

Preface

Recommended Tax Optimization Strategy for a Malaysia Company with a Subsidiary in Thailand

This document outlines a structured tax optimization strategy for an Malaysia incorporated company operating through a Subsidiary in Thailand. The strategy leverages four principal mechanisms, carefully structured in accordance with the Thailand–Malaysia Double Taxation Agreement (DTA) to mitigate double taxation risks and optimize cross-border tax exposure:

1. Dividend Distributions
2. Royalties and Licensing Arrangements
3. Shareholder Loan Financing
4. Management and Service Fee Allocation

Each lever is analyzed with consideration of withholding tax implications, transfer pricing requirements, deductibility rules, and treaty relief provisions under the Thailand–Malaysia DTA.

1. Dividend Repatriation (The "Sweet Spot")

In 2026, dividends are arguably the most effective tool for Malaysian companies due to the extension of tax incentives in the recent budget.

- **The Rate:** Under the Thailand-Malaysia DTA, the Withholding Tax (WHT) on dividends is 10%.
- **Thai Statutory Reserve:** You must still set aside 5% of net profits into a legal reserve until it reaches 10% of the subsidiary's capital.
- **Malaysian Side (FSI Exemption):** Under the 2026 budget measures, Malaysia has extended the tax exemption on foreign-sourced dividends until December 31, 2030.
- **The Condition:** To enjoy 0% tax in Malaysia, the dividend must have been "subject to tax" in Thailand (which the 20% Thai CIT satisfies) and the Thai headline tax rate must be at least 15%.
- **Economic Substance:** You must ensure the Malaysian HQ meets "Economic Substance" requirements (adequate employees and operating expenditure in Malaysia) to qualify for this exemption.

2. Royalties and License Fees

Malaysia is a regional hub for tech and brands; using royalties can "strip" profits out of Thailand before the 20% CIT is applied.

- **DTA Advantage:** The Thailand-Malaysia DTA offers a tiered WHT system:

- 5% for copyrights of literary, artistic, or scientific work.
- 10% for "Know-How" (information concerning industrial, commercial, or scientific experience).
- 15% for patents, trademarks, and equipment rentals (though often negotiated lower in specific setups).
- Tax Efficiency: These are deductible expenses in Thailand. You save 20% Thai CIT and pay only 5%–10% WHT.
- Note: Malaysia taxes royalty income at the standard 24% CIT rate, but you can claim a Section 132 Tax Credit for the WHT paid in Thailand to avoid double taxation.

3. Shareholder Loans (Debt vs. Equity)

- WHT Rate: Under the DTA, interest WHT is 15%. (Reduced to 10% if paid to an insurance company or a financial institution).
- The Strategy: Interest is a deductible expense in Thailand.
- Malaysian Advantage: If the Malaysian HQ is an investment holding company, interest income is taxable, but the 15% Thai WHT can be fully credited against your Malaysian tax bill.
- Earning Stripping Rules (ESR): Ensure the Thai subsidiary's interest-to-EBITDA ratio stays within Thai limits (currently around 30%) to ensure the interest remains fully deductible in Thailand.

4. Management and Technical Service Fees

- WHT Rate: Generally 0% if the services are rendered in Malaysia and there is no "Permanent Establishment" (PE) in Thailand.
- Scope Alert: Thailand is aggressive in 2026 about reclassifying "Technical Services" as "Royalties." If the service involves transferring "secret formulas" or "proprietary processes," it will trigger 10% WHT.
- Benefit: If documented as general administrative support, it is a deductible expense in Thailand with no withholding tax.

Summary Table: Malaysia-Thailand Repatriation (2026)

Method	Thai WHT (DTA)	Thai CIT Deductible?	Malaysia Tax Impact
Dividends	10%	No	0% Tax (FSI Exemption until 2030)

Royalties	5% – 10%	Yes	24% CIT (with Foreign Tax Credit)
Interest	15%	Yes	24% CIT (with Foreign Tax Credit)
Service Fees	0%	Yes	24% CIT (0% Export VAT)

2026 Strategic Compliance for Malaysian Groups

1. **Transfer Pricing (TP) Documentation:** Malaysia has significantly ramped up TP enforcement. You must prepare Contemporaneous TP Documentation in Malaysia for all cross-border transactions. Failure to provide it within 14 days of a request from the IRB (Inland Revenue Board) can lead to penalties of up to RM 100,000.
2. **Labuan Alternative:** If your group structure allows, some Malaysian entities route Thai investments through Labuan. However, for 2026, be careful with "Substance Requirements" as Labuan entities must now meet strict employment and expenditure thresholds to access the 3% tax rate.
3. **E-Invoicing:** Malaysia's full implementation of E-Invoicing in 2025/2026 means all intercompany service fees and royalties must be digitally validated by the IRB. Discrepancies between what Thailand claims as a deduction and what Malaysia claims as income will be flagged instantly.

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