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23 SEPTEMBER 2021

Can a Blatant Refusal by the IRB to Refund Taxes be Challenged?

M v Ketua Pengarah Hasil Dalam Negeri (HC)

When the Inland Revenue Board (**IRB**) issues tax assessments, it expects you to make full payment within 30 days. This applies even if you are appealing the assessments.¹ Any amount outstanding after that would be automatically increased by 10%.² Thereafter, the IRB may (and indeed, will) sue you through the government of Malaysia to recover the money.

Unfortunately (yet perhaps unsurprisingly), such promptness is missing when you have won your appeal and it is time to ask for your money back. Taxpayers recognise, of course, that there would be some delay due to red tape and bureaucratic inertia. But what happens in cases of extreme delay or simply a blatant refusal by the IRB to issue the tax refunds? After all, any victory or vindication would only be Pyrrhic until and unless it can be measured in Ringgit Malaysia and sen.

The recent case of *M v KPHDN* is one example of such a case. The High Court's recent decision a fortnight ago to grant leave, notwithstanding opposition by the IRB and the Attorney-General's Chambers (AGC), confirmed the availability of judicial review to challenge such conduct by the IRB.

Brief facts

In 2015, the IRB issued a time-barred assessment against the taxpayer for the year of assessment (YA) 2009 with penalty. The taxpayer paid the taxes and filed an appeal to the Special Commissioners of Income Tax (**SCIT**). Three years later, in 2018, the SCIT decided unanimously in favour of the taxpayer and set aside the assessment, stating that it was "*salah di sisi undang-undang*" (against the law).

The IRB filed a Notice of Appeal to the SCIT. However, the IRB subsequently ignored the SCIT's directions for it to prepare the draft Case Stated. Despite the taxpayer's various reminders, the draft was only sent eventually in 2021, by which time all three Commissioners who heard the appeal have retired. No extension of time was ever sought by the IRB, nor any explanation proffered for the extended delay. In the meantime, the IRB also ignored the taxpayer's various requests for the taxes that have been set aside to be refunded.

¹ Income Tax Act 1967 (**ITA**), s 103(1) and (2)
² ITA, s 103(5)

Aggrieved by the IRB's conduct, the taxpayer wrote a final letter requesting a reply within a month, failing which it would deem the IRB to have decided not to refund the taxes owed. Again, the IRB did not reply.

High Court granted leave

The High Court granted leave for the taxpayer to commence judicial review. The court also rejected the IRB's application for it to be invited to make submissions at the leave stage. The taxpayer objected to this application, arguing that the IRB's conduct does not justify the exercise of the court's discretion for it to be invited. The IRB has surfaced belatedly to frustrate the taxpayer's genuine attempt to seek reliefs from the court after having ignored all the taxpayer's letters for almost three years.

Our thoughts

This decision confirms that the doors of justice remain open for taxpayers with genuine grievances to challenge unfair decisions and conduct by the tax authorities, including the IRB.

Further, the IRB has been prone to argue in judicial review proceedings that stays should not be granted against tax assessments. Among others, the IRB says that there is no evidence to show that it could not refund such taxes paid if the taxpayer wins its case. With the greatest respect, it appears difficult to reconcile such lofty pronouncements with the facts of this case and the IRB's conduct in it.

In this regard, the recent decisions by the High Court to grant stay in suitable cases ought to be lauded together with their recognition that "the balance of convenience lies in the Applicant's (taxpayer's) favour".³

The taxpayer was successfully represented before the SCIT by Jason Tan Jia Xin, and at the High Court by Jason Tan Jia Xin and Chris Toh Pei Roo, from [Lee Hishammuddin Allen & Gledhill's](#) Tax, Customs & Trade Practice.

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If you have any queries pertaining to tax refunds owing by the tax authorities, including the Inland Revenue Board, please contact associate Chris Toh Pei Roo or team partners, [Dato' Nitin Nadkarni](#) and [Jason Tan Jia Xin](#), at tax@lh-ag.com

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Published by the Tax, Customs & Trade Practice

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