



**PARAGRAPH 34A (4) SCHEDULE 2 REAL
PROPERTY GAINS TAX ACT 1976**

**ENG CHIN TIAN & 3 OTHERS
V.
DIRECTOR GENERAL OF INLAND REVENUE
BA-14-2-08/2022**

Gagah Makmur Sdn Bhd ('Gagah Makmur') owned a piece of land which was purchased for the price of RM6,799,500.00. The Taxpayers were the registered

shareholders of Gagah Makmur, whom later sold 1,000,000 unit of their shares to a third party. Based on the Form CKHT 1 which was filed by the Taxpayers, the Director General of Inland Revenue ('the DGIR') raised the Notice of Assessment for the amount of RM1,076,527.70 together with penalty under section 29(3) Real Property Gains Tax Act 1976 ("RPGTA 1976").

The Taxpayers claimed that Special Commissioners of Income Tax ("the SCIT") has wrongly applied the principles by the High Court in Ketua Pengarah Hasil Dalam Negeri v Tan Teik Kin (2010) MSTC 30018 and Ketua Pengarah Hasil Dalam Negeri v Chan Lian Yen (2010) MSTC 30013. The principle of law enunciated by Tan Teik Kin's case (supra) is that the "consideration which has moved between the parties in the transaction" for the realization of the agreement shall be the consideration under paragraph 34A (4) Schedule 2 RPGTA 1976.

In Tan Teik Kin's case (supra), the liability of the Company amounting RM969,705.00 was a condition precedent or mandatory clause for the realization of the share sale agreement, otherwise the agreement will be terminated. In current appeal, the Taxpayers claimed that the RM4,000,000 loan from Public Bank was not a consideration which has moved the parties in the transaction. Furthermore, the liability of Gagah Makmur to the Public Bank amounting to RM4,000,000 was not paid by the purchasers within seven (7) days after completion of the agreement but the purchasers have chosen to continue the said loan with Public Bank. Unlike Tan Teik Kin's case (supra), the payment clause was optional for the realization of the share sale agreement. Thus, the RM4,000,000 loan from Public Bank does not qualify as consideration under paragraph 34A (4) Schedule 2 RPGTA 1976. The Taxpayers further argued that the disposal price of the 1,000,000 unit of shares should amount to RM2,799,500 and not RM6,799,500.

The DGIR submitted that the Taxpayers had never denied that Gagah Makmur is a Real Property Company and therefore the disposal of the 1,000,000 unit of shares falls under the ambit of paragraph 34A (4) Schedule 2 RPGTA 1976. The DGIR further submitted that the wording in paragraph 34A (4) Schedule 2 RPGTA 1976 is clear where 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.

On 12.09.2023, the High Court confirmed the SCIT's decision and dismissed the Taxpayers' appeal with costs of RM3,000.00.

Editorial Notes:

The Taxpayer has a right to appeal to the Court of Appeal within 30 days from the date of the decision.