



## SECTION 4(a) INCOME TAX ACT 1967

**MULTI-PURPOSE CREDIT SDN BHD**

**V.**

**DIRECTOR GENERAL OF INLAND REVENUE**

**BA-14-4-10/2022**

 **HIGH COURT SHAH ALAM**  
 **YA DR. SHAHNAZ BINTI SULAIMAN**  
 **5<sup>th</sup> DECEMBER 2023**

The Taxpayer's principal activities are credit and leasing business, hire purchase and general loans financing. The Taxpayer received loan from related companies amounting to RM77,305,831 and RM1,157,306 from MP Venture and MP Capital ("the Companies") respectively. The loan debts were then waived by the Companies.

The Director General of Inland Revenue ("DGIR") raised Notices of Additional Assessment for Years of Assessment ("YA") 2011 to 2015 against the Taxpayer on the basis that the debt waived by the Companies were the Taxpayer's business income that is eligible to be taxed under Section 4(a) Income Tax Act 1967 ("ITA 1967").

The Taxpayer contended that Section 4(a) ITA 1967 is silent as to the type of business and what amounts to gross income. Therefore, in ascertaining whether the debts owed by the Companies amount to income under the ITA 1967, the reference is made to the general provision under Section 22 ITA 1967 which determines what is gross income. However, the waiver of debt is not taxable as gross income under Section 22 ITA 1967 based on the decisions of the Court of Appeal in Bandar Nusajaya Development Sdn Bhd (2013) MSTC 30-058 and the House of Lords in The British Mexican Petroleum 16 TC 570. Further, as the amount of debts waived by the Companies were used for the purpose of repaying the Taxpayer's bank borrowings and not for its income producing activities, the Taxpayer did not subject the amount of debt waived to tax under Section 30(4) ITA 1967 since no deduction under Section 33(1) ITA 1967 was made.

The Taxpayer contended that the Special Commissioner of Income Tax ("SCIT") had erred in subjecting the debts owed to the Companies were the Taxpayer's gross income under Section 4(a) ITA 1967 as the provision under Section 30(4) ITA 1967 is the specific provision intended to deal with waiver of debt in determining a taxpayer's income. The SCIT had also erred by concluding that the waiver of debts constitutes gains to the Taxpayer and not capital contributions since there was no increase in the Taxpayer's share capital.

In response, the DGIR asserted that the loan received by the Taxpayer from the Companies were part of the Taxpayer's business transaction, which then became the Taxpayer's liability or obligation. As the debts were then waived by the Companies, the Taxpayer was released from its obligation to pay. Therefore, the waiver of debts by the Companies constitute 'gains' to the Taxpayer and shall be taxable as the Taxpayer's income under Section 4(a) ITA 1967. Additionally, the real character of the money received by the Companies ought to be determined by looking into the original character of the money, where the waiver of debt had changed the characteristic of the money into 'gains'.

The DGIR further argued that the Taxpayer was wrong to subject the DGIR to the application of Section 30(4) ITA 1967 because the word 'release of debt' in the said provision cannot be found anywhere else in the ITA 1967. It is argued by the DGIR that the application of Section 30(4) ITA 1967 is to determine the adjusted income of a taxpayer in relation to the deductions that had been made (claimed by a taxpayer in their tax computation) but subsequently, the 'release of debt' occurred. Therefore, the 'release of debt' under Section 30(4) ITA 1967 is not an income *per se*, but it is a method in determining the adjusted income when deductions were already made under Section 33(1) ITA 1967 by the taxpayer.

The DGIR also highlighted the components of the ITA 1967 in order to observe the functions of each provisions clearly. Section 30(4) ITA 1967 falls under Chapter 3 Part III ITA 1967 for ‘Ascertainment of Chargeable Income’ which involves tax computation, and Section 4 falls under Part II ITA 1967 that deals with ‘Imposition and General Characteristics of Tax’.

In this appeal, the ‘release of the loan liability’ by the Companies had effectively made the loan, which was the Taxpayer’s stock-in-trade, to be free from any liability. In a simple word, the Taxpayer had receiver ‘free money’ from the Companies in the course of its business. Therefore, the DGIR asserted that the ‘release of loan liability’ falls within the characteristics of income under Part II ITA 1967, which is under Section 4(a) for gains or profits from a business.

The High Court on 05.12.2023 had dismissed the Taxpayer’s appeal and upheld the decision of the SCIT. The High Court held that the SCIT had not erred in its finding of facts and was correct to subject the Taxpayer’s income under Section 4(a) ITA 1967 as Section 4 does not specifically stated what constitutes gross income. Further, the High Court held that the Taxpayer did not adduce any evidence to show that the loan was used for non-income producing activity or equity financing.

**Editorial Note**

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