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Tax Espresso

HASiL FAQs, Gazette Orders, Tax Cases and more

January 2024

Greetings from Deloitte Malaysia Tax Services

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Deloitte Malaysia
Inland Revenue Board of Malaysia

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Important deadlines:

	Task	Deadline	
		30 January 2024	**31 January 2024**
1.	**2025 tax estimates for companies with February year-end**	√	
2.	**6th month revision of tax estimates for companies with July year-end**		√
3.	**9th month revision of tax estimates for companies with April year-end**		√
4.	**11th month revision of tax estimates for companies with February year-end**		√
5.	**Statutory filing of 2023 tax returns for companies with June year-end**		√
6.	**Maintenance of transfer pricing documentation for companies with June year-end**		√
7.	**2024 CbCR notification for applicable entities with January year-end**		√

1. Finance (No. 2) Act 2023 [*Act 851*] and Income Tax (Exemption) (No. 7) Order 2023 [*P.U.(A) 410/2023*]

The Finance (No. 2) Bill 2023 has been gazetted as the Finance (No. 2) Act 2023 [*Act 851*] (English and National Language versions) on 29 December 2023, and has come into operation on 30 December 2023.

With the gazette of the Finance (No. 2) Act 2023 [*Act 851*], effective from 1 January 2024, the capital gains tax (CGT) will be imposed on gains or profits made by companies, limited liability partnerships, trust bodies, and co-operative societies from the disposal of:

(a) shares of a company incorporated in Malaysia not listed on the stock exchange;
(b) shares under the new Section 15C of the Income Tax Act 1967 (ITA) (i.e., shares of a controlled company incorporated outside Malaysia which owns real property situated in Malaysia or shares of another controlled company, subject to meeting the 75% threshold conditions) which are deemed to be derived from Malaysia; and
(c) Disposal of capital assets situated outside Malaysia, upon remittance into Malaysia.

On 29 December 2023, the Income Tax (Exemption) (No. 7) Order 2023 [*P.U.(A) 410/2023]* has been gazetted to provide a 2-months exemption from CGT in respect of gains or profits made by companies, limited liability partner ships, trust bodies, and co-operative societies from the disposal of shares of a company incorporated in Malaysia not listed on the stock exchange. *P.U.(A) 410/2023* effectively defers the imposition of CGT in respect of Item (a) above to 1 March 2024, which is the commencement date of CGT as announced in Budget 2024. However, the exemption does not apply to gains or profits from the disposal of shares chargeable to tax as a business income under Section 4(a) of the ITA.

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2. HASiL – Implementation of e-Invoice - Frequently Asked Questions (FAQs) for Construction Industry

The Inland Revenue Board of Malaysia (HASiL) has uploaded the e-invoice FAQs for the construction industry (updated on 30 November 2023) on its website.

Please refer to the FAQs for full details.

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3. Income Tax (Exemption) Orders 2023 in relation to BioNexus Status Company [*P.U.(A) 382/2023, 383/2023 and 384/2023*]

<u>Gazette date</u>
The above exemption orders have been gazetted on 19 December 2023, which are deemed to have come into operation on 1 January 2019.

<u>Exemption</u>
Up to 70% of the statutory income of a BioNexus status company derived from an approved activity that is a new business or an expansion project relating to agricultural biotechnology, industrial biotechnology, or healthcare biotechnology (qualifying activity) shall be exempted from income tax.

The above exemption shall be either of the following:
- Tax exemption for 10 consecutive years of assessment (YAs) for a new business or tax exemption for 5 consecutive YAs for an expansion project [*P.U.(A) 382/2023*]; or
- Tax exemption equivalent to the amount of the qualifying capital expenditure incurred for a period of 5 consecutive years on assets used in Malaysia for the purposes of a new business or an expansion project [*P.U.(A) 383/2023*].

The exemption is subject to an application for approval made in writing by the BioNexus status company and received by the Minister through the Malaysian Bioeconomy Development Corporation Sdn Bhd on or after 1 January 2019 but not later than 31 December 2022.

Further Exemption

A further exemption from income tax is available on the statutory income of the BioNexus status company derived from a qualifying activity for 10 consecutive YAs commencing immediately after the exempt YAs [*P.U.(A) 384/2023*]. The statutory income derived from a qualifying activity during the further exempt YAs is determined in accordance with the formula prescribed in Paragraph 5(4) of *P.U.(A) 384/2023*.

The further exemption is subject to an application for approval made in writing by the BioNexus status company and received by the Minister through the Malaysian Bioeconomy Development Corporation Sdn Bhd at least 6 months before the expiry of the exempt YAs.

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4. Income Tax (Exemption) 2009 (Amendment) Order 2023 [*P.U.(A) 399/2023*]

The above Amendment Order which is in relation to childcare allowance received by employee from employer has been gazetted on 27 December 2023 and has effect from YA 2024.

The Principal Order (Income Tax (Exemption) Order 2009 [*P.U.(A) 152/2009*]) is amended by increasing the limit of childcare allowance received by an employee from his employer that is exempted from income tax from RM2,400 per year to RM3,000 per year, as announced in Budget 2024.

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5. DGIR v Ehsan Armada Sdn Bhd (COA) [*W-01(A)-190-04/2022*]

This is an appeal by the Director General of Inland Revenue (DGIR) against the decision of the High Court (HC), stating that a payment to remove an impediment or obstacle to profitable trading, or that result in the increase of income, is attributable to revenue and hence deductible under Section 33(1) of the ITA.

The taxpayer, by way of case stated pursuant to Paragraph 34, Schedule 5 of the ITA, had appealed to the HC against the entire decision of the Special Commissioners of Income Tax (SCIT) on 30 August 2019. Principally, it is the taxpayer's case that the SCIT was wrong in holding that the payment/contribution made by the taxpayer (as a developer) to the Lembaga Perumahan dan Hartanah Selangor (LPHS) to exempt itself from building low-cost housing in the Mutiara Indah Housing Project (the Exemption Sum) is not deductible under Section 33(1) of the ITA. According to the taxpayer, the capital outlay paid (at the front-end of the business before any development ever took place) to the LPHS in the form of an exemption sum for an exemption from having to construct low-cost housing as supposed 'expenses' is purely, wholly, and exclusively for the purpose of generating income under Section 33(1) of the ITA.

Issues:

Issue 1

Whether the payment of the Exemption Sum made by the taxpayer to the LPHS to exempt itself from building low-cost housing was deductible under Section 33(1) of the ITA.

Issue 2

Whether the DGIR was time barred under Section 91(3) of the ITA to issue the Notice of Additional Assessment for the YA 2007, Notices of Assessment for YA 2008 and YA 2010, and Notification of Non-chargeability for YA 2009.

Issue 3

Whether the DGIR had correctly and reasonably imposed a penalty under Section 113(2) of the ITA at the rate of 45% on the assessments and additional assessments for YAs 2007, 2008, and 2010.

Decision:

The Court of Appeal (COA) allowed the DGIR's appeal and set aside the HC's order and decision based on the following grounds:

Issue 1

The payment of the Exemption Sum was a one-off capital outlay to enable the taxpayer to altogether exempt itself from the social responsibility and low-cost housing elements ordinarily in place within the Project. In the ordinary course of a mixed development with low-cost policy in place, ordinary expenses would refer to expenses to realise the State's mission to aid and help its constituents to afford housing. Any one-off payment that would exempt the taxpayer from this social responsibility element is certainly not an ordinary expense but is instead a capital outlay.

The taxpayer paid the Exemption Sum to attain an enduring advantage to be wholly and fully exempted from the low-cost policy. Hence, the Exemption Sum paid by the taxpayer cannot be considered an ordinary recurring business expense. It was a one-time payment to attain an advantage which pivots the business to be more lucrative (and not merely to enable business or trade).

The one-off exemption would effectively carry an overwhelming enduring benefit in the form of a continuous extraordinary advantage for the business to be insulated and exempted from the ordinary social responsibility policies put in place, typical to a mixed development with low-cost housing elements. On the other hand, In *Ketua Pengarah Hasil Dalam Negeri Malaysia v Mitraland Kota Damansara Sdn Bhd (COA)[2023] 4 MLJ 846 [Mitraland (Supra)]*, the exemption was not exactly a one-off capital payment. It was recurring costs expended as and when contingency arises when the developer had to sell the unsold reserved Bumiputera units to non-Bumiputera purchasers. It is not a one-off capital injection to enable the developer to work outside the confines of the Bumiputera Quota Policy.

Contrary to *Mitraland (Supra)*, the exemption sought by the taxpayer was entirely voluntary, pre-empted, and planned before the Project had an approved Development Plan. The exemption in *Mitraland (Supra)* was brought upon by a sheer, unavoidable contingency that was totally beyond the Developer's control. On the other hand, the taxpayer in this case had the opportunity to re-plan and re-apportion the 84 acres Tanah Anugerah but had intentionally refused to do so in the blatant intent to seek exemption from the low-cost policy.

Therefore, the Exemption Sum made by the taxpayer to the LPHS to exempt itself from building low-cost housing in the Project is not deductible under Section 33(1) of the ITA.

Issue 2

The taxpayer's argument regarding the time bar issue would necessarily fail, as *Mitraland (supra)* does not, in any way, aid in proving the taxpayer's reasonableness in its conduct (in negligently claiming the Exemption Sum as a deductible expense). The taxpayer had unreasonably and negligently drawn a parallel between the Exemption Sum in this case and the Bumiputera Quota Exemption in the case of *Mitraland (supra)*. It was clear that the taxpayer had negligently deducted the Exemption Sum from its taxable income.

The issue of whether the assessment in question must match the negligence complained of is now moot, considering that the nature of negligence in this case is already in alignment with the assessments and additional assessment which the DGIR was imposing against the taxpayer.

Therefore, the HC had erred in finding that the DGIR was time barred under Section 91(3) of the ITA to raise the Notice of Additional Assessment for the YA 2007, Notices of Assessment for YA 2008 and YA 2010, and Notification of Non-chargeability for YA 2009.

Issue 3

'Good faith' must involve the element of honesty and earnest pursuit of the truth, notwithstanding the risk that the 'truth' of the matter might be unsavoury or unfavourable to one's case. There must be an innocent contemplation of all the facts and the prudence to act in manners that will reflect good conscience and bona fide intent. There was no evidence of the taxpayer's effort to, at the very least, communicate with the DGIR regarding the position of the Exemption Sum (in the context of taxable income) for some semblance of certainty. The taxpayer contended that it had obtained professional advice in managing its tax affairs. Yet, the taxpayer was unable to explain the reason they had not written to the DGIR for clarification if there was an honest doubt regarding the taxability of the Exemption Sum. At best, the attainment of professional advice can only be seen as measures for the taxpayer to take a 'calculated risk' on the tax deductibility of the Exemption Sum. In any case, it would certainly fall short of an honest and straightforward enquiry communicated to the DGIR itself.

Therefore, the DGIR had correctly and reasonably imposed a penalty under Section 113(2) of the ITA at the rate of 45% on the assessments and additional assessments for YAs 2007, 2008, and 2010.

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6. TDCSB v DGIR (SCIT)

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

Facts:

The taxpayer's principal activity is property development. The taxpayer had been granted an approval to release the Bumiputera lots to non-bumiputera purchasers, subject to the taxpayer making contribution payment of the Bumiputera Discount Payment to LPHS.

Taxpayer's argument:

The DGIR raised Notices of Additional Assessment for the YAs 2015, 2016, and 2018 in disallowing the taxpayer's claims pursuant to Section 33(1) of the ITA, in relation to the contribution payment made to LPHS. The taxpayer contended that the contribution payment made to LPHS is a business expense incurred to release the Bumiputera units to non-bumiputera purchasers, which widens its category of purchasers, and the sole purpose for incurring the bumiputera release payment is to expedite the sales of the 18 unsold Bumiputera units. The taxpayer relied on the recent COA's case of *Ketua Pengarah Hasil Dalam Negeri Malaysia v Mitraland Kota Damansara Sdn Bhd (2023) 6 CLJ 701* and held that the payment made to LPHS is a revenue expense that is deductible under Section 33(1) of the ITA. The taxpayer argued that the payment was wholly and exclusively incurred for its business, as it is a revenue expenditure and not a penalty in nature.

DGIR's argument:

In response, the DGIR asserted that in determining the term "wholly and exclusively", one must ascribe to the business dealing and industrial practice. Therefore, the determination of 'wholly and exclusively' under Section 33(1) of the ITA must only be confined to the nature of 'revenue expenditure' and it must not encroach into the nature of 'capital expenditure'. The DGIR argued that in determining the nature of the payment made to LPHS, Pekeliling PTGS Bil. 3/2007 (Pekeliling 3/2007) should be read in its entirety, where it sets out the guidelines imposed by the State Authority to be adhered to by any developer. In particular, Paragraph 2.4, Pekeliling 3/2007 should be read in tandem with Paragraph 3.2 of the same, where the nature of the payment made to LPHS was in fact a penalty for the breach of the rules and regulations imposed by LPHS.

The DGIR further argued that the taxpayer, at all material times, did not have the intention to comply with the original requirement stipulated under Pekeliling Bil. 3/2007 as the application for the release of Bumiputera units was made to LPHS before the said project was completed. Furthermore, it is contended that the case of *Mitraland* is distinguishable to the facts at hand as the taxpayer failed to adduce evidence to show that the remaining Bumiputera units could not be sold accordingly if the taxpayer had waited for the project to be completed. The Court in *Mitraland* also did not make any comments and/or findings on the purpose of the introduction of Pekeliling Bil. 3/2007. The DGIR contends that the taxpayer chose and elected to sell the Bumiputera units to non-bumiputera purchasers before the approvals were granted and the projects were completed, which is tantamount to a breach of the original conditions stipulated under Pekeliling Bil. 3/2007.

Issue:

Whether the contribution payment made by the taxpayer to LPHS was wholly and exclusively incurred for its business and therefore deductible under Section 33(1) of the ITA.

Decision:

On 27 October 2023, the SCIT dismissed the taxpayer's appeal and held that the DGIR was correct in disallowing a deduction on the payment made to the LPHS. The SCIT also held that the taxpayer failed to discharge its burden of proof under Paragraph 13, Schedule 5 of the ITA, and the DGIR had basis in law to impose the penalty.

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

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7. SSQSB v DGIR (SCIT)

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

Facts:

The taxpayer's principal activity is property development. The taxpayer was granted approval to release 30% of Bumiputera units at Nautica Condominium to be sold to non-bumiputera purchasers and was required to pay RM2,967,262.00 to LPHS for the release. The DGIR raised a Notice of Additional Assessment for YA 2015 in disallowing the taxpayer's claim pursuant to Section 33(1) of the ITA in relation to the contribution payment made to LPHS.

Taxpayer's argument:

The taxpayer contended that the contribution payment made to LPHS is a business expense incurred in the production of its business income. The taxpayer relied on the recent COA's case of *DGIR v Mitraland Kota Damansara Sdn Bhd (2023) 6 CLJ 701* and held that the payment made to LPHS is a revenue expense that is deductible under Section 33(1) of the ITA. The taxpayer argued that the payment was wholly and exclusively incurred for its business, as it is a revenue expenditure, and not a penalty in nature.

DGIR's argument:

In response, the DGIR asserted that in determining the term "wholly and exclusively", one must ascribe to the business dealing and industrial practice. Therefore, the determination of "wholly and exclusively" under Section 33(1) of the ITA must only be confined to the nature of "revenue expenditure" and it must not encroach into the nature of 'capital expenditure'. The DGIR argued that in determining the nature of the payment made to LPHS, Pekeliling PTGS Bil. 3/2007 (Pekeliling 3/2007) should be read in its entirety, where it sets out the guidelines imposed by the State Authority to be adhered to by any developer. In particular, Paragraph 2.4, Pekeliling 3/2007 should be read in tandem with Paragraph 3.2 of the same, where the nature of the payment made to LPHS was in fact a penalty for the breach of the rules and regulations imposed by LPHS.

The DGIR further argued that under Pekeliling Bil. 3/2007, there is a requirement to advertise the Bumiputera lots three (3) months prior to the application being made, during which the taxpayer was forbidden from selling the lots to non-bumiputera purchasers before obtaining an approval from LPHS. In this case, the taxpayer had sold the Bumiputera units to non-bumiputera purchasers before the approval was granted, based on the facts that the units were sold one day after the advertisement was issued, which was before the project's launching date. The taxpayer, at all material times, did not have the intention to comply with the original requirement stipulated under Pekeliling Bil. 3/2007 as the application for the release of Bumiputera units was made to LPHS before the said project was completed. Furthermore, it is contended that the case of *Mitraland* is distinguishable to the facts at hand as the taxpayer failed to adduce evidence to show that the remaining Bumiputera units could not be sold accordingly if the taxpayer had waited for the project to be completed. The Court in *Mitraland* also did not make any comments and/or findings on the purpose of the introduction of Pekeliling Bil. 3/2007. It is the DGIR's contention that the taxpayer's actions were tantamount to a breach of the original conditions under Pekeliling Bil. 3/2007.

Issue:

Whether the contribution payment made by the taxpayer to LPHS was wholly and exclusively incurred for its business and therefore deductible under Section 33(1) of the ITA.

Decision:

On 27 October 2023, the SCIT had dismissed the taxpayer's appeal and held that the DGIR was correct in disallowing a deduction on the payment made to LPHS. The SCIT also held that the taxpayer failed to discharge its burden of proof under Paragraph 13, Schedule 5 of the ITA, and the DGIR had basis in law to impose the penalty.

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

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8. AEM Microtronics (M) Sdn Bhd v DGIR (HC)

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

Facts:

This is an appeal by AEM Microtronics (M) Sdn Bhd by way of a Notice of Appeal dated 21 April 2022 against the Deciding Order of the SCIT on 13 April 2022, wherein the SCIT had dismissed the taxpayer's appeal against the Notice of Assessment of the Real Property Gains Tax (Form K) for YA 2016.

On 5 July 2012, the taxpayer acquired 61,636,000 units of ordinary shares in Qualitek Electronics (M) Sdn Bhd (QEM) from Microcircuit Technology (S) Pte Ltd at RM2.47 per share. On 1 April 2016, the taxpayer disposed the 61,636,000 ordinary shares to two individuals pursuant to the Sale of Shares Agreement (SSA). The DGIR subjected the gains on the disposal of the 61,636,000 ordinary shares to tax pursuant to Paragraph 34A, Schedule 2 of the Real Property Gains Tax Act 1976 (RPGTA) and raised a Form K for YA 2016 dated 21 August 2018 on the taxpayer, amounting to RM1,599,999.60.

Taxpayer's argument:

The taxpayer contended that QEM is not a real property company (RPC) as defined under Paragraph 34A(6) of the RPGTA, hence the gains on the disposal of 61,636,000 ordinary shares should not be subjected to tax pursuant to Paragraph 34A of the RPGTA. When QEM acquired a plot of land in the year 2000, the property's defined value was only 24.08% of its total tangible asset. However, QEM's defined value of real property had increased to more than 75% of the total tangible assets in the year 2010 due to the disposal of non-real property assets and not through the acquisition of real property. The taxpayer further submitted that QEM only owned a plot of land it acquired in the year 2000. The taxpayer also contended that the SCIT erred in interpreting the definition of RPC under Paragraph 34A(6) of the RPGTA by considering QEM's defined value when the taxpayer acquired the shares in QEM in the year 2012. The taxpayer asserted that the RPC's definition under Paragraph 34A(6) of the RPGTA provides that the property's defined value must be computed when QEM acquired the real property in the year 2000.

The taxpayer also asserted that pursuant to the SSA, the taxpayer and the purchaser had agreed that the disposal price of the 61,636,000 shares is only RM2.00 and not RM8,000,000 as alleged by the DGIR. It was agreed under the SSA that the purchaser would pay for the debt settlement of RM7,999,998 to QEM.

DGIR's argument:

The DGIR contended that QEM is an RPC and the gains received by the taxpayer from the disposal of its shares in QEM is a disposal of chargeable asset pursuant to Paragraph 34A of the RPGTA. Applying the test provided in Paragraph 34A(6) of the RPGTA and as testified by SR1, the defined value of QEM's property was 99.69% of the value of its total tangible assets when the taxpayer acquired the shares in QEM in the year 2012. The definition of RPC provided under Paragraph 34A(6)(b) of the RPGTA is clear and unambiguous. Additionally, Paragraph 34A of the RPGTA should be read as a whole and not confined to certain words or subparagraphs only. The SCIT was correct in deciding that the defined value of the real property, shares, or both owned by the relevant company, as referred to in the definition of RPC, is determined at the date of acquisition of the chargeable asset.

The DGIR further argued that pursuant to the SSA, the consideration or the disposal price of 61,636,000 units of shares in QEM is RM8,000,000. However, the taxpayer had declared the disposal price or the consideration amount in Form CKHT 1B dated 1 April 2016 as RM2.00 only. The sum of RM7,999,998.00 paid by the purchaser to discharge QEM's liabilities is part of the consideration for the sale of 61,636,000 units of shares as agreed by both parties under the SSA.

Issue:

Whether QEM is an RPC and therefore the gains received by the taxpayer from the disposal of its shares in QEM is a disposal of chargeable asset pursuant to Paragraph 34A of the RPGTA.

Decision:
The HC upheld the SCIT's decision and dismissed the taxpayer's appeal.

[Details of the above tax case at both the SCIT and HC levels are not available as of date of publication.]

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9. Multi-purpose Credit Sdn Bhd v DGIR (HC)

HASiL has recently uploaded a case report, "Multi-purpose Credit Sdn Bhd v DGIR (HC)" on its website.

Facts:

The taxpayer's principal activities are credit and leasing business, hire purchase, and general loans financing. The taxpayer received loans from related companies amounting to RM77,305,831 and RM1,157,306 from MP Venture and MP Capital (the Companies) respectively. The loan debts were then waived by the Companies.

The DGIR raised Notices of Additional Assessment for the YAs 2011 to 2015 against the taxpayer on the basis that the debt waived by the Companies were the taxpayer's business income that should be subject to tax under Section 4(a) of the ITA.

Taxpayer's argument:

The taxpayer contended that Section 4(a) of the ITA is silent regarding the type of business and what amounts to gross income. Therefore, in ascertaining whether the debts owed by the Companies amount to income under Section 4(a) of the ITA, reference should be made to the general provision under Section 22 of the ITA, which defines gross income. However, based on the decisions of the COA in *Bandar Nusajaya Development Sdn Bhd (2013) MSTC 30-058 and the House of Lords in The British Mexican Petroleum 16 TC 570,* the waiver of debt was not taxable as the gross income under Section 22 of the ITA. Furthermore, as the amount of debts waived by the Companies was used for repaying the taxpayer's bank borrowings and not for its income producing activities, the taxpayer did not subject the amount of debt waived to tax under Section 30(4) of the ITA, as no deduction under Section 33(1) of the ITA was made.

DGIR's argument:

In response, the DGIR asserted that the loan received by the taxpayer from the Companies were part of the taxpayer's business transaction, which then became the taxpayer's liability or obligation. As the debts were waived by the Companies, the taxpayer was released from its obligation to pay. Therefore, the waiver of debts by the Companies constitutes as 'gains' to the taxpayer and shall be taxable as the taxpayer's income under Section 4(a) of the ITA. Additionally, the real character of the money received by the Companies ought to be determined by looking into the original character of the money, where the waiver of debt had changed the characteristic of the money into 'gains'.

The DGIR further argued that the taxpayer was wrong in respect of the application of Section 30(4) of the ITA because the word 'release of debt' in the said provision cannot be found anywhere else in the ITA. The DGIR argued that the application of Section 30(4) of the ITA is to determine the taxpayer's adjusted income in relation to the deductions that has been made (claimed by a taxpayer in their tax computation) but subsequently, the 'release of debt' occurred. Therefore, the 'release of debt' under Section 30(4) of the ITA is not an income per se, but a method in determining the adjusted income when deductions were already made under Section 33(1) of the ITA by the taxpayer.

The DGIR also highlighted the components of the ITA to clearly observe the functions of each provision. Section 30(4) of the ITA falls under Chapter 3, Part III of the ITA or 'Ascertainment of Chargeable Income' which involves tax computation, and Section 4 of the ITA falls under Part II of the ITA that deals with 'Imposition and General Characteristics of Tax'.

In this appeal, the 'release of the loan liability' by the Companies effectively made the loan, which was the taxpayer's stock-in-trade, to be free from any liability. In simple words, the taxpayer received 'free money' from the Companies in the course of their business. Therefore, the DGIR asserted that the 'release of loan liability' falls within the characteristics of income under Part II of the ITA, i.e., gains or profits from a business under Section 4(a) of the ITA.

Issue:

Whether the waiver of debts by the Companies should be subjected to tax as the taxpayer's business income under Section 4(a) of the ITA.

Decision:

On 5 December 2023, the HC dismissed the taxpayer's appeal and upheld the SCIT's decision. The HC held that the SCIT had not erred in its finding of facts and was correct to subject the taxpayer's income to tax under Section 4(a) of the ITA as Section 4 of the ITA does not specifically state what constitutes gross income. The HC also held that the taxpayer did not adduce any evidence to show that the loan was used for non-income producing activity or equity financing.

[Details of the above tax case at both the SCIT and HC levels are not available as of date of publication.]

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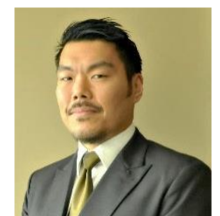

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	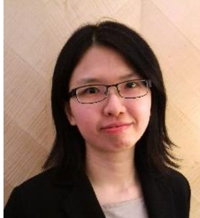			
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