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Understanding Tax Disputes: Insights from Real Cases

Nur Hanina Mohd Azham
Senior Associate
nurhanina@rdslawpartners.com

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1. Tan Nyok Chin v Pemungut Duti Setem (2026) MSTC 30-904 (COA)

Brief Facts

- The Taxpayer was the wife of the deceased, who died testate on 7 November 2019. Under his will, a parcel of land was to be distributed between the Taxpayer and their 5 children, with her entitled to 20% and the 5 children collectively entitled to 80%.
- The executor declined to administer the estate, and the Taxpayer was subsequently appointed as the sole administrator of the estate by the High Court in June 2020. In March 2023, the five children executed a Deed of Settlement and Renunciation of Inheritance, renouncing all their rights and entitlements to the 80% undivided share in favour of the Taxpayer.
- The High Court then issued a vesting order authorising the Taxpayer, as administrator, to transfer the land to herself. The Taxpayer executed the Memorandum of Transfer (Form 14A) to effect the transfer.
- Upon adjudication, the Collector imposed RM10 fixed duty on the transfer of her own 20% share and RM20,800 ad valorem duty on the remaining 80% share which had been renounced by the children.
- The Taxpayer paid the RM20,800 under protest and objected to the assessment, but the Collector rejected her objection. The High Court subsequently dismissed the Taxpayer's appeal.

Main Issues

- Whether the correct stamp duty chargeable on the Memorandum of Transfer (Form 14A) for the 80% renounced share: ad valorem duty (as a "gift" or "release/renunciation by way of gift") or a fixed nominal duty (as a transfer not specifically charged).

- Whether the Court of Appeal, upon allowing the appeal, could order a refund of the excess stamp duty paid by the Taxpayer and impose interest on the refunded amount.

The Collector's Contention

- The Collector's position was essentially that the 80% undivided share had been transferred to the Taxpayer, and therefore the Form 14A should attract ad valorem duty.

- The Collector argued, among other things, that:
  - The 80% share was not transferred to the Taxpayer under the will itself.
  - The Renunciation Deed was not merely an instrument giving effect to a renunciation, but had the effect of transferring the 80% share to the Taxpayer.
  - The Renunciation Deed therefore amounted to a gift/transfer of property.
  - The Form 14A had the legal effect of transferring title of the land to the Appellant.
  - Accordingly, the transfer should be subject to ad valorem duty, including under Item 32(a), Items 32(h) and 46 read with section 16(1), and/or Item 66(c).

The Taxpayer's Contention

- The Taxpayer contended that the true nature of Form 14A was merely to give effect to the children's renunciation of their inheritance, rather than to effect a sale or gift of the land.

- The principal argument was that the children had never acquired a beneficial or legal interest in the land capable of being transferred or gifted.

- The children were merely entitled to inherit under the will. Until administration of the estate was completed and the estate distributed, they did not possess a proprietary interest in the land. Consequently, a person cannot give away property which he or she does not yet possess. Therefore, the children's renunciation could not constitute an inter vivos gift of the 80% share.

- The Taxpayer relied particularly on ***Pemungut Duti Setem v Lee Koy Eng*** **[2022] 3 CLJ 252** (CoA), where the Court of Appeal had held that Form 14A executed pursuant to a renunciation deed attracted only RM10 fixed duty. Therefore, the Form 14A should be charged under Item 32(i) rather than under the provisions imposing ad valorem duty.

The Court of Appeal's Decision

The Court of Appeal allowed the Taxpayer's appeal on the following basis:

- The Court held that the transfer of the renounced 80% share was not a "gift" and therefore only attracted a fixed nominal stamp duty of RM10.00 under Item 32(i) of the First Schedule to the Stamp Act 1949, reaffirming its binding precedent in ***Lee Koy Eng***.
- The Court reaffirmed the principle in ***Lee Koy Eng*** that a beneficiary under a will does not immediately acquire a beneficial interest in estate property capable of being transferred before administration of the estate is completed.
- When a beneficiary renounces his or her entitlement, the law treats the entitlement as never having belonged to that beneficiary. Consequently, the beneficiary cannot be regarded as making a gift of property which he or she never legally possessed.
- The Court held that interest may be awarded on the amount of stamp duty that the Collector is ordered to refund.

2. Pemungut Duti Setem v GTP Network Sdn Bhd

(2026) MSTC ¶30-924 (COA)

Brief Facts

- GTP Network Sdn Bhd (Taxpayer) entered into an Asset Purchase Agreement with MEBA Holdings Sdn Bhd on 1 August 2023, under which the Taxpayer agreed to acquire, among other things, 16 telecommunications towers and their associated equipment and fixtures for RM15 million.

- At the time the Asset Purchase Agreement was executed, legal ownership of the assets had not yet been transferred to the Taxpayer. The agreement contemplated various future steps and deliverables before completion of the transaction.

- The Collector assessed the Asset Purchase Agreement as attracting ad valorem stamp duty under Item 32(a), First Schedule of the Stamp Act 1949, on the basis that it constituted a “conveyance on sale”.

- The High Court allowed the Taxpayer’s appeal and held that the Asset Purchase Agreement attracted only RM10 nominal duty. The Collector appealed to the Court of Appeal.

Main Issue

Whether the Asset Purchase Agreement constituted a “conveyance on sale” within Section 21(1) of the Stamp Act 1949 and was therefore subject to ad valorem duty under Item 32(a) of the First Schedule

The Collector's Contention

- The Collector contended that the High Court had incorrectly characterised the Asset Purchase Agreement as merely an agreement to convey.

- The substance and effect of the Asset Purchase Agreement should be considered, rather than focusing on the fact that certain completion steps were to occur in the future.

- The Asset Purchase Agreement demonstrated the parties' intention to transfer ownership of the assets to the Taxpayer. Therefore, it constituted a conveyance on sale within Section 21(1) of the SA.

- The High Court had placed excessive reliance on the future completion date. The Collector contended that actual date on which the transfer was completed was immaterial to determining whether the Asset Purchase Agreement was a conveyance on sale.

The Taxpayer's Contention

- The Taxpayer maintained that the Asset Purchase Agreement did not itself constitute a conveyance on sale.

- The Asset Purchase Agreement was an "agreement to convey", rather than an instrument that immediately conveyed the assets. The transfer of ownership was subject to future completion steps, meaning that the Asset Purchase Agreement did not itself effect an immediate and complete transfer.

- The Taxpayer relied on authorities which supported the distinction between an instrument that actually conveys property and an agreement merely providing for a future conveyance.

- The Taxpayer argued that the assets covered by the Asset Purchase Agreement were goods/chattels and therefore fell within the exclusion in Section 21(1) of the Stamp Act.

The Court of Appeal's Decision

The Court of Appeal allowed the Collector's appeal and held that the Asset Purchase Agreement constituted a conveyance on sale under ***Section 21(1)*** of the ***Stamp Act 1949***:

- The Asset Purchase Agreement was chargeable with ad valorem duty under ***Item 32(a), First Schedule***.
- The Court held that the telecommunications towers were capital assets, not "goods, wares or merchandise", and therefore did not fall within the ***Section 21(1)*** exception.
- The actual completion date for the transfer of the assets was immaterial. ***Section 21(1)*** did not require an instrument to effect an immediate transfer of property in order to constitute a conveyance on sale. The exception for "goods" in ***s 21(1)*** of the SA applied only to trading goods, not fixed or capital assets.
- The Court of Appeal held that the JC did not err in awarding interest on the refund of duty. The Court may award interest pursuant to ***Section 11*** of the ***Civil Law Act 1956*** and ***Order 42, Rule 12*** of the ***Rules of Court 2012***.

3. Binastra Land Sdn Bhd & Anor v Pemungut Duti

Setem (2026) MSTC ¶30-926 (Shah Alam High Court)

Brief Facts

- In this stamp duty appeal, the first appellant awarded the second appellant a construction contract worth RM250 million relating to a development project through a letter of award, with a contract period of 33 months.

- Subsequent to an audit, the Collector on 31 December 2024 issued an assessment imposing stamp duty of RM250,000 and a penalty of RM50,000 on the Letter of Award.

- The taxpayers paid the assessed amount and lodged an objection under ***Section 38A***. The objection was rejected and the assessment was maintained. The taxpayers thereafter appealed to the High Court under ***Section 39*** of the ***Stamp Act 1949***.

Main Issue

Whether the letter of award was chargeable with ad valorem stamp duty under ***Item 22(1)(a)*** of the ***First Schedule***, or whether it was chargeable, if at all, under ***Item 4*** of the ***Stamp Act 1949***.

The Taxpayer's Contention

- The letter of award was not a "security" within the meaning of ***Item 22(1)(a)*** of the ***First Schedule*** to the SA and therefore was not chargeable with stamp duty under that provision

- The Taxpayers contended that the letter of award did not provide for sums payable at stated periods and that the total amount ultimately payable was not ascertainable because the contract sum was expressly provisional, which was a prerequisite for ad valorem duty under ***Item 22(1)(a).***

- The Collector lacked statutory power to issue the assessment in December 2024 because ***Section 36CA*** of the SA, which expressly empowered the issuance of assessments, only came into force on 1 January 2026.

The Revenue's Contention

- The Collector contended that ***Sections 3A, 4, 36, 38A*** and ***39*** together formed part of a statutory framework which already contemplated the ascertainment, assessment, objection and appeal of stamp duty liabilities.

- The Collector further argued that the letter of award was the operative and principal instrument governing the construction transaction, and that the interim claim interval, certification period, contract duration and stated contract sum were sufficient to satisfy ***Item 22(1)(a).***

The High Court's Decision

The High Court dismissed the taxpayers' appeal and upheld the assessment and penalty based on the following:

- The Letter of Award was the only and principal instrument and was therefore chargeable with ad valorem stamp duty under ***Item 22(1)(a)*** of the ***First Schedule*** to the SA 1949. It constituted a primary security for ascertainable sums payable at definite periods, and the phrase "instrument of any kind whatsoever" was broad enough to cover it.

- ***Sections 3A, 36, 38A*** and ***39*** of the SA 1949 was sufficient to empower the Collector to issue the assessment before ***Section 36CA*** came into force.

- The Court found that the letter of award had not been stamped within the prescribed period after execution and that the statutory late-stamping penalty had therefore been triggered.

4. Mesra Retail & Cafe Sdn Bhd v Pemungut Duti Setem, Malaysia

[2025] MLJU 3979 (High Court)

Brief Facts

- Petronas Dagangan Berhad ("PDB") entered into operating agreements with Golden Scoop Sdn Bhd, granting the license to use areas of petrol stations for the operation of its restaurants. PDB incorporated the plaintiff, its wholly owned subsidiary, to focus on its non-fuel business arm.

- In a Novation Agreement dated 1 January 2022, PDB novated and transferred all its rights, interests, and obligations under the operating agreements to the plaintiff. Under this arrangement, PDB was released from its duties in consideration of the Plaintiff undertaking them instead.

- Believing that the novation agreement operated under ***Section 16(1)*** of the Stamp Act 1949, the Defendant made an ad valorem stamp duty assessment of RM7,478.00.

- The Plaintiff paid the amount under protest, and after its objection was rejected, it filed an appeal in the High Court.

Main Issue

Whether the novation agreement is subject to ad valorem duty under ***Section 16(1)*** read together with ***Item 32(a)*** of the ***First Schedule*** or nominal duty (ie RM 10) under ***Item 4*** of the ***First Schedule***?

The Collector’s Contention

- The Collector argued, among other things, that:
  - Via the novation agreement, PDB novates and transfers all its rights, interests, obligations, and liabilities under the operating agreements to the plaintiff without consideration.
  - This means ***Section 16(1)*** applies because it is a voluntary conveyance for which no valuable consideration is given. Hence, it should be charged with ad valorem duty based on the value of the property conveyed.
  - ***Item 32(a)*** of the ***First Schedule*** provides for the description of the instrument, whether it is a conveyance, assignment, transfer or absolute bill of sale and the appropriate formula to calculate stamp duty.
  - Thus, the purpose of the Novation Agreement is to transfer property to the plaintiff.

The High Court's Decision

The High Court allowed the taxpayers' appeal based on the following:

- There was no transfer or conveyance of property from PDB to the plaintiff. The novation agreement is a tripartite agreement between PDB, Golden Scoop and the plaintiff.
- The effect of the novation is:
  - PDB transfers all rights, interests, obligations and liabilities in relation to its non-fuel business to the plaintiff, a subsidiary of PDB, incorporated to deal with its the non-fuel business.
  - Golden Scoop then agrees to release and discharge PDB from the operating agreements with the plaintiff undertaking to perform the obligations instead.
- As such, there is no transfer of property or conveyance. ***Section 16(1)*** does not apply to the novation agreement. Rather, the applicable stamp duty is pursuant to ***Item 4*** of the ***First Schedule***.

5. Nike Global Trading BV, Singapore Branch v Pemungut Duti Setem, Malaysia [2026] 2 MLJ 221 (Court of Appeal)

Brief Facts

- In May 2021, Nike European Operations Netherlands (‘**Original Lender’**) and Nike Sales (M) Sdn Bhd (‘**Borrower’**) entered into a loan agreement, amounting to RM41,257,000, which was assessed and stamped under item 27(a) of the First Schedule. The loan had also been fully disbursed.

- The debt was later transferred to the Taxpayer from the Original Lender via a novation agreement.

- The novation agreement was presented to the Collector for adjudication in January 2022. The duty due was assessed to be RM1,716,004 based on ***Section 16*** of the SA, read together with ***Item 32(a)*** of the ***First Schedule.***

- Upon the Collector’s dismissal of the Taxpayer’s objection to the assessment, the Taxpayer appealed to the High Court in the present case.

Issue

Whether the novation agreement is subject to ad valorem duty under ***Section 16(1)*** read together with ***Item 32(a)*** of the ***First Schedule*** or nominal duty (ie RM 10) under ***Item 4*** of the ***First Schedule?***

The High Court's Decision

- At present, upon scrutiny of the novation agreement, the whole loan had been disbursed by the Original Lender to the borrower and the purpose of the novation agreement was to transfer the debt to the plaintiff.

- As per ***Section 2*** of the SA, a 'debt' falls within the definition of 'property'.

- Since the debt was transferred to the Taxpayer, although without monetary consideration, it would be chargeable under ***Item 32(a)*** of the ***First Schedule*** as if it was a transfer or conveyance on sale by virtue of ***Section 16(1).***

- The High Court ruled in favour of the Collector and held that there is a transfer or conveyance of a property arising from the novation agreement. Therefore, this attracts stamp duty under ***Item 32(a)*** of the ***First Schedule***. The appeal was accordingly dismissed.

The Court of Appeal's Decision

- The Court of Appeal allowed the taxpayer's appeal.
- The Novation Agreement is not merely a transfer of the right to repayment, it involves a complete substitution of parties, whereby the taxpayer assumes Nike Netherlands' continuing obligations and rights. The taxpayer did not merely acquire rights to receive repayments. Instead, the taxpayer assumed active, ongoing obligations originally borne by Nike Netherlands.
- The Novation Agreement has fully replaced both the rights and obligations, constituting a novation and not a separate assignment or transfer.
- The Novation Agreement is a true novation that entirely replaces the old contract with a new one. The Novation Agreement is intended to replace the Original Loan Agreement with a new contract between the taxpayer and NIKE Malaysia.
- The Novation Agreement has created a new contractual relationship in which the taxpayer assumes Nike Netherlands' rights and obligations, and not a transfer of property.

6. Pemungut Duti Setem v Ann Joo Integrated Steel Sdn Bhd

[2025] 1 MLJ 141 (COA)

Brief Facts

- Pursuant to a letter of offer (the *instrument*), the Taxpayer was granted various credit facilities up to RM105 million by a bank, which the Taxpayer accepted. A stamp duty of RM525,000 was paid by the Taxpayer as assessed by the Revenue. The Taxpayer then sought a remission under the ***Stamp Duty (Remission)(No. 2) Order 2012*** (*Remission Order*) issued by the Minister of Finance.

- The Remission Order allowed remission of stamp duty exceeding 0.1% of the chargeable amount under ***Item 22(1)(b)*** of the ***First Schedule*** of the ***Stamp Act 1949*** (SA), applicable to instruments without security and repayable on demand or via a single bullet repayment, where the term is for life or an other indefinite period. In contrast, ***Item 22(1)(a)*** applied to instruments with a definite and certain period.

- The Revenue rejected the remission request, arguing that the instrument fell under ***Item 22(1)(a)***, not ***Item 22(1)(b)***, and was therefore not eligible.

- The Taxpayer appealed under ***section 39(1) SA*** to the High Court, which allowed the appeal and ordered a refund of RM420,000 with interest at 8% per annum from the date of payment until refund. The Revenue, dissatisfied, filed the present appeal.

Main Issues

- Whether the instrument (the letter of offer granting credit facilities) falls under ***Item 22(1)(a)*** or ***Item 22(1)(b)*** of the ***First Schedule*** to the ***Stamp Act 1949***.

- Whether the Taxpayer is entitled to a stamp duty remission under the ***Stamp Duty (Remission)(No. 2) Order 2012.***

The Revenue's Contention

- The instrument (letter of offer) falls under ***Item 22(1)(a)*** of the ***First Schedule*** to the ***Stamp Act 1949*** — i.e., it is for a definite and certain period with ascertainable total repayment, and thus not eligible for remission under the Remission Order.

- The usance tenure of up to 180 days on the trade facilities constituted a fixed period, satisfying the requirement of ***Item 22(1)(a).***

- The Remission Order is inapplicable because the instrument does not clearly stipulate repayment only upon demand or via single bullet payment.

- Even if ***Item 22(1)(b)*** applied, the respondent miscalculated the remission: the correct calculation should be 1% duty payable minus 0.1%, i.e., only the excess is remitted, not the entire amount above 0.1%.

- The High Court's award of 8% interest on the refunded amount was erroneous, as interest is not applicable under a stamp duty appeal (which is not a suit for debt or damages).

The Taxpayer's Contention

- The instrument should be assessed under ***Item 22(1)(b),*** as:
    - It is not for a fixed term;
    - The repayment is on demand;
    - The facilities are not secured (clean basis);
    - Therefore, it satisfies the four conditions under the Remission Order.

- The reference to a tenure of "up to 180 days" in the facilities:
    - Only indicates the maximum drawdown/usage period,
    - Does not equate to a definite loan tenure,
    - Does not fix the total amount to be ultimately payable.

- Repayment only occurs when the bank exercises its right to recall/cancel and is therefore repayable on demand or in a single bullet repayment.

- Since the instrument satisfies all requirements under ***Item 22(1)(b)*** and the ***Remission Order***, the correct stamp duty payable should be 0.1% of RM105m = RM105,000.

The Court of Appeal's Decision

- The Court of Appeal affirmed the High Court's decision:
  - The instrument does not fall under ***Item 22(1)(a)*** – there is no fixed tenure or ascertainable repayment amount.
  - It falls under ***Item 22(1)(b)*** – credit is repayable on demand, for an indefinite period.

- The Remission Order applies, and all requirements are fulfilled:
  - It is a loan instrument chargeable to duty under ***Item 22(1)(b)***,
  - No security,
  - Repayable on demand/single bullet repayment.

- However, the taxpayer's remission calculation was incorrect:
  - Duty under ***Item 22(1)(b)*** = 1% of RM105m = RM1,050,000.
  - After remission of excess above 0.1%, net payable = RM1,050.
  - Refundable amount = RM525,000 – RM1,050 = RM523,950.
  - But due to no cross-appeal, the High Court's refund of RM420,000 stands.

- On on 26.3.2025, the Federal Court dismissed the Revenue's Notice of Motion to Appeal.

7. Ketua Pengarah Hasil Dalam Negeri v Senai Airport City Sdn Bhd (2026) MSTC 30-923 (HC)

Brief Facts

- The taxpayer was the master developer of an integrated industrial development project in Johor.
- In September 2013, the taxpayer entered into a lease agreement with a third party company, HMSB, involving a 41 acre parcel of land within the development area for a period of 99 years. As part of the same transaction, HMSB was granted a call option to acquire an adjacent 16.24 acre parcel of land within a 2 year option period.
- On 27.12.2016, the Minister of Finance granted a Special Tax Incentive Package for the development project and granted full income tax exemption on statutory income derived from the disposal of rights over plots of land that add value to areas within the development area. The incentive package was subsequently amended in 8.7.2019 which expressly referred to statutory income derived from the disposal of rights over plots of land by way of sale or lease.
- Following a tax audit, the IRB took the position that the RM 1.4 million call option fee did not fall within the scope of the exemption. The tax authority consequently issued an additional assessment for the year of assessment 2016 together with a 20% penalty under ***Section 113(2)*** of the ***Income Tax Act 1967***. The Taxpayer challenged the assessment before the SCIT.

The SCIT's Decision

The SCIT allowed the taxpayer's appeal on the following grounds:

- The SCIT found that the grant of the call option involved the disposal of rights over land because the taxpayer Chad surrendered part of its ability to deal freely with the adjacent land during the option period while granting HMSB legally enforceable rights.
- The SCIT further held that the option arrangement could not be viewed in isolation. Instead, it formed part of the overall commercial arrangement relating to the disposal of land within the development project.
- The applicable incentive was the original 2016 exemption letter rather than the amended 2019 version as the taxpayer's entitlement to the exemption had to be assessed based on the terms that were in force at the material time which the taxpayer had compiled with the conditions.
- Aggrieved by the SCIT's decision, the Revenue appealed to the High Court.

Main Issues

- Whether the call option fee constituted income derived from the disposal of rights over land within a designated development area;

- Whether the SCIT erred in holding that the Option Fee was exempt under the 2016 exemption approval and was not displaced by the subsequent 2019 letter; and

- Whether the penalty imposed under ***section 113(2)*** of the ITA can be sustained.

The Revenue's Contention

- The Revenue maintained that the option fee merely represented consideration for a future opportunity to acquire land and did not amount to a disposal of rights by way of sale or lease.
- There was no disposal of rights over the adjacent land because the call option was merely a contractual right that did not transfer any proprietary or registrable interest in the land to HMSB and the call option fee arose from HMSB's non-exercise of the call option.
- There was insufficient evidence that the adjacent land was value-added land.
- The Revenue further argued that tax exemption provisions had to be construed strictly and the Taxpayer had failed to bring itself within the scope of the 2016 exemption. Further, under ***Section 148*** of the ITA, the Minister had the power to retrospectively vary or revoke the 2016 exemption approval, and the 2019 letter clarified the scope of the exemption.

The Taxpayer's Contention

- The Taxpayer argued that the exemption granted by the MOF was not limited to proprietary rights arising from a completed sale or lease. By granting the call option, it had effectively restricted its ability to deal freely with the adjacent land during the option period while conferring enforceable rights upon HMSB.

- The Taxpayer further contended that the option was not a standalone arrangement but formed an integral part of the broader land disposal transaction embodied in the lease agreement.

- The amended 2019 exemption letter could not be applied retrospectively to alter the tax treatment of a transaction that had already taken place under the earlier incentive framework.

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The High Court’s Decision

- The High Court upheld the SCIT's findings and dismissed the appeal. In doing so, the High Court agreed that the grant of the call option constituted a disposal of rights over land for the purposes of the exemption granted under ***Section 127(3A)*** of the ITA.

- The Court also accepted that the option arrangement formed part of the wider land disposal transaction and was not an independent or unrelated commercial arrangement.

- Importantly, the High Court affirmed that the amended 2019 exemption letter could not be applied retrospectively to alter the tax treatment of a transaction that had already taken place under the earlier incentive framework.

- Consequently, the Court held that the RM 1.4 million option fee fell within the scope of the exemption granted by the MOF and upheld the SCIT's decision to set aside both the additional assessment and the penalty.

8. CGL Co Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2026)

MSTC 10-191 *(SCIT)*

Brief Facts

- The Taxpayer was a licensed moneylender carrying on the business of granting loans to borrowers.

- In the Year of Assessment 2017, the Taxpayer advanced two types of loans, which are interest-bearing loans on which the interest income was earned and brought to income tax and interest-free loans advanced to 139 individuals and companies, who were all third parties. These interest-free loans were recorded separately as “Other Receivables.”

- Following a tax audit, the Revenue took the position that the interest-free loans should have also been subjected to interest. Accordingly, the Revenue imposed deemed interest at the rate of 4% on all the interest-free loans, which resulted in a purported understatement of interest income amounting to RM17,627,101.36.

- Aggrieved by this decision, the Taxpayer filed an appeal to the SCIT.

Main Issues

- Whether, in the absence of an express provision in the ***Income Tax Act 1967*** ("**ITA**") , the Revenue had authority under ***Section 24(5)*** of the ITA to deem the interest-free loans to have generated taxable interest income.

- Whether the penalty imposed by the Revenue under ***Section 113(2) ITA*** was legally and factually justified.

The Taxpayer's Contention

- The Taxpayer contended that the interest-free loans did not generate any income because no interest was charged or received in the first place. The interest-free loans were non-trading loans and did not generate any return in the form of interest.
- In the absence of actual interest or other return, there was no taxable income under ***Section 4(a) ITA***. The Revenue could not rely on ***Section 24(5)*** to create or "deem" interest income merely by alleging that the loans formed part of the Taxpayer's stock-in-trade.
- There was no express statutory provision in the ITA authorising the Revenue to deem interest income from an interest-free loan.
- The Revenue's imposition of a 4% interest rate had no statutory basis and was merely based on the Revenue's own formula.
- The Taxpayer also argued that the relevant borrowers were independent and unrelated parties, meaning that ***Sections 140A*** and ***140B*** of the ITA, which contain provisions concerning deemed interest involving associated persons/directors were not applicable.

The Revenue's Contention

- The Revenue's position was that the interest-free loans were part of the Taxpayer's stock-in-trade because the Taxpayer's business was the lending of money and the loans were made in the ordinary course of that business.

- By virtue of ***Section 24(5)*** of the ITA, the loans generated interest income which was receivable and taxable under ***Section 4(a).***

- The Revenue contended that the Taxpayer had failed to comply with the ***Moneylenders Act 1951*** by not executing moneylending agreements for the interest-free loans.

- Since there were no written agreements specifying an interest rate for the interest-free loans, the Revenue applied a deemed interest rate of 4%, which was reasonably derived from the taxpayer's general ledger, bank statements of its creditors and prevailing bank rates

The SCIT's Decision

The SCIT allowed the Taxpayer's appeal and held that:

- First, interest-free loans, by their very nature, indicate that the borrower was only obliged to repay the principal amount without any additional charge.
- Secondly, the SCIT found that there was no provision under the ITA that empowered the Revenue to deem interest on loans given to third parties.
- Thirdly, based on the evidence adduced, the SCIT accepted that the loans in question did not generate any return capable of constituting taxable income under the ITA. This was reinforced by the taxpayer's financial statements, which confirmed that the taxpayer's revenue was derived from loans given with interest and not from those without interest.
- Finally, the SCIT clarified that it was not the proper forum to adjudicate any issues of compliance under the ***Moneylenders Act 1951***.

9. Ketua Pengarah Hasil Dalam Negeri v Kristal Penaga (M) Sdn Bhd

(Civil Appeal No WA-14-17-06/2023) (HC)

Brief Facts

- Kristal Penaga Sdn Bhd is a company incorporated in Malaysia with a business address at Jalan Segambut, Kuala Lumpur, whose principal activity is that of investment holding.
- On 20.07.1994, the taxpayer entered into an agreement with Mansor bin Salleh @ Md. Salleh (the Vendor) to acquire No GM 1045, No. Lot 2597, in the Mukim of Batu, Wilayah Persekutuan ("Land 1"); when the taxpayer received new titles, the titles showed that Land 1 comprised Malay Reserved Lands.
- On 23.12.2013, the taxpayer executed a Sale and Purchase Agreement with Mega Daiman Sdn Bhd to dispose of twelve (12) pieces of freehold vacant land (i.e. Land 1) at a price of RM13,108,215.00.
- On 27.01.2014, the taxpayer submitted the RPGT forms (Form CKHT 1A and Form CKHT 3) to subject the gains arising from the disposal to real property gains tax, if any.
- The DGIR informed the taxpayer that the gains were subject to income tax and raised the notice of assessment (Form J) for YA 2014 amounting to RM3,058,827.25.

The Taxpayer's Contention

- Trading activities have to be distinguished from investment transactions; the mere realisation of capital appreciation is not income and falls outside the ambit of income tax, and profits from the sale of property used in the business as fixed assets such as land and buildings are normally capital and non-taxable.

- The taxpayer had acquired and kept the Land for investment purposes from day one, and no badges of trade or intention to trade are present in respect of the Land.

- The taxpayer only disposed of the Land to Mega Daiman Sdn Bhd for the sole purpose of restructuring the company from a Bumi company to a non-Bumi company, and the Land remains to date with Mega Daiman, which is a related company.

- The gains arising from the disposal should be subjected to real property gains tax and not income tax.
- The facts proven and found by the SCIT are unassailable; the SCIT reasonably reached its decision by considering the facts and circumstances surrounding the disposal, and there is no misconception of law as the decision is correct and supported by primary facts.

The Revenue's Contention

- The SCIT erred in law and facts when it decided that the proceeds from the disposal of the twelve lots of land were capital receipts taxable under the RPGTA 1976; the proceeds received are in fact a series of activities conducted for the realisation of income from carrying on a business and taxable under section 4(a) of the ITA.

- The definition of "business" under ***section 2*** is not exhaustive and includes an adventure in the nature of trade; applying the conditions from ***Director-General of Inland Revenue v Khoo Ewe Aik Realty*** and the badges of trade, the disposal amounted to an adventure in the nature of trade.

- The taxpayer's dominant purpose in the acquisition of the lands was to resell at a profit, and it was the taxpayer's burden to establish that the subject lands were acquired with the intention of using them as a capital asset.

- There was no evidence produced to indicate that the taxpayer had earned investment income from the date of acquisition until disposal in 2013, so the subject lands did not perform the primary function of providing the means by which revenue is derived; the SCIT misdirected itself in law and facts in deciding the gains were capital realisation when the lands had not generated any investment income during the taxpayer's 19 years of holding.

- The SCIT fell into error in law and fact when it concluded there was no intention to trade upon entering the Sale and Purchase Agreement with Mega Daiman Sdn Bhd, and failed to consider the real intention behind the acquisition of the twelve lots of land.

The High Court’s Decision

- The High Court dismissed the DGIR's appeal, affirming the SCIT's decision that the gains from the disposal of the twelve parcels of land were capital receipts taxable under the RPGTA 1976 and not trading receipts taxable under section 4(a) of the ITA. The taxpayer therefore succeeded at both the SCIT and the High Court.

- Costs of RM3,000.00 were awarded against the DGIR.

- The DGIR, dissatisfied with the whole of the decision, filed a Notice of Appeal dated 12 August 2026 to the Court of Appeal against the whole of the High Court's decision.

*10. Ketua Pengarah Hasil Dalam Negeri v SCP Assets Sdn Bhd (*Civil Appeal No. WA-14-38-10/2023)(HC)

Brief Facts

- The taxpayer operates multi-storey car parks and derives rental income from the letting of the car parks.
- It incurred RM494.95 million in capital expenditure on the acquisition of multi-storey car parks in various locations.
- Prior to filing its Year of Assessment 2017 tax return, the taxpayer sought confirmation from the IRB on its eligibility to claim capital allowances on the multi-storey car parks.
- The IRB took the position that the multi-storey car parks were not “plant”, but permanent structures forming part of the buildings and used as business premises and therefore did not qualify for capital allowances under Schedule 3 of the Income Tax Act 1967 (“**ITA**”).

Brief Facts *(continued)*

- Aggrieved by the DGIR's position, the taxpayer filed a Form Q in respect of YA 2017.

- The SCIT allowed the appeal holding that the multi-storey car parks constituted "plant" within the meaning of ***paragraph 2(1)*** of ***Schedule 3*** of the ***ITA***, and the IRB appealed to the High Court.

Main Issues

Whether the multi-storey car parks owned by the taxpayer qualify as plant for the purposes of capital allowance.

The Taxpayer’s Contention

- A holistic approach should be adopted in determining whether the car parks constitute “plant”, having regard to the taxpayer’s business as a whole.
- ***Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd*** **[2013] MSTC 30-054** is directly on point with the present case, and the SCIT was correct to consider it as binding precedent.
- The similar features are that the car parks were operated by both the taxpayers, they were not part of the taxpayer's stock in trade, they were not considered a "setting" taking into account the taxpayer's operations in the service industry, and the revenue of the taxpayer is derived from its operation as a car park operator.
- The difference in the ownership structure and mode of acquisition of the car parks are not determinative of the issue of whether it qualifies as a plant.

The Revenue's Contention

- In arriving at its decision, the SCIT erred in law and in fact, warranting appellate intervention by the High Court.
- ***Tropiland*** is distinguishable due to material factual differences, including the privatisation agreement, 30-year lease arrangement, non-ownership of the car parks, and the fact that the car parks were the means of generating revenue, which led the Court of Appeal to find that the car park building was essential to the business and qualified as "plant"
- Applying the functionality test, the car parks were premises/settings where the business was carried on, rather than "plant" actively used in carrying on the car park business.

The High Court's Decision

- The High Court dismissed the IRB's appeal and held the following:
  - Applying the functionality/business-use test in ***Yarmouth v France*** **[1887] 19 QBD 647**, the Court considered the role and function of the car parks in SCP Assets' business.
  - The facts were strikingly similar to ***Tropiland,*** as both taxpayers operated car parks, derived revenue from car park operations, and the car parks were neither stock-in-trade nor merely the setting of the business.
  - The mode of ownership, whether the car parks were leased as in ***Tropiland*** or owned by the taxpayer, was not material and did not distinguish the cases.
  - The key question is how the car park is used. If it is the means by which the business is conducted, it constitutes "plant"; if it merely provides the place where the business is conducted, it does not.

11. Yakult (Malaysia) Sdn Bhd v Ketua Pengarah Kastam

(High Court)

Brief Facts

- The Taxpayer manufactures cultured milk drinks marketed as Yakult Ace and Yakult Ace Light (the Products). The Products contain over 30 billion live Shirota strain bacteria in each 80 ml bottle, along with sugar, skim milk powder, glucose and permitted flavouring. The Products are intended to enhance gut function and improve consumers' immune system by fighting viruses and bacterial infections.

- Pursuant to manufacturer's licence issued by the Respondent dated 4.11.2003, the Products were classified under tariff code 0403.90.910 under the Customs Duties 2002.

- Following the repeal of the Customs Duties Order 2002, the Products are now classified under tariff code 0403.90.9000 under the Customs Duties Order 2022.

- However, on 20.7.2023, the Customs informed the Applicant that the Products should be classified under tariff code 2202.99.5000 instead. Aggrieved by the Customs' decision, the Taxpayer filed a judicial review applic

- The two competing tariff classifications were as follows:

Heading/Tariff Code	Description	Sales Tax	Import Duty
04.03	Yogurt; buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, **whether or not concentrated** or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa.		
0403.90.9000	Other	5%	0%
22.02	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit, nut or vegetable juices of heading 20.09.		
2202.99.5000	Other non-aerated beverages ready for immediate consumption without dilution	10%	20%

Main Issue

Whether the Products should be subjected to tariff code 0403.90.9000 as fermented milk products or 2202.99.5000 as beverages, which was contended by the Customs?

The Taxpayer's Contention

- Heading 04.03 expressly covers "other fermented or acidified milk" and was therefore the more specific heading compared to the residual beverage classification under heading 22.02.

- Relying on the High Court's decision in ***Power Root (M) Sdn Bhd & Ors v Ketua Pengarah Kastam*** **[2011] 6 CLJ 114** (affirmed by the Court of Appeal), the Taxpayer contended that classification must be determined by the product's essential character including its primary function and intended use. The Products are not designed as thirst-quenching beverages but as functional dairy products intended to promote gut health through probiotic content. The Taxpayer further emphasised that consumption in liquid form does not transform the Products into beverages for tariff purposes.

- The products had been continuously classified under Heading 04.03 for over two decades, supported by the manufacturing licence, was also relied upon as giving rise to a legitimate expectation that the Customs could not depart from its over 20-year-old classification stance without proper justification..

The Customs' Contention

- The Customs contended that the Products should instead be classified under tariff code 2202.99.5000 as "non-aerated beverages ready for immediate consumption without dilution".

- The Customs took the position that the Products had lost their essential character as fermented milk due to dilution with water and relied, inter alia, on a letter from the Ministry of Health (MOH), which stated that the Products were not yogurt in solid form and therefore, lacked the essential characteristics of yogurt.

The High Court's Decision

- The High Court allowed the judicial review application and set aside Customs' reclassification decision. The court held that the Products retain a strong basis to be characterised as fermented milk and should properly fall under tariff code 0403.90.9000 as the heading expressly includes "*yoghurt… and other fermented or acidified milk and cream*." The court accepted that the core composition of the Products remains that of fermented milk containing live bacteria cultures, skimmed milk powder, sugar and flavouring, notwithstanding the addition of water.

- The essential character of the Products was that of a fermented milk drink and not a thirst-quenching beverage. It was primarily associated with gut health benefits. In fact, the general consumer perception of the Products was that of a fermented milk product for digestive health, rather than an ordinary beverage for casual consumption.

- Accordingly, the High Court concluded that the addition of water does not displace the essential character of the Products as fermented milk, which remained properly classifiable under tariff code 0403.90.9000.

12. Ketua Pengarah Kastam v Sushi King Sdn Bhd & Tribunal Rayuan Kastam (Application No. WA-24-101-12/2023) (HC)

Brief Facts

- The Taxpayer operated retail sushi and Japanese food outlets in Malaysia and imported several fish roe products, namely Tobikko, Masago and Mentaiko (collectively known as "**Fish Roes**").
- During audit, the Customs took the view that the Fish Roes ought to be classified as 'Caviar Substitutes' under Tariff Code 1604.32.0000, which would give rise to 8% import duty and 10% sales tax. Subsequently, the Customs issued three Customs Rulings all dated 15.2.2021.
- Aggrieved, the Taxpayer submitted appeal letters and requested the Customs to review the matter. However, the review application was rejected by the Customs. The Taxpayer appealed to the Customs Appeal Tribunal ("**Tribunal**").
- The Tribunal allowed the Taxpayer's appeal and classified the Fish Roes under Tariff Code 1604.20.9900. Aggrieved by the Tribunal's decision, the Customs appealed to the High Court.

Main Issue

Whether the Tribunal was correct in the classification of the Fish Roes under tariff code 1604.20.9900 as "*Other prepared or preserved fish*" or it should be under tariff code 1604.32.0000 as "*Caviar Substitutes"*, as contended by the Customs?

The Taxpayer's Contentions

The Fish Roes were properly classified under Tariff Code 1604.20.9900 as "Other prepared or preserved fish" for the following reasons:

- The Taxpayer relied on the WCO Explanatory Notes, arguing that "caviar substitutes" referred to products consumed as caviar and prepared from the eggs of fish other than sturgeon;
- The Fish Roes were not consumed as caviar or in a similar manner, because they were not sold as caviar substitutes, there was no evidence that consumers purchased or consumed them as caviar and the Customs' witness had failed to recognise the differences in the manner of consumption between caviar/caviar substitutes and the Fish Roes; and
- "Fish roe" was a broad description of fish eggs and that not all fish roe constituted caviar or caviar substitutes. "Caviar substitutes" constituted a specific category with distinct characteristics, processing methods and modes of consumption.

The Customs' Contentions

- The Customs relied on the WCO Explanatory Notes, which described "caviar substitutes" as products prepared from the eggs of fish other than sturgeon which had been washed, cleaned of adherent organs, salted and sometimes pressed or dried.
- The Customs further relied on articles and publications in support of its contention that the characteristics and descriptions of products such as Tobikko and frozen Mentaiko were consistent with products that could be regarded as substitutes for caviar.
- In substance, the Customs contended that the nature and processing of the Fish Roes, together with the description of "caviar substitutes" in the Explanatory Notes, supported classification under Tariff Code 1604.32.0000. The Fish Roes satisfied the relevant requirements because they were prepared from fish eggs other than sturgeon which had undergone processes such as washing, cleaning, salting and, in some cases, pressing or drying.

The High Court's Decision

The High Court dismissed the Customs' appeal and held that the Fish Roes were correctly classified under Tariff Code 1604.20.9900 as "*Other prepared or preserved fish*" for the following reasons:

- The words "*products consumed as caviar*" in the WCO Explanatory Notes were significant. Although the Fish Roes had been processed, seasoned and preserved, such processing alone was insufficient to classify the products as "*caviar substitutes*", as the products must also satisfy the specific requirement that they are "consumed as caviar";
- The evidence before the Tribunal established that the Fish were proven not to be consumed as caviar, and nothing in the menu indicated that they were sold as caviar substitutes;
- The classification of the products was based on a comprehensive analysis of the fish roes, including their nature, characteristics and processing methods. Although all the products were derived from fish eggs, they originated from different species of fish and exhibited distinct characteristics. Accordingly, they did not fall within the scope of *"caviar substitutes"* as defined in the WCO Explanatory Notes.

13. Ketua Pengarah Hasil Dalam Negeri v Winning Paramount Sdn Bhd
(Rayuan Sivil No.: W-01(IM)-65-02/2025)

Brief Facts

- The taxpayer was principally engaged in the development, leasing and operation of warehouses and related facilities. In 2019, the taxpayer disposed of a leasehold land and duly submitted an RPGT return, which was accepted by the Revenue.
- In 2020, the Inland Revenue Board ("**IRB**") issued a Certificate of Clearance, exempting the gains from RPGT pursuant to the ***Real Property Gains Tax (Exemption) Order 2001***.
- Subsequently, in 2024, the Revenue recharacterised the gains as income chargeable under Section 4(a) of the ITA, resulting in additional assessments for the YAs 2020 and 2021.
- The taxpayer commenced judicial review proceedings seeking, *inter alia*, to quash the additional assessments.
- The High Court granted leave under ***Order 53*** of the ***Rules of Court 2012*** and, in granting leave, also granted a stay of enforcement of the additional assessments pending the determination of the judicial review application **("Stay Order")**.
- The IRB appealed to the Court of Appeal against the Stay Order.

Main Issue

Whether the High Court erred in granting the Stay Order?

The Taxpayer's Contention

- The High Court correctly distinguished a stay of proceedings from an injunction. A stay order merely suspended the decision under review temporarily, whereas an injunction acted in personam to restrain or command a specific act. The statutory prohibitions against issuing injunctions against the Government under ***Section 29(2)*** of the ***Government Proceedings Act 1956*** and ***Section 54(d)*** of the ***Specific Relief Act 1950*** did not curtail the High Court's power to grant a stay under ***Order 53 Rule 3(5)*** of the ***ROC 2012.***
- The "pay first, dispute later" principle under Sections 103 and 106 of the ITA did not oust the inherent jurisdiction of the High Court to grant a stay in judicial review proceedings. As affirmed by the Federal Court in ***Dato' Sri Mohd Najib bin Hj Abd Razak v Public Prosecutor and other appeals*** **[2022] 5 MLJ 85**, the court's judicial power of intervention by way of a stay remained available and intact.
- The "special circumstances" test did not apply to ***Order 53*** judicial review stay applications. The proper test in judicial review was whether a stay was necessary to preserve the status quo, prevent the proceedings from being rendered nugatory, and ensure the taxpayer is not deprived of the full benefits of a successful challenge.

The IRB's Contentions

- Under ***Sections 103, 103B*** and ***106*** of the ITA, tax assessed became immediately due and payable upon service of the notice, regardless of any pending judicial review or appeal.

- The High Court erred in departing from the principle of "pay first, dispute later".

- Allowing a stay undermined the statutory tax recovery mechanism and risked opening floodgates to delay paying taxes.

- The High Court erred in failing to apply the "special circumstances" test required for granting a stay.

The Court of Appeal's Decision

The Court of Appeal unanimously dismissed the IRB's appeal and upheld the High Court's decision, which is summarised as follows:

- Stay in a judicial review application did not tantamount to an injunction;
- Although ***Sections 103, 103B*** and ***106 ITA*** established the statutory "pay first, dispute later" framework, these provisions did not oust the High Court's power to intervene by way of a stay.
- The applicable test for a stay was whether:
    - Whether there was an arguable case or *bona fide* serious issue to be tried;
    - Whether the applicant was likely to suffer irreparable prejudice if the stay was not granted;
    - Whether the balance of equities favoured the granting of a stay;
    - Whether there were any policy, equitable or public interest considerations against the granting of a stay.

14. Southern Power Generation Sdn Bhd v Director General of Inland Revenue (2025) MSTC ¶30-841 (HC)

Brief Facts

- The Taxpayer was an independent power producer that commenced construction of a 1,440MW combined cycle gas-fired power plant in Pasir Gudang, Johor, financed through RM3.665 billion in Sukuk.
- Part of the Sukuk proceeds was invested in unit trust funds.
- Following a tax audit, the IRB raised notices of assessment for the YAs 2017 to 2021, amounting to approximately RM78.5 million.
- The Taxpayer challenged the assessments by way of judicial review, alleging, among others, errors in the classification of Energy Test Payments **("ETP"),** deductibility of Sukuk interest, tax credits on dividends, and treatment of provisions for liquidated damages and restoration costs.
- Leave was granted by the High Court, and the matter proceeded to the substantive stage.

Main Issues

- Whether the Respondent acted unlawfully in taxing the ETP under ***subsection 4(f)*** instead of ***Subsection 4(a)*** of the Income Tax Act 1967;

- Whether the Respondent lawfully disallowed the Applicant's claim for the deduction of Sukuk interest expenses under ***subparagraph 33(1)(a)*** of the ITA;

- Whether the Respondent acted unlawfully in disallowing the Applicant's claim for a tax credit under ***Section 110(9A)*** of the ITA in respect of unit trust dividends; and

- Whether the Respondent had any legal basis to disallow alleged deductions for provisions for liquidated damages and restoration costs under ***Subsection 33(1)*** of the ITA

The Taxpayer's Contentions

- The ETP constituted business income under ***Section 4(a)***, as it arose from electricity generated and sold during the testing and commissioning of the power plant, which formed part of the Taxpayer's business activities.

- The Sukuk interest expenses were deductible under ***Section 33(1)(a),*** as the Sukuk proceeds were used to finance the power plant and its income-producing operations. The Taxpayer also denied any alleged double deduction.

- The Taxpayer was entitled to tax credits under ***Section 110(9A)*** for unit trust dividends, having included the dividends in its gross income and produced dividend vouchers evidencing the tax suffered at the fund level. There was no statutory requirement to prove physical remittance of the dividends. Section 110(9A) did not require proof that the distributions had been physically remitted into its bank accounts.

- The provisions for liquidated damages and restoration costs were never claimed as tax deductions, having been added back in the tax computation. The IRB therefore had no basis to disallow them.

The Revenue's Contention

- The ETP arose before the commencement of the Taxpayer's business and was therefore properly assessed as residual income under ***Section 4(f).***

- The Sukuk interest was capital in nature, and the Taxpayer's audited accounts indicated a potential double deduction.

- The Taxpayer failed to provide sufficient evidence of remittance of the unit trust dividends into its bank account and was therefore not entitled to the ***Section 110*** tax credit.

- The provisions for liquidated damages and restoration costs were contingent provisions and had not been incurred in the production of gross income, and therefore were not deductible under ***Section 33(1***).

- The dispute involved factual and technical matters falling within the SCIT's jurisdiction. The judicial review application was therefore premature, duplicative and an abuse of process given the statutory appeal under Section 99(1) of the ITA.

The High Court's Decision

- The Court allowed the Taxpayer's judicial review application and quashed the notices of assessment for the YAs 2017 to 2021 on the following grounds:

  - ETP charges were business income under ***Section 4(a)***, not ***Section 4(f)*** because the Taxpayer's business commenced when it executed the PPA with TNB and committed itself to the income-producing activity. Electricity generated during testing arose from the same commercial activity as electricity generated after commercial operations commenced. The ETP was therefore an ordinary trading receipt, notwithstanding that it was received during the testing phase.

  - The Sukuk interest expenses were deductible under ***Section 33(1)(a),*** as the Sukuk proceeds were used to finance the Taxpayer's income-producing business. The alleged double deduction was unsupported.

  - The taxpayer was entitled to the tax credits under ***Section 110(9A).*** This was because the taxpayer had satisfied the two statutory requirements:

i. the distributions were included in its gross income and tax had already been borne at the fund level
ii. the dividend vouchers were sufficient evidence. The IRB could not impose an additional requirement to prove remittance into the taxpayer's bank accounts when no such requirement appeared in the ITA.

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Level 16, Menara 1Dutamas
Solaris Dutamas
No.1 Jalan Dutamas 1
50480 Kuala Lumpur