



SECTION 13(2)(c) OF INCOME TAX ACT 1967

SALK

V.

**DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 112-118/2018**

 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **PUAN NIK SERENE BINTI NIK HASHIM**

 **07 APRIL 2023**

The Taxpayer who initially worked at Malayan Banking Berhad (“MBB”) Klang branch, was later assigned and seconded to Maybank (PNG) Limited (“MPNG”) in Papua New Guinea. MPNG was wholly owned by MBB.

By a letter dated 13.01.2009, MBB appointed him as Head, Operations of MPNG effective from 19.01.2009. The Taxpayer was seconded to MPNG until MPNG released him from secondment with effect from 30.04.2016. He then opted for an early retirement due to medical reasons effective from 03.06.2016. MBB filed a Notification of Cessation of Employment dated 18.05.2016 to the Director General of Income Tax (“DGIR”). The DGIR raised assessments against the Taxpayer for Years of Assessments (“YAs”) 2009 to 2015 on the ground that the income received by him from MPNG during that period are deemed to be derived from Malaysia under section 13(2)(c) Income Tax Act 1967 (“ITA 1967”). Dissatisfied with the assessments raised, the Taxpayer filed Forms Q dated 10.01.2017 to the Special Commissioners of Income Tax (“SCIT”).

The Taxpayer relied heavily on the Public Ruling No. 1/2011 (Taxation of Malaysian Employees Seconded Overseas) (“PR No.1/2011”). He submitted that the 2nd until 6th factors/circumstances stated in the PR 1/2011 were not fulfilled to establish that the duties performed during secondment to MPNG were incidental to the duties performed in Malaysia, in order to deem his income during that period are derived from Malaysia. The Taxpayer’s duties had no connection with, nor there were part and parcel of his previous regular duties in Malaysia. His duties during the MPNG assignment were plainly to further the purpose of MPNG, and not MBB. The Taxpayer has worked for seven years with MPNG and he did not resume work with MBB upon completion of his secondment. He also averred that he worked under MPNG and MBB had no supervision, direction or control over his duties during that period. In addition, all salaries paid by MBB to him were reimbursed by MPNG to MBB.

In response, the DGIR averred that the employment existed between the Taxpayer and MBB as MBB was the one who appointed the Taxpayer as Head Operation of MPNG. His appointment was to strengthen and enhance the effectiveness of his job performance in his Malaysian-based regional employment. He was transferred back to where his employment is concerned, which was MBB after the secondment ended. The Taxpayer opted not to resume the employment because of his medical state and requested for early retirement from MBB. In fact, the DGIR has allowed exemption on the gratuity received by him from MBB since his employment with MBB did not end. MBB has the final says in regards to the Taxpayer’s employment, including the power to dismiss him. MBB still continued to pay his salary and made his EPF contribution and he still enjoyed most benefits from MBB. The reimbursement alleged was actually charged from MBB’s nostro account that MBB holds in the bank of MPNG in a foreign currency.

On 07.04.2023, the SCIT allowed the Taxpayer’s appeal and held that the Notices of Assessment raised against the Taxpayer were excessive and erroneous. The Taxpayer has successfully proven his appeal in accordance with paragraph 13, Schedule 5 ITA 1967.

Editorial Notes:

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