

**TECHNICAL**

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**Direct Taxation**

**TAX CASE UPDATE**

**Exemption under S54A(1) of the Income Tax Act 1967 (ITA) in respect of “Malaysian Ships”**

[Ketua Pengarah Hasil Dalam Negeri \(KPHDN\) v Labuan Ferry Corporation Sdn. Bhd.](#) (High Court) (Civil Appeal No: R4-14-01-2009)

Date of Judgment: 26 March 2010

**Facts:**

This is an appeal against the decision of the Special Commissioners of Income Tax (SCIT) who had held that income from the operation of 3 vessels used for the carrying of vehicles/ passengers between the jetty at Labuan and Menumbuk in Sabah is entitled to exemption from income tax under S54A(1) of the ITA.

The respondent (LFC), rented 3 vessels from the state of Sabah and used them for the purpose stated above. The 3 vessels were not registered under the Merchant Shipping Ordinance 1952 (MSO) during the relevant years of assessment (YA), i.e. YA 1996 to 2001. There were profits from the operation of these vessels during the relevant years. In 2007, LFC bought over the vessels and were in the process of registration under the MSO, which imposes the legal obligation for registration of the vessels under S12 of that Ordinance.

(In the appeal before the SCIT, it was Revenue’s contention that the income for the relevant years did not qualify for exemption under S54A of the ITA because the vessels were not registered under the MSO. Even if they were “Malaysian ships” the taxpayer would still not be entitled to the exemption as the vessels were used as ferries and not ships.)

**Issues:**

The question of law to be decided by the High Court is whether the taxpayer (LFC) is entitled to claim for tax exemption under S54A of the ITA. Specifically, deliberation of the law relates to the following:

1. S54A of the ITA which grants tax exemption to Malaysian operators of “Malaysian Ships” which are ships registered under the MSO;
2. Definition of “Malaysian Ship” found in S54(6) – defined as “a sea-going ship registered as such under the MSO other than a ferry, barge, tug-boat, supply vessel, crew boats, lighter, dredger, fishing boat or other similar vessel”;
3. S11 of the MSO which deals with the qualifications of a Malaysian Ship;
4. S12 of the MSO which provides for the mandatory requirement of registration of Malaysian ships with the Registrar of Ships;
5. S13 of the MSO that speaks of exemptions from registration (not applicable in this case).

**Decision:**

Appeal allowed. Assessments confirmed.

The following are the main points from the Grounds of Judgment:

- From the outset, it was stated that the SCIT's findings that the 3 vessels were exempted from the provisions of the MSO (i.e. exempted from the requirement to be registered under the MSO) as they come under the provisions of S4 and S271 of the said Ordinance was a **misconception**. (S4(1) of the MSO states - "*This Ordinance shall not, except where specially provided and subject to the other provisions of this section, apply to ships belonging to her Majesty or to His Highness the Ruler or His Excellency the Governor of any State.*")
- Under the clear provisions S12(4) of the MSO, those ships belonging to the Government of Malaysia or any state thereof, are still subject to registration under the MSO. (Hence, even though the vessels belonged to the State of Sabah, they were not exempt from the requirement for registration under the MSO. S12(4) of the MSO states – "*The Minister may prescribe the manner in which ships or classes of ships belonging to the Government of Malaysia or any State thereof or any statutory body therein may be registered under this Ordinance.*")
- Exemption under S54A of the ITA is only available for operators of ships that are registered under the MSO. The wordings of that section in respect of this condition for exemption is very clear and unambiguous. All the 3 vessels were not registered, and the facts disclosed that they were not exempted from the requirement for registration as a Malaysian ship under the MSO. The vessel could be classified as a "Malaysian Ship" only upon registration and only then could it qualify for exemption under S54A(1) of the ITA.
- As there is no ambiguity in the interpretation of the law relevant to the issue at hand, there is no room for any other interpretation to be construed in favour of the taxpayer. (Reference made to National Land Revenue v DGIR (1993)4 CLJ 339 and Multi-Purpose Holdings Bhd v KPHDN (2006) 1 CLJ 1121). Further, the onus of proof that an assessment is excessive or erroneous is on the taxpayer, as provided under paragraph 13 of Sch. 5 of the ITA.

Members may read the full [Grounds of Judgment](#) from the Kuala Lumpur Law Courts Official website.

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DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)

**RAYUAN SIVIL NO: R4-14-01-2009**

Antara

Ketua Pengarah Hasil Dalam Negeri                      ...      Perayu

Dan

Labuan Ferry Corporation Sdn. Bhd.                      ...      Responden

[Kes dinyatakan oleh Pesuruhjaya Khas Cukai  
Pendapatan bagi pendapat Mahkamah Tinggi  
Menurut Perenggan 34 Jadual 5  
Akta Cukai Pendapatan 1967]

Dalam Perkara

Pesuruhjaya Khas Cukai Pendapatan  
Rayuan No: PKCP (R) 54/2007

Antara

Ketua Pengarah Hasil Dalam Negeri                      ...      Perayu

Dan

Labuan Ferry Corporation Sdn. Bhd.                      ...      Responden

## **GROUND OF JUDGMENT**

### **Introduction:**

This is an appeal, by Ketua Pengarah Hasil Dalam Negeri, by way of case stated pursuant to the provisions in **paragraph 34 of Schedule 5 of the Income Tax Act 1967**. It is an appeal on a question of law, against the deciding Order, made by the Special Commissioners.

The only issue/question of law: whether, on the facts, the Respondent tax-payer is entitled to claim for tax exemption under **Section 54A (1) of the Income Tax Act 1967**.

Upon perusal of the case stated (Enclosure 1) and the submissions filed herein, I made the following findings:-

### **On the facts:**

1. The Respondent tax-payer rented 3 vessels from the state of Sabah and used them for the carrying of vehicles/passengers between the jetty at Labuan and Menumbuk in Sabah.
2. The said 3 vessels were not registered under the **Merchant Shipping Ordinance 1952 (MSO)** during the relevant years of assessments, namely from year 1996 to 2001.

3. In the relevant years of assessment, the Respondent did obtained shipping profits from their operations.
4. In year 2007, the 3 vessels were bought over by the Respondent and were in the process of registration under the **Merchant Shipping Ordinance 1952** and that they are legally obliged to register them under the provisions of **Section 12** of the said Ordinance.

The Law:

1. Tax exemption, under Section **54A of the Income Tax Act 1967** can only be given to Malaysian operators of “**Malaysian Ships**”.
2. “**Malaysian Ships**” are those registered under the **Merchant Shipping Ordinance 1952**.
3. “**Malaysian Ship**” as defined under **Section 54(6) of the Income Tax Act 1967** means a sea-going ship registered as such under the **Merchant Shipping Ordinance 1952**, other than a ferry, barge, tug-boat, supply vessel, crew boats, lighter, dredger, fishing boat or other similar vessel.

4. **Section 11** of the Merchant Shipping Ordinance 1952 deals with the qualifications of a Malaysian Ship.
5. **Section 12** of the Merchant Shipping Ordinance 1952 deals with the mandatory requirement of registration of Malaysian ships with the Registrar General of Ships.
6. **Section 13** of Merchant Shipping Ordinance 1952 speaks of exemptions from registration. (This section is not applicable in this case).

Misconception of the law:

With due respect, the findings by the learned Special Commissioners that the 3 vessels are exempted from the provisions of the Merchant Shipping Ordinance 1952, as they come under the provisions of Section 4 and Section 271 of the said Ordinance, is a misconception.

This is particularly so because, although the 3 vessels belongs to the State of Sabah, under the clear provisions of **Section 12(4) of the Merchant Shipping Ordinance 1952**, those ships belonging to the Government of Malaysia or any state thereof, are still subject to registration under the

Ordinance. This **Section 12(4)** was inserted vide the **Merchant Shipping (Amendment And Extension) Act 1984 (Act A603)**.

Conclusion:

**Tax exemption can only be given to the operators of ships that are registered under the Merchant Shipping Ordinance 1952.** The 3 vessels were not registered. Other than the evidence of implied admission of the need to register the 3 vessels by the subsequent acts of the Respondent in year 2007 the facts also disclosed that the 3 vessels are not exempted from the requirement for registration as a Malaysian ship under the Merchant Shipping Ordinance 1952. They can only enjoy any exemption upon and after registration, and not before. Once the vessels are registered, then only the vessels can be labeled as “a Malaysian ship” and henceforth qualify for the tax exemption under Section 54A (1) of the Income Tax Act 1967. **Before registration under Section 12 of the Merchant Shipping Ordinance 1952**, the vessels **cannot** be classified as “a Malaysian ship” for purposes of the tax exemption. There are no 2 ways about that. The wordings in Section 54(6) of the Income Tax Act is very clear and unambiguous as it refers to all the preceding subsections of the Section 54A.

As there is no ambiguity in the interpretation of the laws that are relevant to the issue at hand, there is no room for any

other interpretation to be construed in favour of the tax payer. On this matter, it is suffice to refer, by analogy to the cases of:-

**National Land Revenue v. Director General of Inland Revenue (1993)4 CLJ 339; and**  
**Multi-Purpose Holdings Bhd. v. Ketua Pengarah Hasil Dalam Negeri (2006)1 CLJ 1121.**

It is also noted that in tax related matters, the onus of proof is always on the tax-payer who claims for exemption. (See also **paragraph 13 of Schedule 5 of the Income Tax Act**, which provides that “**The onus** of proving that an assessment against which on appeal is made is excessive or erroneous shall **be on the appellant**”).

It is my opinion and conclusion that, based on the facts adduced/produced as in the case stated, the learned Special Commissioners had erred in their interpretation of Section 54A (1) Income Tax Act 1967 vis-à-vis the provision of the Merchant Shipping Ordinance 1952 and as provided for under Section 54(6) of Income Tax Act 1967.

Accordingly, the appeal by the Ketua Pengarah Hasil Dalam Negeri is hereby allowed, and accordingly, pursuant to the provisions of paragraph 39 of Schedule 5 of the Income Tax Act, it is hereby ordered that:-



- (i) The assessments to which the case relates to, be confirmed; and
- (ii) Costs in the sum of RM 2,500.00 to be paid to the Appellant.

(DATO' HAJI MOHAMED APANDI BIN HAJI ALI)  
JUDGE  
HIGH COURT MALAYA  
KUALA LUMPUR

Dated: 26th March 2010

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Cases referred to:

1. National Land Revenue v. Director General of Inland Revenue (1993)4 CLJ 339.
2. Multi-Purpose Holdings Bhd. v. Ketua Pengarah Hasil Dalam Negeri (2006)1 CLJ 1121.

Legislations referred to:

1. Income Tax Act 1967.
2. Merchant Shipping Ordinance 1952.