REIMAGINING
TAX
SOLUTIONS

Landmark Tax Cases in 2024

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Amira is a partner with the firm's Tax, SST, and Customs practice. She is involved in tax litigation and advisory with a specific focus on corporate tax, petroleum tax, tax incentives and transfer pricing disputes.

She has represented Fortune 500 companies in Malaysia and leading Malaysian companies in various tax disputes before the Special Commissioners of Income Tax, High Court, Court of Appeal, and Federal Court. She is presently involved in one of the largest tax disputes in Malaysia amounting to RM9 billion in claims.

Amira also focuses on negotiations with the Inland Revenue Board and the Royal Customs of Malaysia where a good number of her matters are resolved amicably through discussions with the authorities.

In recognition of her expertise, she was appointed by her alma mater as a UiTMLaw Industry Reviewer for the tax law subject offered under the UiTM Bachelor of Laws program.

Amira is also a member of the Chartered Tax Institute of Malaysia (CTIM).

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DOCP v KPHDN

Facts

- The Taxpayer is an individual and a tax resident of Malaysia. After retiring from his professional practice, the Taxpayer continued to serve as an independent non-executive director on the boards of several public listed companies. He received director's fees and allowances from these companies. Additionally, he sat on the boards of 7 or 8 unrelated companies, providing consultancy services from time to time. In return, he received consultancy fees for the services rendered.
- He incorporated two management companies in Malaysia, namely OCP Holding Sdn Bhd and Garzania Sdn Bhd (Management Companies). All director fees, allowances, and consultancy fees received were then remitted to the Management Companies and were taxed under Section 4(a) of the Income Tax Act 1967 ("**ITA**").
- The Management Companies then paid monthly salaries to the taxpayer, which he further subjected to income tax in his personal capacity as business income under Section 4(a) of the ITA. This practice had been consistently adopted by the taxpayer since 1998 and was accepted by the Revenue until 2015.
- Following a tax audit, the Revenue treated the director fees, allowances and consultancy fees as employment income under Section 4(b).

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Main Issue

- Whether the Revenue was entitled to treat the Taxpayer as an employee of the public listed companies by virtue of his appointment as an independent director.

- Whether the Taxpayer's earnings should be taxed as employment income under Section 4(b) instead of as business income under Section 4(a).

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The Taxpayer's Contention

- Independent directors are not employees and therefore, receipts of directors' fees should not be treated as employment income under Section 4(b).

- Directors' remuneration was not an indication of employment.

- The Special Commissioners of Income Tax ("**SCIT**") erred in disregarding evidence submitted by the Taxpayer in the form of letters issued by the company secretary.

- The issuance of Form EA was not the sole determinant of employment status.

- The SCIT erred in disregarding similar cases in other Commonwealth jurisdictions which held that an independent director was not an employee.

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The Revenue’s Contention

- The term 'employment' in Section 2 of the ITA was not restricted to the existence of a master and servant relationship but also included any appointment or office for which remuneration was payable.

- There was an appointment of the Taxpayer as an independent non-executive director.

- The director’s fees and allowances received by the Taxpayer constituted remuneration.

- The listed companies that appointed the Taxpayer had issued Form EA.

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The High Court's Decision

- There was no existence of a master-servant relationship.
- In determining whether a master-servant relationship exists, the High Court referred to the Federal Court's decision in ***Hoh Kiang Ngan v Mahkamah Perusahaan & Anor*** **[1995] 3 MLJ 3693**, which laid down the "degree of control" test for deciding if a contract of service exists.
- The greater the degree of control, the more likely the individual should be considered an employee. There was no such restriction imposed on the Taxpayer by the various public listed companies where he served as an independent director.
- The Revenue's witness had testified during the trial that he had not seen any offer of employment, increment letter or employment handbook given by the public listed companies to the Taxpayer.
- There was no evidence of contribution to the Employee Provident Fund.
- Being appointed as a director and receiving remuneration for the services provided did not automatically confer employee status.
- Form EA was merely an administrative document prepared by the Revenue to collect necessary information from employers.

AJSB v KPHDN

Facts

- The Taxpayer entered into a Supply Agreement with a third-party supplier. Pursuant to the Supply Agreement, the Supplier installed its facility in close proximity to the Taxpayer's manufacturing plant, enabling seamless delivery gases through a network of interconnected pipelines.

- According to the terms of the Supply Agreement, the Taxpayer is required to fulfil a monthly payment obligation referred to as the Base Facility Charge ("**BFC**") in the amount of RM950,000.00. The BFC is then supplemented by a Minimum Take or Pay ("**MTOP**") or a monthly variable charge, depending on which amount is higher.

- The Taxpayer claimed deduction for both BFC and MTOP under Section 33(1) of the ITA as business expenses. However, the Revenue selectively allowed the MTOP deduction but disallowed the deduction of BFC, citing it as provisional expenses and not incurred exclusively for income production.

- The Taxpayer, aggrieved by the Revenue's decision, appealed to the SCIT.

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Main Issue

- Whether the BFC payment was wholly and exclusively incurred in the production of income.

- Whether the Revenue can apportion the expenses and selectively disallow a part of it.

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The Taxpayer's Contention

- The Gases are the fundamental components of the Taxpayer's primary business (***Collector Of C.Ex vs Tata Engg. And Locomotive Co. Ltd* (1997) (92) ELT 107 Tri Del**), and this evidence remained unchallenged by the Revenue.

- The Taxpayer had also successfully established that the on-site plant provided by the Supplier has the capability to offer a threefold increase in the gas supply.

- The BFC payment was a recurring, mandatory, and accurate expense, not contingent or preparatory in nature.

- The fact that the payments were made under two invoices does not vitiate the intention of the contracting parties to treat them as considerations for the same product. There is no prohibition under the law for the Supplier to issue two invoices for the same products.

- The law does not authorise the Revenue to do apportionment based on their own interpretation and understanding. Once the quality or purpose of the payment is agreed upon or ascertained, the only question is whether that sum is to be allowed or not to be allowed (***Director General of Inland Revenue v Kok Fai Yin Co Sdn Bhd* (2014) MSTC 30-076**)

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The Revenue's Contention

- The BFC was not incurred wholly and exclusively to produce income because it did not relate directly to gas consumption.
- The BFC payment was a contingent or preparatory expense rather than an operational cost.
- The separate invoicing for BFC and MTOP suggested they were distinct and that no apportionment of costs could be made.

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The SCIT's Decision

The SCIT ruled in favour of the Taxpayer based on the following reasons:

- It is undeniable that the Gases were closely connected to the Taxpayer's business activity (the "**close connection test**") and were purchased for the purpose of enabling the Taxpayer to carry on and earn profits on the trade.
- Hence, the BFC payment was wholly and exclusively incurred in the production of the Taxpayer's income.
- The expense was accurately determinable and is not contingent or preparatory.
- There is no legal prohibition on issuing multiple invoices for the same product.
- Tax laws must be strictly interpreted, and no additional conditions beyond what the law requires can be imposed.

SCPSB v KPHDN

Facts

- The Taxpayer is in the business of owning and operating multi-storey car parks. Between 2013 to 2016, the Taxpayer incurred RM474,947,650 to purchase 8 multi-storey car parks and had recognised them as fixed assets in its financial statement.
- The Revenue denied the Taxpayer's capital allowance claim on the basis that the car parks were permanent structures and not "plant" as defined in Schedule 3 of the ITA.
- Citing the Court of Appeal case of ***Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd* (2013) MSTC 30-054**, where multi-storey car parks were recognised as plant qualifying for capital allowance, the Taxpayer requested a ruling from the Revenue. However, the Revenue reiterated that capital allowance was not applicable, as the car parks functioned as business premises.
- The Taxpayer decided to act prudently by not claiming capital allowance and proceeded to lodge an appeal to the SCIT pursuant to Section 99(4) of the ITA.

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Main Issue

Whether the Revenue has any basis to disallow the Taxpayer's capital allowance claim on the capital expenditure incurred on its multi-storey car parks.

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The Revenue's Contention

- The Revenue referenced the recently introduced paragraph 70A of Schedule 3 of the ITA, added by the Finance Act 2020, which defines a plant as an apparatus used for business purposes, explicitly excluding buildings, intangible assets, or spaces where business operations are conducted. It argued that the multi-storey car parks, as buildings, do not meet the definition of plant.
- The Revenue further argued that the car parks were purchased solely for customer parking, with improvements such as CCTV, shelter, security, and connectivity to nearby buildings to attract customers. Given these features, it asserted that the car parks were buildings, not plant, for capital allowance purposes, equating them to open or covered parking spaces, where the purpose remains simply to provide parking.
- Additionally, the Revenue attempted to distinguish this case from Tropiland by noting that ***Tropiland*** involved a lease requiring the construction of a multi-storey car park and its return to the landowner after lease expiry, conditions not present in the current case.

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The Taxpayer’s Contention

- The definition of plant under paragraph 70A, Schedule 3 was inapplicable to the current appeal, as it was recently introduced and not retroactive. This stance was reinforced by the High Court ruling in **Tenaga Nasional Berhad v Ketua Pengarah Hasil Dalam Negeri [2022] 1 LNS 450**, which emphasised the protection of taxpayers' rights against the retrospective application of new definitions.
- The Taxpayer argued that the Court of Appeal's decision in *Tropiland* should apply to this case, as the multi-storey car park in *Tropiland* was classified as a "plant" for capital allowance purposes due to its active role in the taxpayer's business. The Tropiland ruling was further upheld by the High Court in ***Ketua Pengarah Hasil Dalam Negeri v CIMB Bank Berhad*** **(2019) MSTC 30-301**. The Taxpayer highlighted to the SCIT several key similarities between *Tropiland* case and the present appeal:

  (a)Both taxpayers owned and operated multi-storey car parks

  (b)The multi-storey car parks were exclusively used as parking facilities and not for any other purpose

  (c)The multi-storey car parks did not form part of the taxpayer’s stock in trade

  (d) The multi-storey car parks were not mere physical settings, considering the taxpayer’s business as a car park operator

  (e) Income was generated from the car park operations
- In addressing shelter and security within the multi-storey car parks, the Taxpayer referenced cases like ***Schofield (H.M Inspector of Taxes) v R & H Hall Ltd*** **49 TC 538** and ***Wangaratta Woollen Mills Limited v The Commissioner of Taxation of the Commonwealth of Australia*** **[1969] 119 CLR 1**, which held that a building should not be excluded as "plant" merely due to its operational purposes or size. The Taxpayer argued that its business operations should be viewed as a whole to determine if the structure, despite its size, could qualify as a plant.

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The SCIT's Decision

The SCIT allowed the taxpayer's appeal and held that the multi-storey car parks were a plant and accordingly, the capital expenditure by the taxpayer was eligible for capital allowance.

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AA v KPHDN (HC)

Facts

- The Taxpayer is principally engaged in the liquefaction and marketing of natural gas. It leased two vessels from a related party to transport liquefied natural gas (“**LNG**”) to a Chinese LNG entity.
- Following an audit, the Revenue alleged that the lease payments were not made at arm's length and issued form of notices on 27.12.2023 for years of assessment (“**YAs**”) 2019 and 2020 pursuant to the Section 140A(3C) of the ITA. The provision, which was introduced in 2021, empowers the Revenue to impose a surcharge of not more than five per cent of the amount of increase of any income generally or reduction of any deduction or loss to reflect an arm’s length price.
- Following the Revenue’s decision, the Taxpayer made an application for judicial review.

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Main Issue

Whether the Revenue has any legal basis to invoke Section 140A(3C) of the ITA retrospectively to impose surcharges on the Taxpayer when the provision takes effect from 1.1.2021.

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The Revenue's Contention

- The Revenue found that the Taxpayer's claim for the expenses relating to the short-term leases paid to the related party is not allowable under Section 140A of the ITA. There may be a controlled transaction structured in order to avoid or minimise tax liability based on the following facts:

  a) The Taxpayer and the Related Party can execute any form of agreement compared to independent parties as the usual conflict of interests with independent parties is usually non-existent; and

  b) The leasing of the vessel was priced higher by the related party company compared to the leasing price by third party companies.

- Further, the Revenue asserted that there is also an apparent difference between the selling price to third parties and the selling price to PLL. This indicates that the Taxpayer employed different pricing methods for third parties and PLL.
- Given the above, the Revenue invoked Section 140A(3C) of the ITA, in particular, to impose surcharges for YAs 2019 and 2020, alleging that the short-term lease payments to PLL were not conducted at arm's length.
- Although Section 140A(3C) was introduced in 2021 and the YAs in contention were YAs 2019 and 2020, the provision is applicable for transfer pricing audit cases that commence on or after 1 January 2021 regardless of the year of assessment.

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The Taxpayer's Contention

- The Revenue failed to consider the decisions by the superior courts which held that an enactment is not intended to have a retrospective operation unless a contrary intention applies. The Revenue is bound by the decision of the superior courts, and not its internal interpretation and policy.
- The Parliament via Section 26 of the Finance Act 2020 ("**FA 2020**") did not intend for Section 140A(3C) of the ITA to have a retrospective effect as it is clear in Section 3 of the FA 2020 that Section 26 is only to take effect from 1.1.2021.
- The Taxpayer's rights have been preserved by Section 30 of the Interpretations Act 1948 & 1967 which provides that, among others, the repeal of a written law shall not affect any right under the repealed law.
- The Minister in making the Income Tax (Transfer Pricing) Rules 2023 did not intend for it to operate retrospectively.
- The Revenue's failure to appreciate and give effect to the true effect and application of the ITA amounts to a contravention of Article 96 of the Federal Constitution, which provides: "*no tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law*".

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The High Court's Decision

Upon hearing the parties' submissions, the High Court granted leave to the Taxpayer to proceed with its application for judicial review. The case is now pending a hearing on the substantive issues.

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SPBS v KPHDN (SCIT)

Facts

- The taxpayer was a company incorporated in Malaysia and its principal activity was investment holding.
- In 2001, the Taxpayer acquired an agricultural land from Pengurusan Danaharta Nasional Berhad, intended as a long-term investment. Subsequently, in late 2014, the Taxpayer disposed of the land.
- Following a tax audit by the Revenue, the Taxpayer was informed that the gains from the land's disposal were subject to income tax under the ITA. Consequently, the Revenue raised notices of additional assessment for YAs 2015 and 2017 amounting to RM2,854,890.44 and RM15,407.42 respectively on the taxpayer.
- The taxpayer, being aggrieved by the Revenue's decision, appealed to the SCIT.

Main Issue

Whether the gains from the land's disposal should be classified as trading receipt hence taxable under section 4(a) of the ITA or as capital receipts subject to the Real Property Gains Tax Act 1976 ("**RPGTA**").

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The Taxpayer's Contention

The Taxpayer contended that the gains from the disposal of the land were capital receipts rather than trading receipts, based on several key factors:

- The Taxpayer never intended to trade the land and its sole purpose to hold the land was for long-term investment, as proven by its consistent focus on investment holding.
- The land was consistently classified as a non-current asset in the taxpayer's audited accounts, indicating it was held for investment. The treatment of the land in financial statements reflects its investment rather than trading (***Perak Construction Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri***).
- The Taxpayer owned the land for 13 years before the disposal. A longer period of holding indicates investment rather than trading (***Alf Properties Sdn Bhd v Ketua Pengarah Jabatan Hasil Dalam Negeri***).
- The Taxpayer did not modify the land to make it more saleable. The land was acquired as an agricultural land, remains primarily agricultural, and there were no efforts to enhance the land's merchantability.
- The disposal of the land was driven by financial distress and was done to address cashflow issues. In fact, the land had been charged for a bank facility to support operational needs.
- Although the Taxpayer had previously purchased and sold seven lots to a related party, the transaction was due to the related party's inability to develop the lots and do not indicate a trading intent.
- Although the Taxpayer had advertised the land and used brokers, it is a mere standard and practice and should not by itself indicate a trading intent. Instead, all relevant factors should be considered (***Ng Huan Tong v Ketua Pengarah Hasil Dalam Negeri***).

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The Revenue's Contention

The Revenue contended that the transactions involving the land constituted "an adventure in the nature of trade" for the following reasons:

- The Taxpayer did not retain the Land for long-term investment purposes but rather to wait for the value of the Land to escalate.
- The Taxpayer did not truly intend to yield income from the Land.
- The Taxpayer intended to profit from the disposal of the Land.
- The Taxpayer had engaged in similar transactions multiple times, which is a characteristic of a trading operation.
- The Land is at an advantageous location, being near to accessible roads and development lots, which would naturally attract potential buyers and enhance its marketability.
- The Taxpayer's actions of advertising the land and employing brokers to facilitate its sale were cited as evidence of trading behavior.
- The Taxpayer shared directors and knowledge with its other subsidiaries involved in property development which suggested coordinated approach to trading activities.

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The SCIT's Decision

- To answer the issue of whether the disposal of the property would be subject to RPGT or income tax, the court examined whether the transaction contained elements of badges of trade.
- Based on the true and proper examination of the badges of trade test, the Taxpayer was not in the act of trading and thus, the disposal of the land cannot be subject to income tax.
- Therefore, the SCIT allowed the Taxpayer's appeal and the notices of additional assessments for YAs 2015 and 2017 were set aside.

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Facts

- The Taxpayer acquired an agricultural land in 1994 with the intention for the land to be held for capital investment. In 2013, the Taxpayer disposed of 12 parcels of the land and accordingly submitted its RPGT forms following the disposal.
- The Revenue raised a notice of assessment amounting to RM3,058,827.25 for YA 2014. It claimed that the gains from the disposal of 12 parcels of land is subject to income tax under the ITA.
- The Taxpayer, being aggrieved by the notice of assessment, appealed to the SCIT.

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Main Issue

Whether the gains arising from the disposal of the 12 parcels of land would be subject to RPGT or income tax.

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The Taxpayer's Contention

The Taxpayer contended that the gains from the disposal of the land were capital receipts based on the following reasons:

- The Taxpayer had acquired and kept the 12 parcels of land for the purposes of investment since the first day of the acquisition.
- The disposal to Mega Daiman Sdn Bhd was done for the sole purpose of restructuring the company from a *Bumiputera* company to a non-*Bumiputera* company.
- The 12 parcels of land remain with Mega Daiman Sdn Bhd, which is the Taxpayer's related company.
- There are no elements of badges of trade in relation to the 12 parcels of land.

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The Revenue's Contention

The Revenue contended that the gains arising from the disposal of the 12 parcels of land are subjected to income tax, based on 5 factors:

- The land did not generate any income for the Taxpayer from its acquisition in 1994 until its eventual disposal to Mega Daiman Sdn Bhd in 2013. This suggests that the Taxpayer wishes to hold the land strategically, anticipating an opportune time to maximize returns.
- At the time of purchase, the Taxpayer was aware of the land's significant commercial potential, largely due to the reclassification of the land's usage from "general cultivation" to "residential building".
- The Taxpayer and Mega Daiman Sdn Bhd share the same director. Thus, the lack of advertisement or appointment of brokers to sell the land does not diminish the indication of a trading activity.
- The fact that the parcels had differing grants and were sold at varying prices indicates the Taxpayer's trading motive.
- The strategic location of the 12 parcels of land, situated in major cities including Kuala Lumpur, shows high potential to attract buyers without the need for promotion.

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The SCIT's Decision

The SCIT held that the gains from the disposal of the 12 parcels of land would only be subject to RPGT and not income tax, for the following reasons:

- In order to determine whether the disposal of the 12 parcels of land is of trading in nature, badges of trade must first exist. However, each element need not be fulfilled and the entire circumstances must be examined.
- The Revenue failed to prove that the Taxpayer intended to hold the parcels of land for a limited period of time nor did the Revenue prove that the Taxpayer had any agreements with any parties to sell the land.
- The Taxpayer held the parcels of land for 19 years, indicating no element of trade.
- Although the 12 parcels of land had different grants, the disposal was made through 1 agreement dated 23 December 2013.
- The mere fact that the category of usage was changed from "general cultivation" to "residential building" is not sufficient to prove an element of trade.
- If the Taxpayer sought higher returns, it would have been more logical to improve the land and sell to third parties at higher prices. Instead, the sale to a related company suggests the possibility of a lower return than what could have been achieved with independent buyers.

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Facts

- The Taxpayer was a franchise holder of locally assembled motorcycles and a registered manufacturer who purchased and imported various motorcycle components (“**finished goods**”).
- After importing various components of the motorcycle, the taxpayer will have them assembled at the factory. In this respect, the taxpayer had obtained exemption certificates to claim sales tax exemption for the imported components in the manufacturing of the motorcycles below 250cc under the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ("**Exemption Order 2018**").
- However, the Director General of Customs ("**Customs**") by way of bills of demand imposed additional sales tax at the rate of 10% on the vehicle components for the motorcycles imported by the taxpayer.
- Aggrieved by the Customs' decision, the Taxpayer appealed to the High Court, where the appeal was dismissed.
- The Taxpayer then filed an appeal against the High Court's decision, and the Court of Appeal ruled in favor of the Taxpayer.

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Main Issue

Whether DGC had any legal basis to impose additional conditions by limiting the term "finished goods" under the Exemption Order 2018 to only "taxable finished goods".

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The Taxpayer's Contention

- The High Court and the Custom misinterpreted the definition of "registered manufacturer" under the Sales Tax Act 2018 ("**STA**"). Section 12(2) of the STA provides that any manufacturer of taxable goods is liable to register.
- The mere fact that the taxpayer is producing non-taxable finished goods does not bar him from claiming sales tax exemption as the Exemption Order is applicable to the registered manufacturer.
- Parliament does not act in vain by inserting the phrase "finished goods" if its intention was not to give sales tax exemption to non-taxable finished goods.
- The Taxpayer received an approval letter from the MOF to seek exemption of payment of sales tax for the goods used for the purpose of manufacture of its finished goods.
- The MOF's letter did not limit or specify the finished goods must be finished taxable goods.

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The Customs' Contention

- The Custom alleged that the Taxpayer did not qualify for sales tax exemption on the imported components under item 1, Schedule C of the Exemption Order as the components used in the assembly of the motorcycles were "***non-taxable finished goods***".

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The Court of Appeal's Decision

The Court of Appeal ruled in favour of the Taxpayer for the following reasons:

- The approach adopted by the High Court on the interpretation of Sections 2, 12 and 13 was incorrect to determine whether the phrase "finished goods" was limited to only finished goods.
- The Customs were not entitled to impose additional conditions over the existing conditions under the Exemption Order. Any other condition imposed has to be other than the conditions already stated in column 4, item 1, Schedule C. In the event there were changes to the wording of Schedule C, it has to be done by proper legislation such as through the Exemption (Amended) Order 2022.
- The amendment to the Exemption Order bolsters the contention that the meaning of the original wording "finished goods" was not limited to only finished taxable goods, otherwise, there was no necessity to subsequently amend Schedule C in 2022.

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KPHDN v YBPKM

Facts

- The Taxpayer is a charitable organisation that had held tax-exempt status under Section 44(6) of the ITA since the 1970s.
- Following a tax audit in 2019, the Revenue alleged non-compliance with conditions attached to the Taxpayer's tax exemption and subsequently issued a letter to revoke the Taxpayer's tax-exempt status.
- The Taxpayer contested the decision, providing further input and seeking reconsideration from both the Revenue and the Ministry of Finance ("**MOF**").
- Despite these efforts, the Revenue reaffirmed its decision in revoking the exemption and issued tax assessments for the YAs 2018 and 2019.
- Aggrieved, the Taxpayer sought leave for judicial review, which the High Court granted.
- The Revenue appealed against the leave decision, but the Court of Appeal subsequently dismissed the appeal.

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Main Issue

- Whether the Taxpayer could rely on the Revenue's decision in the letter dated 17.6.2020 as the "impugned decision" for the judicial review.

- Whether the Revenue had arbitrarily and unlawfully withdrawn the Taxpayer's tax exemption status granted under Section 44(6) of the ITA.

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The Taxpayer's Contention

- The Revenue's later decision in its letter dated 17.6.2020 is the final decision that is amenable to this judicial review.
- One must be adversely affected by a decision to make an application for a judicial review. Accordingly, the Taxpayer was only adversely affected upon receipt of the Revenue's letter dated 17.6.2020 as the letter contained elements of finality in it.
- The Revenue's earlier decision in its letter dated 29.8.2019 was not the final decision as both parties had engaged in further discussions on the matter afterwards, up until the later decision was delivered to the Taxpayer.

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- The Revenue failed to appreciate that Section 44(6), read together with Paragraph 13 of Schedule 6 of the ITA, explicitly provides that the income of an approved charitable organization in respect of any contribution received for charity purposes in the basis year is exempted from tax, provided that the establishment is not operated primarily for profit.
- The Revenue failed to consider the decisions of the superior courts in ***National Land Finance*** and ***Society of La Salle Brothers*** which held that approved charitable organisations are entitled to tax exemption as the principle of vested rights apply.
- The Revenue could not arbitrarily and unilaterally impose conditions (e.g. points system) when such conditions were never communicated to the Taxpayer, nor were the conditions prescribed by law.
- In interpreting a taxing statute, one can only look fairly at the language used and what is clearly said; nothing is to be read nor implied. Further, when there is any doubt, it must be resolved in the taxpayer's favour.
- The Revenue has no basis in law to withdraw the Taxpayer's tax exemption status which was granted in 1970.

The Revenue's Contention

- The High Court does not have the requisite jurisdiction to hear and allow the leave sought by the Taxpayer as it was filed out of time, i.e. more than 3 months from the date of the impugned decision.
- The impugned decision was delivered by the Revenue via letter dated 29.8.2019, in which the Revenue informed the Taxpayer that their tax-exempt status had been revoked in accordance with Order 53 rule 3(6) of the Rules of Court 2012 ("**ROC**"). Alternatively, time should be computed from 3.9.2019, the date on which the Taxpayer acknowledged the revocation of their tax-exempt status.
- Even if the time was to run from 17.6.2020, i.e. the date of the Revenue's letter to inform the Taxpayer that its earlier decision the letter dated 29.8.2019 stands, the Taxpayer's judicial review application was nonetheless out of time.

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- According to the Revenue's point system, the Taxpayer has accumulated 500 violation points which requires the Taxpayer's tax exemption status to be withdrawn.
- Among the violations committed by the Taxpayer include the donation receipts being used for asset purchases, the unclear existence and functions of certain funds, unapproved amendments to its Constitution, no separated account for donations, actively engaging in trading activities (i.e. the dialysis centre), minimal contributions to the beneficiaries, and more.
- The Taxpayer's judicial review application was filed out of time.
- The Taxpayer failed to disclose full facts in its judicial review application, particularly Appendix A of the Revenue's letter dated 12.11.1990, which has caused prejudice to the Revenue;
- The Revenue has the power to impose new conditions under Section 148 of the ITA.

The Court of Appeal's Decision

- For the purposes of calculating the 3-month period under Order 53 rule 1(6) of the ROC, time would run from the date the decision sought to be impugned. However, the time may start to run later where the respondent's conduct indicate a willingness to reconsider its earlier decision.
- Although the Revenue revoked the Taxpayer's tax-exempt status in its letter dated 29.8.2019, they demonstrated their willingness to reconsider or review their earlier decision as proven by their letter dated 24.12.2019 requesting further information/input from the Taxpayer, and a meeting held on 12.2.2020.
- Therefore, the Revenue's earlier decision is not final and decisive. The time should be computed from 17.6.2020, i.e. the date of the Revenue's later decision which reconfirmed the earlier decision.
- The Revenue's appeal was dismissed and the Court of Appeal ordered for the High Court to hear the substantive matters.

GOM v MPSB

Facts

- The Taxpayer is involved in the business of property development and investment. In the fiscal year 1995, the Selangor State Government granted the Taxpayer with a forest reserve parcel following a privatization agreement. Thereafter, the acquired land was designated as "investment properties".
- In years 2002 and 2004, the Taxpayer divested the land parcels to fortify its fiscal health.
- The Revenue was of the view that the gains arising from the disposal should be subjected to income tax and thus, issued additional notices of assessments against the taxpayer for YAs 2002, 20023, and 2004.
- In 2020, the Government of Malaysia initiated a tax recovery proceeding and filed a summary judgment application against the Taxpayer.

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Main Issue

Whether a summary judgment can be applied in a tax recovery suit given the readily available recovery mechanism under Section 106 of the ITA.

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The Taxpayer's Contention

- The Federal Court in ***Mohd Najib bin Hj Abd Razak v Government of Malaysia & Another Appeal [2023] 10 CLJ 329*** held that Order 14 of the ROC should not be applied in a tax recovery suit.
- A tax recovery 'debt' under Section 106 of ITA cannot be subjected to the procedure under Order 14 because judgments given under Order 14 are final whilst the ITA only allows for deferral of disputes.
- The relief sought in tax recovery cases under Sections 103 and 106 of ITA is meant to be interim, not final. Order 14 should not override or supersede the process outlined in Sections 103 and 106 of ITA which is for purposes of recovery and enforcement only.
- For tax recovery proceedings under Sections 103 and 106 of the ITA, the proper mode of originating process is via Originating Summons and Affidavit in Support, not a writ of summon.
- The summary judgment should be dismissed due to a lack of triable issues to be considered and for a full trial on the merits of this case.

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The Respondent's Contention

- The use of Order 14 of the ROC is appropriate and ideal for the purpose of a tax collection litigation.

- Commencing a tax recovery proceeding by way of originating summons as opposed to by way of writ is merely an alternative and/or an option.

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The High Court's Decision

- The High Court held that it is duty-bound to give effect to and adhere to the decision in *Mohd Najib*.
- Order 14, Rule 1 of the ROC is not an appropriate mode for a tax recovery suit.
- If a tax recovery debt under Section 106 of the ITA is subjected to the procedure under Order 14 of the ROC, then the entire purpose and object of the ITA is not met.
- The Government of Malaysia should have initiated the recovery proceedings via Originating Summons and Affidavit in Support. Consequently, the summary judgment application is dismissed without an order as to costs.

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Thank you

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