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Tax Espresso

Gazette Orders, HASiL Guidelines, Tax Cases and more

December 2024

Greetings from Deloitte Malaysia Tax Services

Quick links:

Deloitte Malaysia
Inland Revenue Board of Malaysia

Takeaways:

1. ACA for ICT equipment and customised computer software development cost [*P.U.(A) 327/2024 and P.U.(A) 328/2024*]
2. HASiL Technical Guidelines - Application for approval under Paragraph 17(1), Schedule 2, RPGTA
3. HASiL – Frequently Asked Questions (FAQs) on matters pertaining to Transfer Pricing 2.0 dated 18 October 2024
4. D Pristine Medini Sdn Bhd v DGIR (HC)
5. Speed Modulation Sdn Bhd v DGIR (HC)
6. GTP Network Sdn Bhd v Pemungut Duti Setem (HC)
7. Gentari Sdn Bhd v Pemungut Duti Setem (HC)
8. LCH v DGIR (SCIT)
9. LEH v DGIR (SCIT)
10. SDBB v DGIR (SCIT)

Important deadlines:

Task	Deadline	
	31 December 2024	**1 January 2025**
1. 2026 tax estimates for companies with January year-end		√
2. 6th month revision of tax estimates for companies with June year-end	√	
3. 9th month revision of tax estimates for companies with March year-end	√	
4. 11th month revision of tax estimates for companies with January year-end	√	
5. Statutory filing of 2024 tax returns for companies with May year-end	√	
6. Maintenance of transfer pricing documentation for companies with May year-end	√	
7. 2024 CbCR notification for applicable entities with December year-end	√	

1. ACA for ICT equipment and customised computer software development cost [P.U.(A) 327/2024 and P.U.(A) 328/2024]

On 30 October 2024, two gazette orders (the Rules) were gazetted to legislate the Budget 2024 proposal of revising the Initial Allowance (IA) rate to 40% for capital expenditure incurred by companies (*) on the purchase of Information and Communication Technology (ICT) equipment and customised computer software:

- Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 2024 [*P.U.(A) 327/2024*] (the CA Rules); and
- Income tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2024 [*P.U.(A) 328/2024*] (the ACA Rules).

***** *The CA Rules and ACA Rules, which are effective from* year of assessment (YA) 2024, *apply to all resident persons in Malaysia, and not limited to companies only as announced in Budget 2024.*

Background

Prior to YA 2024, Capital Allowance (CA) and Accelerated Capital Allowance (ACA) with an IA and Annual Allowance (AA) of 20% respectively is given on the following qualifying expenditure incurred by a resident person:

(a) Purchase of Information and Communication Technology (ICT) equipment and computer software packages [*P.U.(A) 156/2018*]; and
(b) Consultation, licensing, and incidental fees related to the development of customised computer software. [*P.U.(A) 274/2019*].

Salient points of the ACA Rules

With effect from YA 2024, the CA rates and ACA rates applicable on the capital expenditure incurred by a resident person in Malaysia in relation to the purchase of ICT equipment and customised computer software are summarised in the table below:

Capital expenditure	IA rate	AA rate
Development cost for customised computer software [*P.U.(A) 327/2024*]	Two-fifth (40%)	One-fifth (20%)
Purchase of ICT equipment* [*P.U.(A) 328/2024*]	Two-fifth (40%)	One-fifth (20%)

**The purchase of any ICT equipment shall include the installation of the information and communication technology equipment.*

In these Rules:

“development cost for customised computer software” means any consultation fee, payment for rights of software ownership and incidental fee relating to the development of customised computer software; and

“ICT equipment” for the purpose of the Rules are specified in the Schedule of P.U.(A) 328/2024.

Please take note of the non-application rule of the respective Rules which lists the situations where the Rules are not applicable.

With the gazette of the Rules, both P.U.(A) 156/2018 and P.U.(A) 274/2019 are revoked. Taxpayers who are eligible for the CA and ACA based on the Rules but have submitted their Income Tax Return Form (ITRF) for the YA 2024 may apply for a relief in writing to Inland Revenue Board of Malaysia (HASiL) within five years after the end of the year the Rules were gazetted, i.e., an application for relief shall be made on or before 31 December 2029.

Note: To encourage taxpayers to fully implement e-invoicing, Budget 2025 proposed that the expenses for the purchase of ICT equipment and the development cost for customised computer software will be given ACA that can be fully claimed within 2 years (i.e., IA @ 20% and AA @ 40%). It appears that the proposed shorter ACA period of 2 years applied to purchase of ICT equipment and development cost for customised software incurred for the purpose of implementing e-

invoicing only (taxpayers granted concession in e-invoicing implementation should not be eligible). This Budget 2025 proposal is expected to be legislated via separate subsidiary legislation.

Back to top

2. HASiL Technical Guidelines – Application for approval under Paragraph 17(1), Schedule 2 of the RPGTA

On 11 November 2024, HASiL uploaded the Technical Guidelines – Application for approval under Paragraph 17(1), Schedule 2, RPGTA, dated 11 November 2024 (*Available in Bahasa Malaysia only*) on its website. It amends the Technical Guidelines - Application of approval under Schedule 2, RPGTA, dated 8 January 2015.

These updated guidelines explain the procedure to apply for prior approval under Paragraph 17(1), Schedule 2 of the Real Property Gains Tax Act 1967 (RGPTA). If prior approval is obtained, no tax will be imposed on the disposer or the liquidator as the assets transferred between companies in the same group are treated as a disposal in a no gain or no loss situation. The transfer of assets between companies in the same group that are eligible for approval under Paragraph 17(1) are:

- 17(1)(a) - An asset is transferred between companies in the same group to bring about greater efficiency in operation for a consideration consisting of shares in the company or substantially of shares in the company and the balance of a money payment.
- 17(1)(b) - An asset is transferred for any consideration between companies in any scheme of reorganisation, reconstruction, or amalgamation.
- 17(1)(c) - An asset is distributed by a liquidator of a company and the liquidation of the company was made under a scheme of reorganisation, reconstruction, or amalgamation.

The general criteria for obtaining approval under Paragraph 17(1), Schedule 2 of the RPGTA are as follows:

- The disposer or liquidator must apply to obtain approval from the Director General of the Inland Revenue Board (DGIR) before the disposal of the asset.
- “Dispose” means sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law.
- The transferee must be a resident company and incorporated in Malaysia.

Below are the key changes noted in the Technical Guidelines dated 11 November 2024:

1) Paragraph 5.3 of the technical guideline dated 8 January 2015, “*the consideration for the disposal may consist of cash or shares or both*” has been removed from the criteria for obtaining approval under Paragraph 17(1)(b) of Schedule 2. [*In our view, this may be due to the realignment with the words used in the RPGTA. Whilst consideration is a crucial element for an application for approval under Paragraph 17(1)(b) of Schedule 2, the law does not require the consideration to be in cash or shares or both.*]

2) The DGIR has the right to withdraw the approval granted within three years after the approval is granted in the following circumstances:
   i. The transfer was made wholly or partly for some purpose other than the purpose mentioned under Paragraph 17(1);
   ii. For approval under Paragraph 17(1)(a), the transferee company ceases to be in the same group of companies as the transferor company; or
   iii. The transferee company ceases to be resident in Malaysia.

   The DGIR has inserted two scenarios in Paragraph 8 of the updated guidelines where the transfer of asset does not meet the purpose mentioned under Paragraph 17(1):

   a) Transfer of ownership of assets for the purpose of obtaining loan facilities, financing, or maintaining the credibility of the transferee company.
   b) Transfer of ownership of assets for the purpose of fulfilling certain conditions required for the maintenance of incentive status.

Please refer to Technical Guidelines – Application for approval under Paragraph 17(1), Schedule 2, RPGTA, dated 11 November 2024 for full details.

Back to top

3. HASiL – Frequently Asked Questions (FAQs) on matters pertaining to Transfer Pricing 2.0 dated 18 October 2024

HASiL has issued the Frequently Asked Questions (FAQs) on matters pertaining to Transfer Pricing (TP) 2.0 dated 18 October 2024 on its website.

The FAQ is based on questions raised by participants at the Multinational Tax Conference 2024 on 6 June 2024. The FAQ covers arm's-length principle and range, re-characterisation of transactions, TP methodologies, and TP documentation, pass-through costs, comparability analysis, benchmarking analysis, and penalty under Section 113B of the Income Tax Act 1967 (ITA).

Back to top

4. D Pristine Medini Sdn Bhd v DGIR (HC)

HASiL has recently uploaded a case report, "D Pristine Medini Sdn Bhd v DGIR (HC)" on its website.

Facts:

This was a leave application for judicial review pursuant to Order 53 of the Rules of Court 2012 by the taxpayer to quash the decision of DGIR in the form of Notices of Additional Assessment for the YA 2015 to YA 2019 all dated 30 April 2021 amounting to RM985,935.94.

The taxpayer was a property developer for a development project in Johor. The development project started in 2013 and completed in 2018. The taxpayer was granted a tax exemption under Section 127(3)(b) of the ITA and the Income Tax (Exemption Order) (No. 19) Order [*P.U.(A) 417/2007*] under the Incentive and Support Package.

During the course of its business, a number of purchasers failed to pay the full price of the condominium units and/or failed to fulfil the terms in the Sales and Purchase Agreement (SPA) resulting in the forfeiture of the purchasers' deposits by the taxpayer. On 4 November 2020, the DGIR issued an audit finding against the taxpayer and took the position that the "forfeited deposit received from purchasers", "unit cancellation fees" and "late payment charges" received by the taxpayer were incidental income and did not fall within the scope of the Exemption Order. In response to a letter from the taxpayer, the DGIR maintained its decision through letters dated 9 March 2021 and 30 March 2021 and issued the Notices of Additional Assessment for the YA 2015 to YA 2019 on 30 April 2021. The taxpayer then filed the application for judicial review against the Notices of Additional Assessment.

Taxpayer's argument:

In a letter dated 16 November 2020, the taxpayer explained that the properties were sold in the course of trading in land and any profit from the sales would be considered as business income. Thus, the forfeited deposits and unit cancellation fees were the business income of the taxpayer as a property developer under Section 4(a) of the ITA and were clearly exempted under the exemption order [*P.U.(A) 417/2007*].

DGIR's argument:

The DGIR argued that the issues of eligibility for exemption and determination of whether deposits forfeited, unit cancellation fees and late payment charges were exempted from tax involved determination of facts which should be ventilated before the Special Commissioners of Income Tax (SCIT) through documentary evidence. Witnesses should be called to testify and verify the accounts and documents and prove the facts therein. The Notices of Additional Assessment and the DGIR's audit finding letter dated 4 November 2020 were issued in accordance with the ITA and were not tainted by illegality, irrationality, and procedural impropriety. There were no issues of estoppel and legitimate expectation as the DGIR was carrying out its duties under the law and had acted pursuant to the additional information found during audit. For the stay application, the taxpayer did not prove the existence of special circumstances to warrant for a stay.

Issue:

Whether the taxpayer had an arguable case for the judicial review application and can bypass the alternative remedy of appeal to the SCIT under Section 99 of the ITA.

Decision:

The High Court (HC) ruled that the taxpayer failed to prove the existence of exceptional circumstances and dismissed the taxpayer's leave application for judicial review with cost of RM5,000. Dispute on an assessment involved mixed issues of facts and law and the main issue on determination of source of income should be ventilated before the SCIT. The taxpayer should pursue the domestic remedy provided under Section 99 of the ITA. Interim stay was granted pending the disposal of formal application for stay by the taxpayer provided that the application was to be filed within one month from the date of the decision.

Back to top

5. Speed Modulation Sdn Bhd v DGIR (HC)

HASiL has recently uploaded a case report, "Speed Modulation Sdn Bhd v DGIR (HC)" on its website.

Facts:

The taxpayer was incorporated on 2 August 2007 and its principal activity was property investment. The crux of the judicial review application revolved around the question of facts where it was not satisfied with the assessment raised for the YA 2021 vide the Notice of Assessment and Notice of Additional Assessment dated 23 July 2021 under the RPGTA (RPGT Assessments).

Taxpayer's argument:

The taxpayer contested that the market value assessed by *Jabatan Penilaian dan Perkhidmatan Harta* (JPPH) was incorrect. The taxpayer contended that the market value assessed by their private valuer, Jones Lang Wootton (Private Valuer) through a valuation report dated 30 June 2020 was correct for properties HM/817 PN 81550, HM/46266 PN 89597, HM/818 PN 81551 and HM/46267 PN 89598 (Subject Properties).

The taxpayer submitted that the decision of the DGIR was wrong and ought at the time to be quashed since the DGIR had failed to furnish a copy of the JPPH valuation to the taxpayer when the decision was made. The taxpayer argued that the DGIR, as a public authority, had a duty to give reasons to substantiate its decision. The JPPH's valuation report which were produced subsequently (particularly after this application has been filed) may be construed as an afterthought and cannot be considered. The DGIR also failed to specify the provision upon which it was relying on when substituting the market value of the Subject Properties adopted by the taxpayer with its own.

DGIR's argument:

The DGIR submitted that where the alternative/statutory remedy of appeal was available, judicial review application may only be allowed in very exceptional circumstances where any appeal against an assessment must be determined by the SCIT in accordance with Section 18 of the RPGTA. Section 15 of the RPGTA regulates the assessment/additional assessment. The DGIR had not breached any principle of natural justice as there was no statutory provisions that obligated the DGIR to inform the taxpayer, to give reasons and explanation. Further, there was no statutory provision that required the DGIR to provide a copy of the JPPH valuation report to the taxpayer and to make the taxpayer privy to the communication between the DGIR and JPPH. The onus lied on the taxpayer to first establish what were the statutory duties under the RPGTA that were allegedly imposed on and breached by the DGIR. In this case, the taxpayer failed to prove any of its allegation on the imposition of statutory duties on the DGIR.

Issue:

Whether the RPGT Assessments ought to be raised and heard before the SCIT as provided under Section 18 of the RPGTA and not by the HC by way of application of judicial review.

Decision:

In delivering the judgment, after hearing both written and oral submission by both parties, the HC allowed the taxpayer's judicial review application with costs of RM3,000.

[Details of the above tax case at the HC level are not available as of date of publication.]

Back to top

6. GTP Network Sdn Bhd v Pemungut Duti Setem (HC)

HASiL has recently uploaded a case report, "GTP Network Sdn Bhd v Pemungut Duti Setem (HC)" on its website.

Facts:

The duty payer is a company in the business of constructing and providing telecommunication infrastructure to network service providers. The duty payer had entered into an Asset Purchase Agreement (agreement) with MEBA Holdings Sdn Bhd (MEBA) where the duty payer agreed to purchase 16 telecommunication towers for RM15,000,000. The taxpayer presented the agreement to the Stamp Duty Collector (Collector) through STAMPS for adjudication of stamp duty. The agreement was first rejected by the Collector and the duty payer was instructed to re-submit the agreement for adjudication under the category of Novation Agreement. The Collector issued notice of assessment dated 11 September 2023 where an ad valorem stamp duty of RM584,020 was imposed on the agreement. Dissatisfied with the Collector's decision, the taxpayer filed an appeal to the HC via an originating summon dated 4 March2024 under Section 39(1) of the SA.

Duty payer's argument:

The duty payer argued that the legal ownership, risk, and title did not pass to the duty payer via the agreement and there is no deeming provision in the agreement which stipulated that legal ownership, risk and title are deemed passed to the duty payer on the agreement date. The said legal ownership, risk and title will only be passed and transferred to the duty payer on the "completion date". The duty payer further argued that certain steps relating to the transfer of assets were not completed at the time when the agreement was executed, and their completion is to take place at a future date. The agreement does not amount to a "conveyance" as it is merely an "agreement to convey". The agreement itself was not a "conveyance" and thus should not be subject to ad valorem stamp duty under Item 32(a), First Schedule of the SA. Additionally, the duty payer contended that the 16 telecommunication towers are to be considered as goods or chattels under Section 21(1) of the SA, which stipulates that any instrument for the sale of goods, wares, or merchandise is excluded from the imposition of ad valorem duty. The duty payer argued that the Collector has failed to read the agreement as a whole and erroneously imposed ad valorem stamp duty on the agreement based on Item 32(a), First Schedule of the SA.

Collector's argument:

The Collector submitted that the agreement entered by the duty payer and MEBA is a conveyance on sale as defined under Section 2 of the SA where the conveyance must, inter alia, be of 'property' and or 'interest in property'. As there is a sale of property (i.e., sale of assets) together with all title and rights attached thereto in the duty payer's case, the agreement has to be treated as an instrument of conveyance and became dutiable to ad valorem duty under Item 32(a), First Schedule of the SA. The agreement also states that the MEBA agrees to sell, transfer, deliver, pass, and assign all beneficial ownership and legal ownership of the assets to the duty payer together with economic rights and benefit as of the date of the agreement. Therefore, the agreement fulfilled the characteristics of conveyance of sale and thus falls squarely within the ambit of Section 21(1) of the SA 1949 and was correctly assessed by the Collector to ad valorem duty under Item 32(a), First Schedule of the SA.

Issue:

Whether the ad valorem stamp duty imposed on the agreement based on Item 32(a), First Schedule of the SA is correct.

Decision:

On 10 October 2024, the HC allowed the duty payer's originating summons with costs of RM6,000.

[Details of the above tax case at the HC level are not available as of date of publication.]

Back to top

7. Gentari Sdn Bhd v Pemungut Duti Setem (HC)

HASiL has recently uploaded a case report, "Gentari Sdn Bhd v Pemungut Duti Setem (HC)" on its website.

Facts:

On 13 September 2023, the Collector assessed the Novation Agreement with ad valorem duty for RM8,220,010 pursuant to Item 32(a), First Schedule of the Stamp Act 1949 (SA). Gentari Sdn Bhd (duty payer) being dissatisfied with the duty assessed on the Novation Agreement, appealed against it under Section 39(1) of the SA as the Novation Agreement should have been assessed as an agreement under Item 4, First Schedule of the SA with duty to be paid of RM10 only.

Duty payer's argument:

The duty payer submitted that by operation of law, when something is novated, the old contract is extinguished, and the new one is created. Hence there is no transfer. If by operation of law there is no transfer or assignment, then Item 32(a), First Schedule of the SA cannot be applied. The intention of parties to novate is clear from the language of the Novation Agreement. It is an instrument to change parties to the contract, not an assignment or transfer of debt. The Novation Agreement extinguishes rights and obligations under the old contract for which the new contract is made. The Novation Agreement discharges the rights and obligations of one of the original parties from the original contract entirely.

Collector's argument:

The Collector submits that the nature of the Novation Agreement is a 'conveyance on sale' based on the subject matter, consideration amount and completion date. The definition of 'conveyance on sale' under Section 2 of the SA should not be limited to normal sale and purchase only. The court must look into the substance and the construction of the instrument i.e., in this case, the Novation Agreement. The label given to an instrument is inconclusive. The substance and real character of the instrument has to be established to ascertain whether a particular instrument is liable to stamp duty within the meaning of the SA. The Collector submits that in determining whether the instrument is a conveyance on sale, the document must be construed as a whole, so that the actual substance of that transaction be known. Henceforth, the respective parties' rights and obligations under the instrument can be ascertained. The Collector further submits that the Novation Agreement is related to the shareholder's loan agreements. Even if it's a new contract, this Novation Agreement shall not exist without the shareholder's loan agreement. The Novation Agreement is a contract to transfer all PETRONAS rights and liabilities under the shareholder's loan agreement over the Gentari Renewables Sdn Bhd's debt to the duty payer. The construction of the Novation Agreement itself shows that the property is passed or transferred to the duty payer under the Novation Agreement, which was a 'conveyance on sale' within the meaning of the SA and chargeable with ad valorem duty. Since the instrument fulfills the condition as a 'conveyance on sale,' it is subject to ad valorem duty under Item 32(a), First Schedule of the SA.

Issue:

Whether the ad valorem duty chargeable under Item 32(a), First Schedule of the SA on the Novation Agreement is correct.
Decision:

On 24 October 2024, the HC allowed the duty payer's appeal with costs.

[Details of the above tax case at the HC level are not available as of date of publication.]

Back to top

8. LCH v DGIR (SCIT)

HASiL has recently uploaded a case report, "LCH v DGIR (SCIT)" on its website.

Facts:

The taxpayer was the registered owner of a piece of real estate located in Timor Laut District, Penang (the Property) obtained through a Settlement Agreement dated 30 September 2013 amounting to RM69,500. The taxpayer was also a transferee on behalf of his late father. On 10 December 2013, the taxpayer disposed of the Property to SGSB through a Sale and Purchase Agreement (SPA) dated 10 December 2013 with a disposal price of RM2,000,000. Through Form CKHT 1A dated 3 January 2014 filed by the taxpayer, the acquisition value of the Property was RM69,500. The DGIR has raised a Notice of Assessment (Form K) dated 28 September 2017 for the YA 2013 amounting to RM260,617.50 on the disposal of the Property. Unsatisfied with the assessment raised, the taxpayer appealed against the Form K. The JPPH has assessed the value of the said Property on 30 September 2013 at an amount of RM660,000 and the DGIR has raised a Notice of Reduced Assessment (Form KR) amounting to RM180,900 dated 24 October 2018. However, the taxpayer was still not satisfied with the Form KR and filed an appeal through Form Q dated 27 May 2020.

Taxpayer's argument:

The taxpayer argued that the valuation made by the private valuer should be used by the DGIR instead of the valuation by JPPH. The taxpayer also argued that the JPPH officer who prepared the full assessment report was not the same officer who issued the letter of assessment dated 7 August 2018. In addition, the JPPH valuation used by the DGIR was prepared after 10 years of the property being disposed of and this showed that there were other factors that may have affected the JPPH valuation. The taxpayer also argued that the tax rate that should be imposed by the DGIR was 15% as provided under the Real Property Gains Tax (Exemption) Order 2012 [*P.U.(A) 415/2012*] instead of 30% as provided in Part I, Schedule 5 of the RPGTA.

DGIR's argument:

The DGIR argued that the assessment raised based on the JPPH valuation of RM660,000 on the date of acquisition of the Property, i.e., 30 September 2013 was correct and in order. The JPPH assessment report was a full report on the assessment as notified to the taxpayer through the JPPH letter dated 7 August 2018. During the hearing, the JPPH also explained in detail the comparative method used in determining the market price of the property such as ownership information, location, surrounding development, valuation method and details of comparison and valuation. The DGIR had used the market value determined by the JPPH which was the party responsible for property valuation on behalf of the Malaysian Government in accordance with Section 25(2) and Paragraph 19(1), Schedule 2 of the RPGTA. The taxpayer had failed to call any witnesses to testify regarding the private valuer's report. The DGIR also argued that the actual tax rate used in the tax calculation was 15%. The tax rate of 30% is generated by the system and was not used in the tax calculation for the taxpayer and this fact was confirmed by the DGIR's witnesses during the trial. Section 52 of the RPGTA provides that the Notice of Assessment cannot be deemed to be void for being affected by mistake, defect or omission that do not affect the essence and details that form the basis of the Notice of Assessment.

Issue:

Whether the Form KR issued by the DGIR (based on the JPPH valuation of RM660,000 on the date of acquisition of the Property) was correct and in order.

Decision:

The SCIT dismissed the taxpayer's appeal and decided that the Form KR dated 24 October 2018 for the YA 2013 shall be final and conclusive.

[Details of the above tax case at the SCIT level are not available as of date of publication.]

Back to top

9. LEH v DGIR (SCIT)

HASiL has recently uploaded a case report, "LEH v DGIR (SCIT)" on its website.

Facts:

ADSB allotted a total of 1,000,000 ordinary shares to the taxpayer over three occasions i.e., on 25 June 2013, 26 August 2013, and 27 September 2013. ADSB was regarded as a Real Property Company (RPC) for the purpose of Paragraph 34A, Schedule 2 of the RPGTA on 11 September 2013. On 7 April 2017, the taxpayer disposed of the 1,000,000 shares in ADSB for a total consideration of RM6,000,000. The taxpayer later filed his Real Property Gains Tax (RPGT) return in the prescribed form (Form CKHT 1B) and Form CKHT 3 on the same day. For the YA 2017, the taxpayer received three different notices on the disposal, a Notice of Non-Chargeability on the disposal of the 400 shares, a Notice of Assessment for the amount of RM196,201.92 (inclusive of penalty of 10%) for the disposal of the 199,600 shares and a Notice of Additional Assessment for the amount of RM792,000 (inclusive of penalty of 10%) for the disposal of the 800,000 shares by the DGIR.

Taxpayer's argument:

The taxpayer contended that this case was on a point of law. Tranches 1 and 2 were acquired before ADSB attained RPC status, while Tranche 3 was acquired post ADSB's transition to an RPC. The taxpayer then disposed of the 1,000,000 shares in YA 2017 for a total consideration of RM6,000,000. The taxpayer treated the disposal as a single disposal and computed RPGT in its entirety. The contention of the taxpayer was that the DGIR should not divide the shares transaction into 3 separate disposals, and it should be treated as one disposal of shares, hence it would not attract RPGT as the disposal price was lower than the acquisition price, resulting in no chargeable gain. However, the DGIR treated each tranche disposal as separate events while computing the RPGT individually, thus resulting in separate assessments for the same YA. This is on the basis that there were 3 different acquisition dates.

DGIR's argument:

The DGIR asserted that it has been established during trial and was not disputed by the taxpayer that the only provision applicable to determine the acquisition / disposal price of the shares was provided in Paragraph 34A, Schedule 2 of the RPGTA. The DGIR submitted that the DGIR's method of computation was in line with the provision in Paragraph 34A, Schedule 2 of the RPGTA. Paragraph 34A clearly provides the method of determining the acquisition and the disposal price of shares. The taxpayer had failed to acknowledge that there were 2 acquisition periods of shares acquired by the taxpayer i.e., before the company became an RPC, and after the company had become an RPC.

Issue:

Whether the DGIR's method of computation for determining the acquisition price and the disposal price of shares acquired at three different occasions was in line with the provision in Paragraph 34A, Schedule 2 of the RPGTA.

Decision:

On 25 November 2024, the SCIT dismissed the taxpayer's appeal and held that the Notices of Assessment raised for the YA 2017 against the taxpayer were reasonable and justified.

[Details of the above tax case at the SCIT level are not available as of date of publication.]

Back to top

10. SDBB v DGIR (SCIT)

HASiL has recently uploaded a case report, "SDBB v DGIR (SCIT)" on its website.

Facts:

The taxpayer is a public limited company with principal activity of providing finance for development projects. TRSB was appointed as a developer in a Sandakan housing project and SDSB as the sub-contractor. TRSB obtained banking facilities

from the taxpayer to enable it to undertake and to complete the project. On the other hand, SDSB obtained banking facilities from MBB. As a security for the banking facilities granted to SDSB, MBB required SDSB to give *inter alia* –

- An irrevocable Letter of Instruction from SDSB to TRSB to directly channel all payments (due to SDSB) to SDSB's account with MBB; and
- An irrevocable Letter of Instruction from TRSB to the taxpayer to channel all payments (due to SDSB) to SDSB's account with MBB.

On 16 August 1996, TRSB issued a Letter of Instruction to the taxpayer authorising the taxpayer to remit all progress payments due to SDSB. Consequently, SDSB commenced a claim against TRSB and the taxpayer. The HC and the Court of Appeal (COA) dismissed SDSB's claims against the taxpayer. However, on 1 August 2017, the Federal Court (FC) allowed SDSB's appeal and ordered the taxpayer to pay SDSB a total sum of RM10,484,957.53 (Disputed Sum). On 23 August 2017, the taxpayer paid the Disputed Sum to SDSB and charged the Disputed Sum as an expense in its account for the financial year ended 31 December 2017.

Taxpayer's argument:

The taxpayer contended that the Disputed Sum satisfied the test of deductibility under Section 33(1) of the ITA as TRSB's Letter of Instruction was issued to the taxpayer in the course of the taxpayer's banking business and the provision of banking services to TRSB. When the taxpayer paid the Disputed Sum to SDSB, it was paid in accordance with the Letter of Instruction. The Disputed Sum had therefore been incurred in the taxpayer's production of income. The taxpayer referred to among others, the case of *Herald & Weekly Times BC3200015 and McKnight (HM Inspector of Taxes) v Sheppard (1996) MSTC 10,501* to further establish that payment arising in, and which was incidental to the course of the taxpayer's trade, is tax deductible.

DGIR's argument:

It was the DGIR submission that payment of the Disputed Sum was not an allowable expense as it was restricted by Section 39(1)(b) of the ITA under the category of 'any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income'. SDSB was not a debtor to the taxpayer and the taxpayer did not receive any income from SDSB. Rather, SDSB was demanding payment that should have been paid by the taxpayer and the FC had decided that the money received by the taxpayer was the 'trust money' that must be paid to SDSB. The DGIR referred to the principle laid out in the case of *CKB Ltd v KPHDN (1996) MSTC 2695* where the court decided that the Appellant did not implement the 'trust' that had been agreed upon between parties and ordered the Appellant to pay the 'trust money' to the Claimant.

Issue:

Whether the Disputed Sum was deductible under Section 33(1) of the ITA.

Decision:

On 22 October 2024, the SCIT held that the taxpayer had successfully proved its appeal as required under Paragraph 13, Schedule 5 of the ITA and allowed the taxpayer's appeal. The SCIT ruled that the Notice of Assessment for the YA 2017 was to be set aside.

[Details of the above tax case at the SCIT level are not available as of date of publication.]

Back to top

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	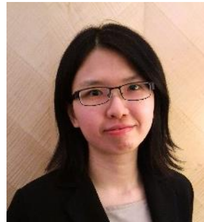			
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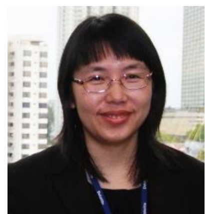				
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