

SCIT Rules PIDM Expenses Are Tax Deductible For Takaful Operator

30 September 2026

For more information, please contact:

Datuk D P Naban
naban@rdslawpartners.com

S. Saravana Kumar
sara@rdslawpartners.com

Amira Azhar
amira@rdslawpartners.com

The Special Commissioners of Income Tax (SCIT) have recently delivered their decision in *EFTB v Ketua Pengarah Hasil Dalam Negeri*, concerning the deductibility of *Perbadanan Insurans Deposit Malaysia* (PIDM) expenses. The decision considers, among others, the interplay between Section 33(1) and Section 60AA of the Income Tax Act 1967 (ITA), as well as the legal effect of the Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013 (2013 Rules).

The Taxpayer was successfully represented by RDS Tax, SST & Customs Partner, S. Saravana Kumar, together with Associate, Tan Jass Key.

Brief Facts

The Taxpayer was a licensed takaful operator principally engaged in the management of general takaful, family takaful and takaful investment-linked businesses. During the year of assessment (YA) 2014, the Taxpayer operated under a segregated fund structure comprising the Family Takaful Fund, General Takaful Fund and Shareholders' Fund. The dispute concerned PIDM expenses incurred by the Shareholders' Fund in respect of the Family Takaful and General Takaful businesses.

The PIDM expenses comprised statutory first and annual premium payments made to PIDM pursuant to the Malaysia Deposit Insurance Corporation Act 2011 (MDICA). For the YA 2014, the Taxpayer incurred PIDM expenses amounting to RM 5,268,481, comprising RM 2,006,100 in respect of the General Takaful business and RM 3,262,381 in respect of the Family Takaful business.

These expenses were borne by the Shareholders' Fund pursuant to Bank Negara Malaysia's Takaful Operational Framework.

The Taxpayer claimed a tax deduction in respect of the PIDM expenses under Section 33(1) of the ITA, relying on the 2013 Rules. During the audit, the Inland Revenue Board (IRB) disallowed the deduction, relying on a Ministry of Finance letter dated 27.7.2017 which stated that PIDM expenses were deductible against the Shareholders' Fund only for the YAs 2015 to 2017. The IRB subsequently raised an additional assessment for the YA 2014, resulting in additional tax and penalty.

Aggrieved, the Taxpayer appealed to the SCIT.

The Issue Before The SCIT

The dispute before the SCIT centred on whether the PIDM expenses incurred by the Shareholders' Fund in connection with the Family Takaful and General Takaful businesses were deductible under Section 33(1) of the ITA.

The Taxpayer's Contentions

The Taxpayer submitted that the PIDM expenses were deductible on two independent grounds:

- (a) Pursuant to the express statutory authorisation contained in the 2013 Rules; and
- (b) Alternatively, under the general deduction provision in Section 33(1) of the ITA.

Deductibility Under The 2013 Rules

The Taxpayer argued that the PIDM expenses were deductible under the 2013 Rules on the following grounds:

- (a) The 2013 Rules expressly provided for a deduction of the first or annual premium paid to PIDM by a member institution for a YA. The Taxpayer had satisfied the relevant conditions, being a member institution which had paid the prescribed PIDM premiums during the basis period;
- (b) The 2013 Rules applied from the YA 2011 onwards and contained no restriction limiting the availability of the deduction to the YAs 2015 to 2017. Accordingly, the PIDM expenses incurred in the YA 2014 fell within the scope of the 2013 Rules; and
- (c) The Ministry of Finance letter dated 27.7.2017 could not override or restrict the operation of the 2013 Rules, which constituted subsidiary legislation. In particular:
 - (i) The limitation to YAs 2015 to 2017 appeared only in the Ministry's letter and not in the 2013 Rules; and

- (ii) Reference to YAs 2015 to 2017 in the Ministry's letter related to a separate income tax exemption under Section 127(3A) of the ITA, and was not a limitation on the deductibility of PIDM expenses under the 2013 Rules.

Deductibility Under Section 33(1)

In the alternative, the Taxpayer argued that the PIDM expenses were deductible under Section 33(1) as they were wholly and exclusively incurred in the production of gross income:

- (a) The PIDM expenses were mandatory regulatory costs incurred in the ordinary course of carrying on its licensed takaful business; and
- (b) Such expenses were connected with the production of the Taxpayer's wakalah fee income derived from managing the Family Takaful and General Takaful businesses.

The Taxpayer further submitted that the PIDM expenses did not create or enhance any capital asset, did not confer any enduring benefit and were not expressly prohibited under Section 39 of the ITA.

Interplay Between Section 33(1) And Section 60AA

Further, the Taxpayer argued that Section 60AA(9)(b) did not expressly or impliedly exclude the operation of Section 33(1). In particular:

- (a) The maxim *generalia specialibus non derogant* only applied where there was an inconsistency between the general and special provisions. As Section 60AA(9)(b) did not specifically address the deductibility of PIDM expenses, there was no inconsistency which required Section 33(1) to be displaced;
- (b) The Taxpayer relied, among others, on *The Great Eastern Life Assurance Co Ltd v Director General of Inland Revenue* [1987] 2 MLJ 529 and *Tune Insurance Malaysia Berhad v Ketua Pengarah Hasil Dalam Negeri* [2019] 1 LNS 1276 in support of its position;
- (c) The majority decision of the Court of Appeal in *Etiqa Family Takaful Bhd (previously known as Etiqa Takaful Bhd) v Ketua Pengarah Hasil Dalam Negeri* [2025] 2 MLJ 536 was distinguishable on the basis that the earlier decision concerned a different category of expenditure and did not involve the 2013 Rules or the effect of the Ministry of Finance letter on the deduction claimed for the YA 2014; and
- (d) The 2013 Rules and Section 60AA formed part of the same statutory framework. As the 2013 Rules were made pursuant to Section 33(1)(d) of the ITA, there was no inconsistency between the 2013 Rules and Section 60AA which would require Section 52 of the ITA to operate.

The IRB's Arguments

The IRB, on the other hand, submitted that the PIDM Expenses were not deductible for the following reasons:

- (a) Section 60AA constituted the specific statutory regime governing the computation of the adjusted income of a takaful operator's Shareholders' Fund. Accordingly, the general deduction provision in Section 33(1) could not be relied upon to the extent that it was inconsistent with Section 60AA;
- (b) Section 60AA(9)(b) specifically prescribed the deductions available to the Shareholders' Fund and therefore prevailed over the general provision in Section 33(1), applying the principle *generalia specialibus non derogant*. The IRB further relied on Section 52, arguing that the general provisions of the ITA must be modified to the extent necessary to give effect to the specific provisions applicable to the Shareholders' Fund;
- (c) The IRB relied on the majority Court of Appeal decision in *Etika Family Takaful Bhd*, contending that the decision was binding and rejected the Taxpayer's reliance on Section 52 to invoke Section 33(1);
- (d) In relation to the 2013 Rules, while the Rules established that a deduction for PIDM contributions was available in principle, they did not specify against which fund, namely, the Shareholders' Fund, Family Takaful Fund or General Takaful Fund, the deduction should be made. Accordingly, the 2013 Rules did not assist the Taxpayer in claiming the deduction against the Shareholders' Fund; and
- (e) The IRB relied on the Ministry of Finance letter dated 27.7.2017, contending that the letter permitted PIDM premiums to be claimed against the Shareholders' Fund only for the YAs 2015 to 2017 and was therefore not applicable to the Taxpayer's claim for the YA 2014.

The SCIT's Decision

The SCIT allowed the Taxpayer's appeal and set aside the additional assessment and penalty.

This decision is significant as it concerns the statutory treatment of PIDM expenses incurred by a takaful operator and, in particular, the relationship between the general deduction provision under Section 33(1) and the provisions governing the computation of income of the Shareholders' Fund under Section 60AA. The decision also highlights the importance of the 2013 Rules, which expressly provide for deductions in respect of PIDM premiums paid by member institutions.

Additionally, this decision will also be of particular interest to takaful operators and other financial institutions in considering the tax treatment of mandatory regulatory expenses and the extent to which administrative guidance may affect deductions arising under subsidiary legislation.

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KUALA LUMPUR

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,
Solaris Dutamas, 50480 Kuala Lumpur
T: +603 6209 5400
F: +603 6209 5411
enquiry@rdslawpartners.com

PENANG

Suite S-21E & F21st Floor, Menara Northam,
No. 55, Jalan Sultan Ahmad Shah, 10050
Penang
T: +604 370 1122
F: +604 370 5678
generalpg@rdslawpartners.com

JOHOR BAHRU

8-35, Menara Delima Satu, Jalan Forest City 1,
Pulau Satu, 81550 Gelang Patah, Johor Bahru
T: +607 585 6414
F: +607 509 7614
generaljb@rdslawpartners.com