INLAND REVENUE BOARD OF MALAYSIA

PROPERTY DEVELOPMENT

PUBLIC RULING NO. 9/2022

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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 basis of ascertaining gross income for the purpose of computing adjusted income derived from the business of property development.

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 paragraph 4(a), section 4C, paragraphs 23(a) section 24, subsections 33(1) and 33(2), section 35, subsection 36(1), sections 39 and 91 of the ITA.

2.3 The relevant subsidiary law referred to in this PR is the Income Tax (Property Development) Regulations 2007 [P.U. (A) 277/2007].

3. Interpretation

The words used in this PR have the following meaning:

3.1 “Progress payments” means amounts billed for work performed on properties sold in respect of property development activities, whether or not they have been paid;

3.2 “The DGIR” refers to the Director General of Inland Revenue Board Malaysia;

3.3 “Property developer” means a company, an individual, a partnership, a co-operative society, a body of persons, who or which engages in or carries on or undertakes or causes to be undertaken property development;

3.4 “Property development” means the activity of acquiring land for the purpose of developing, constructing or causing to be constructed thereon and selling completed residential, commercial or industrial buildings, whether as a whole or by parcels therein, and development and sale of vacant lots for the construction of such buildings thereon including homesteads, hobby farms, orchards or for other similar purposes;

3.5 “Project” means a cluster of development units erected within a designated geographical area forming a cost-accumulating centre and includes vacant lots developed for sale, and where a cluster of development unit is erected in more than one phase, the development units erected in each phase shall be treated as a separate cluster of development units erected within a designated geographical area;

3.6 "Development units" means units of residential, commercial or industrial building and vacant lots developed for sale.

4. Date of Commencement of Business

4.1 The date of commencement of a property development business is a question of fact. Generally, the DGIR deems a property development business commences on a date when some significant activities or essential preliminaries to the normal operations of property development are undertaken.

Examples are the physical possession of the development site, the active development of the land (such as levelling of land or piling) or booking of houses by house buyers.

Example 1

Syarikat A Sdn. Bhd., a property development company, bought a piece of agriculture land and make an application to convert the land status to residential land. The company launched the housing project by inviting the public to make bookings. Active development such as earthwork and piling was carried out on the land.

The relevant information is as follows:

Details	Date
Incorporation of company	02.01.2018
Purchase of land	12.02.2019
Application for conversion of land	23.06.2019
Booking of houses opened to public	11.02.2020
Active development of land	05.04.2020

Since the company is a property developer and the time interval between the activities carried out after the purchase of land is close and consecutive, the date of commencement of the property development business is 12.02.2019 which is the date of purchase of land.

Example 2

Syarikat B Sdn. Bhd. incorporated on 18.08.2013 has purchased a piece of land on 13.11.2015 with the intention of carrying out the property development business.

The relevant information and activities carried out by Syarikat B are as follows:

Details	Date
Purchase of land	13.11.2015
Application for conversion and subdivision of land	03.01.2019
Application for development order	03.01.2019
Application for court order to evict squatters from the land	27.11.2019
Court order to evict the squatters	09.03.2020
Approval for development of land	30.05.2020
Signed agreement with Y Sdn. Bhd. to develop land	27.07.2020

In this case, the date of commencement of the property development business is not 13.11.2015 (the date of purchase of land) but 03.01.2019 which is the date of application for conversion and subdivision of land. Here, an important element in identifying the commencement of business activity is the commitment to the project and activities undertaken.

4.2 Notwithstanding the above paragraphs, the date of commencement of a property development business may also fall on any other date, as the DGIR considers appropriate and reasonable.

5. Separate Source of Income a Property Development Project

In ascertaining the gross income of a property developer from its property development business, each property development project shall be treated as a separate and distinct source of income of a project of the property developer although the business as a whole still constitutes one source of income from the property development business.

Example 3

Syarikat C Sdn. Bhd. undertakes a property development project consisting of three phases in the year 2020. The information is as follows:

Details	Phase 1	Phase 2	Phase 3
Type of development	Condominium	Double storey terrace houses	Double storey semi-detached houses
Estimated gross profit RM	2,500,000	3,000,000	2,200,000

Therefore, each phase shall be treated as a separate property development project to ascertain the company's gross income for the year of assessment 2020. All projects will be considered as one source of income from property development business.

6. Recognition of Income Prior to Completion of Project

6.1 The taxation and recognition of gross income from a property development business is ascertained in accordance with section 24 of the ITA, which provides that the gross income from a business shall be assessed on a receivable basis and the Income Tax (Property Development) Regulations 2007 [P.U. (A) 277/2007].

6.2 Income from property development business shall be recognised as development activity progresses, by reference to the stage of completion of the development activity at the statement of financial position date.

6.3 The stage of completion of a property development project shall be determined using "Percentage of Completion Method", where the project income shall be matched with the development expenditure incurred for the basis period for the year of assessment.

6.4 The Percentage of Completion Method of a property development project may be determined based on-

(a) progress payments;

(b) cost incurred to date;

(c) surveys of work performed; or

(d) any other formula.

6.5 Income recognition of a property development project shall commence when all the following criteria are met:

(a) when the sale of the development units is executed (when sales and purchase agreements are signed); and

(b) upon commencement of development activities.

6.6 Gross income

The gross income of property developer for the basis period for the year of assessment in respect of each property development project shall be the estimated gross profit of the property developer for that period as ascertained under paragraph 6.7 or 6.8.

Example 4

Syarikat D Sdn. Bhd. which closes accounts on 31 December each year carries out a project with three phases in Kuala Lumpur and the estimated gross profit from the project in the year 2020 is as follows:

Details	**Estimated Gross Profit RM**
Phase 1	2,500,000
Phase 2	3,000,000
Phase 3	2,200,000
Total	**7,700,000**

Therefore, the gross income of the company from the property development business for the basis year for a year assessment 2020 is RM7,700,000.

6.7 Estimated gross profit

The estimated gross profit of a property developer for the basis period for the year of assessment in respect of a property development project shall be an amount ascertained in accordance with the following formula:

$$\frac{A}{B} \times C$$

Where

A = sum of progress payments in respect of the project, received and receivable in that basis period (the figures must reflect the actual position prevailing at the statement of financial position date);

B = total estimated sale value of the project; and

C = total estimated gross profit from the project, i.e., the expected gross profit to be derived from that project or phase.

Example 5

Syarikat E Sdn. Bhd. which closes accounts on 31 December each year commenced a housing project (single phase) in the year 2016 and estimates that the project will be completed in the year 2019. Total estimated sale value of the project is RM24 million and total estimated development costs is RM16 million. Therefore, the estimated gross profit is RM8 million.

Progress payments received and receivable are as follows:

Year	Progress Payments Received and Receivable RM
2016	5,000,000
2017	8,000,000
2018	6,000,000
2019	5,000,000
Total	**24,000,000**

Applying the formula above, the estimated gross profit for each year of assessment is as follows:

Computation of Estimated Gross Profit
for Year of Assessment (YA) 2016 to 2019

Details	YA 2016 RM	YA 2017 RM	YA 2018 RM	YA 2019 RM
Estimated gross profit for the project	8,000,000			
Total progress payments received and receivable	5,000,000	8,000,000	6,000,000	5,000,000
Details	**YA 2016 RM**	**YA 2017 RM**	**YA 2018 RM**	**YA 2019 RM**
Total estimated sales value	24,000,000			
Estimated gross profit for the year of assessment	$\frac{5,000,000}{24,000,000}$ X 8,000,000 = **1,667,000**	$\frac{8,000,000}{24,000,000}$ X 8,000,000 = **2,666,000**	$\frac{6,000,000}{24,000,000}$ X 8,000,000 = **2,000,000**	**1,667,000** [1 & 2]

Note

[1] RM8,000,000 - (RM1,667,000 + RM2,666,000 + RM2,000,000) = RM1,667,000

[2] Upon completion of the project, this amount shall be replaced by the actual gross profit of the project less the estimated gross profit that has been recognised for year 2016, 2017 and 2018.

Example 6

F & F Development, a partnership that carries on a property development business, has a project with two phases progressing concurrently. Phase 1 is expected to be completed in the year 2019 and Phase 2 in the year 2020.The following information is provided by the partnership:

Details	Phase 1 RM	Phase 2 RM
Total estimated sales value	40,000,000	60,000,000
Total estimated development cost	32,000,000	50,000,000
Estimated gross profit	**8,000,000**	**10,000,000**

Progress payments received and receivable are as follows:

Year Ended 31 Dec	Phase 1 RM	Phase 2 RM
2016	6,000,000	5,000,000
2017	14,000,000	12,000,000
2018	14,000,000	16,000,000
2019	6,000,000	20,000,000
2020	-	7,000,000
Total	**40,000,000**	**60,000,000**

The estimated gross profit for each year as follows:

Computation of Estimated Gross Profit
for Year of Assessment (YA) 2016 to 2019

Phase 1

<table>
<tr><th>Details</th><th>YA 2016
RM</th><th>YA 2017
RM</th><th>YA 2018
RM</th><th>YA 2019
RM</th></tr>
<tr><td>Estimated gross profit for the project</td><td colspan="4">8,000,000</td></tr>
<tr><td>Total progress payments received and receivable</td><td>6,000,000</td><td>14,000,000</td><td>14,000,000</td><td>6,000,000</td></tr>
<tr><td>Total estimated sales value</td><td colspan="4">40,000,000</td></tr>
<tr><td>Estimated gross profit for the year of assessment</td><td>$\frac{6,000,000}{40,000,000}$
X
8,000,000 =
1,200,000</td><td>$\frac{14,000,000}{40,000,000}$
X
8,000,000 =
2,800,000</td><td>$\frac{14,000,000}{40,000,000}$
X
8,000,000 =
2,800,000</td><td>1,200,000 [3 & 4]</td></tr>
</table>

Note

[3] RM8,000,000 - (RM1,200,000 + RM2,800,000 + RM2,800,000) = RM1,200,000

[4] Upon completion of the project, this amount shall be replaced by the actual gross profit of the project less the estimated gross profit that has been recognised for year 2016, 2017 and 2018.

Computation of Estimated Gross Profit for Year of Assessment (YA) 2016 to 2020

Phase 2

Details	YA 2016 RM	YA 2017 RM	YA 2018 RM	YA 2019 RM	YA 2020 RM
Estimated gross profit for the project	10,000,000				
Total progress payments received and receivable	5,000,000	12,000,000	16,000,000	20,000,000	7,000,000
Total estimated sales value	60,000,000				
Estimated gross profit for the year of assessment	5,000,000 / 60,000,000 X 10,000,000 = **833,000**	12,000,000 / 60,000,000 X 10,000,000 = **2,000,000**	16,000,000 / 60,000,000 X 10,000,000 = **2,667,000**	20,000,000 / 60,000,000 X 10,000,000 = **3,333,000**	**1,167,000** [5 & 6]

Note

[5] RM10,000,000 - (RM833,000 + RM2,000,000 + RM2,667,000 + RM3,333,000) = RM1,167,000

[6] Upon completion of the project, this amount shall be replaced by the actual gross profit of the project less the estimated gross profit that has been recognised for year 2016, 2017, 2018 and 2019.

6.8 Other formula

The DGIR may allow a property developer to use a formula, other than the formula provided in paragraph 6.7 to ascertain the estimated gross profit from the property development project. The formula adopted shall be in accordance with the accounting standards or practice applicable during the basis period that relates to the project.

Example 7

G Sdn. Bhd. has a development project for which the cost to date formula was adopted in arriving at the percentage of completion. The financial data of the project is as follows:

Details	
Number of units built	100
Number of units sold	40
	RM
Sale price per unit	300,000
Cost excluding land cost Cost incurred to date Further cost to complete Total cost	 11,000,000 10,000,000 21,000,000
Land cost	4,000,000
Budgeted cost per unit (included cost of land) RM25,000,000 (RM21,000,000 + RM4,000,000) 100	250,000
Total sales value of units sold 40 X RM300,000	12,000,000
Total budgeted cost of unit sold 40 X RM250,000	10,000,000
Percentage of completion RM11,000,000 X 100% RM21,000,000[7]	52%
Attributable profit or loss Income : RM12,000,000 X 52% = RM6,240,000 Expenses : RM10,000,000 X 52% = RM5,200,000	**RM** 1,040,000

Note

[7] Total cost for this purpose are not include cost of land and site materials not yet used.

6.9 In ascertaining the estimated gross profit of the property development project according to the formula in paragraph 6.7 or 6.8, the property developer shall ensure that is uses fair and reasonable estimates.

6.10 Consistency and fair spread

Where the estimated gross profit or revised estimated gross profit of a property developer has been ascertained in accordance with the formula as described in paragraph 6.7 or 6.8, the property developer shall apply the formula consistently throughout the period of its property development project. The result shall reflect a fair spread of the estimated gross profit for the relevant period.

Example 8

Syarikat H Sdn. Bhd. commenced its first development project of terrace houses in the year 2019. The company had recognised the project income by using the percentage of completion method based on progress payments for the project.

In the year 2020, the company undertook its second project, a condominium project and decided to use the percentage of completion formula based on cost incurred to date for this project.

The company may use different formulae for two projects carried out. However, any formula adopted for each project must be applied consistently until the project is completed.

6.11 Where the method of accounting used results in a distortion of the true and fair spread of the estimated gross profits for taxation purposes, the DGIR may review the assessments for all the relevant years to ensure a fair and reasonable spread of the estimated gross profit over the duration of the project.

6.12 This ruling explains the income tax treatment to be applied for property development projects where the commencement and the completion date of the project fall into different accounting periods.

6.13 Where a property developer prepares an account on a completion of contract method, the property developer is required to compute his income tax liability for the year of assessment by using the percentage of completion method to determine and recognise the estimated gross profits annually. Property developers are not allowed to defer the recognition of income in the accounts until the property development is completed.

7. Estimated Loss from Uncompleted Project

7.1 Computation of estimated loss

The estimated loss of a property developer for the basis period for the year of assessment in respect of a property development project shall be ascertained in accordance with the formula provided for in paragraph 6.7 or 6.8. In applying the formula, the total estimated gross profit in the formula shall be substituted with total estimated loss from the project.

Example 9

J Sdn. Bhd. has a property development project in Ampang with several phases which are expected to be completed in 3 years. Phase 2 which will take three years to complete is expected to incur an estimated gross loss of RM50,000.

Phase 2 is 20% completed in the first year. The estimated loss of Phase 2 for the first year is computed as follows:

[20% x RM50,000] = RM 10,000

7.2 Where for a basis period for the year of assessment, a property developer anticipates that there would be an estimated loss from one or more of its property development projects for that basis period, the estimated loss or aggregate of estimated loss from those projects shall be allowed to be set off against the aggregate of the estimated gross profits from the other property development projects of the property developer for the same basis period.

7.3 Estimated loss less than estimated gross profit

Where the estimated loss or aggregate of estimated loss from one or more projects for the basis period is less than the aggregate estimated gross profit from other projects, the excess of estimated gross profit is the gross income from the property development business.

Example 10

K Development Sdn. Bhd. which closes its accounts on 31.12.2019 has a property development project of three phases in Shah Alam. The estimated gross profit or loss of the three phases for the year 2019 is as follows:

Details	Estimated Gross Profit or Loss	RM
Phase 1	Estimated gross profit	30,000
Phase 2	Estimated loss	(10,000)
Phase 3	Estimated loss	(15,000)

The aggregate estimated loss from phase 2 and 3 amounting to RM25,000 is allowed to be set off against the estimated gross profit of RM30,000 from phase 1. The excess of estimated gross profit amounting to RM5,000 is the gross income from the property development business for the year of assessment 2019.

7.4 Estimated loss more than aggregate estimated gross profit

Where the estimated loss or aggregate estimated loss of the property developer from one or more projects for that basis period exceeds the aggregate estimated gross profit from other projects, the excess shall be disregarded for the purposes of ascertaining the chargeable income of the property developer for that basis period and subsequent basis periods until the projects are completed and actual losses are ascertained.

Example 11

L Development Sdn. Bhd. which closes its accounts on 31.12.2019 has a property development project of three phases in Kajang. The estimated gross profit or loss for the three phases for the year 2019 is as follows:

Details	Estimated Gross Profit or Loss	RM
Phase 1	Estimated gross profit	30,000
Phase 2	Estimated loss	(10,000)
Phase 3	Estimated loss	(22,000)

The aggregate estimated loss from phase 2 and 3 amounting to RM32,000 is more than the estimated gross profit from phase 1 by RM2,000. Hence, the gross income for the year of the assessment 2019 from the property development business is “Nil”. The estimated loss of RM2,000 shall be disregarded for the year of assessment 2019 and subsequent years of assessment until the projects for phase 2 and 3 are completed and actual loss is ascertained. The estimated loss of RM2,000 cannot be used to offset against other sources of income of the company.

7.5 Estimated loss shall not be allowed to be set off against actual gross profit

Estimated loss or aggregate estimated losses from one or more projects for a basis period shall not be allowed to be set off against the actual gross profit of other projects for the purpose of ascertaining the chargeable income of the property developer for that basis period.

Example 12

Syarikat M Sdn. Bhd. which closes its accounts 31.12.2019 has a property development project of three phases in Pulau Pinang. The actual profit from the completed Phase 1 and estimated gross profit/loss from the remaining two phases for the year 2019 as follows:

Details	Estimated Gross Profit or Loss	RM
Phase 1	Actual gross profit	20,000
Phase 2	Estimated gross profit	10,000
Phase 3	Estimated loss	(15,000)

The gross income of the company for the year of assessment 2019 from the property development business is RM20,000. The estimated loss of RM15,000 from phase 3 can only be allowed to be set off against the estimated gross profit of RM10,000 from phase 2 and the excess estimated loss of RM5,000 is disregarded for the year of assessment 2019 and subsequent years of assessment until the project is completed and actual loss is ascertained.

8. Revision of Estimates and Tax Computation

8.1 In the course of a project, there may be a situation where the original estimate made by the property developer needs to be revised.. Revision of estimate is allowed only in the following circumstances:

(a) there is a variation in the development cost of the project;

(b) there is a variation in the selling price of the development units of the project; or

(c) any commercial reasons as may be accepted by the DGIR.

8.2 Such circumstances may result in a change in the estimated gross profit, and cause the existence one of the following situations:

(a) estimated gross profit is reduced;

(b) estimated gross profit becomes estimated loss; or

(c) estimated gross profit is increased.

8.3 Where the situations in paragraph 8.2 arise due to any of the circumstances described in paragraph 8.1, the property developer may revise the estimated gross profit for that basis period and the immediately following basis periods by using the revised estimated sales value and estimated development cost. Prior years' assessments based on the original estimates should not be reopened since the adjustments shall be made in the basis period when project is completed by using the actual sales value and development cost.

Example 13

Syarikat N Sdn. Bhd. a property developer commenced a housing project in the year 2017. The original estimate for the year ended 31.12.2017 at the commencement of the project is revised in the year 2018. The reasons for the revision are that development costs have increased while the company had to reduce the selling price of the development units to attract more buyers. These reasons are acceptable to the DGIR. The company provides the following particulars:

Details		**Original Estimate RM**	**Revised Estimate RM**
		2017	**2018**
Total sales value of project **(B)**		10,000,000	9,500,000
Total development cost		7,000,000	7,500,000
Total gross profit **(C)**		3,000,000	2,000,000
Amount receivable **(A)**	2017	3,000,000	3,000,000
	2018	3,000,000	2,700,000
	2019	2,000,000	1,900,000
	2020	2,000,000	1,900,000

Applying the formula in paragraph 6.7, the estimated gross profit for each year is as follows:

Computation of Estimated Gross Profit
for Year of Assessment 2017 to 2020

Year of Assessment	Original Estimate RM	Revised Estimate RM
2017	900,000	631,580
2018	900,000	568,420
2019	600,000	400,000
2020	600,000	400,000
Total	**3,000,000**	**2,000,000**

Since the revision is made in the year 2018, the revised estimate shall be taken into the computation with effect from the year of assessment 2018. The original estimated in respect of the year ended 31.12.2017 amounting to RM900,000 is not to be adjusted. Thus, the property developer would have been subject to tax on a total gross profit as follows:

Year of Assessment	RM	Note
2017	900,000	Original Estimate
2018	568,420	Revised Estimate
2019	400,000	
2020	400,000	
Total	**2,268,420**	

Adjustments should be made in the basis period when the project is completed, when the sales value, development cost and actual gross profit can be ascertained.

In this example, assuming the project has been completed and the actual gross profit that can be ascertained in the year of assessment 2020 is RM2,000,000, the actual gross profit for tyear of assessment 2020 is RM131,580 (RM400,000 – RM268,420) to reduce the estimated gross profit of RM2,268,420 to actual gross profit RM2,000,000.

Example 14

Same facts as in Example 13 except that the company decides to use the cumulative progress payments as follows:

Computation of Estimated Gross Profit
(Based on Cumulative Progress Payments)
for Year of Assessment 2017 to 2020

Year of Assessment	Cumulative Progress Payments RM	Cumulative Profit RM
2017	3,000,000	$\frac{3,000,000}{10,000,000}$ X 3,000,000 = 900,000
2018	5,700,000	$\frac{5,700,000}{9,500,000}$ X 2,000,000 = 1,200,000
2019	7,600,000	$\frac{7,600,000}{9,500,000}$ X 2,000,000 = 1,600,000
2020	9,500,000	$\frac{9,500,000}{9,500,000}$ X 2,000,000 = 2,000,000

Hence, the property developer would be subject to tax on current year profit for each year of assessment as follows:

Year of Assessment	Cumulative Profit to Date (A) RM	Cumulative Profit Up to Previous Year of Assessment (B) RM	Current Year Profit (A-B) RM
2017	900,000	0	900,000
2018	1,200,000	900,000	300,000
2019	1,600,000	1,200,000	400,000
2020	2,000,000	1,600,000	400,000
Total			**2,000,000**

9. **Cancellation of Purchases**

In the case where a development unit buyer surrenders or cancels his purchase, the buyer may lose the payment that has been made to the property developer. Therefore, the adjustment on the purchase cancellation shall be made in the basis period the cancellation take place.

For example, the buyer bought a house in the year 2017 and cancelled the purchase in the year 2018, the developer shall make an adjustment in relation to the cancellation in the year 2018. His assessment for the year of assessment 2017 has been finalised. Though the cancellation affected the developer's tax liability for the year of assessment 2017, the assessment is not to be reopened. Instead, the adjustment shall be taken into account in computing his income tax liability for the year of assessment 2018.

Example 15

P Development Sdn. Bhd. commenced a new project in the year 2017 to build 200 houses, scheduled to be completed in the year 2020. In the year 2017, all 200 houses were sold. When the company closed the accounts on 31.12.2018, ten (10) buyers cancelled their purchase.

These buyers lost the payments made in the year 2017. No further payments were made in the year 2018. The company is unable to resell the said 10 houses in the year 2018. Other information provided by the company is as follows:

Details	RM
Total sale price of 200 houses	40,000,000
Total estimated cost of development	30,000,000
Original estimated gross profit	10,000,000
Payments receivable in the year 2017	20,000,000
Payments receivable in the year 2018	10,000,000
Payments receivable in the year 2019	6,000,000
Payments receivable in the year 2020	4,000,000
Payments receivable in the year 2017 for the 10 houses	1,000,000
Payments received in the year 2017 for the10 houses	600,000[8]
Payments receivable in the year 2018 for the10 houses	500,000

Note

[8] Forfeited in the year 2017

Computation of Estimated Gross Profit for Year of Assessment 2017

The original estimated gross profit for the year is as follows:

$$\frac{RM20{,}000{,}000}{RM40{,}000{,}000} \times RM10{,}000{,}000 = RM5{,}000{,}000$$

RM5,000,000 is the company's estimated gross profit for the year of assessment 2017.

The company revised the estimated gross profit due to cancellation of 10 purchases and the amount calculated as follows:

$$\frac{RM19{,}000{,}000^{9}}{RM40{,}000{,}000} \times RM10{,}000{,}000 = RM4{,}750{,}000$$

Note

[9] Payments receivable for the year 2017 less payment receivable for 10 houses cancelled is RM19,000,000 (RM20,000,000 - RM1,000,000).

Therefore, the company shall make an adjustment to the estimated gross profit of RM250,000 (RM5,000,000 - RM4,750,000) in the year ended 31.12.2018.

However, for income tax purposes, the assessment for the year of assessment 2017 based on the original estimated gross profit of RM5,000,000 cannot be revised. An adjustment of RM250,000 shall be made in the year of assessment 2018.

Computation of Estimated Gross Profit for Year of Asessment 2018

The estimated gross profit in respect of 190 houses calculated as follows:

$$\frac{RM9{,}500{,}000^{\mathbf{10}}}{RM40{,}000{,}000} \times RM10{,}000{,}000 = RM2{,}375{,}000$$

Note

[10] Payments receivable for the year 2018 less payment receivables for 10 houses cancelled is RM9,500,000 (RM10,000,000 - RM500,000).

For income tax purposes, the estimated gross profit of RM2,375,000 is adjusted by deducting the amount of RM250,000 arising from the cancellation. Adjusted estimated gross profit is RM2,125,000 (RM2,375,000 – RM250,000).

The above example should be distinguished from the case where a buyer defaults his payments. In such a case, there is no cancellation of the purchase and the gross profit is to be assessed in full.

For purposes of record, a full list of cancellation has to be kept and filed properly.

Payment received in the year 2017 for the 10 houses amounting to RM600,000 which was forfeited when the cancellation occurs shall be recognised as other business income of the property development business and taxable in the year of assessment 2018.

10. Completion of Project

10.1 Date of completion of a project

A property development project shall be deemed completed on -

(a) the date on which the Temporary Certificate of Fitness for Occupation is issued;

(b) the date on which the Certificate of Fitness for Occupation (CFO) is issued; or

(c) the date of any other certification which has a similar effect;

whichever is earlier

[With effect from 12 April 2007, the Certificate of Completion and Compliance (CCC) has replaced the CFO.]

10.2 Where a phase consist of few blocks of condominiums or apartments and the blocks are separately given CCC or vacant possession on different dates, the date of completion for each block is deemed to be the date of CCC or vacant possession, whichever is earlier.

Example 16

Syarikat Q Sdn. Bhd. undertakes a condominium project consisting of three blocks. Block 1 was completed on 01.08.2020. Due to some unforeseen circumstances, development works on Block 2 and 3 were stopped in March 2020 when the works done had reached 50% and 30% respectively.

Block 1 is deemed completed when CCC is issued or when house puchasers are given vacant possession of their condominium units, whichever is earlier.

10.3 Ascertainment of actual gross profit or loss

Where in a basis period for a year of assessment a property development project is deemed to have been completed, the property developer shall ascertain the actual gross profit or loss from the project based on the actual sales value and the actual development costs in that basis period.

10.4 Tax treatment upon completion of project

10.4.1 Actual gross profit or loss

Upon completion of a property development project or delivery of vacant possession of completed units, the actual gross profit or loss for the project may be ascertained. The following situations may arise:

(a) the actual gross profit from the project is more than the total estimated gross profit that has been recognised as gross income of the developer for that period as ascertained using the formula in paragraph 6.7 or 6.8;

(b) the actual gross profit from the project is less than the total estimated gross profit that has been recognised as gross income of the developer for that period as ascertained using the formula in paragraph 6.7 or 6.8; or

(c) there is an actual loss from the project.

10.4.2 Actual gross profit more than estimated gross profit

Where the actual gross profit from the project is more than the total estimated gross profit that has been taxed in the preceding years of assessment, the difference shall be treated as part of gross income of the developer for the basis period of project completion.

Example 17

Details	RM	RM
Actual gross profit		3,800,000
Less:		
Estimated gross profit for year 1	700,000	
Estimated gross profit for year 2	900,000	
Estimated gross profit for year 3	1,200,000	2,800,000
Difference of gross profit		1,000,000

The difference of RM1,000,000 shall be treated as part of the gross profit in the basis period of project completion. Prior year assessments were not reopened or reviewed.

10.4.3 Actual gross profit less than estimated gross profit

Where the actual gross profit from the project is less than the total estimated gross profit that has been taxed, the actual profit for that basis period and preceding basis periods may be apportioned by applying the formula as in paragraph 6.7 or 6.8. The assessments that have been made can be reviewed or for the assessment to be made can be determined accordingly with this ruling.

In applying the formula in paragraph 6.7 or 6.8, the property developer shall use the actual sales value, development cost and profit or loss from that project.

Example 18

A project commenced in the year 2017 and completed in the year 2020. The actual gross profit in the year the project is completed is RM2,000,000. The estimated gross profit that has been taxed in prior years of assessment is as follows:

Year of Assessment	Estimated Gross Profit RM
2017	500,000
2018	1,300,000
2019	800,000
Total	**2,600,000**

Since the actual gross profit is less than the total estimated gross profit for the years of assessment 2017 to 2019 of RM600,000, all the prior years' assessments may be reviewed. The actual gross profit for years of assessment 2017 to 2020 will be ascertained as follows:

Details	RM	RM
Actual gross profit	2,000,000	
Gross profit for YA 2017 (20%)		400,000
Gross profit for YA 2018 (50%)		1,000,000
Gross profit for YA 2019 (25%)		500,000
Gross profit for YA 2020 (5%)		100,000
Total actual gross profit		**2,000,000**

However, if the company chooses not to reopen the prior years of assessment, the DGIR may allow the company to make the adjustment to the gross profit for the year of assessment 2020 on condition that there are no tax implications for all the relevant years of assessment.

10.4.4 Project with actual loss

Where a project ultimately incurs a loss, the actual loss from the project may be apportioned to each relevant years of assessment by applying the formula in paragraph 6.7 or 6.8.

However, if the company chooses not to reopen the prior years of assessment, the DGIR may allow the company to make the adjustment to the gross profit in the year project is completed on condition that there are no tax implications for all the relevant years of assessment.

10.5 Concurrent multiple projects

A developer may carry on a few projects concurrently, where in the same basis period there may be projects under development, projects completed and new projects launched.

The following example illustrates a property developer who has multiple projects where there are situations as follows:

(a) a revision of estimated gross profit to estimated loss in the middle of the project;

(b) actual gross profit or loss when project is completed; and

(c) estimated gross profit for other projects being developed.

Example 19

Syarikat R Sdn. Bhd. commenced Project X in the year 2017 which is completed in the year 2020. The original estimated gross profit for the project was RM800,000 but revised in the year 2019 to an estimated loss of RM200,000. In the year Project X was completed, the actual loss was RM205,000. The revision was for reasons acceptable to the DGIR.

The distribution of original and revised estimated gross profit or loss for each year based on the formula are computed by the company as follows:

Project X 31 Dec	Original Estimated Gross Profit RM	Revised Estimated Gross Profit/(Loss)[11] (in the Year 2019) RM	Revised Estimated Gross Profit/(Loss) (in the Year 2020 - Project X Completed) RM
2017	250,000[12]	(62,500)	(62,500)
2018	250,000[12]	(62,500)	(62,500)
2019	150,000	(37,500)	(37,500)
2020	150,000	(37,500)	(42,500)[13]
Total	**800,000**	**(200,000)**	**(205,000)**

Note

[11] The revision was made in the year 2019. Therefore, the revised estimate was only taken into account in the tax computation for the year of assessment 2019.

[12] The original estimated gross profit in the year 2017 and year 2018 amounting to RM250,000 respectively were not revised. The revision was only made when the Project X was completed.

[13] The adjustment of the losses shall be made in the basis period Project X was completed when the actual loss can be ascertained.

The company appealed that the relevant prior year's assessment relating to Project X be reviewed. Particulars in relation to other projects including the expenses in the statement of comprehensive income are as follows:

Year Ended 31 Dec	2017 RM	2018 RM	2019 RM	2020 RM
Gross profit - Project W	30,000	30,000	-	-
Gross profit - Project Y	-	20,000	20,000	60,000
Gross profit - Project Z	150,000	-	-	-
Expenses	30,000	15,000	20,000	10,000

Assuming the estimated or actual gross profit for other projects do not need to be amended and all the expenses claimed in the statement of comprehensive income are allowable, the tax computations for the Company R is as follow:

Computation of Adjusted Income/ (Loss)
for Year of Assessment 2017 (Revised in the Year 2020)

Details	Original Estimated Gross Profit RM	Revised Estimated Gross Profit/(Loss) (in the Year 2020 - Project X Completed)[14] RM
Project X	250,000	(62,500)[15]
Project W	30,000	30,000
Project Z	150,000	150,000
Total gross income	**430,000**	**117,500[16]**
Expenses	(30,000)	(30,000)
Adjusted income/ (loss)	**400,000**	**87,500**

Note

[14] The revision is made in the year 2020, in the year Project X was completed when the actual loss can be ascertained.

[15] The amount is the portion based on the revised estimated loss in the year 2019.

[16] The actual loss of Project X is deducted against the actual gross profit and the estimated gross profit of other projects in the same basis period.

Computation of Adjusted Income/ (Loss)
for Year of Assessment 2018 (Revised in the Year 2020)

Details	Original Estimated Gross Profit RM	Revised Estimated Gross Profit/(Loss) (in the Year 2020 - Project X Completed)[14] RM
Project X	250,000	(62,500)[15]
Project W	30,000	30,000[18]
Project Y	20,000	20,000
Total gross income	**300,000**	**(12,500)[16]**
Expenses	(15,000)	(15,000)
Adjusted income/ (loss)	**285,000**	**(27,500)[17]**

Note

Notes [14, 15] and [16] are the same as notes under the year of assessment 2017.

[17] The loss of RM12,500 and the allowable expenses of RM15,000 result in an adjusted loss of RM27,500.

[18] Project W completed in the year 2018 and in this example, no adjustment is made to the actual gross profit for this project.

Computation of Adjusted Income/ (Loss)
for Year of Assessment 2019 (Revised in the Year 2020)

Details	Original Estimated Gross Profit[19] RM	Revised Estimated Gross Profit/(Loss) (in the Year 2020 - Project X Completed) RM
Project X	(37,500)	(37,500)
Project Y	20,000	20,000
Total gross income	**Nil[20]**	**(17,500)**
Expenses	(20,000)	(20,000)
Adjusted income/ (loss)	**(20,000)[21]**	**(37,500)[22]**

Note

19 Since notification of the revised estimated loss for Project X was given by the company in the year 2019, no revision will be made to prior year assessments i.e. years of assessment 2017 and 2018. Adjustment is only made for the year of assessment 2019.

20 The estimated loss for Project X is allowed to be set off against estimated gross profit for Project Y and the excess loss of RM17,500 shall be disregarded.

21 The allowable expenses of RM20,000 become an adjusted loss for the year of assessment 2019.

22 The adjusted business loss is RM37,500, after taking into account the actual loss of Project X.

Computation of Adjusted Income/ (Loss) for Year of Assessment 2020

Details	Original Estimated Gross Profit RM
Project X	(42,500)
Project Y	60,000
Total gross income	**17,500**
Expenses	(10,000)
Adjusted income/loss	**7,500**

10.6 Individual developers

In the case of an individual developer or a partner in a joint venture project which is subject to the progressive income tax rate under Schedule 1 of the ITA, the developer is allowed to review the prior years' assessments upon completion of the project.

Example 20

Mr. S. an individual developer, commenced a housing project in the year 2018 which was completed in the year 2020.Total estimated sales value of the project is RM20 million. Progress payments received and receivable are as follow:

Year	Progress Payments Received and Receivable RM
2018	8,000,000
2019	8,000,000
2020	4,000,000
Total	**20,000,000**

When the project was completed, the actual gross profit was ascertained as RM1,500,000. The estimated gross profit taken into computation for the project is as follows:

Year of Assessment	RM
2018	750,000
2019	750,000
2020	400,000
Total	**1,900,000**

Since the actual gross profit is less than the estimated gross profit taken into account for years of assessment 2018 to 2020, Mr. S may review all his prior years' assessments.

The actual gross profit for each year of assessment will be recomputed as follows:

Computation of Actual Gross Profit
for Year of Assessment 2018 to 2020

Year of Assessment	RM
2018	$\frac{8,000,000}{20,000,000} \times 1,500,000 = 600,000$
2019	$\frac{8,000,000}{20,000,000} \times 1,500,000 = 600,000$
2020	$\frac{4,000,000}{20,000,000} \times 1,500,000 = 300,000$

11. Adjusted Income

11.1 In ascertaining the adjusted income from the business of a property developer for the basis period for each year of assessment, all expenses (other than any development expenditure that has been taken into account in ascertaining the estimated gross profit or loss of property development) that are wholly and exclusively incurred in the production of that income during that period is allowed under the ITA. However, adjustments shall be made in the income tax computation for each year of assessment for outgoings and expenses prohibited under section 39 of the ITA.

11.2 Where there is an adjusted loss of a property development business for a basis period, the adjusted loss shall be deducted from the aggregate income from all sources of income in that basis period under subsection 44(2) of the ITA. If the aggregate income from all sources of income is absence or insufficient to absorb the adjusted loss, the loss shall be carried forward and deducted from the total statutory income from all sources of business income in the following basis period, as provided in subsection 43(2) of the ITA.

12. Development Expenditures

12.1 The expenses mentioned in paragraph 11.1 refer to all expenses, which are deductible under the ITA. Such expenses include tender fees and related expenses after the first phase/project and for subsequent phase/project in respect of a property development project, which are incurred after the commencement of the property development business of the developer.

12.2 In preparing the development expenditure accounts, a property developer shall distinguish between direct expenses related to the property development project and operating and administrative expenditure debited to the comprehensive income statement.

12.3 Property development cost

12.3.1 Property development cost comprise all costs that are directly attributable to development activities or that can be reasonably allocated to such activities.

12.3.2 All direct expenses which are related to the property development project, including infrastructure cost such as drainage, internal roads, reservoir, oxidation ponds etc. that add value to the project shall be capitalised in the development expenditure account.

12.3.3 Development expenditure includes –

(a) interest paid or payable on loans taken by the property developer to finance the purchase of land or development works of its property development project; and

(b) the proportion of the common infrastructure cost that relates to the project.

12.3.4 The development expenditure account for each project or phase should be kept separately and must be prepared for each year of assessment.

12.3.5 With regards to the cost of land capitalised in the development expenditure account, any surplus on revaluation of land (if the cost taken is a revalued cost) is not an allowable expense and shall be added back proportionately when the project or phase is completed.

12.3.6 Expenses incurred prior to the date of commencement of the project such as cost of land, survey fees, soil investigation expenses, architect fees, etc. are cost attributable to the development project hence is deductible. Where a project consists of more than one phase, such development costs shall be shown separately.

12.3.7 A property developer is required to make the necessary adjustments for expenses which are reflected in the development expenditure account. Where items such as materials for another project and provision for TNB substation has been included in the development expenditure account, these expenses shall be taken out to arrive at the allowable development expenditure to be carried forward to the following year of assessment. This is to ensure only the final year's account of the project needs to be adjusted upon completion of the project.

12.4 Allocation of land cost

Where a property development project consists of more than one phase with different types of properties, the land cost shall be allocated according to the land area (acreage) for each phase. This is particularly important where there are vacant lots of land reserved for future development.

Example 21

Syarikat T Sdn. Bhd. has a 200-hectare piece of land. The company plans to build a block of luxurious condominium on 10% of the land area while reserving the remaining 180 hectare to build bungalow houses in the future.

The cost of the whole piece of land is RM10 million. Hence, the cost of land to be allocated to the condominium project is RM1 million.

Example 22

U Development Sdn. Bhd. bought a 300–hectare piece of land for RM1 million. The land is divided into 4 parcels. Parcels 1, 2 and 3 are for immediate development whereas parcel 4 is reserved for future use. Development work on parcel 1 commenced on 01.07.2020. The cost of each parcel is calculated based on land area as follows:

Parcel	Land Area		Land Cost	
	Hectarer	%	RM	%
1	30	10	100,000	10
2	45	15	150,000	15
3	75	25	250,000	25
4	150	50	500,000	50
Total	**300**	**100**	**1,000,000**	**100**

Example 23

Syarikat V Sdn. Bhd. undertakes a mixed development project consisting of semi-detached houses, terrace houses and condominiums on a 500-hectare site. The condominium block consists of units with various types: one-room, two-room, three-room and penthouse unit.

The basis of land cost allocation shall be based on the land area (acreage) for each type of development.

However, for the condominium project, the allocation of land cost allotted for each block of condominiums may then be divided amongst the various types of units by using the following method:

(a) the relative sales value method; or

(b) any method that is acceptance by the DGIR such as floor area.

12.5 Allocation of common infrastructure cost

The allocation of common infrastructure cost that relates to the property development project shall be determined consistently in accordance with:

(a) the area (acreage) method;

(b) the relative sales value method; or

(c) any method that is acceptable by the DGIR.

The property developer who chooses to apply any of the above methods does not need to apply to the DGIR. The developer only needs to indicate his choice in the tax computation and ensure that the method used reflects a fair and reasonable allocation of the costs.

Example 24

W Bhd's development project has the following particulars:

Details	
Total development area	30 hectares
Total budgeted cost incurred on common infrastructure on 30 hectares	RM9,000,000
Actual cost incurred for common infrastructure up to 31.12.2020	RM3,000,000
Area of phase 1	3 hectares
Date of completion of phase 1	31.12.2020

Computation of Allocation of Common Infrastructure Cost Phase 1

$$\frac{\text{Total development area of Phase 1}}{\text{Total development area of all Phases}} \times \text{Common infrastructure cost}$$

$$\frac{3}{30} \times \text{RM3,000,000}$$

= RM300,000

12.6 Fees paid for securing projects

12.6.1 A property developer may make payments to certain parties for securing the project. Such payments may be termed as kick-back, commission, management fees etc. The terms of the agreement may provide, among others:

(a) payments to be in the form of a fixed sum or a percentage or a combination of both;

(b) payment of such fees to be made prior to commencement of a project, during the project period and/or after completion of project; and

(c) payments to be made in a lump sum or in instalments or a combination of both.

12.6.2 For income tax purposes, the deductibility of such expenses would depend on the purpose, nature and circumstances in which such fees arise. Where the services provided by the payee are merely to secure the project, the fee paid would be considered a kick back and not eligible for a deduction as allowable expenses.

12.6.3 However, where the payee is actively involved in managing and running the project after securing it, then the fee paid is an allowable expense and shall be capitalised in the development expenditure account.

12.7 Defects liability expenses

12.7.1 Upon completion of the project, any defects or damage to the development units within the period of time specified in the sale and purchase agreement shall be repaired or fixed by the developer within the defect liability period. All costs and expenses related to the repairs of defects and damages shall be borne by the property developer.

12.7.2 The defect liability expenses of a development project which are incurred in the basis period or any following basis period shall be allowed as a deduction against the gross income of the property developer depending on circumstances and choices made by the developer.

(a) Sufficient gross income from the same development project

Where there is sufficient gross income from the same development project, the defect liability expenses shall be allowed as a deduction against the gross income from the same project for that basis period or that following basis periods, as the case may be.

Example 25

X Sdn. Bhd., which closes its accounts on 31 December every year, has a multi-phase project in Johor Bahru that is developed concurrently. Phase 1 of the project was completed on 30.06.2019. Gross income from the project for the years of assessment 2019 and 2020 is RM10,000 and RM12,000, respectively. The company incurred defects liability expenses amounting to RM5,000 and RM3,000 as of 30.9.2019 and 30.05.2020 respectively. The computations of gross income are as follows:

Computation of Gross Income (After Defect Liability) for Year of Assessment (YA) 2019 to 2020

Details	YA 2019	YA2020
	RM	RM
Gross income from Phase 1	10,000	12,000
Less: Defect liability expenses incurred	5,000	3,000
Gross income	**5,000**	**9,000**

(b) Insufficiency or an absence of gross income from the same development project

Where there is insufficiency or an absence of gross income from the same development project for that basis period or that following basis period, defects liability expenses which cannot be deducted in full or in part shall be allowed as a deduction against -

(i) the aggregate amount of gross income from other development projects for that basis period or following basis period , as the case may be ; or

(ii) the gross income from the same property development project for the basis period preceding the basis period in which the expenses are incurred. Where, by reason of an absence or insufficiency of gross income from the same project for that preceding basis period, the expenses which have not been so deducted shall be allowed as a deduction against the gross income from that project for the next preceding basis period and so on for the duration of the project.

Where the property developer decides to elect this method, the election is irrevocable. This election can be made either in the tax computation for the current year of assessment or in the revised tax computations for prior years of assessment to the respective branch offices of Inland Revenue Board Malaysia.

Example 26

Y Sdn. Bhd. with accounts ending on 31 December has multiple projects in Pulau Pinang. Phase 2 of the project which started in November 2017 was completed on 30.04.2019. Defect liability expenses of RM3,000 were incurred on 30.09.2019 and RM5,000 on 30.01.2020. The tax computations of gross income are as follows:

Computation of Gross Income (After Defect Liability) for Year of Assessment 2019 to 2020

Details	2019 RM	2020 RM
Gross income from Phase 2	2,000	3,000
Less: Defect liability expenses incurred	3,000	5,000
Loss from Phase 2	(1,000)	(2,000)
Less: Aggregate gross income from other phases	4,000	1,000
Gross income	**3,000**	**(1,000)**
Less : Expenses	1,000	Nil
Adjusted income/(loss)	**2,000**	**(1,000)**

The adjusted loss of RM1,000 may be deducted from other sources of income such as dividend, interest etc.

Example 27

Syarikat Z Sdn. Bhd. with accounts ending on 31 December has a project with two phases. Phase 1 commenced on 01.02.2018 and completed on 10.01.2020. After serious consideration, the company decided to make an election as described in paragraph 12.7.2(b) above. Details of income and defects liability expenses are as follows:

Year of Assessment	Gross Income RM
2018	80,000
2019	30,000
2020	10,000

Defects liability expenses of RM42,000 was incurred in the year 2020. Computation of gross income is as follows:

Computation of Gross Income (After Defect Liability) for Year of Assessment 2020

Details	RM
Gross income from Phase 1	10,000
Less : Defect liability expenses incurred	42,000
Gross income	**NIL**

Unabsorbed defects liability expenses of RM32,000 is carried back to the year of assessment 2019 where the tax computation would be reviewed.

Computation of Gross Income (After Defect Liability) for Year of Assessment 2019

Details	RM
Gross income from Phase 1	30,000
Less : Unabsorbed defect liability expenses incurred carried back from the year of assessment 2020	32,000
Gross income	**NIL**

Unabsorbed defects liability expenses of RM2,000 is carried back to the year of assessment 2018 where the tax computation would be reviewed:

Computation of Gross Income (After Defect Liability) for Year of Assessment 2018

Details	RM
Gross income from Phase 1	80,000
Less : Unabsorbed defect liability expenses incurred carried back from the year of assessment 2020	2,000
Gross income	**78,000**

12.8 Liquidated ascertained damages (LAD)

12.8.1 A property developer has a period of time specified in the sale and purchase agreement to complete the development unit and deliver to the buyer. If the developer fails to deliver vacant possession within this period, the developer shall be liable to pay to the buyer an amount calculated at a rate as specified in the sales and purchase agreement as LAD until vacant possession are delivered to the buyer.

12.8.2 For income tax purposes, the provision for LAD is not an allowable expense. A developer's liability only arises when payment of the LAD becomes a fact. The liability is incurred as and when the actual amount of LAD is ascertained and agreed to between the developer and buyers.

12.8.3 For the property developer who undertakes a single project/phase and does not have sufficient income after the project has been completed, the developer may claim the LAD expenses to be carried back and allowed as a deduction against the gross income from the same project for the basis period preceding the basis period in which the expenses are incurred. Any expenses which cannot be fully deducted shall be allowed as deduction for the immediate preceding period and so on until fully deducted for the duration of the project.

12.8.4 This concession is given to a property developer who:

(a) undertakes a single project/phase;

(b) has sold all the development units in that project/phase;

(c) the business is dissolved or liquidated when the project/phase completed; and

(d) has insufficient or no income from the project to offset the LAD expenses.

12.9 Land premium and strata title expenses

12.9.1 For income tax purposes, the provision for land premium and strata title expenses are not allowable expenses. These expenses may be allowed as a deduction against the gross income of the property development projects only when the amount has been ascertained by the land office and paid by the developer.

12.9.2 For the property developer who undertakes a single project/phase and does not have sufficient income after the project has been completed, the developer may claim the land premium and strata title expenses paid by him to be carried back and allowed as a deduction against the gross income from the same project for the basis period preceding the basis period in which the expenses are incurred. Any expenses which cannot be fully deducted shall be allowed as a deduction for the immediate preceding period and so on until fully deducted for the duration of the project.

12.9.3 This concession is given to the same property developer as specified in paragraph 12.8.4.

12.10 Legal and professional fees

12.10.1 Legal and professional fees such as stamping, filing, and legal fees incurred in connection with the arrangement of loans, including bridging loans, are not allowable under section 39 of the ITA.

12.10.2 Costs incurred in arranging end-financing facilities for the buyer are allowable expenses as these expenses are incurred for the convenience and benefit of the buyer and not for the benefit of the property developer.

12.10.3 Fees paid for the valuation of land at the time of purchase by the property developer, legal fees paid for transfer of land titles, subdivision and conversion of land, and compensation for eviction of squatters are allowable expenses.

12.11 Marketing and promotional expenses

12.11.1 Marketing expenses in the form of advertisements in media, billboards, brochures etc. are allowable as expenses under subsection 33(1) of the ITA.

12.11.2 Expenses such as free legal fees, free cabinets or free air conditioners are allowable deductions as expenses incurred in the provision of entertainment which is related wholly to sales arising from the business of a property developer under subparagraph 39(1)(l)(vii) of the ITA.

12.11.3 Show house expenditure

(a) the show house expenditure shall be capitalised in the development expenditure account. If the show house is built outside the development project area, the allowable expenditure does not include the land cost.

(b) the show house which is a trading stock and subsequently transferred and used as a business asset of the property developer, the tax treatment under subsection 24(2) of the ITA is applicable.

(c) any furniture, fitting and fixture, interior design and decoration expenses related to the show house of the development project shall be capitalised in the development expenditure account. Where furniture, fitting and fixture are resold as scrap, the proceeds shall be recognised as other business income under paragraph 4(a) of the ITA.

(d) expenditure on the construction of a sales gallery or management office which is built in the same area or which is connected to the show house is not an allowable expenditure under section 39 of the ITA.

12.12 Guarantee fee

A guarantee fee paid to a guarantor in respect of a loan or facility granted to a property developer is a capital expense for raising funds and is not deductible.

12.13 General administrative expenses

12.13.1 Where non-allowable expenses are charged to the statement of comprehensive income, an adjustment shall be made to the income tax computation to disallow the expenses in accordance with the provisions of the ITA.

12.13.2 General administrative expenses such as audit fees and bank charges are allowable against the gross income of the property development business under subsection 33(1) of the ITA if they are incurred in the production of income of the property development business.

12.14 Interest expense

12.14.1 A property developer may charge interest expense in the:

(a) development expenditure account; and/or

(b) comprehensive income statement

12.14.2 The interest charged on loans taken to finance the purchase of land and development works shall be capitalised in the development expenditure account. The interest shall be allocated to all land held during the year in proportion to the cost of each parcel.

Example 28

AA Development Sdn. Bhd. bought a 300-hectare piece of land for RM1million financed by a bank loan. The total loan is RM1.6 million including RM600,000 for development work on project A. The total interest expenses in the year 2020 on the total loan is RM120,000. Development work on project A started on 01.07.2020. For project B, C and D, progress work has not yet begun.

The land is divided into 4 projects based on the land area as follows:

Project	**Land Area**		**Land Cost**	
	Hectar	**%**	**RM**	**%**
A	30	10	100,000	10
B	45	15	150,000	15
C	75	25	250,000	25
D	150	50	500,000	50
Total	**300**	**100**	**1,000,000**	**100**

Interest expenses may be apportioned as follows:

Computation of Interest on Development Cost

$$\frac{\text{Development cost}}{\text{Total loan}} \times \text{Total interest}$$

$$\frac{\text{RM600,0000}}{\text{RM1,600,000}} \times \text{RM120,000} = \textbf{RM45,000}$$[23]

Note

[23] Interest on the development cost loan shall be capitalised in the development expenditure account for Project A only.

Computation of Interest on Land Cost

$$\frac{\text{Land cost}}{\text{Total loan}} \times \text{Total interest}$$

$$\frac{\text{RM1,000,000}}{\text{RM1,600,000}} \times \text{RM120,000} = \textbf{RM75,000}$$[24]

Note

[24] Interest on the purchase of land shall be distributed to each project as follow:

$$\frac{\text{Land cost}}{\text{Total land cost}} \times \text{Total interest}$$

Project	Allocation of Interest RM	Interest RM
A	$\frac{100,000}{1,000,000} \times 75,000$	7,500
B	$\frac{150,000}{1,000,000} \times 75,000$	11,250
C	$\frac{250,000}{1,000,000} \times 75,000$	18,750
D	$\frac{500,000}{1,000,000} \times 75,000$	37,500
Total		**75,000**

Since only Project A commenced in 2020, the interest on the purchase of land amounting to RM 7,500 will be capitalised in the development expenditure account of Project A. The interest for Project B, C and D will be capitalised in the development expenditure account of Project B, C and D and can be claimed upon the commencement of these projects.

12.14.3 Where a property developer charges interest expenses which is not allowable to development expenditure, adjustment has to be made by taking out that amount of interest expenses from the development expenditure account.

12.14.4 For income tax purposes, only interest expenses directly related to phases/projects of development being developed are allowed to be capitalised in the development expenditure account.

12.14.5 The interest expenses which is capitalised in the development expenditure account shall be restricted where appropriate, in accordance with subsection 33(2) of the ITA. If the restriction of interest under subsection 33(2) of the ITA applies, it shall be computed for the basis period for each year of assessment.

13. Tax Treatment on Stock

13.1 Withdrawal of stock to fixed asset

The withdrawal of stock to fixed asset is subject to income tax under subsection 24(2) of the ITA. The market value of the stock at the time of the withdrawal is the gross income of the property developer during that basis period. Subsequent disposal of property is subject to tax under the Real Property Gains Tax Act 1976(RPGT).

Example 29

BB Indah Sdn. Bhd., a property developer, withdrew several unsold houses from the stock and transferred to fixed assets at cost at the end of the financial year. These houses were subsequently rented out to earn rental income.

Subsection 24(2) of the ITA is applicable. The market value of the stock at the time of withdrawal to fixed asset is the gross income of the property developer during the basis period. To determine whether rental income from these houses shall be taxed under paragraph 4(a) or 4(d) of the ITA, please refer to the PR No. 12/2018 titled Income from Letting of Real Property that can be downloaded from the Inland Revenue Board of Malaysia’s official portal at www.hasil.gov.my.

13.2 Stock that has not been sold but is being rented out

Where a property developer has stock that has not been sold but is being rented out, the rental income shall be taxable under paragraph 4(a) of the ITA.

Example 30

CC Lestari Development Sdn. Bhd., a property developer, completed a project comprising 295 units of townhouses in the year 2020. The company managed to sell 285 units, leaving another 10 units unsold for rent. Rental income shall be taxable under paragraph 4(a) of the ITA.

Subsection 24(2) of the ITA is not applicable in this case because there is no withdrawal of stock to fixed assets. In the event of a subsequent sale of these houses, the profits are subject to income tax under paragraph 4(a) of the ITA.

13.3 Stock of land not yet developed

Where the property development business has not commenced and the property developer receives rental income from the land such as rental of land, parking fees, etc., the rental income is subject to tax under paragraph 4(d) of the ITA, unless the facts of the case prove that the letting of the land is a business source chargeable to tax under paragraph 4(a) of the ITA.

13.4 Stock parted with by compulsion under Section 4C of the ITA

With effect from the year of assessment 2014, for the purpose of paragraph 4(a) of ITA, any amount or compensation receivable arising from stock in trade parted with by compulsion, including on requisition or compulsory acquisition of the land or in a similar manner, shall be treated as gross income of the business in the year in which the stock is parted in that manner.

13.5 Cessation of business - whether unsold development units are stock or fixed asset

Whether the unsold development units of a property developer are to be treated as stock or fixed assets upon the cessation of his business of property development will depend on the facts of the case.

14. Other Issues Related to Property Development

Interest income from housing development account

Interest income derived from the housing development account should be assessed under paragraph 4(c) of the ITA.

15. **Joint Venture Project**

15.1 A joint venture project is a property development project undertaken jointly between a landowner and a property developer under an agreement to develop a property development project, whereby:

(a) the landowner surrenders his land to the property developer for development and in return receives:

(i) an amount in cash;

(ii) a certain number of development units upon the completion of the project;

(iii) a percentage of sales value of the project;

(iv) a percentage of profit sharing from the sale of development units; or

(v) unit shares of the company

or

(b) the landowner and the property developer agree to other arrangement under the joint venture project.

15.2 The recognition of income for income tax purposes in respect of a joint venture project depends on the terms and conditions of the agreement signed between the landowner and the property developer. Hence, joint venture projects have to be dealt with according to the facts of each case.

15.3 The income tax treatment in respect of joint venture projects is as follows:

(a) where the landowner takes an active role in the property development activities together with the property developer, the landowner is deemed to be undertaking the business of a property development; and

(b) where the landowner does not take an active role in the development activities and the land is not a trading stock of his business, the landowner is deemed not undertaking the business of a property development.

15.4 The active role in property development activities for joint venture are−

(a) The land owner has significant influence, among others are:

(i) determining the planning of property development project such as the concept, type, nature and duration of the development project;

(ii) the appointment of contractors involved in joint venture project such as consulting companies, contractor and subcontractor;

(iii) involve in marketing activities for the whole development project;

(iv) determining the selling price of development units;

or

(b) the existence of badges of trade in joint venture project transaction.

16. Updates and Amendments

<table>
<tr><td rowspan="2">This PR replaces the PR No. 1/2009 dated 22 May 2009</td><td>Amendments</td></tr>
<tr><td>The contents of this PR have been amended and updated as follows:
<table>
<tr><th>Paragraph in this PR</th><th>Amendments</th></tr>
<tr><td>1</td><td>Paragraph 1 is amended.</td></tr>
<tr><td>2</td><td>Paragraph 2 is amended and renumbered as subparagraph 2.2.

New subparagraph 2.1 and 2.3 are inserted.</td></tr>
<tr><td>4</td><td>Subparagraph 4.1 and 4.2 are amended and renumbered as paragraph 4.1.

Subparagraph 4.3 is deleted.

Subparagraph 4.4 is renumbered as subparagraph 4.2.

Examples 1 and 2 are amended.</td></tr>
<tr><td>5</td><td>Paragraph 6 is amended and renumbered as paragraph 5.

Example 8 is amended and renumbered as example 3.</td></tr>
<tr><td>6</td><td>The title of paragraph 5 is amended and renumbered as paragraph 6.

Subparagraph 5.1 to 5.7, 5.9 to 5.14 are amended and renumbered as subparagraph 6.1 to 6.7 and 6.8 to 6.13.

Subparagraph 5.8 and 5.10 are amended and renumbered as subparagraph 6.9.

Examples 3 to 7 are amended and renumbered as examples 4 to 8.</td></tr>
</table></td></tr>
</table>

Amendments

Paragraph in this PR	Amendments
7	Subparagraph 7.1 and 7.4 are amended. New subparagraph 7.5 is inserted. Examples 9, 10, 11 and 12 are amended.
8	New subparagraph 8.2(c) is inserted. Subparagraph 8.3 are amended. Examples 13 and 14 are updated.
9	Paragraph 9 is amended. Example 15 is amended.
10	Subparagraph 10.1 is amended. Subparagraph 10.2 and 10.5 are deleted. Subparagraph 10.3, 10.4, 10.6 to 10.8 are amended and renumbered as subparagraph 10.2 to 10.6. Examples 16, 17, 18, 19 and 20 are amended.
11	New subparagraph 11.1 and 11.2 are inserted
12	Paragraph 11 is renumbered as paragraph 12. Subparagraph 11.1 is deleted. Subparagraph 11.2 to 11.15 are amended and renumbered as subparagraph 12.1 to 12.14. New subparagraph 12.11.3 is inserted. Subparagraph 11.15.5 is deleted. Examples 21, 22, 23 and 24 are amended.

Amendments

Paragraph in this PR	Amendments
12	Examples 25 and 26 are amended and renumbered as example 25. Examples 27 and 28 are amended and renumbered as example 26. Examples 29 and 30 are amended and renumbered as example 27 and 28.
13	Paragraph 12 is amended and renumbered as paragraph 13. Subparagraph 12.1 and 12.2 are amended and renumbered as subparagraph 13.1. Subparagraph 12.3, 12.5 and 12.6 are amended and renumbered as subparagraph 13.2, 13.3 and 13.5. Subparagraph 12.4 is deleted. New subparagraph 13.4 are inserted. Examples 31 and 32 are amended and renumbered as examples 29 and 30.
14	Paragraph 13 is renumbered as paragraph 14.
	Paragraph 14 is deleted.
15	Subparagraph 15.1 to 15.3 are amended. New subparagraph 15.4 is inserted.

17. 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.