KPMG Budget Seminar - Recent Tax Developments

Speaker:

Amira Ahmad Azhar
Partner, Tax, SST & Customs Practice
amira@rdslawpartners.com

1. Na'imah binti Abdul Khalid v Ketua Pengarah Hasil Dalam Negeri (BA-25-116-08/2024)

Brief Facts

- The taxpayer elected for joint assessment with her husband pursuant to Section 45 of the Income Tax Act 1967 ("**ITA**") for YA 2018.
- In June 2023, the IRB investigated her late husband, including the issue of the taxpayer's shareholding in a company.
- The taxpayer's husband entered into a settlement for RM31.498 million in respect of YAs 2017 to 2019.
- However, in January 2024, the IRB commenced a fresh inquiry against the taxpayer concerning the same issue of shareholding and the foreign assets used as collateral.
- The taxpayer explained that the assets were situated overseas, had been acquired in the 1990s and had generated no income received in Malaysia.
- The IRB nevertheless treated the assets' 2018 market value as undeclared income and issued an additional assessment of approximately RM313 million for YA 2018.

Main Issues

- Whether the taxpayer could be separately assessed after electing for joint assessment with her late husband.
- Whether the assessment amounted to double taxation because the same subject matter had previously been assessed and settled.
- Whether the IRB could treat the market value of foreign assets as taxable income for YA 2018.
- Whether the IRB could require documents relating to assets acquired more than 20 years earlier.
- Whether judicial review was available despite the availability of alternative remedy provided under the statute.

The Taxpayer's Contentions

- Pursuant to Section 45(4) of the ITA, the taxpayer argued that her income for YA 2018 had already been aggregated with her late husband's income. The separate assessment was therefore ultra vires, as "shall" imposed a mandatory joint assessment regime.

> (4) Where under subsection (2) the total income of the wife who elects falls to be aggregated with that of her husband or the total income of the husband who elects falls to be aggregated with that of his wife, for a year of assessment, the wife who elects or the husband who elects, as the case may be, shall be treated as having no chargeable income for that year.

- The IRB had already investigated and settled the same issue against her late husband for the same YA.
- The subsequent assessment amounted to double taxation, contrary to ***Ketua Pengarah Hasil Dalam Negeri v Kind Action Sdn Bhd*** **[2025] 3 MLRA 403**, which recognised the illegality of taxing the same transaction twice and the potential application of estoppel against the IRB.

- The ITA is a statute to impose tax on income of an individual and not on their wealth.

- Sections 78 - 82 confer information-gathering powers but do not authorise the IRB to treat the market value of an asset as taxable income.

- Pursuant to Section 3 of the ITA, only **income accruing in, derived from or received in Malaysia** is taxable. The IRB failed to identify any Malaysian-sourced income and instead relied on the 2018 market value of assets acquired decades earlier.

- Section 82A requires records to be retained for seven years. The taxpayer argued that the IRB could not circumvent this limit by demanding documents dating back to the 1990s under Sections 78 - 81.

The Revenue's Contentions

- The IRB argued that the judicial review application was an abuse of process because the taxpayer had an alternative remedy under Section 99(1) of the ITA and had already lodged a Form Q appeal with the Special Commissioners of Income Tax (SCIT).

- It contended that the taxpayer had to establish exceptional circumstances before the High Court could intervene through judicial review and that the dispute involved factual issues.

- According to the IRB, the value of the foreign assets demonstrated the existence of undeclared income and justified the additional assessment. Its requests for information and documents under Sections 78 to 80A were, it said, valid exercises of its statutory powers.

- The IRB further argued that the taxpayer's failure to provide the requested documents entitled it to raise the assessment based on the value of the assets as taxable income.

The High Court's Decision

- The High Court allowed the judicial review and quashed the additional assessment for illegality and irrationality. The assessment amounted to double taxation because its basis had already been assessed and settled under the joint assessment with the taxpayer's late husband.

- The ITA taxes income, not wealth, and does not permit the market value of an asset to be deemed as the taxpayer's income. The foreign assets did not constitute Malaysian taxable income without evidence that income derived from them had been received in Malaysia.

- Requiring records relating to assets acquired decades earlier was irrational because the statutory record-retention period was only seven years.

- Judicial review was available despite the SCIT appeal because the alleged illegality constituted exceptional circumstances warranting the High Court's intervention.

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

Brief Facts

- The Taxpayer is an independent power producer established to generate and supply electricity to Tenaga Nasional Berhad ("**TNB**"). In 2017, it commenced constructing a 1,440MW gas-fired power plant in Pasir Gudang, financed through RM3.665 billion in Sukuk. Part of the unutilised Sukuk proceeds was temporarily 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.

Main Issues

- Whether the ETP was business income under Section 4(a), or other income under Section 4(f), of the ITA;
- Whether the Sukuk interest expenses were deductible under Section 33(1)(a) of the ITA;
- Whether the Taxpayer was entitled to tax credits under Section 110(9A) for unit trust distributions; and
- Whether the Revenue could disallow provisions for liquidated damages and restoration costs when no deductions had been claimed.

The Taxpayer's Contentions

- The ETP constituted business income under Section 4(a) of the ITA. The payments were made by TNB for electricity generated and supplied during the testing and commissioning phase.

- The ETP was paid for electricity generated and supplied to TNB during the testing phase and was therefore business income under Section 4(a).

- The Sukuk interest expenses were deductible under Section 33(1)(a), as the Sukuk was issued to finance the development and operation of the power plant. The corresponding financing costs were incurred wholly and exclusively in producing gross income. Interest does not become capital expenditure merely because the borrowed funds were used to acquire or construct a capital asset.

- The Taxpayer was entitled to tax credits under Section 110(9A) because the unit trust distributions were included in its gross income and the dividend vouchers showed that tax had already been borne at the fund level. Section 110(9A) did not require proof that the distributions had been physically remitted into its bank accounts.

The Revenue's Contention

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

- The Sukuk interest was capital in nature because the Sukuk proceeds were used to finance the construction of the power plant.

- 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 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:

- The ETP was taxable 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 financing costs were deductible under Section 33(1)(a) as the Sukuk proceeds were employed to develop and operate the power plant from which the taxpayer derived its income. The related financing expenses therefore fell within Section 33(1)(a) as interest on money borrowed and employed in producing gross income or acquiring assets used for that purpose. Interest does not become capital expenditure merely because the borrowings financed the acquisition or construction of a capital asset.

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

  (1) the distributions were included in its gross income and tax had already been borne at the fund level

  (1) 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.

3. LKP Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (SCIT)

Brief Facts

- The taxpayer was the surrendering company under the group relief provisions in Section 44A of the ITA, while a related company (LIPSB) was the claimant company.
- Following a tax audit, the IRB disallowed interest expenses relating to a debt settlement arrangement, reducing the adjusted losses available to be surrendered by the taxpayer to LIPSB.
- The IRB issued additional assessments against LIPSB under Section 44A(9)(a) to recover the tax arising from the excessive group relief claimed.
- However, subsequently, the IRB also imposed a penalty on the taxpayer under Section 44A(9)(b) in respect of the same group relief adjustment.
- Aggrieved by the penalty imposed under Section 44A(9)(b), the taxpayer appealed to the SCIT.

Main Issues

- Whether the IRB has any legal basis to invoke Section 44A(9)(b) of the ITA to impose a penalty against the taxpayer (the surrendering company) via Form G, when it has simultaneously invoked Section 44A(9)(a) of the ITA to issue a Notice of Additional Assessment (Form JA) against the claimant company, LIPSB?

- Whether the statutory term "or" connecting subsections 44A(9)(a) and 44A(9)(b) should be interpreted disjunctively in accordance with its ordinary and plain meaning?

Section 44A(9) is as follows:

(9) Where—

(a) in the basis year for a year of assessment the Director General discovers that the adjusted loss as mentioned in subsection (4) ought not to have been deducted in arriving at the total income of the claimant company, the Director General may in that year or within five years after its expiration make an assessment or additional assessment in respect of that company in order to make good any loss of tax; or

(b) the surrendering company gives an incorrect information in the return furnished under section 77A in respect of the amount of adjusted loss surrendered, the Director General may, by a notice in writing, require the surrendering company to pay a penalty equal to the amount of tax which had or would have been undercharged by the claimant company in consequence of the incorrect information and where the surrendering company is dissatisfied with the penalty, the surrendering company may within thirty days of being notified appeal to the Special Commissioners as if the notice were a notice of assessment and the provision of this Act relating to appeals shall apply accordingly with any necessary modifications.

The Taxpayer's Contention

- The IRB erred in law by concurrently invoking both Sections 44A(9)(a) and Section 44A(9)(b) of the ITA.
- The word "or" connecting subsections 44A(9)(a) and 44A(9)(b) must be interpreted disjunctively, requiring the Respondent to elect either an additional assessment on the claimant company under paragraph (a) or a penalty on the surrendering company under paragraph (b).
- Parliament intended for the two remedies under Section 44A(9) to be mutually exclusive, preventing double taxation or double penalty on the same group relief transaction.
- Having issued a Form JA against the claimant company under Section 44A(9)(a), the IRB was precluded from imposing a Form G penalty against the Taxpayer under Section 44A(9)(b).
- The penalty imposed under Form G was arbitrary, illegal and lacked statutory foundation due to the IRB's misapplication of Section 44A(9).

The Revenue's Contention

- Sections 44A(9)(a) and 44A(9)(b) serve distinct purposes, with paragraph (a) applying to the claimant company to recover undercharged tax, and paragraph (b) applying to the surrendering company as a penalty for furnishing incorrect information.
- Applying a purposive interpretation under Section 17A of the Interpretation Acts 1948 and 1967, the statutory word "or" connecting subsections (a) and (b) should be read conjunctively ("**and**") rather than disjunctively.
- A disjunctive interpretation would lead to absurd results, as the undercharged tax under paragraph (a) must first be determined before the penalty under paragraph (b) can be calculated.
- Applying both provisions would give effect to the legislative intention of safeguarding the IRB against improperly claimed group relief.

The SCIT's Decision

- The word "or" connecting paragraphs (a) and (b) of Section 44A(9) must be read disjunctively and the IRB is not allowed to invoke both paragraphs simultaneously against the same group relief adjustment.
- Having issued additional assessments against LIPSB under Section 44A(9)(a), the IRB could not subsequently impose a penalty on the taxpayer under Section 44A(9)(b) for the same adjustments made.
- The objective of protecting the IRB cannot override the express wording of the legislation. Concurrent application would result in unwarranted double recovery of the same tax shortfall.
- The SCIT allowed the taxpayer's appeal and ordered that the Form G imposing the Section 44A(9)(b) penalty against the taxpayer to be set aside.

4. CGL Co Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

(2026) MSTC 10-192 (SCIT)

Brief Facts

- The Taxpayer was a licensed moneylender in the business of moneylending, which includes the receiving of loans from the creditors and giving out loans to the debtors.
- In the YA 2017, the Taxpayer advanced two types of loans:
  a) Interest-bearing loans: recorded as "Loan Receivables", on which interest was charged at rates of between 5.25% and 5.68% per annum and duly returned as taxable income;
  b) Interest-free loans: recorded separately as "Other Receivables", on which no interest was charged at all. The loans were advanced to 139 individuals and companies, who were all third parties.
- 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 ITA, the Revenue had authority under Section 24(5) of the ITA to deem the interest-free loans as taxable income of the Taxpayer for YA 2017?

- 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) of the 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.
- 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 imposition of a 4% interest rate had no statutory basis and was merely based on the Revenue's own formula.

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 a licensed moneylender thus the loans were made in the ordinary course of that business.
- By virtue of Section 24(5) of the ITA, the interest-free loans generated receivable interest income 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. In absence of written agreements for the interest-free loans, the Respondent has rightly imposed the deemed interest of 4 % interest rate for the interest-free loans in calculating the additional tax.
- 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, based on the evidence adduced, the SCIT accepted that the loans in question did not generate any return capable of constituting taxable income under Section 4(a) of the ITA.
- There is no express provision under the ITA which empowers the Revenue to deem interest-free loans as taxable income. Section 24(5) of the ITA does not authorise the Revenue to deem interest-free loans as taxable interest income. The court cannot read or imply into an express provision of a statute if Parliament does not legislate the intended deemed provision.
- Further, Sections 140A and 140B of the ITA are not applicable in the present case as the borrowers of the interest-free loans are not associated persons.
- Thirdly, the Revenue's action in imposing a 4% interest rate as "deemed interest" for the interest-free loans has no basis in law.
- Lastly, the SCIT clarified that it was not the proper forum to adjudicate any issues of compliance under the Moneylenders Act 1951.

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

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

Brief Facts

- The Taxpayer is a company incorporated in Malaysia with the principal activity is of investment holding.
- In 1994, the Taxpayer purchased a piece of Land holding it as its investment property.
- Subsequently, in 2013, after holding the land as its investment property for 19 years, the Taxpayer disposed the said Land to Mega Daiman Sdn Bhd at a price of RM13,108,215.00.
- 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 in 2014.
- In 2016, 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 SCIT ruled in favour of the Taxpayer, and the IRB subsequently appealed the decision to the High Court.

RDS

The Taxpayer's Contention

- There are no badges of trade present. Mere realisation of capital appreciation is not income and falls outside the ambit of income tax.
- The Land was always treated as an investment property in the taxpayer's books.
- 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, as the Land was held as investment for 19 years.
- 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 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.
- 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 taxpayer's dominant purpose in the acquisition of the Land was to resell at a profit and it was the taxpayer's burden to establish that the subject Land was acquired with the intention of using them as a capital asset.
- The Land was partitioned and disposed off in 12 pieces. It is clear that the taxpayer's intention was to make profit.
- 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 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 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.

6. Ketua Pengarah Hasil Dalam Negeri v Exceptional Landmark Sdn Bhd (W-01(A)-376-08/2025) (COA)

Brief Facts

- The Taxpayer was a property investment company. In 2012, the Taxpayer purchased a warehouse for RM23.6 million from a real estate investment trust ("**REIT**"). The taxpayer undertook some repair and maintenance work to make the warehouse tenantable and eventually rented it out to a multinational company as a long-term tenant.

- Approximately two years later, in 2014, the Taxpayer was approached by the same REIT to repurchase the warehouse and the Taxpayer sold the warehouse for RM52.5 million, double its acquisition price.

- The Taxpayer submitted RPGT return which the Revenue issued a certificate of clearance exempting the Taxpayer from payment of RPGT for the disposal pursuant to the *Real Property Gains Tax (Exemption) (No. 4) Order 2003* ("**RPGT Exemption Order**").

- Subsequently, the Revenue changed its mind and without discharging the RPGT certificate of clearance issued earlier, proceeded to raise a notice of additional assessment pursuant to the ITA totalling RM7.23 million.

- The RPGT Exemption Order was issued by the Minister of Finance pursuant to the RPGTA, which exempts gains from the disposal of property to a REIT approved by the Securities Commission:

Exemption

2. The Minister exempts any person from the payment of real property gains tax in respect of chargeable gains accruing on the disposal of any chargeable assets to a Real Estate Investment Trust (REIT) or a Property Trust Fund (PTF) which is approved by the Securities Commission.

Made 17 November 2003
[Perb. CR(8.09) 294/6/4-9 (Sj. 5) Vol. 3 (Sk. 4);
LHDN. 01/35/(S)/42/23/7; PN(PU²)325/II]

On behalf and in the name of the Minister of Finance

DR. NG YEN YEN
Deputy Minister of Finance II

- Both the SCIT and the High Court ruled in favour of the Taxpayer. The IRB subsequently appealed to the Court of Appeal.

Main Issues

- Whether the gains from the disposal were taxable under the RPGT 1976 or the ITA 1967?
- Whether there was a lawful basis for the DGIR to disregard the RPGT Exemption Order (No.4) 2003?

The High Court's Decision

- The High Court dismissed the Revenue's appeal and upheld the learned SCIT's decision.
- The disposal of the Warehouse did not exhibit badges of trade and therefore did not constitute a trading transaction giving rise to income chargeable under Section 4(a) of the ITA 1967.
- The High Court held that the Revenue had no lawful basis to disregard the RPGT Exemption Order issued by the Minister pursuant to Section 9(3) of the RPGTA in respect of the disposal of the Warehouse.
- There was no factual or legal basis to justify the issuance of penalty under Section 113(2) of the ITA. There is no compelling evidence that the Taxpayer had made an incorrect return by omitting, understating any income, or submitting any erroneous information.

The Taxpayer's Contention

- It is trite law that financial gains from the disposal of property would only be taxable under Section 4(a) of the ITA if the taxpayer had engaged in a trade or an adventure like a trade.

- The Taxpayer maintained that the sale of the warehouse did not amount to a trading activity as the property had been held as a long-term investment. The disposal was prompted solely by an unsolicited offer by the buyer. It has been established by the learned SCIT that the relevant directors had abstained and continued to abstain from the discussion of the sale of the Warehouse to the REIT.

- The Taxpayer merely undertook repair and maintenance work to make the warehouse tenantable and secured a multinational company as a long-term tenant under an 8.5-year lease.

- The Revenue issued additional assessments under the ITA without first discharging the Certificate of Clearance, which amounts to double taxation. The Revenue had also disregarded the RPGT Exemption Order, issued by the Minister of Finance which exempts gains from the disposal of property to a REIT.

The Revenue's Contention

- The Revenue contended that the disposal of the warehouse demonstrated badges of trade and the Taxpayer's intention was to sell at a profit.

- The proceeds of the disposal received by the Taxpayer are a series of activities conducted for the realisation of income from carrying on a business and are taxable under Section 4(a) of the ITA.

- The Revenue contended that the Taxpayer was a company with a paid-up capital of only RM2, made a substantial profit when it sold the high-value commercial property it acquired and held for just two years. The Taxpayer then distributed the proceeds to shareholders and became effectively dormant thereafter.

- The warehouse was repurchased by the same REIT that sold it and the Taxpayer's directors had control in the REIT.

The Court of Appeal's Decision

- The Court of Appeal unanimously dismissed the Revenue's appeal, upholding the findings of the Special Commissioners of Income Tax and the High Court that the gain from the disposal of a warehouse to a REIT was not subject to income tax.

- The Court reaffirmed that the mere fact that a property is sold shortly after acquisition does not, by itself, make the resulting gain taxable as trading income. The badges of trade must be assessed cumulatively and holistically, having regard to the taxpayer's conduct and the circumstances surrounding the acquisition and disposal.

- An attractive, unsolicited offer can provide a legitimate commercial reason for an investor to realise an investment, without necessarily transforming that investment into trading stock.

7. 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 YA 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 ITA.
- 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.

Issue

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.

8. Courts (Malaysia) Sdn Bhd (formerly known as Courts Mammoth Sdn Bhd) v Ketua Pengarah Hasil Dalam Negeri
(2026) MSTC 30-918 (HC)

Brief Facts

- The Taxpayer was a major retailer of furniture, electrical and electronic products. As part of its business, the Taxpayer offered customers the FlexiCredit Plan ("**Scheme**"), which allowed purchases to be paid in monthly installments. Installments comprised the principal amount/purchase price and service charges akin to interest.

- A substantial portion of the Taxpayer's sales was conducted through the Scheme. Customers entering the Scheme were required to execute a Chattel Agreement.

- Prior to YA 2013, the IRB accepted the Taxpayer's treatment of the interest income as business income under Section 4(a) of the ITA. Following the introduction of Section 4B and amendments to Section 24(5), the IRB reclassified the interest and late payment charges as interest income under Section 4(c).

- The SCIT upheld the IRB's treatment. The Taxpayer appealed to the High Court.

Main Issue

- Whether the interest derived from the Scheme was business income under Section 4(a) of the ITA or interest income under Section 4(c) of the ITA?

- Whether the Scheme satisfied the 1st limb of Section 24(5) of the ITA, such that the interest would be treated as business income?

Non-business income

4B. For the purpose of section 4, gains or profit from a business shall not include—

(a) any interest that first becomes receivable by a person in the basis period for a year of assessment other than interest where subsection 24(5) applies; and

(b) gains or profits from the disposal of capital asset other than gains or profits where subsection 24(1) applies.

Section 4B of the ITA

Basis period to which gross income from a business is related

24. (1) Where in the relevant period a debt owing to the relevant person arises in respect of—

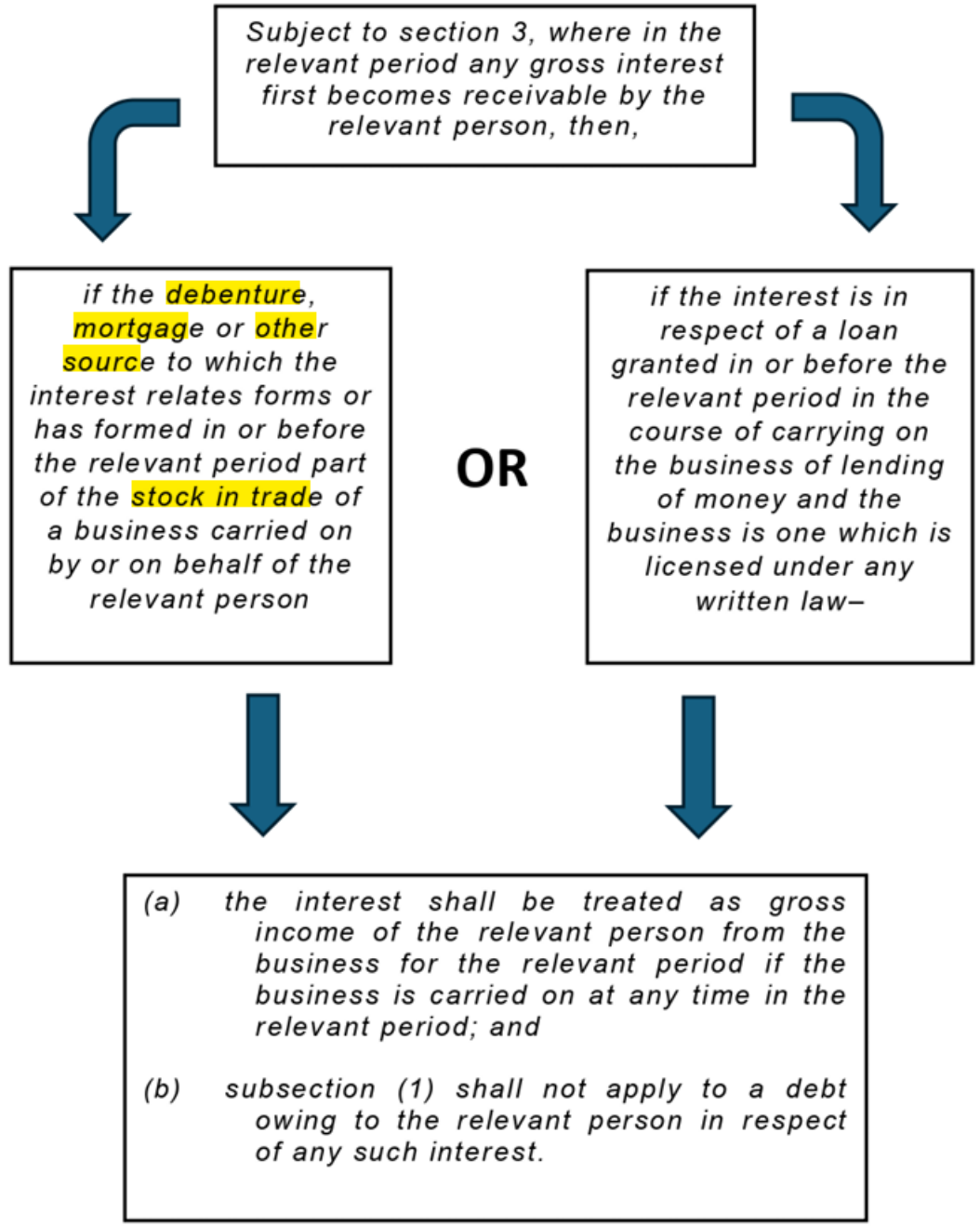
(5) Subject to section 3, where in the relevant period any gross interest first becomes receivable by the relevant person, then, if the debenture, mortgage or other source to which the interest relates forms or has formed in or before the relevant period part of the stock in trade of a business carried on by or on behalf of the relevant person, or if the interest is in respect of a loan granted in or before the relevant period in the course of carrying on the business of lending of money and the business is one which is licensed under any written law—

(a) the interest shall be treated as gross income of the relevant person from the business for the relevant period if the business is carried on at any time in the relevant period; and

(b) subsection (1) shall not apply to a debt owing to the relevant person in respect of any such interest.

Section 24(5) of the ITA

RDS


Subject to section 3, where in the relevant period any gross interest first becomes receivable by the relevant person, then,
if the debenture, mortgage or other source to which the interest relates forms or has formed in or before the relevant period part of the stock in trade of a business carried on by or on behalf of the relevant person
OR
if the interest is in respect of a loan granted in or before the relevant period in the course of carrying on the business of lending of money and the business is one which is licensed under any written law–
(a) the interest shall be treated as gross income of the relevant person from the business for the relevant period if the business is carried on at any time in the relevant period; and
(b) subsection (1) shall not apply to a debt owing to the relevant person in respect of any such interest.

The Taxpayer's Contentions

- The amendment to Section 24(5) of the ITA, introduced in the YA 2013, only affected the second limb. Since the Interest from the Scheme fell within the first limb, the amendment should not have altered its treatment as business income under Section 4(a).
- Interest income from the Scheme fell within the 1st limb of Section 24(5) and therefore qualified as business income under Section 4(a):
  - ✓ The Scheme was an "other source" within the meaning of Section 24(5). Applying ejusdem generis, "other source" should not be narrowly confined to conventional loan-security instruments.
  - ✓ A debenture and mortgage share the common characteristics of an obligation to repay money, repayment over a specified period, and interest accruing over time.
  - ✓ The Scheme had the same essential characteristics: customers obtained products on instalment terms; and interest accrued over the payment period.
  - ✓ The Scheme formed part of the Taxpayer's stock-in-trade, as credit sales were integral to the Taxpayer's retail business. The Scheme was not a standalone financing activity; it was interrelated with the sale of the Taxpayer's products. Approximately 70% of the products were sold on credit through the Scheme.

The Revenue's Contention

- Section 24(5) applied only to interest arising from lending activities. The Taxpayer was not in the moneylending business. The service charges and late payment interest did not arise from any loan or lending activity. The Scheme was therefore not an “other source” within the meaning of Section 24(5).

- The Taxpayer’s actual stock-in-trade was the furniture, electrical and electronic products, not the Scheme or the resulting debts. The Scheme merely constituted a payment facility offered to customers purchasing the Taxpayer’s products.

- Accordingly, the interest income fell outside Section 24(5) and was properly taxable under Section 4(c).

The High Court's Decision

The High Court allowed the Taxpayer's appeal and held that the interest qualified as business income under Section 4(a):

- There was no dispute that the 2nd limb was not relevant as the Taxpayer was not involved in the business of moneylending.

- The interest arising from the Scheme fell under the scope of the first limb of Section 24(5):
  - ✓ "Other source" is not confined to conventional lending instruments.
  - ✓ The Court accepted that *ejusdem generis* was the correct interpretative principle, but held that the SCIT applied it too narrowly. "Debenture" and "mortgage" share common characteristics beyond simply being loan-security instruments. The relevant common characteristic was an obligation to repay money over a specified period, with interest accruing over time. The Scheme possessed these same characteristics.

- The Scheme need only "form part of" stock-in-trade
  - ✓ The Court rejected the SCIT's interpretation that the Scheme itself had to constitute the Taxpayer's stock-in-trade.
  - ✓ Section 24(5) requires the source to **"***form or have formed … part of the stock in trade***"**.
  - ✓ There is a distinction between constituting the stock-in-trade, and forming part of the stock-in-trade. The Scheme was inseparable from the Taxpayer's sale of products. Approximately 70% of products were sold through the Scheme.

9. 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.

10. *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 successfully challenged the additional assessment before the SCIT, which ruled in the Taxpayer's favour.

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.

RDS

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. Thus, the Taxpayer's grant of the Call Option constituted a disposal of rights.

- 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 Call Option Fee was made by HMSB to the Taxpayer in 2016 prior to the 2019 exemption letter. At the material time, the Taxpayer acted on the conditions as issued and could not have foreseen that those conditions would later be revised. Thus, the 2019 exemption letter cannot be applied retrospectively.

- At the material time, the taxpayer had fulfilled all the conditions stipulated under the 2016 exemption letter.

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 to establish that the adjacent land was value-added land. Thus, the Taxpayer failed to satisfy the requirement that value must have been added to the land as a condition for the exemption.
- 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 vary or revoke the 2016 exemption approval retrospectively, and the 2019 letter clarified the scope of the exemption.

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.

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

(Application No.: NA-25-6-05/2025)(HC)

Brief Facts

- The Taxpayer manufactured cultured milk drinks marketed as Yakult Ace and Yakult Ace Light ("**Products**"). The Products contained over 30 billion live Shirota strain bacteria in each 80 ml bottle, along with sugar, skim milk powder, glucose and permitted flavouring. The Products were 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, the Products were classified under tariff code 0403.90.910 under the Customs Duties 2002 (equivalent to tariff code 0403.90.9000 under the Customs Duties Order 2022).

- However, 10 years later, the Customs informed the Applicant that the Products should be classified under tariff code 2202.99.5000 as beverages instead.

- Aggrieved by the Customs' decision, the Taxpayer filed a judicial review application.

- 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, 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 on, inter alia, 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 the Customs' reclassification decision on the following grounds:

- The Products was properly classified as fermented milk under tariff code 0403.90.9000 which covered "yoghurt… and other fermented or acidified milk and cream."
- The Court found that the Products' core composition remained that of fermented milk, comprising live bacteria cultures, skimmed milk powder, sugar and flavouring, notwithstanding the addition of water.
- Crucially, the Court considered the essential character of the Products to be that of fermented milk associated with gut-health benefits, rather than a beverage consumed merely to quench thirst.
- The Court also took into account consumer perception, observing that the general consumer associates "Yakult" with a fermented milk product intended to provide benefits to intestinal health, rather than an ordinary beverage.
- Accordingly, the addition of water did not alter the essential character of the Products as fermented milk.

Thank you

Have any questions about corporate tax? Let us help you.

Follow us on all social media platforms for more legal insights.

www.rdslawpartners.com

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

RDS
ADVOCATES & SOLICITORS