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Tax Espresso

HASiL Gazette Orders, Media Release, Tax Cases and more

June 2024

Greetings from Deloitte Malaysia Tax Services

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Deloitte Malaysia
Inland Revenue Board of Malaysia

Takeaways:

1. Income Tax (Amendment) Act 2024 and Labuan Business Activity Tax (Amendment) Act 2024
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Important deadlines:

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

1. Income Tax (Amendment) Act 2024 and Labuan Business Activity Tax (Amendment) Act 2024

On 20 May 2024, the Income Tax (Amendment) Bill 2024 and the Labuan Business Activity Tax (Amendment) Bill 2024 were gazetted as the Income Tax (Amendment) Act 2024 [Act A1706] and the Labuan Business Activity Tax (Amendment) Act 2024 [Act A1707].

The above Amendment Acts 2024, which come into operation on 21 May 2024, are the same as the Amendment Bills 2024 passed by the House of Representatives and the Senate. You may click on the Deloitte Malaysia Tax Espresso – Special Alert: Income Tax (Amendment) Bill 2024 and Labuan Business Activity Tax (Amendment) Bill 2024 for the amendments made. We have summarised in the table below the respective effective dates of key amendments made for easy reference:

Amendment	Effective Date
(A) Amendments related to capital gains tax (CGT)	
- Redefinition of the term "capital assets"	21 May 2024
- Scope of chargeable person for the purpose of Section 15C shares	21 May 2024
- Definition of "shares" for the purpose of CGT	21 May 2024
(B) Amendments related to e-invoicing	
- Issuance of receipt to buyers	1 January 2024
- e-Commerce platform provider to issue self-billed invoice	1 January 2024

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2. Labuan Business Activity Tax (Exemption) Order 2024 [P.U.(A) 127/2024] – In relation to Islamic Finance

P.U.(A) 127/2024 was gazetted on 17 May 2024 and shall have effect from the YA 2024 until YA 2028. This exemption was announced in Budget 2024 on 13 October 2023.

Exemption

A Labuan entity specified in column (2) of the Schedule attached to the Order is exempt, in the basis period for a YA, from the payment of tax in respect of any of its income derived from a qualifying activity. The term "qualifying activity" refers to a Labuan trading activity in relation to Islamic finance for the promoted sectors as specified in column (3) of the Schedule.

The above exemption does not absolve the Labuan entity from complying with any requirement to submit any return or statement of bank accounts or to furnish any other information under the Labuan Business Activity Tax Act 1990.

A Labuan entity that is exempted as above shall maintain separate accounts for the income derived from each qualifying activity, and activity or business other than the qualifying activity. Each such activity or business shall be treated as a separate and distinct source of activity or business for the Labuan entity.

Please refer to *P.U.(A) 127/2024* for full details.

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3. HASiL Media Release – MyInvois System Production Environment through API is accessible by e-Invoice pilot companies from 24 May 2024

The Inland Revenue Board of Malaysia (HASiL) has issued a media release dated 24 May 2024 on e-Invoicing on its website that states the following, among others:

- MyInvois System Production Environment through the Application Programming Interface (API) has been opened to enable e-Invoice pilot companies to issue e-Invoice using real business data from 24 May 2024.
- e-Invoice pilot companies can start accessing the MyInvois System API production environment after applying for Client ID and Client Secret for the production environment from the HASiL via email to sdkmyinvois@hasil.gov.my.

- Access to this production environment allows the pilot company to:
  - Manage and issue e-Invoices directly to HASiL using production data (real business data) to ensure the accuracy of the information sent to HASiL; and
  - The API in the production environment offers key functions such as login, validation, sending, and cancellation of documents.
- To ensure a smooth transition process for sending e-Invoices through this API production environment, the digital signature verification process is temporarily disabled until further notice.

Please refer to the media release for full details and access the HASiL's e-Invoice webpage for more information.

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4. DGIR v Tenaga Nasional Berhad (COA) [W-01(A)-84-02/2022]

Background facts:

The taxpayer claimed reinvestment allowance (RA) for the YA 2018 in its tax return. After an exchange of correspondence where the taxpayer was required to submit various documents, on 3 July 2020, the Director General of Inland Revenue (DGIR) informed the taxpayer that the RA claimed for the YA 2018 was disallowed. Subsequently, the DGIR issued a Notice of Additional Assessment (JA) dated 13 July 2020 amounting to RM1,812,506,384.64. This then prompted the taxpayer to file its application for judicial review (JR) on 21 July 2020. Leave was granted on 30 September 2020 despite the objections of the DGIR who appeared as the putative respondent. The DGIR then appealed against the leave granted. The appeal was withdrawn where there was a consent order among which it was agreed that the subject matter of the dispute be heard and resolved by way of JR. The High Court (HC) Judge allowed the JR application and set aside the JA for the YA 2018.

Issue:

Whether the taxpayer was involved in the business of manufacturing electricity and eligible to claim the RA incentive of RM1,812,506,384.64, pursuant to Schedule 7A of the ITA.

Decision:

The Court of Appeal (COA) unanimously dismissed the DGIR's appeal and upheld the HC's decision that the taxpayer was involved in the business of manufacturing electricity (i.e., it is not a service provider) and qualified for RA under Schedule 7A based on the following grounds:

- A reading of Paragraph 1, Schedule 7A of the ITA would show that to be eligible for RA, the taxpayer has to incur capital expenditure on a factory, plant, or machinery for the purposes of a qualifying project. In so far as capital expenditure is concerned, it is common ground that the taxpayer had claimed RA on capital expenditure for machinery; namely PMU switchgear, transmission lines, transformer, capacitor, underground cables/lines and distribution lines, and substations.
- A qualifying project has been defined in Paragraph 8(a), Schedule 7A of the ITA to mean a project to expand, modernise, or automate the taxpayer's existing business in respect of **manufacturing** or processing **of a product** (emphasis added). It cannot be said that, merely because the word "manufacturing" was not used to describe the activity, the taxpayer was immediately said to be not involved in the manufacturing of electricity. This was because the taxpayer must have produced and manufactured the electricity from a source for it to supply electricity to its consumers. Therefore, the generation, transmission, and distribution of electricity by the taxpayer amounted to the manufacturing of electricity. The taxpayer was thus involved in the business of manufacturing electricity. The taxpayer has fulfilled the requirements of Paragraph 1, Schedule 7A of the ITA read together with Paragraph 8, Schedule 7A of the ITA in relation to a qualifying project, to be entitled to claim RA.
- The taxpayer did not fall within the circumstances listed in Paragraph 7 of Schedule 7A of the ITA where it cannot claim for RA. Those circumstances are in relation to the Promotion of Investments Act 1986 (PIA) on pioneer status,

pioneer certificate, investment tax allowance, and other approvals. It was not disputed that the taxpayer did not claim any such incentives under the PIA.

- Pursuant to the Income Tax (Prescription of Activity Excluded from the Definition of Manufacturing) Rules 2012 [*P.U.(A) 23/2012*] there are 20 activities which have been excluded as not being classified as "manufacturing". It was also not disputed that the manufacture of electricity is absent in the exclusion list. If it had been intended to exclude the generating of electricity from the activity of manufacturing, it should have been so stated in *P.U.(A) 23/2012.*

- The definition of "manufacturing" for the purposes of RA that was inserted into Paragraph 9 via Section 46(f) of the Finance Act 2009 with effect from YA 2009, did not apply to the taxpayer, as the taxpayer first made the RA claim in YA 2003. As provided in Paragraph 2B, Schedule 7A of the ITA, RA is a claim that lasts for 15 years from the year it was first claimed. The taxpayer's existing right cannot be affected by the insertion of a new definition.

- As the definition of "manufacturing" does not apply, an ordinary dictionary meaning can be given to it. The Oxford Dictionary of English (Second Edition, Revised) ascribes manufacturing to the meaning of "make something on a large-scale using machinery"; "make or produce (something abstract) in a merely mechanical way". The Collins online dictionary defines "manufacture" to mean "the making or producing of anything; generation". Within these confines and definition, the generation of electricity would amount to manufacturing.

- It was submitted by the DGIR that the taxpayer is required to carry out the manufacturing activity in a factory, as per the definition of manufacturing read with the definition of factory. As the business activities were not carried out in a factory, the items being claimed were not machinery installed in a factory where there was no factory in the first place. It must be noted that the definition of "factory" was inserted into Paragraph 9 via Section 23(c) of the Finance Act 2012. This was also after the taxpayer first submitted its RA claim for the YA 2003. The taxpayer's existing right cannot be affected by the insertion of a new definition.

- Taxpayer can apply for the special incentive relief either under Schedule 7A (RA) or Schedule 7B (Investment Allowance for Service Sector) of the ITA. Taxpayer is eligible to claim the RA if the conditions stipulated under Schedule 7A of the ITA were met. It was not by compulsion that the taxpayer must apply under Schedule 7A or Schedule 7B of the ITA. It was a matter of compliance of the relevant provisions under which the taxpayer applies.

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5. DGIR v Genting Malaysia Berhad (COA)

HASiL has recently uploaded a case report, "DGIR v Genting Malaysia Berhad (COA)" on its website.

Facts:

The dispute which led to the application for JR arose way back in 2018 when the DGIR requested the Applicant to provide the personal data of members of Genting Rewards Loyalty Program. The request was refused by the Applicant on the basis that such disclosure would be in breach of the Personal Data Protection Act 2010 (PDPA) whereas the DGIR was of the view that such request was made under Section 81 of the ITA which was within the purview of Section 39(b)(ii) of the PDPA. [***Note:*** *Section 39(b) of the PDPA permits a data user to disclose personal data of a data subject if the disclosure is required for the purposes of crime prevention or detection or for investigations or is required or authorized by law or court order.*]

To resolve the dispute, the DGIR had written to the Department of Personal Data Protection (DPDP) for a confirmation for such request. On 8 November 2019, the Deputy Commissioner of Personal Data Protection confirmed via a letter which was sent through an e-mail dated 12 November 2019 that the disclosure of the information was allowable under Section 39(b)(ii) of the PDPA as Section 81 of the ITA authorised the DGIR to request for such information. The application for JR was filed against the DGIR against what was purported to be the DGIR's decision in the said e-mail dated 12 November 2019.

In opposing the application, the DGIR argued that the e-mail dated 12 November 2019 merely conveyed DPDP's letter to the Applicant and did not amount to a 'decision' by the DGIR under Order 53 Rules of Court 2012. The decision, if any, was contained in the earlier letters dated 23 November 2018, 29 April 2019, and 17 May 2019, where the information was requested and the DGIR made a stand that such request was lawfully made under Section 81 of the ITA and not prohibited by the PDPA. The application for leave for JR was filed on 7 February 2020 (i.e., after the due date). In any event, the

request was made pursuant to the power under Section 81 of the ITA, of which the provision fell within the purview of Section 39(b)(ii) of the PDPA that allowed for disclosure if it was required or authorised by any law.

Issue:

Whether the HC had erred in allowing the taxpayer's JR application against the DGIR.

Decision:

The COA unanimously allowed the appeal by the DGIR against the decision of the HC. [***Note:*** *In summary, the HC allowed the JR application and ruled in favour of the Applicant that the PDPA does not allow the DGIR to make such a request in view of the protection afforded to individuals by the PDPA over their personal data.]*

The COA held that the e-mail dated 12 November 2019 was not a 'decision' and thus the learned HC Judge had erred in allowing the application for JR against the DGIR. The 'decision' was contained in the earlier letters dated 23 November 2018, 29 April 2019, and 17 May 2019. Since the application was filed after the due date, the HC had no power to grant the leave for JR. The HC had further erred in deciding that the HC was *functus officio* when the DGIR raised the argument of jurisdiction at the substantive stage, as argument on the issue of jurisdiction may be raised at any stage.

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

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6. DGIR v Revenue Point Sdn Bhd (COA)

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

Facts:

The taxpayer was assessed to income tax under the ITA for the gains derived from the disposal of 59 apartment units in Fahrenheit 88, Kuala Lumpur.

The disposals were carried out by the taxpayer on four separate occasions from the YA 2010 to YA 2011. The gains from the disposal of 3 apartment units were subjected to the additional assessment in YA 2010 whilst the gains from the disposal of the 56 apartment units (sold en bloc) in YA 2011 had been declared by the taxpayer in its 2011 tax return and thus, a deemed assessment by the DGIR. For YA 2009 and YA 2010, the taxpayer had failed to submit its tax returns, and thus the DGIR had raised best judgment assessments under Section 90(3) of the ITA on 27 September 2012.

Taxpayer's argument:

The taxpayer contended that the gains from the disposal of the 59 apartment units were not subjected to tax under the ITA as the true purpose of acquiring the apartments was solely for investment and the sale of the apartments were made due to the irresistible offer from the purchaser. The taxpayer had also relied on its financial statements to contend that since the properties were classified consistently as fixed assets before the sale, then the properties were investment properties.

Note: Taxpayer's argument at HC level *In 2022, when the case was appealed at the HC level, the taxpayer also argued that the badges of trade did not exist. The taxpayer had no intention to trade as the purpose of holding these investment properties was to generate rental income. The taxpayer did not make any special exertion to procure or attract purchasers. No broker or real estate company was employed to sell or dispose of the apartments. Jubilee Harmoni Sdn Bhd was the one who approached the taxpayer and informed it of the potential buyers for the apartment units.*

DGIR's argument:

The DGIR argued that one of the criteria to indicate that the property was acquired as a permanent investment was when the investment was sold to acquire another more satisfactory investment. However, when all 59 apartment units were sold, the taxpayer had not acquired any other properties as the Special Commissioners of Income Tax (SCIT) was told that the apartment units were the only investment made by the taxpayer. There was also no evidence as to how the proceeds

were used. The taxpayer's conduct was inconsistent with the proclaimed intention of holding the property for investment by getting rental income.

Further, the derivation of rental income does not mean that a property is an investment property. The rental income derived from the properties was merely incidental as the taxpayer was fully aware of the huge potential of profit from the construction and opening of the nearby Pavilion. By the taxpayer's witness's admission, the acquisition was not purely for rental income, but rather the anticipated profits from resale.

The DGIR argued that the properties were acquired for resale at a profit and the wait of 3 years had matured the assets and ensured a good price to the taxpayer. The said properties were located at a strategic and developed business location in the Kuala Lumpur Golden Triangle. The taxpayer faced no difficulties at all in disposing of the said properties as the properties themselves would attract interested buyers. The disposal of the said properties was made within a short period of 3 years, which did not signify long-term investment as claimed by the taxpayer.

The four disposals were repetitious transactions which indicated the purpose was for resale at a profit. In any event, even if the four disposals were regarded as an isolated transaction, that isolated transaction could constitute an adventure or concern in the nature of trade. If the properties were intended for investment, renovation could make them more tenantable, and thus fetch a higher rental. On the other hand, if the apartment units were intended for resale, it would make no sense to renovate the properties beforehand as it might not meet the intended purchaser's requirements. Hence, the said properties would be more marketable and saleable without any alterations. In the present case, the SCIT found that there was no renovation being done to the apartment units bearing in mind that apart from the rented units there were also some non-rental units.

The nature of the properties themselves, which were in a strategic and developed business location would by itself be a very good ready-made advertisement without the need for any special exertion to find buyers for the properties.

The accounting evidence must be construed by weighing it against other evidence. In the instant case, the sale was not due to any immediate need for funds or forced sale. The circumstances leading to the disposal of the said properties reflected the existence of a profit-making scheme.

Issue:

Whether the DGIR has demonstrated the existence of the badges of trade in the disposal of the 59 apartment units and therefore such gains should be taxed under the ITA rather than the Real Property Gains Tax Act 1976 (RPGTA).

Decision:

The COA had unanimously allowed the appeal by the DGIR against the decision of the HC thereby, reinstating the decision of the SCIT. [*Note: In summary, the HC allowed taxpayer's appeal against SCIT's decision that taxpayer was trading in properties based on the badges of trades that existed. Details of the above tax case at the SCIT level are not available as of date of publication.]* The COA held that the SCIT had correctly decided that the taxpayer had failed to discharge its burden of proof that the assessments which had been raised by the DGIR were erroneous or excessive. The findings of the SCIT were based on facts, supported by evidence, and therefore unassailable and should not have been disturbed by the HC. The assessments as raised by the DGIR and confirmed by the SCIT were correct as the taxpayer had been in trading and the gains should not be capital gains when disposing of its 59 apartment units, and neither was there any legitimate basis for the taxpayer to challenge the validity or propriety for the issuance of the best judgment assessments and the penalty which had been imposed by the DGIR against the taxpayer.

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7. Regional Land Sdn Bhd v DGIR (COA)

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

Facts:

The taxpayer filed an appeal against the decision of the HC in dismissing the taxpayer's application for leave to commence JR application. The JR application sought to challenge the assessments raised by the DGIR for the YAs 2019 and 2020 by subjecting the taxpayer's gains from the disposal of land to tax under the ITA.

Taxpayer's argument:

The taxpayer contended that there was no dispute of facts in this case. At the leave stage, the HC should not consider whether there were exceptional circumstances to justify the grant of substantive judicial review. The matter should be considered at the substantive stage. The HC Judge thus erred in holding that the issue of alternative remedy ought to be dealt with at the leave stage and dismissed the application for leave on the basis that the alternative remedy for appeal had not been exhausted before the SCIT.

DGIR's argument:

The DGIR submitted that the JR application was to dispute the validity of the assessments as the taxpayer was of the view that the disposal of the land should be subjected to tax under the RPGTA. The issue should be ventilated before the SCIT, and the taxpayer should proceed with the appeal under Section 99 of the ITA instead of filing an application for leave before the HC. The dispute on whether the imposition of tax should be under the RPGTA or the ITA required the determination of intention of the taxpayer (whether the acquisition of the land by the taxpayer was for trade or investment purposes). As such, the SCIT would be the appropriate quorum to deal with such issue as it involved question of facts.

Issue:

Whether the taxpayer had an arguable case for JR application and can bypass the alternative remedy of appeal to the SCIT under Section 99(1) of the ITA.

Decision:

The COA dismissed the taxpayer's appeal and upheld HC's decision that such issue fell within the purview of the SCIT.

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

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8. Chua Kee Ming v Government of Malaysia (COA)

HASiL has recently uploaded a case report, "Chua Kee Ming v Government of Malaysia (COA)" on its website.

Facts:

The Appellant was assessed with additional taxes of RM1,174,623.42, RM577,732.48, RM2,791,982.75, RM2,783,846.62, RM62,592.12 and RM24,546.35 for the YAs 2011 to 2016 respectively.

The Notices of Additional Assessment (Notices) were issued and sent by ordinary post to the Appellant to his last known address according to the Respondent at that time, and had never been returned undelivered to the Appellant. Hence, the said Notices were deemed to have been duly served to the Appellant in accordance with Section 145(2)(c) of the ITA.

The Appellant filed an appeal against the said Notices by way of Form Q on 16 April 2021 for the YAs 2011 to 2016. As the Appellant failed to fully pay the outstanding sum within 30 days from the date of service of the Notices as provided under Section 103 of the ITA, an increase of 10% on the outstanding tax was imposed by virtue of Section 103(5) of the ITA.

The Appellant had made partial payment of RM8,000 for the YA 2016 and left the remaining balance owed and payable at RM8,148,856.09.

Appellant's argument:

The Appellant's main argument was that there were 3 different amounts claimed by the Respondent in this suit:

Writ of summon & certificate under Section 142(1) of the ITA	RM8,149,856.09
Statement of claim & notice of application Order 14	RM8,148,856.09
Order & judgment dated 2 November 2022	RM8,148,856.09

The Respondent's claim was not final, erroneous and just an estimation without proper calculation. The Appellant also relied on the Respondent's 'without prejudice letter' dated 8 April 2022 stating that the additional tax assessed was reduced from RM8,148,856.09 to RM3,458,250.63. The initial calculation of RM8,148,856.09 was grossly erroneous, incorrect and without basis. Therefore, the summary judgment ought not to be given.

Respondent's argument:

The Respondent argued that since the Respondent's claim did not exceed the amount as stated in the certificate, it did not prejudice the Respondent's application and did not give rise to a triable issue that warranted a full trial. As regards the letter dated 8 April 2022, it was issued for the purpose of out of court settlement with the Appellant. There were conditions being imposed on the Appellant if the Appellant agreed upon the proposal for settlement. Since there was no agreement to the settlement by the Appellant, the proposed amount of RM3,458,250.63 would no longer be relevant.

Issue:

Whether a summary judgement order should be entered against the taxpayer in accordance with Section 106 of the ITA.

Decision:

The COA unanimously dismissed the Appellant's appeal.

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

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9. Kumpulan Constructions Sdn Bhd v DGIR (HC)

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

Facts:

The taxpayer filed a JR application against the DGIR for an Order for Certiorari to quash the DGIR's decision in the form of a JA for the YA 2013 dated 30 December 2022 (Form JA) for the sum of RM13,536,920 (Decision) and the demand notice dated 30 December2022.

Taxpayer's argument:

The taxpayer raised the issue of whether the DGIR was authorised to tax the gain from the disposal of shares by the taxpayer under the ITA despite the DGIR had made a finding that the gain on the disposal of the shares was subject to tax under the RPGTA. The taxpayer submitted that the DGIR had clearly revoked its own finding including the computations as reflected in the Notification of Non-Chargeability and tax audit clearance letter for the YA 2013 under the RPGTA. Further, the DGIR did not provide any valid justification or reason for such revocation. The taxpayer also submitted that the DGIR should not act arbitrarily by revoking the taxpayer's own findings, including the computations, and subsequently made the impugned Decision without any justification. Therefore, such actions of the DGIR were made with a clear lack of jurisdiction. The taxpayer also asserted that the jurisdiction as conferred by Section 91(1) of the ITA would be subjected to statutory limitation and can only be legally and validly exercised within the period of five years under Section 91(1) of the ITA.

DGIR's argument:

The DGIR submitted that the taxpayer had the remedy to appeal to the SCIT against the tax treatment upon issuance of the JA. There were no exceptional circumstances that warranted for JR in this case. The SCIT was the right avenue to determine whether the taxpayer should be subjected to tax under the ITA or the RPGTA. The DGIR relied on Section 91(3) of the ITA to support the argument that the DGIR may at any time make an assessment for any YA for the purpose of making good any loss of tax attributable to fraud, wilful default, or negligence. The facts to support the DGIR's position on the existence of fraud, wilful default, or negligence must be determined before the SCIT.

Issues:

1. Whether the taxpayer had an arguable case for the JR application and can bypass the alternative remedy of appeal to the SCIT under Section 99(1) of the ITA.

2. Whether the DGIR had any legal basis to raise the Form JA beyond the statutory time limit of five years under Section 91(1) of the ITA.

Decision:

The HC allowed the taxpayer's JR application and held that the DGIR had no legal basis to subject the gain from the disposal of shares for the YA 2013 to tax under the ITA beyond the statutory time limit as provided under Section 91(1) of the ITA. The HC also held that the DGIR could not rely on Section 91(3) of the ITA because the decision in the Form JA and the demand notice was made under Section 91(1) of the ITA instead of Section 91(3) of the ITA.

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

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10. IBI v DGIR (SCIT)

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

Facts:

BSSB is a housing and real estate developer company. On 18 October 2004, BSSB sold 150 lots of land to the taxpayer who was a director of BSSB for a price of RM850,000. The taxpayer resigned as director of BSSB on 27 September 2009. On 4 March 2015, the taxpayer sold 150 lots of land for a price of RM44,000,000. Although the 150 lots were disposed of after a holding period of six (6) years and were not subjected to real property gains tax (RPGT), the DGIR's opinion was that the gain from the disposal of the said lands was trade in nature and should be subjected to income tax under Section 4(a) of the ITA. Accordingly, JA together with a penalty under Section 113(2) of the ITA amounting to RM15,637,352.68 were raised by the DGIR for the YA 2015 on 30 August 2020.

Taxpayer's argument:

The taxpayer argued that the purchase of the 150 lots of land was for long-term investment purposes and not for trading purposes. The taxpayer also did not make any improvements to the entire 150 lots of land, so there was no element of trade during the holding period of the land. Further, the taxpayer argued that there were no badges of trade as the taxpayer had no intention of trading when disposing of the 150 lots of land. The taxpayer was only a silent director and did not have any active role during his directorship with BSSB.

DGIR's argument:

The DGIR argued that the taxpayer had expertise in the real estate industry because the taxpayer was a director of BSSB, which was a housing and real estate developer company. After resigning from BSSB, the taxpayer was appointed as an advisor to SCSB, which was a construction company. The taxpayer had used his skills and knowledge in the real estate industry to plan the acquisition and disposal in an orderly manner and only dispose of the land after the six (6) year period had expired. The DGIR also argued that the taxpayer did not receive any rental income from the 150 lots of land. The purchase of land in large quantities and in excess of normal/domestic use clearly showed the taxpayer's intention to trade.

The DGIR also argued that the 150 lots of land were in a strategic location and complete with infrastructure and close to Alor Setar Town Centre which gave the taxpayer an advantage to generate revenue through the disposal of the 150 lots of land. This clearly showed that the purchase of the said lands by the taxpayer were for trading purposes and not for investment purposes.

Issue:

Whether the gain from the disposal of the 150 lots of land by the taxpayer was trade in nature, and therefore, if it should be subjected to income tax under Section 4(a) of the ITA.

Decision:

The SCIT held that the taxpayer failed to prove that the additional assessment raised by the DGIR for the YA 2015 was incorrect and excessive in accordance with Paragraph 13, Schedule 5 of the ITA.

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

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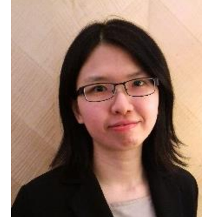

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