

**TECHNICAL**

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**Direct Taxation**

**TAX CASE UPDATE**

**Compensation for loss of employment and compensation for death or injuries**

**Ketua Pengarah Hasil Dalam Negeri v Prof. Dr. Syed Muhammad Naquib Al Attas (HC) 2012** (Civil Appeal No: R2-14-7-07/2012)

Date of Judgment: 8 November 2012

**Facts:**

The respondent had filed a civil suit against ISTAC, IIUM and others ("the defendants"), asking for certain declaration. The suit was settled out of court and the defendants agreed to pay compensation to the respondent under the Deed of Settlement dated 20.2.2008 ("the Deed"). Compensation under the Deed amounted to RM2.5 million in total ("Settlement Sum"), including the sum of RM1.95 million ("the said sum") received by the respondent "as a compensation for "emotional pain, mental anguish and pain and suffering." The appellant imposed income tax on all items of compensation under the Deed.

The respondent appealed against the assessment to the Special Commissioners of Income Tax (SCIT), who allowed the appeal.

The present case is the appeal by KPHDN against the decision of the SCIT.

**Issue:**

The issue for determination is whether, under the circumstances of the case, the sum of RM1.95 million was chargeable to income tax under [S13\(1\)\(e\)](#) of the ITA.

**Decision:**

Appeal dismissed with cost.

*Summary of Grounds of Decision:*

1. In the Deed, the compensation is categorized into various specific items. For instance, the following items are listed in section 3.04 of the Deed:

- (i) for loss of basic pay;
- (ii) for loss of fixed allowance; and
- (iii) for loss of honorarium.

Under item (v) of the above section, the sum of RM1.95 million is described as compensation for "emotional pain, mental anguish, pain and suffering."

2. The respondent had submitted as evidence a letter from the solicitors acting for the defendants dated 30.4.2008, which confirmed that the said sum was not intended to be compensation for loss of employment.
3. The appellant did not rebut the content of the Deed, or the evidence of the letter dated 30.4. 2008. Therefore the contents of those documents must be taken as correct.

4. The Deed also provided in sections 2.01 and 2.03 respectively, that (1) the parties agreed to settle their dispute, and the plaintiff in the suit will file a notice to discontinue with the suit upon receipt of the Settlement Sum, and (2) the plaintiff agreed that the withdrawal and discontinuance of the suit will constitute a final and complete settlement of such action and issues raised in the suit.
5. Therefore it is clear that the respondent did not receive the said sum as an employee in respect of gain or profit of an employment but as the plaintiff in a civil suit in consideration for agreeing to discontinue the suit. Hence, he is also entitled to exemption under [paragraph 14 of Sch. 6](#) of the ITA, which provides for exemption from income tax for “*sums received by way of death gratuities or as consolidated compensation for death or injuries.*”
6. The learned Judge referred to the following definitions of “*injury*”

Source	Definition
Black’s Law Dictionary	Any invasion of personal rights, including mental suffering
Words, Phrases & Maxims Legally & Judicially Defined	...include “any wrong or damage done to another, either in his person, rights, reputation or property”.

Based on the above definitions, the learned Judge agreed that the respondent’s reputation as a World Scholar was injured and therefore [paragraph 14 of Sch. 6](#) of the ITA is applicable to the said sum.

#### Note

*Although the Court has clearly decided that the compensation sum received in this case is not income from an employment source under S13(1)(e) of the ITA, there is no pronouncement as to whether the receipt representing compensation for “emotional pain and mental anguish” is “income” which is taxable under the ITA. Nevertheless, the Court has held that the recipient is entitled to exemption under paragraph 14 of Sch. 6 of the ITA. This gives rise to the question of whether there is a presumption that the receipt is taxable income under the ITA, if not for the exemption referred to.*

*The decision in this case may come as a surprise to some who hold to the commonly held notion that paragraph 14 of Sch. 6 of the ITA applies to compensation received in respect of physical death or injuries. Note that exemption of the sum in question is based on “injury” to the respondent’s reputation. If there is a presumption that such compensation is taxable under the ITA, the challenge is to further extend the application of the word “injury” to other forms of injury that would qualify the receipt for exemption under paragraph 14 of Sch. 6 of the ITA.*

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

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