

Estates Sdn Bhd v Director-General of Inland Revenue [1979-1996] AMTC 1200, Lord Scarman held on p1202:

‘Certain features of the law are clear. The law uses the concept of “source” in the determination of income: ss4 and 5 of the Act. A business is, if it shows a profit, a source of income, and, if it shows a loss, a source of loss: s5(1)(c). The statute recognises the existence of a source consisting of a business and the situation that a taxpayer can have more than one source consisting of a business: s5(2) and s43.’

This Malaysia highest authority case clearly established the rule of law that a business can have more than one source of income. The various sources of income will be grouped together as one business. Capital allowances will be computed only for a business.

The issue of whether rental income can be assessed as business income under s4(a) rather than s4(d) investment income will depend very much on the following factors:

(a) Sendirian Berhad (Sdn Bhd) or individual deriving rental income

Rental income derived by a Sdn Bhd is business income. The presumption factor where incorporation of a Sdn Bhd as the business vehicle of carrying on the income letting activity is affirmed in the Privy Council’s decision in *American Leaf Blending Co Sdn Bhd v Director General of Inland Revenue* [1979-1996] AMTC 903.

Lord Diplock held his decision at p908:

‘In the case of a private individual it may well be that the mere receipts of rents from property that he owns raises no presumption that he is carrying on a business. In contrast, in their Lordships’ view, in the case of a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets *prima facie* amounts to the carrying on of a business. Where the gainful use to which a company’s property is put, is letting it out for rent, their Lordships do not find it easy to envisage circumstances that are likely to arise in practice which would displace the *prima facie* inference that in doing so it was carrying on a business.’

The Parliament in 2005 intends to limit this presumption business object inference from a Sdn Bhd. The Finance Act 2006 via s60F(1A) held that rental income derived by an investment holding company (IHC) is to remain as investment income to be assessed under s4(d). The statutory definition of

IHC under s60F is entirely different from the accounting concept or the statutory audited account description of IHC.

(b) Provision of maintenance and support services.

Business activity has to be present in order to sustain the argument of business source. The provision and maintenance of support services is one of the considerations for rental income to be assessed as a business source under s4(a).

It would generally refer to the provision of cleaning services, security services, repair and maintenance of the premises, payment of utility bills and other rental related services. It does not need to be comprehensive or extensive.

This only applies to a company incorporated under the Companies Act 1965 with the sole intention and exclusively deriving rental income. Such company referred as real property investment holding company.

(c) Public Ruling (PR) 1/2004

The Inland Revenue has simplified the method to determine whether rental income is a business income by using only quantity test as stipulated in PR 1/2004 “Income from Letting of Real Property”. This, however, only applies to company incorporated under the Companies Act 1965 and is not available to individual, partnership, society, club or association. If a company owns, rent out and sub-let the following units of rental source, it would automatically qualify to

(a) Special purpose building	Rental income from <i>either</i> : (i) a commercial complex (ii) an office complex (iii) a shopping complex (iv) a factory (v) a warehouse	
(b) Commercial units	Minimum 4 units	} The entire property under the title particulars should be included in the letting.
(c) Residential units	Minimum 4 units	
(d) Shophouses	Minimum 4 floors	
(e) Mixture of (b), (c) or (d)	Any combination satisfying the minimum of 4 units.	

be assessed as business income:

PR 1/2004 exclusively stated it does not apply to IHC as defined in s60F of the Act. Manufacturing, trading and services companies deriving rental income need only to comply with the unit test as stipulated in PR 1/2004 to have the rental income being assessed as business income. These companies need not provide maintenance and support services.