



SECTION 127 OF THE INCOME TAX ACT, 1967

WHSB

V.

DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700.7/1/317(2)

 SPECIAL COMMISSIONERS OF INCOME TAX

 PUAN NIK SERENE BINTI NIK HASHIM

 16 JANUARY 2023

The Taxpayer claimed tax exemption for farming of tiger prawns (*udang harimau*) based on a letter issued by the Ministry of Agriculture Malaysia (“MOA”) informing the Taxpayer’s application for incentives

under Section 127 Income Tax Act 1967 (“ITA 1967”) to undertake an Approved Food Production Project was approved by the Ministry of Finance (“MOF”).

The Taxpayer conceded to the fact that the farming incentive stated in the MOA’s letter is specifically for the *udang harimau* species. However, the Taxpayer contended that Jabatan Perikanan Sabah has approved the inclusion of *udang putih* into the incentive due to the invasion of the white spot virus infecting the *udang harimau* species. Further, the Taxpayer claimed both *udang putih* and *udang harimau* as the same “*penaeidae*” family.

The Taxpayer took the position that there is no requirement under the ITA 1967 for them to inform the DGIR on the change of prawn species. The Taxpayer is only required to inform the DGIR when it obtains profit from the approved production project. Further, there is no legal requirement under the ITA 1967 requiring the Taxpayer to maintain two separate accounts in order to ascertain the chain of income from the *udang harimau* and *udang putih* farming.

On the other hand, the DGIR asserted that the farming incentive approval as stated in the MOA’s letter is limited and exclusive to the *udang harimau* farming activities only. The DGIR further argued that the farming of *udang putih* does not fall under the Approved Food Production Project in light of the MOA’s letter and therefore, the Taxpayer was not entitled for tax exemption pursuant to Section 127 ITA 1967.

The DGIR also argued that the Taxpayer failed to report the statutory income of *udang putih* farming which is not tax exempted and to prepare a separate account for the different prawn species which resulted in the Taxpayer making an incorrect return and giving incorrect information in its tax return. Thus, the DGIR has correctly and reasonably imposed penalty pursuant to Section 113(2) ITA 1967 against the Taxpayer.

In dismissing the Taxpayer’s appeal, the SCIT decided that the Notice of Additional Assessment raised against the Taxpayer is reasonable and just. The SCIT ruled the farming incentive exemption to be exclusive only to the farming of the *udang harimau* species and there is a basis in law or fact for the DGIR to impose penalty under Section 113(2) ITA 1967.