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Minister Allows Tax Exemption Appeal

On 31.5.2019, the Minister of Finance (**Minister**) allowed an appeal lodged by [Lee Hishammuddin Allen & Gledhill](#) under Section 44(6B) of the Income Tax Act 1967 (**ITA**), on behalf of the Association of Science, Technology and Innovation, better known as ASTI.

Our partners, Datuk D P Naban and S Saravana Kumar from the Tax, SST & Customs Practice, acted for ASTI on a pro bono basis.

Background

ASTI is a non-governmental organisation dedicated to promoting the learning of science among schoolchildren in Malaysia.

On 27.2.2017, it submitted an application under Section 44(6) of the ITA to the Director General of Inland Revenue (**DGIR**) which, if approved, would allow the donors of a gift of money to ASTI to enjoy a tax deduction to the extent prescribed in the proviso to Section 44(6). Additionally, the approval would enable ASTI to enjoy tax exemption on its income other than dividend income by virtue of paragraph 13(a) of Schedule 6 of the ITA.

[Note: By virtue of paragraph 12B of Schedule 6 of the ITA, dividend income from a single tier source will also enjoy tax exemption.]

Unfortunately, on 28.8.2018, the DGIR rejected ASTI's application on the premise that its educational activities do not amount to a charitable activity. Aggrieved, ASTI sought our assistance to challenge the DGIR's decision.

Appeal to Minister

Accordingly, on 26.9.2018, we lodged an appeal to the Minister pursuant to Section 44(6B), which reads:

“Where an institution or organization is aggrieved by the decision of the Director General in respect of an application made under subsection (6), the institution or organization may, within thirty days after being informed of the decision, appeal to the Minister and

the Minister may make any decision as he considers fit.”

Our appeal was based on the premise that pursuant to item (b) of the definition of institution under Section 44(7), ASTI is a benevolent institution that is not operated or conducted primarily for profit. ASTI has been at the forefront of the advancement of education by promoting the importance of science, technology and innovation to schoolchildren nationwide. Some of its educational activities were regularly reported by local English-language daily, the *Star*, last year:

- [Students get a chance to shine with science](#)
- [Science week to become annual affair](#)
- [Spurring pupils' interest in science](#)
- [Put on thinking cap for challenge](#)

Hence, as clearly provided under Section 44(7), ASTI, as an institution in Malaysia which is not operated or conducted for profit and is benevolent in nature, qualifies as an approved institution under Section 44(6). In ASTI's case, it is registered in Malaysia and its activities are not operated or conducted for profit. Its only objective is to promote education through the learning of science among students in Malaysia.

Being a non-profit institution, ASTI relies on donations to fund its educational activities and approval under Section 44(6) would assist ASTI in raising funds for its activities. Despite all the supporting documents provided, the DGIR had rejected ASTI's application on the basis that its educational activities are not charitable in nature. This runs contrary to the established legal position in *Pemsel's* case, in which the advancement of education was acknowledged as one of the four categories of charity, something that is also recognised by the DGIR's very own Guidelines For Application Of Approval Under Section 44(6) Of The ITA.

Conclusion

This matter reflects that the DGIR does not enjoy unfettered discretion and, accordingly, his decision can be appealed against if upon in good time.

It is hoped that following this successful appeal, ASTI will be spurred to organise more of such educational activities for the benefit of young, inquisitive minds. Further information about ASTI may be viewed [here](#).

For queries on Section 44(6) application and tax exemption generally, please contact our tax partners from the Tax, SST & Customs Practice, **Datuk D P Naban** or **S Saravana Kumar**, at tax@lh-ag.com

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