



**PARAGRAPH 34A (2) & 34A (3), SCHEDULE 2
REAL PROPERTY GAINS TAX ACT 1976**

**LEH
V.
DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 117/2019**

 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **PUAN NIK ASMA ANITA BINTI MAKHTAR**

 **25th NOVEMBER 2024**

ADSB had allotted a total of 1,000,000 ordinary shares to the Taxpayer on 25.6.2013, 26.8.2013 and 27.9.2013. ADSB is regarded as a Real Property Company (RPC) for the purpose of Paragraph 34A, Schedule 2, Real Property Gains

Tax Act 1976 (RPGTA 1976) on 11.9.2013. On 7.4.2017 the Taxpayer disposed 1,000,000 shares in ADSB for the disposal amount of RM 6,000,000.00. The Taxpayer later filed his Real Property Gains Tax (RPGT) return in the prescribed form (Form CKHT 1B) and Form CKHT 3 on the same day. For the Year of Assessment (YA) 2017, the Taxpayer received three different notices on the disposal, a Notice of Non-Chargeability on the disposal of the 400 shares, a Notice of Assessment for the amount of RM 196,201.92 (inclusive of penalty of 10%) for the disposal of the 199,600 shares and a Notice of Additional Assessment for the amount of RM 792,000.00 (inclusive of penalty of 10%) for the disposal of the 800,000 shares by the Director General of Income Tax (DGIR).

The Taxpayer contended that this case is on a point of law. Tranches 1 and 2 were acquired before ADSB attained RPC status, while Tranche 3 was acquired post ADSB's transition to an RPC. The Taxpayer then disposed the 1,000,000 shares in YA 2017 for a total consideration of RM6,000,000.00. The Taxpayer treated the disposal as a single disposal and computed RPGT in its entirety. However, the DGIR treated each tranche's disposal as separate events while computing RPGT individually, thus resulting in separate assessments for the same YA. This is on the basis that there were 3 different acquisition dates.

In response, the DGIR asserts that it has been established during trial and was not disputed by the Taxpayer that the only provision applicable to determine the acquisition/disposal price of the shares is only provided by Paragraph 34A, Schedule 2 RPGTA 1976. The contention of the Taxpayer was that the DGIR should not divide the shares transaction into 3 separate disposal and it should be treated as one disposal of shares, hence it would not attract RPGT as the disposal price was lower than the acquisition price, resulting in no chargeable gain. The DGIR submits that the DGIR's method of computation was in line with the provision of Paragraph 34A, Schedule 2 RPGTA 1976. Paragraph 34A clearly provides the method of calculation for the acquisition and the disposal price of shares. The Taxpayer had failed to acknowledge that there were 2 acquisition periods of shares acquired by the Taxpayer i.e. before the company became an RPC and after the company had become an RPC.

The Special Commissioners of Income Tax (SCIT) had on 25.11.2024 dismissed the Taxpayer's appeal and held that the Notices of Assessment raised for YA 2017 against the Taxpayer are reasonable and justified.

Editorial Note

The Taxpayer has the right to file an appeal against the decision of the SCIT within 21 days from the date of the decision.