Tax Espresso

Gazette Order, Guidelines, Tax Cases and more
August 2025

Greetings from Deloitte Malaysia Tax Services

Quick links:

Deloitte Malaysia
Inland Revenue Board of Malaysia (IRBM)

Takeaways:

Important deadlines:

	Task	Deadline
		31 August 2025
(a)	2026 tax estimates for companies with September year-end	√
(b)	6th month revision of tax estimates for companies with February year-end	√
(c)	9th month revision of tax estimates for companies with November year-end	√
(d)	11th month revision of tax estimates for companies with September year-end	√
(e)	Statutory filing of 2024 tax returns for companies with January year-end	√
(f)	Maintenance of transfer pricing documentation for companies with January year-end	√
(g)	2025 CbCR notification for applicable entities with August year-end	√

1. Income Tax (Issuance of Electronic Invoice) (Amendment) Rules 2025 *[P.U.(A) 196/2025]*

The Income Tax (Issuance of Electronic Invoice) (Amendment) Rules 2025 [*P.U.(A) 196/2025*] were gazetted on 26 June 2025 and came into operation on 30 June 2025.

Amendment
The Income Tax (Issuance of Electronic Invoice) Rules 2024 [*P.U.(A) 265/2024*] are amended in subrule 2(1), i.e., any person who carries out a transaction in respect of any goods sold or service performed shall issue an electronic invoice (e-Invoice) in relation to:

- Annual sales of > RM5 million - RM25 million, the e-Invoice shall be issued from 1 July 2025.
- Annual sales of > RM1 million - RM5 million, the e-Invoice shall be issued from 1 January 2026.
- Annual sales of ≤ RM1 million, the e-Invoice shall be issued from 1 July 2026.

The above amendments legislate the announcement made by the Inland Revenue Board of Malaysia (IRBM) on 5 June 2025 with regard to the revision of e-Invoice implementation timeline (reported in *Deloitte Malaysia Tax Espresso - Special Alert - e-Invoice Implementation Timeline*).

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2. IRBM – Operational Guidelines No. 1/2025 - Implementation of Tax Compliance Certificate on Government Procurement

The Operational Guidelines No. 1/2025 - Implementation of Tax Compliance Certificate (TCC) on Government Procurement issued on 25 June 2025 (GPHDN 1/2025) (*available in Bahasa Malaysia only*) explain the procedure for implementing the TCC for Government procurement applications for all categories of Government procurement, i.e., supplies, services (consultants and non-consultants) and works, starting 1 July 2025.

The TCC issued by the IRBM is part of the prerequisite documents when taxpayers / bidders submit applications for Government procurement.

The GPHDN 1/2025 covers the following:

- Introduction
- General information
- TCC Review and Issuance Procedure
- TCC Authenticity Check Procedure
- IRBM Contact
- TCC Issuance Flowchart (Appendix A-1)
- Example of TCC with Compliant Status (Appendix A-2)
- Example of TCC with Non-Compliant Status (Appendix A-3)
- Example of Verification Status for Authenticity Check of TCC (Appendix A-4)
- Frequently Asked Questions (FAQs) in relation to TCC

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3. IRBM – e-Invoice Guideline (v.4.5), e-Invoice Specific Guideline (v.4.3) & FAQs for Donations or Contributions

The IRBM has issued the following:

1) e-Invoice Guideline (v.4.5) dated 7 July 2025 which replaces the e-Invoice Guideline (v.4.4) dated 5 June 2025. The summary of changes is listed on page 3 of the updated Guideline.

2) e-Invoice Specific Guideline (v.4.3) dated 7 July 2025 which replaces the e-Invoice Specific Guideline (v.4.2) dated 5 June 2025. The summary of changes is listed on page 6 of the updated Guideline.

3) Frequently Asked Questions (FAQs) for Donations or Contributions dated 7 July 2025.

The above are accessible on the e-Invoice webpage of IRBM's website.

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4. IRBM – No 2% tax deduction for payments to deceased agent, dealer or distributor

According to the IRBM, the 2% tax deduction under Section 107D of the Income Tax Act 1967 (ITA) does not apply to payments made to a deceased agent, dealer, or distributor (ADD). Effective 1 August 2025, payment of such deductions will no longer be accepted by the IRBM.

The definition of "individual" in the context of an ADD under Section 107D of the ITA refers to a living person or a natural person as defined in Section 2 of the ITA. Therefore, if the ADD has passed away, that person is no longer considered an individual for the purposes of this provision.

If there is any income received after the date of the ADD's death, such income must be managed by the executor, administrator, heir, or legal representative of the deceased and must be reported under the Estate's return form (Form TP).

Form TP must be registered at any IRBM office by completing the Notification of Taxpayer's Demise (Form CP57) and submitting the following supporting documents:
- A copy of the death certificate; and
- A copy of the grant of probate or the letter of administration.

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5. IRBM – Improvements to e-CKM Module in MyTax

The IRBM has improved the e-CKM – Capital Gains Tax Return Form (CGTRF) module in MyTax as follows:

1) Draft e-CKM

- Taxpayers can now prepare more than one draft CGTRF involving the same disposer at the same time.
- A new draft is only allowed if it refers to a different disposal date, different shares disposal details, and different acquirer.

- This enables taxpayers to prepare a new draft without completing the submission of an existing one.

2) Submission of e-CKM for estimated assessment cases

- Taxpayers who wish to revise / appeal against an estimated assessment [issued under Section 90(3) of the ITA] must submit the e-CKM.
- Details of the name of share, disposal date, and number of shares that have been disposed of will be displayed to help taxpayers identify the relevant disposal transaction.
- If the submission does not involve an estimated assessment, taxpayers must use the "New Disposal" function instead.

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6. KPHDN v Tenaga Nasional Berhad (FC)

The IRBM has recently uploaded a case report, "Ketua Pengarah Hasil Dalam Negeri v Tenaga Nasional Berhad (FC)" on its website.

Facts:

This was an appeal made by the DGIR against the decision of the Court of Appeal (COA) in allowing the taxpayer's judicial review application that the company is in the business of manufacturing electricity and eligible for reinvestment allowance (RA) under Schedule 7A of the ITA.

The taxpayer was assessed with the additional assessment for the year of assessment (YA) 2018 amounting to RM1,812,506,384.64 after a tax audit conducted by the DGIR.

The taxpayer claimed RA under Schedule 7A of the ITA and submitted that its business activities of generating, transmitting, distributing and selling electricity were manufacturing activities as defined under Schedule 7A of the ITA. On the other hand, the DGIR submitted that the clear issue was whether the taxpayer's activities should be classified as a manufacturing activities where the taxpayer was eligible to claim RA under Schedule 7A of the ITA or whether the taxpayer's activities would fall under the utilities sector (having regard to the real intention of Parliament in enacting Schedule 7B of the ITA) where the claim of tax benefits must be made under Schedule 7B of the ITA.

The DGIR's main argument was that the COA erred when it held that the taxpayer's activities were "manufacturing" in nature under Schedule 7A of the ITA. The COA failed to appreciate that a taxpayer may be engaged in a manufacturing activity and yet be a service provider in the public sector. A utility company can also be a manufacturing company. The taxpayer's business activities did not fall within the purview of Schedule 7A of the ITA, which was confined to manufacturing companies engaged in manufacturing activities. Therefore, the taxpayer's business activities did not fall within the definition of "qualifying project" and "manufacturing" under Paragraphs 8(a) and 9, Schedule 7A of the ITA respectively, making it ineligible for RA claim. The DGIR argued that the taxpayer's business activities should fall within the definition of an "approved service project" under Paragraph 9, Schedule 7B of the ITA.

On 1 March 1979, the Parliament passed the Income Tax (Amendment) Act 1979 *[Act A451]* to introduce RA for manufacturing companies that invest in capital expenditure for expansion, modernisation or automation of their existing business in respect of manufacturing of a product. Thus, Schedule 7A of the ITA would apply to a manufacturing company that manufactured products. The definition of "manufacturing" was added to the ITA through Finance Act 2009 *[Act 693]* to provide clarity for companies claiming incentives under Schedule 7A of the ITA. The DGIR submitted that the courts misunderstood the nature of electricity generation as manufacturing and incorrectly relied on Commonwealth authorities.

Instead, the courts should have strictly interpreted the incentive provisions of Schedule 7A of the ITA, which placed the burden of proof on the taxpayer to demonstrate eligibility. The courts erred in ignoring the updated definition of "manufacturing", which applied to the basis period for YA 2018.

Furthermore, Schedule 7B of the ITA was introduced as a special incentive known as investment allowance for service sector through the Finance Act 1996 [*Act 544*] on 1 February 1996. The taxpayer was in a service sector as defined under Schedule 7B of the ITA and therefore the taxpayer's claim for RA under Schedule 7A of the ITA was against the intention and objective of the Parliament when introducing the Schedule.

The taxpayer's own declaration, admission and the charges of service tax were contradicting and inconsistent to its claim of being a manufacturer under Schedule 7A of the ITA and instead, it was in line with Schedule 7B of the ITA. The taxpayer was a public utility company operating under the Electric Supply Act 1990 which was involved in the service sector wherein the taxpayer had declared, announced and admitted to it in its Annual Report 2018, and in also the Main Market listing with Bursa Malaysia as "utility sector". Furthermore, the taxpayer imposed a service charge on its electricity supply on the basis that the supply of electricity was a transfer of distinct goods to its customers as found in its Annual Report and Audited Accounts for YA 2018.

It was submitted that the application of statutory provisions to a situation was not a matter of option or choice of parties. There was no suggestion of any ambiguity in the application or wordings of the two schedules. They both have their foundation under Section 133A of the ITA but have different origins in time and purpose. Section 133A of the ITA states that the special incentive relief shall be given in accordance with Schedule 7A and Schedule 7B. It did not provide a choice or option to a taxpayer claiming this tax relief. It depends on the conditions and terms of eligibility stipulated in the two schedules. They are significantly different and compliance with the terms of eligibility is therefore mandated by the parent provision. Besides, the requirement under the two schedules varies, in which the RA claim under Schedule 7A of the ITA was based on "qualifying project" under a prescribed form to be submitted and approved by the DGIR. Whereas the claim under Schedule 7B of the ITA was under the jurisdiction of the Ministry of Finance subject to public interest element involving the service sectors mentioned in Paragraph 9, Schedule 7B ITA, namely the sectors of "transportation, communications, utilities or any other sub-sector as approved by the Minister". The main objective of Schedule 7B of the ITA was to place the monitoring and control of tax incentives in the service sector under the Minister of Finance. The Parliament does not legislate in vain.

In the case of ambiguity relating to tax benefit/exemption, the burden of proof was on the party seeking relief / benefit / exemption i.e., the taxpayer. The DGIR submitted that the taxpayer had failed to discharge the burden of establishing its entitlement to RA under Schedule 7A of the ITA and had not satisfied the eligibility criteria of "qualifying project" set out in the Schedule.

The DGIR further argued that the High Court (HC) had wrongly relied on the Federal Court's (FC) decision in *Majlis Perbandaran Seberang Perai v Tenaga Nasional Bhd [2005] 1 MLJ 1 (MPSP)* and *KPHDN v Success Electronics & Transformer Manufacturer Sdn Bhd (2012) MSTC 30-039 (SETM)* where the facts were distinguishable. The MPSP's case was decided under different legislation i.e., the Local Government Act 1976. The tax issue in SETM was related to the interpretation and definition of the term "factory" for the purposes of claiming RA.

Issue:

Whether the taxpayer was involved in the business of manufacturing (where it is eligible to claim the RA incentive under Schedule 7A of the ITA) or in the service sector relating to utilities (where it is eligible to claim the investment allowance incentive under Schedule 7B of the ITA).

Decision:

The FC overturned the decision of the COA and unanimously allowed the DGIR's appeal based on the following grounds:

- It was the Parliament's intention, when legislating Schedule 7B of the ITA (investment allowance for service sector) that the taxpayer was undertaking an approved service project, i.e., a project in the service sector in relation to utilities under Paragraph 9, Schedule 7B of the ITA.

- In any case of ambiguity relating to tax benefit / exemption, the benefit should be given to the tax authorities instead of the taxpayers. This applies especially here as there was no ambiguity at all in this case since both schedules were legislated with different purposes and the Parliament did not legislate in vain.

- Since the items claimed by the taxpayer have been allowed capital allowance under Schedule 3 of the ITA, the taxpayer's business activities should come under Schedule 7B of the ITA. Schedule 7B of the ITA has been enacted specifically for companies that provide services.

[Details of the above tax case at the FC level are not available as of date of publication. Please refer to Deloitte Malaysia Tax Espresso – November 2022 and Deloitte Malaysia Tax Espresso – June 2024 for the grounds of judgement of the HC and COA respectively.]

Impact:

Schedule 7B of the ITA states that where a company which is resident in Malaysia for the basis year for a YA has incurred in the basis period for that YA capital expenditure for the purpose of an approved service project, there shall be given to the company for that YA an investment allowance of an amount approved by the Minister of Finance, such allowance being not less than 60% of that expenditure. With the ruling of the FC, companies that provide services will now need to apply for investment allowance under Schedule 7B of the ITA and comply with the terms and conditions as prescribed by the Minister of Finance.

Schedule 7A of the ITA has been clarified to cater for companies that conduct activities of manufacturing as prescribed under Schedule 7A of the ITA and compliance with the law should be in accordance with the YA applied. There is no retrospective effect to be given.

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7. KPHDN v Jeffery Florian & Anor (COA) (2025) MSTC 30-809

This was an appeal by the DGIR against the HC's decision in allowing a judicial review application filed by Jeffery Florian and Yeo Siew Hee (the taxpayers).

Issues:

- Whether judicial review was permissible despite the existence of a statutory appeal process.
- Whether the taxpayers' application involved questions of fact.
- Whether the taxpayers failed to establish exceptional circumstances to warrant the granting of certiorari.

Decision:

The COA overturned the HC's decision and allowed the DGIR's appeal based on the following grounds:

- Based on the guiding principles outlined in *Government of Malaysia & Anor* v *Jagdis Singh [1987] CLJ (Rep) 110* (*Jagdis Singh*), the courts should exercise caution in allowing judicial review or granting leave to commence proceedings in revenue matters, as the ITA prescribed a specific statutory appeal process for aggrieved taxpayers, except in very exceptional circumstances.

- In the present case, the taxpayers knew their rights under the ITA and chose to appeal against the DGIR's decision to the Special Commissioners of Income Tax (SCIT). Having appealed under Section 99 of the ITA, the taxpayers could not later justify the judicial review on grounds of law or as an abundance of caution. The FC in *Ketua Pengarah Hasil Dalam Negeri* v *Alcatel-Lucent (M) Sdn Bhd & Anor (2016) MSTC 30-134; [2017] 2 CLJ 1* (*Alcatel-Lucent*) had established that revenue matters must follow the proper process, either by appeal or case stated before the HC.

- The taxpayers, having chosen to appeal to the SCIT, could not pursue an alternative forum to challenge the notices of assessment. The availability of judicial review should not override the specific remedy provided under Section 99 of the ITA. Bypassing the specific appeal process under the ITA in favour of judicial review, without exceptional circumstances, went against parliament's intent and rendered the appeal provisions ineffective. Therefore, it was an abuse of the court process to maintain the judicial review application.

- The DGIR's decision to issue the additional assessments against the taxpayers involved a dispute of facts. Determining whether there was an intention to trade required assessing all circumstances, guided by the "badges of trade" principle established by the apex courts. Whether the disposal was taxable under the ITA or the Real Property Gains Tax Act 1976 (RPGTA) depended on that intention. As the burden of proof rested with the taxpayers, the SCIT was the appropriate forum to decide the matter as the judges of facts.

- There was no statutory duty on the DGIR to provide reasons for raising the additional assessments, as contended by the taxpayers. Moreover, the DGIR's failure to provide reasons for the additional assessments involved both factual and legal issues, which fell within the SCIT's purview as judges of fact, particularly in determining whether there was an intention to trade based on the circumstances.

- As established in *Jagdis Singh*, certiorari would not be granted unless the taxpayers demonstrated a clear lack of jurisdiction, a blatant failure to perform a statutory duty, or a serious breach of natural justice by the DGIR. In the present case, the DGIR had considered all relevant provisions and the facts of the case before issuing the notices of assessment. Accordingly, under Section 91(1) of the ITA, the DGIR had acted within their statutory authority and in accordance with the law in raising the additional assessments. Section 91(1) of the ITA did not require the DGIR to provide reasons for raising additional assessments on taxpayers. In fact, it was the DGIR's statutory duty to ensure a correct assessment of tax. As held in *Alcatel-Lucent*, the DGIR's failure to give reasons did not render the decision-making process unlawful.

- There were no defects in jurisdiction and no breach of natural justice in the present case. The mere fact that the taxpayers disputed the assessments did not amount to exceptional or very exceptional circumstances. Therefore, the taxpayers failed to prove exceptional circumstances to warrant the granting of certiorari.

- The DGIR found the taxpayers' voluntary disclosure of zero taxable income to be inaccurate and made with unclean hands. As an audit had been conducted prior to the disclosure, the DGIR's rejection of the voluntary disclosure was a proper application of the law, not an afterthought. The audit findings predated the voluntary disclosure, indicating due diligence rather than bad faith.

The DGIR's acceptance of the voluntary disclosure did not prevent them from revisiting their decision, and the subsequent revocation was within their authority. The issue of legitimate expectation did not arise, as the DGIR was discharging their duty under the ITA when issuing the notices of assessment, as confirmed by case authorities.

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8. Muhibbah Marine Engineering Sdn Bhd v DGIR (HC) (2024) MSTC 30-753

This was a judicial review application by the taxpayer, Muhibbah Marine Engineering Sdn Bhd, seeking an order of certiorari to quash the decision of the DGIR in issuing notices of assessment for the years of assessment (YAs) 2015 and 2016.

Issue:

Whether exceptional circumstances existed for judicial review to be granted by the HC.

Decision:

The HC dismissed the taxpayer's judicial review application based on the following grounds:

- The established principle outlined in *Government of Malaysia & Anor* v *Jagdis Singh [1987] 2 MLJ 185; [1986] 1 MLRA 207; [1987] CLJ Rep 110* (*Jagdis Singh*) was that judicial review was generally unavailable to taxpayers if an alternative remedy existed unless there were exceptional circumstances. The taxpayer's case had not satisfied the exceptional circumstances test as propounded in *Jagdis Singh*.

- The taxpayer was dissatisfied with the assessments made by the DGIR. However, the DGIR was exercising their statutory powers conferred on them by Sections 33, 44A, 91, and 97A of the ITA. As such, there was no blatant excess of jurisdiction, breach of natural justice or breach of statutory duty, as per *Jagdis Singh*, or excess or abuse of power, or maladministration, as per *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan [1993] 3 CLJ 65.*

- The taxpayer's challenge to the DGIR's interpretation of Section 44A(9) of the ITA and the issue of whether the project accrued expenses fell within the ambit of Section 33(1) of the ITA were questions of law and were within the function of the SCIT to determine. Thus, the taxpayer needed to demonstrate that the SCIT's decision was appealable to the HC on a question of law, as per Paragraphs 34(1) and 34B(1), Schedule 5 of the ITA. The issue of interpretation of law is not an exceptional circumstance, as per *Ketua Pengarah Hasil Dalam Negeri (LHDN)* v *IBM (Malaysia) Sdn Bhd (2019) MSTC 30-307; [2019] MLJU 2062.*

- The taxpayer could challenge the DGIR's assessments before the SCIT as Section 33(1) of the ITA was dependent on documentary evidence. Determining whether the project accrued expenses were deductible under Section 33(1) of the ITA was a question of fact for the SCIT. The established law was that the SCIT were "judges of facts" in such cases, as per *Kerajaan Malaysia v Dato Haji Ghani Gilong [1995] 1 MLRA 360; [1995] 3 CLJ 161.*

- The taxpayer's case involved a dispute over facts and interpretation of law and whether the DGIR's assessment was correct. There were no exceptional circumstances justifying judicial review. As such, the taxpayer should first exhaust the appeal process under Section 99 of the ITA before the SCIT. Pursuing judicial review without exceptional circumstances constituted an abuse of the court process, and the SCIT was the proper forum for resolving these matters.

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9. Nishimatsu Construction Co Ltd v KPHDN (HC) (2025) MSTC 30-814

This was an appeal by Nishimatsu Construction Co Ltd (the taxpayer), against the deciding order of the SCIT, which had dismissed the taxpayer's appeals against the assessments and penalties imposed by the DGIR for the YAs 2013 to 2016. [*You may also refer to Deloitte Malaysia Tax Espresso – October 2024 for relevant details provided in the case report by the IRBM.*]

Issues:

- Whether income from a joint venture (JV) partnership could be fully taxed under Sections 55(3) and 55(4) of ITA when the taxpayer's basis period differed from that of the JV.
- Whether the imposition of 15% penalties on the taxpayer for YAs 2013 to 2016 was valid under Section 113(2) of the ITA.

Decision:

The HC upheld the SCIT's decision and dismissed the taxpayer's appeal based on the following grounds:

- The SCIT correctly determined that, under Section 21A of the ITA, the basis period for income from the JV partnership was treated as the same as the company's own basis period. Therefore, there was a single basis period, and the taxpayer was required to declare all income from its business and the JV partnership in one return, covering 1 April to 31 March of the next calendar year.

- The taxpayer was obligated to determine and declare the JV partnership's income for January, February, and March. It was confirmed before the HC that the estimation amount of the JV partnership's income was based on its management accounts. Therefore, the taxpayer was able to ascertain the JV partnership's income for the months of January, February, and March.

- Contrary to the taxpayer's contention that Sections 55(3) and 55(4) of the ITA prevented it from declaring its chargeable income for the full basis year, the taxpayer had access to the JV partnership's accurately kept accounts, which could be used for tax declaration purposes, especially where the company was obligated to declare such income in its own tax return under the ITA. Therefore, Sections 55(3) and 55(4) of the ITA did not create a lacuna, as contended by the taxpayer.

- The SCIT correctly found that the penalties imposed on the taxpayer by the DGIR under Section 113(2) of the ITA were valid, as the taxpayer had incorrectly filed its tax returns and understated the JV partnership's income. The taxpayer's argument that the returns were filed due to a lacuna between Sections 55 and 77A of the ITA lacked merit, as the taxpayer made no effort to inform the DGIR of the correct position and continued to file its tax returns as though no such lacuna existed.

- As held in *Ketua Pengarah Hasil Dalam Negeri v TCY Jaya Sdn Bhd (2023) MSTC 30-641; [2024] 1 CLJ 242*, good faith on the part of the taxpayer was not a relevant consideration under Section 113(2) of the ITA. Therefore, the imposition of penalties on the taxpayer was valid.

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10. Kuan Zi Yi v Collector of Stamp Duty (HC)

The IRBM has recently uploaded a case report, "Kuan Zi Yi v Collector of Stamp Duty (HC)" on its website.

Facts:

The duty payer was dissatisfied with the assessment raised by the Collector of Stamp Duties (the Collector) in respect of the disposal of a service apartment held by the duty payer in Johor. Pursuant to Section 39(1) of the Stamp Act 1949, the duty payer filed an appeal against the Notice of Assessment for the transfer of property with regards to ad-valorem duty amounting to RM4,800.

The duty payer applied for a stamp duty exemption under the Stamp Duty (Exemption) Order 2021 *[P.U.(A) 53/2021]* (Exemption Order) as the purchase of the service apartment was the first-time purchase by the duty payer and the value of the service apartment was below RM500,000 which fell under the definition of "*residential property*" under Paragraph 2(4)(a) of the Exemption Order. A statutory declaration was made by the duty payer under Paragraph 2(3) of the Exemption Order.

The Collector submitted that the burden was on the duty payer to bring the Form 14A within the words of "*residential property*" as stated in the Exemption Order. If the property was a "*residential property*" for the purpose of Paragraph 2(4)(a) of the Exemption Order, then the duty payer would be entitled to claim for the stamp duty exemption.

The Collector argued that the exemption was not applicable to the property purchased by the duty payer as the property was not solely used as a dwelling house but was also used as "*kediaman / perkedaian / rumah kelab*" as shown in the deed of title. Further, the statutory declaration dated 1 July 2024 submitted by the duty payer had confirmed that the property did not include *small office home office (SOHO), small office flexible office (SOFO), small office virtual office (SOVO)* and *service apartment*.

Issue:

Whether the duty payer's service apartment fell within the meaning of "*residential property*" under the Exemption Order and was therefore eligible for the stamp duty exemption.

Decision:

On 20 June 2025, the HC dismissed the duty payer's application and held that the service apartment did not fall within the meaning of "*residential property*" under the Exemption Order and therefore the duty payer would not be eligible for the stamp duty exemption. The Notice of Assessment raised by the Collector was confirmed and justifiable.

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

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11. SMK v DGIR (SCIT)

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

Facts:

The investee company, SSB, became a Real Property Company (RPC) on 26 April 2011 in accordance with Paragraph 34A, Schedule 2 of the RPGTA. SSB had allotted a total of 500,000 shares to the taxpayer on 26 January 2011, 25 April 2011 and 6 April 2012. On 3 March 2020, the taxpayer had disposed of all his shares in SSB for the consideration of RM 38,000,000. The DGIR conducted an audit on the disposal of shares by the taxpayer and raised an assessment for the YA 2020 on 28 May 2021 amounting to RM1,898,437.50 (inclusive of 25% of penalty).

Taxpayer's argument:

The taxpayer argued that the calculation by the DGIR was erroneous as the DGIR failed to consider that the allotment of 500,000 unit of shares was done before SSB became an RPC.

DGIR's argument:

DGIR asserted that Paragraph 34A, Schedule 2 of the RPGTA was applicable to the 500,000 shares in SSB disposed of by the taxpayer. The taxpayer failed to refer to the definition of shares specifically provided for RPC under Paragraph 34A, Schedule 2 of the RPGTA. The DGIR further contended that the taxpayer's negligence and failure to file the return form within the stipulated period was a clear breach of the statutory duty provided under Section 13 of the RPGTA, thus the penalty under Section 29(3) of the RPGTA 1976 was correctly imposed for the late submission of Form CKHT 1B.

Issue:

Whether the shares disposed of by the taxpayer were RPC shares under Paragraph 34A, Schedule 2 of the RPGTA.

Decision:

On 30 May 2025, the SCIT dismissed the taxpayer's appeal and held that the taxpayer has failed to prove its case as required under Paragraph 13, Schedule 5 of the ITA. As such, the issuance of the notice of assessment for YA 2020 and the imposition of penalty were confirmed.

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

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12. GLDVSB v DGIR (SCIT)

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

Facts:

The taxpayer entered into the Sale and Purchase Agreements (SPAs) between year 2010 until year 2013 to sell lands which were supposed to be subdivided. The taxpayer claimed to have only received deposit payments from the sale of lands. The taxpayer had declared and paid tax for the YAs 2011 until 2015. Upon audit, the DGIR discovered that the income declared by the taxpayer was incorrect as it was not based on the full disposal price as stated in the SPAs. The DGIR then raised additional assessments based on the audit findings.

Taxpayer's argument:

The taxpayer argued that the phrase 'debt owing' and sale of 'stock in trade' in Section 24(1)(a) of the ITA was only applicable to determine the date of accrual of gross income. As the master title had yet to be subdivided, the SPAs did not come into force until all conditions precedent were fulfilled.

DGIR's argument:

DGIR asserted that Section 24(1) of the ITA was a specific provision which dealt with the disposal of stock in trade even when the disposal price under the SPAs has not been paid in full. It was further contended that the unpaid balance of the purchase price by the purchasers was considered as "debt owing" to the taxpayer under the ITA. Therefore, the principle of "condition precedent" adopted by the taxpayer in determining the relevant YAs that ought to be taxed was wrong in law.

Issue:

Whether the unpaid balance of the disposal price under the SPAs which have not come into force is considered an amount of "debt owing" to the taxpayer which is taxable under Section 24(1) of the ITA.

Decision:

On 30 May 2025, the SCIT dismissed the taxpayer's appeal and held that the taxpayer has failed to prove its case as required under Paragraph 13, Schedule 5 of the ITA. However, the SCIT also held that the DGIR had no legal basis for imposing 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.]

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13. SLASB v DGIR (SCIT)

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

Facts:

The taxpayer was a theme-park operator and had been granted with pioneer status by the Malaysian Investment Trade and Industry (MITI) vide its agency, the Malaysian Investment Development Authority (MIDA) for a period of five (5) years starting from 12 November 2012 until 11 November 2017. The taxpayer was eligible for a pioneer status incentive (70% tax exemption on statutory income) under the Promotion of Investment Act 1986 (PIA) for undertaking a tourism project but on condition that the said project shall be registered with the Ministry of Tourism, Arts and Culture (MOTAC).

Taxpayer's argument:

The taxpayer contended that the DGIR had acted *ultra vires* and interfered with the power vested to MITI and MIDA under the PIA by disallowing the income tax relief that had been claimed by the taxpayer for the relevant YA. The taxpayer submitted that there was a valid and genuine Pioneer Certificate issued by MITI with the additional confirmation by MOTAC vide its letter dated 14 August 2020 that the tourism project carried out by the taxpayer was a registered project even though the taxpayer was unable to produce the "*Sijil Pendaftaran Projek Pelancongan*" as requested during the audit exercise.

DGIR's argument:

The DGIR submitted that the audit that was carried out against the taxpayer was within the DGIR's statutory powers under the ITA. The audit was carried out against the taxpayer to ensure that the taxpayer's application for the pioneer status incentive as declared in the income tax return form for YA 2013 until YA 2017 was valid and in order. The DGIR did not contravene any of the provisions under the PIA in disallowing the income tax relief as the decision was made due to the taxpayer's failure to produce or submit a valid "*Sijil Pendaftaran Projek Pelancongan*" issued by MOTAC under the name of the taxpayer throughout the pioneer period which was required to substantiate the income tax relief that was applied by the taxpayer.

Issue:

Whether the taxpayer was allowed to claim the pioneer status incentive for YA 2013 until YA 2017 without submission of a valid "*Sijil Pendaftaran Projek Pelancongan*" as requested during the audit exercise.

Decision:

On 30 May 2025, the SCIT dismissed the taxpayer's appeal and held that the taxpayer had failed to prove its case as required under Paragraph 13, Schedule 5 of the ITA. The DGIR had a legal and factual basis to raise the additional assessments under Section 91(3) of the ITA. The SCIT ruled that the DGIR was correct in disallowing the income tax relief and therefore the Notices of Assessment for YA 2013 until YA 2017 raised against the taxpayer were reasonable and justified.

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

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14. JSSB v DGIR (SCIT)

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

Facts:

The taxpayer operated a National Service training camp and related services in Sarawak. An audit exercise has been carried out by the DGIR against the taxpayer in relation to the YA 2011. Upon audit, a Notice of Additional Assessment for YA 2011 was raised where the DGIR had disallowed the taxpayer's claim on development cost amounting to RM4,838,082. Dissatisfied with the DGIR's tax treatment, the taxpayer filed a Notice of Appeal vide Form Q to the SCIT.

Taxpayer's argument:

The taxpayer contended that the development cost was an expense incurred in generating its revenue and therefore it was a revenue expenditure and not a capital expenditure. The development cost was incurred in adhering to the Schedule of Compliance (SOC) issued by the Ministry of Defence (MINDEF) and not for securing an advantage and enduring benefit of the taxpayer's trade. The DGIR was wrong in treating the development cost as an initial step for the taxpayer to produce income.

DGIR's argument:

The DGIR argued that the cost of building the training camp was an initial expenditure or preparatory to the earning of income of the taxpayer and it was for the enduring benefit of the taxpayer's trade. In this appeal, the taxpayer had not only failed to furnish its tax return in accordance with Section 77A(1) of the ITA for YA 2011 but also filed an incorrect return by understating its income for YA 2011.

Issue:

Whether the development cost is a deductible expense under Section 33(1) of the ITA.

Decision:

On 20 June 2025, 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 SCIT ruled that the DGIR was correct in disallowing the development cost as a deductible expense under Section 33(1) of the ITA including the imposition of penalty under Sections 112(3) and 113(2) of the ITA and therefore the Notice of Additional Assessment for YA 2011 raised against the taxpayer was reasonable and justified.

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

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 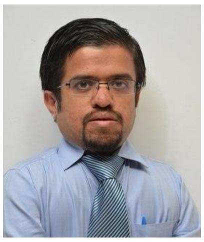   

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