

**PARAGRAPH 10 & 15 SCHEDULE 3 &
SECTION 113(2) INCOME TAX ACT 1967**



ALOGSB

V.

**DIRECTOR GENERAL OF INLAND REVENUE
PKCP.700-7/1/1144-1145**

 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **TUAN SHAZRILL BIN GHAZALI**

 **7TH MARCH 2025**

The Taxpayer entered into a Memorandum of Agreements (MOAs) with POMC to buy a vessel on 4.7.2016 and another five vessels (the Vessels) on 21.7.2017. The Taxpayer's accounting period ends on the 30th of September every year.

The Taxpayer purchased the Vessels on an instalment basis but claimed capital allowance for the full purchase price in YAs 2016 and 2017. The Director General of Inland Revenue (DGIR) issued Notices of Additional Assessments for YAs 2016 and 2017 with penalties under Section 113(2) Income Tax Act 1967 (ITA 1967).

The Taxpayer contended that the Vessels were used for the business, therefore entitled to claim capital allowance under Schedule 3 ITA 1967. According to the Certificate of Registration, the Taxpayer is the registered legal owner of the Vessels as POMC had transferred ownership of the Vessels to the Taxpayer, irregardless of the ongoing instalment payments. The Taxpayer further argued by that the DGIR had failed to exercise his discretion on the imposition of penalty and did not provide reasons for the penalty whereas the Taxpayer had acted in good faith at all times, sought professional advice from the tax agent, was co-operative during the audit period and submitted its tax returns within the stipulated filing deadline throughout the years and the matter in dispute arose from a technical adjustment.

The DGIR argues that the capital allowance claimed by the Taxpayer under Paragraph 10 and Paragraph 15 Schedule 3 ITA 1967 cannot be allowed based on the actual cost (purchase price) of the Vessels. The four conditions must be met under Schedule 3 ITA 1967 in order for a person to be eligible to claim capital allowance. The DGIR is not disputing that the Taxpayer is allowed to claim capital allowance in relation to the purchase of the Vessels. The DGIR's contention is that that the Taxpayer is not allowed to claim capital allowance for the entire purchase price of the Vessels for the respective YAs, but the allowable capital allowance claimed is limited to the amount of instalment payments made during the basis period for YAs 2016 and 2017 only.

The DGIR also argued that the Taxpayer is merely a beneficial owner and not the legal owner of the Vessels as yet until the full purchase price has been paid. Accordingly, the Taxpayer is not entitled to claim capital allowance for the entire purchase price of the Vessels. Clause 9.1 and 9.1.4 of the MOAs clearly illustrated that the Taxpayer requires prior written consent from POMC in relation to the Vessels as long as the full purchase price has yet to be paid. The DGIR has the legal and factual basis to impose penalties under Section 113(2) ITA 1967.

On 7.3.2025, the Special of Commissioners of Income Tax (SCIT) had dismissed the Taxpayer's appeals and held that the Taxpayer has failed to prove its case as required under Paragraph 13 Schedule 5 ITA 1967. As such, the issuance of Notices of Additional Assessments for YAs 2016 and 2017 together with the imposition of penalties are confirmed.

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.*