



**SECTION 3, SECTION 19 REAL PROPERTY GAINS
TAX ACT 1976 &
PARAGRAPH 4(AA) OF THE INCOME TAX ACT 1967**

**HPRSB
V.
DIRECTOR GENERAL OF INLAND REVENUE**

The Taxpayer entered into a Sale and Purchase Agreement dated 31.03.2024 to dispose of a parcel of land located in Kuching, Sarawak (“the land”) to RCSJT for a consideration of RM7,000,000.00. The Taxpayer subsequently filed form CKHT 1A dated 24.5.2024 for the Year of Assessment (“YA”) 2024. A Notice of Assessment (“Form K”) was issued on

30.05.2024 requiring the Taxpayer to pay real property gains tax of RM559,919.00 on a chargeable gain of RM5,599,190.00. The Taxpayer contended that the submission of form CKHT 1A was made in error. Consequently, the Taxpayer appealed and submitted an application for relief in respect of error or mistake pursuant to Section 19(1) of the Real Property Gains Tax Act 1976 (“RPGTA 1976”) via form CP15C dated 19.07.2024, seeking a revision and discharge of the assessment. On 23.10.2024, the Director General on Inland Revenue (“DGIR”) forwarded the application to the Special Commissioners of Income Tax (“SCIT”) for determination.

The Taxpayer contended the land is a capital asset, and therefore the gains from the disposal of the land constitute gains or profits from the disposal of a capital asset under paragraph 4(aa) of Income Tax Act 1967 (“ITA 1967”), and therefore it is not subjected to section 3 of the RPGTA 1976. Accordingly, the Taxpayer argued that the reporting of the disposal under the RPGTA 1976 constituted an “error or mistake” within the meaning of subsection 19(1) of the RPGTA 1976, thereby rendering the assessment erroneous in law. The Taxpayer further submitted that the DGIR’s reliance on the Budget 2024 announcement to exclude real property from Capital Gains Tax (“CGT”) was misplaced, as such policy statements cannot override the express provisions of the Finance (No. 2) Act 2023 (‘Act 851’), and thus the assessment ought to be revised and set aside.

In response, the DGIR contended that the application for relief under subsection 19(1) of the RPGTA 1976 was properly rejected as the Taxpayer failed to demonstrate any genuine error or mistake within the meaning of the provision. The DGIR further argued that the Taxpayer had not discharged the burden of proof to justify the reclassification of the gain from RPGTA 1976 to Paragraph 4(aa) of the ITA 1967. The disposed land as reported in the CKHT 1A form is situated in Malaysia and the gain is taxable as it falls within the scope of RPGTA 1976 which was a valid law and in force at the time of the disposal. Additionally, the DGIR maintained that the imposition of CGT as announced in Budget 2024, which came into operation on 01.01.2024 vide Act 851 and the Income Tax (Amendment) Act 2024 (‘Act A1706’), which came into operation on 21.05.2024 applies specifically to the gains arising from the disposal of unlisted shares in Malaysia, and not on gains or profits from the disposal of real property situated in Malaysia. The taxation of real property in Malaysia continues to be governed under the RPGTA 1976. Hence, the Notice of Assessment raised under the section 3 of the the RPGTA 1976 was valid, proper, and in accordance with the law.

On 24.04.2026, the SCIT dismissed the Taxpayer’s appeal and held that the the disposal of the land fell squarely under section 3(1) of RPGTA 1976 rather than the case of profit from the disposal of capital assets under paragraph 4(aa) of ITA 1967. Accordingly, the Taxpayer made no mistake in filing the form CKHT 1A and thus the Notice of Assessment dated 30.05.2024 for YA 2024 raised by the DGIR was valid and correct in law.

Editorial Note

- *The Taxpayer has the right to file an appeal against the decision by the SCIT within 21 days from the date of the decision.*