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Gazette Orders, HASiL Guidelines, Tax Cases and more

October 2024

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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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Upcoming events:

25 October 2024 – Deloitte Tax Challenge 2024
21 November 2024 – Deloitte TaxMax – The 50th series: Fostering economic growth the MADANI way

Important deadlines:

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

1. Income Tax (Green Technology Incentive) (Exemption) Orders 2024 [*P.U.(A) 243/2024 to 247/2024*]

The following Exemption Orders which have been gazetted on 17 September 2024 are deemed effective from the year of assessment (YA) 2020 except for P.U. (A) 243/2024 which is deemed operational from 25 October 2013 and P.U. (A) 247/2024 deemed operational from 1 January 2020.

Qualifying company (QC) in these Orders means a Malaysian-incorporated and resident company.

1. P.U. (A) 243/2024 – Green Technology Asset (GTA)
   - Exemption is up to 70% of statutory business income of QC equivalent to qualifying capital expenditure (QCE) incurred by QC for purchase of GTA used in Malaysia solely for QC's business.
   - QCE incurred by QC is from 25 October 2013 to 31 December 2023.
   - Application for verification of GTA shall be received by the Malaysian Green Technology and Climate Change Corporation (MGTC) within 25 October 2013 to 31 December 2023 or 1 January 2022 to 31 December 2023 (for purchase of GTA under rainwater harvesting system). Application shall be made within 2 years from the date QC incurred QCE for purchase of GTA.

2. P.U. (A) 244/2024 – Qualifying activity in relation to green sectors
   - Exemption is up to 70% of statutory income from qualifying activity (QA) or activity other than QA of QC equivalent to QCE incurred by QC for purchase of GTA used in Malaysia solely for QC's QA.
   - Exemption is for 3 consecutive years commencing from date QC incurred the first QCE subject to compliance of conditions verified by MGTC.
   - Application for approval that QC is carrying on QA shall be received by the Malaysian Investment Development Authority (MIDA) within 1 January 2020 to 31 December 2023. QC shall not have made any QCE before application date. QC shall request MGTC to determine commencement date of exemption within the period specified in the Schedule of this Order.

3. P.U. (A) 245/2024 – Green building
   - Exemption is up to 70% of statutory business income of QC equivalent to qualifying expenditure (QE) incurred by QC. QE shall be deemed incurred on the day the final Green Building Certificate (GBC) is issued.
   - Exemption is for 3 consecutive years commencing from date QC incurred the first QE subject to compliance of conditions verified by MGTC.
   - QE is additional expenditure incurred from 1 January 2020 on building construction, or alteration, renovation, extension or improvement or plant or machinery for obtaining final GBC from relevant green building rating tools recognised by MGTC. QE shall be verified by MGTC. QE shall not be earlier than 3 years from the date application for approval that QC incurred QE is received by MIDA. The application shall be received by MIDA within 1 January 2020 to 31 December 2023 after obtaining provisional GBC.
   - QC shall request MGTC to determine commencement date of exemption within 24 months from MIDA's approval date or any period the Minister allows.

4. P.U. (A) 246/2024 – Qualifying services in relation to green sectors
   - Exemption is up to 70% of statutory income from QA of QC. Intellectual property income under Paragraph 5 of this Order is not exempted.
   - Exemption is for 3 consecutive YAs commencing from the YA where the date the first invoice related to QA is issued by QC as verified by MGTC. That date shall be after the date application for approval that QC is carrying on QA is received by MIDA. The application shall be received by MIDA within 1 January 2020 to 31 December 2023. QC shall request MGTC to determine commencement date of exemption within 12 months from MIDA's approval date.

5. P.U. (A) 247/2024 – Solar photovoltaic system leasing services
   - Exemption is up to 70% of the statutory income from QA of QC. Intellectual property income under Paragraph 6 of this Order is not exempted.
   - Exemption is for 5 consecutive YAs (QC having installed capacity of >3 megawatts (MW) to 10MW) or 10 consecutive YAs (QC having installed capacity of >10MW to 30MW), commencing from the YA where the date the first invoice related to QA is issued by QC as verified by Sustainable Energy Development Authority Malaysia (SEDAM). That date shall be after the date application for approval that QC is carrying on QA is received by MIDA.

The application shall be received by MIDA within 1 January 2020 to 31 December 2023. QC shall request SEDAM to determine commencement date of exemption within 24 months from MIDA's approval date.

- QA is solar photovoltaic system leasing services by QC related to implementation of Net Energy Metering Scheme for sales of electricity or solar photovoltaic system leasing as verified by SEDAM.
- At least 60% equity of QC is directly owned by Malaysian citizens. QC has been listed under the Registered Solar Photovoltaic Investor Directory.

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2. MIDA – Incentive for Reinvestment under NIMP 2030 & Automation CA further enhanced in Budget 2023

MIDA has issued Guidelines and Procedures for Application of the following:

1. Incentive for Reinvestment under the New Industrial Master Plan (NIMP) 2030

    a) The Incentive for Reinvestment under the NIMP 2030 is a tiered and outcome-based approach introduced through Budget 2024. This provides an opportunity for existing companies that have exhausted their Reinvestment Allowance, to continue to increase their capacity and investment in high-growth and high-value areas in the country.
    b) The incentive is an Investment Tax Allowance of 100% or 60% on the QCE (excluding land cost) incurred for 5 years. The allowance can be offset against up to 100% or 70% of statutory income for each assessment year until fully utilised.
    c) Applications received by MIDA from 1 January 2024 until 31 December 2028 are eligible for consideration.
    d) The relevant statutory order for the tax incentives has not been gazetted yet.

2. Automation Capital Allowance (Automation CA) for manufacturing and service sectors further enhanced in Budget 2023

    a) The Automation CA for the manufacturing and services sectors was further enhanced in Budget 2023 to include the adaptation of Industry 4.0 elements in the scope of automation and increase the capital expenditure threshold for Categories 1 and 2 up to RM10 million.
    b) The Automation CA is on the first RM10 million capital expenditure incurred within the YA from 2023 to 2027.
    c) Applications received by MIDA from 1 January 2023 until 31 December 2027 are eligible for consideration.
    d) The relevant statutory order for the Automation CA has not been gazetted yet.

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3. MIDA – Pengerang Integrated Petroleum Complex Incentive Packages

MIDA has issued Guidelines and Procedures for Application of the following:

1. Pengerang Integrated Petroleum Complex Special Incentive (PIPC) Package for the manufacturing sector

    a. The PIPC is a downstream oil and gas hub accommodating oil refineries, oil storage facilities and petrochemical product manufacturing plants. A Special Incentive Package for the PIPC was announced in Budget 2024 to attract more potential investors in the chemicals and petrochemical industry.

    b. The Special Incentive Package consists of:

        i. For a company with capital investment (excluding land) of RM500 million and above in the manufacturing sector:

            - Special tax rate of 5% or 10% for up to 10 years (5+5 years); or
            - Investment Tax Allowance of 100% (or 60%) on the qualifying capital investment (excluding land) for up to 10 years (5+5 years). The allowance can be offset against up to 100% of statutory income for each YA.

ii. Stamp duty and import duty exemptions for certain instruments and items.

c. Applications received by MIDA from 14 October 2023 until 31 December 2028 are eligible for consideration.

d. The relevant statutory order for the Special Incentive Package has not been gazetted yet.

2. PIPC Tax Incentive Package for Industrial Park Developer

a. A Tax Incentive Package for Industrial Park Developers in the PIPC was announced in Budget 2024 to attract developers to develop a "plug and play" industrial park in the PIPC.

b. The Tax Incentive Package consists of:

i. Special tax rate of 10% for a company on the disposal or rental/lease of land or buildings for qualifying projects for 10 years.
ii. Stamp duty exemption for certain instruments.

c. Applications received by the Ministry of Finance from 14 October 2023 until 31 December 2028 are eligible for consideration.

d. The relevant statutory order for the Tax Incentive Package has not been gazetted yet.

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4. HASiL – Guide to Filling a Notice of Appeal (Form Q)

The Inland Revenue Board of Malaysia (HASiL) has issued a Guide to Filling a Notice of Appeal (Form Q) dated 23 August 2024 on its website.

The Guide explains how to fill out a written notice of appeal (Form Q) by a taxpayer who is aggrieved by an assessment raised by the Director General of Inland Revenue (DGIR).

Some of the key points to note are as follows:

- The aggrieved taxpayer may appeal under Section 99(1) of the Income Tax Act 1967 (ITA) against the assessment by way of Form Q as prescribed by the DGIR under Section 152 of the ITA.
- The Form Q can be downloaded from the HASiL website: *Download Form - Other Forms > Category > Form Q > Search.*
- For further clarification and information regarding the appeal procedure (Form Q), the Guide should be read together with *Public Ruling No. 7/2020: Appeal Against an Assessment and Application for Relief.*

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5. HASiL – Updated Guidelines for Approval of the DGIR under Section 44(6) of the ITA for Institutions, Organisations or Funds

HASiL has issued updated Guidelines for Approval of the DGIR under Section 44(6) of the ITA for Institutions, Organisations or Funds (IOFs) (in Bahasa Malaysia) dated 20 August 2024 on its website.

The updated Guidelines outline the laws and regulations related to IOFs that operate or are run on a non-profit basis. These Guidelines apply to IOFs that have been approved by the DGIR and serve as a guide to other related and concerned parties.

Some of the key updates are as follows:

- The definition of an "organisation" and the list of qualifying activities are expanded.

- The basic principle for the definition of "must not be profit-oriented only" (*bukan bertujuan untuk mencari keuntungan semata-mata*) is that the IOF must not engage in any activities geared towards trade, business, and other interests of certain parties. At least 50% or 60% of the income obtained from the previous year must be spent in the following year on activities to achieve the IOF's objectives.
- IOFs must obtain the Minister's approval for cash collections from the public.
- For the establishment of a fund, the founder of the fund must be registered with any of the registrar bodies listed in Paragraphs 2.1(a) to 2.1(d) of the Guidelines.
- Each IOF must state its objectives clearly in the constitution, memorandum of incorporation or regulations of the IOF.
- The establishment of the IOF must not be for the sole purpose of making a profit.
- Tax agents officially appointed by the IOF are allowed to submit applications to the DGIR for approval. Their appointment letter must be submitted together with the application.
- Institutions and organisations can use their funds for activities to achieve their objectives, subject to certain conditions.
- Any institution or organisation that intends to make an investment is subject to the Investment Policy as set out in Appendix B.
- Starting from the YA 2024, if an IOF breaches any of the prescribed conditions and prohibitions, the IOF will be taxed for the YA in which the breach of conditions occurs, even within the approval period still in force in accordance with Paragraph 13(1)(a), Schedule 6 of the ITA.

The above updated Guidelines replace the earlier Guidelines below, **effective from the YA 2024**:

- Guidelines for Approval of the DGIR under Section 44(6) of the ITA dated 30 January 2020; and
- Application Guidelines for the approval of the DGIR under Section 44(6) of the ITA for Welfare and Education Fund dated on 15 July 2020.

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6. GOM v Kuala Rejang Industrial Synergy Sdn Bhd & 2 Ors (COA)

The HASiL has recently uploaded a case report, "GOM v Kuala Rejang Industrial Synergy Sdn Bhd & 2 Ors (COA)" on its website.

Facts:

The DGIR filed an appeal against the decision of the High Court (HC) delivered on 14 September 2021 in dismissing the DGIR's application for summary judgement.

The writ filed by the DGIR against the taxpayer was to recover the debt owed to the Government of RM4,116,323.97 for the additional assessment raised for the YA 2016. The additional tax on the disposal of land was originally assessed under the Real Property Gains Tax Act 1976 (RPGTA). The taxpayer submitted its tax return for YA 2016 and audited account on 24 August 2018. The DGIR conducted an audit exercise on the taxpayer and found that some expenses claimed were not deductible. On 17 May 2019, both parties mutually agreed that the DGIR will raise additional assessment for YA 2016 for a sum of RM3,850,495.70 with a penalty at the rate of 10%. On 28 May 2019, the DGIR raised an additional assessment for YA 2016.

Instead of paying the debt due as per agreement, the taxpayer filed an application for extension of time to file an appeal (Form N) under Section 100(1) of the ITA on 1 February 2021 and notice of appeal (Form Q) under Section 99 of the ITA on 19 March 2021 to the Special Commissioners of Income Tax (SCIT). The DGIR then initiated civil recovery against the taxpayer.

Taxpayer's argument:

The taxpayer challenged the merit of the additional assessment and questioned its validity. The taxpayer had filed an appeal to the SCIT. The HC dismissed the DGIR's application for summary judgment and ruled that the taxpayer had successfully raised triable issues and ordered this case to proceed for a full trial. The taxpayer argued that the original tax was assessed under the RPGTA and that the current contract / transaction of the current action was amended on many occasions caused by the change of conditions. The matter was still ongoing and yet to be concluded and the completion date was extended to 31 August 2021. The DGIR's claim against the taxpayer in this action was premature as the transaction had yet to be finalized.

DGIR's argument:

The DGIR argued that there was an error of law in the HC's decision in which the court did not take into account the position of the tax law in collecting the debt due to the Government under Sections 103 and 106 of the ITA, and the decision of the Federal Court (FC) in the case of Mohd Najib Hj Abdul Razak v. Government of Malaysia & Another Appeal (2023) MSTC 30-638. All the issues raised by the taxpayer comes down to the same issue i.e., the correctness and merit of the additional assessment, in which it should be ventilated before the SCIT.

Issue:

Whether the additional assessment has been properly raised by DGIR and the amount of tax payable is final and conclusive.

Decision:

The Court of Appeal (COA) unanimously reversed the HC's decision and dismissed the taxpayer's appeal with cost of RM10,000 to the DGIR. [Note: In summary, the HC dismissed the DGIR's application for a summary judgement that the taxpayer is truly and justly indebted to the DGIR for the tax due and payable. The HC judge has relied on the provision of O14 Rule 4 of the Rules of Court 2012, where the court will give defendants unconditional leave to defend if defendants raise triable issues. The taxpayer has raised relevant triable issues and successfully rejected the issue of summary judgement. If the judgement causes a taxpayer to become bankrupt prematurely, then it is not fair to the taxpayer. The HC held that it is not the intention of Parliament to have an oppressive law to be imposed on the public. Justice to all is a paramount factor.]

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

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7. CMS Infra Trading Sdn Bhd Anor v KPHDN (HC)

Facts:

CMS Infra Trading Sdn Bhd and Samalaju Properties Sdn Bhd (which are the lead appellants) and some other companies (collectively referred to as the taxpayers) are part of the CMSB Group with Cahya Mata Sarawak Berhad (CMSB) being their ultimate holding company.

Since June 2010, CMSB had implemented the CMSB Group Employee Share Option Scheme (ESOS), whereby options would be granted to eligible employees to acquire shares in CMSB. The taxpayers incurred ESOS expenses in the YA 2012 and YA 2013 i.e., the cost for the options to be granted to the taxpayers' eligible employees to purchase the newly-issued shares of CMSB. The taxpayers would make payment to CMSB for the options to purchase CMSB's shares by their employees while their employees could exercise the options granted to purchase CMSB's shares.

On 15 August 2013, the DGIR conducted an assessment in respect of the taxpayers' ESOS expenses. In the assessment, the DGIR has decided that ESOS expenses are not expenditures deductible under Section 33(1) of the ITA. On 29 August 2013, the taxpayers filed an appeal to the SCIT against the said assessment dated 15 August 2013 for YA 2012. Thereafter, they filed Form Q dated 25 August 2014 to appeal against another assessment dated 14 August 2014 for YA 2013.

The SCIT dismissed the taxpayers' appeal against the DGIR's decision in disallowing the taxpayers' deduction for expenditures incurred in providing the ESOS for YA 2012 and YA 2013 under Section 33(1) of the ITA. The taxpayers being dissatisfied with the SCIT's deciding order filed an appeal to the HC.

Taxpayers' argument:

The taxpayers claimed that the SCIT had erred in not allowing a deduction of the ESOS expenditure incurred by:

- misinterpreting and misapplying the test under Section 33(1) of the ITA; and

- erroneously concluding that the taxpayers had failed to prove that the ESOS expenditure was for the purpose of promoting business and earning profit.

The taxpayers submitted that the proper test for determining the deductibility of an expenditure is whether the taxpayer had sufficiently established the requisite purpose for incurring such ESOS expenditure. Once the purpose is established, the question of whether the expenditure produces or increases profits is not within the contemplation of Section 33(1) of the ITA. In justifying a deductibility of the ESOS expenses, the taxpayers had established that the requisite purpose of ESOS is an incentive to motivate the taxpayers' employees to achieve better performance. Employees must meet performance criteria before the option is being granted and exercised. The ESOS is directly linked to the employees' performance which had resulted in improved productivity of the taxpayers' businesses. Thus, ESOS expenses were wholly and exclusively incurred in the production of the taxpayers' income.

The taxpayers further submitted that ESOS expenditure is not capital in nature. The ESOS expenditure incurred does not bring enduring benefits in the same way as fixed capital does. The ESOS expenditure was incurred every year on a regular basis in providing share options to eligible employees. Thus, the ESOS expenditure is revenue in nature. It is also not a prohibited deduction under Section 39(1)(c) of the ITA.

DGIR's argument:

The DGIR contended that the ESOS has brought enduring benefits to the taxpayers. The ESOS has motivated the employees, increased productivity, and stimulated greater commitment for the companies' growth. Since the payments for the share options were made for more than one purpose, the "wholly and exclusively incurred in the production of income" test is not fulfilled. Hence, the ESOS expenditure is not eligible for deduction under Section 33(1) of ITA.

The DGIR argued that the taxpayers' payment to CMSB was for the options to purchase CMSB's shares. It was capital in nature since the taxpayers did not purchase the newly-issued shares but only acquired the options to purchase. By way of illustration, there are 2 levels in the ESOS process. Firstly, the taxpayers would make payment to CMSB for the options to purchase the shares by its employees. The ESOS expense made by taxpayers are capital in nature. Secondly, the employees could exercise that option to purchase the shares in CMSB which does not involve the taxpayers at all. The DGIR argued that the payment transaction between the taxpayers and CMSB at the first level must be scrutinised as a whole. It is a proven fact that there is no actual cost incurred by CMSB for the issuance of shares for the purpose of the ESOS. There is only a notional cost based on the fair value of the shares.

The DGIR also submitted that the taxpayers received a capital contribution from CMSB which was then spent on employees' remuneration. They are not genuine commercial expenses incurred wholly and exclusively in the production of income. The payment made by the taxpayers to CMSB was to claim tax deductions on inter-company accounts.

The DGIR also referred to Paragraph 10 of the Public Ruling No. 11/2012 (PR No. 11/2012), which states that deductions were not allowed for expenses related to the newly-issued shares offered by the holding or subsidiary company to its employees.

"Paragraph 10 of PR No. 11/2012 states:

10.1 Newly-issued shares of a company
When a company fulfils its obligations under an employee share scheme using newly-issued shares of its own company, the share issue merely involves a movement in the company's share capital account. From the perspective of accounting (MFRS 2: Share Based Payment), the expense (fair value of the shares) recognised for newly-issued shares to fulfil the obligations under an employee share scheme is charged to the profit and loss account as staff costs. Although a charge is made to the profit and loss account as staff costs, the company did not incur actual cost that is wholly and exclusively incurred in the production of income. Therefore, no deductions are allowed for expenses claimed as staff costs in the profit and loss account for the issuance of newly-issued shares to fulfil the company's obligations under an employee share scheme.

10.2 Newly-issued shares of a holding / subsidiary company
A company that offers newly-issued shares of its holding / subsidiary company to its employees under an employee share scheme will not be allowed deductions for the costs related to such new shares."

Issue:

Whether the expenditure incurred by the taxpayers in providing the ESOS to their employees is deductible under Section 33(1) of the ITA.

Decision:

The HC allowed the taxpayers' appeal and set aside the SCIT's decision based on the following grounds:

- ESOS expenditure is revenue in nature because the sole purpose is to give the best compensation to the employees so that they can upgrade their performance for better productivity. The DGIR has failed to establish that the ESOS expenditure is capital in nature.

- It was agreed that any capital assets owned by the taxpayers would have been recognised in their audited accounts, which was not the case here in the present appeal. Since the share options were not recorded in the taxpayers' audited accounts, the ESOS expenditure cannot be considered as capital asset. The nature of the ESOS expenditure is not to generate capital but to generate income in the form of compensation to the taxpayers' employees which is revenue in nature.

- The act of the taxpayers in making the shares option available to their employees is different from the issuance of the newly-issued shares to the employees by CMSB. These transactions cannot be viewed as a whole to indicate that the ESOS expenses incurred by the taxpayers are capital in nature.

- Whether or not CMSB only incurred notional or actual costs for the issuance of new shares is irrelevant. The concern is to establish the motive and objective of the ESOS scheme. The taxpayers have established that the requisite purpose for incurring the ESOS expenditure is to provide the share options to the employees. The employees will be motivated to work harder to achieve better work performance, which contributed towards the growth of the taxpayers' businesses in generating income and revenue. Thus, the ESOS expenditure was wholly and exclusively incurred by the taxpayers in the production of income and hence deductible under Section 33(1) of the ITA.

- Regarding the SCIT's decision that the evidence presented by the taxpayers was insufficient to prove that the ESOS was intended for promoting business and earning profits was erroneous, there were overwhelming evidence proving otherwise, not only through the taxpayers' submissions but also from the DGIR's own witnesses.

- In reading Paragraph 10 of the PR No. 11/2012, it's clear that Paragraph 10 only applies to costs or expenses related to the issuance of newly-issued shares. In the present appeal, the expenses incurred by the taxpayers pertain to the fair value of the share options granted to eligible employees, and does not relate to the fair value of the newly-issued shares. Therefore, the public ruling does not apply to the facts of this appeal. Furthermore, the public ruling merely provides guidance for the public and officers of the HASiL and is not binding on the court.

[Details of the above tax case at the SCIT level are not available as of date of publication. It was stated in the HC's decision statement that the DGIR has appealed to the COA against its decision.]

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8. Nishimatsu Construction Co. Ltd (Malaysia Branch) v DGIR (HC)

The HASiL has recently uploaded a case report, "Nishimatsu Construction Co. Ltd (Malaysia Branch) v DGIR (HC)" on its website.

Facts:

The taxpayer and three companies formed an unincorporated joint venture (JV) to carry out the Pahang-Selangor Raw Water Transfer Project (JV Agreement). The taxpayer's financial year end and basis period for a YA is from 1 April to 31 March. The JV's financial year end and the basis period for a YA is from 1 January to 31 December. The taxpayer declared its partnership income from the JV for the months of April to December for YAs 2013 to 2016 in its tax returns. Thereafter it submitted revised tax returns to declare its divisible income for January, February and March for YAs 2013 to 2016. The DGIR issued the notices of additional assessment for YAs 2013 to 2016 with penalties under Section 113(2) of the ITA to tax the taxpayer's income in full. The taxpayer appealed by way of Form Q against the notices of additional assessment. The SCIT dismissed the appeal, and the taxpayer filed an appeal to the HC.

Taxpayer's argument:

The taxpayer contended that the partnership income from the JV (for the period of 1 January to 31 March for YAs 2013 to 2016) cannot be determined until the end of the JV accounting period, which constitutes the JV's basis periods for the relevant YAs which are different from the taxpayer's basis period. Thus, it was not possible to conclusively determine the divisible income of the taxpayer from the JV for the months of January to March of the relevant YAs within the prescribed time. It was further argued that Sections 55(3), 55(4), and 77A of the ITA do not allow the taxpayer to recognise its divisible income from the JV on an estimation basis and / or based on the unaudited management account. The taxpayer has referred extensively to Section 55 of the ITA where it is a mandatory requirement that the JV's divisible income can only be ascertained after making the allowable tax deductions incurred during the relevant basis periods. This income is subsequently treated as having accrued evenly over the basis period and then divided among the JV's partners. Therefore, the relevant provisions of the ITA should be construed strictly, and any ambiguity arising from these provisions should be interpreted in favour of the taxpayer.

The taxpayer further argued that the DGIR can only impose a penalty under Section 113(2) of the ITA after giving due consideration to all relevant facts and circumstances, and arriving at a decision that such facts and circumstances warrant the imposition of a penalty. Hence, the SCIT had erred in law in upholding the penalties without giving due consideration to the surrounding circumstances.

DGIR's argument:

The DGIR submits that the taxpayer's income derived from the JV's partnership should be brought to tax in full, based on the taxpayer's basis period notwithstanding to the JV's basis period. Section 21A of the ITA clearly states that the basis year for a YA shall constitute the basis period for that YA. Further, the taxpayer is a company where its declaration of income earned for each of YA is subject to Section 77A of the ITA. Unlike Section 77A of the ITA (which requires a company to furnish a tax return based on its audited account), a partnership is not required under Section 86 of the ITA to furnish tax return based on an audited account.

The taxpayer had failed and / or deliberately refused to declare the partnership income from the JV for the period of 1 January to 31 March in the tax returns for YAs 2013 to 2016, even though it is undisputed that the taxpayer had earned partnership income from the JV for a complete basis period from 1 April to 31 March for the YAs 2013 to 2016. The DGIR also argued that pursuant to the JV Agreement, the accounts for the JV are kept accurately and can be examined by the parties under the JV including the taxpayer. The taxpayer could request for details of the account on a monthly basis particularly for the purpose of tax declaration. Under the ITA, the taxpayer is obliged to declare its chargeable income or full income earned from each source of income for the basis period in that year. The imposition of penalties under Section 113(2) of the ITA by the DGIR are just and correct.

Issue:

Whether the penalty imposed by the DGIR on the understatement of partnership income is just and correct.

Decision:

The HC dismissed the taxpayer's appeal with cost of RM5,000.

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

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

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