

**TECHNICAL**

**Direct Taxation**

**TAXATION OF BUSINESS TRUST -- PUBLIC RULING (PR) NO. 10/2013**

The Inland Revenue Board (IRB) issued the above Public Ruling on 3 July 2013. The salient points in the PR are summarized below:-

Subject	Reference
<b>Features of a Business Trust (BT)</b> <ul style="list-style-type: none"> <li>Para 4 provides a brief description of the legal form and the mode of operations of a BT. Among the important features are: <ul style="list-style-type: none"> <li>It is a unit trust scheme where the operation or management of the scheme and the asset or property of the scheme is managed by a trustee, the trustee-manager (TM), who must be a company other than an exempt private company;</li> <li>The TM holds legal ownership of the assets of the underlying business and manages the business of the trust as its operator;</li> <li>Unit holders of a BT have a beneficial interest in the assets of the BT via their holdings of units of the BT.</li> </ul> </li> <li><a href="#">The Capital Markets and Services (Amendment) Act 2012 (Act A1437) (CMSA)</a> [<a href="#">P.U.(B) 428/2012</a>] and the <a href="#">Business Trust Guidelines</a> issued by the SC on 28.12.2012 provide a legal framework for an offering of BT including Islamic BT in Malaysia.</li> <li>Pursuant to <a href="#">S.2(11)</a> of the Income Tax Act 1967 (ITA), any reference to shares, ordinary share capital, shareholders and dividend in the ITA shall be read as including a reference to units, derivatives of units, unit holders and distributions respectively</li> <li>Para 5 shows the basic structure of a BT diagrammatically and indicates the different functions of a promoter/shareholder and a TM.</li> <li>Para 16 summarises the distinction between a BT and a company in a table form.</li> </ul>	<p>Para 4</p> <p>Para 5</p> <p>Para 16</p>
<b>Taxation of a BT</b> <ul style="list-style-type: none"> <li><i>Residence status</i> – a BT is resident in Malaysia for a YA if the TM is resident in Malaysia. The TM is resident for the basis year for a YA if – <ul style="list-style-type: none"> <li>The TM (in its capacity as such) carries on business of the BT in Malaysia; and</li> <li>The management and control of the business of such BT is exercised in Malaysia.</li> </ul> </li> <li><i>Basis period (bp)</i> – The basis year for a YA or the financial accounting year ending on a day other than 31 December is the bp of a BT for that YA as governed by <a href="#">S21A</a> of ITA. <ul style="list-style-type: none"> <li>Where there is a change of accounting period of a BT, for the purposes of instalment payments of the estimated tax payable under <a href="#">S.107C</a>, ITA, <a href="#">PR No.7/2011</a> (Notification of Change in Accounting Period of A Company, Trust Body and Co-Operative Society) shall apply.</li> </ul> </li> </ul>	<p>Para 6 See Examples 1 and 2.</p> <p>Para 7 and Example 3</p>

<ul style="list-style-type: none"> <li>For income tax purposes, a BT is treated as a company <a href="#">[S.2(1)]</a> of ITA as amended by the Finance Act 2013]. The amendment comes into operation on 28.12.2012, following the coming into force of the corresponding provisions of the Capital Market and Services (Amendment) Act 2012.</li> <li>Consequently, the provisions of the ITA which apply to a company are also applicable to a BT. The following matters are specifically discussed: <ul style="list-style-type: none"> <li>a) Meaning of BT Group (Para 9)</li> <li>b) Group relief (Para 10 with Examples 4 &amp; 5))</li> <li>c) Control transfer (Para 11)</li> <li>d) Foreign sourced income and remittances (Para 12 with Example 6)</li> <li>e) Tax incentives (Para 13)</li> </ul> </li> </ul>	Para 8
<p><b>Preferential tax treatment specifically excluded to a BT</b></p> <ul style="list-style-type: none"> <li>Pursuant to <a href="#">S2(9)</a>, ITA, the following preferential treatments accorded to a <i>company</i> with paid-up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the bp for a YA, are <i>not applicable to a BT</i>: <ul style="list-style-type: none"> <li>a) Exemption from submission of estimate of tax payable for the first 2 YA in which it first commences operations <a href="#">[S107C(4A)]</a> of ITA];</li> <li>b) Preferential tax rate of 20% on the first RM500,000 of chargeable income <a href="#">[Para 2A]</a>, Sch. 1 of ITA];</li> <li>c) Special allowance for small value assets <a href="#">[Para 19A]</a>, Sch. 3 of ITA.]</li> </ul> </li> </ul>	Para 14  Para14 (a) Para 14 (b) Para 14 (c)
<p><b>Real property gains tax (RPGT) and stamp duty (SD) on the transfer of business and assets as well as income tax treatment on trade debts taken over by a BT</b></p> <ul style="list-style-type: none"> <li>Chargeable gains accruing on the disposal of any chargeable asset to a TM/BT in relation to the initial offering (i.e. initial transfer of real property or shares in real property company from the promoter to the BT) of the BT, which has been registered and approved on or after 1.1.2013 but not later than 31.12.2017, are exempted from RPGT pursuant to the <a href="#">Real Property Gains Tax (Exemption) Order 2013 [P.U.(A) 128/2013]</a></li> <li>Similarly, all instruments executed by a TM in relation to the transfer of any business, assets, or real property to a BT for the purpose of initial offering of the BT are exempted from SD pursuant to the <a href="#">Stamp Duty (Exemption) (No.7) Order 2013 [P.U.(A) 127/2013]</a>. The exemption is not applicable in the case where loans are transferred to a BT.</li> <li>Trade debts taken over are to be regarded as capital assets of the BT, and separate records must be kept as no deduction is allowed when such debts are written off while recoveries in respect of such debts are not taxable.</li> </ul>	Para 15.1 and Example 7  Para 15.2  Para 15.3
<p><b>Filing of tax returns</b></p> <ul style="list-style-type: none"> <li>The TM is responsible for filing the Income Tax Return Form (Form TN) for each YA, within 7 months from the date following the close of the accounting period which constitutes the bp for that YA.</li> </ul>	Para 17

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 Ruling No.10/2013](#).

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