



INLAND REVENUE BOARD OF MALAYSIA

**UNIT TRUST FUNDS
PART 1 - AN OVERVIEW**

PUBLIC RULING NO. 7/2013

Translation from the original Bahasa Malaysia text.

DATE OF ISSUE: 28 MAY 2013



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Published by
Inland Revenue Board of Malaysia

Published on 28 May 2013

First edition on 28 May 2013

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CONTENTS	Page
1. Objective	1
2. Related Provisions	1
3. Interpretation	1
4. Unit Trust Funds In Malaysia	1
5. Regulatory Framework of Unit Trust Funds In Malaysia	3
6. Key Features Of Unit Trusts	4
7. Filing Of Income Tax Return Form	14
8. Other Tax Considerations	15
9. Glossary	15

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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.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

1. **Objective**

The objective of this Ruling is to explain in general the unit trust fund including property trusts other than real estate investment trusts (REITs) and property trust funds (PTFs) based on the relevant guidelines issued by the Securities Commission (SC).

2. **Related Provisions**

The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are section 2 and Schedule 6.

3. **Interpretation**

The words used in this Ruling have the following meaning:

- 3.1 "Individual" means a natural person.
- 3.2 "Director General" (DG) means the Director General of Inland Revenue Board of Malaysia.
- 3.3 "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole.
- 3.4 "Securities Commission" means the Securities Commission established under section 3 of the Securities Commission Act 1993 [Act 498].

4. **Unit Trust Funds In Malaysia**

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.

4.1 Conventional unit trust fund

- 4.1.1 A unit trust fund is a form of collective investment scheme which pools financial resources from various investors for the purpose of making large scale investments in a broadly diversified portfolio of stocks and bonds or other financial instruments.
- 4.1.2 Unit trust includes property trust. Property trusts refer to unit trusts which invest primarily in real properties. Among the types of unit trust funds found in Malaysia are bonds / fixed income funds, money market fund, fund-of-funds, index funds, structured products, feeder funds, umbrella funds, guaranteed funds and capital protected funds.

4.1.3 The introduction of a multi-class structure for unit trust fund with effect from 1.6.2010 allows a single unit trust fund to offer multiple classes of units over a single investment pool. Each class of units will have different features such as the fees and charges imposed and the currency in which it is denominated. Multi-class structure unit trust funds enable different investor groups to opt for their investment preferences. The currency option will facilitate the marketing of Malaysian unit trusts to foreign investors who can invest directly into a unit trust fund in their own currency instead of having to convert their investment sums into Ringgit Malaysia(RM).

4.2 Islamic unit trust fund / *Syariah*-based unit trust fund

4.2.1 Besides the above mentioned conventional unit trust funds, Islamic unit trust funds or *Syariah*-based unit trust funds have also been established in Malaysia. Islamic unit trust funds are collective investment schemes that offer investors the opportunity to invest in a diversified portfolio of *Syariah*-compliant securities.

4.2.2 The objective of an Islamic unit trust fund, as in any other Islamic financial products in the Islamic Capital Market (ICM), is to ensure permissibility of investments in the context of *Syariah* law, such as the elimination of *riba* (interest), *maisir* (gambling) and *gharar* (ambiguity or excessive uncertainty).

4.3 Price of a unit

The price of a unit in a unit trust fund reflects its net asset value (NAV) per unit of the fund. The NAV is the fund's assets less its liabilities and divided by the total number of units in issue. Unlike prices of stocks, which are subject to change at each transaction, a fund's NAV is based on the closing prices of the stocks in its portfolio on each trading day.

Where a fund issues multiple classes of units, the price of a unit of any class of units should be calculated by reference to the NAV of the fund's assets and in accordance with the provisions of both the deed and the prospectus applying to that class of units. For classes of income denominated in different currencies, the price of a unit must be quoted and paid for in the currencies in which those classes are denominated.

4.4 Unit trusts are not separate legal entities. A unit trust is constituted when a trust deed is executed by the manager and the trustee. A trustee is the registered legal owner (holds the legal title) of all the assets of the trust fund including real properties, shares in companies and bank accounts. All the assets of the fund are held by the trustee on behalf of and for the benefit of the unit holders. In other words, unit holders of the fund are the beneficial owners of all the assets of the fund.

5. Regulatory Framework Of Unit Trust Funds In Malaysia

- 5.1 The unit trust industry in Malaysia is governed by the SC which is the sole regulatory body in the establishment and operations of unit trusts in Malaysia.
- 5.2 The SC is a statutory body entrusted with the responsibility of regulating and systematically developing Malaysia's capital markets. It has the direct responsibility of supervising and monitoring the activities of market institutions and regulating all persons licensed under the Capital Markets and Services Act 2007 (CMSA).
- 5.3 The CMSA consolidates the Securities Industry Act 1983, the Futures Industry Act 1993 and Part IV of the Securities Commission Act 1993. The CMSA and guidelines on unit trust funds are the principal legislations and guidelines governing the unit trust industry and are structured to outline the roles and responsibilities of the fund manager and trustee. The guidelines on unit trust funds were introduced to govern the unit trust fund industry. Only unit trust funds approved by the SC can be offered for sale to the public.
- 5.4 The Guidelines on Unit Trust Funds are –
- (a) issued by the SC under section 377 of the CMSA,
 - (b) aimed at providing a regulatory environment that will protect the interests of the investing public and facilitate the orderly development of the unit trust industry in Malaysia,
 - (c) drawn up to govern the operation of unit trust funds established in Malaysia,
 - (d) to be complied with by any person intending to establish a unit trust fund in Malaysia and issue, offer or invite any person to subscribe for purchase units of the unit trust fund, and
 - (e) part of the regulatory framework for unit trusts in Malaysia and should be read together with the securities laws.
- 5.5 The growing awareness of and demand for investing in accordance with Islamic principles on a global scale has created a flourishing ICM in Malaysia. The ICM functions as a parallel capital market to the conventional capital market for both the capital seekers and providers. The ICM refers to the capital market where activities are carried out in accordance with *Syariah* principles. To this end, the *Syariah* Advisory Council (SAC) was established in 1996 primarily to advise the SC on *Syariah* related matters and to provide *Syariah* guidance of ICM transaction and activities, aimed at standardising and harmonising

applications. Among the various capital market products available is the Islamic unit trust.

- 5.6 For the establishment of an Islamic fund based on *Syariah* principles, the guidelines on unit trust fund must be read together with the guidelines on Islamic fund management, guidelines on compliance function for fund managers and all relevant guidelines applicable as required under the CMSA.
- 5.7 A fund manager of a unit trust who carries on an Islamic fund management business under an Islamic window is also required to comply with all the relevant guidelines as set out by the SC. Islamic window means a capital market services licence holder (fund manager) that carries on an Islamic fund management business together with a conventional fund management business.

6. Key Features Of Unit Trusts

6.1 Structure of Unit Trusts

6.1.1 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 terms and conditions of this relationship is specifically defined in the trust deed of the unit trust, which effectively forms the constitution of the fund, and details the way in which the fund operates. The trust deed is prepared by the fund manager and is registered with the SC. The SC approves the appointment of the fund manager (management company) and trustee of the unit trust.

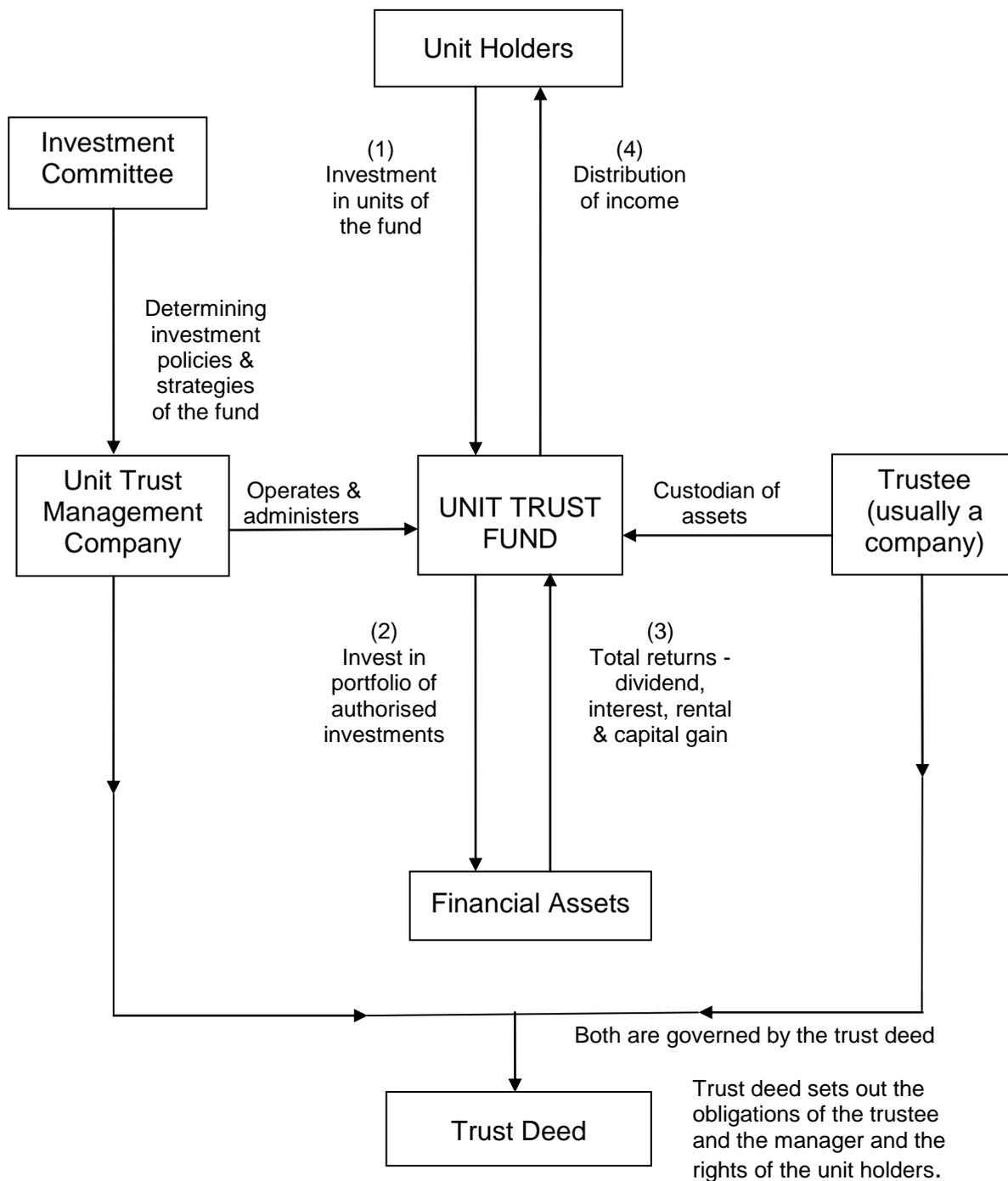
The fund manager runs the trust for profit. The trustee ensures the fund manager keeps to the fund's investment objective and safeguards the trust assets. The unit holders have the rights to the trust assets.

- 6.1.2 Pursuant to section 294 of the CMSA, a deed must contain such provisions, covenants, requirements, information and particulars specified by the SC, and must not contain any provision that is prejudicial to the interests of any unit holder or to the unit holders of any class of units (where applicable).
- 6.1.3 Every unit trust has its own independent trustee. However, it is not unusual for unit trust management companies to engage one trustee for all funds for administrative simplicity. The trustee can be any independent trustee of Malaysia or any independent trustee companies.

The trustee's primary role is to ensure the terms of the fund's deed are adhered to. The management company has to deal with the trustee who will ensure that the day-to-day work of running the trust, the fund's accounts, valuations and calculations of unit prices are carried out properly and in accordance with both the deed and the rules laid down by SC.

- 6.1.4 The Islamic unit trust schemes are required to appoint a *Syariah* committee or *Syariah* adviser as stipulated in the Guidelines on unit trust fund issued by SC to ensure that their operations are in accordance with *Syariah* principles. The Islamic unit trust schemes are available in many forms similar to that of the conventional unit trusts except that the investments are *Syariah*-compliant.

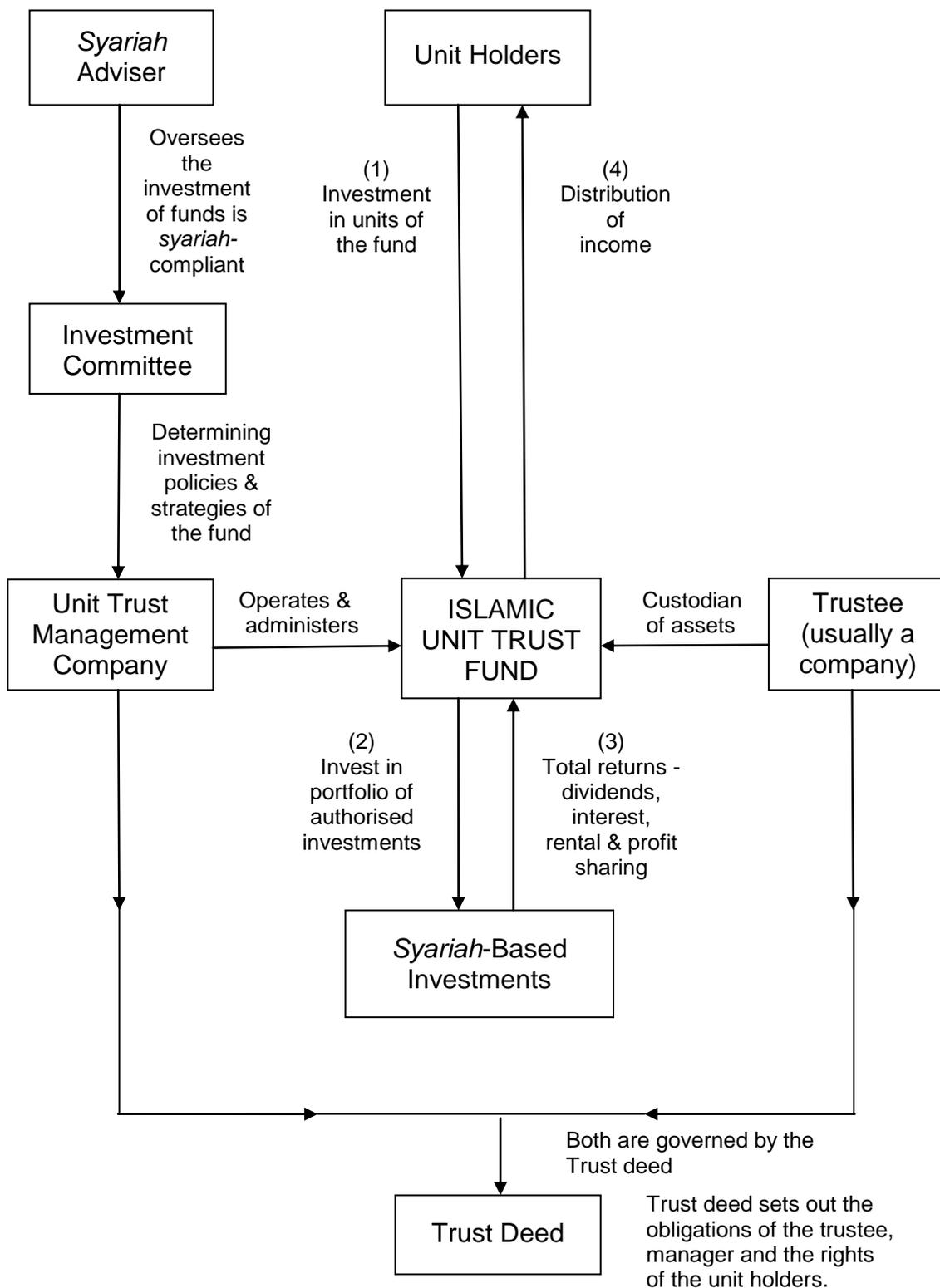
Diagram Of Basic Structure Of A Conventional Unit Trust Fund In Malaysia



The functions of the stakeholders of a conventional unit trust are as follows:

Stakeholder	Functions
Management Company	Establishes, operates and administers the fund. Management fees are paid in return.
Trustee	Acts on behalf of unit holders.
Investment Committee	Appointed by the management company to perform oversight functions - management and operation of fund.

Diagram Of Basic Structure Of A *Syariah* Based Unit Trust Fund In Malaysia



The functions of the stakeholders of an Islamic unit trust are as follows:

Stakeholder	Functions
Management Company	Establishes, operates and administers the fund. Management fees are paid in return.
Trustee	Acts on behalf of unit holders.
Investment Committee	Appointed by the management company to perform oversight functions - management and operation of fund.
<i>Syariah</i> Adviser	Oversees the investment of the fund is <i>Syariah</i> -compliant

6.2 Investment activities of conventional unit trusts

6.2.1 The fund's property should be relevant and consistent with the investment objective, the trust deed, prospectus of the fund, guidelines on unit trusts funds and securities laws.

6.2.2 According to the guidelines on unit trust fund, investments in the fund may only consist of the following:

- (a) transferable securities (i.e. equities, debentures and warrants). Investments in unlisted securities are subject to certain investment limits. Warrants should carry the right in respect of a security traded in or under the rules of an eligible market,
- (b) cash, deposits with a financial institution and money market instruments,
- (c) units / shares in other collective investment schemes,
- (d) derivatives that are traded on an exchange or over the counter,
- (e) investments in structured products, and
- (f) investments in eligible foreign markets where the regulatory authority is a member of the International Organisation of Securities Commission.

6.2.3 The fund may participate in the lending of securities if it is permitted under the trust deed and disclosed in the prospectus. The lending of securities must comply with the guidelines on securities

borrowing and lending and the relevant authorities as specified in the guidelines on unit trust fund.

6.3 Investment activities of Islamic unit trusts

6.3.1 The determination whether a particular stock is Islamic or not are based on the sources of income received by the corporation.

6.3.2 An Islamic fund manager must ensure that:

- (a) all forms of investments are limited to *Syariah*-compliant investments,
- (b) its clients' monies and properties are properly safe guarded under the securities law in accordance with *Syariah* requirements, and
- (c) appropriate risk management techniques and tools undertaken comply with *Syariah* principles and are endorsed by its appointed adviser.

6.4 Investment restrictions and limits

Investment restrictions and limits as specified in the guidelines on unit trust fund are to be complied with based on the most up to date valuation of the investments of the fund. In the case of an Islamic fund, all investments shall comply with the principles of *Syariah*.

6.5 Non-permissible investments of *Syariah*-based unit trust fund

6.5.1 The general criteria in evaluating the status of *Syariah* approved securities are that the companies are not involved in the following core activities:

- (a) financial services based on *riba* (interest),
- (b) gambling,
- (c) manufacture or sale of non-halal products or related products,
- (d) conventional insurance,
- (e) entertainment activities that are non-permissible according to *Syariah*,
- (f) manufacture or sale of tobacco-based products or related products,
- (g) stock broking or share trading in *Syariah* non-compliant securities, and

- (h) other activities deemed non-permissible according to *Syariah*.

6.5.2 For companies with activities comprising both permissible and non-permissible elements, the *Syariah* committee / *Syariah* adviser considers two additional criteria:

- (a) the public perception or image of the company must be exemplary,
- (b) the core activities of the company are important and must be considered *masalah* (in the public interest) to the Muslim *ummah* (nation) and the country, and the non-permissible elements present must be minimal and involves matters such as *`umum balwa* (common plight and difficult to avoid) and *`uruf* (custom).

6.5.3 To determine the tolerable level of mixed activities from permissible and non-permissible activities towards revenue and profit before tax of a company, the SAC has established several benchmarks based on *ijtihad* (reasoning from the source of *Syariah* by qualified *Syariah* scholars). If the activities carried out do not comply with the benchmark, the securities of the company will not be classified as *Syariah*-approved.

6.6 Income of unit trust

6.6.1 Interest

Interest income received is assessed and charged to tax unless an exemption is granted to the unit trust, such as:

- (a) any savings certificates issued by the Government [paragraph 19 of Schedule 6 of the ITA 1967],
- (b) securities or bonds issued or guaranteed by the Government [subparagraph 35(a) of Schedule 6 of the ITA 1967],
- (c) debentures or Islamic securities, other than convertible loan stock, approved by the securities commission [subparagraph 35(b) of Schedule 6 of the ITA 1967],
- (d) Bon Simpanan Malaysia issued by Bank Negara Malaysia [subparagraph 35(d) of Schedule 6 of the ITA 1967],
- (e) interest income derived from Malaysia and paid or credited by any bank or financial institution licensed under the

Banking and Financial Institutions Act 1989 or Islamic Banking Act 1983 [paragraph 35A of Schedule 6 of the ITA 1967],

- (f) bonds and securities issued by Pengurusan Danaharta Nasional Berhad - Income Tax (Exemption) (No.5) Order 2001 [P.U.(A) 220/2001],
- (g) Islamic securities (including *sukuks*) originating from Malaysia, other than convertible loan stock, issued in any currency other than Ringgit and approved by the Securities Commission or Labuan Financial Services Authority [subparagraph 33B of Schedule 6 of the ITA 1967],
- (h) any income received by the fund from a *Sukuk* Issue which has been issued by the Malaysia Global *Sukuk* Inc - Income Tax (Exemption) (No. 31) Order 2002, and
- (i) any income received by the fund from *sukuk ijarah*, other than convertible loan stock, issued in any currency by 1Malaysia Sukuk Global Berhad - Income Tax (Exemption) Order 2010.

6.6.2 Gains or profits in lieu of interest

A *Syariah*-based unit trust fund is prohibited from participating in investments which involve interest (*riba*).

However, pursuant to subsection 2(7) of the ITA 1967, any reference to interest shall apply, *mutatis mutandis*, to gains or profits received and expenses incurred by an Islamic fund, in lieu of interest, in transactions conducted in accordance with the principles of *Syariah*. In other words, any gains or profits received by an Islamic fund and expenses incurred, in lieu of interest, in transactions conducted in accordance with the principles of *Syariah*, will be accorded the same treatment as if they were interest.

6.6.3 Dividend

- (a) The single tier system was introduced effective 1.1.2008 and single-tier dividends distributed by a resident company are exempt from tax in Malaysia.
- (b) Unit trusts may also receive dividends which are tax exempt. The exempt dividends may be received from investments in companies which have previously enjoyed or are currently enjoying the various tax incentives provided under the

relevant legislation as well as from distributions from exempt income accounts.

6.6.4 Income of an approved unit trust

Pursuant to Income Tax (Exemption) (No.12) Order 1985, where a unit trust approved by the Minister of Finance has 90% or more of its investments in Government securities and the balance in commercial papers –

- (a) the income of such a unit trust will be exempt, and
- (b) dividends received from that unit trust by a resident individual will also be exempt.

Commercial papers means promissory note, commercial drafts, bank acceptances, trade acceptances and similar credit instruments issued by banking and business firms in financing their operation.

6.6.5 Rental

Unit trusts include property trusts which are not considered as REITs/PTF by the SC. The rental income of property trusts other than REITs/PTF from the letting of property is part of the total income of the property trust.

6.6.6 Pengurusan Danaharta Nasional Bhd /Danaharta Urus Sdn Bhd

Pursuant to Income Tax Exemption (No.6) Order 2003, with effect from the year of assessment 1999, discounts or profits received from the sale of bonds or securities issued by Pengurusan Danaharta Nasional Bhd / Danaharta Urus Sdn Bhd within and outside Malaysia is tax exempt.

6.6.7 Gains from realisation of investments

Pursuant to paragraph 61(1)(b) of the ITA 1967, gains from the realisation of investments of a unit trust will not be treated as income of the fund and are not subject to tax.

6.6.8 Foreign income

A fund may receive dividends, interest and other income from investments outside Malaysia. With effect from the year of assessment 1998, income derived from sources outside Malaysia and received in Malaysia by a resident unit trust is exempt from income tax.

6.7 Fees and expenses of unit trusts

According to the guidelines on unit trust fund -

- (a) a management company and trustee may only be remunerated by way of an annual fee charged to the fund if it is permitted by the trust deed of a unit trust and clearly disclosed in the prospectus, and
- (b) only expenses directly related and necessary in operating and administering a fund may be paid out of the fund. Among these expenses are:
 - (i) commissions / fees paid to brokers / dealers in effecting dealings in the fund's property, shown on the contract notes or confirmation notes or difference accounts,
 - (ii) where the custodial function is delegated by the trustee charges / fees paid to sub-custodians,
 - (iii) taxes and other duties charged on the fund by government and other authorities,
 - (iv) fees and other expenses properly incurred by the auditor appointed for the fund,
 - (v) fees for the valuation of any investment of the fund by independent valuers for the benefit of the fund,
 - (vi) costs incurred for the modification of the trust deed of the fund other than those for the benefit of the management company or trustee,
 - (vii) cost incurred for any meeting of the unit holders other than those convened for the benefit of the management company or trustee, and
 - (viii) listing expenses for listing on the stock exchange.

7. **Filing Of Income Tax Return Form (ITRF)**

Unit trusts / Property trusts (other than REITs/PTF) are required to file an ITRF TC within seven months from the date following the end of the accounting period.

Example 1

ABC Unit Trust commenced operations on 1.11.2010 and made up its accounts to 30.6.2011. The unit trust makes up its subsequent accounts to 30 June annually.

The basis periods for the years of assessment are as follows:

Year Of Assessment	Basis Period
2010	1.11.2010 to 31.12.2010
2011	1.01.2011 to 31.12.2011
2012	1.07.2011 to 30.06.2012
2013	1.07.2012 to 30.06.2013

The due date to file the ITRF TC are as follows:

Year Of Assessment	Basis Period	Due Date To File ITRF
2010	1.11.2010 to 31.12.2010	31.1.2012
2011	1.01.2011 to 31.12.2011	31.1.2013
2012	1.07.2011 to 30.06.2012	31.1.2013
2013	1.07.2012 to 30.06.2013	31.1.2014

8. Other Tax Considerations

Gains arising from the disposal of units of investments including real properties or shares in real property companies are not regarded as income of a unit trust and therefore are not subject to income tax. Pursuant to subsection 2(1) of the Real Property Gains Tax Act 1976, the definition of *gains* has been extended to include gains accruing to a unit trust from the disposal of real property. In other words, although gains from the disposal of units of investments including real properties or shares in real property companies are not chargeable to income tax, they may be subject to Real Property Gains Tax (RPGT). Similarly, RPGT is imposed on the chargeable gain on disposal of chargeable assets by any person to unit trusts other than REITs/PTF approved by the SC.

9. Glossary

- 9.1 “Real estate investment trust or property trust fund” means a unit trust scheme that qualifies as a real estate investment trust or a property trust fund by the Securities Commission.
- 9.2 “Dividend” includes income distributed by a unit trust.
- 9.3 “Classes of units” in relation to a unit trust fund means two or more classes of units representing similar interests in the assets of the fund.
- 9.4 “Unit holder” means the unit holder of a unit trust fund.

- 9.5 “Distribution” refers to the distribution of income by a unit trust fund to its unit holders.
- 9.6 “Fund” means a unit trust fund.
- 9.7 “Umbrella fund” means a fund that comprises of at least two sub-funds.
- 9.8 “Unit trust fund” means any unit trust scheme other than a real estate investment trust / property trust fund where any arrangements are made for the purpose or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of –
- (a) securities,
 - (b) futures contracts, or
 - (c) any other property as permitted under the relevant regulations and guidelines set by the Securities Commission on unit trust, and
- includes a sub-fund of an umbrella fund.
- 9.9 “Islamic unit trust fund or *Syariah* based unit trust fund” means a unit trust scheme that is managed and operated in accordance with *Syariah* principles.
- 9.10 “Securities laws” means the Securities Commission (Amendment) Act 2007, the Securities Industry (Central Depositories) Act 1991 [Act 453] and the Capital Markets and Services Act 2007.
- 9.11 “Unit” in relation to a unit trust fund means a measurement of a right or interest of a unit holder in a unit trust fund.

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