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BY LEGAL DEPARTMENT

SPECIAL COMMISSIONERS OF INCOME TAX

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14 JULY 2023

PARAGRAPH 4(a) OR 4(d) INCOME TAX ACT 1967 ('ITA 1967')

GESB
V.
DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700-7/1/1412-1414

The Taxpayer is an investment holding company. Other than rental income, the Taxpayer also earned other income from dividend, interest and management fee. The Taxpayer owns 14 properties ('Properties') which rented out.

The issue of the case is whether the rental received from the Properties owned by the Taxpayer is a business income under paragraph 4(a) ITA 1967 or rental income under paragraph 4(d) ITA 1967.

The Taxpayer alleged that the rental income is a business source and is taxable under paragraph 4(a) ITA 1967 as all the Properties were not put to any other use apart from generating rental income. The Taxpayer further contends that they are not a 'passive' service provider as they maintain the Properties to keep it in a tenantable condition at all times and mostly hire third parties to carry out the maintenance and security services and other services such as electricians, gardeners, general contractors and plumbers. Otherwise, the employees of the Taxpayer will attend to the general needs of the tenants. The Taxpayer alleged that the Director General of Inland Revenue ('DGIR') had wrongly applied Public Ruling No. 12/2018 ('PR 12/2018') in assessing the tax to be imposed on the Taxpayer as PR 12/2018 cannot apply retrospectively. PR 12/2018 only came into force on 19.12.2018 and the additional assessment is for financial years ending 2015, 2016 and 2017.

The DGIR submitted that since the Taxpayer is an investment holding company and not listed on Bursa Malaysia, the tax treatment for the Taxpayer is under Section 60F ITA 1967 where any income received from investment holding such as [interest, dividend, rent (non-business) and rent (investment holding business)] is considered as a non-business source. Further, it was not mentioned or stated in the tenancy agreement that the Taxpayer has to provide comprehensive maintenance on the Properties, and no evidence shows that the maintenance or support services were comprehensively and actively provided by the Taxpayer on the Properties other than upon request or complaint by the tenants.

The DGIR further submitted that he was correct in relying on the PR 12/2018 as it replaced Public Ruling No. 4/2011 (issued on 10.03.2011) which was issued as a guidance in determining whether a rental receipt is subject to paragraph 4(a) or 4(d) ITA 1967.

On 14.07.2023, the Special Commissioner of Income Tax ('SCIT') had dismissed the Taxpayer's appeal and held that the DGIR is justified in law to issue Notices of Additional Assessment against the Taxpayer. The SCIT ruled that there are basis in law and in facts for the DGIR to impose penalty under Section 113(2) ITA 1967.

Editorial Notes: The Taxpayer has a right to appeal to the High Court within 21 days from the date of the decision.