

28 APRIL 2026

BEYOND THE CORPORATE VEIL: COURT OF APPEAL RECOGNISES SUBSTANCE OVER FORM IN CLAIMING TAX BENEFIT

by Ivy Ling Yieng Ping & Charlene Woon Zi Xuan

"...in appropriate cases, the court is willing to lift the veil of incorporation when the justice of the case so demands..."

The Court of Appeal's recent decision in ***Ketua Pengarah Kastam v Batu Tiga Quarry Sdn Bhd*** is a noteworthy development in Malaysian tax law. In dismissing Customs' appeal, the Court held that, in appropriate cases, the Court may look beyond separate legal personality and treat a parent company and its subsidiary as a single commercial unit, where the economic reality so demands.

Although the dispute arose under the now-abolished GST regime, the principles articulated by the Court have continuing relevance across all tax matters, particularly for businesses operating through group structures.

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Background

Batu Tiga Quarry Sdn Bhd ("**BTQ**"), a wholly-owned subsidiary of YTL Cement Bhd, operates a quarry and trades in granite aggregates, supplying products both locally and to customers in Singapore. BTQ has been GST-registered since 1 April 2015.

In 2011, BTQ entered into a sale and delivery agreement with YTL Cement Marketing Singapore Pte Ltd ("**YTL**"), pursuant to which BTQ agreed to sell and deliver quarry products to YTL and its end customers in Singapore. The products were produced from rock materials extracted from Kulai Quarry, the operations of which BTQ had taken over from its wholly-owned subsidiary, CIQ Quarry & Marketing Sdn Bhd ("**CIQ**"), in July 2007.

Notwithstanding this, for export purposes, the export declaration forms (K2 Forms) continued to be declared under CIQ's name, as the holder of the relevant Approved Permit, rather than BTQ's name. Customs subsequently took the view that BTQ had underpaid GST by zero-rating the exported quarry products, on the basis that only CIQ, being the party named in the K2 Forms, could qualify as the exporter. A Bill of Demand in the sum of RM1,196,461.46 was accordingly issued to BTQ.

Key Issue

The central question before the Court of Appeal was whether BTQ was entitled to zero-rate its export supplies under Section 17(1)(b) of the Goods and Services Tax Act 2014 ("**GST Act**"), despite not being named as the exporter in the K2 Forms.

Customs' Position

Customs argued that BTQ and CIQ were separate legal entities, and that only the party named as the exporter in the K2 Forms could qualify for zero-rating. On that basis, Customs contended that BTQ was not entitled to zero-rate the export supplies.

Decision of the Court of Appeal

The Court of Appeal upheld the High Court's decision in favour of BTQ and rejected Customs arguments. The Court's reasoning can be distilled into four key principles:

1. No Extra-Statutory Conditions

The Court upheld the trite rule that tax legislation must be interpreted strictly. Section 17(1)(b) of the GST Act applies where "the goods are exported." There is no additional statutory requirement that the supplier must also be the entity named in the K2 Form; accordingly, Customs cannot impose an additional condition not found in the statute.

2. K2 Forms Are Not Conclusive

The Court held that the particulars recorded in the K2 Forms are not conclusive evidence of who the exporter is. The form reflects administrative compliance with customs requirements; it does not determine the entity entitled to claim zero-rating tax treatment.

3. Substance and Commercial Reality Prevail

The Court examined the underlying facts and found that it was **BTQ**, and not **CIQ**, that:

- Used its expertise and industry knowledge to operate the quarry;
- Bore all costs and expenses of the quarry operations;
- Directly paid land tributes; and
- Actively supplied the quarry products to **YTL** and its customers in Singapore.

Based on these facts, **BTQ** was, in substance, the true exporter.

4. Corporate Veil May Be Lifted in Tax Cases

Most significantly, the Court held that where justice requires, it is prepared to **lift the corporate veil** and treat the parent and subsidiary as one single unit. Applying this principle, the Court held that the corporate veil of **CIQ** ought to be lifted and that **BTQ** is, in fact, the true exporter of the quarry products for the purposes of Section 17(1)(b) of the GST Act, and was accordingly entitled to zero-rating.

Why This Decision Matters

This decision is significant for businesses operating through group structures or shared operational models. The Court's reasoning establishes several important propositions:

- **Separate legal personality is the starting point, but not always the end of the inquiry.** The Court's willingness to lift the corporate veil, even for the purposes of claiming tax benefits (zero-rating treatment), confirms that, in tax cases, Courts may examine the commercial reality of the arrangement, including who truly bears the economic burden, performs the operational role, and in fact makes the supply. Importantly, this doctrine is not confined to traditional company law disputes, nor is it a tool available only to the tax authorities in imposing liability; it may equally be invoked by the taxpayers to establish their entitlement to the relevant tax treatment.
- **Tax authorities cannot impose requirements not found in the statute.** Tax treatment cannot be denied by reading additional conditions into legislation where none exist.
- **Documentation matters, but commercial substance may prevail.** Where the underlying facts point clearly in a different direction, the administrative forms will not be determinative.

Practical Takeaways for Businesses

While this case arose under the now-abolished GST regime, the broader principle that courts are willing, in appropriate cases, to look beyond form and give effect to commercial reality is likely to remain relevant in future tax disputes.

In light of this decision, businesses operating through group structures should consider the following:

- **Align legal documentation with operational reality.** Ensure that your contracts, permits, and declarations reflect who is actually operating the business and bearing the commercial risk.
- **Clarify roles within the group.** Where a parent and subsidiary share functions, there should be clarity on who is the contracting party, supplier, exporter, and risk-bearer—both in documentation and in practice.
- **Be prepared for scrutiny based on substance.** Group arrangements may be examined on the basis of economic reality, not merely corporate form, by both tax authorities and the Courts.

Lee Hishammuddin Allen & Gledhill successfully represented Batu Tiga Quarry Sdn Bhd before the Court of Appeal and High Court. The team was led by **Andrew Chiew Ean Vooi** (Partner), assisted by **Ivy Ling Yieng Ping** (Partner) and **Charlene Woon Zi Xuan** (Associate).

The Court of Appeal's grounds of judgment can be accessed [here](#). The High Court's grounds of judgment can be accessed [here](#).

This alert is written by Ivy Ling Yieng Ping, Partner, and Charlene Woon Zi Xuan, Associate of LHAG's Tax, Customs and Trade.

*For further information on how this decision may affect your business or group structure, please do not hesitate to contact our Partner **Ivy Ling Yieng Ping** (il@lh-ag.com)*

This alert is prepared for general informational purposes only and does not constitute legal advice. Specific legal advice should be sought for any particular circumstances.

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