

Syarikat SESCO Berhad v Ketua Pengarah Hasil Dalam Negeri
(Court of Appeal)

Whether the Feasibility Studies expenses incurred by the taxpayer for the YAs 2011 to 2020 were deductible under Section 33(1) of the ITA?

The Court of Appeal's Decision

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

- a) The Feasibility Studies (FS) expenses were deductible under Section 33(1) of the ITA. They were outgoings incurred on a yearly and recurring basis, revenue in nature and not capital. The dominant purpose of the FS was to assess the financial viability of the sites for planning dam projects, rather than for construction.
- b) The taxpayer was the permitted assignee of SEB in respect of the FS expenses. Accordingly, the expenses properly fell on the taxpayer.
- c) The penalty imposed under Section 113(2) was set aside.

Horizon Hills Resort Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri
(Court of Appeal)

- Whether the Golf Course and Recreational Facilities capital expenditure incurred by the taxpayer for the YA 2010 are allowed under Schedule 3 of the ITA as Capital Allowance?

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 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 under 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.

Sunway Reit Holdings Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri
[2025] 3 MLJ 123
(Court of Appeal)

- Whether Section 33(1) of the ITA allows for apportionment of interest deduction based on the taxable income received by the taxpayer.

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:
 - Section 33(1) of the ITA does not provide for apportionment of interest expenses;
 - Interest expenditure incurred in the production of gross income from a single source is fully deductible, unless specifically disallowed under Section 39 of the ITA;
 - Public Ruling No. 2/2011 is ultra vires; and
 - The total interest expenditure amounting to RM18.19 million is fully deductible.