

Direct Taxation

PUBLIC RULING NO. 1/2015 –CLUBS, ASSOCIATION OR SIMILAR INSTITUTION

The Lembaga Hasil Dalam Negeri Malaysia (LHDNM) issued the Public Ruling (PR) [No.1/2015](#) on 12 January 2015. This PR replaces the PR No. 5/2012 dated 25 June 2012.

Objective

The objective of the PR is to explain the taxation of a *club, association, or similar institution* (CASI) which is established and controlled by its members.

Important Definitions

The following are terms defined in paragraph 3 of the PR:

Term	Meaning
Members	In relation to a body of persons means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.
Body of persons (BOP)	An unincorporated body of persons (not being a company), including a Hindu Joint Family but excluding a partnership.

Taxation of clubs associations and similar institutions.

The following is a summary of the contents of the PR:

Para No.	Subject and Summary
4	<p><i>Introduction</i></p> <ul style="list-style-type: none"> A CASI is formed not for commercial purposes but for social, recreational, sports, arts and literature, and other pursuits for the interest and benefits of its members, but the activities of some CASI are trade dealings conducted for profit which is subjected to tax as business profits such as a fitness centre or a professional football club. A CASI also includes a Joint Management Body, a Management Corporation and Resident's Association which are community associations of property owners. Guidelines entitled "Tax treatment of charges for maintenance and joint property management received by developers, Joint Management Bodies and Management Corporations" dated 21 May 2012 is available from the LHDNM website.
5	<p><i>Ownership and membership</i></p> <p>The following are factors to consider in determining whether the activities of a CASI are trading/ business activities or for the benefit of its members:</p> <ul style="list-style-type: none"> If ownership of the BOP is different from membership, it is likely to be a trading enterprise. But if a CASI is established and owned by members for the benefit of its members, all the assets belong to the membership who controls the club and its dealings. Transactions with members are not regarded as trade dealings. Any surplus of

	<p>receipts over expenditure in respect of income from transactions with members must be used for the benefit of all the members of the CASI. But when a CASI provides its facilities to non-members on a commercial basis, the CASI is deemed to be carrying on a trade and therefore the income from trading with non-members is taxable.</p>						
6 & 7	<p><i>Basis of assessment and residence status</i></p> <ul style="list-style-type: none"> The basis period for a year of assessment (YA) of a CASI is the basis year (the calendar year which coincides with that YA). If the financial year of a CASI ends on a day other than 31 December, adjustments must be made to ensure that the tax computation filed in the tax return is for a basis period from January to December of a calendar year. Residence status is determined under S.8(1)(b) and (c) of the ITA as follows: <table border="1"> <thead> <tr> <th>CASI</th><th>Residence status for the basis year for a YA</th></tr> </thead> <tbody> <tr> <td>- carrying on a trade or business in Malaysia</td><td>Is resident in Malaysia if at any time during the basis year, the management and control of its business or of any one of its businesses is exercised in Malaysia.</td></tr> <tr> <td>- not carrying on a trade or business in Malaysia</td><td>Is resident in Malaysia if at any time during the basis year, the management and control of its affairs are exercised in Malaysia by its directors or any other controlling authority, e.g. board of management.</td></tr> </tbody> </table>	CASI	Residence status for the basis year for a YA	- carrying on a trade or business in Malaysia	Is resident in Malaysia if at any time during the basis year, the management and control of its business or of any one of its businesses is exercised in Malaysia.	- not carrying on a trade or business in Malaysia	Is resident in Malaysia if at any time during the basis year, the management and control of its affairs are exercised in Malaysia by its directors or any other controlling authority, e.g. board of management.
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8	<p><i>Taxability of a CASI</i></p> <table border="1"> <tbody> <tr> <td>Prior to YA 2009</td><td> <p>A CASI is subject to tax based on the following general taxation principles:</p> <ul style="list-style-type: none"> Members fee and income from transactions with members are not subject to tax based on the principle of mutuality; and Income derived from transactions with non-members is subject to tax. </td></tr> <tr> <td>With effect from YA 2009</td><td> <p>S.53A of the ITA was introduced on the tax treatment of a CASI and applies to a CASI which is established, controlled and conducted by its members not for the purpose of seeking profits.</p> </td></tr> </tbody> </table>	Prior to YA 2009	<p>A CASI is subject to tax based on the following general taxation principles:</p> <ul style="list-style-type: none"> Members fee and income from transactions with members are not subject to tax based on the principle of mutuality; and Income derived from transactions with non-members is subject to tax. 	With effect from YA 2009	<p>S.53A of the ITA was introduced on the tax treatment of a CASI and applies to a CASI which is established, controlled and conducted by its members not for the purpose of seeking profits.</p>		
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9	<p><i>Tax treatment</i></p> <ul style="list-style-type: none"> Any income arising from mutual dealings with members of a CASI established for the benefit of its members only is not subject to tax. Examples of mutual receipts from members of a CASI include entrance fees and members' subscription fees, drinks and food sold at the CASI's bar and restaurant to its members, amounts paid by members to attend dinners or social functions organized by the CASI and amounts paid by members to attend a talk, presentation or workshop organized by the CASI. <p>Not all income from transactions involving members are necessarily mutual receipts. Such income which are not mutual receipts are taxable. (Refer to Example 1 and 2)</p>						

	<ul style="list-style-type: none"> Income from activities or transactions with non-members is taxable (even if the CASI is not formed with the aim of making profits). Some examples of taxable receipts are proceeds from fund raising drives to the public, fees from hiring out of the club's facilities to the public, sale of souvenirs to non-members etc. Spouses, parents and children of club members are regarded as non-members. (Refer to Example 3) Income from investments (interest, rent, dividends) is taxable. If a CASI contracts with an external party to provide facilities (e.g. restaurant or gym) which are patronised by its members, income derived by the CASI under the contract with the external party is income from an external source and is fully taxable. (Refer to Example 4) Voluntary gifts of money received by a CASI which is not an approved institution under S.44(6) of the ITA are taxable as the club is not exempted under paragraph 13 of Sch.6 of the ITA. Any payments (expenses) out of donations received, for charitable purposes, are deductible and any surplus remaining is taxable as receipts of the CASI. A CASI which qualifies as an institution under S.44(7) of the ITA and is approved under S.44(6) of the ITA is automatically exempted from tax on its income (including gifts of money) under paragraph 13 of Sch.6 of the ITA. Where the objective of the CASI approved for the purposes of S.44(6) of the ITA has been contravened, the LHDNM will withdraw the CASI's approved status. In such a case, gifts of money received by the CASI would be taxable and the gifts of money donated to the CASI will not be allowed as a deduction against the aggregate income of the donor. The deductibility of expenses and qualifying capital expenditure (QCE) incurred in connection with income derived from transactions with members/ non-members is summarised below: <ul style="list-style-type: none"> a. Outgoings / Expenses incurred in deriving income from transactions with - <ul style="list-style-type: none"> non-members - Allowable in determining adjusted income from transactions with non-members. (Allowable expenses that may be included are outgoings / expenses incurred for earning dividends or bank interest, expenses incurred in organising a function for non-members only and expenses incurred in fundraising drives to the public.) members - Not allowed as deductions and is disregarded for purposes of the ITA. (The expenses that are not allowable deductions may include the cost of administration and operation solely for members, collecting subscription fees and increasing memberships.) b. Capital expenditure incurred on assets used in business transactions with - <ul style="list-style-type: none"> non-members - Qualify for capital allowances (CA) members - Does not qualify for CA c. Outgoings / Expenses and CA common to income from transactions with
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	<p>both members and non-members -</p> <ul style="list-style-type: none"> ○ The amount allowed as deduction (outgoings / expenses or CA) is restricted to the portion attributable to non-members. Outgoings / Expenses or CA common to the income from transactions with members and non-members need to be apportioned into outgoings / expenses or CA attributable to income from transactions with members and income from transactions with non-members respectively. Generally, common expenses that may require apportionment include printing, postage, stationery, telephone, electricity, rent and bank charges. <p>Apportionment of common outgoings / expenses or CA to compute the amount relating to transactions with non-members is determined in accordance with the formulas in the Income Tax (Deduction Relating to Transaction with Non-Members for CASI) Rules 2011 [P.U. (A) 360/2011] as follows:</p> <p>The formula for apportioning outgoings/expenses and capital allowances are explained in Paragraphs 9.5 and 9.6 respectively</p> <ul style="list-style-type: none"> • Gifts of money which is deducted from aggregate income under S.44(6) of the ITA, is also apportioned. The amount which can be deducted from aggregate income relating to transactions with non-members is computed using the formula set out under paragraph 9.7 of the PR. The amount to be deducted shall not exceed 7% of the aggregate income of the CASI for the basis period for that YA. • Examples 5 to 8 in the PR illustrate the computation of tax payable by a CASI. • Losses arising from transactions with members cannot be deducted from income derived from transactions with non-members, and are disregarded for purposes of the ITA. (Refer to Examples 9 and 10.)
10	<p><i>Tax rates</i></p> <ul style="list-style-type: none"> • Income of a CASI are taxed at scale rates that are applicable to individuals in Paragraph 1, Part 1, Sch. 1 of the ITA, but personal reliefs that apply to individuals are not applicable to a CASI.
11 -12	<p><i>Record-keeping and filing of income tax return forms</i></p> <ul style="list-style-type: none"> • Separate accounts must be kept in respect of income derived from transactions with members and transactions with non-members. Records that distinguish between member and non-member functions have to be kept if a CASI does not have a limitation on dealings with non-members. (Refer to Example 11) • A CASI is required to file its income tax return form (ITRF) i.e. Form TF for each YA. The deadline for filing the ITRF in the year following that YA is 30 April for non-business income source and 30 June for business income source.
13	<p><i>Similarities and differences between a CASI and a trade association</i></p> <ul style="list-style-type: none"> • These are summarized in a table under paragraph 13 of the PR.

Members may read the PR at the websites of the [Institute](#) and the [LHDNM](#).

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