INLAND REVENUE BOARD OF MALAYSIA

TAXATION OF REAL ESTATE INVESTMENT TRUST OR PROPERTY TRUST FUND

PUBLIC RULING NO. 5/2017

Translation from the original Bahasa Malaysia text

DATE OF PUBLICATION: 8 SEPTEMBER 2017

Published by
Inland Revenue Board of Malaysia

Third edition

Second edition on 19 June 2015

First edition on 26 November 2012

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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 this Public Ruling 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 accorded to a real estate investment trust or a property trust fund (REIT/PTF) in Malaysia which may either be listed on Bursa Malaysia or unlisted, that is approved by the Securities Commission Malaysia (SC).

2. Relevant Provisions of the Law

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 21A, 33, 60I, 61A, 63C, 77A, 82, 82A, 109D, 110, Part 1 and Part X of Schedule 1, paragraphs 38A, 39 and 40 of Schedule 3, paragraphs 12B, 19, 28, 35 and 35A of Schedule 6.

2.3 The relevant subsidiary laws referred to in this PR are:

(a) Income Tax (Deduction for Establishment Expenditure of Real Estate Investment Trust or Property Trust Fund) Rules 2006 (P.U.(A) 135/2006); and

(b) Income Tax (Exemption) (No. 5) Order 2001 (P.U.(A) 220/2001).

3. Interpretation

The words used in this PR have the following meaning:

3.1 "Total income" in relation to a person and a year of assessment, means total income ascertained in accordance with the ITA.

3.2 "Securities Commission" means the Securities Commission Malaysia established under section 3 of the Securities Commission Act 1993 [*Act 498*].

4. Introduction

A REIT/PTF is a unit trust scheme that invests or proposes to invest primarily in a portfolio of income generating real estates. An Islamic REIT/PTF is a real estate investment trust that is managed and operated in accordance with *Syariah* principles.

A REIT/PTF is a trust body. A REIT/PTF is a special type of trust created and is constituted when the trust deed is executed by the manager and the trustee.

The income distributed by a REIT/PTF to its unit holders is a distribution of income.

5. Basis of Assessment of a Real Estate Investment Trust/Property Trust Fund (REIT/PTF)

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 REIT/PTF for that year of assessment and this is determined in accordance with the provisions of section 21A of the ITA. All the subsections of section 21A are applicable except for subsection 21A(5) of the ITA.

Example 1

Highand REIT commenced operations on 1.11.2015 and made up its accounts to 30.6.2016. Highand REIT makes up its subsequent accounts to 30 June annually.

The basis periods for the following years of assessment are:

Year of Assessment	Basis Period
2016	1.11.2015 to 30.06.2016
2017	1.07.2016 to 30.06.2017

Please refer to PR No. 8/2014 dated 1.12.2014 entitled “Basis Period of a Company, Limited Liability Partnership, Trust Body and Co-operative Society” for more information.

6. Rental Income of a REIT/PTF - Special Tax Treatment

The Government had introduced a special tax treatment as an incentive to promote the growth of REIT/PTF in Malaysia effective year of assessment 2005.

6.1 Rental income received by a REIT/PTF from its investments in real properties is treated as gross income from a business source. However, this special tax treatment is subject to the following restrictions:

(a) the amount of deductible expenses incurred in a year of assessment is restricted to the gross income from the letting of properties in that year of assessment. Any excess of expenditure is disregarded, i.e. the excess of expenditure is not allowed as a deduction against other sources of income of the REIT/PTF such as interest or to be carried forward to the following years of assessment; and

(b) if the source (property) has not commenced to produce any rental income, no deduction for expenses is allowed. The rental source for a building is considered to have commenced if the building is available for rent. It is to be noted that any related expenses incurred prior to the commencement of that rental source are not deductible against the rental income of a REIT/PTF.

Example 2

A REIT owns 2 factory buildings in Penang which were let out to a manufacturing company since 2010. The REIT purchased a new factory building in Petaling Jaya in October 2017 which was not available for rent yet in 2017.

The income and expenditure account for the year ended 31.12.2017 is as follows:

Buildings	RM
Two (2) factories (Penang)	
Rental	500,000
Allowable expenses	350,000
Industrial building allowance	30,000
One (1) factory - new (Petaling Jaya)	
Rental	Nil
Allowable expenses	50,000
Dividend (single tier)	200,000

Computation of Total Income for the Year of Assessment 2017

Details	RM	RM
Rental		
(a) Factories (Penang)		500,000
(b) Factory - new (Petaling Jaya)[1]		Nil
		500,000
Less: Allowable expenses		
(a) Factories (Penang)	350,000	
(b) Factory (Petaling Jaya)[2]	Nil	350,000
Adjusted income		150,000
Less: Industrial building allowance		
Factories (Penang)	30,000	30,000
Statutory income/Total income		120,000
Dividends		Nil
Chargeable income		120,000

Note

[1,2]The source of income from the factory in Petaling Jaya has not commenced as the factory building was not available for rent yet. Therefore no deduction for the expense is allowable for this factory.

6.2 In ascertaining the statutory income from the letting of properties in the basis period for a year of assessment, capital allowance is allowable pursuant to Schedule 3 of the ITA but subject to the following restrictions:

(a) the amount of capital allowance is restricted to the adjusted income from the letting of property for that year of assessment; and

(b) if there is no adjusted income or insufficient adjusted income to absorb the capital allowance, any excess capital allowances is not allowed to be carried forward to the following years of assessment.

Example 3

A REIT owns two (2) factory buildings in Shah Alam and Klang which were let out to two (2) manufacturing companies since 2006. The factory located in Klang was not rented out in 2017 after the tenants vacated the premise on 31.12.2016. The accounting period of the REIT is 31 December each year.

The Income and expenditure account and claims for capital allowance/Industrial building allowance (IBA) of the REIT for the year ended 31.12.2017 are as follows:

Year Ended 31.12.2017

Buildings	RM
One (1) factory (Shah Alam)	
Rental	300,000
Allowable expenses	350,000
Industrial building allowance	30,000
Capital allowance	10,000
One (1) factory (Klang) (vacant)	
Rental	Nil
Allowable expenses	50,000
Industrial building allowance	20,000
Capital allowance	5,000
Dividends (tax-exempt)	200,000

Computation of Total Income for the Year of Assessment 2017

Details	RM	RM
Rental		
(a) Factory (Shah Alam)		300,000
(b) Factory (Klang) (vacant)		Nil
		300,000
Less: Allowable expenses		
(a) Factory (Shah Alam)	350,000	
(b) Factory (Klang) (vacant)	50,000	
	400,000	
(restricted)	300,000	300,000
(disregarded[3])	100,000	
Adjusted income		Nil
Less: Industrial building allowance		
(a) Factory (Shah Alam)	30,000	
(b) Factory (Klang) (vacant)	20,000	
(disregarded[4])	50,000	Nil
		Nil
Less: Capital allowance		
(a) Factory (Shah Alam)	10,000	
(b) Factory (Klang) (vacant)	5,000	Nil
(disregarded[5])	15,000	
Total income		Nil

Note

[3,4,5]The excess expenditure of RM100,000, unabsorbed IBA and unabsorbed capital allowance of RM50,000 and RM15,000 respectively in the year of assessment 2017 cannot be carried forward to subsequent years of assessment and are to be disregarded.

6.3 Effective year of assessment 2017, unit trust in subsection 61A(2) of the ITA means a unit trust which is approved by the SC as a REIT/PTF and listed on Bursa Malaysia. However, both listed and unlisted REIT/PTF will still be eligible for the special tax treatment on rental income from the letting of real property under section 63C of the ITA.

7. Deductibility of Expenses

The deductibility of expenses against the rental income received by a REIT/PTF are as follows:

7.1 Pursuant to subsection 33(1) of the ITA, expenses wholly and exclusively incurred in the production of the rental income are allowable against that rental income.

7.2 As rental income is treated as a business source of a REIT/PTF, the management fees paid to the management company which is appointed to establish, operate and administer the REIT/PTF, and account to the trustee is deductible under subsection 33(1) of the ITA. The fee paid to a trustee, an approved custodian appointed to hold the investments on behalf of the unit holders is not a deductible expense under subsection 33(1) of the ITA.

7.3 In accordance with P.U. (A) 135/2006, establishment expenditure incurred by a REIT/PTF is allowed as a deduction in ascertaining the adjusted income from the letting of real property of the REIT/PTF. Establishment expenditure refers to legal, valuation and consultancy fees incurred for establishing a REIT/PTF prior to an approval by the SC. A REIT/PTF is deemed to have incurred the establishment expenditure in the basis period for a year of assessment in which the business commenced.

Example 4

Jaya Bhd and its group of companies own several commercial properties which are rented out. The group decided to pool their properties and form a REIT in order to enjoy the tax incentives offered by the Government. Jaya Bhd made an application to the SC for the establishment of Jaya REIT on 12.12.2016 and approval was obtained on 21.12.2016. Jaya REIT–

(a) made Initial Public Offerings on 3.1.2017;

(b) was listed on Bursa Malaysia on 10.2.2017;

(c) commenced business on 1.2.2017 when a building acquired on 1.2.2017 was let out on the same date;

(d) made up its first set of accounts to 31.12.2017; and

(e) incurred RM1.3 million for legal, valuation and consultancy fees for the purpose of establishing Jaya REIT prior to the approval by SC.

In ascertaining the adjusted income in the basis period for the year of assessment 2017, the establishment expenses of RM1.3 million can be allowed as a deduction against Jaya REIT’s gross business income from the letting of property. Any amount of expenditure in excess of the amount of gross income is disregarded.

8. Capital Allowance and Industrial Building Allowance

A REIT/PTF is allowed to claim capital allowance and IBA as follows:

8.1 Capital allowance

A REIT/PTF can claim capital allowance pursuant to Schedule 3 of the ITA. The capital allowance is deductible against the adjusted income from the letting of real property of the REIT/PTF. Pursuant to subsection 63C(4) of the ITA, in ascertaining the statutory income for a year of assessment, any capital allowance or balancing allowance for that year of assessment is restricted to the adjusted income for that year of assessment only. Any unabsorbed capital allowance and balancing allowance is disregarded and cannot be carried forward to any subsequent years of assessment.

Where in the basis period for a year of assessment a REIT/PTF disposes of an asset and the disposal value exceeds the residual expenditure at the date of its disposal, a balancing charge arises. However, the balancing charge must not exceed the capital allowances allowed in respect of the asset disposed of. The statutory income is increased by the balancing charge. However, in the absence of an adjusted income (a loss situation) the amount of adjusted loss cannot be deducted from the balancing charge.

Example 5

A REIT/PTF disposed of 2 of its assets in the basis period for the year of assessment 2017. Details are as follows:

Asset (Year Purchased)	Asset 1 (2014)	Asset 2 (2015)
Cost of asset	RM200,000	RM300,000
Sale proceeds	RM150,000	RM100,000

The adjusted income and capital allowance for the year of assessment 2017 for scenario 1 and 2 are as follows:

Details	Scenario 1	Scenario 2
Adjusted income/(loss)	RM50,000	(RM50,000)
Capital allowance	RM120,000	RM120,000

Computation of Balancing Allowance/Balancing Charge

Asset 1 (2014)	RM
Residual expenditure RM200,000 less [RM200,000 X 20% initial allowance (IA) + 14% annual allowance (AA) 3 years]	76,000
Sale proceeds	150,000
Balancing charge	74,000

Asset 2 (2015)	RM
Residual expenditure RM300,000 less [RM300,000 X 20% (IA) + 14% (AA) 2 years]	156,000
Sale proceeds	100,000
Balancing allowance	56,000

Computation of Statutory Income for Year of Assessment 2017

	Scenario 1		Scenario 2	
	RM	RM	RM	RM
Adjusted income/(loss)		50,000	(50,000)	Nil
Add: Balancing charge		74,000		74,000
		124,000		74,000
Less: Capital allowance Balancing allowance Restricted to Disregarded	 120,000 56,000 176,000 124,000 52,000	124,000	 120,000 56,000 176,000 74,000 102,000	74,000
Statutory income		Nil		Nil

Note

The adjusted loss of RM50,000 in scenario 2 is to be disregarded.

8.2 Industrial building allowance

A REIT/PTF deriving rental income from an industrial building may claim IBA under Schedule 3 of the ITA. The amount is deductible against the adjusted income from the letting of real property. A REIT/PTF that rents out its building will only qualify for IBA if the tenant uses the building as an industrial building. An industrial building is a building that is used for specific purposes. The purposes are limited to certain types of businesses and the building must be used for any one of the specific purposes as provided in Schedule 3 of the ITA.

8.3 Qualifying capital expenditure incurred on an industrial building

IBA is allowed for qualifying capital expenditure incurred on a building which is or is deemed to be an industrial building. Qualifying capital expenditure refers to the cost of constructing the building or the purchase price of the building.

8.3.1 Qualifying capital expenditure of an industrial building acquired from a company

Generally, when a company disposes a building which is or is deemed to be an industrial building, the company would be subject to a balancing charge (where the disposal value is more than the residual expenditure) or balancing allowance (where the disposal value is less than the residual expenditure).

The acquirer of such a building may claim IBA on the qualifying capital expenditure of the building i.e. the purchase price paid by the acquirer.

Similarly, if a REIT/PTF acquires an industrial building from a company, the REIT/PTF may claim IBA on the qualifying capital expenditure of the building which is the purchase price of the building.

8.3.2 Qualifying capital expenditure of an industrial building acquired from a related company

Effective year of assessment 2013, with the introduction of the definition of a company for the purpose of paragraph 38A of Schedule 3 of the ITA, control transfer provisions would only be applicable where a company disposes an industrial building to a REIT/PTF and holds not less than 50% of the -

(a) residual profits of the REIT/PTF available for distribution; or

(b) residual assets of the REIT/PTF available for distribution on a winding up.

In other words, a company that disposes an industrial building to a REIT/PTF and –

(a) holds not less than 50% of the residual profits or residual assets of the REIT/PTF; and

(b) has claimed IBA prior to the disposal of the industrial building,

is deemed to have disposed of the industrial building for a sum equal to its residual expenditure on the first day of the company's final period. This means that the company would not be subject to a balancing charge or balancing allowance.

The REIT/PTF would be eligible to claim IBA on the remaining balance of the residual expenditure of the building if the building continues to be used as an industrial building as stated in paragraph 8.2.

8.3.3 Application of paragraph 38A, Schedule 3 of the ITA

In order to ascertain whether a company that disposed of or transferred an industrial building to a REIT/PTF is subject to control transfer provisions, the company's entitlement to the residual profits and the residual assets of the REIT/PTF has to be examined.

(a) Residual profits

Residual profits means net profits of a REIT/PTF. If a REIT/PTF has no residual profit, a notional amount of RM100 is deemed to be the residual profits of the REIT/PTF.

[It is to be noted that according to paragraph 8.35 of the Guidelines on Real Estate Investment Trusts (issued by the SC on 21 August 2008 and last revised on 28.12.2012), **a REIT/PTF may only borrow** from licensed institutions or through the issuance of debentures].

When a company disposes an industrial building to a REIT/PTF, its entitlement to the residual profits available for distribution by a REIT/PTF is determined as follows:

$$\frac{\text{Number of issued units of a REIT/PTF held by a company}}{\text{Total number of issued units of a REIT/PTF held by unit holders}} \times \text{Residual profits available for distribution by a REIT/PTF}$$

(b) Residual assets

Residual assets means net assets of a REIT/PTF. Where a REIT/PTF has no residual assets, a notional amount of RM100 is deemed to be the residual asset of the REIT/PTF.

When a company disposes an industrial building to a REIT/PTF, its entitlement to the residual assets available for distribution by a REIT/PTF on a winding up is determined as follows:

$$\frac{\text{Number of issued units of a REIT/PTF held by a company}}{\text{Total number of issued units of a REIT/PTF held by unit holders}} \times \text{Residual assets available for distribution by a REIT/PTF}$$

(c) Illustration to ascertain a company's entitlement to the residual profits and residual assets of a REIT/PTF

Example 6

For the year ended 31.12.2017, 7,500 out of 10,000 units in XYZ REIT are owned by the following unit holders:

Company A - 6,000 units (60% of units issued)
Company B - 1,000 units (10% of units issued)
Company C - 500 units (5% of units issued)

(i) XYZ REIT has an accounting profit of RM250,000 after deducting interest payable to debenture holders amounting to RM100,000;

(ii) The net assets of XYZ REIT amount to RM1,300,000; and

(iii) Companies A, B and C each disposed of an industrial building to XYZ REIT.

The entitlement to the residual profits of XYZ REIT for each company are as follows:

Unit Holders of XYZ REIT	Proportion of Residual Profits (RM)	Percentage of Residual Profits
Company A	(6,000/10,000) X 250,000 = 150,000	150,000/250,000 = 60%
Company B	(1,000/10,000) X 250,000 = 25,000	25,000/250,000 = 10%
Company C	(500/10,000) X 250,000 = 12,500	12,500/250,000 = 5%

The entitlement to the residual assets of XYZ REIT for each company are as follows:

Unit Holders of XYZ REIT	Proportion of Residual Assets (RM)	Percentage of Residual Assets
Company A	(6,000/10,000) X 1,300,000 = 780,000	780,000/1,300,000 = 60%
Company B	(1,000/10,000) X 1,300,000 = 130,000	130,000/1,300,000 = 10%
Company C	(500/10,000) X 1,300,000 = 65,000	65,000/1,300,000 = 5%

(a) Company A is entitled to 60% of the residual profits and residual assets of XYZ REIT, and by virtue of paragraph 38A of Schedule 3 of the ITA, the control transfer provisions are applicable. Company A is deemed to have disposed of the industrial building for a sum equal to its residual expenditure on the first day of its final period. Company A would not be subject to a balancing charge or balancing allowance.

(b) As both companies B and C hold less than 50% of the residual profits and residual assets of XYZ REIT, the disposal of industrial buildings to XYZ REIT do not fall under paragraph 38A of Schedule 3 of the ITA. Companies B and C would be subject to a balancing charge or balancing allowance.

(c) Since control transfer provisions are applicable to the disposal of the industrial building by Company A to XYZ

REIT and if the building continues to be used as an industrial building, XYZ REIT would be eligible to claim IBA on the remaining balance of the residual expenditure of the building.

(d) If the industrial buildings disposed by both Companies B and C to XYZ REIT continues to be used as an industrial building, XYZ REIT would be eligible to claim IBA on the purchase price of the buildings as control transfer provisions are not applicable to the disposal.

Example 7

The facts are the same as in Example 6 except that XYZ REIT has no residual profits and residual assets. A notional amount of RM100 is deemed to be the residual profit and residual asset of XYZ REIT.

The companies' entitlement to the residual profits of XYZ REIT are as follows:

Unit Holders of XYZ REIT	Proportion of Residual Profits (RM)	Percentage of Residual Profits
Company A	(6,000/10,000) X 100 = 60	60/100 = 60%
Company B	(1,000/10,000) X 100 = 10	10/100 = 10%
Company C	(500/10,000) X 100 = 5	5/100 = 5%

The companies' entitlement to the residual assets of XYZ REIT are as follows:

Unit Holders of XYZ REIT	Proportion of Residual Assets (RM)	Percentage of Residual Assets
Company A	(6,000/10,000) X 100 = 60	60/100 = 60%
Company B	(1,000/10,000) X 100 = 10	10/100 = 10%
Company C	(500/10,000) X 100 = 5	5/100 = 5%

Refer to the explanation in Example 6.

8.3.4 Years of assessment 2008 to 2012

For the years of assessment 2008 to 2012, any company which had claimed IBA and subsequently disposed of the industrial building to a REIT/PTF would be deemed to have disposed of the industrial building for a sum equal to its residual expenditure on the first day of the company's final period. As such, the company would not be subject to a balancing charge or balancing allowance.

Example 8

Company Y disposed of a factory (which had claimed IBA) on 30.6.2012 for RM5 million to Smart REIT (SR), a unit trust approved by the SC as a REIT. Company Y closes its accounts on 30 June and SR on 30 September. Company Y was deemed to have disposed of the building on 1.7.2011, the first day of Company Y's final period i.e.1.7.2011 to 30.6.2012. Residual expenditure of the factory at 1.7.2011 was RM120,000. SR rents out the factory to a tenant that uses the building as an industrial building.

As Company Y disposed of an industrial building to a REIT, the selling price of RM5 million is disregarded. The qualifying expenditure for SR is the residual expenditure of the industrial building on 1.7.2011 i.e. RM120,000. No balancing allowance or balancing charge arose to Company Y.

8.4 Disposal of an industrial building together with plant and machinery

Paragraph 38A of Schedule 3 of the ITA is applicable to industrial buildings only. When an industrial building is disposed of together with the plant and machinery, balancing charge or balancing allowance of the plant and machinery has to be computed separately by the disposer.

Example 9

An Islamic REIT acquired a factory together with the plant and machinery from Company Z on 30.6.2017 for a sum of RM10 million (including RM1 million for the plant and machinery). Company Z held 75% of the residual profits of the REIT and it closes its accounts on 31 December whereas the Islamic REIT on 30 September.

The factory building is an industrial building and Company Z is deemed to have disposed of the factory building on the first day (1.1.2017) of Company Z's final period, i.e. 1.1.2017 to 31.12.2017. The residual expenditure of the factory building on 1.1.2017 was RM500,000 and the residual expenditure of the plant and machinery on 1.1.2017 is RM200,000. The Islamic REIT rents out the factory to a tenant that uses the building as an industrial building.

As Company Z holds not less than 50% of the residual profits of the Islamic REIT, the sale proceeds from the disposal of the factory building to the REIT is disregarded. Company Z would not be subject to a balancing charge or balancing allowance on the disposal of the factory building.

The Islamic REIT would be eligible to claim IBA on the residual expenditure of the factory building (RM500,000) for the year of assessment 2017.

However, Company Z would be subject to a balancing charge or balancing allowance on the disposal of the plant and machinery to the Islamic REIT. The disposal value of the plant and machinery is equal to the market value of the plant and machinery at the date of disposal or the net proceeds from the sale, whichever is greater.

The Islamic REIT would be eligible to claim capital allowance on the puchase price it had paid for the plant and machinery for the year of assessment 2017.

9. Transitional Provision – Special Provision relating to Section 63C of the ITA

9.1 Prior to the year of assessment 2005, the tax treatment of a REIT/PTF was in accordance with the provisions of the ITA applicable to unit trusts i.e. subsection 61(1), sections 63A and 63B. With the introduction of section 63C of the ITA from the year of assessment 2005, the transitional provison provides that –

(a) sections 43 and 44 of the ITA in respect of any adjusted loss; and

(b) paragraph 75 of Schedule 3 of the ITA in respect of capital allowance

of a unit trust which was ascertained prior to the coming into operation of section 63C of the ITA is allowable for deduction against the income for the year of assessment 2005 and subsequent years of assessment.

9.2 A summary of the special tax treatment accorded to a REIT/PTF is shown in **Appendix 1**.

10. Exemption of Income from Tax

10.1 Distribution of income by REIT/PTF

Year of assessment 2007 to 2016

Effective year of assessment 2007, subsection 61A(1) of the ITA provides that a REIT/PTF is fully exempt from tax for a year of assessment if it distributes 90% or more of its total income to its unit holders in the basis period for that year of assessment.

Year of assessment 2017 and subsequent years of assessment

Effective year of assessment 2017, unit trust in section 61A of the ITA means a unit trust which is approved by the SC as a REIT/PTF and listed on Bursa Malaysia. This means that a REIT/PTF which is listed on Bursa Malaysia is fully exempt from tax for a year of assessment, if it distributes 90% or more of its total income to its unit holders in the basis period for that year of assessment. A REIT/PTF that is not listed on Bursa Malaysia would not enjoy any exemption from tax for a year of assessment, even if it distributes 90% or more of its total income to its unit holders, in the basis period for that year of assessment.

10.1.1 Distribution is 90% or more of its total income

Example 10

A REIT that is listed on Bursa Malaysia has the following total income for the year of assessment 2017.

		RM	RM
(a)	Business (rental)		200,000
	Less: Section 33(1) expenses		25,000
	Adjusted income		175,000
	Less: Capital allowance	15,000	
	IBA	60,000	75,000
	Statutory income		100,000
(b)	Interest		10,000
	Aggregate income/Total income		110,000

Distribution to unit holders: RM100,000

$$\text{\% of distribution} = \frac{100,000}{110,000} \times 100 = 91\%$$

Chargeable income: Nil

Tax charged: Nil

Note

If the REIT is not listed on Bursa Malaysia, it would be taxed on the chargeable income of RM110,000 @ 24% even though it distributes more than 90% or more of its total income to its unit holders in the year of assessment 2017.

10.1.2 Distribution is less than 90% of its total income

Where distribution made by a REIT/PTF to its unit holders is less than 90% of the total income, the whole chargeable income will be subjected to tax at the prevailing corporate tax rate.

Example 11

A REIT that is listed on Bursa Malaysia has the following total income for the year of assessment 2017.

		RM	RM
(a)	Business (rental)		200,000
	Less: Section 33(1) expenses		25,000
	Adjusted income		175,000
	Less: Capital allowance	15,000	
	IBA	60,000	75,000
	Statutory income		100,000
(b)	Interest		10,000
	Aggregate income/Total income		110,000

Distribution to unit holders: RM90,000

$$\% \text{ of distribution} = \frac{90,000}{110,000} \times 100 = 81.81\%$$

Chargeable income: RM110,000

Tax charged: RM110,000 @ 24% = RM26,400

10.1.3 Audit adjustment resulting in a distribution of less than 90% of its total income

Example 12

The facts are the same as in Example 10 except that an audit was carried out by the Inland Revenue Board of Malaysia (IRBM) where adjustments made resulted in total income being increased to RM112,500 for the year of assessment 2017. As a result, the distribution of RM100,000 by the REIT was less than 90% of its total income.

Distribution to unit holders: RM100,000

$$\% \text{ of distribution} = \frac{100,000}{112,500} \times 100 = 88.88\ \%$$

Total income/Chargeable income: RM112,500

		RM
Tax charged: RM112,500 @ 24%	-	27,000.00
Less: tax charged before audit	-	Nil
Tax undercharged	-	27,000.00
Penalty under subsection 113(2) of the ITA on tax undercharged @ 45%	-	12,150.00
Tax payable		39,150.00

As the REIT only distributed 88.88% of its total income of RM112,500, the REIT was taxed on the total sum of RM112,500 for the year of assessment 2017.

10.2 Interest income received by a REIT/PTF

Interest income earned by a REIT/PTF from the following is exempt from tax under Schedule 6 of the ITA:

(a) any savings certificates issued by the government;

(b) securities or bonds issued or guaranteed by the government;

(c) sukuk or debentures issued in Ringgit Malaysia, other than convertible loan stock, approved or authorised by or lodged with the SC;

(d) Bon Simpanan Malaysia issued by Bank Negara Malaysia;

(e) a bank licensed under the Financial Services Act 2013, an Islamic bank licensed under the Islamic Financial Services Act 2013 or a development financial institution prescribed under the Development Financial Institutions Act 2002:

Provided that in the case of a wholesale fund which is a money market fund, the exemption shall only apply to a wholesale fund which complies with the criteria as set out in the relevant guidelines of the SC.

(f) bonds and securities issued by Pengurusan Danaharta Nasional Berhad; and

(g) interest income received from a foreign source and remitted to Malaysia.

10.3 Dividend income received by a REIT/PTF

With the introduction of the single-tier system effective from 1.1.2008 which is fully applicable for all companies from 1.1.2014, all dividends distributed by a resident company are exempt from tax in Malaysia.

10.4 Exempt income received by a REIT/PTF

The tax exempt income received by a REIT/PTF (e.g. dividends) are not included in computing the total income of the REIT/PTF. Expenses incurred in respect of exempt income will not be allowed a deduction.

10.5 Examples to show the tax treatment on the various types of income received by a REIT/PTF

10.5.1 Rental and interest

Example 13

Sunnyland REIT, an approved REIT that is listed on Bursa Malaysia received rental income from the letting of a hotel. For the year ended 31.3.2017, Sunnyland REIT claimed capital allowances of RM15,000 and had the following Income and Expenditure Statement:

Income and Expenditure Statement

	RM	**RM**	**RM**
Rent (hotel building)			2,000,000
Interest from Goverment Bonds (tax exempt)			275,000
			2,275,000
Less: Bad debts			
Specific provision	25,000		
General provision	30,000	55,000	
Property operating expenses:			
Property manager’s fee	60,000		
Maintenance cost	60,000		
Insurance, assessment			
and quit rent	20,000	140,000	
Expenses of the REIT:			
Trustee’s fee	30,000		
REIT manager’s fee	60,000		
Administration expenses	20,000		
Depreciation	5,000		
Loan interest[6]	100,000	215,000	410,000
Net income			1,865,000

[6]RM100,000 related to purchase of government bonds

Computation of Total Income for the Year of Assessment 2017

	RM	RM
Net income		1,865,000
Less: interest from Government bonds		275,000
		1,590,000
Add:		
Bad debts (general provision)	30,000	
Loan interest (Government Bonds)	100,000	
Depreciation	5,000	
Trustee fee	30,000	165,000
Adjusted income		1,755,000
Less:		
Capital allowances		15,000
Statutory income / Total income		1,740,000

Distribution to unit holders: RM1,570,000

$$\% \text{ of distribution} = \frac{1{,}570{,}000}{1{,}740{,}000} \times 100 = 90.22\%$$

Chargeable income: Nil

Tax charged: Nil

Note

(1) For the year of assessment 2017, RM1,570,000 from the total income of RM1,740,000 was distributed to the unit holders. As the distribution exceeds 90% of the total income, Sunnyland REIT is exempted from tax for the year of assessment 2017.

(2) If Sunnyland REIT is not listed on Bursa Malaysia, it would be taxed on the chargeable income of RM1,740,000 @ 24% even though it distributes more than 90% of its total income in the year of assessment 2017.

Example 14

Jaya REIT, listed on Bursa Malaysia received income and made distributions for two years of assessment as follows:

Income	YA 2016 (RM)	YA 2017 (RM)
Statutory income - rental	10,000	9,000
Statutory income - interest	2,000	5,000
Total income	12,000	14,000
Distribution	10,000 (83%)	14,000 (100%)

Computation of Chargeable Income and Tax Payable

Income	YA 2016 (RM)	YA 2017 (RM)
Total income of Jaya REIT	12,000	14,000
Chargeable income	12,000	NIL
Tax payable @ 24%	2,880	NIL

Note

As the distribution of income is less than 90% of the total income of the REIT for the year of assessment 2016, the REIT is taxable.

10.5.2 Rental and dividend income

Example 15

Condo REIT received income and made the following distribution for year of assessment 2013.

Income	YA 2013 (RM)
Statutory income (rental)	10,000
Dividend (tax credit - RM5,000)	20,000
Dividend (single-tier[7])	Nil
Total income	30,000
Distribution (90%)	27,000

Computation of Chargeable Income and Tax Payable

	RM
Total income of REIT	30,000
Chargeable income	Nil

	RM
Tax payable	Nil
Less:	
Set-off under section 110 of the ITA	5,000
Tax repayable	5,000

Note

[7]From the year of assessment 2017, any deductions in relation to single-tier dividend income is disregarded for the purpose of ascertaining the chargeable income.

In the above example, if the single-tier dividend income is RM10,000 and the interest expense related to it is RM6,000, the expense of RM6,000 is disregarded and it cannot be deducted against gross dividend income of RM20,000 that is taxable.

Example 16

The facts are the same as in Example 15 except that Condo REIT made an income distribution of less than 90% of its total income for the year of assessment 2013.

Income	**YA 2013 (RM)**
Statutory income (rental)	10,000
Dividend (tax credit - RM5,000)	20,000
Dividend (single-tier)	Nil
Total income	30,000
Distribution (66.66%)	20,000

Computation of Chargeable Income and Tax Payable

	RM
Total income of REIT	30,000
Chargeable income	30,000

	RM
Tax payable - 30,000 @ 25%	7,500
Less:	
Set-off under section 110 of the ITA	5,000
Tax payable	2,500

10.6 Years of assessment 2005 and 2006

The introduction of section 61A of the ITA in the year of assessment 2005 was to accord a tax exemption to a REIT/PTF on its total income for a year of assessment equivalent to the amount of income distributed to unit holders in the basis period for that year of assessment. The amount of income not distributed in that year of assessment would be subject to tax at the prevailing corporate tax rate at the REIT/PTF level. This exemption is only effective for the years of assessment 2005 and 2006.

11. REIT/PTF that Establishes Special Purpose Vehicle

Effective year of assessment 2015, pursuant to section 60I of the ITA, where a REIT/PTF establishes a special purpose vehicle (SPV) solely for the issuance of *sukuk*, any source of the SPV and any income from that source shall be treated as a source and income of that REIT/PTF and such REIT/PTF shall have the right to receive and utilise any proceeds derived from the issuance of such *sukuk*.

The REIT/PTF that establishes the SPV is required to keep and retain all records and documents in accordance with sections 82 and 82A of the ITA for the purpose of ascertaining the chargeable income of the REIT/PTF from the source of the SPV. The SPV is exempted from complying with the provisions under the ITA.

Example 17

In January 2017, an Islamic REIT, XYZ REIT listed on Bursa Malaysia established a SPV solely for the issuance of *sukuk ijarah*. Mony Global Sukuk Inc., the SPV cum issuer first purchased on behalf of XYZ REIT five parcels of land from a plantation company. To fund this purchase, the SPV then issued *sukuk ijarah* to investors and received the *sukuk* proceeds amounting to RM250,000 million. The *sukuk* proceeds were actually the purchase price of the land parcels.

The land was subsequently leased back to the plantation company for 20 years through a series of *ijarah* arrangement. The monthly lease rental of RM5 million was effective from 1.6.2017.

The *sukuk* represents undivided proportionate ownership over the land parcels. Therefore, the investors who are the *sukuk* holders would be entitled to receive the lease rentals as their periodic profit distribution. The lease rental represents profits to the sukuk holders.

For the year of assessment 2017, the SPV received lease rental of RM35 million (RM5 million X 7 months) and this source of lease rental income is treated as a source and income of XYZ REIT, which has the right to receive and utilise any proceeds derived from the issuance of the *sukuk*.

12. Distribution of Income to Unit Holders

A REIT/PTF may make a number of distributions to its unit holders anytime in the basis period for a year of assessment.

12.1 Grace period allowed to distribute income to unit holders in order to qualify for tax exemption

If a REIT/PTF, listed on Bursa Malaysia intends to distribute 90% or more of its total income but has fallen short of 90% at the end of the basis period, the REIT/PTF is given a grace period of two months from the closing of its accounts to distribute the balance so as to qualify for tax exemption at the REIT/PTF level.

12.2 Deduction of withholding tax

Pursuant to section 109D of the ITA, where a REIT/PTF (payer), listed on Bursa Malaysia and exempted from tax under section 61A of the ITA distributes income exempted under section 61A of the ITA which is deemed derived from Malaysia to a unit holder (other than resident companies), the payer is required to deduct tax at the rate applicable to that unit holder. Withholding tax under section 109D of the ITA is a final tax.

On the other hand, where a REIT/PTF that is not listed on Bursa Malaysia makes any distribution of its total income to its unit holders, this distribution is not subject to withholding tax under section 109D of the ITA.

12.3 Determining the residence status of unit holders

For the purposes of facilitating the deduction of withholding tax, a REIT/PTF may use the information available in the Central Depository System (CDS) account to determine the residence status of the unit holder i.e. based on the nationality of the unit holder. In cases where the unit holders are able to confirm their tax residence status directly to the payer, such confirmation may also be relied upon for purposes of deducting withholding tax.

12.4 Withholding tax rates on unit holders

A summary of the withholding tax rates is as follows:

(a) resident and non-resident individuals as well as resident entities (other than resident companies) are subject to a final withholding tax of 10% for the period from 1.1.2009 to 31.12.2019;

(b) foreign institutional investors are subject to a final withholding tax of 10% for the period from 1.1.2009 to 31.12.2019; and

(c) non-resident companies are subject to a final withholding tax at the rate of 24%.

(For a resident company, the income received from a REIT/PTF is subject to tax at the prevailing tax rate applicable to the company.)

12.5 Accumulated income of REIT/PTF

12.5.1 The undistributed accumulated income of a REIT/PTF listed on Bursa Malaysia from prior years could fall under any one of the following categories:

(a) exempted from tax at the REIT/PTF level; or

(b) subjected to tax at the REIT/PTF level.

12.5.2 The undistributed accumulated income of a REIT/PTF from prior years which has been subjected to tax at the REIT/PTF level would not be subjected to any further taxes when distributed in the following years.

12.6 Distribution voucher

A REIT/PTF shall prepare distribution vouchers for the unit holders based on the share of each unit holder at the time of distribution. A typical distribution voucher should contain the following details:

(a) payment date;

(b) accounting period;

(c) number of units held;

(d) taxable income;

(e) Malaysian tax;

(f) non-allowable expenses;

(g) non-taxable income; and

(h) net amount payable.

(Refer to **Appendix 2** for a specimen sample of a distribution voucher).

12.7 Information on unit holders

A REIT/PTF shall furnish to the IRBM the following information when making distributions to both resident and non-resident unit holders:

(a) name of unit holder;
(b) identity card number/company registration number;
(c) income
   (i) tax-exempt at REIT/PTF level;
   (ii) undistributed income from previous years; and
(d) tax suffered at REIT/PTF level on undistributed income.

The REIT/PTF may forward the above information in a soft copy format using a compact disc (CD) to:

Lembaga Hasil Dalam Negeri Malaysia
Cawangan Tidak Bermastautin
Unit Cukai Pegangan
Tingkat 7 Kanan, Blok 8
Kompleks Pejabat Kerajaan
Jalan Duta, Kuala Lumpur
Karung Berkunci 11061
50990 Kuala Lumpur.

13. Payment of Withholding Tax

When a REIT/PTF distributes income to a unit holder who is not a resident company, the REIT/PTF being the payer has to deduct withholding tax at the applicable tax rates. The payment of withholding tax has to be made as follows:

13.1 The payer must remit the amount withheld to the Director General of Inland Revenue (DGIR) within one month after distributing the income to the unit holder. However the DGIR may under special circumstances, allow extension of time for the tax deducted to be remitted.

13.2 The payer must pay withholding tax on the gross income distributed (global basis) in respect of all its unit holders (other than resident companies) without having to provide detailed information on the recipients when making payment.

13.3 Since the payment is on a global basis, the registration of file will be for the payer only and not for each unit holder. The IRBM will record the payment of withholding tax as a whole without details of each recipient. However, the payer must provide details of the payment upon request by the IRBM.

13.4 The payer has to submit Form CP37E and furnish the following particulars when making payment:

(a) name, address and income tax reference number of the payer; and
(b) particulars of deductions such as the period for which distribution is made, date of distribution, amount of gross income distributed, amount

of deduction and net amount distributed.

Form CP37E is available for download from the IRBM's website at http://www.hasil.gov.my.

13.5 Form CP37E together with the payment must be submitted to the relevant branches at the following addresses according to the location of the branch that is handling the income tax file of the payer.

STATES	ADDRESS
Peninsular Malaysia	Lembaga Hasil Dalam Negeri Malaysia Pusat Bayaran Kuala Lumpur Tingkat Bawah & 15, Blok 8A Kompleks Bangunan Kerajaan Jalan Tuanku Abdul Halim, Karung Berkunci 11061 50990 Kuala Lumpur
Sabah and Federal Territory of Labuan	Lembaga Hasil Dalam Negeri Malaysia Cawangan Kota Kinabalu Pusat Bayaran Kota Kinabalu Tingkat Bawah, 3 & 4 Menara Hasil Jalan Tuanku Abdul Rahman 88600 Kota Kinabalu Sabah
Sarawak	Lembaga Hasil Dalam Negeri Malaysia Cawangan Kuching Pusat Bayaran Kuching Unit Operasi Kutipan Cukai Aras 1, Wisma Hasil No 1, Jalan Padungan 93100 Kuching Sarawak

14. Failure to Deduct and Remit Tax

If a payer fails to deduct and pay the amount of withholding tax to the DGIR under subsection 109D(2) of the ITA, the amount which he fails to pay shall be increased by 10%. The amount which he fails to pay and the increased sum shall be a debt due from him to the Government and shall be payable immediately to the DGIR pursuant to subsection 109D(3) of the ITA.

15. **Debt Due to Payer**

A payer who makes payments to the unit holder and has not deducted withholding tax but paid the withholding tax himself to the DGIR may recover that amount of withholding tax from the unit holder as a debt due to the payer.

16**. Filing of Income Tax Return Form**

A REIT/PTF is required to file an Income Tax Return Form (ITRF) i.e Form TR within seven months from the date following the close of the accounting period.

Example 18

Same facts as in Example 1.

The basis periods and filing due dates of ITRF are as follows:

Year of Assessment	Basis Period	Due Date
2016	1.11.2015 – 30.6.2016	31.1.2017
2017	1.07.2016 – 30.6.2017	31.1.2018

17. **Updates and Amendments**

<table>
<tr><th></th><th>Amendment</th></tr>
<tr><td>This PR replaces the PR No. 2/2015 dated 19.06.2015.</td><td>The contents of this PR are essentially the same as the previous PR with the following amendments:
<table><tr><td>Paragraph</td><td>Explanation</td></tr><tr><td>1</td><td>Paragraph 1 in the previous PR is amended due to the amendment made to sections 61A and 63C of the ITA by Finance Act 2017 [Act 785] which is effective from the year of assessment 2017.</td></tr><tr><td>6.3</td><td>This new paragraph is inserted to provide further clarification in consequence to the amendment</td></tr></table></td></tr>
</table>

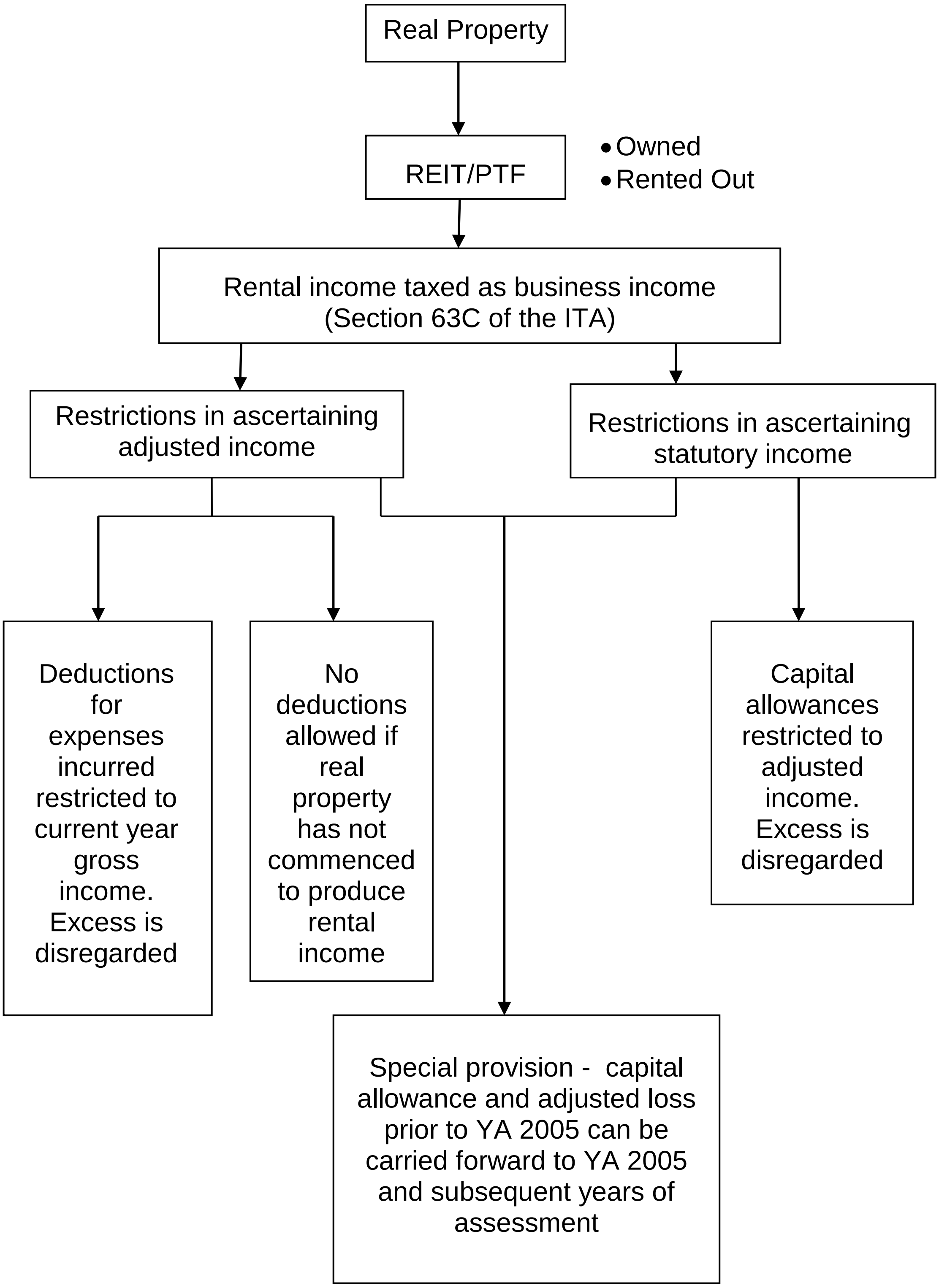
		under Act 785.
	7.2	Paragraph 7.2 in the previous PR is amended to provide further clarification in relation to allowable expenses under subsection 33(1) of the ITA.
	8.3.3	Paragraphs 8.3.3 (a) and (b) in the previous PR are amended to substitute the definition of Residual Profit and Residual Asset.
	10.1	Paragraph 10.1 in the previous PR is amended to provide further clarification in consequence to the amendment under Act 785.
	10.1.1	The Note to Example 10 is inserted to provide further clarification in consequence to the amendment under Act 785.
	10.2	Paragraph 10.2(e) in the previous PR is amended due to the amendment made to paragraph 35A to Schedule 6 of the ITA by Act 785 which is effective from the year of assessment 2017.
	11	Paragraph 11 in the previous PR is substituted to provide further clarification due to the amendment made to section 60I of the ITA by Finance (No.2) Act 2014 [*Act 764*] which is effective from the year of assessment 2015 and Finance Act 2015 [*Act 773*] which is effective on 31.12.2015.

	12, 13, 14, 15 and 16	Paragraphs 11, 12, 13, 14 and 15 in the previous PR are renumbered as paragraphs 12, 13, 14, 15 and 16 in this new PR.

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

Appendix 1

Special Tax Treatment Accorded to a REIT/PTF



Appendix 2

Specimen sample of a REIT/PTF distribution voucher

ABC REIT

VOUCHER NO.	DISTRIBUTION NO.	UNIT HOLDINGS	DISTRIBUTION INTERIM/FINAL	PERIOD ENDING	PAYMENT DATE

Distribution from the income which is tax exempt at REIT / PTF level under Section 61A of the Income Tax Act 1967

TAXABLE INCOME	MALAYSIAN TAX WITHHELD	NON-TAXABLE INCOME/NON-DEDUCTIBLE EXPENSE	NET PAYABLE

Distribution of income which has been subject to tax at REIT / PTF level

TAXABLE INCOME	MALAYSIAN TAX PAID BY REIT / PTF	NON-TAXABLE INCOME/NON-DEDUCTIBLE EXPENSE	NET PAYABLE

We hereby certify that the Malaysian income tax deducted as above has been or will be accounted for by us to the Director General of Inland Revenue Malaysia. Please retain this voucher for submission to the tax authorities.

Details of Unit Holder

Yours Faithfully

ABC REIT