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April 2022

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Inland Revenue Board of Malaysia

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Important deadlines:

Task	Deadline	
	30 April 2022	1 May 2022
1. 2023 tax estimates for companies with May year-end		√
2. 6th month revision of tax estimates for companies with October year-end	√	
3. 9th month revision of tax estimates for companies with July year-end	√	
4. Statutory filing of 2021 tax returns for companies with September year-end	√	
5. Maintenance of transfer pricing documentation for companies with September year-end	√	
6. 2022 CbCR notification for applicable entities with April year-end	√	

1. FAQs on Remittance of 2% withholding tax on payments made by a company to a resident individual agent, dealer or distributor

The Inland Revenue Board of Malaysia (IRBM) has recently issued the Frequently Asked Questions (FAQs) to provide guidance on the remittance of 2% withholding tax (WHT) pursuant to the newly inserted Section 107D of the Income Tax Act, 1967 (ITA) via the Finance Act 2021.

The salient points are as follow:

A. General

1. Section 107D of the ITA requires all companies* that make payment in monetary form (cash commissions and cash incentives) to a resident individual on sales, transactions, or schemes carried out by that resident individual as the authorised agent, dealer or a distributor (ADD) of the companies, to withhold tax at the rate of 2% on the gross amount, with effect from 1 January 2022. The 2% WHT deducted shall be remitted to the IRBM within 30 days after paying or crediting such payments to the ADD.

2. The 2% WHT is not applicable to credit notes, offsets, and discounts received by the ADD.

**Section 2 of the ITA interprets the meaning of company as a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a territory outside Malaysia and a business trust.*

B. Meaning of agent, dealer or distributor (ADD)

1. According to the FAQs, an ADD is a resident individual who is authorised by a company to carry out sales, transactions, or schemes on behalf of the company. The following persons are also regarded as resident individual under the definition of an ADD:
   - Sole proprietor
   - Individual partner (excluding a partnership)

2. The definition of an ADD will not be extended to the following persons:
   - Limited Liability Partnership (LLP)
   - Private limited company (PLT or "Sdn Bhd")
   - Association

C. Threshold for WHT at 2%

1. The 2% WHT on monetary payments is applicable if the total sum of payments (whether monetary or otherwise) received by an ADD from the company in the immediate preceding basis year for a year of assessment (YA) exceeds the threshold value of RM100,000. The threshold value should be determined on a yearly basis by the company to further determine if the payment made to an ADD in the current year is subjected to the 2% WHT. [*Please refer to item C4 of the FAQ for illustrative example*.]

2. The threshold value is to be determined based on payments received from each individual paying company. [*Please refer to item C3 of the FAQ for illustrative example*.]

3. The tax resident status of an ADD is not taken into consideration when determining the threshold value and if the 2% WHT is applicable. In the event where an ADD was not a tax resident in the YA 2021, but became a tax resident in the YA 2022, that ADD will still be subjected to the 2% WHT in the YA 2022 provided that the payment made to that ADD in the YA 2021 exceeds the threshold value of RM100,000.

D. Payment and reporting by the Company

1. The paying company should remit the 2% WHT to the IRBM within 30 days of making the payment to an ADD. [*Please refer to item D1 of the FAQ for illustrative example*.] The company can remit the 2% WHT to the IRBM either via post or over the following IRBM's service counters:
   - Kuala Lumpur Payment Centre Counter
   - Kuching Payment Centre Counter
   - Kota Kinabalu Payment Centre Counter

An official receipt will be issued if payment is made over the Payment Centre Counter.

2. Companies should make a declaration to the IRBM by using Form CP107D (available on the IRBM's website) when remitting the 2% WHT to the IRBM. If there are more than one ADD, companies will have to complete the information in Form CP107D together with Appendix CP107D(1) (each appendix is limited to 20 recipients).

3. Companies must report the amount remitted to the IRBM via Form CP58 (which has been amended to allow for the declaration of the 2% WHT).

4. The 2% WHT will be considered as part of the Income Tax payable by an ADD upon the submission of forms (Forms BE / B / BT) for the relevant YA. Hence, it is important for an ADD to have an income tax reference number which can be registered online.

5. If an ADD is subjected to CP500, the 2% WHT will still be applicable to the ADD. This is because the responsibility of CP500 falls on the ADD whereas the responsibility of the 2% WHT falls on the company upon crediting the payment to the ADD.

6. If an ADD is entitled to receive a commission payment for the month of December 2021 but only receives the payment in January 2022, the company is required to report the commission paid in Form CP58 of the ADD for the YA 2022. The company will then need to determine if the 2% WHT is applicable by assessing whether the payment made to the ADD in the immediate preceding YA equals to, or exceeds the threshold value of RM100,000.

E. Deferment of the remittance of WHT under Section 107D of the ITA

1. The IRBM has agreed to defer the remittance of the 2% WHT for the period of 1 January 2022 to 31 March 2022 [*reported via our Special Alert @ 19 January 2022*]. The deferment period is automatically given to all companies.

2. However, the IRBM clearly states that companies shall remit the 2% WHT on payments made to an ADD between the period of 1 January 2022 to 2 March 2022 to the IRBM upon the cessation of the deferment period, which is on 1 April 2022. For payments made to an ADD from 3 March 2022 onwards, the 2% WHT shall be remitted within 30 days from the date of making the payment to the ADD. [*Please refer to Item E3 of the FAQ for illustrative example*]

3. A penalty of 10% will be imposed if companies fail to remit the 2% WHT to the IRBM within the stipulated deadline. In addition to the 10% penalty, such companies will not be allowed to claim a tax deduction on the amount paid to that ADD as an allowable expense under Section 39(1)(s) of the ITA.

Please refer to the FAQ for the full details and illustrative examples.

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2. Income Tax (Global Trading Centre Incentive Scheme) Rules 2022 [P.U.(A) 48/2022]

On 4 March 2022, the Malaysian government gazetted the "Income Tax (Global Trading Centre Incentive Scheme) Rules 2022" (P.U.(A) 48/2022) to implement the tax incentive for "Global Trading Centres," as announced in the 2021 national budget, which aims to encourage more companies to set up regional and global operations in Malaysia and create more job opportunities. The incentive scheme provides for a concessionary corporate income tax rate of 10% for five consecutive YAs, which is renewable for another five YAs (the general corporate income tax rate in Malaysia is 24%). The rules are effective as from YA 2021. The issuance of the rules follows the 2021 issuance by the Malaysian Investment Development Authority (MIDA) of Guidelines setting forth the eligibility criteria and conditions to qualify for the incentive.

The rules are applicable to qualifying companies undertaking qualifying activities that apply to the Minister of Finance ("Minister") for the Global Trading Centre Incentive Scheme ("GTC scheme") through the MIDA and whose applications are received between 1 January 2021 and 31 December 2022.

Key definitions under the rules are described below, followed by some additional salient points regarding the tax incentive.

Relevant definitions

A "qualifying company" is a company that meets the following requirements:

(a) The company is incorporated under the Companies Act 2016 (Act 777) and is a resident in Malaysia;
(b) The company has not carried on any activity in Malaysia (i.e., the company is a newly incorporated company);
(c) The company fulfills the eligibility conditions imposed by the Minister under the Income Tax Act 1967 and the rules; and
(d) The company uses Malaysia as its international trading base.

As noted above, the incentive under the GTC scheme is available to qualifying companies that undertake a qualifying activity. A "qualifying activity" is an activity undertaken by a qualifying company in respect of strategic sourcing, procurement, and distribution of raw materials, components, and finished products to other companies within or outside Malaysia. The guidelines issued by the MIDA indicate that the other companies within or outside Malaysia may include both related and unrelated companies.

Other salient points

- A qualifying company that carries on a business in respect of a qualifying activity under the GTC scheme may enjoy the concessionary income tax rate of 10% commencing from the date as determined by the Minister.

- A qualifying company approved under the GTC scheme is entitled to the tax incentive only if it complies with all conditions imposed by the Minister throughout the incentive period, including the following:

  (a) It employs at least 15 full-time employees in Malaysia with a minimum salary of RM5,000 per month in the basis period for each of the specified YAs to carry on the qualifying activity, and at least 50% of those employees are Malaysians;
  (b) It has paid-up capital of at least RM1 million to carry on the qualifying activity;
  (c) It incurs annual operating expenditure of at least RM1.5 million to carry on the qualifying activity; and
  (d) It has annual sales revenue from the qualifying activity of at least RM300 million.

- The Minister may, at any time (except where the qualifying company fails to comply with any conditions imposed in relation to the GTC scheme), accept a qualifying company's surrender of the incentive granted under the GTC scheme rules. The surrender may be made by a notice in writing from the qualifying company to the Minister through the MIDA. The surrender of the incentive will have effect on the first day in the basis period for the YA in which the notification of the surrender of the incentive is received by the Minister through the MIDA.

Please refer to P.U.(A) 48/2022 for full details.

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3. Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies at Technical and Vocational Certificate, Diploma, Bachelor's Degree, Master's Degree or Doctor of Philosophy Levels) Rules 2022 [P.U.(A) 49/2022]

On 7 March 2022, the Malaysian government gazetted the "Income Tax (Deduction for the Sponsorship of Scholarship to Malaysian Student Pursuing Studies at Technical and Vocational Certificate, Diploma, Bachelor's Degree, Master's Degree or Doctor of Philosophy Levels) Rules 2022" (P.U.(A) 49/2022) to implement an extension and expansion of the double deduction (i.e., a corporate income tax deduction of 200% of qualifying expenditure) for companies sponsoring scholarships, as announced in the 2022 national budget. The double deduction is expanded to include qualifying expenditure for scholarships relating to all fields of study at the technical or vocational certificate level or at the diploma, bachelor's degree, master's degree, or doctor of philosophy level. The rules, which aim to develop more highly skilled talent in Malaysia, are effective as from YA 2022.

The rules are applicable to a company that meets the following requirements:

- The company is incorporated under the Companies Act 2016 (Act 777) and is resident in Malaysia;
- The company sponsors a scholarship to a student pursuing a full-time course of study:
  (a) at the technical or vocational certificate level in an institution; or

(b) at the diploma, bachelor's degree, master's degree, or doctor of philosophy level in a higher educational institution; and

- The company executes a scholarship agreement with the student between 1 January 2022 and 31 December 2025.

Key definitions under the rules are described below, followed by some additional salient points regarding the tax incentive.

Relevant definitions

An "institution" refers to any institution recognized by the Malaysian Qualifications Agency or the Skills Development Department.

A "higher educational institution" refers to any institution established under the Universities and University Colleges Act 1971 (Act 30), the "Universiti Technologi MARA Act 1976" (Act 173), or the Private Higher Educational Institutions Act 1996 (Act 555).

A "student" refers to an individual who meets the following requirements:

- The individual is a Malaysian citizen and resident in Malaysia;
- The individual is pursuing full-time course of study:
  (a) at a technical or vocational certificate level in an institution; or
  (b) at a diploma, bachelor's degree, master's degree, or doctor of philosophy level in a higher educational institution;
- The individual has no means of their own (i.e., the individual does not have sufficient financial resources of their own to afford the course of study); and
- The parents or guardians of the individual have total monthly income not exceeding RM10,000.

Other salient points

- In calculating the adjusted income of a company from its business in a basis period for a YA, a double deduction is allowed for expenses incurred and paid by the company in that basis period for sponsoring a scholarship to a student in accordance with the period of the relevant sponsorship agreement.

- The expenses eligible for the double deduction are the following:

  (a) payments required by the relevant institution or higher educational institution relating to the course of study; and
  (b) educational aid and reasonable cost of living expenses throughout the student's period of study at the relevant institution or higher educational institution.

- If, in the opinion of the Director General of Inland Revenue (DGIR), the total amount of any expenses that otherwise would have been allowed as a deduction under the rules exceeds the amount that would reasonably be expected to be incurred in the ordinary course of business, the DGIR may disallow a portion of the deduction, to the extent of the excess amount.

- Any amount repaid by the student to the company will, upon receipt, be treated as gross income of the company from business derived from Malaysia in the basis period for the YA.

Please refer to P.U.(A) 49/2022 for full details.

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4. Termination of Special Programme on Remittance of Income Kept Overseas

The IRBM has announced via Media Release dated 11 March 2022 that it has terminated the Special Income Remittance Programme (PKPP) which was offered through the Media Release dated 16 November 2021, with effect from 11 March 2022.

The IRBM's decision to terminate the PKPP was made after taking into account the tax exemption announced by the Ministry of Finance (MOF) on 30 December 2021 (*reported via our Special Alert @ 31 December 2021*) on foreign source income received in Malaysia by individual residents (other than partnership income). The same exemption is also given to foreign source dividend income brought in by companies and limited liability partnerships. This exemption is subject to the conditions stated in the income tax exemption order to be issued under Section 127 of the Income Tax Act 1967.

Other foreign source income that are not exempted and are brought into Malaysia from 1 January 2022 must be reported in the Return Form for the relevant YA. Foreign income which is still subjected to tax and brought into Malaysia from 1 January 2022 to 30 June 2022 (both dates inclusive) will be taxed at a concession rate of 3% as announced in the National Budget 2022 and provided under the Finance Act 2021. Upon the the expiry of the said period, the prevailing tax rate will apply according to the categories of taxpayers concerned.

Please refer to the Media Release for more information.

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5. The IRBM issued updated Guidelines for application of relief from stamp duty under Sections 15 and 15A of the Stamp Act 1949

The following updated guidelines, both dated 1 March 2022, were recently issued by the IRBM:

- Guideline for application of relief from stamp duty under Section 15 of Stamp Act 1949; and
- Guideline for application of relief from stamp duty under Section 15A of Stamp Act 1949.

These guidelines were issued to explain the procedures involved for the application of stamp duty relief in the case of reconstruction or amalgamation of companies provided under Section 15 of the Stamp Act 1949 and transfer of property between associated companies provided under Section 15A of the Stamp Act 1949. These guidelines supercede the previous guidelines that were issued in 2019, with effect from 1 March 2022.

These guidelines cover:

1. Introduction;
2. Conditions for approval;
3. Procedures for application (including submission of supporting documents);
4. Situations where the stamp duty relief will be withdrawn; and
5. Responsibilities of the transferor and transferee.

Please refer to the respective updated guidelines for full details.

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6. Labuan Companies (Amendment) Bill 2022, Labuan Financial Services and Securities (Amendment) Bill 2022 and Labuan Islamic Financial Services and Securities (Amendment) Bill 2022

The Labuan Companies (Amendment) Bill 2022, Labuan Financial Services and Securities (Amendment) Bill 2022, and Labuan Islamic Financial Services and Securities (Amendment) Bill 2022 were recently tabled in Parliament.

The Labuan Companies (Amendment) Bill 2022 amends the Labuan Companies Act 1990 to improve the procedures relating to qualifications of a director, the ascertainment of beneficial ownership, and the strike off of a Labuan company. The Labuan Companies (Amendment) Bill 2022 also stipulates the increase of penalty for offences and compliance requirements to the international taxation standards.

Meanwhile, the Labuan Financial Services and Securities (Amendment) Bill 2022 and Labuan Islamic Financial Services and Securities (Amendment) Bill 2022 amends the Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010 respectively to stipulate compliance requirements of the international taxation standards that prohibit harmful tax practices.

Please refer to the above-stated Amendment Bills for changes noted.

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7. The IRBM announces concession for submission of prescribed form on change of address

The IRBM has recently announced that with effect from 1 January 2022, taxpayers are required to notify the Director General of Inland Revenue (DGIR) of a change of address via a prescribed form (CP 600B) to be submitted either by post or by electronic transmission. The announcement is in line with the Budget 2022 proposal which was legislated through the Finance Act 2021.

The IRBM grants concession for taxpayers from 1 January 2022 to 30 June 2022 to submit the CP 600B either by hand, post, email or fax, through the Customer Feedback portal or online via the e-Kemaskini application. However, with effect from 1 July 2022, the submission of CP 600B can only be made by hand or post or via the e-Kemaskini application.

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8. DuitNow as a medium for tax refund

The IRBM has recently announced via a Media Release that with effect from 1 March 2022, DuitNow can be used as an additional channel for tax refund for individual taxpayers who have submitted their Income Tax Return Form for the YA 2021. Previously, individual taxpayers can only receive their tax refund via the following mediums:

- Electronic Fund Transfer (EFT) for local taxpayers and Telegraphic Transfer (TT) for overseas taxpayers (e-payment); or
- Cheque / Tax Refund Voucher (manual).

DuitNow is the latest inter-bank money transfer method that is easy, safe, and has no transaction limit. Taxpayers who wish to use DuitNow to receive their tax refund will have to register for it with their respective banks by using their MyKad / passport number as an Identity (ID) number. Under this new channel, taxpayers are not required to provide their bank account details to the IRBM for tax refund in contrast with the requirements under the EFT. Taxpayers must take note that the IRBM will not accept any registration made using their mobile phone number for tax refund purpose.

Taxpayers who wish to use DuitNow to receive their tax refund must choose this method during the submission of their income tax return form (via e-Filing / manual filing). The IRBM further states that if the tax refund made via DuitNow fails, the refund will automatically be made via EFT using taxpayers bank account number and name that is registered with the IRBM.

Currently, the DuitNow refund option is only available to individual taxpayers. However, the IRBM has stated that the DuitNow refund option will be gradually extended to corporate taxpayers by using their respective ROC number as an ID number.

Please click on the link for full details.

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9. Stamp Duty (Exemption) (No. 8) 2018 (Amendment) Order 2022 [P.U.(A) 74/2022]

On 29 March 2022, the Malaysian government gazetted the Stamp Duty (Exemption) (No. 8) 2018 (Amendment) Order 2022 [P.U.(A) 74/2022] to extend the stamp duty exemption on instrument of transfer of real property granted under the Stamp Duty (Exemption) (No. 8) Order 2018 [P.U. (A) 397/2018] for another two years.

Subparagraph 2(1) of P.U.(A) 397/2018 exempts *ad valorem* stamp duty for the transfer of real property used in a qualifying tourism project carried on in the Sabah Development Corridor, provided the instrument is executed between 20 November 2012 and 31 December 2020 (both dates inclusive). The exemption is now extended to instrument executed between 1 January 2021 and 31 December 2022 (both dates inclusive).

Please refer to the Amendment Order and [P.U. (A) 397/2018] for more details.

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10. Income Tax (Exemption) (No. 11) 2018 (Amendment) Order 2022 [P.U.(A) 75/2022]

On 29 March 2022, the Malaysian government gazetted the Income Tax (Exemption) (No. 11) 2018 (Amendment) Order 2022 P.U.(A) 75/2022 to extend the application period by another two years for the application of exemption under the Income Tax (Exemption) (No. 11) 2018 [P.U. (A) 390/2018].

Subparagraph 5(1) of P.U.(A) 390/2018 exempts a qualifying company from the payment of income tax on statutory income derived from a qualifying activity carried on in the Sabah Development Corridor, which is equivalent to the allowance of 100% of qualifying capital expenditure incurred by the qualifying company, provided that the application for the exemption is made to the Minister through the Sabah Economic Development and Investment Authority between the period of 20 November 2012 and 31 December 2020 (both dates inclusive). Depending on the sector as indicated in the specified Schedule of P.U.(A) 390/2018, the exemption shall be given for a period of 5 or 10 consecutive years. The application period for the exemption under P.U.(A) 390/2018 is now extended from 1 January 2021 until 31 December 2022 (both dates inclusive).

Please refer to the Amendment Order and P.U. (A) 390/2018 for more details.

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11. Income Tax (Exemption) (No. 12) 2018 (Amendment) Order 2022 [P.U.(A) 76/2022]

On 29 March 2022, the Malaysian government gazetted the Income Tax (Exemption) (No. 12) 2018 (Amendment) Order 2022 [P.U.(A) 76/2022] to extend the application period by another two years for the application of income tax exemption granted under the Income Tax (Exemption) (No. 12) 2018 [P.U. (A) 391/2018].

Subparagraph 4(1) of P.U.(A) 391/2018 exempts a qualifying company from the payment of income tax on statutory income derived from a qualifying activity carried on in the Sabah Development Corridor (intellectual property income excluded), provided that the application for the exemption is made to the Minister through the Sabah Economic Development and Investment Authority between the period of 20 November 2012 and 31 December 2020 (both dates inclusive). Depending on the sector as indicated in the specified Schedule of P.U.(A) 391/2018, the exemption shall be given for a period of 5 or 10 consecutive years of assessment. The application period for the exemption is now extended from 1 January 2021 to 31 December 2022 (both dates inclusive).

Please refer to the Amendment Order and P.U. (A) 391/2018 for more details.

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12. Ketua Pengarah Hasil Dalam Negeri v Classic Japan (M) Sdn Bhd (COA)

Issues:

Whether the decision of the High Court (HC) was correct in law and facts in deciding that:

- The taxpayer is entitled to claim the increased export allowance under the Income Tax (Allowance for Increased Export) Rules 1999 (1999 Rules) [*Note: this rule has been revoked by the Income Tax (Exemption) Order (No. 6) 2019 (PU(A) 162/2019)*];
- The taxpayer's factory is an industrial building as defined under Paragraph 63, Schedule 3 of the Income Tax Act 1967 (ITA) and as such, entitled to claim industrial building allowance (IBA); and
- The Director General of Inland Revenue (DGIR) has no legal or factual basis to impose the penalty under Section 113(2) of the ITA.

Decision:

The Court of Appeal (COA) has allowed the appeal by the DGIR in part, with the following grounds of judgement:

- Having taken into consideration the dictionary meaning, the phrase "engaged in agriculture" under Rule 3 of the 1999 Rules clearly has the connotation of involvement in the planting or growing of the fresh flowers. This means that the mere activity of buying flowers from contract flower growers is not an activity within the meaning of the phrase "engaged in agriculture" under Rule 3. The taxpayer was not engaged in agriculture that entitled the taxpayer to claim the increased exports allowance under the 1999 Rules. In addition, the Special Commissioners of Income Tax (SCIT) found that the taxpayer was not engaged in agriculture as envisaged under Rule 3 of the 1999 Rules. The HC was wrong in interfering with the finding of facts by the SCIT.

- For the taxpayer's factory to be categorised as an industrial building under Paragraph 63, Schedule 3 of the ITA, the building must be used for business purposes, and also used for the housing of machinery or plant of any description for the subjection of goods to any process. The activity in the factory which includes inspection, trimming, grading, bunching and cutting, hydration, packaging, and shipping certainly involves a process. Thus, the COA agreed with both the SCIT and the HC that the taxpayer's factory is an industrial building that entitled the taxpayer to IBA.

- Under Section 113(2) of the ITA, the discretion is given to the DGIR to impose a penalty equal to the amount of tax to any person who makes an incorrect return or gives incorrect information in the tax return. The defence of "good faith" as found in Section 113(1) of the ITA does not apply to the DGIR's discretion under Section 113(2) of the ITA. The taxpayer had failed to declare income correctly in its tax return as well as given incorrect information to the DGIR. This is sufficient for the DGIR to exercise his discretion to impose the penalty on the taxpayer.

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13. Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (COA)

This was an appeal filed by Wiramuda (M) Sdn Bhd against the decision of the High Court dated 29 September 2020 in dismissing the taxpayer's application for judicial review inter alia to quash the Notice of Assessment for the YA 2018 issued by the Director General of the Inland Revenue Board of Malaysia (DGIR).

Issues:

- Whether Section 4C of the Income Tax Act, 1967 (ITA) is unconstitutional for contravention of Article 13(2) of the Federal Constitution;

- Whether the taxpayer can bypass the alternative remedy of appeal to the Special Commissioners of Income Tax (SCIT) under Section 99(1) of the ITA; and

- Whether the taxpayer's compulsorily acquired land is stock in trade as envisaged under Section 4C and 24(1)(aa) of the ITA.

Decision:

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

- The decision of the Federal Court in the case of Semenyih Jaya Sdn Bhd v Pentadbir Daerah Hulu Langat and Another [2017] 3 MLJ 561 held that "the preliminary position is that there is always a strong presumption in favour of the constitutionality of provisions in a statute. This is premised on the principle that Parliament cannot be presumed to intend an unconstitutional action. The burden is upon him who challenges the provision to show that they are unconstitutional. The court's function is merely to test the legality of action against principles and standards established by the Constitution. Unless it is found that there has been a clear transgression of constitutional principles, the court would refrain from declaring the law as legislated by the Legislature to be invalid. As such, Section 4C of the ITA as enacted via the Finance Act 2014 and passed in the Parliament, cannot be presumed to be unconstitutional by the COA.

- Section 4C of the ITA stipulates "for the purpose of paragraph 4(a), gains or profits from a business shall include an amount receivable arising from stock in trade parted with by any element of compulsion including on requisition or compulsory acquisition or in a similar manner." As such, the COA was of the view that the tax imposed on the

compensation received from taxpayer's compulsorily acquired land under Section 4C of the ITA does not contravene Article 13(2) of the Federal Constitution. This is because Article 13(2) of the Federal Constitution does not restrict the legislative powers of Parliament, but merely requires adequate compensation to be awarded for the compulsory acquisition of land. The adequacy of compensation depends on the principle of equivalence as demonstrated in the case of Pentadbir Tanah Daerah Gombak V Huat Heng (Lim Low & Sons) Sdn Bhd [1990] 3 MLJ 282. In that case, the Supreme Court held that "the basic principle governing compensation is that the sum awarded should, as far as practicable, place the person in the same financial position as he would have been in, had there been no question of his land being compulsorily acquired".

- The taxpayer has every right to object the amount of compensation awarded under Section 37 of the LAA 1960. Thus, the COA held that the taxpayer was not deprived of his right to adequate compensation for the lands that were compulsorily acquired by the State Government of Selangor as the taxpayer had already referred the case of inadequacy of compensation received for the compulsory acquisition of the land to the Shah Alam High Court. As such, there were no transgression of constitutional principles or infringement to the Constitution and therefore, the COA was of the view that Section 4C of the ITA is intra vires the Federal Constitution.

- The SCIT are judges of facts and best for hearing and deciding on tax grievances. It is trite principle of law that, where an alternative remedy exists, the remedy by way of judicial review could only be exercised in very exceptional circumstances as highlighted in the case of Government of Malaysia & Anor v Jagdish Singh [1987] 2 MLJ 185. The COA held that there is no special or exceptional circumstance that entitles the taxpayer to bypass the alternative remedy of the domestic appeal process under Section 99(1) of the ITA, as Section 4C of the ITA does not contravene the Federal Constitution. The assessment raised by the DGIR on the taxpayer for the YA 2018 was in accordance with the DGIR's statutory powers granted under Sections 91(1), 91(3), and 96 of the ITA, apart from Section 4C of the same Act. The COA found that the taxpayer has not established the existence of lack or absence of jurisdiction on the part of the DGIR, blatant failure to perform statutory duty or breach of the principle of natural justice by the DGIR. On this ground alone, the decision of the High Court judge in dismissing the judicial review application by the taxpayer was correct in law.

- The COA held that the issue of stock in trade is a question of fact that needs to be determined by a judge of facts. This includes assessing evidence by witnesses and documents presented and the judge of facts is the SCIT and not the High Court Judge in a judicial review application.

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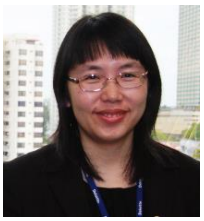

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