

Taxpayer Wins RPC Shares Tax Appeal - Computation Of RPC Shares Disposal Price

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Recently, the Special Commissioners of Income Tax (SCIT) in *PSB v KPHDN* ruled in favour of the taxpayer and held that the Inland Revenue Board (Revenue) cannot, in the absence of clear statutory authority, reconstruct a transaction to arrive at a more favourable tax outcome. Particularly, the SCIT held that where shares are disposed of in a single transaction for a single consideration, the Revenue has no power to apportion the disposal price.

The SCIT further clarified that the date of acquisition is relevant only in determining the acquisition price of the shares and plays no role in the computation of the disposal price, which is confined to the “*amount or value of the consideration in money or money’s worth*” actually received for the disposal.

The taxpayer in this appeal was successfully represented by the firm’s Tax, SST & Customs Partner, S. Saravana Kumar together with associate, Tan Jia Hua.

Background Facts

The taxpayer first acquired the entire shareholding in PCSB on 13 September 2018 through the purchase of 1 share for a nominal consideration of RM1. Subsequently, on 28 September 2018, the taxpayer acquired a piece of freehold land for RM4.7 million. By way of a nomination letter, the taxpayer nominated PCSB to assume all rights, interests, and obligations under the agreement.

Upon obtaining the requisite approval from the relevant state land authority on 6 March 2019, the land was transferred to PCSB. Following the transfer, PCSB became a real property company (RPC) within the meaning of Paragraph 34A(6)(b) of Schedule 2 of the Real Property Gains Tax Act 1976 (RPGT Act).

Consequently, the value of the taxpayer's single share in PCSB increased to RM 4.7 million.

Thereafter, on 31 August 2019, PCSB allotted an additional 99,999 shares to the taxpayer at RM1 per share, resulting in a total shareholding of 100,000 shares.

On 27 November 2019, the taxpayer disposed of its entire shareholding in PCSB to a third party in a single transaction for a total consideration of RM 5.7 million.

The Revenue subsequently raised assessments for the year of assessment (YA) 2019 on the basis that the disposal price ought to be apportioned equally across the individual shares, having regard to their differing acquisition dates and prices.

Aggrieved by the Revenue's position, the taxpayer filed an appeal to the SCIT.

The Main Issue Before The SCIT

The central issue before the SCIT was the proper method of computing the disposal price of shares disposed of in a single transaction under paragraph 34A of Schedule 2 of the RPGT Act.

Specifically, the question was whether the Revenue was empowered, as a matter of law, to apportion the total consideration received for the disposal of 100,000 shares across the individual shares by reference to their respective acquisition dates and prices, or whether the disposal price must be confined to the total "*amount or value of the consideration in money or money's worth*" received for the disposal as a whole.

The Revenue's Arguments

It was undisputed that the acquisition price for the 1 share acquired on 13 September 2018 was RM 4.7 million, while the acquisition price for the 99,999 shares allotted on 31 August 2019 was RM 99,999.00. It was further undisputed that all 100,000 shares were disposed of in a single transaction for RM 5.7 million.

However, the Revenue contended that, as the shares were acquired at different points in time and at materially different acquisition prices, the disposal price ought to be apportioned accordingly.

In advancing this position, the Revenue adopted a mathematical allocation based on unit count, dividing the total consideration of RM 5.7 million across 100,000 shares, resulting in a notional disposal price of RM 57.00 per share.

For the 1 share acquired on 13 September 2018:

Disposal Price:

$$\frac{1 \text{ share}}{\text{RM } 5,700,000} = \text{RM } 57.00$$

Gains / Losses:

$$\text{RM } 57.00 - \text{RM } 4,700,000 = (- \text{RM } 4,699,943)$$

Accordingly, no RPGT is payable for the disposal of this 1 unit share.

For the 99,999 shares acquired on 31 August 2019:

Disposal Price:

$$\frac{99,999 \text{ share}}{\text{RM } 5,700,000} = \text{RM } 5,699,943.00$$

Gains / Losses:

$$\text{RM } 5,699,943.00 - \text{RM } 99,999.00 = \text{RM } 5,599,944.00$$

This resulted in a significant gain and, consequently, a substantial RPGT liability as follows:

$$\text{RM } 5,599,944.00 \times 30\% = \text{RM } 1,679,983.20$$

The Revenue justified this apportionment methodology by relying principally on *Lee Soon Mui dan satu lagi v Ketua Pengarah Hasil Dalam Negeri dan satu lagi* [2024] MLJU 1879, where the High Court adopted a mathematical allocation of disposal consideration based on the number of shares disposed of. It contended that the same approach should apply.

The Taxpayer's Arguments

The taxpayer argued that the Revenue's approach was contrary to the proper construction of Paragraph 34A of Schedule 2 of the RPGT Act and unsupported by any statutory formula.

The taxable gain ought to have been computed simply as RM 5.7 million less RM 4,799,999.00, yielding RM 900,001.00, with RPGT payable at 30% amounting to only RM 270,000.30.

The taxpayer further contended that the Revenue had unlawfully imported acquisition mechanics into the computation of disposal price. While differing acquisition dates are relevant in determining the acquisition price under paragraphs 34A(2) and 34A(3), such distinctions are confined strictly to acquisition. These provisions have no role in determining disposal price under paragraph 34A(4).

The Revenue's method artificially inflated the gain to RM 5,599,944.00, resulting in RPGT of RM 1,679,983.20, despite the taxpayer's actual economic gain being only RM 900,001.00. Such an outcome was plainly inconsistent with commercial reality and resulted in taxation of artificial gains.

Further and in the alternative, the taxpayer argued that even if apportionment were permissible (which was denied), it must be based on relative “*money or money’s worth*” rather than unit count.

Applying this approach:

1 share:

$$\frac{4,700,000}{4,799,999} \times \text{RM } 5.7 \text{ million} = \text{RM } 5,581,251.16$$

99,999 shares:

$$\frac{99,999}{4,799,999} \times \text{RM } 5.7 \text{ million} = \text{RM } 118,748.84$$

Based on the disposal gains calculated above, and after deducting the deemed acquisition costs of the respective shares, the correct amount of RPGT payable in respect of the gains is as follows:

1 share:

$$\text{RM } 5,581,251.16 - \text{RM } 4,700,000.00 = \text{RM } 881,251.16$$

$$\text{RM } 881,251.16 \times 30\% = \text{RM } 264,375.35$$

99,999 shares:

$$\text{RM } 118,748.84 - \text{RM } 99,999.00 = \text{RM } 18,749.84$$

$$\text{RM } 18,749.84 \times 30\% = \text{RM } 5,624.95$$

Total RPGT Payable:

$$\text{RM } 264,375.35 + \text{RM } 5,624.95 = \text{RM } 270,000.30$$

Notably, this allocation also produced the same aggregate RPGT payable of RM 270,000.30. This was because both taxpayer’s approaches were grounded in the statutory concept of “*money or money’s worth*”. In contrast, the Revenue’s computation, based purely on share units, was an artificial construct with no basis.

Further, the taxpayer argued that the Revenue’s reliance on *Lee Soon Mui* was misplaced as that case concerned the computation of acquisition price, not disposal price, and involved shares of equal value. In other words, the equal apportionment in that case arose from factual parity, and not a general rule permitting mechanical apportionment.

The SCIT Ruling

The SCIT allowed the taxpayer's appeal. The written grounds of decision have yet to be issued at the time of publication.

Conclusion

This decision clarifies that the computation of gains under the RPGT Act must be confined to the "amount or value of the consideration in money or money's worth" received.

It affirms that timing is relevant only in determining the acquisition price and has no role in the computation of the disposal price. Accordingly, the Revenue cannot introduce artificial apportionment absent express statutory authority, and a single transaction for a single consideration must be respected as such.

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