

ORGANISED BY



PREMIER TAX EVENT OF THE YEAR
NATIONAL TAX CONFERENCE
2018

16 & 17 JULY 2018 | MONDAY & TUESDAY
KUALA LUMPUR CONVENTION CENTRE

“Taxation in a Changing Economy”

ORGANISED BY



PREMIER TAX EVENT OF THE YEAR
NATIONAL TAX CONFERENCE
2018

16 & 17 JULY 2018 | MONDAY & TUESDAY
KUALA LUMPUR CONVENTION CENTRE

DAY 2 : 17 JULY 2018

**TOPIC : AGGRESSIVE TAX PLANNING –
is there a clear dividing line**

Speaker : Chow Chee Yen
Executive Director
Advent MS Tax Consultants Sdn Bhd

TAX AVOIDANCE (ATP)	TAX MITIGATION
Tax driven	Tax savings is secondary or incidental
No commercial justification	<input type="checkbox"/> Commercially justified <input type="checkbox"/> Consequent to the requirements of law <input type="checkbox"/> Accepted business practices
SAAR & GAAR	Permissible

CASE LAW

Sabah Berjaya Sdn Bhd v KPHDN
(1999)
[Donations instead of dividend
payment to Sabah Foundation]

DECISION

- ☐ Income tax is mitigated by a taxpayer who reduces his income or incurs expenditure in circumstances which reduce his assessable income
- ☐ Arranging one's affairs to enjoy a tax benefit which is permissible under the Income Tax Act does not amount to tax avoidance

CASE LAW

Port Dickson Power Bhd v
KPHDN (2012)
[Funding by way of loan stock
instead of equity from
shareholders]

DECISION

- ☐ Just because the taxpayer had to borrow in order to pay for interests that accrued did not mean the payment of the interest was not genuine
- ☐ The DGIR must have reasons to believe that the taxpayer had committed an act resulting in tax avoidance (not based on suspicion alone)
- ☐ The burden of proof to establish that the transaction was a sham rests with the DGIR

CASE LAW

Syarikat Ibraco-Peremba Sdn Bhd v
KPHDN (2014)
[land transferred to subsidiary for
development]

DECISION

- ☐ Taxpayer must be able to demonstrate that the transaction or the arrangement undertaken by them was consequent to the requirements of law or accepted business practices and that the tax savings were purely incidental
- ☐ There was no commercial nor business reason to set up the subsidiary except for the purpose of the scheme to avoid such disposal from being taxed under the income tax
- ☐ Each individual step or transaction need not only be looked at from each individual step or transaction but it is to be looked at as a whole

CASE LAW

Ensco Gerudi (M) Sdn Bhd v
KPHDN (unreported)
[lease rental payment made to a
Labuan SPV to mitigate
withholding tax]

DECISION

- ☐ Taxpayers have the freedom to structure transactions to their best tax advantage
- ☐ The transactions were within the meaning and scope of the of the arrangements contemplated by the government in actively offering incentives, to promote Labuan as an international trade and financial centre

THANK YOU!

