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Judicial Review To Challenge Tax Assessment

Last Friday, an individual taxpayer successfully obtained leave to commence judicial review proceedings against the Director General of the Inland Revenue Board (**DGIR**) to set aside the additional assessment for income tax raised against him. The Attorney-General's representative and the DGIR objected to the application for judicial review on the grounds that there was an alternative remedy of appeal to the Special Commissioners of Income Tax (**SCIT**).

Upon hearing all the parties, the High Court granted leave and dismissed the objections by the Attorney-General and the DGIR. The court also granted a stay order against the payment of the disputed tax amounting to RM1.8 million until the judicial review application is determined by the High Court.

The taxpayer's solicitors in Kuching engaged our Tax, SST & Customs partner, S Saravana Kumar, as the external solicitor to draft the cause papers and written submissions.

Brief Facts

The taxpayer, who has been filing his tax returns on time, was unaware that a notice of additional assessment had been raised against him until a few weeks ago. Nor was he informed of the reasons, whether in writing or verbally, for the additional assessment. Additionally, he was also not provided with the opportunity to be heard before the DGIR issued the additional assessment.

Aggrieved by the DGIR's decision, the taxpayer applied for judicial review on the premise that the additional assessment was raised arbitrarily by the DGIR.

High Court Ruling

The High Court granted the taxpayer leave to commence judicial review on the grounds that:

- (a) The judicial review application is not frivolous;
- (b) Judicial review application is still available to the taxpayer despite the existence of an alternative remedy;

- (c) There are exceptional circumstances in the present matter; and
- (d) The financial difficulty which the taxpayer would suffer as a result of the DGIR's decision amounts to a special circumstance to warrant the grant of stay of proceedings.

Conclusion

This matter supports the legal position that despite the existence of an alternative remedy in the form of an appeal to the SCIT, judicial review proceedings remain available to taxpayers in exceptional circumstances. This is especially so when the DGIR raises an additional assessment without providing any reason.

If you wish to challenge any assessment issued by the DGIR, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar**, at tax@lh-ag.com

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