Deloitte.

Tax Espresso

Gazette Orders, HASiL Media Releases, Public Rulings, Tax Cases and more

February 2025

Greetings from Deloitte Malaysia Tax Services

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Deloitte Malaysia
Inland Revenue Board of Malaysia

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Important deadlines:

	Task	Deadline	
		1 March 2025	**28 February 2025**
1.	**2026 tax estimates for companies with March year-end**	√	
2.	**6th month revision of tax estimates for companies with August year-end**		√
3.	**9th month revision of tax estimates for companies with May year-end**		√
4.	**11th month revision of tax estimates for companies with March year-end**		√
5.	**Statutory filing of 2024 tax returns for companies with July year-end**		√
6.	**Maintenance of transfer pricing documentation for companies with July year-end**		√
7.	**2025 CbCR notification for applicable entities with February year-end**		√

1. HASiL – TIN search platform for e-invoicing and taxation activities

In conjunction with the Budget 2025 announcement, the Inland Revenue Board of Malaysia (HASiL) has introduced a new Tax Identification Number (TIN) search function for the purposes under the Income Tax Act 1967 (ITA) which includes taxation and e-invoicing activities.

Taxpayers can now search for the TIN of respective parties by providing the following information:

- Individuals: Identification number or passport number.
- Non-Individuals: Business Registration Number (BRN) or registered taxpayer name (if BRN is unavailable).

The TIN search function will return one (1) corresponding TIN based on the provided search information.

The platform is accessible starting from 1 January 2025 via:

1) MyTax portal
   Visit https://mytax.hasil.gov.my and click on the TIN search button.

2) MyInvois portal
   Click on the search icon on the MyInvois portal new document page.

Buyer (To) *
Scan QR Code
Upload QR
ID Type *
Registration/Identification/Passport *
Tax Identification Number (TIN) *
Validate
Name *
SST Registration Number *
E-mail
Telephone Number *
Address Line 1 *

3) MyInvois API
   API integration details and technical guidance are available in the MyInvois Software Development Kit (SDK).

   To support the use of MyDigital ID, HASiL has also provided access to the TIN search function by using the MyDigital ID mobile app. Please note that MyDigital ID is exclusively available for Malaysian citizens.

   Taxpayers are advised to use the TIN search function strictly for purposes outlined under the ITA. Unauthorised use of this service is prohibited and may result in prosecution under Section 66A of the ITA, where a fine not exceeding RM4,000 or imprisonment for a period not exceeding one year or both may be imposed.

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2. HASiL – Audit Framework on Real Property Gains Tax

HASiL has issued an Audit Framework (AF) on Real Property Gains Tax (RPGT) (available in Bahasa Malaysia version only). The AF on RPGT is effective from 1 January 2025. In line with the introduction of the RPGT Self-Assessment System starting from 1 January 2025, the RPGT audit is one of the activities implemented by HASiL to increase voluntary tax compliance.

The AF on RPGT issued by HASiL aims to:

a) Ensure that the RPGT audit is carried out fairly, transparently, and thoroughly. The AF on RPGT outlines the rights and responsibilities of RPGT audit officers, taxpayers, and tax agents / lawyers.
b) Assist RPGT audit officers to carry out their duties more efficiently and effectively.
c) Help taxpayers meet their responsibilities.

The RPGT audit is conducted on a comprehensive audit basis and covers disposals within the last 3 years of assessment (YAs). However, the YAs covered for raising an assessment may be extended up to the last 5 YAs depending on the audit issues found. This limitation on the coverage period does not apply to audit cases involving fraud or wilful default as provided under Section 15(2) of the Real Property Gains Tax Act 1976 (RPGTA).

The AF on RPGT also includes the following:

- Selection of cases.
- RPGT audit implementation.
- Rights and responsibilities of HASiL and taxpayers.
- Confidentiality of information.
- Offenses and penalties, complaints, payment procedure, and appeal.

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3. HASiL – RPGT Forms (CKHT 15H – 1-2025, CKHT 15J – 1-2025, and CKHT 15K – 1-2025)

HASiL has uploaded the following forms on its website, on 26 December 2024:

1) Application for relief to the Director General of Inland Revenue (DGIR) under Sections 19 and 19A of the RPGTA

These forms can be downloaded at Hasil Official Portal > *Forms* > *Download Forms* > *Other Forms* > *Semua|All*

- CKHT 15H – 1/2025 – Form for application for relief in respect of error or mistake under Section 19 of the RPGTA
- CKHT 15J – 1/2025 – Form for application for relief other than in respect of error or mistake under Section 19A of the RPGTA

2) Request form to forward the relief application to the Special Commissioners of Income Tax (SCIT) under the RPGTA (Relief Request)

This form is issued following the Finance Act (No. 2) 2023 (Act 851) and it can be downloaded at the HASiL Official Portal > *Forms* > *Download Forms* > *Other Forms* > *Semua|All*

Form RF (CKHT 15K – 1/2025) – Request form to forward the relief application to the SCIT under the RPGTA (Relief Request)

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4. Income Tax (Exemption) (Amendment) Orders 2025 for Increase in Export Sales [*P.U.(A) 12/2025 and P.U.(A) 14/2025*]

The Income Tax (Exemption) (No. 5) Order 2019 (Amendment) Order 2025 (*P.U.(A) 12/2025)* and Income Tax (Exemption) (No. 6) Order 2019 (Amendment) Order 2025 (*P.U.(A) 14/2025)*, both relating to the exemption for achieving an increase in export sales were gazetted on 13 January 2025 and have effect from the year of assessment (YA) 2025.

Amendments

The Principal Orders [Income Tax (Exemption) (No. 5) Order 2019 (*P.U.(A) 161/2019*) and Income Tax (Exemption) (No. 6) Order 2019 (*P.U.(A) 162/2019*)], both relating to the exemption for achieving an increase in export sales have been amended in Paragraphs 3(3)(a) and 3(2)(a) respectively as follows:

"(a) at the beginning of the basis period for a year of assessment, at least sixty per cent of the issued share capital of the qualifying company is owned—

(i) directly by a Malaysian citizen;
(ii) by a body corporate which administers and manages a fund established under any written law; or
(iii) by a company which is—

(A) incorporated under the Companies Act 2016 (CA) and resident in Malaysia in the basis period for that YA; and

(B) at least sixty per cent of the issued share capital of the company is owned by a Malaysian citizen or a body corporate which administers and manages a fund established under any written law;"

For the purposes of the Amendment Orders, the body corporate which administers and manages a fund is as follows:

(a) the Employees Provident Fund Board which is established under section 3 of the Employees Provident Fund Act 1991 [*Act 452*];
(b) the Retirement Fund (Incorporated) which is established under section 3 of the Retirement Fund Act 2007 [*Act 662*];
(c) the Lembaga Tabung Haji which is established under section 3 of the Tabung Haji Act 1995 [*Act 535*];
(d) the Lembaga Tabung Angkatan Tentera which is established under section 4 of the Tabung Angkatan Tentera Act 1973 [*Act 101*]; or
(e) any body corporate which administers and manages a fund established under a written law as approved by the Minister.

[*Note: The qualifying conditions under Paragraph 3(3)(a) of P.U. (A) 161/2019 and Paragraph 3(2)(a) of P.U. (A) 162/2019 respectively state that at least 60% of issued share capital of the qualifying company is to be owned directly by Malaysian citizen. As such, a company which is indirectly owned by Malaysian citizens (at least 60% of the shares through another company) would not qualify for the incentive. Following the amendments via P.U.(A) 12/2025 and P.U.(A) 14/2025 which have effect from the YA 2025, the incentive is applicable to a qualifying company which is either directly owned by Malaysian citizens (minimum shareholding of 60%) or indirectly owned by Malaysian citizens (at least 60% of the shares are held through another resident company as defined in the amendment orders).*]

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5. Income Tax (Sustainable and Responsible Investment Linked Sukuk) Rules 2024 [*P.U.(A) 415/2024*]

On 19 December 2024, the Income Tax (Sustainable and Responsible Investment Linked Sukuk) Rules 2024 [*P.U.(A) 415/2024*] were gazetted to legislate the proposed tax deduction on the cost of issuing Sustainable and Responsible Investment (SRI) Linked Sukuk (SRI-Linked Sukuk) as announced in Budget 2023. These Rules have effect from YA 2023 to YA 2027.

Background

To provide an innovative Shariah-compliant financing and place Malaysia as a regional hub of SRI-Linked Sukuk issuance, Budget 2023 proposed that a tax deduction be given on the costs of issuing SRI-Linked Sukuk that is approved or authorised by, or lodged with, the Securities Commission Malaysia (SC) for a period of 5 years, from YA 2023 until YA 2027.

Salient points of the Rules

Tax deduction shall be allowed for the expenditure incurred by a company on the issuance or offering of a SRI-Linked Sukuk, which is:

- approved or authorised by, or lodged with, the SC under the Capital Markets and Services Act 2007 (CMSA), and
- issued or offered to an investor in compliance with the guidelines relating to sukuk issued by the SC under the CMSA.

The **amount of tax deduction** allowed shall be determined in accordance with the following formula:

A – B = C

A	Amount of expenditure incurred by the company on the issuance or offering of the SRI-Linked Sukuk.
B	Amount exempted under Section 127(3A) of the ITA in respect of a grant to finance an external review expenditure for the issuance or offering of the SRI-Linked Sukuk.
C	Total amount of deduction allowed.

Note: Any company which has made a claim for a deduction for expenditure on the issuance or offering of the SRI-Linked Sukuk under any rules made under Section 154 of the ITA in the basis period for a YA shall not be eligible for the deduction under these Rules for that YA.

In these Rules:

- "external review expenditure" means an expenditure incurred by a company on the issuance or offering of the SRI-Linked Sukuk:

  a) to appoint an external reviewer for the purpose of assessing and providing a report on the company's compliance with the requirement under the guidelines relating to sukuk issued by the SC under the CMSA before the issuance of the SRI-Linked Sukuk is made, and

  b) to appoint an independent verifier to provide a verification report for the purpose of monitoring performance levels of the company in respect of the sustainability performance targets for each key performance indicator after the issuance of the SRI-Linked Sukuk is made.

- "company" means a company resident in Malaysia which is incorporated under the CA or Labuan Companies Act 1990.

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6. Income Tax (Green Technology Incentive) (Solar Photovoltaic System Leasing) (Exemption) (Amendment) Order 2024 [*P.U.(A) 445/2024*]

P.U.(A) 445/2024 has been gazetted on 23 December 2024 to extend the application period to the Malaysian Investment Development Authority (MIDA) by another 3 years i.e., from 1 January 2024 until 31 December 2026, as proposed in Budget 2024.

Prior to Budget 2024 announcement on the extended application period, the Income Tax (Green Technology Incentive) (Solar Photovoltaic System Leasing) (Exemption) Order 2024 [P.U.(A) 247/2024] apply to applications made by qualifying companies undertaking qualifying solar leasing activities that have been received by MIDA until 31 December 2023. You may also refer to Deloitte Malaysia Tax Espresso – October 2024 for the relevant details of P.U.(A) 247/2024.

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7. Income Tax (Islamic Securities) (Exemption) Order 2024 [*P.U.(A) 444/2024*]

On 23 December 2024, the Income Tax (Islamic Securities) (Exemption) Order 2024 [*P.U.(A) 444/2024*] was gazetted to legislate the proposed tax exemption on income arising from Islamic Securities Selling and Buying (ISSB) as announced in Budget 2024. This Order has effect from the YA 2024.

Background

Prior to YA 2024, borrowers and lenders were exempted from tax on any income (other than dividends, lending fees, interest earned on collateral and rebate) arising from a loan of securities listed on Bursa Malaysia and, the return of the same or equivalent securities and, the corresponding exchange of collateral, in respect of a securities borrowing and lending transaction made under a Securities Borrowing and Lending (SBL) Agreement. The exemption shall apply to lenders and borrowers who were authorised by the SC and the SBL Agreement must be approved by the SC.

To increase the overall volume of securities trading and the liquidity of the *syariah*-compliant stock market through the involvement of more investors and brokers in ISSB transactions, and to ensure equal treatments are given to investors and brokers of conventional SBL and ISSB, Budget 2024 proposed that tax exemption be granted on income arising from ISSB.

Salient points of the Order

The Minister exempts any approved supplier and approved user from the payment of income tax in the basis period for a YA in respect of the statutory income derived from an ISSB negotiated transaction other than structured payments, monthly instalment and profit earned on collateral and rebate arising from:

a) the selling and buying of Islamic securities listed on Bursa Malaysia Securities Berhad,
b) the return of the same or equivalent Islamic securities,
c) the corresponding exchange of collateral, and
d) the exercise of any remedial option due to reclassification of the status of the Islamic securities to Shariah non-compliant securities,

in respect of an ISSB negotiated transaction under an ISSB negotiated transaction agreement.

In this Order:

- "approved supplier" means a person approved by an approved clearing house to be a supplier in an ISSB under an ISSB negotiated transaction agreement.
- "approved user" means a person approved by an approved clearing house to be a user in an ISSB under an ISSB buying negotiated transaction agreement.
- "approved clearing house" has the meaning assigned to it in the CMSA.
- "Islamic securities selling and buying negotiated transaction" means an ISSB negotiated transaction as specified in the rules of an approved clearing house under the CMSA.

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8. Stamp Duty (Exemption) (No. 9) Order 2024 [*P.U.(A) 470/2024*]

Stamp Duty (Exemption) (No. 9) Order 2024 [*P.U.(A) 470/2024*] was gazetted on 31 December 2024 and came into operation on 1 January 2025.

Exemption
The instrument of loan or financing agreement under the Micro Financing Scheme product approved by the Central Bank of Malaysia for an amount not exceeding RM100,000 executed between a borrower and a financial institution on or after 1 January 2025 is exempted from stamp duty. [*This exemption is in line with the proposal announced in Budget 2025.*]

Revocation
The Stamp Duty (Exemption) (No. 4) Order 2011 [*P.U.(A) 446/2011*] is revoked. [*Under P.U.(A) 446/2011, an instrument of agreement for a loan or financing pursuant to a Micro Financing Scheme approved by the National Small and Medium Enterprise Development Council, for an amount not exceeding RM50,000 between a borrower and a participating bank or financial institution executed on or after 1 January 2012 is exempted from stamp duty.]*

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9. Public Ruling No. 4/2024 - Taxation of a Resident Individual Part I - Gifts or Contributions and Allowable Deductions, Public Ruling No. 5/2024 - Tax Incentive for Investment in Bionexus Status Company and Public Ruling No. 6/2024 - Tax Incentive for Organizing Arts, Cultural, Sports and Recreational Activities

HASiL has uploaded the following Public Rulings (PRs) on its website, dated 27 December 2024:

1) PR No. 4/2024 - Taxation of a Resident Individual Part I - Gifts or Contributions and Allowable Deductions

   This PR is the 6th edition and it replaces PR No. 6/2023 dated 20 November 2023 (5th Edition). The updates and amendments to PR No. 6/2023 are listed in Paragraph 7 of PR No. 4/2024. These updates and amendments are in accordance with changes legislated via the Finance Act 2023, which was gazetted on 31 May 2023.

2) PR No. 5/2024 - Tax Incentive for Investment in Bionexus Status Company

   This PR explains the tax incentives offered to an investor who has invested in a BioNexus status company (BSC) in Malaysia.

   This PR is the 3rd edition and it replaces the PR No.2/2023 dated 4 October 2023 and should be read together with PR No. 1/2020 (Second Edition) dated 22 May 2020.

   Note: A list of updates and amendments can be found in Paragraph 10 on page 9 of this PR. The main updates and amendments to PR No. 2/2023 are made to reflect the further extension of the tax incentive under the Income Tax (Deduction for Investment in a Bionexus Status Company) Rules 2016 [*P.U.(A) 306/2016*] for another 2 years, from 1 January 2023 to 31 December 2024. The extension was legislated through the gazette of the Income Tax (Deduction for Investment in a BioNexus Status Company) (Amendment) Rules 2024 [*P.U.(A) 23/2024*].

3) PR No. 6/2024 - Tax Incentive for Organizing Arts, Cultural, Sports and Recreational Activities

   This PR is the 1st edition, and it explains the tax incentive available to a promoter that organises approved art or cultural activities as well as sports or recreational competitions in Malaysia.

Please refer to the respective PRs for full details.

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10. AHSB v DGIR (SCIT)

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

Facts:

The taxpayer is an investment holding company incorporated in Malaysia. The company is 90% owned by YCL and the remaining 10% is owned by YTC. Additionally, YCL and YTC also own equal shares in TSSB.

A tax audit was conducted on the taxpayer, resulted in the DGIR issuing notices of non-chargeability for the YAs 2014 to 2017 and notice of assessment for YA 2018. Aggrieved by the DGIR's decision, the taxpayer filed an appeal to the SCIT through Forms Q dated 25 September 2020 for YAs 2014 to 2018.

Taxpayer's argument:

The taxpayer contended that the DGIR has failed to establish the element of "control" as defined in the ITA as the said element hinges upon four fundamental elements which include the power of a person to secure, the power of a person in holding shares or voting powers, the power of an authority from regulatory documents, and the power to conduct the

affairs of the company as he wishes as derived from Paragraph 38(2), Schedule 3 of the ITA. The taxpayer also contended that Section 2 and Section 139 of the ITA are not applicable in determining the element of "control" under Paragraph 38, Schedule 3 of the ITA. It is a long-standing principle that tax statutes should be interpreted strictly, and a specific provision should take precedence over a general one. For the imposition of penalty, the DGIR must exercise his discretion judiciously based on a thorough evaluation of all the relevant facts.

DGIR's argument:

DGIR argued that Paragraph 38(1), Schedule 3 of the ITA is applicable in the current appeal (in which there is a presence of "controlled disposal of assets") based on the fact that YCL holds equal shares with YTC in TSSB. As the managing director for both, the taxpayer and TSSB, YCL would *prima facie* have indirect control of the company. An individual is a beneficial owner in a company limited by shares based on whether he has the right to exercise ultimate effective control, formal or informal over the company, the director, or the management of the company. Since YCL holds 90% of shares in the taxpayer while also being a director in TSSB, it could be observed through circumstantial facts that YCL indeed has indirect control and thus, the disposal of assets between TSSB and the taxpayer could be determined as a "controlled transfer / sale" within the meaning of Paragraph 38, Schedule 3 of the ITA. Where two companies have a common director or common directors, they would be treated as being connected with each other. In addition, the imposition of penalty under Section 113(2) of the ITA was due to the failure of the taxpayer to observe the requirement of the law as provided in Paragraph 2(a) or (b) of the same provision. The DGIR further contended that the defense of 'good faith' is only applicable for penalties imposed under Section 113(1) of the ITA and not applicable for penalties imposed under Section 113(2) of the ITA.

Issues:

- Whether the disposal of assets by TSSB to the taxpayer falls within the ambit of "controlled disposal of assets" pursuant to Paragraphs 38, 39 and 40 of Schedule 3.
- Whether the imposition of penalty on the taxpayer under Section 113(2) for YA 2018 is correct.

Decision:

On 22 November 2024, the SCIT had dismissed the taxpayer's appeals and held that the taxpayer has failed to prove its case as required under Paragraph 13, Schedule 5 of the ITA and held that the penalties for YAs 2014 to 2018 are correct and justified to be imposed. As such, the issuance of notices of non-chargeability for YAs 2014 to YA 2017 and notice of assessment for YA 2018 together with the imposition of penalties are confirmed.

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

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11. KPHDN v Berjaya Golf & Resort Berhad (COA)

HASiL has recently uploaded a case report, "KPHDN v Berjaya Golf & Resort Berhad (COA)" on its website.

Facts:

The DGIR filed an appeal against the decision of the High Court (HC) in allowing the taxpayers' appeal against the decision of the SCIT. [*You may refer to Deloitte Malaysia Tax Espresso – February 2023 for our report on the HC's decision.*]

The taxpayer was part of the Berjaya group of companies (Berjaya Group). For the YA 2013, Berjaya Air Sdn Bhd (Berjaya Air) being a member of the Berjaya Group surrendered its losses amounting to RM16,300,200 to two companies in the Berjaya Group, namely Berjaya Land Sdn Bhd (Berjaya Land) as the first claimant for an amount of RM14,615,512 and the taxpayer as the second claimant for an amount of RM1,684,688. This exercise was made pursuant to the group relief provision under Section 44A(5)(a) of the ITA.

Berjaya Land and the taxpayer had made a claim in their respective tax returns for YA 2013 under Section 44A(2) of the ITA for the losses that Berjaya Air had surrendered through its tax return for YA 2013. The DGIR conducted an audit on Berjaya Land, and its aggregate income was subsequently reduced from RM14,628,484 to RM3,939,862. On 25 September 2014, Berjaya Air revised its group relief form (Form RK-S) after Berjaya Land's aggregate income was reduced due to the audit. The claimants remained the same, but the amounts surrendered to each claimant were revised.

The amount of loss surrendered to Berjaya Land was revised to RM3,939,862 whilst the amount surrendered to the taxpayer was revised to RM12,360,338. On 29 September 2014, the taxpayer submitted a revised tax computation, tax return and Form C (RK-T) together with an application for relief under Section 131(1) of the ITA to revise the adjusted loss claimed from the original amount of RM1,684,688 to RM12,360,338. The DGIR rejected the application on the basis that the irrevocable election had been made by Berjaya Air, Berjaya Land, and the taxpayer to fulfil the conditions of group relief under paragraph 44A(2)(a)(iv) of the ITA.

Taxpayer's argument:

The taxpayer revised the losses claimed due to the DGIR's audit on Berjaya Land, whereby the first claimant's chargeable income was reduced. Revising the amount of loss claimed was based on their erroneous belief that the taxpayer was entitled to claim up to a maximum amount of RM1,684,688 from Berjaya Air. The DGIR has allowed Berjaya Land to deduct expenditures incurred in rendering management services. As such, the aggregate income of Berjaya Land was reduced, which eventually affected the taxpayer's utilisation of the balance of the loss.

DGIR's argument:

The DGIR argued that Berjaya Air as the surrendering company, Berjaya Land as the first claimant and the taxpayer as the second claimant were bound to the whole contents of irrevocable election made in their tax returns under Section 44A(2)(iv) of the ITA. Thus, the irrevocable election includes the amount of adjusted loss being surrendered and claimed. Consequently, they had no option to revise the amount of adjusted loss. The audit findings that resulted in Berjaya Land's income being reduced did not constitute error or mistake within the meaning of Section 131(1) of the ITA. The group relief was a conscious and deliberate act by all parties, carried out despite the knowledge that an audit was being conducted on Berjaya Land at the material time.

Issues:

- Whether a surrendering company and a claimant company who have made an irrevocable election respectively under Section 44A(2)(iv) of the ITA may subsequently revise the amount of adjusted loss that have been surrendered and claimed.
- Whether there is any error or mistake on the part of the taxpayer that justifies the application for relief under Section 131(1) of the ITA.

Decision:

The Court of Appeal (COA) unanimously upheld the HC's decision and dismissed the DGIR's appeal. The COA held that the claimant had not revoked the irrevocable election but merely making adjustment on the amount to be set off. [*Note: In summary, the HC allowed the taxpayer's appeal against the SCIT's decision and held that the taxpayer is entitled to claim the excess of surrendered loss under Section 44A and Section 131(1) of the ITA.*]

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

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12. KPHDN v Ultimate Reserves Sdn Bhd (COA)

HASiL has recently uploaded a case report, "KPHDN v Ultimate Reserves Sdn Bhd (COA)" on its website.

Facts:

This is an appeal by the DGIR against the decision of the HC on 10 September 2021 allowing the taxpayer's appeal against the decision of the SCIT on 18 May 2017. The main issues are whether the dump truck, workshop equipment, canopy diesel generator set, heavy machinery and other assets (steel deck road weighbridge, recondition cummins generator set, airman used air compressor) are eligible for reinvestment allowance (RA) claim.

The taxpayer's principal business activities being running a quarry, concrete and armac premix plant operations, contract works and cultivation of oil palm. The taxpayer has claimed the items under the category 'plant and machinery' in its *Elaun Pelaburan Semula* (EPS) form for YAs 2009 and 2010. The DGIR has disallowed the taxpayer's claim for RA under Schedule

7A of the ITA for all the items since they were not used for the purpose of manufacturing activity as defined in Paragraph 9, Schedule 7A of the ITA. These items were used after the manufacturing stage i.e., to facilitate shipment and transportation. The additional assessments have been raised and notices of additional assessment have been issued against the taxpayer for YAs 2009 and 2010. The taxpayer appealed against the additional assessments by way of Form Q before the SCIT.

Taxpayer's argument:

The taxpayer has alleged that the SCIT's findings are incorrect in law and the claimed items are part of the manufacturing activities. The taxpayer's claim is under the qualified project in expanding and / or modernising the taxpayer's existing business in the quarry and asphalt activities which involves manufacturing and supplying the quarry and asphaltic products for construction of roads and other constructing activities. The taxpayer has also alleged that the SCIT has misconstrued Paragraph 1(a) and Paragraph 8(a), Schedule 7A of the ITA and agreed with the HC's decision that the plant and machinery must be used for the 'existing business' in respect of manufacturing of a product or any related product within the same industry.

DGIR's argument:

The taxpayer has failed to prove that the items claimed were used in the manufacturing activity to produce the product of quarry operation and asphalt / premix / asphaltic concrete and has failed to prove it being 'qualified project' under Paragraph 8(a), Schedule 7A of the ITA. Quarry production process starts with site cleaning, drilling, and exploding the quarry to obtain the raw material i.e., rock, stones, and sandstone combination, which are the end-product. The claimed items are for transportation and transferring the rocks. Whereas in the asphaltic production process, it starts at processing, weight bitumen and raw material, mixing it in the mixing pan and producing the end-product i.e., asphaltic concrete / premix / black aggregate stone / bitumen. The claimed items under RA are used to load, deliver, or transfer the products to the site project. The taxpayer also claimed RA on machines used at the project sites for works done and levelling roads, which is after the completion of manufacturing or after the stones or asphalt are produced. The definition of manufacturing excludes "any activity to facilitate shipment and transportation" as stated in Part (gg), Paragraph 9, Schedule 7A of the ITA. Besides, the taxpayer has failed to prove the increase of volume of production as claimed in the EPS Form under "purpose" i.e., expansion and diversifying on plant and equipment which increase the volume of production, before the project and with the project.

Issue:

Whether the plant and machinery were used in manufacturing activities of a qualifying project for RA purpose.

Decision:

The COA has unanimously agreed and decided to uphold the SCIT's decision that the claimed items were not eligible for RA and the claim for plant and machineries are no longer an integral part of the manufacturing of a product. The DGIR's appeal is allowed with no order as to cost.

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

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13. Merimen Online Sdn Bhd v KPHDN (COA)

HASiL has recently uploaded a case report, "Merimen Online Sdn Bhd v KPHDN (COA)" on its website.

Facts:

The taxpayer filed an appeal against the decision of the HC on 12 January 2023 and the deciding order of the SCIT made on 4 July 2018 dismissing the taxpayer's appeal on the assessments for the YAs 2009-2016. [*You may refer to Deloitte Malaysia Tax Espresso – August 2023 for our report on the HC's decision.*]

The taxpayer was granted Multimedia Super Corridor (MSC) status effective from 31 July 2008. It was issued with a MSC Status Certificate, signed by the Minister of International Trade and Industry (MITI) [now known as the Minister of Investment, Trade and Industry] and the Minister of Finance (MOF). The MSC status entitled the taxpayer to a 100% tax

exemption should it be granted with pioneer status i.e., the MOF Exemption. The taxpayer also received pioneer status under Section 6(1AB) of the Promotion of Investments Act 1986 (PIA) effective from 31 July 2008 until 30 July 2013, which was later extended to 30 July 2018. On 29 October 2012, the taxpayer notified the DGIR of its stance and requested a ruling from the DGIR. Pending the DGIR's confirmation / ruling, the taxpayer filed its tax returns for the YAs 2009-2013 on the basis that 100% of its statutory income was not taxable in pursuant to its interpretation of Section 21C of the PIA and the MOF Exemption. On 11 March 2014 (17 months later), the DGIR replied that only the value-added income of the taxpayer was exempted based on the proviso in Section 21C of the PIA. The taxpayer disagreed with the DGIR's stand.

Taxpayer's argument:

The taxpayer argued that inflation-adjusted base income was not the taxpayer's income, and it is not taxable. The taxpayer argued that it was entitled to the 100% tax exemption pursuant to Section 21C of the PIA since the taxpayer fulfilled the criteria in its proviso that the exemption applies to a company "that is already operating in Malaysia". Nothing in the entire PIA or ITA suggested that "inflation-adjusted base income" constituted a taxable income.

DGIR's argument:

The DGIR submitted that tax had to be paid on the inflation-adjusted base income, as Section 21C of the PIA provided that only the value-added income would be exempted. Section 21C of the PIA clearly provided that the value-added income would be exempted from income tax during the pioneer period.

Section 21C(2A) of the PIA defined the terms "value-added income" and "inflation-adjusted base income" for the purpose of Section 21C. According to Section 21C(2A)(a) of the PIA, "value-added income" means the statutory income for the basis period for the YA less the "inflation-adjusted base income" while Section 21C(2A)(b) of PIA provided the formula in determining the "inflation-adjusted base income". Section 21C(2) of the PIA and Section 21C(2A) of the PIA provided a clear guidance in ascertaining the taxpayers' income that would be exempt from income tax under the ITA. The proviso provided further clarification that there should not be any dispute in reaching a correct amount of exempted income under the PIA. The grounds of the SCIT and the HC clearly held that there was no ambiguity to the proviso in Section 21C(2) of the PIA.

The DGIR submitted that it was proven from the facts of the case that the taxpayer had been negligent in submitting and preparing its tax returns for YAs 2009 and 2010. The taxpayer submitted its tax return for YA 2009 out of prescribed period. The taxpayer had also been negligent in wrongly declaring its income pursuant to the PIA for YA 2009.

The taxpayer had clearly submitted incorrect returns for YAs 2009 to 2013 resulted in the imposition of penalty under Section 113(2) of the ITA. The imposition of penalty for YAs 2009 to 2013 are justified and correct after taking into consideration of all relevant facts and circumstances on the issues relating to the case.

Issue:

- Whether the taxpayer's income (within the ambit of the pioneer status) during the pioneer period for YAs 2009 to 2016 is value-added income pursuant to the PIA.
- Whether the notices of additional assessment for the YAs 2009 and 2010 are time-barred.
- Whether the DGIR is correct in imposing penalties under Section 113(2) of the ITA for the YAs 2009 to 2013.

Decision:

The COA unanimously agreed with the taxpayer's submission and ruled that the appeal be allowed with cost of RM10,000 payable by the DGIR to the taxpayer, setting aside the HC's decision and the SCIT's deciding order and findings. [*Note: In summary, the HC dismissed the taxpayer's appeal and held that the SCIT did not misdirect itself in law and had correctly interpreted Section 21C of the PIA. The SCIT was correct in holding that the DGIR was not time barred. The taxpayer was negligent and had submitted incorrect returns.*]

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

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14. Yayasan Buah Pinggang Kebangsaan Malaysia v DGIR (HC)

HASiL has recently uploaded a case report, "Yayasan Buah Pinggang Kebangsaan Malaysia v DGIR (HC)" on its website.

Facts:

The taxpayer, National Kidney Foundation (NKF), is a registered charitable foundation which had been granted tax exemption status under Section 44(6) of the ITA in 1970. Following a compliance audit, the exemption was revoked via a letter dated 17 June 2020 due to alleged non-compliance with conditions, particularly concerning a points system introduced in 2019. The taxpayer contended that these conditions were not originally imposed or communicated, thus rendering the revocation arbitrary.

The subject matter of the taxpayer's judicial review application is the revocation of the taxpayer's tax exemption status granted under Section 44(6) of the ITA in which the taxpayer contended that it was made by the DGIR via its letter dated 17 June 2020 and assessments raised on 22 June 2020 for the YA 2017 and 2018.

Taxpayer's argument:

The taxpayer contended that the revocation of its tax exemption status under Section 44(6) of the ITA by the DGIR was procedurally flawed and unlawful. The tax exemption status, granted in 1970 without conditions, was revoked following a 2019 audit based on a newly introduced and uncommunicated points system. The taxpayer argued that this retroactive imposition was arbitrary and lacked a statutory basis, violating legitimate expectations. The taxpayer asserted that the DGIR's letter dated 17 June 2020 represents the final, reviewable decision, as the earlier letters were merely preliminary. Additionally, they challenged the DGIR's authority under Section 148 of the ITA to impose new conditions without legislative procedures.

DGIR's argument:

In response, the DGIR submitted that the revocation of the taxpayer's tax exemption status under Section 44(6) of the ITA was lawful and justified due to multiple breaches of conditions. The DGIR argued that the judicial review application was time-barred, as the decision was made on 29 August 2019 and reaffirmed on 25 November 2019, with the letter dated 17 June 2020 merely confirming the decision. The application was filed on 17 September 2020, which has exceeded the three-month period to make an application under Order 53 Rule 3(6) of the Rules of Court 2012. The DGIR further submitted that there were several compliance failures, including operating profit-driven dialysis centres, inadequate financial aid, unauthorised constitutional changes, poor financial transparency, and offering external nursing training. The DGIR asserted its authority to impose conditions, including a points system, as necessary regulatory measures under Section 148 of the ITA.

In addition, the DGIR submitted that the taxpayer had omitted material facts, particularly the letter dated 29 August 2019, misleading the court, and violating the duty of full disclosure. The DGIR contended that the revocation was proportionate, given repeated warnings and continued non-compliance, making the action necessary rather than excessive. Therefore, the DGIR concluded that the judicial review application should be dismissed on procedural and substantive grounds.

Issue:

Whether the revocation of the tax exemption status granted under Section 44(6) of the ITA was legally justified or constituted an arbitrary imposition of new, uncommunicated conditions by the DGIR.

Decision:

The HC dismissed the preliminary objection by the DGIR and was satisfied that there was unreasonableness and / or illegality to warrant this court to allow the taxpayer's application for judicial review. The HC ordered an order for Certiorari to quash the DGIR's decision in the form of a letter dated 17 June 2020, withdrawing the taxpayer's tax exemption status under Section 44(6) 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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