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September 2021

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Quick links:

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Inland Revenue Board of Malaysia

Takeaways:

1. LFSA Circular on Additional Temporary Regulatory Relief Measures for Labuan Entities
2. PR 4/2021: Taxation of Income Arising from Settlements
3. Stamp Duty (Exemption) (No. 6) Order 2021 [P.U.(A) 328/2021]
4. Stamp Duty (Exemption) (No. 7) Order 2021 [P.U.(A) 329/2021]
5. Stamp Duty (Exemption) (No. 8) Order 2021 [P.U.(A) 333/2021]
6. Stamp Duty (Exemption) (No. 9) Order 2021 [P.U.(A) 334/2021]
7. Parkwood Palms Sdn Bhd v Pemungut Duti Setem (HC)
8. Opus International (M) Berhad v KPHDN (HC)
9. Tropical Land Property Sdn Bhd v KPHDN (HC)
10. MW Park Sdn Bhd v Collector of Stamp Duties (HC)
11. Ku Ek Mei v Pemungut Duti Setem, UTC Johor Bahru (COA)

Important deadlines:

Task	2021 Due Date	
	30 September	1 October
1. 2022 tax estimates for companies with October year-end		√
2. 6th month revision of tax estimates for companies with March year-end	√	
3. 9th month revision of tax estimates for companies with December year-end	√	
4. Statutory filing of 2021 tax returns for companies with February year-end	√	
5. Maintenance of transfer pricing documentation for companies with February year-end	√	
6. Deadline for 2021 CbCR notification for companies with September year-end	√	

1. LFSA Circular on Additional Temporary Regulatory Relief Measures for Labuan Entities

The Labuan Financial Services Authority (LFSA) has recently issued a Circular on Additional Temporary Regulatory Relief (TRR) Measures for Labuan Entities (dated 5 August 2021). Reference was made to the earlier circulars dated 9 April 2020, 18 November 2020, and 11 June 2021 on the provision of temporary regulatory reliefs (TRRs) for Labuan entities.

Based on the earlier circular on Further Extension of Regulatory Relief to Labuan Entities issued on 11 June 2021, LFSA has agreed to provide additional TRRs to facilitate the business operations of Labuan IBFC's players. The details and scope of the reliefs are provided in the Appendix of the Circular on Additional Temporary Regulatory Relief Measures for Labuan Entities (dated 5 August 2021). The TRRs will be effective from the date of the Circular.

The Circular also states that LFSA is closely monitoring the COVID-19 situation and will continue to support industry players in overcoming the economic challenges as the situation develops.

Please refer to the respective LFSA Circulars for full details.

Back to top

2. PR 4/2021: Taxation of income arising from settlements

The Inland Revenue Board of Malaysia (IRBM) has recently released Public Ruling (PR) No. 4/2021 to explain on the taxation of income arising from a settlement created by a person for the benefit of another person.

A person (settlor) may decide to create a settlement for the benefit of another person (beneficiary), i.e. a relative or any other person. Sometimes, although the settlor transfers his income and income-producing assets into a settlement, he may decide to retain the power to revoke the settlement or hold a significant measure of control or accessibility to the said income. A settlement may at times be used as a vehicle through which a settlor diverts either his income or capital to the beneficiary whose tax liability is at a lower rate as compared to that of the settlor.

Section 65 of the Income Tax Act 1967 (ITA) addresses the following circumstances where the **income arising under the settlement is deemed to be the income of the settlor and assessable on him**:

1) Settlement for an unmarried relative under 21 years of age [Section 65(1) of the ITA]

   Where a settlement is created either directly or indirectly for the benefit of a minor or a relative of the settlor, any income arising under the settlement from an income source or income-producing assets would be deemed as income of the settlor, and not income of any other person (beneficiary) when all of the following conditions are fulfilled:
   i) under the terms of any settlement;
   ii) during the life of the settlor;
   iii) any income of the settlement or asset representing it will, or may become payable or applicable to or for the benefit of any relative of the settlor; and
   iv) at the beginning of the basis period of the YA, that relative is unmarried and has not attained the age of 21 years.

2) Revocable settlement [Section 65(2) of the ITA]

   Where a settlement is made for any person and, if and so long as the terms of the settlement gives the settlor or any other person the power to revoke or otherwise determine the settlement or any provisions thereof:
   i) whether immediately or in the future; or
   ii) whether with or without the consent of any other person; and
   iii) when the settlor or spouse of the settlor will or may become beneficially entitled to the whole or any part of the property or the income comprised in the settlement upon revocation of the settlement,

   any income arising under the settlement is deemed to be the income of the settlor and subject to Section 45(2) of the ITA, and not income of any other person.

   Where the settlor or spouse will or may become entitled to the income or property of the settlement because the beneficiary predeceased the settlor, income from the settlement is not deemed income of the settlor.

3) Income arising from a settlement made use of by a settlor who controls the settlement [Section 65(3) of the ITA]

Where in a basis year for a YA, a settlor, relative, or company controlled by the settlor or relative:
i) makes use for his or its own purposes;
ii) whether by borrowing or otherwise;
iii) any income arising or of any accumulated income from a settlement to which he is not entitled,

the amount of income or of any accumulated income so made use of, would be deemed to be the settlor's income and not income of the beneficiary for the relevant YA.

If the beneficiary who is actually entitled to the income arising from the settlement has paid tax on the income, repayment will be made to him. This situation would arise when the income is deemed to be the income of the settlor.

If any question arises as to the amount of any payment of income or as to any apportionment of income or of statutory income in relation to settlements, the question is to be determined by the Director General of Inland Revenue (DGIR) and there is no appeal against the decision of the DGIR [Section 65(7) of the ITA].

The PR also covers the determination of the amount of income from the settlement which is deemed as the income of the settlor in settlement cases where trust is created; or where trust is not created, case of a settlement where there are 2 or more settlors, recovery of income tax paid by a settlor, etc. Please see PR 4/2021 for full details.

Back to top

3. Stamp Duty (Exemption) (No. 6) Order 2021 [P.U.(A) 328/2021]

P.U.(A) 328/2021 (the Order) was gazetted on 4 August 2021 and is deemed to have come into operation on 30 July 2020.

According to the Order:

1) Instrument of loan or financing agreement for the PENJANA Tourism Financing Facility approved under Bank Negara Malaysia's Fund executed between a participating financial institution and small and medium enterprises (SMEs), shall be exempted from stamp duty.

2) The stamp duty exemption shall only apply to the instrument of loan or financing agreement executed pursuant to a letter of offer issued by the participating financial institution on or after 30 July 2020 but not later than 31 December 2021.

3) The stamp duty exemption shall be subject to condition that the instrument of loan and financing agreement is accompanied by a letter of offer from the participating financial institution to the SMEs which states the approval of the loan or financing facility.

Please refer to the Order for full details.

Back to top

4. Stamp Duty (Exemption) (No. 7) Order 2021 [P.U.(A) 329/2021]

P.U.(A) 329/2021 (the Order) was gazetted on 4 August 2021 and is deemed to have come into operation on 1 September 2020.

According to the Order:

1) Instrument of loan or financing agreement for the PENJANA Tourism Financing Facility approved under Bank Negara Malaysia's Fund executed by Bank Negara Malaysia with the participating financial institution, shall be exempted from stamp duty.

2) The stamp duty exemption shall only apply if the instrument of loan or financing agreement is executed on or after 1 September 2020 but not later than 31 December 2021.

Please refer to the Order for full details.

Back to top

5. Stamp Duty (Exemption) (No. 8) Order 2021 [P.U.(A) 333/2021]

P.U.(A) 333/2021 (the Order) was gazetted on 12 August 2021 and is deemed to have come into operation on 2 February 2021.

According to the Order:

1) An instrument of loan or a financing agreement relating to the loan or financing facility executed between a small and medium enterprises (SMEs) and a financial institution is, on application, exempted from stamp duty.

2) The stamp duty exemption shall apply to the said instrument which is executed pursuant to a letter of offer issued by the financial institution on or after 2 February 2021 but not later than 31 December 2021.

3) The application for the stamp duty exemption shall be accompanied by a letter of offer from the financial institution to the SMEs which states the approval of the loan or financing facility.

Please refer to the Order for full details.

Back to top

6. Stamp Duty (Exemption) (No. 9) Order 2021 [P.U.(A) 334/2021]

P.U.(A) 334/2021 (the Order) was gazetted on 12 August 2021.

According to the Order:

1) An instrument of agency agreement for the Special Relief Facility, Targeted Relief and Recovery Facility and Disaster Relief Facility 2021 approved under the Bank Negara Malaysia's Fund for small and medium enterprises executed between Bank Negara Malaysia and Credit Guarantee Corporation Malaysia Berhad are exempted from stamp duty.

2) The stamp duty exemption shall apply to the instrument of agency agreement for the Special Relief Facility, Targeted Relief and Recovery Facility and Disaster Relief Facility 2021 which is executed not later than 31 December 2021.

Back to top

7. Parkwood Palms Sdn Bhd v Pemungut Duti Setem (HC)

Issues:

1) Whether the market value of the land determined by the duty payer's private valuer or the market value determined by Jabatan Penilaian Dan Perkhidmatan Harta, Johor Bahru (JPPHJB), was more accurate.

2) Whether the Collector's decision to impose stamp duty based on JPPHJB's valuation was correct.

Decision:

The High Court (HC) allowed the appeal on the following grounds:

- The valuation report by JPPHJB had been compromised as it did not meet the criteria in the application of the comparison method in respect of time and location (vicinity).

- The omission by JPPHJB in acknowledging unfavourable surroundings was evidence that due consideration was not given to relevant factors in arriving at the proper market value. Thus, the valuation was not consistent with trite principles of law and flawed.

- By reference to Section 60 of the Evidence Act 1950 and as established by cases, it is imperative for the person who expressed his opinion in the report, to be cross-examined. The report by JPPHJB was explained by a witness who had no knowledge of the matter and was not involved in the report.

- The duty payer's valuation report by its private valuer reflected the most accurate market value of the land.

Back to top

8. Opus International (M) Berhad v KPHDN (HC)

Issues:

1) Whether the DGIR had successfully discharged the burden of proof as required under Section 91(3) of the ITA;

2) If the answer to Issue (1) was in the affirmative, whether the DGIR had any legal basis to bring the payment for the project management fee (PMA) amounting to RM19,473,324.13 to income tax in YA 1999; and

3) Notwithstanding Issues (1) and (2), whether the DGIR was correct in law to impose penalty under Section 113(2) of the ITA.

Decision:

The HC upheld the decisions made by the Special Commissioners of Income Tax (SCIT) on all issues, and dismissed the taxpayer's appeal with the following grounds of judgement:

Issue 1

- The HC was of the considered opinion that the SCIT did not make any error in law in ascertaining the meaning of 'negligent' in the context of the ITA. The word 'negligent' is not defined in the ITA. Where the words of an Act of Parliament are not defined in the Act itself, it is permissible for the courts to ascertain the ordinary meaning of the words or phrase by reference to the dictionary. In Noor Jahan bte Abdul Wahab v. Md Yusoff bin Amanshah & Anor [1994] 1 MLJ 156, Justice Edgar Joseph JR SCJ stated that although dictionaries were not to be taken as authoritative exponents of the meaning of the words used in the Acts of Parliament, it is a well-known rule that words should be taken to be used in their ordinary sense. The SCIT had accepted the definition of negligence in Black's Law Dictionary, Eight Edition, which is 'the failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation'.

- The SCIT had made a finding of fact that the taxpayer was entitled to receive the PMA fee of RM80,971,764.14 as at 31 December 1998. But the taxpayer only received RM61,449,600.00, leaving a balance of RM19,473,324.13, which they only received vide the Invoice No. ST 2019 dated 24.12.1999 and Invoice No. ST 2069 dated 6.4.2000. The SCIT had also made a finding of fact that the balance of RM19,473,324.13 was not for post construction works*****, but the amount was for works already done, which could only be ascertained upon the finalisation of the Linkedua (Malaysia) Bhd and the taxpayer's account. Therefore, since the PMA fee of RM80,971,764.14 was realised for service rendered in 1998, then the same should be recognised in YA 1999 (basis period 1998) . *[***Note:** The taxpayer had declared the two (2) payments totaling RM19,473,324.13 as income for the YA* 2000 *(preceding year basis).]*

  The HC was of the considered opinion and agreed with the SCIT that the taxpayer's failure to do the correction by recognising the income that should be recognised in YA 1999 (basis period 1998) was negligence, and fell within Section 91(3) of the ITA. The HC agreed with the findings of the SCIT that the taxpayer had committed negligence when the taxpayer failed to make amendments to the actual recognition of income for YA 1999 when the account was finalised in 2000. In addition, the taxpayer was also negligent in not reporting its actual income in accordance with Section 24(1)(b) of the ITA, thereby causing losses to the tax collection in YA 1999.

- Based on the findings of facts, the SCIT found that the DGIR had discharged their burden of proof that the taxpayer had committed negligence as envisaged by Section 91(3) of the ITA. Therefore, the HC agreed with the SCIT's conclusion that the DGIR's action in raising the tax after the period of 6 years was valid.

Issue 2

- The SCIT had made a finding of fact that the payment of RM19,473,324.00 was for services rendered in the year 1998. This sum was part of the PMA fees of RM80,971,764.14, based on 7% of the Final Construction Cost of RM1,148,155,045.00. Therefore, the sum of RM19,473,324.00 should have been recognised and declared for the YA 1999.

- The SCIT did not accept the taxpayer's contention that the sum of RM19,473,324.00 was for services rendered in 1999 and 2000 respectively. The SCIT found that the taxpayer had failed to provide proof of this claim, and instead made a finding that this sum was part of the PMA fees based on the Final Construction Cost after the finalisation of the Linkedua account. Added to that, the SCIT had also made a finding of fact that the services provided by the taxpayer in years 1999 and 2000 was for additional services, involving management fees of RM552,071.00 that was recognised in YA 2000.

- Therefore, the HC found that based on Section 24(1)(b) of the ITA, the taxpayer should have filed an amended Return Form for YA 1999, recognising the actual PMA fees based on the actual final cost after the finalisation of the account.

Issue 3

- The taxpayer had filed an incorrect return and had given incorrect information which justifies the DGIR to invoke his discretion in imposing the penalty. The DGIR only ascertained the incorrect return after the audit. The balance sum of RM19,473,324.00 should have been recognised and declared for the YA 1999 and the failure of the taxpayer to file an amended return for YA 1999 amounted to the taxpayer maintaining its filing of an incorrect return.

  The taxpayer also submitted that they had acted in good faith, made full disclosure, and that the matter arose as a result of a technical adjustment. The SCIT, however, did not accept that the matter arose out of a technical adjustment. The SCIT had accepted the letter from the taxpayer's tax adviser that the total revised PMA fee was RM80,971,764.14, that the total PMA fee billed up to December 1998 was RM61,449,600.00 and the balance of the PMA fee unbilled amounting to RM19,522,164.14 (RM80,971,764.14 - RM61,449,600.00) was apportioned to the financial year after FY 1998 up to the finalisation of the Malaysia-Singapore Second Crossing project account. Therefore, the duty was on the taxpayer to declare and file an amended return form for YA 1999 with regard to the balance of the PMA fees under Section 24(1)(b) of the ITA.

- With regard to the issue of 'good faith' in Section 113 of the ITA, the Court of Appeal (COA) in Syarikat Ibraco Paremba Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2015] 10 CLJ 114, had held that 'good faith' was not relevant where the DGIR had exercised his discretion under Section 113(2) of the ITA, and the same position was taken by the COA in Sri Binaraya Sdn Bhd (supra).

  In the present case, since there was no prosecution against the taxpayer under Section 113(1) of the ITA, and that the penalties were imposed under Section 113(2) of the ITA, then the issue of whether the mistake in the tax returns were made in good faith was not relevant. Therefore, with regards to Issue (3), the HC was of the considered opinion that the DGIR's imposition of penalties on the taxpayer under Section 113(2) of the ITA was correct in law, as the DGIR has the discretion to impose the same in accordance with the law.

Back to top

9. Tropical Land Property Sdn Bhd v KPHDN (HC)

Issue:

Whether the taxpayer's application for leave to commence judicial review (JR) proceedings and for a stay order against the notices of additional assessment for the YAs 2017 and 2018, both dated 10 July 2020 issued by the DGIR should be allowed.

Decision:

The HC granted the taxpayer's leave for JR, together with an interim stay, with the following grounds of judgement:

*[**Note:** The DGIR raised notices of additional assessments for the YAs 2017 and 2018 to disallow the deduction of RM4,958,871.35 incurred by the taxpayer through contributions paid to the Johor State Government to obtain approval for*

the release of Bumiputera lots in its development projects for sale to non-Bumiputera buyers. The taxpayer, a property development company, had claimed deduction of the expenditure under Section 33(1) of the ITA.]

The Law — Adversely Affected

- Order 52, rule 2(4) of the Rules of Court 2012 states that any person **adversely affected** by a decision of any public authority shall be entitled to make an application for JR. The Federal Court case of *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145* held that this had to do with that person's "real and genuine interest in the subject matter".

- The cases, amongst others, of *QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532*, and *Flextronics Shah Alam Sdn Bhd v KPHDN [2018] 7 CLJ 487* affirmed that the courts had to adopt a flexible approach when deciding if and when an applicant was indeed "adversely affected".

Threshold for Leave is Low

- It is trite law that the threshold for leave is low, with the sole question to be asked at the leave stage being whether or not the application is frivolous.

- The fact that the taxpayer's expenditure of RM4,958,871.35 was disallowed by the DGIR and consequently, the taxpayer had to pay tax and penalties on that expenditure, was, without doubt, evidence that the taxpayer was, in fact, "adversely affected" by the DGIR's decision in disallowing the expenditure to be deducted from the taxpayer's taxable income.

- The taxpayer's grounds for challenging the additional notices issued in respect of the relevant expenditures mentioned above was based on the decisions of the HC in the following cases. In *Prima Nova Harta Development Sdn Bhd v KPHDN, Rayuan No. WA-14-7-12/2019*, the HC reversed the decision of the SCIT and another decision by a different HC in *Sovereign Teamwork (M) Sdn Bhd v KPHDN (WA-14-1-01/2020)*, the respective HCs decided that such expenditures as incurred by the taxpayer were deductible. Although the DGIR had filed an appeal against both the above decisions, nevertheless, those decisions still stand as good law until and unless reversed by the COA.

- The main submission by the DGIR against the taxpayer's application was that there was an alternative remedy by way of an appeal to the SCIT. Therefore, it was not open to the taxpayer to apply for JR. However, this objection had been addressed by numerous cases in the COA and the other HCs. The COA in *Teh Huat Hong v Perbadanan Tabung Pendidikan [2015] 3 AMR 35* decided as follows, *"It was not necessary to go into the merits of the case at the* ***leave stage*** *because the threshold to establish whether the leave should be granted is very low…".* Additionally other cases such as *Majlis Perbandaran Pulau Pinang v Syarikat Serbaguna Sungai Gelugor [1999] 3 MLJ 1 (FC)* and *QSR Brands Bhd* v *Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532, also decided that the existence of a domestic remedy should only be considered and decided upon **at the merits stage** of the proceedings, and not at the leave stage.

- The taxpayer submitted that the HC should grant an interim stay to preserve the status quo, as the implementation of the DGIR's decision would result in significant liabilities which would adversely affect the taxpayer's cash flow position. Therefore, the HC was satisfied that the taxpayer had established special circumstances to justify the granting of an interim stay until the disposal of the JR application.

For the foregoing reasons, the HC granted leave for JR together with an interim stay application by the taxpayer.

Back to top

10. MW Park Sdn Bhd v Collector of Stamp Duties (HC)

Issue:

Whether the ad valorem duty applicable in determining the stamp duty imposed on the Memorandum of Transfer (MOT) shall be based on:

i) the date of the Sale and Purchase Agreement (SPA) which was on 21 August 2018; or
ii) the date of the MOT which was on 24 December 2018; or
iii) the date when the MOT was submitted to the Collector of Stamp Duty for adjudication which was on 2 January 2019.

Decision:

The HC dismissed the appeal by the appellant on the following grounds of judgement:

- It was very clear from Section 12A of the Stamp Act 1949 (SA) and the Federal Court case of Chin Choy & Ors v Collector of Stamp Duties {1979} 1 MLJ 69, that the date for determining the market value of any property shall be the date when the instrument of transfer was executed. Once the market value was ascertained, then ad valorem duty will be imposed according to Item 32(a) of the First Schedule of the SA. There is nothing in Section 12A of the SA which provide that the rate of stamp duty that should be imposed shall be in accordance with the date of the execution of SPA or MOT.

  The HC cannot presume that because the MOT was dated 24 December 2018 then ad valorem duty to be charged shall be in accordance with that date. Such a position cannot be made about tax matters without any clear and explicit provision. The HC has no power to add or subtract any word in Section 12A of the SA.

- The responsibility of the Collector was to assess the stamp duty that should be imposed under Section 36 of the SA i.e., *"All instruments chargeable with duty and executed by any person in Malaysia (except an instrument which by virtue of Section 47 cannot be stamped after execution)* ***shall be brought to the Collector and the Collector shall assess the duty****, if any, with which in his judgment the instrument is chargeable."*

  The word "duty" has been defined as *"any stamp duty for the time being chargeable under this Act or under any written law"*. Based on the interpretation of the word "duty" it was clear that the stamp duty that can be imposed must be a duty which was in force at the time. The MOT was submitted for adjudication on 2 January 2019. Pursuant to the Finance Act 2018 [Act 812], amendments to the rate of duty made for Item 32(a) of the First Schedule of the SA was effective from 1 January 2019. Therefore, when the Collector assessed the stamp duty, he must use the rate in force at that time (i.e. on 2 January 2019). The HC found that the ad valorem duty in force on 1 January 2019 used in determining the stamp duty of the MOT was in order.

- Although the appellant in the appeal had executed the MOT on 24 December 2018, the appellant failed to submit it for adjudication to the Collector in the same year, 2018. If the appellant had submitted an application in 2018, the appellant would not be required to pay an additional stamp duty of RM67,000.00. Risk of delay in submitting MOT must be borne by the appellant himself. Effective 1 January 2019 the stamp duty rate under Item 32(a) of the First Schedule of the SA has been changed. As the appellant submitted the application for adjudication of MOT on 2 January 2019, it was appropriate that the ad valorem duty applicable at that time was applied for stamp duty purposes.

- If stamp duty should be imposed on the date the instrument of transfer was executed it must be clearly stated in the Act, as provided in Section 52(2) of the SA which reads: *"No instrument executed outside Malaysia and relating to any property situate, or to any matter or thing done or to be done, in any part of Malaysia shall, except in the circumstances mentioned in subsection (1), be given in evidence or referred to or used in any manner in any proceedings in any Court or before any tribunal, board, commission, committee or similar body by whatever name called, established under any written law,* ***unless it is duly stamped in accordance with the law in force in that part of Malaysia at the time when it was first executed relating to stamp duty which would have been chargeable on any such instrument*** *if it had been executed in that part of Malaysia.*

  In Section 52(2) of the SA, it is clearly stated that stamp duty shall be assessed in accordance with the duty applicable at the time the instrument is executed.

- The appellant also referred to the Stamp Duty (Remission) (No. 2) Order 2018 when applying for the stamp duty rate in 2018 to be used for the MOT. The Remission Order was made following the amendment to Item 32(a) of the First Schedule of the SA which came into effect on 1.1.2019 through the Finance Act 2018. The purpose of the Remission Order was to remit stamp duty of 1% on instruments of transfer having a property value in excess of one million ringgit (RM1,000,000.00) and up to two million five hundred thousand ringgit (RM2,500,000.00).

  The Remission Order did not apply to the MOT submitted by the appellant because the market value of the property was RM7,700,000.00.

- In conclusion, the HC found that the Notice of Assessment dated 17 January 2019 issued by the Collector was in line with the provisions of the SA and in order. The applicable ad valorem duty which determined the imposition of stamp duty on the MOT should be based on the date the MOT was submitted to the Collector for adjudication, i.e. on 2 January 2019. Stamp duty payable shall be according to the rate in force at that time (i.e. 2 January 2019). The Remission Order was not applicable to the appellant in the appeal. Therefore, the appellant's appeal is dismissed by the HC.

Back to top

11. Ku Ek Mei v Pemungut Duti Setem, UTC Johor Bahru (COA)

Issues:

1) Whether there was a failure to refund the excess payment made by the duty payer on the stamp duty on transfer of the first subject lot and the second subject lot, that is, RM14,250 and RM18,900, respectively; and

2) Whether there was a failure to apply the correct principle of law as to what constituted the comparable method of valuation of the properties.

Decision:

The COA allowed the appeal of the duty payer subject to allocatur and set aside the Order of the HC on the following grounds:

- Based on the authorities in *Collector of Stamp Duties v Ng Fah In & Ors [1981] 1 MLJ 288*, *Setia Usaha Tetap Kementerian Pelajaran v Collector of Land Revenue, Butterworth [1972] 2 MLJ 155* and *Malakoff Bhd v Pemungut Hasil Tanah Seberang Perai Utara, Butterworth [2005] 1 CLJ 365*, it was the sales evidence of the actual price that had to be used as the comparable, the prices paid for such sales were qualified by the common rider "subject to making allowances for all the circumstances". Thus, evidence of sales involving similar lands was not the sole criterion. There were other factors that the Collector had to consider as enunciated by the Federal Court in *Ng Tiou Hong v Collector of Land Revenue, Gombak [1984] 2 MLJ 35 (Ng Tiou Hong)*.

- The Valuation and Property Services Department (JPPH) applied the comparable valuation method as reflected in the JPPH Valuation Report, which contained the particulars of the comparables relied on by the JPPH. However, in arriving at "the fair value per square metre" in determining the market value of the properties, the Judicial Commissioner (JC) did not specify "the differing factors" to which "the necessary upward and downward adjustments" were made.

- The JC did not consider the duty payer's argument of why the value RM220 per square metre should not be used to determine the market value of the first subject lot. Therefore despite referring to *Ng Tiou Hong*'s case, and agreeing that the JPPH had used the comparable method of valuation, the learned JC erred in holding that the JPPH had used due care and diligence in arriving at the market value of the first subject lot and failed to apply the principle established in the Federal Court authority of "the prices of sales of similar lands in the neighbourhood or locality and similar quality and positions" which was binding on her by the doctrine of stare decisis. From the analysis of the 5 comparables, in so far as Lot Perbandingan 1.1 was concerned, there was no percentage of adjustment made to the value per square metre vis a vis the comparable factors. Going by the decisions in *Ahmad Zahri bin Mirza Abdul Hamid v Aims Cyberjaya Sdn Bhd [2020] 1 LNS 494 (FC)* and *MMC Oil & Gas Engineering Sdn Bhd v Tan Bock Kwee & Sons Sdn Bhd [2016] 2 MLJ 428 (CA)*, the stamp duty had to be assessed based on the market value of RM1.1 million.

- The duty payer conceded that the JPPH Valuation Report was more accurate than the Collector's Valuation Report. There was merit in the submission as it was visually evident from the Common Plan For Comparables in respect of the second subject lot that in terms of the land use and the date of transaction, prices of sales of similar lands in the neighbourhood or locality, that the more appropriate comparable lot would be Lot Perbandingan 2.2. Regarding the second error, that JPPH had used the wrong figure, the JC had erred for the same reasons, and the market value of the second subject lot ought to be RM8,301,252.86.

- It was mandatory for the Court to order any excess payment of stamp duty that had been paid to be refunded as explicitly provided under Section 39(4) of the SA. Assuming the learned JC was correct in her decision, the learned JC should have invoked Section 39(4) of the SA to order the refund because of the excess payment.

  However, based on the COA's finding that there had been an erroneous assessment of the stamp duty payable by the duty payer based on the market value of the properties, the COA ordered that the refund of excess stamp duty shall be made by the Collector after making the necessary adjustments to the computation based on the COA's assessment of the market value of the 2 properties.

Back to top

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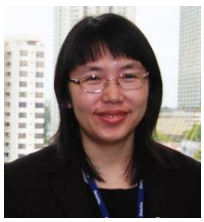

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