



Insights to Malaysia's First Transfer Pricing Litigation: MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

Date	Venue	Event Code	Date	Venue	Event Code
5 April 2013	Impiana Hotel, Ipoh	WS/044	3 May 2013	Ramada Plaza Melaka	WS/047
8 April 2013	Mutiara Hotel, Johor Bahru	WS/043	27 May 2013	Hyatt Regency, Kota Kinabalu	WS/048
10 April 2013	Traders Hotel, Penang	WS/045	29 May 2013	Four Points Sheraton, Kuching	WS/049
29 April 2013	Seri Pacific Hotel, Kuala Lumpur	WS/046			

SYNOPSIS

On 5.2.2013, the Special Commissioners of Income Tax delivered their decision in Malaysia's first transfer pricing litigation, which favoured the taxpayer. The taxpayer was successfully represented by Datuk D.P. Naban, Mr S. Saravana Kumar and Ms Siti Fatimah Mohd Shahrom of Lee Hishammuddin Allen & Gledhill. Subsequent to a transfer pricing audit by the Inland Revenue Board ("IRB") that lasted for more than 2 years, the principal issues faced by the taxpayer, which is one of the world's largest shipping and logistics operators, were as follows:

Issue 1: Commission Rate

Whether the IRB based on Section 140(1) of the Income Tax Act 1967 ("ITA") may adjust the commission rate received in the years of assessment 2002 to 2005 by the taxpayer from AP Group by increasing the commission rate by 0.25% subsequent to a transfer pricing audit?

Issue 2: Business Process Improvements Services & Regional Services Charges

Whether the IRB based on Section 140(1) of ITA has a basis to allege that the Business Process Improvement services and Regional Services were never provided and consequently disregard the BPI services and Regional Services charges paid by the taxpayer to M Singapore Pte Ltd in the years of assessment 1998, 1999, 2000(CYB), 2001, 2002, 2003, 2004 and 2005 subsequent to a transfer pricing audit?

Issue 3: Penalty

Notwithstanding the above, whether penalty under Section 113(2) of ITA should have been imposed on the taxpayer for the additional

assessments made for the years of assessment 1998 to 2005 subsequent to a transfer pricing audit?

CTIM, the nation's premier tax body, proudly presents a specialist workshop on transfer pricing featuring Mr S. Saravana Kumar and Siti Fatimah Mohd Shahrom who will discuss and analyse the landmark decision of the Special Commissioners of Income Tax in MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri, which ruled that:

- The transfer pricing adjustment made by the IRB was to be set aside;
- The IRB's Transfer Pricing Guidelines have no force of law;
- The failure to comply with Section 140(1) and Section 140(5) of the ITA rendered the assessments null and void;
- Transfer pricing was not an exact science; and
- The taxpayer's comparable reports and the expert evidence led by the taxpayer were reliable in establishing that the taxpayer's pricing methodology was acceptable.

PROGRAMME OUTLINE

- Part 1:**
- # Understanding the OECD Transfer Pricing Guidelines
 - # Comparative Study of the OECD Guidelines and the IRB Transfer Pricing Guidelines
- Part 2:**
- # Analysing Malaysia's first Transfer Pricing litigation: MM Sdn Bhd case

- Part 3:**
- # The importance of proper documentation, comprehensive transfer pricing report and expert evidence by a transfer pricing specialist
- Part 4:**
- # Analysis of other transfer pricing cases pending before the Special Commissioners: OM Sdn Bhd v KPHDN and T Sdn Bhd v KPHDN

SPEAKER'S PROFILE

S. Saravana Kumar and Siti Fatimah Mohd Shahrom are tax lawyers with Lee Hishammuddin Allen & Gledhill, one of the largest law firms in Malaysia. The firm's dynamic Taxation & Private Clients Practice Group is ranked as a Tier 1 practice by Legal 500. Saravana and Siti have a sub-specialisation in transfer pricing litigation and are representing a number of established multinational companies before the Special Commissioners of Income Tax. Alongside Datuk D.P. Naban, they have appeared in benchmark litigations with a sizeable volume of wins in tax disputes. Their recent successes in Courts include Metacorp Development, Damco Logistics, Levi Strauss Malaysia, Saujana Hotel, Pelangi, Servier Malaysia, Office Park Development, Mercedes-Benz Malaysia and Port Dickson Power, all of which are reported in tax journals. Legal 500 describes the team as being 'committed', 'sound in knowledge', 'amiable' and always 'well prepared'. They are top choices for major government-linked companies, telecommunications companies, investment banks and even accounting firms seeking representation against decisions and penalties imposed by the Inland Revenue Board. Saravana and Siti are the authors of Malaysia Singapore Tax Cases Digest, a publication of CCH Asia in addition to authoring numerous tax articles. Saravana and Siti are highly sought after speakers by accounting firms, trade associations and professional bodies.

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CTIM/ACCA Member	<input type="checkbox"/> RM350.00	<input type="checkbox"/> RM335.00
Member's Firm Staff	<input type="checkbox"/> RM400.00	<input type="checkbox"/> RM385.00
Non-Member	<input type="checkbox"/> RM460.00	<input type="checkbox"/> RM435.00

Seats are limited based on first-come, first-served basis.

- * Registration of participants will be confirmed upon receipt of full payment or an acceptable employers guarantee and settlement of previous outstanding dues.
- * Walk-in participant registration is subject to availability of seats and full payment.
- * Certificate of Attendance will be issued upon full attendance and receipt of full payment.

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Confirmation of Registration

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Disclaimer

The Organiser reserves the right to change the speaker, date, venue or to cancel the event if the number of participants is less than 20. A minimum of 3 days notice will be given.

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