e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

e-CTIM TECH 159/2013 **27 December 2013**

TO ALL MEMBERS

TECHNICAL

Direct Taxation

TAX CASE UPDATE

Capital Expenditure on "Plant or Machinery" – Claim For Capital Allowance

***Ketua Pengarah Hasil Dalam Negeri v Resort Poresia Berhad* (2013) [Court of Appeal] (Civil Appeal No: J-01-577-10)**

Date of Judgment: 8 January 2013

Facts:

In the Year of Assessment 1995, Resort Poresia Bhd (the taxpayer) claimed capital allowance on the sum of RM18,094,574 which was incurred on turfing and grass on a golf course. The claim was disallowed by the KPHDN.

The taxpayer appealed to the Special Commissioners of Income Tax (SCIT) who held that the golf course was premises within which membership fees were derived and the business was carried out. The taxpayer's appeal was dismissed.

The taxpayer then appealed to the High Court which held that the decision of the SCIT cannot stand and allowed the appeal.

The KPHDN appealed to the Court of Appeal.

Issue:

Whether the expenditure on turfing and grass on the golf course falls within the meaning of "machinery or plant" that qualifies for capital allowance under Schedule 3 of the Income Tax Act, 1967 (ITA).

Decision:

Appeal allowed. The order of the High Court was set aside and the decision of the SCIT was reinstated.

In reviewing the judgment of the High Court, the Court of Appeal noted (among other points made) the following key points in High Court's grounds of decision in allowing the taxpayer's appeal:

- The SCIT have applied the wrong tests in determining the issue whether the capital expenditure incurred was qualifying plant expenditure.
- The SCIT appeared to have lost sight of the issue at hand which is whether expenditure incurred on the golf course turfing and grass was qualifying expenditure incurred on the provision of machinery or plant for the purpose of the taxpayer's business.
- There was unchallenged evidence before the SCIT from the appellants (taxpayer) in the form of a Capital Allowance Study on the functionality of the various grasses used in the fairways and greens in issue. The SCIT should have made a finding in respect of the nature and function of the grass and turfing before applying the principle laid down in the

Yarmouth case (*Yarmouth v France (1887) 19 QBD647*). However, no finding of fact was made in respect of the appellant's evidence, and the (High) Court was of the view that this failure to state their finding had gravely prejudiced the appellant.

- The finding of fact by the SCIT that the taxpayer's income consists of licence fee, subscription and other club operations income, and the inference drawn (that the golf course was a premise within which the business was carried out) is fundamentally flawed as the SCIT has failed to distinguish the golf course from the turfing and grass.

The Court of Appeal declared that in its view, it was not mandatory that the SCIT must so necessarily deal with each and every submission made by one party or both, or set out the reasons for not giving weight where (from the whole of the judgment and the nature of the appeal), the reasons are obvious. It is sufficient that the grounds of judgment make clear the facts, findings and reasoning that led to the conclusion.

The functionality afforded by the different grasses is part and parcel of the quality of the golf course itself. The grasses chosen are an inseparable part and parcel of the golf course, and therefore if the golf course is premises from which the business of the taxpayer is carried on, the turf and grasses are part and parcel of such premises. The High Court gravely erred in holding that the SCIT appear to be confused in failing to distinguish between the golf course and the turfing and grass.

The germane question is whether the SCIT had erred in their application of the principles set out in relevant case-law. In declaring that the golf course is not a plant used in carrying out the business of the taxpayer, but premises from which the business is carried on, it cannot be said that the SCIT, on the basis of case-law, had erred in making its finding. As observed by Lord Lowry in *Inland Revenue Commissioners v Scottish and Newcastle Breweries Ltd [1982] 1 WLR 322 HL*, there are cases that on the facts found, are capable of decision either way.

The finding by the SCIT is one they were entitled to make and should not have been disturbed.

Members may read the full **Grounds of Judgement** from the Attorney General's Chambers website.