INLAND REVENUE BOARD OF MALAYSIA

TAXATION OF TRUSTS

PUBLIC RULING NO. 9/2020

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CONTENTS **Page**

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 taxation of trusts including the ascertainment of a trust beneficiary's statutory income from the trust.

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 2, 7, 8, 21, 21A, 33, 39, 44, 55 to 58, 61, 62, 63, 65, 67, 73, 77A,103, 107C, 110, 122, subsection 112(3), paragraphs 4(*b*) and 4(*e*) and Schedules 1 and 6.

3. Interpretation

The words used in this PR have the following meaning:

3.1 "Trust body", in relation to a trust, means the trust body provided for by section 61 of the ITA.

3.2 "Non-resident" means other than a resident in Malaysia by virtue of sections 7 and 8 and subsection 61(3) of the ITA.

3.3 "Individual" means a natural person.

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

3.5 "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole.

3.6 "Resident" means resident in Malaysia for the basis year for a year of assessment by virtue of sections 7 and 8 and subsection 61(3) of the ITA.

3.7 "Chargeable income" in relation to a person and a year of assessment, means chargeable income ascertained in accordance with the ITA.

3.8 "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.

4. Introduction

Generally, a trust is a way of managing property / assets (money, investments, land or buildings) for people. It provides a mechanism of holding and managing money or property for people who may not be ready or able to manage it for themselves. A trust manages the distribution of a person’s property by transferring its benefits and obligations to different people. Among the reasons for setting up a trust are as follows:

(a) to control and protect family property / assets;

(b) when someone’s too young or incapacitated to handle their affairs;

(c) to pass on property / assets while an individual is still alive;

(d) to pass on property / assets upon death (with a will); or

(e) when someone wants to set up a charitable trust, trust for the maintenance of animals, etc.

5. **Trusts**

The basics of a trust are as follows:

5.1 Creation of a trust

(a) Legal transfer of ownership of property / assets

A trust is an arrangement created when there is a legal transfer of ownership by the owner of the property / assets (the settlor, grantor, trustor or creator of the trust) to an appointed person (the trustee) with instructions that the trustee holds and manages the property / assets for the benefit of another person (one beneficiary or a few beneficiaries). The details of the arrangement are laid out in a trust deed (the legal document setting up the trust) and the property / assets placed in the trust is the trust fund.

(b) Not a separate legal entity

A trust is not a separate legal entity but a trust is an equitable obligation, binding a person (trustee) to deal with the property / assets over which he has control, for the benefit of persons (beneficiaries) of whom he may himself be one, and any of whom may enforce the obligation.

(c) Created by living person or in the event of death

Trusts can take effect during the lifetime of a settlor or shortly after the death of a settlor. A trust may be created during the lifetime of the settlor and without being dependent upon the death of any person. If a will provides not for the immediate distribution of the whole of an estate, a trust may be created where certain property / assets are retained for the eventual benefit of certain beneficiaries who may enjoy the income arising from the property / assets as determined by the testator (deceased settlor).

(d) Deed of Family Arrangement

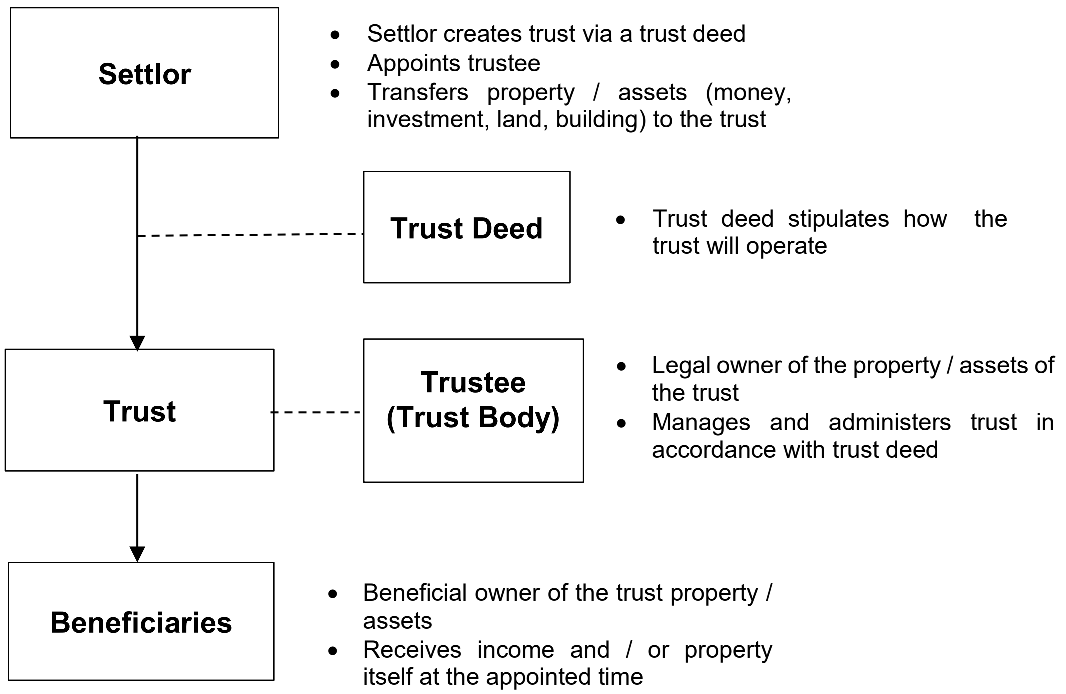
Beneficiaries may collectively decide to make some arrangement for the benefit of one of the beneficiaries. This may be done formally by a Deed of Family Arrangement or it may be done informally. A typical example would be where a man passes away and leaves his estate to be realised and divided among his widow and children. The children may decide not to claim their share immediately but to leave the estate intact so that the widow may enjoy the whole income during her lifetime. Upon the demise of the widow, the estate would be divided among the children.

For the purposes of income tax, such arrangements whether formal or informal would normally constitute a trust. However, the Director General of Inland Revenue (DGIR) would have to be satisfied that the scheme is *bona fide* and the terms of the arrangement were in fact being carried out.

5.2 Parties involved in a trust

A trust involves a settlor, a trustee and beneficiaries. This can be summarised in the following diagram:

Basic Structure of a Trust



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

Stakeholder	Functions
Settlor	• Creates a trust. • Original owner of property / assets before transfer to trust. • Decides how the assets should be used via a trust deed. • Transfers property / assets owned (money, investments, land and buildings) to the trust i.e. the trust fund.
Trustee	• Appointed by settlor via trust deed. • Settlor can also be a trustee. • A beneficiary can be one of the trustees. • Trustee can be an individual, group of individuals or a company. • Legal owner of the property / assets held in a trust. • Hold property / assets on trust for beneficiaries. • Manages the trust and administers affairs of the trust in accordance with the wishes of the settlor as set out in the trust deed, such as deciding on how to invest or use the trust's property / assets. • Owes a fiduciary duty to the beneficiaries i.e acts solely in the best interest of the beneficiary when dealing with the trust assets. • For tax purposes: ➢ Trustee is a trust body. ➢ So long as trustees remain members of the trust body, they are jointly and severally subject to all liabilities to which they would be subject to tax under section 67 of the ITA if the trust body were the principal within the meaning of that section and each trustee were the representative within that meaning. ➢ In other words, for tax purposes, the relationship between the trust and the trustees is that of

<table>
<tr><th>Stakeholder</th><th>Functions</th></tr>
<tr><td></td><td>principal and representatives where among the responsibilities of the trustees include –
✓ register the trust for tax;
✓ keeping records;
✓ submission of income tax return forms (ITRF);
✓ payment of tax or debt due; and
✓ provide each beneficiary with details of their share of their total income from the trust body of the trust, so that the beneficiaries can include this amount in their ITRF.
➢ The trustees are responsible for the trust body for any period of time once the trustee's responsibility or obligation arises.
➢ A trustee who vacates his office is no longer responsible for the trust body unless he has committed any criminal or negligent act.
➢ May be paid a remuneration for services if the trust deed specifically provides for this.</td></tr>
<tr><td>Beneficiaries</td><td>• One beneficiary or more.
• Beneficial owners of the assets held in trust.
• Rights to income and capital would depend on the type of trust set up.
• Benefit from the income of the trust (e.g. rental, dividends) or capital only (shares or property held in a trust upon attaining a certain age), or both as the case may be.
• Entitlement to the trust income would depend on the trust deed and any discretion that the trustee has under the trust deed to allocate income between beneficiaries.</td></tr>
</table>

5.3 Types of trust

Among the main types of trust are as follows:

(a) Express trust

An express trust is created knowingly and intentionally by a settlor. The trust deed for express trust would state the terms of the trust as follows:

(i) type of property / assets to be transferred to the trust by the settlor;

(ii) specified beneficiaries; and

(iii) powers and duties of the trustees such as investment, vary the interests of the beneficiaries, appoint new trustees etc.

Among the examples of express trusts are bare trusts, discretionary trusts, non-discretionary or fixed trusts, and public trusts set up for charitable purposes.

(b) Bare trust

Assets in a bare trusts are held in the name of a trustee and are often used to pass assets to young people at a determined time. The assets set aside by the settlor will always go directly to the intended beneficiary at a pre-determined age. There is no further duty of performance by the trustee except to transfer the property to the beneficiaries, as directed.

(c) Discretionary trust

Discretionary trust is a trust where the income is distributed to the beneficiaries at the discretion of the trustee. The trustee is given the power to make certain decisions on how to use the trust income, and sometimes the capital. The trust deed would determine what the trustee can decide on such as –

(i) what gets paid out i.e. income or capital;

(ii) which beneficiary to make payment to;

(iii) how often payments are made; and

(iv) any conditions to impose on the beneficiaries.

(d) Non-discretionary trust or fixed trust

Where a trust deed states the ratio or entitlement of each beneficiary as determined by a settlor, such a trust is said to be a non-discretionary trust or a fixed trust.

(e) Trust for accumulation

Trustees may be given the discretion to accumulate part or whole of the income within the trust and add it to the trust's capital. Trustees may also be able to pay income out, as with discretionary trust.

(f) Mixed trust

A mixed trust is one where the trustees have a discretionary power over part of the trust income and a non-discretionary power over the other part of the trust income. The trust income is divided into a discretionary and non-discretionary part. The beneficiary's statutory income is then the aggregate of the appropriate share of the discretionary and non-discretionary part.

(g) Charitable trust

Charitable trust is established for a purpose such as the advancement of education, alleviation of poverty, advancement of religion or some other purpose that is of benefit to the community. Charitable trusts differ from other trusts in that it does not have any particular beneficiaries but instead is for a particular purpose. For charitable trusts, the beneficiaries would be an identified class of people.

(h) Testamentary trust

Testamentary trust is created in a will and only takes effect upon the death of a testator. Normally, the terms of the trust are set out in the testator's will and are often established where the settlor wishes to provide for their children who have yet to reach adulthood or are handicapped.

6. Chargeable Person

6.1 For the purposes of tax, a trustee or trustees of a trust is a trust body. A trust body of a trust is treated as a chargeable person that is subject to all the provisions under the ITA except for Part VIII - Offenses and Penalties (other than section 122 of the ITA).

6.2 Generally, Part VIII of the ITA consists of sections 112 to 126 in respect of the offenses and penalties such as those related to failure to furnish returns, incorrect returns, wilful evasion etc.

6.3 All provisions of Part VIII of the ITA are not applicable to a trust body except section 122 of the ITA. Section 122 of the ITA covers the requirement to pay tax and make a return despite the institution of proceeding or the imposition of a penalty, special penalty, fine etc (which is applicable to those subject to section 122, excluding a trust body). In other words, the trust body is required to pay tax and make a return even if it is not subject to:

(a) penalties under section 112, 113 or 114 of the ITA; and

(b) prosecution under section 120 of the ITA.

6.4 The income of a trust body is assessed and charged to tax separately from the income of a beneficiary from any source of his in relation to the trust, whether or not that beneficiary is also a trustee member of the trust body.

7. Basis of Assessment

The basis year for a year of assessment or the financial accounting period (for a period of 12 months not ending on 31 December) will be the basis period for that year of assessment of a trust body of a trust. This is determined according to section 21A of the ITA. All the subsections of section 21A of the ITA are applicable except for subsection 21A(5) of the ITA.

8. Residence Status

8.1 Determination of the residence status of a trust body

Pursuant to subsection 61(3) of the ITA, the resident status of a trust body of a trust is determined as follows:

(a) Resident

A trust body would be regarded as resident in Malaysia for the basis year for a year of assessment if, but only if, any trustee member of the trust body is resident in Malaysia for that basis year.

(b) Non-resident

The trust body would be regarded as non-resident for that basis year if none of the trustee members of that trust body are resident in Malaysia for the basis year for a year of assessment.

In addition, a trust body would be regarded as non-resident for a basis year if **all** of the following conditions are satisfied -

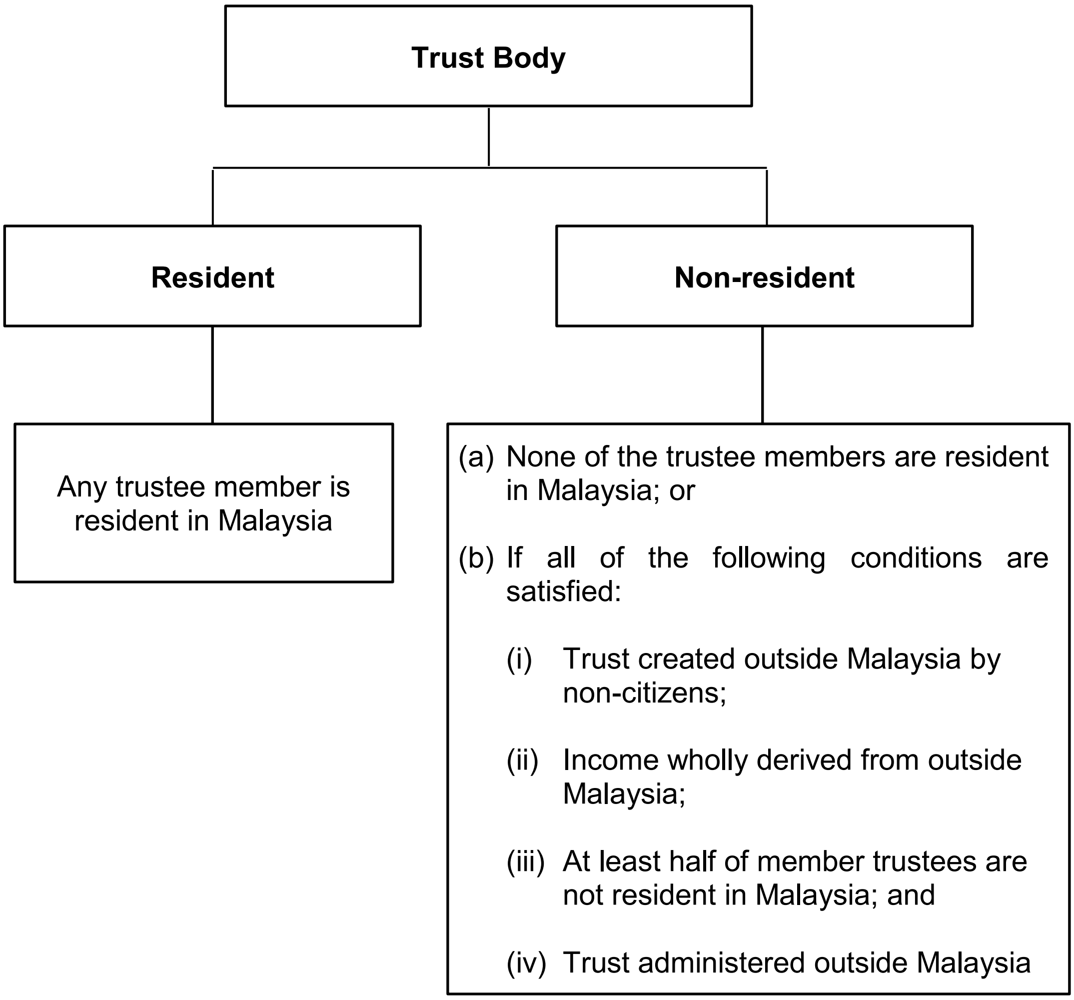
(i) the trust was created outside Malaysia by a person or persons who were not citizens;

(ii) the income of that trust body for the basis year is wholly derived from outside Malaysia;

(iii) the trust is administered for the whole of that basis year outside Malaysia; and

(iv) at least one-half of the number of the member trustees are not resident in Malaysia for that basis year.

8.2 Summary of the determination of residence status of a trust body



8.3 Significance of residence status

A trust body that is resident in Malaysia will enjoy the following tax treatment:

(a) may deduct from its total income, the beneficiary's share of the total income of the trust body;

(b) may deduct any annuity payable to a beneficiary; and

(c) any annuity paid by a trust body of a trust that is resident to its beneficiaries is deemed to be derived from Malaysia, whether or not the trust body has any total income in the relevant year of assessment.

9. Sources of Income

The sources of income of a trust body of a trust are as follows:

(a) any source forming part of the property / assets of the trust such as business, rental, interest, dividends and other income; and

(b) any source of a trustee of a trust, being a source of his in respect of partnership income where a trust body is a partner and is assessable to tax in respect of its share of partnership income.

10. Tax Rate

A trust body is subject to tax on its chargeable income at the prevailing rates under paragraph 2, Part 1, Schedule 1 of the ITA. The current prevailing rate effective from the year of assessment 2016 is 24%.

11. Tax Treatment of a Trust Body

11.1 Scope of tax of a trust body

The trust body of a trust is subject to tax on any income accrued in or derived from Malaysia. However, foreign source income received by the trust is exempt from tax by virtue of paragraph 28, Schedule 6 of the ITA.

11.2 Deductibility of expenses

(a) In ascertaining the chargeable income of a trust body of a trust, expenses wholly and exclusively incurred in the production of income are deductible by virtue of subsection 33(1) of the ITA subject to any specific prohibition under section 39 of the ITA.

(b) Where a trustee is paid a remuneration for the management and administration of the trust, such remuneration is not deductible in the ascertainment of the total income of a trust. This expense is not considered wholly and exclusively incurred in the production of income. However, if it can be proven that the trustee is directly involved in carrying on the business of the trust, the remuneration may be deductible if it is wholly and exclusively incurred in the production of income.

11.3 Total income of trust body and share entitlement of beneficiary

For the purposes of income tax, the total income of the trust body of a trust would have to be determined. The share entitlement of each beneficiary of a trust to the said total income has to be computed after the total income of the trust body has been determined.

11.4 Ascertainment of a beneficiary's share entitlement of the distributable income and total income

A beneficiary receives from a trust the actual amount of money that is available for distribution i.e. the distributable income. The beneficiary would receive either the whole or a fraction of the distributable income of the trust in accordance with the beneficiary's share entitlement as stipulated in a trust deed. This same share entitlement (whole or a fraction) would be applied to the total income of the trust body to determine the beneficiary's share of the total income of the trust body for the purposes of the beneficiary's tax.

11.5 Total income of a trust body

The total income of a trust body for a year of assessment is subject to tax regardless whether a share of that total income may be deemed (under section 61 or 62 of the ITA) to be the statutory income of a beneficiary.

However, where a share of the total income of the trust body (which is resident) for a year of assessment is deemed to be the statutory income of a beneficiary (who is resident), the DGIR may, in ascertaining the chargeable income of the trust body for that year of assessment, deduct from the total income of the trust body that share of the beneficiary.

In other words, income derived by a trust is taxed in the hands of the trust body itself or the beneficiaries. The income would not be taxed more than once. If part of the income is distributed, the trust body would be taxed on the balance.

Example 1

AA Trust is a resident trust in Malaysia for the basis year 2018. B, a resident in Malaysia is the sole beneficiary of the trust and is entitled to the whole of the distributable income from the trust. The statutory income of the trust body of the trust for the year ended 31.12.2018 are as follows:

Statutory Income	**RM**
Rental	60,000
Interest	10,000

Year of Assessment 2018
Computation of Total Income and Chargeable Income

Statutory Income	**RM**
Rental	60,000
Interest	10,000
Aggregate income / Total income	70,000
Less:	
Beneficiary's share of total income	70,000[1]
Chargeable income	Nil

[1]Note

The deduction of the beneficiary's share of total income of RM70,000 is allowed if DGIR is satisfied that AA Trust and beneficiary B are resident in Malaysia for the year of assessment 2018. If no deduction is allowed, then the chargeable income of AA Trust is RM70,000 and the tax payable for the year of assessment 2018 would be RM16,800 (RM70,000 X 24%).

11.6 Meaning and significance of distributable income

(a) When a trust body of a trust distributes income from the trust to its beneficiaries, the distributed income is from the distributable income. Distributable income is not defined in the ITA. The ordinary meaning of distributable income is income received by the trust less the expenses incurred by the trust. Distributable income would be ascertained in accordance with the generally accepted accounting principles.

(b) Distributable income differs from total income. Total income is determined in accordance with the provisions in the ITA whereas distributable income is determined in accordance with accounting principles.

(c) The quantum of distributable income and total income may also differ. Some of the expenses incurred may not be tax deductible in arriving at the total income of the trust body but for the purposes of computing distributable income, such expenses are deducted.

(d) Distribution of income by a trust body of a trust to a beneficiary is not a revenue expense and would not be deductible in computing the total income of the trust body.

(e) A beneficiary's share of the distributable income and the total distributable income may be used in some of the formulas to determine the beneficiary's share of the total income of a trust body.

11.7 Summary of distinction between distributable income and total income

Details	Distributable Income	Total Income
Computation	Distributable income is not defined in the ITA. Distributable income is the actual amount of money that is available for distribution. Determined in accordance with the generally accepted accounting principles.	Determined in accordance with the provisions in the ITA.
Chargeability to tax	Distributable income is not a deductible expense in arriving at the total income of a trust body and it is not subject to income tax.	Total income is subject to income tax.
Share entitlement	A trust deed would state each beneficiary's share entitlement (whole or a fraction) to the income of a trust. Beneficiaries receive a distribution from a trust based on the actual money available i.e. the distributable income of the trust.	For income tax purposes of each beneficiary of a trust, each beneficiary's share of the total income of a trust body has to be determined. The beneficiary's share of the total income of the trust body is in the same share entitlement (whole or a fraction) as stated in the trust deed.

12. Beneficiary of a Trust

12.1 Beneficiary subject to tax

A beneficiary of a trust is subject to tax in respect of any income of his from his ordinary source or further source (foreign source) under paragraph 4(*e*) of the ITA. A beneficiary who is a resident for tax purposes would be allowed a personal relief. If the beneficiary's share of the total income from the trust body has been taxed at the trust body level, a set-off under subsection 110(8) of the ITA is allowed to the beneficiary. If the beneficiary's share of the total income has been deducted from the total income in arriving at the chargeable income of the trust body as shown in Example 1, a set-off under subsection 110(8) of the ITA would not be available to the beneficiary as the beneficiary's share of total income has not been taxed.

12.2 Income from an ordinary source

The entitlement of a beneficiary at any time and from time to time to any income from a trust is deemed to be a source of his in relation to the trust. A beneficiary's share of any total income of the trust body of the trust for a year of assessment is deemed to be his statutory income from his ordinary source for that year.

Example 2

Same facts as in Example 1.

The beneficiary, B's share of the total income of the trust body of the trust for the year of assessment 2018 is RM70,000. This RM70,000 is deemed to be B's statutory income from his ordinary source.

12.3 Further source (foreign source)

In the basis year for a year of assessment, if the **total amount** of all income received:

(a) in Malaysia by a beneficiary from the trust body of a trust; and

(b) outside Malaysia by a beneficiary from the trust body of a trust in any year and remitted to Malaysia,

exceeds the amount of statutory income from the beneficiary's ordinary source in relation to the trust for that year of assessment, the **excess** is deemed to be the beneficiary's **further source (foreign source)** of income in relation to the trust. The excess is the statutory income from the further source for that particular year of assessment.

If the DGIR is satisfied that a sum equal to any part of the excess (further source) is regarded as an ingredient of the beneficiary's statutory income from his ordinary source in relation to the trust for any preceding year of assessment, the beneficiary's statutory income from the further source is reduced by such an amount.

The statutory income from the further source is a foreign source and is deemed to be derived from outside Malaysia. However, a further source income of a resident beneficiary is exempt from tax by virtue of paragraph 28, Schedule 6 of the ITA. A non-resident beneficiary would not be subject to tax on the further source as it is income not derived from Malaysia.

Example 3

BB Trust is a non-discretionary trust and a non-resident for the basis years 2017 and 2018. Beneficiaries A and B are residents for the years of assessment 2017 and 2018. They are each entitled to ½ share of the distributable income of the trust body. The total income of the trust body for the years of assessment 2017 and 2018 are RM15,000 and RM10,000 respectively. The summary of distributable income received by the beneficiaries and their entitlement to the total income are as follows:

Years of Assessment 2017 and 2018
Beneficiary's Distributable Income Received and
Entitlement to the Total Income of the Trust Body of the Trust

Year of Assessment 2017		
Beneficiary	**Distributable Income Received RM**	**Entitlement to the Total Income RM**
A (Resident)	6,000	7,500 (½ X 15,000)
B (Resident)	6,000	7,500 (½ X 15,000)

Year of Assessment 2018		
Beneficiary	**Distributable Income Received RM**	**Entitlement to the Total Income RM**
A (Resident)	6,000	5,000 (½ X 10,000)
B (Resident)	6,000	5,000 (½ X 10,000)

Year of assessment 2017

A and B's statutory income from an ordinary source was RM7,500 each. The distribution received by A and B was RM6,000 each. A and B did not received foreign source income as the amount of distribution received is less than the statutory income of A and B from ordinary source.

Year of assessment 2018

A and B's statutory income from an ordinary source was RM5,000 each. The distribution received by A and B was RM6,000 each. A and B would each have an excess of RM1,000 (RM6,000 – RM5,000) in addition to their statutory income from an ordinary source. This excess is deemed as foreign source income. However, the foreign source income received by A and B is exempt from tax by virtue of paragraph 28, Schedule 6 of the ITA.

If the DGIR is satisfied that any part of the excess of RM1,000 distributed to A and B in the year of assessment 2018 is regarded as an ingredient of A and B's statutory income from his ordinary source in the year of assessment 2017, A and B's statutory income from the foreign source is reduced by RM1,000 each in the year of assessment 2018.

12.4 Entitlement of a beneficiary to the distributable income from a trust and total income of a trust

(a) Where the entitlement of a beneficiary or beneficiaries is the whole or a particular fraction (as stipulated in a trust deed) of the distributable income from the trust body of a trust (whether resident or not) for the basis year for a year of assessment, that same proportion (whole or a particular fraction) would be the entitlement of the beneficiary or beneficiaries to the total income of the trust body of the trust. The beneficiary's entitlement to the total income in a basis year for a year of assessment will be taxed on the beneficiary irrespective whether the beneficiary has received that income or not.

(b) Although the entitlement to both distributable income and total income is in the same proportion (whole or particular fraction), the amount of distributable income received by the beneficiary may not be an amount that is equal to the beneficiary's share of the total income of the trust body of the trust.

Example 4

CC Trust is a non-discretionary trust resident in Malaysia. There are two (2) beneficiaries, C and D who are entitled to ¼ share and ¾ share of the distributable income respectively.

Income and expenditure of the trust body for the year ended 31.12.2018

Income / Expenditure	RM	RM
Gross income from business	80,000	90,000
Gross income from interest	10,000	
Business expenses (revenue)	30,000	45,000
Business expenses (capital)	10,000	
Administrative expenses	5,000	

Note:

The administrative expenses of RM5,000 are paid for the management and administration of the trust, which are not wholly and exclusively incurred in the production of income. Therefore, the adminstrative expenses is not deductible in the ascertainment of the total income of a trust.

Year of Assessment 2018
Computation of Distributable Income and Total Income

Income	Computation	
Distributable income		RM
	Gross income	90,000
	Less:	
	Expenses	45,000
	Distributable income	45,000
Total income		RM
	Gross business income	80,000
	Less:	
	Allowable business expenses	30,000
	Adjusted / Statutory business income	50,000
	Statutory interest income	10,000
	Aggregate income / Total income	60,000

Year of Assessment 2018
Beneficiary's Entitlement to the Distributable Income and Total Income of the Trust Body of the Trust

Beneficiary	Entitlement	
	Distributable Income RM	Total Income RM
C	11,250 (¼ X 45,000)	15,000 (¼ X 60,000)
D	33,750 (¾ X 45,000)	45,000 (¾ X 60,000)

C and D's share of the total income of the trust body of the trust for the year of assessment 2018 is deemed to be the statutory income from their ordinary source for that year.

12.5 Beneficiary's entitlement to distributable income for any part or parts of the basis year

Where a trust subsists throughout a basis year for a year of assessment, and during any part or parts of that basis year a beneficiary is entitled to the whole or a particular fraction of the distributable income from the trust body, whether resident or not:

(a) the total income of the trust body of the trust would be treated as having accrued evenly from day to day over that basis year and the total income would be apportioned in relation to the part or parts of that basis year;

(b) the whole or particular fraction of the total income of the trust body of the trust for that part or parts of that basis year would be the beneficiary's share of that total income of the trust body; and

(c) the beneficiary's share of that total income that has been ascertained for any part or parts of that basis year is aggregated and deemed to be the amount of his share of that total income.

Example 5

DD Trust is a non-discretionary trust resident in Malaysia and subsists throughout 2018. Up to 30.6.2018, the two (2) beneficiaries, A and B are entitled to ¼ share and ¾ share of the distributable income from the trust body of the trust respectively. From 1.7.2018, A was entitled to the whole of the distributable income as A was the only surviving beneficiary. The total income of the trust body of the trust for the year of assessment 2018 is RM20,000.

The total income of the trust body of the trust deemed to have accrued evenly from day to day over the period of 1.1.2018 to 30.6.2018 is RM10,000. The total income of the trust body deemed to have accrued for the second half year ended 31.12.2018 is RM10,000.

Year of Assessment 2018
Beneficiary's Entitlement to the Total Income
of the Trust Body of the Trust

Beneficiary	**Entitlement to the Total Income**		
	1.1.2018 to 30.6.2018 **RM**	**1.7.2018 to 31.12.2018** **RM**	**Statutory Income from an Ordinary Source** **RM**
A	2,500 (¼ X 10,000)	10,000	12,500
B	7,500 (¾ X 10,000)	Nil	7,500
Total	10,000	10,000	20,000

Note

The computation of the beneficiary's entitlement to the total income of the trust body of the trust is as shown above even though DD Trust is a non-resident for the year of assessment 2018.

12.6 Amounts received by a beneficiary

Amounts received by a beneficiary are amounts of an income nature and include amounts disbursed by the trustees on behalf of the beneficiary or for the benefit of the beneficiary.

Example 6

EE Trust, a non-discretionary trust is a non-resident for the basis year 2018. For the year of assessment 2018, the trust body had a total income of RM10,000 and derived foreign source income of RM5,000. Each of the two (2) beneficiaries i.e. A and B are entitled to a ½ share of the distributable income of RM15,000 from the trust body. Beneficiary A is a resident and beneficiary B is not a resident for the year of assessment 2018.

Year of Assessment 2018
Beneficiary's Entitlement to the Distributable Income and Total Income of the Trust Body of the Trust

Beneficiary	Entitlement	
	Distributable Income RM	Total Income RM
A (Resident)	7,500 (½ X 15,000)	5,000 (½ X 10,000)
B (Non-resident)	7,500 (½ X 15,000)	5,000 (½ X 10,000)

For the year of assessment 2018:

(a) A's statutory income from an ordinary source is RM5,000. The foreign source income received by A of RM2,500 (RM7,500 – RM5,000) is exempt from tax by virtue of paragraph 28, Schedule 6 of the ITA.

(b) B's statutory income from an ordinary source is RM5,000. The foreign source income received by B of RM2,500 (RM7,500 – RM5,000) is not subject to tax as it is income not derived from Malaysia.

13. Discretionary Trusts

13.1 Amount of trust income distributed at the discretion of a trustee

A discretionary trust is a trust whereby a trustee is given the discretion, as stipulated in a trust deed to decide on the amount of trust income (not capital) to be distributed to the beneficiaries, or more usually certain classes of beneficiaries. A trust is not a discretionary trust if a trustee's discretion is in respect of the time and mode of payment of the trust income. The trust body of a discretionary trust is assessed and charged to tax on its total income for a year of assessment in the same manner as any other trust body of a trust.

13.2 Income of beneficiary from a discretionary trust

The statutory income of a beneficiary of a discretionary trust, whether or not the trust body is resident for the basis year for a year of assessment is computed as follows:

(a) Single beneficiary

A particular beneficiary's share of the total income of the trust body for the basis year for a year of assessment is deemed to be the –

(i) total of all sums amount received in Malaysia in that basis year from the trust body of a trust; or

(ii) total income of the trust body for that year of assessment,

whichever is lower.

The beneficiary's share of the total income of the trust body, is his statutory income from the trust body for the year of assessment. This statutory income is from the ordinary source of the beneficiary and will be taxed on the beneficiary.

Example 7

Under the terms of a will, a discretionary trust is created for the benefit of the sole beneficiary. The trustee is empowered to release such sums as he considers necessary for the maintenance and benefit of the beneficiary. For the year of assessment 2018, the total income of the trust is RM100,000 and in the year ended 31.12.2018, the trustee distributed RM120,000 to the beneficiary.

The beneficiary's statutory income from his ordinary source is RM100,000, i.e. the lower of –

(a) trust total income of RM100,000; or

(b) distribution received of RM120,000.

Example 8

Same facts as in Example 7 except that for the year of assessment 2018, the total income of the trust was RM100,000 and in the year ended 31.12.2018, the trustee distributed RM80,000 to the beneficiary. In addition, the beneficiary's statutory income from rental is RM70,000.

The beneficiary's statutory income from his ordinary source is RM80,000, i.e. the lower of –

(a) trust total income of RM100,000; or

(b) distribution received of RM80,000.

The tax payable by the trust would be RM24,000 (24% X RM100,000). The tax suffered on the beneficiary's share of the total trust income would be allowed a set-off under subsection 110(8) of the ITA. Therefore, a set-off of RM19,200 (24% X RM80,000) would be allowed against the income tax payable by the beneficiary.

Year of Assessment 2018	RM
Computation of Tax Payable by the Trust Body of the Trust	
Total income	100,000
Tax payable (24%)	24,000
Computation of Tax Payable by the Beneficiary of the Trust	
Statutory rental income	70,000
Statutory trust income	80,000
Total income / Chargeable income	150,000
Tax payable according to the individual income tax rate	22,900
Less:	
Subsection 110(8) of the ITA [RM80,000 x 24%]	19,200
Tax charged	3,700

(b) More than one particular beneficiary

Where a particular beneficiary –

(i) is one of a class of the beneficiaries of a trust; and

(ii) has received in Malaysia, and any other beneficiary or beneficiaries of that class has or have received in Malaysia any sum or sums of an income nature in that basis year from the trust body; and

(iii) the aggregate of such sums received by all the beneficiaries exceeds the total income of the trust body for that year of assessment,

the statutory income of the beneficiary's share is determined as follows -

$$\text{Total income of trust body} \quad \times \quad \frac{\text{Total of all sums received by beneficiary}}{\text{Aggregate sums received by all the beneficiaries}}$$

Example 9

GG Trust, a discretionary trust resident in Malaysia was created for the benefit of two (2) beneficiaries, A and B. The trustees are empowered to distribute such amounts as they deem necessary for the maintenance and benefit of the beneficiaries. For the year of assessment 2018, the total income of the trust body of the trust was RM150,000 and the trustees released RM40,000 for the benefit of A and RM80,000 for the benefit of B in the year ended 31.12.2018.

The aggregate of the income of RM120,000 (RM40,000 + RM80,000) received by the beneficiaries does not exceed the total income of the trust of RM150,000. Therefore, for the year of assessment 2018, the statutory income from A and B's ordinary source are RM40,000 and RM80,000 respectively.

Example 10

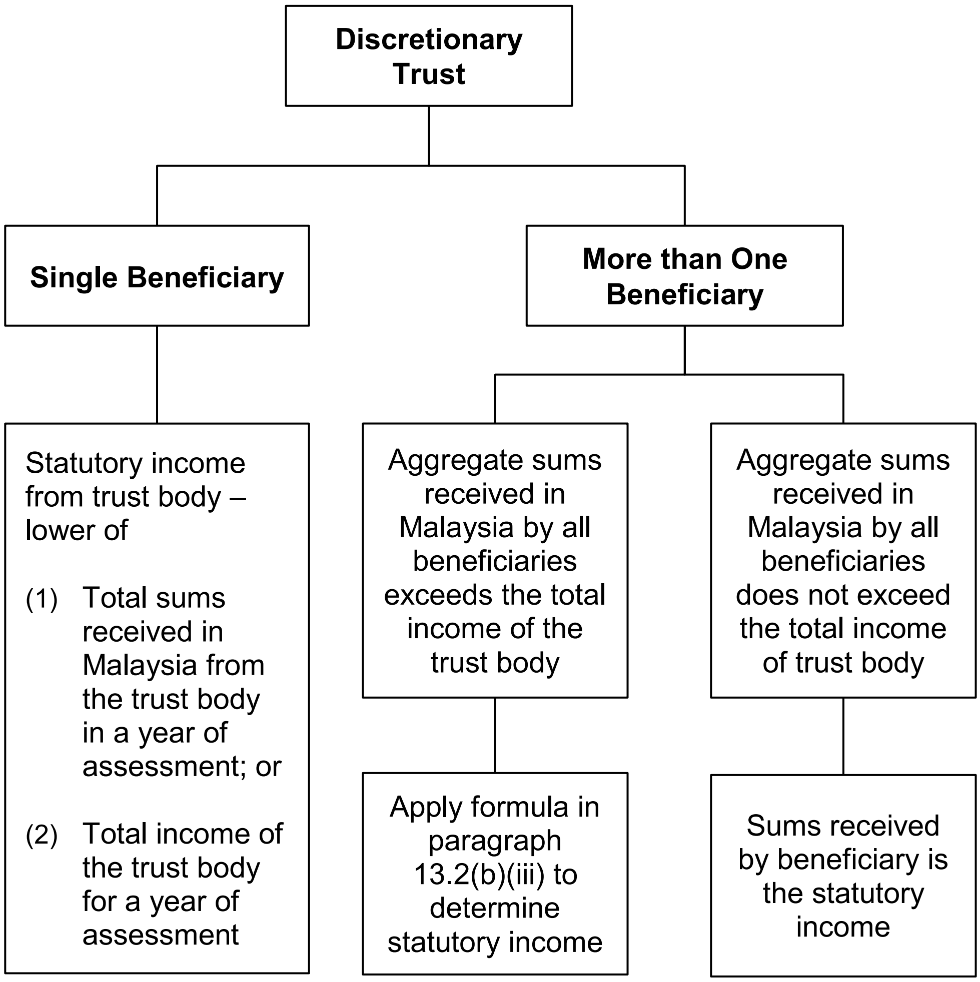
Same facts as in Example 9 except that in the year ended 31.12.2018, A and B received distributable income of RM80,000 and RM120,000 respectively.

As the aggregate sum of RM200,000 (RM80,000 + RM120,000) received by the beneficiaries exceeds the total income of the trust of RM150,000, the statutory income of A and B from their ordinary source is computed as follows -

$$\text{A} \qquad \text{RM150,000} \times \frac{\text{RM80,000}}{\text{RM200,000}} = \text{RM60,000}$$

$$\text{B} \qquad \text{RM150,000} \times \frac{\text{RM120,000}}{\text{RM200,000}} = \text{RM90,000}$$

(c) Summary of the determination of the statutory income of a beneficiary of a discretionary trust



14. **Mixed Trusts**

14.1 Where the trustees have a discretionary power over part of the distributable income from the trust and a non-discretionary power over the other part of the distributable income from trust, such a trust is known as a mixed trust. The total income of the trust body is divided into the discretionary and non-discretionary portion. The beneficiary's statutory income is then the aggregate of the appropriate share of the discretionary and non-discretionary portion. The total income of the trust body is divided into the discretionary and non-discretionary portion in accordance with the following formula:

(a) Discretionary portion

$$\text{Total income of trust body} \times \frac{\text{Discretionary portion of distributable income}}{\text{Total distributable income of trust body}}$$

(b) Non-discretionary portion

$$\text{Total income of trust body} \times \frac{\text{Non-discretionary portion of distributable income}}{\text{Total distributable income of trust body}}$$

Example 11

HH Trust, a mixed trust resident in Malaysia was created for the benefit of A and B who are to receive a ¾ share and ¼ share of half of the distributable income of the trust body. The remaining distributable income is to be divided between C and D, who are to be given such amounts as the trustees consider necessary for their maintenance. C and D received a distribution of RM10,000 and RM8,000 respectively. The distributable income of the trust body for the basis year for the year of assessment 2018 is RM100,000 and the total income is RM120,000.

Non-discretionary portion of the distributable income

RM100,000 X ½ = RM50,000[2]

Discretionary portion of the distributable income

RM100,000 X ½ = RM50,000[3]

In the year ended 31.12.2018, A and B received RM37,500 (¾ X RM50,000) and RM12,500 (¼ X RM50,000) respectively from the non-discretionary portion of the distributable income.

In the year ended 31.12.2018, C and D received RM10,000 and RM8,000 respectively from the discretionary portion of the distributable income.

Non-discretionary portion of the total income of the trust body

$$\text{RM120,000} \quad \text{X} \quad \frac{\text{RM50,000}^{2}}{\text{RM100,000}} = \text{RM60,000}^{4}$$

Discretionary portion of the total income of the trust body

$$\text{RM120,000} \quad \text{X} \quad \frac{\text{RM50,000}^{3}}{\text{RM100,000}} = \text{RM60,000}^{5}$$

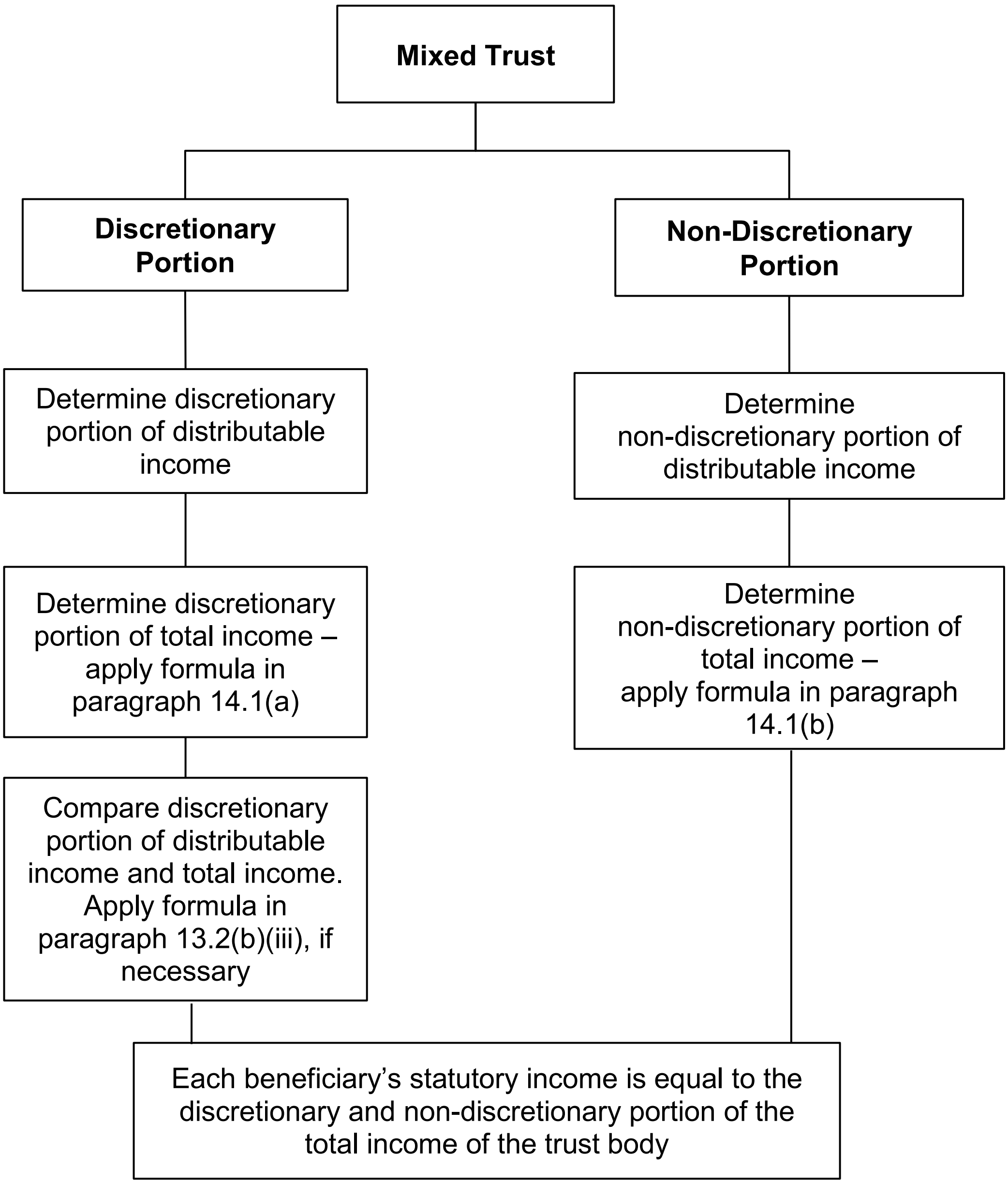
For the year of assessment 2018, the beneficiary's share of the total income from the trust body is determined as follows:

Beneficiary	Non-Discretionary Portion of the Total Income of the Trust Body RM	Discretionary Portion of the Total Income of the Trust Body RM	Beneficiary's Statutory Income from Ordinary Source RM
A	45,000 (60,000[4] X ¾)	Nil	45,000
B	15,000 (60,000[4] X ¼)	Nil	15,000
C	Nil	10,000	10,000[6]
D	Nil	8,000	8,000[7]

[6,7]**Note**

The aggregate of such sums received by C and D amounting to RM18,000 (RM10,000 + RM8,000) does not exceed the the discretionary portion of the total income (RM60,000[5]) of the trust body for year of assessment 2018. Therefore, C and D's statutory income from their ordinary source would be RM10,000 and RM8,000 respectively. The formula as explained in paragraph 13.2(b)(iii) of this PR is not applicable in this case.

14.2 Summary of determination of statutory income of a beneficiary of a mixed trust



15. Income from Trust subject to Trust for Accumulation

15.1 A trust deed may stipulate that a particular fraction of the distributable income of a trust is to be:

(a) distributed to certain beneficiaries, whether for a non-discretionary or discretionary trust; and

(b) accumulated for the benefit of certain beneficiaries until they have met some conditions such as attaining a specified age.

In other words, part of the income from a trust for the basis year for a year of assessment may be subject to a trust for accumulation as provided in a trust deed.

15.2 Where there is a trust for accumulation, the distributable income of the trust body is arrived at after taking into account the amount to be accumulated. Therefore, the portion of total income of the trust body for the purposes of computing the beneficiary's share of the total income is determined as follows:

$$\text{Total income of trust} \times \frac{\text{Distributable income}}{\text{Distributable income plus income of trust subject to trust for accumulation}}$$

15.3 The chargeable income of the trust body is not affected whether the whole or part of the total income is subject to accumulation. The tax payable by the trust would remain the same even though the trust is subject to accumulation. The tax payable for the portion of total income of the trust body of the trust which is accumulated is not given as a tax credit to the beneficiaries.

15.4 When the beneficiary receives the distribution from the income accumulated, no further tax would be levied on the beneficiary as the trust body has already paid the tax on such income.

Example 12

JJ Trust, a non-discretionary trust subject to accumulation is a resident trust in Malaysia with three (3) beneficiaries, A, B and C. RM60,000 is to be accumulated for A until he attains the age of 21 years. B and C's share of the balance of the distributable income is ¾ and ¼ respectively. The income and expenditure for the year ended 31.12.2018 is as follows:

Details	**RM**	**RM**
Rental from properties		120,000
Interest		20,000
		140,000
Less: Expenses		
Loan interest (properties)	4,500	
Repairs and maintenance	5,500	10,000
Net income		130,000

Year of Assessment 2018
Computation of Distributable Income

Details	**RM**	**RM**
Gross rental income		120,000
Gross interest income		20,000
		140,000
Less: Expenditure		
Loan interest	4,500	
Repairs and maintenance	5,500	10,000
Gross income less expenses		130,000
Less:		
Accumulated for A		60,000[8]
Distributable income		70,000[9]

Year of Assessment 2018
Computation of Total Income

Details	**RM**	**RM**
Gross rental income		120,000
Less: Allowable expenses		
Loan interest	4,500	
Repairs and maintenance	5,500	10,000
Statutory rental income		110,000
Statutory interest income		20,000
Aggregate income / Total income		130,000[10]

Computation of Beneficiaries' Statutory Income

$$\text{RM130,000}^{10} \times \frac{\text{RM70,000}^{9}}{\underset{(\text{RM70,000}^{9} + \text{RM60,000}^{8})}{\text{RM130,000}}} = \text{RM70,000}^{11}$$

Year of Assessment 2018
Beneficiary's Statutory Income from Ordinary Source

B = RM52,500 (RM70,000[11] X ¾)

C = RM17,500 (RM70,000[11] X ¼)

A has no statutory income from the trust body for the year of assessment 2018 since A's share is to be accumulated until A has attained the age of 21. When A is 21 years of age, the lump sum which he receives from the trust body will not be chargeable to tax.

Example 13

Same as in Example 11 except that in the trust deed it has been stipulated that RM20,000 is to be accumulated for E until he attains the age of 21 years.

Year of Assessment 2018
Computation of Distributable Income

Details	RM
Gross income less expenses	100,000
Less:	
Accumulation for E	20,000[12]
Distributable income	80,000[13]

Non-discretionary portion of the distributable income

RM80,000[13] X ½ = RM40,000[14]

Discretionary portion of the distributable income

RM80,000[13] X ½ = RM40,000[15]

In the year ended 31.12.2018, A and B received RM30,000 (¾ X RM40,000[14]) and RM10,000 (¼ X RM40,000[15]) respectively from the non-discretionary portion of the distributable income.

Non-discretionary portion of the total income of the trust body

$$\text{RM120,000} \quad \times \quad \frac{\text{RM40,000}^{14}}{\underset{(\text{RM80,000}^{13} + \text{RM20,000}^{12})}{\text{RM100,000}}} \quad = \quad \text{RM48,000}^{16}$$

Discretionary portion of the total income of the trust body

$$\text{RM120,000} \quad \times \quad \frac{\text{RM40,000}^{15}}{\underset{(\text{RM80,000}^{13} + \text{RM20,000}^{12})}{\text{RM100,000}}} \quad = \quad \text{RM48,000}^{17}$$

For the year of assessment 2018, the beneficiary's share of the total income from the trust body is determined as follows:

Beneficiary	**Non-Discretionary Portion of the Total Income of the Trust Body** **RM**	**Discretionary Portion of the Total Income of the Trust Body** **RM**	**Beneficiary's Statutory Income from Ordinary Source** **RM**
A	36,000 (48,000[16] X ¾)	Nil	36,000
B	12,000 (48,000[16] X ¼)	Nil	12,000
C	Nil	10,000	10,000[18]
D	Nil	8,000	8,000[19]

E has no statutory income from the trust body for the year of assessment 2018 since E's share is to be accumulated until E has attained the age of 21. When E is 21 years of age, the lump sum which he receives from the trust body will not be chargeable to tax.

[18, 19]Note

The aggregate of such sums received by C and D amounting to RM18,000 (RM10,000 + RM8,000) does not exceed the discretionary portion of the total income (RM48,000[17]) of the trust body for year of assessment 2018. Therefore, C and D's statutory income from their ordinary source would be RM10,000 and RM8,000 respectively. The formula as explained in paragraph 13.2(b)(iii) of this PR is not applicable in this case.

16. **Trust Annuities**

A beneficiary of a trust may be entitiled to an annuity from the trust body as stipulated in a trust deed. The amount of annuity payable is to be deducted from the aggregate income to arrive at the total income of the trust body. Whether such annuity is derived from Malaysia has to be ascertained as follows:

16.1 Where the whole of the gross income of the trust body from each of its sources for the basis period for a year of assessment is derived from Malaysia or the trust body is resident for the basis year for that year of assessment –

(a) the amount payable in respect of the annuity for that basis year is deemed to be derived from Malaysia, whether or not the trust body has any total income for that year of assessment; and

(b) in ascertaining the total income (if any) of the trust body for that year of assessment, that amount of annuity is to be deducted after any deduction pursuant to subsection 44(2) and Schedule 4 or 4B of the ITA, and before any deduction pursuant to subsection 44(6) or 44(6A) of the ITA.

Example 14

Same facts as in Example 12 except that A is to receive an annuity of RM60,000 and B and C will receive 60% of the distributable income in equal shares and the balance of 40% will be accumulated for A until he attains the age of 21 years.

Year of Assessment 2018
Computation of Distributable Income

Details	RM	RM
Gross rental income		120,000
Gross interest income		20,000
		140,000
Less: Expenditure		
Loan interest	4,500	
Repairs and maintenance	5,500	10,000
Gross income less expenses		130,000
Less:		
Accumulated for A (40%)		52,000[20]
Distributable income		78,000[21]

Year of Assessment 2018
Computation of Total Income

Details	RM	RM
Gross rental income		120,000
Less: Allowable expenses		
Loan interest	4,500	
Repairs and maintenance	5,500	10,000
Statutory rental income		110,000
Statutory interest income		20,000
Aggregate income		130,000
Less:		
Annuity for A		60,000[22]
Total income		70,000[23]

Computation of Beneficiaries' Statutory Income

$$\text{RM70,000}^{23} \times \frac{\text{RM78,000}^{21}}{\underset{(\text{RM78,000}^{21} + \text{RM52,000}^{20})}{\text{RM130,000}}} = \text{RM42,000}^{24}$$

Year of Assessment 2018
Beneficiary's Statutory Income from Ordinary Source

A = RM60,000[22]

B = RM21,000 [RM42,000[24] X ½]

C = RM21,000 [RM42,000[24] X½]

16.2 Where the trust body is not a resident for the basis year for a year of assessment, and the trust body has either a source of income which is derived partly from Malaysia, or has more than one source and one of its sources is derived wholly or partly from Malaysia, –

(a) the trust annuity is deemed derived from Malaysia if the whole of the annuity is deductible in arriving at the total income of the trust body; and

Example 15

KK Trust is not a resident trust in Malaysia with a sole beneficiary A who is a resident in Malaysia. Annuity of RM130,000 was paid to A on 30.11.2018. The following sources of income for the year ending 31.12.2018 are as follows -

Details	RM
Business income (Malaysia)	120,000
Rental income (Malaysia)	10,000

Year of Assessment 2018
Computation of Total Income

Details	RM
Statutory business income (Malaysia)	120,000
Statutory rental income (Malaysia)	10,000
Aggregate income	130,000
Less:	
Annuity for A	130,000
Total income	Nil

A will be assessed on the annuity of RM130,000 under paragraph 4(*e*) of the ITA.

(b) if the whole of the annuity cannot be deducted in arriving at the total income of the trust body because the aggregate income before deducting the annuity is less than the annuity, the amount which can be deducted is deemed to be derived from Malaysia.

Example 16

Same facts as in Example 15 except that the annuity paid to A was RM150,000.

Year of Assessment 2018
Computation of Total Income

Details	**RM**
Statutory business income (Malaysia)	120,000
Statutory rental income (Malaysia)	10,000
Aggregate income	130,000
Less:	
Annuity for A (restricted)	130,000
Total income	Nil

The annuity income of RM130,000 is deemed to be derived from Malaysia and A will be assessed on the annuity of RM130,000 under paragraph 4*(e)* of the ITA. A's foreign source income of RM20,000 (RM150,000 – RM130,000) is not subject to tax as it is income not derived from Malaysia.

17. Joint Annuity

Where any joint annuity is payable as stipulated in a trust deed, each person sharing in the annuity is charged upon that fraction of that annuity, ascertained by dividing the amount of that annuity by the number of the joint annuitants.

Where two or more annuities are payable under the terms of the trust and there is insufficient income to allow a full deduction of all the annuities in arriving at the total income of the trust, the DGIR will give directions for ascertaining how much of the amount payable in respect of each of the annuities is deemed to be derived from Malaysia.

Example 17

Same facts as in Example 14 except that A and B are to receive an annuity of RM60,000 and RM20,000 respectively. C will receive 60% of the distributable income and the balance of 40% will be accumulated for A until he attains the age of 21 years.

Year of Assessment 2018
Computation of Distributable Income

Details	**RM**	**RM**
Gross rental income		120,000
Gross interest income		20,000
		140,000
Less: Expenditure		
Loan interest	4,500	
Repairs and maintenance	5,500	10,000
Gross income less expenses		130,000
Less:		
Accumulated for A (40%)		52,000[25]
Distributable income		78,000[26]

Year of Assessment 2018
Computation of Total Income

Details	**RM**	**RM**
Gross rental income		120,000
Less: Allowable expenses		
Loan interest	4,500	
Repairs and maintenance	5,500	10,000
Statutory rental income		110,000
Statutory interest income		20,000
Aggregate income		130,000
Less:		
Annuity for A	60,000	
Annuity for B	20,000	80,000[27]
Total income		50,000[28]

Computation of Beneficiaries' Statutory Income

$$\text{RM50,000}^{28} \times \frac{\text{RM78,000}^{26}}{\underset{(\text{RM78,000}^{26} + \text{RM52,000}^{25})}{\text{RM130,000}}} = \text{RM30,000}^{29}$$

Year of Assessment 2018
Beneficiary's Statutory Income from Ordinary Source

A = RM60,000

B = RM20,000

C = RM30,000[29]

Example 17

Same facts as in Example 16 except that A, B and C receive an annuity of RM60,000, RM20,000 and RM60,000 respectively.

Year of Assessment 2018
Computation of Total Income

Details	RM	RM
Gross rental income		120,000
Less: Allowable expenses		
Loan interest	4,500	
Repairs and maintenance	5,500	10,000
Statutory rental income		110,000
Statutory interest income		20,000
Aggregate income		130,000[30]
Less:		
Annuity for A	60,000[31]	
Annuity for B	20,000[32]	
Annuity for C	60,000[33]	140,000[34]
Total income		Nil

For the year of assessment 2018, the proportion of each annuity deemed to be derived from Malaysia is computed as follows:

$$\text{Aggregate income} \times \frac{\text{Annuity received by a beneficiary}}{\text{Annuities received by all beneficiaries}}$$

Annuitants	Amount of Annuity Deemed Derived from Malaysia	Amount of Annuity Deemed not Derived from Malaysia
A	RM130,000[30] X RM60,000[31] / RM140,000[34] = RM55,714	RM4,286 (RM60,000[31] – RM55,714)
B	RM130,000[30] X RM20,000[32] / RM140,000[34] = RM18,571	RM1,429 (RM20,000[32] – RM18,571)
C	RM130,000[30] X RM60,000[33] / RM140,000[34] = RM55,714	RM4,286 (RM60,000[33] – RM55,714)

18. Estimate of Tax Payable and Payment of Instalments

The trust body of a trust is required to comply with the advance instalment payments under section 107C of the ITA via CP 204 and CP204A. Failure to comply would result in a tax increase under subsections 107C(9) and 107C(10) of the ITA.

19. Filing of Income Tax Return Form

The trust body of a trust is required to submit the ITRF (Form **TA**) for the relevant year of assessment and pay the balance of tax payable to the DGIR within seven months from the date following the close of the relevant accounting period. Failure to pay the balance of tax payable would result in a tax increase under section 103 of the ITA.

20. Taxation of a Trustee

The remuneration received by a trustee from the trust is employment income in the hands of the trustee who is an individual. The trustee would be taxed on the employment income under paragraph 4(*b*) of the ITA. If the trustee is a company, the fees received will be taxed as business income under paragraph 4*(a)* of the ITA.

21. Taxation of a Settlor Who Creates a Settlement for Minors

A trust may be created by a settlor for the benefit of beneficiaries who are minors (below the age of 21). Therefore, the settlor has created a settlement and income arising under a settlement for the benefit of minors would be regarded as income of the settlor by virtue of section 65 of the ITA.

22. Disclaimer

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

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