



INLAND REVENUE BOARD OF MALAYSIA

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

PUBLIC RULING NO. 1/2021

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CONTENTS	Page
1. Objective	1
2. Relevant Provisions of the Law	1
3. Interpretation	1
4. Tax at Unit Holders' Level	2
5. Filing of Income Tax Return Form	7
6. Updates and Amendments	7
7. Disclaimer	8

DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 (ITA) provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

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

1. Objective

The objective of this Public Ruling (PR) is to explain the tax treatment of distribution of income from real estate investment trusts (REIT) or property trust funds (PTF) in Malaysia to its unit holders.

2. Relevant Provisions of the Law

The provisions of the Income Tax Act 1967 (ITA) related to this PR are subsection 5(1A), sections 6, 7, 8, 61, 61A, 109D, 110 and 111, subsections 127(3A) and 127(5), paragraph 127(3)(b) and Parts 1 and X of Schedule 1.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 “Real Estate Investment Trust” or “Property Trust Fund” 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 in Malaysia for the basis year for a year of assessment by virtue of section 7 or 8 of the ITA.
- 3.4 “Individual” means a natural person.
- 3.5 “Person” includes a company, a body of persons, a limited liability partnership, a corporation sole and a partnership.
- 3.6 “Institutional investor” means a pension fund, collective investment scheme 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 section 3 of the Securities Commission Malaysia Act 1993 [Act 498].

- 3.9 “Fund” means a Real Estate Investment Trust or Islamic Real Estate Investment Trust.

4. Tax at Unit Holders’ Level

- 4.1 REIT/PTF unit holders are taxed in the year of assessment (YA) the distribution of income is received.

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

Example 1

Income of Smart REIT for the period from 1.1.2020 to 31.12. 2020 was received by unit holders on 31.1.2021. One of the unit holders, ABC Sdn Bhd which closes its accounts on 31 December each year, received a distribution on 31.1. 2021.

ABC Sdn Bhd, a resident company, should declare the distribution of income from Smart REIT in the YA 2021 as the payment date on the distribution voucher indicates the date the income was received.

- (ii) Unit holders are also taxed in the YA they received distribution of accumulated undistributed income from REIT/PTF. The accumulated undistributed income constitutes previous years’ income which was tax exempt or subjected to tax at the REIT/PTF level. Distribution of accumulated undistributed income which was subjected to tax would carry with it tax credits¹.

Note

¹For the purpose of this Public Ruling, tax credit is the portion of the tax paid by the unit trust attributable to the units held by the unit holders which can be utilised by the unit holders to set off against the tax charged on them pursuant to subsection 110(9A) of the ITA.

- 4.2 Distribution of income which is tax exempt at REIT/PTF level by a REIT/PTF that is listed on Bursa Malaysia

If 90% or more of the total income of a REIT/PTF that is listed on Bursa Malaysia in the basis year for a YA is distributed to unit holders, the REIT/PTF is exempted from tax under section 61A of the ITA for that YA. However, unit holders are liable to tax on this distribution of income as provided in paragraph 4.1 above. Since the income distributed by the REIT/PTF is tax exempt, no tax credit would be available to the unit holders. Tax charged on this distribution of income is a final tax.

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

Unit holders who receive income distribution which has been subjected to tax at the REITs/PTF level from either a–

- (i) REIT/PTF that is listed on Bursa Malaysia; or
- (ii) REIT/PTF that is not listed on Bursa Malaysia,

would be subject to tax on the income distribution. However, the income distribution would carry with it a tax credit, which can be utilised by the unit holders to set off against the tax charged on them pursuant to subsection 110(9A) of the ITA.

- 4.4 Distribution of tax exempt income received by REIT/PTF

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

- 4.5 Distribution of income received by a tax-exempt unit holder

Pursuant to subsection 127(5) of the ITA, where a unit holder is tax exempt under paragraph 127(3)(b), subsection 127(3A) or Schedule 6 of the ITA, and the distribution of income from a REIT/PTF has been subjected to withholding tax (WHT) under section 109D of the ITA, that unit holder would be entitled to a refund under section 111 of the ITA.

- 4.6 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 2009 to 2015		YA 2016 to 2025	
	Type of Tax	Rate	Type of Tax	Rate
(A) Company				
(i) Resident	Corporate	25%	Corporate	24% ²
(ii) Non-Resident	WHT (final tax)	25%	WHT (final tax)	24% ²
(B) Foreign Institutional Investor	WHT (final tax)	10%	WHT (final tax)	10%
(C) Individual				
(i) Resident	WHT (final tax)	10%	WHT (final tax)	10%
(ii) Non-Resident	WHT (final tax)	10%	WHT (final tax)	10%
(D) Others				
(i) Resident	WHT (final tax)	10%	WHT (final tax)	10%
(ii) Non-Resident	WHT (final tax)	10%	WHT (final tax)	10%

Note

²The tax rate of 24% for resident company and non-resident company have effect for the YA 2016 and subsequent YA.

Example 2

The following unit holders received their share of distribution of income from Luxury REIT listed on Bursa Malaysia in the basis period for the YA 2021.

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	Non-resident foreign institutional investor
Discretionary Trust	Resident and non-resident

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

Unit Holder	Tax Treatment
Daya Maju Sdn Bhd	Corporate Tax 24% ³
Gupta India Pte Ltd	WHT 24% ⁴
Padzli	WHT 10% ⁴
Johnson	WHT 10% ⁴
German Pension Fund	WHT 10% ⁴
Discretionary Trust	WHT 10% ⁴

Note

³Daya Maju Sdn Bhd is not subject to WHT but is taxable at the corporate tax rate of 24% for the YA 2021.

⁴WHT charged on Gupta India Pte Ltd, Mr. Padzli, Mr. Johnson, German Pension Fund and Discretionary Trust is the final tax for the YA 2021.

Example 3

The facts are the same as in Example 2 except that Luxory REIT distributed the previous year's exempt income of RM100,000 in the YA 2021.

The income exempted from tax other than under section 61A which were received by Luxory REIT and subsequently distributed to unit holders continue to be tax exempt at the unit holders level.

Example 4

Luxory REIT, listed on Bursa Malaysia, distributed 80% of its total income of RM1,000,000 for the YA 2020. The Fund was taxed on the total sum of RM1,000,000 as only 80% of the total income was distributed. The income for the YA 2020 which is not distributed amounting to RM200,000 (retained income) will be distributed by Luxory REIT in the YA 2021 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	Non-resident foreign institutional investor

The income distribution in the YA 2020 and the retained income distributed in the YA 2021, which has been taxed at the REIT/PTF level, would have tax credits attached.

The above unit holders are required to declare the distribution of income from Luxory REIT amounting to RM800,000 in the YA 2020 in their Income Tax Return Form (ITRF) for the YA 2020. These unit holders would be entitled to the tax credit, which can be utilised to set off against the tax charged on them pursuant to subsection 110(9A) of the ITA.

When the retained income of RM200,000 from the YA 2020 is distributed by Luxory REIT in the YA 2021, the unit holders are required to declare such distribution in their ITRF for the YA 2021. These unit holders would be entitled to the tax credit, which can be utilised to set off against the tax charged on them pursuant to subsection 110(9A) of the ITA.

5. Filing of Income Tax Return Form

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

- (a) in the case of resident corporate unit holders where the WHT provision under section 109D of the ITA is not applicable, and
- (b) where REIT/ PTF –
 - (i) are not exempted from tax under subsection 61(1A) of the ITA (either on the basis that the distribution is less than 90% of total income of a REIT/PTF that is listed on Bursa Malaysia or the distribution is from a REIT/PTF that is not listed on Bursa Malaysia 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 REIT/PTF,

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

6. Updates and Amendments

This PR replaces the PR No. 9/2018 dated 12 October 2018.	Amendment	
	The contents of this PR are essentially the same as the previous PR with the following amendments:	
	Paragraph	Explanation
	2	Paragraph 2 is updated and amended.
	3	Items 3.1, 3.5 and 3.8 updated and amended.
	4.1	Paragraph 4.1

			updated and amended. Example 1 updated. Note explaining item "Tax Credit" is inserted.
		4.2	Paragraph 4.2 is updated and amended.
		4.3	Paragraph 4.3 is updated and amended.
		4.5	Paragraph 4.5 is updated and amended.
		4.6	Paragraph 4.6 is updated and amended. Examples 2, 3 and 4 are updated and amended.
		5	Paragraph 5 is updated and amended.
		6	Paragraph 6 is updated and amended.
		7	Paragraph 7 is updated and amended.

7. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

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