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## **Tax Deductibility of Contributions for Bumiputera Quota Release**

*DHSB v Ketua Pengarah Hasil Dalam Negeri (HC)*

Yesterday, a property developer company obtained leave to commence judicial review proceedings against the Director General of Inland Revenue (**DGIR**) to set aside additional assessments for income tax. The DGIR had disallowed the deduction of contributions made for the release of Bumiputera housing quota by the company to the Johor state government.

The High Court further granted an interim stay against the payment of the additional assessments.

The taxpayer was successfully represented by our partner from the firm's Tax, SST & Customs Practice, S Saravana Kumar, assisted by associate, Jay Fong Jia Sheng.

### **Brief Facts**

The additional assessments were raised consequent to the DGIR's position that the contributions made by the company for the release of Bumiputera housing quota (**Contributions**) are not deductible under Section 33(1) of the Income Tax Act 1967 (**ITA**). The DGIR contended that the Contributions were capital expenditure to acquire the right to sell the Bumiputera housing quota units.

Aggrieved by the DGIR's decision, the taxpayer filed an application for judicial review to challenge the legality of the additional assessments as well as to stay the enforcement of the additional assessments pending the outcome of the hearing.

### **Taxpayer's Contention**

The issue was whether there was any basis for the DGIR to disallow the deduction of the Contributions. The taxpayer is of the view that the Contributions are deductible based on the following reasons:

- Section 44(6) of the ITA clearly provides that any gift of money made in the basis year to a state government or a local authority is deductible for that year in arriving at the total income.

- The Court of Appeal in the *Sabah Berjaya* case ruled that cash contributions to the Sabah state government were deductible under Section 44(6) even though the contributions were made on the instruction of the Chief Minister.

Accordingly, the taxpayer submitted that leave for the judicial review application should be granted as the application for the said leave is not frivolous. Further, the DGIR committed an error of law in raising the additional assessments, notwithstanding Section 44(6) and the *Sabah Berjaya* case.

### High Court's Ruling

The High Court granted the taxpayer leave to commence judicial review and an interim stay.

If you have any queries on the tax deductibility of contributions made to state governments, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar**, at [tax@lh-ag.com](mailto:tax@lh-ag.com)

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