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BY LEGAL DEPARTMENT

SHAH ALAM HIGH COURT

YA DR. SHAHNAZ BINTI SULAIMAN

18 APRIL 2023

PARAGRAPH 4(b) INCOME TAX ACT 1967
SUBPARAGRAPH 13(2)(e) INCOME TAX ACT 1967

SETHURAM A/L KUPPUSAMY
V.
DIRECTOR GENERAL OF INLAND REVENUE
BA-14-1-08/2022

The Taxpayer is a seafarer and works as a Chief Engineer for EMAS (Malaysia) aboard Lewek Scarlet, Lewek Petrel and Lewek Ariel which are supply vessels ("the Ships").

The Taxpayer had entered into a Seafarer Employer Agreement ("SEA") dated 16.06.2015 with EMAS (Malaysia), a company resident in Malaysia. Based on the SEA, the Taxpayer's employment is effective from 22.11.2012. However, the Taxpayer contended that he is exempted from being taxed under the Income Tax Act 1967 ("ITA 1967") because the Ships in which he was instructed to work at is owned and operated by a company not resident in Malaysia, which is EMAS (Singapore). As such, the Taxpayer contends that gains or profits from his employment aboard the Ships is not derived or deemed derived from Malaysia pursuant to paragraph 13(2)(e) of the ITA 1967.

The Director General of Inland Revenue ("DGIR") raised Notice of Additional Assessment for Year of Assessment ("YA") 2012 and Notices of Assessment for YA 2013 until YA 2016 against the Taxpayer. The DGIR contends that the gains or profits received by the Taxpayer is an employment income derived from his employment with EMAS (Malaysia), and thus should be subjected to income tax under paragraph 4(b) ITA 1967. This is further strengthened by the fact that EMAS (Malaysia) prepared EA Forms for the Taxpayer and there was also EPF and SOCSO deductions which are found in the crew pay slips of the Taxpayer. The Taxpayer also did not provide proof as to whether he had paid income tax to the Singapore Tax Authority.

The Taxpayer argues that his case falls squarely under paragraph 13(2)(e) ITA 1967 as it is the specific provision for the determination of derivation of employment source of income of a seafarer. As such, since the Ships in which the Taxpayer exercised his employment was operated by EMAS (Singapore), the Taxpayer should not be subjected to income tax in Malaysia. The Taxpayer also contended that the employment income is exempted from tax pursuant to paragraph 28 Schedule 6 ITA 1967 and penalties should not be imposed as the DGIR failed to provide reasons behind its imposition.

The DGIR submitted that subsection 13(2) ITA 1967 has to be looked as a whole and the Taxpayer is not exempted from income tax for the sole reason that paragraph 13(2)(e) does not apply.

The High Court had on 18.04.2023 dismissed the Taxpayer's appeal and held that the SCIT did not misdirect herself in arriving to the conclusion that the Taxpayer's employment income should be subjected to income tax under paragraph 4(b) ITA 1967. It agrees with the DGIR's contention that the Taxpayer is an employee of EMAS (Malaysia) based on the SEA. The Taxpayer is not entitled to claim for exemption under paragraph 28 Schedule 6 ITA 1967. The High Court also held that there is no statutory requirement for the DGIR to provide reasons behind the imposition of penalty. The High Court dismissed the Taxpayer's appeal with costs.

- *Editorial Note: The Taxpayer has the right to file motion for leave to appeal to the Court of Appeal within 30 days from the date of the decision,*