

INCOME TAX (EXEMPTION) (NO. 8) ORDER 2011

(P.U. (A) 420)

DIRECTOR GENERAL OF INLAND REVENUE

V.

JONATHAN JAMES LAW

WA-14-28-10/2022



KUALA LUMPUR HIGH COURT



Y.A DATO' WAN AHMAD FARID BIN WAN SALLEH



21 MAY 2024

The Taxpayer is an employee of Three Sixty Financial Inc ('the Company') in Labuan. The Taxpayer claimed 50% exemption from his gross income under Income Tax (Exemption) (No. 8) Order 2011 (P.U. (A) 420)

('the Exemption Order') and submitted Form CP21 (Notification by Employer of Employee's Departure from Malaysia) when he left the Company in 2017. The Exemption Order provides an exemption of 50% from gross income of a non-Malaysia individual exercising employment in a managerial capacity with any Labuan entity. Based on the Form CP21 as submitted by the Taxpayer, the Director General of Inland Revenue ('the DGIR') decided/concluded that the Taxpayer did not qualify for the Exemption Order. Thus, Notices of Additional of Assessment for the Years of Assessment ('YAs') 2015 and 2016 and a Notice of Advance Assessment under section 92 Income Tax Act 1967 ('ITA 1967') for the YA 2017 all dated 11th January 2018 were raised by the DGIR against the Taxpayer.

The Taxpayer contended that his employment contract and the Company's corporate structure that was submitted to the DGIR has outlined the Taxpayer's managerial duties and his role as a manager in the Company. The Taxpayer further contended that the DGIR's claim that a manager should be the most senior position in a company is an unsupported claim in any business organization as an organization will always have different levels of management that consists of different managers, directors and Board Members. It is a known practice within an organization that a level of management will report and answer to a more senior position, often it would be to a director or to the Board Members. The Taxpayer added that he was responsible in managing the sales team in the Company which he will later reported and discussed the team's performance with the Board of Directors. The Taxpayer also argued that he has failed to call any of witnesses due to Covid-19 pandemic which resulted in his witnesses not being available to testify during hearing.

The DGIR submitted that the Taxpayer had failed to discharge his onus of proof under paragraph 13 Schedule 5 ITA 1967 to show that the post held by him, Financial Advisor /Senior Manager falls within the meaning of 'managerial capacity' as required under the Exemption Order and therefore the assessments raised by the DGIR were not excessive or erroneous. Based on the Facts Found and Facts Proven together with the documents tendered during the trial before the Special Commissioners of Income Tax ('the SCIT'), the Taxpayer's position in the Company did not fit the meaning of 'managerial capacity' and therefore the Taxpayer was not entitled to the 50% tax exemption from his gross income under the Exemption Order. The DGIR further submitted that all facts submitted by the Taxpayer in his testimony should be disregarded as there were not corroborated by any witnesses nor any documents tendered by the Taxpayer. Hence, the testimonial given by the Taxpayer is unacceptable and should be ignored.

On 21.04.2024, the High Court confirmed the SCIT's decision and dismissed the DGIR's appeal with no order as to costs.

Editorial Notes: The DGIR has the right to appeal to the Court of Appeal within 30 days from the date of the decision.