



 Court of Appeal, Putrajaya

 April 21st, 2022

 Legal Department, IRBM

COURT OF APPEAL RULED THAT PART II OF SCH. 5 RPGT ACT APPLIES TO A TRUSTEE

**JINGGA JAYA SDN BHD
v.
DIRECTOR GENERAL OF INLAND REVENUE**

Keywords: disposal of land – paragraph 8 and 10 of Sch. 1 - Part II Sch. 5 - Real Property Gains Tax Act 1976

The taxpayer had appealed against the notice of assessment issued by DGIR against the taxpayer for disposal of 6 pieces of land purportedly held by the taxpayer as trustee for its shareholder, Datuk C. The appeal was dismissed by the SCIT and confirmed by the High Court.

JUDGES

Dato' Lee Swee Seng

Dato' Hadhariah binti Syed Ismail

Dato' Mohd Nazlan bin Mohd

Ghazali

The issue is whether the real property gains tax on the disposal of the lands ought to be imposed on the taxpayer or Datuk C, under the provisions of the Real Property Gains Tax Act 1976 ("RPGT Act").

COUNSEL FOR DGIR

Normareza binti Mat Rejab

Syazana Safiah binti Rozman

The taxpayer is a company formerly owned by RSB. On 20.4.2009, RSB sold its entire shareholding to Datuk C and his wife via a Share Agreement for RM1,680,000.00. Under the terms of the Share Agreement, the sale of shares was inclusive of the 6 pieces of land owned by the taxpayer.

COUNSEL FOR TAXPAYER

Jason Tan Jia Xin

[Messrs. Lee Hishamuddin Allen & Gledhill]

On the same date, the taxpayer executed a "Declaration of Trust", which was signed by Datuk C and his wife on behalf of the taxpayer - where it was declared that the taxpayer was holding the lands as trustee for Datuk C. The taxpayer later sold the lands under its own name on 15.5.2014. There was no mention of the trust in the sale.

Upon the sale of the lands, Datuk C submitted Forms CKHT 1A and CKHT 3 declaring himself as the disposer of the lands and claiming exemption of RPGT on the ground that the lands was disposed by him and had been held for a period exceeding 5 years. The DGIR was of the view that the disposal of the lands were assessable on the taxpayer as the disposer of the

The taxpayer argued that the DGIR had wrongly issued the assessment against the taxpayer personally, and not under its capacity as the trustee of Datuk C. The SCIT had made a finding of fact that there was a trust created between the taxpayer and Datuk C and Datuk C is entitled to all proceeds from the sale of the Properties. Thus, it was argued that the HC had erred in interfering with this finding of fact by deciding that the Declaration of Trust was not valid or enforceable.

On the other hand, the DGIR argued that based on the principle of separate legal entity and privity of contract, RSB has no legal capacity to sell the lands to Datuk C. RSB as a shareholder has no legal or equitable rights or ownership over the taxpayer's assets. The Declaration of Trust was made based on the purported sale of lands under the Share Agreement. Since RSB has no legal capacity to sell the taxpayer's lands, the lands were not acquired by Datuk C under the Share Agreement. Thus, the Declaration of Trust was neither valid nor enforceable. The SCIT had also made a finding of fact that the lands were sold in the taxpayer's own personal capacity, not as a trustee. Further, no endorsement of trust had been made on the title of the lands under the National Land Code 1965. Thus, the taxpayer's ownership remained indefeasible. Even if the taxpayer was a trustee, it is still assessable as a chargeable person. The rate of tax under Schedule 5 applies according to the trustee's nature, be it a company or an individual. Thus, Part II of Schedule 5 RPGT ACT applies to a trustee who is a company.

The Court of Appeal unanimously held that the HC had not erred as there was a clear case of purchase of shares and not land. Datuk C could not have owned the land as the taxpayer remained as the legal and beneficial owner of the land. The S&P did not disclose any fact that the lands were held by the taxpayer as a trustee. Be it as a company or trustee, Part II of Schedule 5 applies to the taxpayer. The appeal was dismissed with costs of RM15,000 to the DGIR.