



	<b>COURT OF APPEAL</b>
	<b>YA DATUK SERI KAMALUDDIN BIN MD SAID YA DATO' ABU BAKAR BIN JAIS YA DATO' COLLIN LAWRENCE SEQUERAH</b>
	<b>24<sup>th</sup> MAY 2024</b>

**Section 4(f) ITA 1967 - Section 91(3) ITA 1967 -  
Section 113(2) ITA 1967**

---

**KEYSIGHT TECHNOLOGIES MALAYSIA SDN BHD**  
v.  
**DIRECTOR GENERAL OF INLAND REVENUE**  
**[W-01(A)-272-05/2021]**

---

The Court of Appeal was unanimous in allowing the Taxpayer's appeal against the additional assessment for the year of assessment (YA) 2008 that was issued by the Revenue vide the Notice of Additional Assessment dated 13.06.2017 for the amount of RM311,057,602.46.

Confining to the peculiar facts of the case, the decision of the High Court and the Special Commissioners of Income Tax (SCIT) were overturned. The Revenue raised the additional assessment on gain received from the transfer of technical know-how by the Taxpayer to Agilent Technologies International (ATIS) for the amount of RM821,615,000.00 being income under section 4(f) of the Income Tax Act 1967 (ITA 1967) together with the penalty under section 113(2) ITA 1967.

The Revenue contended that subsection 91(3) of the ITA 1967 provided that the Revenue may issue an assessment after the expiration of the time period of 5 years on grounds of fraud or willful default or negligence. The findings of negligence on the part of the Taxpayer include failure to support the claim that the gain from the transfer of technical knowhow (i.e. the marketing and manufacturing intangibles) by the Taxpayer to Agilent Technologies International (ATIS) was an outright sale and failure to furnish the document and information as requested by the Revenue in the audit letter on the valuation of the marketing and manufacturing intangibles.

The Revenue found that there was no proof of outright sale of the technical know-how as the Intellectual Property (IP) Agreement and Manufacturing Services (MS) Agreement showed no evidence that the legal rights had been transferred to ATIS since the agreements merely stated of the transfer of beneficial rights. Further, facts have shown that the technical know-how was still used by the Taxpayer in a similar manner prior to and post the IP Agreement and MS Agreement. Instead, the gain of RM821,615,000.00 million was proven to represent the future income that would have been received by the Taxpayer for the years 2008-2015 should the Taxpayer continue to carry out its function as a full-fledged manufacturing company of which the function had subsequently changed to being a contract manufacturing company due to the Taxpayer's group's global restructuring exercise. As such, the gain was taxed as other income under section 4(f) ITA 1967.

The Taxpayer argued that the Revenue was time-barred under section 91(1) ITA 1967 from issuing the Notice of Additional Assessment for YA 2008. The Taxpayer also argued that the sale of marketing and manufacturing intangibles by the Taxpayer to ATIS was capital in nature and therefore should not subject to tax under section 4(f) ITA 1967. The "badges of trade test" would be applicable in determining whether the income was revenue or capital in nature.

Whilst the SCIT and the High Court had agreed with the Revenue's argument but the Court of Appeal had affirmed the application of the "badges of trade" test as argued by the Taxpayer in determining whether the income was capital or revenue in nature and the test was not confined to disposal of land. The Court of Appeal held that the Taxpayer was not in the business of buy and sell of IP and the IP was not its stock in trade. No special effort had been made by the Taxpayer to attract purchasers. The transfer of technical know-how was due to global restructuring of the group of the company. The Court of Appeal further held that there had been an actual sale by way of agreement. The title to technical know-how was not registrable due to protection of confidential information. The outright sale test thus was not a proper test and the valuation report as requested by the Revenue was irrelevant. There was no failure on the part of the Taxpayer to adduce valuation report as it was not requested during audit. Thus, there was no negligence and hence the additional assessment was time-barred. The Taxpayer's appeal was allowed with cost of RM20,000 to be paid by the Revenue to the Taxpayer.