

	KUALA LUMPUR HIGH COURT
	YA DATO' AMARJEET SINGH A/L SERJIT SINGH
	17 NOVEMBER 2023

SECTION 60(3) INCOME TAX ACT 1967

ZURICH LIFE INSURANCE MALAYSIA BERHAD
(Formerly Zurich Insurance Malaysia Berhad)
V.
DIRECTOR GENERAL OF INLAND REVENUE
CIVIL APPEAL NO.: WA - 14 – 15 – 06 / 2022

This is an appeal by the Taxpayer against the decision of the Special Commissioners of Income Tax (“SCIT”) on 01.06.2022 which dismissed the Taxpayer’s appeals by way

of Notices of Appeal for the Years of Assessment (“YAs”) 2011 and 2012. The SCIT agreed with the Director General of Inland Revenue (“DGIR”) that the income from Menara MAA and Casa Rachado Beach Resort are investment income from the Life Fund which subject to specific tax treatment under Section 60 Income Tax Act 1967 (“ITA 1967”) and taxable under Section 60(3) ITA 1967. In brief, the Taxpayer is engaged principally in the underwriting of life insurance, including investment-linked and annuity business, and all classes of general insurance business.

It is the Taxpayer’s contention that the income received from sub-letting out of Menara MAA and resort operation of Casa Rachado Beach Resort are business sources, thus the income received ought to be charged to tax under Section 4(a) ITA 1967. The source of sub-letting from Menara MAA and the resort operation of Casa Rachado Beach Resort are business income based on the definition of the word "business" in Section 2(1) ITA 1967.

The Taxpayer argued that rental business and insurance business are different types of business. Section 60 ITA 1967 does not preclude the application Section 33(1) ITA 1967. Thus, the expenses incurred by the Taxpayer from the sub-letting and resort operations are deductible under Section 33(1) ITA 1967. The income from the sub-letting and resort operation are business income. Thus, the current year adjusted business losses can be utilised against the business income from the Taxpayer’s life, general and shareholders’ funds. The Taxpayer also argued that the penalties imposed under Section 113(2) ITA 1967 ought to be discharged.

On the other hand, the DGIR argued that the income received by the Taxpayer are subject to Section 60(1) ITA 1967. In determining the adjusted income of the life fund of an insurer carries life business, the Taxpayer is taxable under Section 60(3) ITA 1967 and not under Section 4(a) ITA 1967. The income from the sub-letting and the resort operation are taxable as income from investments under Section 60(3)(a) ITA 1967. As such, it follows that the expenses from the sub-letting and resort operation are not deductible under Section 33(1) ITA 1967. Furthermore, the adjusted losses from the sub-letting and resort operation cannot be utilised against the business income from the life, general and shareholders’ funds.

The DGIR further argued that the principle of *generalia specialibus non derogant* applies in this case as the Taxpayer is engaged principally in the underwriting of life insurance, including investment-linked and annuity business, and all classes of general insurance business. Thus, the Taxpayer is subject to Section 60 ITA 1967 which specifically for the insurance business where the specific provision takes precedence over the general provision of Section 33(1) ITA 1967. The DGIR has the right to impose a penalty under Section 113(2) ITA 1967 since the Taxpayer had filed an incorrect return for all years in dispute and there is no prosecution instituted against the Taxpayer under Section 113(1) ITA 1967.

The High Court dismissed the Taxpayer’s appeal with costs of RM8,000.00 and upheld the decision of the SCIT.

Editorial Note

- *The Taxpayer has the right to file an appeal against the decision by the High Court within 30 days from the date of the decision.*