
Tax

High Court Rules that DGIR is under Duty to Give Reasons for Imposing a Substantial Increase in Tax Liability on a Taxpayer

Introduction

Recently, the Kuala Lumpur High Court in *Government of Malaysia v Inoapps Sdn Bhd* [2022] MLJU 2280 held that while it was bound by sections 103 and 106 of the Income Tax Act 1967 ("ITA") to enter a summary judgment against a taxpayer on a civil suit commenced by the Government of Malaysia for outstanding tax assessments, a stay of execution of the summary judgment was warranted on account of the absence of any reason given by the Director General of Inland Revenue ("DGIR") on the substantial increase in the chargeable income raised against the tax payer vide the assessments. The stay was pending the outcome of an appeal before the Special Commissioner of Income Tax ("SCIT") on the correctness of the same assessments.

The taxpayer was represented by our Corporate and Commercial Disputes Partners, [John Mathew](#) and [HK Niak](#).

This Update highlights the main arguments advanced by both parties and the impact of this decision.

Facts

The Government of Malaysia commenced legal action seeking payment for taxes allegedly due for the years of assessment 2019 and 2020 ("**YA 2019 and YA 2020**").

It was not disputed that the taxpayer did not file the required tax returns with the Inland Revenue Board for YA 2019 and YA 2020. As a result, the DGIR issued Notices of Assessment (estimated) (Form J) for YA 2019 and YA 2020 ("**Estimated Notices of Assessment**") to the taxpayer pursuant to section 91(1) of the ITA, i.e., based on the "best judgment" of the DGIR.

The time limit to commence judicial review proceedings on the decision raising the Estimated Notices of Assessment had long passed when the legal action for the recovery of the income tax raised was commenced against the taxpayer.

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The DGIR raised assessments on additional chargeable income of RM8,786,225 and RM9,597,236 for YA 2019 and YA 2020, respectively, against the taxpayer. This represented a substantial jump from the preceding years of assessment where the taxpayer's chargeable income hovered around RM1.1 million to RM2 million. No explanation was offered by the DGIR in relation to this substantial increase.

The Government of Malaysia applied for summary judgment to be entered against the taxpayer.

The Taxpayer's Contention

In essence, the taxpayer submitted that a summary judgment ought not be granted by the High Court because there were triable issues including the following:

- (a) the certificate on the tax due as issued by the DGIR under section 142(1) of the ITA was ineffectual in law;
- (b) the claim for penalties in respect of YA 2019 was time barred ("**time bar argument**"); and
- (c) the DGIR failed to exercise his "best judgment" under section 91(1) of the ITA.

The taxpayer's main argument was that the Estimated Notices of Assessment were issued by the DGIR based on his "best judgment" pursuant to section 91(1) of the ITA, but nowhere has the DGIR shown the basis for coming to his "best judgment".

The taxpayer further highlighted that the "best judgment" of the DGIR was also wholly inconsistent with the chargeable income of the taxpayer based on the tax returns of the taxpayer for the preceding years of assessment.

The Revenue counsel's Arguments

The main argument advanced by the Revenue counsel was that the High Court should enter a summary judgment against the taxpayer by virtue of sections 103 and 106 of the ITA. In essence, the Revenue counsel submitted that in any civil proceedings by the Government of Malaysia to recover income tax allegedly due and payable, the Court must close its ears and shut its eyes to any suggestion or indication that the amount claimed is excessive or incorrectly assessed – if a taxpayer is dissatisfied with the assessment raised, the taxpayer may appeal to the SCIT.

Commentary

After hearing submissions from both parties, the High Court held that the issues concerning the validity of the tax certificate issued by the DGIR and the time bar argument did not justify the rejection of the application for a summary judgment. In this regard, the High Court held that it was bound by sections 103 and 106 of the ITA to enter a summary judgment against the taxpayer.

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However, the High Court observed that the matter did not end there. The High Court held that section 106 of the ITA did not prohibit or limit the powers of the Court to grant a stay of execution of the summary judgment pending the outcome of the appeal before the SCIT ("**Stay Order**") in appropriate cases or where special circumstances exist which would warrant such an order.

After considering several authorities, the High Court held that the DGIR is under a duty to explain and give reasons for any act that he undertakes that may result in additional taxes on a taxpayer.

The High Court recognised that the power to grant a stay of execution on a judgment should rarely be exercised, and normally a summary judgment should be entered in line with section 106 of the ITA. However, and on the facts, the High Court held that the discretionary power to grant a stay of enforcement on the summary judgment pending the disposal of the appeal before the SCIT should be exercised in view of the special circumstances, namely, the lack of any explanation for the substantial increase in the income chargeable to tax against the taxpayer. The High Court noted that if the DGIR had provided an explanation as to why the sums were reasonable, then a summary judgment on an unconditional basis could have been entered against the taxpayer – but this was not the case.

This decision emphasises the need for a public decision-making body including the DGIR to give reasons for its decision. This decision is in line with the judicial trend that the giving of reasons for decisions is one of the fundamentals of good administration as it inculcates transparency and accountability in public decision-making bodies.

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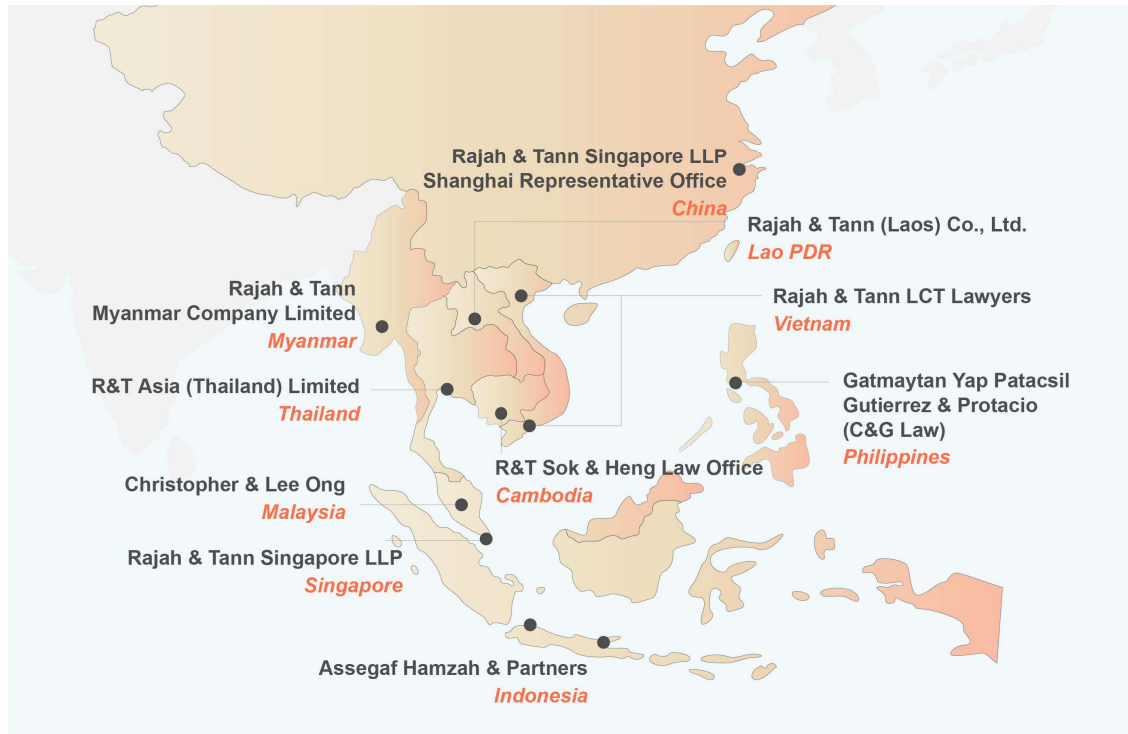
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