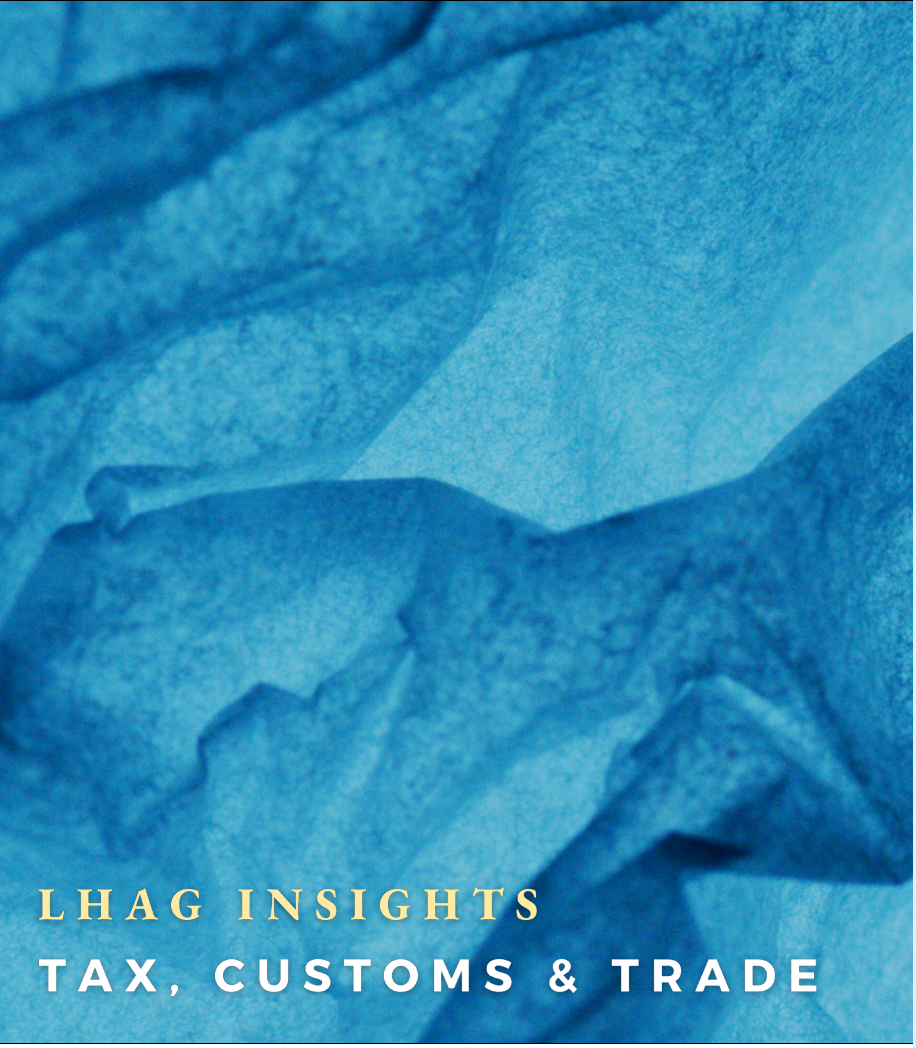

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REINVESTMENT ALLOWANCE & INVESTMENT TAX ALLOWANCE – ARE THEY MUTUALLY EXCLUSIVE?

by Chris Toh Pei Roo & Soon Jia Ying

On 9 December 2024, the High Court ("**HC**") allowed an appeal brought by the taxpayer ("**Taxpayer**") against the decision of the Special Commissioners of Income Tax ("**SCIT**"), effectively holding that reinvestment allowance ("**RA**") under Schedule 7A of the Income Tax Act 1967 ("**the 1967 Act**") and investment tax allowance ("**ITA**) under the Promotion of Investments Act 1986 ("**PIA**") may not be mutually exclusive. This decision is significant for taxpayers navigating investment incentives under both legislations.

Brief Facts

The Taxpayer, a manufacturer of audio, video, and electronic musical instrument products, incurred capital expenditure ("**CAPEX**") for:

(a) Manufacturing electronic musical instrument products ("**Promoted Products**"), for which it was

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granted ITA under the PIA. No RA was claimed for these products.

(b) Expanding, modernising, and automating its business for manufacturing audio and video equipment ("**Non-Promoted Products**"), for which it claimed RA under Schedule 7A of the ITA.

The Director General of Inland ("**Revenue**") disallowed the RA claim on the basis that:

(a) The Taxpayer had already been granted pioneer status under the PIA 1986 and was thus precluded from claiming RA by paragraph 7(b) of Schedule 7A of the ITA ("**the Disputed Provision**").

(b) The CAPEX was not incurred on a "qualifying project" within the meaning of paragraphs 1(b) and 8(a) of Schedule 7A of the ITA.

The SCIT's Decision

The SCIT dismissed the Taxpayer's appeal.

(a) The SCIT held that the Disputed Provision was "clear and unambiguous" in precluding a taxpayer who had claimed ITA in a year of assessment ("**YA**") from also claiming RA in the same YA.

(b) The SCIT found that the Taxpayer had incurred CAPEX on factory, plant, and machinery for the expansion and modernisation of its business for the production of non-Promoted Products. However, having determined that a taxpayer who had claimed ITA in a YA is precluded from claiming RA, it concluded that the Taxpayer was not entitled to claim RA.

The Taxpayer's Appeal to the HC

The Revenue argued that:

(a) The Disputed Provision is an exclusion clause that denies RA based on the status of a company (i.e., whether it has been granted pioneer status) rather than on the status of its activities or products. Further, any ambiguity in tax statutes must be construed strictly against taxpayers.

(b) The Taxpayer did not fulfil the requirement of a "qualifying project" under paragraph 8(a) of Schedule 7A of the ITA, as there was no modernisation, and the disputed items were unrelated to the manufacturing of the Taxpayer's products.

The Taxpayer contended that:

(a) The Disputed Provision is not a blanket exclusion of RA for a company with pioneer status. It should be interpreted in its ordinary meaning, which clearly excludes RA only for a "promoted activity or promoted product" for which the company has been granted approval under the PIA. Therefore, the exclusion should not apply to the Non-Promoted Products. Any ambiguity should be construed in the Taxpayer's favour, as Schedule 7A of the ITA is a relief provision that benefits taxpayers.

The Revenue's interpretation would lead to an unfair and absurd outcome, precluding RA claims for unrelated non-promoted activities or products despite significant CAPEX incurred for expansion and modernisation.

Furthermore, the additional wording, i.e., "in respect of a promoted activity or product" ("**Additional Wording**"), did not exist in an earlier version of the Disputed Provision. It was deliberately inserted by Parliament to clarify that RA would only be excluded in respect of promoted activities or products enjoying investment tax allowance under the PIA 1986. Disregarding the Additional Wording would render it meaningless, which is contrary to the well-established legal principle that every word in legislation must bear some meaning, as Parliament does not legislate in vain.

(b) If the HC decides in the Taxpayer's favour on the meaning of the Disputed Provision, the claim for RA should be allowed. The SCIT had already found as a fact that the Taxpayer had incurred the CAPEX for a qualifying project within the meaning of paragraphs 1(b) and 8(a) of Schedule 7A of the ITA.

Conclusion

The HC allowed the Taxpayer's appeal and ruled in its favour. The HC's written grounds are eagerly anticipated to provide further clarity on the legal position. In the meantime, our key takeaways from the HC's decision are:

(a) The principle that ambiguity in tax relief provisions should be construed in favour of taxpayers is now regarded as settled law, as reaffirmed most recently by the Court of Appeal ("**COA**") in ***Dyson Manufacturing Sdn Bhd v Ketua Pengarah Kastam, Jabatan Kastam Diraja Malaysia*** **[2024] CLJU 546**.

(b) Every word in a tax statute must bear meaning, as Parliament does not legislate in vain. Neither the court nor the Revenue can disregard or treat statutory language as superfluous or insignificant.

The Taxpayer was successfully represented by Dato' Nitin Nadkarni and Chris Toh Pei Roo of Lee Hishammuddin Allen & Gledhill's Tax, Customs & Trade Practice.

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