



**SECTIONS 33(1), 60AA(9)(b)(iii) & 60(3A)(b)(ii)
INCOME TAX ACT 1967**

**ETIQA FAMILY TAKAFUL BERHAD & ETIQA
GENERAL INSURANCE BERHAD**

V.

**KETUA PENGARAH HASIL DALAM NEGERI
WA-14-21-09/2022 & WA-14-22-09/2022**



HIGH COURT KUALA LUMPUR



YA DATO' AHMAD KAMAL BIN MD. SHAHID



8th FEBRUARY 2024

The First Taxpayer's principal activities are general takaful, family takaful and takaful investment-linked business. The Second Taxpayer's principal activities are general insurance, life insurance and investment-linked business.

The Taxpayers were of the opinion that interest and profit payments on Tier 2 subordinated bond and sukuk are incurred in order to comply with the requirement set by the Bank Negara and allowable under section 33 Income Tax Act 1967 ("ITA 1967"). They did not claim the said expenses in their tax returns for all years of assessment ("YAs") under dispute, YAs 2014 - 2018 and subsequently, filed an appeals to the Special Commissioners of Income Tax ("SCIT") upon submission of the returns.

It was the Taxpayers' contention that the profit and interest payments were incurred by the Taxpayers are allowable expenses under general provision of section 33(1) ITA 1967. Sections 60(9) ITA 1967 and 60AA(9) ITA 1967 do not preclude the application of Section 33(1) ITA 1967 as Section 33(1) ITA 1967 applies to all businesses and the interest and profit payments fulfilled the requirement under Section 33(1)(a) ITA 1967. There is no prohibition of such deduction under Section 39 ITA 1967 that forbids the deduction of the interest and profit payments incurred by the Taxpayers. The expenses were incurred in order to comply with the Bank Negara requirement.

In contrast, the DGIR submitted that the profit and interest payments incurred by the Taxpayers on the Tier 2 capital subordinated bond and sukuk are not deductible under section 33(1) ITA 1967, section 60AA(9)(b)(iii) ITA 1967 and section 60(3A)(b)(ii) ITA 1967. There is a specific provision of section 60AA ITA 1967 inserted vide Finance Act 2007 (Act 683) which has effect for the YA 2008 and subsequent years of assessment with the purpose to comply with Syariah requirement and to provide for a specific provision to determine the taxation of takaful business for the First Taxpayer. There is also a specific provision of section 60 ITA 1967 which is in existence since the introduction of the ITA 1967 to determine the taxation of insurance business for the Second Taxpayer. Therefore, Section 33 ITA 1967 is not applicable to the Taxpayers since there are specific provisions, Section 60AA(9)(b)(iii) ITA 1967 and Section 60(3A) (b)(iii) ITA 1967 respectively. Complying with the requirement set by the Bank Negara has no bearing in tax treatment. The principle of *generalia specialibus non derogant* or whether specific statutory provision should override general provision applies.

The SCIT dismissed the appeal and held that that the Taxpayers are not entitled to claim both payments, profit and interest under section 33(1) ITA 1967 because there are specific provisions on takaful and insurance business. Both payments are also not deductible because there are not listed under an allowable expenses under section 60AA(9)(b)(iii) ITA 1967 and section 60(3A)(b)(ii) ITA 1967.

The High Court on 8.2.2024 decided that there are no merits on the appeals and dismissed the Taxpayers' appeals with cost of RM3,000.00 for each case.

Editorial Note:

- *The Taxpayers has the right to appeal to the Court of Appeal within 30 days from the date of the decision.*