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LHDN MALAYSIA
BY LEGAL DEPARTMENT

SPECIAL COMMISSIONERS OF INCOME TAX

PUAN FAJRUL SHIHAR BINTI ABU SAMAH

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PARAGRAPH 34A(4) SCHEDULE 2, SECTION 14(5) & SECTION 29(3) REAL PROPERTY GAINS TAX ACT 1976

SKB & BSK
V.
DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700-7/1/2364-2365

The Taxpayers are the directors and shareholders of BSKCHSB ("the Company") with an equal shareholding of 50%. Vide the Share Sale Agreement ("SSA") between Taxpayers and TISB dated 05.06.2017. The Taxpayers disposed of 250,000 ordinary shares in the Company to TISB for a consideration of RM500,000.00 and assigned the directors' advances to TISB for a sum amounting to RM11,153,527.96. On 05.06.2017, the Taxpayers filed their Real Property Gains Tax ("RPGT") returns for the disposal of shares in Real Property Companies ("RPC") (Forms CKHT 1B) together with the Notification of Disposal of Asset not Subject to Tax or Exempt from the Payment of Tax (Forms CKHT 3) by declaring the disposal price for all 250,000 units of shares at RM500,000.00. The Director General of Inland Revenue ("DGIR") raised a Notice of Assessment dated 03.12.2021 on the basis that the directors' advances amounting to RM11,153,527.96 form part of the disposal price.

The Taxpayers contended that the disposal price of the 250,000 units of shares was RM500,000.00 as it reflects the consideration mutually agreed upon between the Taxpayers and TISB and it corresponds with the actual value and money's worth of the shares at the material time. Further, the Taxpayers only received RM250,000.00 each for the shares disposed to TISB. The Taxpayers also submit that the directors' advances do not represent any gain accruing to the Taxpayers and should not be brought to tax under the RPGT framework.

The DGIR contends that parties had never disputed that the Company is an RPC under Paragraph 34A Schedule 2 of the Real Property Gains Tax Act 1976 ("RPGTA 1976"). Thus, by virtue of Paragraph 34A Schedule 2 RPGTA 1976, the acquisition of 250,000 of shares by the Taxpayers in the Company is deemed to be an acquisition of a chargeable asset and the imposition of RPGT shall be subjected to Paragraph 34A Schedule 2 RPGTA 1976. It is the DGIR's case that the amount of RM11,153,527.96 being the directors' advances should be part of the disposal price as the terms and conditions stated in the SSA shows that the satisfaction of directors' advances forms an integral part of the disposal transaction of the entire 250,000 unit of the RPC shares by the Taxpayers to TISB.

The Special Commissioners of Income Tax ("SCIT") had on 30.6.2026 dismissed the Taxpayer's appeal and held that the Notices of Assessment for YA 2017 raised against the Taxpayers are reasonable and justified. The SCIT concluded that the DGIR had both legal and factual basis to raise the additional assessment and the penalty imposed was justified.

Editorial Note

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