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Tax Controversy 360: Perspectives, Pitfalls & Policy Paths

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Presenter

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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.

01

Stamp Duty

Stamp Duty

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

Facts

- PPPP obtained a RM100 million Tawarruq loan from Bank Islam, which had a letter of undertaking ('**LOU**') guaranteed by the Penang State Government in 2019. 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

- Ann Joo had been granted credit facilities amounting to RM105,000,000 by a bank pursuant to a letter of offer issued by the bank.
- The Collector insisted that the impugned instrument did not qualify for the remission and should be subject to stamp duty calculated under Item 22(1)(a) of the First Schedule, as it is does not have a fixed tenure.

Court's Judgment

- The impugned instrument falls within Item 22(1)(b) of the First Schedule. All four conditions for the Remission Order are satisfied (chargeable under Item 22(1)(b); loan instrument; unsecured; repayable on demand/single bullet).
- Computation clarified (remit all above 0.1% of stamp duty payable).

Taxpayer Won

Stamp Duty

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Petronas Carigali Sdn Bhd v Pemungut Duti Setem
[2023] MSTC 30-605 (High Court)

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

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02

Capital vs Revenue (RPGTA vs ITA)

Capital vs Revenue - Facts

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

Facts

- On 04.08.2014, 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.
- On 03.10.2017, 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

Capital vs Revenue - Principles

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.

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03

Other Tax Considerations

Time-Barred & Negligence

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Ketua Pengarah Hasil Dalam Negeri v Etiqa Family Takaful Berhad (formerly known as Etiqa Takaful Berhad) [2024] *MSTC 30-769*

- Differing views and adopting a favourable 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 it's 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 if they

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Questions?

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