

TECHNICAL

Direct Taxation

Tax Case Update

Qualifying Expenditure for Reinvestment Allowance Claim

***Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturing Sdn Bhd*
(Civil Appeal No.: W-01-429-11)**

On 12 July 2013, the Court of Appeal unanimously dismissed the appeal by the Director General of Inland Revenue ("DGIR") in *Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturing Sdn Bhd* (Civil Appeal No. : W-01-429-11) ("the SETM case"). Reinvestment allowance is a tax incentive provided under Schedule 7A of the Income Tax Act 1967. The SETM case is the first case of its kind that has reached the Court of Appeal. The written grounds of the Court of Appeal are yet to be made available.

In its oral judgment, the Court of Appeal affirmed the concurrent decisions of the Special Commissioners of Income Tax and the High Court in ruling that there is no legal basis for the DGIR to restrict the availability of reinvestment allowance to "production areas" only. Accordingly, the taxpayer was allowed to claim reinvestment allowance on the capital expenditure incurred on:

- (a) the construction of surau, lift lobby, research and development ("R&D") room, warehouse, "void area" for the installation of cranes, staircase, meeting rooms, office spaces and toilets;
- (b) the plant and machinery used in the R&D room and warehouse; and
- (c) the installation of electrical, lighting, telephone and air conditioning wiring in the surau, meeting rooms, office spaces, warehouse and R&D room.

The taxpayer was also allowed to claim reinvestment allowance on the capitalised interest expenditure during the construction of the factory.

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Reinvestment allowance is the most widely claimed tax incentive in Malaysia. The above decision has wide implications on the claim of reinvestment allowance. Members interested in further details of the case may refer to the High Court judgment on *Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturer Sdn Bhd*, [Civil Appeal No R1-14-14-09] [(2012) MSTC ¶30-039] in Malaysia and Singapore Tax Cases. You may also view the High Court judgment online at the Resource Centre of the Institute during working hours.

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