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Stay Granted to Taxpayer in RPGT Valuation Dispute

CMK v Ketua Pengarah Hasil Dalam Negeri

Last week, the Court of Appeal granted an individual taxpayer an order for stay of proceedings pending the determination of his appeal. The order enables him to defer payment of the disputed real property gains tax (**RPGT**) amounting to more than RM3 million.

The taxpayer was successfully represented by partner [Bahari Yeow Tien Hong](#), assisted by associate Chris Toh from the firm's Tax, SST & Customs Practice.

Brief Facts

In 2015, the taxpayer acquired shares in A Sdn Bhd and subsequently disposed of them in 2017. In early 2018, the Director General of Inland Revenue (**DGIR**) raised an assessment for RPGT amounting to approximately RM2.2 million on the gains arising from the disposal. The DGIR took the view that A Sdn Bhd was a real property company.

Despite filing his appeal to the Special Commissioners of Income Tax (**SCIT**), the taxpayer proceeded to pay the disputed RPGT. In mid-2018, after receiving an additional assessment of approximately RM3.3 million for RPGT on the same transaction, the taxpayer filed an application for judicial review at the High Court.

The High Court granted leave for the taxpayer to commence judicial review. However, the judge subsequently dismissed the application at the substantive stage on the basis that the question raised by the taxpayer should be determined by the SCIT. The taxpayer's application for a stay to the High Court pending his appeal to the Court of Appeal was dismissed. Accordingly, the taxpayer filed an application for stay to the Court of Appeal.

Taxpayer's Contentions

The issue was whether there was any basis for the DGIR to raise the additional RPGT assessment on the same disposal. By way of the two assessments, the DGIR also appeared to have effectively imposed RPGT at the rate of more than 70% on the taxpayer's disposal of shares.

The taxpayer submitted that the Court of Appeal has the jurisdiction to grant an interim stay pending appeal. The purpose of a stay is to preserve the integrity of the statutory appeal and, as such, an interim stay should be granted pending the outcome of the appeal. An interim order would prevent prejudice to the taxpayer who would be likely to face the threat of civil action and bankruptcy as the amount of taxes raised was substantial. Further, the DGIR had alleged that the additional assessment was necessary due to a mistake in the original assessment.

In the circumstances, as the accuracy of the additional assessment cannot be guaranteed, a stay should be granted for the integrity of the appeal to be preserved. Finally, the taxpayer is also not a recalcitrant taxpayer as he had settled the disputed taxes under the original assessment, notwithstanding the appeal to the SCIT.

DGIR's Response

The DGIR submitted that there was no threat of civil action against the taxpayer. Further, the granting of a stay would also have the effect of interrupting the operation of the provisions of the Real Property Gains Tax Act 1976 (**Act**), which allows such action to be taken. The taxpayer had also not presented evidence of his financial position before the court to show that he would not be able to pay the amount of taxes imposed. Finally, the Act allows for additional assessments to be raised as mistakes are unavoidable in the raising of assessments by the DGIR.

Court of Appeal's Decision

The Court of Appeal agreed with the arguments advanced by our tax lawyers, and unanimously granted the interim stay application pending the disposal of the appeal against the High Court's decision.

If you have any dispute with the tax authority, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar**, at tax@lh-ag.com

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