Case Law Exposé: Learning from precedents

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Topic 1

SCIT v JR

Overview of the SCIT

- Right to appeal under section 99 ITA 1967
- Schedule 5 ITA 1967

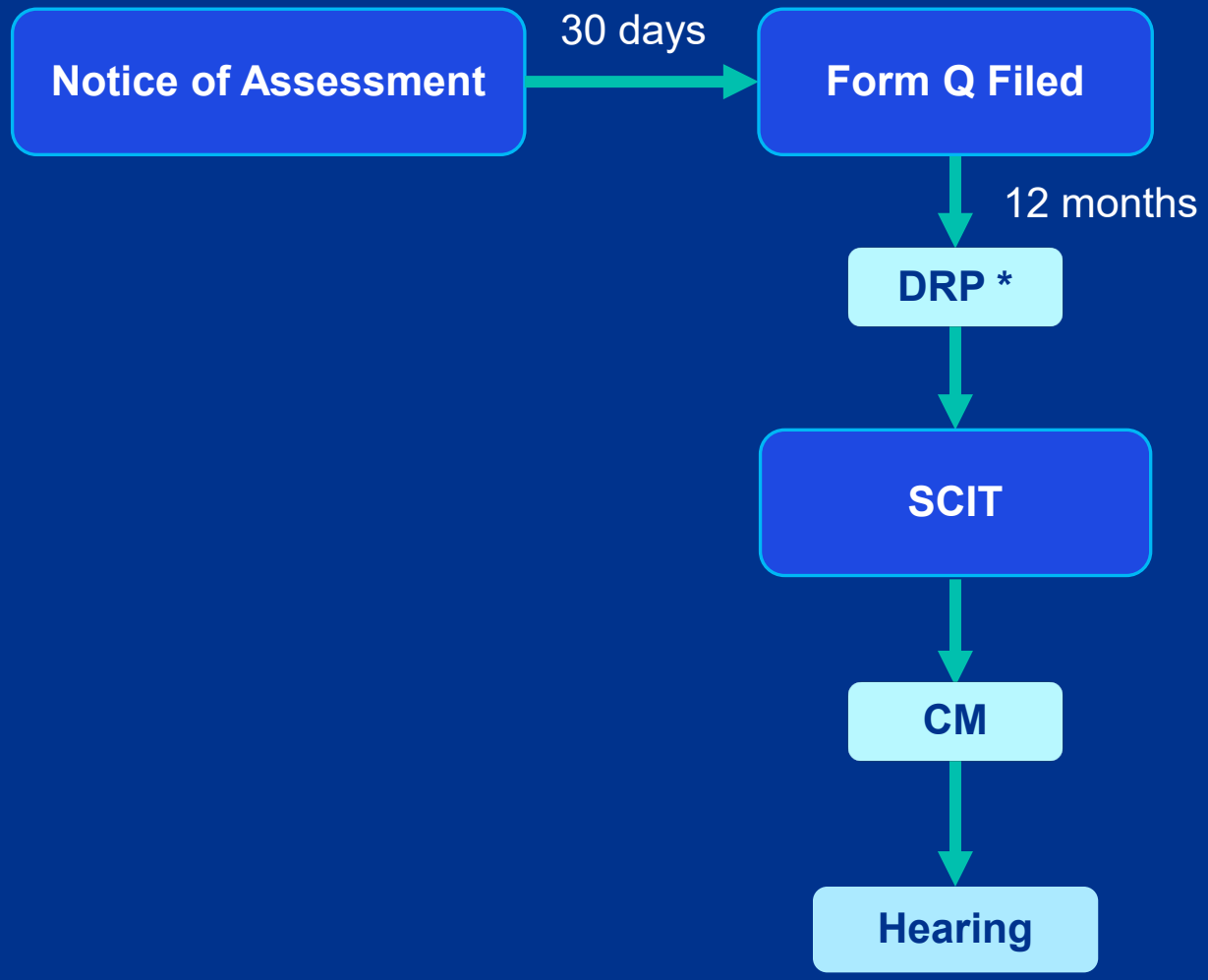
http://www.pkcp.treasury.gov.my/index.php/ms

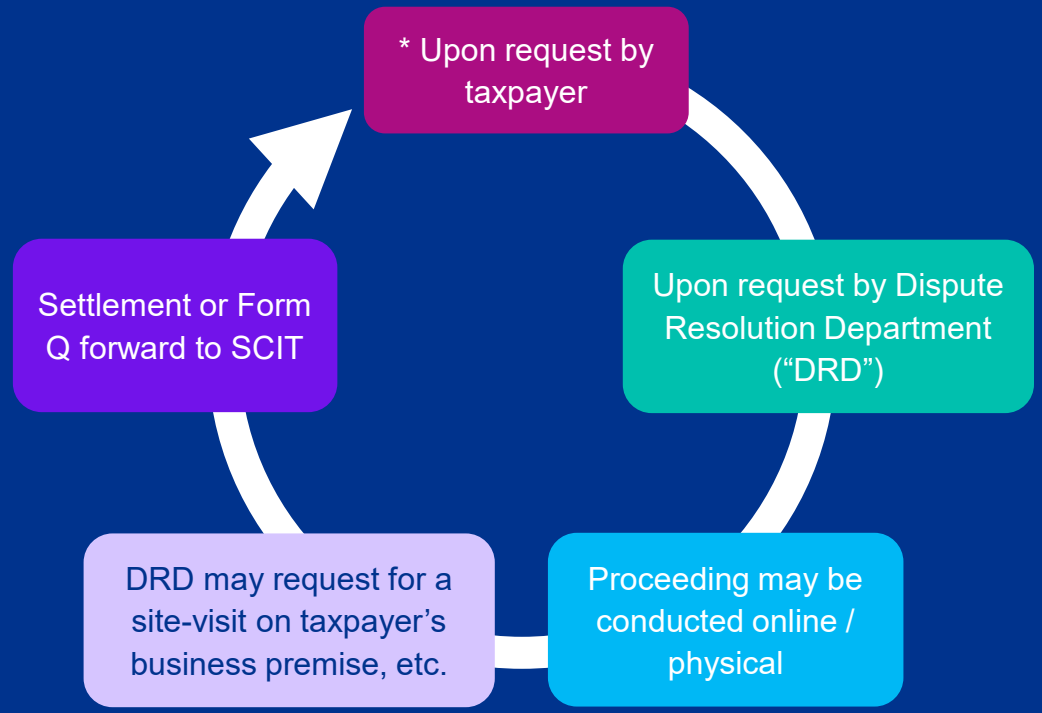
Court room in Putrajaya

Domestic remedy under Section 99 ITA 1967

- **Judges of fact – Kerajaan Malaysia v Dato' Hj. Ghani Gilong [1995] 2 MLJ 119**
- **Calling for witnesses**
- **Tender of documents**

Insights on journey of Form Q





SCIT v JR

Government Of Malaysia & Anor v. Jagdis Singh [1987] 2 MLJ 185

Situation where JR is applicable -

A clear lack of jurisdiction;

B blatant failure to perform some statutory duty; or

C serious breach of the principles of natural justice

Cases on SCIT v JR

Bintulu Lumber Development Sdn. Bhd. v KPHDN [2020] MLJU 59

@ JR dismissed

Society of La Salle Brothers v KPHDN [2018] 1 MLJ 376

@ JR granted

Case on SCIT v JR

Bintulu Lumber Development Sdn. Bhd. v KPHDN
[2020] MLJU 59

Issue

Whether the cultivation of palm oil fruits came within the words “cultivation of fruits” stipulated in paragraph 9(cc) Schedule 7A ITA 1967?

Fact

TP claimed RA for YA 2011 in which disallowed by DGIR

DGIR imposed additional tax and penalties totalling RM7,396,165.80

TP filed JR application for an order of certiorari to annul the DGIR's decision and filed Form Q simultaneously

Case on SCIT v JR

Bintulu Lumber Development Sdn. Bhd. v KPHDN
[2020] MLJU 59

DGIR's argument

- The existence of alternative remedies would be a ground for refusing leave to apply for JR
- JR is not to be available where an alternative remedy exists except in very exceptional cases and TP failed to show any exceptional circumstances herein
- TP failed to prove that the DGIR's NOA is illegal / unreasonable / irrational
- TP has already filed appeal against the DGIR's assessment to the SCIT

Decision

COA dismissed TP's appeal

- No merit
- JR is an abuse of process of court

Case on SCIT v JR

Society of La Salle Brothers v KPHDN [2018] 1 MLJ 376

Fact

TP enjoyed tax exemption status as a charitable institution during its more than 160 - year existence in Malaysia, was informed by the DGIR by a letter dated 25.7.1995 that it had to re - apply for tax-exemption status but failed to do so.

On 27.3.2015, TP was served with NA dated 16.3.2015, with penalties for YAs 2004, 2006, 2007, 2010 – 2013.

Issue

Whether TP was not precluded from applying to quash DGIR's decision by way of JR instead of appealing to SCIT under section 99 ITA 1967?

DGIR's argument

JR application was an abuse of process of court as the TP should have exercised the right of appeal to the SCIT under section 99 ITA 1967.

Case on SCIT v JR

Society of La Salle Brothers v KPHDN [2018] 1 MLJ 376

Decision

The COA allowed TP's appeal

- DGIR's decision to issue NA was illegal and without jurisdiction as it failed to take into account the TP's vested right under the Ordinance which was not impaired by the amendments effected to the ITA 1967
- TP's failure to re - apply for tax exemption was of no significance
- Decision of DGIR was thus amenable to JR

Topic 1 : SCIT v JR

JR remains available for tax cases depending on the facts and issues:

- where there are no other appeal option; or
- where there is domestic remedy, it depends on the circumstances

Cases: **Mohd Najib and Mohd Nazifuddin (2003)(FC)**

Topic 1 : SCIT v JR

2 stages to a judicial review: (i) leave; and (ii) substantive

Threshold for leave for JR is low – only need to show whether there is an arguable case; not a frivolous or vexatious case

Cases: **Muhibbah Engineering (M) Bhd v Ketua Pengarah Hasil Dalam Negeri [2022] 4 MLJ 660 (COA); Allianz General Insurance Co (M) Bhd v Ketua Pengarah Hasil Dalam Negeri [2022] 4 MLJ 498 (COA)**

Topic 1 : SCIT v JR

Issue of whether the case is suited for judicial review is to be determined at the substantive hearing stage:

Whether there are domestic remedy and whether there are exceptional circumstances: (a) clear lack of jurisdiction; (b) blatant failure to perform a statutory duty; or (c) breach of the principles of natural justice.

Cases: **Government Of Malaysia & Anor v Jagdis Singh [1987] 2 MLJ 185**; **Allianz General Insurance Co (M) Bhd v Ketua Pengarah Hasil Dalam Negeri [2022] 4 MLJ 498 (COA)**

Topic 1 : SCIT v JR

Effect of Federal Court's decision in **Mohd Najib** and **Mohd Nazifuddin**

1

Pay first, dispute later – are all taxpayers able to do that?

2

Instalment payments vis-à-vis stay of payment

Topic 2

Negligence

Negligence

Section 91 ITA 1967

Assessments and additional assessments in certain cases

91. (1) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax, may in that year or within five years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that person ought to have been made for that year.

(2) Where the Director General discovers that the whole or part of any tax repaid to a person (otherwise than in consequence of an agreement come to with respect to an assessment pursuant to subsection 101(2) or in consequence of an assessment having been determined on appeal) has been repaid by mistake whether of fact or law, the Director General may make an assessment in respect of that person in the amount of that tax or that part of that tax, as the case may be:

Provided that no such assessment shall be made—

(a) if the repayment was in fact made on the basis of, or in accordance with, the practice of the Director General generally prevailing at the time when the repayment was made; or

(b) in respect of any tax, more than five years after the tax has been repaid.

(3) The Director General where it appears to him that—

(a) any form of fraud or wilful default has been committed by or on behalf of any person; or

(b) any person has been negligent,

in connection with or in relation to tax, may at any time make an assessment in respect of that person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.

Definition of negligence

The word “negligence” is not defined in ITA 1967

Black’s Law Dictionary

Meaning of ‘negligence’ as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.

Definition of negligence

Opus International (M) Berhad v KPHDN W-01(A)-348-05/2018

"neglect means negligence or a failure to give any notice, make any return, statement or declaration or to produce or furnish any list, document or other information required by the Income Tax Act, but a person is not deemed to have failed to do anything required in a limited time if he does it within such extended time as the Commissioners or officer concerned may allow, where a person has a reasonable excuse for not doing anything required he is deemed not to have failed to do it if he does it without unreasonably delay. It should be noted that even though an incorrect return was not made fraudulently or negligently originally, a subsequent failure to remedy it without unreasonable delay may result in the return being treated as having been made negligently"

Onus of proof on negligence

1. The DGIR to start calling the witness first

2. The DGIR has to prove that TP is negligent

Cases on negligence

Infra Quest Sdn Bhd v KPHDN

(2016) MSTC 30-133

Opus International (M) Berhad v KPHDN

W-01(A)-348-05/2018

Case on negligence

Infra quest sdn. Bhd. V KPHDN (2016) mstc ¶30-133

[73] Upon analysis of the facts, this Court had found that the Respondent/Revenue had failed to establish negligence against the Appellant/Taxpayer on the balance of probabilities. Instead, this Court after critical analysis of the available evidence both oral and documentary, was satisfied that the Appellant/Taxpayer had led evidence to prove otherwise and successfully proved that:—

(i) At all material times, the Appellant/Taxpayer took professional advice from a firm of professional; tax agent that was independent of the Appellant/Taxpayer (refer Answer 31 of AW1 testimony);

(ii) The Appellant/Taxpayer had provided full cooperation by duly providing all the documents requested by Respondent/Revenue (refer Answer 34 of AW1 testimony);

(iii) The Appellant/Taxpayer made full and frank disclosure of its tax treatment in relation to the capital allowance claim (refer Answer 35 of AW1 testimony);

(iv) The details pertaining to the capital allowance claim were stated in tax computations (refer Answer 35 of AW1 testimony);

(v) The tax returns for the Years of Assessment 2003 and 2004 were filed within the prescribed statutory time frame (refer Answer 38 of AW1 testimony);

(vi) The Respondent/Revenue gave no reasons at all to justify the basis for raising the time-barred assessments nor did it give the opportunity to the Appellant to explain otherwise (refer Answer 39 and 40 of AW1 testimony);

(vii) The Appellant only learned the reasons for the time-barred assessment in the course of the hearing before the SCIT when RW1 testified (refer Answer 41 of AW1 testimony);

(viii) There was no attempt by the Appellant/Taxpayer to evade or avoid tax. The Appellant was a good corporate taxpayer. The Appellant had always ensured that the payable taxes were duly paid, including the disputed assessment of the tax payable in this case (refer Answer 33 of AW1 testimony).

(ix) The Appellant had never been investigated or reprimanded by the Respondent in the past (refer Answer 33 of AW1 testimony).

decision affirmed by COA

Case on negligence

Opus International (M) Berhad v KPHDN W-01(A)-348-05/2018

The COA agreed that the PC has been negligent for failure to report is actual income in accordance with the provisions of the ITA 1967 -

'(31) I agree with the findings of the SCIT that the Appellant has committed negligence when the Appellant failed to make amendment to the actual recognition of income for YA 1999 when the account was finalized in 2000. Added to that the Appellant was negligent in not reporting its actual income in accordance section 24(1) (b) of the ITA 1967 thereby causing losses to the tax collection in YA 1999

'(32) Based on the findings of facts, the SCIT found that the DGIR had discharged their burden of proof that the Appellant had committed negligence as envisaged by subsection 91(3) of the ITA 1967. Therefore, I agree with the SCIT's conclusion that the DGIR's action in raising the tax after the period of six years is valid.'

Topic 2 : Negligence

“Negligence” as defined by textbooks and court - failure to carry out a duty imposed under the Act

1. This suggests that it must be more than just filing an incorrect return

2. If just that, the time-bar in section 91 (1) of the ITA would in effect be rendered redundant

Case on negligence

How to show that due care has been exercised to disprove negligence – depends on facts and circumstances:

- Taxpayer did not do something a reasonable person in his position would not have done

Case: **Infra Quest Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2016) MSTC ¶30-133**

Case on negligence

How to show that due care has been exercised to disprove negligence – depends on facts and circumstances:

- Where taxpayer has obtained professional advice, should not be held liable for negligence

Case: **Seiwa Podoyo Sdn Bhd V Ketua Pengarah Hasil Dalam Negeri (2022) MTSC ¶30-482 (HC)**

Case on negligence

How to show hat due care has been exercised to disprove negligence – depends on facts and circumstances:

- If it's a matter of difference in technical interpretation, arguably not negligence

Case: **Etiqa Family Takaful Berhad v Ketua Pengarah Hasil Dalam Negeri (2022) MSTC ¶30-510 (HC)**

Topic 3

Deductibility of expenses on bumiputra quota, penalty, capital in nature

Cases on bumiputra quota

KPHDN v. Prima Nova Harta Development

W-01(A)-318-07/2020

Taman Equine (M) Sdn. Bhd. v KPHDN

W-01(A)-337-06/2021

KPHDN v. Mitraland Kota Damansara Sdn. Bhd.

W-01(A)-359-06/2021

Case on bumiputra quota

KPHDN v. Prima Nova Harta Development
W-01(A)-318-07/2020

Issue

Whether TP was not precluded from applying to quash DGIR's decision by way of JR instead of appealing to SCIT under section 99 ITA 1967?

Fact

The DGIR disallowed the payment paid to LPHS for the Bumiputera units to be sold to non-Bumiputera buyers

Decision

On 21.9.2021, the COA has set aside the High Court decision and affirmed the SCIT's decision as follows -

"the amount 12% and 15% paid by the Appellant to LPHS were in fact a penalty for breach of the rules and regulations imposed by LPHS on the Appellant; and the Respondent in this case is correct in imposing a penalty under section 113(2)(b) of the Act"

However, no grounds of judgment of Court of Appeal in Prima Nova and Taman Equine
– doctrine of stare decisis does not apply to bind the Court of Appeal

Case on bumiputra quota

Taman Equine (M) Sdn Bhd v KPHDN W-01(A)-337-06/2021

Issue

Whether the payment made by TP to obtain release of bumiputera quota was not deductible under section 33(1) ITA 1967?

Fact

The DGIR disallowed the payment for release of Bumiputera quota to the LPHS

Decision

On 22.03.2022, the COA has set aside the High Court decision and affirmed the SCIT's decision as follows -

" the amount 12% and 15% paid by the Appellant to LPHS were in fact a penalty for breach of the rules and regulations imposed by LPHS on the Appellant; and the Respondent in this case is correct in imposing a penalty under section 113(2)(b) of the Act"

However, no grounds of judgment of Court of Appeal in Prima Nova and Taman Equine – doctrine of stare decisis does not apply to bind the Court of Appeal

Cases on bumiputra quota

1 **Taman Equine (M) Sdn Bhd v KPHDN**
W-01(A)-337-06/2021

2 **KPHDN v. Prima Nova Harta Development**
W-01(A)-318-07/2020

No grounds of judgment issued = doctrine of stare decisis does not bind COA

What happen if no GOJ?

A decision without reasons is not a judgment according to law

"In reaching a conclusion the learned judge had to consider the probabilities and the circumstances of the whole case. It was essentially a case in which there should have been a full record of the reasons which persuaded him to reach the conclusion he did. A mere finding of no negligence against both the respondents and that the accident occurred because of the sudden brake failure on account of some latent defect in the braking system, **not supported by reasons, is not judgment according to law"**

Tan Kim Leng & Anor v Chong Boon Eng & Anor [1974] 2 MLJ 151

Without reasons, a decision is not a binding authority

"A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect…"

Arnit Das v State of Bihar AIR 2000 SC 2264

Case on Bumiputra quota

KPHDN v. Mitraland Kota Damansara Sdn Bhd
W-01(A)-359-06/2021

Issue

Whether the High Court is correct in deciding that the expenses incurred i.e. the sum of RM5,518,597.00 paid to the State Authority of Selangor or LPHS for the release of the reserved houses for the Bumiputera to the non-Bumiputera is deductible under section 33(1) ITA 1967?

Fact

The DGIR had conducted a field audit and found that the TP, a property developer, had, in its income tax returns for the YA 2014, claimed deduction on a payment of RM5,518,597 made to LPHS for the release of unsold residential and commercial development units reserved for Bumiputera to be sold to all buyers, including the non-Bumiputera in one of its mixed developments in Selangor

The DGIR disallowed the deduction on the ground that it was not allowable under section 33(1) ITA 1967

Case on Bumiputra quota

KPHDN v. Mitraland Kota Damansara Sdn Bhd W-01(A)-359-06/2021

On 31.10.20211, the COA has affirmed the High Court's decision -

- Bumiputra discounts paid to a State Authority in return for releasing Bumiputra units to Non-Bumiputras was not a capital expenditure and
- The penalty for violating the prohibition terms was not deductible under section 33(1) ITA 1967

"However, we do not have the benefit of the grounds of judgment for both these cases, and in the premise it cannot be gainsaid that the doctrine of stare decisis applies to bind us to these earlier decisions

Though the applicable general principles are the same, each tax case would have to be decided on its peculiar contextual facts and circumstances as was stated by Raja Azlan Shah FCJ (as HRH then was) in I Investment Ltd v. CGIR 2 [1975] MLJ 208"

Why Mitraland does not bind us?

- The COA in Mitraland had not effectively set aside the COA's decisions in Prima Nova and Taman Equine

- The COA in Mitraland had emphasized that "each tax case would have to be decided on its peculiar contextual facts and circumstances" as stated by Raja Azlan Shah FCJ in I Investment Ltd v CGIR 2 [1975] MLJ 208 -

"I think it right to emphasise what has already been treated judicially that cases on income tax depend so much on their peculiar facts that excessive reliance on precedents may be dangerous"

Has the issue of Bumiputra quota come to an end?

Sovereign Teamwork (M) Sdn. Bhd. v KPHDN W-01(A)-568-10/2020	Hearing: 14.12.2023
TCSD v KPHDN	Decision on 27.10.2023 The SCIT dismissed the appeal
SSQSB v KPHDN	Decision on 27.10.2023 The SCIT dismissed the appeal

Case on Bumiputra quota

KPHDN v. Mitraland Kota Damansara Sdn Bhd [2023] MLJU 1039

1. It was the Selangor State Government's policy that property developers had to reserve a certain portion of their development units for the bumiputera community and also provide for a 7-10% discount to bumiputera purchasing these units.

2. Nonetheless, if the bumiputera units could not be sold after a specified period of time and despite efforts having been expended for their marking and sales, the developer could apply to Lembaga Perumahan dan Hartanah Selangor **("LPHS")** to lift the sales restriction and sell these to non-bumiputera purchasers instead.

3. All these were reflected in two circulars issued by the State Government.

4. The Taxpayer – a property developer – applied to LPHS for the lifting of the sales restriction for certain bumiputera units. In accordance with the circulars, it made the following types of payment to LPHS depending on whether the bumiputera units were sold before or after obtaining the approval from LPHS:

    - **Before approval was granted:** a sum which was equivalent to the Bumiputera Discount **("the Release Payment")**

    - **After approval was granted:** 5% of the sale price as "caj pelanggaran mekanisme pelepasan Bumiputera" **("the Payment for Breach")** plus the Release Payment

Court of Appeal's judgment

The Release Payment: Deductible

1. The units that the property developers build and complete are their stock-in-trade. Property developers receive income from the sale of these units. If the units could not be sold, there would be no income.

2. The option for Release Payment was provided by the State Government so that property developers can unlock and sell bumiputera units to the general public. The effect of the payment to LPHS was to achieve sales. The Release Payments were exclusively related to the Taxpayer's business operations in order to generate income.

3. The Release Payments were revenue in nature:

    - They were a classic revenue expense since they were directly related to the Taxpayer's stock-in-trade.
    - The recurring nature of the payment to LPHS every time a bumiputera unit was sold to a non-bumiputera purchaser clearly indicated that the expenditure was revenue in nature.
    - They were incurred wholly and exclusively in the production of income. They did not bring about enrichment of or the improvement to an item of fixed capital.
    - The Taxpayer had the right to sell the bumiputera units all along, as the units were the Taxpayer's stock-in-trade. Each payment to LPHS merely widened the group or class of people to whom these units could be sold. No asset or enduring benefit was acquired following the expenditure.
    - Case authorities have recognised that a payment made to remove an obstacle to profitable trading is attributable to revenue. (See *Kulim Rubber Plantations Ltd* [1981] 1 MLJ 214)

Court of Appeal's judgment

The Payment for Breach: Non-deductible

1. A penalty imposed upon the taxpayer for an infraction of the law is a not deductible expense as it is not incurred in the production of gross income.
2. **Is this a policy statement or a consideration of the test in section 33(1)?**
3. The following judicial quote from the UK case of CIR v EC. Warnes & Co Ltd (12 TC 227) was cited:

> **"Penalty or fine is not tax deductible as it is imposed upon a trader personally for a breach of law. Breaking the law cannot be considered to be trading transaction."**

4. The Payment for Breach is analogous to a traffic summons that a taxpayer receives for speeding whilst transporting his stock-in-trade on his lorry. Even if the reason for speeding on the highway is to reach his destination on time to effect a sale which he would otherwise miss, such expense is not deductible.
5. Similarly, the making of the Payment for Breach to hasten the transaction and achieve an earlier sale before the LPHS approval was obtained cannot be construed as an expense "wholly and exclusively incurred ... in the production of gross income..." for the purposes of section 33(1) of the ITA.
6. The Taxpayer's business could very well be carried on without the infraction of the policy requirements of the State Government as contained in the two circulars.

Topic 4

Penalty – Good Faith Defence

Penalty

Section 113(2) ITA 1967 empowers the Revenue to impose penalty for filing incorrect returns

(2) Where a person—

(a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of himself or another person; or

(b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

then, if no prosecution under subsection (1) has been instituted in respect of the incorrect return or incorrect information, the Director General may require that person to pay a penalty equal to the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct; and, if that person pays that penalty (or, where the penalty is abated or remitted under subsection 124(3), so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

Penalty

1. **Rangka Kerja Audit Cukai**

2. **Ibraco-Paremba Sdn. Bhd. v KPHDN**
[2017] 2 MLJ 120

3. **Dr. Zanariah binti Ramli v KPHDN**
W-01-711-12/2011

4. **KPHDN v Classic Japan (M) Sdn. Bhd.**
[2022] 3 MLJ 894

Penalty

Rangka Kerja Audit Cukai 1.5.2022

Kesalahan	Kadar
Penalti kesalahan pertama	15%
Penalti kesalahan kedua	30%
Penalti kesalahan ketiga dan seterusnya	45%

Rangka Kerja Audit Cukai 15.9.2019

10.1 Sekiranya terdapat kekurangan atau ketinggalan sebarang pendapatan berikutan daripada penemuan audit, penalti boleh dikenakan di bawah subseksyen 113(2) ACP bersamaan dengan amaun cukai yang terkurang (100%). Namun, bagi maksud Rangka Kerja Audit Cukai ini, penalti di bawah subseksyen 113(2) ACP dikenakan atas kadar 45% atas cukai yang terkurang. Walau bagaimanapun, KPHDN boleh menggunakan kuasa budi bicara berdasarkan subseksyen 124(3) ACP untuk mengurang atau menghapuskan penalti yang dikenakan.

10.2 Sekiranya pembayar cukai melakukan kesalahan berulang setelah diaudit atau disiasat, penalti akan dikenakan di bawah subseksyen 113(2) ACP pada kadar 55% atas cukai yang terkurang.

Penalty

What is Good Faith?

The word “Good Faith” is not defined in ITA 1967

Black’s Law Dictionary

“The phrase ‘good faith’ is used in a variety of contexts, and its meaning varies somewhat with the context. Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party

Cases on Penalty

Dr. Zanariah Binti Ramli v KPHDN W-01-711-12/2011

"14. … as the Revenue was successful in the appeal, that means that the Respondent Dr. Zanariah had filed an incorrect or inaccurate tax return for the years under review and it is only fair that the penalty that was imposed by the Revenue be reinstated… I agree that section 113(2) of the ITA 1967 does not provide for **good faith** as a defence in a situation where no prosecution has been mounted against the… taxpayer"

Ibraco-Paremba Sdn. Bhd. v KPHDN [2017] 2 MLJ 120

The COA held that the defense of **good faith** as found in section 113(1), and not found in s.113(2), does not apply to the DGIR's discretion under section 113(2) ITA 1967

Case on Penalty

Ketua Pengarah Hasil Dalam Negeri v Classic Japan (M) Sdn. Bhd. [2022] 3 MLJ 894

- Penalty is allowed by COA on 9.3.2022

- The Judge had decided the following –
  (4) What had been established in the present case was that the Appellant had made an incorrect return as well as given incorrect information to the Appellant. This was sufficient for the Appellant to exercise his discretion to impose the said penalty on the Respondent. The issue of good faith had no application to the imposition of penalty under section 113(2) ITA 1967

- [47] The evidence in this case shows that the revenue board became aware of the RM18,000,000 claimed as deduction only upon auditing. Not for the auditing, the respondent would not be aware that the deductible rental should be lesser instead. The appellant therefore would be paying less tax. The contention by the appellant that it was made in good faith due to the differing interpretation of the law cannot hold because ignorance of the law cannot be a defence

Case on Penalty

- Good faith may not be a statutory or automatic defence against section 113(2) penalty, but it can be relevant
- DGIR has discretion whether or not to impose penalty – DGIR should consider the facts of the case before imposing penalty and part of the consideration can be good faith

Case: **Ketua Pengarah Hasil Dalam Negeri v Kim Thye & Co [1992] 1 CLJ (Rep) 135**

Case on Penalty

- Penalty should not be imposed mechanically i.e. without exercise of discretion

Case: **Seiwa Podoyo Sdn Bhd V Ketua Pengarah Hasil Dalam Negeri (2022) MTSC ¶30-482 (HC)**

Case on Penalty

- If it is merely a technical adjustment, no penalty should be imposed

Case: **Ketua Pengarah Hasil Dalam Negeri v Woodville Development Sdn Bhd [2013] 3 MLJ 832**

Case on Penalty

- Court of Appeal had discharged the penalties imposed although the assessments on the substantive issues were maintained – on the basis that this is the first case involving interpretation and application of the provision of law in question

Case: **Kenny Vale Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri, Court of Appeal, Civil Appeal No. W-01-521-2010**

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