



High Court Upholds Tax Exemption On Call Option Fee Under MOF Incentive Package

15 June 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 High Court has dismissed an appeal by the Inland Revenue Board (IRB), affirming a decision of the Special Commissioners of Income Tax (SCIT) that a RM 1.4 million call option fee received by a taxpayer was exempt from income tax under a special tax incentive package granted by the Minister of Finance (MOF).

The taxpayer was successfully represented by the firm's Tax, SST & Customs Partner, S. Saravana Kumar together with Senior Associate, Nur Hanina Mohd Azham.

This ruling provides judicial guidance on the tax treatment of call option arrangements involving land and underscores the principle that tax incentives granted by the government cannot be retrospectively restricted through subsequent amendments or administrative interpretation.

At the centre of the dispute was whether the call option fee constituted income derived from the disposal of rights over land within a designated development area and therefore qualified for exemption under a tax incentive package granted pursuant to Section 127(3A) of the Income Tax Act 1967 (ITA).

Development Project And Call Option Arrangement

The taxpayer was the master developer of an integrated industrial development project in Johor.

In September 2013, the taxpayer entered into a lease agreement with a third party company, HMSB, involving a 41 acre parcel of land within the development area for a period of 99 years. As part of the same transaction, HMSB was granted a call option to acquire an adjacent 16.24 acre parcel of land within a 2 year option period.

In consideration for the option, HMSB paid RM 1.4 million to the taxpayer.

Several years later, the development project received a special tax incentive package from the MOF. Through a letter dated 27 December 2016, the MOF granted full income tax exemption on statutory income derived from the disposal of rights over plots of land that add value within the development area.

The incentive package was subsequently amended through a letter dated 8 July 2019, which expressly referred to statutory income derived from the disposal of rights over plots of land by way of sale or lease.

Following a tax audit, the IRB took the position that the RM 1.4 million call option fee did not fall within the scope of the exemption. The tax authority consequently issued an additional assessment for the year of assessment 2016 together with a 20% penalty under Section 113(2) of the ITA.

The taxpayer challenged the assessment before the SCIT.

Whether A Call Option Involves Disposal Of Rights Over Land

A central issue in the case was the legal character of the call option arrangement.

The taxpayer argued that the exemption granted by the MOF was not limited to proprietary rights arising from a completed sale or lease. By granting the call option, it had effectively restricted its ability to deal freely with the adjacent land during the option period while conferring enforceable rights upon HMSB.

The taxpayer further contended that the option was not a standalone arrangement but formed an integral part of the broader land disposal transaction embodied in the lease agreement.

The IRB, however, maintained that the option fee merely represented consideration for a future opportunity to acquire land and did not amount to a disposal of rights by way of sale or lease. According to the tax authority, because HMSB ultimately did not exercise the option, no qualifying disposal of rights had taken place.

The IRB also argued that tax exemptions must be interpreted strictly and that the taxpayer bore the burden of bringing itself squarely within the terms of the exemption.

SCIT Finds In Favour Of Taxpayer

In a decision delivered in December 2025, the SCIT allowed the taxpayer's appeal.

The SCIT found that the grant of the call option involved the disposal of rights over land because the taxpayer had surrendered part of its ability to deal freely with the adjacent land during the option period while granting HMSB legally enforceable rights.

The SCIT further held that the option arrangement could not be viewed in isolation. Instead, it formed part of the overall commercial arrangement relating to the disposal of land within the development project.

Significantly, the tribunal concluded that the applicable incentive was the original 2016 exemption letter rather than the amended 2019 version. Since the option fee had been received before the issuance of the amended letter, the taxpayer's entitlement to the exemption had to be assessed based on the terms that were in force at the material time.

The SCIT also found that the taxpayer had complied with the conditions attached to the incentive package, including requirements relating to the location of the land and value-added development activities carried out within the project area.

As a result, the tribunal held that the option fee qualified for exemption and that the penalty imposed by the IRB should be set aside.

High Court Dismisses IRB's Appeal

Dissatisfied with the outcome, the IRB appealed to the High Court.

The High Court upheld the SCIT's findings and dismissed the appeal. In doing so, the High Court agreed that the grant of the call option constituted a disposal of rights over land for the purposes of the exemption granted under Section 127(3A) of the ITA.

The court also accepted that the option arrangement formed part of the wider land disposal transaction and was not an independent or unrelated commercial arrangement.

Importantly, the High Court affirmed that the amended 2019 exemption letter could not be applied retrospectively to alter the tax treatment of a transaction that had already taken place under the earlier incentive framework.

Consequently, the court held that the RM 1.4 million option fee fell within the scope of the exemption granted by the MOF and upheld the SCIT's decision to set aside both the additional assessment and the penalty.

Broader Implications For Tax Incentives

The decision is likely to be of interest to property developers, investors and taxpayers involved in large scale development projects that benefit from government approved tax incentives.

The ruling suggests that courts may look beyond the form of a transaction and examine its commercial and legal substance when determining whether a particular receipt falls within the scope of an incentive.

The judgment also reinforces an important principle of tax certainty. Where taxpayers have structured transactions and complied with the conditions of an incentive package in force at the relevant time, subsequent amendments or administrative interpretations should not ordinarily be used to deny benefits that have already accrued.

In addition, the case highlights the potential significance of ancillary land related rights, such as call options, rights of first refusal and similar contractual mechanisms, which frequently accompany major property and industrial development transactions. Depending on their legal effect and relationship to the underlying land disposal arrangement, such rights may carry tax consequences that extend beyond their contractual description.

For taxpayers operating within government-approved development corridors and incentive schemes, the decision serves as a reminder that the precise wording of incentive letters, the timing of transactions and the overall commercial context remain critical factors in determining the availability of tax exemptions.

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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