



**Stamp Duty [Remission] [No. 2] Order 2012
(P.U.(A) 258/2012)**

**PBL LAND BERHAD
V.
DIRECTOR GENERAL OF INLAND REVENUE
KB-24NCvC-104-04/2022**

 **HIGH COURT SUNGAI PETANI**
 **YA PUAN NARKUNAVATHY SUNDARESON**
 **13 DISEMBER 2022**

The Taxpayer entered into a Tawarruq Financing Agreement (“Facility Agreement”) amounting to RM 23,000,000.00 with Bank Islam Malaysia Berhad (“Bank Islam”). According to the Facility Agreement, the Taxpayer

Guarantee Agreement requires a Guarantor to pay Bank Islam on demand all monies due to the bank by the Taxpayer.

The Taxpayer submitted the Facility Agreement to the *Sistem Taksiran dan Pembayaran Duti Setem* System (“STAMPS”). Simultaneously, the Taxpayer and Bank Islam applied for remission under the Stamp Duty [Remission] [No. 2] Order 2012 (P.U.(A) 258/2012) (“Remission”). The said application was rejected and the DGIR imposed an Ad Valorem duty instead.

The Taxpayer contended that the Facility Agreement fulfils the prerequisite of the Remission as it is without security and the loan is repayable upon demand. The Taxpayer contended that the executed Guarantee Agreement is not a form of security because it is not an encumbrance of any property in which Bank Islam can rely upon to enforce and to recover the sum loaned.

In response, the DGIR asserted that the Facility Agreement is secured by the Guarantee Agreement. The DGIR argued that the Taxpayer does not satisfy the two requirements of the Remission which prescribes the Loan Agreement is to be without security and the sum to be repayable on demand or in a single bullet payment. Thus, it is the duty of the Taxpayer to prove that the instrument falls within the ambit of the exemption order.

The High Court had on 13.12.2022 dismissed the Taxpayer’s appeal and decided that the term “security” includes a guarantee. The Taxpayer is not entitled to claim for the Remission and the appeal was dismissed with costs.