
TAX LAW

**TIME-BARRED TAX PENALTIES:
A CASE COMMENTARY OF
KETUA PENGARAH HASIL DALAM NEGERI V.
SAP MALAYSIA SDN. BHD.**

Published on 30 September 2024

INTRODUCTION

It is enshrined vide Section 77A(1) of the Income Tax Act 1976 ("**ITA**") that every company is required to annually submit its tax return to the Inland Revenue Board of Malaysia ("**IRBM**") within seven months following the close of the accounting period which constitutes the basis period for the particular year of assessment. Taxpayers who fail to comply within the stipulated period can expect penalties levied at the discretion of the Director General of Inland Revenue ("**DGIR**") pursuant to Section 112(3) of ITA. The said penalty can be as much as treble the amount of tax payable by the taxpayer for the period in question.

In this case, SAP Malaysia Sdn. Bhd. ("**SAP**") submitted its tax returns in relation to Years of Assessment ("**YA**") 2010 and 2011 respectively. The tax returns were filed using draft financial statements instead of the finalised versions of the taxpayer's audited accounts ("**finalised audited accounts**"). Pursuant to the said submission, SAP had overstated (and, in turn, overpaid) its tax burden by RM9,684.00 for YA 2010 and RM1,483,055.00 for YA 2011. SAP, realizing its error, attempted to rectify the overpayment by revising its returns using its finalised audited accounts. In response, the IRBM issued its own assessments for the YAs in question ("**impugned assessments**") which included penalties imposed under Section 112(3) ITA. The impugned assessments were issued more than 5 years after the YAs in question which made them time-barred.

Among the important issues raised in this case was whether SAP had acted negligently in filing its tax returns using its draft financial statements thus removing the time-bar relating to the impugned assessments and also whether IRBM had properly applied the penalty provided for under Section 112(3) ITA.

FACTS OF THE CASE

SAP filed its tax returns under (then) Section 77A(1) ITA using its draft financial statements as follows:

- i) YA 2010 on 04.08.2011; and
- ii) YA 2011 on 15.08.2012.

It is to be noted that prior to the Finance Act 2014, which introduced the new Section 77A(4) ITA, there was hitherto no requirement for the tax returns to be filed using the taxpayer's audited accounts.

SAP subsequently, by way of letter dated 15.05.2014, revised its tax returns for the relevant YAs using its finalised audited accounts. The revision was premised on SAP's contention that it had overstated its taxable income based on the said draft financial statements and, as a result, overpaid taxes to the sum of respectively RM9,684.00 for YA 2010 and RM1,483,055.00 for YA 2011. However, the IRBM's response was, on 11.04.2017, to raise the impugned assessments against SAP and, notwithstanding being the recipient of overpaid tax by the taxpayer, to impose a penalty against SAP under Section 112(3) ITA. The IRBM contended that the earlier tax returns did not qualify as returns within the meaning of Section 77A. The penalty imposed was as follows:

- i) For YA 2010: RM1,074,791.93 (at the rate of 30%); and
- ii) For YA 2011: RM491,060.56 (at the rate of 25%).

SAP contended that the impugned assessments was time-barred as it was issued more than 5 years after the YAs in question. The DGIR, in reply, argued that the impugned assessments are not time-barred due to Section 91(3) ITA being invoked as a result of SAP's alleged negligence. Dissatisfied with the IRBM's assessment, SAP appealed against the impugned assessments under Section 99 ITA and the case was referred to the Special Commissioner of Income Tax ("SCIT") who upheld the taxpayer's appeal. The IRBM then appealed the SCIT's decision to the High Court ("the Appeal").

ISSUES RAISED BEFORE THE HIGH COURT

Among the issues considered by the Court was:

- 1) Whether the limitation (time-bar) is extended due to the taxpayer's negligence;
- 2) Whether the impugned assessments (including the penalty imposed) was properly issued by the DGIR.

DECISION OF HIGH COURT

With regard to the 1st issue, the High Court held that it is clear from Section 91(1) ITA that the impugned assessments were time-barred. It then leads to the question of whether the time-bar can be set aside using the provisions of Section 91(3) ITA. Section 91(3) provides for the extension of limitation in cases involving fraud, willful default or negligence. In this case, the IRBM relied on allegations of negligence. The Court held that there was no evidence of negligence. Furthermore, the taxpayer had overpaid his taxes and, therefore, the government did not suffer any loss of tax but, rather, a windfall not legally due to it. Hence, the provisions of Section 91(3) which provided that the extension which was allowed "for the purpose to make good any loss of tax attributable to the fraud, willful default or negligence" would not apply in this case.

As far as the 2nd issue is concerned, the High Court found that the impugned assessments including penalties are null and void. The penalty under Section 112(3) of the ITA was not properly imposed because there was no default vide Section 77A(1) ITA. The taxpayer had clearly complied with the requirements (as it then stood). Furthermore, the taxpayer had overpaid its taxes.

The Court therefore upheld the decision of the SCIT and the IRBM's appeal was dismissed. To-date there has been no appeal by the DGIR to the Court of Appeal.

KEY TAKEAWAYS

This case underscores important considerations for companies when filing tax returns, particularly the use of draft financial statements versus finalized audited accounts. The High Court ruled that the assessments imposed by the IRBM on SAP Malaysia Sdn. Bhd. were time-barred, and there was no evidence of negligence that could justify the extension of the time-bar under Section 91(3) of the Income Tax Act 1976 (ITA). Additionally, the penalties imposed under Section 112(3) ITA were declared null and void, as the taxpayer had complied with the tax filing requirements at the time and had overpaid its taxes. This decision emphasizes the need for IRBM to clearly establish both negligence and a loss of tax when seeking to extend the limitation period or impose penalties, providing valuable clarity for taxpayers on compliance and the limits of the IRBM's authority.

For the full judgement of *Ketua Pengarah Hasil Dalam Negeri v. SAP Malaysia Sdn. Bhd.*, please click [HERE](#).

Authors



Feruz Anwar Seth
(Partner)



Nursyibra Salma Che Harun
(Pupil-in-Chambers)

Disclaimer: The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such.