



BY LEGAL DEPARTMENT



SPECIAL COMMISSIONERS OF INCOME TAX



YA PUAN NIK ASMA ANITA BINTI MAKHTAR



10 JANUARY 2025

TSB

V.

**KETUA PENGARAH HASIL DALAM NEGERI  
RAYUAN NO. MOF.PKCP.700-7/1/1486-1493**

The Taxpayer is in the business of cultivation of oil palm. On 30.12.2009, Taxpayer was assigned all rights, title, interest, liabilities, duties and obligation for planted forest under LPF/0035 by RSB. RSB acquired the rights

under LPF/0035 from RHSB on 30.12.2009. The LPF/0035 was granted by Kerajaan Negeri Sarawak to RHSB on 22.03.2004, which the license ends on 21.03.2064. On 20.02.2017, the Taxpayer transfer the development costs under the license, biological assets, commercial rights and all fixtures and fitting back to RSB. The issues before the Special Commissioner of Income Tax (SCIT) is whether the gains arising from the Taxpayer's disposal of the agricultural rights at the Simunjan Estate, amounting to RM75,206,616.00, are taxable as capital gains under the Real Property Gains Tax Act 1976 ("RPGTA 1976") or as trading income under Section 4(a) Income Tax Act 1967 ("ITA 1967") and whether the penalty imposed against the Taxpayer for the Year of Assessment (YA) 2017 under Section 113(2) ITA 1967 is correct.

The Taxpayer argues that they are not in the business of trading of Agricultural Rights. The disposal merely transfers the rights under LPF/0035 and did not constitute a trading transaction. The disposal should be considered as capital transaction and not a trading activity as the Taxpayer had no intention to trade or profit seeking motive from the disposal. The Agricultural Rights were held for investment purposes to generate income but due extenuating circumstances, it warranted the disposal of the said Agricultural Rights.

In response, the Director General of Income Tax (DGIR) had contended that the disposal of license LPF/0035 is a disposal of Simunjan Plantation. The DGIR emphasized that Simunjan Plantation were established under the LPF/0035 which has been disposed of by the Taxpayer on 20.02.2017 for an amount of RM75,206,616.00. The DGIR submit that the rights under the LPF/0035 actually comes together with a portion of land, approximately 15,580 (revised to 15,017) hectares. Therefore, it is a trading receipt and taxable under section 4(a) ITA 1967. The disposal of rights as claimed or contended by the Taxpayer is actually a disposal of lands under the LPF/0035. The DGIR further submits that the disposal of the Simunjan Plantation under LPF/0035 by the Taxpayer is an adventure in the nature of trade based on (i) the Taxpayer has the intention to gain profit from the disposal of the Simunjan Plantation under LPF/0035; (ii) the subject matter of the transaction i.e. Simunjan Plantation under LPF/0035; (iii) treatment of the account; (iv) period of ownership of the Simunjan Plantation under LPF/0035; (v) alteration/maintenance of the Simunjan Plantation under LPF/0035 to render it more saleable; and (vi) methods employed in disposing of the Simunjan Plantation under LPF/0035. Therefore, the DGIR submit that the disposal of Simunjan Plantation under the LPF/0035 had fulfilled the elements of badges of trade. Hence, the gains from the disposal is subject to tax under section 4(a) ITA 1967.

On 10.01.2025, the SCIT held that the Taxpayer had successfully proved its appeal as required under Paragraph 13 Schedule 5 ITA 1967 as the SCIT found that the disposal of Agricultural Rights is a capital transaction as it was held for investment purposes with no intention to trade. The SCIT ruled that the Notice of Assessment for the YA 2017 is to be set aside.

**Editorial Note:**

- *The DGIR has the right to file an appeal against the decision by the SCIT within 21 days from the date of the decision.*