

TECHNICAL

---

Direct Taxation

THE INLAND REVENUE BOARD (IRB) ISSUES PUBLIC RULINGS NO. 5/2013 & 6/2013

1. The IRB of Malaysia issued the following Public Rulings on 23 May 2013:

PR No.	Topic
5/2013	<a href="#">Taxation of Unit Holders of Unit Trust Funds</a>
6/2013	<a href="#">Unit Trust Funds Part II – Taxation of Unit Trusts</a>

The salient points in each Public Ruling (PR) are outlined below.

2. [PR 5/2013](#)

The PR explains the taxation of unit holders who receive income distribution from unit trusts.

- *Taxation of Unit Trust Holders*
  - i) Unit holders are taxed on an amount equivalent to their share of the total taxable income of the unit trust for a year of assessment (YA) which is distributed to them by the unit trust for that YA. The tax credit attached to the distribution of income is available (under [S.110\(9A\)](#)) to the unit holder for set-off against tax chargeable of the unit holder.
  - ii) The following are tax exempt in the hands of unit holders:
    - Distributions to unit holders out of income which is tax exempt at unit trust level (e.g. certain types of interest and foreign sourced income);
    - Distribution of income from gains arising from disposal of investments by the unit trust;
    - Gains realized by unit holders from the sale or redemption of unit trusts;
    - Bonus issues of units which do not represent distributions of income derived from investments of the unit trust.
  - iii) The following tax rates are applicable
    - Companies and non-resident companies – 25% (prevailing rate);
    - Resident individuals and others (cooperatives, associations and societies) – scale rates;
    - Non-resident individuals and others (cooperatives, associations and societies) – 26% (current rate).
  - iv) There is no withholding tax on distributions of unit trust income to non-resident unit holders.
- *Filing of returns* – Unit holders must declare their taxable distribution of income from unit trusts in their income tax return forms, together with other taxable income.

3. [PR 6/2013](#)

The Ruling explains the taxation of unit trusts [other than a real estate investment trust or property trust fund (REIT/PTF) governed by the Securities Commission (SC)].

- Taxation of Unit Trusts in General

- (i) *Basis of assessment* – The basis period for a unit trust is the basis year for the year of assessment or the accounting year (where the 12-month accounting period ends on a date other than 31 December) pursuant to [S.21A](#) of the ITA.
  - (ii) *Residence status* – This is determined in accordance with [S.61\(3\)](#) of the ITA which provides that a trust body is resident in Malaysia for the basis year for a YA if any trustee member is resident in Malaysia for that basis year.
  - (iii) *Expense deduction* – Deductibility of expenses is governed by [S.33\(1\)](#) of the ITA, i.e. only expenses wholly and exclusively incurred in the production of gross income are allowed as deduction against each source of income.
  - (iv) *Special deduction* – [S.63B](#) of the ITA provides for a special deduction of “permitted expenses” (defined in that section) to be made in ascertaining total income of a unit trust. The deduction is an amount which is calculated in accordance with the formula provided in that section. (Such “permitted expenses” are of the kind which are regarded as not allowable under [S.33\(1\)](#) of the ITA).
  - (v) *Tax Computation of unit trusts and examples* (Paragraph 7, Examples 2 to 4).
- Taxation of Property Trusts other than REIT/ PTF
    - (i) Paragraph 8 focuses on the taxation of property trusts that invest primarily in income generating real estate but do not qualify as REIT/ PTF under SC guidelines. Important points to note are:-
      - Such Property Trusts are eligible to claim a special deduction under [S.63A](#) of the ITA for qualifying capital expenditure (QCE) which is deductible against adjusted income from the *rental source* of the unit trust. This deduction is not capital allowance and cannot be carried forward. Neither is there any balancing charge or allowance.
      - “QCE” means capital expenditure incurred on the provision of machinery and plant used for the purpose of deriving rent from the letting of buildings, including expenditure on the alteration of an existing building or preparation of a site for installation of machinery or plant (provided that specified conditions are met).
      - Conditions to qualify for claim of the special deduction must also be met (explained in paragraph 8.4 of the Ruling).
      - The special deduction is in the form of an allowance equal to 10% of the QCE.
      - [S.63D](#) of the ITA states that rental income of a unit trust (other than REIT/ PTF) shall not be treated as business source.
    - (ii) Paragraph 8.10 provides the tax computation for a Property Trust (Example 5).

You may write to the Institute at [technical@ctim.org.my](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any concern or comments you may have on the Public Rulings.

**Disclaimer**

This document is only meant for members of the Chartered Tax Institute of Malaysia (CTIM) only. Although the CTIM has taken all reasonable care in the preparation and compilation of the information contained in the CTIM e-circular, the Institute / each party providing the material displayed herein expressly disclaim all and any liability or responsibility to any person(s) for any errors or omissions in the contents of the CTIM e-circular or for anything done or omitted to be done by any such person in reliance whether wholly or partially, upon the whole or any part of the contents of the CTIM e-circular.