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HASiL e-Invoice Industry Specific FAQs, Gazette Orders, Public Rulings, Tax Cases and more

March 2024

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Greetings from Deloitte Malaysia Tax Services

Quick links:

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Inland Revenue Board of Malaysia

Takeaways:

1. Income Tax (Deduction for Investment in a BioNexus Status Company) (Amendment) Rules 2024 [*P.U.(A) 23/2024*]
2. Income Tax (Exemption) Order 2024 [P.U.(A) 37/2024] in relation to an IDR Status Company
3. Income Tax (Determination of Approved Individual and Specified Year of Assessment under the Returning Expert Programme) (Amendment) Rules 2024 [*P.U.(A) 45/2024*]
4. HASiL – Implementation of e-Invoice - Industry Specific FAQs for Telecommunication, e-Commerce and Petroleum Operations
5. HASiL – Public Ruling No. 1/2024 – Investment Tax Allowance – Promoted Product Under the Manufacturing Sector
6. MUSB v DGIR (SCIT)
7. Yap Mun Yue v DGIR (HC)
8. PSB v DGIR (SCIT)
9. KRKB v DGIR (SCIT)
10. NSB(MR) & NSB(MK) v DGIR (SCIT)
11. Tan Nyok Chin v Collector of Stamp Duties (HC)

Important deadlines:

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

1. Income Tax (Deduction for Investment in a BioNexus Status Company) (Amendment) Rules 2024 [*P.U.(A) 23/2024*]

P.U.(A) 23/2024 was gazetted on 30 January 2024 and came into operation on 1 January 2023.

Amendment

The Principal Rules i.e., Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016 [*P.U.(A) 306/2016*] is amended to further extend the tax incentive for investment in BioNexus status companies. The tax incentive will apply to qualifying investments made from 1 January 2023 to 31 December 2024.

Please refer to *P.U.(A) 23/2024* for full details.

Back to top

2. Income Tax (Exemption) Order 2024 [*P.U.(A) 37/2024*] in relation to an IDR Status Company

P.U.(A) 37/2024 (the Order) was gazetted on 2 February 2024. The Order came into operation on 24 October 2013 except for items 3(e) and 7 of the Schedule, which came into effect on 1 January 2021, and item 6 of the Schedule, which is deemed to have come into operation on 1 November 2016.

Exemption

A company with Iskandar Development Region (IDR) status is exempted from income tax in respect of statutory income derived from qualifying activities. This exemption is equivalent to 100% of the qualifying capital expenditure incurred by the IDR status company during the basis period for that year of assessment (YA). The terms "IDR status company", "Qualifying activity" and "Qualifying capital expenditure" are elaborated further in the Order.

The above exemption is subject to a written application made by the IDR status company that is received by the Minister through the Iskandar Regional Development Authority on or after 24 October 2013 but not later than 31 December 2024. The exemption shall be for a period of 5 consecutive years commencing from the date of the first qualifying capital expenditure incurred by the IDR status company as determined by the Iskandar Regional Development Authority.

Please refer to *P.U.(A) 37/2024* for full details.

Back to top

3. Income Tax (Determination of Approved Individual and Specified Year of Assessment under the Returning Expert Programme) (Amendment) Rules 2024 [*P.U.(A) 45/2024*]

P.U.(A) 45/2024 (Amendment Rules) was gazetted on 7 February 2024.

The Amendment Rules amend the Principal Rules [Income Tax (Determination of Approved Individual and Specified Year of Assessment under the Returning Expert Programme) Rules 2012 – *P.U.(A) 151/2012*] by substituting the words "31 December 2023" with the words "31 December 2027" in Paragraph 4(b).

This means that the deadline for an approved individual to make an application under the Returning Expert Programme for the Minister's approval to be subject to tax under Part XV of Schedule 1 of the Income Tax Act 1967 is extended until 31 December 2027 (previously it was extended up to 31 December 2023 by the *P.U.(A) 147/2021*).

Note*: The above amendment was to legislate the proposed extension of application for tax exemption under the Returning Expert Program (where successful applicants shall enjoy a fixed income tax rate of 15% on employment income for 5 consecutive years of assessment) for another 4 years as announced in Budget 2024. Applications must be received by Talent Corporation Malaysia Berhad from 1 January 2024 until 31 December 2027.*

Please refer to *P.U.(A) 45/2024* for full details.

Back to top

4. HASiL – Implementation of e-Invoice - Industry Specific FAQs for Telecommunication, e-Commerce and Petroleum Operations

The Inland Revenue Board of Malaysia (HASiL) has uploaded the following Industry Specific Frequently Asked Questions (FAQs) on its website:

- e-Invoice FAQs for Petroleum Operations (updated on 18 January 2024)
- e-Invoice FAQs for Telecommunication (updated on 22 December 2023)
- e-Invoice FAQs for e-Commerce Industry (updated on 22 December 2023)

Please refer to the respective FAQs for full details.

Back to top

5. HASiL – Public Ruling No. 1/2024 – Investment Tax Allowance – Promoted Product Under the Manufacturing Sector

HASiL has uploaded the Public Ruling (PR) No. 1/2024 on Investment Tax Allowance – Promoted Product Under The Manufacturing Sector dated 24 January 2024 on its website.

This PR provides an explanation regarding the investment tax allowance that can be applied by a company which participates or intends to participate in a business in the manufacturing sector. This allowance applies to the production of a promoted product that is listed in Malaysia, reinvestment in particular industries and selected industries, as well as high technology companies and small-scale companies.

The explanations in this PR do not cover the production of promoted products under the provisions of Sections 4A, 4B, and 4E of the Promotion of Investments Act 1986 (PIA).

Please refer to the PR No. 1/2024 for full details.

Back to top

6. MUSB v DGIR (SCIT)

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

Facts:

On 25 October 1994, the taxpayer acquired a piece of agricultural freehold land known as Holding No. 1410, Mukim of Tanjong Minyak, Melaka (the Property). On 15 October 2002, the taxpayer entered into a Joint Venture Agreement (JVA) with a property developer (SYL) with the intention to develop the Property. The Property was subdivided, and houses were built on the subdivided lots. Vide a letter dated 8 March 2005, SYL informed the taxpayer that the subdivision of the Property had been approved and attached a list of the sub-divided lots selected by SYL for the taxpayer, which amounted to 33 lots. In the YA 2018, the taxpayer had sold off 18 lots (the Lots) that it owned. The taxpayer contended that the gains they received from the sale of the Lots should be subjected to Real Property Gains Tax Act 1976 (RPGTA). The Director General of Inland Revenue (DGIR) was of the view that the elements of badges of trade were present and therefore, gains from the disposal of the Lots should be subjected to income tax as the taxpayer's business income under Section 4(a) of the ITA.

Taxpayer's argument:

The taxpayer contended that the elements of badges of trade do not exist. The Property was acquired as a long-term investment and it was sold to realise its investment. The taxpayer also contended that it is only a passive participant in the development of the Property because SYL is the one who would develop the Property based on the JVA, and SYL undertook the necessary approvals to complete the development of the Property.

DGIR's argument:

The DGIR contended that clear elements of badges of trade existed in the disposal of the Lots. In particular, the repeated sale of the Lots to respective third parties showed that the taxpayer intended to delve into the adventure of trade. The fact that the Property was subdivided into different lots, of which 33 of them were transferred to the taxpayer, and 18 were sold separately to third parties, showed that significant alterations were made to the Property to make it more saleable. The DGIR found that the intention to trade the Property had materialised since the Property was purchased by the taxpayer.

Issue:

Whether the Property was acquired by the taxpayer for investment purposes (where the disposal of the Lots is subjected to tax under the RPGTA) or for trading purposes (where the disposal of the Lots is subjected to tax under the ITA).

Decision:

On 24 November 2023, the Special Commissioners of Income Tax (SCIT) dismissed the taxpayer's appeal, and the Notice of Additional Assessment for YA 2018 is maintained. The taxpayer did not manage to prove that the Notice of Additional Assessment was erroneous and the DGIR had rightly imposed the penalty under Section 113(2) of the ITA against the taxpayer.

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

Back to top

7. Yap Mun Yue v DGIR (HC)

HASiL has recently uploaded a case report, "Yap Mun Yue v DGIR (HC)" on its website.

Facts:

The taxpayer is one of the shareholders of a real property company (RPC) with the shareholding of 400,000 units of shares. The taxpayer acquired the shares in two (2) tranches, i.e., 40 units of shares on 4 April 2013 and 399,960 units of shares on 25 March 2014 respectively. The 399,960 units of shares were acquired after the company became an RPC on 2 May 2013. On 23 December 2015, the RPC's shareholders entered into a Share Sale Agreement to dispose their respective shares at a consideration price of RM8,500,000. Following the disposal, the taxpayer filed Form CKHT 1B on 18 February 2016 and the DGIR issued an additional assessment vide Form KA on 11 September 2017 in relation to the disposal. Dissatisfied with the assessment, the taxpayer filed an appeal to the SCIT. The issue raised was whether the acquisition price of the 399,960 shares in the RPC on 25 March 2014 should be valued at the actual acquisition price of RM1.00 each or at the market value price.

On 1 November 2022, the SCIT dismissed the taxpayer's appeal and held that the acquisition price of the 399,960 shares by the taxpayer are to be valued at RM1.00 per share by virtue of Paragraph 34A(3)(b), Schedule 2 of the RPGTA and to be read with Paragraph 4, Schedule 2 of the RPGTA. The taxpayer then filed an appeal against the SCIT's decision and requested for the High Court's (HC) opinion on whether the decision of the SCIT is correct in law.

Taxpayer's argument:

The taxpayer contended that the SCIT had erred in law when the SCIT ignored the law under Paragraph 23, Schedule 2 of the RPGTA as two (2) of the shareholders in the RPC are connected persons, i.e., husband and wife. The taxpayer also contended that the RPC is a "controlled company" by virtue of Section 139 of the ITA. Therefore, the shares were acquired as a result of a transaction between connected persons and was otherwise made by way of a bargain at arm's length. The taxpayer further submitted that due to the given circumstances, the shares' value must follow the market value as required under Paragraph 9, Schedule 2 of the RPGTA. The price of RM1.00 per share is not an arm's length price.

DGIR's argument:

The DGIR submitted that in determining the acquisition price under Paragraph 34A(3)(b), Schedule 2 of the RPGTA, Paragraph 4(1), Schedule 2 of the RPGTA should apply to ascertain the acquisition price of the 399,960 unit of shares which had been allotted to the taxpayer. The DGIR submitted that the SCIT had correctly ruled the price of RM1.00 per share based on the documents and evidence adduced, which included Form 24 of the RPC, Financial Statements and Form CKHT 1B. To determine the value of shares in a company, the DGIR contended that the performance and outlook of the company should be examined, among other things.

Issue:

Whether the SCIT's decision (i.e., the acquisition price of the 399,960 shares in the RPC on 25 March 2014 should be valued at the actual acquisition price of RM1.00 per share) is correct in law.

Decision:

On 7 December 2023, the HC dismissed the taxpayer's appeal with costs of RM2,000.

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

Back to top

8. PSB v DGIR (SCIT)

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

Facts:

The taxpayer is wholly owned by PGEO Group Sdn Bhd whereas PGEO Group Sdn Bhd is wholly owned by Wilmar International Ltd, based in Singapore. Its principal business is investment holding, processing, and marketing of edible oil products and manufacturing of steel drums. In YA 2010, the taxpayer claimed reinvestment allowance (RA) under the category of expansion project on existing product and modernisation or automation project. The claim related to the cost of a factory building (Ace Solvent Fractional Plant), the cost of plant and machinery (Ace Solvent Fractionation Plant), and Neutralization Plant linked to Acetone Solvent Fractionation Plant to build a new plant. The taxpayer reported the sale to its related companies in Malaysia and outside Malaysia in their tax return forms for YAs 2011 and 2014. The DGIR disallowed the taxpayer's RA claim on the basis that the new plants did not amount to a qualifying project under Paragraph 8(a), Schedule 7A of the ITA. The DGIR also invoked Section 140A of the ITA for the YAs 2011 and 2014. These resulted in additional assessments raised for the YAs 2010, 2011 and 2014 (Assessments). Dissatisfied with the Assessments raised, the taxpayer filed Notices of Appeal against the assessments for the YAs 2010, 2011 and 2014.

Taxpayer's argument:

The taxpayer contended that the assessment for the YA 2010 was time-barred since the DGIR failed to raise it within five years. The DGIR failed to provide a reason to justify the invocation of his powers under Section 91(3) of the ITA. The DGIR had never alleged, substantiated, or proved any negligence on the taxpayer's part during the audit. Additionally, for the first time during the trial, the DGIR alleged that the taxpayer had been guilty of negligence in claiming RA. The new plants did enable the taxpayer to manufacture an existing product, i.e., Cocoa Butter Equivalent (CBE), and led to the increase of sales or turnover in value, sales quantity, production capacity, and utilisation of resources in manufacturing of CBE. Hence, it expanded the taxpayer's existing business in manufacturing and sale of edible oil (including CBE). Alternatively, the new plants also fulfilled the criteria to be a qualifying diversification project. Prior to year 2010, the taxpayer imported Shea Stearin from overseas to manufacture CBE. Furthermore, it was not stated in the ITA that a "backward integration project" could not be a qualifying diversification project under Schedule 7A of the ITA. The most recent Public Rulings No. 10/2020 and 10/2022 have also recognised that qualifying expansion projects include backward integration projects.

For the YAs 2011 and 2014, the taxpayer argued that no adjustment to the median was required when the taxpayer's result was already within the inter-quartile range (IQR) and the median was not a good determinant of arm's length pricing. When there was comparability defect, statistical tools such as interquartile range or other percentiles were used to narrow the range of figures to enhance reliability of the analysis. There was no comparability defect as the DGIR himself selected and agreed with the selection of seven comparable companies in the present case. For YA 2014, the taxpayer had suggested to the DGIR that weighted averages for the YAs 2012 to 2014 should be adopted to analyse YA 2014 due to several economic circumstances. The taxpayer's basis in using weighted averages for the YAs 2012 to 2014 to determine its result for the YA 2014 was due to a year-on-year analysis which showed that YA 2014 alone was not sufficiently reliable due to unforeseen economic and climate circumstances, such as the El Nino phenomena and the hike in unit price of electricity and natural gas as mentioned in Paragraph 3.62 of the OECD Guidelines 2010. During the trial, the DGIR's witness also admitted that if there was any comparability defect, an appropriate measure such as weighted averages should be used to minimise the risk of error.

DGIR's argument:

In response, the DGIR argued that the taxpayer claimed RA on disqualified items. The disallowed expenditure was negligently claimed by the taxpayer, resulting in less tax chargeability. If no audit was done by the DGIR, this would not have been discovered. The taxpayer also did not submit supporting documents to show that the production of CBE started as early as the year 2008 and failed to inform the DGIR during the audit that there was production of CBE before the year 2010. The DGIR had discharged his burden of proof that the taxpayer had committed negligence as envisaged under Section 91(3) of the ITA. Therein, the DGIR's action in raising the tax after the period of five years was valid. There was no express provision in the ITA which imposed a statutory duty on the DGIR to give reasons for lifting a time-bar or making any decision on tax assessments. In fact, the DGIR had given his reason in the first audit finding for rejecting the RA claim that the taxpayer's project did not come under the category of expansion. The new plants were not a qualifying expansion and did not enable the taxpayer to achieve expansion of an existing product as the taxpayer had not been producing Shea Stearin before the year 2010. Instead, the taxpayer imported them from overseas. The Shea Stearin was a semi-finished product and did not fall within the definition of the word "qualifying project" under Paragraph 8(a), Schedule 7A of the ITA. The taxpayer's existing product was CBE, yet the new plants were used to produce Shea Stearin and not for CBE. Furthermore, the taxpayer's reference to the Public Rulings No. 10/2020 and 10/2022 were totally irrelevant. It was not stated in the Public Ruling No. 2/2008 that the qualifying expansion projects would include backward integration projects.

The DGIR also contended that there was a comparability defect due to unavailable information on the business strategies of the comparable companies used by the taxpayer. Based on the benchmarking analysis by the DGIR, the taxpayer's result for the YA 2011 was below the median point and for the YA 2014, it was done outside the interquartile range of the comparable companies. Therefore, the transaction between the taxpayer and its related companies was not done at arm's length. The DGIR adjusted the median point after considering the comparability defect of the comparable companies regarding their business strategies, which did not comply with the comparability factors under the Transfer Pricing Rules 2012.

Issues:

1) Whether the new plants fell within the definition of qualifying project under Paragraph 8(a), Schedule 7A of the ITA and therefore, eligible for RA claim.

2) Whether the transaction between the taxpayer and its related companies was done at arm's length.

Decision:

On 15 December 2023, the SCIT held that the taxpayer had successfully discharged its burden of proof under Paragraph 13, Schedule 5 of the ITA in proving that the additional assessments and penalties raised by the DGIR were excessive and wrong. Therefore, the taxpayer's appeals were allowed and the Notices of Additional Assessments for the YAs 2010, 2011 and 2014 were set aside.

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

Back to top

9. KRKB v DGIR (SCIT)

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

Facts:

The taxpayer was a cooperative established on 21 January 2011 and enjoyed a five (5) years tax exemption under Paragraph 12(1)(a), Schedule 6 of the ITA. The taxpayer was first subjected to tax in February 2016. The taxpayer's main activity was running a pawnbroking business (*Ar-Rahnu*) through joint ventures and franchises. To carry out its business activity, the taxpayer established the Investment Fund 2 (TP2) and a written regulation (i.e., Investment Fund Regulation 2) was approved by the taxpayer. For the YA 2017, the taxpayer made a distribution of returns on members' investments amounting to RM392,194.50, based on the profits obtained through TP2. The taxpayer claimed the distribution of the Member's Return on Investment as an allowable expenditure under Section 33(1) of the ITA.

On 15 February 2021, the DGIR raised a Notice of Additional Assessment on the taxpayer for the YA 2017. The DGIR was of the view that the taxpayer was not eligible to claim the distribution of the Member's Return on Investment as an allowable expenditure under Section 33(1) of the ITA. During the tax exemption period, the taxpayer did not claim the distribution of the Member's Return on Investment as an expense. Instead, the taxpayer recorded the total return on the investment as a dividend payment to the members of the cooperative.

Taxpayer's argument:

The taxpayer argued that the expenditure incurred was not a dividend payment. The taxpayer stated that the expenditure incurred had the same meaning as 'interest' pursuant to Section 2(7) of the ITA. Therefore, the expenditure of RM392,194.50 was treated as interest for tax purposes. The expenditure had been recorded as "Return on Member's Investment" in the taxpayer's Audited Account for the YA 2017.

DGIR's argument:

The DGIR argued that the Member's Return on Investment was not a profit in lieu of interest as intended under Section 2(7) of the ITA. Although the TP2 transaction was carried out based on the *syariah* principle (i.e., *al-mudharabah*), the profit arising from the transaction was not a profit in lieu of interest because such a profit arising from *syariah*-based transactions under Section 2(7) of the ITA refers to *syariah* financing transactions which are an alternative to loan transactions based on conventional schemes. Therefore, the Member's Return on Investment was not an expense wholly and exclusively incurred in the production of gross income under Section 33(1) of the ITA.

Issue:

Whether the distribution of the Member's Return on Investment was a deductible expenditure under Section 33(1) of the ITA.

Decision:

On 18 December 2023, the SCIT dismissed the taxpayer's appeal and held that the taxpayer failed to prove its case as required under Paragraph 13, Schedule 5 of the ITA. The Notice of Additional Assessment raised by the DGIR was confirmed and upheld.

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

Back to top

10. NSB(MR) & NSB(MK) v DGIR (SCIT)

HASiL has recently uploaded a case report, "NSB (MR) & NSB (MK) v DGIR (SCIT)" on its website.

Facts:

The taxpayers' principal activities are general trading activities, mainly in managing several departmental stores. The taxpayers had written-off several debts as bad debts and claimed the bad debts written off as deductions against the gross income for the YA 2011. The debts were in existence since year 2008.

The DGIR disallowed the deductions claimed on the bad debts written off under Section 34(2) of the ITA and raised the Notices of Additional Assessment (Forms JA) for the YA 2011 for both taxpayers.

Taxpayers' argument:

The taxpayers referred to Section 34(2) of the ITA and the DGIR's Public Ruling No. 1/2002, which provide guidance of how a debt can be "reasonably estimated" as "irrecoverable". It was argued that the debts ought to be written off as bad debts, and should therefore be allowed as a deduction in the relevant YA as:

- three reminders were sent to the debtors between years 2008 to 2009;
- three of the debtors had ceased to carry on business since year 2011. Therefore, any legal action taken before the claims become statute-barred was not cost-effective;
- a Letter of Demand (LOD) was eventually sent to each debtor, where the LOD were issued three years after the debt occurred; and
- the amounts owed by the debtors were relatively small and any further action to pursue the debt was not cost-effective.

DGIR’s argument:

On the other hand, the DGIR contended that the said debts do not qualify for deduction against the gross income. The debts do not constitute bad debts as envisioned under Section 34(2) of the ITA because the taxpayers had not taken any effort to recover the said debts, and no legal action was taken to recover the said debts. Further, merely issuing LODs to the debtors to demand for a full payment within seven days after the debt had accumulated since 2008, was not regarded as a genuine and reasonable commercial consideration. The LODs were issued on 29 December 2011 and the debts were written-off on 31 December 2011 (two days after), which were prior to the expiry date stated in the said LODs. Moreover, with the absence of any documented evidence of reminder notices, substantive arbitration or negotiation proceeding of the disputed debts against the debtors, there was no evidence to show that the taxpayers had made any effort to recover the debts. Under these circumstances, the DGIR argued that the taxpayers had not taken all the reasonable steps available to recover the debts. Additionally, the taxpayers failed to provide a satisfactory and detailed explanation regarding the nature and particulars of the debts. The measure taken by the taxpayers to recover the debts by merely issuing the LODs three years after the debts had accumulated, is not a commercially feasible or prudent decision.

Issue:

Whether the debts ought to be written off as bad and allowed as deductions against the gross income under Section 34(2) of the ITA.

Decision:

The SCIT dismissed the taxpayers’ appeal and upheld the Forms JA for the YA 2011 raised by the DGIR against the taxpayers and further held that the DGIR was correct in law and facts to impose the penalty under Section 113(2) of the ITA.

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

Back to top

11. Tan Nyok Chin v Collector of Stamp Duties (HC)

HASiL has recently uploaded a case report, “Tan Nyok Chin v Collector of Stamp Duties (HC)” on its website.

Facts:

The Plaintiff’s husband died testate on 7 November 2019, leaving his last Will and Testament dated 25 April 2008 (Will) which included a land (the Land) to be distributed to the Plaintiff and their five (5) children (Children). By way of Deed of Settlement and Renunciation of the Inheritance (DSRI) dated 27 March 2023, all the deceased’s children renounced their rights and entitlements to the Land stipulated under the Will, resulting in the Plaintiff being the sole beneficiary of the Land. The Kuala Lumpur HC issued an order to vest (the Vesting Order) all shares of the Land to the Plaintiff and granted leave for the Plaintiff to execute the transfer of instrument to affect the vesting of the Land’s title. The Plaintiff submitted Form 14A dated 22 June 2023 (Form 14A) to the Defendant for adjudication. The Defendant issued a Notice of Assessment dated 13 July 2023, where a fixed stamp duty of RM10 was imposed on the 1/6 share of the Land and an ad valorem stamp duty of RM20,800 was imposed on the 5/6 share of the Land that was previously renounced by the Plaintiff’s children.

Plaintiff’s argument:

The Plaintiff argued that the transfer of 5/6 share of the Land vested to her pursuant to the Vesting Order and DSRI shall be subjected to a fixed stamp duty of RM10 under Item 32(i), First Schedule of the Stamp Act 1949 (SA) and should not be construed as a "gift" under Item 66(c), First Schedule of the SA. This is because at the time of renunciation by the other beneficiaries, the administration and distribution of the Will has yet to be completed. Since the other beneficiaries renounced their rights, interest, and entitlement to the Land, they did not and could not have any right or title to make/grant a gift to the Plaintiff. The Plaintiff contended that the principles enunciated in the Court of Appeal's case of Lee Koy Eng were applied to her case as there were striking parallel facts that could be drawn between them. The Plaintiff argued that the Defendant had misinterpreted the relevant principles and provisions of the law and erroneously imposed an ad valorem stamp duty on Form 14A based on Item 66(c), First Schedule of the SA.

Defendant's argument:

The Defendant submitted that on the last page of the Will, it was clearly stated that the estates were passed as gifts to the beneficiaries. Hence, the Court may take judicial notice that the property was gifted to the beneficiaries by the deceased. Inference can also be made that there was entitlement and rights of the property to the beneficiaries before the renunciation took place vide the DSRI. The Plaintiff's children voluntarily renounced and foregone their respective entitlement and rights of inheritance under the Will towards the Land by way of execution of DSRI to the Plaintiff as a sole beneficiary to administer the estate of the deceased and to vest all the shares. Thus, the DSRI was valid and enforceable to transfer the children's interest to the Plaintiff as agreed and granted her the entitlement to such rights that did not belong to her in the first place. The renunciation was also made to the Plaintiff in consideration for love and affection as clearly stated in Paragraph (b) of the DSRI, which constitutes a gift to the Plaintiff. Therefore, the renunciation was a conveyance that operates as a voluntary disposition inter vivos under Section 16 of the SA which leads to Item 46, First Schedule of the SA. As such, the adjudication of the Form 14A for the transfer of 5/6 of the Land attracts Item 66(c), First Schedule of the SA.

Issue:

Whether the adjudication of the Form 14A for the transfer of 5/6 share of the Land to the Plaintiff attracts a fixed stamp duty of RM10 under Item 32(i), First Schedule of the SA [conveyance or transfer which is not specifically charged with stamp duty] or an ad valorem stamp duty under Item 66(c), First Schedule of the SA [release or renunciation of property by way of a gift].

Decision:

On 31 January 2024, the HC dismissed the Plaintiff's Originating Summons with costs of RM6,000.

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

Back to top

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