

TECHNICAL

Direct Taxation

TAX CASE UPDATE

Government of Malaysia's Claim for Debt In Respect of Chargeable Gain Pursuant to Real Property Gains Tax Act 1976

Mudek Sdn Bhd v Kerajaan Malaysia (2013) [CA] (Civil Appeal No: B-01(IM)-100-11)

Facts and Issues:

Mudek Sdn Bhd (the appellant) entered into a Sale and Purchase Agreement with Yeng Chong Realty Sdn Bhd (Purchaser). However, the appellant alleged that the Purchaser had not fulfilled the condition of sale and the appellant had filed 2 suits in the High Court for default in payment of the purchase price.

This is an appeal by the appellant against the decision of the High Court to allow the Government of Malaysia to enter summary judgment in respect of a purported claim for debt arising from chargeable gain pursuant to the Real Property Gains Tax Act, 1976 (the Act). The central complaint of the appellant is that there is no chargeable gain as stated in section 3 of the Act, and the property has not been disposed of or the purchase price received pursuant to section 2 of the Act. The essence of the appellant's argument is that because of non-payment, the property has not been disposed of yet within the meaning of section 2 of the Act, so that no chargeable gain had arisen upon which the respondent (Kerajaan Malaysia) could raise an assessment in accordance with section 3 of the Act. In consequence, the appellant argues that the issue above will stand as a triable issue.

Decision:

Appeal allowed.

The Act is only triggered if there is a disposal within the meaning of section 3 of the Act. Paragraphs 15 and 16 of Schedule 2 of the Act in relation to section 7 (chargeable gains and allowable losses) further fortifies the argument that there must be complete disposal or receipt of the purchase price before liability can be attached. The Court is of the view that the appellant's argument that there is breach (of the sale agreement) and there are 2 suits pending before the court, will stand as triable issues. The case of *Ketua Pengarah Hasil Dalam Negeri v The Petaling Rubber Estates Limited (2010) MLJ 1301* was cited, wherein it was asserted by the Special Commissioners of Income Tax that to be liable to real property gains tax, there must be chargeable gain within the ambit of section 3 of the Act. In the instant case, the duty of the trial court is to ascertain whether there was in fact a disposal as envisaged by the Act.

Every exercise of statutory power must not only be in conformity with the express words of the statute but must also comply with certain implied legal requirements. (*Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang, Ong Gaik Kee [1983] 2 MLJ 35*) The Court will treat as illegal where the exercise is done for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. The Revenue Department is not an exception to the said jurisprudence.

Members may read the full [Grounds of Judgment](#) from the Kuala Lumpur Law Courts Official website.

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