



INLAND REVENUE BOARD OF MALAYSIA

**TAXATION OF INCOME ARISING
FROM SETTLEMENTS**

PUBLIC RULING NO. 4/2021

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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 provide an explanation on the taxation of income arising from a settlement created by a person for the benefit of another person.

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 section 2, 7, 8, 21, 21A, 48, 61 and 65 and subsection 45(2).

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 "Child" in relation to an individual or his wife, means a legitimate child or step-child of his or his wife, or a child proved to the satisfaction of the Director General to have been adopted by the individual or his wife in accordance with any law.
- 3.2 "Trust body", in relation to a trust, means the trust body provided for by section 61 of the ITA.
- 3.3 "Non-resident" means other than a resident in Malaysia by virtue of sections 7, 8 and subsection 61(3) of the ITA.
- 3.4 "Individual" means a natural person.
- 3.5 "Total income" in relation to a person and a year of assessment, means total income ascertained in accordance with the ITA.
- 3.6 "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole.
- 3.7 "Statutory income", in relation to a person, a source and a year of assessment, means statutory income ascertained in accordance with the ITA.
- 3.8 "Settlor", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and any person who was provided or undertaken to provide funds or credit directly or indirectly for the purpose of the settlement or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

- 3.9 "Resident" means resident in Malaysia for the basis period for a year of assessment by virtue of sections 7, 8 and subsection 61(3) of the ITA.
- 3.10 "Settlement" includes any disposition, trust, covenant, arrangement or agreement and any transfer of assets or income, but does not include –
- (a) a settlement which in the opinion of the Director General is made for valuable and adequate consideration;
 - (b) a settlement resulting from an order of a court; or
 - (c) any agreement made by an employer to pay to an employee or to the widow or widower or any relative or dependant of an employee after his death such remuneration, pension or lump sum as in the opinion of the Director General is fair and reasonable.
- 3.11 "Relative" means a child of the settlor (including a stepchild of the settlor and a child of whom the settlor has the custody or whom he maintains wholly or partly at his own expense), a child adopted by the settlor or the husband or wife of the settlor in accordance with any law, and any person who is a wife, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin of the settlor.
- 3.12 "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.
- 3.13 "Year of assessment" means calendar year.
- 3.14 "Basis period" in relation to a person, a source of his and a year of assessment, means such basis period, if any, as is ascertained in accordance with section 21 or 21A of the ITA.

4. Introduction

A person (settlor) may decide to create a settlement for the benefit of another person (beneficiary) i.e. a relative or any other person. Sometimes although the settlor transfers his income and income producing assets into a settlement, he may decide to retain the power to revoke the settlement or hold a significant measure of control or accessibility to the said income. A settlement may at times be used as a vehicle through which a settlor diverts either his income or capital to the beneficiary whose tax liability is at a lower rate as compared to that of the settlor. It is to be noted that being a settlor is a question of fact which has to be determined based on the facts and circumstances of the creation of the settlement.

5. Settlor

A settlor is a person who created a settlement for the benefit of another person. For income tax purposes:

- (a) A settlor includes any person by whom a settlement is made or entered into for the purpose of the settlement i.e. someone who puts or gifts money or other assets into a settlement created for the benefit of another person (beneficiary). This is known as settling property and can be done directly or indirectly by the settlor.
- (b) A settlor also includes a person who has made a reciprocal arrangement with some other person for that other person to enter into a settlement. A reciprocal settlement is one in which the two transactions are of a similar nature.

Example 1

Aaron transferred his own money into the bank account of his son, Harry (a minor under the age of 21 years) for the purpose of creating a settlement. Harry would be the beneficiary of income arising from the settlement.

Aaron, the father is the settlor as it was he who directly put (or settled) the funds into the settlement.

Example 2

Same facts as in Example 1 except that Aaron's father Sam provided Aaron with the funds to make a settlement for Harry (Sam's grandson).

Sam is treated as the real settlor as it was he who indirectly provided (or settled) the funds for Aaron to create the settlement.

Example 3

Don and Arul are friends. They are not related. Don makes an agreement with Arul that Don would transfer funds under a settlement to Arul's minor son on the understanding that Arul transfers funds of the same amount to Don's minor daughter under a settlement.

Don and Arul have entered into a reciprocal settlement and are both settlors with regard to their respective children i.e. Don is the settlor for his own daughter and Arul is the settlor for his own son.

Example 4

Malek gave his own money to his son, Amir (a minor under the age of 21 years) to commence a sole proprietorship business carried on by Amir.

Malek, the father is the settlor as it was he who directly provided (or settled) the funds for Amir, an unmarried minor to commence the business. Malek has created a settlement for Amir.

6. Settlements

A settlement may be created by a settlor but for income tax purposes, the beneficiary of the settlement is not automatically taxed on the income arising from the settlement as the income could be deemed as income of the settlor.

6.1 Scope of settlements

A settlement covers -

- (a) every transaction within the ordinary meaning of settlement;
- (b) as well as any disposition, trust, covenant, arrangement or agreement or any transfer of assets or income.

In other words, settlements may involve written agreements or deeds. However, there may not be a deed and a settlement can include an unwritten arrangement or even a straight forward gift or transfer of property. There has to be some form of arrangement, whether formal or informal, where property or income belonging to one person is passed to another. Property includes money, land and other types of physical assets as well as shares, rights and share options. In a settlement, there must be an element of giving or getting something for nothing or less than the open market value.

Example 5

Same facts as in Example 1.

Aaron transfers money into his son's bank account for the purpose of putting money into a settlement. A settlement arises as the element of giving exists when money was put into the son's bank account and the son benefits from the income arising under the settlement.

Example 6

Ahmad covenants to pay into a trust $\frac{1}{4}$ of his annual income from all sources for accumulation until his children attain the age of 21 years. Under the trust for accumulation, the distributable income from the trust is accumulated until the beneficiaries meet certain conditions (as stated under the terms of the settlement) such as attaining a certain age.

A settlement has been made by Ahmad by creating a trust for accumulation.

6.2 Exclusion from a settlement

There are a number of arrangements that are not treated as settlements. A settlement does not include –

- (a) a settlement which in the opinion of the Director General of Inland Revenue (DGIR) is made for valuable and adequate consideration;

Example 7

Harris transferred money to Zul, a relative for the purchase consideration of a piece of land from Zul at market value.

The transfer of money as payment for the piece of land is not considered a settlement as the price paid is at market value, which is an adequate valuable consideration.

Note

Generally, normal commercial transfers of money between relatives would be excluded from settlements.

- (b) a settlement which results from a court order; and

Example 8

A husband is separated from his wife and the court orders him to make payments to his children living with his former wife.

Payments made as a result of a court order is not considered a settlement.

- (c) an agreement made by an employer to pay an employee or his dependant after the employee's death, a reasonable and fair remuneration, pension etc.

Example 9

Ahmad is an employee of Dinas Sdn Bhd who has served for 15 years. Ahmad died during his service with the company. Dinas Sdn Bhd as an employer has settled the payment of salary arrears and payment of gratuity to appreciate Ahmad's services during his lifetime based on Ahmad's employment contract. The payment was made to Ahmad's wife a month after Ahmad died.

The payment received by Ahmad's wife according to Ahmad's employment contract is fair and reasonable. Therefore, this payment is not considered a settlement.

7. Income of Settlement is Deemed to be Income of the Settlor

The specific provision of section 65 of the ITA addresses the following circumstances where the income arising under the settlement is deemed to be the income of the settlor and assessable on him:

7.1 Settlement for an unmarried relative under 21 years of age

- (a) Where a settlement is created either directly or indirectly for the benefit of a minor or a relative of the settlor, any income arising under the settlement from an income source or income producing assets would be deemed to be the income of the settlor, and not income of any other person (beneficiary) when all of the following conditions are fulfilled:
 - (i) under the terms of any settlement;
 - (ii) during the life of the settlor;
 - (iii) any income of the settlement or asset representing it will or may become payable or applicable to or for the benefit of any relative of the settlor; and
 - (iv) at the beginning of the basis period of the year of assessment, that relative is unmarried and has not attained the age of 21 years.

[Subsection 65(1) of the ITA]

- (b) It is to be noted that subsection 65(1) of the ITA is not applicable under the following circumstances:
 - (i) in the event of the death of the settlor, the income from the settlement after the date of death of the settlor is not to be deemed as income of the settlor as one of the conditions mentioned in paragraph (a) are of

this PR is not fulfilled. As the settlor has passed away, this means that the condition in paragraph 7(a)(ii) of this PR is not fulfilled. As such, after the death of the settlor, the relative who is the beneficiary below the age of 21 years will be taxed on the income arising from the settlement.

- (ii) a relative under 21 years old who is married;
- (iii) a relative who is 21 years old and above whether married or unmarried;

Example 10

On 1.6.2018, Aidi transferred a shophouse, which is a rental producing property as a gift to his nephew aged 18 years old. The property was settled on the nephew with the intention that the rental income would finance the nephew's education. The nephew would attain the age of 21 on 1.1.2021.

- (a) At the beginning of the basis period (1.1.2018 to 31.12.2018) for YA 2018, Aidi's nephew was below the age of 21 and unmarried. Therefore, the rental income derived from the shophouse would be deemed to be Aidi's (settlor) income for the YA 2018 by virtue of subsection 65(1) of the ITA.
- (b) Similarly, for the YA 2019 and YA 2020, the rental income derived would also be deemed to be Aidi's income.
- (c) When the nephew attains the age of 21 on 1.1.2021, one of the conditions under subsection 65(1) of the ITA is not fulfilled. As such, the rental income derived from the shophouse would be assessable in the nephew's name from the YA 2021 onwards.

Example 11

Same facts as in Example 10 except that Aidi passed away on 1.6.2019.

- (a) For the YA 2018, the tax treatment is the same as in Example 9.
- (b) For the YA 2019, rental income from 1.1.2019 to 31.5.2019 would be deemed Aidi's income (during the life of the settlor) and assessed in the name of Aidi under subsection 65(1) of the ITA.
- (c) Upon the demise of Aidi on 1.6.2019, one of the conditions under subsection 65(1) of the ITA is not fulfilled. Therefore, the rental income from 1.6.2019 to 31.12.2019 would be assessed in the nephew's name for the YA 2019 although the nephew is below the age of 21 years.

- (d) For the year of assessment 2020 onwards, the rental income would be assessed in the nephew's name.

Example 12

Same facts as in Example 4.

The income arising from the settlement i.e. income from the business carried on by Malek's son would be assessed on Malek, the settlor who had created the settlement. When Amir attains the age of 21 or gets married before the age of 21 years, the income derived from the settlement would be assessed in Amir's name.

7.2 Revocable settlement

- (a) Where a settlement is made for any person and, if and so long as the terms of the settlement gives the settlor or any other person the power to revoke or otherwise determine the settlement or any provisions thereof -
- (i) whether immediately or in the future; or
 - (ii) whether with or without the consent of any other person; and
 - (iii) when the settlor or spouse of the settlor will or may become beneficially entitled to the whole or any part of the property or the income comprised in the settlement upon revocation of the settlement

any income arising under the settlement is deemed to be the income of the settlor and subject to subsection 45(2) of the ITA, and not income of any other person.

- (b) The power to revoke means that the income or assets transferred into the settlement by the settlor can revert to the settlor or spouse of the settlor upon the exercise of such powers, as provided under the terms of the settlement.
- (c) The power to revoke without the consent of any other person would mean the settlor alone has the power to determine the settlement.
- (d) The power to revoke with the consent of any other person would mean that the settlor has to obtain the consent of another person (as provided under the terms of the settlement), to determine the settlement.
- (e) The power to revoke or otherwise determine the settlement or any provisions thereof will include the power to do any act whereby the settlement or a specific provision thereof will come to an end. The said

act of the settlor would have to be in accordance with the terms provided in the settlement.

- (f) The power to revoke a settlement may be immediately or in the future. When this power is exercised, the settlor or the husband / wife of the settlor need not immediately become beneficially entitled to the income that arises from the settlement. The revocation may give rise to future beneficial entitlement to the income comprised in the settlement.
- (g) Where a settlement is created with a right of revocation, any income arising under the settlement is deemed to be the income of the settlor and subject to combined assessment under subsection 45(2) of the ITA. Pursuant to subsection 45(2) of the ITA –
 - (i) If a settlor and wife / husband were living together in the basis year for a year of assessment and did not in that basis year cease to live together or to be husband and wife of each other, the wife / husband may elect in writing that her / his total income is to be aggregated with the total income of her husband / his wife and assessed in his / her name for that year of assessment.
 - (ii) Where the wife / husband who elects is not resident for the basis year for a year of assessment, such wife / husband, as the case may be, may elect under subsection 45(2) of the ITA only if she / he is a citizen.
- (h) Where the settlor or spouse will or may become entitled to the income or property of the settlement because the beneficiary predeceased the settlor, income from the settlement is not deemed income of the settlor.

[Subsection 65(2) of the ITA]

Example 13

Osman receives rental income from several landed properties and office buildings. On 1.3.2017, he created a settlement by way of a written agreement. The beneficiary is his daughter aged 20 years on 1.1.2017. The terms of the agreement states that all Osman's income producing landed properties would be settled on his daughter, provided that she marries the son of his childhood friend before she reaches the age of 28 years. If the daughter fails to marry the handpicked candidate, the settlement would be revoked and the properties would revert to Osman's wife.

Although Osman's daughter has not attained the age of 21 at the time the settlement was created but the right of revocation existed. Therefore the

income arising from the settlement with a right of revocation is deemed to be Osman's (settlor) income under subsection 65(2) of the ITA.

Example 14

On 1.3.2018, Chan transferred his rental producing properties into a settlement for the benefit of his nephew, Charlie aged 25 years on 1.1.2018 with the understanding that he would continue to live in Malaysia. Under the terms of the settlement, in the event that Charlie decides to migrate overseas, Chan would have the right to revoke the settlement and the properties would revert to Chan's wife.

As the settlement was created with the right of revocation, any income derived from the settled properties is deemed to be Chan's (settlor) income.

Example 15

Facts are the same as in Example 14 except that the properties were transferred without the right of revocation and Charlie passed away in an accident 5 years after the transfer. The properties were reverted to Chan upon the demise of his nephew.

The income arising from the settlement during the lifetime of Charlie is assessed on Charlie as Chan has no right to revoke the settlement. Chan only became entitled to the income and property of the settlement because Charlie, the beneficiary predeceased Chan, (settlor) and not due to any right of revocation by Chan.

Example 16

Richard owns several properties from which he receives rental. He entered into an agreement whereby he settles one of his properties and rental income from that property on a childhood friend for so long as the friend is alive. Upon the demise of the friend, the property and the right to the rental income passes to Richard's wife.

The income from the property under the settlement is the income of the friend and not of Richard since Richard has no power to revoke the settlement. Richard's wife only becomes the beneficial owner of the property when the friend (beneficiary) predeceases Richard (settlor).

7.3 Income arising from a settlement made use of by a settlor who controls the settlement

- (a) Where in a basis year for a year of assessment a settlor, relative or company controlled by the settlor or relative –

- (i) makes use for his or its own purposes;
- (ii) whether by borrowing or otherwise,
- (iii) any income arising or of any accumulated income from a settlement to which he is not entitled

the amount of income or of any accumulated income so made use of would be deemed to be the settlor's income and not income of the beneficiary for the relevant year of assessment.

- (b) If the beneficiary who is actually entitled to the income arising from the settlement has paid tax on the income, repayment will be made to him. This situation would arise when the income is deemed to be the income of the settlor.

[Subsection 65(3) of the ITA]

Example 17

Mohan transferred all his rental producing properties to his daughter aged 35 years under a settlement in 2010. For the years 2010 to 2018, Mohan's daughter paid the tax on the rental income received. In the year 2019, Mohan's business was affected by the poor sales. He utilised the 2019 rental income of RM60,000 and accumulated income of RM100,000 from the settlement to sustain his business.

Mohan, the settlor has control over his daughter and made use of the income and accumulated income arising from the settlement for his own purpose i.e to sustain his business. Therefore, the 2019 rental income and accumulated income amounting to RM160,000 from the settlement that was made use of by Mohan in 2019 would be deemed to be Mohan's income for the year of assessment 2019.

If Mohan's daughter has paid tax on the rental income of RM60,000 for the year of assessment 2019, she may request for a repayment.

Example 18

Husin entered into a settlement and transferred his commercial properties to his son. Rental income of RM200,000 arises under the settlement annually. In the year of assessment 2019, a company controlled by Husin obtained a loan of RM100,000 from the trustee of the settlement.

The company controlled by Husin took and made use of the loan of RM100,000 arising under the settlement. The borrowings of RM100,000 is deemed to be the income of Husin (settlor) for the year of assessment 2019.

8. Settlement Creating a Trust

The income of the beneficiaries from a settlement where a trust is established would be deemed to be the income of the settlor and not income of any other person.

- (a) In the case of a settlement, a trust may be created under the terms of the settlement so that the income or income producing assets is transferred to the trust by the settlor. Where the income from the trust body of the trust is deemed to be the income of the settlor, this would mean that the income of the beneficiaries from the trust body of the trust is the deemed income of the settlor. The amount of income from the settlement deemed as income of the settlor would be the –
- (i) statutory income of the beneficiary from any property comprised in the settlement or if the beneficiary is a non-resident, his statutory income would be the statutory income from all property as if he had been a resident for all the relevant years of assessment; or
 - (ii) amount as determined by the DGIR where the settlor or any relative of the settlor or any company with respect to which the settlor or any of his relatives has control makes use for his or its own purpose, by borrowing or otherwise, of any income arising or of any accumulated income which has arisen under the settlement;

and the income deemed to be the income of the settlor is deemed to be derived from such place and source as the DGIR directs to be the statutory income of the settlor.

[Subparagraph 65(5)(a) of the ITA]

Example 19

Ellen created a settlement for her children, 10 years old Amy and 18 years old Benny by establishing a non-discretionary trust. Benny has been studying in the United Kingdom since he was 12 years of age and has not been a resident in Malaysia since 2016. For the year of assessment 2019, the trust body had a total income of RM10,000 and derived foreign source income of RM5,000 which was remitted to Malaysia. Each of the 2 beneficiaries are entitled to $\frac{1}{2}$ share of the distributable income of RM15,000 from the trust body. Amy is a resident and Benny is not a resident for the year of assessment 2019.

Year of Assessment 2019
Beneficiary's Entitlement to the Distributable Income and
Total Income of the Trust Body of the Trust

Beneficiary	Entitlement	
	Distributable Income	Total Income
Amy (Resident)	7,500 ($\frac{1}{2}$ X 15,000)	5,000 ($\frac{1}{2}$ X 10,000)
Benny (Non-resident)	7,500 ($\frac{1}{2}$ X 15,000)	5,000 ($\frac{1}{2}$ X 10,000)

For the year of assessment 2019 –

- (i) Amy's statutory income from an ordinary source is RM5,000. The income from a further source i.e. the foreign source income received is exempted from tax by virtue of paragraph 28, Schedule 6 of the ITA.
- (ii) Benny's statutory income from an ordinary source is RM5,000. As Benny is a non-resident, the foreign source income received is exempted from tax by virtue of paragraph 28, Schedule 6 of the ITA.

For the year of assessment 2019, the sum of statutory income of Amy (RM5,000) and Benny (RM5,000) would be taken to be Ellen's deemed income [RM10,000 (RM5,000 + RM5,000)] from the settlement by virtue of subsection 65(5) of the ITA. For purposes of determining the statutory income of Benny who is a non-resident, he would be treated as if he had been a resident by virtue of subparagraph 65(5)(a)(i) of the ITA.

Since subsection 65(5) of the ITA is applicable in this case, Amy and Benny would not have any statutory income and if they have paid tax on such income, they may claim a refund by virtue of subsection 65(4) of the ITA.

Note

For further information on trusts, please refer to Public Ruling No. XX/2020 titled Taxation of Trusts which can be downloaded from the official portal of the Inland Revenue Board of Malaysia (IRBM) at www.hasil.gov.my.

- (b) Source of income of a trust body of a trust created under a settlement

Where under the terms of a settlement a person has the power to revoke the settlement and consequent upon the exercise of that power the settlor or a husband or wife of the settlor becomes beneficially entitled to the whole or part

of any of the property comprised in the settlement, the statutory income from each source of the trust body is deemed to be that of the settlor and to be derived from such place and source of the settlor as the DGIR may direct. It is the statutory income which is deemed to be the income of the settlor in relation to the settlement. If a loss is sustained in a business carried on under a settlement, the loss is not deemed to be the loss of that settlor and no relief by the settlor may be claimed in respect of such a loss.

[Subsection 65(6) of the ITA]

9. **Settlement Cases Where a Trust is Not Created**

In settlement cases that do not involve creating a trust, the income of the settlor is the amount of what would have been –

- (i) the statutory income of the beneficiary from any property comprised in the settlement as if he was a resident regardless of whether he was a resident or not for the relevant year of assessment; or
- (ii) amount as determined by the DGIR where the settlor or any relative of the settlor or any company with respect to which the settlor or any of his relatives has control makes use for his or its own purpose, by borrowing or otherwise, of any income arising or of any accumulated income which has arisen under the settlement;

and the income deemed to be the income of the settlor is deemed to be derived from such place and source as the DGIR directs to be the statutory income of the settlor.

[Subparagraph 65(5)(b) of the ITA]

10. **Resolution of Amount of Any Income Made or Apportionment of Income or Statutory Income**

If any question arises as to the amount of any payment of income or as to any apportionment of income or of statutory income in relation to settlements, the question is to be determined by the DGIR and there is no appeal against the decision of the DGIR.

[Subsection 65(7) of the ITA]

11. **Two or More Settlers to a Settlement**

If in the case of a settlement where there are 2 or more settlers, each settlor is looked at separately. In determining the income arising under the settlement attributed to each settlor, only the portion of the income in proportion to the income or income

producing assets transferred directly or indirectly for the purposes of the settlement by each settlor would be taken into account.

[subsection 65(9) of the ITA]

Example 20

Ari and Daniel, who are brothers made a joint settlement on their nephew Zul aged 18 years on 1.1.2019. Ari settles 2 shophouses and Daniel settles 10 acres of plantation land on Zul. Under the terms of the settlement, Zul is to receive RM36,000 annually from the rental income of the shophouse and RM24,000 annually from the sale of the fresh fruit bunches.

The settlors settled the property on an unmarried minor. Therefore, the income arising from the settlement is deemed to be the income of the settlors by virtue of subsection 65(1) of the ITA. For the year of assessment 2019, the amount of statutory income from the settlement for Ari and Daniel would be RM36,000 and RM24,000 respectively.

12. Recovery of Income Tax Paid by a Settlor

Where tax is charged on or paid by a settlor on income deemed to be his under a settlement, the settlor is entitled to recover the tax so paid from -

- (a) any trustee of the settlement in receipt of income arising whether directly or indirectly; or
- (b) the beneficiaries who actually receives the income deemed to be the settlor's;

and the settlor is also entitled to require the DGIR to furnish a certificate specifying the amount of tax so paid and any certificate so furnished is conclusive evidence. This certificate is to assist the settlor in his tax recovery.

[Subsection 65(4) of the ITA]

13. Disclaimer

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

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