

TECHNICAL

Direct Taxation

SOME SALIENT POINTS IN PUBLIC RULING NO. 7/2013

1. **Unit Trust Funds in Malaysia**

- i) A unit trust is a form of collective investment constituted under a trust deed. Unit trusts are open ended investments. Each fund has a specified investment objective to determine the management aims and limitations.
- ii) A *conventional unit trust fund* invests in a broadly diversified portfolio of stocks and bonds or other financial instruments and includes a property trust which invests primarily in real properties. Other funds include bond/ fixed income funds, money market funds, fund-of funds, index funds, structured products, feeder funds, umbrella funds, guaranteed funds and capital protected funds.
- iii) *Islamic unit trust funds /Syariah-based unit trust funds* are collective investment schemes that invest in a diversified portfolio of Syariah-compliant securities.
- iv) Unit trusts are not separate legal entities. A trustee is the registered legal owner of all assets of the trust fund. The trustee holds the assets on behalf of and for the benefit of the unit holders who are the beneficial owners of the assets of the fund.

2. **Regulatory Framework**

- i) The sole regulatory body of the unit trust industry in Malaysia is the SC which is the supervisory authority for the establishment and operations of unit trusts in Malaysia. Only unit trust funds approved by the SC can be offered for sale to the public.
- ii) The Capital Markets and Services Act 2007 (CMSA) and guidelines on unit trust funds issued by the SC are the principal legislations and guidelines governing the unit trust industry and they provide the legal framework for the roles and responsibilities of the fund manager and trustee.
- iii) The Guidelines on Unit Trust Funds are issued by the SC under section 377 of the CMSA and form part of the regulatory framework for unit trusts in Malaysia, and should be read together with the securities laws.
- iv) A fund manager of a unit trust which carries on an Islamic fund management business under an Islamic window is required to comply with the relevant guidelines as set out by the SC.

3. **Structure and key features of Unit Trusts**

- i) The unit trust arrangement is a tripartite relationship between the investors (unit holders), the trustee and the management company (fund manager) in a unit trust. The trust deed defines the terms and conditions of this relationship and details the way in which the fund operates. The trust deed must be registered with the SC which also approves the appointment of the fund manager and the trustee.
- ii) An Islamic unit trust scheme is required to appoint a *Syariah* adviser as stipulated in the SC's Guidelines on unit trust fund to ensure that their operations are in accordance with *Syariah* principles.

- iii) Other key features are outlined in paragraph 6 of the Ruling, and include the following:

Subject	Paragraph
Investment activities of conventional unit trusts	6.2
Investment activities of Islamic unit trusts	6.3
Investment restrictions and units	6.4
Non-permissible investments of <i>Syariah</i> -based unit trust fund	6.5
Income of unit trust	6.6
Fees and expenses of unit trusts	6.7

- iv) The following is a summary of points made in paragraph 6.6 (Income of unit trust):
- Interest income of a unit trust is charged to tax except for interest specifically exempted under Schedule 6 of the ITA or various Exemption Orders;
 - Under S2(7) of the ITA, any gains or profits received by an Islamic fund and expenses incurred, in lieu of interest, in transactions conducted in accordance with *Syariah* principles, are to be accorded the same treatment as if they were interest.
 - The following dividends received by unit trusts are tax exempt:
 - Single-tier dividends distributed by a resident company;
 - Tax-exempt dividends distributed by companies enjoying tax incentives, from their exempt income accounts.
 - An approved unit trust approved by the Minister of Finance, is exempt from tax on its income, and dividends received from that unit trust are also exempt in the hands of a resident individuals [Income Tax (Exemption) (No. 12) Order 1985].
 - Rental income of a unit trust which is not considered as a REIT/PTF by the SC is part of the total income of the property trust.
 - Other tax exempt income of a unit trust are:
 - Gains from the realization of investments of a unit trust;
 - Income derived from sources outside Malaysia and received in Malaysia by a resident unit trust (from YA 1998).

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

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