

Zaid Ibrahim & Co

Tax Summit 2025 - Johor

5 November 2025

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With over a decade of experience in tax and customs-related work, she possesses comprehensive knowledge of direct and indirect tax law, covering aspects such as transfer pricing, withholding tax, real property gains tax, stamp duty, GST, sales & service tax, and customs duty. Prior to joining Zaid Ibrahim & Co, she was with the tax practice group of Lee Hishamuddin Allen & Gledhill and Wong & Partners (a member firm of Baker & McKenzie).

Her expertise extends from supporting taxpayers during audit, investigation and dawn raids conducted by the tax authorities to guiding taxpayers through settlement negotiations and legal representation before the national courts and tax tribunals. She has represented multinational companies and government-linked entities across various industries, including manufacturing, banking, insurance, FMCG, e-commerce platforms, offshore drilling companies, automotives and Labuan companies for tax related matters.

She has conducted various client training sessions in Malaysia, Hong Kong, Singapore, and Vietnam, covering topics such as general tax planning, tax updates, and tax audits and investigations.



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01

Stamp Duty

01 Stamp Duty

Perbadanan Pembangunan Pulau Pinang v Pemungut Duti Setem, Malaysia [2024] MLJU 3782

Facts

- PPPP entered into a Murabbah Financing Agreement with Bank Islam in 2020, granting an Islamic banking facility of RM100 million (the loan). The repayment of loan was guaranteed by the Penang State Government by an LOU dated in 2019 issued to Bank Islam. PPPP's application to the Collector for stamp duty remission on the facility agreement was rejected.

Court's Judgment

- The Court held that the LOU, by its very nature, does not comprise security for the loan agreement. The LOU is merely a condition that has to be complied with prior to any procuring of the loan as statutory required under the specific state legislation
- Appeal by the Taxpayer was allowed, and that the remission still applies.

Taxpayer Won

Muhibbah Engineering (M) Bhd. v Pemungut Duti Setem [2018] MSTC 30-163

Facts

- MEM had entered into a banking facility with Maybank Islamic Bhd. for the transfer/refinancing of the trade line facilities, which contains a negative pledge. MEM's application to the Collector for stamp duty remission on the facility agreement was rejected.

Court's Judgment

- The Court held that the negative pledge, by its very nature, does not represent any guarantee; it is merely to abstain from creating any form of charge, encumbrance or security. The negative pledge was a mere contractual obligation and was not a security within the Remission Order
- Not a 'security for any sum or sums of money repayable on demand'

Taxpayer Won

Pemungut Duti Setem v Ann Joo Integrated Steel Sdn. Bhd. [2024] MSTC 30-752

Facts

- Alliance Bank had issued a Letter of Offer to Ann Joo for various credit facilities with a maximum limit of RM 105 million. The Collector disagreed that the stamp duty remission is applicable to Ann Joo.

Court's Judgment

- The Court held that the remission order applies but corrected the calculation. The loan was deemed to be for an indefinite period because the bank could recall the facility at any time. It would fall under Item 22(1)(b) of the First Schedule of the Stamp Act) instead of a fixed term loan under Item 22(1)(a).

Taxpayer Won

01 Stamp Duty

Petronas Carigali Sdn. Bhd. v Pemungut Duti Setem [2023] MSTC 30-605

Facts

Petronas had a contract with a contractor for the provision of supply, delivery and commissioning of gas compressor bundle assembly and casing. The Collector subsequently raised an ad valorem assessment under Item 22 (1)(a) of the First Schedule and rejected the Petronas' notice of objection to the assessment.

Court's Judgment

- The contract has nothing to do with “annuity” or “security”.
- The Court emphasized that one must look at the instruments and not at the transactions in construing the Act.
- Price stated in the procurement contract was only an estimation on an optional service. The Collector had erred by treating the optional services fee stated in the agreement as the actual price of the agreement.

Taxpayer Won

Nike Global Trading B.V., Singapore Branch v Pemungut Duti Setem [2025] MSTC 30-833

Facts

An appeal by the taxpayer that a novation does not effectively transfer/assign the right and obligation of the earlier loan agreement. The novation agreement extinguished an existing contract and created an entirely new agreement.

Court's Judgment

- The Court found a true novation—old obligations extinguished, new contract with consent of all parties; not an assignment.
- While contractual rights can generally be assigned from one party to another, obligations and liabilities cannot be assigned or transferred without the express consent of all original parties.
- The novation agreement cannot amount to an assignment, conveyance or transfer of property.

Taxpayer Won

Havi Logistics (M) Sdn. Bhd. v Pemungut Duti Setem [2025] MSTC 30-801

Facts

An appeal by the taxpayer that the asset purchase agreement (APA) was merely a written contract for the purchase of a business, attracting a fixed RM10.00 duty under Item 4 of the First Schedule of the Stamp Act.

Court's Judgment

- The APA is a conveyance on sale: it effected the sale and transfer of “property” (fixed assets, inventory handling, business contracts, assumed liabilities) and so attracts ad valorem duty under item 32(a).
- The “goods, wares or merchandise” exception in s 21(1) is confined to trading goods. Capital movables (e.g., plant, equipment, furniture) are not “goods” for the exception. The existence of a “deemed delivery” or completion clause is immaterial to determining whether an instrument is a conveyance on sale or not.
- The instrument would be chargeable with ad valorem duty if the criteria under Section 21(1) are fulfilled.

Taxpayer Lost

02

Capital vs Revenue (RPGTA v ITA)

02 Capital vs Revenue (RPGTA v ITA)

International Naturopathic Bio-Tech (M) Sdn. Bhd. v. Ketua Pengarah Hasil Dalam Negeri [2024] 2 CLJ 519

Facts

- This was an appeal by International Naturopathic Bio-Tech (INBT) against the High Court's decision in favour of the DGIR.
- INBT acquired shop lots in 2010 and have them sold in 2011. The DGIR raised a notice of assessment in respect of the disposal of the shop lots for YA 2011.
- The DGIR contended by applying the "badges of trade" test, the disposal of the shop lots was in the form of trade or adventure in the nature of trade and subject to the application of the ITA.
- INBT contended there was no intention to trade, as the shop lots were long-term investments and the disposal was subject to RPGT, not income tax.
- INBT's principal activity was as distributors of health products and as an investment holding company. The gains from the disposal were not from the ordinary course of its business, thus should not taxable as income

Court's Judgment

- The COA held that the disposal is subjected to section 4(a) of the ITA.
- The court referred to the badges of trade (including intention, subject matter, frequency of transactions, holding period, and financing).
- INTB's conducts are important considerations in determining whether the properties in question are for investment or trading purposes. The business nature of INTB has nothing to do with trading in property does not and cannot mean that any disposal of the its property can never result in taxable gains.
- INBT's change of intention to resell the shop lots at a profit due to difficulties to rent out the properties was indicative that it is not for investment purposes.
- The financing of the shop lots through a director's loan rather than company funds indicated a lack of capacity for a long-term investment.

Taxpayer Won

02 Capital vs Revenue (RPGTA v ITA)

Keysight Technologies Malaysia Sdn. Bhd. v KPHDN [2024] MSTC 30-732

Facts

- Keysight converted from a full-fledged manufacturer into a contract manufacturer in 2008 and sold its IP Rights to ATIS (IP Transfer Agreement). ATIS granted Keysight a license to use the IP Rights only for manufacturing purposes in a separate agreement.
- IRB initiated a TP Audit on Keysight in 2013 and issued the 1st audit findings letter in 2017 – alleging the receipt of the IP Rights transfer is an income receipt.
- Despite explanation provided by Keysight, IRB maintained its findings in the 2nd audit findings letter and issued additional assessment of RM214,946,249.18 and penalties of RM96,128,955.00 (Total amount: RM311,057,602.46).
- Taxpayer was unsuccessful before the SCIT and the High Court and subsequently appealed to the Court of Appeal.

Court's Judgment

- The COA held that the badges of trade test does not restrict its application to “type of assets”. The test considers the subject matter of the transaction.
 - a) Subject matter of transaction – IP is not a stock in trade. Keysight has a pioneer certificate as a microcircuits manufacturer.
 - b) Frequency of transaction – It was a “one-off” sale.
 - c) Circumstances of sale – It fits Keysight's new business model as a contract manufacturer.
- The IP Transfer Agreement sets out the intention to transfer/sell the IP Rights, and the IP Rights are not registerable under the law (no title).
- Keysight was using the IP Rights as a licensee after the sale, not as an owner.

Taxpayer Won

02 Capital vs Revenue (RPGTA v ITA)

Ketua Pengarah Hasil Dalam Negeri v Exceptional Landmark Sdn. Bhd. [2025] MSTC 30-832

Facts

- In 2014, upon the sale of a three-storey commercial building in Shah Alam land, the taxpayer submitted its RPGT and was issued with a certificate of clearance by the DGIR.
- In 2017, DGIR informed that the sale of the impugned property was subject to income tax, referring to different classes of income on which income tax is chargeable on gains or profits from a business and issued a notice of additional assessment.
- The SCIT, upon appeal by the taxpayer, found that the gains from the sale of the impugned property did not qualify as trading receipts under Section 4(a) Income Tax Act ('ITA') 1967
- Accordingly, SCIT dismissed the notice of additional assessment, and DGIR made an appeal to the HC, that has been dismissed accordingly.
- It was held that, based on the badges of trade taken collectively, the disposal of the impugned property was not an adventure in a trade to attract ITA, but the RPGT, and there was no legitimate basis for the DGIR to disregard the RPGT Exemption Order.

Taxpayer Won

Ketua Pengarah Hasil Dalam Negeri v Kind Action (M) Sdn. Bhd. [2025] MSTC 30-807

Facts

- Between 2007 and 2017, Kind Action sold its plantation lands in 10 transactions based on a decision made by its holding company. KASB paid RPGT under the RPGTA, and the assessments and tax certificates were issued by the DGIR.
- In October 2019, DGIR informed that the sale of the impugned property was subject to income tax and issued a notice of additional assessment.
- DGIR then issued notices of additional assessment without discharging or revoking the earlier RPGTA clearance. KASB simultaneously filed an appeal to the SCIT and an application for judicial review to quash the ITA Assessments, which the COA upheld.
- The Federal Court further upheld that the DGIR's contention that KASB could be taxed under the ITA after an audit, despite the RPGTA assessments being final and conclusive, violated the principle against double taxation and conflicted with the finality provision in Section 20(1) of the RPGTA.

Taxpayer Won

02 Capital vs Revenue (RPGTA v ITA)

The legal framework the courts lean on:

1. RPGT vs ITA exclusivity.

- Courts are clear that gains from a property disposal fall into either the RPGTA (capital) bucket OR the ITA (trading income) bucket—never both.
- The legislative schemes are designed to be mutually exclusive for the same gain.

2. Finality under RPGT.

- Once an RPGT assessment is accepted and becomes “final and conclusive” (no appeal and no Section 20(2) grounds), that finding is irreversible.
- To re-characterise, they must lawfully revise/discharge RPGT first, then assess under ITA.

3. Courts rejected the idea of “keeping alternatives open” as it creates impermissible double taxation and prolonged uncertainty



Key badges the courts weigh, with how they were applied:

1. **Intention at acquisition and throughout holding.** Stated corporate objects are relevant but not conclusive; intention is inferred from conduct.
2. **Period of ownership.** Short holding isn't decisive by itself. It must be read with the other badges and the surrounding circumstances for the sale.
3. **Frequency and repetition.** One-off disposals usually push towards capital; repetitive, systematic disposals tilt to trade.
4. **Alterations/improvements.** Upgrades for regulatory or tenant safety standards do not, without more, indicate trading.
5. **Method of disposal.** Use of marketing/sales infrastructure (brokers, advertising, packaging) suggests trade;
6. **Circumstances of sale.** Opportunistic divestment at an attractive price, without a trading scheme, supports capital characterisation.
7. **Accounting treatment and business organisation.** Classifying property as non-current assets, the absence of sales staff/processes, and a leasing/investment model weigh toward capital.

03

Other Tax Consideration

Multi-Purpose Credit Sdn. Bhd. v Ketua Pengarah Hasil Dalam Negeri [2025] MSTC 30-838

Facts

- Multi-Purpose received 2 loans from two related companies for the purpose of trading and dealing with credit facilities but did not claim any tax deduction for it.
- The loans were subsequently waived by the related companies. DGIR raised additional assessment, contending that the waived sum was a taxable income.
- Multi-Purpose contended that the debt waiver was not taxable under the applicable tax provision as Multi-Purpose did not claim for tax deduction previously.
- The case was heard in the High Court and subsequently appealed in the Court of Appeal.
- The Court of Appeal set aside the High Court's decision, ruling that the DGIR's additional assessment and penalties were unlawful and invalid. It was held that Section 30(4) of the ITA is a specific provision (*les specialis*) for debt waivers and takes precedence over the general taxing provisions.

Taxpayer Won

FT Sdn. Bhd. v Ketua Pengarah Hasil Dalam Negeri [2016] MSTC 10-057

Facts

- FT Sdn. Bhd. (Felda Trading) had received a loan from its holding company, for the purpose of trading activities.
- Subsequently, the loan was waived by the holding company. DGIR raised a notice of assessment, stating that the waived sum was a taxable trade income.
- Felda Trading contended that the loan does not fall within section 4(a) of the Income Tax Act because it was not a gain or income from a business as the loan was used exclusively by Felda Trading to pay off its creditors and to ensure continuous supply of goods to its retail outlets. Hence, it was a non-taxable contribution.
- The Special Commissioners of Income Tax (SCIT) held that the loan waived is treated as taxable business income under Section 4(a) of the Income Tax Act and affirmed that additional tax assessment raised by the DGIR.

Taxpayer Lost

Time-Barred and Negligence

Ketua Pengarah Hasil Dalam Negeri v Etika Family Takaful Berhad (formerly known as Etika Takaful Berhad)

[2024] MSTC 30-769

- Differing views and adopting a favorable interpretation for the taxpayer were acceptable when reasonable care was exercised by consulting a competent advisor.
- Penalty cannot be mechanically imposed.
- The taxpayer could not be negligent by relying upon professional advice and had not willy nilly classified the sum received without the benefit of relevant advice from specialists.

CIMB Group Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

[2025] MSTC 30-804

- Where there is a genuine legal uncertainty, and taxpayer had in fact obtained advice from independent tax advisors who are competent in the field of tax – the taxpayer cannot be said to be negligence simply for having different views.
- The burden is on the DGIR under Section 91(3) of the ITA to show that the respondent had been “negligent” in connection with or in relation to tax for a certain year of assessment.
- For negligence to be proven, a mere disagreement on the interpretation or application of a tax provision is not sufficient; something more is required.
- Since the DGIR failed to prove the necessary elements to validate the additional assessments, the imposition of penalties was found to be unlawful or incorrect in law.

Ketua Pengarah Hasil Dalam Negeri v CIMB Group Holdings Berhad

[2024] MSTC 30-727

Common Issues

- Whether the DGIR is entitled to issue additional assessments outside the standard limit by relying on the taxpayer's negligence.
- Whether the imposition of penalties was justified in law and on the facts.

Common Grounds of Decision in favour of the Taxpayers

- a) The DGIR had failed to prove/provide reasons to discharge its legal burden.
- b) Assessments were time-barred as they were issued beyond the statutory limitation period.
- c) Differing interpretations of law through reasonable reliance on qualified tax advisors negates negligence.
- d) Penalty cannot be mechanically imposed.

Ketua Pengarah Hasil Dalam Negeri v Etiqa Family Takaful Berhad (formerly known as Etiqa Takaful Berhad)

[2024] MSTC 30-769

- The DGIR had issued an additional assessment subjecting the gains from the disposal of land by Winning Paramount to income tax. Subsequently, Winning Paramount applied for a stay of proceedings against enforcement of DGIR's decision, pending the disposal of judicial review.
- DGIR had opposed the application for stay of proceedings on the following grounds: a) The stay of proceedings was in essence an injunction against the Government. Hence, it was statutorily prohibited, b) The Court has lack jurisdiction to grant a stay of proceedings due to the “pay first, dispute later” system under the Income Tax Act (ITA) and c) Winning Paramount failed to satisfy the ‘special circumstances’ test for a stay of proceeding.
- The Courts held that the granting of an order to stay proceedings is an interim relief. The order is not made automatically when leave is granted, instead it is made at the discretion of the Judge.
- Further, in order to obtain stay, the applicant must first establish the following prerequisite: a) there is a bona fide issue to be tried, b) taxpayer is likely to suffer irreparable harm in the absence of stay order, c) balance of equity and d) whether there are policy/public interest to refuse stay.

Common Issues

- Whether there are merits in the DGIR's contentions on the stay of proceedings.
- Whether the test for stay of application to be allowed is fulfilled.
- .

Common Grounds of Decision in favour of the Taxpayers

- Stay of proceedings does not akin to an injunction.
- “Pay first, dispute later policy” under ITA is ousted when taxpayer has commenced judicial review proceedings to challenge the assessment.
- Pre-requisites for a stay of proceedings is fulfilled.

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