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Gazette Orders, HASiL Media Releases, Guidelines, Public Ruling, Tax Cases and more

January 2025

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Greetings from Deloitte Malaysia Tax Services

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Deloitte Malaysia
Inland Revenue Board of Malaysia

Takeaways:

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Important deadlines:

Task	Deadline	
	29 January 2025	**31 January 2025**
1. 2026 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 2024 tax returns for companies with June year-end		√
6. Maintenance of transfer pricing documentation for companies with June year-end		√
7. 2025 CbCR notification for applicable entities with January year-end		√

1. Finance Act 2024, Measures for the Collection, Administration and Enforcement of Tax Act 2024 and Labuan Business Activity Tax (Amendment)(No.2) Act 2024

The three (3) bills, i.e., Finance Bill 2024, Measures for the Collection, Administration and Enforcement of Tax Bill 2024 and Labuan Business Activity Tax (Amendment) (No.2) Bill 2024 have been gazetted on 31 December 2024 (as follows), and have come into operation on 1 January 2025:

1) Finance Act 2024 [*Act 862*] (English and National Language versions);

2) Measures for the Collection, Administration and Enforcement of Tax Act 2024 [*Act 863*] (English and National Language versions); and

3) Labuan Business Activity Tax (Amendment) (No.2) Act 2024 [*Act A1741*] (English and National Language versions).

The above Acts adopt all provisions proposed in the three bills, which include:

- Measures to clarify and amend the capital gains tax legislation and the legislation relating to the implementation of the Pillar Two global minimum tax (GMT);
- Measures relating to self-assessment systems for purposes of the stamp duty, real property gains tax (RPGT), and Labuan tax (LBATA) regimes, as well as various other modifications relating to these regimes;
- A change in the tax assessment system under the LBATA regime to transition from a preceding-year basis to a current-year basis;
- The introduction of a 2% tax on certain annual dividend income exceeding RM100,000 received by individuals;
- A change of the deadline for submission of sales tax and service tax returns for registered persons with a varied taxable period;
- A change in the persons subject to the sales tax law provisions regarding the requirements to account for taxable goods and provide a valid reason for the account for taxable goods; and
- Various other measures relating to tax administration, including modifications of certain penalties.

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2. Income Tax (Exemption) (No. 5) Order 2022 (Amendment) Order 2024 [*P.U.(A) 451/2024*] in relation to foreign source income

Income Tax (Exemption) (No. 5) Order 2022 (Amendment) Order 2024 [*P.U. (A) 451/2024*] was gazetted on 24 December 2024 and will come into operation on 1 January 2027.

Amendment

The Principal Order [Income Tax (Exemption) (No. 5) Order 2022 [*P.U. (A) 234/2022*] which was previously effective until 31 December 2026 has been extended to be effective until **31 December 2036**.

P.U.(A) 234/2022 is in relation to the exemption from the payment of income tax in respect of the gross income from all sources of income under Section 4 of the Income Tax Act 1967 (ITA), excluding a source of income from a partnership business in Malaysia, which is received in Malaysia from outside Malaysia by an individual resident in Malaysia.

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3. Income Tax (Exemption) (No. 4) Order 2022 (Amendment) Order 2024 [*P.U.(A) 367/2024*]

On 27 November 2024, *P.U.(A) 367/2024* (the Amendment Order) was gazetted to legislate the proposed expansion and extension of the tax incentive for investment in equity crowdfunding as announced in the National Budget 2024:

- The tax incentive has been expanded to investments made by individual investors through a nominee limited liability partnership.
- The incentive period has been extended for 3 years, including investments made from **1 January 2024 until 31 December 2026**.

Background

By virtue of the Income Tax (Exemption) (No.4) 2022 [*P.U.(A) 142/2022*], which has effect from the year of assessment (YA) 2021, the Minister of Finance exempts a qualifying individual in respect of his aggregate income from the payment of income tax on an amount equivalent to 50% of investment made in the investee company, in the second YA following the YA in which the investment is made by the qualifying individual. The exemption granted is capped at RM50,000 for each YA and shall be limited to 10% of the aggregate income of the qualifying individual in the basis period for a YA. The investment shall be made by the qualifying individual in the form of holding shares which are paid in cash to the investee company through an equity crowdfunding platform or through a nominee company between the period from 1 January 2021 until 31 December 2023 (both dates inclusive).

Amendment

A new definition has been added on "nominee limited liability partnership". It means a limited liability partnership which:

(a) is registered under the Limited Liability Partnerships Act 2012 [Act 743];
(b) is a resident in Malaysia;
(c) is established by an equity crowdfunding operator in Malaysia to receive investments from a qualifying individual; and
(d) invests on behalf of the qualifying individual through an equity crowdfunding platform into an investee company.

The definition for "nominee company" has been rephrased for clarity purposes. It means a company which:

(a) is incorporated under the Companies Act 2016;
(b) is a resident in Malaysia;
(c) is established by an equity crowdfunding operator in Malaysia to receive investments from a qualifying individual; and
(d) invests on behalf of the qualifying individual through an equity crowdfunding platform into an investee company.

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4. Stamp Duty Exemption Orders [*P.U.(A) 343/2024* to *349/2024*]

Stamp Duty Exemption Orders [P*.U.(A) 343/2024 to 349/2024*] were gazetted on 20 November 2024 and are deemed to have come into operation on 1 January 2022.

Exemption

1) The instrument of loan or financing agreement executed between a financial institution (FI) / participating FI and small and medium enterprises (SMEs) for the following facilities is exempted from stamp duty:

   - Disaster Relief Facility 2022 or a Disaster Relief Facility approved under Bank Negara Malaysia's (BNM) Fund for SMEs [*P.U.(A) 343/2024*]
   - PENJANA Tourism Financing Facility approved under the BNM's Fund for SMEs [*P.U.(A) 344/2024*]
   - Targeted Relief and Recovery Facility approved under the BNM's Fund for SMEs [*P.U.(A) 345/2024*]
   - Loan or financing facility approved under BNM's Fund for SMEs in respect of All Economic Sectors Facility, SMEs Automation and Digitalisation Facility or Agrofood Facility [*P.U.(A) 346/2024*]
   - High Tech and Green Facility approved under the BNM's Fund for SMEs. [*P.U.(A) 348/2024*]

   The exemption shall only apply to the said instrument executed pursuant to a letter of offer issued by the FI / participating FI on or after 1 January 2022 but not later than 31 December 2023.

   The exemption shall be accompanied by a letter of offer from the FI / participating FI to the SMEs which states the approval of the loan or financing facility.

2) The instrument of agency agreement for the Special Relief Facility, Targeted Relief and Recovery Facility, Disaster Relief Facility 2021 and Disaster Relief Facility 2022 approved under the BNM's Fund for SMEs executed on or after 1 January 2022 but not later than 31 December 2023 between BNM and Credit Guarantee Corporation Malaysia Berhad is exempted from stamp duty [*P.U.(A) 347/2024*].

3) The instrument of loan or financing agreement for the Targeted Relief and Recovery Facility approved under the BNM's Fund for SMEs executed between BNM and a participating FI is exempted from stamp duty [*P.U.(A) 349/2024*].

The exemption shall apply to the said instrument executed pursuant to a letter of offer issued by the participating FI on or after 1 January 2022 but not later than 31 December 2023.

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5. HASiL – Guidelines on the implementation of Global Minimum Tax in Malaysia

The Inland Revenue Board of Malaysia (HASiL) has issued the Guidelines on the Implementation of Global Minimum Tax in Malaysia dated 2 December 2024 on its website.

The objective of these guidelines is to explain the implementation of the GMT legislation as provided under Part XI of the ITA. The guidelines outline the Director General of Inland Revenue's (DGIR) interpretation and administration of the GMT legislation, including the relevant policies and procedures. However, in the event of inconsistencies, GloBE Rules should take precedence.

The guidelines include the following:

- Provisions of the law
- Interpretation
- Scope
- Filing obligations of the information return and top-up tax return
- Transitional penalty relief
- The Qualified Domestic Minimum Top-up Tax (QDMTT) safe harbour
- The Transitional Country-by-Country Reporting (CbCR) safe harbour
- The permanent safe harbour

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6. Public Ruling No. 3/2024 - Tax borne by employers

HASiL has issued Public Ruling (PR) No. 3/2024 (dated 10 December 2024) to replace Public Ruling No. 11/2016 (dated 8 December 2016).

The key updates to Public Ruling No. 11/2016 (amendments as listed in Paragraph 10 of Public Ruling No. 3/2024) were to reflect the changes in Section 83 of the ITA via the Finance Act 2020. Effective 1 January 2021, the deadline for an employer to submit to the DGIR the relevant notification of employee status pursuant to Section 83 of the ITA had been revised from one month to 30 days. HASiL have summarised the employer responsibilities and types of notification under Section 83 of the ITA in Paragraph 9 of the Public Ruling No. 3/2024, as reproduced below:

ITA	Employer responsibilities
Subsection 83(1)	*Employers are required to submit a Return Form of Employer (Form E) which contains complete information to the DGIR for each year not later than 31 March in the following year.*
Subsection 83(1A)	*Employers are required to prepare and render to the employee a Statement of Remuneration from Employment (Form EA) in respect of that employee on or before the last day of February of the following year.*
Subsection 83(2)	*Employers are required to submit a notification via Form CP22 (Notification Form By Employer For Employees) to the DGIR by providing details of new employees who are chargeable to tax or likely to be chargeable to tax not later than 30 days after the date of commencement of employment.*
Subsection 83(3)	*Employers are required to submit a notification using Form CP22A (Tax Clearance Form for Cessation of Employment of Private Sector Employees) / CP22B (Tax Clearance Form for Cessation of Employment of Public Sector Employees) to the DGIR by providing details of employees if the employer intends to cease to employ an employee who is or is likely*

	to be chargeable to tax in respect of income from the employment or where an employee under his employment dies. The notification must be submitted not less than 30 days before the cessation of employment or not more than 30 days after being informed of the death of an employee. *However, the employer is not required to submit Form CP22A / CP22B if the employee's income is subject to MTD or if the employee's monthly salary is below the minimum amount eligible for MTD deduction.*
Subsection 83(4)	*Employers are required to submit a notification using Form CP21 (Notification by Employer of Employee's Departure From Malaysia) to the DGIR by providing details of employees who will be chargeable to tax in respect of their employment and who intend to leave or have the intention to leave Malaysia for a period exceeding three (3) months. The notification must be submitted not less than 30 days before the date the employee is expected to leave Malaysia.*
Subsection 83(5)	*The employer shall withhold any portion of the money that will be paid or payable to an employee who has ceased or is about to cease to be employed or is about to leave Malaysia for a period of more than three (3) months with no intention of returning. The employer cannot without the permission of DGIR pay any part of the money to or for the benefit of the employee for 90 days after the receipt of the notification (CP22A / CP22B / Form CP21) under subsection 83(3) and 83(4) by the DGIR. The employer shall pay all or part of the withheld amount to the DGIR when instructed at any time during that period.*

Please refer to the Public Ruling No. 3/2024 for full details.

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7. HASiL Media Release – Submission of the RPGT return form via e-CKHT is mandatory on the MyTax portal from 1 January 2025

HASiL has issued a media release dated 25 November 2024 on its website that states the following:

- The submission of the RPGT Return Form electronically via e-CKHT on the MyTax portal will be mandatory from 1 January 2025.

- The electronic submission method is as follows:

  (a) Visit the https://mytax.hasil.gov.my/. Login to MyTax by selecting the type of identification and entering your password. If you do not have a Tax Identification Number (TIN), an application can be made by registering for a TIN via the e-Daftar link on MyTax;
  (b) Select the menu *ezHASIL Services > eCKHT*; and
  (c) Choose the type of RPGT Return Form and fill in the relevant information.

  Authorised lawyers and appointed licensed tax agents are allowed to access e-CKHT on behalf of taxpayers through the following medium:

  (a) Licensed tax agents: TAeF System version 2.0; and
  (b) Lawyers: Lawyer Role in MyTax

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8. HASiL Media Release – Mandatory submission of e-107D for 2% withholding tax from payment made to a resident individual agent, dealer or distributor and changes to tax payments which are acceptable at PPTHKL from 1 January 2025

HASiL has issued a media release dated 31 December 2024 on its website in relation to the following:

1) Mandatory electronic submission of Form CP107D (e-107D)

HASiL mandates electronic submission of the prescribed form CP107D for the 2% tax deduction for payments by a paying company to agents, dealers, or distributors under Section 107D of the ITA via e-107D with effect from 1 January 2025.

The said payments under Section 107D of the ITA must be made electronically using a Bill Number and can be done through the following channels:

- ByrHASiL at https://byrhasil.hasil.gov.my/HITS_EP/; or
- Financial Process Exchange (FPX) through the ByrHASiL link.

2) Changes to tax payments which are acceptable at the Kuala Lumpur Revenue Management Centre (PPTHKL)

Types of tax payment that are **no longer accepted** at the PPTHKL from 1 January 2025

- 3% retention sum by the real estate acquirers under Section 21B of the Real Property Gains Tax Act 1976 (Form CKHT502)
- Withholding tax
- Public entertainer tax
- 2% tax deduction for payments by a paying company to agents, dealers, or distributors under Section 107D of the ITA

The above payments could be made through the following platforms, using the Bill Number or TIN as payment references:

- Online via the official HASiL Portal (ByrHASiL) and the internet banking portal of HASiL agent banks.
- Cash via Pos Malaysia and HASiL agent banks' counters, HASiL agent banks' cash deposit machines and HASiL agent banks' Automatic Teller Machines (ATMs).
- Telegraphic Transfer (TT), Electronic Funds Transfer (EFT) and Interbank GIRO Transfer (IBG) using the e-TT system for taxpayers with bank accounts both in Malaysia and outside Malaysia.

Types of tax payment that are **still acceptable** at the PPTHKL from 1 January 2025

- Compound payment
- Income tax payment (using debit/credit card issued in Malaysia)

HASiL expressed confidence that the mandatory implementation of e-107D and enhancement of the online services would simplify taxation matters for taxpayers and set a new norm for Malaysians in moving towards full digitisation in the future.

Any queries on the above can be directed to HASiL through:

(a) Hasil Contact Centre (HCC) at 03-8911 1000 or 603-8911 1100 (overseas)
(b) HASiL Live Chat
(c) Feedback Form in HASiL's official portal at this link https://maklumbalaspelanggan.hasil.gov.my/Public/

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9. HASiL – Filing Programme for Documents specified under Section 82B through MITRS

HASiL has uploaded the Filing Programme for documents specified under Section 82B through the Malaysian Income Tax Reporting System (MITRS) on 2 December 2024 on its website.

The key points to note are as follows:

1) The MITRS is an online platform to furnish tax information and documents for ascertaining chargeable income and tax payable.

2) Section 82B of the ITA provides that taxpayers who have furnished a return form under Section 77 or Section 77A of the ITA shall **provide information and furnish documents determined by the DGIR for ascertaining chargeable income and tax payable on an electronic medium within 30 days after the due date for submission of the return form**.

   Refer to the Guidance Notes for a complete list of the specified documents.

3) Submission of the information and specified documents through MITRS will be implemented in stages, starting with taxpayers of the Company category (C) and Limited Liability Partnership (PT) commencing from the YA 2025.

4) The specified documents under Section 82B of the ITA need to be submitted through an **electronic medium using the MITRS platform**, which can be accessed through the **MyTax Portal from 1 April 2025**.

5) The specified documents that need to be submitted are as follows:

   (a) Audited financial statements / Accounts;
   (b) Tax calculation;
   (c) The complete Schedule of Capital Allowance under Schedule 3 of the ITA that is claimed; and
   (d) Complete calculation of claimed incentives (if applicable).

6) If documents / amended documents are submitted after the permitted due date, documents / amended documents received after the submission due date are subject to offense and penalty under Section 120(1) of the ITA.

7) Failure to comply with Section 82B of the ITA is an offence under Section 120(1)(d) of the ITA and shall on conviction, be liable to a fine not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding six months or both.

8) Taxpayers and tax agents can access the MITRS on the MyTax Portal and TAeF System version 2.0, respectively, at https://mytax.hasil.gov.my

Please refer to the MITRS Filing Programme in full on the website of HASiL.

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10. (1) Etiqa Family Takaful Berhad v KPHDN (COA) (2024) MSTC 30-768; (2) KPHDN v Etiqa Family Takaful Berhad (COA) - (2024) MSTC 30-769

There are two appeals being heard together. Appeal 726 is the appeal of Etiqa Family Takaful Berhad (taxpayer) against the decision of the High Court (HC) dismissing its appeal for the YAs 2011, 2012, and 2013. Appeal 746 is the appeal by the DGIR against the decision of the HC in allowing the taxpayer's appeal for Yas 2008, 2009, and 2010.

Appeal 726 by the taxpayer

Issue:

Whether the commission expenses incurred by the taxpayer in the Shareholders Fund for YAs 2008 to 2013 to earn the *Wakalah* Fee from the General Takaful Fund are deductible as the expenses of the Shareholders Fund under Section 33(1) of the ITA.

Decision:

The Court of Appeal (COA) dismissed the taxpayer's appeal based on the following grounds:

- Section 60AA of the ITA was inserted by Finance Act 2007 (*Act 683*). The intention was to have a specific provision to ascertain the taxability of takaful business and to address syariah compliance requirements. Parliament's intention

then was to treat takaful business as a separate and distinct business vide Section 60AA. It is this provision that one turns to when dealing with takaful business rather than to Section 33(1) of the ITA. Section 60AA of the ITA is to be construed in a manner that would promote the purpose or object underlying it.

- If it is not clear enough that Section 60AA(9)(b) of the ITA would be the definitive section on allowable expenses for a takaful business operator, for which commission expenses are not deductible, Section 60AA(9)(b) of the ITA was subsequently amended to insert a new subparagraph (b)(iv) to allow for such deduction. This amendment was made through the Finance Act 2014 (*Act 761*).

- It follows that, if the then unamended Section 60AA(9)(b)(i), (ii), and (iii) allowed the deduction of commission expenses, there would be no necessity to insert subparagraph (iv) to allow it again. If indeed Parliament had the intention to allow the deduction of commission expenses before YA 2014, it would have done so earlier in Finance Act 2007 when it introduced the specific provision to ascertain the taxability of takaful business for the YA 2008 onwards.

- Having found that Section 60AA(9)(b) of the ITA is the specific provision dealing with takaful business and the taxability thereof, it follows that Section 60AA(9)(b) of the ITA, being a specific provision, prevails over the general provision of Section 33(1) of the ITA.

Appeal 746 by the DGIR

Issues:

1) Whether the DGIR has successfully discharged its burden of proof under Section 91(3) of the ITA in relation to the Notices of Additional Assessment for the YAs 2008 to 2010.

2) Whether there is any factual or legal basis for the DGIR to impose a penalty against the taxpayer under Section 113(2) of the ITA for the YAs 2008 to 2010.

Decision:

The COA dismissed the DGIR's appeal based on the following grounds:

- The Notices of Additional Assessment were issued beyond 5 years from YAs 2008 to 2010. Section 91(1) of the ITA allows such additional assessment to be made within 5 years. However, where there has been fraud, wilful default, or negligence on the part of the taxpayer, such assessment may be made at any time. The taxpayer is said to be negligent in preparing its tax computation and reporting its income in its tax returns for the YAs 2008 to 2010. The HC had found that the only fault of the taxpayer was in having a different interpretation of the law. There seems to be a recognition that differing views and taking a more favourable view to a taxpayer is acceptable. Reasonable care is regarded as being taken when there is consultation with a competent advisor. In this case, the differing view is whether Section 33(1) of the ITA applies rather than Section 60AA(9)(b) of the ITA where the taxpayer had been advised by a renowned tax specialist. Therefore, the taxpayer was not negligent and the DGIR did not successfully discharge its burden of proof under Section 91(3) of the ITA in relation to the Notices of Additional Assessment for the YAs 2008 to 2010.

- Given the above finding on Section 91(3) of the ITA, the penalty under Section 113(2) of the ITA was incorrectly imposed.

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11. Medan Prestasi Sdn Bhd v DGIR (COA)

HASiL has recently uploaded a case report, "Medan Prestasi Sdn Bhd v DGIR (COA)" on its website.

Facts:

This is an appeal by the taxpayer against the decision of the HC dated 16 March 2023 in dismissing its appeal against the decision of the Special Commissioners of Income Tax (SCIT) on 10 May 2019.

The taxpayer is a wholly owned subsidiary of MK Land Holdings Berhad (MKL). On 21 April 1995, the Selangor State Government (the State) entered into a Privatisation Agreement (PA) with MKL to construct 50,000 low-cost homes in 9 districts of Selangor with all basic and external infrastructures. Through the PA, the State shall provide the land, the finance and undertake the sales of the houses whereas MKL shall provide technical expertise in designing, drawing and completion of the construction of the housing units. As specified in a supplemental agreement executed on 26 June 1996, 400 acres of land will be alienated to the taxpayer and 75% of the land was to be developed for the low-cost, low-medium-cost, and medium-cost housing. The taxpayer shall, on its own cost and expense, carry out and undertake the development and to complete all stages of the project including allocation, sale, and collection of the proceeds of the housing units in the project.

However, the taxpayer had disposed of 12 parcels of land (the remaining 25% of the land) on 30 June 2002 and 30 June 2004. These disposals were reported / declared under the Real Property Gains Tax Act 1976 (RPGTA). Upon audit, the DGIR assessed and subjected the gains from the disposal of the land as business income under Section 4(a) of the ITA and issued the Notices of Assessment for the Yas 2002, 2003 and 2004 dated 7 August 2007 for a total amount of RM12,628,225.62.

Taxpayer's argument:

The taxpayer contended that the land was meant for investment and would be rented out whereas another part of it would be used to build a showroom. The taxpayer also argued that the sale of the land was a forced sale due to the company's financial difficulties.

DGIR's argument:

There was no rental agreement being made and the building plan which was intended to be the showroom was not signed by any certified architect and was only produced at the SCIT hearing. The HC found that the taxpayer failed to prove its contention, and the contemporaneous documents spoke otherwise.

Furthermore, the taxpayer's witness failed to corroborate the testimony that the land was intended to be the taxpayer's investment where office buildings and showrooms would be constructed. There was also confusion in the taxpayer's audited annual report in respect of the land where it was initially stated for investment, but later the intention seemed to be for the purpose of rental collection. The SCIT and the HC have made a strong finding that the land is not meant for investment but for development / trading. Thus, the gains arising from the sale of the said land was the business income of the taxpayer.

The DGIR submitted that the circumstances leading to the disposal of the said land reflect the existence of profit-making undertaking or scheme. The fact findings by the SCIT were approved by the HC where the taxpayer had failed to prove that the land was meant for investment and the authenticity of the architect drawing was questionable.

Issue:

Whether the gains received by the taxpayer from the disposal of 12 parcels of land were trading receipts (taxable as business income under Section 4(a) of the ITA) or capital receipts (taxable under the RPGTA).

Decision:

The COA has unanimously agreed with the facts found by the SCIT and affirmed the decision of the HC. There were no circumstances that warrant the COA's interference and the taxpayer's appeal was dismissed.

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

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12. Pemungut Duti Setem v Ann Joo Integrated Steel Sdn Bhd (COA) (2024) MSTC 30-752

This was an appeal by the Collector of Stamp Duties (Collector) against the decision of the HC, which allowed an appeal by the duty payer, Ann Joo Integrated Steel Sdn Bhd (AJISSB). AJISSB had appealed against the Collector's decision in rejecting its objection against the Notice of Stamp Duty Assessment dated 13 February 2019 raised by the Collector.

Issue:

Whether the instrument (i.e., letter of offer issued by Alliance Bank Malaysia Berhad (ABMB)) could qualify to be an instrument as described under Item 22(1)(b), First Schedule of the Stamp Act 1949 (SA) hence eligible for a remission under the Stamp Duty (Remission) (No 2) Order 2012 [*P.U.(A) 258/2012*] (Remission Order).

Decision:

The COA allowed the Collector's appeal in part, based on the following grounds:

- The credit facilities did not meet the requirement of "a definite and certain period" under Item 22(1)(a) of the First Schedule of the SA. As the terms lacked a fixed period, the "total amount to be ultimately payable" could not be ascertained, as the latter depends on the former. Consequently, the credit facilities in the instrument could not qualify as a loan instrument under Item 22(1)(a), First Schedule of the SA.

- The credit facilities fell within the meaning of a loan "for the term of life or any other indefinite period", remaining valid until ABMB exercised their right to recall or cancel them. Thus, the instrument fulfilled the requirements under Item 22(1)(b), First Schedule of the SA.

- AJISSB had met the conditions to qualify for the Remission Order, as the instrument satisfied the criteria under Item 22(1)(b), First Schedule of the SA. It was a loan instrument, and the credit facilities were offered on a "clean basis", without requiring any security.

- Regarding the condition that the repayment must be on demand or through a single bullet payment, the Collector's interpretation that the Remission Order only applied when any outstanding sum owing to ABMB was repayable on demand was unreasonable. All loans from financial institutions required repayment, either through staggered payments (fixed instalments) or flexi-payments (non-fixed amount). Financial institutions did not typically offer loans without repayment terms or stipulate repayment only upon demand, contrary to the Collector's contention.

- The credit facilities provided by ABMB differed from conventional loans, as AJISSB could draw funds as needed rather than receiving a full disbursement upfront. Repayment was flexible, with amounts and timing dependent on AJISSB's financial situation, though repayment was always required, even without a demand from ABMB. The Collector's interpretation could not align with the Minister's intent under Section 80(2) of the SA in making the Remission Order.

- ABMB retained the right to recall or cancel the facility at any time without providing a reason, making the outstanding amount repayable on demand. The right of "repayable on demand" was expressly stated in the specific conditions for trade facilities and the forward foreign exchange facility. Therefore, the final condition of the Remission Order was satisfied, entitling AJISSB to its benefits.

- However, AJISSB's submission that the instrument should be stamped at the rate of 0.1% of the amount chargeable for stamp duty which amounted to RM105,000 was incorrect in law. The phrase "the amount of stamp duty that is chargeable" in the Remission Order refers to the stamp duty payable and not the amount chargeable to duty.

- AJISSB paid RM525,000 in stamp duty, but the correct stamp duty payable was RM1,050, resulting in an excess of RM523,950 to be refunded. The HC had incorrectly ordered a refund of only RM420,000. As AJISSB did not file a cross-appeal regarding this error, the HC's order on the refund amount was upheld without making any changes.

- The Collector's objection to the HC order in granting accrued interest of 8% on the refundable sum of RM420,000 was allowed and the said order was set aside.

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13. Petronas Dagangan Berhad v Collector of Stamp Duty (HC)

HASiL has recently uploaded a case report, "Petronas Dagangan Berhad v Collector of Stamp Duty (HC)" on its website.

Facts:

The duty payer, Petronas Dagangan Berhad (PDB) had entered into a Business Transfer and Share Subscription Agreement (BTSSA) with Petrosniaga Sdn Bhd and Petroleum Sarawak Berhad on 9 March 2022.

PDB agreed to sell PDB Business which include the PDB Contracts, PDB Equipment, PDB Assets and PDB Liabilities but exclude "Excluded Assets". On 15 September 2022, the Collector assessed the BTSSA with ad valorem duty of RM1,584,040 pursuant to Item 32(a), First Schedule of the SA for the consideration cash value of RM40,000,000 received by PDB.

PDB, being dissatisfied with the duty assessed on the BTSSA, filed a notice of objection to the assessment under Section 38A(1) of the SA as PDB was of the view that the BTSSA should have been assessed with nominal duty of RM10 under Item 4, First Schedule of the SA. PDB objected to the "Notis Taksiran Pindah Milik Perniagaan" (Ad Valorem Duty) dated 15 September 2022 in which the Collector rejected the objection and issued the "Notis Taksiran Pindaan Pindah Milik Perniagaan" (Ad Valorem Duty) dated 4 January 2023 for the same amount of RM1,584,040. PDB then appealed to the HC vide Section 39(1) of the SA by way of the Originating Summons and the Case Stated.

Duty payer's argument:

PDB submitted that the BTSSA does not fall within the ambit of Section 21(1) of the SA as there was no equitable interest in property transferred, the case *Pemungut Duti Setem v Havi Logistics (M) Sdn Bhd (2024) 1 MLJ 177* was referred to by PDB. There was no conveyance, assignment or transfer of property that warranted the application of Item 32(a), First Schedule of the SA. The BTSSA was a mere written contract for the sales of its business. Clause 2.2 of the BTSSA clearly provided that PDB Business will be transferred through a Novation Agreement, thus there was no transfer of property legally or equitably or a sale of interest. There was also no deeming provision in the BTSSA for the transfer of the Equipment. PDB relied on the *Havi's* case and argued that the meaning of 'goods' was wide enough to cover the Equipment i.e., gas cylinders and the cages holding the cylinders and those 'goods' are clearly exempted from the application of Section 21(1) of the SA. In addition, all the requirements under Item 4, First Schedule of the SA have been fulfilled, therefore the BTSSA should be chargeable under Item 4, First Schedule of the SA.

Collector's argument:

The Collector submitted that it was settled law that stamp duty is charged on the instrument and not the transaction. Item 4, First Schedule of the SA was a general provision whereby the BTSSA dated 9 March 2022 was a conveyance on sale and should be charged with ad valorem duty. The BTSSA fulfilled all the elements of business transfer which falls under Section 21(1) of the SA. There was a deeming provision of the PDB Equipments in Paragraphs 6.3 and 6.4.1 of the BTSSA, therefore the *Havi's* case was not applicable in this case. The Novation Agreement was merely to substitute PDB with Petrosniaga and it cannot be considered as a separate agreement. There was also no consideration mentioned in the Novation Agreement. The construction of the BTSSA itself showed that PDB's Business and Equipment are passed and transferred to Petrosniaga which in this case was a 'conveyance on sale' within the meaning of Section 2 of the SA and chargeable with 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 BTSSA is correct.

Decision:

On 25 November 2024, the HC dismissed PDB's Originating Summons with costs.

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

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