

Case Update

Our Tax Partners, [Anand Raj](#) and [Foong Pui Chi](#), together with [Analise Cheong](#) and [Thivagar Paramasivam](#) (Legal Associates), from our Tax & Revenue Practice Group, successfully acted for the taxpayer in **Kind Action (M) Sdn Bhd (“KASB”) v Director General of Inland Revenue (“DGIR”)** before the Court of Appeal.

In this case, KASB, a company carrying on plantation business, filed a judicial review application before the High Court to challenge the position taken by the DGIR to subject the gains arising from the realization of KASB’s investments in agricultural land to income tax under the **Income Tax Act 1967 (“ITA”)** despite the fact that KASB had already been subjected to real property gains tax under the **Real Property Gains Tax Act 1976 (“RPGTA”)** in respect of the same transactions (i.e. double taxation). The judicial review application was concluded in 2022 with the High Court ruling in favour of the DGIR. KASB then appealed to the Court of Appeal.

In 2023, the Court of Appeal agreed with our arguments and reversed the decision of the High Court. The Court of Appeal ruled in favour of KASB and held, amongst others, that the DGIR should have discharged/revoked the RPGTA certificate of clearance and assessments first before raising assessments under the ITA. Since the DGIR had already issued certificate of clearance and assessments under the RPGTA in respect of the land transactions, these are final and conclusive under section 20 of the RPGTA and so the DGIR should be bound by the same and not subject KASB to the ITA.

Dissatisfied with the Court of Appeal’s decision, the DGIR has filed an application for leave to appeal to the Federal Court.

For more information about this case or tax matters in general, please contact our [Tax & Revenue Practice Group](#).

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Tax & Revenue Law Update

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