

e-CIRCULAR TO MEMBERS**CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)****19 June 2019****TECHNICAL****Direct Taxation****TAX CASE UPDATE**

Application for judicial review – Assessments and additional assessments raised following the IRB's decision to disallow interest expenses incurred in relation to income from investments and interest.

[MAGNUM HOLDINGS SDN BHD v KPHDN](#)
(WA-25-135-05/2017)

[MAGNUM BERHAD v KPHDN](#)
(WA-25-137-05/2017)

[MAGNUM HOLDINGS SDN BHD v KPHDN](#)
(WA-25-172-06/2017)

High Court of Malaya at Kuala Lumpur

Date of Judgment: 18 January 2018

Facts and Issues:

There are 3 applications to commence judicial review. The applicant in each is seeking to quash the notices of assessment (NA) issued with penalty, as shown below:

Application No.	Date of NA	Years of Assessment (YAs)
WA-25-135-05/2017	15.5.2017 (NA)	2008, 2009, 2010, 2011, 2012, 2013
WA-25-137-05/2017	15.5.2017 (supplementary NA) 15.5.2017 (NA)	2008, 2013, 2014, 2015 2011, 2012
WA-25-172-06/2017	22.5.2017 (Additional NA)	2008

Magnum Bhd (MB) was incorporated in Malaysia. Its principle activities are investment holding, and the provision of share registration and management services. Magnum Holdings Sdn Bhd (MHSB) is a wholly owned subsidiary of MB, with its principle activity in investment holdings.

The applicants in the first and second applications were issued with the relevant notices of assessment (as listed in the above table) after they were notified of impending audit visits by the DGIR (in 2014 and 2017 respectively), following which there were submission of documents by the taxpayers and exchange of letters between the parties.

The applicant in the first application was informed in a letter dated 3.3.2017 that the interest expenses in TVSB and loan stock interest in respect of investments in Magnum Corporation Sdn Bhd in the YAs 2008 – 2013 were not deductible, followed by the issue of NAs (with penalties) for

the relevant YAs despite the applicant's objections.

The applicant in the second application was informed in a letter dated 15.3.2017 that interest expenses incurred for investment in portfolio of shares for the YAs 2008, 2011 – 2013 and interest related to interest income for the YAs 2013 – 2015 were not deductible on the basis that S33(1) of the Income Tax Act 1967 (ITA) should be applied, instead of S33(2) of that Act. The applicant was also informed that its dividend income of RM2.8 million for YA 2008 was not declared. The NAs were duly issued (with penalties) despite the applicant's objections.

In the third application, the applicant was issued with an additional assessment (with penalty) for YA 2008 (a revision of the assessment for YA 2008 which is the subject of the first application) on 22.5.2017, for additional tax of RM 630,000.

The core issue in these applications is whether the application for leave should be dismissed as the applicant should have proceeded with the appeal process provided under S99 of the ITA.

Decision:

Having considered the applications and the submissions of the parties, the Court granted the application for leave in all 3 applications. The grounds of the decision are summarized below:

1. The grounds of all 3 applications are essentially that assessments and additional assessments issued (with penalties) by the DGIR are tainted with illegality, are void, unlawful and / or in excess of authority, irrational and unreasonable.
2. The principles established in the following cases are reiterated:
Govt of Malaysia & Anor v Jagdis Singh [1987] 2 MLJ 185
 - (i) "Judicial review is always at the discretion of the court but where there is another avenue or remedy open to the applicant, it will only be exercised in exceptional circumstances;"
 - (i) "The applicant must show exceptional circumstances, such as a clear lack of jurisdiction or a blatant failure to perform some statutory duty or a serious breach of natural justice."Majlis Perbandaran Pulau Pinang v Sykt. Bekerjasama-sama Serbaguna Sungai Glugor dengan Tanggungan [1999] 3 MLJ 1
 - (i) "....(where) a statute provides for a special appeal procedure,...the courts understandably may not grant judicial review. However, this is always subject to the grant of review in certain cases, for example, where an applicant is able to demonstrate excess or abuse of power, or breach of natural justice."
 - (ii) "where the main grounds....are that the public body had acted unfairly, abused its powers, judicial review is more appropriate, as the issues raised are issues of public importance, going beyond the significance of the case itself."
3. Declaring that "there is no issue with regards to the principles enunciated by the cases cited above" the Court nevertheless drew a distinction in that "in the present application, the applicant's complaint is that the DGIR has failed to apply the legal position in Multi-Purpose Holdings Bhd v KPHDN [2001] 8 CLJ 462 (involving the same parties)¹ and that the DGIR is bound by legal interpretation of that case. Since the DGIR had refused to apply the decision in Multi-Purpose, then the DGIR had exceeded his jurisdiction."
4. In the Multi-Purpose case, the Special Commissioners of Income Tax (SCIT) decided that "in respect of share income, all counters of shares.....whether income producing or non-income producing are a single source of income under s.4(c) of the Act and that the same principle equally applied to interest income." The decision was affirmed by the High Court and the DGIR did not appeal further.

5. The issue raised in the present application is the same one raised in the Multi-Purpose case, i.e. whether the DGIR can segregate the applicant's investment in TVSB from its investment in MCSB on the premise that the investments in TVSB did not produce any income. The applicant contended that segregating these investments is contrary to the principle established in Multi-Purpose.
6. Having considered the submission of the applicant that the facts and the law in this case fall squarely within the Multi-Purpose case, the Judge is of the opinion that the Multi-Purpose case will be binding on both the SCIT and the DGIR. Therefore, the failure to apply the principles in the Multi-Purpose case by the DGIR amounts to an excess of jurisdiction. (*KPHDN v. Mudah.My Sdn Bhd [2017] 5 CLJ 283* cited.)
7. If the DGIR is seeking to revisit the legal position in the Multi-Purpose case, then the proper forum is this court, as both the SCIT and the DGIR are bound to apply the High Court decision in Multi-Purpose.

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

Notes;

1. Magnum Berhad was formerly known as Multi-Purpose Holdings Berhad.

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