



**SECTION 33, 39, 4(f), 61(1A) INCOME TAX ACT 1967 &
PUBLIC RULING NO. 2/2011 ON INTEREST EXPENSE AND
INTEREST RESTRICTION**

SUNWAY REIT HOLDINGS SDN BHD

v.

KETUA PENGARAH HASIL DALAM NEGERI

[W-01(A)-610-08/2022]

 **COURT OF APPEAL, PUTRAJAYA**
 **YA DATUK SUPANG LIAN, HMR**
YA DATO' LIM CHONG FONG, HMR
YA DATO' DR. HJ. ALWI BIN HJ. ABDUL
 **06.03.2025**

The Taxpayer was a company incorporated in Malaysia and an investment holding company where its sole source of investment was the holding of 986,634,185 units in Sunway Real Estate Investment Trust (Sunway REIT). The investment was financed by the loan from the holding company and its related company.

In the Year of Assessment (“YA”) 2011, the Taxpayer received distributions amounting to RM33,249,572.00, comprising distributions of income and distributions for the return of capital from Sunway REIT. The Taxpayer subjected the distributions of income amounting to RM24,468,528.00 to income tax under Section 3 and Section 4(f) of the Income Tax Act 1967 (“ITA 1967”). Whereas the distributions for the return of capital amounting to RM8,781,044.00 were not subjected to income tax as they represented the return of capital from Sunway REIT. The total interest expenditure for YA 2011 was RM18,316,912. The Revenue then, informed the Taxpayer that pursuant to Public Ruling No. 2/2011, the interest expenditure must be apportioned between its distribution of total income and distributions for the return of capital.

It was the Taxpayer’s argument that out of the total distribution of RM33,249,572.00, the amount of RM8,781,044.00 being the return of capital from Sunway REIT should be excluded from the total distribution of RM24,468,528.00 from being taxed. Section 61(1A) of the ITA 1967 has specifically provided for a method and ascertainment of a unit holder’s total income.

The Revenue contended that the Special Commissioners of Income Tax (“SCIT”) had ruled that the amount received by the Taxpayer and termed as “return of capital” should be taxable under the ITA 1967. There was no evidence by the Taxpayer to show the nature of the “distribution of return of capital” to be capital in nature and therefore was assessable to income tax upon distribution by Sunway REIT to the Taxpayer. Meanwhile, the High Court had affirmed the decision of the SCIT and the apportioned interest should be made between taxable and non-taxable distributions.

The Court of Appeal had upheld the apportionment by the Taxpayer on the basis that Sections 33 and 39 of the ITA 1967 did not provide for apportionment of expenditure. Therefore, the apportionment of expenditure made by the Revenue was invalid. The appeal was allowed with cost of RM10,000.00.