



SUBPARAGRAPH 34A (4), SCHEDULE 2

REAL PROPERTY GAINS TAX 1976

**DATO' ABD GANI BIN YUSOF & DATO AZIZI
BIN TAN SRI YOM AHMAD**

V.

**DIRECTOR GENERAL OF INLAND REVENUE
WA-14-36-12/2022 & WA-14-37-12/2022**

The Taxpayers and another shareholder owned 5,000,000 shares in a real property company known as Midwest Equity Sdn Bhd. By way of a Share Sale Agreement (“SSA”) dated

29.5.2017, The Taxpayers and the shareholder sold their shares to Piagam Wira Sdn Bhd with a consideration sum of RM28,000,000.00. The Director General of Inland Revenue (“DGIR”) assessed the disposal price at RM28,000,000.00 pursuant to paragraph 34A Schedule 2 of the Real Property Gains Tax Act 1976 (“RPGTA 1976”). The Taxpayers contended that the real property gains tax imposed on the Taxpayers should be calculated on the net disposal price of RM3.00. On 23.11.2022, the Special Commissioners of Income Tax (“SCIT”) affirmed the DGIR’s decision. Dissatisfied with the SCIT’s decision, the Taxpayer further appealed to the High Court.

The Taxpayers argued the "actual" disposal price was only RM 3.00 (or RM 1.00 for each of the three shareholders). The total consideration sum should deduct RM27,999,997.00 being the existing creditors’ liabilities borne by Midwest Equity Sdn Bhd. Under the SSA, the total disposal price must be utilized to repay the Company’s loans to ensure that the Company is free of encumbrances and to comply with Bursa Malaysia’s Main Market Listing Requirement. The SCIT had erred in both law and fact by interpreting clauses under the SSA in isolation.

In response, the DGIR argued that the wording of paragraph 34A Schedule 2 of the RPGTA 1976 is extremely clear. The law states that if the value of a company's tangible asset is more than 75%, the disposal of the shares of such company becomes the disposal of a chargeable asset under the RPGTA 1976. Pursuant to subparagraph 34A(4) Schedule 2 of RPGTA 1976, 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. It is clear under the SSA that the consideration sum is RM28,000,000.00. There is no provision under paragraph 34A(4) Schedule 2 of RPGTA 1976 permitting deduction of company liabilities from the disposal price. The manner of settlement is immaterial: payment to third parties (including banks) pursuant to the agreement is part and parcel of the total consideration, without which the transaction could not be concluded. To exclude such payments would defeat the legislative purpose of paragraph 34A Schedule 2 of RPGTA 1976.

On 2.3.2026, the High Court dismissed the Taxpayers’ appeals with costs. The High Court held that the DGIR was right in imposing assessment under RPGTA 1976 as there was no provision regarding liability in determining the disposal price under subparagraph 34A(4) Schedule 2 of the RPGTA. The SCIT’s decision was affirmed.

Editorial Note:

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