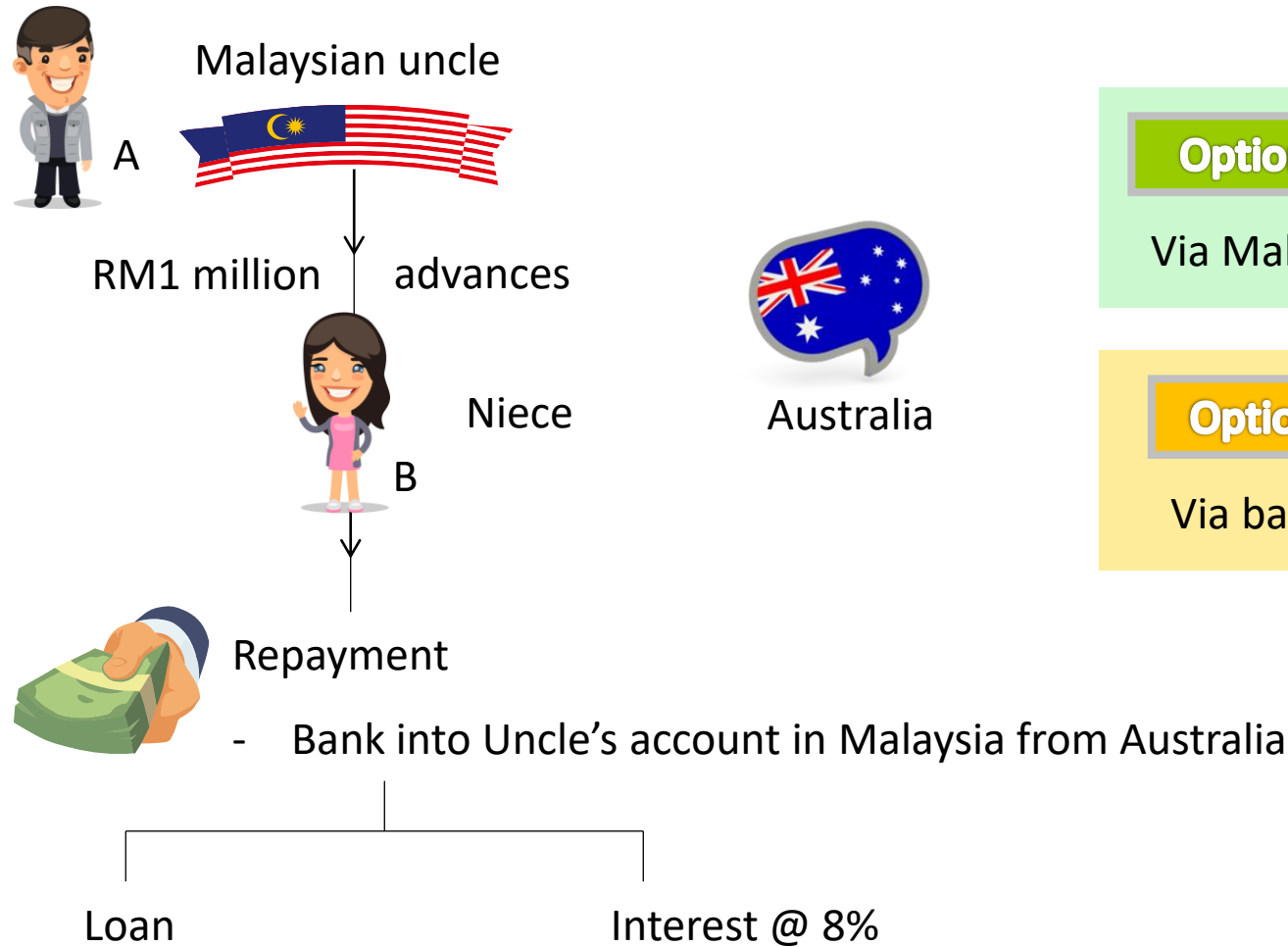


Illustration 11

Money lending – tax implication



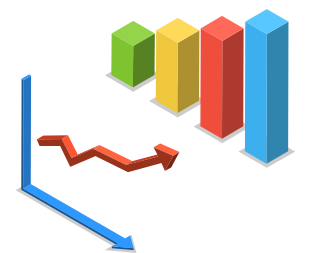
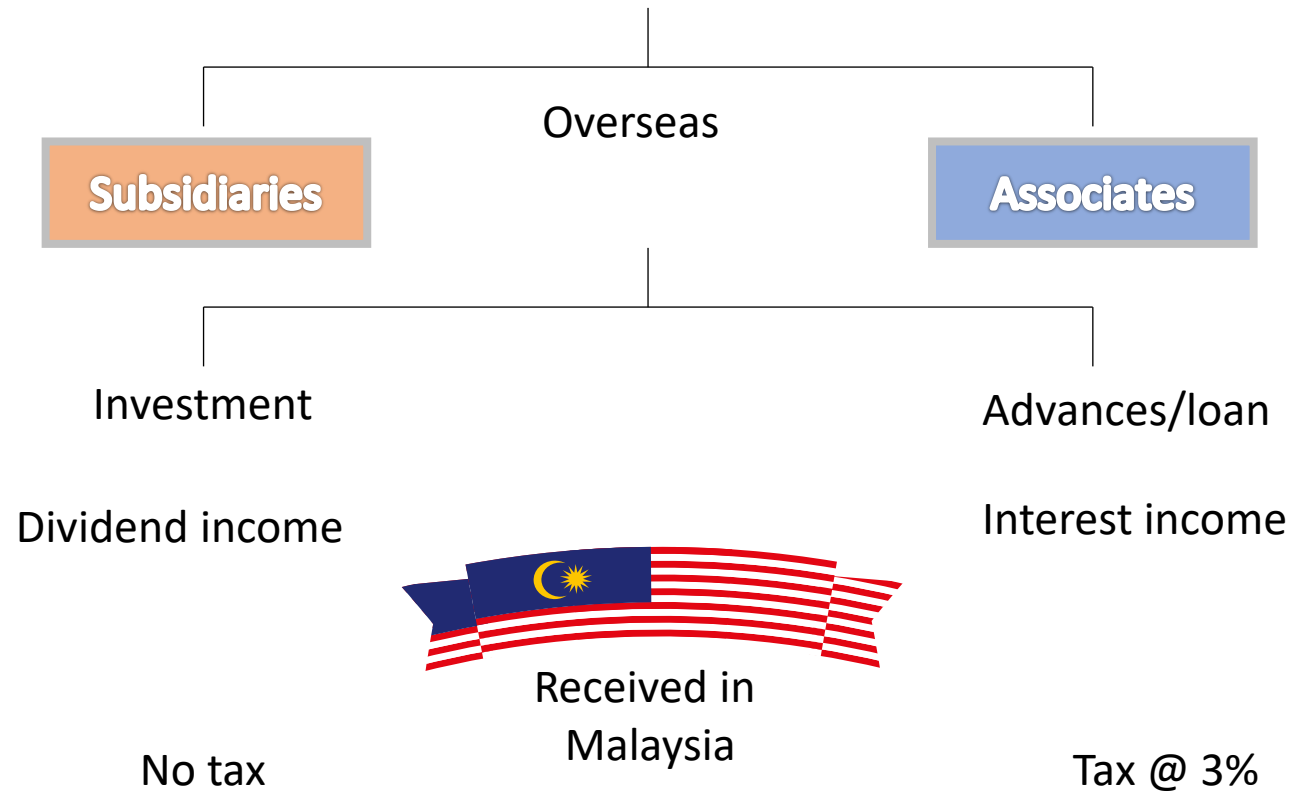
Option 1
Via Malaysian bank account of the niece

Option 2
Via bank transfer to account in Australia

Interest income [s 4(c)]



Holding company



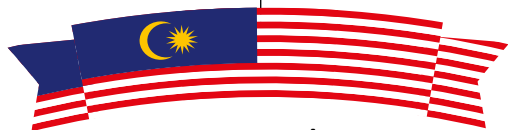


Royalty income [s 4(d)]

- Licensing fee overseas
- Franchise fee overseas



Net of withholding tax



Received in Malaysia



Foreign source income
- With bilateral relief

Gross	xx
(-) withholding tax	(x)
Net sum	<u>xx</u>

Illustration 12

	AUD
Licensing fee	16,000
(-) 15% withholding tax	(2,400)
Net	<u>13,600</u>



	1
	100%
	RM
Gross	<u>48,800</u>
Tax @ 3%	1,464
(-) withholding tax paid overseas	<u>(1,464)</u>
Net tax payable	<u>-</u>

AUD 1 = RM3.05

Illustration 13

	AUD
Licensing fee	16,000
(-) 15% withholding tax	(2,400)
Net	<u>13,600</u>



Option

	2 100%	3 50%	4 30%
Gross	RM <u>48,800</u>	RM <u>24,400</u>	RM <u>14,640</u>
Tax @ 24%	11,712	5,856	3,514
(-) withholding tax paid overseas	(7,320)	(3,660)	(2,196)
Net tax payable	<u>4,392</u>	<u>2,196</u>	<u>1,318</u>

AUD 1 = RM3.05

AUD 1 = RM3.05

FOREIGN SOURCED INCOME 2022

Special Remittance Program – a must for now

- (a) Limited period 1.1.2022–30.6.2022
- (b) Automatic exchange of financial accounts information
- (c) Disclosure in tax return
- (d) Mechanism
- (e) Tax administration

Book 7



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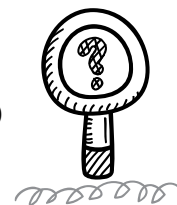


Malaysia derived income

- Business
- Employment
- Etc



- ↓
- Not reported
 - Accidentally diverted to overseas banks



↓

Participation in
Special Remittance Program

↓

The time is now or never!



Limited period
1.1.2022–30.6.2022

Special return
on 30.7.2022

- Declaration
- Remittance
- Tax at 3%

No tax audit
tax investigation
enquiries
penalties

With complete good faith

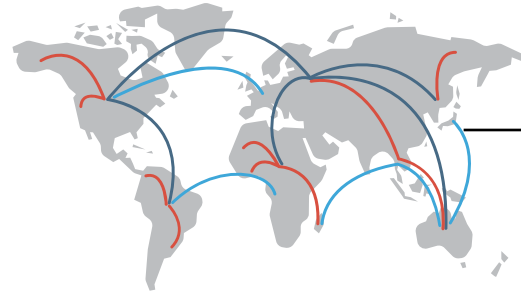


Automatic exchange of financial account information

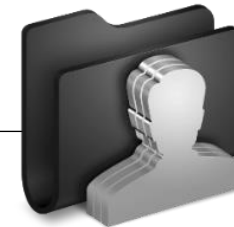
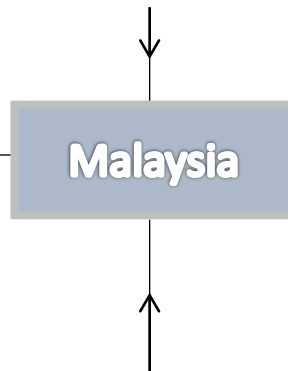


1. Malaysian companies
2. Individual
3. Related parties to 1 and 2

with overseas bank accounts



108 participating countries
(as at 19.1.2021)



4. May be interviewed by IRB on the source of fund

5. IRB would
 - review
 - examine
 - analyse



notice of additional assessment issued with penalty on undeclared Malaysian derived income



Disclosure of bank accounts at overseas

1. Form B (sole proprietor, partner in partnership)

PART D:		OTHER PARTICULARS					
D1	Telephone no.		Handphone no.		D2	Address of business premise	
D3	E-mail						
D4	Employer's no.	E					
D5	Has financial account(s) at financial institution(s) outside Malaysia		1 = Yes 2 = No		Postcode	Town	
D6a	Carries on e-Commerce (If 'Yes', also complete item D6b)		1 = Yes 2 = No		State		
D6b	Website / blog address						

D5 Has financial account(s) at financial institution(s) outside Malaysia 1 = Yes
2 = No

2. Form BE

PART D:		OTHER PARTICULARS						
D1	Telephone no.		Handphone no.		D2	E-mail		
D3	Employer's no.	E						
D4	Has financial account(s) at financial institution(s) outside Malaysia		1 = Yes 2 = No					
D5	Details of bank (NOTE: Enter the name of the bank and bank account no. for the purpose of electronic income tax refund)							
D5a	Name of bank					D5b	Bank account no.	
D6a	Disposal of asset under the Real Property Gains Tax Act 1976 (If 'Yes', also complete item D6b)		1 = Yes 2 = No	D6b	Disposal declared to LHDNM		1 = Yes 2 = No	

D4 Has financial account(s) at financial institution(s) outside Malaysia 1 = Yes
2 = No

Disclosure of bank accounts at overseas

3. Form C

PART G:		OTHER PARTICULARS	
G1	Chargeable income of preceding year not declared (if any)		
	Type of Income	Year of Assessment	Amount
G5a	Subject to Income Tax (Country-by-Country Reporting) Rules 2016 <i>(If 'Yes', also complete item G5b)</i>	<input type="checkbox"/>	1 = Yes 2 = No
G5b	Subject as a reporting entity / non-reporting entity	<input type="checkbox"/>	1 = Yes – Reporting entity (Fill in the required appendix) 2 = No – Non-reporting entity (Fill in the required appendix)
G6	Has financial account(s) at financial institution(s) outside Malaysia	<input type="checkbox"/>	1 = Yes 2 = No

G6 Has financial account(s) at financial institution(s) outside Malaysia 1 = Yes
2 = No

4. Form PT

PART G:		OTHER PARTICULARS	
G1	Chargeable income of preceding year not declared (if any)		
G4b	Website / blog address		
G5a	Subject to Income Tax (Country-by-Country Reporting) Rules 2016 <i>(If '1' complete item G5b)</i>	<input type="checkbox"/>	1 = Yes 2 = No
G5b	Subject as a reporting entity / non-reporting entity	<input type="checkbox"/>	1 = Yes – Reporting entity (fill in the required appendix) 2 = No – Non-reporting entity (fill in the required appendix)
G6	Has financial account(s) at financial institution(s) outside Malaysia	<input type="checkbox"/>	1 = Yes 2 = No

G6 Has financial account(s) at financial institution(s) outside Malaysia 1 = Yes
2 = No

Non compliance



1. It amounted to an incorrect return submitted [s 113(1)]

113. Incorrect return.

(1) Any person who



(a) ...

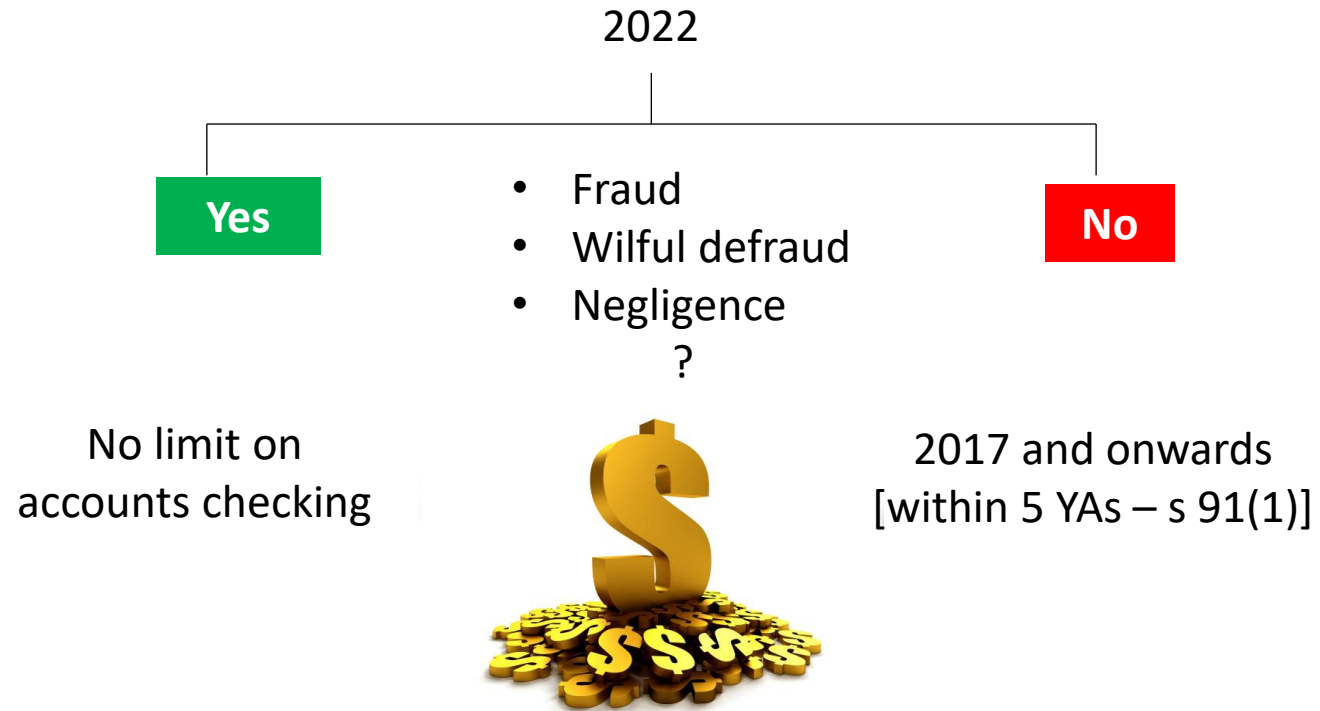
(b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person

... be liable to a fine of not less than RM1,000 and not more than RM10,000 and shall pay a special penalty of double the amount of tax which has been undercharged ...

2. The sum in overseas bank account prima facie income underreported.



Overseas bank account



Special amnesty



Foreign income

- Malaysian derived



- Wrongly diverted
 - Under reporting
 - Incorrect reporting
- in overseas bank

Prior year 2021

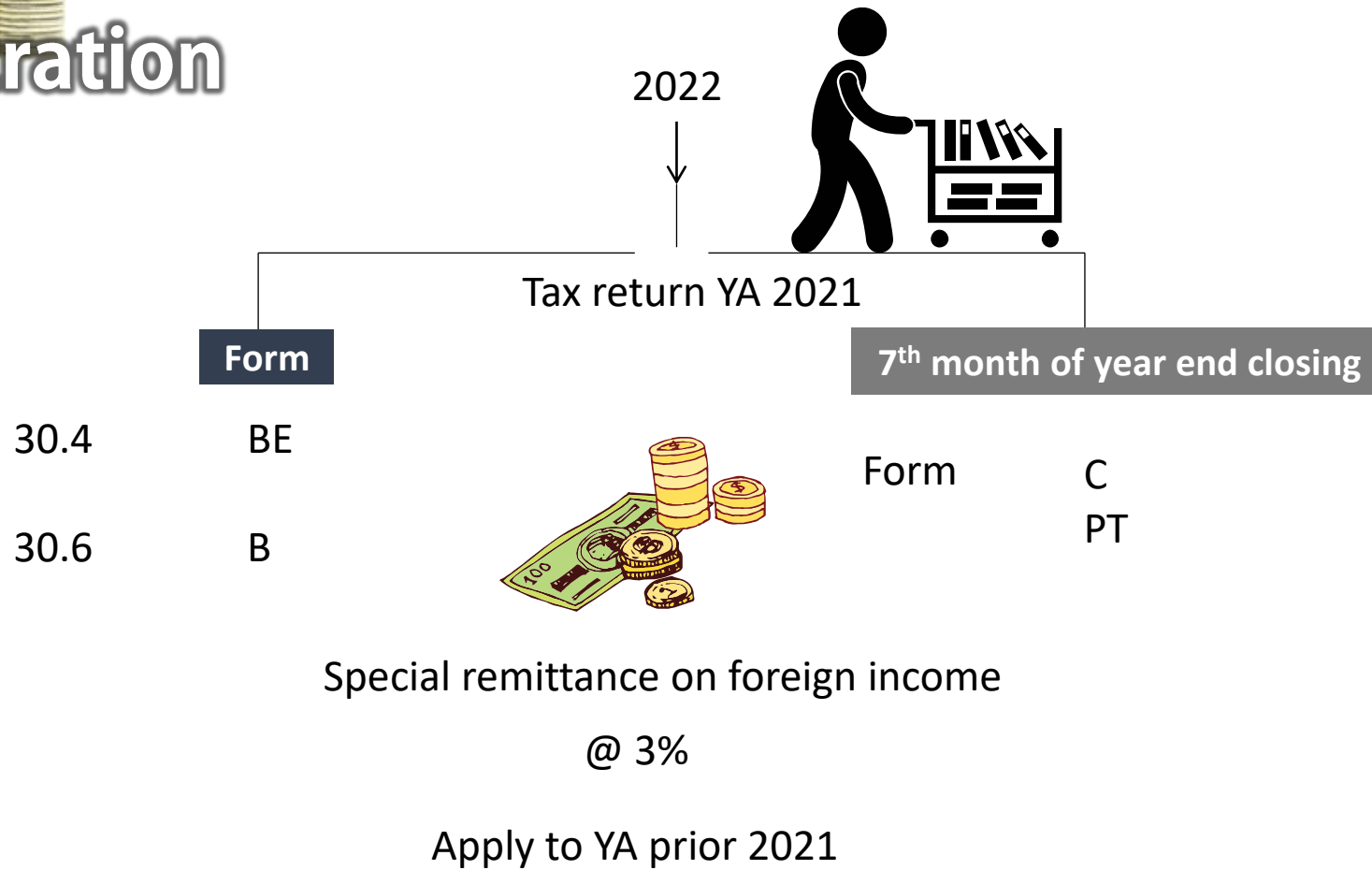


Received in
Malaysia

1.1.2022 – 30.6.2022

@ 3%

Tax administration

Case study 1



A Sdn Bhd

Malaysia
y/e 31.12

Management services

1.6.2018

Lion Pte Ltd

Singapore



Not reported
in Malaysia in
YA 2018



Paid



Maybank a/c
in Malaysia
1.4.2022



Standard Chartered Bank
in Singapore of A Sdn Bhd
1.9.2020

Tax implication?



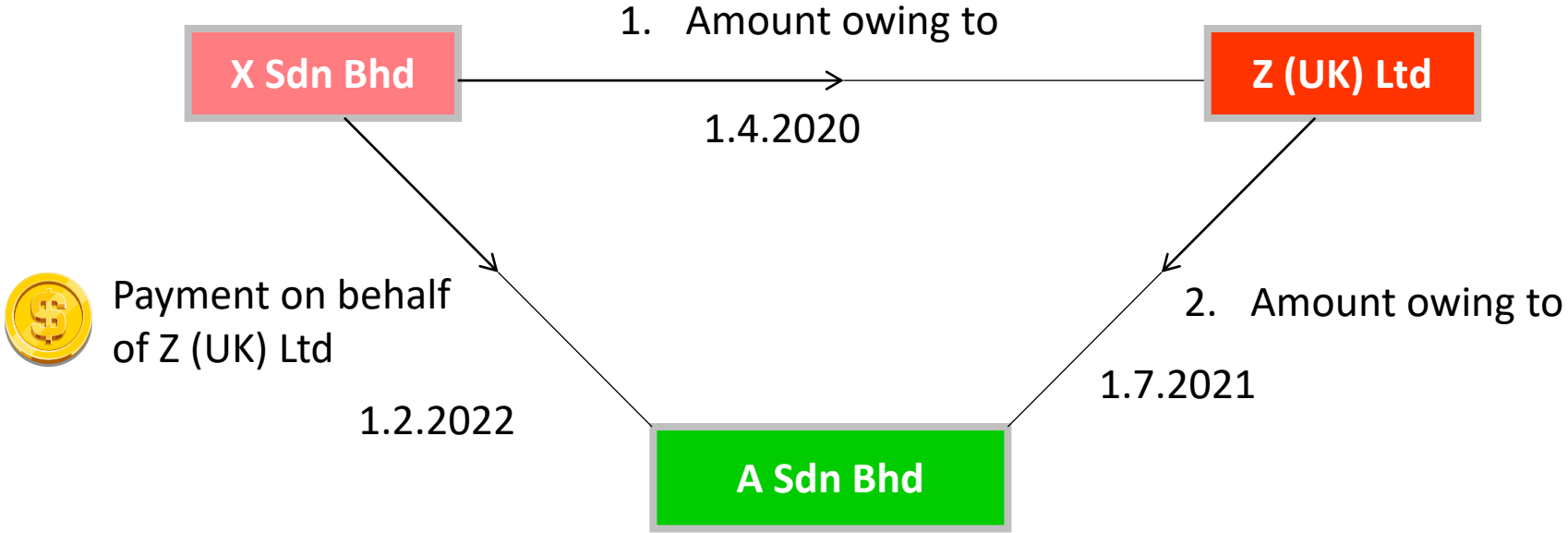
Case study 2



Tax implication?



Case study 3



Tax implication?



Big Bang : 1.7.2022



IRB
examine
review
evaluate
analyse



Overseas bank a/c
of

- Individual
- Business entities

Not reported

Originates from Malaysia
derived income

Wrongly diverted





Additional tax
Penalty

100%

RM

xx

x

xx

Legislation

113(2)

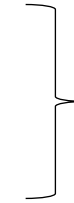
Business income

- Derivation



Malaysian

- Company
- Partnership
- Sole proprietor



carrying on business

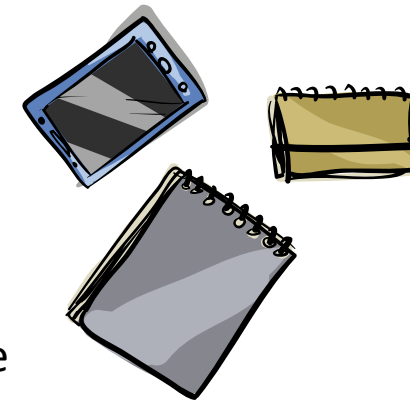


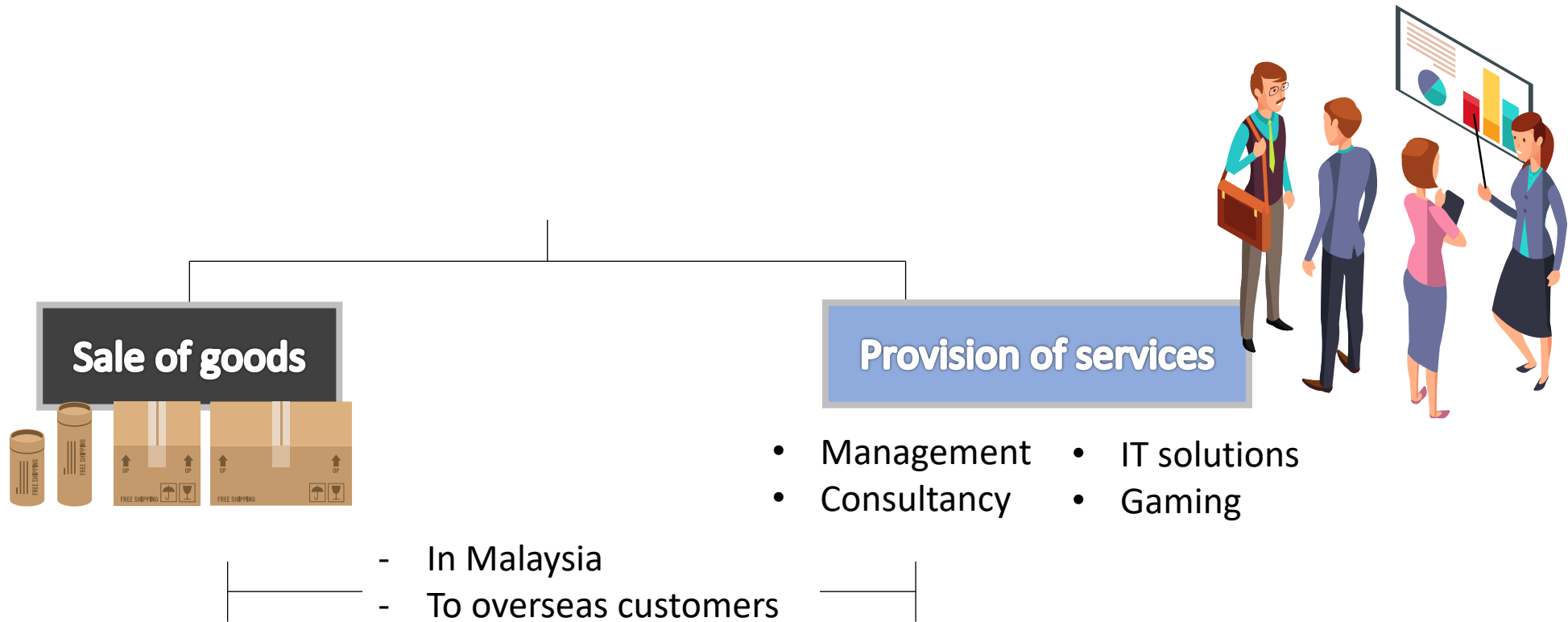
Place of business [s 12(3)]

- Place of management
- Operation of business
 - ❖ Office
 - ❖ Factory
 - ❖ Warehouse



Locality determines business source





Deemed derivation in Malaysia



s 12(1)(a)

Section 12(1)(a) of the Act

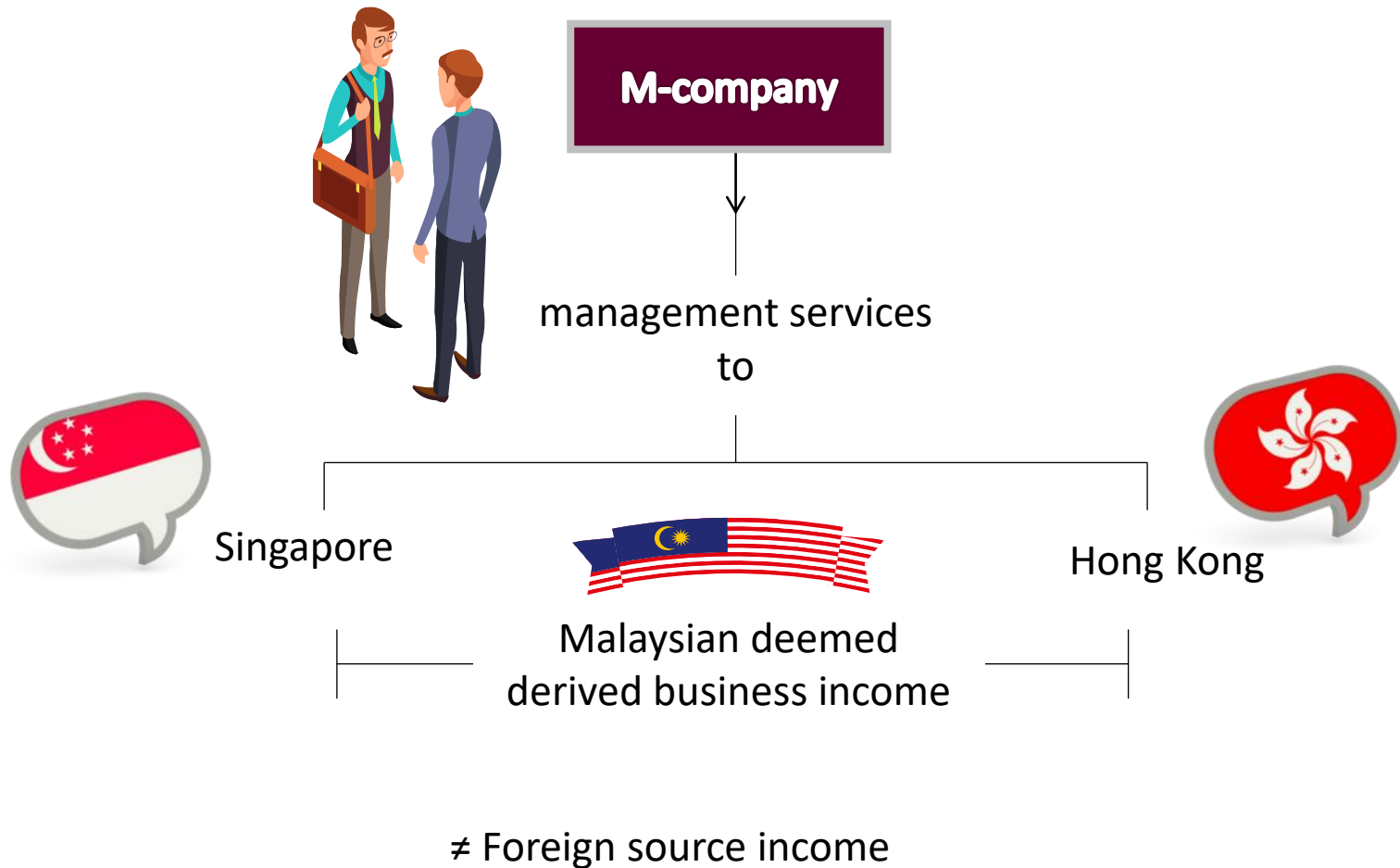


specifically provide that:



“... so much of the gross income from the business as is not attributable to operations of the business carried on outside Malaysia shall be deemed to be derived from Malaysia”

Illustration 14



Tax planning consideration

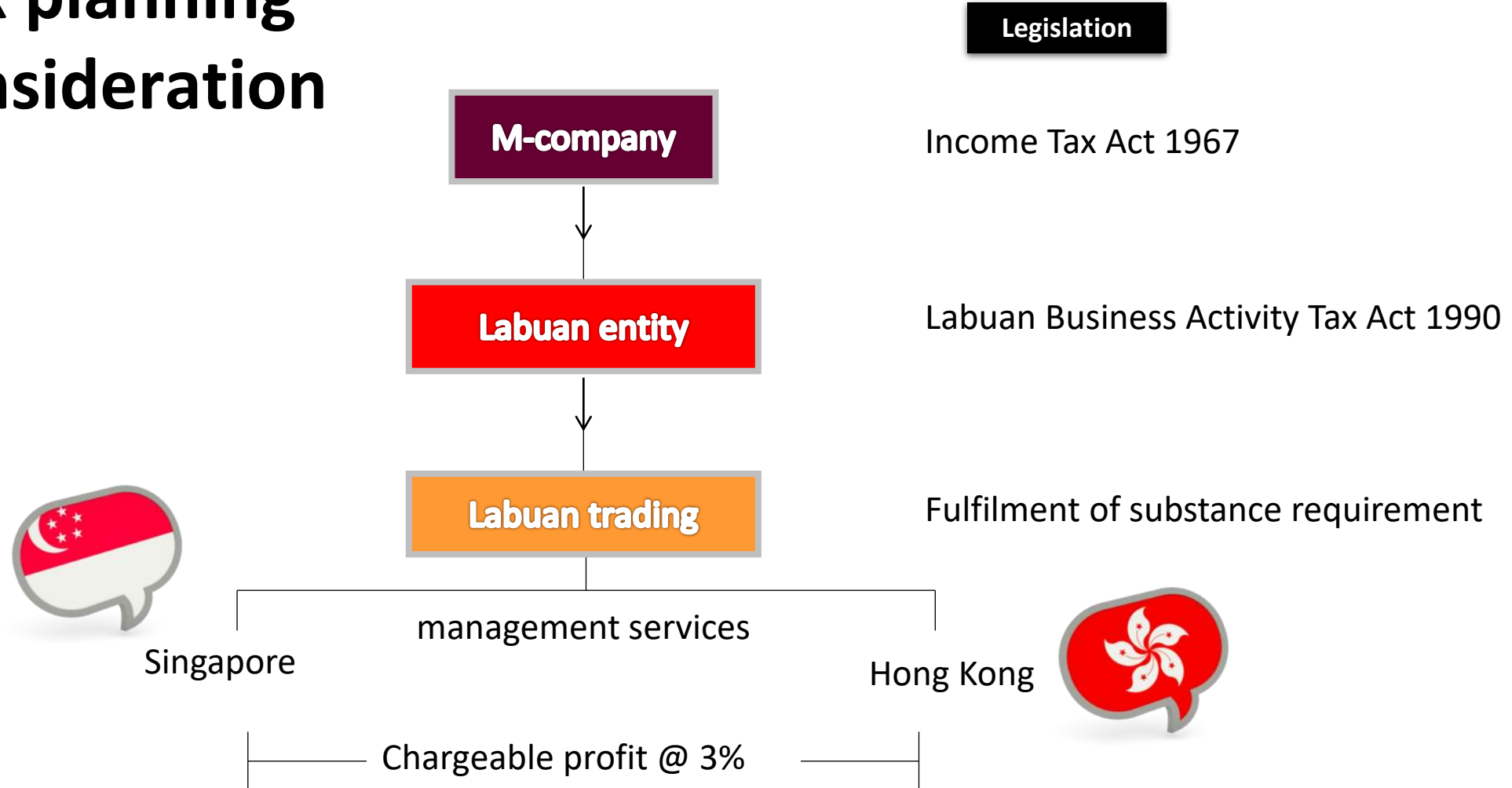
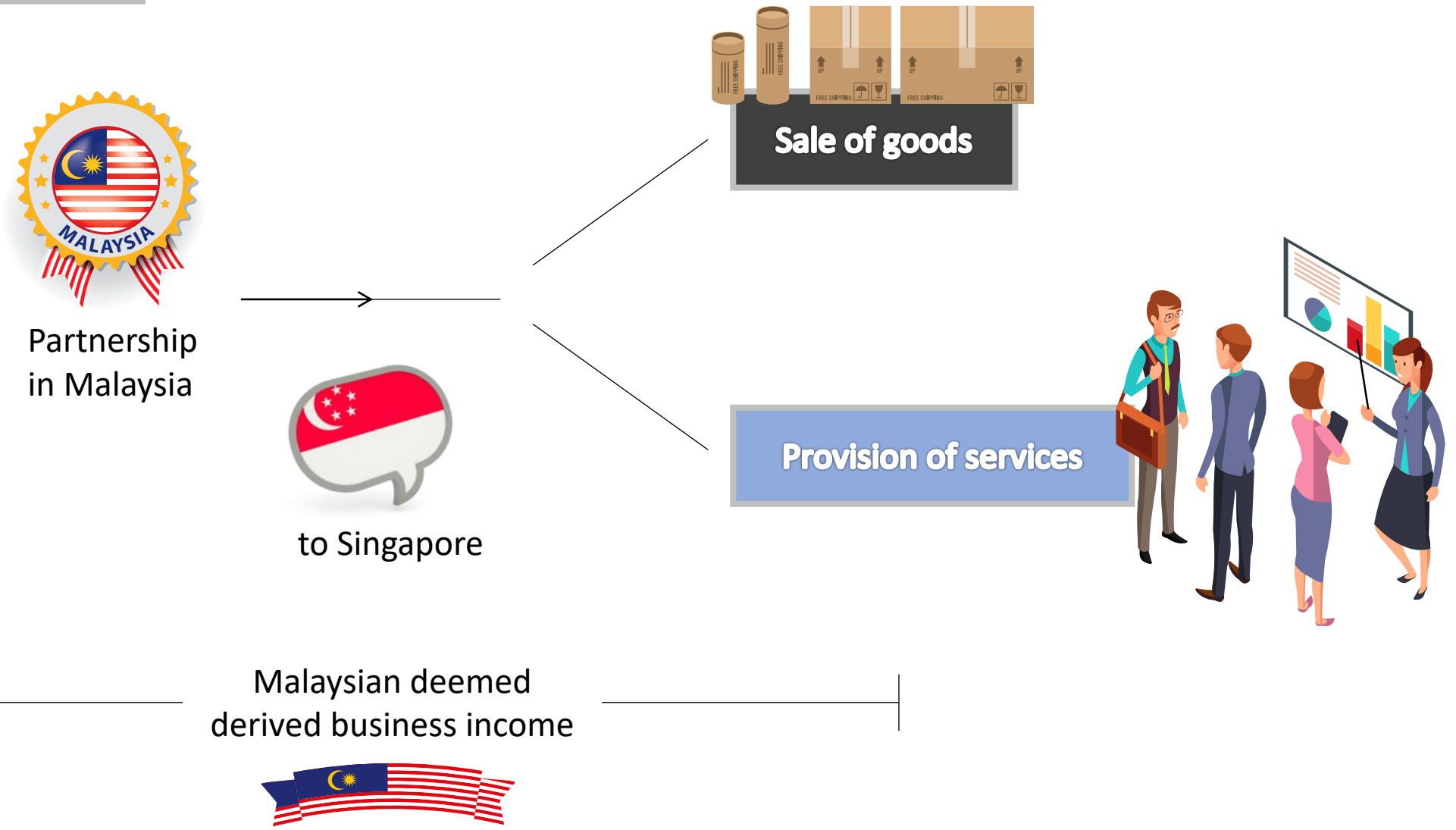


Illustration 15



Tax planning consideration

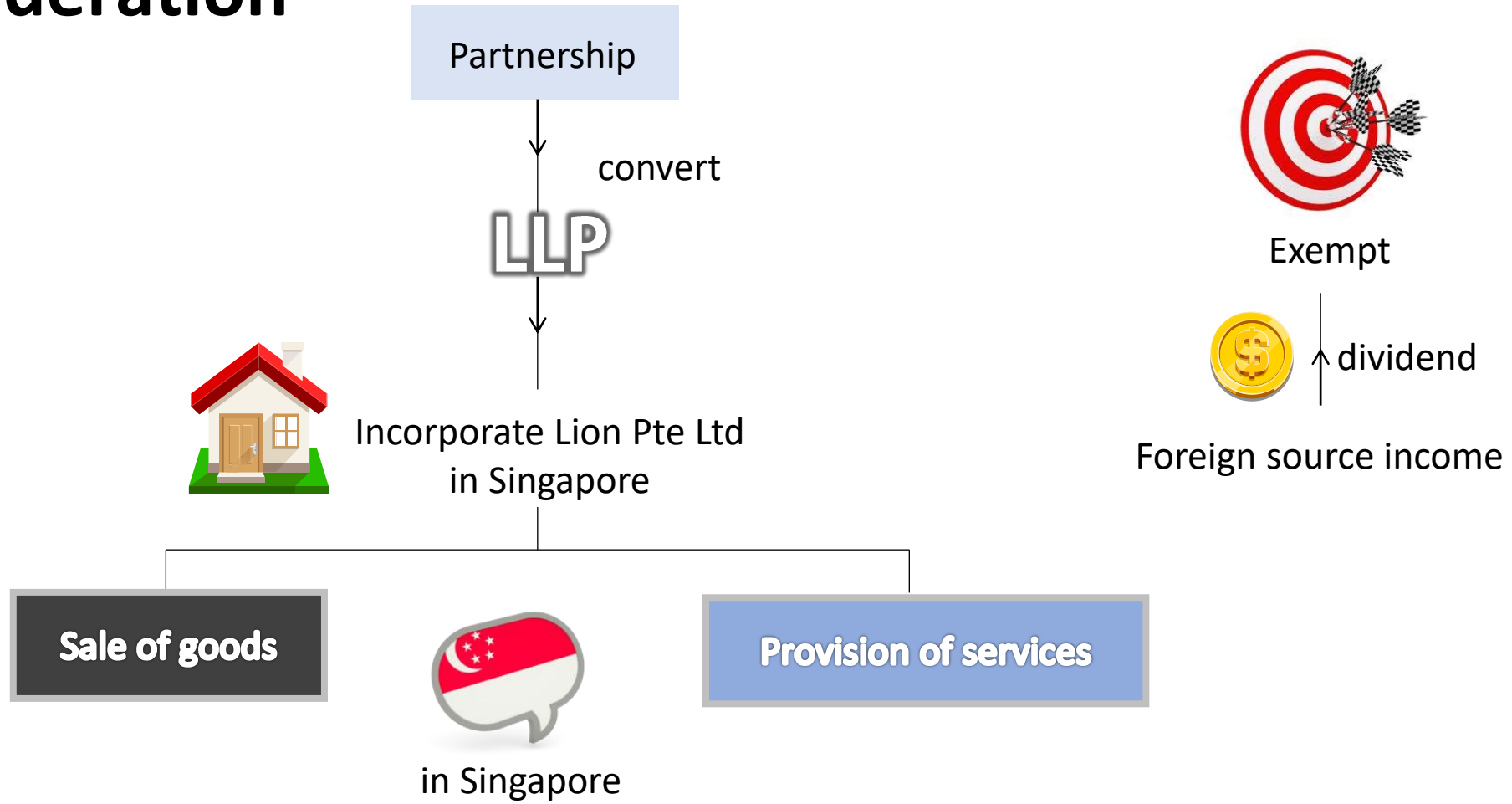


Illustration 16



On 30.12.2021, the MOF announced that certain types of FSI of resident taxpayers will continue to be exempt from tax. This exemption will apply to the foreign-sourced dividend income of companies and limited liability partnerships, and all foreign-sourced income of individuals (**except individuals carrying out business in Malaysia through a partnership**).

Confusing on the bold sentences.

If partnership provide services/goods to Singapore customers, would it considered as foreign-sourced income?



Illustration 17



Malaysian company



services
to

Overseas holding company

Income

Business

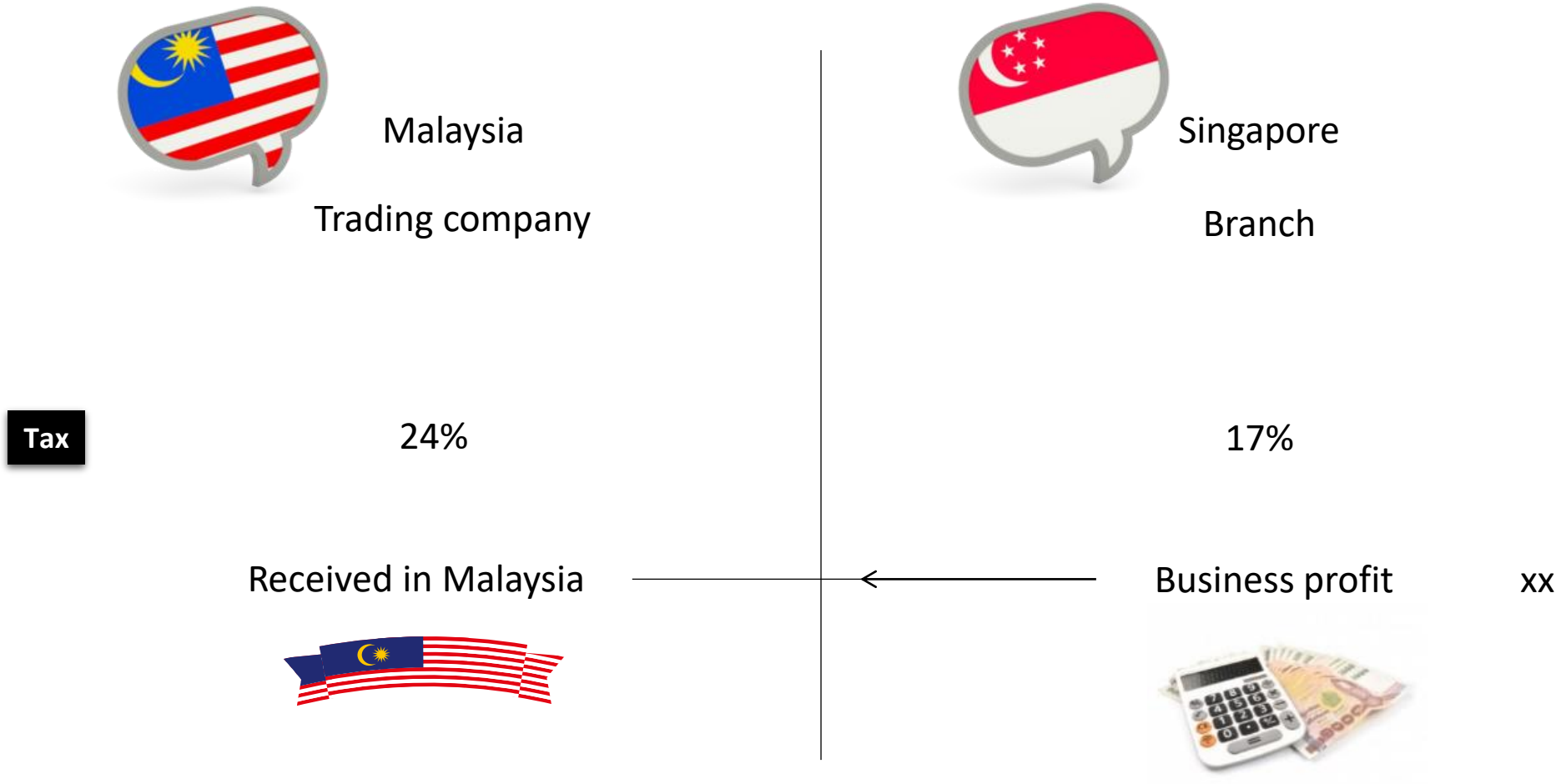
Other income

- Technical information
- Invention
- Patent application

Tax implications



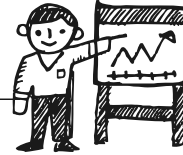
Branch profit – remittance





Branch in Singapore

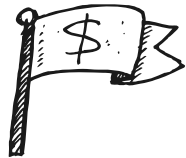
	RM
Profit	100,000
(-) tax @ 17%	(17,000)
	<hr/>
	83,000



Computation of bilateral relief



Received in Malaysia
RM24,900
by M-Co



Gross up RM30,000

Tax @ 24%

(-) foreign tax
(17% x 30,000)

Additional tax

1.7.2022

RM
7,200
(5,100)
<hr/>
2,100

1.1.2022–30.6.2022

RM
Tax @ 3%
900
(900)
<hr/>
-



Tax planning

- Accumulation branch profit in overseas



xx



Tax saving 7%



Now or never !

1.1.2022 – 30.6.2022

Individual

Shares – investment or trading?

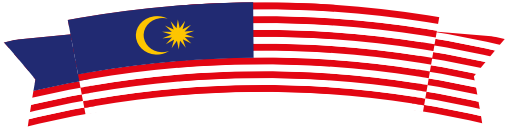


Buy

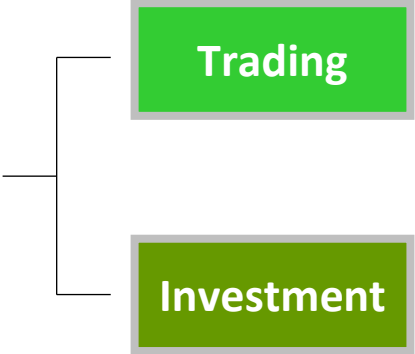
12 months

Sell

- Holding period
- Frequency
- Source of finance



Malaysian counters





Guiding legal principles

1. Holding periods

2 years

2. Dividend income



Received

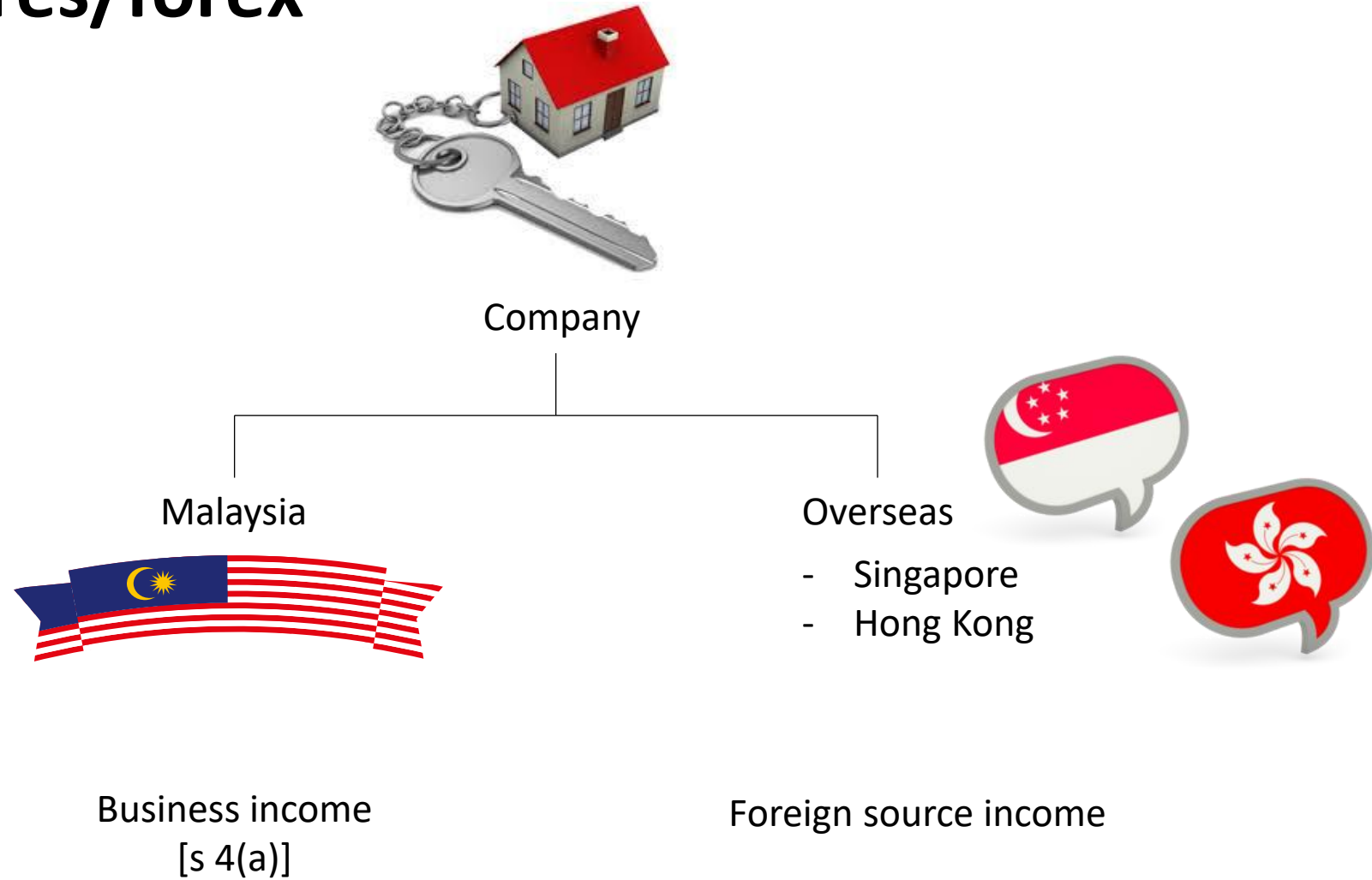
3. Frequency of transaction

20 sales transaction

- Calendar year basis
- Examples:
 - 1.1.2020–31.12.2020
 - 1.1.2021–31.12.2021



Trading shares/forex



Derivation



M-Co

Buy
Sell



Trading



s 4(a)

Sale proceeds	xx	
(-) Cost of sales	(x)	
Gross profit/(loss)	<u>xx</u>	<u>(x)</u>

Closing stocks

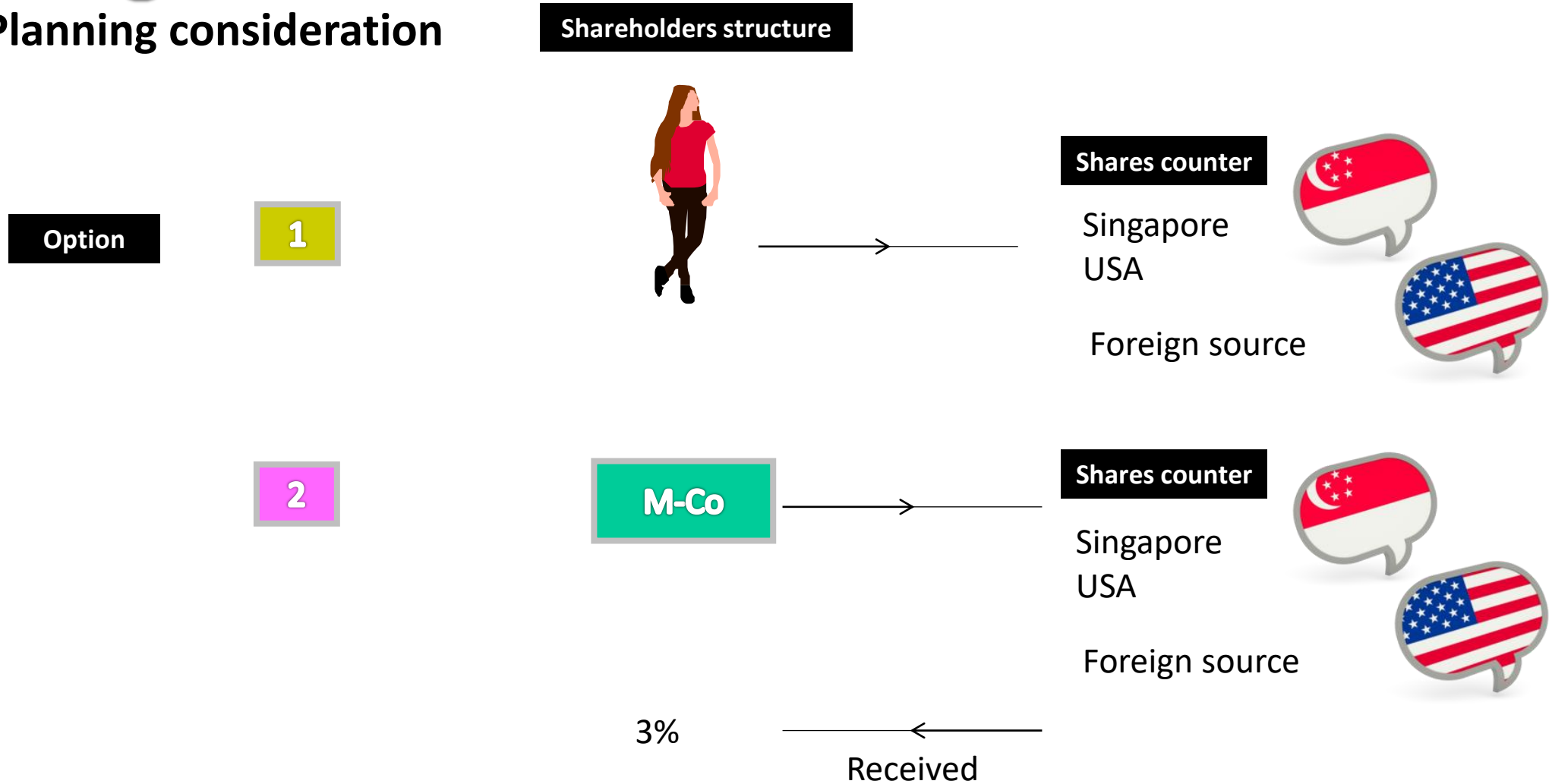
Value at *lower* of cost or market value



[proviso s 35(3)(a)]

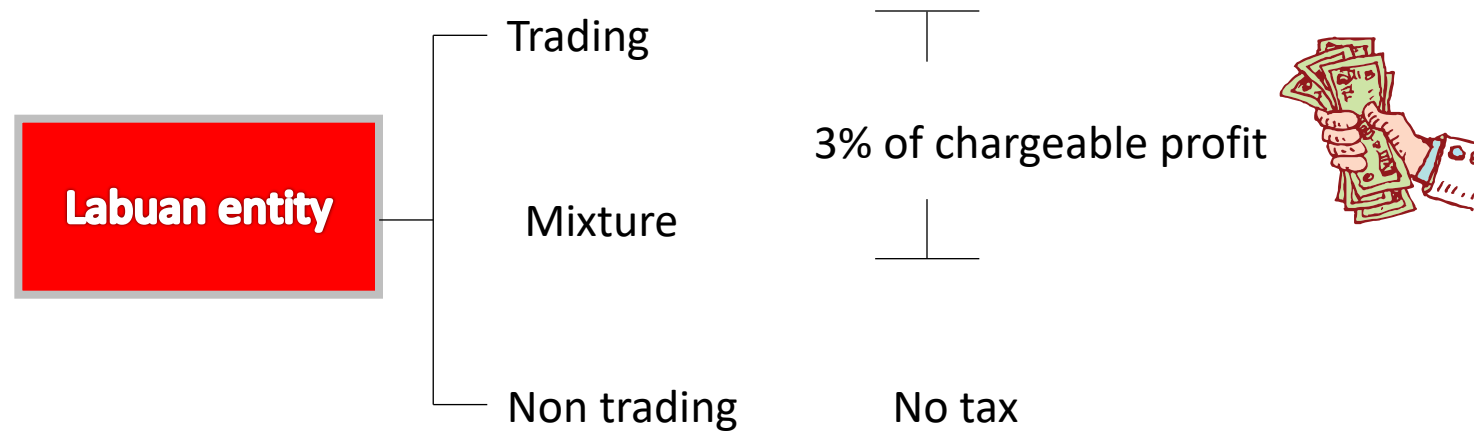
Moving forward

- Planning consideration





Labuan company as an option



LABATA 1990

Substance requirement



Labuan trading

Labuan non trading

(a) Employees in Labuan
- Full time

2

1

(b) Annual operating
expenditure in Labuan
(RM)



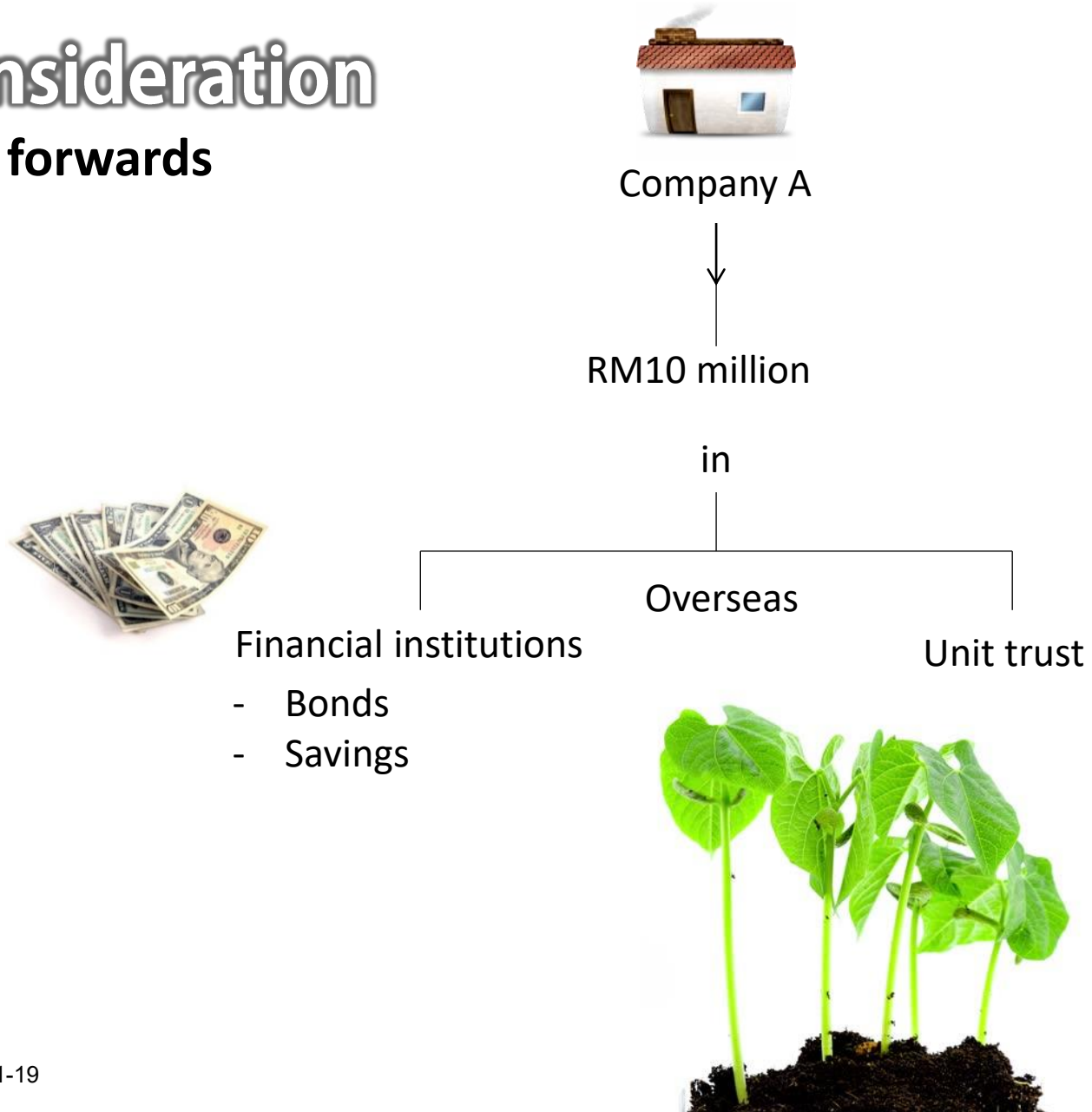
100,000

20,000

[Labuan Business Activity Tax (Requirements for Labuan Business Activity)
Regulations 2021, PU(A) 423/2021]

Tax consideration

- Moving forwards



Foreign source income



Interest income

↓
Return



Distribution

↓

3%

Received in
Malaysia

No tax



Income consolidation



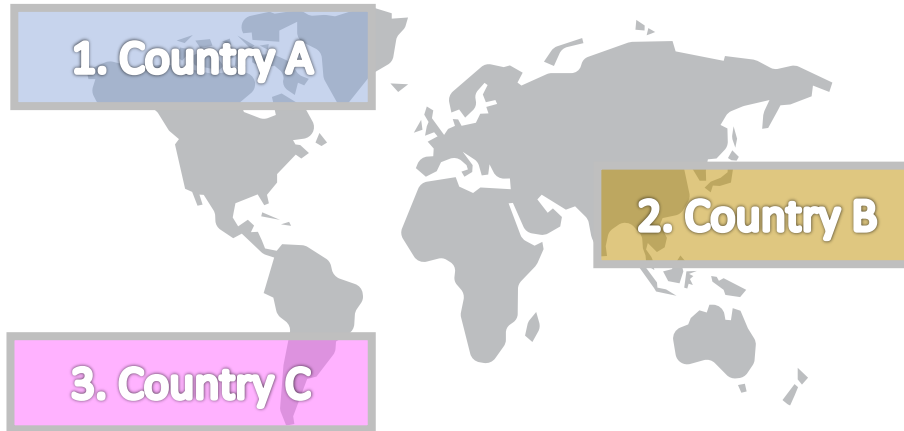
Commonly owned by



X



Y



- A, B, C are related
- Common controlled

Option 1

Foreign source income

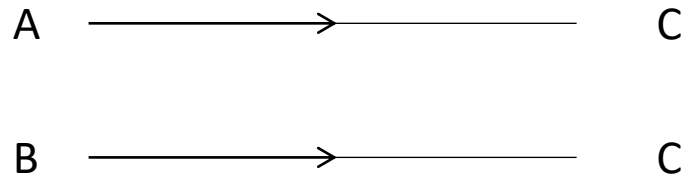


A
B
C

Pay individually to the shareholders



Option 2



Dividend income to shareholders





Cryptocurrency

- Investment or trading

- Bitcoins
- BNB
- Solana
- Fantom
- etc

Determined by



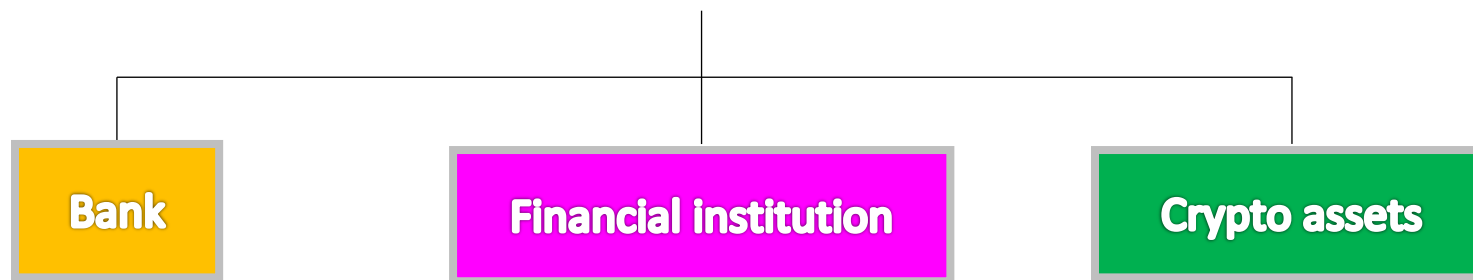
- Intention to make profit
- Business model



Crypto transactions



Cryptocurrency online exchange



— Cryptocurrency wallet information —



- Purchases
- Sales
- Transfers

Cryptocurrencies/forex



Buy
Sell



↓
Speculative

Gain

No tax

Loss

Not allowed



Sales of shares	xx
Less: Cost of shares	(x)
Dividend reinvestment	(x)
Gains	<u>xx</u>

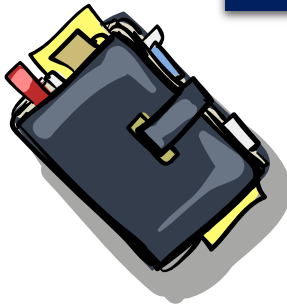
Capital



Foreign source income
Employment income
Dividend income

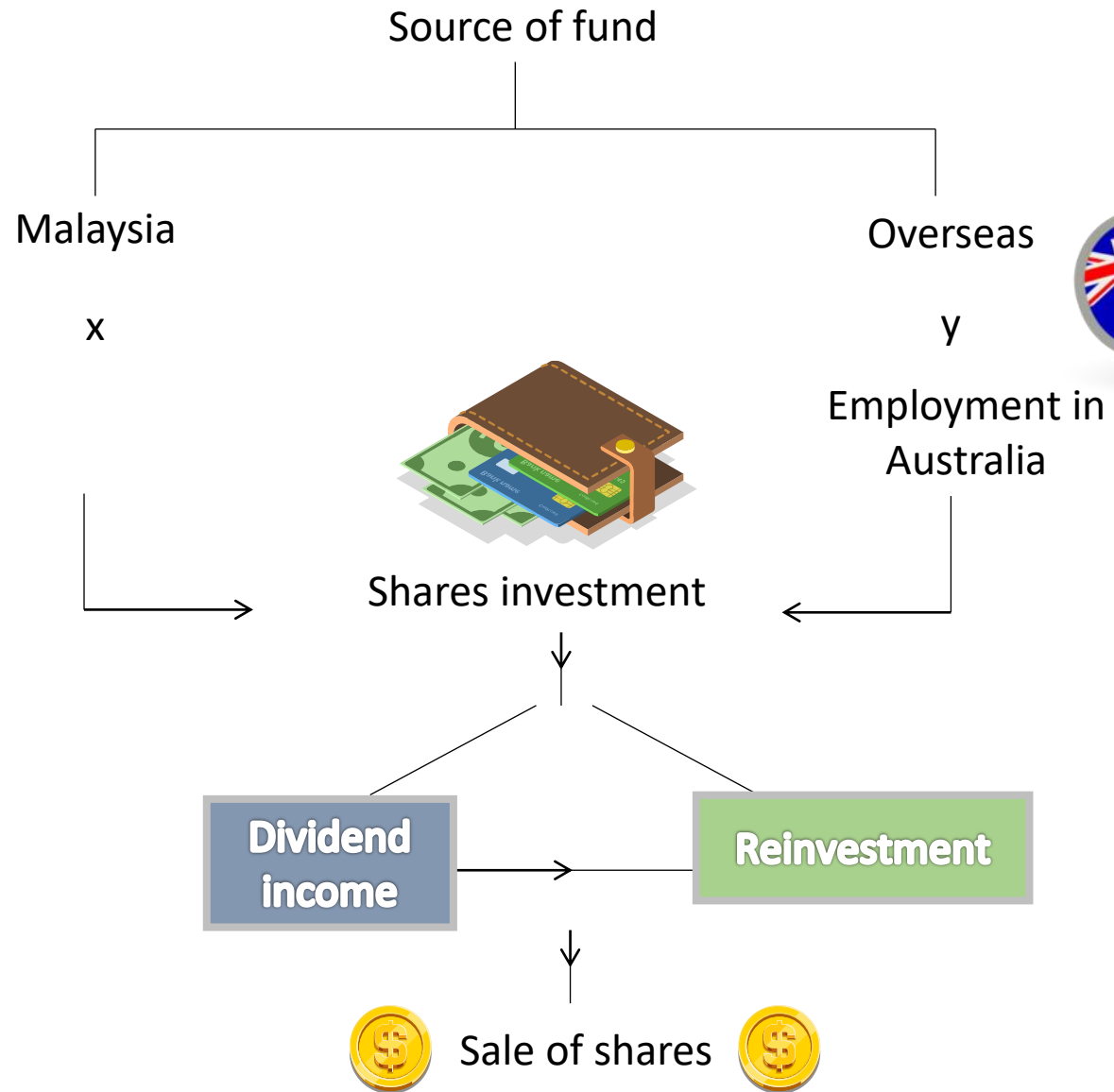
	y
	<u>xx</u>
	<u>xx</u>

Documentation

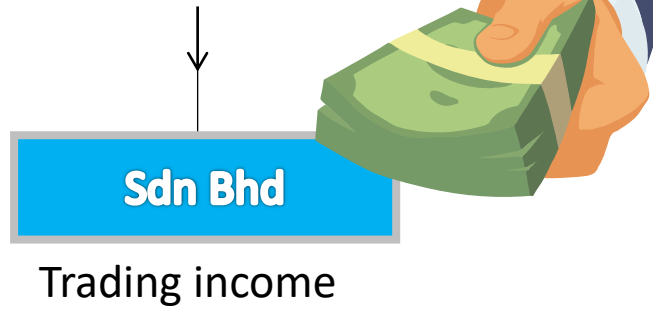


- Contract notes
- Dividend warrant
- Salaries slip on employment
- Tax paid on employment

Capital and income demarcation



Cryptocurrency



Financial year (12 months)

Sales	xx	
- Cost of sales	(x)	
Gross profit/(loss)	<u>xx</u>	<u>(xx)</u>



Gain is tax
Loss is allowed

FOREIGN SOURCED INCOME 2022

Employment income

- (a) Deemed derived – Malaysia source
- (b) Overseas duties – Malaysia source
- (c) Demarcation foreign source income
- (d) Tax implication on restricted stock units
- (e) Director's tax implications

Book 10



DR CHOONG KWAI FATT

Advocate and Solicitor (High Court of Malaya), Tax Consultant

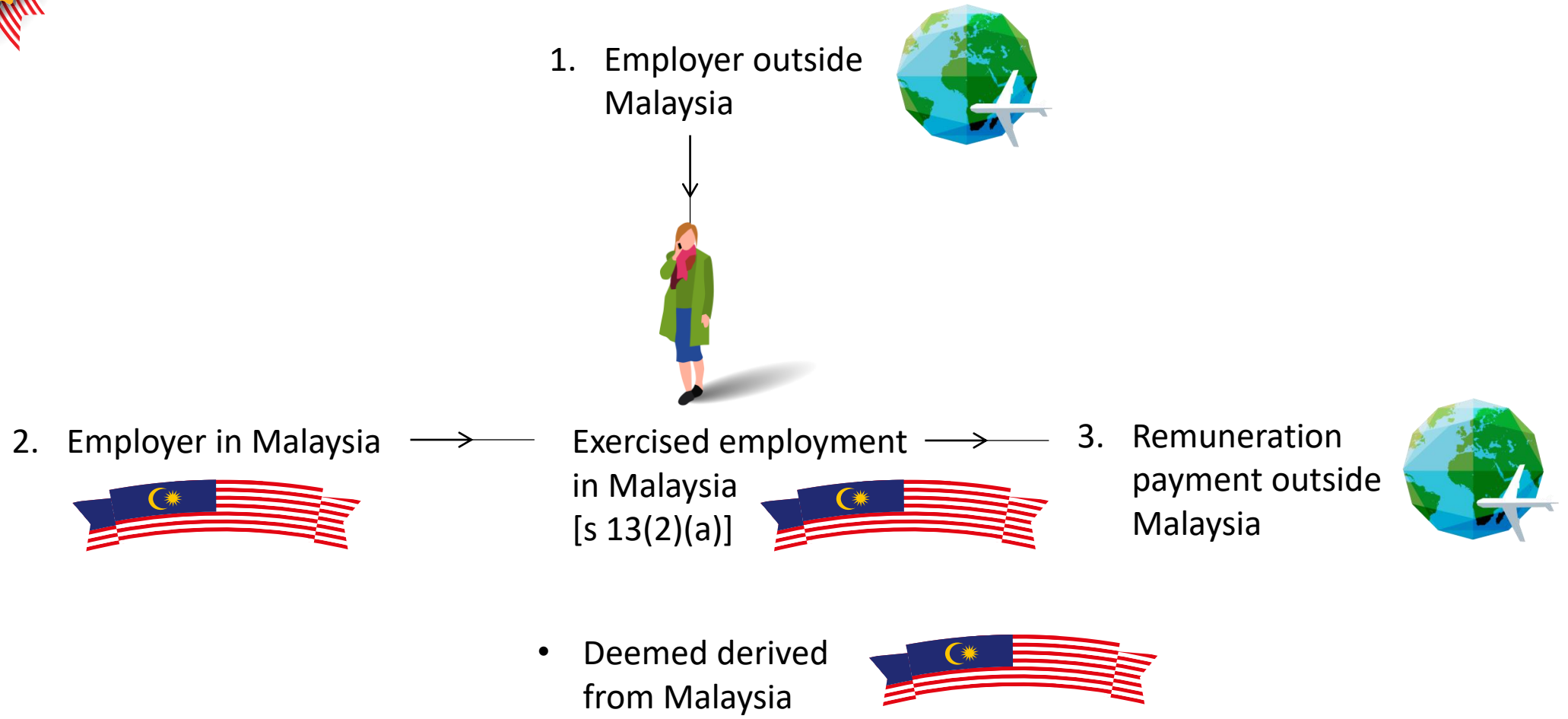
B.Acc(Hons)(Malaya),
LL.B(Hons)(London), CLP, MCL(IIUM), PhD(IIUM),
FCCA(UK), CPA(M), CA(M),
CA(Aust. & NZ).

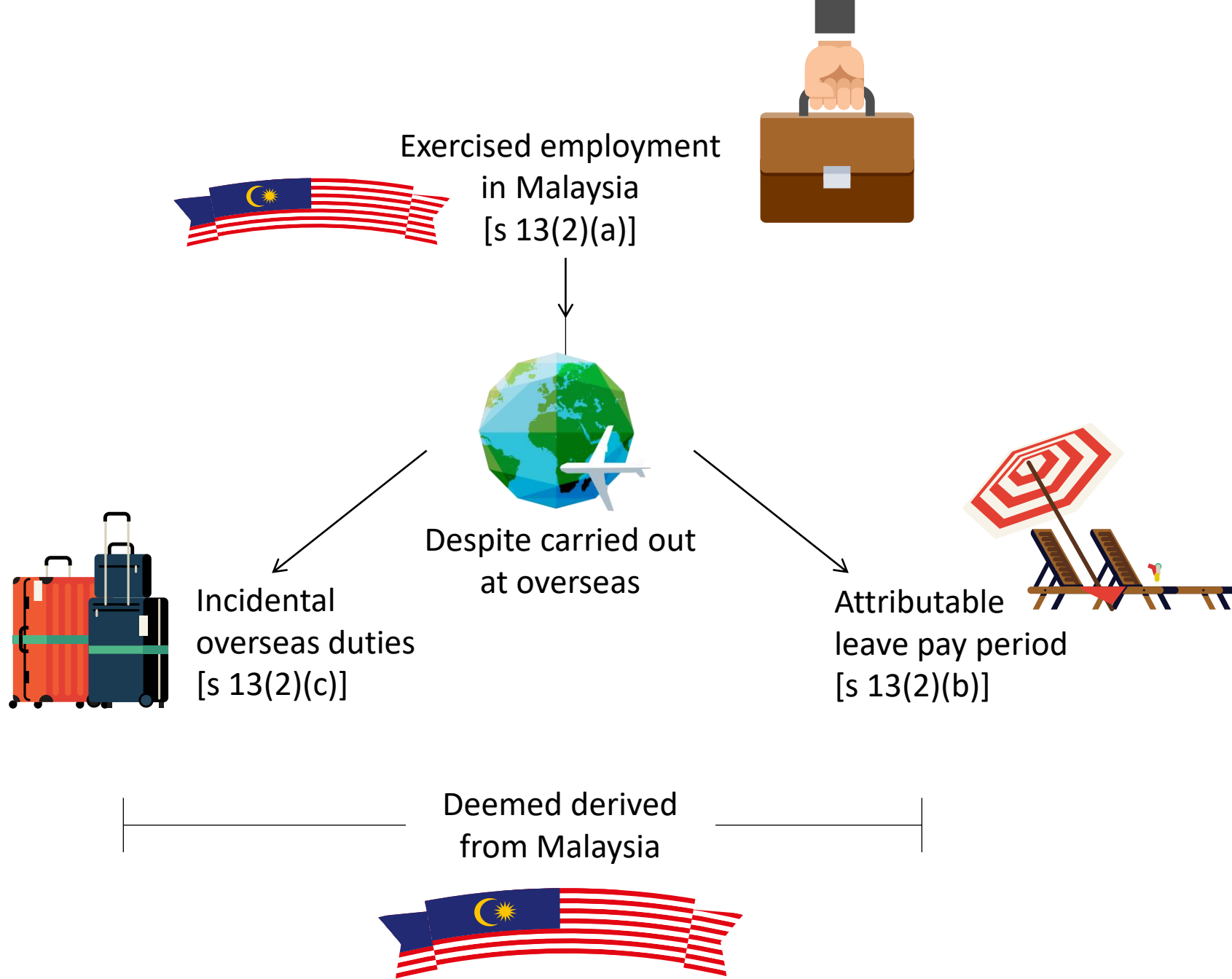
Live Zoom Seminar
20 January 2022

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Malaysia derived employment income





Employment – Malaysia or FSI ?

M-Co



A



Employee working in Malaysia



B



Employee working in overseas

Malaysian deemed derived employment income [s 13(2)(a)]



Foreign source income

Payment of salary in Singapore



Received in Malaysia in 2022



No tax

Exempt from tax

Illustration 18

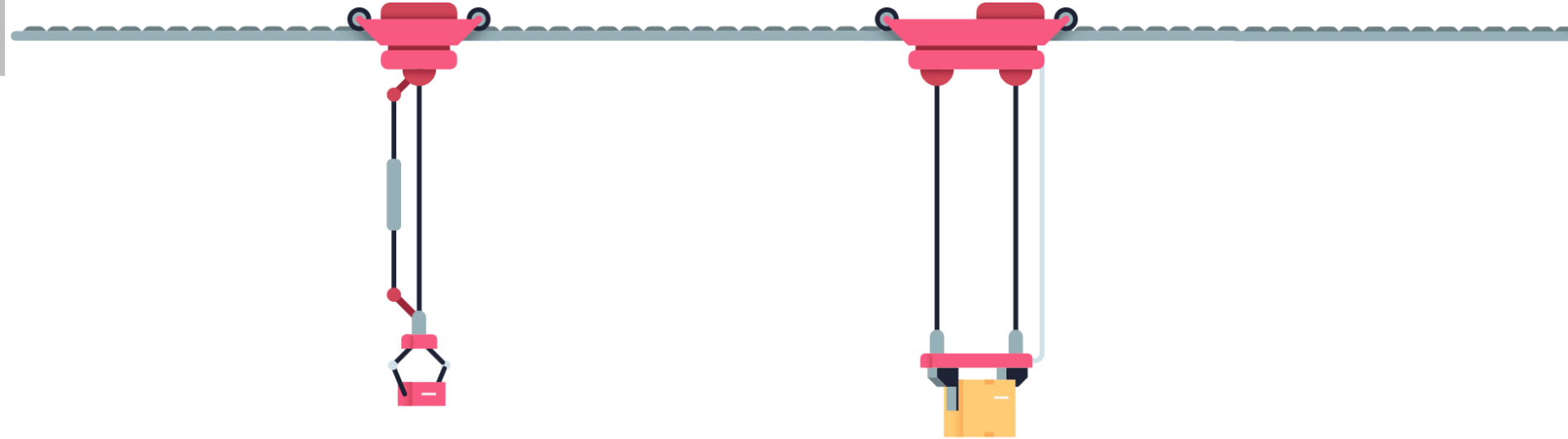


I am now a Malaysian tax resident. Previously I worked abroad and through my accumulated employment income I was able to purchase a piece of property for a sum equivalent to RM500,000.

I have now been offered a sum equivalent to RM550,000 for this property. If I were to dispose my property and transfer the proceeds back to Malaysia, what is my tax liability?



Illustration 19



If I have taken up my restricted stock units (RSU) offered by my employer and paid tax for this benefit-in-kind (BIK) and later disposed the shares and have the proceeds remitted back to Malaysia, would this remittance be taxed?

Restricted Stock Unit (RSU)

- Share option



Exercise employment
in Malaysia

Deemed derived

s 13(1)(a) Perquisite

No tax



xx Y_1

Received in Malaysia



RSU in USA

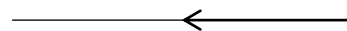
- Exercised RSU
- Purchased Y_1



Disposal

Y_2

- Sale proceeds of shares
- Capital proceeds



Y_3

Share option as perquisites



Market value of the shares

(a) At the time of exercise

(b) At the time of option granted

[s 25(1A) read with s 32(1A)]

Lower of

xx

Less: Option price paid on the share

(x)

Excess

xx

x no. of shares

y

Perquisites

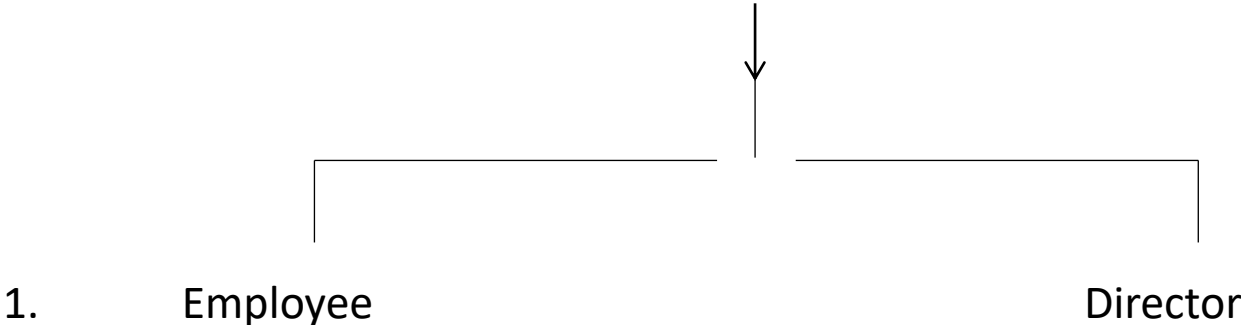
s 13(1)(a)



Individual



- Resident
- Non resident
- Citizen
- Foreigner





Distinction importance



2. Malaysian derived

3. Foreign source income



Directors' fees

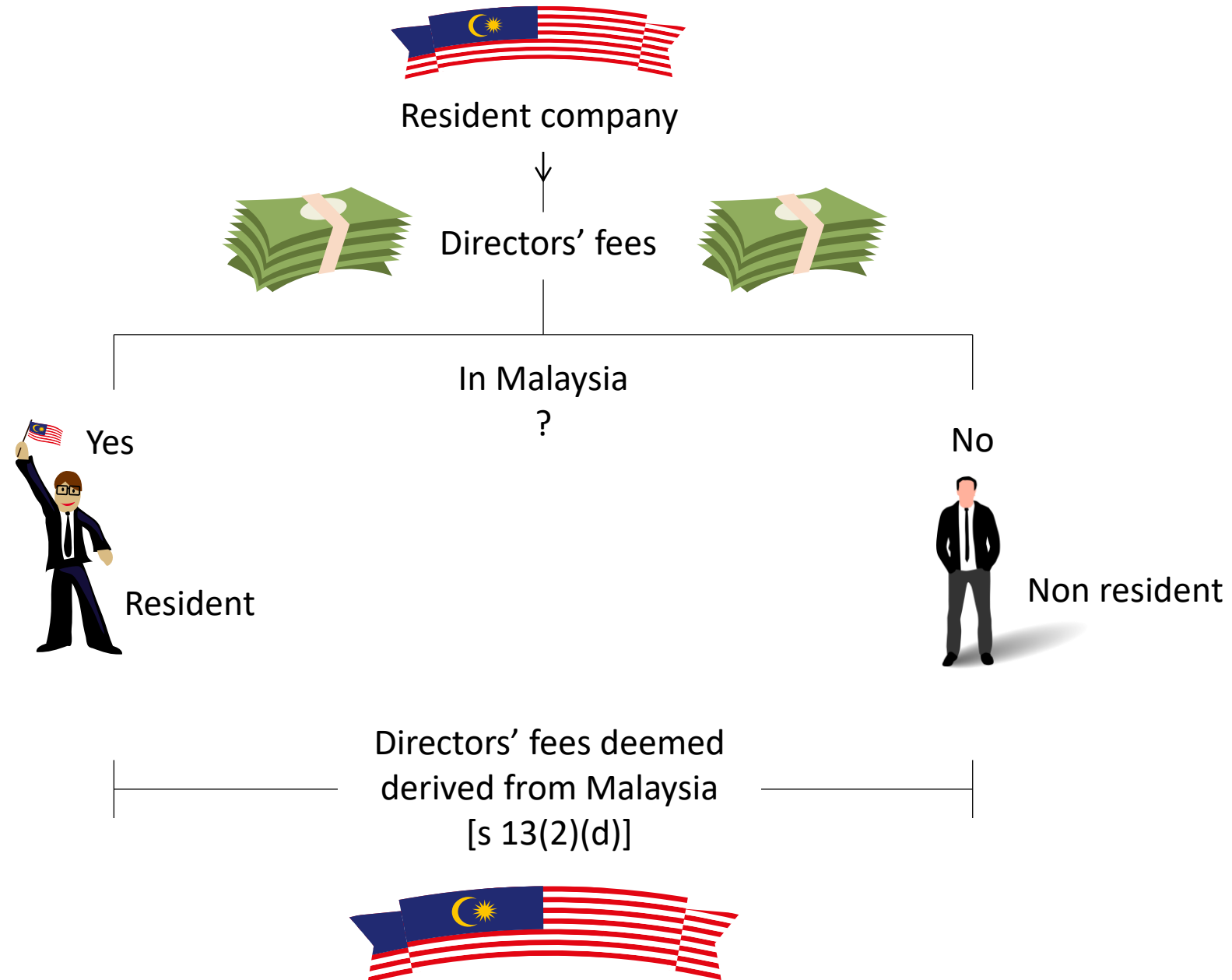


Illustration 20



If my Malaysian Company sets up a branch overseas and the Malaysian directors who are stationed there occasionally return to Malaysia, will the director's fees earn overseas be tax exempted in Malaysia?

