



Dato' Nitin Nadkarni
Senior Partner
Tax, Customs & Trade
T: +603 6208 5866
E: nn@lh-ag.com



Jason Tan Jia Xin
Partner
Tax, Customs & Trade
T: +603 6208 5873
E: tjx@lh-ag.com



Keith Lim Boon Long
Senior Associate
Tax, Customs & Trade
T: +603 6208 5830
E: bl@lh-ag.com

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C Bhd v KPHDN: Landmark Decision on Tax Treatment on Disposal of Lands Through a Joint Venture Agreement

The Special Commissioners of Income Tax (**SCIT**) recently ruled that income tax was not payable by a landowner which received a share of the gross revenue generated from a development, under a joint venture agreement (**JVA**) with the developer. This is believed to be the first decision considering the taxability of returns made by a company which provided land to a developer under a JVA, in return for a percentage of the gross sales, rather than a fixed price.

In this case, the landowner acquired a loss-making golf club. Less than five years later, the board of directors (**Board**) started discussing developing the golf course, either on its own or in a joint venture. The Inland Revenue Board (**Revenue**) argued that this early discussion showed that the landowner's initial intention in acquiring the land had been to develop or resell it at a profit.

After considering various options, the landowner signed a JVA with an established developer, for a mixed residential and commercial development on the golf course. Rather than receiving a fixed price for the land, the landowner received a percentage of the gross sales realised from the developed properties over the 6- to 12-year period of the development. The Revenue contended that this showed that the landowner was not merely a passive seller of the land, but a partner or an active participant in the development. Whatever its initial intention in acquiring the land, by taking a stake in the profitability of the development, the landowner was alleged to have been clearly trading in the land.

The SCIT allowed the landowner's appeal, and held that the gains received by the landowner were not profits subject to tax under the Income Tax Act 1967. The landowner had not traded in the land by receiving a share of the gross revenue generated by the development. In initially considering whether to carry out its own development before signing the JVA, the Board had only

acted as a responsible owner, seeking to maximise the returns on its investment.

The taxpayer was successfully represented by lawyers from LHAG's Tax, Customs & Trade Practice: Dato' Nitin Nadkarni, Jason Tan Jia Xin and Keith Lim Boon Long.

Keith Lim Boon Long (bl@lh-ag.com)

If you have any queries, please contact the author or his team partners, [Dato' Nitin Nadkarni](#) and [Jason Tan Jia Xin](#), at tax@lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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