



Special Commissioners
of Income Tax,
Putrajaya

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Legal Department,
IRBM

SCIT CONFIRMS THAT COMMISSION EXPENSES IN CONNECTION TO WAKALAH FEE OF THE SHAREHOLDERS' FUND ARE NOT DEDUCTIBLE UNDER THE INCOME TAX ACT 1967

ETB & EFTB v
DIRECTOR GENERAL OF INLAND REVENUE

Keywords: *commission expenses – takaful business – paragraph 60AA(9)(b) of the Income Tax Act 1967.*

PANEL

Puan Hanim Abdul Rahman
Tuan Ahmad Zakhi Mohd Daud
Puan Rosidah Abu Bakar

COUNSELS FOR IRBM

Noor Kamaliah Mohamad
Japeri
Nur Aina Mohd Jaffar

COUNSELS FOR APPELLANT

S. Saravana Kumar
Ng Ka Ngai

The Appellants are involved in general and family Takaful business in Malaysia. In the YAs 2008 to 2013, the Appellant claimed commission expenses incurred by the Shareholders' Fund for the purpose of earning the Wakalah Fee from the General Takaful Fund under subsection 33(1) of the Income Tax Act 1967 ("ITA 1967"). The Revenue had disallowed the expenses and had accordingly, raised additional assessments for YAs 2008 to 2013. The additional assessments for YA 2008 to 2010 were time-barred.

Section 60AA of the ITA 1967 specifically governs the taxation of the Appellants who are carrying the business of a Takaful operator. However, it was argued by the Appellants that paragraph 60AA(9)(b) of the ITA 1967 which dealt with the type of deductions allowable for a Takaful business does not preclude the application of subsection 33(1) of the ITA 1967.

The Appellants contended that subsection 33(1) of the ITA 1967 applies as the commission expenses are closely connected to the Wakalah Fee income earned by the Shareholders' Fund. As a Takaful operator, the Shareholders' Fund is required to pay commission to Takaful agents for marketing the Takaful schemes. In turn, the Shareholders' Fund will then earn the Wakalah Fee income. Thus, the commission expenses should be allowed to be deducted by the Shareholders' Fund pursuant to subsection 33(1) of the ITA 1967.

The Revenue took the stand that the said commission expenses are not deductible under subsection 33(1) of the ITA 1967 as a Takaful business may only claim for the specific expenses laid down in paragraph 60AA(9)(b) of the ITA 1967. At the material time, there is no specific provision allowing for such expenses. Section 60AA(9)(b)(iv) of the ITA 1967 that provides for deduction of commission expenses in relation to Wakalah Fee only came into force in YA 2014. The SCIT agreed with the Revenue's submission and thus, held that the commission expenses are not deductible.

On the issue of the time-barred assessments, the SCIT held that the Appellants had been negligent in claiming the commission expenses in the said YAs as there is no provision under section 60AA of the ITA 1967 that allows for such expenses to be deducted by the Shareholders' Fund. On the same note, the imposition of 45% penalties on the Appellants under subsection 113(2) of the ITA 1967 is held to be justified in law and fact.

Editorial Note:

This decision is applicable to claim for deduction by Shareholders' Fund prior to YA 2014. Sub-paragraph 60AA(9)(b)(iv) of the ITA 1967 was introduced via section 16(1) of the Finance Act 2014 to provide for deduction of commission expenses by the Shareholders' Fund in relation to Wakalah Fee effective from YA 2014. Hence, subsequent to the amendment, the commission expenses are now an allowable expense under the ITA 1967.