



**JUDICIAL REVIEW APPLICATION  
ORDER 53 RULES OF COURT 2012  
RM1.67 BILLION RPGT HELD TO BE LAWFUL**

**ST. JUDE MEDICAL INTERNATIONAL HOLDING  
S.A.R.L v KETUA PENGARAH HASIL DALAM  
NEGERI  
PA-25-55-10/2024**

 **PENANG HIGH COURT**  
 **YA DR. CHOONG YEOW CHOY**  
 **7.10.2025**

The High Court has dismissed the Judicial Review (JR) application by the Applicant. The Applicant, a Luxembourg-incorporated entity challenged the Real Property Gains Tax (RPGT) assessment imposed by DGIR amounting to RM1,676,950,317.24. The dispute arises from the disposal of shares in a Malaysian real property company (RPC), which the Applicant argued should not be taxed in Malaysia due to the provisions of the Malaysia–Luxembourg Double Taxation Agreement (DTA) and misapplication of valuation rules under the RPGT Act 1976.

The Applicant disposed its shares in St. Jude Medical Operations (Malaysia) Sdn. Bhd. to its indirect shareholder, Abbott Malta, for RM15.9 billion. The company qualifies as an RPC, triggering RPGT under Paragraph 34A of Schedule 2 of the RPGT Act. The Applicant declared RPGT liability of RM3.86 million based on the market value of the underlying real property (RM231.9 million), but the Revenue assessed RPGT based on the full share consideration, resulting in a liability of RM1.67 billion including penalties. The Applicant submitted three key points in challenging the imposition of the RPGT. Firstly, they submitted that under Article 14(4) of the Malaysia–Luxembourg DTA, only Luxembourg has taxing rights over share disposal gains, as the Applicant is a Luxembourg resident. They argued that the DTA, ratified under Section 132 of the Income Tax Act 1967 overrides domestic law and includes RPGT as a form of income tax, supported by OECD standards. Further, the Applicant asserted that the Revenue had wrongly applied the RPGT Act by using the consideration amount instead of the market value, which is required for transactions between connected persons. Thirdly, it contends that the Revenue had breached natural justice by failing to provide adequate reasoning for its decision, preventing a proper challenge. Furthermore, the Applicant contends that by virtue of the amendment of subsection 132(1) ITA, such DTA is binding on any other taxes which includes the RPGT Act despite its absence in the DTA.

In response, the Revenue argued that RPGT is not covered under the DTA as Article 2 of the Agreement only includes income tax and petroleum income tax, where RPGT is not included. The Revenue emphasized that the DTA does not create tax liability but merely provides relief from double taxation, and that the charging law remains the RPGT Act. The Revenue contended that the DTA’s Article 2 provides an exhaustive list of applicable taxes, which excludes RPGT, and that RPGT is not equivalent to Capital Gains Tax (CGT) as defined under international standards or the OECD Model Convention. Furthermore, the Respondent asserted that RPGT is a distinct tax enacted to curb property speculation, not a tax on income, and therefore falls outside the scope of the DTA. The Revenue further argued that the disposal price for shares in a RPC must be based on the actual consideration paid, as clearly stated in Paragraph 34A(4) of Schedule 2 of the RPGT Act, which overrides other provisions that refer to market value in transactions between connected persons.

The Revenue further submitted that the Applicant had acknowledged the RPGT liability in its own tax return and only raised the DTA argument as an afterthought. It is additionally submitted by the Revenue that judicial review is inappropriate in this case, as the Applicant has already filed an appeal with the Special Commissioners of Income Tax (SCIT), which is the proper forum for resolving disputes over tax assessments. The Revenue concluded that the assessment was made lawfully and within jurisdiction, and therefore the judicial review application should be dismissed.

In delivering the judgment, the Learned High Court Judge has dismissed the Applicant’s JR application and ordered the Applicant to pay costs of RM15,000. The Court is persuaded by the Revenue’s argument that RPGT is not included in the DTA and the nature of RPGT is distinct from CGT. The main issue was whether the RPGT assessment was flawed due to incorrect valuation—specifically, whether market value should have replaced the consideration. After reviewing the relevant provisions of the RPGT Act (Paragraphs 9, 23, and 34A of Schedule 2), the Court found no error in the Revenue’s assessment and upheld it.