



**LEMBAGA HASIL DALAM NEGERI  
INLAND REVENUE BOARD**

**PUBLIC RULING**

**INCOME FROM LETTING  
OF REAL PROPERTY**

*Translation from the original Bahasa Malaysia text.*

**PUBLIC RULING NO. 1/2004**

**DATE OF ISSUE: 30 June 2004**

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#### **DIRECTOR GENERAL'S PUBLIC RULING**

A Public Ruling is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,  
Malaysia**



1. This Ruling considers:
  - 1.1 the treatment of rent as a non-business source of income under section 4(d) of the Income Tax Act 1967 (the *Act*);
  - 1.2 the situations or circumstances where rent or income from the letting of property can be treated as business income of a person under section 4(a) of the *Act*; and
  - 1.3 how all properties of a person are to be grouped in several categories in computing the statutory income under section 4(d) of the *Act*.
  
2. For the purpose of this Ruling, the words used have the following meanings:
  - 2.1 "Rent" or "rental income" or "income from letting" includes any sum paid for the use or occupation of any property or part thereof, including premiums and other payments in connection with the use or occupation of the property.
  - 2.2 "Letting" a property means granting the use or occupation of the property under an agreement or a term of contract, and includes the sublease or subletting of a rented or leased property.
  - 2.3 "Property" means real property which includes any land and any interest, option or other right in or over such land, and includes any building on land.
  - 2.4 "Person" includes a company, a co-operative society, a partnership, a club, an association, a Hindu joint family, a trust, an estate under administration and an individual, but excludes a unit trust.
  - 2.5 "Ancillary or support services / facilities" include some or all of the following: security guard service; air-conditioning (centralized or split units); supply of hot water; escalators and / or lifts; recreational facilities (clubhouse, gymnasium, tennis / squash / badminton courts, swimming pool, etc.); cleaning or housekeeping (including garbage disposal); maintenance of common property, garden, landscaping, exterior lighting and other external fixtures.
  - 2.6 "Management corporation" means a management corporation established under the Strata Titles Act 1985 (Act 318), the Land (Subsidiary Title) Enactment 1972 (Sabah No. 9 of 1972) or the Strata Titles Ordinance 1995 (Laws of Sarawak, Chapter 18).
  - 2.7 "Commercial unit" means a unit in an office complex, a commercial centre or a shopping complex, or a floor or a unit in a shophouse with a separate strata title.
  - 2.8 "Shophouse" means a single or multiple-storey building where at least the ground floor is designed or used for occupation as a shop or premises for



carrying on trading or commercial activities, other than a commercial unit or a residential property used as a shop.

- 2.9 "Residential property" means a property designed or used for occupation as residence or dwelling, such as houses, apartments or condominium units, other than a shophouse or part of a shophouse used as a residence. Where, with the written approval of the relevant authorities, a residential property is converted into a shop or an office (for example, a bungalow that is converted into a showroom or office), that property may be regarded as a shophouse or commercial unit, as the case may be.
- 2.10 "Strata or subsidiary title" means a strata title issued under the provisions of the Strata Titles Act 1985 (Act 318) or a subsidiary title issued under the provisions of the Land (Subsidiary Title) Enactment 1972 (Sabah No. 9 of 1972) or the Strata Titles Ordinance 1995 (Laws of Sarawak, Chapter 18). A property for which a strata or subsidiary title "is in the process of being issued" means a property for which a proper application has been made to the relevant authorities.
- 2.11 "Related or connected person", in relation to a company, means any person who is in a position to influence or be influenced by the other person, or to control or be controlled by the other person, and includes a director, an employee, a related company or its directors or employees, a relative of a director, or a person who controls or is controlled by the company.
- 2.12 "Associate", in relation to a company, means a director or subsidiary of that company and a director or employee of that subsidiary.
- 2.13 "Director" includes a person who occupies the position of a director or a person in accordance with whose directions or instructions the directors or staff of a company are accustomed to act.
- 2.14 "Employee" means the servant (where the relationship of master and servant subsists in an employment) or (where it does not) the holder of an appointment or office for which remuneration is payable.
- 2.15 "Related company" means the situation where one company holds not less than 20% of the ordinary shares or preference shares of the other.
- 2.16 "Arm's length basis" refers to the circumstances, decisions or outcomes that would have been arrived at if unrelated or unconnected persons were to deal with each other wholly independently and out of reach of personal influence.
- 2.17 "Significantly less than the market rate" means less than 70% of the economic rent or the amount that would have been payable as rent if the lease or tenancy or occupation of the premise had been negotiated by independent parties dealing on an arm's length basis. Unless there are business or commercial



reasons to justify such a substantial difference, it should be presumed that the situation has been influenced or controlled by the related or connected person.

3. Generally, rent is regarded as a non-business source of income and is charged to income tax under section 4(d) of the Act. Where the property concerned is managed and let in such a systematic or organized manner that the letting can be regarded as carrying on a business, the income from the letting can be charged to tax under section 4(a) of the Act.

**4. Rent as a business source**

4.1 Where, in conjunction with the letting of a property, a person also provides ancillary or support services / facilities, the letting of the property can be considered a business source of income of that person and the income received charged to tax under section 4(a).

4.2 To qualify for the treatment mentioned in paragraph 4.1 above, the services / facilities should be actively provided by the person (that is, the services / facilities are procured, managed and / or supplied by the person who lets the property) and not passively or incidentally derived from the ownership or lease of the property, as in the case of services and facilities provided by the management corporation of a subdivided building to the proprietors / tenants of the individual units.

*Example 1*

An individual owns an apartment complex consisting of 24 units (located in 2 blocks of 3 storeys each) and lets out individual units to tenants on both short and long term tenancies. The lifts that are provided for access to the upper floors are maintained by the owner. Security is provided on a 24-hour basis by a security firm hired by the owner. Housekeeping service is provided optionally at an additional charge; a maid is employed by the owner for this purpose.

*The letting of the apartment units can be treated as a business source of the individual since the services and facilities are actively provided.*

*Example 2*

A company owns 3 units in a condominium and lets them out to 3 different persons. Proprietors of the individual units are entitled to the use of the swimming pool, tennis courts and other facilities. All the facilities are maintained by the management corporation of the building, which also provides 24-hour security.

*The letting of the condominium units should **not** be considered a business source of the company as the facilities and services are available to the*

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*tenants merely by extension of the rights of the company as proprietor of the units and cannot be regarded as being actively provided by it. The rental income should be regarded as arising in a passive manner and treated as non-business income under section 4(d).*

**5. Special treatment for a company (other than an investment holding company or a company limited by guarantee which is taxed as a club or association) where rent can be regarded as a business source**

**5.1 *Special-purpose commercial building***

The letting of a special-purpose building built:

5.1.1 for commercial purpose such as a commercial complex, an office complex or a shopping complex; or

5.1.2 as a factory or warehouse;

can be considered a business source of a company and the income therefrom charged to tax under section 4(a).

*Example 3*

A company owns a 3-storey complex built for commercial purpose comprising 15 units which can be used either as offices or retail outlets and lets them to various tenants.

*The letting of the property can be treated as a business source under section 4(a) as the building is a commercial building complex.*

*Example 4*

A company owns a building which is let to another company which uses it as a factory for the manufacture of consumer goods.

*The letting of the property can be regarded as a business source under section 4(a) as the building is in use as a factory.*

**5.2 *Commercial units, shophouses and residential properties***

The letting of 4 or more commercial units, 4 or more floors of shophouses or 4 or more residential properties or any combination of 4 units of the above may be treated as a business source of a company and the income therefrom charged to tax under section 4(a). [The entire property (except for a shophouse) constituted under the particular title should be included in the letting].

*Example 5*



A company owns 3 commercial units in a shopping complex, each with a separate strata title. It also holds the lease for an adjoining unit which is situated in between the 2 units owned by it. It lets out all 4 units to a single tenant.

*Since there is a letting of 4 commercial units, it can be considered a business source under section 4(a). [The rent that the company pays for the intermediate unit can be allowed as a deductible expense].*

*Example 6*

A company owns a commercial unit in a shopping complex with an area of 2,000 square feet under one strata title. The company subdivides the unit into 4 sub-units by putting up partitions and additional doors, and lets out the sub-units to 4 separate tenants.

*Since the letting involves 1 commercial unit, the company is **not** eligible to treat the letting of the property as a business source. The rental income should be charged to tax under section 4(d).*

*Example 7*

A company, which owns a 2-storey shophouse, holds on a lease of an adjoining shophouse. It lets out the 2 shophouses to one tenant.

*The letting of the properties can be considered a business source under section 4(a).*

*Example 8*

A company owns a 4-storey shophouse. It lets out the shophouse to 4 different tenants, each occupying one floor.

*Since the 4 floors are let, the letting of the shophouse can be regarded as a business source under section 4(a).*

*Example 9*

A company owns 5 properties: 2 bungalows, a double-storey terrace house and 2 condominium units. One of the condominium units is occupied rent-free by the managing director of the company; all the other properties are let to non-related persons.

*Disregarding the property occupied by the managing director [see paragraph 5.4], the company still has the minimum of 4 residential properties which can be taken into account. The letting of the properties can, therefore, be considered a business source under section 4(a).*

*Example 10*



A company holds on a lease a commercial unit in a shopping complex, a 2-storey shophouse and a bungalow. All the properties are let to various persons.

*The letting of the properties can be considered a business source under section 4(a).*

*Example 11*

A company owns 2 apartment units, 1 commercial unit and a piece of vacant land and holds a lease on 1 shophouse, all of which are rented out.

*Disregarding the vacant land which cannot be taken into account for this purpose, there is a total of 4 properties which can be taken into consideration. The letting of the properties can, therefore, be regarded as a business source under section 4(a).*

**5.3 *Separate strata or subsidiary titles for subdivided properties***

For the purpose of paragraph 5.2 above, a floor may be subdivided into 2 units with 2 separate strata or subsidiary titles: in such a case, each unit will be considered separately.

*Example 12*

A company owns a 2-storey shophouse. Each floor is subdivided into 2 units. Each unit has a separate strata title and can be used independently from the other units. The company lets the whole shophouse to one tenant who is allowed to make renovations to internally connect the units.

*The letting of the property can be considered a business source under section 4(a) as there are 4 commercial units.*

**5.4 *Letting of property to, or occupation of property by, related or connected person(s)***

If a property is let to, or occupied by, a related or connected person, that property cannot be taken into account for the purpose of determining the eligibility for any of the treatment provided under paragraph 5.2 above, unless it can be shown that the letting or occupancy is on an arm's length basis, that is:

- a. there is payment of rent in respect of the letting or occupation by the related or connected person(s); and
- b. the amount of that rent is not significantly less than the market rate.

*Example 13*

A company owns 6 condominium units, 3 of which are occupied by directors of the company who pay nominal rent of RM500 per month each. The other 3 units are let for RM2,000 per month each to persons who are not related or connected to the company or its directors.



*Since the 3 properties let to connected persons (the directors) must be disregarded (the rent paid being significantly less than the market value of RM2,000), the company does **not** have a minimum of 4 residential properties which can be taken into account and is, therefore, **not** eligible for the treatment under paragraph 5.2. The rental income should be charged to tax under section 4(d).*

*Example 14*

A company owns 2 properties: a 1-storey shophouse and a condominium unit. All of the properties are let to unrelated persons. It also holds the lease for a 2-storey shophouse. The upper floor of the leased shophouse is occupied by the company's employees as residence. It sublets the ground floor to an unrelated person.

*Disregarding the floor occupied by the company's employees as residence, the letting of the 1-storey shophouse, the ground floor of the leased shophouse and the condominium unit does not enable the company to be eligible for treatment under paragraph 5.2. The rental income should be charged to tax under section 4(d). [However, if the company's employees pay rent to the company at market rates, the rental income can be charged to tax under section 4(a)].*

**5.5 *Letting for less than the entire duration of the basis period***

Where because of one or more of the following situations:

- a. the letting of one or more of the properties temporarily ceases by reason of repair or renovation of the building; termination of tenancy; legal injunction or other official sanctions; or any other similar circumstances beyond the control of the company;
- b. the acquisition of one or more properties and the commencement of letting at any time during the basis period; or
- c. the disposal of one or more properties and / or the cessation of letting at any time during the basis period;

the minimum conditions under paragraph 5.2 are fulfilled for part of the basis period for a year of assessment, the letting of the properties can still be considered a business source. Where the failure to fulfil the minimum conditions is only temporary as in situation (a) above, the letting of the properties can be considered a business source under section 4(a).

*Example 15*

A company owns a bungalow, an apartment, 2 commercial units and a piece of vacant land, all of which are let to various tenants. The letting of the properties has been treated as a business source of the company in prior years.



During the basis period for a particular year of assessment, the tenancy of the bungalow ceases and it remains vacant for the rest of the basis period despite the efforts of the company to find a new tenant (including advertisements in various newspapers). The situation remains the same for the next 20 months.

*The letting of the properties can still be regarded as a business source of the company for that year of assessment since the minimum condition under paragraph 5.2 has been fulfilled. Furthermore, the cessation in letting of one of the properties is only temporary, as the bungalow continues to be held available for letting.*

*Example 16*

A company owns 2 two-storey shophouses, both of which are let. The letting of the properties has been treated as a business source of the company in prior years. In December 2003, one of the shophouses is partially destroyed by fire and substantial repairs are required before it can be reoccupied. The tenancy is terminated by mutual consent as the tenant is unwilling to wait for the building to be repaired. The repairs are not completed until March 2005, when the building is let out once again.

*The letting of the properties can still be regarded as a business source of the company for the basis period for year of assessment 2004 as the temporary interruption in the ability of the company to meet the minimum requirements is beyond its control.*

*Example 17*

During a particular year, a company which owns and lets out 3 residential houses acquires an apartment unit which it immediately lets out through the real estate agent who manages its other properties.

*The letting of the properties can be regarded as a business source of the company for that year of assessment since it is able to meet the minimum condition of 4 residential properties at some time during the basis period.*

*Example 18*

A company owns two 2-storey shophouses which are let and the letting of the properties has been treated as a business source in prior years. During the basis period for a particular year of assessment, it disposes one of the shophouses.

*The letting of the properties can still be regarded as a business source for that particular year of assessment, but **not** for the subsequent year of assessment since it will then not be able to fulfil the minimum condition of at least 4 floors of shophouses.*

**6. Date of commencement**



- 6.1 The source of income from a property used for the purpose of letting commences on the date of first letting of the property.

*Example 19*

A company purchases a condominium on 01.04.2004. After renovations have been completed, the condominium is let on 01.10.2004.

*The source of income from the property commences on 01.10.2004.*

- 6.2 Paragraph 6.1 above does not apply in the case of letting of property that falls under paragraph 4. In the case of letting of property that falls under paragraph 4, the source of income commences on the date the property is made available for letting. A property is made available for letting when the property is ready to be occupied by tenants and the property is advertised for letting or a property agent has been appointed for letting out the property.

*Example 20*

On 25.03.2004 a company purchases a 25-storey office building. The company advertises the letting of the building on 01.04.2004. The company will provide lifts, lighting and central air-conditioning to the whole building and cleaning of common areas. The expected date of commencement of letting is 01.07.2004. Renovation to the building is completed on 31.08.2004.

*The business of letting of property can be said to have commenced on 01.09.2004.*

**7. Treatment of all properties as a single source / several sources**

**7.1 *Treatment of rental income as one business source***

Where the minimum conditions under any of the paragraphs 4 and 5 have been fulfilled and a decision has been made to treat the letting as a business source, all properties of the person should be treated as one business source. This business source of letting of properties should be treated as a separate business source from other businesses.

*Example 21*

A company, which owns two 2-storey shophouses and a piece of vacant land, decides to treat its income from letting as a business source. It qualifies to do so as it satisfies the condition in paragraph 5.2 (4 floors or more of shophouses). After deducting allowable expenses (assessment, property insurance, quit rent, repairs, etc.), the position is as follows:

<i>Property</i>	<i>Adjusted income</i>	<i>Adjusted loss</i>
Shophouse #1	36,000	-
Shophouse #2	-	2,000
Vacant land	-	1,000
<i>Total</i>	36,000	3,000

*Since the company qualifies for the treatment under paragraph 5.2, its rental income can be regarded as a business source and its statutory income from the business of letting should be calculated as follows:*

<i>Adjusted income</i>	<i>36,000</i>
<i>Less: Adjusted loss</i>	<i>(3,000)</i>
<i>Statutory income from letting</i>	<u><i>33,000</i></u>

#### **7.2 Treatment of rental income as a non-business source**

In the case where rent is a section 4(d) source, rent from each property is treated as a separate source of income. However, as a concession, in computing the adjusted income from rent, the properties of the person can be grouped into the following categories:

- a. Residential properties;
- b. Shop-house / commercial properties; and
- c. Vacant land.

The grouping into the above categories should include only those properties which have commenced receiving rental income.

#### *Example 22*

An individual has the following position:

<i>Property</i>	<i>Gross income</i>	<i>Allowable expenses</i>
Shoplot #1	24,000	8,000
Shoplot #2	12,000	14,000
Apartment	30,000	12,000
Vacant land	1,200	1,500
<i>Total</i>	67,200	35,500

*His adjusted income / statutory income from rent should be calculated as follows:*

- a. Residential properties



<i>Gross income from rent</i>	<i>30,000</i>
<i>Less: allowable expenses</i>	<i><u>12,000</u></i>
<i>Adjusted income / statutory income from rent</i>	<i><u>18,000</u></i>
b. Shop-house / commercial properties	
<i>Gross income from rent</i>	<i>36,000</i>
<i>Less: allowable expenses</i>	<i><u>22,000</u></i>
<i>Adjusted income / statutory income from rent</i>	<i><u>14,000</u></i>
c. Vacant land	
<i>Gross income from rent</i>	<i>1,200</i>
<i>Less: allowable expenses</i>	<i><u>1,500</u></i>
<i>Adjusted income / statutory income from rent</i>	<i><u>Nil</u></i>

**8. Capital allowance / industrial building allowance**

- 8.1 Where the letting of property is treated as a business source, capital allowance / industrial building allowance can be claimed on capital expenditure incurred on plant and machinery and industrial building. The provisions and rules relating to capital allowances shall also apply in the business of letting of properties.
- 8.2 Where the letting of property is treated as a business source and there is temporary cessation of letting of property such as repair of building or termination of tenancy, the company can continue to claim capital allowance / industrial building allowance provided the property is maintained in good condition and is available for letting (after completion of repair).
- 8.3 Where the letting of property has been treated as a business source and capital allowance has been claimed and subsequently, the letting of property ceases to be treated as a business source, the residual expenditure of the assets (after deduction of capital allowances) will be reduced by notional allowances for each subsequent year of assessment.

*Example 23*

A company lets 4 fully-furnished condominiums. The rent has been treated as a business source and capital allowance has been claimed on furniture, electrical fittings and air-conditioners. One of the condominium is sold in April 2004. At the end of the basis period for year of assessment 2004 and 2005 the company owns 3 condominiums.

*The balancing allowance or balancing charge for year of assessment 2004 will be calculated on furniture, electrical fittings and air-conditioners that are*



*sold together with the condominium in April 2004. Capital allowance for year of assessment 2004 will be given for the furniture, electrical fittings and air-conditioners in the remaining condominiums. For year of assessment 2005, no capital allowance will be given as the company does not qualify under paragraph 5.2 to treat the rent as a business source. Instead, notional allowances will be deducted to arrive at the residual expenditure of the assets.*

- 8.4 Where the letting of property is treated as a non-business source and subsequently, the company qualifies to treat the letting of property as a business source, the qualifying expenditure of assets used in the letting such as furniture and air-conditioners will be the market value on the day the assets are brought into use in the business.

*Example 24*

A company closes its accounts on 30 June each year. As the company owns 2 furnished condominiums, the income from letting is treated as a rental source under section 4(d). In March 2004 the company acquires 2 additional condominiums and both are let in May 2004 after renovation has been made and furnishings have been installed.

*As the company lets 4 condominiums in the basis period for year of assessment 2004, it qualifies to treat the letting of properties as a business source. The qualifying expenditure for assets in use on or prior to 30 June 2003 will be the market value on the day the assets are brought into use in the business, that is, on 1 July 2003. No initial allowance will be given.*

- 8.5 Where the letting of property is treated as a non-business source and the property qualifies as an industrial building, industrial building allowance can be claimed.

**9. Replacement cost of furnishings**

Where the letting of a furnished property is treated as a non-business source, cost of replacing items such as furniture and air-conditioners can be claimed as a deduction.

**10. Subletting of building used in the business**

Where a building is used for the purpose of a business and part of the building is sublet, the rent arising from the subletting is treated as part of the existing business source.

**11. Effective date**



This Ruling is effective for year of assessment 2004 and subsequent years of assessment. This Ruling supersedes Director General Ruling No. 1/95 issued on 25 May 1995.

**12. Transitional treatment under the Director General Ruling No. 1/95**

If a company has been treated as carrying on a business of letting under Director General Ruling No. 1/95 (old Ruling), this treatment shall continue until such time the company is no longer eligible to do so under the old Ruling such as the disposal of 1 or more units of property acquired in the basis period for year of assessment 2003 or earlier (old property). Where 1 or more units of old property have been sold and the company does not qualify to treat the letting of the remaining old property as a business source under the old Ruling, the old Ruling shall cease to apply to the company. The old Ruling shall not apply to properties acquired on or after the first day of the basis period for year of assessment 2004.

*Example 25*

A company has 3 commercial units that have been let since 1998. The income from rent has been treated as a business source. During the basis period for year of assessment 2005, the company sells one of the commercial unit. Using the funds from the sale, the company purchases another commercial unit and lets it out in the same year.

*For year of assessment 2004 and 2005, the company can treat the rent as income from a business as the company has let 3 old commercial properties and the old Ruling continues to apply. In year of assessment 2006 the income from rent is not treated as a business source as neither the conditions in the old Ruling (the company has only 2 old commercial properties) nor the conditions in the Ruling have been satisfied.*

**Director General  
of Inland Revenue**