



INLAND REVENUE BOARD OF MALAYSIA

TAXATION OF UNIT HOLDERS OF REAL ESTATE INVESTMENT TRUSTS / PROPERTY TRUST FUNDS

PUBLIC RULING NO. 9/2018

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

The Director General may withdraw 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 this Public Ruling (PR) is to explain the tax treatment of distribution of income from real estate investment trusts / property trust funds in Malaysia to its unit holders.

2. Related Provisions of the Law

The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 6, 7, 8, 61, 61A, 109D, 110, 111, subsections 127(3)(b), 127(3A), 127(5) and Part 1 and X of Schedule 1.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 “Real Estate Investment Trust” (REIT) or “Property Trust Fund” (PTF) means a unit trust scheme that invests or proposes to invest primarily in income generating real estate.
- 3.2 “Islamic Real Estate Investment Trust” is a real estate investment trust that is managed and operated based on Syariah principles.
- 3.3 “Resident” means resident in Malaysia for the basis year for a year of assessment by virtue of section 7 or 8 of the ITA.
- 3.4 “Individual” means a natural person.
- 3.5 “Person” includes a company, a co-operative society, a club, an association, a Hindu Joint Family, a trust, an estate under administration, an individual and a partnership.
- 3.6 “Institutional investor” means a pension fund, collective investment schemes or such other person approved by the Minister.
- 3.7 “Distribution” refers to the distribution of income by a Real Estate Investment Trust or Islamic Real Estate Investment Trust to its unit holders.
- 3.8 “Securities Commission” means the Securities Commission established under the Securities Commission Act 1993.

3.9 “Fund” means a Real Estate Investment Trust or Islamic Real Estate Investment Trust.

4. Tax at Unit Holders’ Level

4.1 REITs/PTF unit holders are taxed in the year of assessment (YA) the distribution is received.

- (i) Unit holders are taxed in the YA the distribution of income is received from REITs/PTF. Distribution of income from the income of REITs/PTF exempted from tax for a basis year for a YA under section 61A of the ITA is taxable on the unit holder in the YA the income is received. In practice, REITs/PTF may only be able to make payments to the unit holders after the close of accounts.

Example 1

Income of Smart REITs for the period from 1.1.2017 to 31.12.2017 was received by unit holders on 31.1.2018. One of the unit holders, ABC Sdn Bhd which closes its accounts on 31 December each year, received a distribution on 31.1.2018.

ABC Sdn Bhd, a resident company, should declare the distribution of income from Smart REITs in YA 2018 as the payment date on the distribution voucher indicates the date the income was received.

- (ii) Unit holders are also taxed in the YA they received distribution of accumulated undistributed income from REITs/PTF. The accumulated undistributed income constitutes previous years’ income which was tax exempt or subjected to tax at the REITs/PTF level. Distribution of accumulated undistributed income which was subjected to tax would carry with it tax credits.

4.2 Distribution of income which is tax exempt at REITs/PTF level by a REIT/PTF that is listed on Bursa Malaysia

If 90% or more of the total income of a REIT/PTF that is listed on Bursa Malaysia in the basis year for a YA is distributed to unit holders, the REIT/PTF is exempted from tax for that YA. However, unit holders are liable to tax on this distribution of income. Since the income distributed by the

REIT/PTF is tax exempt, no tax credit under subsection 110(9A) of the ITA would be available to the unit holders.

4.3 Distribution of income that has been taxed at REITs/PTF level

Unit holders who receive income distribution which has been subjected to tax at the REITs/PTF level from either a :

- (i) REIT/PTF that is listed on Bursa Malaysia, or
- (ii) REIT/PTF that is not listed on Bursa Malaysia

would be subject to tax on the income distribution. However, the income distribution would carry with it a tax credit, which can be utilised by the unit holders to offset against the tax payable by them pursuant to subsection 110(9A) of the ITA.

4.4 Distribution of tax exempt income received by REITs/PTF

Tax exempt income received by REITs/PTF and subsequently distributed to unit holders continue to be tax exempt in the hands of these unit holders.

4.5 Distribution of income received by a tax-exempt unit holder

Pursuant to subsection 127(5) of the ITA, where a unit holder is tax-exempt under subsection 127(3)(b), 127(3A) or Schedule 6 of the ITA, and the distribution of income from a REIT/PTF has been subjected to withholding tax under section 109D of the ITA, that unit holder would be entitled to a refund under section 111 of the ITA.

4.6 Tax rates

The tax rates applicable to the unit holders would depend on their residence status. A summary of the relevant tax rates are as follows:

Chargeable Person	YA 2009 to 2015		YA 2016 to 2018	
	Type of Tax	Rate	Type of Tax	Rate
(A) Company (i) Resident	Corporate	25%	Corporate	24%
	(ii) Non-Resident	WHT ¹ (final tax)	25%	WHT (final tax)
(B) Foreign Institutional Investor	WHT (final tax)	10%	WHT (final tax)	10%
(C) Individual (i) Resident	WHT (final tax)	10%	WHT (final tax)	10%
	(ii) Non-Resident	WHT (final tax)	WHT (final tax)	10%
(D) Others (i) Resident	WHT (final tax)	10%	WHT (final tax)	10%
	(ii) Non-Resident	WHT (final tax)	WHT (final tax)	10%

¹WHT – withholding tax

Example 2

The following unit holders received their share of distribution of income from Luxury REIT listed in Bursa Malaysia in the basis period for the YA 2018.

Unit Holder	Residence Status
Daya Maju Sdn Bhd	Resident company
Gupta India Pte Ltd	Non-resident company
Padzli	Resident individual
Johnson	Non-resident individual
German Pension Fund	Foreign Institutional Investor – non-resident
Discretionary Trust	Resident & non-resident

As the income distributed has been exempted from tax at the REITs level according to section 61A of the ITA, Luxury REIT unit holders are subject to withholding tax as follows:

Unit Holder	Tax Treatment
Daya Maju Sdn Bhd	Note ²
Gupta India Pte Ltd	WHT 24%
Padzli	WHT 10%
Johnson	WHT 10%
German Pension Fund	WHT 10%
Discretionary Trust	WHT 10%

²Daya Maju Sdn Bhd is not subject to withholding tax but is taxable at the corporate tax rate of 24% for the YA 2018.

Example 3

The facts are the same as in Example 2 except that Luxury REIT distributed the previous year's exempt income of RM100,000 in YA 2018.

The exempt income received by Luxury REIT and subsequently distributed to unit holders continue to be tax exempt at the unit holders level.

Example 4

Luxury REIT, listed in Bursa Malaysia, distributed 80% of its total income of RM1,000,000 for the YA 2017. The Fund was taxed on the total sum of RM1,000,000 as only 80% of the total income was distributed. The

retained income of RM200,000 will be distributed by Luxory REIT in YA 2018 to the following unit holders:

Unit Holder	Residence Status
Daya Maju Sdn Bhd	Resident company
Padzli	Resident individual
Johnson	Non-resident individual
German Pension Fund	Foreign institutional investor – non-resident

The income distribution in YA 2017 and the retained income distributed in YA 2018, which has been taxed at the REITs/PTF level, would have tax credits attached.

The above unit holders are required to declare the distribution of income amounting to RM800,000 from Luxory REIT in YA 2017 in their Income Tax Return Form (ITRF). These unit holders would be entitled to the tax credit under subsection 110(9A) of the ITA for the YA 2017.

When the retained income of RM200,000 from YA 2017 is distributed by Luxory REIT in YA 2018, the unit holders are required to declare such distribution in their ITRF for YA 2018 and they would be entitled to the tax credit under subsection 110(9A) of the ITA.

5. Filing of Income Tax Return Form

If a unit holder has income from sources other than REITs/PTF, an ITRF has to be filed (e.g. Form BE, B or M for individuals or Form C for companies). The income from REITs/PTF need not be included in the ITRF as the tax withheld is a final tax. However, income from REITs/PTF has to be reported in the following circumstances:

- (a) in the case of resident corporate unit holders where the withholding tax provision under Section 109D of the ITA is not applicable, and
- (b) where REITs/ PTF –
 - (i) are not exempted from tax under Section 61(1A) of the ITA (either on the basis that the distribution is less than 90% of total income of a REIT/PTF that is listed on Bursa Malaysia or the distribution is

from a REIT/PTF that is not listed on Bursa Malaysia for that YA),
and

- (ii) distribute income which carries a tax credit proportionate to each unit of the taxable income in respect of the tax paid by the REITs/PTF,

unit holders should declare the REITs/PTF distribution as income in their ITRF and claim a set-off under section 110(9A) of the ITA.

6. Updates and Amendments

<p>This PR replaces the PR No. 7/2012 dated 29 October 2012</p>	Amendment	
	The contents of this PR are essentially the same as the previous PR with the following amendments:	
	Paragraph	Explanation
	4.2, 4.3, 4.6 and 5(b)(i)	Amended
	4.5	New

7. Disclaimer

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

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

