



**SUBPARAGRAPH 34A (4), SCHEDULE 2 OF THE
REAL PROPERTY GAINS TAX 1976**

MHHSB, SLSB, MTSB

v.

**DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 821-823/2017**

 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **PUAN NIK SERENE BINTI NIK HASHIM**

 **13 JANUARY 2023**

The Taxpayers disposed shares owned in a real property company known as MHSB to F Berhad and subsequently, they submitted Form CKHT 1B to the DGIR. After the

DGIR raised Notices of Assessment for real property gains tax (Form K), the Taxpayers vide their counsel's letter informed that the DGIR's assessments are erroneous as certain costs such as the payments which are known in the Share Sale Agreement ("SSA") as 'Non Tax Allowable Development Expenditure' and 'Cost of Resting TNB High Tension Cables' ("the said expenditure") have not been taken into account for deduction from the disposal price pursuant to subparagraph 34A (4), Schedule 2 Real Property Gains Tax Act 1976 ("RPGTA 1976").

The Taxpayers contended that payment of the said expenditure was made pursuant to the SSA and by virtue of subparagraph 34A (4), Schedule 2 RPGTA 1976, the amount or value of the consideration in money or money's worth for the disposal of the shares by the Taxpayers to F Berhad was wrongly computed by the DGIR as the DGIR had failed to consider the said expenditure in determining the disposal price of the shares.

In response, the DGIR asserts that MHSB is a real property company as its defined value of shares owned at the date of acquisition is 97% of the value of its total tangible assets as defined under subparagraph 34A (6), Schedule 2 RPGTA 1976.

The DGIR further argued that pursuant to subparagraph 34A (4), Schedule 2 RPGTA 1976, the disposal price of the chargeable asset is the amount or value of the consideration in money or money's worth for the disposal of the chargeable asset. Both SSA and the Form CKHT 1B as submitted by the Taxpayers had specified the total disposal price of shares. Furthermore, the Taxpayers are not entitled to claim deduction for the said expenditure and there are no columns provided in the said form that permits the Taxpayers to claim for deduction for any payments or incidental costs incurred during the disposal of shares.

The SCIT had on 13.01.2022 dismissed the Taxpayer's appeal and held that the Notices of Assessment raised against the Taxpayers for the real property gains tax are reasonable and justified. The Taxpayers are not entitled to claim deduction for the 'Non Tax Allowable Development Expenditure' and 'Cost of Resting TNB High Tension Cables' from the disposal price of shares pursuant to subparagraph 34A (4), Schedule 2 RPGTA 1976.