



## **INLAND REVENUE BOARD OF MALAYSIA**

### **TAXATION OF BUSINESS TRUST**

**PUBLIC RULING NO. 10/2013**

*Translation from the original Bahasa Malaysia text*

**DATE OF ISSUE: 3 JULY 2013**



**INLAND REVENUE BOARD OF MALAYSIA**

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#### **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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.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 the tax treatment accorded to a business trust registered with the Securities Commission Malaysia.

2. **Related Provisions**

The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are subsections 2(1), 2(9), 2(11), sections 8, 21A, 44A, 75B, 132, 133, paragraph 2 of Schedule 1, paragraphs 38 to 40 of Schedule 3 and paragraph 28 of Schedule 6.

3. **Interpretation**

The words used in this Ruling have the following meaning:

3.1 “Business trust (BT)” means a unit trust scheme where the operation or management of the scheme and the scheme’s property or asset is managed by a trustee-manager [BT has the same meaning assigned to it in the Capital Markets and Services Act 2007].

3.2 “Company” means a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a territory outside Malaysia and a business trust.

3.3 “Person” includes a company, a body of persons, a limited liability partnership and a corporation sole.

4. **Business Trust In Malaysia**

A BT is essentially a business structured in the form of trusts instead of corporations. Like all trusts, the constitutive document is a trust deed, and there will be a trustee. In the case of a BT, the trustee shall be a trustee-manager (TM) who holds legal ownership of the assets of the underlying business in its capacity as a trustee, and at the same time manage the business of the trust as its operator. Given its key role in a BT, the framework requires that the TM must be a company other than an exempt private company. Unit holders of a BT have a beneficial interest in the assets of a BT by acquiring units of the BT.

Like other business entities, a BT actively undertakes business operations. A significant advantage of a BT over a company, in the Malaysian context, a distribution of income can be made to investors from a BT’s cash flow, subject to solvency requirements. This differs from a Malaysian company which can only make distributions out of accounting profits.

It is anticipated that a BT will be more attractive for business assets that are capital intensive but with stable cash flows such as those in the infrastructure, shipping, public utility and healthcare sectors.



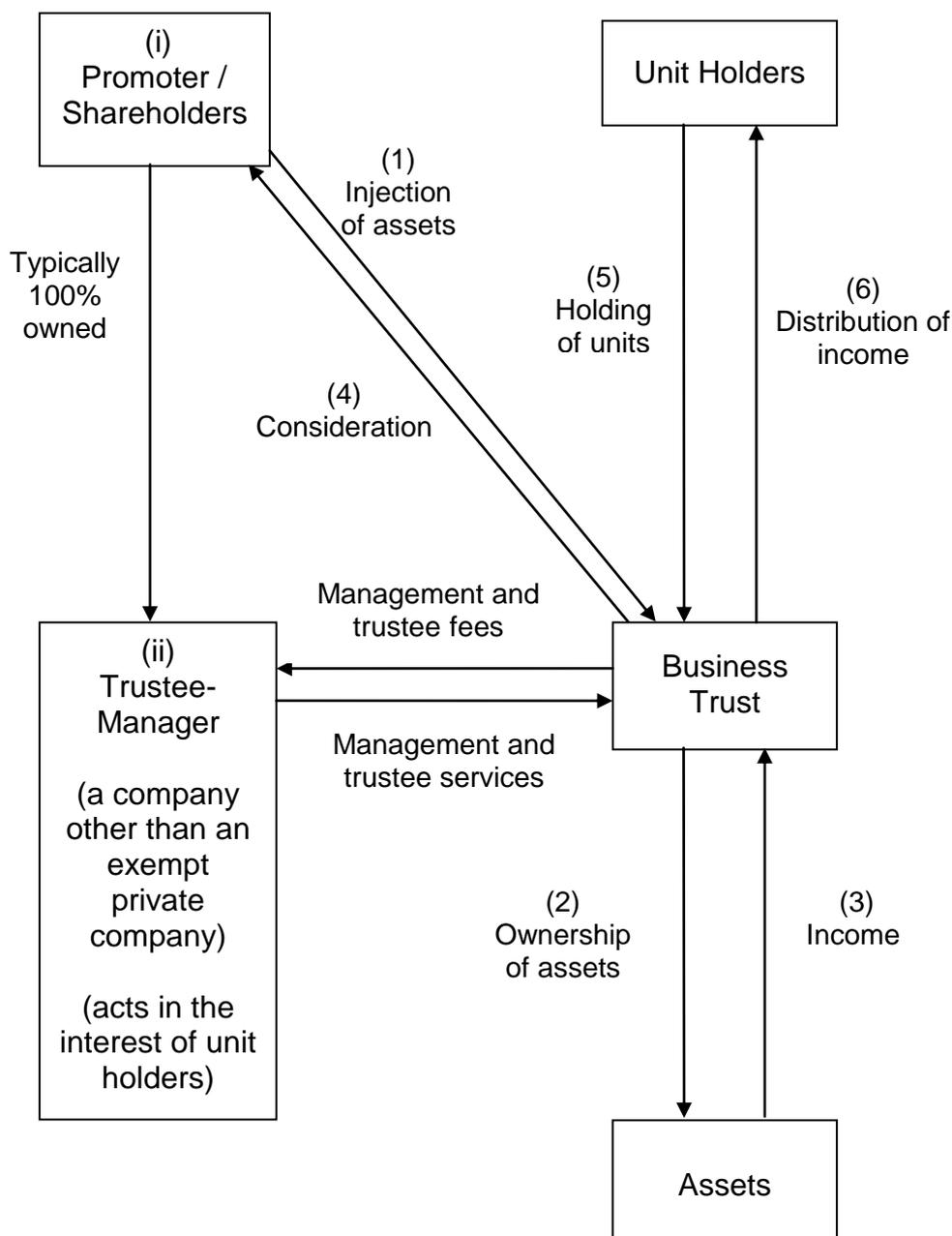
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The Capital Markets and Services Act 2007 (CMSA), read together with the Business Trusts Guidelines which was issued by the SC on 28.12.2012 provides a legal framework for the offering of BT including Islamic BT in Malaysia. A copy of the act and guidelines can be obtained from SC's website at [www.sc.com.my](http://www.sc.com.my).

For income tax purposes a BT would be given the same tax treatment as a company. Pursuant to the subsection 2(11) of the ITA 1967, any reference to shares or ordinary share capital, shareholders and dividend in the ITA 1967 shall be read as including a reference to units or derivatives of units, unit holders and distributions, respectively.

5. Structure Of A BT

Basic Structure Of A Registered BT In Malaysia



The functions of stakeholders of a BT are generally as follows:

No.	Stakeholder	Functions
(i)	Promoter / Shareholder	<ul style="list-style-type: none"> <li>• A promoter (eg: company, individual) incorporates a company in Malaysia which serves as a TM.</li> <li>• Transfers business assets to a BT for consideration typically for units in the BT [refer to (1) and (4) in the diagram above].</li> </ul>
(ii)	Trustee Manager	<ul style="list-style-type: none"> <li>• TM is a company other than an exempt private company and constitutes a BT by executing a trust deed.</li> <li>• TM provides services to a BT and is responsible for the management and operation of the BT.</li> <li>• TM acts in the interest of unit holders.</li> <li>• TM is the legal owner of the assets, holding it on trust for the BT.</li> <li>• TM may appoint an agent to carry out its functions on its behalf.</li> <li>• TM issues the units in a BT in an initial public offer /initial listing and uses the proceeds to acquire the assets.</li> </ul>

#### 6. Residence Status Of A BT

A BT is resident in Malaysia for the basis year for a year of assessment if the TM of that BT is resident in Malaysia. The TM of a BT is resident for the basis year for a year of assessment if –

- (a) the TM in its capacity as such carries on the business of such BT in Malaysia, and
- (b) the management and control of the business of such BT is exercised in Malaysia.

### Example 1

A BT is registered with the SC in Malaysia and a TM is appointed to manage and operate the shipping business of the BT in Malaysia. All meetings of the TM relating to the management and policies to be followed by the BT are held in Malaysia.

The BT is considered a resident in Malaysia as the TM carried on the shipping business of the BT in Malaysia and the management and control of the BT is exercised in Malaysia. Therefore, the BT is taxable under section 54 of the ITA 1967.

If the BT which is a resident in Malaysia for the basis year for a year of assessment carries on the business of –

- (a) transporting passengers or cargo by sea on a Malaysian ship, or
- (b) lets out on charter a Malaysian ship owned by him on a voyage or time charter basis,

the statutory income for that year of assessment from that business will be exempt from tax [subsection 54A(1) of the ITA 1967]. The exemption of shipping income in respect of a person resident in Malaysia prior to year of assessment 2014 is explained in Public Ruling No. 10/2012 titled Tax Treatment of Malaysian Ship dated 13.12.2012.

If all the meetings relating to the management of the BT and the policies to be followed by the BT are held outside Malaysia by the TM, the BT is considered a non-resident in Malaysia as the management and control of the BT is not exercised in Malaysia. Therefore, the BT is taxable as a non-resident under section 54 of the ITA 1967.

### Example 2

A BT is registered in Malaysia by a promoter which is a non-resident company. A TM is incorporated in Malaysia by the promoter to manage and operate the BT's business of operating hospitals in and outside Malaysia. The TM appointed an agent in Indonesia to manage and operate the business activity of a hospital in Indonesia. The accounts of the hospital in Indonesia are audited by auditors from Malaysia. The consolidated accounts are prepared by the BT in Malaysia. All meetings relating to the management of the hospital and the policies to be followed by the BT are held in Malaysia.

The BT is considered a resident in Malaysia as the TM in his capacity carried on the BT's business in Malaysia and the management and control of the BT is exercised in Malaysia.

Although an agent in Indonesia is appointed to manage and operate the business activity of a hospital in Indonesia, it does not mean that the agent controls the business. The management and control of the BT is considered exercised in

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Malaysia as the TM's meetings are held in Malaysia. The TM is still responsible for the operations of the hospital in Indonesia.

The BT and the TM, both resident in Malaysia will be accorded the tax treatment in accordance with the relevant provisions of the ITA 1967.

7. **Basis Period Of A BT**

The basis year for a year of assessment or the financial accounting period which ends on a day other than 31 December is the basis period of BT for that year of assessment and this is determined in accordance with the provisions of section 21A of the ITA 1967.

**Example 3**

A BT commences operations on 1.11.2013 and makes up its accounts to 30.6.2014. The BT makes up its subsequent accounts to 30 June annually.

The basis periods for the following years of assessment are:

<b>Year Of Assessment</b>	<b>Basis Period</b>
2013	1.11.2013 to 31.12.2013
2014	1.01.2014 to 31.12.2014
2015	1.07.2014 to 30.06.2015
2016	1.07.2015 to 30.06.2016

If there is a change of accounting period of a BT, for purposes of instalment payments of the estimated tax payable by a BT under section 107C of the ITA 1967, refer to Public Ruling No. 7/2011 titled Notification Of Change In Accounting Period Of A Company, Trust Body/Co-Operative Society.

8. **Tax Treatment Of A BT Registered With Or Recognised By The SC**

A BT will be treated as a company with effect from 28.12.2012 [the date of coming into operation of the corresponding provision of the Capital Markets and Services (Amendment) Act 2012]. Based on this treatment, the income of a BT will be taxable at the BT level.

The provisions in the ITA 1967 relating to the matters listed below are also applicable to a BT:

- (a) Group relief
- (b) Control transfer
- (c) Foreign sourced income and remittances
- (d) Tax incentives.

9. **Meaning Of A Controlled BT**

A BT group includes the BT and the BT's subsidiary entities. Two or more BTs are eligible to be treated as BTs within a group of BTs if one BT controls each of the other BTs. A subsidiary entity in relation to a BT is as explained in paragraph 2.01 of the Business Trusts Guidelines issued by the SC.

10. **Group Relief For A BT**

Pursuant to section 44A of the ITA 1967, group relief is available to a company in the same group of companies. All requirements applicable to a company for the purpose of group relief will similarly apply to a BT within a group of BTs. For the purpose of applying the group relief provisions to a BT, units of BT will be used in lieu of the ordinary shares of the company.

According to the Capital Markets and Services Act 2007, a BT group structure includes the BT and the BT's subsidiary entities. In other words, the BT group structure is among BTs.

10.1 **Determination of related parties relationship**

A two level test is imposed to determine whether the claimant BT and the surrendering BT qualify as related BTs. The first level test relates to unit holding of these BTs. For the purpose of group relief, a surrendering BT and the claimant BT are related BTs if at least seventy percent (70%) of the unit holdings in respect of the units -

- (a) of the surrendering BT is directly or indirectly (through the medium of other BTs resident and incorporated in Malaysia) owned by the claimant BT, or
- (b) of the claimant BT is directly or indirectly (through the medium of other BTs resident and incorporated in Malaysia) owned by the surrendering BT, or
- (c) of the surrendering BT and the claimant BT are directly or indirectly owned by another BT resident and incorporated in Malaysia.

In determining the 70% shareholding threshold, any direct or indirect holdings by BTs that are not resident and not incorporated in Malaysia are disregarded.

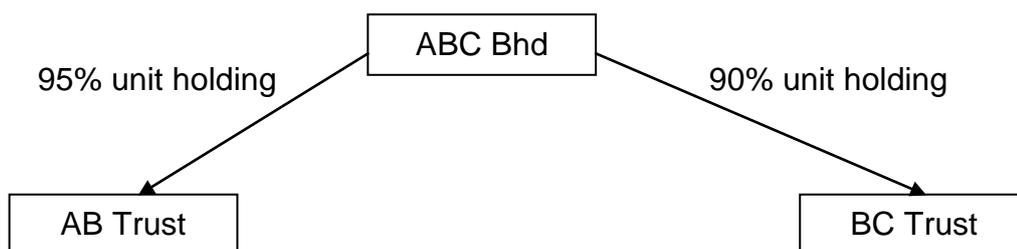
**Example 4**

ABC Bhd carries on a shipping and a construction business in Malaysia. ABC Bhd decided to establish AB Trust and BC Trust for each business and 2 separate TM's are appointed for the 2 BT. Both BTs are resident in Malaysia as the TM is resident in Malaysia, and the management and control

of the BT is exercised in Malaysia. ABC Bhd transferred its assets including plant, machinery, land and building to both BT. The unit holding in AB Trust and BC Trust by ABC Bhd are as follows:

Unit Holders	Unit Holding In AB Trust	Unit Holding In BC Trust
ABC Bhd	95%	90%
Others	5%	10%

The BT group structure is summarised as follows:



Relationship Between Promoter (Company) And BT	Unit Holding Of BT Units (Directly Or Indirectly) (%)	70% Unit Holding Requirement Met?
ABC Bhd & AB Trust	95% - directly	Yes
ABC Bhd & BC Trust	90% - directly	Yes

10.2 Although the 70% ownership of unit holding has been satisfied, it does not automatically mean that the claimant and surrendering BTs are related for purposes of group relief. The second level test requires that in addition to the claimant or surrendering BT owning at least 70% of the unit holding in the other BT, the owning BT must also be beneficially entitled to at least 70% of the residual profit and residual assets of the other BT.

(a) Residual Profits

Holders of units in BT must show that they are beneficially entitled, directly or indirectly, to at least 70% of any residual profits of the BT available for distribution to the BT's unit holders. Unit holders of a BT are holders of units in a BT and creditors in respect of non-commercial loans.

The computation of residual profits is as follows:

	RM
Accounting profit (net profit before tax) (after deducting fixed returns on commercial and non-commercial loans)	XX
Residual profit	<div style="border-top: 1px solid black; border-bottom: 3px double black; width: 100%; margin: 0;"></div>

If a BT has no residual profit, a notional amount of RM100 is deemed to be the residual profit.

(b) Residual assets

Holders of units in a BT must show that they are beneficially entitled, directly or indirectly, to at least 70% of any residual assets of the BT available for distribution to the BT unit holders upon winding up of the BT.

Residual assets are net assets -

- (i) available for distribution to unit holders in the event of winding up,
- (ii) after deducting payment for commercial loans, and
- (iii) distributed using the ratio used for the purpose of determining residual profits.

If a BT has no residual asset, a notional amount of RM100 is deemed to be the residual asset.

**Example 5**

10,000 units in XYZ BT are owned by the following unit holders:

A BT - 7,000 units (70% of units issued)

B BT - 2,000 units (20% of units issued)

C BT - 1,000 units (10% of units issued)

XYZ BT has an accounting profit of RM250,000 after deducting fixed returns on commercial and non-commercial loans amounting to RM100,000. The net asset of XYZ BT is RM130,000.

The related parties relationship is determined as follows:

<b>Relationship Between XYZ BT And BT</b>	<b>Unit Holding Of Units (Directly Or Indirectly) (%)</b>	<b>70% Unit Holding Requirement Met?</b>
XYZ BT & A BT	70% - directly	Yes
XYZ BT & B BT	20% - directly	No
XYZ BT & C BT	10% - directly	No

The residual profit is RM250,000. The following BT's entitlement to the residual profits of XYZ BT are as follows:

<b>Unit Holders Of XYZ BT</b>	<b>Proportion Of Residual Profits (RM)</b>	<b>Percentage Of Residual Profits</b>
A BT	$(7,000 / 10,000) \times 250,000 = 175,000$	$175,000 / 250,000 = 70\%$
B BT	$(2,000 / 10,000) \times 250,000 = 50,000$	$50,000 / 250,000 = 20\%$
C BT	$(1,000 / 10,000) \times 250,000 = 25,000$	$25,000 / 250,000 = 10\%$

A BT is beneficially entitled to 70% of the residual profits of XYZ BT.

The following BT's entitlement to the residual assets of XYZ BT is as follows:

<b>Unit Holders Of XYZ BT</b>	<b>Proportion Of Residual Assets (RM)</b>	<b>Percentage Of Residual Assets</b>
A BT	$(7,000 / 10,000) \times 130,000 = 91,000$	$91,000 / 130,000 = 70\%$
B BT	$(2,000 / 10,000) \times 130,000 = 26,000$	$26,000 / 130,000 = 20\%$
C BT	$(1,000 / 10,000) \times 130,000 = 13,000$	$13,000 / 130,000 = 10\%$

A BT is entitled to 70% of the residual assets of XYZ BT.

## 11. Control Transfer

In relation to a control transfer, the provisions of paragraphs 38 to 40 of Schedule 3 of the ITA 1967 apply. For persons who have or should have claimed any capital allowances or industrial building allowances under Schedule 3 and subsequently disposed the assets to a BT are deemed to have disposed the assets for a sum equal to its residual expenditure on the first day of the company's final period. Therefore, the person would not be subject to a balancing charge or balancing allowance. The BT is eligible to claim capital allowance or industrial building allowance on the balance of the residual expenditure of the asset.

Control in relation to a BT means the unit holder's right to not less than 50% of residual profits of the BT available for distribution, or not less than 50% of any residual assets of the BT available for distribution on a winding up.

## 12. Foreign Sourced Income And Remittances

- (a) Pursuant to paragraph 28(1) of Schedule 6 of the ITA 1967, income of any person, other than a resident company carrying on the business of banking, insurance and sea or air transport for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia are exempt from tax.
- (b) In view of the above, bilateral credit (section 132 of the ITA 1967) and unilateral credit (section 133 of the ITA 1967) are relevant only to a BT resident in Malaysia:
  - (i) which is carrying on the business of banking, insurance and sea or air transport, and
  - (ii) whose foreign income, although considered as derived from Malaysia, has suffered foreign tax.
- (c) A BT resident in Malaysia in receipt of foreign sourced remittances which is exempt from tax pursuant to paragraph 28 of Schedule 6 of the ITA 1967 is not eligible to claim bilateral credit or unilateral credit as the remittance is not subject to Malaysian tax.

### Example 6

The facts are the same as in Example 2.

The tax treatment of the income derived in Malaysia and Indonesia by the BT would depend on the facts of the case. In this case the income derived in Indonesia is considered a foreign sourced income and the BT in Malaysia is exempted from tax under paragraph 28 of Schedule 6 of the ITA 1967 on this foreign sourced income.

The tax liability of the BT in Indonesia would depend on the domestic tax laws in Indonesia and the Avoidance of Double Tax Agreement between Malaysia and Indonesia (DTA). Reference will have to be made to Article 7 of the DTA to determine whether the business profits derived by the Malaysian BT (foreign enterprise) in Indonesia should be taxed in Indonesia. The source of profit that the BT derives in Indonesia has to be examined by applying the permanent establishment test (as laid out in Article 5 of the DTA). If it is found that the BT carries on a business through the permanent establishment in Indonesia, Indonesia may tax the profits of the BT that is attributable to the permanent establishment.

### 13. Tax Incentives

The provisions of the ITA 1967, Income Tax Rules and Income Tax (Exemption) Orders related to tax incentives for a company are also applicable to a BT with effect from year of assessment 2013. However, it is to be noted that the incentives do not apply to a BT if a company registered under the Companies Act 1965 is mentioned in the above.

### 14. Preferential Tax Treatment Not Applicable To A BT

Pursuant to subsection 2(9) of the ITA 1967, the following preferential tax treatment enjoyed by a company which has a paid up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period for a year of assessment is not applicable to a BT:

#### (a) Submission of estimate of tax payable

A company resident in Malaysia need not submit the estimate of tax payable in a prescribed form (Form CP 204) for the first two years of assessment in which it first commences operations provided the paid up ordinary share capital of the company is not more than RM2.5 million at the beginning of the two basis periods and that it does not control or is controlled by a related company which has a paid up ordinary share capital of more than RM2.5 million at the beginning of the basis period for a year of assessment [subsection 107C(4A) of the ITA 1967].

A BT is required to submit the estimate of tax payable (Form CP 204) within 3 months from the date of commencement of operations.

#### (b) Preferential tax rate

A company resident in Malaysia which has a paid up share capital of not more than RM2.5 million at the beginning of the basis period for a year of assessment is taxed at the preferential rate of 20% on the first RM500,000 chargeable income. Chargeable income in excess of RM500,000 is taxed at the prevailing tax rate of 25% [paragraph 2A of Schedule 1 of the ITA 1967].

A BT is taxed at the prevailing corporate tax rate and the above stated preferential tax rate is not applicable to a BT.

(c) Special allowances for small value assets

A company is allowed a special rate of allowance to be given to small value assets but the claim for the special allowance is restricted to a maximum of RM10,000 for each year of assessment. However, a company resident in Malaysia which has a paid up share capital of not more than RM2.5 million at the beginning of the basis period for a year of assessment is not subject to the restriction of RM10,000 [paragraph 19A of Schedule 3 of the ITA 1967].

A BT is not eligible to claim for the special allowances for small value assets. The normal rate of capital allowance as provided under paragraphs 10 and 15 of Schedule 3 of the ITA 1967 would be applicable to a BT.

## 15. Other Taxes And Tax Implications

The other taxes/issues to be considered are -

### 15.1 Real Property Gains Tax (RPGT)

- (a) While disposal of real property by a disposer to a BT is not subject to income tax, RPGT is applicable on the chargeable gain accruing on the disposal of any real property in Malaysia.

However, RPGT exemption is given to any person on the chargeable gains accruing on the disposal of any chargeable asset, including shares in a real property company, to a TM acting on behalf of a BT, in relation to the initial offering (initial transfer of real property or shares in a real property company from the promoter to a BT) of the BT which has been registered and approved by the SC on or after 1.1.2013 but not later than 31.12.2017 [Real Property Gains Tax (Exemption) Order 2013, P.U.(A) 128/2013].

It is to be noted that the RPGT exemption is only given once for the one-off initial transfer of real property or shares in a real property company from the promoter (company or individual) to a BT.

When assets that are transferred to a BT are subsequently disposed, for RPGT purposes the acquisition date of the transferred asset is the date of transfer of the asset from the disposer to the BT.

#### Example 7

Company A transferred real property to a BT on 1.6.2013. The BT disposes this real property on 1.7.2017.

For RPGT purposes, the acquisition date of the real property is 1.6.2013 and the market value of the real property is determined on 1.6.2013.

- (b) For the purposes of the exemption, the Inland Revenue Board of Malaysia will not establish whether the real property or shares in a real property company transferred in respect of the initial one-off transfer from a disposer to a BT is an adventure in the nature of trade.
- (c) RPGT is not applicable to properties that are held as stock in trade by a company or an individual and transferred to a BT. The disposal of stock in trade to a BT by a company or an individual is subject to the ITA 1967.

#### 15.2 Stamp Duty

- (a) Stamp duty exemption is given on all instruments executed by a TM acting on behalf of a BT in relation to the transfer of any business, assets or real property to a BT for the purpose of initial offering (initial transfer of real property or shares in a real property company from the promoter to a BT) of the BT, which has been registered and approved by the SC on or after 1.1.2013 but not later than 31.12.2017 [Stamp Duty (Exemption) (No. 7) Order 2013, P.U.(A) 127/2013].
- (b) Stamp duty exemption is not applicable in the case where loans are transferred to a BT. The discharge of charges and the recharge are not exempted from stamp duty.

#### 15.3 Trade debts taken over from an entity

Trade debts may be transferred to a BT by a company. A BT is required to keep separate records for such transfers as trade debts taken over are capital assets of the BT. Thus, a BT cannot claim tax deduction in respect of the debts should the trade debts become bad or written-off. Similarly, any recoveries in respect of the debts are not taxable.

### 16. Distinction Between A BT and A Company

The distinct differences between a BT and a company are as follows:

<b>Particulars</b>	<b>BT</b>	<b>Company</b>
Registered	Capital Market and Services Act 2007	Companies Act 1965
Owner of the business	TM (on trust for unit holders)	Company (shareholders own shares in the company that give them certain rights in relation to the Company)
Legal Status	An entity. Not a body corporate	A body corporate (a separate legal entity)
Responsibility for management of the business	Managed by TM as a single responsible entity	Board of directors and management
Party that is liable for debts of the business	TM	Company
Returns	Unit holders entitled to share of distributions when declared.  Distributions paid out of cash flows, subject to solvency requirements.	Shareholders entitled to share of dividends when declared.  Dividends can only be paid out of accounting profits.
Taxation	Tax paid by TM on income generated by BT at corporate tax rate.  Distributions received by unit holders exempted from tax.  Stamp duty exemption for transfer of business and assets to BT (one-off).  Real property gains tax exemption for transfer of real property or real property companies to BT (one-off).	Corporate tax paid on profits.  No tax paid by shareholders on dividends.

**17. Filing Of Income Tax Return Form**

It is the responsibility of the TM to ensure that the BT files an Income Tax Return Form (ITRF) i.e. Form TN for each year of assessment. The ITRF should be furnished to the Director General of Inland Revenue within 7 months from the date following the close of the accounting period which constitutes the basis period for the year of assessment.

**18. Glossary**

- 18.1 “Registered business trust” means a business trust established in Malaysia that is registered under subsection 256K(1) of the CMSA 2007.
- 18.2 “Recognised business trust” means a business trust established outside Malaysia that is recognised under subsection 256K(1) of the CMSA 2007.
- 18.3 “Business trust group” includes the business trust and the business trust’s subsidiary entities.
- 18.4 “Trustee-manager” means a person who -
- (a) holds property or asset on trust for unit holders of the business trust, and
  - (b) manages and operates such property or asset.
- 18.5 “Unit holder” means a person who holds units in a business trust.
- 18.6 “Securities Commission (SC)” means the Securities Commission established under the Securities Commission Act 1993.
- 18.7 “Exempt private company” means a private company in the shares of no beneficial interest is held directly or indirectly by any corporation and which has not more than twenty members none of whom is a corporation.

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