



Datuk D P Naban
Senior Partner
Tax, SST & Customs
T: +603 6208 5858
E: dpn@lh-ag.com



S Saravana Kumar
Partner
Tax, SST & Customs
T: +603 6208 5813
E: sks@lh-ag.com

23 AUGUST 2019

Stay Order Against Tax Assessments

WSB v Ketua Pengarah Hasil Dalam Negeri

On Wednesday, the High Court allowed an application for stay of proceedings filed by a taxpayer against the enforcement of a disputed notice of additional assessment raised by the Director General of Inland Revenue (**DGIR**).

The taxpayer was successfully represented by partner, S Saravana Kumar, who was assisted by pupil, Tan Iyan Xin, from the firm's Tax, SST & Customs Practice.

Background

The notice of additional assessment was raised consequent to the DGIR's position of subjecting the compensation for compulsory acquisition of land to income tax under Section 4C of the Income Tax Act 1967 (**ITA**).

The taxpayer filed an application for judicial review to challenge the legality of the disputed assessment as well as to stay the enforcement of the disputed assessment pending the outcome of the hearing. The High Court granted leave to commence judicial review in June this year and ordered the application for stay to be heard *inter partes*. Upon hearing the parties, the High Court allowed the taxpayer's application for stay.

High Court's Ruling

In allowing the application, the High Court accepted the following arguments advanced by the taxpayer:

- It is not disputed that the High Court has jurisdiction to grant a stay of proceedings against a public authority like the DGIR. "Stay of proceedings" in judicial review proceedings must be interpreted to have a wider application whereby it covers the decision under challenge.
- The stay of proceedings is sought to enhance the effectiveness of judicial review jurisdiction, preserve the status

quo and the integrity of the judicial review application. In this regard, stay should be granted to preserve the integrity of the application, especially where the constitutionality of Section 4C of the ITA is challenged.

- Sections 103 and 106 of the ITA do not bar the grant of stay of assessments.
- Considering, among other things, the merits of the taxpayer's case and the substantial amount of taxes which would result in irreparable damage and irremediable prejudice to the taxpayer, there are special circumstances in the present matter warranting the grant of stay.

Conclusion

The decision of the High Court to allow the taxpayer's application for stay in *WSB v KPHDN* is testament to the position that our courts have jurisdiction to grant stay in judicial review applications for tax matters.

If you require any legal representation or strategy to challenge the assessments raised by the DGIR, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar**, at 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
W 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](#)