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Takes Two to Tango: Harmonising Income Tax Act and Other Legislation

Can obligations imposed by another legislation be taken into account when determining the tax liability under the Income Tax Act 1967 ("**ITA**")?

In the recent case of ***Amlife Insurance Berhad v Ketua Pengarah Hasil Dalam Negeri*** (Appeal No. W-01(A)-315-05/2018), the Court of Appeal examined the interplay between the obligations of an insurance company under the Insurance Act 1996 (now repealed) and its tax obligation under the ITA. The Court of Appeal unanimously held that in interpreting the ITA, regard must be given to the Insurance Act 1996 ("**Insurance Act**"), which regulates insurance companies on pain of penal consequences for non-compliance.

The decision is to be welcomed for its broader implications: that taxing legislation does not exist in isolation and must, where appropriate, be interpreted in the light of the broader legislative framework that applies to regulated industries.

Brief Facts

This appeal concerns a Taxpayer who, at the material time, sold both general insurance and life insurance.

Pursuant to the Insurance Act, the Taxpayer segregated the life insurance fund ("**Life Fund**") from its general insurance fund ("**General Fund**").

The Taxpayer's Shareholders' Fund suffered current year losses for both Yas 2003 and 2004, which it set off against the statutory income of the General Fund.

After an audit, the Inland Revenue Board ("**IRB**") raised additional taxes and imposed penalties, alleging that losses suffered by the Shareholders' Funds should be set off against the aggregate income of both the Life Fund and the General Fund.

The Taxpayer's appeal was dismissed by the Special Commissioners of Income Tax and, thereafter, by the High Court. Both opined that the Taxpayer's legal obligations under the Insurance Act were irrelevant to the interpretation and application of the ITA.

Court of Appeal's Decision

In allowing the Taxpayer's appeal, the Court of Appeal held the following:

(a) The ITA and the Insurance Act must be read harmoniously and interpreted based on the purposes for which they were created. Parliament could not have intended insurers to treat the income from the Life Funds as their own, especially when Life Funds enjoy a concessionary tax rate of 8%. The High Court therefore erred in law by holding that the Taxpayer's obligations under the Insurance Act were irrelevant, and that the court should only be concerned with interpretating the provisions in the ITA for taxation matters.

(b) Funds in the Life Fund do not belong to the Taxpayer unless stringent requirements under Section 43(3)(2)(b) of the Insurance Act have been met. In the present instance, these requirements had not been met. Had the losses in the Shareholders' Fund been set off against the Life Fund (as required by the IRB), the Taxpayer would have breached the Insurance Act and been at risk of penal consequences.

(c) Understood within the regulatory framework of the Insurance Act, Section 60AB and Section 60(3) of the ITA create a separate scheme to allow concessionary tax rate of 8% to be imposed on the chargeable income of the Life Fund. This prevents any current year losses from the Taxpayer's aggregate income being set off against the statutory income of the Life Fund.

(d) Accordingly, the current year losses in the Shareholders' Fund should not be set off against the statutory income of the Life Fund.

The Court of Appeal has made available its grounds of judgment here, while the High Court's grounds of judgment can be viewed here. The Taxpayer was successfully represented by Dato' Nitin Nadkarni and Ivy Ling Yieng Ping from the Tax, Customs & Trade Practice Group of Lee Hishammuddin Allen & Gledhill.

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