



*National Tax Conference 2014*

**Tax Enforcement & Anti-Money  
Laundering, Anti-Terrorism Financing  
*and Proceeds of Unlawful Activities*  
Act 2001**

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## ***Evolution of the “AMLATFPUAA” - !***

- 2001 – AMLA
- 2003(7) – AMLATFA
- 2014(?) – AMLATFPUAA
- *“Reporting Institutions” – Schedule 1*
- *“Unlawful Activities” – Schedule 2*
- *“Freezing, Seizure and Forfeiture”*

## AMLATFPUAA 2001

Anyone who engages in, attempts or abets  
***“money laundering”*** –  
fine up to RM5 mil or 5 years jail or both

***“money laundering”*** means, amongst others, where accused  
(knows or ought to know he is) dealing in, concealing, etc.  
***proceeds of any “unlawful activity”***

***“unlawful activity”*** relates directly/indirectly to ***“Serious Offences”***  
including (irrespective of conviction/prosecution!)  
**Sections 112, 113 and 114 ITA!**

## “Serious Offences” under the ITA

### **Section 112 –**

Failure to furnish or give  
notice of chargeability

### **Section 113 –**

Incorrect returns or  
Incorrect information

**Section 114 (1) –**  
Wilful evasion

**Section 114 (1A) –**  
Tax Advisor’s offence

- *Also covers customs/excise duties, service/sales taxes*
- *How about “tax avoidance”, “tax mitigation” and “tax planning”?*
- *Consider some recent Section 113(2) ITA penalty cases ...*

## DGIR v S - 2013 KL HC

- Payments were made by S to SI for services and advice in regard to a feasibility study on product quality specifications. S claimed deduction under Section 33(1) ITA
- IRB audited, disallowed expenses and imposed 45% penalties.
- SCIT agreed with taxpayer – allowed appeal and discharged Section 113(2) ITA penalties.
- IRB appealed to the HC and the High Court affirmed the SCIT's decision and dismissed the IRB's appeal.

***Note: The DGIR has appealed to the Court of Appeal***



## **C v. DGIR – SCIT (2014) *(DGIR appealing to HC)***

- IRB disallowed deductions of certain payments made by the Company to various third parties for advertising purposes and to promote the sale of the Company's products during events organized by third parties.
- Revenue imposed penalties under Section 113(2) ITA.
- The SCIT decided in favour of taxpayer and held that the expenses were deductible under Section 33(1) ITA and all penalties imposed were discharged in full.

## **K v. DGIR – SCIT (2014) *(DGIR appealing to HC)***

- K is in the palm oil business. Revenue have always allowed deductions of the quit rent payments.
- Following conversion of the land from ‘agricultural’ to ‘commercial’, the State Govt increased the quit rent. IRB disallowed the increased portion and imposed penalties under Section 113(2) ITA.
- The SCIT decided in favour of the taxpayer. Hence, the quit rent payments were deductible in full under Section 33(1) of the ITA and all penalties imposed were discharged in full.

## **U v. DGIR – SCIT (2014) (DGIR appealing to HC)**

- U is in the oil palm business. IRB sought to tax the following payments made by the Land Administrator to U:
  1. *Late Payment Charges on additional compensation for the compulsory acquisition of U's land; and*
  2. *Reimbursement of Retrenchment Benefits paid out by U on the Land Administrator's behalf to retrenched employees.*
- IRB imposed penalties under Section 113(2) ITA on issue 2.
- The SCIT decided in favour of the taxpayer and held that the Late Payment Charges and Reimbursements should not be subject to income tax and the penalties imposed on the Retrenchment Benefits were discharged in full.



## Summary & Conclusion

- Penalties?
- “Serious Offences”?
- ITA v. AMLATFPUAA



# Thank You

## Tax & Revenue Practice Group

- Tax Litigation, Judicial Review & Appeals
- Tax Audits & Investigations
- Transfer Pricing
- Tax Advisory, Planning & Mitigation
- Securing & Protecting Tax & Investment Incentives

*These slides only contain a summary of selected issues and are not a substitute for a tax law review or advice nor do they constitute legal advice on any general or specific transactions, arrangements, documents or business practices.*

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