SALIHIN
THINK DIFFERENTLY

SALIHIN Academy

2026 MALAYSIA BUDGET TAX SEMINAR
KUALA LUMPUR EDITION

SPEAKER
SESSION 3

MS. IVY LING YIENG PING

Partner, Tax, Customs & Trade,
Lee Hishammuddin Allen & Gledhill

RECENT TAX CASES & LITIGATION TRENDS

LESSONS FOR TAX RISK MANAGEMENT

1. Ketua Pengarah Kastam v Hong Leong Yamaha Sdn Bhd [2025] 9 CLJ 361

- Sales Tax: Ministerial Exemption
- HC dismissed Taxpayer's JR
- COA allowed Taxpayer's Appeal
- **FC allowed Customs' Appeal**

Sales Tax: Minister's Exemptions

- Under s.35 of the Sales Tax Act 2018, the Minister has the power to exempt sales tax subject to conditions as he deems fit:

> **35.** (1) The Minister may, by order published in the *Gazette* and subject to such conditions as he deems fit, exempt—
>
> *(a)* any goods or class of goods from the whole or any part of the sales tax; or
>
> *(b)* any person or class of persons from payment of the whole or any part of the sales tax which may be charged and levied on any taxable goods manufactured or imported.

> (3) The Minister may, in any particular case and subject to such conditions as he deems fit—
>
> *(a)* exempt any person or class of persons from payment of the whole or any part of the sales tax which may be charged and levied on any taxable goods manufactured or imported;
>
> *(b)* exempt any registered manufacturer or class of registered manufacturers from charging and collecting sales tax on taxable goods; or
>
> *(c)* direct the Director General to make a refund to any person or class of persons of the whole or any part of the sales tax or penalty paid by such persons or class of persons.

- Taxpayers are required to comply with the conditions strictly. Any failure to comply with the conditions will result in the sales tax being due and payable immediately.

- s.35(5) of the Sales Tax Act 2018:

> (5) Where any person who is exempted under paragraph (1)*(b)* or (3)*(a)* fails to comply with any conditions to which the exemption relates, any sales tax that has been the subject of the exemption shall become due and payable by the person on the date on which any of the conditions failed to be complied with.

KPK v Hong Leong Yamaha Sdn Bhd

Facts

- Taxpayer, a registered manufacturer of locally assembled motorcycles, imported various components used to assemble motorcycles below 250cc.
- Taxpayer claimed sales tax exemption under Item 1, Sch. C of the Sales Tax (Person Exempted from Payment of Tax) Order using Exemption Certificates issued by Customs ("Exemption Order").
- Customs contended that the exemption was only eligible for raw material used to manufacture taxable finished goods. Motorcycles below 250cc are not taxable. Thus, its raw materials are not eligible for sales tax exemption.
- Customs issued BODs for a total of RM 55.9 million. Taxpayer filed JR to High Court.

Questions to be addressed by FC

- Whether a "registered manufacturer" who **manufactures both "taxable finished product" and "tax-exempted finished product**" is **entitled to claim exemption for taxable raw materials imported for the manufacturing of "tax exempted finished product"** under Item 1, Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018;
- Whether the law enunciated by the English Court of Appeal in ***Littman v Barron (Inspector of Taxes) [1951] 2 All ER 393 (CA)*** per Cohen LJ that 'the principle that **in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief** in certain cases from a section clearly imposing liability' should apply in Malaysia;
- Whether the law enunciated by the English House of Lords in ***Ben-Odeco Ltd v Powlson (Inspector of Taxes) [1978] STC 460*** per Lord Russell that **in the case of a provision affording relief from tax, 'the taxpayer must persuade me that he is within it**. If the reasons **pro and con were in precise balance, the taxpayer on that basis would lose**' should apply in Malaysia

KPK v Hong Leong Yamaha Sdn Bhd

JADUAL C/ *SCHEDULE C*

(1) *Item No.*	*(2)* *Persons*	*(3)* *Goods Exempted*	*(4)* *Conditions*	*(5)* *Certificate to be signed by*
1.	Any registered manufacturer	Raw materials, components and packaging materials excluding petroleum	*(a)* That the goods are approved by the Director General; *(b)* that the goods are imported or purchased from another registered manudfacturer or a warehouse licensed under section 65 or licensed manufacturing warehouse under 65A of the Customs Act 1967; *(c)* that the goods shall be used solely in the manufacturing of finished goods of the person mentioned in column (2); *(d)* that the person mentioned in column (2) shall pay the sales tax on any goods that cannot be accounted for; *(e)* any other conditions the Director General deem fit to impose.	Registered Manufacturer

- One of the conditions imposed in the Taxpayer's Exemption Certificate being: "The raw materials, components and packaging materials shall be used solely in the manufacturing of the **finished taxable goods of the registered manufacturer".**

Amended Item 1, Sch C

JADUAL C/ *SCHEDULE C*

(1) Item No.	*(2) Persons*	*(3) Goods Exempted*	*(4) Conditions*	*(5) Certificate to be signed by*
1.	Any registered manufacturer	Raw materials, components and packaging materials excluding petroleum	*(a)* That the goods are approved by the Director General; *(b)* that the goods are— (i) imported; (ii) purchased from another registered manufacturer; or (iii) transported from— *(a)* a licensed warehouse under section 65 of the Customs Act 1967 or a licensed manufacturing warehouse under section 65A of the Customs Act 1967; or *(b)* a free zone established under the Free Zones Act 1990 by person acting on behalf of a registered manufacturer; *[(b) Subs. PU(A) 380/2022:para.4]* *(c)* that the goods shall be used in the manufacturing of finished goods of— (i) taxable goods; or (ii) both taxable and exempted goods of the person mentioned in column (2); *[(c) Subs. PU(A) 380/2022:para.4]*	Registered Manufacturer

Amended Item 1, Sch C (cont'd)

(1) Item No.	*(2) Persons*	*(3) Goods Exempted*	*(4) Conditions*	*(5) Certificate to be signed by*
			(ca) that in the case of manufacturing the exempted goods, the finished goods shall be exported by the person mentioned in column (2); *[(ca) Ins. PU(A) 380/2022:para.4]* *(cb)* notwithstanding subitem *(ca)*, that in the case of manufacturing the exempted goods, the following finished goods: (i) controlled article under the Control of Supplies Act 1961 [*Act 122*] and subject to price control; (ii) pharmaceutical product falling under chapter 30 of the prevailing Customs Duties Order; or (iii) milk products falling under headings or subheadings 04.01, 04.02, 0403.10.29 00, 0403.20.19 00, 0403.10.99 00, 0403.90.10 00, 0403.90.90 90, 0403.90.90 00, 04.04, 1901.10.20 00, 1901.90.31 00, 1901.90.32 00, 1901.90.39 00 and 2202.99.10 00 of the prevailing Customs Duties Order, *[(cb) Ins. PU(A) 380/2022:para.4]* may be sold locally by the registered manufacturer;	

HC held in favour of Customs

- Exemption Order must be construed together with the principal Act, Sales Tax Act.
- Section 2 of the Act read together with s.12, a 'registered manufacturer' is one who manufactures 'taxable goods' who is liable to be registered under s.13 of the same Act.
- The Exemption Order is issued by Minister under s.35(1)(b). The provision empowers the Minister to exempt sales tax charged and levied on “any taxable goods manufactured or imported”.
- Read together with s.8(1)(a) (levy of sales tax on taxable goods), it follows that a manufacturer who manufactures non-taxable goods is not required to be registered and not eligible for sales tax exemption. In this regard, the Taxpayer is well aware that the sales tax exemption is only applicable for finished taxable goods.
- Further, para. 3 of the Exemption Certificate issued clearly stated: "finished taxable goods of the registered manufacturer".

COA allowed Taxpayer’s appeal

- The HC’s flawed reasoning fails to justify why the Taxpayer, whose finished goods are non-taxable, was required to register as a manufacturer.
- The DGC could neither impose additional conditions nor add or change the words by limiting the meaning of the words “finished goods” to mean “finished taxable goods”. It has to be done by proper legislation.
- Further, the Exemption Order 2018 was amended from “finished goods” to “finished goods of taxable goods”, which strengthens the contention that the meaning of the original wording in Schedule C, column 4 was not limited to only finished taxable goods, otherwise, there was no necessity to amend the Schedule C in 2022.

FC's Decision in Allowing Customs' Appeal

- The Court held that the manufacturers of motorcycles below 250cc (which are tax-exempt finished goods) are not "registered manufacturers" under Item 1, Schedule C of PU(A) 210. Only manufacturers of taxable goods qualify as registered manufacturers.

- The exemption certificate itself clearly stated that raw materials and components must be used to produce taxable finished goods ("barang siap bercukai"). Since the Taxpayer generated and used this certificate, it was fully aware of this condition.

- **The onus lies on a taxpayer who claims tax exemption to establish that he has satisfied the requirements and falls within the exemption**. The taxpayer, whose supplies would otherwise be taxable, is to establish that it comes within the exemption, so that, if the court is left in doubt whether a fair interpretation of the words of the exemption cover the supplies in question, the claim to the exemption must be rejected.

- Tax exemption provision should be construed in a manner "to make as much sense as it can be of the text of the statutory provisions read in its appropriate context" so as to avoid an absurd consequence where "the obvious purpose of the provisions would be defeated" if a wider/over- inclusive construction of the exemption is adopted.

- The COA failed to distinguish between a tax-charging provision/statute from one which provides relief or exemption from tax and leans towards a literal interpretation from a purposive interpretation, even when it is obvious that the outcome of such literal construction of the exemption would invariably lead to a situation of over-inclusiveness which was not intended by the exemption, which subsequently leads to absurd consequences.

2. Rohas-Euco Industries Bhd v KPK [2025] CLJU 1852

- Input Tax Credits Refunds under GST Act 2014
- HC dismissed the Taxpayer's Judicial Review
- **COA allowed the Taxpayer's Appeal**

Case Facts

- The Taxpayer, a GST-registered company, was required to file GST-03 returns and entitled to claim input tax credits ("ITC")..
- Due to a new internal accounting system and data migration, the Taxpayer filed its GST returns for May–August 2018 late (on 31 January 2019).
- The Taxpayer wrote to Customs on 27 June 2018 seeking an extension of time but received no reply.
- Customs later rejected the Taxpayer's ITC refunds solely because the returns were filed late, in reliance on sections 6 and 8 of the GST Repeal Act 2018.
- Subsequently, on 28 April 2021, Customs issued a Bill of Demand to recover the disallowed ITC ("**the Decision**").
- Aggrieved, the Taxpayer filed a judicial review application in the High Court, which was dismissed, leading to an appeal to the Court of Appeal.

Issues Before the COA

- Whether section 8 of the GST Repeal Act removed Customs' legal obligation to refund, concomitant with the Appellant's vested entitlement under ss.38 and 39 GST Act to ITC refunds?

- Whether the Taxpayer's failure, if any, to comply with sections 6(2)(a) and 8(1) of the GST Repeal Act allows Customs to forfeit ITCs due to the Taxpayer for the entire taxable period (i.e. May to August 2018)?

Customs' Contention

- The Taxpayer's failure to submit its GST returns and corresponding ITC claims before the statutory deadline constituted a breach of Section 8(1) of the GST Repeal Act. Therefore, the Taxpayer was not entitled to make any ITC claim as it will be in non-compliance with section 8 of the GST Repeal Act

Court of Appeal's Decision

- Section 8 of the GST Repeal Act governs only the final GST return (i.e. August 2018) and does not apply to returns for May, June and July 2018. Even then, section 8 does not relieve Customs of its obligation to refund the relevant ITC merely because the return was submitted late.

- Relying on COA's decision in ***Ketua Pengarah Kastam v Metrogold Commercial Sdn Bhd [2024] 2 MLJ 918***, the **GST Repeal Act cannot be construed as retrospectively impairing the Taxpayer's right,** already accrued, existing and vested, to be refunded with its claim for input tax credit.

- Under section 38(5) of the GST Act, Customs merely has the power to "withhold" ITC refunds if the Taxpayer failed to furnish GST return. However, such withholding cannot be indefinite so as to amount to a forfeiture. **Customs remains dutybound to refund the ITC if it is found to be valid, notwithstanding the late submission**.

- Further, the COA reiterated the well-established legal principles governing the interpretation of tax and revenue statutes, Article 96 of the Federal Constitution, which provides that "***no tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law***."

3. KPHDN v Tenaga Nasional Berhad (01(f) – 27 – 09/2024 (W)

- Reinvestment Allowance
- High Court & COA held in favour of Taxpayer
- **FC overturned COA's decision, in favour of KPHDN**

Case Facts

- TNB, the sole electricity provider in Peninsular Malaysia, claimed Reinvestment Allowance (RA) under Schedule 7A of the Income Tax Act 1967 from YA 2003–2017.
- The Inland Revenue Board (IRB) rejected the claim and instead said TNB should have claimed Investment Allowance (IA) under Schedule 7B for the service sector, as electricity generation is not a “manufacturing activity” within the context of Schedule 7A.
- Aggrieved by the rejection, the Taxpayer filed a judicial review application in the High Court to quash the said decision.
- Eventually, the HC allowed the judicial review application which decision was unanimously affirmed by the COA subsequently.
- Aggrieved by the said decision, IRB filed a motion in the Federal Court for leave to appeal against that decision and leave was granted.

Question of Law Before the Federal Court

Whether the Court of Appeal is correct in its determination of the Taxpayer's activities is that of **manufacturing under Schedule 7A of the ITA 1967** based on the cases of ***Majlis Perbandaran Seberang Perai v Tenaga Nasional Bhd [2005] 1 MLJ 1*** and ***Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturer Sdn Bhd (2012) MSTC 30-039*** without regard to the real intention of the Parliament in enacting Schedule 7B of the ITA 1967 which applies to the utility sector?

Key Issue

Whether the Taxpayer is in the business of manufacturing when it generates, transmits and distributes electricity for sale to its customers?

FC's Decision

- **Schedules 7A and 7B of the Income Tax Act apply to different circumstances and are mutually exclusive**; a taxpayer is not entitled to claim relief under both.

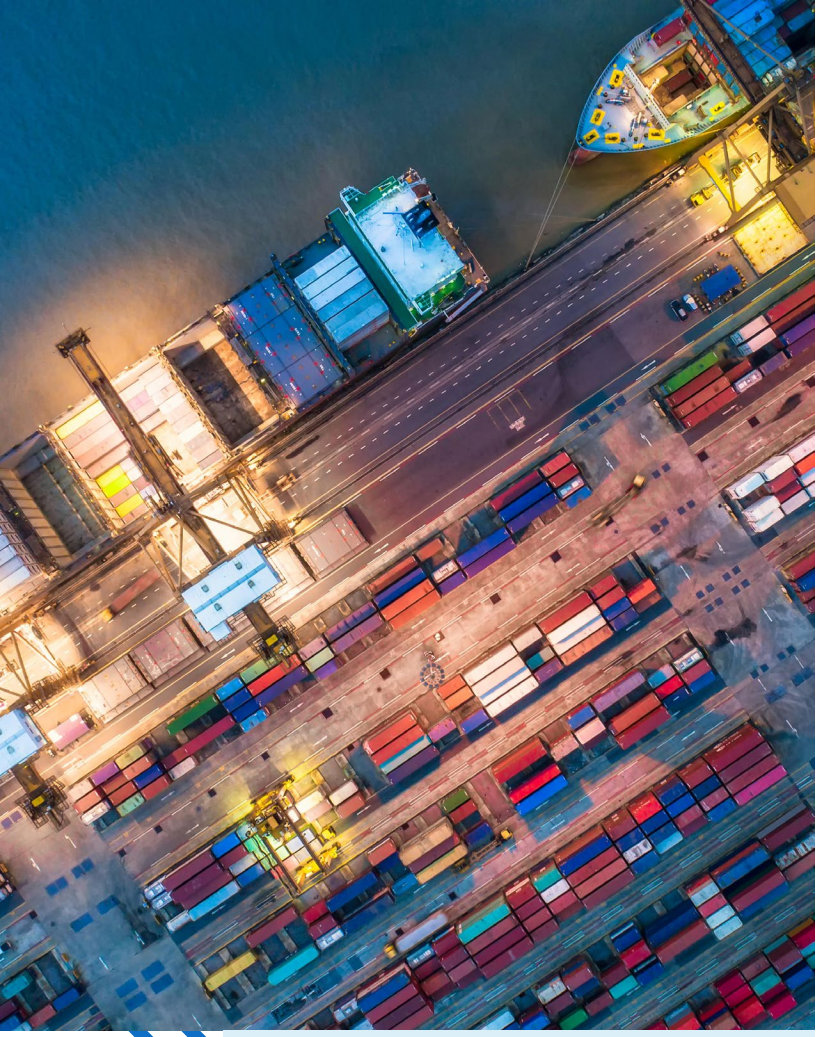
- TNB's claim for reinvestment allowance (RA) was submitted in YA 2018, although it related to YA 2003. The Court ruled that such a claim must be assessed based on the law applicable at the time of filing (YA 2018), hence there was no vested right. The legal maxim of posterior derogate (legi) priori applies (A later law repeals an earlier (law)).

- Since TNB is **allowed to charge service tax under the Service Tax Act 2018** for its provision of electricity, it therefore **falls within the category of the service industry regularised by Schedule 7B**.

- The items for which RA was claimed by TNB did not fall within the meaning of "expanding, modernising or automating its existing business" under Schedule 7A.

- Allowing TNB to claim RA under Schedule 7A after being granted capital allowance in respect of the said items would amount to **double relief**, which the Court found impermissible.

- **When it comes to taxpayer's entitlement to tax benefit or tax exemption such ambiguity must be construed in favour of the tax authority**.



4. Havi Logistics (M) Sdn Bhd v Pemungut Duti Setem [2025] 2 MLJ 845

- **Stamp Duty - Asset Purchase Agreement**
- HC allowed the Taxpayer's Appeal
- COA overturned HC's decision
- **<u>FC dismissed Taxpayer's appeal, in favour of the Collector</u>**

Case Facts

Havi Logistics entered into an Asset Purchase Agreement **("APA")** to purchase certain assets and liabilities, including fixed assets, inventory and business contracts **("Assets")**. Key provisions in the APA are:

Deeming Provision

Title and risk passes automatically at closing and the Assets are deemed delivered where they are. No further or separate act was required for transfer.

Purchase Price

USD2,491,491.55 (equivalent to RM 10,378,806.35) was the Purchase Price for the Assets, excluding Inventory, which was dealt with separately.

Inventory Cost

On closing date, Purchaser would pay 100% of book value of Inventory, estimated at USD 30 million

Case Facts (cont’d)

The collector assessed the Agreement with ad valorem duty RM399,196 under Section 21(1) and item 32(a).

Havi Logistics objected and argued that the APA is a simple agreement and should only attract RM 10 nominal duty.

The collector rejected the objection, Havi Logistics appealed to the High Court, which ruled in favor of Havi Logistics.

The Court of Appeal reversed the High Court decision, ruling that the APA was a "conveyance on sale". Dissatisfied, Havi Logistics appealed to the Federal Court.

The Federal Court dismissed Havi Logistics' appeal.

Taxpayer's Arguments

- S.21(1) SA 1949 provides for contracts and agreement for the sale of property to be charged with ad valorem stamp duty as if they were actual conveyances for sale; except for "goods, wares or merchandise".
- The APA fell within the exception of "goods".
- The APA was not a "conveyance on sale" since the transfer of legal title did not occur upon execution but only at closing, meaning it was not an instrument of conveyance.

FC's Decision

- The term "goods" should be interpreted in context with the words "wares or merchandise", which comes immediately after the word "goods" in s.21(2). This means the exception applies only to inventory or trading stock.
- **Capital or fixed assets do not fall within this definition and are therefore not qualify for the exemption under Section 21(1).**
- The APA was a "conveyance on sale" regardless of the timing of title transfer. Otherwise, taxpayers could easily circumvent ad valorem stamp duty simply by drafting agreements to defer the passing of title to a future date.

Significance of the Decision

- An agreement should clearly distinguish between consideration attributable to **fixed or capital assets and inventory or trading stock**.
- This is because inventory and trading stock are classified as "goods" under Section 21(1) of the Stamp Act 1949 and are exempt from *ad valorem* stamp duty.

The Federal Court in *Havi Logistics* held that stamp duty liability on asset sale agreements arises immediately upon execution, regardless of whether the transaction is ultimately completed or not.

Can stamp duty be refunded if an asset sale fall through due to unmet Condition Precedents or other reasons?

Current Litigation Trends

Judicial Approach

Stamp Duty

Observations:

- Courts generally apply literal approach in interpretating the Stamp Act 1949.
- However, when construing the nature of an instrument, the court will look beyond the label or title and examine the substance and true legal effect of the document to determine its proper stamp duty chargeable.
- Although judicial interpretation remains consistent, there has been an increase in stamp duty audits by LHDN, especially in:
  - Loan & financing agreements
  - Any document which serves as a security for a sum
  - Joint Venture Agreement (for property developers)

Tax Exemptions / Reliefs

Observations:

- Strict interpretation principle: Exemption and relief provisions are strictly construed; any ambiguity is resolved in favour of taxation and against the taxpayer.
- The onus lies on a taxpayer who claims tax exemption to establish that he has satisfied the requirements and falls within the exemption.

Common Disputes

Transfer Pricing
(e.g., Intercompany Loans & Transactions)

Income Tax
Under-reported income or disallowed deductions

SST
Chargeability disputes & the applicability of exemptions

RPGT vs Income Tax; Capital Gains vs Income Tax
(with focus on share disposal)

Stamp Duty
Classification of instruments

SALIHIN THINK DIFFERENTLY

SALIHIN Academy

20 MALAYSIA 26 BUDGET TAX SEMINAR KUALA LUMPUR EDITION

Thank You

DROP YOUR **QUESTION** HERE

GO TO

pigeonhole.at

PASSCODE

SALIHINACADEMY03