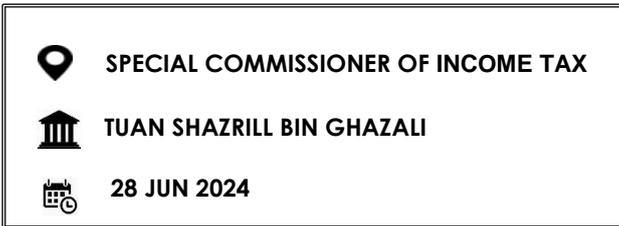


**SECTIONS 4(c), 22(2)(a)(i) & 113(2)  
INCOME TAX ACT 1967**



**BND  
v.  
DIRECTOR GENERAL OF INLAND REVENUE  
PKCP(R) 918/2017**



Pursuant to the Redeemable Subordinate Loan Agreement, ULB provides a loan up to a maximum of RM875 million to the Taxpayer with the total amount of interest accrued of RM222,062,659.00. The Taxpayer had claimed interest expense under Section 33(1) Income Tax Act 1967 (“ITA 1967”) against two different sources of interest income namely business income

for RM40,198,833.00 and non-business interest income which amounted to RM181,863,826.00 in Years of Assessment (YAs) 2003 to 2005. In year 2006, ULB waived the interest of the loan. Consequently, the Taxpayer brought RM40,198,833.00 to income tax pursuant to Section 30(4) ITA 1967. However, the Taxpayer did not bring the release interest expense of RM181,863,826.00 to income tax as interest income. The Director General of Inland Revenue (“DGIR”) raised a Notice of Additional Assessment (“Form JA”) for YA 2006 against the Taxpayer based on the tax audit findings that the release of interest expense amounting to RM181,863,826.00 is subjected to Section 22(2)(a)(i) ITA 1967 and taxable under Section 4(c) ITA 1967.

The Taxpayer filed an application for Judicial Review (“JR application”) at the High Court to quash the said Form JA and did not file an appeal by way of Form Q to the Special Commissioners of Income Tax (“SCIT”). The primary issue raised by the Taxpayer in its JR application was the application of Section 22(2)(a) ITA 1967 by the DGIR on the issue of release of interest. The High Court and the Court of Appeal decided in favour of the Taxpayer but the decisions were set aside by the Federal Court on 18.10.2016. On 09.11.2016, the Taxpayer filed for an extension of time by way of Form N to file the Form Q and it was granted by the SCIT. The grounds of appeal in the Form Q filed by the Taxpayer are the same in its JR application.

The Taxpayer contended that there was no finality of judgment in this case since there was no ground of judgment issued by the Federal Court in setting aside the High Court and the Court of Appeal decisions. Thus, it is irrelevant for the SCIT to decide whether the *res judicata* principle is applicable or not in this case as argued by the DGIR. It also argued that Section 22(2) ITA 1967 does not cover release of debt and the only provision that brings the release of debt to income tax is Section 30(4) ITA 1967. Hence, the release of interest against the non-business income is not subject to Section 22(2)(a) ITA 1967.

The DGIR argued that there was a finality of decision by the Federal Court in this case and clearly the principle of *res judicata* applies. The DGIR further argued that the present appeal involved the question of facts and law which had been fully ventilated during the JR application as the issues, facts and provisions of law are identical. The DGIR further argued that the Taxpayer’s argument that there is no finality of the judgment just because no ground of judgement issued by the Federal Court is blatantly misconceived. It is also submitted that the release of interest which had previously deducted under Section 33(1) ITA 1967 by the Taxpayer against its non-business interest income is subjected to Section 22(2)(a) and taxable under Section 4(c) ITA 1967. Section 22(2)(a)(i) ITA 1967 should be construed in the context of the ITA 1967 as a whole where the expense that had been claimed earlier but finally were not incurred should be brought back to tax under the said provision.

The SCIT had on 28.06.2024 dismissed the Taxpayer’s appeal and held that the Taxpayer failed to prove its case as required under Paragraph 13 Schedule 5 ITA 1967. The SCIT is bound to follow the Federal Court’s decision given on 18.10.2016. As such, the Form JA for YA 2006 and the penalty imposed under Section 113(2) ITA 1967 raised by the DGIR against the Taxpayer is justified and confirmed.

*Editorial Note:*

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