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# Tax Espresso

Gazette Order, Labuan Filing Programme, Tax Cases and more

July 2025

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# Greetings from Deloitte Malaysia Tax Services

## Quick links:

*Deloitte Malaysia*
*Inland Revenue Board of Malaysia (IRBM)*

## Takeaways:

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12. Yakin Jayamuda Sdn Bhd v Collector of Stamp Duty (Sessions Court)

## Upcoming event:

24 July 2025 – Charting the change: Adapting to Malaysia's stamp duty self-assessment regime

## Important deadlines:

| Task | Deadline | |
|---|---|---|
| | 31 July 2025 | 1 August 2025 |
| (a) 2026 tax estimates for companies with August year-end | | √ |
| (b) 6th month revision of tax estimates for companies with January year-end | √ | |
| (c) 9th month revision of tax estimates for companies with October year-end | √ | |
| (d) 11th month revision of tax estimates for companies with August year-end | √ | |
| (e) Statutory filing of 2024 tax returns for companies with December year-end | √ | |
| (f) Maintenance of transfer pricing documentation for companies with December year-end | √ | |
| (g) 2025 CbCR notification for applicable entities with July year-end | √ | |

# 1. Income Tax (Deduction for Expenditure in relation to Environmental Preservation, Social and Governance) Rules 2025 [*P.U.(A) 193/2025*]

On 23 June 2025, the Income Tax (Deduction for Expenditure in relation to Environmental Preservation, Social and Governance) Rules 2025 [*P.U.(A) 193/2025*] (the Rules) were gazetted. The Rules have effect from the year of assessment (YA) 2024 to YA 2027.

**Background**

As announced in Budget 2024, a tax deduction of up to RM50,000 for each YA (for YA 2024 to YA 2027) will be given for expenses incurred in relation to environmental, social and governance reporting, reports related to Tax Corporate Governance Framework (TCGF), transfer pricing documentation and e-invoicing implementation.

**Salient points of the Rules**

The Rules shall apply to a financial institution, a company, a Labuan company, and a micro enterprise or small and medium enterprise resident in Malaysia who has incurred expenditures in the basis period. These apply only in relation to Environmental, Social and Governance (ESG) impact as follows:

a) expenditure for ESG reporting incurred by a financial institution supervised by the Central Bank or a company listed on Bursa Malaysia for:

   (i) validation, verification and certification of the use of ESG practices, calculation and tracking of the greenhouse gas emissions, and ESG exposure;
   (ii) subscription of technology or software systems for data collection, tracking the use of ESG metrics, risk management, scenario analysis and calculation of greenhouse gas emissions;
   (iii) capacity building including training, education and skills development for employees; and
   (iv) services of consultant expert or subject matter expert to perform activities as specified in the paragraphs (i) to (iii);

b) expenditure incurred by a company or Labuan company for:

   (i) preparing the reporting as required under the guidelines for TCGF issued by the Director General and appointing an independent reviewer to perform review assessment of compliance with the guidelines for TCGF [***Note:*** *subject to the company or Labuan company obtaining a certificate of compliance with the guidelines for the TCGF*]; or
   (ii) preparing the contemporaneous transfer pricing documentation; or

c) consultation fees incurred by a micro enterprise or small and medium enterprise for the development of customised software for the implementation of electronic invoice in a business and obtaining services of external service providers but does not include:

   (i) any expenditure incurred at the planning stage or preliminary procedures for the provision of the customised software; and
   (ii) any consultation fee relating to the issuance of an electronic invoice through MyInvois Portal.

**Non-application**

The Rules shall not apply if the financial institution, company, Labuan company, micro enterprise or small and medium enterprise in a YA, in respect of the above-mentioned expenditures,

- has made a claim for deduction under Section 33 of the Income Tax Act 1967 (ITA);
- has been granted an exemption under Section 127(3)(b) or Section 127(3A) of the ITA; or
- has made a claim for deduction under any rules made under Section 154 of the ITA.

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## 2. IRBM – Filing programme for return of profits by a Labuan entity for YA 2025 under the self-assessment system (SAS)

Beginning from YA 2025, the SAS is introduced to Labuan entities undertaking Labuan business activities, in line with the amendment to the Labuan Business Activity Tax Act 1990.

There shall be two YAs in 2025, namely:

- YA 2025 based on a basis period ending in 2024 (preceding year basis); and
- YA 2025 based on a basis period ending in 2025 (current year basis).

YA 2025 based on current year basis is a separate and subsequent assessment year following the YA 2025 that was based on the preceding year basis.

e-filing is mandatory for the return of profits by a Labuan entity for YA 2025 (current year basis) onwards under the SAS. The filing programme is as follows:

| **Filing programme for Labuan entity (SAS)** | |
|---|---|
| **File type** | LE |
| **Form type** | e-LE1 |
| **Taxpayer Category** | Labuan entity |
| **Due date for submission of return of profits** | Within 7 months from the closing date of the accounting period which constitutes the basis period for the YA |
| **Grace period for submission of return of profits and payment of balance of tax (if any)** | 1 month |
| **Availability of e-Filing** | 1 August 2025 |
| **Guide notes on submission of return of profits** | Refer to guide notes at the bottom of the IRBM webpage on the filing programme for return of profits by a Labuan entity for YA 2025 under the SAS |

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## 3. IRBM – Updated e-Invoice Frequently Asked Questions (FAQs)

The e-Invoice FAQs have been updated on 15 June 2025 in relation to the following:

- Revised mandatory implementation dates
- Determining the e-Invoice implementation date in certain situations
- e-Invoice for Micro, Small, and Medium Enterprises
- e-Invoice treatment during the interim relaxation period

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## 4. Lee Soon Mui & Anor v Ketua Pengarah Hasil Dalam Negeri (HC) (2024) MSTC 30-743

This was an appeal by the taxpayers against the decision of the Special Commissioners of Income Tax (SCIT). The SCIT had dismissed the taxpayers' appeal against the notice of additional assessment for real property gains tax (RPGT) for the YA 2018, which was raised by the DGIR. The taxpayers argued that the acquisition price of their RPC shares disposed of was incorrectly calculated by the DGIR.

**Issue:**

Whether the calculation of real property gains tax (RPGT) imposed on the disposal of the taxpayers' shares in Impian Dupleks Sdn Bhd (IDSB) was correct and proper.

**Decision:**

The High Court (HC) dismissed the taxpayers' appeal and held that the Special Commissioners of Income Tax (SCIT) made a correct decision based on the following grounds:

- The taxpayers did not dispute, and in fact agreed that IDSB was a real property company (RPC) as defined under Paragraph 34A(6), Schedule 2 of the Real Property Gains Tax Act 1976 (RPGTA). Hence, the applicable provision in determining the acquisition and disposal price of the shares fell under Paragraph 34A, Schedule 2 of the RPGTA. This provision provides that the acquisition of shares in an RPC was treated as the acquisition of a chargeable asset, and any disposal of these shares was considered a disposal of a chargeable asset.

- IDSB became an RPC on 20 April 2014 and the shares of IDSB were purchased by the taxpayers on 30 April 2014 (100 unit of shares in IDSB for RM100) and 16 May 2014 (99,900 unit of shares in IDSB for RM99,900) respectively. Hence, the acquisition of shares in IDSB was made after IDSB has attained its RPC status. Based on Paragraph 34A(3)(b), Schedule 2 of the RPGTA, the acquisition price of the shares disposed of is the amount or value of the consideration in money or money's worth (i.e., RM1 per share), in accordance with Paragraph 4(1), Schedule 2 of the RPGTA.

- The acquisition price of the 49,950 shares held by Lee Soon Mui (LSM) was RM49,950. This amount of RM49,950 was reported by LSM in SSM Form 24 in 2014, and not RM4,056,088, being the factory price as claimed by the taxpayers. The Director General of Inland Revenue (DGIR) was correct in applying Paragraph 4, Schedule 2 of the RPGTA by using the acquisition price of RM49,950.

- Paragraph 34A(4), Schedule 2 of the RPGTA states that the disposal price of a chargeable asset is the amount or value of the consideration in money or money's worth for the disposal of the asset. Based on the evidence presented before the HC, the disposal price of the 100,000 units of shares in IDSB was RM4.2 million.

- The DGIR correctly contended that Paragraph 9, Schedule 2 of the RPGTA, which outlines the situations where a transaction would be deemed to be at market value, was inapplicable in this case as the acquisition and disposal prices of the shares were clearly stated in the taxpayers' documents. Consequently, Paragraph 23(1), Schedule 2 of the RPGTA, relating to transactions between connected persons, which the taxpayers claimed applied to them, was inapplicable in this case.

- The taxpayers were not entitled to claim any expenses related to the disposal of their shares based on Paragraph 34A(4), Schedule 2 of the RPGTA. It is stated in this provision that the disposal price for shares in an RPC is the amount or value of the consideration in the form of money or money's worth, without considering the provision of Paragraph 5, Schedule 2 of the RPGTA for the incidental costs paid, as exhibited by the taxpayers.

*[Details of the above tax case at the SCIT level are not available as of date of publication. During the hearing before the SCIT, both LSM and Dr. Francis Liga Muga agreed that the decision of this appeal will bind the case of Dr. Francis Liga Muga (Appeal No. MOF.PKCP.700-7/1/324) based on the same facts and issues as those arising in this appeal. It is reported that LSM has appealed against the HC's decision to the Court of Appeal (COA).]*

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## 5. Tropical Land Property Sdn Bhd v DGIR (HC) (2025) MSTC 30-810

This was a judicial review application by the taxpayer, seeking, among others, an order of *certiorari* to quash the decision of the Director General of Inland Revenue (DGIR) in disallowing taxpayer's Bumiputera quota release expenditure as tax deductions.

**Issues:**

1) Whether the judicial review application could be sustained.

2) Whether the monies paid by taxpayer to the Johor State Government to obtain the release of the Bumiputera units were deductible under Section 33(1) and / or Section 44(6) of the ITA.

**Decision:**

The HC held that the DGIR had wrongly disallowed the claim for the deduction, and as a result granted the order of *certiorari* which sought to quash the Notices of Additional Assessment based on the following grounds:

- As guided by the recent decision of the COA in *Ketua Pengarah Hasil Dalam Negeri v Mitraland Kota Damansara Sdn Bhd [2023] MSTC 30-608*, the contribution was revenue expenses deductible under Section 33(1) of the ITA.

- The Bumiputera quota release expenditure was made to obtain the release of the Bumiputera units, and it did not constitute penalties or fines, as affirmed by the DGIR in their affidavit. Thus, the DGIR's contentions were contradictory. While relying on *Prima Nova Harta Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (W-01(A)-318-07/2020) [Prima Nova]*, the DGIR also argued that the disallowance of the expenses was not solely based on it. Labelling the payments without examining their substance amounted to applying precedent without assessing the facts. The DGIR failed to consider the different payment mechanisms between the Selangor and Johor State Governments. The DGIR ought to have examined taxpayer's documents and requested further evidence before imposing the additional tax of RM2 million.

- The DGIR's decision to impose additional tax of RM2 million based solely on *Prima Nova* was flawed. In *Prima Nova*, the SCIT had found that the penalty or fine imposed on the developer for redemption was capital in nature and not deductible under Section 33(1) of the ITA, whereas in the instant case, the payment was a contribution to the *Tabung Perumahan Negeri Johor*. The Bumiputera quota release mechanisms in Johor are different as no penalty will be imposed on developers if they fail to obtain approval before releasing the Bumiputera units. Thus, the DGIR's argument that the taxpayer's contribution payments were capital in nature and not deductible under Section 33(1) of the ITA was unjustifiable and without merit.

- The sale of the Bumiputera units directly generated the taxpayer's income as a property developer. The purpose of the Bumiputera quota release expenditure was to generate income. The payment is an income expenditure which is made on a recurrent basis whenever taxpayer need to apply for the release from the Johor state authorities.

- The Bumiputera units formed part of taxpayer's stock-in-trade and were not capital assets. The payment was made to facilitate their sale, and its effect was to achieve sales of the stock-in-trade.

- Section 39(1) of the ITA did not stipulate that the payment was non-deductible. As there was no express provision disallowing such expenses, it was trite in tax law that only what was clearly stated in the ITA could be considered, with nothing to be read in or implied.

- The taxpayer could not claim the expenditure as a donation to the Johor state government under Section 44(6) of the ITA, as it had not made a claim under that section in its return and elected to claim the expenditure under Section 33 of the ITA instead.

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## 6. Datuk Oh Chong Peng v Ketua Pengarah Hasil Dalam Negeri (HC) (2024) MSTC 30-708

This was an appeal by the taxpayer, Datuk Oh Chong Peng, against the decision of the SCIT. The SCIT had disallowed the taxpayer's appeal against the assessment raised by the DGIR. The SCIT was of the view that the taxpayer fell within the category of employment whereby the term 'employment' is not limited to only instances where there exists a master-servant relationship. The SCIT referred to a contract of service by an independent contractor for which a salary or remuneration is paid in exchange.

**Issues:**

1) Whether the DGIR had any legal and factual basis to treat the taxpayer as an employee of various public listed companies by his appointment as an independent director and taxed his director's fees as employment income under Section 4(b) of the ITA instead of business income under Section 4(a) of the ITA.

2) Whether the DGIR had successfully discharged the burden of proof required under Section 91(3) of the ITA relating to the time-barred assessments for the relevant YAs.

3) Whether the DGIR had any legal or factual basis to impose a penalty on the taxpayer under Section 113(2) of the ITA.

**Decision:**

The HC allowed the taxpayer's appeal based on the following grounds:

- The SCIT had adopted a broad interpretation of the terms "employee" and "employment" under Section 2 of the ITA to include an independent director of a company and had failed to distinguish an independent director from a director within a company. The case of *Chong Kim Seng* v *Metatrade Sdn Bhd [2004] 1 MLRA 241; [2004] 1 MELR 4; [2004] 2 CLJ 439; [2004] 3 MLJ 1* explained this distinction whereby the appointment of a director in a company did not necessarily make them an employee. Whether they receive remuneration as a director would depend on the company's articles of association, normally determined in a general meeting. However, an employee of a company could

also be appointed as a director without losing their employee status, and they would still be entitled to wages or salary unless their employment contract was terminated.

- The case of *Hoh Kiang Ngan v Mahkamah Perusahaan & Anor [1995] 2 MLRA 435; [1995] 3 MLJ 369; [1995] 1 MELR 1; [1996] 4 CLJ 687; [1996] 3 AMR 3693* outlined the test to determine the existence of a contract of service. The Federal Court held that while the "degree of control" might not be the sole criterion, it remained significant in distinguishing between a contract of service and a contract for services. In the taxpayer's case, a relationship of master and servant between the taxpayer and the public listed companies had not been established. The taxpayer was neither an employee nor subject to the control of the companies. Consequently, the director's fees received by the taxpayer should be taxed as business income rather than employment income.

- Bursa Malaysia Securities Berhad Practice Note 13 outlined 7 requirements for an independent director, establishing a clear position that an independent director could not be considered an employee. The SCIT was wrong to conclude that Bursa Malaysia's definition of an independent director was a mere guideline and only persuasive. According to Bursa Malaysia's Participating Organisations' Directives and Guidance, any directives or guidance that impose obligations on a participating organisation or registered person were binding on them. This include the stipulation that independent directors in listed companies were not considered employees.

- In *Lim Chao Liang & Lim Chao Li v Ketua Pengarah Hasil Dalam Negeri (Rayuan No PKCP(P) 90/2012),* the SCIT allowed the taxpayer's appeal and held that there was no indication of a master-servant relationship and considered various factors to reach at that conclusion. As in *Lim Chao Liang*, the DGIR in the present case had testified in court that no offer of employment, increment letter, circular on employment, or employee handbook was provided to the taxpayer by the companies. Consequently, it was clear that the taxpayer did not fall within the categories of an "employee" under the ITA.

- Further evidence showed that the taxpayer, as an independent director, did not receive director's fees monthly. Instead, these fees were only paid upon approval at the annual general meeting (AGM) of a company, and the approved fees were distributed among the board of independent non-executive directors. In contrast, an employee's salary was usually paid on a daily, weekly, or monthly basis and would be clearly known before the employment. The employee was entitled to seek remedy through the Industrial Court if their salary was not paid after providing service.

- The company secretary of the relevant companies had produced several letters confirming that the taxpayer served as an independent director and not as an employee. These letters also indicated that the taxpayer was appointed to provide advice and services for a fee approved by the shareholders during the AGM of the company [the director's fees paid to the taxpayer were clearly stated in the AGM reports]. The SCIT, however, had disregarded these letters. The SCIT and the DGIR had failed to understand the position of a company secretary, as well as their role and functions under the *Companies Act 1965* (Companies Act). This was evident from the DGIR's statement that they would accept the letters if they were signed by the companies' board of directors instead of the company secretary. The DGIR had clearly failed to appreciate that a company secretary was an officer of the company, and that delegation of responsibility by the board of directors to such an officer was provided for under Section 216 of the Companies Act. The SCIT was also wrong to agree with the DGIR's position on this. As per *Tan Ban Uu & Anor v Ong Ghin Leong [2017] 1 MLRHU 115; [2017] 3 AMR 287; [2017] MLJU 244*, a company secretary's duties were primarily to the board of directors. In the present case, the letters issued and signed by the company secretary should be treated as issued and signed by the board of directors. Therefore, the DGIR and the SCIT should not have disregarded the letters.

- The DGIR's assessments raised against the taxpayer were based on their reliance on the EA forms received by the taxpayer from the public listed companies, which led to the conclusion that the taxpayer was an employee. Based on the evidence presented, the EA form was merely a standard form used by the Inland Revenue Board of Malaysia to obtain taxpayer's information which include director's fees, as confirmed by the DGIR. The form did not determine the taxpayer's status or role in the company, nor did it determine the taxpayer's tax liability under Section 4(a) or Section 4(b) of the ITA. The DGIR was wrong to conclude that the taxpayer was an employee based on the EA forms issued by the relevant companies. Therefore, the SCIT was also wrong to conclude that the EA forms were *prima facie* evidence of the taxpayer's employment status.

- The SCIT made an error in finding that the taxpayer was negligent as the DGIR had failed to discharge the burden of proof for the time-bar exceptions under Section 91(3) of the ITA (namely fraud or negligence by the taxpayer) to apply. The taxpayer, acting as an independent non-executive director, was not an employee, and therefore the income he received could not be treated as employment income. Thus, no negligence could be established in the taxpayer's income declaration to justify the DGIR's issuance of the time-barred assessments.

- The DGIR had failed to consider the relevant facts and circumstances in exercising their discretion to impose a penalty against the taxpayer under Section 113(2) of the ITA and failed to provide reasons for it. Conversely, the taxpayer consistently acted in good faith and had taken reasonable steps to file and pay taxes in compliance with the law, which was acknowledged by the DGIR.

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## 7. Nike Global Trading B.V., Singapore Branch v Pemungut Duti Setem, Malaysia (HC) (2024) MSTC 30-750

This was an appeal by the duty payer, Nike Global Trading B.V., Singapore Branch, against the dismissal of an objection filed by them. The duty payer had objected to the assessment of stamp duty made by the Collector of Stamp Duties (Collector) on its novation agreement with Nike European Operations Netherlands (NEON) and Nike Sales (Malaysia) Sdn Bhd (NSMSB).

**Issue:**

Whether the novation agreement was chargeable under Section 16(1) read together with Item 32(a), First Schedule of the Stamp Act 1949 (SA).

**Decision:**

The HC dismissed the duty payer's appeal based on the following grounds:

- Section 4(1) of the SA provided that the instruments specified in the First Schedule of the SA were chargeable with the stipulated duties. Thus, the governing principle was that stamp duty was chargeable on the instrument and not transactions.

- The novation agreement transferred the debt from NEON to the duty payer without consideration. For stamp duty purposes, the focus was on the substance of the agreement rather than its form, which was determined by the rights and obligations of the parties involved. The true meaning or nature and effect of the instrument should be determined, as per *Tan Kay Thye & Ors* v *Commissioner of Stamp Duties (1991) 1 MSTC 7,144; [1991] 3 MLJ 150* and *Lap Shun Textiles Industrial Co Ltd v Collector of Stamp Revenue [1976] 1 All ER 833*. The main question was whether the novation agreement fell within the meaning of Section 16(1) of the SA i.e., voluntary conveyance *inter vivos*.

- NEON had fulfilled its obligation under the loan agreement by disbursing the loan. The purpose of the novation agreement was the transfer of NEON's right of repayment of the debt to the duty payer. Under Section 2 of the SA, a "debt" fell within the definition of "property". Although the debt was transferred to the duty payer without monetary consideration, it was chargeable under Item 32(a), First Schedule of the SA, and treated as a transfer or conveyance on sale under Section 16(1) of the SA.

- As per *PPB Group Bhd v Pemungut Duti Setem [2011] 9 MLJ 145*, payment *in specie* was a voluntary disposition *inter vivos* as contemplated under Sections 16(1) and 16(3) of the SA. Section 16(3) of the SA was broadly worded to include transfers based on payment in specie. Section 16 of the SA provided that any conveyance or transfer not made in favour of a purchaser, incumbrancer, or a party acting in good faith for valuable consideration was considered a voluntary disposition *inter vivos*. As per *Associated British Engineering Limited v Commissioner of Inland Revenue [1940] 7 KB 75*, the Commissioner treated each instrument of transfer of shares to the company's shareholder as a voluntary disposition *inter vivos* and imposed ad valorem duty, which was upheld by the court.

- In *Stanyforth & Anor v Commissioners of Inland Revenue [1930] AC 339*, it was held that the value of a transaction should be based on the amount of consideration as if it were a conveyance or transfer on sale. Therefore, even without monetary consideration, *ad valorem* stamping would be imposed.

- The novation agreement involved a transfer or conveyance of property which attracted stamp duty under Item 32(a), First Schedule of the SA.

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## 8. Prima Cahaya Sdn Bhd v Pemungut Duti Setem (HC) (2024) MSTC 30-722

This was an appeal by the duty payer against the stamp duty assessed by the Collector of Stamp Duty con deed of assignment.

**Issue:**

Whether the stamp duty on the deed of assignment should be based on:

a) the value amounting to RM227,250,000 as determined by *Jabatan Penilaian dan Perkhidmatan Harta Kuala Lumpur* (JPPH);
b) the value amounting to RM117,000,000 as stated in the principal sale and purchase agreement (principal SPA); or
c) the value amounting to RM105,300,000 as stated in the deed of assignment between Bestinet Sdn Bhd (Bestinet) and PCSB (the duty payer).

**Decision:**

The HC allowed the duty payer's appeal based on the following grounds:

- The assessment of stamp duty on the deed of assignment must be based on the market value of the property and which value had to be ascertained, and the stamp duty calculated should be based on the market value of the property as at the date the agreement for sale was executed. On the evidence adduced, the stamp duty chargeable for the deed of assignment should be based on the value amounting to RM117,000,000, as stated in the principal SPA between the vendor and Bestinet.

- The primary method in assessing a valuation should be the comparison method. Alternative methods could be used only if the primary method was unsuitable upon proper justification. It was a requirement under the Land Acquisition Act 1960 for a comparable to be successfully transacted, irrespective of the reason for undertaking the valuation. There was no reason to deviate from this principle of general application.

- The cost method of valuation was inappropriate and ought not to have been used. The use of the said method, coupled with the failure to make and explain necessary adjustments, had resulted in a seriously inflated and defective valuation. Whether all three methods of determining the market value relied on by JPPH indeed took place on the same day was questionable. The discrepancy suggested that a valuation based on the investment method was not conducted.

- It was illogical that the market value as assessed by JPPH was far higher than the amount anyone was willing to pay in an auction. It was not reflective of a realistic market value where a willing buyer and willing seller were ready to transact at without any compulsion, bearing in mind that the market value as assessed was a value after the pandemic when businesses and the general economy were struggling to pick up and normalise again.

- On the facts, the sale price of RM117,000,000 was the market value as "spoken by the market" in general, with the present owner constituting the market. On this premise, the stamp duty on the deed of assignment should be based on the value amounting to RM117,000,000 as stated in the principal SPA.

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## 9. MB Bhd v Ketua Pengarah Hasil Dalam Negeri (SCIT) (2024) MSTC 10-170

This was an appeal by the taxpayer against the DGIR's disallowance of its claim for capital allowance on the development cost of customised computer software and accelerated capital allowances on the costs of upgrading existing computer software and developing customised computer software.

**Issues:**

1) Whether the taxpayer was entitled to claim for capital allowance for the development cost of customised computer software.
2) Whether the taxpayer was entitled to claim for accelerated capital allowance for the upgrading cost of computer software and the development cost of customised computer software.
3) Whether the DGIR had factual and legal basis under Section 113(2) of the ITA to impose a 45% penalty rate on the taxpayer.

**Decision:**

The SCIT allowed the taxpayer's appeal and held that the taxpayer is eligible to claim capital allowance on the development cost of customised computer software and accelerated capital allowances on the costs of upgrading existing computer software and developing customised computer software, based on the following grounds:

- In *Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd (2013) MSTC 30-054* (*Tropiland*), the court held that although the words "machinery" and "plant" were not defined in the ITA, it was clear that their categories were not limited. The items listed in Paragraphs 2(1)(a), (b) and (c) of Schedule 3 to the ITA simply illustrated these terms without restricting their scope to those items alone. Therefore, a liberal and holistic approach should be taken in determining or interpreting whether an asset constituted "plant" by considering the function and use of the asset in taxpayer's business.

- Based on the legal principles established by *Tropiland* and other cases, the taxpayer was correct in contending that the interpretation of "plant" was not limited to the items listed under Paragraph 2, Schedule 3 of the ITA. The provisions were very clear, and the term "plant" had a broad interpretation that could encompass other assets, including computer software, provided they were used for business purposes.

- Based on the evidence presented by the taxpayer and the DGIR, the computer software was used for the purpose of conducting taxpayer's banking business. The customised computer software was crucial to taxpayer's banking system because without such customisation, the purchased computer software would be useless and not fully functional. Therefore, the expenses incurred for developing the customised computer software were necessary expenses incidental to the purchase of computer software under Paragraph 2(1)(a) of Schedule 3 of the ITA. Therefore, the computer software constituted "plant" for the purposes of Schedule 3 of the ITA.

- The DGIR did not deny that the computer software used by the taxpayer, including the customised computer software, was for the taxpayer's business purposes and that the software would be useless if not customised to its banking system. Instead, the DGIR contended that the software was not listed as "plant" in Schedule 3 of the ITA, nor in any related subsidiary legislation. The DGIR's contention in this regard was not acceptable. The computer software, including upgrades, customised computer software and computer software licenses, was equipment used by the taxpayer in conducting its business. Therefore, all of these constituted a computer software package, which qualified as "plant" under the ITA.

- By taking a purposive approach in interpreting the schedule under the *Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014* [Rules 2014], it could be said that the software packages listed in the said schedule include computer software developed for the purpose of customised computer software development, as well as upgrades to existing computer software. The development and upgrading of computer software were aspects that could not be separated from the computer software purchased by the taxpayer to ensure the functionality of the software. Therefore, the word "purchase" in Rule 2 of Rules 2014 include the purchase of software systems or software packages together with any customised computer software development and upgrades to existing computer software, as well as the installation of their components. Based on the purposive approach, the term "includes" used in interpreting the word "purchase" under Rule 2 of Rules 2014 was intended to reflect a non-restrictive interpretation and should be construed broadly.

- In *CIMB-Principal Asset Management Bhd v Ketua Pengarah Hasil Dalam Negeri (HC) (2022) MLJU 2081*, the HC held that Paragraph 8.2 of Public Ruling 12/2014 (PR 12/2024) was illegal and in conflict with Rules 2014 and Schedule 3 of the ITA. Paragraph 8.2 of the PR 12/2014 states that payments for software development, such as consulting fees, license fees and other incidental charges, were not part of the cost for the provision of computer software. Since the meaning of "purchase" under Rules 2014 should be read and interpreted broadly, "purchase" would include installation and any related actions, which in this case encompassed the upgrading of existing computer software and the development of customised computer software. Therefore, Paragraph 8.2 of PR 12/2014 contravened Rules 2014.

- The taxpayer was eligible to claim the costs of upgrading existing computer software and developing customised computer software purchased by it as capital allowances. This expenditure constituted qualifying expenditure under Paragraph 45, Schedule 3 of the ITA and Rules 2014.

- The DGIR's imposition of penalty against taxpayer under Section 113(2) of the ITA was legally wrong and irregular. The conditions for a penalty to be imposed were not fulfilled by the DGIR. Therefore, there was no legal and factual basis for the DGIR's imposition of penalty against the taxpayer.

*Note 1:*
*Paragraph 45(a) of Schedule 3 to the ITA provides that for the purposes of Schedule 3, capital expenditure incurred on the provision of machinery or plant, includes capital expenditure incurred on the reconstruction of that machinery or plant.*

*Note 2:*
*Effective YA 2021, the definition of plant was introduced in Paragraph 70A, Schedule 3 of the ITA via the Finance Act 2020. Subsequently, the Finance Act 2023 deleted the word "an intangible asset" from the exclusion list and included powers for the Minister to prescribe any other assets as a plant.*

*Paragraph 70A, Schedule 3 of the ITA*
*(1) In this Schedule, "plant" means an apparatus used by a person for carrying on his business but does not include a building or any asset used and that functions as a place within which a business is carried on.*

*(2) Notwithstanding subparagraph (1), the Minister may prescribe any other assets as assets which are excluded from the definition of "plant".*

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## 10. PBNCJST v DGIR (SCIT)

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

**Facts:**

The taxpayer is the administrator and trustee of a Hindu temple registered under the Trustees (Incorporation) Act 1952.

The taxpayer disposed of 3 lots of property for a consideration of RM9,991,444 via sale and purchase agreement dated 19 July 2019. Although the said properties were disposed of after six (6) years from the date of acquisition, the DGIR had imposed RPGT at the rate of 10% under Part II, Schedule 5 of the RPGTA. However, the taxpayer was of the view that the DGIR should have imposed RPGT at the rate of 5% under Part I, Schedule 5 of the RPGTA.

**Taxpayer's argument:**

The taxpayer argued that as a trustee of a trust body, the taxpayer should not be subjected to RPGT at the rate of 10% under Part II, Schedule 5 of the RPGTA because at the time of the disposal, Part II, Schedule 5 of the RPGTA only applied specifically to "companies" and not to "a trustee of a trust".

**DGIR's argument:**

The DGIR was of the view that the taxpayer should be subjected to RPGT at the rate of 10% under Part II, Schedule 5 of the RPGTA because the taxpayer is a "body corporate" registered under the Trustees (Incorporation) Act 1952.

**Issue:**

Whether the taxpayer should be subjected to RPGT at the rate of 5% under Part I, Schedule 5 of the RPGTA or 10% under Part II, Schedule 5 of the RPGTA for the disposal of the properties.

**Decision:**

On 2 May 2025, the SCIT dismissed the taxpayer's appeal and upheld the Notice of Reduced Assessment for the YA 2019. The taxpayer has failed to discharge the burden of proof under Paragraph 13, Schedule 5 of the ITA, read with Section 18 of the RPGTA.

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

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## 11. MDCSB v Ketua Pengarah Hasil Dalam Negeri (SCIT)

The IRBM has recently uploaded a case report, "MDCSB v Ketua Pengarah Hasil Dalam Negeri (SCIT)" on its website.

**Facts:**

The taxpayer is in the business of manufacturing cement product, bricks and ready-mixed concrete. The taxpayer had claimed reinvestment allowance (RA) for the YA 2000. In 2012, pursuant to the gazette of the Income Tax (Prescription of Activity Excluded from the Definition of "Manufacturing") Rules 2012 [*P.U.(A) 23/2012*] which were deemed to have come into effect from YA 2009, the taxpayer's business activities have been excluded from the definition of "manufacturing".

**Taxpayer's argument:**

The taxpayer has argued that it has the right to continue claiming RA which has been made prior to the issuance of *P.U.(A) 23/2012* and the first RA claim has been made for YA 2000. Therefore, the taxpayer is also eligible to claim RA pursuant to Paragraph 2B(a), Schedule 7A of the ITA for capital expenditures that were incurred for the qualifying project in YAs 2016, 2017, 2018, 2021 and 2022.

**DGIR's argument:**

The DGIR argued that the taxpayer's expansion project is not considered as a qualifying project due to the exclusion of the taxpayer's business activities from the definition of "manufacturing" under *P.U.(A) 23/2012*.

However, a concession has been given to the taxpayer on the basis that the first RA claim has been made before YA 2009, which allows the RA to be claimed until the end of the 15$^{th}$ YA of the eligibility period i.e., for YA 2000 to YA 2014.

**Issue:**

Whether the taxpayer is eligible for RA claim following the exclusion of its business activities from the definition of "manufacturing" under *P.U.(A) 23/2012*.

**Decision:**

On 16 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.

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

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## 12. Yakin Jayamuda Sdn Bhd v Collector of Stamp Duty (Sessions Court)

The IRBM has recently uploaded a case report, "Yakin Jayamuda Sdn Bhd v Collector of Stamp Duty (Sessions Court)" on its website.

**Facts:**

On 25 June 2019, the duty payer entered into a Sale and Purchase Agreement (SPA) with the Seller to purchase a property. On 1 June 2020, the duty payer applied for adjudication of stamp duty on the Memorandum of Transfer (Form 14A). The Notice of Assessment for the transfer of property (ad valorem duty) was raised on 17 June 2020 with the imposition of *ad valorem* duty amounting to RM30,720.

The Shah Alam HC wound up the Seller by Order dated 27 July 2020. The duty payer only found out about this winding up in March 2021. The duty payer applied for a refund of the stamp duty paid in the amount of RM30,720 from the Collector. The duty payer asserted that Section 57 of the SA allowed the duty payer to apply for a refund within 24 months from the date the duty payer resolved the COA proceeding which was on 9 May 2022 and/or the date the duty payer received a new Form 14A from the Malaysia Department of Insolvency, which was on 13 October 2022.

On 20 October 2022, the duty payer had applied for an adjudication of stamp duty on the said transfer of property and has submitted a new Form 14A signed by the Official Receiver and Liquidator. The Notice of Assessment for the transfer of property was raised on 6 November 2022 with the imposition of an ad valorem duty of RM32,256 including penalty.

The Collector rejected the application for refund of stamp duty amounting to RM30,720 under Section 57(f)(iv) of the SA because the Form 14A dated 1 June 2020 was considered spoiled and became void since the Seller's administrative affairs are now under the control of the Official Receiver, Malaysia Department of Insolvency. The application for refund of stamp duty was only made by the duty payer on 20 October 2022. Proviso (a) of Section 57 of the SA provides that the application for refund must be made within 12 months from the date the stamp duty was considered spoiled, which was 27 July 2020, the date the Seller was wound up. The amendment of the refund application period from 12 months to 24 months is only effective from 1 January 2022 as provided under Section 36, Chapter IV of the Finance Act 2021. Therefore, the said amendment does not apply to the duty payer's situation.

An Originating Summons dated 1 July 2024 was filed by the duty payer because he was not satisfied with the Collector's decision.

**Issue:**

Whether the ad valorem duty amounting to RM30,720 should be refunded by the Collector under Section 57 of the SA.

**Decision:**

On 9 April 2025, the Sessions Court dismissed the duty payer's Originating Summons with costs of RM500.

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

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