



## SECTION 60 (8) & 33(1) INCOME TAX ACT 1967

### GENERALI INSURANCE MALAYSIA BERHAD V. DIRECTOR GENERAL OF INLAND REVENUE WA-14-49-12/2023, WA-14-50-12/2023, WA-14-51- 12/2023 & WA-14-52-12/2023

 HIGH COURT OF MALAYA IN KUALA LUMPUR

 YA ALICE LOKE YEE CHING

 20 MAY 2026

The Taxpayer is engaged in underwriting all classes of general insurance business. It obtained prior approval from Bank Negara Malaysia (“BNM”) to acquire shares in BH Insurance (M) Bhd

(“BHI”) which conducts a similar business activity. BNM required BHI’s business to be merged with the Taxpayer. Accordingly, the Taxpayer acquired all shares in BHI and entered into an agreement to transfer BHI’s business to itself. The Taxpayer declared dividend income from BHI for Years of Assessment (“YAs”) 2010 to 2013 under Section 4(c) of the Income Tax Act 1967 (“ITA 1967”). It also claimed deductions for interest expenses on loans used to acquire BHI for the respective YA and professional fees relating to Risk-Based Capital Certification (“RBCC”) for YA 2013 under Section 33(1) ITA 1967. Following audits for YAs 2010–2013, the Director General of Inland Revenue (“DGIR”) issued additional assessments with penalties. On 17.3.2023, the Taxpayer’s appeals before the Special Commissioners of Income Tax (“SCIT”) were dismissed, and the Taxpayer subsequently appealed to the High Court.

The Taxpayer contended that the SCIT had erred in law. It argued that the additional assessments were time-barred. The determination of the time limit of five years for raising the additional assessments for YA 2010, 2011, 2012 and 2013 should be based on the date of receipt of the Notices of Additional Assessment (Form JA). For an assessment to be made, it must also be served on the Taxpayer. A taxpayer’s liability to pay only starts to run from the time a taxpayer receives the assessment or additional assessment. Forms JA in the present case were served on the Taxpayer outside of the five years limitation period.

The Taxpayer further argued that the dividend income from BHI fell under Section 4(c) ITA 1967 as a passive source arising from share ownership, and not incidental to its insurance business; hence, Section 60(8) ITA 1967 was inapplicable. It also maintained that the interest expenses from subordinated and senior loans were deductible under Section 33(1)(a)(ii) as they were incurred on loans used to acquire BHI shares. As the Taxpayer held an asset i.e. the shares of BHI which produced dividend income, the money borrowed was laid out on assets held to produce the Taxpayer’s gross income. Alternatively, the expenses qualified under the opening part of Section 33(1) as wholly and exclusively incurred in producing gross income. The professional fees incurred for RBCC were also claimed to be revenue expenses deductible under Section 33(1).

In response, the DGIR submitted that the time-bar issue applied only to YA 2011, and that the five-year period was based on the end of the calendar year by the use of words “year of assessment” in Section 91(1) which was further defined under Section 2 ITA 1967. In any event, the assessment for YA 2011 fell within Section 91(3) due to the Taxpayer’s negligence who declared dividend income under Section 4(c) ITA 1967 and claimed for deduction of non-allowable interest expenses. The DGIR argued that the dividend income was subject to Section 60(8) ITA 1967 and should be treated under Section 4(f) ITA 1967, with Section 60 ITA 1967 prevailing over general provisions. The dividend arose from the strategic acquisition of BHI shares for the purpose of merger with the Taxpayer’s business, not from the Taxpayer’s activity of general insurance business.

The DGIR further contended that the interest expenses were capital in nature as the shares were acquired not to produce income but to facilitate the transfer and merger of BHI’s business. The acquisition required BNM approval and was confirmed by a High Court vesting order. It was not incurred wholly and exclusively in the production of the Taxpayer’s gross income. Accordingly, the expenses did not satisfy Section 33(1)(a)(ii) ITA 1967 as it was not laid out on assets used or held for the production of gross income. The professional fees for RBCC were also disallowed under Section 39(1)(c) as they were capital in nature, being incurred to meet BNM’s regulatory capital requirements.

On 20.5.2026, the High Court dismissed the Taxpayer’s appeals with costs and upheld the SCIT’s decision. The High Court found no error in the SCIT’s findings, noting that the SCIT had duly considered all the evidence tendered during the trial. The additional assessments and imposition of penalties for YAs 2010 to 2013 were confirmed.

#### **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.*