

**TECHNICAL**

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**Direct Taxation**

**TAX CASE UPDATE**

**Compensation for loss of employment and compensation for death or injuries**

**Ketua Pengarah Hasil Dalam Negeri v Prof. Dr. Syed Muhammad Naquib Al Attas (HC) 2012** (Civil Appeal No: R2-14-7-07/2012)

Date of Judgment: 8 November 2012

**Facts:**

The respondent had filed a civil suit against ISTAC, IIUM and others ("the defendants"), asking for certain declaration. The suit was settled out of court and the defendants agreed to pay compensation to the respondent under the Deed of Settlement dated 20.2.2008 ("the Deed"). Compensation under the Deed amounted to RM2.5 million in total ("Settlement Sum"), including the sum of RM1.95 million ("the said sum") received by the respondent "as a compensation for "emotional pain, mental anguish and pain and suffering." The appellant imposed income tax on all items of compensation under the Deed.

The respondent appealed against the assessment to the Special Commissioners of Income Tax (SCIT), who allowed the appeal.

The present case is the appeal by KPHDN against the decision of the SCIT.

**Issue:**

The issue for determination is whether, under the circumstances of the case, the sum of RM1.95 million was chargeable to income tax under [S13\(1\)\(e\)](#) of the ITA.

**Decision:**

Appeal dismissed with cost.

*Summary of Grounds of Decision:*

1. In the Deed, the compensation is categorized into various specific items. For instance, the following items are listed in section 3.04 of the Deed:

- (i) for loss of basic pay;
- (ii) for loss of fixed allowance; and
- (iii) for loss of honorarium.

Under item (v) of the above section, the sum of RM1.95 million is described as compensation for "emotional pain, mental anguish, pain and suffering."

2. The respondent had submitted as evidence a letter from the solicitors acting for the defendants dated 30.4.2008, which confirmed that the said sum was not intended to be compensation for loss of employment.
3. The appellant did not rebut the content of the Deed, or the evidence of the letter dated 30.4. 2008. Therefore the contents of those documents must be taken as correct.

4. The Deed also provided in sections 2.01 and 2.03 respectively, that (1) the parties agreed to settle their dispute, and the plaintiff in the suit will file a notice to discontinue with the suit upon receipt of the Settlement Sum, and (2) the plaintiff agreed that the withdrawal and discontinuance of the suit will constitute a final and complete settlement of such action and issues raised in the suit.
5. Therefore it is clear that the respondent did not receive the said sum as an employee in respect of gain or profit of an employment but as the plaintiff in a civil suit in consideration for agreeing to discontinue the suit. Hence, he is also entitled to exemption under [paragraph 14 of Sch. 6](#) of the ITA, which provides for exemption from income tax for “*sums received by way of death gratuities or as consolidated compensation for death or injuries.*”
6. The learned Judge referred to the following definitions of “*injury*”

Source	Definition
Black’s Law Dictionary	Any invasion of personal rights, including mental suffering
Words, Phrases & Maxims Legally & Judicially Defined	...include “any wrong or damage done to another, either in his person, rights, reputation or property”.

Based on the above definitions, the learned Judge agreed that the respondent’s reputation as a World Scholar was injured and therefore [paragraph 14 of Sch. 6](#) of the ITA is applicable to the said sum.

#### Note

*Although the Court has clearly decided that the compensation sum received in this case is not income from an employment source under S13(1)(e) of the ITA, there is no pronouncement as to whether the receipt representing compensation for “emotional pain and mental anguish” is “income” which is taxable under the ITA. Nevertheless, the Court has held that the recipient is entitled to exemption under paragraph 14 of Sch. 6 of the ITA. This gives rise to the question of whether there is a presumption that the receipt is taxable income under the ITA, if not for the exemption referred to.*

*The decision in this case may come as a surprise to some who hold to the commonly held notion that paragraph 14 of Sch. 6 of the ITA applies to compensation received in respect of physical death or injuries. Note that exemption of the sum in question is based on “injury” to the respondent’s reputation. If there is a presumption that such compensation is taxable under the ITA, the challenge is to further extend the application of the word “injury” to other forms of injury that would qualify the receipt for exemption under paragraph 14 of Sch. 6 of the ITA.*

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

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**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(APPELLATE AND SPECIAL POWERS DIVISION)**

**CIVIL APPEAL NO: R2-14-7-07/2012**

**BETWEEN**

**KETUA PENGARAH HASIL DALAM NEGERI - APPELLANT**

**AND**

**1. PROF. DR SYED MUHAMMAD - RESPONDENT  
NAQUIB AL ATTAS**

**A Case Stated By the Special Commissioners of Income Tax  
For The Opinion of the High Court Pursuant to  
Paragraph 34 Schedule 5 Of The Income Tax Act 1967**

**(In the Matter of The Special Commissioners of Income Tax  
Appeal No: PKCP (R)20/2011)**

**BETWEEN**

**PROF. DR SYED MUHAMMAD - APPELLANT**

**AND**

**KETUA PENGARAH HASIL DALAM NEGERI - RESPONDENT**

## **GROUND OF JUDGMENT**

The respondent had filed a civil suit vide Civil Suit No 54-22-134-2003 against ISTAC, IIUM and others (hereinafter referred to as 'defendants') asking for certain declaration. The said civil suit was settled out of court when the defendants agreed to pay certain compensations to the respondent in accordance with the Deed of Settlement dated 20.2.2008.

2. The Appellant imposed income tax on all the items of compensations totaling RM2,500,000.00 (Settlement Sum) which includes the sum of RM1,950,000.00 received by the respondent as a compensation for "emotional pain, mental anguish and pain and suffering".

3. The respondent appealed to the Special Commissioners of Income Tax, who allowed the appeal. Now the appellant is appealing against that decision of the Special Commissioners.

### **Issue**

Whether under the circumstances of this case, the sum of RM1,950,000.00 was chargeable to income tax under section 13(1)(e) of the Income Tax Act 1967.

### **Decision**

1. The parties to the Deed of Settlement has categorized the compensation into various specific items. For instance, in items (i),(ii) and (iii) of section 3.04 of the Deed of Settlement the several sums are stated as compensations:-

(i) for loss of basic pay [item (i)] ;

- (ii) for loss of fixed allowance [item (ii)] ; and
- (iii) for loss of honorarium (item (iii)).

Whereas under item (v) of section 3.04, the said sum of RM1,950,000.00 is described as compensation for “emotional pain, mental anguish, pain and suffering”.

2. At the hearing of the appeal the respondent produced a letter dated 30<sup>th</sup> April 2008( Exhibit G) from Messrs Zaid Ibrahim & Co., solicitors for the defendants confirming that the said “sum of RM1,950,000.00 was not intended to be compensation for his loss of employment”.

3. The appellant did not rebut the content of the Deed of Settlement or the content of exhibit G. In fact the respondent was not cross-examined at all by learned counsel for the appellant at the hearing before the Special Commissioners. Therefore the contents of those documents must be taken as correct.

4. The Deed of Settlement inter alia provides as follows:-

Section 2.01 which states:-

*“The plaintiff and the defendants agree to settle their dispute and the plaintiff shall upon receipt of the Settlement Sum hereinafter defined, instruct his solicitors to file a Notice of Discontinuance of the Suit .....”; and*

Section 2.03 which states:

*The plaintiff hereby agrees that the withdrawal and discontinuance of the Suit by him shall constitute a full, final and complete settlement of such action and issues raised therein ...*

5. Thus it is clear to me that the respondent did not receive the said sum of RM1,950,000.00 as an employee in respect of gain of profit for an employment but he received it as a plaintiff in the civil suit as consideration for agreeing to discontinue the civil suit. Hence, he is entitled to get exemption under paragraph 14 of Schedule 6 of the Income Tax Act 1967.

6. Paragraph 14 of Schedule 6 of the Income Tax Act 1967 clearly provides as follows:-

*“ 14. Sums received by way of death gratuities or as consolidated compensation for death or injuries”*

7. Black's Law Dictionary, 7<sup>th</sup> Edition defines injury to include “any invasion of personal rights, including mental suffering...”

8. Words, Phrases & Maxims Legally & Judicially defines “injury” to include “any wrong or damage done to another, either in his person, rights, reputation or property”.

9. Thus, I agree with the respondent that the respondent's reputation as a World Scholar was injured and therefore paragraph 14 of Schedule 6 is definitely applicable, to exempt the said sum of RM1,950,000.00 from tax.

### **Conclusion**

Based on the above, I agree with the respondent's submission and dismiss the appeal with cost.

**DATO' ZALEHA BINTI YUSOF  
JUDGE  
HIGH COURT OF MALAYA  
KUALA LUMPUR.**

**Dated: 8<sup>th</sup> November 2012.**

**For the Appellant:** En. Ahmad Isyak Bin Mohd. Hassan bersama Puan Azrul Safinas binti Rosli ; Ketua Pengarah Hasil Dalam Negeri.

**For the Respondent:** Mr. Nik Saghir bin Mohd. Noor; Messrs Nik Saghir & Ismail