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### HIGH COURT RULES TAXPAYERS ENTITLED TO REFUNDS WITH INTEREST FOR TAXES PAID UNDER UNCONSTITUTIONAL SECTION 4C OF THE ITA: FEDERAL COURT'S DECISION IN *WIRAMUDA* APPLIES RETROSPECTIVELY

by Chris Toh Pei Roo & Soon Jia Ying

*Tanda Bestari Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN) ("Tanda Bestari")*

*Lush Development Sdn Bhd v KPHDN ("Lush Development")*

In a significant post-*Wiramuda* development, the Kuala Lumpur High Court ("KLHC") has allowed two judicial review applications by taxpayers seeking refunds with interest for taxes collected under Section 4C of the Income Tax Act 1967 ("ITA") - a provision declared **unconstitutional** by the Federal Court ("FC") in *Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2023] 5 MLRA 285 ("**Wiramuda**").

## KEY LAWYERS

DATO' NITIN NADKARNI  
Consultant  
[nn@lh-ag.com](mailto:nn@lh-ag.com)



JASON TAN JIA XIN  
Partner  
[tjx@lh-ag.com](mailto:tjx@lh-ag.com)



IVY LING YIENG PING  
Partner  
[il@lh-ag.com](mailto:il@lh-ag.com)



CHRIS TOH PEI ROO  
Partner  
[tpr@lh-ag.com](mailto:tpr@lh-ag.com)



The KLHC's decisions of 29 July 2025 in *Tanda Bestari* and *Lush Development* confirm that the FC's declaration of invalidity in *Wiramuda* applies retrospectively, and that the Director General of Inland Revenue ("DGIR") is legally obliged to refund taxes collected under the now-invalid Section 4C of the ITA.

## Background

Both taxpayers ("**Taxpayers**") are property development companies whose lands were compulsorily acquired in 2017. The lands were held as stock in trade. At the material time, Section 4C of the ITA deemed such compensation to be taxable as business income. Accordingly, the Taxpayers filed tax returns, declaring the compensation received as taxable.

Later, in 2022, the FC in *Wiramuda* declared Section 4C to be in violation of Article 13(2) of the Federal Constitution, which guarantees adequate compensation for compulsory acquisitions. Consequently, the FC held Section 4C to be unconstitutional.

Following the decision, both Taxpayers issued letters to the DGIR requesting refunds of taxes paid under Section 4C. The Revenue failed to respond, prompting the Taxpayers to initiate judicial review proceedings.

## Procedural History

1. On 13 September 2023, the KLHC granted leave for the Taxpayers to commence judicial review<sup>1</sup>.
2. In May 2024, the Court of Appeal ("**COA**") struck out the DGIR's appeal against the KLHC's decision to grant leave<sup>2</sup>.
3. In September 2024, the FC struck out the DGIR's application for leave to appeal against the COA's decision to strike out.
4. In November 2024, the FC rejected the DGIR's application for clarification on whether the *Wiramuda* decision applies prospectively or retrospectively. The FC held that the issue should have been raised during the hearing of the *Wiramuda* case itself, and that the FC is now *functus officio* with no authority to make further orders on the matter.

## Parties' Arguments During the Substantive Judicial Review Hearing

### DGIR's Position

The DGIR opposed the judicial review applications, contending, amongst others, that:

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[1] The High Court's grounds of judgments can be viewed [here](#) and [here](#).

[2] Our LHAG Alert dated 24 May 2024 on the COA's decisions can be viewed here: <https://lh-ag.com/wp-content/uploads/2024/05/LHAG-Insights-20240524.pdf>

1. The *Wiramuda* decision should be applied prospectively to avoid administrative disruption and a floodgate of claims for refund. The DGIR relied in particular on the FC's decision in *Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd and other appeals* [2024] 5 MLJ 897 ("**the Obata Ambak Decision**").
2. The Taxpayers' claims were time-barred under Section 111 of the ITA.
3. The DGIR's failure to respond did not amount to a "decision" amenable to judicial review

### Taxpayers' Arguments

The Taxpayers contended that:

1. The DGIR is bound by the *Wiramuda* decision, which applies **retrospectively** in the absence of an express order to the contrary. The DGIR had every opportunity to seek a declaration of prospectivity at the hearing of *Wiramuda* but failed to do so. The FC is now *functus officio*.
2. The *Obata Ambak* Decision is distinguishable. There, exceptional hardship and potential unjust enrichment of house buyers were present. Here, the Taxpayers are merely seeking restitution for taxes paid under an invalid provision. If *Wiramuda* were applied prospectively, it is the DGIR—not the Taxpayers—that would be unjustly enriched.
3. Section 111 of the ITA is inapplicable. This is not a case of overpayment under valid law, but a constitutional claim for restitution of tax collected under an unlawful statute.

### High Court Decision

On 29 July 2025, the KLHC ruled in favour of the Taxpayers, holding that:

#### **1. The *Wiramuda* Decision Applies Retrospectively**

The FC made no direction for prospective application. Therefore, the general rule of retrospective application of constitutional rulings applies. The High Court cannot impose a prospective limitation where the FC has not done so.

#### **2. The DGIR is Bound by the FC's Ruling**

As reaffirmed in *Arumugam Pillai v Government of Malaysia* [1980] 2 MLJ 283, once the apex court has ruled on a tax issue, the DGIR must apply it uniformly. Failure to do so is subject to judicial review.

### 3. Section 111 of the ITA Does Not Apply

The High Court agreed this was **not a case of excess payment** under a valid assessment, but a constitutional claim for **restitution** of tax collected under an **unlawful provision**.

### 4. DGIR Silence Is Not a Shield

The DGIR's inaction was held to be a reviewable decision:

***"The DGIR's inaction on the matter created an impasse that should not have been. It was a conscious decision on the part of the DGIR not to respond ... The intentional decision to remain silent was unwarranted."***

(Emphasis added)

### 5. Refund with Interest Ordered

The Court directed that refunds be paid with interest at 5%, calculated from the date of filing of the judicial review applications.

Broad grounds by the KLHC have been issued and can be viewed [here](#).

### Conclusion

This decision confirms:

1. The **retrospective application** of constitutional rulings in the absence of specific directions of prospective application.
2. The taxpayer's **constitutional right to restitution** of taxes paid pursuant to unlawful legislation.
3. The DGIR's **obligation to comply** with apex court decisions.
4. That **inaction** or silence cannot be used to evade that duty.

It is noteworthy that on 4 June 2024, the Shah Alam High Court ("**SAHC**") ruled *against* the taxpayer in a similar case<sup>3</sup>.

The DGIR has filed appeals against the KLHC's decisions in *Lush Development* and *Tanda Bestari*. Both matters are expected to be heard by the COA in due course, as with the matter decided by the SAHC.

The Taxpayers were successfully represented by Consultant Dato' Nitin Nadkarni, Partner Chris Toh Pei Roo, and Associate Soon Jia Ying from Lee Hishammuddin Allen & Gledhill's Tax, Trade & Customs Practice.

*If you have any queries regarding tax assessments raised by the DGIR please contact Partner **Chris Toh Pei Roo** ([tpr@lh-ag.com](mailto:tpr@lh-ag.com)) or Associate **Soon Jia Ying** ([jys@lh-ag.com](mailto:jys@lh-ag.com)).*

#### Head Office

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122

#### Johor Office

Suite 21.01  
21st Floor, Public Bank Tower  
No.19, Jalan Wong Ah Fook  
80000 Johor Bahru, Johor  
Tel: +607 278 3833  
Fax: +607 278 2833

#### Penang Office

51-12-E, Menara BHL Bank,  
Jalan Sultan Ahmad Shah,  
10050 Penang  
Tel: +604 299 9668  
Fax: +604 299 9628

#### Email

[enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)

#### Website

[www.lh-ag.com](http://www.lh-ag.com)

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