

# LHAG Insights



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### **KPHDN v C Bhd: High Court affirmed SCIT's Decision that Gains from a Disposal of Land Through a JVA is not Chargeable to Income Tax**

Our [LHAG Insights](#) of 19 August 2021 analysed *C Bhd v KPHDN*, which discharged income tax assessed on gains made by a landowner from a joint venture with a developer.

The High Court recently affirmed the SCIT's decision, for the following broad reasons:

- (a) The landowner had initially acquired the golf course and club as an investment. The land was held as the landowner's capital asset for a lengthy period of 7 years.
- (b) The board of directors' (**Board**) subsequent decision to redevelop the land by a joint venture with a developer was not a change of intention. Rather, it was a one-off isolated transaction to address the sustained losses of the golf course. The Board was not engaging in an adventure in the nature of trade, but was carrying out its responsibilities when it considered various business options to maximise the gains from disposal of the land.
- (c) Entering a Joint Venture Agreement with a developer instead of a conventional sale and purchase agreement does not mean that the landowner was carrying out a profit-making venture to develop the land. It also does not turn the land into stock in trade.

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- (d) The landowner did not actively participate in the development of the land. It did not share in the profits or losses but received payment based on the gross sales revenue from the development. This means that the landowner did not bear any financial risks of the development.
- (e) The Revenue cannot rely on the development expertise of one of the landowner's directors in other companies to impute that the landowner had special skills in development. It is trite law that a company is a separate legal entity from its directors and shareholders.

**Concluding thoughts**

In its quest to repair government finances, the Revenue is apparently assessing income tax even on gains made from investment properties disposed of by way of a joint venture, without regard for the facts. This is one of a series of cases where the courts have set aside such assessments, and made clear that an investment asset does not become stock in trade merely because:

- a. it is disposed of in a joint venture with a developer; and/or
- b. the directors have considered various business options to maximise returns.

This decision also confirms the importance of the language used in contracts. Taxpayers would be well advised to seek competent tax advice when drafting a contract for the sale of a long-held investment, to minimize the risks of an unwelcome income tax assessment.

The taxpayer was successfully represented both at the SCIT and the High Court by lawyers from Lee Hishammuddin Allen & Gledhill's Tax, Trade & Customs Practice, Dato' Nitin Nadkarni and Jason Tan Jia Xin.

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