

16 June 2014 | Issue 8-2014

TaXavvy

Stay current. Be tax savvy.

Court of Appeal decides on
an anti-avoidance case

Criteria on incomplete
income tax return form

Filing of income tax returns
for dormant companies



www.pwc.com/my

Court of Appeal decides on an anti-avoidance case

In May 2014, the Court of Appeal decided on the case of *Syarikat Ibraco-Peremba Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [Civil Appeal W-01-177-04/2013]. The Court of Appeal dismissed the taxpayer's appeal and upheld the decision of both the High Court and Special Commissioners of Income Tax that the Director General of Inland Revenue (DGIR) was right to invoke the anti-avoidance provision (section 140(1)(a)) of the Income Tax Act 1967 on the taxpayer.

The taxpayer, a property development company, purchased land in 1992 for long term investment and built commercial properties to be leased out. Upon advice from its tax advisors, the taxpayer undertook a series of transactions over a number of years.

- In 1994, the taxpayer sold the land to IPH, a newly incorporated subsidiary whose principal activity was investment holding and property development. IPH then developed the land under a turnkey contract with the taxpayer. Upon completion in 1996, the buildings were rented out and IPH treated the rental income as its business income.
- In 2003, the taxpayer sold its shares in IPH to Vendu Sdn Bhd (VSB), a related company, pursuant to a corporate restructuring exercise. The taxpayer and VSB were controlled by the same entity. No real property gains tax (RPGT) return was filed as RPGT was suspended then.
- In 2003 and 2004, IPH sold all its properties to third parties and subsequently both VSB and IPH were wound up. The sale proceeds were passed to VSB which in turn used the money to pay the taxpayer for the IPH shares.

The DGIR contended that there was no commercial nor business reason for setting up IPH except for the purpose of a scheme to avoid the disposal of the properties from being subjected to income tax. As a result, the DGIR invoked section 140 to disregard the transactions of IPH and assessed the taxpayer on the total value of the disposal of properties net of the development cost.

The Court of Appeal agreed with the DGIR's treatment.

- It was clear that the advice of the tax advisors was obtained for the primary purpose of ordering the transactions in a manner to minimise tax.
- As established in the case of *W T Ramsay Ltd v Inland Revenue Commissioners* [1981] 1 All E.R. 865, in looking at a tax avoidance scheme which comprised of specific transactions, the genuineness of each step or transaction needs to be looked at as a whole. The legitimacy of a tax avoidance scheme is to be examined in its entirety.
- Transactions spanning over a number of years offer little support to the taxpayer's case as the facts proved that it was a scheme advanced by its tax advisors to alter the incidence of tax.

The Court of Appeal also allowed the imposition of penalty for incorrect return under section 113(2) as it was at the discretion of the DGIR. The defence of "good faith" as found in section 113(1) did not apply to section 113(2). The judges did not agree with the taxpayer's contention that the DGIR was precluded from invoking section 113(2) on the basis that section 140 did not provide for a penalty.

Criteria on incomplete income tax return form

The Inland Revenue Board (IRB) has included an additional criteria on incomplete income tax return form (ITRF). Under the revised criteria, ITRF has to be printed on plain white A4 paper [210mm x 297mm or minimum 80 gsm]. The submission of ITRF printed on recycled paper will be considered as an incomplete ITRF and late filing penalty under section 112(3) will be imposed.

The full criteria on what constitutes an incomplete ITRF can be obtained from the IRB's website at www.hasil.gov.my (Forms > Criteria on Incomplete ITRF).

Filing of income tax returns for dormant companies

Further to the operational and technical dialogue between IRB and the professional bodies held on 17 February 2014, the IRB has reconfirmed that all dormant companies must file income tax returns pursuant to section 77A of the Income Tax Act 1967.

Minutes of the abovementioned dialogue can be obtained from the IRB's website at www.hasil.gov.my (Links > Dialogue Minutes for Operation & Technical Issues).

Let's talk

Our offices	Name	Email	Telephone
Kuala Lumpur	Jagdev Singh	jagdev.singh@my.pwc.com	+60(3) 2173 1469
Penang / Ipoh	Tony Chua	tony.chua@my.pwc.com	+60(4) 238 9118
Johor Bahru	Benedict Francis	benedict.francis@my.pwc.com	+60(7) 222 4448
Melaka	Teh Wee Hong Au Yong	wee.hong.teh@my.pwc.com paik.hup.au@my.pwc.com	+60(3) 2173 1595 +60(6) 282 6169
Labuan	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828

Our services	Name	Email	Telephone
Corporate Tax Compliance & Planning			
▪ Consumer & Industrial Product Services	Theresa Lim Margaret Lee	theresa.lim@my.pwc.com margaret.lee.seet.cheng@my.pwc.com	+60(3) 2173 1583 +60(3) 2173 1501
▪ Emerging Markets	Fung Mei Lin	mei.lin.fung@my.pwc.com	+60(3) 2173 1505
▪ Energy, Utilities & Mining	Lavindran Sandragasu	lavindran.sandragasu@my.pwc.com	+60(3) 2173 1494
▪ Financial Services	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828
▪ Technology, InfoComm & Entertainment	Khoo Chuan Keat	chuan.keat.khoo@my.pwc.com	+60(3) 2173 1368
GST / Indirect Tax	Wan Heng Choon	heng.choon.wan@my.pwc.com	+60(3) 2173 1488
International Tax Services / Mergers and Acquisition	Frances Po	frances.po@my.pwc.com	+60(3) 2173 1618
Transfer Pricing, Tax Audits & Investigations	SM Thanneermalai	thanneermalai.somasundaram@my.pwc.com	+60(3) 2173 1582
International Assignment Services	Sakaya Johns Rani	sakaya.johns.rani@my.pwc.com	+60(3) 2173 1553
Corporate Services	Lee Shuk Yee	shuk.yee.lee@my.pwc.com	+60(3) 2173 1626
Japanese Business Consulting	Junichi Fujii	junichi.fujii@my.pwc.com	+60(3) 2173 1480
Worldtrade Management Services	Huang Shi Yang	shi.yang.huang@my.pwc.com	+60(3) 2173 1657

pwc.com/my

Taxavvy is a newsletter issued by PricewaterhouseCoopers Taxation Services Sdn Bhd. Whilst every care has been taken in compiling this newsletter, we make no representations or warranty (expressed or implied) about the accuracy, suitability, reliability or completeness of the information for any purpose. PricewaterhouseCoopers Taxation Services Sdn Bhd, its employees and agents accept no liability, and disclaim all responsibility, for the consequences of anyone acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Recipients should not act upon it without seeking specific professional advice tailored to your circumstances, requirements or needs.

© 2014 PricewaterhouseCoopers Taxation Services Sdn Bhd. All rights reserved. "PricewaterhouseCoopers" and/or "PwC" refers to the individual members of the PricewaterhouseCoopers organisation in Malaysia, each of which is a separate and independent legal entity. Please see www.pwc.com/structure for further details.