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Tax Espresso

Amendment Acts, Gazette Orders, Public Ruling, Tax Cases and more

June 2025

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Greetings from Deloitte Malaysia Tax Services

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Inland Revenue Board of Malaysia

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Upcoming events:

19 June 2025 – SST expansion and impact on businesses

Important deadlines:

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

1. Labuan Amendment Acts 2025

The following Labuan Amendment Acts were gazetted on 22 April 2025 and came in operation on 23 April 2025:

- Labuan Companies (Amendment) Act 2025 [*Act A1756*] (available in English and Malay)
- Labuan Trusts (Amendment) Act 2025 [*Act A1757*] (available in English and Malay)
- Labuan Foundations (Amendment) Act 2025 [*Act A1758*] (available in English and Malay)
- Labuan Limited Partnerships and Limited Liability Partnerships (Amendment) Act 2025 [*Act A1759*] (available in English and Malay)

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2. Income Tax (Determination of chargeable income of an individual in respect of dividend) Rules 2025 [*P.U.(A) 148/2025*]

On 7 May 2025, the Income Tax (Determination of Chargeable Income of an Individual in respect of Dividend) Rules 2025 [*P.U.(A) 148/2025*] were gazetted. These Rules have effect from the year of assessment (YA) 2025.

Background

Effective YA 2025, Malaysia will introduce a new dividend tax of 2% on dividend income exceeding RM100,000 annually, pursuant to changes made via the Finance Act 2024. This 2% tax is imposed on dividend income deemed by virtue of Section 14 of the Income Tax Act 1967 (ITA) to be derived from Malaysia (i.e., dividends paid, credited, or distributed by resident company), whether in monetary form or otherwise, received by individual shareholders (resident individuals, non-resident individuals, and individuals who hold shares through nominees), in excess of RM100,000 annually.

Relevant provisions in the ITA have been amended to incorporate these new changes via the Finance Act 2024. This includes amendments to Paragraph 12B of Schedule 6 to the ITA, to specify that individual shareholders earning dividend income not exceeding RM100,000 annually or their first RM100,000 of the dividend income is exempt from tax and any deduction related to the exempted dividend income shall be disregarded when ascertaining the chargeable income of the individual.

As announced in Budget 2025, where the individual has income from a source other than dividend as stated above, the chargeable income of the individual shall be determined using a formula prescribed by the Minister of Finance.

Salient points of the Rules

The Rules (P.U.(A) 148/2025) shall apply to cases where an individual, both resident and non-resident in Malaysia, has income which consists of dividend (which is deemed by virtue of Section 14 of the ITA to be derived from Malaysia) exceeding RM100,000 and a source other than dividend in the basis period for a YA.

The Rules prescribe a formula to be used in determining the amount of chargeable income attributable to such dividends, which is reproduced below:

$$\frac{\text{Statutory income in respect of dividend}}{\text{Aggregate income}} \times \text{Chargeable income which is subject to tax*}$$

**As specified in Paragraph 1 (resident individual in Malaysia) or Paragraph 1A (non-resident individual in Malaysia) of Part 1, and Part XXII of Schedule 1 of the ITA.*

For the purpose of these Rules:

“dividend” means a dividend paid, credited or distributed by a company, whether in monetary form or otherwise.

“individual” means a shareholder of a company, either through a direct shareholding or a nominee.

[Note: As announced in Budget 2025, several categories of dividend income will be excluded from this new 2% tax. We expect these exclusions to be legislated via separate subsidiary legislation soon.]

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3. Income Tax (Exemption) Order 2025 (Amendment) Order 2025 [*P.U.(A) 149/2025*] in relation to Labuan Entities

The Income Tax (Exemption) Order 2025 (Amendment) Order 2025 [*P.U.(A) 149/2025*] was gazetted on 7 May 2025 and has effect from the YA 2023 to the YA 2027.

Amendment
The Income Tax (Exemption) Order 2025 [*P.U.(A) 59/2025*] is amended in Paragraph 2(1)(j) by substituting for the word "member" the word "beneficiary" as follows (You may refer to *Deloitte Malaysia Tax Espresso – March 2025* for the relevant details):

2(1) The Minister exempts—
(j) a ***beneficiary*** *of a Labuan foundation or a Labuan Islamic foundation from the payment of income tax in respect of chargeable income from distributions of profit after tax received from the Labuan foundation or Labuan Islamic foundation;*

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4. IRBM Public Ruling No. 1/2025 – Tax Treatment of Malaysian Ship

The Inland Revenue Board of Malaysia (IRBM) has uploaded the Public Ruling No. 1/2025 – Tax Treatment of Malaysian Ship (PR No. 1/2025) dated 15 May 2025.

This PR is the 2nd edition, replacing the older PR No. 10/2012 dated 13 December 2012. A list of updates and amendments can be found in Paragraph 17 on Pages 39 to 41 of this PR.

The key changes are summarised below:

- Paragraph 5.2.2 is updated as follows:
  In order to qualify for Malaysian ship status under the ITA, a vessel has to be a sea-going ship that goes beyond port limits ***and fulfil the definition of "Malaysian ship" under the ITA.***

- Paragraph 5.3.1 is updated as follows:
  "Sea-going ship" is not defined in the ITA. In line with the definition of "sea-going ship" in Section 2 of the MSO, a sea-going ship refers to any ship going beyond port limits. Port limits vary in accordance with the by-laws of each port. ***Therefore, a ship sailing in Malaysian waters that does not sail beyond the port limit is not considered as a sea-going ship****.*

- Paragraph 6.1 is updated as follows:
  Pursuant to subsection 54A(1) of the ITA, where a person who is resident in Malaysia for the basis year for a year of assessment carries on the qualifying business of –
  (a) transporting passengers or cargo by sea on a Malaysian ship, or
  (b) letting out on charter a Malaysian ship owned by him on a voyage or time charter basis,

  70% of the statutory income for the year of assessment shall be exempted from tax. However, a full exemption on the statutory income has been granted from the YA 2012 until YA 2026 through the subsidiary legislation listed in paragraph 3.1 of this PR. Nevertheless, effective from the YA 2021 companies that get full exemption must comply with the substantive conditions based on P.U.(A) 312/2022 and P.U.(A) 184/2024. These substantive conditions will be explained in paragraph 10 of this PR.

- Addition of Paragraph 10 – Compliance with the conditions for annual verification.

- **Paragraph 16.2** is updated to include the following documents which may be required to substantiate a claim for the exemption of the shipping income in the event of tax audit:
  (e) Reports and documents of compliance with conditions and annual verification from the Malaysian Ministry of Transport (starting YA 2021)

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5. IRBM's FAQs on e-CKHT (Method of Submission for Forms 1A, 1B, 2A, 3)

The IRBM has uploaded the Frequently Asked Questions (FAQs) on e-Cukai Keuntungan Harta Tanah (e-CKHT) on (Methods of Submission for Form 1A, 1B, 2A, 3) as at 1 May 2025 on the Real Property Gains Tax (RPGT) webpage on its website.

The FAQs include the following:
- Tax Identification Number (TIN Number);
- MyTax e-CKHT;
- The role of lawyers and TAeF;
- Procedure for completing Form CKHT 1A / 1B / 3 (Disposer);
- Procedure for completing Form CKHT 2A (Acquirer);
- Procedure for completing Form CKHT 502 (Acquirer) (disposals for YA 2024 and before); and
- Appeals / enquiries related to e-CKHT.

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6. MIDA – Forest City Special Financial Zone & Johor-Singapore Special Economic Zone tax incentive packages

The Malaysian Investment Development Authority (MIDA) has issued Guidelines for the following:

1) Forest City Special Financial Zone (FCSFZ) tax incentive package
   a) The FCSFZ is Malaysia's pioneering special financial zone. It underpins Malaysia's ambition to become a global hub for financial services.
   b) The tax incentive package consists of:
      - **Smart Logistics Complex** – Income tax exemption equivalent to Investment Tax Allowance (ITA) of 100% on the qualifying capital expenditure (QCE) (excluding land) for 5 years. The ITA can be offset against up to 100% of statutory income (SI) derived from the approved business for each YA. Unutilised ITA can be carried forward until fully absorbed.
      - **Global Services Hub** – Corporate tax rate of 5% for up to 10 years & extension of an additional 10 years on trading and services income or services income.
      - **Relocation (Services)** – Corporate tax rate of 5% for up to 10 years & extension of an additional 10 years.
   c) Applications received by MIDA from 1 September 2024 until 31 December 2034 are eligible for consideration.
   d) The incentives in item (b) above are to be provided through:
      - Smart Logistics Complex – P.U.(A) 113/2006.
      - Global Services Hub & Relocation (Services) – subsidiary legislation under the ITA, to be gazetted.

2) Johor-Singapore Special Economic Zone (JS-SEZ) tax incentive package
   a) The JS-SEZ encompasses a wide range of sectors, including manufacturing, logistics, tourism, global services and the digital economy. The JS-SEZ has nine flagship zones, which are Johor Bahru Waterfront (JBW), Iskandar Puteri (IP), Tanjung Pelepas (TP), Tanjung Langsat – Kong Kong (TL-KK), Senai – Skudai (S-S), Kulai –Sedenak (K-S), Desaru – Penawar (D-P), Pengerang Integrated Petroleum Complex (PIPC) and FCSFZ.
   b) The tax incentive package for seven flagship zones (excluding PIPC & FCSFZ) consists of:
      - **Global Services Hub (Flagship zones: JBW & IP)** – Special tax rate of 5% for 15 years on trading and services income or services income.
      - **Smart Logistics Complex (Flagship zone: TP)** – ITA of 100% QCE incurred within 5 years. The ITA can be offset against up to 100% of SI derived from the approved business for each YA.

- **Manufacturing – Downstream Specialty Chemicals (Flagship zone: TL-KK)** – For a company with capital investment (excluding land) of at least RM500 million in the manufacturing sector:
    - Special tax rate (5% or 10%) for up to 10 years; or
    - Income tax exemption equivalent to ITA [60% or 100% on qualifying capital investment (excluding land)] for up to 10 years. The ITA can be offset against up to 100% of SI derived from the approved business for each YA.
- **Manufacturing Business Incentive Scheme (Flagship zones: S-S & K-S)**
    - **New company** – Special tax rate of 5% for 10 years (for new investment* between RM500 million and RM1 billion) or 5% for 15 years (for new investment* above RM1 billion).
    - **Existing company [relocating overseas facilities (for a new business segment not expansion of existing products) into Malaysia]** – Income tax exemption equivalent to ITA of 100% on qualifying capital investment (excluding land) incurred within 5 years (new investment* above RM500 million). The ITA can be offset against up to 100% of SI derived from the approved business for each YA.

  Note: ** New investment in the manufacturing sector with capital investment (excluding land).*
- **Integrated Tourism Project (Flagship zone: D-P)** – ITA of 100% QCE incurred within 5 years. The ITA can be offset against up to 70% of SI derived from the approved business for each YA.

c) Applications received by MIDA from 1 January 2025 until 31 December 2034 are eligible for consideration.

d) The incentives in item (b) above are to be provided through:
- Smart Logistics Complex & Integrated Tourism Project – P.U. (A)113/2006.
- Global Services Hub, Manufacturing – Downstream Specialty Chemicals & Manufacturing Business Incentive Scheme – subsidiary legislation under the ITA, to be gazetted.

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7. KPHDN v Kind Action (M) Sdn Bhd (FC) (2025) MSTC 30-807

Issue:

Whether there was an appealable error made by the Court of Appeal (COA) that warranted an intervention by the Federal Court (FC).

Decision:

The FC held that there was no appealable error made by the COA that warranted the court's intervention based on the following grounds:

- The Director General of Inland Revenue (DGIR)'s contention that KASB could be taxed under the ITA after an audit, despite the RPGT assessments being final and conclusive, **violated the principle against double taxation** and **conflicted with the finality** provision in Section 20(1) of the Real Property Gains Tax Act 1976 (RPGTA). The words in Section 20(1) of the RPGTA were clear. If no appeal was filed and the circumstances in Section 20(2) of the RPGTA did not arise, the RPGT assessments were final and conclusive.
- It was well-established that courts do not read words into a statute but only interpreted and applied the words used by the legislature. Any ambiguity should be interpreted in the taxpayer's favour. Therefore, there was no reason not to give effect to the **clear words "final and conclusive"** in Section 20(1) of the RPGTA. The certainty and definiteness of the legal position had to be maintained.
- The RPGTA did not permit the DGIR to accept the RPGT return "**on the surface**" and review it later. Good governance required the DGIR to conduct an investigation or audit before issuing an assessment, in line with Section 14(1) of the RPGTA, which allows the DGIR to either accept the return or make adjustments before assessing.
- The DGIR's position to "**keep open the various alternatives**" was not acceptable as it effectively amounted to taxing KASB under both the RPGTA and the ITA, which the law prohibited. Such an approach would create perpetual uncertainty in the tax position, which could not have been the intention of parliament given the final and conclusive provision in the law.
- The DGIR's conduct in issuing the certificates of clearance and assessments under the RPGTA, and then issuing notices of assessment under the ITA 7 years later, was **clearly illegal** as it resulted in **double taxation** for the same land transactions under 2 different legislations.
- The COA had considered the adjustments made to KASB's RPGT payments before the issuance of the assessments under the ITA. The COA correctly held that the **proper procedure** was for the DGIR to revise and discharge the assessments under the RPGTA before raising taxes under the ITA.

- The DGIR's contention that they were empowered to raise the assessments under Section 91 of the ITA and were not estopped from doing so was misplaced. The COA did not find that the DGIR lacked power under Section 91 of the ITA to raise assessments against KASB. Instead, it found that the DGIR had **acted contrary to law** by imposing tax under both the RPGTA and the ITA, having failed to discharge the certificates of clearance and assessments under the RPGTA before revising and imposing tax under the ITA.
- It was undisputed that KASB had received multiple assurances over a 7-year period from 2011 to 2018 that all the transactions were capital in nature. This had created a **legitimate expectation** for KASB that they were correct, and the **DGIR was estopped** from shifting their position.
- The **High Court (HC) had erred** in concluding that the proper forum was the Special Commissioners of Income Tax (SCIT) and in contradicting itself by addressing the merits. Having found that the merits were for the SCIT to determine, the HC should not have decided on issues of negligence, limitation, and bad faith.

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8. Zurich Life Insurance Berhad v KPHDN (COA)

The IRBM has recently uploaded a case report, "Zurich Life Insurance Berhad v KPHDN (COA)" on its website.

Facts:

The dispute revolved around the taxpayer, being an insurance company, claiming that it operated two 'distinct' businesses that were unrelated to its insurance business, namely, sub-lease of unoccupied premises in Menara MAA in Kuching and Kota Kinabalu and operation of Casa Rachado Resort in Port Dickson.

The lease of Menara MAA Kuching and Kota Kinabalu and the acquisition of Casa Rachado Resort were funded by the life fund of its life insurance business. Initially, the income from these sources was declared as rental income but was later reclassified as business income under Section 4(a) of the ITA. The DGIR rejected this reclassification, treating the income as life fund income, as it was gross income from investments made from the taxpayer's life fund that would fall under Section 60(3)(a) of the ITA.

Taxpayer's argument:

The taxpayer contended that these businesses should be taxed separately as business income under Section 4(a) of the ITA as the businesses by its very nature, do not qualify as an investment. On this basis, all related expenditures of the two sources were claimed as deductions under Section 33(1) of the ITA. The taxpayer also sought to set-off the adjusted losses from these two sources against the general fund and shareholders' fund income asserting that the income derived from these two sources cannot be treated as investments. They were not passive income given the taxpayer's active involvement in managing the resort and maintaining the sub-leased premises.

DGIR's argument:

The DGIR countered that as an insurer, the taxpayer was legally prohibited from carrying out any other businesses other than insurance. Section 60 of the ITA was primarily based on the laws regulating the insurance industry. Thus, its construction must take into account the legal framework of the insurance business. Further, the taxpayer had declared in its statutory return to Bank Negara of Malaysia that the resort was the investment property of the life fund and the income from both sources was reported as the investment income of the life fund.

The term "investments" was defined in Section 60(11) of the ITA 1967 to include any accretions thereto but did not clarify what constituted an investment. The DGIR argued that based on the ordinary meaning of investment as derived from dictionaries, investment would not necessarily mean passive income. When money being put into something or used to generate a profit, then such an act qualified as an investment. Thus, when the money from the life fund was used to purchase the Casa Rachado Resort, it would constitute an investment made from the life fund. Similarly, the money from the life fund was used to rent out Menara MAA Kuching and Kota Kinabalu and the rental lead to sub-leasing of parts of the unused premises, it represented the use of life fund money to generate a profit which constitutes an investment. Furthermore, based on Sections 60(10A) and 60(10D) of the ITA, the computation of the life fund's total income had been quarantined to life fund. Thus, the adjusted losses arising out of the two sources from the life fund could not be set-off with the general fund and shareholders' fund income.

Issue:

Whether the income from subletting of premises and resort operations was investment income falling under Section 60(3) or business income taxable under Section 4(a) of the ITA.

Decision:

The COA unanimously dismissed the taxpayers' appeal against the HC's decision with cost of RM15,000 to the DGIR. The COA held that there was no appealable error in the decision of the HC judge in dismissing the taxpayer's appeal, and thus, the appellate intervention was unwarranted. [*Note: In summary, the HC dismissed the taxpayer's appeal against the SCIT's decision that the income from subletting of premises and resort operations was an investment income falling under Section 60(3) of the ITA. The SCIT did not make any appealable error.*]

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

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9. Amlife Insurance Bhd v Ketua Pengarah Hasil Dalam Negeri (COA) (2024) MSTC 30-713

This was an appeal by the taxpayer against the decision of the HC, which had concurred with the findings of the SCIT and had dismissed the taxpayer's appeal.

Issue:

Whether the income of the life fund should be treated as part of the taxpayer's aggregate income under Section 44(2) of the ITA.

Decision:

The COA set aside the HC's order and allowed the taxpayer's appeal based on the following grounds:

- The ITA clearly provides for a separate method for calculating the income of a life fund, which enjoys a concessionary rate of 8% compared to the 28% imposed on the general fund and shareholders' funds. The calculation method for life fund of a resident insurer is provided under Sections 60(3) and 60AB of the ITA, rather than Sections 5, 43 and 44 of the ITA. According to the legal principle of *generalibus specialia derogant*, when there were 2 provisions of written law, the specific provision excludes the application of the general provision, as per *Luggage Distributors (M) Sdn Bhd v Tan Hor Cheng @ Tan Chi & Anor [1995] 3 CLJ 520*.

- The HC had erred in law in agreeing with the SCIT, which resulted in the income of the life fund being aggregated with the other funds i.e., general fund and shareholders' fund, thus becoming ineligible for the concessionary tax rate of 8%. The HC failed to recognise that the income of a life fund should be clearly separated from the income of other funds to enjoy the preferential tax rate. Therefore, it was incorrect to rely on Section 44(2) of the ITA to set off the losses from the shareholders' fund against the life fund, as the latter was not part of the taxpayer's aggregate income.

- The correct method to determine the taxable income of the shareholders' fund and the general fund was prescribed by virtue of Sections 42, 43, 44(2) and 60(4B) of the ITA. Therefore, the taxpayer was right to aggregate and set off the shareholders' fund's losses against the general fund under Sections 43 and 44(2) of the ITA. The aggregated income of the general and shareholders' funds would then be subjected to the regular tax rate of 28%. The HC erred by concluding that the income from the shareholders' fund could not be aggregated with the general fund.

- The appropriate method to determine the taxable income of the life fund of a resident insurer was prescribed by virtue of Sections 60(3) and 60AB of the ITA. The life fund should not be included in the aggregate income. The HC erred by agreeing with the SCIT without considering the purpose and implications of Sections 60(3) and 60AB of the ITA. These sections provide a preferential tax rate of 8% for life fund income, as opposed to 28% on the income of other funds. A separate tax treatment was created for life funds under the ITA, consistent with the statutory segregation of life funds from the insurance companies' assets under the *Insurance Act 1996* (IA).

- The SCIT was wrong in determining that the taxpayer's losses in its shareholders' fund should be set off against the income from life fund without the taxpayer fulfilling the strict requirements under Section 43(2)(b) of the IA. The HC committed a fundamental error of law in agreeing with the SCIT on this issue and concluding that the taxpayer would not be disregarding the provisions of the IA by complying with the provisions of the ITA.

- The taxpayer could not fulfil the requirements set by the DGIR under the ITA without breaching the IA and suffering penal consequences. The taxpayer and any insurance company would commit an offence if they failed to abide by the requirements outlined in Section 43(2)(b) of the IA. Therefore, the HC erred in law by holding that the taxpayer's responsibilities under the IA were irrelevant and its focus should solely be on the ITA regarding taxation matters. The HC failed to consider the penal consequences liable to be faced by the taxpayer under the IA. The ITA and the IA were to be read harmoniously and interpreted purposively based on the purposes for which they were created, as per *Tebin bin Mostapa* v *Hulba-Danyai bin Balia & Anor [2020] 7 CLJ 561*.

- The Parliament could not have intended insurers to treat the income from their life funds as their own, particularly when the income was only subjected to the preferential tax rate of 8%. The underlying intention was to encourage insurance companies to reduce the premium for life insurance for the benefit of policyholders; hence, strict regulatory measures were put in place for the income of life funds.

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10. KPHDN v Notable Vision Sdn Bhd (COA)

The IRBM has recently uploaded a case report, "KPHDN v Notable Vision Sdn Bhd (COA)" on its website.

Facts:

The was an appeal by the DGIR against the decision of the HC in allowing the taxpayer's application for judicial review against the DGIR's letter dated 29 June 2021 informing the taxpayer of the existence of the relationship between the taxpayer and FHTM pursuant to Section 2(4)(b) of the ITA to be read together with Section 139 of the ITA based on the audit findings conducted on the taxpayer.

This case concerned the withholding tax treatment on interest payments by the taxpayer, under a medium-term note (MTN) programme, which was an asset-backed security (ABS) that was approved by the Securities Commission (SC) and incentivised via an income tax exemption under Paragraph 33A of Schedule 6 to the ITA. Briefly, Paragraph 33A of Schedule 6 to the ITA exempts from income tax any interest paid to non-resident companies (other than such interest accruing to a place of business in Malaysia), other than companies in the same group (#), in respect of, *inter alia*, sukuk or debenture issued in Ringgit Malaysia (other than convertible loan stock) approved or authorised by or lodged with the SC.

(#) *Effective 1 January 2022, Paragraph 33A of Schedule 6 to the ITA has been amended to further exclude from exemption any interest paid or credited by a Special Purpose Vehicle (SPV) to a company pursuant to the issuance of asset-backed securities lodged with the SC, where the company receiving the interest and the person who established the SPV for the issuance of the asset-backed securities are in the same group.*

The taxpayer was incorporated on 16 December 2013 as a special purpose vehicle (SPV) to issue ABS as approved by SC on 24 March 2014. TMF Trustees Malaysia Berhad (TMF Trustees) holds 100% of the taxpayer's shares. TMF Trustees is a subsidiary under TMF Group. The taxpayer issued the MTN to FHT Malaysia Pte Ltd (FHTM), a non-resident company based in Singapore, to finance the acquisition of a real property known as "The Westin Kuala Lumpur" and a piece of land located at Section 67, Bandar Kuala Lumpur, Daerah Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur.

The taxpayer as the bond issuer had to pay interests to the bondholders as consideration. On 14 February 2018, the taxpayer wrote to the DGIR seeking for the DGIR's position on the withholding tax exemption on the taxpayer. The DGIR replied on 5 July 2018 informing the taxpayer that it was entitled to rely on the exemption under Paragraph 33A(1) of Schedule 6 to the ITA. The DGIR's letter dated 5 July 2018 approving the tax exemption was issued based on the information provided by the taxpayer through their letters dated 14 February 2018 and 17 May 2018. No audit was being conducted on the taxpayer at that material time.

However, upon conducting an audit subsequently, the DGIR found that the taxpayer made payments of interest to its related company/same group of companies (i.e., FHTM). Hence, the payments of interest paid by the taxpayer to FHTM under the MTN Programme was subject to withholding tax because the taxpayer paid the interest to a related company in the group, based on Section 2(4)(b) of the ITA read together with Section 139 of the ITA.

The taxpayer filed a judicial review application for, *inter alia*, a *certiorari* order to quash the decision of the DGIR in the form of an audit letter dated 29 June 2021 relating to the audit conducted for the years of assessment (YAs) 2014, 2015, 2016, 2017 and 2018. At the material time, no assessment had been made by the DGIR against the taxpayer.

Taxpayer's argument:

The taxpayer contended that the DGIR's action was tainted with illegality, irrationality and unreasonableness, and there was procedural impropriety. The application for judicial review was against the DGIR's letter dated 29 June 2021 which had revoked the DGIR's view as expressed in the earlier letter dated 5 July 2018.

DGIR's argument:

The letter dated 29 June 2021 was a notification and the taxpayer had failed to prove that they were aggrieved by it. The taxpayer still had a right to appeal against an assessment to the SCIT upon issuance of the notice of assessment. There was no decision being made and the decision-making process was still in progress. Therefore, the application for judicial review was premature and the DGIR's letter dated 29 June 2021 was issued in accordance with the ITA and was not infirmed by illegality, irrationality and procedural impropriety.

The DGIR found additional information from the audit findings and had duly stated the same in the letter dated 24 June 2020. The letter dated 29 June 2021 that was issued by the DGIR was pursuant to the audit findings which stated that the taxpayer's payments of interest to FHTM did not fall under the exemption under Paragraph 33A(1) of Schedule 6 to the ITA. Meanwhile, the letter dated 5 July 2018 issued by the DGIR had been cancelled due to the audit exercise. The issue of estoppel and legitimate expectation did not arise in this case as the DGIR was merely carrying out its duties under the law and had acted pursuant to the additional information found by DGIR during the audit.

Issues:
- Whether the DGIR's letter dated 29 June 2021 was a decision amendable to judicial review.
- Whether there was a breach of taxpayer's legitimate expectation.

Decision:

The COA unanimously allowed the DGIR's appeal and set aside the HC's decision. [*Note: In summary, the HC allowed the taxpayer's judicial review application to seek a certiorari order to quash the decision of the DGIR. Following an audit, the DGIR cancelled its Private Ruling after three years and revoked its view that taxpayer was entitled to rely on tax exemption under Paragraph 33A(1) of the ITA, and imposed withholding tax.*]

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

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11. Udapakat Bina Sdn Bhd v KPHDN (HC) (2024) MSTC 30-742

Issues:

- Whether the DGIR was entitled in law to disallow taxpayer's application for refund of the illegally paid taxes under Section 4C of the ITA given that the said provision had been deemed unconstitutional and was struck down.
- Whether the DGIR could refuse to recognise and give effect to the FC's decision in *Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2023) MSTC 30-613 (Wiramuda).*

Decision:

The HC held that the taxpayer has present a clear and arguable case and allowed the taxpayer's application for leave to commence judicial review proceeding based on the following grounds:

- It was trite law that the failure or refusal by a public authority to make a decision was amenable to judicial review, and the court would have to allow leave for judicial review in such circumstances. Hence, the taxpayer's deemed decision arising from the non-reply to taxpayer's request for a refund of the taxes paid was amenable to judicial review under Order 53 rule 2(4) of the Rule of Court 2012.

- The subject matter of the instant appeal pertained to the DGIR's deemed decision to refuse taxpayer's discharge application in compliance with the decision in *Wiramuda* and not the assessment for the YA 2018. In the circumstances, the instant judicial review application was filed within time and within 3 months from the date of the DGIR's deemed decision.
- The DGIR's failure to follow the FC's decision in *Wiramuda* rendered the impugned decision flawed. The DGIR had no right to retain the taxes paid by taxpayer for gains from the compulsory acquisition of its land and was unjustly enriched from the collection and retention of the said taxes.
- The DGIR's decision was ultra vires, illegal, void, unlawful and / or in excess of authority. The DGIR had failed to acknowledge and give effect to the recent FC's decision in *Wiramuda* where the FC had rightfully struck down Section 4C of the ITA due to its unconstitutionality as it contravenes Article 13 of the Federal Constitution.

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12. Horizon Hills Development Sdn Bhd v KPHDN (HC) (2024) MSTC 30-749

Issue:

Whether the contributions paid by the taxpayer to be released from the condition that certain percentage of housing units was to be sold only to Bumiputera purchasers were revenue expenses that are allowable under Section 33(1) of the ITA.

Decision:

The HC held that the DGIR had wrongly disallowed the claim for the deduction and granted the order of *certiorari* sought to quash the notices of additional assessment based on the following grounds:

- As binding by the recent decision of the COA in *KPHDN v Mitraland Kota Damansara Sdn Bhd [2023] MSTC 30-608*, the contribution was revenue expense came within the deduction allowable under Section 33(1) of the ITA.

- The option was provided by the Johor State Government so that property developers can unlock and sell the Bumiputera lots that could otherwise be not sold to the public (non-Bumiputera). The effect of the payment to Tabung Perumahan Bumiputera Negeri Johor was to achieve sales. The payment is exclusively related to business operations to generate income. If not, there would be no income from these Bumiputera units if unsold.

- The sale of the Bumiputera lots to non-Bumiputera purchasers would only be approved provided HHDSB *inter alia* contributed 7.5% of the purchase price of the Bumiputera units to Tabung Perumahan Bumiputera Negeri Johor or any other amount stipulated by the State Government. That is a clear indication that the expenditure is considered as revenue, due to the payment being directly related to the taxpayer's stock-in-trade, as opposed to capital in nature. These payments are incurred wholly and exclusively in the production of income.

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13. Sentul Raya Sdn Bhd v KPHDN (HC) (2024) MSTC 30-751

Issue:

Whether the taxpayer has met the threshold for leave to be granted to commence judicial review proceedings.

Decision:

The HC held that the taxpayer has presented a clear and arguable case and allowed the taxpayer's application for leave to commence judicial review proceeding based on the following grounds:

- The deemed decision of the DGIR arising from their non-reply to taxpayer's letter in November 2023 was amenable to judicial review under Order 53 Rule 2(4) of the Rule of Court 2012.

- The taxpayer's judicial review application was not filed out of time. It was filed within 3 months from the date of the DGIR's deemed decision in November 2023.

- The DGIR's failure to follow the decision of the FC in *Wiramuda* rendered their decision flawed. The DGIR had no right to retain taxes paid by taxpayer on gains from the compulsory land acquisition and had been unjustly enriched by collecting and retaining these taxes.

- The taxpayer's application raised questions of the law which would be more suitable for the court to determine at the substantive stage, as examining the merits was not appropriate during the leave application stage.

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