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MALAYSIA BUDGET TAX SEMINAR 2027

Date: 4th November 2026 | *Time:* 8.00am - 5.30pm | *Venue:* Royale Chulan Damansara

SPEAKER SESSION 4

RECENT DEVELOPMENTS IN INCOME TAX DISPUTES AND LITIGATION



YBHG. DATO' S. SARAVANA KUMAR
Partner,
Rosli Dahlan Saravana Partnership (RDS)

Mesra Retail & Cafe Sdn Bhd v Pemungut Duti Setem, Malaysia [2025] MLJU 2009 (HC)

Stamp Duty

Brief Facts

- PDB was the owner of various petrol station premises together with ancillary facilities. PDB had entered into several operating agreements with GS, pursuant to which GS was granted licences to occupy designated areas within selected petrol stations for the purpose of operating Baskin-Robbins outlets.

- Subsequently, PDB incorporated the Taxpayer, a wholly-owned subsidiary, to undertake and manage PDB's non-fuel business segment.

- Pursuant to the Novation Agreement entered between PDB, GS and the Taxpayer, PDB novated and transferred all its rights, interests, obligations and liabilities under the existing operating agreements to the Taxpayer.

- The Collector assessed stamp duty on an ad valorem basis under Item 32(a) of the First Schedule of the Stamp Act 1949 ("**SA**").

- Dissatisfied with the Collector's decision, the Taxpayer appealed to the High Court.

Drop Your Question Here

Issue

Whether the novation agreement is subject to ad valorem duty under Section 16(1) read together with Item 32(a) of the First Schedule or nominal duty (i.e. RM 10) under Item 4 of the First Schedule?



Drop Your Question Here

The High Court's Decision

- The High Court allowed MRCSB's appeal and set aside the stamp duty assessment and the excess stamp duty that was paid is to be refunded with interest.

- The Court referred to the concept of novation as such:

> "*Novation is a new contract. It extinguishes rights and obligations under the old contract for which the new contract is made. Being a new contract, there must be consent by all parties, and there must be consideration, and rights and obligations under it are not those transferred from the old contract, which is already extinguished. (See Chitty on Contract, Volume 1, 1983 edition at paragraphs 1315 and 1316).*"

- Further, stamp duty is chargeable on the instrument, not the underlying transaction, as held by the Federal Court in ***BSAF Services (M) Sdn Bhd v Pemungut Duti Setem*** **[2010] 5 CLJ 109**. The court must ascertain the instrument's true nature and effect, rather than rely solely on the label given by the parties.



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- In determining the true nature of an instrument, the court should construe it as a whole and consider the relevant documents and circumstances, including the parties' actual rights and obligations.

- The High Court found that under the Novation Agreement, all rights, interests, obligations and liabilities under the operating agreements were transferred from PDB to the Taxpayer as part of the novation of PDB's non-fuel business. GS released PDB from its obligations and the Taxpayer assumed PDB's position under the operating agreements.

- Thus, it does not constitute an assignment or transfer of property and is therefore not subject to ad valorem stamp duty under Section 16(1) and Item 32(a) of the First Schedule of the SA.



Pemungut Duti Setem v GTP Network Sdn Bhd (2026) MSTC ¶30-924 (COA)

Stamp Duty

Brief Facts

- The Taxpayer entered into an Asset Purchase Agreement with MEBA Holdings Sdn Bhd on 1 August 2023, under which the Taxpayer agreed to acquire, among other things, 16 telecommunications towers and their associated equipment and fixtures for RM15 million.

- At the time the Asset Purchase Agreement was executed, legal ownership of the assets had not yet been transferred to the Taxpayer. The agreement contemplated various future steps and deliverables before completion of the transaction.

- The Collector assessed the Asset Purchase Agreement as attracting ad valorem stamp duty under Item 32(a), First Schedule of the SA read together with Section 21(1), on the basis that it constituted a “conveyance on sale”.

- The High Court allowed the Taxpayer’s appeal and held that the Asset Purchase Agreement attracted only RM10 nominal duty. The High Court also awarded 5% interest to be paid by the Collector to the Taxpayer.

- Subsequently, the Collector appealed to the Court of Appeal.

Drop Your Question Here

Main Issue

Whether the Asset Purchase Agreement constituted a “conveyance on sale” within Section 21(1) of the SA and was therefore subject to ad valorem duty under Item 32(a) of the First Schedule?



Drop Your Question Here

The Collector's Contentions

- The Collector contended that the High Court had incorrectly characterised the Asset Purchase Agreement as merely an agreement to convey.
- The substance and effect of the Asset Purchase Agreement should be considered, rather than focusing on the fact that certain completion steps were to occur in the future.
- The Asset Purchase Agreement demonstrated the parties' intention to transfer ownership of the assets to the Taxpayer. Therefore, it constituted a conveyance on sale within Section 21(1) of the SA.
- The High Court had placed excessive reliance on the future completion date. The Collector contended that the actual date on which the transfer was completed was immaterial to determining whether the Asset Purchase Agreement was a conveyance on sale.
- Section 39 of the SA does not expressly empower the court to award interest.



Drop Your Question Here

The Taxpayer's Contentions

- The Taxpayer maintained that the Asset Purchase Agreement did not itself constitute a conveyance on sale.
- The Asset Purchase Agreement was an "agreement to convey", rather than an instrument that immediately conveyed the assets. There was no immediate transfer of legal ownership, title or risk in the assets. The transfer of ownership was subject to future completion steps, meaning that the Asset Purchase Agreement did not itself effect an immediate and complete transfer.
- The Taxpayer relied on authorities which supported the distinction between an instrument that actually conveys property and an agreement merely providing for a future conveyance.
- The Taxpayer argued that the assets covered by the Asset Purchase Agreement were goods/chattels and therefore fell within the exclusion in Section 21(1) of the SA.
- The telecommunications towers and basic telecommunications infrastructure were chattels and thus, the Asset Purchase Agreement should instead fall under Item 4 of the First Schedule, attracting nominal duty of RM10.



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The Court of Appeal's Decision

The Court of Appeal allowed the Collector's appeal and held that the Asset Purchase Agreement constituted a conveyance on sale under Section 21(1) of the SA:

- The Court held that the telecommunications towers were capital assets, not "goods, wares or merchandise", and therefore did not fall within the Section 21(1) exception.
- The actual completion date for the transfer of the assets was immaterial. Section 21(1) did not require an instrument to effect an immediate transfer of property in order to constitute a conveyance on sale. The exception for "goods" in s 21(1) of the SA applied only to trading goods, not fixed or capital assets.
- Thus, the Asset Purchase Agreement was chargeable with ad valorem duty under Item 32(a), First Schedule.
- The Court of Appeal held that the High Court did not err in awarding interest on the refund of duty. The Court may award interest pursuant to Section 11 of the Civil Law Act 1956 and Order 42 rule 12 of the Rules of Court 2012.



Drop Your Question Here

Ketua Pengarah Hasil Dalam Negeri v Ensco Gerudi (M) Sdn Bhd (2023) MSTC ¶30-614 (COA)

Transfer Pricing

Brief Facts

- The Taxpayer carried on the business of providing offshore drilling services, including leasing drilling rigs to oil and gas operators in Malaysia.
- The Taxpayer entered into a Master Charter Agreement with Ensco Labuan Ltd ("**ELL**"), a company within the Ensco Group, to lease drilling rigs. The Taxpayer paid ELL a percentage of the applicable day rate earned from its drilling contracts.
- Following an audit for YAs 2012 to 2017, the Revenue considered the rig-lease pricing not to be at arm's length and made a 20% adjustment by reference to ELL's identified profit margin under Section 140A of the ITA.
- The Taxpayer sought judicial review, arguing that an earlier High Court decision in *Ensco Gerudi* (2013) had already determined the issues of control and transfer-pricing.
- The High Court allowed the Taxpayer's application and quashed the Revenue's decision. The Revenue appealed to the Court of Appeal.



Drop Your Question Here

Main Issues

- Whether the earlier decision in *Ensco Gerudi* (2013), which concerned Section 140(1)(c) of the ITA, was binding on the Revenue in making transfer-pricing adjustments under Section 140A.
- Whether EGSB and ELL were “associated persons” or controlled by the same person for Section 140A of the ITA to apply.
- Whether the availability of an alternative statutory appeal to the SCIT precluded judicial review in the absence of exceptional circumstances.
- Whether the Revenue had failed to provide adequate reasons for its transfer-pricing adjustments and whether the assessment for YA 2012 was time-barred.



Drop Your Question Here

The Taxpayer's Contentions

- The Revenue acted in excess of its jurisdiction by revisiting issues which the Taxpayer contended had already been determined in *Ensco Gerudi* (2013), as the facts and relationship between the Taxpayer and ELL had not changed.
- The Taxpayer and ELL were not "associated persons" within the meaning of the ITA. The Revenue could not invoke Section 140A without establishing the requisite statutory control.
- The lease payments were priced at arm's length, as reflected in the Taxpayer's transfer-pricing documentation and its application of the Transactional Net Margin Method ("**TNMM**").
- The Revenue's proposed adjustment lacked a proper functional, asset and risk analysis to justify its rejection of the existing pricing methodology.
- The Revenue failed to provide clear reasons or justifications for its conclusions on the association between the Taxpayer and ELL and the preferred pricing methodology.
- The additional assessment for YA 2012 was time-barred under Section 91(5) of the ITA, in the absence of a proper basis to invoke the exceptions under Section 91(3).



Drop Your Question Here

The Revenue's Contentions

- The earlier decision in *Ensco Gerudi* (2013) was distinguishable because it concerned Section 140(1)(c) of the ITA, a general anti-avoidance provision, whereas the present adjustments were made under Section 140A, a specific transfer-pricing provision.
- Section 140A empowered the Revenue to adjust the pricing of transactions between associated persons where the transactions were not conducted at arm's length.
- The earlier High Court decision did not conclusively determine that the Taxpayer and ELL were not associated persons. Rather, the Revenue had failed to adduce sufficient evidence to establish control in that case.
- The issues concerning control, the appropriate transfer-pricing methodology, arm's-length pricing and the limitation period were factual or mixed questions of fact and law that should be determined by the SCIT.
- Since the Taxpayer had already lodged an appeal before the SCIT, judicial review was inappropriate in the absence of exceptional circumstances.
- The Revenue further contended that its correspondence explained the position and basis for the adjustments.



Drop Your Question Here

The Court of Appeal's Decision

- The Court of Appeal allowed the Revenue's appeal and set aside the High Court's decision.
- The earlier decision in *Ensco Gerudi* (2013) was not binding on the present dispute because it concerned Section 140(1)(c), whereas the present adjustments were made under Section 140A. The earlier case did not establish that the Taxpayer and ELL were not associated persons.
- Judicial review was inappropriate because the Taxpayer had an alternative statutory remedy under Section 99 of the ITA, and no exceptional circumstances had been established. The transfer-pricing and related factual issues should be determined by the SCIT.
- Section 140A(5A) could not be invoked for the relevant period because it only took effect on 1 January 2019. The question of control under Section 140A(5)(c) had to be assessed by reference to Section 139 of the ITA and the relevant factual circumstances to be determined before the SCIT, including voting rights.
- The Court held that the shareholdings of three separate local companies could not simply be aggregated to determine control. The question of control required further consideration of the statutory tests and the evidence.



Drop Your Question Here

Executive Offshore Shipping Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

Transfer Pricing

Brief Facts

- The taxpayer's principal activity involved the chartering of offshore support vessels.
- For YAs 2014 to 2016, the taxpayer made payments to a related party for the charter hire of vessels and crew management services, applying the Cost-Plus Method ("**CPM**") with a mark-up of 35%.
- The Revenue rejected the taxpayer's CPM method, substituted it with the Transactional Net Margin Method ("**TNMM**"), and adjusted the service fees by applying the median of five comparable companies identified by the Revenue.
- The taxpayer initiated judicial review proceedings. Although leave was granted, the High Court dismissed the substantive application, ruling that the dispute regarding the appropriate transfer pricing method was a question of fact that should be heard before the SCIT.
- The taxpayer appealed the High Court's decision to the Court of Appeal.



Drop Your Question Here

Main Issues

- Whether Section 140A of the ITA and the Transfer Pricing Rules 2012 (**"TP Rules 2012"**) empowered the Revenue to unilaterally review and replace the taxpayer's chosen TP method and impose median adjustments for YAs 2014 to 2016.
- Whether the DGIR had the power to retrospectively apply the Transfer Pricing Rules 2023 ("**TP Rules 2023**") to earlier years of assessment by reviewing and replacing the taxpayer's selected transfer pricing method and imposing a median adjustment.
- Whether the existence of an alternative domestic remedy (an appeal to the SCIT under Section 99 of the ITA) barred the taxpayer from pursuing judicial review.



Drop Your Question Here

The Taxpayer's Contentions

- The dispute raised a question of law/jurisdiction regarding the Revenue's legal authority under Section 140A of the ITA and the applicable TP Rules, rather than a mere question of fact.
- Under Rule 5(1) of the TP Rules 2012, taxpayers are directed to apply traditional transactional methods (which include CPM). The discretion to shift to a transactional profit method under Rule 5(2) (such as TNMM) rests with the taxpayer, not the Revenue.
- Rule 5(3) only empowered the Revenue to *permit* an alternative method if the primary methods could not be applied at all; it did not confer the power to unilaterally review, dictate, or substitute the taxpayer's method.
- Neither Section 140A of the ITA nor the TP Rules 2012 authorise the Revenue to apply the median range in making adjustments.
- The specific powers to review/replace TP methods (Rule 6(3)) and apply median adjustments (Rule 13(3) & 13(5)) were only introduced under the TP Rules 2023, which apply prospectively from YA 2023 onwards (Rule 1(2)) and cannot operate retrospectively.



Drop Your Question Here

The Revenue's Contentions

- Transfer pricing matters are inherently questions of fact that should be resolved by the SCIT as the specialized judges of fact, (citing ***Ensco Gerudi (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri*** **[2021] MLRHU 890**).

- The Revenue was empowered under Section 140A of the ITA and TP Rules 2012 to review and replace transfer pricing methods, and to make the median adjustments.

- The amendments in the TP Rules 2023 merely clarified and expanded the existing framework rather than creating entirely new powers.

- Since the taxpayer had lodged an appeal to the SCIT under Section 99 of the ITA, the dispute ought to proceed before the SCIT in line with the statutory dispute resolution scheme.



Drop Your Question Here

The Court of Appeal's Decision

- Reversing the High Court's decision, the Court of Appeal unanimously allowed the taxpayer's appeal.
- The Federal Court in ***Ketua Pengarah Hasil Dalam Negeri v Kind Action (M) Sdn Bhd*** clearly held that the availability of a domestic remedy does not, by itself, preclude judicial review where the complaint concerns illegality or jurisdictional error.
- As the central issue in this case concerned whether the Revenue had acted within the scope of its statutory powers, it was a question of law amenable to judicial review.
- Section 140A of the ITA and the TP Rules 2012, which was applicable in the YAs 2014 to 2016, did not empower the Revenue to review and replace the transfer pricing method chosen by the taxpayer and make median adjustments.
- Such powers were only vested with the Revenue through the TP Rules 2023, which was only effective from 1.1.2023 and cannot be applied retrospectively. As such, the Respondent was acting *ultra vires* in making such TP adjustments.
- ***Ensco Gerudi*** is distinguishable from the present matter and does not constitute a blanket bar to judicial review.



Drop Your Question Here

Ketua Pengarah Hasil Dalam Negeri v Exceptional Landmark Sdn Bhd (COA)

RPGT vs ITA

Brief Facts

- The Taxpayer was a property investment company. In 2012, the Taxpayer purchased a warehouse for RM23.6 million from a real estate investment trust ("**REIT**"). The taxpayer undertook some repair and maintenance work to make the warehouse tenantable and eventually rented it out to a multinational company as a long-term tenant.

- Approximately two years later, in 2014, the Taxpayer was approached by the same REIT to repurchase the warehouse and the Taxpayer sold the warehouse for RM52.5 million, double its acquisition price.

- The Taxpayer submitted its RPGT return to the Revenue and in 2015, the Revenue issued a certificate of clearance that exempted the Taxpayer from payment of RPGT for the impugned disposal pursuant to the *Real Property Gains Tax (Exemption) (No. 4) Order 2003* ("**RPGT Exemption Order**").

- However, in November 2017, the Revenue changed its mind and without discharging the RPGT certificate of clearance issued earlier, proceeded to raise a notice of additional assessment pursuant to the ITA totalling RM7.23 million.

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- The RPGT Exemption Order was issued by the Minister of Finance pursuant to the RPGTA, which exempts gains from the disposal of property to a REIT approved by the Securities Commission:

Exemption

2. The Minister exempts any person from the payment of real property gains tax in respect of chargeable gains accruing on the disposal of any chargeable assets to a Real Estate Investment Trust (REIT) or a Property Trust Fund (PTF) which is approved by the Securities Commission.

Made 17 November 2003
[Perb. CR(8.09) 294/6/4-9 (Sj. 5) Vol. 3 (Sk. 4);
LHDN. 01/35/(S)/42/23/7; PN(PU²)325/II]

On behalf and in the name of the Minister of Finance

DR. NG YEN YEN
Deputy Minister of Finance II

Main Issues

- Whether the gains from the disposal were taxable under the RPGT 1976 or the ITA?
- Whether there was a lawful basis for the DGIR to disregard the RPGT Exemption Order (No.4) 2003?



Drop Your Question Here

The High Court's Decision

- The High Court dismissed the Revenue's appeal and upheld the learned SCIT's decision.
- The disposal of the Warehouse did not exhibit badges of trade and therefore did not constitute a trading transaction giving rise to income chargeable under Section 4(a) of the ITA 1967.
- The High Court held that the Revenue had no lawful basis to disregard the RPGT Exemption Order issued by the Minister pursuant to section 9(3) of the RPGTA in respect of the disposal of the Warehouse.
- There was no factual or legal basis to justify the issuance of penalty under Section 113(2) of the ITA. There is no compelling evidence that the Taxpayer had made an incorrect return by omitting, understating any income, or submitting any erroneous information.



Drop Your Question Here

The Revenue's Contentions

- The Revenue contended that the disposal of the warehouse demonstrated badges of trade and the Taxpayer's intention was to sell at a profit.

- The proceeds of the disposal received by the Taxpayer are a series of activities conducted for the realisation of income from carrying on a business and are taxable under Section 4(a) of the ITA.

- The Revenue contended that the Taxpayer was a company with a paid-up capital of only RM2, made a substantial profit when it sold the high-value commercial property it acquired and held for just two years. The Taxpayer then distributed the proceeds to shareholders and became effectively dormant thereafter.

- The warehouse was repurchased by the same REIT that sold it and the Taxpayer's directors had control in the REIT.



Drop Your Question Here

The Taxpayer's Contentions

- The Revenue issued additional assessments under the ITA without first discharging the Certificate of Clearance, which amounts to double taxation. In any event, the Revenue had also disregarded the RPGT Exemption Order, issued by the Minister of Finance pursuant to the RPGTA, which exempts gains from the disposal of property to a REIT approved by the Securities Commission.

- It is trite law that financial gains from the disposal of property would only be taxable under Section 4(a) of the ITA if the taxpayer had engaged in a trade or an adventure like a trade.

- The Taxpayer maintained that the sale of the warehouse did not amount to a trading activity as the property had been held as a long-term investment. The disposal was prompted solely by an unsolicited offer by the buyer. It has been established by the learned SCIT that the relevant directors had abstained and continued to abstain from the discussion of the sale of the Warehouse to the REIT.

- The Taxpayer merely undertook repair and maintenance work to make the warehouse tenantable and secured a multinational company as a long-term tenant under an 8.5-year lease.



Drop Your Question Here

The Court of Appeal's Decision

- The Court of Appeal unanimously dismissed the Revenue's appeal, upholding the findings of the Special Commissioners of Income Tax and the High Court that the gain from the disposal of a warehouse to a REIT was not subject to income tax.

- The Court reaffirmed that the mere fact that a property is sold shortly after acquisition does not, by itself, make the resulting gain taxable as trading income. The badges of trade must be assessed cumulatively and holistically, having regard to the taxpayer's conduct and the circumstances surrounding the acquisition and disposal.

- An attractive, unsolicited offer can provide a legitimate commercial reason for an investor to realise an investment, without necessarily transforming that investment into trading stock.



Drop Your Question Here

Multi-Purpose Credit Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2026] 2 MLJ 820 (COA)

Brief Facts

- The Taxpayer, Multi-Purpose Credit Sdn Bhd was principally engaged in the credit leasing, hire-purchase and general loan financing.

- The Taxpayer obtained loans totaling RM78,462,867 from two related companies to conduct its business in YAs 2011 and 2012. Subsequently, the lenders waived the Taxpayer's obligation to repay the loans.

- The Respondent contended that the waiver of debt amounts to business income and raised notices of additional assessment for the YAs 2011 to 2015 under Section 4(a) of the ITA.

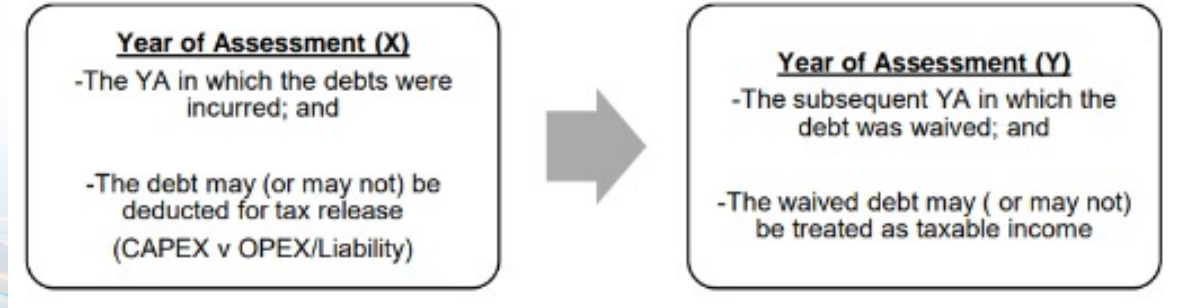
- The SCIT ruled in favour of the Revenue, and the High Court upheld that decision. The Taxpayer appealed to the Court of Appeal.



Drop Your Question Here

Main Issues

- Whether Section 30(4) of the ITA remained relevant and applicable notwithstanding that the Taxpayer had not claimed a deduction for the loan in Year X?
- Whether the general charging provisions under Sections 4 and 22 ITA could apply to the waiver of the loan, notwithstanding the specific provision in Section 30(4) governing the release of liabilities?
- Whether the Revenue was entitled to impose a second tax charge in Year Y on the waived loan amount, having already collected tax on the same RM78.46 million in Year X?
- Whether the characterisation of the loan as capital expenditure ("**CAPEX**") or operating expenditure ("**OPEX**") affected its tax treatment upon waiver in Year Y?



Drop Your Question Here

The Taxpayer's Contentions

- For a receipt to fall within Section 4(a), it must first constitute "income" i.e. something that comes in rather than a mere saving from expenditure. A release of an existing liability was not, in itself, income or a gain arising from business. (***Tennant v Smith; Cooke and Sherden; British Mexican Petroleum)***

- *Generalibus specialia derogant*- waiver of debt was specifically dealt with by Section 30(4) of the ITA. It is the Parliament's intention that a waiver is only taxable under Section 30(4) if a deduction was ever taken under Sections 33(1) or 42 of the ITA.

- Since the Taxpayer had never taken any deduction on the same amount, the waiver of debt should not be taxable under Section 30(4) of the ITA regardless of whether it was CAPEX or OPEX.

- ***Felda Trading*** was decided *per incuriam* because the SCIT failed entirely to consider Section 30(4), despite its central relevance to debt waivers. More importantly, the taxpayer in ***Felda Trading*** had claimed a deduction under Section 33(1) of the ITA.



Drop Your Question Here

The Revenue's Contentions

- Although Section 30(4) was inapplicable, the provision was not intended to be exhaustive and the matter should instead be dealt with under the general provisions of Sections 4 and 22 of the ITA.

- As the Taxpayer is principally engaged in credit/money-lending business, the loans formed part of its stock-in-trade/business operations. The waiver therefore enriched the Taxpayer's economic position because it was no longer required to repay the money.

- In respect of the above, the waiver of debt is akin to business gains and is therefore taxable under Section 4(a) of the ITA.

- The Revenue also relied on ***Felda Trading Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*** **(2016) MSTC 10-057**, where a waived inter-company loan had been treated as taxable under Section 4(a) of the ITA.



Drop Your Question Here

The Court of Appeal's Decision

- Reversing the SCIT and High Court's decisions, the Court of Appeal unanimously allowed the Taxpayer's appeal.
- The Court described Section 30(4) as a comprehensive and exclusive charging provision governing the taxability of released liabilities.
- To allow Section 4(a) to operate in parallel, it observed, would effectively negate the purpose of Section 30(4) and render the provision redundant. Such an interpretation would run counter to legislative intent and the principle that tax charges must be clearly imposed.
- CAPEX/OPEX classification was not material to the tax treatment of the waiver.
- The decisive question, the court held, was whether a deduction was previously claimed.
- The Court concluded that ***Felda Trading*** was found to have been decided *per incuriam* for failing to consider Section 30(4). In any event, it is also irrelevant as a deduction had been taken in that case and its not an apple to apple comparison.



Drop Your Question Here

Horizon Hills Resort Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

Capital Allowance

Brief Facts

- The Taxpayer operates a golf and recreational club in Johor. In the YA 2010, the taxpayer incurred capital expenditure on (a) golf course (which includes the drainage system, grass and turfing, land cost, maintenance workshop, buggy charging station, golf bag station, caddies station and other incidental costs), (b) swimming pool, (c) kid's fun pool, (d) gymnasium, (e) two tennis courts, (f) table tennis room, (g) children playing area, (h) changing rooms, towel stations and toilets, (i) multipurpose rooms, (j) food & beverage outlets, (k) reading room, (l) health centre, (m) pro shop and (n) sports shop (hereinafter referred to as the "Disputed Items")

- On 25.8.2011, the Taxpayer appealed to the SCIT to claim capital allowance against the capital expenditure incurred for the Disputed Items pursuant to Schedule 3 of the ITA. Following ***Pulai Springs Resort Bhd v Ketua Pengarah Hasil Dalam Negeri*** (Appeal No.: PKCP(R) 17/2006), the Taxpayer varied its grounds of appeal by claiming capital allowance on the capital expenditure incurred on the Disputed Items.

Drop Your Question Here

The SCIT & High Court's Decision

- The SCIT and the High Court both ruled in favour of the Revenue.
- The High Court dismissed the Taxpayer's appeal with costs. In its reasoning, the Court took a narrow view of the definition of "plant" and noted that cases such as ***Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd*** **(2013) MSTC 30-05,** ***Cooke (Inspector of Taxes) v Beach Station Caravans Ltd*** **[1974] 3 All ER 159 and** ***Inland Revenue Commissioners v Barclay Curle & Co*** **[1969] 1 ALL ER 732** are rare cases where certain buildings or structures were treated as both "premises" and "plant". Hence, these cases should be regarded as rare departures from the general rule.

Dissatisfied with the High Court's decision, the taxpayer appealed to the Court of Appeal.

Issue before the Court of Appeal

Whether the Disputed Items incurred by the taxpayer for the YA 2010 are allowed under Schedule 3 of the ITA as Capital Allowance?

Drop Your Question Here

The Revenue's Contentions

- Authorities which held that the apparatus running golf courses are not "plant" are not confined to ***Resort Poresia*** .

- Relying on the following cases which held that turfing grass and greens are not plant but merely premises for the purpose of capital allowance:

  - ***Shove (Inspector of Taxes) v Lingfield Park (1991) Ltd [2004] STC 805 –*** where an All-Weather Track installed at a racecourse was held not to constitute plant.
  - ***Family Golf Centres Ltd v Thorne (Inspector of Taxes)*** **[1998] STC 106 –** while the greens were essential to the taxpayer's operations, they nonetheless formed part of the golf course as premises, not as plant.
  - ***Ketua Pengarah Hasil Dalam Negeri v MSDC Sdn Bhd [2001] 1 MLJ 92 –*** a driving institute's training ground amounted to premises upon which the business was conducted, rather than the taxpayer's "tools of trade".

The Taxpayer's Contentions

- The learned High Court judge erred **in failing** to:
  - apply the liberal and holistic approach established in the Court of Appeal case in ***Tropiland.*** In this case, the court held that the list for plant for the purpose capital allowance under Schedule 3 is non-exhaustive.
  - consider that apparatus are deemed as plant if they meet the functional test, as per Tropiland and also a line of established authorities such as ***Infra Quest Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2016) MSTC 30-13 and Ketua Pengarah Hasil Dalam Negeri v CIMB Bank Berhad (2019) MSTC 30-301***.
- Relying on ***Munby v Furlong (H M Inspector of Taxes)*** **[1977] 2 All ER 953**, "*plant extends virtually to a man's tools of trade. It extends to the things which he uses day by day in the exercise of his profession*."
- The correct test for determining whether an item qualifies as "plant" is that formulated in ***Yarmouth v France [1887] 19 QBD 647***, namely: *"whatever apparatus is used by a businessman for carrying on his business, which he keeps for permanent employment in his business*".

Drop Your Question Here

The Court of Appeal's Decision

The Court of Appeal unanimously reversed the High Court and SCIT decisions, and held that:

a) The High Court erred in law by failing to consider the precedents in ***Tropiland*** and ***Pulai Springs*** and by overlooking the application of the functional test in light of the taxpayer's industry and business model.

b) The disputed facilities were purpose-built assets integral to the operation of the taxpayer's business and therefore fell within the definition of plant based on the functional test established in ***Yarmouth v France.***

c) Distinguished but did not overrule ***Resort Poresia.*** The taxpayer must demonstrate that the asset serves as "apparatus" of trade rather than part of the business premises.

d) Their functions had to be assessed in the context of the Taxpayer's overall business operations, rather than treating them merely as premises.



Sunway REIT Holdings Sdn Bhd v KPHDN (2025) MSTC 30-808 (COA)

Deductibility of Interest Expenditure

Brief Facts

- The Taxpayer was an investment holding company whose sole investment was 986,634,185 units in Sunway Real Estate Investment Trust ("**Sunway REIT**"). The acquisition was financed partly through the assumption of Sunway Bhd's bank debt and partly through a loan from Sunway Treasury Sdn Bhd.

- For the YA 2011, Sunway REIT distributed a total of RM33,249,572 to the Taxpayer, comprising RM24,468,528 described as income distributions and RM8,781,044 described as distributions for return of capital. The Taxpayer treated only the RM24,468,528 as taxable income and excluded the RM8,781,044 return of capital from its tax computation.



Drop Your Question Here

- The Taxpayer also incurred RM18,316,912 in interest expenditure in the YA 2011 and claimed RM18,188,537.62 as deductible interest expenditure against its taxable income.

- The Revenue disagreed with both aspects of the tax treatment. The Revenue considered that the RM8,781,044 described as return of capital was in fact taxable income and further took the position that the interest expenditure had to be apportioned between taxable and non-taxable distributions pursuant to Public Ruling No. 2/2011.

- The SCIT and High Court upheld the Revenue's position, following which the Taxpayer appealed to the Court of Appeal.



The SCIT's Decision

The SCIT dismissed the taxpayer's appeal and held that the distribution of return of capital was taxable. However, the SCIT did not discuss Section 33(1) of the ITA.

The High Court's Decision

The High Court affirmed the SCIT's decision and held that:

- The distribution for return of capital is assessable to income tax as when it was distributed by Sunway REIT, it became an income in the hands of the taxpayer.

- The taxpayer did not prove any capital injection into REIT assets to justify return of capital.



Drop Your Question Here

Main Issues

- Whether the distribution of return of capital was a non-taxable income.

- Whether Section 33(1) of the ITA provides any room for apportionment of the deductibility of interest expenditure based on the taxable income received by the taxpayer.



Drop Your Question Here

The Revenue's Contentions

- By virtue of Section 61A of the ITA, when a REIT or Property Trust Fund distributes more than 90% of its total income to its unit holders, the REIT or Property Trust Fund company is exempt from tax in respect of its total income.
- When Sunway REIT claimed industrial building allowance and capital allowance, the amounts became part of its income, which was subsequently distributed to its unit holder, i.e., the taxpayer. Accordingly, the distribution constituted income and not a return of capital.
- There was no evidence to show that there is a realisation of capital between Sunway REIT and the taxpayer i.e. withdrawal or sale of the assets by REIT to the taxpayer.
- There was no evidence to show any relationship between the taxpayer's investments and any capital injection or contribution by the taxpayer to Sunway REIT in respect of the qualifying assets, namely plant and machinery and industrial buildings, owned and used for the purposes of Sunway REIT's real property letting business.
- The taxpayer has also failed to establish the existence of any contractual obligation between the taxpayer and Sunway REIT for the taxpayer to receive a distribution constituting a return of capital.

Drop Your Question Here

The Taxpayer's Contentions

- Section 33(1)(a) does not provide any room for apportionment of interest expenses. As the interest expense was wholly and exclusively incurred in the production of taxable income, it should be fully deductible under Section 33(1)(a) of the ITA.
- The interest expenditure was incurred to fund the acquisition of an investment in Sunway REIT and hence, the taxpayer's taxable and non-taxable income were derived from the same source.
- The Revenue had ignored the clear provision of Section 61(1A) of the ITA, which sets out the method for ascertaining a unit holder's total income. Section 61(1A) of the ITA is clear: the total income of the unit holder shall mirror the total income of the unit trust.
- Since the capital allowances and industrial building allowances claimed by Sunway REIT do not form part of the total income of Sunway REIT, the non-taxable distribution resulting from the capital allowances and industrial building allowances claimed by Sunway REIT should also not form part of the taxpayer's income.
- Public rulings are merely guides that set out the Revenue's view or interpretation of a particular taxing provision and are not binding on the courts.



Drop Your Question Here

The Court of Appeal's Decision

- The Court of Appeal agreed that the entire distributions constituted the taxpayer's taxable income.
- Nonetheless, the Court of Appeal agreed with the taxpayer and held that:
  - Sections 33(1) and 39 of the ITA do not provide any statutory mechanism for apportioning expenditure between taxable and non-taxable income.
  - Accordingly, Public Ruling No. 2/2011 was *ultra vires* and inapplicable to the extent that it required such apportionment.
  - The Revenue's computation, which restricted the interest deduction based on the proportion of taxable and non-taxable distributions, was therefore flawed.
  - The Court also distinguished ***Perbadanan Kemajuan Ekonomi Negeri Johor***, because that case involved a taxpayer with two separate sources of income, whereas the Taxpayer here had only one source of income from Sunway REIT.

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