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2016

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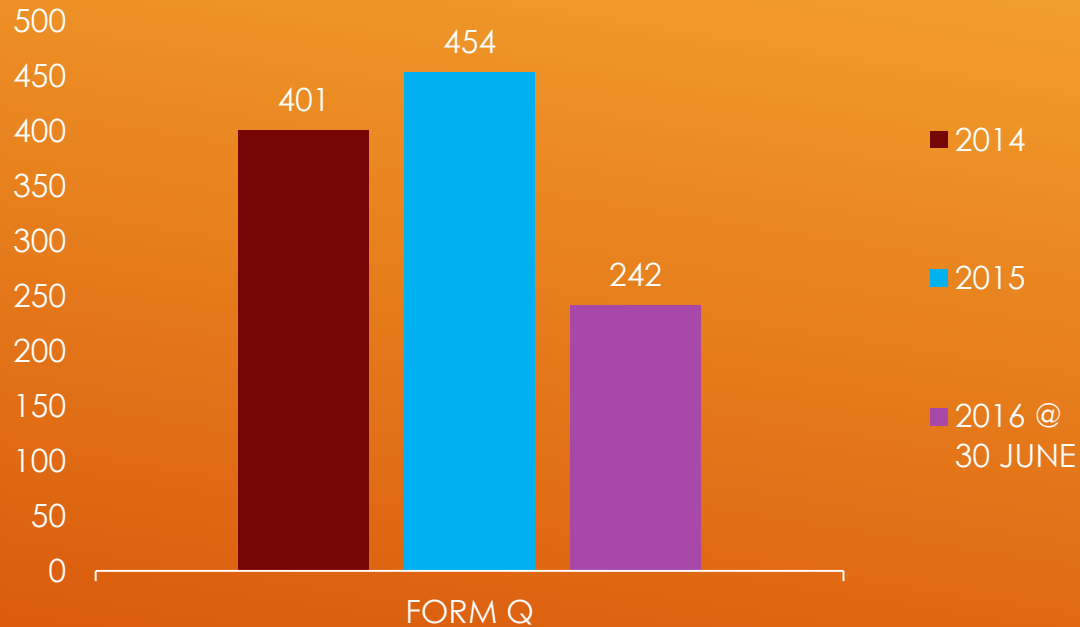
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Statistic: Tax Appeal (Form Q)



Topic : Type your topic here

Speaker : Mr Abu Tariq Jamaluddin



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Dispute Resolution Proceeding (DRP)

Year	Total Form Q Received	Total Number of Proceeding	Cases Resolved
2016 @ June 16	242	54	10
2015	454	100	32
2014	401	49	27

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WITHHOLDING TAX ISSUES ON ROYALTIES

Cases :

- ▶ Mudah.my v KPHDN
- ▶ KPHDN v Alcatel-Lucent
- ▶ KPHDN v Thomson Reuters Global Resources

Observations-

- **Suitability of Judicial Review -**
 - there is no abuse of process
 - there is no error of law

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▪ Scope of Royalty under the ITA -

- Definition of 'royalty' – wide interpretation
- the words 'for the use' and 'right to use' must be given effect
- Parliament does not act in vain

[KPHDN v Bandar Nusajaya Development Sdn Bhd]

- OECD Commentary is not binding however persuasive

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DEDUCTIONS

Case :

- ▶ **Ensco Gerudi (M) Sdn Bhd v KPHDN**

Observations-

- The Commissioners (SCIT) are judges of facts
- Decision is based on facts found before the SCIT
- No reason for the court to disturb the conclusion of the SCIT

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DEDUCTIONS

Case :

- ▶ **Ensco Gerudi (M) Sdn Bhd v KPHDN**

Observations-

Penalty

- Good faith is not a defence
- Intention of the taxpayer is immaterial
- DGIR has no burden in law to prove bad intention
- When there is error in the return the liability is with the taxpayer and not with the tax practitioner.

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DEDUCTIONS

Case :

➤ **Piramid Intan Sdn Bhd v KPHDN**

Observations-

- The types of payments:
 - i. Payment for the use license
 - ii. Payment for acquiring rights to work and extract timber
 - iii. Payment for outright purchase of standing timber
 - iv. Payment for acquisition of land with the right to extract timber

- Whether the payment is revenue or capital in nature depends on facts of each case

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REINVESTMENT ALLOWANCE

Case :

- ▶ **KPHDN v Bintulu Lumber Development Sdn Bhd**

Observation-

- **Strict interpretation v. purposive approach**

[Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal [2005] 3 MLJ 97]

[LHDN v Alam Maritim Sdn Bhd Civil Appeal No. 01(f)-23-09/2012(W)]

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ANTI-AVOIDANCE

Case:

- ▶ **Ensco Gerudi (M) Sdn Bhd v KHDN**

Observations-

- In the context of taxation the Labuan company is a “shell” company
- The taxpayer entered into “preordained” transaction
- The main purpose of the establishment is to relieve taxpayer from paying withholding tax
- The legality of the established entity and transaction is immaterial
[Syarikat Ibraco-Paremba Sdn Bhd v KPHDN, Civil Appeal No. W-01-177-04/2014]

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INTEREST WAIVED

Case:

- ▶ **KPHDN v Bandar Nusajaya Development Sdn Bhd**

Observations-

- Leave to appeal to the Federal Court is granted
- Question of law:

'Whether misinterpretation of subparagraph 22(2)(a)(i) of the ITA 1967 by the Revenue (if there is, which is denied in full) amounted to an error of law, thus the decision to raise the additional assessment was made with a clear lack of jurisdiction.'

- Misinterpretation of law does not amount to error of law or abuse of process

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LOAN WAIVED

Case ;

▶ **Felda Trading Sdn Bhd v KPHDN**

Observations-

- Loan was used in taxpayer's business to ensure business operation is sustainable
- Loan to supplement trading revenue and to preserve trading stability
- The facts and evidence are peculiar to this case

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PIONEER STATUS

Case :

- ▶ **KPHDN v Latex Manufacturing Sdn Bhd**

Observations-

- There is no cancelation of the pioneer certificate
- DGIR may upon audit refuse to give effect to the certificate
[Central Cold Storage Kuching v KPHDN (2011) 1 CLJ 315]
- Condition: Export must be made by the company and not by any related company

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Thank you

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