INLAND REVENUE BOARD OF MALAYSIA

UNIT TRUST FUNDS
PART II - TAXATION OF UNIT TRUSTS

PUBLIC RULING NO. 6/2013

Translation from the original Bahasa Malaysia text.

DATE OF ISSUE: 23 MAY 2013

Published by
Inland Revenue Board of Malaysia

Published on 23 May 2013

First edition on 23 May 2013

CONTENTS **Page**

DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance 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 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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.

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

1. Objective

The objective of this Ruling is to explain the taxation of unit trust funds and property trusts other than a real estate investment trust or property trust fund (REITs/PTF) governed by the Securities Commission (SC).

2. Related Provisions

The provisions of the Income Tax Act 1967 (ITA 1967) related to this Public Ruling are sections 2, 8, 21A, 33, 43, 44, 61, 63A, 63B, 63D, 110, subsections 4(*a*), 4(*d*), Part I of Schedule 1, paragraphs 28, 35 and 35A Schedule 6.

3. Interpretation

The words used in this Ruling have the following meaning:

3.1 "Individual" means a natural person.

3.2 "Director General" (DG) means the Director General of Inland Revenue Board of Malaysia.

3.3 "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole.

3.4 "Securities Commission" means the Securities Commission established under section 3 of the Securities Commission Act 1993 [Act 498].

4. Basis Of Assessment Of Unit Trusts

The basis year for a year of assessment or the financial accounting period (for a period of 12 months not ending on 31 December) will be the basis period for that year of assessment of a unit trust. This is determined according to section 21A of the ITA 1967. All the subsections of section 21A are applicable except for subsection 21A(5) of the ITA 1967.

Example 1

ABC Unit Trust commenced operations on 1.11.2010 and made up its 1st set of accounts to 30.6.2011 and subsequent accounts to 30 June every year.

The basis periods for the years of assessment are as follows:

Year Of Assessment	Basis Period
2010	1.11.2010 to 31.12.2010
2011	1.01.2011 to 31.12.2011
2012	1.07.2011 to 30.06.2012
2013	1.07.2012 to 30.06.2013

5. Residence Status

A unit trust is a trust body. Pursuant to subsection 61(3) of the ITA 1967, a trust body is resident in Malaysia for the basis year for a year of assessment if any trustee member of the trust body is resident in Malaysia for that basis year.

6. Deductibility Of Expenses Under The ITA 1967

6.1 Pursuant to subsection 33(1) of the ITA 1967, deductions for expenses wholly and exclusively incurred in the production of gross income are allowable against each source of the fund. Examples of deductions for expenses wholly and exclusively incurred in the production of gross income include -

(a) interest on monies borrowed by the unit trust to finance the purchase of investments, and

(b) direct expenses incurred in the letting of real property by unit trusts other than REITs/PTF where the income from the letting of property is charged to tax under section 4(*d*) of the ITA 1967.

6.2 The following expenses incurred by a unit trust are not allowable as they are regarded as not being wholly and exclusively incurred in the production of the investment income:

(a) manager's remuneration,

(b) maintenance of register of unit holders,

(c) share registration expenses, and

(d) secretarial, audit and accounting fees, telephone charges, printing, stationery costs and postage.

However, pursuant to section 63B of the ITA 1967, in ascertaining the total income of a unit trust for the basis period for a year of assessment, a special deduction is allowed in respect of the above expenses which are referred to as permitted expenses. The special deduction is determined in accordance with the formula:

$$A \quad X \quad \frac{B}{4C}$$

where

A - The total permitted expenses incurred for that basis period.

B - The gross income consisting of dividend, interest and rent chargeable to tax for that basis period.

C - The aggregate gross income consisting of dividend (whether exempt or not), interest and rent and gains made from the realisation of investments (whether chargeable to tax or not) for that basis period.

This special deduction of expenses is subject to a minimum of 10% of the total permitted expenses incurred for the basis period. The allowable portion of the permitted expenses will be deducted from the aggregate income. If the aggregate income is insufficient or there is no aggregate income, the unabsorbed portion of the special deduction is not allowed to be carried forward to subsequent years of assessment.

7. Taxation Of Unit Trusts

7.1 The Fund is treated as a trust body and the taxation of the fund is governed principally by sections 61 and 63B of the ITA 1967.

7.2 The tax rate applicable to a unit trust is as specified in paragraph 2, Part I of Schedule 1 of the ITA 1967.

7.3 The following examples illustrate the determination of a unit trust's chargeable income and tax payable.

Example 2

XYZ Unit Trust Fund, established in 2001 invests in shares and bonds. The profit and loss account for the year ended 31.12.2012 is as follows:

Income		RM
Malaysian dividends (net)		300,000
Dividends (pioneer company - tax exempt)		100,000
Dividends from overseas		100,000
Interest (tax exempt)		5,000
Gains on disposal of investments		300,000
Gross income		805,000
Less: Expenses		
Trustee's fee	24,000	
Manager's remuneration	24,000	
Share registration expenses	20,000	
Audit, accounting and secretarial fees	12,000	
Telephone and stationary expenses	6,000	
Printing and postage	5,000	91,000
Net profit		714,000

Computation Of Tax Payable For The Year Of Assessment 2012

Income Dividends (regross)[1] Dividends (tax exempt) Interest (tax exempt)		RM 400,000 NIL NIL
Gross income Less: Special deduction for permitted expenses[2] Formula: $A \times \frac{B}{4C}$ $67{,}000 \times \frac{400{,}000}{4 \times 905{,}000} = 7{,}403$ or 10% of 67,000 = 6,700 whichever is the greater		400,000 7,403
Chargeable income		392,597

	RM
Tax on RM392,597 @ 25%	98,149.25
Less:	
Section 110 set off (400,000 X 25%)	100,000.00
Tax repayable	1,850.75

[1]Note Dividend (regross) - $300{,}000 \times \frac{100}{75}$	400,000

[2]Note	
Permitted expenses (**A**):	
Manager's remuneration	24,000
Share registration expenses	20,000
Audit, accounting & secretarial fees	12,000
Telephone & stationery	6,000
Printing and postage	5,000
	67,000
Gross income consisting of dividend and interest chargeable to tax (**B**):	
Dividend (regross) - 300,000 X $\frac{100}{75}$	400,000
Interest (tax exempt)	NIL
	400,000
Aggregate of the gross income (whether chargeable to tax or not)(**C**)	
Malaysian dividends (gross)	400,000
Dividends (pioneer company – tax exempt)	100,000
Dividends from overseas company	100,000
Interest (tax exempt)	5,000
Gains on disposal of investments	300,000
	905,000

Example 3

ABC Unit Trust Fund was established to invest in shares, bonds and fixed deposits. The profit and loss account of ABC Unit Trust for the year ended 31.12.2012 is as follows:

Income		RM
Malaysian dividends (gross)		200,000
Exempt dividends		50,000
Interest (tax exempt)		100,000
Gains from disposal of shares		500,000
Gross income		850,000

Less: Expenses Manager's remuneration Share registration expenses Telephone and stationery Trustee's fee Secretarial and accounting fee Interest on loan to purchase shares	 30,000 10,000 6,000 24,000 12,000 6,000	 88,000
Net profit		762,000

Computation Of Tax Payable For The Year Of Assessment 2012

Income Dividend (gross) Less: interest on loan Dividend (tax exempt) Interest (tax exempt) Gains from disposal of shares		RM 200,000 6,000 194,000 NIL NIL NIL
Aggregate income Less: Deduction for permitted expenses[3] Formula: $A \times \frac{B}{4C}$ $58{,}000 \times \frac{200{,}000}{4 \times 850{,}000} = 3{,}412$ or 10% of 58,000 = 5,800 whichever is the greater		194,000 5,800
Chargeable income		188,200

	RM
Tax on RM188,200 @ 25%	47,050
Less: Section 110 set off - $200{,}000 \times \frac{25}{100}$	50,000
Tax repayable	2,950

[3]Note		
Permitted expenses (**A**):		
Fund management fee		30,000
Share registration expenses		10,000
Telephone & stationery		6,000
Secretarial & accounting fee		12,000
		58,000
Gross income consisting of dividend and interest chargeable to tax (**B**):		
Dividend		200,000
Interest		NIL
		200,000
Aggregate of the gross income (whether chargeable or not)(**C**)		
Malaysian dividends (gross)		200,000
Exempt dividends		50,000
Interest (tax exempt)		100,000
Gains from disposal of shares		500,000
		850,000

Example 4

DEF Islamic Unit Trust Fund is an Islamic fixed income fund that invests in Islamic money market instruments, short term bonds (*sukuk*) and government bonds (*sukuk*) in Malaysia and other foreign countries approved for investments by the SC and *Syariah* Advisory Council. The profit and loss account of DEF Islamic Unit Trust Fund for the year ended 30.9.2012 is as follows:

Income		RM
Gross dividend income		900,000
Profits from short term *Syariah* based deposits, bank balances and government *sukuks*		3,000,000
Net realised gain on sale of *Syariah* compliant investments		1,100,000
Gross income		5,000,000

Less: Expenses Manager's remuneration Trustee's fee Auditors' remuneration Tax agent's fee Administration expenses	 300,000 24,000 6,000 5,000 20,000	 355,000
Net profit		4,645,000

Computation Of Tax Payable For Year Of Assessment 2012

Income Dividend Profits from short term Syariah based deposits, bank balances and government *sukuks* (tax exempt)		RM 900,000 NIL
Gross income Less: Special deduction for permitted expenses[4] Formula: $A \times \frac{B}{4C}$ $326{,}000 \times \frac{900{,}000}{4 \times 5{,}000{,}000} = 14{,}760$ or 10% of 326,000 = 32,600 whichever is the greater		900,000 32,600
Chargeable income		867,400

		RM
Tax on RM867,400 @ 25% Less: Section 110 set off (900,000 @ 25%) Tax repayable		216,850 225,000 8,150

[4]Note	
Permitted expenses (**A**):	
Manager's remuneration	300,000
Auditors' remuneration	6,000
Administration expenses	20,000
	326,000
Gross income consisting of dividend chargeable to tax (**B**):	
Dividend	900,000
Aggregate of the gross income (whether chargeable or not)(**C**)	
Gross dividend income	900,000
Profits from short term *Syariah*-based deposits, bank balances and government *sukuks*	3,000,000
Net realised gain on sale of *Syariah*-compliant investments	1,100,000
	5,000,000

8. **Taxation Of Property Trusts Other Than REIT/PTF**

8.1 Property Trusts that invest primarily in income generating real estate but do not qualify as REIT/PTF under the SC guidelines will continue to have their rental income taxed under subsection 4*(d)* of the ITA 1967.

8.2 As rental income from the rental of properties is treated as income under section 4*(d)* of the ITA 1967, property trusts are not eligible to claim capital allowances on fixed assets pursuant to paragraph 2 of Schedule 3 of the ITA 1967. However a property trust other than a REIT/PTF that receives rental income from its properties is entitled to claim a special deduction for qualifying capital expenditure under section 63A of the ITA 1967 apart from the special deduction for expenses under section 63B of the ITA 1967. This special deduction for qualifying capital expenditure is deductible against the adjusted income from the rental source of the unit trust.

8.3 Qualifying capital expenditure means capital expenditure incurred on the provision of machinery or plant used for the purposes of deriving rent from the letting of property, including -

(a) expenditure incurred on the alteration of an existing building for the purpose of installing that machinery or plant and other expenditure incurred incidentally to the installation thereof provided that such expenditure does not exceed 75% of the aggregate of itself and any other qualifying capital expenditure, and

(b) expenditure incurred on preparing or levelling land in order to prepare a site for the installation of the machinery or plant provided that such expenditure does not exceed 10% of the aggregate of itself and any other qualifying capital expenditure.

8.4 The following conditions must be fulfilled in order to qualify for the special deduction:

(a) the qualifying capital expenditure must be incurred by the unit trust,

(b) the unit trust must be the owner of the asset, and

(c) the asset must be in use by the unit trust for the purposes of deriving rent from the letting of real property.

8.5 The special deduction will be in the form of an allowance equal to 10% of the qualifying capital expenditure made against the adjusted income from the source relating to the derivation of rental from the letting of real property. Any unabsorbed allowances will not be allowed to be carried forward to subsequent years of assessment.

8.6 Where at the end of the basis period for any year of assessment,

(a) the residual expenditure in relation to an asset in respect of which qualifying capital expenditure has been incurred is zero,

(b) the asset is no longer owned by the unit trust, or

(c) the asset is no longer in use by the unit trust,

no allowance is to be made to the unit trust for that year of assessment or subsequent years.

8.7 The special deduction for qualifying capital expenditure of a unit trust is given in ascertaining statutory income from the rental source. It is not a capital allowance in the normal sense and there is no carry forward if the adjusted income is insufficient. Neither is there any balancing charge or balancing allowance.

8.8 This special deduction is not applicable to unit trusts which are REIT/PTF.

8.9 To ensure that only REIT/PTF enjoy the special tax treatment where rental income from the letting of property is treated as a business source, a new provision under section 63D of the ITA 1967 was introduced to state that rental income received by unit trusts (other than REIT/PTF) shall not be treated as a business source.

8.10 The following example illustrates the tax treatment of a property trust other than REITs/PTF:

Example 5

A property trust (not a REIT/PTF), established in 2001 invests primarily in real estate besides investing in shares and bonds. A building was acquired in 2012 and was rented out from 1.6.2012. Before the building was rented out, additional elevators were installed. The capital expenditure on the elevator amounted to RM900,000 and the alteration cost was RM600,000. The profit and loss account for the year ended 31.12.2012 is as follows:

Income		RM
Malaysian dividends (net)		300,000
Dividends (pioneer company - tax exempt)		100,000
Dividends from overseas company		100,000
Interest (tax exempt)		5,000
Rent (gross)		700,000
Gains on disposal of investments		300,000
Gross income		1,505,000
Less: Expenses		
Trustee's fee	24,000	
Management fee for fund	24,000	
Property management fee	12,000	
Share registration expenses	20,000	
Audit, accounting and secretarial fees	12,000	
Office rent	18,000	
Telephone and stationary expenses	6,000	
Printing and postage	5,000	
Assessment and quit rent	10,000	
Fire insurance	5,000	136,000
Net profit		1,369,000

Computation Of Tax Payable For The Year Of Assessment 2012

Income		RM
Rent		700,000
Less:		
Property management fee	12,000	
Assessment and quit rent	10,000	
Fire insurance	5,000	27,000
		673,000
Less: Special deduction for qualifying capital expenditure: Qualifying capital expenditure is: Cost of elevator 900,000 Cost of alteration 600,000 1,500,000 10% of 1,500,000 = 150,000		150,000
		523,000
Dividends (regross)[5]		400,000
Dividends (tax exempt)		NIL
Interest (tax exempt)		NIL
Aggregate income		923,000
Less: Special deduction for permitted expenses[6] Formula: $A \times \frac{B}{4C}$ $67{,}000 \times \frac{1{,}100{,}000}{4 \times 1{,}605{,}000} = 11{,}480$ or 10% of 67,000 = 6,700 whichever is the greater		11,480
Chargeable income		911,520

	RM
Tax on RM911,520 @ 25%	227,880
Less:	
Section 110 set off (400,000 X 25 %)	100,000
Income tax payable	127,880

[5]Note		
Dividend (regross) - 300,000 x $\frac{100}{75}$		400,000
[6]Note:		
Permitted expenses (**A**):		
Management fee for fund		24,000
Share registration expenses		20,000
Audit, accounting & secretarial fees		12,000
Telephone & stationery		6,000
Printing and postage		5,000
		67,000
Gross income consisting of dividend, interest and rent chargeable to tax (**B**):		
Dividend (regross) - 300,000 x $\frac{100}{75}$		400,000
Interest		NIL
Rent		700,000
		1,100,000
Aggregate of the gross income (whether chargeable or not)(**C**)		
Malaysian dividends (regross)		400,000
Dividends (pioneer company - tax exempt)		100,000
Dividends from overseas company		100,000
Interest (tax exempt)		5,000
Rent (gross)		700,000
Gains on disposal of investments		300,000
		1,605,000

9. **Glossary**

9.1 "Distribution" refers to the distribution of income by a unit trust fund to its unit holders.

9.2 "Real estate investment trust or property trust fund" means a unit trust scheme that qualifies as a real estate investment trust or a property trust fund by the Securities Commission.

9.3 "Dividend" includes income distributed by a unit trust.

9.4 "Individual" means a natural person

9.5 "Classes of units" in relation to a unit trust fund means two or more classes of units representing similar interests in the assets of the fund.

9.6 "Director General" (DG) means the Director General of Inland Revenue Board Malaysia.

9.7 "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.

9.8 "Resident" means resident of Malaysia for the basis year for a year of assessment by virtue of subsection 61(3) of the ITA 1967

9.9 "Unit holder" means the unit holder of a unit trust fund.

9.10 "Securities Commission" means the Securities Commission established under the Securities Commission Act 1993.

9.11 "Fund" means a unit trust fund or Islamic unit trust fund.

9.12 "Umbrella fund" means a fund that comprises of at least two sub-funds.

9.13 "Unit trust fund" means any unit trust scheme other than a real estate investment trust / property trust fund where any arrangements are made for the purpose, or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of –

(a) securities,

(b) futures contracts, or

(c) any other property as permitted under the relevant regulations and guidelines set by the Securities Commission on unit trust, and

includes a sub-fund of an umbrella fund.

9.14 "Islamic unit trust fund or *Syariah* based unit trust fund" means a unit trust scheme that is managed and operated in accordance with *Syariah* principles.

9.15 "Securities laws" means the Securities Commission (Amendment) Act 2007, the Securities Industry (Central Depositories) Act 1991 [*Act 453*] and the Capital Markets and Services Act 2007.

9.16 "Unit" in relation to a unit trust fund means a measurement of a right or interest of a unit holder in a unit trust fund.

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