

# CHAPTER 1 PARTNERSHIP TAXATION

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## 1.0 INTRODUCTION

A partnership is not a person in law, it is not a separate and assessable entity for tax purposes (*Rose v FC of T*). A partnership is, however, required to lodge a return. The partnership return determines what is the net partnership income or partnership loss. Each partner must then include in his personal return his individual share of these amounts and pays tax accordingly.

### 1.1 DEFINITION OF PARTNERSHIP UNDER ITA 1967

A partnership is defined in Section 2 of the Income Tax Act (ITA) as "an association of any kind (including joint ventures, syndicates and cases where a party to the association is itself a partnership) between parties who have agreed to combine any of their rights, powers, property, labour or skill for the purpose of carrying on a business and sharing the profits there from but it excludes a Hindu joint family although such a family may be a partner in a partnership."

According to the Malaysian Partnership Act 1961, a partnership is defined as a relationship that subsists between persons carrying on business in common with a view of profit. A partnership is not a person within the meaning of sec 2 of the ITA. Consequently, no assessment can raised for income tax purposes on the partnership. Instead each individual partner is assessed on his or her share of the partnership income.

#### 1.1.1 Types of partners

##### a. Full partners

These are the "real" partners who share in the conduct of the business and in the profit or losses it generates. Their income is assessed to tax under sec 4(a) as income from a business or professional source.

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**Richard Bailey**



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