



## SAC v Ketua Pengarah Hasil Dalam Negeri: Call Option Fee Falls Within The Scope Of Tax Exemption

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The decision of the Special Commissioners of Income Tax (SCIT) in *SAC v Ketua Pengarah Hasil Dalam Negeri* raises important questions concerning the scope of ministerial tax exemptions under Section 127(3A) of the Income Tax Act 1967 (ITA), the legal character of call options over land and the limits of administrative reinterpretation of incentive conditions.

At its core, the dispute concerned whether the Call Option Fee received by the taxpayer in the Year of Assessment (YA) 2016 constituted statutory income “derived from the disposal of rights over land” within the meaning of a tax exemption granted by the Minister of Finance (MOF).

The SCIT held that the Call Option Fee received by the taxpayer was entitled to income tax exemption pursuant to the tax incentive package granted by the MOF under Section 127(3A) of the ITA.

The taxpayer was successfully represented by the firm’s Tax, SST & Customs Partners, S. Saravana Kumar and Nur Amira Ahmad Azhar, together with Senior Associate, Nur Hanina Mohd Azham.

### **Statutory Framework: Section 127(3A) ITA**

Section 127(3A) ITA empowers the Minister of Finance to:

*“exempt any person or class of persons from the payment of income tax in respect of any income or class of income...”*

The provision is broad and discretionary. Once exercised, however, the exemption operates according to its expressed terms. The Director General of Inland Revenue (DGIR) administers the Act but does not possess independent authority

under Section 127(3A) to vary, narrow or override an exemption granted by the Minister.

The legal effect of a Section 127(3A) exemption is therefore twofold:

1. It removes otherwise chargeable income from the scope of taxation; and
2. Its scope must be determined by construing the exemption instrument itself.

The present case turned on the proper construction of the 2016 Exemption Letter, which granted full exemption on statutory income derived from *“the disposal of rights over plots of land that add value within the development area.”*

### **The Central Issue: What Constitutes A “Disposal of Rights Over Land”?**

The Revenue argued that only disposals by way of completed sale or lease qualified for exemption, relying heavily on the wording introduced in the 2019 amended letter (“by way of sale or lease”).

However, the Call Option Fee was received in YA 2016, and the operative instrument at the material time was the 2016 Exemption Letter, which did not restrict qualifying disposals to sale or lease.

The interpretive question was therefore whether the grant of a call option, coupled with consideration, constituted a “disposal of rights over land.”

### **Legal Character Of A Call Option Over Land**

At common law, a call option over land is more than a mere revocable offer. Upon payment of consideration, the option holder acquires an enforceable contractual right to compel a conveyance if the option is exercised within the stipulated period.

Simultaneously:

- The grantor is legally restrained from disposing of the land inconsistently with the option; and
- The land is effectively encumbered during the option period.

Although an option does not immediately transfer legal title, it undeniably involves the grant and restriction of proprietary rights. The grantor relinquishes, for value, the unfettered ability to deal freely with the land.

The SCIT appears to have accepted that such relinquishment constitutes a “disposal of rights,” even absent an immediate transfer of legal estate. This interpretation aligns with a functional and commercial understanding of “disposal,” focusing on the divestment or curtailment of proprietary powers rather than solely on completed conveyances.

Notably, the term “disposal” is not exhaustively defined in the ITA for purposes of Section 127(3A) exemptions. In the absence of statutory restriction, it must bear its ordinary legal meaning, which is capable of encompassing the transfer, assignment, surrender, or restriction of rights.

### **Strict Construction Of Tax Exemptions**

The Revenue relied on the orthodox principle that tax exemptions are to be construed strictly and that the burden lies on the taxpayer to bring itself squarely within the exemption.

While that principle is well established, strict construction does not permit the insertion of additional conditions not found in the exemption instrument. The role of the Revenue is to interpret the words used, and not to rewrite them.

The 2016 Exemption Letter referred broadly to “disposal of rights over plots of land.” The subsequent 2019 amendment introduced express language limiting disposals to those “by way of sale or lease.” The existence of this amendment arguably indicates that the earlier letter did not contain such a limitation.

Under orthodox principles of statutory and document construction:

- Where language is clear, it must be given effect;
- Subsequent amendments cannot be treated as retrospective clarifications unless expressly stated; and
- A later refinement may imply that the earlier formulation was wider.

The SCIT’s reasoning implicitly rejects the proposition that the 2019 amendment was merely declaratory of an original, narrower intention.

### **Temporal Operation And Non-Retroactivity**

The Call Option Fee was received in YA 2016. The applicable exemption must therefore be determined as at that year of assessment.

Malaysian jurisprudence recognises a strong presumption against retrospective operation of fiscal provisions, particularly where such operation would impose tax burdens or withdraw vested benefits absent clear legislative intent.

Although Section 127(3A) confers discretionary power on the Minister, once an exemption is granted and acted upon, the taxpayer acquires a legitimate expectation that its tax position will be determined in accordance with the conditions prevailing at the material time.

The SCIT’s decision reinforces that subsequent amendments cannot be invoked to deny exemption in respect of income already derived under the earlier framework.

## Nexus and Character: The Rakyat Berjaya Principle

The taxpayer relied on *Rakyat Berjaya Sdn Bhd v KPHDN* [1998] 4 MLJ 666 to argue that where a transaction is intrinsically linked to an earlier principal transaction, it inherits the same tax character.

Although *Rakyat Berjaya* concerned deductibility of interest on refinancing, the broader principle is that tax character may be informed by commercial continuity.

Here, the call option was granted contemporaneously with the 99-year lease of the primary 41-acre plot. It was not an isolated commercial arrangement but part of a single integrated development transaction. The SCIT appears to have accepted that the Call Option Fee derived from, and was inseparable from, the overall land disposal arrangement within the development area.

## Broader Implications

This decision is significant for three principal reasons:

### 1. Scope of “Disposal”

It affirms that disposal of rights over land is not confined to completed transfers of title. Option arrangements and similar proprietary restrictions may fall within incentive frameworks where drafted broadly.

### 2. Limits Of Administrative Narrowing

The DGIR cannot effectively curtail the scope of a Section 127(3A) exemption through post hoc restrictive interpretation or reliance on subsequent amendments.

### 3. Transactional Structuring In Incentivised Developments

For developers operating within government-backed incentive schemes, the decision provides authority for treating integrated land arrangements including options and conditional rights, as part of qualifying disposals, provided the exemption language supports such characterisation.

Ultimately, the case reinforces a foundational principle of Malaysian tax law: while exemptions are construed strictly, they must be applied according to their expressed terms at the material time. Administrative clarification cannot operate as retrospective taxation by another name.

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