

Landmark Tax Decision By Court of Appeal Confirming that Databases Constitute “Plant” and Qualify for Capital Allowances

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By the Tax and Revenue Practice Group

In 2006, CIMB Bank Berhad (“CIMB Bank”) acquired the core deposit and credit card customers databases (“Databases”) of another bank pursuant to a vesting order of the High Court. The issue was whether the Databases qualify for capital allowances (“CAs”) under **Schedule 3** of the **Income Tax Act 1967** (“ITA”).

The Director General of Inland Revenue (“DGIR”) took the position that the Databases were not “plant” but “goodwill” and would not qualify for CAs. The DGIR disallowed CIMB Bank’s claims for CAs on the Databases and raised assessments against CIMB Bank. The DGIR also imposed penalties under **Section 113(2)** of the **ITA** for the alleged incorrect returns.

CIMB Bank appealed against the assessments raised by the DGIR to the Special Commissioners of Income Tax (“SCIT”) which allowed CIMB Bank’s appeal in full. The SCIT made a finding of fact that the Databases are tools used by CIMB Bank in its banking business and thus the Databases constitute “plant” qualifying for CAs.

Being dissatisfied with the SCIT’s decision, the DGIR appealed to the High Court. In the High Court, the DGIR abandoned the “goodwill” argument and focused instead on arguing that the Databases were not “plant” as they did not depreciate and did not suffer wear and tear.

CIMB Bank emphasized the wide definition given to the word “plant” in case law and that once the requirements set out in Schedule 3 of the ITA have been satisfied, the Databases qualified for CAs.

The DGIR’s appeal was dismissed by the High Court and the DGIR’s appeal to the Court of Appeal was heard earlier this week where once again the DGIR’s appeal was dismissed.

This decision of the Court of Appeal, being the final appellate court in tax appeals that started before the SCIT, is a landmark decision as the Court of Appeal has affirmed that “plant” could also include intangible assets like the Databases and CAs should be granted so long as the conditions for claiming CAs under Schedule 3 are satisfied.

CIMB Bank was represented in this matter by Goh Ka Im (Head of Department) and Foong Pui Chi (Partner) from our Tax & Revenue Practice Group.

For further information regarding tax and revenue law, please contact:

Goh Ka Im

kgoh@shearndelamore.com

Anand Raj

anand@shearndelamore.com

Irene Yong

irene.yong@shearndelamore.com

7th Floor
Wisma Hamzah – Kwong Hing
No.1, Leboh Ampang
50100 Kuala Lumpur, Malaysia
T: +603 2027 2727
F: +603 2078 5625
E: info@shearndelamore.com
W: www.shearndelamore.com