



Dato' Nitin Nadkarni  
Partner  
**Tax, SST & Customs**  
T: +603 6208 5866  
E: [nn@lh-ag.com](mailto:nn@lh-ag.com)



Jason Tan Jia Xin  
Partner  
**Tax, SST & Customs**  
T: +603 6208 5873  
E: [tjx@lh-ag.com](mailto:tjx@lh-ag.com)



Keith Lim Boon Long  
Senior Associate  
**Tax, SST & Customs**  
T: +603 6208 5830  
E: [bl@lh-ag.com](mailto:bl@lh-ag.com)

20 MAY 2021

## Restrictions on Inland Revenue Board's Right to Audit Client Accounts of Law Firms

*Director General of Inland Revenue v Malaysian Bar*

Recently, the Court of Appeal affirmed the decision of the High Court in relation to solicitor-client privilege and the restrictions on the Inland Revenue Board's (**IRB**) right to audit the client accounts of law firms. In essence, the High Court's decision is as follows:

- (a) Section 142(5)(b) of the Income Tax Act 1967 (**ITA**) could not be used by the IRB to gain access to a client account with a view of taxing advocates and solicitors. The section does not go beyond s 126 of the Evidence Act 1950 (**EA**), which provides for solicitor-client privilege. In other words, law firms can refuse to give information on a client account to IRB as such information is protected by legal privilege. However, the privilege does not apply to information or communication made for an illegal purpose or if it is meant to show commission of fraud by the advocate.
- (b) The EA is the specific legislation governing legal privilege. Although the provision was enacted before s 142(5) of the ITA, it was a specific provision on legal privilege, and as such, excluded the operation of the general provision of s 142(5) of the ITA. Since the EA was undeniably more precise, unambiguous and specific, s 126 of the EA must take precedence over s 142(5)(b) of the ITA to the extent of any inconsistency in respect of matters relating to legal privilege.
- (c) Parliament did not intend to apply s 142(5)(b) of the ITA to the exclusion of the common law on legal privilege. The words "notwithstanding the provisions of any other written law" in s 142(5)(b) of the ITA do not exclude the operation of common law. Section 142(5) of the ITA makes no reference to common law and, therefore, such an exception should not be read into the statute.

In short, the solicitor-client privilege under s 126 of the EA is not affected by the operation of the ITA and the IRB cannot demand law firms to provide information on a client's account unless the client waives privilege. In a nutshell, the IRB cannot use the ITA as an instrument to fish for information on the clients of law firms.

**Keith Lim Boon Long** ([bll@lh-ag.com](mailto:bll@lh-ag.com))

If you have any queries, please contact the author or his team partners, [Dato' Nitin Nadkarni](#) and [Jason Tan Jia Xin](#), at [tax@lh-ag.com](mailto:tax@lh-ag.com)

**Lee Hishammuddin Allen & Gledhill**

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia

T +603 6208 5888  
F +603 6201 0122/0136  
E [enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)  
W [www.lh-ag.com](http://www.lh-ag.com)

Published by the Tax, SST & Customs Practice

© Lee Hishammuddin Allen & Gledhill. All rights reserved. The views and opinions attributable to the authors or editor of this publication are not to be imputed to the firm, Lee Hishammuddin Allen & Gledhill. The contents of this publication are intended for purposes of general information and academic discussion only. It should not be construed as legal advice or legal opinion on any fact or circumstance.

[Feedback](#)

[Unsubscribe](#)