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## Rental Income as an Investment Income

Investment income denotes passive income as no maintenance and support services needs to be provided to generate such income. Rental income will be assessed as an investment income under s4(d). Although rental income will be further categorised being derivation from commercial property, residential property and vacant land, it nonetheless constitutes only one source. This is affirmed in the High Court case of *Ketua Pengarah Hasil Dalam Negeri v Multi Purpose Holdings Bhd* [1997-2002] AMTC 2308. KC Vohrah J held that rental income despite being assessed as investment income is to be treated as one source.

If one carefully examine s4, 5, 43(2) and 44 of the Act, one would derive conclusion that should the Parliament have the intention that rental income of commercial property, residential property and vacant land be categorised into three separate sources of income, it would have been specifically spelt out in s4(d) and differently worded to reflect so. Having said that, the Inland Revenue had attempted to argue through PR 1/2004 that rental income which is assessable as investment income has further three sources of rental sources being commercial property, residential property and vacant land. With greatest respect, this is legally not tenable and no justification in law.

KC Vohrah J in *Multi Purpose's* decision clearly established the rule that investment income such as dividend is a single source, interest is a single source and rental is a single source. KC Vohrah J held on p2314:

'I refer to the provisions of s4 set out earlier in this decision. The reference in s4 is a reference to "classes of income" chargeable to tax and six classes are mentioned, one of them being "gains of profits from a business" (s4(a)) and another class being "dividends, interest or discounts" (s4(c)).... Our Act also creates taxes upon yearly gains and profits of a taxpayer and they are classified under s4 and there is no subdivision shown therein.... There is no justification for revenue to disintegrate the groupings of profits

and gains according to sources which have been specified under s4 of the Act and clearly the Special Commissioners were right in holding so.'

In this case, the Inland Revenue is arguing that share which produced dividend income is a source while share which do not produce dividend income is another source. With this argument any expenses related to the share that do not produce dividend income is not tax deductible and is a permanent loss. The High Court however held that dividend income can only be one source. Thus, all expenses related to the shares acquisition irrespective of whether dividend income is produced, is deductible against aggregate dividend income.

KC Vohrah J clearly lays down the proposition of law in relation to investment income at p2316:

'It will be noticed that our Act identifies the subject matter of taxation as "dividends" and "interest". One may ask relevantly, where is the revenue's authority to split this classification up in a manner that increases the taxpayer's liability to tax? A taxing statute has to be strictly construed and tax cannot be imposed unless there are clear and unambiguous words which show an intention to tax a subject: Supreme Court, *National Land Finance Co-Operative v DGIR* [1993] 2 AMR 3581 at 3590. Clearly there is no authority to disintegrate the groupings of the profits and gains according to sources.'

The rule law in relation to rental income is re-tabulated below:

Business	- one source or; - more than one source of income	River Estates Sdn Bhd - Privy Council's decision
Investment types: (a) Dividend (b) Interest (c) Rental	One source One source One source	Multi Purpose Holding Bhd (HC)

## Conclusion

Rental income, if assessed as a business income, is a business with several rental income sources being commercial, residential or vacant land. However, if rental income is assessed as investment income, whether it is derived from commercial, residential or vacant land, it remains as one single source. This would mean that when one computes rental income assessable as investment income; rental income from all three i.e. commercial, residential or vacant land will be aggregated and all expenses incurred therein will be tax deductible. ■