

TAX CASE

Wiramuda (M) Sdn Bhd v DGIR (2022) (Federal Court)

Is compensation from compulsory acquisition of property subject to income tax?

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Introduction

Is compensation from compulsory acquisition of property subject to income tax?

Section 4C of the Income Tax Act 1967 (“ITA”) reads as follows:

“For the purpose of paragraph 4(a), gains or profits from a business shall include an amount receivable arising from stock in trade parted with by any element of compulsion including on requisition or compulsory acquisition or in a similar manner.”

Section 4C of the ITA was introduced by way of the Finance Act 2014 and was effective from the year of assessment 2014. Section 4C of the ITA was introduced after the Inland Revenue Board (“IRB”) had lost another tax case, *Ketua Pengarah Hasil Dalam Negeri v Metacorp Development Sdn Bhd (2013) (Federal Court)*, in which the Federal Court had unanimously affirmed the decisions of the High Court and Court of Appeal that compensation income received by the taxpayer on account of a compulsory acquisition of land cannot be seen as profit arising from the taxpayer’s business activity and therefore was not taxable income pursuant to Section 4(a) of the ITA.

The subsequent introduction of Section 4C of the ITA overrules the *Metacorp (supra)* ruling and basically empowers the IRB to subject to tax the gains received by a taxpayer on any compulsory acquisition of its stock in trade. With the increase in compulsory acquisitions by the government over the past decade to construct public infrastructure in the country, this change in tax law has greatly impacted the property developers as well as companies that are trading in land and properties as such assets form part of their stock in trade.

However, one affected taxpayer has appealed the matter up to the Federal Court. This landmark tax case named *Wiramuda (M) Sdn Bhd v DGIR (2022) (Federal Court)* is a precedent for other affected taxpayers.

Tax Case

Wiramuda (M) Sdn Bhd v DGIR (2022) (Federal Court)

Landmark Ruling

Background

Wiramuda (M) Sdn Bhd (“Wiramuda” / “the taxpayer”) is a company principally engaged in the business of property development.

In 2015, the Selangor state government compulsorily acquired four (4) plots of land pursuant to the Land Acquisition Act 1960 and paid compensation of approximately RM202 million to Wiramuda. Wiramuda did not subject the compensation payment to tax.

In February 2019, the Inland Revenue Board (“IRB”) gave notice to Wiramuda that the compensation payment of approximately RM202 million should be subject to income tax pursuant to Sections 4C and 24(1)(aa) of the ITA and proceeded to raise a notice of additional assessment on Wiramuda with the additional tax payable of approximately RM52 million.

Wiramuda proceeded to file a judicial review at the High Court to challenge the constitutionality of Section 4C of the ITA as it contravenes Article 13(2) of the Federal Constitution which prescribes that the taxpayer should receive adequate compensation for the property that is being compulsorily acquired pursuant to the Land Acquisition Act 1960.

The High Court dismissed the taxpayer’s appeal on 29 September 2020 and this decision was further upheld by the Court of Appeal on 7 March 2022.

Tax Case

Wiramuda (M) Sdn Bhd v DGIR (2022) (Federal Court)

Landmark Ruling

Issue for Determination

Does Section 4C of the ITA contravene Article 13(2) of the Federal Constitution as it deprives the taxpayer of an adequate compensation granted under the Land Acquisition Act 1960?

Federal Court's Decision

The Federal Court allowed the appeal. In their decision, the Federal Court invalidated Section 4C of the ITA on the grounds that the introduction of this provision was unconstitutional.

Therefore, the IRB cannot invoke Section 4C of the ITA to bring to tax the compensation income received by a taxpayer on a compulsory acquisition under the Land Acquisition Act 1960. This is because the act of collecting tax upon the compensation would violate the fundamental rights of the taxpayer to receive an adequate compensation.

Actions Required

What Should Property Developers or Property Traders Do?



Check on properties sold in recent years

To conduct a check on the properties sold in the past and whether any properties were compulsory acquisitions by the Government under the Land Acquisition Act 1960.



Review of the tax treatment

To review the tax treatment adopted on the compensation income received from the government for the properties that were compulsorily acquired. Has the compensation income been taxed under Section 4C of the ITA?

How Crowe Can Assist You

Helping you navigate the complex and ever-changing tax laws and regulations



Review of tax returns

To review the tax treatment adopted on the compensation income received from the government for compulsorily acquired properties.

Submission of revised tax returns

- To prepare the revised tax computation and tax returns.
- To assist with the submission of the revised tax computations and tax returns to the Inland Revenue Board.
- To follow up with repayment of tax.



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