

TECHNICAL

TAX CASES UPLOADED ON LHDNM WEBSITE

The following tax cases have been uploaded on the website of the Inland Revenue Board of Malaysia (LHDNM):

| No. | Case Title | Matters deliberated by the Court |
|-----|---|--|
| 1. | SDSB & 2 ors vs Ketua Pengarah Hasil Dalam Negeri High Court Date of Judgment: 26 July 2019 | <ul style="list-style-type: none"> SDSB & 2 ors ("the Applicants") were dissatisfied with the assessments raised by the Revenue which subjected the gains arising from the disposal of a property under section 4(a) of the Income Tax Act 1967 ("ITA"). The Applicants filed leave applications for judicial review at the Kuala Lumpur High Court to quash the assessments. The issue is whether the Revenue's decision in subjecting the gains under section 4(a) is erroneous due to the failure to give effect to the decisions of the superior courts in <i>Alf Properties Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri</i> [2005] and <i>Lower Perak Co-operative Housing Society Berhad v Ketua Pengarah Hasil Dalam Negeri</i> [1994]. The High Court dismissed the Applicants' applications for leave on the grounds that the issues raised by the Applicants involves a dispute on questions of fact and thus, the merits of the assessments are to be tried by the Special Commissioners of Income Tax ("SCIT"). The High Court also dismissed the Applicants' applications for stay of proceeding pending appeal to the Court of Appeal. |
| 2. | Ketua Pengarah Hasil Dalam Negeri vs GSMBS Court of Appeal Date of Judgment: 2 August 2019 | <ul style="list-style-type: none"> GMSB had filed an application for judicial review to quash the additional assessment raised by the Revenue in connection with payments made to a non-resident which the Revenue contended should have been subjected to withholding tax. The High Court allowed the application and the Revenue, being |

| No. | Case Title | Matters deliberated by the Court |
|-----|--|--|
| | | <p>dissatisfied, filed an appeal before the Court of Appeal. The issue was whether the additional assessment issued by the Revenue was made with a clear lack of jurisdiction, irrationality/unreasonableness and tainted with illegality.</p> <ul style="list-style-type: none"> The Court of Appeal is of the view that the merits of the case involve finding of facts that should be heard before the SCIT and GSMSB has to exhaust the internal remedy as provided under section 99 of the ITA. |
| 3. | <p>AR vs Ketua Pengarah Hasil Dalam Negeri Special Commissioners of Income Tax Date of Judgment: 2 August 2019</p> | <ul style="list-style-type: none"> The Revenue had raised a Real Property Gains Tax ("RPGT") assessment on AR for YA 2011 for the disposal of real properties using an acquisition price of RM17 million based on the Form KTN14A. AR disagreed with the assessment and contended that the actual acquisition price should be RM32.7 million as shown in a sale and purchase agreement where AR had acquired the real properties from another party instead. The issue was whether AR's acquisition price for the real properties is RM17 million or RM32.7 million for determining the RPGT for YA 2011. The SCIT agreed with the Revenue's submission, rejected AR's appeal to amend the acquisition price for determining the RPGT for the disposal of real properties in 2011 and upheld the assessment for YA 2011. |

Members may read the tax cases in full at the [Institute](#) website and the [LHDNM](#) website.

Disclaimer

This document is meant for the members of the Chartered Tax Institute of Malaysia (CTIM) only. CTIM has taken all reasonable care in the preparation and compilation of the information contained in this e-CTIM. 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.