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PRAD Expenses Are Deductible For Tax Purposes

TIB v Ketua Pengarah Hasil Dalam Negeri

On 23.5.2019, the High Court allowed the application for judicial review by insurance company TIB to quash the Director General of Inland Revenue's (**DGIR**) decision to disallow TIB from deducting its Provision of Risk Margin for Adverse Deviation (**PRAD**) expenses either under Section 33(1) or Section 60(5)(b)(i) of the Income Tax Act 1967 (**ITA**).

The court ordered the DGIR to amend the notices of additional assessment raised against TIB to allow the deduction of the PRAD expenses. The High Court also granted a stay order against the payment of the disputed taxes in relation to the other issues until the matter is heard and determined by the Special Commissioners of Income Tax (**SCIT**).

Our lawyers from the firm's Tax, SST & Customs Practice successfully represented TIB.

Brief Facts

Under Section 60(5)(b)(i) of the ITA, expenses in the form of claims incurred by an insurer in relation to its general insurance business are deductible. In the present case, the DGIR had disallowed the deduction of PRAD expenses on the basis that these had not been incurred by TIB as no payment had been disbursed to the claimants. Aggrieved by the DGIR's decision, TIB applied for judicial review.

The DGIR raised a preliminary objection to the application on the grounds that TIB had submitted notices of appeal via Form Q to the SCIT. The DGIR also argued that there were other disputed issues in relation to the notices of additional assessment that were not raised before the High Court.

High Court Ruling

The High Court dismissed the IRB's preliminary objection and allowed TIB's application on the following grounds:

Preliminary objection

- (a) Where two remedies are open to an aggrieved party, there is no general rule that by going to some other tribunal, the aggrieved party has thereby waived his or her right to come to the High Court.
- (b) A liberal and progressive approach is to be adopted in *certiorari* proceedings such that the High Court should endeavour to remedy an injustice rather than deny relief to an aggrieved party on purely technical and narrow grounds.
- (c) The High Court is empowered to mould the relief to fit the factual matrix of a particular case, and to grant such relief in accordance with the demands of justice.

Deductibility of PRAD expenses

- (a) The IRB had failed to appreciate that the PRAD expenses could also be deducted under Section 33(1), which applies to all sources of income.
- (b) Section 60(5)(b)(i) does not preclude the application of Section 33(1) as there are no express words to that effect.
- (c) It is trite law that taxing statutes are to be read strictly, and that any doubt must be resolved in the taxpayer's favour.
- (d) The decisions of our courts have settled the law in respect of the meaning of the word "incurred", whereby expenses incurred by a taxpayer are deductible in that basis period so long as there is an obligation to pay.
- (e) The DGIR had failed to adhere to the clear wording of the ITA and had further failed to comply with the decisions of our courts, which decided that an expense incurred is not confined to an actual disbursement and must include an obligation to pay.

Conclusion

This case highlights the wide powers conferred under the law for the High Court to remedy an injustice. The court has the jurisdiction to fashion the appropriate remedy and to grant such relief as meets the ends of justice.

The decision further affirms the principle that expenditure can be incurred without being disbursed or discharged, provided there is a legal liability to pay and the amount is capable of a reasonable estimate. In an insurance context, the PRAD expenses are deductible under Section 33(1) or Section 60(5)(b)(i) of the ITA.

TIB was represented by partner, S Saravana Kumar, together with associate, Nur Amira Binti Ahmad Azhar, and pupil, Ng Kar Ngai, from the firm's Tax, SST & Customs Practice.

If you require any legal representation or strategy on the deductibility of your business expenses, please contact **S Saravana Kumar** at tax@lh-ag.com

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