INLAND REVENUE BOARD OF MALAYSIA

THE DECEASED

PART I - INTRODUCTION

PUBLIC RULING NO. 9/2023

Translation from the original Bahasa Malaysia text

DATE OF PUBLICATION: 27 DECEMBER 2023

Published by

Inland Revenue Board of Malaysia

First edition

CONTENTS

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 administration of the estate and the liabilities of The Deceased.

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, 4, 64, 74 and 106, subsection 13(1) and 83(3) and paragraphs 4(a), 4(b), 4(c), 4(d), 4(e), 4(f).

3. Interpretation

The terms used in the this PR have the following meaning:

3.1 “Individual” means a natural person.

3.2 “Person” includes a company, a body of persons, a limited liability partnership and a corporation sole.

3.3 “Year of assessment” means calendar year.

3.4 “Executor" means the executor, administrator, or other person administering or managing the estate of a deceased person.

4. Introduction

An individual who dies leaves assets, debts, or both that need to be managed by The Deceased’s executor.

All assets left by The Deceased after his death are called the estate. This estate is administered by The Deceased’s legal representative and distributed to The Deceased’s entitled heirs, known as beneficiaries.

Besides the inherited estate, The Deceased also leaves liabilities, such as debts that are still under the responsibility of The Deceased. The Deceased’s estate cannot be distributed to the entitled heirs until all The Deceased’s liabilities including tax liabilities, have been settled in full.

5. Sources of the Individual's Income Before Death

The income of a living individual consists of the sources of income referred to in section 4 of the ITA as follows: -

5.1 Business Income – Paragraph 4(a) of the ITA

The business consists of sole proprietorship, partnership, limited liability partnership, and private limited company.

a) Sole Proprietorship

The income of a sole proprietorship business is the income of the proprietor (individual) himself. If the individual dies, the sole proprietorship business is automatically considered dissolved.

b) Partnership

Partners usually receive a salary from the partnership business and also share in the profits of the partnership business.

If one of the partners dies, ownership of the partnership transfers to another individual or the partnership is dissolved, or the partnership business changes its status into a sole proprietorship.

c) Limited Liability Partnership (LLP)

LLP is a form of a hybrid entity form that has the characteristics of both a company and a partnership and offers its partners limited liability.

Partners in an LLP commonly receive remuneration and returns in the form of profit sharing from the business.

When a partner in an LLP dies, membership in the LLP is transferred to another person through the distribution of the respective estate of The Deceased.

However, there will be no changes in the business of the LLP.

d) Private Limited Company

A private limited company and its shareholders are considered separate legal entities under the law. Generally, individual shareholders will receive director's fees if they are appointed as directors and also share in the company's profit.

When one of the shareholders of a company dies, no more director's fee will be received. Share in the company's profit after the date of The Deceased's death shall be considered part of The Deceased's estate income under the administration of the executor.

5.2 **Employment Income - Paragraph 4(b) of the ITA**

An employment exists when there is a relationship between the master (employer) and the servant (employee) through any appointment or employment whether public or otherwise, where remuneration is payable by employers to employees.

The gross income of an employee consists of the profits or gains from employment under subsection 13(1) of the ITA, including any wages, salaries, remuneration, leave pay, fees, commissions, bonuses, gratuity, perquisites, or allowances (whether in the form of money or otherwise), benefits in kind and living accommodation in connection with the possession or carrying on of any employment.

When an employee dies, there is no longer any remuneration received due to the termination of the employment relationship between the employee and the employer. The employer must inform the IRBM within 30 days after being informed by the next of kin of the employee's death.

Note:

The next of kin means someone who has a blood relation or legal relationship such as parents, husband or wife, children, siblings or cousins.

5.3 **Other Income**

a) Rental income – Paragraph 4(a) or 4(d) of the ITA

Rental income is earned by individuals when the property they own is rented to others.

After the death of the owner, the property shall be passed to the entitled heirs (beneficiaries). If the property continues to be rented out after the original owner's death, the rental income goes to the new owner.

However, if the rented property is not distributed to beneficiaries, then the rental income received after the date of death shall be considered part of The Deceased's estate income under the administration of the executor.

b) Commission – Paragraph 4(a) or 4(f) of the ITA

Generally, individuals receive commission income from a payer company or other individuals after carrying out specific transactions or services as agents, distributors, or dealers.

When an individual who acts as an agent, distributor, or dealer dies, there will be no more commission earned after the date of death as there are no more transactions or services being carried out.

c) Dividends – Paragraph 4(c) of the ITA

The company distributes its profits to its shareholders in the form of dividends when it makes a profit. Dividends may be distributed or paid in the form of cash, other assets, or the issuance of shares.

After the date of The Deceased's death, the dividen income received shall be considered part of The Deceased's estate income under the administration of the executor.

d) Interest – Paragraph 4(c) of the ITA

Interest income is the return or payment for the use of funds belonging to one party by another. Interest is also usually a part of the profit the borrower makes from using those funds.

The interest income received after the date of The Deceased's death shall be considered part of The Deceased's estate income under the administration of the executor.

e) Pensions - Paragraph 4(e) of the ITA

A pension is a payment made by a former employer to an employee who has retired (pensioner). The pension is paid when the employee :

a) retires on or after the age of 55; or

b) retires at the compulsory retirement age or under any written law; or

c) retires before reaching the age of 55 years; or

d) retires due to health reasons.

After the death of a pensioner, the husband or wife usually receives the pension of the pensioner.

If an pensioner receives more than one pension, only one of the pensions is exempt from tax. Pensions that are not exempt from tax are subject to taxation under paragraph 4(e) of the ITA.

f) Annuities - Paragraph 4(e) of the ITA

An annuity is a series of payments that an individual receives periodically as one of his or her sources of income. Annuities can also refer to a sum of payments received over a number of years or for the rest of one's life. Annuity income is usually paid under a contract, agreement, or will. The amount of annuity payment is not fixed and may exist under the following conditions –

a) under an annuity insurance policy taken out by an insurance company;

b) through a will, inheritance, gift; or

c) received as consideration for the sale of assets or the transfer of rights.

An annuity is a genuine income received by the recipient. When the recipient dies, he or she does not receive any further annuity payments. The annuity payments will be transferred to a new recipient or back to the original owner based on the contract or agreement.

6. The Act of Notifying the Death of The Deceased

6.1 When an individual dies, his or her death should be reported to the agency responsible for certifying the death, either the hospital or the police.

6.2 The National Registration Department will record the death information and issue the death certificate of The Deceased.

6.3 Once the death certificate of The Deceased is available, the next of kin of The Deceased should report or notify the IRBM of the death as soon as possible and commence the posthumous assessment based on subsection 74(3) of the ITA.

6.4 When reporting the death of The Deceased to the IRBM, the next of kin of The Deceased should provide a copy of the death certificate and a copy of the Grant of Probate or a copy of the Letter of Administration together with the prescribed Form CP57. For more information please refer to paragraph 11. The next of kin can visit the IRBM locality that handles The Deceased's tax file or the IRBM office in their area to report his death.

6.5 The next of kin is advised to contact the Hasil Care Line to find out the IRBM locality that handles The Deceased's file, and to obtain the e-mail address of that locality so that notification and copies of supporting documents can be submitted online.

6.6 The next of kin who attends personally with supporting documents, can directly check the tax status of The Deceased to determine if there are any outstanding taxes that need to be paid or if tax overpayments can be claimed for a refund from the IRBM.

6.7 If the next of kin is unable to pay all of The Deceased’s outstanding taxes in a single payment, IRBM may provide flexibility and allow the payment in installments based on a mutual agreement with the approval of IRBM management.

6.8 However, if The Deceased was an employee, the next of kin must immediately notify The Deceased’s employer. The Deceased’s employer must then convey the information about the employee’s death to the IRBM within 30 days after notification is given by The Deceased’s next of kin.

7. Estate of The Deceased

The estate of The Deceased refers to the property owned by an individual on the day of his death. These assets include both cash and non-cash assets such as vehicles, stocks, and real estate assets like houses, buildings, land, and so on. The assets left by The Deceased will be inherited by his beneficiaries.

Therefore, when death occurs, the next of kin of The Deceased must determine whether or not The Deceased has left a will.

7.1 Testamentary Death

(a) Valid Will

If The Deceased leaves a will, and the court decide that the will is valid, the court will issue a Grant of Probate. The Grant of Probate authorizes the person designated in the will to administer the estate of The Deceased on behalf of the heirs or beneficiaries. The Deceased's estate is then administered according to the terms specified in the will.

(b) Invalid Will

If the court decides that the will of The Deceased is invalid, the closest heirs or beneficiaries must apply to the court for a Letter of Administration. This letter is issued by the court to appoint an administrator or legal representative to administer The Deceased's estate.

(c) Partial Will

Only certain provisions of a will can be enforced while other provisions in the same will may not be enforceable. In this case, the court shall determine the provisions that cannot be enforced shall be deemed not to be included in the distribution of the respective estate of The Deceased.

7.2 Intestacy Death

a) Heirs Apply for a Letter of Administration

The estate of The Deceased cannot be administered by anyone until a Letter of Administration is obtained from the court and the Intestate Succession Law will determine who is entitled to act as the legal representative to administer The Deceased's estate.

b) Heirs Do Not Apply for a Letter of Administration

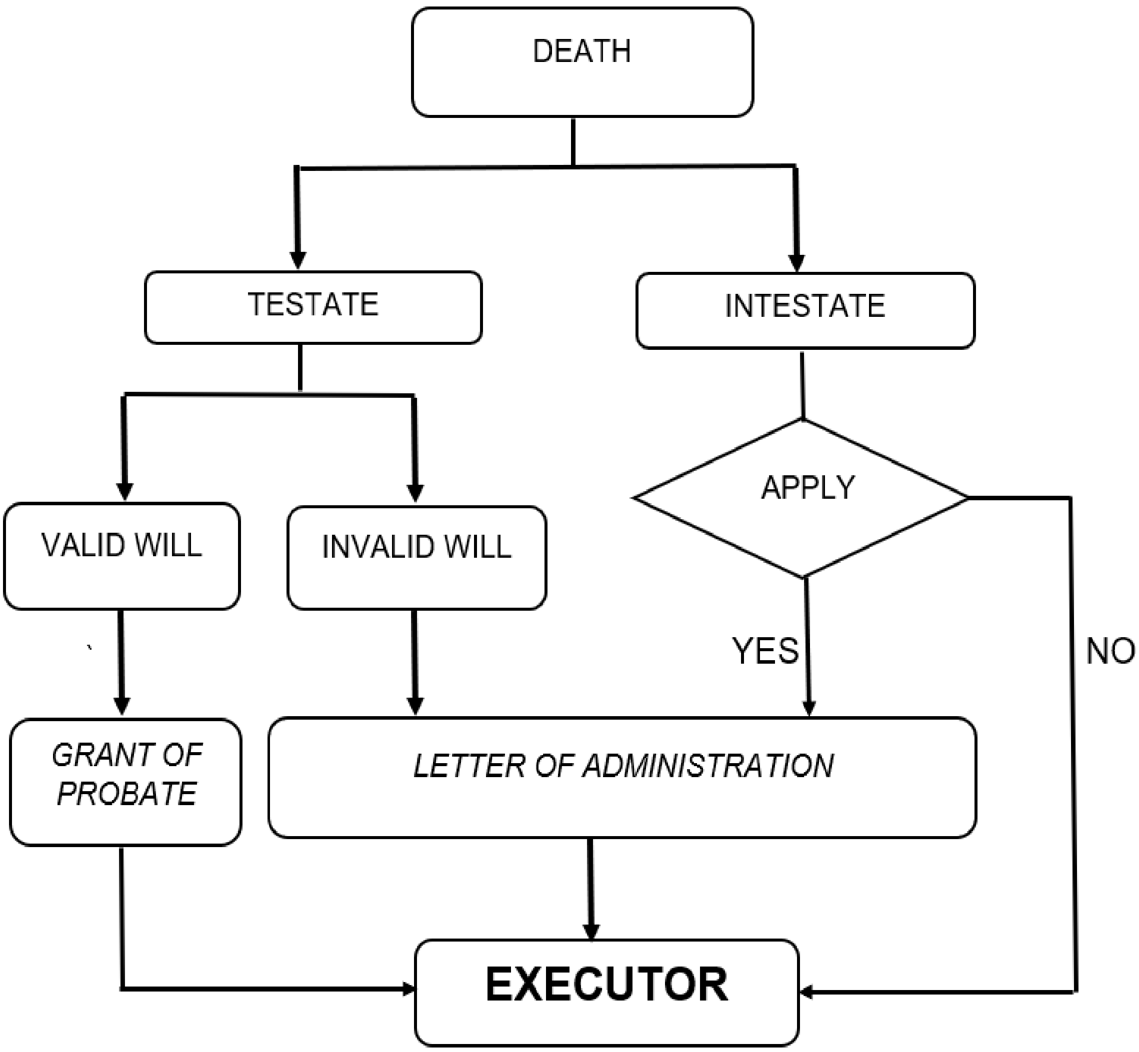
If a Letter of Administration is not requested, the closest heirs may be appointed to take responsibility for paying the tax liabilities of The Deceased and administering the property left by The Deceased.

Example 1

Mrs. Anisah is a widow whose husband was killed in a traffic accident. She is a housewife and has no income. Mrs. Anisah did not apply for the Letter of Administration because her late husband (The Deceased) left no property or assets. She has completed and submitted her late husband's Income Tax Return Form (ITRF) on behalf of The Deceased and declared herself as his wife.

Mrs. Anisah falls under the category of **other persons** under the definition of executor in section 2 of the ITA who administers or manages the estate of her deceased husband.

7.3 A summary of the process for appointing a legal representative (executor) of The Deceased estate is as follows:



8. Administration of Estate by Executor

8.1 According to section 2 of the ITA, an executor means:

(i) executor;
(ii) administrator; or
(iii) other person

who administers or manages the estate of a deceased person.

8.2 The executor is an individual appointed by the court through a Grant of Probate or Letter of Administration on behalf of the heirs to administer the estate of The Deceased and settle the liabilities left by The Deceased. A Grant of Probate and Letter of Administration are collectively known as Grants of Representation. The individual appointed through Grants of Representation is the executor or administrator, who acts as the personal representative of The Deceased to administer the estate and settle the liabilities of The Deceased.

9. Responsibilities of the Executor

The responsibilities of the executor are basically -

9.1 Administering the Estate of The Deceased

The executor is responsible for administering The Deceased's estate on behalf of the heirs before it is distributed to the entitled beneficiaries.

In addition to administering the estate, the executor is also responsible for the welfare of The Deceased's minor children and surviving parents (if any). This includes providing for their welfare through adequate food, proper shelter, good care, healthcare, education, and safety.

9.2 Clarifying the Liability of The Deceased

Liabilities mean the obligations left by The Deceased after his death, which the executor must manage and settle completely.

a) Debts of The Deceased

The debts left by The Deceased may be debts owed to other individuals and debts owed to institutions, especially financial institutions.

The estate of The Deceased cannot be distributed to the entitled beneficiaries or heirs until all the debts of The Deceased are paid in full by the executor.

The executor will utilise The Deceased's estate especially available cash, or sell real estate to settle The Deceased's debts.

b) Tax Liability of The Deceased

Section 74 of the ITA stipulates that any outstanding income tax cannot be automatically waived even if the individual is confirmed to have passed away.

The Deceased's tax liability is as follows:

(i) Year Before Death

(A) The executor must check with the IRBM to determine the amount of outstanding taxes owed by The Deceased for the years preceding his or her death. If there are any outstanding taxes that were not paid in full by The Deceased during his or her lifetime, the executor must pay these outstanding taxes in full including any penalties imposed.

(B) The executor must file the ITRF for each year of assessment (YA) that was not filed by The Deceased during his or her lifetime. The type of ITRF to be filed by the executor for the years before the death of The Deceased depends on the source of income as explained in paragraph 5 and the tax residence status of The Deceased during his or her lifetime.

(C) The tax assessment will be made by the IRBM after The Deceased’s ITRF is received. The executor is responsible for settling all the tax amounts assessed, including any penalties imposed.

(D) The executor is also entitled to apply for tax refunds on behalf of The Deceased if there are tax refunds that The Deceased did not receive during his or her lifetime.

Example 2

Mr. Amran passed away on 30th June 2023. His wife, Mrs. Rohaya, was appointed by the court as the executor based on a valid will. Mrs. Rohaya submitted Form CP 57 to the IRBM to report the death of her husband. Upon review, it was discovered that Mr. Amran (The Deceased) did not file ITRF for YA 2018 to YA 2022. Mrs. Rohaya is responsible for completing and submitting the ITRF for YA 2018 to YA 2022 on behalf of The Deceased. Mrs. Rohaya is also accountable for settling the income taxes for YA 2018 to YA 2022 that have been assessed by the IRBM including any penalties imposed.

(ii) Year of Death

The year of death refers to the year in which The Deceased died. The executor is responsible for submitting the ITRF for The Deceased for that particular year because The Deceased died before he or she could submit the ITRF for that year. This is because the ITRF for the year of death must be submitted to the IRBM no later than 30th April of the following year for those who receive employment or no later than 30th June for those receiving business income.

Example 3

Teacher Roslan (The Deceased) died on 20 May 2023, therefore the year of his death is the year of assessment 2023.

His wife, who is the executor of The Deceased’s estate needs to submit the ITRF for the YA 2023 not later than 30 April 2024, if The Deceased only received a salary as a teacher during his lifetime. The income required to be reported in the ITRF 2023 is The Deceased's salary from 1 January 2023 to 20 May 2023. Income (except employment income) received on or after 21 May 2023 (if any) is the income of The Deceased's estate and is assessed on The Deceased's wife as the executor.

(iii) Year after Death

(A) Subsection 64(1) of the ITA stipulates that income arising after the date of death of The Deceased shall be considered as income of The Deceased's estate and shall be assessed on The Deceased’s executors.

(B) Therefore, income received from sources of The Deceased's estate after the date of death is considered part of The Deceased's estate income and not the personal income of The Deceased.

Example 4

Mr. Anthony passed away on 29 August 2022. Mr. John, the brother of the late Mr. Anthony, was appointed as the executor through a Grant of Probate after the court verified the validity of Mr. Anthony's will. The will of the late Mr. Anthony stated that his brother, Mr. John, was appointed as his executor. During his lifetime, Mr. Anthony received rental income from 10 shophouses that he owned. Therefore, this rental income received from 30 August 2022 onwards will be considered income from Mr. Anthony's estate and is assessed on Mr. John as the executor of the late Mr. Anthony.

The executor of a deceased individual shall not distribute any of the assets of The Deceased's estate if the executor knows of any outstanding tax liabilities of The Deceased that must be paid to the IRBM unless the executor has made provisions to pay The Deceased's tax liabilities as provided under subsection 74(5) of the ITA.

If the executor fails to pay The Deceased's outstanding tax, the executor may be subject to civil action as provided under section 106 of the ITA.

10. Period of Estate Administration by Executor

The period of estate administration by the executor shall be between the date of death until the date of distribution of The Deceased's estate to the entitled heirs or beneficiaries.

10.1 Usually, the executor / administrator / legal representative is given a certain period by the court to fulfill their duties and responsibilities. This period allows the creditors to make and support their claims against The Deceased's estate. Additionally, this period allows relevant parties to dispute or question any provisions in the will of The Deceased.

10.2 The executor must settle all outstanding debts and taxes according to the testamentary document before distributing the estate.

10.3 In certain cases, a testamentary death provides for the establishment of a trust to carry out the specific instructions of The Deceased. An executor can only transfer all his duties to the trustee once the balance of The Deceased's estate has been determined within the executor's administration period.

10.4 In the case of an intestacy, where the executor has determined the balance of The Deceased's estate for distribution to identified eligible heirs, it is recommended to have written evidence such as an agreement among the heirs.

10.5 The period of administration by the executor is important because:

a) If the administration is not yet completed, the income received from the estate sources is considered estate income and will be subject to taxation on The Deceased 's executor.

b) If the administration has been completed, any income received from its sources will be considered the beneficiary's income and will be subject to tax on the beneficiary to whom the estate is distributed.

c) If the will of The Deceased provides for the establishment of a trust body, the income received from the sources of the estate is considered the income of the trust body, and it will be subject to tax on the trustee or eligible beneficiaries. Please refer to Public Ruling No. 9/2020 Taxation of Trusts for further information.

Example 5

The facts are the same as in Example 4 except for the fact that Mr. John has settled all of the debts belonging to the late Anthony including his outstanding taxes while he was alive. According to Anthony's will, Mr. John shall distribute all the real estate assets, which include 10 shophouses to 3 of Anthony's children and his widow. This estate distribution process was completed on 1 July 2023, which also marks the expiration of Mr John's administration period. Any income received after this date is considered the beneficiaries' income and will be subject to tax on the respective beneficiaries.

10.6 In Malaysia, there are several legal provisions related to the distribution of The Deceased's estate to eligible beneficiaries as follows:

a) Distribution Act 1958 [*Act 300],*

b) Parsee Intestate Succession Ordinance of Straits Settlements,

c) Law of Faraid; and

d) Intestate Succession Ordinance 1960

The Distribution Act 1958, does not apply to those professing Islam or the Majusi religion. Followers of the Majusi religion are governed by the Parsee Intestate Succession Ordinance of the Straits Settlements, while those professing Islam are subject to the Law of Faraid.

10.7 The administration period of The Deceased's estate by the executor will end when the estate is wound up or after the estate is fully distributed which means all the liabilities of The Deceased have been settled.

11. Procedures

The closest heirs or executors can inform the IRBM regarding The Deceased's death by using Form CP 57, which is the Notification of The Demise of Taxpayer Form. Form CP 57 can be downloaded from the Official Portal of the IRBM. The closest heirs or executor shall submit Form CP 57 together with the supporting documents that are listed on the form. The form and document can be submitted to the IRBM locality that handles The Deceased's tax file or any nearby IRBM locality. In addition, the closest heirs are advised to contact the Hasil Care Line to find out the IRBM locality that handles the file of The Deceased, and obtain the e-mail address of the locality so that notification and copies of supporting documents can be submitted online.

Employers are required to submit Form CP 22A, which is the Tax Clearance Form for Cessation of Employment of Private Sector Employees, or Form CP 22B, which is the Tax Clearance Form for Cessation of Employment of Public Sector Employees. Both forms can be downloaded from the Official Portal of the IRBM. Employers should print and submit either Form CP 22A or CP 22B to the IRBM locality that handles the tax file of The Deceased.

12. 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