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PREMIER TAX EVENT OF THE YEAR  
**NATIONAL TAX CONFERENCE**  
**2020**

**25 & 26 AUGUST 2020 | TUESDAY & WEDNESDAY**  
**VIA LIVE STREAMING**

# TOPIC 6: **FORUM—UPDATES OF TAX CASES**

Panel Member:

**Mr Abu Tariq Jamaluddin**  
*Director, Legal Department*  
*Lembaga Hasil Dalam Negeri Malaysia*

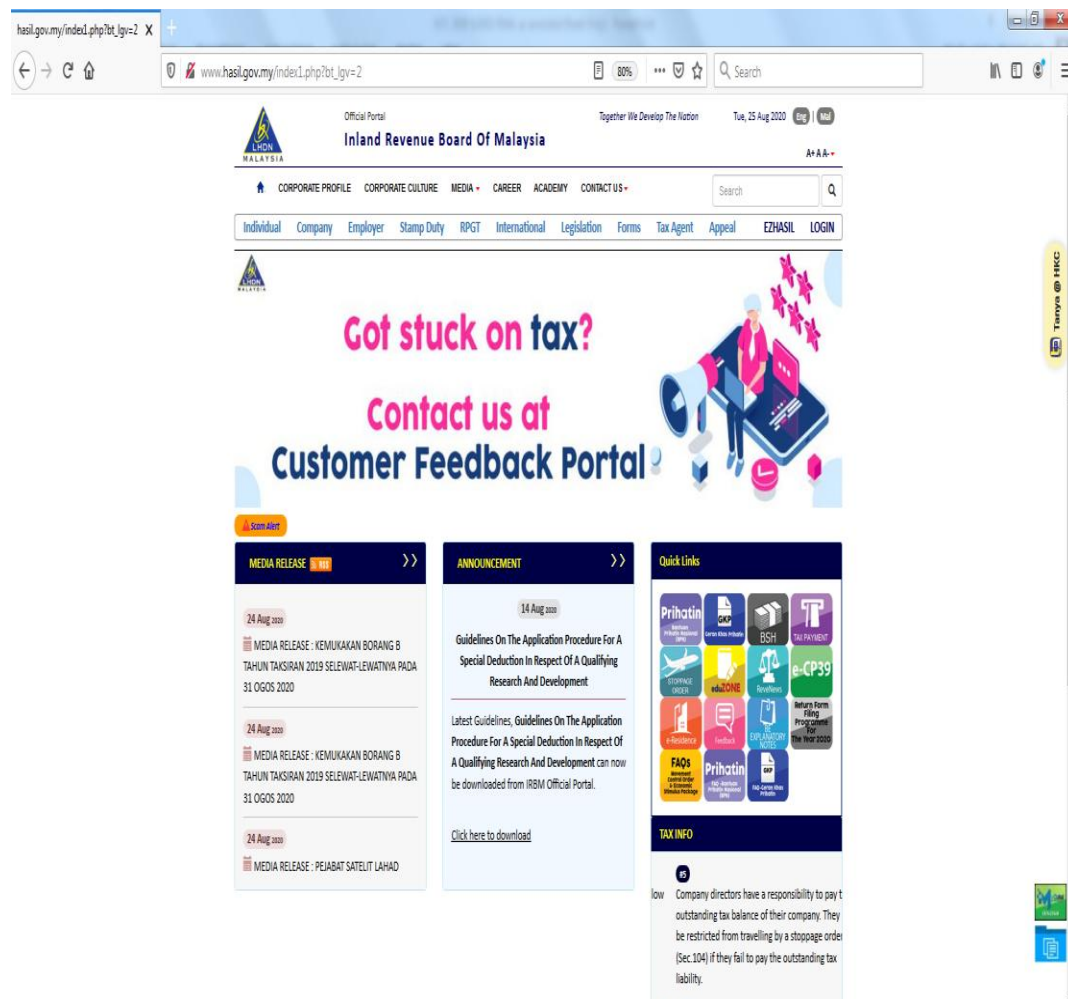


## OVERVIEW

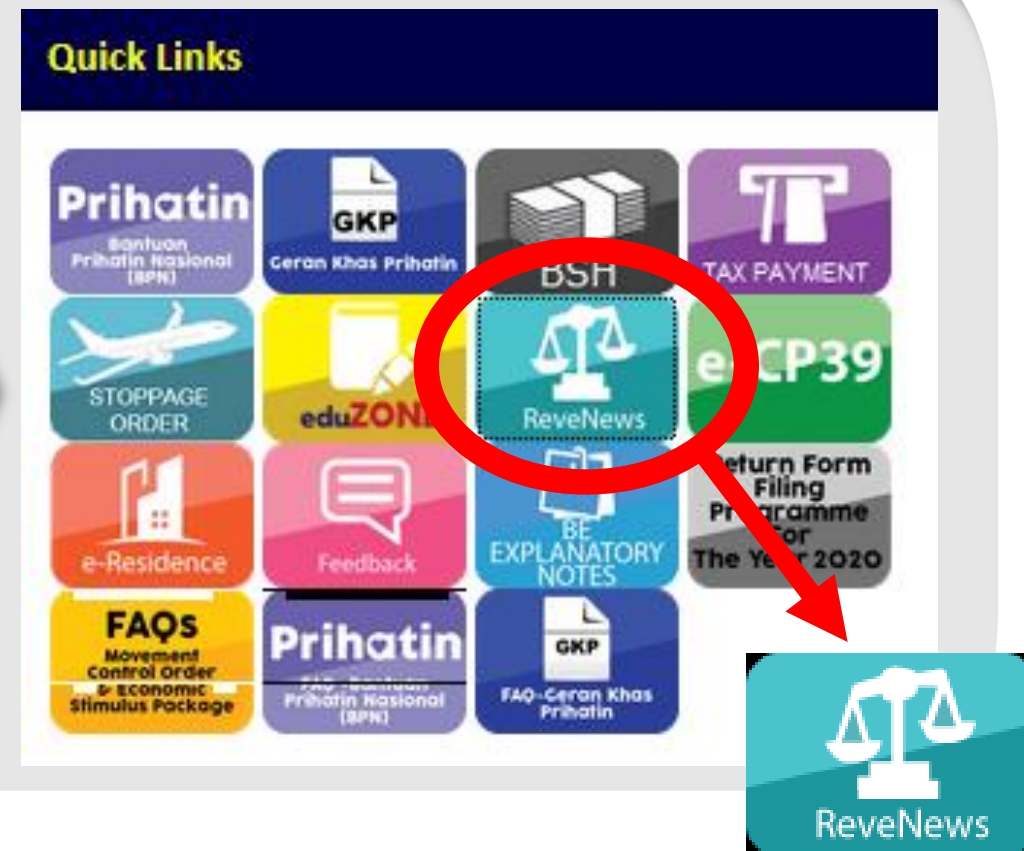
- 01 DEDUCTIBILITY
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- 04 ADVANCE RULING
- 05 INCOME TAX v. REAL  
PROPERTY GAINS TAX
- 06 STAMP DUTY



# CASE REFERENCE



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## DEDUCTIBILITY

**Section 33(1)** reads as follows:-

*“Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses **wholly and exclusively incurred** during that period by that person **in the production of gross income from that source, including - .....”***

**PRIMA NOVA HARTA  
DEVELOPMENT  
SDN BHD v. DGIR  
WA-14-7-12/2019**

**Issue:**

Whether sum paid to State Authority of Selangor to procure the approval of the state to sell units of development reserved for bumiputra to non bumiputra is deductible pursuant to section 33(1) of ITA

## DEDUCTIONS CLAIMED BY DEVELOPERS

**STSB v. DGIR PKCP (R)  
476-477/2016**

**Issue:**

Whether payment (10% of purchase price) made to state government for each bumiputra unit is deductible under section 33(1) of ITA.

**EASB v. DGIR PKCP (R)  
426-429/2017**

**Issue:**

Whether contribution payment to state agency in connection with the exemption from the requirement to build low cost apartments is deductible under section 33(1) of ITA.

**TESB v. DGIR PKCP (R)  
295-297/2017**

**Issue:**

Whether payment made to state agency in order to release bumiputra units and 5% penalty imposed are deductible under section 33(1) of ITA.

**MKDSB v. DGIR PKCP  
(R) 437/2017**

**Issue:**

Whether payment made to State Authority of Selangor to procure the approval of the State Authority to sell units of development reserved for bumiputra to Non-bumiputra are deductible under section 33(1) of ITA.



# PRIMA NOVA HARTA DEVELOPMENT SDN BHD v. DGIR

WA-14-7-12/2019

## BRIEF FACTS

The taxpayer is a property developer.

The taxpayer had applied to Pejabat Tanah dan Galian Selangor (PTGS) to reduce Bumiputra quota from 50% to 40%.

Based on PTGS's letter, the taxpayer had to pay PTGS 12% penalty for Rumah Teres Kos Sederhana (Bumiputra units) which were sold to Non-Bumiputras without PTGS's approval.

The 12% penalty imposed by PTGS consisted of the 7% discount supposed to be given by the Appellant to Bumiputera and 5% penalty for breach of PTGS's rules.

# PRIMA NOVA HARTA DEVELOPMENT SDN BHD v. DGIR

WA-14-7-12/2019

## DECISIONS

THE SCIT DISMISSED THE  
TAXPAYER'S APPEAL

THE HIGH COURT  
ALLOWED THE  
TAXPAYER'S APPEAL

## CURRENT STATUS

Pending appeal before the Court of Appeal



# STSB v. DGIR

## PKCP (R) 476-477/2016

### BRIEF FACTS

The taxpayer is a property developer. In the course of its business, the taxpayer incurred expenses on the Bumiputra Discount Payment (10% of principal price) payable to the state government for each Bumiputra lot released.

Under Pekeliling Tanah dan Galian Selangor Bil.3/2007, in the event the taxpayer sells the Bumiputra units to non-Bumiputras, the taxpayer is required to pay back to Lembaga Perumahan dan Hartanah Selangor (LPHS) the Bumiputra discount of 10% and 5% as charge for breach of the Bumiputra quota release mechanism.

### DECISION

SCIT dismissed the taxpayer's appeal.

### CURRENT STATUS

Pending appeal before the High Court.

# EASB v. DGIR

## PKCP (R) 426-429/2017

### BRIEF FACTS

The taxpayer is a property developer. The Lembaga Perumahan dan Hartanah Selangor (LPHS) informed the taxpayer that Majlis Kerajaan Negeri Selangor had agreed to exempt the taxpayer from the requirement to build low cost, medium low cost and medium cost housing.

Under Pekeliling Tanah dan Galian Selangor Bil.3/2007, the developer needs to pay contribution payment to the State Authority for the exemption given.

### DECISION

SCIT dismissed the taxpayer's appeal.

### CURRENT STATUS

Pending appeal before the High Court.

# TESB v. DGIR

## PKCP (R) 295-297/2017

### BRIEF FACTS

The taxpayer is a property developer. The taxpayer applied to Pejabat Tanah dan Galian Selangor (PTGS) for the release of the 30% Bumiputera quota. The reason given for the application was because the sales for the Bumiputra lots did not receive favourable and satisfactory responses.

PTGS approved the taxpayer's application provided the taxpayer pay the refund of 10% for the Bumiputra quota plus a penalty of 5% for violating the terms of the quota to the State Government through Lembaga Perumahan Harta Selangor (LPHS). PTGS' approval was subject to Circular No.1/2011.

### DECISION

SCIT dismissed the taxpayer's appeal.

### CURRENT STATUS

Pending appeal before the High Court.

# MKDSB v.DGIR

PKCP (R) 437/2017

## BRIEF FACTS

The taxpayer is a property developer. The taxpayer made applications to Pejabat Daerah/Tanah Petaling (PDTs) and Lembaga Perumahan dan Hartanah Selangor (LPHS) to release Bumiputra quota for the unsold Bumiputra units.

LPHS approved the taxpayer's appeal for release of the Bumiputra units subject to Circular No.1/2011.

The taxpayer needed to pay refund of 17% for the Bumiputra quota plus a penalty of 5% for violating the terms of the quota to the State Government through LPHS.

## DECISION

SCIT dismissed the taxpayer's appeal.

## CURRENT STATUS

Pending appeal before the High Court.



## GROUND : SCIT

01

There is clear breach of condition imposed by the state government.

02

Penal liability cannot be regarded as loss connected with and arising out of trade.

03

Payment was to release the taxpayer from an obligation initially imposed by the authority and to acquire rights to build and sell new type of houses / building, therefore not wholly and exclusively incurred in the production of income.



## JUDICIAL REVIEW

## **COURT OF APPEAL CASES**

**CHAI MENG KUI v  
KETUA PENGARAH HASIL  
DALAM NEGERI  
M-01(A)-540-09/2019**

**SHELL TIMUR SDN BHD v  
KETUA PENGARAH HASIL  
DALAM NEGERI  
B-01(A)-188-04/2019**

**SHELL PEOPLE SERVICES  
ASIA SDN BHD v  
KETUA PENGARAH HASIL  
DALAM NEGERI  
B-01(A)-474-09/2019**

# CHAI MENG KUI v KETUA PENGARAH HASIL DALAM NEGERI

M-01(A)-540-09/2019

## ISSUE

Whether the court can grant leave pursuant to Order 53 r 3(1) of the Rules of Court 2012 for a judicial review of the DGIR's decision to raise additional assessment under the Real Property Gains Tax Act 1976



# CHAI MENG KUI v KETUA PENGARAH HASIL DALAM NEGERI

M-01(A)-540-09/2019

## BRIEF FACTS

The taxpayer held shares in Arah Menang Sdn Bhd (ARSD).  
In 2015, the taxpayer purchased additional 150,000 shares in ARSD.  
In 2017, the taxpayer disposed of all its shares to Pesidia Malaysia Sdn Bhd

The sale price was RM7 million.  
However the consideration amount stated in the RPGT form was RM20 million.  
The taxpayer contended that the company is in the business of housing development, thus, not a Real Property Company.

# CHAI MENG KUI v KETUA PENGARAH HASIL DALAM NEGERI

M-01(A)-540-09/2019

## DECISIONS

THE HIGH COURT  
DISMISSED THE  
TAXPAYER'S  
APPLICATION

THE COURT OF APPEAL  
DISMISSED THE  
TAXPAYER'S APPEAL

## GROUNDS : HIGH COURT

01

Applicant has not discharged the burden of establishing exceptional circumstances.

02

Exceptional circumstances – lack of jurisdiction,  
failure to perform some statutory duty,  
serious breach of natural justice

03

Issues of facts/ mixed issues of fact and law are best  
ventilated before Special Commissioners

# **SHELL TIMUR SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**B-01(A)-188-04/2019**

## **ISSUE**

Whether the court can grant leave pursuant to Order 53 r 3(1) of the Rules of Court 2012 for a judicial review of DGIR's decision to raise additional assessment against the taxpayer by invoking section 91(3) of ITA



# SHELL TIMUR SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI

B-01(A)-188-04/2019

## BRIEF FACTS

The taxpayer sold its economic rights in certain intellectual property for a sum of RM257 million to Shell Brands International AG. The taxpayer treated the sum as capital receipt and did not bring it to tax

Pursuant to an audit, the amount was brought to tax by the DGIR as a revenue gain.  
The taxpayer failed to state the amount arising from the disposal in the return furnished to the DGIR  
The assessment was raised after the statutory time bar.

# **SHELL TIMUR SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**B-01(A)-188-04/2019**

## **DECISIONS**

**THE HIGH COURT  
DISMISSED THE  
TAXPAYER'S  
APPLICATION**

**THE COURT OF APPEAL  
DISMISSED THE  
TAXPAYER'S APPEAL**

## GROUNDS : HIGH COURT

01

Applicant has not discharged the burden of establishing exceptional circumstances.

02

Exceptional circumstances – lack of jurisdiction,  
failure to perform some statutory duty,  
serious breach of natural justice

03

Plea of time bar is best determined by the Special Commissioners

# **SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**B-01(A)-474-09/2019**

## **ISSUE**

Whether the court can grant leave pursuant to Order 53 r 3(1) of the Rules of Court 2012 for a judicial review of DGIR's decision under section 140A of ITA



# SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI

B-01(A)-474-09/2019

## BRIEF FACTS

The taxpayer's principal activities is to provide shared central function services to affiliated companies within the Shell Group. The taxpayer is a party to the contractual arrangement for the sharing of services and resources within the Shell Group as provided in a Cost Contribution Arrangement (CCA).

The DGIR conducted transfer pricing audit under section 140A of ITA.  
Pursuant to a transfer pricing audit, DGIR proposed to impose a mark up on the services provided by the taxpayer.  
The DGIR requested the taxpayer to provide feedback on the audit findings.

# **SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**B-01(A)-474-09/2019**

## **DECISIONS**

**THE HIGH COURT  
DISMISSED THE  
TAXPAYER'S  
APPLICATION**

**THE COURT OF APPEAL  
ALLOWED THE  
TAXPAYER'S APPEAL**

## GROUNDS : HIGH COURT

01

There is no clear lack of jurisdiction. DGIR has power under section 140A of the ITA

02

There is no blatant failure to perform any statutory duty

03

The DGIR had not contravened the two rules of natural justice namely rule against biasness and right to be heard.

## JUDICIAL REVIEW CASES AT HIGH COURT 2020

### Application for leave dismissed

CASES	ISSUES
<b>RAOUL ULRIC HUET</b> BA-25-114-10/2019	Application for judicial review to set aside Deciding Order by SCIT.
<b>CHONG KET SANG</b> BKI-13NCvC-17/10-2019	Whether Notice of Additional Assessment raised based on 'Apparent Income' concept is against the law
<b>ECK DEVELOPMENT SDN BHD</b> WA-25-547-11/2019	Whether DGIR can impose double taxation on the same income
<b>CAPITAL ASSETS SDN BHD</b> WA-25-561-12/2019	Whether proceeds from the disposal of land is subject to tax under section 4(a) ITA 1967 or RPGTA 1976
<b>BANDAR BARU MAJIDEE DEVELOPMENT SDN BHD</b> WA-25-121-03/2020	Whether proceeds from the disposal of land is subject to tax under section 4(a) ITA 1967 or RPGTA 1976
<b>GOLDEN ORIENTAL REALTY SDN BHD</b> WA-25-163-05/2020	Whether payment made to State Government is 'donation' under section 44(1) ITA 1967 or alternatively expenses under section 33(1) ITA 1967
<b>ALLIANZ GENERAL INSURANCE COMPANY (MALAYSIA) BERHAD</b> WA-25-1-01/2020	Taxpayer made application to set aside Notification of Reduced Assessment and Notice of Additional Assessment

## JUDICIAL REVIEW CASES AT HIGH COURT 2020

### Application for leave dismissed

CASES	ISSUES
LION DIGITAL MALAYSIA SDN BHD WA-25-181-06/2020	Whether media payment made to related company in Hong Kong is royalty and subject to withholding tax under section 109(1) ITA 1967
LAYAR BAIDURI SDN BHD PA-25-36-07/2019	Whether withdrawal of the Industrial Building Allowance and Tax Investment Allowance is in accordance with the law.
MELODY PARK SDN BHD BA-25-8-01/2020	Whether proceeds from the disposal of land is subject to tax under section 4(a) ITA 1967 or RPGTA 1976
THE PEAK@KLCC SDN BHD BA-25-8-01/2019	Whether proceeds from the disposal of land is subject to tax under section 4(a) ITA 1967 or RPGTA 1976
SRI BESTARI ESTATE SDN BHD BA-25-33-05/2020	Whether proceeds from the disposal of land is subject to tax under section 4(a) ITA 1967 or RPGTA 1976
MUHIBBAH ENGINEERING (M) SDN BHD WA-25-71-01/2020	Whether expenses incurred are allowable under section 33 of ITA and whether penalty in relation to group relief under section 44A(9)(b) of ITA is correctly imposed.



## JUDICIAL REVIEW CASES AT HIGH COURT (2020)

### Application for leave allowed

CASES	ISSUES
MULTI-PURPOSE INTERNATIONAL LIMITED LBN-25-1/12-2019	Whether the transaction carried out by the taxpayer falls within the scope of 'offshore non-trading activity' under the Labuan Business Activities Act 1990
REPSOL OIL & GAS MALAYSIA LIMITED & 3 OTHERS TA-25-1-01/2020	Applicant made application to set aside assessment and penalty imposed by way of Notice of Additional Assessment [deemed to be taxable person under subsection 2 (1) of the Petroleum Act (Income Tax) Act 1967]
SEAPORT WORLDWIDE SDN BHD JA-25-61-11/2019	Whether the transaction in dispute was sale / disposal of rights over land or merely a lease in nature; Whether the taxpayer is eligible to deduct the development cost / property development expenditure in ascertaining its chargeable income.



# STAY OF PROCEEDINGS

# **SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**BA-25-68-08/2019**

## **ISSUE**

Whether court can grant ad interim stay pending disposal of leave application for Judicial Review?

# SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI

BA-25-68-08/2019

## BRIEF FACTS

The application for leave for Judicial Review was postponed to enable the DGIR to submit reply submission.

The taxpayer applied for an interim stay pending the disposal of the leave application.

# **SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**BA-25-68-08/2019**

**DECISION**

**THE HIGH COURT GRANTED AD INTERIM STAY  
PURSUANT TO O92 R4 RULES OF COURT 2012**



## GROUNDS : HIGH COURT

01

Court has the inherent power to grant Ad Interim Stay to prevent injustice or to prevent leave application from being rendered redundant.

02

The delay in the disposal of the leave application may cause irreparable harm to taxpayer and render leave application to be academic.

03

No prejudice is caused to DGIR by the Ad Interim Stay

# **SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**BA-25-68-08/2019**

## **ISSUE**

Whether court can grant stay of proceedings pending disposal of substantive application?

# SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI

BA-25-68-08/2019

## BRIEF FACTS

The taxpayer filed an application for leave for Judicial Review

In the same application for leave, the taxpayer applied for all proceedings to be stayed until the final determination of the substantive application.

# **SHELL PEOPLE SERVICES ASIA SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI**

**BA-25-68-08/2019**

**DECISION**

**THE HIGH COURT DID NOT GRANT STAY UNDER  
ORDER 53 R 3(5) RULES OF COURT**

## GROUNDS : HIGH COURT

01

No evidence that the substantive application will be rendered academic; or that the taxpayer will face severe cash flow problem, commercial insolvency or winding up proceeding.

02

Merits of the case, law-abiding person and huge amount tax involved do not amount to special circumstances.

03

Other reported cases on stay of proceedings can be distinguished as those cases do not concern assessment of income tax.





# ADVANCE RULING

# IBM MALAYSIA SDN BHD v DIRECTOR GENERAL OF INLAND REVENUE

01(f)-37-11/2019(W)

## ISSUE

1. Whether the advance ruling is a decision which is binding upon the taxpayer;
2. Whether the application for judicial review is premature;
3. Whether the domestic appeal remedy under the ITA is available to the taxpayer.

# IBM MALAYSIA SDN BHD v DIRECTOR GENERAL OF INLAND REVENUE

01(f)-37-11/2019(W)

## BRIEF FACTS

→ An application for an Advance Ruling (AR) was made relating to a proposed software distribution agreement

→ DGIR issued the AR that payment made to IBM Ireland (non-resident) pursuant to the agreement is royalty and thus, subject to withholding tax.

→ The taxpayer filed judicial review application to quash the AR. High Court allowed the taxpayer's application for JR.

→ DGIR appealed to the Court of Appeal against the High Court's decision. Court of Appeal decided in favour of DGIR. A further appeal was filed by the taxpayer to the Federal Court.

# IBM MALAYSIA SDN BHD v DIRECTOR GENERAL OF INLAND REVENUE

01(f)-37-11/2019(W)

## DECISIONS

THE HIGH COURT ALLOWED  
THE  
TAXPAYER'S APPLICATION  
FOR JUDICIAL REVIEW

THE COURT OF APPEAL  
ALLOWED THE DGIR'S  
APPEAL

THE FEDERAL COURT  
DISMISSED THE  
TAXPAYER'S APPEAL

## GROUNDS : COURT OF APPEAL

01

The AR has not adversely affected the taxpayer until return is filed and tax assessed. AR is binding but taxpayer has the option not to proceed with the arrangement.

02

If the taxpayer proceeded with the proposed business transaction, the taxpayer must comply with the AR and then may file an appeal against the assessment.

03

The application to quash the AR is premature and remedy by way of judicial review is not to be available where an alternative remedy exist except in very exceptional case.



## GROUNDS : COURT OF APPEAL

04

The issue of whether the payment is a royalty payment is a matter of interpretation of law which is not special circumstances to allow a judicial review application

05

The proper forum to ventilate the issue is before the Special Commissioners of Income Tax (SCIT).

06

By coming to court as a forum to address its grievances, the taxpayer was using a backdoor to appeal against the AR and also circumventing the function of the SCIT. This is an abuse of the court process.



# INCOME TAX v REAL PROPERTY GAINS TAX

## ITA v RPGT

**NATASRI  
SDN BHD v. KPHDN  
WA-14-14-10/2018**

**TGSB SDN BHD  
PKCP(R) 439/2016**

# NATASRI SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI

WA-14-14-10/2018

## ISSUE

Whether the gains from the disposal of properties are subject to income tax as gains and profit from a business under section 4(a) of ITA

# NATASRI SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI

WA-14-14-10/2018

## BRIEF FACTS

The taxpayer's principal activity is property holding.

The subject land was purchased by the taxpayer on 21.1.1984.

The taxpayer entered into JV in 2001 with a developer company to develop land into housing development project.

Power of attorney was granted to developer. The taxpayer subdivided the land into 34 parcels and converted category of land for commercial use. Taxpayer also made a request to change the layout of plans.

The JV was not implemented and subsequently aborted. The taxpayer sold the subject land on 11.6.2010.



# NATASRI SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI

WA-14-14-10/2018

## DECISIONS

THE SCIT DISMISSED  
THE  
TAXPAYER'S APPEAL

THE HIGH COURT  
DISMISSED THE  
TAXPAYER'S APPEAL

## GROUNDS : HIGH COURT

01

Memorandum of Association empowered the taxpayer to carry out land investment, land development, purchase and sale of land and other commercial properties. Mere declaring that the land is a fixed asset and not trading stock is not conclusive evidence.

02

Taxpayer played an active role in the JV, including conversion of agricultural land to commercial and those facts constituted an adventure in the nature of trade.

03

The initial intention of the taxpayer was holding for investment, but this fact has changed when the appellant acted in an adventure in the nature of trade.

# TGSB SDN BHD V. DGIR

PKCP(R) 439/2016

## ISSUE

Whether the gains from the disposal of properties are subject to income tax as gains and profit from a business under section 4(a) of ITA  
Whether the assessment raised was time barred under section 91(1) of ITA.

# TGSB SDN BHD V. DGIR

PKCP(R) 439/2016

## BRIEF FACTS

→ The taxpayer is principally engaged as a civil and building contractor. Essentially the taxpayer builds and maintains road, drainage, sewerage and various types of civil works.

→ The taxpayer purchased properties and categorised them as 'Investment Properties' in its audited accounts.

→ Pursuant to a field audit, 6 properties (shop offices and terrace house) which were disposed in year 2010 to 2012 were treated as gains and profit from a business and subject to ITA.

# **TGSB SDN BHD V. DGIR**

**PKCP(R) 439/2016**

## **DECISION**

**THE SCIT DISMISSED THE  
TAXPAYER'S APPEAL**

## **CURRENT STATUS**

Pending appeal before the High Court



# TGSB SDN BHD V. DGIR

## PKCP(R) 439/2016

### FOUNDATIONS : SCIT

01

The intention of the taxpayer at the time of acquisition of asset was to dispose of it at a profit. Contention that the asset was rented out was not substantiated by documents.

02

There have been several transactions of the same kind of properties. The property was held for short period after its acquisition. Badges of trade considered by the SCIT.

03

There was negligence on the part the taxpayer in failing to declare the disposal under the ITA. The taxpayer has a duty to obtain clarification for the tax treatment for the disposals, either from the DGIR or its tax agent.



# STAMP DUTY

# **BROWNWOOD SDN BHD v INLAND REVENUE BOARD OF MALAYSIA & ANOTHER**

**W-01(A)-286-06/2019**

## **ISSUE**

Whether the Respondent's Decision to reject the application for refund made by the Applicant pursuant to section 57(f)(i) of the Stamp Act 1949 is illegal/ irrational.

# BROWNWOOD SDN BHD v INLAND REVENUE BOARD OF MALAYSIA & ANOTHER

W-01(A)-286-06/2019

## BRIEF FACTS

The Applicant had on 23.8.2012 entered into a Sale and Purchase Agreement with MKSB (Vendor) in respect of a piece of land. Form 14A was executed by the Applicant and the Vendor on 17.10.2012.

Another company, RADSB had on 6.12.2012 entered a caveat on the said land on the ground that RADSB had paid a deposit for the land but later on 16.1.2013 withdrew its caveat.

A search conducted by the Applicant with the Land Office on 30.1.2013 confirmed that the Applicant is the registered owner of the said land.

Vide subsequent title search made on 28.10.2013, 20.8.2014 and 18.2.2015, the Applicant found that the land was transferred to RADSB by the Vendor.

# BROWNWOOD SDN BHD v INLAND REVENUE BOARD OF MALAYSIA & ANOTHER

W-01(A)-286-06/2019

## BRIEF FACTS

The Applicant later sued the Vendor and the legal firm for fraud in the sale of the said Land. A consent judgement was entered between parties on 12.2.2018 where one of the term is that the SPA between the Applicant and the Vendor dated 23.8.2012 is void and of no legal effect.

The Applicant vide a letter dated 31.5.2018 requested for refund from the 1<sup>st</sup> Respondent but the application for refund was rejected vide an email on 31.10.2018 (the Decision).

Hence, the Applicant filed this application to review and quash the Decision.



# BROWNWOOD SDN BHD v INLAND REVENUE BOARD OF MALAYSIA & ANOTHER

W-01(A)-286-06/2019

## DECISIONS

HIGH COURT DISMISSED  
THE APPLICANT'S JR  
APPLICATION

COURT OF APPEAL  
DISMISSED THE  
APPLICANT'S APPEAL

## GROUNDS : HIGH COURT

01

The SPA and Form 14A is not void from beginning (*void ab initio*) but void from the date of consent judgement (23.8.2012).

02

No refund shall be allowed if the application for refund was made after twelve months from the date of execution of Form 14A.

03

No refund shall be allowed if legal proceeding has commenced and the instrument was offered in evidence.



# THANK YOU

**ABU TARIQ BIN JAMALUDDIN**

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