



INLAND REVENUE BOARD MALAYSIA

**TAXATION OF UNIT HOLDERS OF
REAL ESTATE INVESTMENT TRUSTS /
PROPERTY TRUST FUNDS**

PUBLIC RULING NO. 7/2012

Translation from the original Bahasa Malaysia text

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**Public Ruling No. 7/2012
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CONTENTS	Page
1. Objective	1
2. Related Provisions	1
3. Interpretation	1
4. Tax At Unit Holders' Level	2
5. Filing Of Income Tax Return Form	6

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 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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.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 Malaysia.**

1. Objective

The objective of this Ruling is to explain the tax treatment of distribution of income from real estate investment trusts / property trust funds in Malaysia to its unit holders.

2. Related Provisions

The provisions of the Income Tax Act 1967 (ITA 1967) related to this Public Ruling are sections 6, 7, 8, 61, 61A, 109D, 110 and Part 1 and X of Schedule 1.

3. Interpretation

The words used in this Ruling have the following meaning:

- 3.1 “Real estate investment trust” (REITs) or “property trust fund” (PTF) means a unit trust scheme that invests or proposes to invest primarily in income generating real estate.
- 3.2 “Islamic real estate investment trust” is a real estate investment trust that is managed and operated based on Syariah principles.
- 3.3 “Resident” means resident of Malaysia for the basis year for a year of assessment by virtue of sections 7, 8 or subsection 61(3) of the ITA 1967.
- 3.4 “Individual” means a natural person.
- 3.5 “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.
- 3.6 “Institutional investor” means a pension fund, collective investment schemes or such other person approved by the Minister
- 3.7 “Distribution” refers to the distribution of income by a real estate investment trust or Islamic real estate investment trust to its unit holders.
- 3.8 “Securities Commission” means the Securities Commission established under the Securities Commission Act 1993.
- 3.9 “Fund” means a real estate investment trust or Islamic real estate investment trust.

4. Tax At Unit Holders' Level

4.1 REITs/PTF unit holders are taxed in the year of assessment the distribution is received

- (a) Unit holders are taxed in the year of assessment the distribution of income is received from REITs/PTF. Distribution of income from the income of REITs/PTF exempted from tax for a basis year for a year of assessment under section 61A of the ITA 1967 is taxable on the unit holder in the year of assessment the income is received. In practice, REITs/PTF may only be able to make payments to the unit holders after the close of accounts.

Example 1

Income of Smart REITs for the period from 1.1.2011 to 31.12.2011 was received by unit holders on 31.1.2012. One of the unit holders, ABC Sdn Bhd which closes its accounts on 31 Disember each year, received a distribution on 31.1.2012.

ABC Sdn Bhd, a resident company, should declare the distribution of income from Smart REITs in year of assessment 2012 as the payment date on the distribution voucher indicates the date the income was received.

- (b) Unit holders are also taxed in the year of assessment they received distribution of accumulated undistributed income from REITs/PTF. The accumulated undistributed income constitutes previous years' income which was tax exempt or subjected to tax at the REITs/PTF level. Distribution of accumulated undistributed income which was subjected to tax would carry with it tax credits.

4.2 Distribution of income which is tax exempt at REITs/PTF level

If 90% or more of the total income of REITs/PTF in the basis year for a year of assessment is distributed to unit holders, REITs/PTF are exempted from tax for that year of assessment. However, unit holders are liable to tax on this distribution of income. Since the income distributed by REITs/PTF are tax exempt, no tax credit under subsection 110(9A) of the ITA 1967 would be available to the unit holders.

4.3 Distribution of income that has been taxed at REITs/PTF level

Unit holders who receive income distribution which has been subjected to tax at the REITs/PTF level would not be subject to any further taxes upon the distribution. The income distribution would carry with it a tax credit which

can be utilised by the unit holders to offset against the tax payable by them pursuant to subsection 110(9A) of the ITA 1967.

4.4 Distribution of tax exempt income received by REITs/PTF

Tax exempt income received by REITs/PTF and subsequently distributed to unit holders continue to be tax exempt in the hands of these unit holders.

4.5 Tax rates

The tax rates applicable to the unit holders would depend on their residence status. A summary of the relevant tax rates are as follows:

Chargeable Person	YA 2005 & 2006		YA 2007 & 2008		YA 2009 to 2016	
	Type Of Tax	Rate	Type Of Tax	Rate	Type Of Tax	Rate
(A) Company	Corporate	28%	Corporate	27% (YA2007)	Corporate	25% (YA2009 onwards)
				26% (YA2008)		
(ii) Non-Resident	WHT ¹ (final tax)	28%	WHT (final tax)	27% (YA2007) 26% (YA2008)	WHT (final tax)	25% (YA2009 onwards)
(B) Foreign Institutional Investor	WHT (final tax)	28%	WHT (final tax)	20%	WHT (final tax)	10%
(C) Individual	Individual tax	Scale rates	WHT (final tax)	15%	WHT (final tax)	10%
				28%		
(ii) Non-Resident	WHT (final tax)	28%	WHT (final tax)	15%	WHT (final tax)	10%
(D) Others	Appropriate rates	Appropriate rates	WHT (final tax)	15%	WHT (final tax)	10%
				28%		
(ii) Non-Resident	WHT (final tax)	28%	WHT (final tax)	15%	WHT (final tax)	10%

¹WHT – withholding tax

Example 2

The following unit holders received their share of distribution of income from Luxury REIT in the basis period for the year of assessment 2011.

Unit Holder	Residence Status
Daya Maju Sdn Bhd	Resident company
Gupta India Pte Ltd	Non-resident company
Padzli	Resident individual
Johnson	Non-resident individual
German Pension Fund	Foreign Institutional Investor – non-resident
Discretionary Trust	Resident & non-resident

As the income distributed has been exempted from tax at the REITs level according to section 61A of the ITA 1967, Luxury REIT unit holders are subject to withholding tax as follows:

Unit Holder	Tax Treatment
Daya Maju Sdn Bhd	Note ²
Gupta India Pte Ltd	WHT 25%
Padzli	WHT 10%
Johnson	WHT 10%
German Pension Fund	WHT 10%
Discretionary Trust	WHT 10%

²Daya Maju Sdn Bhd is not subject to withholding tax but is taxable at the corporate tax rate of 25% for the year of assessment 2011.

Example 3

The facts are the same as in Example 2 except that Luxury REIT distributed the previous year's exempt income of RM100,000 in year of assessment 2011.

The exempt income received by Luxury REIT and subsequently distributed to unit holders continue to be tax exempt at the unit holders level.

Example 4

Luxury REIT distributed 80% of its total income of RM1,000,000 for the year of assessment 2011. The Fund was taxed on the total sum of RM1,000,000 as only 80% of the total income was distributed. The retained income of RM200,000 will be distributed by Luxury REIT in year of assessment 2012 to the following unit holders:

Unit Holder	Residence Status
Daya Maju Sdn Bhd	Resident company
Padzli	Resident individual
Johnson	Non-resident individual
German Pension Fund	Foreign institutional investor – non-resident

The undistributed income of year of assessment 2011 which has been taxed at the REITs/PTF level will have tax credits attached. The distribution of such income will not be subject to any further taxes upon distribution in the year of assessment 2012.

The above unit holders are required to declare the distribution of income from Luxury REITs in their Income Tax Return Form (ITRF) and they are entitled to the tax credit under subsection 110(9A) of the ITA 1967 for the year of assessment 2012.

5. Filing Of Income Tax Return Form

If a unit holder has income from sources other than REITs/PTF, an ITRF has to be filed (e.g. Form BE, B or M for individuals or Form C for companies). The income from REITs/PTF need not be included in the ITRF as the tax withheld is a final tax. However, income from REITs/PTF has to be reported in the following circumstances:



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- (a) in the case of resident corporate unit holders where the withholding tax provision under Section 109D of the ITA 1967 is not applicable, and
 - (b) where REITs/ PTF –
 - (i) are not exempted from tax under Section 61(1A) of the ITA 1967 (on the basis that the distribution is less than 90% of its total income for that YA), and
 - (ii) distribute income which carries a tax credit proportionate to each unit of the taxable income in respect of the tax paid by the REITs/PTF,

unit holders should declare the REITs/PTF distribution as income in their ITRF and claim a set-off under section 110(9A) of the ITA 1967.

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