

## TECHNICAL

### Direct Taxation

#### PUBLIC RULING NO. 10/2015 – INVESTMENT HOLDING COMPANY

The Inland Revenue Board of Malaysia (IRBM) issued Public Ruling (PR) [No. 10/2015](#) on 16 December 2015 (reported in the [e-CTIM TECH-DT 87/2015](#) dated 21 December 2015). It replaces [PR No. 3/2011](#) dated 10 March 2011. The summary of the [PR](#) is set-out below.

#### Objective

The [PR](#) explains the tax treatment of investment holding companies resident in Malaysia.

#### Definitions

The following terms are defined in para. 3:

Term	Meaning
resident	resident in Malaysia as determined under para. <a href="#">8(1)(b)</a> and <a href="#">8(1)(c)</a> of the ITA
real property	includes any land and any interest, option or other rights in or over such land and includes any building on land

#### Tax Treatment of IHC

The following table summarizes the contents of the PR:

Para No.	Summary
4	<p><b>Definition of <i>an Investment Holding Company</i> (IHC)</b></p> <p>An IHC means a company whose activities consist mainly in the holding of investments and not less than 80% of its gross income other than gross income from a source consisting of a business of holding of an investment (whether exempt or not) is derived from the holding of those investments</p>
5	<p><b>Definition of <i>Business of Holding of an Investment</i></b></p> <p>A “business of holding of an investment” means a business of <i>letting of real property</i> (defined in <a href="#">para. 5.2</a>) where a company in any year of assessment (YA) provides maintenance services or support services in respect of the real property.</p> <p>Maintenance services or support services should be “comprehensively and actively provided”. “Comprehensively provided” and “actively provided” have specific meanings which are explained in para. <a href="#">5.3.1</a> and <a href="#">5.3.2</a> respectively.</p> <p>The determination of whether income from the letting of real property is a business source or a non-business source is dealt with in the following Public Rulings:-</p> <ul style="list-style-type: none"> <li>- From YA 2011- refer <a href="#">PR No. 4/2011</a></li> <li>- Prior to YA 2011 – refer <a href="#">PR No. 1/2004</a></li> </ul>
6	<p><b>Determination of <i>an IHC</i></b></p> <p>The 2 main criteria applied in determining that a company is an IHC are:</p> <p>(a) Its main activity is the holding of investments; and</p>

	<p>(b) Not less than 80% of its gross income other than gross income from a source consisting of a business of holding of an investment (whether exempt or not) is derived from the holding of those investments; (Refer Examples 1 – 3)</p> <p>In addition to the above, any amount of gross income from <i>a business of holding of an investment</i> is not to be included in gross income from the holding of investments. Only interest and dividend under S.4(c) and rental under S.4(d) are included in gross income from the holding of investments. (Example 4)</p> <p>A company which is a non-IHC in a YA may experience a reduction in gross rental (business of holding of investment) income in a subsequent YA due to temporary cessation of tenancy under the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) repair or renovation of the building;</li> <li>(b) absence of tenants for a period of 2 years after termination of tenancy;</li> <li>(c) legal injunction or other official sanction; or</li> <li>(d) other circumstances beyond the control of the company.</li> </ul> <p>The company is still deemed as a non-IHC for subsequent YAs even though its income from holding of investments is not less than 80% of the gross income of the company: (Examples 5, 6 and 7)</p> <p>A company determined to be an IHC for a YA will be deemed to be an IHC for subsequent YAs unless it is able to prove that it is no longer an IHC in the relevant YA. (Example 8)</p>
7	<p><b>Tax treatment</b></p> <p>The tax treatment of an IHC is governed by the following provisions:</p> <ul style="list-style-type: none"> <li>(a) <a href="#">S60 F</a> of the ITA for IHC not listed on Bursa Malaysia (BM);</li> <li>(b) <a href="#">S60 FA</a> of the ITA for IHC listed on BM.</li> </ul>
8	<p><b>IHC not listed on BM – <a href="#">S60F</a></b></p> <p>Income derived from the holding of investments (interest, dividend, non-business rental) and rental (from a business of holding an investment) is treated as non-business sources, while income other than income from the holding of investment is treated as a source under <a href="#">S4(f)</a> of the ITA. (Example 9)</p> <p>A deduction for “permitted expenses” is allowed against aggregate income of the IHC in arriving at total income. The amount to be allowed is computed using a prescribed formula. (Please refer to para. <a href="#">8.2.3</a> for the detailed explanation of the formula and example of computation of permitted expenses [Example 10])</p> <p>The amount of permitted expenses allowed is restricted to not more than 5% of the gross income from dividend, interest and rent for that basis period. If allowable permitted expenses exceed aggregate income, the excess amount of the permitted expenses cannot be carried forward to subsequent years of assessment.</p> <p>Expenses related to the derivation of exempt single-tier dividend are disregarded (from YA 2008). (Example 11)</p>
9	<p><b>IHC listed on BM – <a href="#">S60FA</a></b></p> <ul style="list-style-type: none"> <li>• Income derived from the holding of investments – interest, dividend, rental (non-business as well as rental from a business of holding an investment) – is treated as business sources (<a href="#">S4(a)</a> of ITA), each source to be separately assessed.</li> <li>• <a href="#">S60FA</a> provides for the following “special treatment” in ascertaining adjusted income (AI) and statutory income (SI) of each business source:</li> </ul>

	<ul style="list-style-type: none"> <li>(a) If no income is produced, no deduction of expenses is allowed;</li> <li>(b) If the amount of allowable deduction for direct expenses exceeds the gross income from that source, the excess amount of deduction is disregarded and cannot be absorbed by other sources or carried forward to future years;</li> <li>(c) The deduction for common expenses allowed (apportioned based on gross income) cannot exceed the gross income from that source and any excess amount of allowable deduction is also to be disregarded.</li> <li>(d) Capital allowance (CA) under <a href="#">Schedule 3</a> which is deductible in arriving at SI from each business source is restricted to the amount of AI from that source. Any excess of CA over AI cannot be carried forward to future YA. (Example 12)</li> <li>• If a listed IHC also carries on a business activity (not as the main activity), any adjusted loss from that business source is treated normally pursuant to <a href="#">S43(2)</a> and <a href="#">S44(2)</a> of the ITA, i.e. deducted against aggregate income of the current year, and (if necessary) further carried forward for deduction against aggregate of SI from business sources in subsequent YA. (Examples 13 &amp; 14)</li> <li>• If an IHC is listed on BM for any period in the basis period for a YA, the IHC is deemed to be an IHC listed on BM in the basis period for that YA. (Examples 15 &amp; 16)</li> </ul>
10	<p><b>Capital allowance/ Industrial Building Allowance (IBA)</b></p> <ul style="list-style-type: none"> <li>• Where rental income is treated as a business source (depending on the circumstances of the case) of a person, that person may be eligible to claim deduction of CA/ IBA against that rental income.</li> <li>• If a company which has been claiming CA/ IBA against its rental income (business source), then becomes an IHC so that rental income is no longer treated as a business source, the company is not eligible for CA deduction against its rental income, unless it is an IHC listed on BM. However, pursuant to Para 60 of <a href="#">Sch. 3</a> of ITA, the company may claim IBA on its building if the tenant uses the building as an IB.</li> </ul>

Members may view the PR at the [Institute website](#) and the [LHDNM website](#).

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 suggestions, concern or comments you may have on the [PR](#) so that we may raise them to the LHDNM.

#### Disclaimer

This document is meant for the members of the Chartered Tax Institute of Malaysia (CTIM) only. CTIM has taken all reasonable care in the preparation and compilation of the information contained in this E-CTIM. CTIM herein expressly disclaims all and any liability or responsibility to any person(s) for any errors or omissions in reliance whether wholly or partially, upon the whole or any part of this E-CTIM.