

Deloitte.



Tax Espresso

Latest Gazette Orders, FAQs, Tax Cases and more
July 2021



Greetings from Deloitte Malaysia Tax Services

Quick links:

[Deloitte Malaysia](#)

[Inland Revenue Board of Malaysia](#)

Takeaways:

- [Income Tax \(Accelerated Capital Allowance\) \(Machinery and Equipment including ICT Equipment\) Rules 2021 \[P.U.\(A\) 268/2021\]](#)
- [Income Tax \(Deduction for Expenses in Relation to the Cost of Personal Protective Equipment\) Rules 2021 \[P.U.\(A\) 269/2021\]](#)
- [Income from Fund Management Services Exempted from Tax via P.U.\(A\) 282/2021, P.U.\(A\) 283/2021 and P.U.\(A\) 284/2021](#)
- [IRBM's media release and FAQs on tax matters during Phase One of the National Recovery Plan \(updated on 4 July 2021\)](#)
- [IRBM's media release and FAQs on deferment of payment of CP204 and CP500 from 1 April 2021 to 31 December 2021 under PEMERKASA \(updated on 28 June 2021\)](#)
- [IRBM's media release – Notification on registration of income tax number through e-Daftar and change of prefix for individual taxpayers from SG and OG to IG](#)
- [MSC Malaysia BOG 5 Revised Tax Regime comes into Force on 1 July 2021](#)
- [Ship Vet Sdn Bhd v KPHDN \(HC\)](#)
- [Berjaya Times Square Sdn Bhd v KPHDN \(COA\)](#)
- [Seek Kim Lee v KPHDN \(HC\)](#)
- [Keysight Technologies Malaysia Sdn Bhd v KPHDN \(HC\)](#)

Upcoming events:

- [Sales Tax & Service Tax - A year in review](#)

Important deadlines:

Task	2021 Due Date	
	31 July	1 August
1. 2022 tax estimates for companies with August year-end		√
2. 6th month revision of tax estimates for companies with January year-end	√	
3. 9th month revision of tax estimates for companies with October year-end	√	
4. Statutory filing of 2020 tax returns for companies with December year-end	√	
5. Maintenance of transfer pricing documentation for companies with December year-end	√	
6. Deadline for 2021 CbCR notification for companies with July year-end	√	

1. Income Tax (Accelerated Capital Allowance) (Machinery and Equipment including Information and Communication Technology Equipment) Rules 2021 [P.U.(A) 268/2021]

[P.U.\(A\) 268/2021](#) (the Rules) was gazetted on 15 June 2021 and shall have effect from the year of assessment (YA) 2020.

Application

The Rules apply to a person, in respect of qualifying plant expenditure incurred by such person between 1 March 2020 and 31 December 2021 and used for the purpose of his business subject to the prescribed conditions.

Accelerated Capital Allowance

The person qualifies for an initial allowance of 20% and an annual allowance of 40% of the qualifying plant expenditure incurred.

For the purposes of the Rules:

“Qualifying plant expenditure” means a capital expenditure incurred under Paragraph 2 of Schedule 3 to the ITA in relation to the provision of machinery and equipment including information and communication technology equipment except motor vehicle.

“Information and communication technology equipment” means information and communication technology equipment as specified in the Schedule. An extract thereof is reproduced below:

- Access control system
- Banking systems
- Barcode equipment
- Bursters/decollators
- Cables and connectors
- Computer Assisted Design (CAD)
- Computer Assisted Manufacturing (CAM)
- Computer Assisted Engineering (CAE)
- Card readers
- Computers and components
- Central Processing Units (CPU)
- Storages
- Screens
- Printers
- Scanners/readers
- Accessories
- Communications and networks

Non-application

The Rules shall not apply to a person who has incurred qualifying plant expenditure in a basis period for a YA where during that basis period the person is eligible and has claimed in respect of the same qualifying plant expenditure—

- (a) a deduction under the Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017 [[P.U.\(A\) 252/2017](#)]; or
- (b) an exemption under Income Tax (Exemption) (No. 8) Order 2017 [[P.U.\(A\) 253/2017](#)]

Please refer to the [Rules](#) for the full details, including the deeming provision relating to hire purchase agreement.

[The above accelerated capital allowance was first announced in the Economic Stimulus Package in February 2020 and was to expire on 31 December 2020. It was extended to 31 December 2021 under PENJANA announced in June 2020. See [Deloitte Malaysia Tax Espresso - Special Alert - Economic Stimulus Package 2020 – Tax related measures](#) and [Appendix 10 of PENJANA Tax-Related Measures](#)]

[Back to top](#)

2. Income Tax (Deduction for Expenses in Relation to the Cost of Personal Protective Equipment) Rules 2021 [P.U.(A) 269/2021]

[P.U.\(A\) 269/2021](#) (the Rules) was gazetted on 15 June 2021 and came into operation from the YA 2020.

Deduction

For the purpose of ascertaining the adjusted income of an employer from its business in a basis period for a year of assessment, a deduction shall be allowed for the cost of personal protective equipment for the purpose of its business from 1 March 2020.

In these Rules, unless the context otherwise requires, “cost of personal protective equipment” means the expenditure incurred by the employer for the purpose of prevention and protection of its workers from Coronavirus Disease 2019 (COVID-19).

Non-application

These Rules shall not apply to an employer who has incurred expenses on the cost of personal protective equipment where in the basis period for that year of assessment, the employer has claimed the cost of the personal protective equipment under—

- (a) capital allowances for qualifying expenditure under Schedule 3 of the Act; or
- (b) accelerated capital allowances under the Income Tax (Accelerated Capital Allowance) (Machinery and Equipment Including Information and Communication Technology Equipment) Rules 2021 [\[P.U.\(A\) 268/2021\]](#).

Please refer to the [Rules](#) for the full details.

[The above was one of the measures announced in the government’s Short-Term Economic Recovery Plan (PENJANA). See [Deloitte Malaysia Tax Espresso - Special Alert - PENJANA: Appendices on Tax Related Measures](#) on ‘Tax relief for COVID-19 related expenses’]

[Back to top](#)

3. Income from Fund Management Services Exempted from Tax via P.U.(A) 282/2021, P.U.(A) 283/2021 and P.U.(A) 284/2021

Three (3) Orders were gazetted on 29 June 2021 and are effective from YA 2021 to YA 2023:

- 1) Income Tax (Exemption) (No. 6) Order 2021 [\[P.U.\(A\) 282/2021\]](#),
- 2) Income Tax (Exemption) (No. 7) Order 2021 [\[P.U.\(A\) 283/2021\]](#), and
- 3) Income Tax (Exemption) (No. 8) Order 2021 [\[P.U.\(A\) 284/2021\]](#).

The above Orders were gazetted to legislate the proposed extension of statutory income tax exemption by another 3 years, applicable for companies that derive statutory income from a business of providing fund management services in accordance with Syariah principle as certified by the Securities Commission Malaysia (“SC”) to the following in Malaysia:

- 1) business trusts or real estate investment trusts [\[P.U.\(A\) 282/2021\]](#);
- 2) local investors [\[P.U.\(A\) 283/2021\]](#); and
- 3) foreign investors [\[P.U.\(A\) 284/2021\]](#).

Previously, the tax exemption on income from the provision of management services of Syariah-compliant funds approved by the SC was given up to YA 2020. *[See [Tax Espresso \(Special Edition\) - Highlights of Budget 2020 – Part I](#) on ‘Extension of period of tax exemption on management fee income for Shariah Compliant Fund’].*

To qualify for the exemption, the qualifying company must have obtained the annual certification from the Securities Commission Malaysia that the following conditions have been fulfilled namely the qualifying company:

- provides fund management services in Malaysia in accordance with the Syariah principles;
- has at least two (2) full-time employees in Malaysia of which one of the employees holds a Capital Markets Services Representative’s Licence under the *Capital Markets and Services Act 2007*; and
- incurs annual operating expenditure of at least RM250,000 in Malaysia.

A qualifying company for this purpose refers to a Malaysian resident company incorporated under the Companies Act 2016 and holds a Capital Markets Services Licence under the *Capital Markets and Services Act 2007* to carry on the business of providing fund management services.

Please be reminded that a qualifying company shall **maintain a separate account** for the income derived from the business of providing fund management services in the basis period for each YA to enjoy the exemption. The income shall be treated as a separate and distinct source of business for the company.

Please refer to the respective [P.U.\(A\) 282/2021](#), [P.U.\(A\) 283/2021](#) and [P.U.\(A\) 284/2021](#) for the full details.

Our remarks:

The Exemption Orders continue to promote the Syariah-compliant fund management industry in Malaysia in line with the Government's continuing goal to develop Malaysia as an Islamic Financial Services hub in the region.

The substantial requirement in the context of qualifying company in the new PU Orders are:-

- *adequate number of full-time employees in Malaysia which one of the employees must holds a Capital Markets Services Representative's Licence under CMSA; and*
- *annual operating expenditure of at least RM250,000 incurred in Malaysia.*

However, the term "operating expenditure" is not defined in the new PU Orders. The issue is whether the operating expenditure referred to in the Orders are restricted to expenditures directly incurred in the business of providing fund management services in accordance with Syariah principles as certified by the SC to the following in Malaysia:

- 1) *business trusts or real estate investment trusts;*
- 2) *local investors; and*
- 3) *foreign investors.*

One may interpret "operating expenditure" to mean all operating expenditure incurred by the claimant company in its ordinary course of business whether or not incurred directly in relation to the provision of fund management services in accordance with the Syariah principles as certified by the Securities Commission Malaysia to specific groups of clients.

We trust the scope of "operating expenditure" should be standardized to every incentive. A guideline should be issued to give further clarification on what constitute the operating expenditures to be incurred annually by a qualifying company. A clearly specified minimum number of full-time employees and operating expenditure for each incentive would also provide greater clarity to investors.

[Back to top](#)

4. IRBM's media release and FAQs on tax matters during Phase One of the National Recovery Plan (updated on 4 July 2021)

Further to [Deloitte Malaysia Tax Espresso - Special Alert - PEMERKASA Plus: Tax-related measures](#), the IRBM has issued a [media release](#) 'Relaxation of tax payment and penalty under the PEMERKASA Plus and the FAQs related to tax matters during MCO 3.0' (*Available in Bahasa Malaysia only*) to address the relaxation of tax payment and penalty announced in PEMERKASA Plus.

The relaxation by the IRBM as outlined below, is specifically intended to ease the burden of taxpayers affected by the pandemic in settling their tax arrears and tax penalties, and **applies only** to taxpayers whose income has been affected as a result of the pandemic and the subsequent Movement Control Order (MCO) (i.e. unaffected taxpayers must continue paying taxes as required by the applicable law).

- Application for **deferral of penalty payment** relating to the taxpayers' tax obligations to year 2022, provided that such taxpayers continue to comply with the payment of the principal amount of tax due. The penalties covered are the penalties imposed under the ITA, the Real Property Gains Tax Act 1976 (RPGTA) and the Stamp Act 1949 (SA);
- Application for **rescheduling of tax payment** for taxpayers who lost their source of income or are unable to settle tax arrears due to the MCO; and

- Appealing against **penalties imposed** if the taxpayer has a strong reason. The appeals will be considered on a case-to-case basis.

The IRBM advises that taxpayers who wish to apply for the above relaxation should contact the IRBM branch that handles their income tax file. [Please refer to Part E “Appeal and Penalty Payment” of the FAQs for guidance.

<https://maklumbalaspelanggan.hasil.gov.my/MaklumBalas/en-US/>]

The IRBM has also uploaded the ‘Frequently Asked Questions ([FAQs](#)) on Tax Matters during Phase One of the National Recovery Plan’ covering issues on filing of income tax returns and income tax payments. The following are the salient points:

- 1) Taxpayer may be allowed to reschedule tax instalment payments on a case-to-case basis. Taxpayer must submit the application with the relevant documents such as cash flow documents.
- 2) Extension of time until **31 July 2021** will be given for submission of CP204, revision to CP500 and CP204, CP204B (#) where the **due date falls in June 2021**. (#) *Notification of Change of Accounting Period (CP204B) has to be submitted by post or courier.*
- 3) Extension of time until **31 August 2021** will be given for:
 - a) Submission of Income Tax Return Form (ITRF) for the YA 2020 for taxpayers **carrying on a business** i.e. taxpayers who are individuals, resident individuals (knowledge/expert workers), non-resident individuals, non-resident individuals (knowledge/expert workers), partnerships, associations, deceased persons estate and Hindu joint families [*Please refer to the [2021 Return Form Filing Programme](#) for full details*]; and
 - b) Submission of RPGT return forms and payment of sum retained under Section 21B of the RPGTA where **the due date falls within Phase One of the National Recovery Plan (NRP)**.
- 4) **Two (2) months** extension of time will be given for submission of ITRF involving companies, limited liability partnerships, unit trusts/property trusts, co-operative societies, trust bodies, real estate investment trusts/property trust funds, business trusts and petroleum as follows:
 - YA 2020 – for those with accounting period ending 1 October 2020 until 31 December 2020; and
 - YA 2021 – for those with accounting period ending 1 January 2021 until 31 January 2021.

Please refer to the [2021 Return Form Filing Programme](#) for full details.

- 5) For deferment for compound and penalty payment which are **due to be paid within the period from 1 June 2021 to 28 June 2021**, extension of time up to **30 days** from the initial due date for payment will be given.
- 6) Extension of time will **not** be given for withholding tax payments where **the due date falls within Phase One of the NRP**. Withholding tax payment can be made via telegraphic transfer (TT) / interbank GIRO (IBG) transfer / electronic fund transfer (EFT) by furnishing complete payment details to IRBM via fax at 03-62019637 or email to HelpTTPayment@hasil.gov.my.
- 7) Application for extension of time for other matters may also be submitted for IRBM’s consideration on a case-to-case basis if taxpayers are required to submit/provide the following where **the due date falls within Phase One of the NRP**:
 - a) documents for audit or investigation;
 - b) feedback to IRBM letters;
 - c) Notice of Appeal to the Special Commissioners of Income Tax (SCIT) [Form Q] (Taxpayer is required to file Form N and state that the delay is due to the implementation of MCO 3.0); and
 - d) Country-by-Country Reporting (CbCR).
- 8) For stamping of documents that cannot be done within Phase One of the NRP, an extension of time of **30 days** is given from the due date of stamping and payment, for all instruments where **the due date falls within Phase One of the NRP**. For other cases, the extension of time will be considered by the IRBM based on the merits of each case.

- 9) For RPGT, appeals on penalty will be considered by IRBM based on the merits of each case.
- 10) For stamp duty, appeals for a waiver or remission of penalty will be considered by IRBM based on the merits of each case.

Please refer to both the [media release](#) and [FAQs](#) for full details.

[Back to top](#)

5. IRBM's media release and FAQs on deferment of payment of CP204 and CP500 from 1 April 2021 to 31 December 2021 under PEMERKASA (updated on 28 June 2021)

Further to [Deloitte Malaysia Tax Espresso - Special Alert - PEMERKASA: Tax-related measures](#), the IRBM has issued a [media release](#) (Available in Bahasa Malaysia only) and Frequently Asked Questions ([FAQs](#)) (updated on 28 June 2021) on the deferment of payment of estimated tax payable (CP204) and instalment scheme (CP500) from 1 April 2021 to 31 December 2021 for eligible taxpayers in the tourism industry (such as travel agents, hotel operators, and airlines) as well as cinema and spa industries. The IRBM has provided the business codes under the Malaysia Standard Industrial Classification (MSIC) in respect of business activities eligible for deferment.

The salient points are as follow:

- 1) Taxpayers who conduct business activities under the **tourism, cinema, and spa industries** are eligible for the deferment of payment of CP204 or CP500 from **1 April 2021 to 31 December 2021**. In the case where the taxpayer also conducts other business activities, in addition to the business activities under the tourism, cinema, or spa industries, the taxpayer is still eligible for the deferment.
- 2) The deferment of payment of CP204 and CP500 is applicable to all basis periods (i.e. not limited to basis period ending 31 December 2021), provided that the instalment payments are due in the deferment period.
- 3) Eligible taxpayers are **determined based on the IRBM's records, i.e. the business code indicated in the taxpayer's latest ITRF** received by the IRBM. *[Please refer to FAQ #3 for the list of qualifying MSIC business codes.]*
- 4) The deferment of payment of CP204 and CP500 will be granted **automatically** by the IRBM to all eligible taxpayers. These taxpayers will be notified via email registered with the IRBM. In the case where the taxpayer falls within the list of qualifying business code mentioned above but has yet to receive the IRBM's email notification, the taxpayer is not required to make the instalment payments due in the deferment period.
- 5) If the taxpayer's current status meets the eligibility criteria for the deferment, the taxpayer can appeal to the IRBM via email to the following addresses by category type:
 - i) cp204pemeraksa@hasil.gov.my; or
 - ii) cp500pemeraksa@hasil.gov.my
- 6) Taxpayers whose business activities do **not** fall within the list of eligible business codes provided by the IRBM in FAQ #3 but their businesses are affected, can submit an application for deferment of payment of CP204 or CP500 together with supporting documents to the IRBM. Applications will be considered based on the merits of each case, subject to IRBM's approval.
 - i) Application for deferment of CP204 instalment payments can be submitted to IRBM by email to cp204pemeraksa@hasil.gov.my.
 - ii) Application for deferment of CP500 instalment payments can be submitted to the IRBM branch that handles the file or by email to cp500pemeraksa@hasil.gov.my.
- 7) Taxpayers are required to settle the deferred payment of CP204 or CP500 **by the due date of submission of the ITRF** for the relevant year of assessment (YA), if there is still an outstanding tax payable.
- 8) The increase in taxes under Sections 107B(3) and 107C(9) of the Income Tax Act 1967 will not be imposed on taxpayers who were granted a deferment of CP204 or CP500 payments due during the deferment period.

- 9) If the CP204 or CP500 payment has been settled within the deferment period, the taxpayer will not be allowed to carry forward the payment to settle the monthly instalment due after the expiry of the deferment period or the next YA.
- 10) Nevertheless, eligible taxpayers **can choose not to defer** their CP204 or CP205 payments, i.e. continue to make the payments based on the due dates stipulated in the original instalment payment schedule, without the need to notify the IRBM.

Please refer to both the [media release](#) and [FAQs](#) for full details, including the scenarios on implementation of the deferment of payment of CP204 and CP500.

[Back to top](#)

6. IRBM's media release – Notification on registration of income tax number through e-Daftar and change of prefix for individual taxpayers from SG and OG to IG

The IRBM has notified via [media release](#) (*Available in Bahasa Malaysia only*) dated 16 May 2021, that starting from 18 May 2021, the registration of income tax number can be done online through the e-Daftar service which can be accessed through the link at <https://edaftar.hasil.gov.my/> for taxpayers in the following categories:

- Cooperative Society (CS)
- Associations (F)
- Trust Body (TA)
- Unit Trusts / Real Estate Trusts (TC)
- Business Trusts (TN)
- Real Estate Investment Trust / Property Trust Fund (TR)

Prior to 18 May 2021, the e-Daftar service was limited to the registration of income tax number for individual (SG & OG), company (C), partnership (D), employer (E), and Limited Liability Partnerships (LLP).

Beginning from 18 May 2021, the IRBM has also implemented a new prefix setting for individual taxpayers i.e. from the SG and OG prefix to the IG prefix. The prefix setting process involves two phases. The first phase will be implemented for individual taxpayers who have recently registered through the IRBM system. The second phase involves changing the prefix for existing individual taxpayers in stages from 18 May 2021 onwards.

[Back to top](#)

7. MSC Malaysia BOG 5 Revised Tax Regime comes into Force on 1 July 2021

The Malaysia Digital Economy Corporation (MDEC) has made an [announcement](#) 'MSC Malaysia BOG 5 Revised Tax Regime Comes into Force On 1 July 2021' on its website relating to the Application for Tax Transition (Services Incentive), with a final reminder that companies intending to apply for transition into the revised tax regime (MSC Malaysia Status Services Incentive) are required to submit their application **by 31 July 2021**. As reported earlier in [Deloitte Malaysia Tax Espresso January 2020 MDEC: Guidelines on MSC Malaysia Financial Incentives](#), an existing MSC Malaysia status company with services income has an option to enjoy the remaining period of tax exemption under the revised tax regime subject to compliance with applicable new conditions and approval.

The MDEC announcement states that:

- Eligible companies must fulfil the new conditions as set out in the [Guidelines](#).
- Companies intending to apply for transition under the Revised Regime must complete an online application form, Compliance Self Declaration Form (SDF) and submit the relevant supporting documents via MDEC's [online form](#) by 31 July 2021.
- FAQ and presentation slides for your reference:
[Click here for FAQ](#)
[Click here for Presentation](#)

- For enquiries, you may contact MDEC Client Contact Centre at 1-800-88-8338 (within Malaysia) or +603 8315 3000 (overseas) or email to clic@mdec.com.my

Please refer to the MDEC [announcement](#) for the full details.

[Back to top](#)

8. Ship Vet Sdn Bhd v KPHDN (HC)

Issues:

- 1) Whether the income for the YAs 2014 and 2015 from the provision of ship and vessel inspection services was foreign sourced income, which was not taxable under Paragraph 28, Schedule 6 of the ITA; and
- 2) Whether the penalty imposed under Section 113(2) of ITA was valid and enforceable.

Decision:

The High Court (HC) upheld the decision of the SCIT and dismissed the appeal of the taxpayer on the following grounds:

- Whether the income was derived from sources outside of Malaysia depends on the facts of the case and not merely on the location or the place where the work was done, as decided in *Tariff Reinsurances Ltd v Commissioner of Taxes (Victoria) (1937–38) 59 CLR 205*. One had to look at the totality of the facts and find out what the taxpayer did to earn the profits rather than going only by the location of the business.
- It is fundamental to note that in determining if the income was derived from sources outside Malaysia, the emphasis is on the word “derived” and not “received”. The word ‘derived’ means more than received, “derived” connotes the source or origin.
- The taxpayer conducted the inspection on ships which might or might not have been anchored in Malaysia. However, the taxpayer conducted the pre-inspection and post-inspection processes in relation to the services in Malaysia itself.
- The focus had to be on the initial stages of the work and not exclusively on the final stage of the work as decided in *Commissioner of Taxation v Kirk [1900] AC 588*. The taxpayer managed and controlled its business from its sole office in Johor Bahru, which included receiving payment for the work done outside Malaysia, to its account in Malaysia. The income and profits were not taxed in any jurisdiction outside Malaysia.
- Under Section 113(2) of the ITA, the Director General of Inland Revenue (DGIR) had the power to impose a penalty up to the equivalent of the amount of tax undercharged due to the incorrect returns made. However, in the present case, only 45% of the tax, which had been undercharged, was imposed on the taxpayer, and this was done after taking into consideration the facts and merits of the case. Therefore, there was no injustice in the imposition of such penalty.

[Back to top](#)

9. Berjaya Times Square Sdn Bhd v KPHDN (COA)

Issue:

Whether the HC’s decision that the taxpayer’s application for leave for judicial review was an abuse of court process was correct and if the taxpayer ought to have proceeded with the statutory process since it had appealed before the SCIT under Section 99 of the ITA.

Decision:

The Court of Appeal (COA) upheld the decision made by the HC, and unanimously dismissed the taxpayer’s appeal with the following grounds of judgement:

- The HC’s decision, that it was an abuse of the court process to maintain the taxpayer’s judicial review application since the taxpayer had filed an appeal to the SCIT under Section 99 of the ITA, was correct.

- The taxpayer rightly argued that the existence of domestic remedy was no bar to judicial review. As decided in *Jagdis Singh and Iskandar Coast Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2019) MSTC ¶30-303; [2019] 7 CLJ 143*, judicial review was always at the Court's discretion. Still, where there was another avenue or remedy available to the applicant, it would be exercised only in exceptional circumstances, which would be determined depending on the factual matrix of each case. Thus, the applicant had to first exhaust the remedy provided under the ITA and show a clear lack of jurisdiction or a blatant failure to perform some statutory duty or a serious breach of natural justice.
- The taxpayer argued that it was undisputed that the said lots were the investment assets of the taxpayer, which the DGIR had recognised in 2 letters. However, the HC was correct in opining that the particular paragraph had to be read with the rest of the letter and not in isolation. The said paragraph must be read with the rest of the letter, whereby the DGIR had explained the reasons why the DGIR considered the disposal of the said Lots is subject to Section 4(a) of the ITA. A mere statement could not be taken as an admission if one was to appreciate the letter's contents as a whole.
- The taxpayer's contention that the subsequent filing of appeal before the SCIT was only confined to the penalty was untenable. The COA held that there were no separate appeal provisions for tax assessment and penalties. Penalties issued, if any, were subject to the validity of the impugned notices, which the taxpayer was disputing. The DGIR rightly argued that the taxpayer was challenging the assessments, which involved a question of facts.
- Going by the decision in *Investment Ltd v Comptroller-General of Inland Revenue [1975] 2 MLJ 208*, whether the gain from the disposal of the property was subject to the income tax or real property gains tax, was a question about the merit of each case. Such an issue was best reserved for argument in an appeal before the SCIT and not in judicial review proceedings.
- Whether the transaction amounted to trading or merely a capital transaction was a question of facts and degree. This was a question of fact to be ascertained and decided by the SCIT, and there was no factual admission by the DGIR that the said lots were investment properties. Since there was a dispute of facts, the case should be referred to the SCIT to ascertain the factual matrix.
- As per the authorities, *Ketua Pengarah Hasil Dalam Negeri v Alcatel-Lucent Malaysia Sdn Bhd & Anor (2016) MSTC ¶30-134; [2017] 1 MLJ 563* and *Ta Wu Realty Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri & Anor (2008) MSTC 4,362; [2009] 1 MLJ 555*, judicial review was a court proceeding to challenge the legality of the decision-making process by a public authority and the court sitting in a judicial review application was to exercise its supervisory jurisdiction and was not to examine the merits of the application.
- It was not justifiable to set aside or vary an order simply because there could be a different conclusion on similar material. The duties of an appellate court in such a matter as the present case were confined to those normally exercisable where the lower court had discretion. In *Vazhappulli Raman v T Damodaran PV Raman & Anor [1981] CLJ 84; [1981] CLJ (Rep) 101; [1981] 2 MLJ 150* and *Ratnam v Cumarasamy & Anor [1964] 1 LNS 237; [1965] 1 MLJ 228*, the Court held that an appellate court would not interfere with the discretion exercised by a lower court unless it was clearly satisfied that the discretion had been exercised on a wrong principle and ought to have been exercised in a contrary way or that there had been a miscarriage of justice.
- There was nothing exceptional about the taxpayer's case for a judicial review before exhausting the domestic appeal process prescribed by Section 99 of the ITA. There were no "very exceptional circumstances", in the sense that there was no "clear lack of jurisdiction, or a blatant failure to perform some statutory duty, or a serious breach of the principles of natural justice" on the issuance of the notices of assessment.

[Back to top](#)

10. Seek Kim Lee v KPHDN (HC)

Issue:

Whether the SCIT erred in deciding that the bad debts should not have been allowed as deductions from the gross income for the YAs 2007, 2008, and 2009.

Decision:

The HC allowed the appeal of the taxpayer on the following grounds:

- Since there was no challenge to the taxpayer's evidence, the case stated reflected an absence of a basis of the SCIT's Deciding Order. The authorities that the DGIR had relied on in the appeal were distinguished as those cases dealt with different factual matrices.
- On the balance of probabilities, the case stated was ambiguous and vague and, therefore, insufficient for the Court to decide the question of law sought to be raised. The appeal, in the interest of clarity and justice, needed to be remitted to the SCIT for further clarification.
- The decision in *Chua Lip Kong v Director-General of Inland Revenue (1950–1985) MSTC 58; [1981] 1 LNS 157; [1982] 1 MLJ 235* laid down that, in a case stated by the SCIT, the SCIT needed to set out in a separate paragraph from that which contained their findings of primary facts such inferences as they had drawn from those primary facts in arriving at their decision. Going by this authority and the decision in *Sincere Leasing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2000] 4 CLJ 334*, the appeal needed to be remitted to the SCIT to enable them to make specific findings of facts.

[Back to top](#)

11. Keysight Technologies Malaysia Sdn Bhd v KPHDN (HC)

The IRBM recently uploaded a case report, "[Keysight Technologies Malaysia Sdn Bhd v KPHDN \(HC\)](#)" on its website.

Issues:

- 1) Whether the DGIR is time-barred under Section 91(1) of the ITA to raise additional assessment for the YA 2008; and
- 2) Whether the proceeds from the sale of marketing and manufacturing intangibles by the taxpayer to its related company, Agilent Technologies International SARL is capital in nature, and therefore not subjected to tax under the ITA.

Decision:

The taxpayer's appeal against the decision of the SCIT was dismissed.

The HC affirmed the SCIT's decision that the taxpayer's gains on the transfer of technical know-how (i.e. the marketing and manufacturing intangibles) is assessable as income under Section 4(f) of the ITA. The taxpayer was negligent in preparing its income tax return as the gains from the sale of the technical know-how was declared under business source of the taxpayer's manufacturing business which has pioneer status and tax exempted. Thus, the DGIR is not barred from raising the additional assessment.

[Details of the above tax case at both SCIT and HC levels are not available as of this date of publication. It is also noted that this case is pending appeal at the Court of Appeal.]

[Back to top](#)

We invite you to explore other tax-related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

Tax Team - Contact us

Service lines / Names	Designation	Email	Telephone
Business Tax Compliance & Advisory			
Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Stefanie Low	Executive Director	gelow@deloitte.com	+603 7610 8891
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878
Choy Mei Won	Executive Director	mwchoy@deloitte.com	+603 7610 8842
Suzanna Kavita	Director	sukavita@deloitte.com	+603 7610 8437
Business Process Solutions			
Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847
Shareena Martin	Director	sbmartin@deloitte.com	+603 7610 8925
Eugene Chow Jan Liang	Director	euchow@deloitte.com	+605 254 0288
Capital Allowances Study			
Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Sumaisarah Abdul Sukor	Associate Director	sabdulsukor@deloitte.com	+603 7610 8331
Global Employer Services			
Ang Weina	Executive Director	angweina@deloitte.com	+603 7610 8841
Chee Ying Cheng	Executive Director	yichee@deloitte.com	+603 7610 8827
Michelle Lai	Director	michlai@deloitte.com	+603 7610 8846
Cynthia Wong	Director	cywong@deloitte.com	+603 7610 8091
Government Grants & Incentives			
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878
Indirect Tax			
Tan Eng Yew	Executive Director	etan@deloitte.com	+603 7610 8870
Senthuran Elalingam	Executive Director	selalingam@deloitte.com	+603 7610 8879
Chandran TS Ramasamy	Director	ctsramasamy@deloitte.com	+603 7610 8873
Larry James Sta Maria	Director	lstamaria@deloitte.com	+603 7610 8636
Wong Poh Geng	Director	powong@deloitte.com	+603 7610 8834
Nicholas Lee Pak Wei	Director	nichlee@deloitte.com	+603 7610 8361

International Tax & Value Chain Alignment

Tan Hooi Beng	Deputy Managing Director	hooitan@deloitte.com	+603 7610 8843
Kelvin Yee Rung Hua	Director	keyee@deloitte.com	+603 7610 8621

Mergers & Acquisitions

Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
---------------	-------------------	--	----------------

Private Wealth Services

Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Chan Ee Lin	Director	eelchan@deloitte.com	+604 218 9888

Tax Audit & Investigation

Chow Kuo Seng	Executive Director	kuchow@deloitte.com	+603 7610 8836
Stefanie Low	Executive Director	gelow@deloitte.com	+603 7610 8891
Anston Cheah	Director	kcheah@deloitte.com	+603 7610 8923
Kei Ooi	Director	soooi@deloitte.com	+603 7610 8395
Wong Yu Sann	Director	yuwong@deloitte.com	+603 7610 8176

Tax Management Consulting

Senthuran Elalingam	Executive Director	selalingam@deloitte.com	+603 7610 8879
Cheong Mun Loong	Director	mucheong@deloitte.com	+603 7610 7652

Transfer Pricing

Theresa Goh	Executive Director	tgoh@deloitte.com	+603 7610 8837
Subhabrata Dasgupta	Executive Director	sudasgupta@deloitte.com	+603 7610 8376
Philip Yeoh	Executive Director	phyeoh@deloitte.com	+603 7610 7375
Gagan Deep Nagpal	Executive Director	gnagpal@deloitte.com	+603 7610 8876
Vrushang Sheth	Executive Director	vsheth@deloitte.com	+603 7610 8534
Justine Fan	Director	jufan@deloitte.com	+603 7610 8182
Anil Kumar Gupta	Director	anilkgupta@deloitte.com	+603 7610 8224

Sectors / Names
Designation**Email****Telephone****Automotive**

Stefanie Low	Executive Director	gelow@deloitte.com	+603 7610 8891
--------------	--------------------	--	----------------

Consumer Products

Sim Kwang Gek	Managing Director	kgsim@deloitte.com	+603 7610 8849
---------------	-------------------	--	----------------

Financial Services

Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Mohd Fariz Mohd Faruk	Executive Director	mmohdfaruk@deloitte.com	+603 7610 8153

Oil & Gas

Toh Hong Peir	Executive Director	htoh@deloitte.com	+603 7610 8808
Kelvin Kok	Director	kekok@deloitte.com	+603 7610 8157

Real Estate

Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Gan Sin Reei	Director	sregan@deloitte.com	+603 7610 8166

Telecommunications

Thin Siew Chi	Executive Director	sthin@deloitte.com	+603 7610 8878
---------------	--------------------	--	----------------

Other Specialist Groups / Names	Designation	Email	Telephone
---------------------------------	-------------	-------	-----------

Chinese Services Group

Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
---------------	--------------------	--	----------------

Japanese Services Group

Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
-----------	--------------------	--	----------------

Korean Services Group

Chee Pei Pei	Executive Director	pechee@deloitte.com	+603 7610 8862
--------------	--------------------	--	----------------

Branches / Names	Designation	Email	Telephone
------------------	-------------	-------	-----------

Penang

Ng Lan Kheng	Executive Director	lkng@deloitte.com	+604 218 9268
Tan Wei Chuan	Executive Director	wctan@deloitte.com	+604 218 9888
Au Yeong Pui Nee	Director	pnauyeong@deloitte.com	+604 218 9888
Monica Liew	Director	monicaliew@deloitte.com	+604 218 9888

Ipoh

Mark Chan	Executive Director	marchan@deloitte.com	+603 7610 8966
Lam Weng Keat	Director	welam@deloitte.com	+605 253 4828

Patricia Lau	Director	palau@deloitte.com	+605 254 0288
Eugene Chow Jan Liang	Director	euchow@deloitte.com	+605 254 0288

Melaka

Julie Tan	Executive Director	jultan@deloitte.com	+603 7610 8847
Gabriel Kua	Director	gkua@deloitte.com	+606 281 1077

Johor Bahru

Thean Szu Ping	Executive Director	spthean@deloitte.com	+607 268 0988
Caslin Ng Yuet Foong	Director	caslinng@deloitte.com	+607 268 0850
Catherine Kok Nyet Yean	Director	nykok@deloitte.com	+607 268 0882

Kuching

Tham Lih Jiun	Executive Director	ljtham@deloitte.com	+603 7610 8875
Philip Lim Su Sing	Director	suslim@deloitte.com	+608 246 3311
Chai Suk Phin	Director	spchai@deloitte.com	+608 246 3311

Kota Kinabalu

Chia Swee How	Executive Director	swchia@deloitte.com	+603 7610 7371
Leong Sing Yee	Assistant Manager	sleong@deloitte.com	+608 823 9601



Sim Kwang Gek



Tan Hooi Beng



Stefanie Low



Thin Siew Chi



Choy Mei Won



Julie Tan



Chia Swee How



Ang Weina



Chee Ying Cheng



Tham Lih Jiun



Tan Eng Yew



Senthuran
Elalingam



Chee Pei Pei



Mark Chan



Mohd Fariz
Mohd Faruk



Chow Kuo Seng



Theresa Goh



Subhabrata
Dasgupta



Philip Yeoh



Gagan Deep
Nagpal



Vrushang Sheth



Toh Hong Peir



Ng Lan Kheng



Tan Wei Chuan



Thean Szu Ping



Suzanna Kavita



Shareena Martin



Eugene Chow
Jan Liang



Michelle Lai



Cynthia Wong



Chandran TS
Ramasamy



Larry James Sta
Maria



Wong Poh Geng



Nicholas Lee
Pak Wei



Kelvin Yee
Rung Hua



Chan Ee Lin



Anston Cheah



Kei Ooi



Wong Yu Sann



Cheong Mun
Loong



Justine Fan



Anil Kumar Gupta



Kelvin Kok



Gan Sin Reei



Au Yeong
Pui Nee



Monica Liew



Lam Weng Keat



Patricia Lau



Gabriel Kua



Caslin Ng
Yuet Foong



Catherine Kok
Nyet Yean



Philip Lim
Su Sing



Chai Suk Phin



Sumaisarah
Abdul Sukor



Leong Sing Yee

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2021 Deloitte Tax Services Sdn Bhd

