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### ***A v Ketua Pengarah Hasil Dalam Negeri***

In a key decision delivered recently, the Special Commissioners of Income Tax (**SCIT**) discharged real property gains tax (**RPGT**) assessments raised by the Inland Revenue Board (**IRB**) on a real estate investment trust (**REIT**). The broad grounds of judgment given by the SCIT essentially deliberated on two novel points of law: (i) Does a REIT have legal personality? and (ii) Should RPGT assessments be raised on a REIT or its trustee?

#### **REIT has no legal personality**

In raising the tax assessments, the IRB treated the REIT as a **company** and subjected it to an RPGT rate of 5%<sup>1</sup> under Part II of Schedule 5 of the Real Property Gains Tax Act 1976 (**RPGT Act**). It was common ground that if the REIT was not taxable as a company, no RPGT would be payable.

The SCIT agreed with the taxpayer's argument that, for RPGT purposes, a REIT is not a company but merely a label given to a bundle of rights and obligations. The SCIT accepted that a company is a body corporate, which has separate legal personality and can sue and be sued in its own name. A trust such as a REIT has no separate legal personality as it cannot exist independently of a trustee and beneficiaries. Arising from this, the SCIT found that a REIT is not a company and discharged the assessments.

#### **Wrong entity**

The SCIT further found that the assessments were wrongly issued to the REIT. They ought properly to have been issued to the trustee. The SCIT found that the RPGT Act provides that any acquisition or disposal of an asset of a trust is to be treated as an acquisition or disposal by the trustee. Stemming from this, a trustee is the chargeable person under the RPGT Act. In the circumstances, the assessments issued against the REIT were defective and were quashed.

<sup>1</sup> Disposal in sixth year after the date of acquisition of the chargeable asset

## Swift decision by SCIT

The SCIT should be commended for swiftly delivering its decision, within three months from the start of trial. This reflects the success of the ongoing reforms to expedite the disposal of tax appeals before the SCIT.

The taxpayer was successfully represented by Dato' Nitin Nadkarni, Jason Tan Jia Xin and Keith Lim Boon Long from [Lee Hishammuddin Allen & Gledhill](#)'s Tax, SST & Customs Practice.

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