

**PARAGRAPH 4(a) & SECTION 113(2) INCOME
TAX ACT 1967**



BY LEGAL DEPARTMENT



SPECIAL COMMISSIONERS OF INCOME TAX



YA PUAN NIK SERENE BINTI NIK HASHIM



24 NOVEMBER 2023

MUSB

V.

**DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700-7/1/1203**

On 25.10.1994, the Taxpayer acquired a piece of agricultural freehold land known as Holding No. 1410, Mukim of Tanjong Minyak, Melaka (“the Property”). On

15.10.2002, the Taxpayer entered into a Joint Venture Agreement (“JVA”) with a property developer (“SYL”) with the intention to develop the Property. The Property was subdivided and houses were built on the subdivided lots. Vide letter dated 8.3.2005, SYL informed the Taxpayer that the subdivision of the Property had been approved and attached a list of the sub-divided lots selected by SYL for the Taxpayer, which amounted to 33 lots. In the year of assessment (“YA”) 2018, the Taxpayer had sold off 18 lots (“the Lots”) that it owned. The Taxpayer contended that the gains that they received from the sale of the Lots should be subjected to Real Property Gains Tax Act 1976 (“RPGTA 1976”). The Director General of Inland Revenue (“DGIR”) was of the view that disposals should be subjected to paragraph 4(a) Income Tax Act 1967 (“ITA 1967”) as the business income of the Taxpayer as the elements of badges of trade were present.

The Taxpayer contended that the elements of badges of trade does not exist. The Property was acquired as a long-term investment and that the Property was sold in order to realize its investment. The Taxpayer also contended that the Taxpayer is only a passive participant in the development of the Property because based on the JVA, SYL is the one who would develop the Property and SYL undertook to get the necessary approvals in order to complete the development of the Property.

The DGIR contended that there are clear elements of badges of trade exists in the disposal of the Lots. In particular, the repeated nature of selling off the Lots to third parties respectively show that the Taxpayer intended to delve itself in the adventure in the nature of trade. The fact that the Property was subdivided into different lots to which 33 of them were transferred to the Taxpayer and that 18 lots were sold to third parties separately showed that significant alterations were made to the Property in order to make it more saleable. The DGIR found that it is clear that the intention to trade the Property had materialized ever since the Property was purchased by the Taxpayer.

The SCIT had on 24.11.2023 dismissed the Taxpayer’s appeal and the Notice of Additional Assessment for YA 2018 is maintained. The Taxpayer did not manage to prove that the Notice of Additional Assessment was erroneous and that the DGIR had rightly imposed penalty under section 113(2) ITA 1967 against the Taxpayer.

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.*