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Practice Note, Guidelines, Tax Cases and more

April 2025

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Greetings from Deloitte Malaysia Tax Services

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Deloitte Malaysia
Inland Revenue Board of Malaysia (IRBM)

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	Task	Deadline	
		30 April 2025	**1 May 2025**
1.	**2026 tax estimates for companies with May year-end**		√
2.	**6th month revision of tax estimates for companies with October year-end**	√	
3.	**9th month revision of tax estimates for companies with July year-end**	√	
4.	**11th month revision of tax estimates for companies with May year-end**	√	
5.	**Statutory filing of 2024 tax returns for companies with September year-end**	√	
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1. IRBM – Access control function for company director / organisation administrator representatives in MyTax

The Inland Revenue Board of Malaysia (IRBM) has informed that, starting from 18 January 2025, the IRBM has provided the control to set the function of the company director / organisation administrator representatives in MyTax.

1) The access limit and corresponding functions of new representatives can therefore be set as follows:

Access limit	Details
Tax	Representatives are allowed to access and perform taxation-related functions only
MyInvois	Representatives are allowed to access and perform MyInvois-related functions only
Tax and MyInvois	Representatives are allowed to access and perform both taxation-related and MyInvois-related functions.

2) For existing representatives, the access limit will be automatically set as follows:

Appointment in MyTax	Appointment in MyInvois	Accessible function(s)
Appointed before 1 July 2024	Has a role in MyInvois	Tax and MyInvois
Appointed between 1 July 2024 to 18 February 2025	Has a role in MyInvois	MyInvois
Appointed before 18 February 2025	No role in MyInvois	Tax

3) The company director / organisation administrator representatives can update the access control at any time.

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2. FAQ on e-CKHT

The IRBM has recently uploaded frequently ask questions (FAQ) on the electronic submission of RPGT return (e-CKHT) (available in Bahasa Malaysia only) on its website.

Effective 1 January 2025, submission of RPGT returns electronically to the IRBM via e-CKHT on the MyTax portal is **mandatory**, in line with the implementation of self-assessment system for real property gains tax (RPGT).

The FAQ provides clarification on the responsibilities of a disposer and an acquirer, as well as the appointment of lawyer / tax agent, in reporting gains from the disposal of chargeable assets in Malaysia to the IRBM starting from 1 January 2025. The FAQ also addresses several common issues relating to e-CKHT.

	Return forms	Details	Deadline for submission of return forms
Disposer	CKHT 1A	Disposal of real property	Within 60 days from disposal date *Note: Pay tax within 90 days from the disposal date using the bill number generated on the confirmation of receipt of CKHT 1A / 1B [Applicable for disposals in year of assessment (YA) 2025 onwards].*
	CKHT 1B	Disposal of real property company (RPC) shares	
	CKHT 3	Notification under Section 13(6) of the Real Property Gains Tax Act 1976 (RPGTA) – Disposals not subject to tax or exempt from payment of tax	
Acquirer	CKHT 2A	Acquisition of real property / RPC shares	Within 60 days from the disposal date *Note: Remit payment under Section 21B of the RPGTA within 60 days from the disposal date using the bill number generated on the confirmation of receipt of CKHT 2A.*

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3. Practice Note No. 1/2025 – Tax treatment on the acceptance of donations or contributions

On 24 March 2025, the IRBM uploaded the Practice Note No. 1/2025 - Tax treatment on the acceptance of donations or contributions on its website to provide clarification regarding the tax treatment of donations or contributions received by any "person". The definition of a “person” under Section 2 of the Income Tax Act 1967 (ITA) includes “a company, body of persons, a limited liability partnership and a sole proprietorship”.

In general, donations or contributions received by a person are meant for raising funds to carry out specific objectives. These persons are generally institutions, organisations, or funds (IOFs) that are established not for the purposes of profit i.e. without any commercial purpose, but with the objectives of carrying out activities for the public interest or providing contributions to the public for charitable purposes.

Currently, there are no specific provisions in the ITA regarding the tax treatment of donations or contributions received. Therefore, the existing scope of charge of income tax applies to such IOFs. The scope of charge under Section 3 of the ITA states that income tax is charged for each YA upon the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. Therefore, donations or contributions received by these IOFs fall within the scope of chargeability to tax if the receipts have the characteristics of income or if the elements of badges of trade exists such as:

- Income is received repeatedly;
- Income flows from source of income; and
- Income is received in the ordinary course of business.

Donations or contributions may be subject to income tax if:

- The recipient of the donations or contributions is engaged in business; or
- The donations or contributions received are used to increase revenue and to sustain its business activities.

These IOFs can apply for approval under Section 44(6) of the ITA if they fulfil the specified eligibility criteria. If an IOF is approved under Section 44(6) of the ITA, the income received by the IOF is exempt from tax pursuant to Paragraph 13(1)(a), Schedule 6 of the ITA. Applications for approval under Section 44(6) of the ITA must be submitted with complete supporting documents to the Tax Policy Department, IRBM. The Guidelines for Approval by the Director General of Inland Revenue under subsection 44(6) of the ITA can be accessed through the website (Available in Bahasa Malaysia only). [*You may refer to Deloitte Malaysia Tax Espresso – October 2024 for our report on the Guidelines.*]

Please refer to the Practice Note No. 1/2025 - Tax treatment on the acceptance of donations or contributions for full details.

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4. MIDA Guideline for the application of tax incentive for Smart Logistics Complex (SLC)

In the National Budget 2025, the Government has announced the Smart Logistics Complex incentive to propel Malaysia's logistics sector towards Industry 4.0 readiness and empower businesses to achieve greater efficiency and competitiveness, reinforcing Malaysia’s position as a regional logistics hub.

Smart Logistics Complex (SLC) is a modern facility that utilises technology to optimise and automate various warehouse operations. In summary, the SLC aims to integrate advanced systems such as the Internet of Things (IoT), Artificial Intelligence (AI), Radio Frequency Identification (RFID) and automated material handling equipment to enhance efficiency, reduce costs, and improve overall supply chain performance.

Eligible company may now submit its application for the SLC Incentive to the Malaysian Investment Development Authority (MIDA) until 31 December 2027.

Qualifying conditions

- The company must be incorporated under the Companies Act 2016 and resident in Malaysia.

- Companies applying for the SLC incentive must provide at least one (1) of the logistics services from the qualifying activities as follows:

Types of logistic services	Details
Regional Distribution Center (RDC)	Collection and consolidation centre for finished goods, components and spare parts produced by its own group of companies for its own brand to be distributed to dealers, importers or its subsidiaries or other unrelated companies within or outside the country. Among the activities involved are bulk breaking, repackaging and labelling.
Integrated Logistics Services	End-to-end logistics services, including warehousing, transportation, freight forwarding, distribution, other value-added services (i.e., product assembly / installation, consolidation, procurement, quality control, and supply chain management).
Dangerous Goods Storage	Safe warehousing, handling, and storing of any goods classified as dangerous goods approved by the Government of Malaysia.
Cold Chain Facility	Operation of a facility designed and equipped to store and handle perishable food products within the designated temperature.

- The built-up area of the smart warehouse complex must be at least 30,000 square meters.

- The company must incur fixed asset investment (excluding land) as proposed for the construction of the smart warehouse complex within the incentive period.

- The Company must incur an adequate amount of operating expenditure annually, as proposed, throughout the tax incentive period. This operating expenditure shall include local services for insurance, legal, banking, ICT and transportation. However, this amount shall not include the cost of goods sold, depreciation, interest on borrowings and expenses not directly involved in the company's proposed activities.

- The smart warehouse complex facilities must be equipped with at least three (3) enabling elements technologies under Industry 4.0 as follows:
  - Big data analytics
  - Cloud computing
  - Augmented reality
  - Cybersecurity
  - Artificial intelligence
  - Additive manufacturing
  - System integration
  - Simulation
  - Internet of Things
  - Autonomous robot
  - Advanced materials

- The smart warehouse complex must adopt at least one (1) of these following green technologies for its facility as follows:
  - Renewable energy such as solar, biomass, biogas, mini hydro, geothermal and wind energy
  - Energy efficiency equipment or technologies
  - Rainwater Harvesting System
  - Green Building certified via Green Building Index (GBI) or Malaysian Carbon Reduction and Environmental Sustainability Tool (MyCREST), or GreenRE rating tools

- At least 80% of the company's full-time employees shall be Malaysians. Employment of foreign workers (Including workers engaged through outsourcing) is subject to the current prevailing policy.

- The company must conduct internship programs related to the field of management and / or administration of the SLC facility.

- The number of staff at the managerial, technical and supervisory level which are directly employed by the company shall consist of at least 20% of the company's overall manpower with a minimum monthly salary of RM7,000.

- The company must conduct technical training programs for the Malaysian employees who are directly employed by the company.

- The company must appoint local contractors as the main contractor for the construction of the smart warehouse complex. A local contractor means a company incorporated under the CA and resident in Malaysia with at least 51% Malaysian equity.

- The company must use local seaports and/or airports and/or local transportation services for import and export transactions.

- The company must establish partnerships with at least three (3) locally owned logistics companies to carry out the integrated logistics activities for the purpose of enhancing the capabilities of the respective companies. The company is encouraged to establish this partnership with small and medium-sized Bumiputera companies. Locally owned logistics company means a company incorporated under the CA and resident in Malaysia with at least 60% Malaysian equity.

- Other conditions related to the incentive shall be imposed by the National Committee on Investment (NCI) upon the incentive's approval.

Eligible companies

- New or existing company investing in smart warehouses to carry out qualifying logistics services as specified in the qualifying conditions.

- Only one company within the same group is eligible to be considered for the incentive.

- Related companies undertaking the same SLC activity are not eligible for this incentive. Related company has the same meaning assigned to it under Section 2 of the Promotion of Investments Act, 1986.

Business model	Details
SLC Model 1 – Investor and operator	A company which invests in smart warehouses and carry out qualifying logistics services / activities as specified in the qualifying conditions.
SLC Model 2 – Operator	A company which leases smart warehouse with a minimum term of 10 years to carry out qualifying logistics services as specified in the qualifying conditions.

Mechanism of tax incentive

The incentive is to be provided under the Income Tax (Exemption) (No.12) Order 2006 [PU(A) 113/2006], and to be considered by the National Committee on Investments (NCI).

Companies are eligible for an income tax exemption equivalent to investment tax allowance of 60% on the qualifying capital expenditure incurred within a period of 5 years. This allowance can be set off against 70% of the statutory income of the approved business for each YA. Any unutilised allowances can be carried forward until fully absorbed.

Application

Companies must submit the incentive application to MIDA before the commencement of its proposed project. Commencement of business is deemed to occur when the company issued its first sales invoice for the proposed SLC project.

The period of eligible capital expenditure can be backdated up to three (3) years from the date of application but must not be earlier than 1 January 2023 or the end date of the previous tax incentive (if any), whichever is later.

Applications should be made online at https://investmalaysia.mida.gov.my and received by MIDA **from 1 January 2025 to 31 December 2027**.

Please refer to the MIDA Guideline for the application for tax incentive for Smart Logistics Complex (SLC) for full details.

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5. Silverdrum Corporation Sdn Bhd v DGIR (COA)

The IRBM has recently uploaded a case report, "Silverdrum Corporation Sdn Bhd v DGIR (COA)" on its website.

Facts:

This is an appeal made by the taxpayer against the decision of the High Court (HC) on 16 June 2021.

Issues:

1) Whether the sale of sublots 43 and 58 of Imperiale Residence Project Phase 2 to the taxpayer's directors were made at arm's length and thereby not caught under Sections 140(1) and 140(6) of the ITA.

2) Whether the taxpayer may claim deductions under Section 33(1) of the ITA for provisions of stamp duty and conversion premium.

3) Whether the Director General of Inland Revenue (DGIR) was correct in imposing the penalty in the sum of RM197,216.13 on the taxpayer under Section 113(2) of the ITA.

Taxpayer's argument:

The taxpayer argued that the HC had erred in law by failing to apply the judicial precedent laid down in the case *of Ketua Pengarah Hasil Dalam Negeri v Rainforest Heights Sdn Bhd (Rainforest Heights)*. In the case of *Rainforest Heights*, it was held that the sale to shareholders / directors with a discount of 10% did not fall under Section 140(6) of the ITA. It was further argued that since the valuation by the Valuation and Property Services Department (JPPH) had been rejected by the Special Commissioners of Income Tax (SCIT) which preferred the valuation made by a private valuer, the SCIT and the HC must amend the assessment to reflect the market value in that valuation. As for the claim for deduction on the estimated amount of stamp duty and conversion premium, the taxpayer relied on the case of *Exxon Chemical Malaysia) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* to justify that these provisions were deductible. It was argued that the expenses were incurred once the agreement for sale was signed, as the taxpayer would be under an obligation to pay to the relevant authorities. Further, the taxpayer argued that the imposition of penalty under Section 113(2) of the ITA was unjustified because the taxpayer had relied on the advice of the tax agent in preparing the tax return.

DGIR's argument:

The DGIR argued that the facts of *Rainforest Heights* were distinguishable. In the instant appeal, the valuation by the JPPH revealed a discount of more than 35% being given to the directors. Even the market value provided by the private valuer had exceeded 30% indicating that the purchase price was undervalued. The transaction in *Rainforest Heights* was also found by the SCIT to be commercially justified, unlike the present case where no reason had been provided to justify the high discount given to the directors. For the second issue, it was not disputed that the stamp duty and conversion premium may be claimed as a deduction. However, the payments were statutory payments and thus, the obligation to pay only arose when a demand was made by the statutory authorities. The SCIT and the HC were correct in holding that no obligation existed at the time the deduction was claimed. Thus, the DGIR had correctly exercised its discretion in imposing the penalty under Section 113(2) of the ITA.

Decision:

The Court of Appeal (COA) upheld the decisions of the SCIT and the HC and dismissed the taxpayer's appeal.

[*In summary, the HC in affirming the SCIT's deciding order held that the SCIT had not committed any error in their facts finding that the taxpayer had given incorrect return by understating its income on the sale of the two sublots which were not made at arm's length and also on the deduction of provisions for stamp duty and conversion of land premium as these were yet to be incurred during the relevant period or YA. These formed the basis for the imposition of the penalty.*]

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

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6. AIA Berhad v KPHDN (HC)

The IRBM has recently uploaded a case report, "AIA Berhad v KPHDN (HC)" on its website.

Facts:

The taxpayer filed an application for leave to commence Judicial Review (JR) under Order 53 of the Rules of Court 2012 for an order of certiorari to quash the decision of the DGIR via notices of additional assessment for the years of assessment (YAs) 2015, 2016 and 2017, and 2018 and 2019, via two suits respectively.

Taxpayer's argument:

The taxpayer submitted that the DGIR had excluded the investment-linked fund from the computation of tax on the actuarial surplus. The taxpayer argued that the DGIR had decided that there was no surplus that has been transferred from the investment-linked fund to the shareholders' fund.

The taxpayer further argued that the DGIR had misinterpreted the scope and intent of Section 110B of the ITA and the Income Tax (Set-Off For Tax Charged On Actuarial Surplus) Rules 2008 (Set-Off Rules), consequently posing incorrect questions to themselves, where neither Section 110B of ITA nor the Set-Off Rules has authorised the DGIR to segregate the investment-linked fund from the investment operating fund or the standard non-participating life insurance fund. The taxpayer also asserted that the presence of alternative recourse should not bar its JR application before the HC where it was also argued that the DGIR's decision to ignore the investment-linked fund from the calculation of tax under the Set-Off Rules warrants the HC's intervention.

DGIR's argument:

The DGIR argued that the ITA provided a statutory right of appeal to the SCIT. The DGIR argued that the main issue in this case was about the tax raised based on the set off for tax charged on actuarial surplus under Section 110B of ITA. There was a dispute on whether there is a transfer of actuarial surplus from the life fund to the shareholders' fund, where from the DGIR's view the amount of transfer is nil based on the tax calculation. Although the taxpayer had given their own account on the calculation of the surplus, there was no reason given why it was not reflected in the tax calculation. Hence, the amount of actual surplus that could be claimed by the taxpayer was a question of fact that need to be ventilated before the SCIT.

The DGIR further submitted that the issues of interpretations of tax law were very technical in nature as they involved the determination of facts and should be determined by the SCIT based on the documentary evidence. The JR application was not the right remedy for the taxpayer to quash the assessments that were raised by the DGIR.

Issue:

Whether the taxpayer had an arguable case and the application for leave to commence JR was not frivolous.

Decision:

On 19 February 2025, the HC dismissed the JR application with cost of RM3,000 for each suit and held that issues involving question of facts must be ventilated before the SCIT.

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

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7. TSB v KPHDN (SCIT)

The IRBM has recently uploaded a case report, "TSB v KPHDN (SCIT)" on its website.

Facts:

The taxpayer is in the business of cultivation of oil palm. On 30 December 2009, taxpayer was assigned all rights, title, interest, liabilities, duties and obligation for planted forest under LPF/0035 by RSB. RSB acquired the rights under LPF/0035 from RHSB on 30 December 2009. The LPF/0035 was granted by Kerajaan Negeri Sarawak to RHSB on 22 March 2004 which the license ends on 21 March 2064. On 20 February 2017, the taxpayer transferred the development costs under the license, biological assets, commercial rights and all fixtures and fitting back to RSB.

Taxpayer's argument:

The taxpayer argued that they are not in the business of trading of agricultural rights. The disposal merely transferred the rights under LPF/0035 and did not constitute a trading transaction. The disposal should be considered as capital transaction and not a trading activity as the taxpayer had no intention to trade or profit seeking motive from the disposal. The agricultural rights were held for investment purposes to generate income but due to extenuating circumstances, it warranted the disposal of the said agricultural rights.

DGIR's argument:

The DGIR had contended that the disposal of the rights under LPF/0035 is a disposal of Simunjan Plantation. The DGIR emphasised that Simunjan Plantation were established under LPF/0035 which has been disposed of by the taxpayer on 20 February 2017 for an amount of RM75,206,616. The DGIR submitted that the rights under LPF/0035 actually come together with a portion of land of approximately 15,580 (revised to 15,017) hectares. Therefore, it was a trading receipt taxable under Ssection 4(a) of the ITA. The disposal of rights as claimed or contended by the taxpayer was a disposal of land under LPF/0035. The DGIR further submitted that the disposal of the Simunjan Plantation under LPF/0035 by the taxpayer was an adventure in the nature of trade based on the following factors:

- the taxpayer has the intention to gain profit from the disposal of the Simunjan Plantation under LPF/0035;
- the subject matter of the transaction is Simunjan Plantation under LPF/0035;
- the treatment of the account;
- the period of ownership of the Simunjan Plantation under LPF/0035;
- the alteration/maintenance of the Simunjan Plantation under LPF/0035 to render it more saleable; and
- the methods employed in disposing of the Simunjan Plantation under LPF/0035.

Therefore, the DGIR submitted that the disposal of Simunjan Plantation under LPF/0035 had fulfilled the elements of badges of trade. Hence, the gain from the disposal is subject to tax under Section 4(a) of the ITA.

Issue:

- Whether the gains arising from the taxpayer's disposal of the agricultural rights under LPF/0035, amounting to RM75,206,616, are taxable as capital gains under the RPGTA or as trading income under Section 4(a) of the ITA.
- Whether the penalty imposed on the taxpayer for the YA 2017 under Section 113(2) of the ITA is correct.

Decision:

On 10 January 2025, the SCIT held that the taxpayer had successfully proved its appeal as required under Paragraph 13, Schedule 5 of the ITA. The SCIT found that the disposal of agricultural rights is a capital transaction as the agricultural rights were held for investment purposes with no intention to trade. The SCIT ruled that the notice of assessment for the YA 2017 is to be set aside.

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

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8. KYH v DGIR (SCIT)

The IRBM has recently uploaded a case report, "KYH v DGIR (SCIT)" on its website.

Facts:

The taxpayer, acting as the administrator of the Estate of MR (Sole Proprietor) appealed against the assessments raised by the DGIR for the YAs 2012, 2014, and 2015 (all dated 28 February 2018) through Forms Q dated 19 June 2019. The amount paid to the Client's Account (to off-set against the money siphoned by a former employee) and the interest paid on the loan were claimed as deduction under Section 33(1) of the ITA by the taxpayer. However, the DGIR found that these expenses claimed by the taxpayer should not be allowed as deduction under Section 33(1) of the ITA.

Taxpayer's argument:

The taxpayer contended that such expenses should be allowed under Section 33(1) of the ITA based on the Public Ruling No. 4/2012 "Deduction for Loss of Cash and Treatment of Recoveries" which states that the "loss of cash caused by theft, defalcation or embezzlement by an employee is allowable as it arises directly from the necessity of delegating certain duties of the business to employee".

DGIR's argument:

The DGIR asserted that the general test on the deductibility of expenditure under Section 33(1) of the ITA states that all outgoings and expenses must be incurred "wholly and exclusively" in the production of gross income during the relevant period. In addition, the deductibility of the expenses must also not be prohibited under Section 39 of the ITA. The embezzlement by the taxpayer's employee was not "wholly and exclusively" incurred in the production of the taxpayer's income and the supporting documents produced by the taxpayer could not substantiate the claims. The money in the Client's Account was money belonging to the taxpayer's clients and not for the taxpayer's business. The Client's Account was not taxable under Section 4(a) of the ITA. Only after the legal fees were credited into the Office Account will it be recognised as the taxpayer's business income. Such business losses can only be treated as ordinary commercial principles if they were not capital in nature. The loss of cash caused by theft, defalcation or embezzlement is generally allowable as a deduction in computing the adjusted income of business, provided that such loss is incidental to the business carried on. However, in this case, such loss was not incidental to the business carried out by the taxpayer as the type of loss and repayments made by a solicitor to reimburse the Client's Account (which had been siphoned by an employee) were not expenses incurred in the production of income. Moreover, based on the case of *Ketua Pengarah Hasil Dalam Negeri v Bar Malaysia (supra)*, the documents and information of the taxpayer's Client's Account were protected by solicitor-client privilege and could not be made available to the DGIR.

Issue:

Whether the amount paid to the Client's Account (to off-set against the money siphoned by a former employee) and the interest paid on the loan by the taxpayer were deductible under Section 33(1) of the ITA.

Decision:

On 10 January 2025, the SCIT allowed the taxpayer's appeal and held that the taxpayer had successfully proved its appeal as required under Paragraph 13, Schedule 5 of the ITA. The SCIT ruled that the Notices of Assessment for the YAs 2012, 2014 and 2015 are to be set aside.

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

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9. PPMEP v DGIR (SCIT)

The IRBM has recently uploaded a case report, "PPMEP v DGIR (SCIT)" on its website.

Facts:

The taxpayer is a company incorporated in Indonesia and engaged in exploration and production of petroleum. The taxpayer entered into several agreements with PTTEP and PCSB for the exploration and production of petroleum in Sabah and Sarawak offshore.

Pursuant to the Production Sharing Contracts (PSCs), all parties are required to contribute funds to the PSCs Operator to facilitate the operation of the PSCs. Subsequently, the funds shall be transferred to the Escrow Account and be kept by the PSCs Operator. Where such deposits generated interest, these will be allocated to the respective partners based on a pro-rata basis. In view of Section 4B of the ITA, Paragraph 2 of Article 11 of the Double Taxation Agreement between Malaysia and Indonesia (the DTA) and the amending Protocol to the DTA, the taxpayer brought the interest income to tax at the rate of 10% for the relevant YAs. On the other hand, the DGIR subjected the taxpayer's interest income to tax at the rate of 25% for YA 2015 and 24% for YAs 2016 to 2018 according to Paragraph 2, Schedule 1 of the ITA.

Taxpayer's argument:

The taxpayer contended that it was not negligent in filing of its tax return (Form C) for YA 2015 as it has filed its Form C on time under Section 77A(1) of the ITA. Although the audited financial statement was unsigned during the time of filing, the information provided was still accurate and complete as the taxpayer's Form C was filed based on the parent's company consolidated audited accounts which were signed and audited. The taxpayer also contended that it was not negligent as it sought some advice from professional tax agent and had given full cooperation to the DGIR during the tax audit. The assessment raised by the DGIR for YA 2015 is therefore time barred.

On the issue of tax rate, the taxpayer argued that as the interest income arising from the Escrow Account is a passive income, Paragraphs 1 and 2 of Article 11 of the DTA shall apply, and the relevant tax rate is 10%.

DGIR's argument:

The DGIR asserted that the taxpayer was negligent in relation to its tax return for YA 2015 as the taxpayer failed to prepare its Form C based on the audited account as envisaged under Section 77A(4) of the ITA. The purpose and intent of Section 77A(4) of the ITA is to require a company to submit its Form C based on the audited accounts. It is also a mandatory requirement for the taxpayer to comply with all conditions stipulated under Section 77A of the ITA. Further, it was also admitted during trial by the taxpayer that there was no audited financial statement available for YA 2015 when the Form C was filed. As such, the taxpayer's act in filing its Form C based on the draft audited financial statements is tantamount to an act of negligence.

On the issue of interest income, the DGIR has referred to Paragraph 2(b), Article 5 of the DTA in determining the taxpayer's permanent establishment in Malaysia. Based on the facts, the taxpayer is a non-resident company and has a permanent establishment in Malaysia by having a local Malaysian branch. As the income received by the taxpayer was interest received from the Joint Venture Operating Account (JVA), the DGIR firstly referred to Paragraph 7, Article 11 of the DTA where it states that Paragraphs 1, 2 and 3, Article 11 of the DTA shall not apply "*if the beneficial owner of the interest, being a Resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment*".

Therefore, Article 7 of the DTA shall apply as the profits of an enterprise of a contracting state shall be taxable only in that state unless the enterprise carries on business in the other state through a permanent establishment situated therein. In accordance with that, the DGIR asserted that the determination of the taxpayer's tax rate ought to be based on Section 6(1)(a) of the ITA, specifically Part I, Schedule 1 of the ITA. The DGIR was of the view that the interest income derived from the JVA is effectively connected to the taxpayer's business as the interest income was used by the taxpayer to finance the operation of its business. As the taxpayer does not fall within the ambit of Paragraph 2A, Schedule 1 of the ITA, the applicable rates of 25% and 24% as mentioned under Paragraph 2(1)(a), Schedule 1 of the ITA are therefore applicable.

Issues:

- Whether the taxpayer was negligent in filing its tax return (Form C) for YA 2015.
- Whether the interest income received by the taxpayer should be taxed as business profits under Article 7 (prevailing tax rate under Paragraph 2(1)(a), Schedule 1 of the ITA applies) or non-business income under Article 11(1) of the DTA [tax rate of 10% under Article 11(2) of the DTA applies].

Decision:

On 27 February 2025, the SCIT held that the taxpayer failed to discharge its burden of proof under Paragraph 13, Schedule 5 of the ITA, and that the DGIR has the legal and factual basis to impose penalties under Section 112(3) and 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.]

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10. CCH v DGIR & TBC v DGIR (SCIT)

The IRBM has recently uploaded a case report, "CCH v DGIR & TBC v DGIR (SCIT)" on its website.

Facts:

Each of the taxpayers (i.e., CCH and TBC) acquired one unit of shares in Syarikat NJG (SNJG) on 6 June 2012 respectively. SNJG became an RPC on 11 June 2012. On 5 September 2012, CCH and TBC acquired 16,667 and 16,666 additional units of shares in SNJG respectively.

On 4 September 2014, CCH and TBC entered into a share purchase agreement to dispose of 33,335 units of SNJG shares with a consideration of RM1,454,128. On 7 October 2014, CCH and TBC reported the disposal of the SNJG shares via Forms CKHT 1B for the YA 2014. The Notices of Assessment for RPGT (Form K) amounting to RM191,807.10 (for CCH) and RM191,807.40 (for TBC) were raised by the DGIR on 10 October 2019 based on Paragraph 34A, Schedule 2 of the RPGTA.

Taxpayers' argument:

The taxpayers argued that SNJG only became an RPC on 30 October 2012 when the full payment of the purchase price of the land was made. This argument was supported by the Private Land Title Search which was only submitted at the written submission stage. Therefore, the entire shares disposed of by CCH and TBC were not RPC shares because the said shares were acquired before 30 October 2012.

DGIR's argument:

The DGIR argued that SNJG became an RPC on 11 June 2012 when the value of the property acquired exceeded 75%, (i.e., 93% of the total value of the tangible assets). Paragraph 15, Schedule 2 of the RPGTA provides that the date of acquisition of an asset shall be deemed to be the same as the date of disposal. The DGIR had objected to the Private Land Title Search which was submitted by the taxpayers at the written submission stage. Therefore, in this case, no other information or documents were submitted to support the date of acquisition as claimed by the taxpayers.

The DGIR stressed that the calculation of the acquisition price for the two (2) units of shares acquired on 6 June 2012 should be determined based on Paragraph 34A(3)(a), Schedule 2 of the RPGTA, which was RM1.00 per unit. Meanwhile, the acquisition price of 33,333 units of shares acquired on 5 September 2012 should be determined based on Paragraph 34A(3)(b), Schedule 2 of the RPGTA and Paragraph 4(1), Schedule 2 of the RPGTA, which was the actual acquisition price of the shares. Therefore, the disposal price should be determined based on the actual price received in the disposal of the shares as provided under Paragraph 34A(4), Schedule 2 of the RPGTA.

Issue:

Whether the additional units of SNJG shares acquired by CCH and TBC on 5 September 2012 were RPC shares.

Decision:

On 21 February 2025, the SCIT decided that the taxpayers failed to prove that the assessments raised by the DGIR for the YA 2014 were incorrect and excessive. The additional documents submitted by the taxpayers were not considered by the SCIT as they were only submitted after the completion of the trial. The SCIT dismissed the taxpayers' appeal and upheld the Notices of Assessment for the YA 2014.

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

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11. KA v DGIR (SCIT)

The IRBM has recently uploaded a case report, "KA v DGIR (SCIT)" on its website.

Facts:

On 7 February 2018, the taxpayer disposed of his vacant land (the Property) to Syarikat SI for a consideration of RM15,164,735. Based on the Forms CKHT 1A and CKHT 3 submitted by the taxpayer, the DGIR issued a Notice of Assessment (Form K) dated 12 September 2018 for the YA 2018 with RPGT payable amounting to RM557,464.13.

After the issuance of the Form K, the taxpayer was audited and the DGIR found that the taxpayer had claimed commission expenses amounting to RM3,500,000, expenses for the purpose of maintaining, preserving and defending the Property (custodian fee) as well as commission payments to Syarikat AKVS amounting to RM2,390,700. On 24 April 2019, the DGIR issued a Notice of Additional Assessment (Form KA) amounting to RM1,512,464 by disallowing the abovesaid expenditures. The taxpayer, being dissatisfied with the Form KA issued, filed an appeal via Form Q dated 24 April 2019.

Taxpayer's argument:

The taxpayer argued that the commission payment to the agent for the sale of the Property was an expense incurred wholly and exclusively for the purpose of disposing of the Property. This expense should be allowed because the amount of the commission payment was agreed upon by the parties. The custodian fee expenditure was an expenditure incurred to preserve and defend the Property and therefore eligible to be claimed under Paragraph 5(1)(a), 5(1)(b) and 5(1)(c), Schedule 2 of the RPGTA. Meanwhile, the caveat cancellation expenditure was an eligible expenditure under Paragraph 5(1)(b), Schedule 2 of the RPGTA because this expenditure was incurred to defend the Property from attempted seizure and to prevent illegal occupation.

DGIR's argument:

The DGIR argued that the taxpayer had failed to prove that the expenditure was incurred for the purpose of:

- enhancing or preserving the value of the asset, which is reflected in the state or nature of the asset at the time of the disposal [Paragraph 5(1)(a), Schedule 2 of the RPGTA];
- establishing, preserving or defending the title of the asset [Paragraph 5(1)(b), Schedule 2 of the RPGTA]; and
- that the expenditure was wholly and exclusively incurred for the stated purpose.

The commission and custodian fee expenses claimed were also not expenses incurred wholly and exclusively for the purpose of disposal of the Property as provided under Paragraph 6, Schedule 2 of the RPGTA. According to the Valuers, Appraisers and Estate Agents Rules 1986, the total commission allowed is at a maximum rate of 3%, while the value of the commission expenses claimed by the taxpayer was at a rate of 11%. Therefore, the commission and custodian fee expenses cannot be allowed, and the assessment raised by the DGIR was in order.

Issue:

Whether the commission and custodian fee incurred by the taxpayer were allowable expenses under Paragraph 5 and Paragraph 6, Schedule 2 of the RPGTA.

Decision:

The SCIT dismissed the taxpayer's appeal and held that the Form KA dated 4 April 2019 for the YA 2018 is permanent and final.

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

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12. ALOGSB v DGIR (SCIT)

The IRBM has recently uploaded a case report, "ALOGSB v DGIR (SCIT)" on its website.

Facts:

The taxpayer entered into Memorandum of Agreements (MOAs) with POMC to buy a vessel on 4 July 2016 and another five vessels (the Vessels) on 21 July 2017. The taxpayer purchased the Vessels on instalment basis but claimed capital allowance based on the full purchase price of the Vessels in the YAs 2016 and 2017. The DGIR issued Notices of Additional Assessments for the YAs 2016 and 2017 with penalties under Section 113(2) of the ITA.

Taxpayer's argument:

The taxpayer contended that the Vessels were used for the business, therefore entitled to claim capital allowance under Schedule 3 of the ITA. According to the Certificate of Registration, the taxpayer is the registered legal owner of the Vessels as POMC had transferred ownership of the Vessels to the taxpayer, despite the ongoing instalment payments. The taxpayer further argued that the DGIR failed to exercise his discretion on the imposition of penalty and did not provide reasons for the penalty whereas the taxpayer had acted in good faith at all times, sought professional advice from the tax agent, was co-operative during the audit period and submitted its tax returns within the stipulated filing deadline throughout the years and the matter in dispute arose from a technical adjustment.

DGIR's argument:

The DGIR argued that the capital allowance claimed by the taxpayer under Paragraphs 10 and 15, Schedule 3 of the ITA cannot be allowed based on the actual cost (purchase price) of the Vessels. The four qualifying conditions under Schedule 3 of the ITA must be met for a person to be eligible to claim capital allowance. The DGIR was not disputing that the taxpayer was allowed to claim capital allowance in relation to the purchase of the Vessels. The DGIR's contention was that the taxpayer was not allowed to claim capital allowance for the entire purchase price of the Vessels for the respective YAs, but the allowable capital allowance claimed was limited to the amount of instalment payments made during the basis periods for the YAs 2016 and 2017 only.

The DGIR also argued that the taxpayer is merely the beneficial owner, and will only become the legal owner of the Vessels upon making full payment of the purchase price. Accordingly, the taxpayer is not entitled to claim capital allowance for the entire purchase price of the Vessels. Clauses 9.1 and 9.1.4 of the MOAs clearly stipulated that the taxpayer requires prior written consent from POMC in relation to the Vessels if the full purchase price has yet to be paid.

Issue:

Whether the taxpayer was allowed to claim capital allowance on the Vessels based on the actual cost (purchase price) or based on the amount of instalment payments made.

Decision:

On 7 March 2025, the SCIT dismissed the taxpayer's appeals and held that the taxpayer failed to prove its case as required under Paragraph 13, Schedule 5 of the ITA. As such, the issuance of Notices of Additional Assessments for YAs 2016 and 2017 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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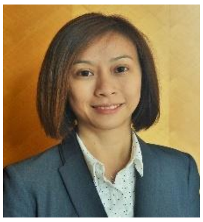
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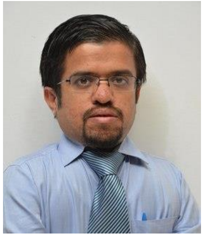

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