



ARRIS MANAGEMENT SERVICES SDN. BHD.

(Company No. 607434 – P)

No. 39, Second Floor, Jalan Kenari 17C, Bandar Puchong Jaya,
47100 Puchong, Selangor Darul Ehsan
Tel: 603 – 8076 3063 Fax : 603 – 8073 1232

Arris Notes 11

BUSINESS TRUST

Background

Business trust (“BT”) is a new investment vehicle in Malaysia. It is a unit-trust scheme established under the amended Capital Markets and Services Act 2007 where the business operations are conducted by the trustee-manager (“TM”) who acts as a trustee on behalf of BT and the unit holders. BT is suitable for businesses which are capital intensive with stable cash flows, such as infrastructure, shipping, manufacturing and healthcare sectors. For example, a healthcare company with chains of hospitals may wish to spin off its properties into a business trust.

As BT uses most of the underlying asset’s cash flows to pay dividends, it is more attractive to long-term investors seeking steady income and quicker returns. It is also a way for companies, typically large ones, to raise money by putting some of their hard assets into a BT. The introduction of BT will broaden the range of investment products and asset classes in the capital market.

Proposed Legislation

To promote the development and investment in BT, it is proposed that:

- (1) BT be given income tax, stamp duty and real property gains tax treatments similar to those of a company;
- (2) BT be given stamp duty exemption on instruments of transfer of businesses, assets or real properties acquired; and
- (3) The disposer of real properties or shares in a real property company to BT be given real property gains tax exemption.

The above incentives in (2) and (3) above are provided on a one-off basis at the initial stage of the establishment of BT.



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It is also proposed that the following existing legislation is to be amended:-

- (a) Section 2(1) of the Income Tax Act 1967 on the definition of a “company” now includes BT. Hence the tax treatment of a BT is meant to be similar to a company under the Income Tax Act 1967.
- (b) Section 2(9) of the Income Tax Act 1967 has been amended to exclude a BT with lower paid up capital (i.e. RM2.5 million and below) from enjoying benefits of not filling tax estimates and not making instalment payments pursuant to Subsection 107C(4A) of the Income Tax Act 1967, eligibility for the special tax rate under Schedule 1 of the Income Tax Act 1967 and eligibility for the special allowances for small value assets under Schedule 3 of the Income Tax Act 1967.
- (c) A new Section 2(11) of the income Tax Act 1967 has been inserted so that any reference to shares or ordinary share capital, shareholders and dividend will also include reference to units or derivatives of units, unit holders and distributions in relation to a BT. For example, this will mean that BT will also be included for provisions under the Income Tax Act 1967 where a shareholding test is required (e.g. Group Relief).
- (d) Section 8 of the Income Tax Act 1967 provides that the residence status of a BT is determined based on the residence status of a trustee-manager. The trustee manager is resident in Malaysia if he carries on the business of the BT in Malaysia and the management and control of its business are exercised in Malaysia.
- (e) A new Section 75B of the Income Tax Act 1967 would provide for the responsibility of a trustee-manager to do all acts and things required under the Income Tax Act 1967 on behalf of BT.
- (f) Schedule 3, Paragraph 38(2) of the Income Tax Act 1967 on controlled transfer has been widened to include a BT. Control for the purpose of a BT means the right to not less than fifty percent of residual profits of the BT available for distribution, or not less than fifty percent of any residual assets of the BT available for distribution on a winding up.



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Reference

Section 2, 8, 75B, and Schedule 3, Paragraph 38(2) of the Income Tax Act 1967.

Stamp duty exemption and real property gains tax exemption are to be gazetted by way of statutory orders.

Effective Date

Proposal (1) : From year of assessment 2013.

Proposal (2) : For instruments executed from 1 January 2013.

Proposal (3) : For disposal of real properties or shares in a real property company from 1 January 2013.

Likely Tax Effect and Implications

The proposals are aimed for a BT to:

- manage and operate business enterprises, similar to a company with features of an investment fund;
- have no restriction on the type of assets which a business trust may hold;
- undertakes activities in respect of any property or asset;
- have property or asset managed as a whole by a trustee-manager or by another person on behalf of the trustee-manager;
- not to be subject to capital maintenance requirements; and
- not be subject to restrictions on paying dividends out of accounting profits. The business trust can pay distributions to investors out of operating cash flows, subject to solvency tests. Hence, the BT becomes more attractive to inventors.

It should be noted that transfer of assets to a BT would still be subject to income tax where applicable.



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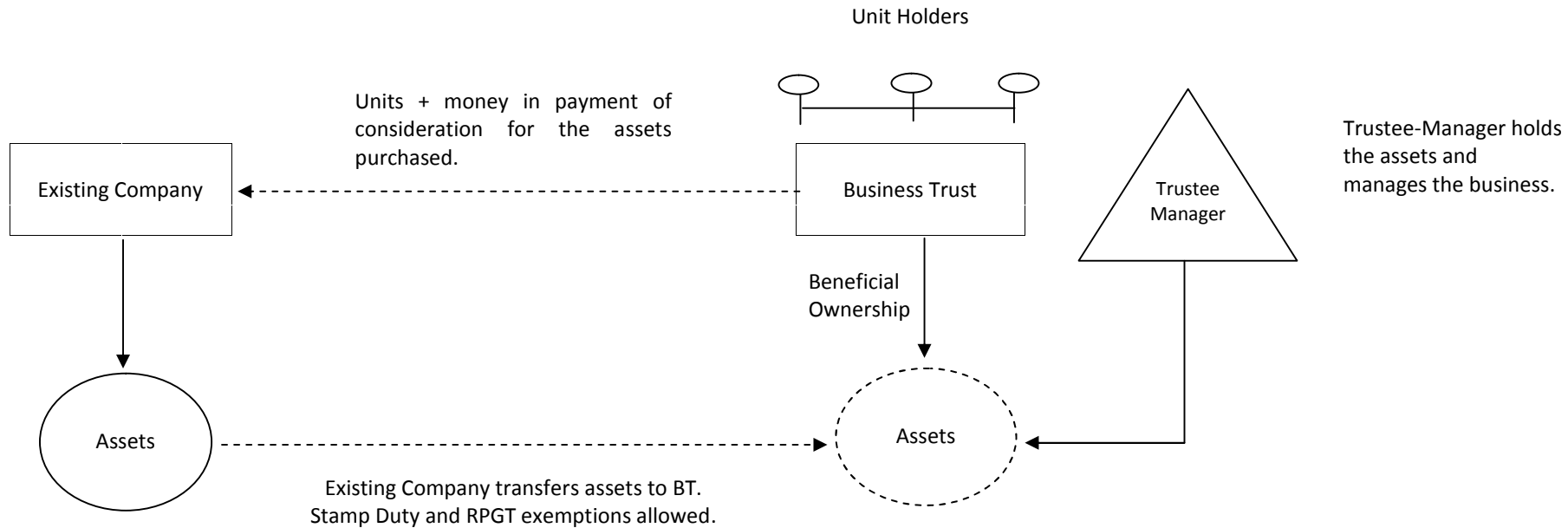
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The setting up of a BT can be illustrated as follows:-



Source: 2013 Budget Commentary and Tax Information by MIA, MICPA and CTIM

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