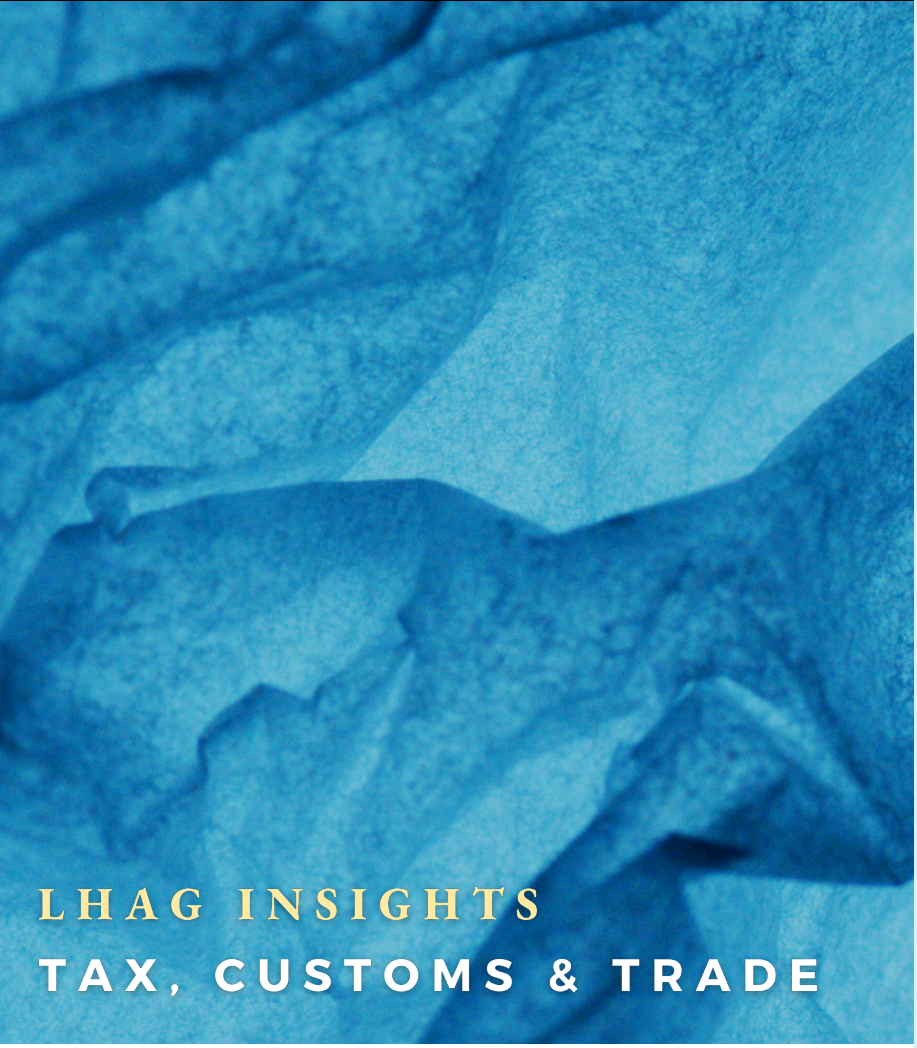

LHAG INSIGHTS

TAX, CUSTOMS & TRADE

23 JUNE 2025

REINVESTMENT ALLOWANCE & INVESTMENT TAX ALLOWANCE – HIGH COURT GROUNDS OFFER CERTAINTY ON RA CLAIMS

by Chris Toh Pei Roo & Soon Jia Ying

Panasonic AVC Networks Johor (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN)

We previously issued an alert on the High Court's ("**HC**") decision in this case, which ruled in favour of the taxpayer ("**Taxpayer**"), confirming 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. The alert can be viewed here.

The HC has now released its written grounds of judgment, offering key insights into the court's reasoning in allowing the Taxpayer's appeal, which can be viewed here.

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Recap of the Case

The dispute arose from the Director General of Inland Revenue's ("**Revenue**") decision to disallow the Taxpayer's RA claim for capital expenditure ("**CAPEX**") incurred in expanding, modernising, and automating its business for manufacturing audio and video equipment ("**Non-Promoted Products**") under Schedule 7A of the 1967 Act. The Revenue argued that:

(a) The Taxpayer had already been granted pioneer status under the PIA 1986 and was therefore precluded from claiming RA by virtue of paragraph 7(b) of Schedule 7A of the 1967 Act ("**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 1967 Act.

The Special Commissioners of Income Tax's ("SCIT") Decision

The SCIT dismissed the Taxpayer's appeal. The SCIT held that the Disputed Provision was "clear and unambiguous" in precluding a taxpayer from claiming both ITA and RA in the same year of assessment ("**YA**"). Secondly, although the SCIT found that the Taxpayer had incurred CAPEX for expanding, modernising, and automating its business for Non-Promoted Products, it concluded that the Taxpayer's RA claim was disallowed solely because the Taxpayer had already claimed ITA on the Promoted Products in that same year.

Key Takeaways from the HC's Grounds of Judgment

Aggrieved by the SCIT's decision, the Taxpayer appealed to the HC. The HC reversed the SCIT's decision, ruling in favour of the Taxpayer and allowing the Taxpayer's RA claim. Our key takeaways from the HC's grounds of judgment are summarised as follows:

1. **The HC Agreed with the Taxpayer's Interpretation of the Disputed Provision**

The Taxpayer contended that the Disputed Provision is not a blanket exclusion of RA for companies with pioneer status under the PIA. Instead, RA is only to be excluded in respect of a promoted activity or promoted product for which the taxpayer has already been granted ITA under the PIA.

The HC agreed that the legislative history of Schedule 7A of the 1967 Act and the deliberate insertion of the additional wording, i.e., "*in respect of a promoted activity or product*" ("**Additional Wording**"), which was absent in an earlier version of the Disputed Provision, show Parliament's intention that the RA is only to be excluded to companies in respect of promoted products, and not to non-promoted products. To interpret otherwise would render the Additional Wording meaningless, contrary to the principle that Parliament does not legislate in vain.

2. The HC Rejected the Revenue's Argument That the Amendment Merely Clarified the Definition of "Pioneer Company"

The Revenue argued that 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) and not the products / activities (i.e., promoted products or non-promoted products). The Revenue further argued that the insertion of the Additional Wording in the Disputed Provision was a consequence of the amendment to the definition of "pioneer company" in the PIA, which included the same phrase "*in relation to a promoted activity or promoted product*". Accordingly, the amendment to the PIA resulted in the corresponding amendment in the 1967 Act.

The HC rejected the Revenue's argument that the amendment to the Disputed Provision was merely to mirror the amendment in the PIA, which includes the wording of "*in respect of a promoted activity or promoted product*".

3. The Additional Wording Was Not Intended to Address the Defects of The Earlier Amendment

The HC clarified that the amendment to the Disputed Provision was "*NOT in any way intended to address the defects of the earlier amendment*". This is supported by the fact that the whole paragraph 7 of Schedule 7A of the 1967 Act was reconstructed, including the new opening phrase: "*This Schedule shall not apply to a company—*". The amendment was made to dispel any ambiguity that a pioneer company or a company currently enjoying ITA on the promoted activities or products is excluded from claiming RA *in respect of those promoted activities or products*.

Conclusion

The HC's written grounds of judgment provide greater clarity for companies engaged in both promoted and non-promoted activities or products. The HC affirmed that companies with pioneer status, or those enjoying ITA on promoted products, may still claim RA under Schedule 7A of the 1976 Act for capital expenditure incurred on non-promoted activities or products, provided that the conditions of Schedule 7A are met. Therefore, taxpayers whose RA claims were previously denied by the Revenue solely due to their pioneer status or ITA benefits on promoted activities or products may consider reassessing their eligibility if their claims relate to non-promoted activities or products. This judgment is particularly significant for tax planning as it provides clearer guidance on structuring capital expenditure across promoted and non-promoted activities or products, allowing businesses to maximise the use of available tax incentives within the statutory framework.

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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