

TECHNICAL

Direct Taxation

PUBLIC RULING NO. 12/2018 - INCOME FROM LETTING OF REAL PROPERTY

The Inland Revenue Board of Malaysia (LHDNM) issued [Public Ruling \(PR\) No.12/2018 \(Third Edition\)](#) on 19 December 2018 (reported in our [e-CTIM TECH-DT 97/2018](#) dated 21 December 2018). It replaces [PR 4/2011](#) dated 10 March 2011 (please refer to our [e-CTIM No.13/2011](#) dated 1 April 2011).

A summary of its Contents is given below.

(The sections quoted below refer to sections of the Income Tax Act 1967 (ITA), unless otherwise stated. Please refer to the [ITA](#) to read the relevant sections mentioned.)

Para. #	Summary
1	Objective This PR explains the tax treatment of income from the letting of real property which is treated as a - (a) business source under S4(a) and (b) rental source under S4(d).
2	Relevant Provisions of the Law States the provisions of the ITA which are related to rental income.
3	Interpretation Provides definitions of terms used in this PR. (The meanings of the terms underlined below are found in this paragraph.)
4	Letting of Real Property as a Business Source
4.1	- Income from the <u>letting of real property</u> (RP) is treated as a business source under S4(a) if maintenance or support services relating to the <u>RP</u> are provided.
4.2	- These services should be “ <i>comprehensively and actively provided</i> ”. The meanings of the 2 qualifying terms - “comprehensively” and “actively” (provided) are further explained in paragraphs 4.2.1 and 4.2.2 respectively. - Examples 1, 2 and 3 under paragraph 4.2 illustrate situations where maintenance and support services are “comprehensively and actively provided”, thus qualifying <u>rental income</u> from the letting of RP to be treated as business income under S4(a).
4.4	- The letting of a building in the Cyberjaya Flagship Zone to an approved MSC status company is treated as carrying on a business under the Income Tax (Industrial Building Allowance) (Approved MSC Status Company) Rules 2006 [P.U.(A) 202/2006], provided that the stipulated conditions are met (effective YA 2006).
5	Letting of Real Property as a Non-Business Source
5.1	Rental is treated as a non-business source and charged to tax under S4(d) if a <u>person</u> lets out the RP without providing maintenance services or support services comprehensively and actively. (Examples 4, 5 and 6)
5.2	Rental is also assessed under S4(d) if the RP is let out by the owner while

		maintenance and support services are passively derived from the ownership of the property (e.g. provided by the <u>management corporation</u> of an apartment – see Example 7)
6	6.1	Commencement Date of Letting of RP The date of commencement of letting of RP from which <u>rental income</u> which is assessed under S4(d) is derived, is the date the RP is let out for the first time. (Example 8)
	6.2	The date of commencement of letting out RP from which rental income which is assessed under S4(a) as a business source is derived, is the date the RP is made available for letting. This means the RP is ready to be occupied by tenants and steps have been taken to let out the property (e.g. by appointing a real estate agent.) (Examples 9, 10, 11 and 12)
7	7.1	Real Properties Grouped as a Single Source If a person lets out several RPs in a YA, and the income from letting the properties is treated as – - (a) a business source, all the RP can be grouped as one business source under S4(a); (b) a non-business source, all the properties can be grouped as one source under S4(d); - If some of the RPs make up a business source and others constitute a non-business source, the income from each source is assessed separately as either a S4(a) source or a S4(d) source. (Examples 13, 14, 15 and 16 illustrate the treatments stated above.)
	7.2	If in a YA, a person has a business ([S4(a)] source from the letting of RP as well as another business source from a different business, the business of letting RP has to be separated from the other business source/s. (Example 17 shows the computation of total income in such a case.)
8		Expenses Relating to Income of Letting of RP This paragraph explains the rules relating to deduction of expenses from income from the letting of RP. Expenses that are deductible from income which is charged under –
	8.1	- S4(a) – must fall under S33(1) of the ITA as being wholly and exclusively incurred in the production of income, but not within S39(1).
	8.2	- S4(d) – must fall within S33(1) of the ITA. [Examples are listed under items (a) to (f) .] The following paragraphs should be referred to for the explanation on whether the following expenses are deductible or not –
	8.3	• Initial expenses (not allowed) – (Examples 18, 19)
	8.4	• Expenses during a period when the RP is not rented out (not allowed except under certain circumstances) – (Examples 20, 21, 22)
	8.5	• Expenses before RP is let out (not allowed) – (Example 23)
	8.6	• Interest expense – (restriction of interest under S33(2)) (Example 24)
9	9.2	Rental Income Received in Advance Where rental income is assessed under S4(d), rent received in advance is charged to tax in the basis period in which it is received, and any expense incurred relating to that income is allowed in the basis period in which the income was assessed. (Example 25)
	9.3	Where rental income is assessed under S4(a), rent received in advance in

		<p>respect of the future use or enjoyment of any property to be dealt with in the relevant period or in any following basis period is to be taxed in the basis period it is received, notwithstanding that the use or enjoyment of the property has yet to be dealt with. [S24(1A)]</p> <p>Where the above has been applied, any expense incurred after that YA relating to the advance rental, will be allowable in the basis period in which it is incurred. (Example 26)</p>
	9.4	Examples 27 and 28 are examples to show the deduction of expenses from rental income where there is more than one RP and rental income from one or several RP is received in advance.
10	10.1	<p>Capital Allowances (CA)</p> <p>The provisions of Sched. 3 relating to CA are applicable to a business of letting out RP (where rental income is treated as a business source).</p> <p>The following matters relating to CA claims are discussed:</p>
	10.2	- when rental income is treated as a S4(a) source, and the letting of RP ceases temporarily due to circumstances mentioned in para. 8.4.2 of this PR (when letting ceases temporarily due to circumstances specified in that paragraph.); (See Examples 29 to 31.)
	10.3 to 10.5	<p>- where there is a change in tax treatment of rental income, from a business source [S4(a)] to a non-business source [S4(d)], and as a result of the change, the company –</p> <ul style="list-style-type: none"> • becomes an investment holding company (IHC) with S4(d) source; or • does not become an IHC [but deriving rental income under both S4(a) and S4(d)]; <p>- in both cases, the company is not entitled to claim CA since the plant and machinery (P&M) are not used for the purposes of a business at the end of the basis period for a YA.</p> <p>Example 32 illustrates the case where notional CA has to be computed.</p>
	10.6	- where there is a change in tax treatment of rental income from a non-business source [S4(d)] to a business source (S4(a)], CA can be deducted against rental income from the business source since P&M are used for the purpose of a business at the end of the basis period for that YA. (Example 33).
11		<p>Industrial Building Allowance (IBA)</p> <p>The owner of a building who lets out the building for it to be used as an IB, can claim IBA even though the letting is a non-business source.</p> <p>If the special treatment explained in paragraph 4.4 of this PR, (see above) is accorded, the owner of the building is eligible to claim IBA on the qualifying building expenditure incurred.</p>
12		<p>Replacement Cost of Furnishings</p> <p>Where rental income is assessed under S4(d), cost of replacing furnishings can be claimed a deduction from gross income from letting.</p>
13		<p>Letting of Part of Building Used in the Business</p> <p>If part of a building, which is used for business purposes, is let out, the rental income so derived is treated as part of the income from the existing business source.</p>
14		<p>Updates and Amendments</p> <p>This PR replaces PR No. 4/2011 dated 10 March 2011.</p>
15		Disclaimer

	The examples in this PR are for illustration purposes only and not exhaustive.
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Please read the PR in full at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the PR No. 12/2018.

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