

**TECHNICAL**

---

**Direct Taxation****TAX CASE UPDATE****Real Property Gains Tax – Transfer of property owned by a company to children of the company’s directors.****KPHDN v CHIA HENG WHOLESALER SDN BHD**

High Court of Malaya at Kuala Lumpur  
Appeal No. 14-10-10/2012

Date of Judgment: 25 April 2013

**Facts and Issues:**

This is an appeal against the decision of the Special Commissioners of Income Tax (SCIT) by way of the Deciding Order dated 15.06.2012.

The respondent is a company (“the company”) having 2 directors who are the husband and wife of each other. On 15.11.2005, the company transferred its only asset, a 3-storey shophouse, to the 4 children of the directors of the company (each transferee receiving ¼ share), for consideration which amounted to RM1. The company filed Forms CKHT 1 and 2 in respect of the sale and acquisition of the property to the Director General of Inland Revenue (KPHDN) on 7.12.2005.

KPHDN issued a Notice of Assessment (NA) for Stamp Duty amounting to RM18,000 on 12.12.2005, which was based on the market value of RM800,000. The NA for real property gains tax (RPGT) was issued on 2.11.2007 for RPGT amounting to RM36,000.

The company appealed against the assessment of RPGT to the SCIT, who allowed the appeal. The SCIT held that the transfer of the property fell under para. 12 of Schedule 2 of the RPGT Act 1976 (RPGTA). They further held that the issue of whether the said transfer was subject to RPGT under S3(1) read together with para. 18 of Schedule 2 of the RPGTA, was not relevant for the decision of the SCIT. (All provisions cited hereinafter are from the RPGTA, unless otherwise stated.)

KPHDN then appealed to the High Court (“this Court”) against the decision of the SCIT.

**Decision:**

Appeal dismissed. The grounds of the decision are summarized below:

1. Among the contentions of the appellant are the following:
  - Para. 12 of Sch. 2 is not applicable to the transfer of property in the present case because the company has not met the requirements under that paragraph. The respondent is a company and not the parents of the transferees of the property, who are children of the directors of the company.
  - The principle that the benefit of the doubt must be accorded to the taxpayer where there is uncertainty in the interpretation of the law, does not apply where the statute is one

providing relief from tax, which must be interpreted strictly. There is no equity in tax, and its enforcement by the court must be according to the provisions of the law. KPHDN is empowered under S25(2) of the RPGTA to substitute the agreed price between the parties, with the market price as determined by KPHDN.

- The market price used in this case was determined by the Jabatan Penilaian dan Perkhidmatan Harga.
2. The company submitted that the decision of the SCIT is correct. Their finding that the transfer of the said property was a transfer between parents and children, was a finding of fact which should not be disturbed by the court of appeal. The transfer was a gift and the company was only an agent for the transfer because –
- the company was not an active company and had no business activities, no office nor staff, and its only asset was the 3-storey shophouse.
  - no consideration was received except RM1.
  - the transaction was not a commercial transaction.
- Hence, the transaction came within para. 12 of Sched. 2 of the RPGTA. Therefore no gain was made from the transfer and the company is not subject to tax under the RPGTA.
3. After perusing the Case Stated and the other documents as well as submissions by both appellant and respondent, the Judge agreed with the company's submission that the decision of the SCIT is correct. It was clear that the transfer of property was between parents and children and the company was merely an agent for the transfer, in view of the fact that the company was inactive, and was without any staff other than the directors who are husband and wife to each other. She also agreed that the finding by the SCIT that the transfer of property was a transfer between parents and children is a finding of fact and this Court cannot disturb that finding of fact.

Members may read the full Grounds of Judgment at the [Institute's website](#) and the [LHDNM website](#).

**Disclaimer**

This document is meant for the members of the Chartered Tax Institute of Malaysia (CTIM) only. This summary is based on publicly available documents sourced from the relevant websites, and is provided gratuitously and without liability. CTIM herein expressly disclaims all and any liability or responsibility to any person(s) for any errors or omissions in reliance whether wholly or partially, upon the whole or any part of this e-CTIM.