IN-DEPTH

Tax Disputes And Litigation

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In-Depth: Tax Disputes and Litigation (formerly The Tax Disputes and Litigation Review) is a practical overview of the common issues that give rise to tax disputes in key jurisdictions, the procedures for resolving those disputes, and the powers and approach of local tax authorities. With a focus on recent developments, it offers insights into the process, timescale and cost of resolving complex difficulties when they arise across multiple jurisdictions.

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Summary

Introduction

The phrase "pay first and talk later" is one that neatly encapsulates the essence of Malaysia's tax litigation framework. This principle is enshrined in section 103 of the Income Tax Act 1967 (ITA), which provides that taxes assessed are payable within the prescribed due date, notwithstanding any appeal.[1] While often described as "harsh", this provision has been judicially recognised as a deliberative legislative provision, made "having regard to the incidence of tax evasion".[2]

In the event that taxpayers wish to challenge an assessment, or more broadly, a decision by the tax authorities, they may do so through specialised tribunals, namely the Special Commissioners of Income Tax (SCIT) for income tax disputes and the Customs Appeal Tribunal (CAT) for Customs disputes. These tribunals perform judicial or quasi-judicial functions and are composed of laypersons who apply their specialist skills to adjudicate the matters before them.[3] Their authorities "are confined to their relative spheres".[4] These tax disputes may take anywhere from one to five years to be resolved, depending on the nature of the dispute, complexity of the issues involved, and the quantum at stake.

In recent years, there has been a noticeable increase in stamp duty disputes. Unlike income tax and customs matters, stamp duty appeals are made directly to the High Court (HC). However, the statutory framework remains consistent with the "pay first" principle. Stamp duty must be paid within 21 days of being notified of the tax authority's decision before an appeal can be initiated.[5]

In certain circumstances, however, taxpayers may seek to challenge the decisions of tax authorities without first making payment, by commencing judicial review proceedings and applying for a stay of enforcement. Judicial review proceedings are filed in the HC and tend to have comparatively shorter timelines for resolution.

For matters involving genuine differences in interpretation of tax laws, the Inland Revenue Board (IRB) may be more amenable to negotiations and discussions. The IRB's own Tax Audit Framework[6] also assures that matters arising from technical adjustments do not attract the imposition of penalties under section 113(2) of the ITA. However, there are certain areas where the IRB is less amenable to such discussions. These include cases of tax evasion or fraud, where taxpayers have intentionally engaged in attempts to defraud the tax authorities and to understate their income. The IRB has displayed its willingness to invoke the criminal provisions under the ITA and other laws to prosecute taxpayers who commit such offences.

The risk of tax disputes is expected to grow with the recent introduction of the self-assessment system for both real property gains tax (RPGT) and stamp duty. Under these regimes, taxpayers are required to compute and declare their own tax liabilities, subject to potential review and audit by the tax authorities. To support these changes, the IRB issued new operational guidelines and audit frameworks, which are likely to lead to increased audit activity and greater scrutiny of taxpayer filings, resulting in a higher volume of disputes in the coming years.

Commencing disputes

The self-assessment system

Income tax

The self-assessment system has been implemented for income tax in Malaysia since 2001 for companies, and since 2004 for businesses, partnerships, cooperatives and salaried individuals. Under the previous official assessment system, taxpayers were assessed for income tax by the IRB pursuant to the tax returns they filed. By contrast, under the self-assessment system, taxpayers are required to file their tax returns based on their own computation of tax liability, resulting in deemed assessments and the corresponding payment of taxes.

To ensure compliance and avoid tax leakages under the self-assessment system, the IRB is vested with wide powers under the ITA. Among others, sections 78–81 of the ITA empower the Director General of Inland Revenue (DGIR) to call for specific returns, require production of books and bank statements, access buildings and documents, and obtain any information that may be relevant to the taxpayer’s affairs. With these powers, the IRB routinely conducts post-assessment audits, which may take the form of either desk audits (conducted from the IRB’s office) or field audits (conducted at the taxpayer’s premises with prior notice). The IRB also periodically issues its Tax Audit Framework, which sets out its stated practice and procedure in carrying out audits.[7]

Preliminary findings letters are issued to taxpayers during the audit process, and taxpayers typically have the opportunity to respond to any issues raised. Audits are concluded with a final audit findings letter, following which the IRB will issue notices of assessment (Form J) or notices of additional assessment (Form JA), as the case may be, in respect of taxes it alleges have been underpaid. Pursuant to section 91 of the ITA, assessments must be raised within the five years after the relevant year of assessment (YA), except in circumstances of fraud, wilful default or negligence.

In practice, however, time-barred assessments are common, as the IRB often takes the position that negligence exists where taxpayers' tax treatments differ from their own. The courts have rejected such an approach, holding that mere differences in interpretation alone do not constitute negligence on the taxpayer’s part.

Real property gains tax

Effective 1 January 2025, the self-assessment system has also been implemented for RPGT. Under this regime, taxpayers are responsible for computing their own RPGT liabilities and filing the relevant RPGT returns. The return submitted is treated as a deemed assessment, and no formal notice of assessment will be issued by the IRB. Notably, acquirers are still required to retain a portion of the consideration and remit it to the IRB within 60 days of the date of disposal.

In conjunction with this transition, the IRB issued both an Operational Guideline for RPGT and an RPGT Audit Framework, effective 1 January 2025. The Operational Guideline clarifies the responsibilities of disposers and acquirers in reporting disposals of chargeable assets under the self-assessment system. Meanwhile, the RPGT Audit

Framework outlines the IRB's approach to verifying compliance, including audit procedures and enforcement actions. The introduction of the self-assessment system, together with the issuance of the Audit Framework, is expected to lead to an increase in the number of RPGT audits. This may, in turn, result in a rise in tax disputes, particularly concerning issues such as disposal dates, base costs, exemptions and valuation matters.

Stamp duty

Similarly, the self-assessment system for stamp duty was implemented on a phased basis beginning 1 January 2026. In the first phase, only rental and lease agreements, general stamping and securities instruments will be subject to self-assessment, with instruments of transfer and other documents to follow in 2027 and 2028, respectively. Taxpayers are required to electronically file their stamp duty returns and make payment upon submission. The return will be deemed an assessment. To facilitate the implementation, the IRB issued the Guidelines for Applications for Stamping via the Self-Assessment Stamp Duty System (STSDS) dated 26 December 2025, which provides guidance on the application process for stamping under the new self-assessment system.

Similar to the position under the ITA and Real Property Gains Tax Act 1967 (RPGTA), under this new regime, the deemed assessment may be subject to further assessment by the Collector, who retains the authority to issue additional assessments within five years, or indefinitely in cases involving fraud, wilful default or negligence.[8] In line with this, the IRB has issued a Stamp Duty Audit Framework, effective 1 January 2025, which outlines the audit procedures. As with RPGT, the implementation of the self-assessment system, together with the issuance of the Audit Framework and the STSDS Guidelines, is expected to increase audit activity, potentially resulting in more audit disputes as taxpayers adapt to the new compliance environment.

Disputing assessments

Taxpayers in Malaysia may challenge tax assessments or decisions by the tax authorities through several modes: an appeal to the SCIT for income tax matters, an appeal to the CAT for customs, sales tax, and service tax matters, an appeal to the HC for stamp duty disputes or, in appropriate cases, by filing an application for judicial review.

SCIT appeal

A taxpayer aggrieved by an assessment made by the DGIR under the ITA or the RPGTA may file a notice of appeal (Form Q) to the SCIT, together with the grounds of the appeal, within 30 days of the date of service of the assessment. Upon receipt of the Form Q, the DGIR has a 12-month review period, during which dispute resolution proceedings (DRP) may be conducted to explore the possibility of an amicable settlement. These proceedings can result in an agreement under section 101(2) of the ITA between the DGIR and the taxpayer on the proper amount of taxes payable.

If no agreement is reached during the review period, the Form Q will be forwarded to the SCIT for registration. Upon registration, case management will be conducted, during which directions will be given for the filing of cause papers and the fixing of a hearing date. In recent times, it has become common for hearings to be fixed two to three years after registration because of the high number of pending appeals. At any time before the hearing concludes, the taxpayer and the DGIR may still reach a settlement, which can be recorded before the SCIT. If no settlement is reached, the SCIT will proceed to hear the case and issue its deciding order, either confirming or discharging the assessments.

CAT appeal

Taxpayers who are dissatisfied with decisions made by the Royal Malaysian Customs Department (RMCD) under the Customs Act 1967 (CA), Sales Tax Act 2018, or Service Tax Act 2018, except in relation to compounds, may first apply for a review of the decision by the Director General of Customs and Excise (DGC) within 30 days of being notified.[9] The DGC is required, where practicable, to make a decision within 60 days of receiving the application.[10]

If aggrieved by the outcome of the review, the taxpayer may file an appeal to the CAT within 30 days from the date of notification of the DGC's decision.[11] The appeal is initiated by filing a notice of appeal (Form A), which must set out the grounds of appeal and be supported by relevant documents. Once filed, the Secretary of the CAT will seal and register the matter, and provide a copy of the notice to the parties.[12]

Case management will then be conducted, during which directions are given for the filing of cause papers and the fixing of a hearing date. As with SCIT proceedings, the parties may attempt to settle the dispute at any stage before the conclusion of the hearing, and any such settlement may be recorded before the CAT.[13] If no settlement is reached, the CAT will proceed to hear and determine the appeal.

Stamp duty appeal

Stamp duty disputes are procedurally distinct from income tax and indirect tax matters, as they do not fall within the jurisdiction of the SCIT or CAT. Instead, appeals against stamp duty assessments must be made directly to the HC.

Where a taxpayer is aggrieved by a decision of the Collector of Stamp Duties under the Stamp Act 1949, they must first file a notice of objection to the Collector within 30 days of the date of the decision.[14] The Collector will then make a determination and notify the taxpayer in writing.[15] If the taxpayer is dissatisfied with the outcome of the objection, they may appeal to the HC within 21 days of being notified of the decision, and upon full payment of the stamp duty assessed.[16] The appeal is initiated by filing an originating summons, supported by an affidavit affirming the relevant facts and attaching all material documents, including the instrument in dispute and the Collector's decision.[17] The originating summons and affidavit must be served on the opposing party.

The taxpayer may then require the Collector to state and sign a case, setting forth the question upon which their opinion was required and the decision made, which is then set down for hearing before the HC.[18] Upon hearing, the HC will determine the question submitted and, if the instrument is chargeable to duty, assess the duty accordingly. Where the HC finds the Collector's assessment to be erroneous, any excess duty and penalties paid may be ordered to be repaid to the taxpayer.

Judicial review

Under certain circumstances, a taxpayer may file a judicial review application at the HC-[19] to challenge a tax assessment or decision by the tax authorities. However, judicial review cannot be commenced as of right. Taxpayers must first obtain leave of the court. The threshold for leave is ordinarily low and will be satisfied where it is proven that the application is not frivolous or vexatious.

Even where an alternative remedy exists, such as an appeal to the SCIT, the courts have held that taxpayers are not barred from judicial review, provided that exceptional circumstances exist. These exceptional circumstances arise where the decision of the tax authority involves:

- a clear lack of jurisdiction;
- a blatant failure to perform some statutory duty; or
- a serious breach of the principles of natural justice.[20]

Judicial review is, however, unsuitable where there are factual disputes, which should be resolved by the SCIT as the tribunal of fact. Judicial sentiment on the role of judicial review in challenging abuses of power is best reflected in the landmark case of *Indira Gandhi a/p Mutho v PengarahJabatan Agama Islam Perak and others*, where the Federal Court held that "the boundaries of the exercise of powers conferred by legislation is solely for the determination by the courts", and that "if an exercise of power under a statute exceeds the four corners of that statute, it would be ultra vires and a court of law must be able to hold it as such".[21]

Stay of payment

Once an assessment is raised, taxes are generally due and payable regardless of whether an appeal is made.[22] In certain circumstances, taxpayers may seek to stay the enforcement and effect of the assessment by commencing judicial review proceedings in the HC. The effect of such a stay is that the taxes assessed are no longer immediately due and payable, and the government is precluded from commencing civil recovery proceedings in respect of the stayed assessment. Unlike judicial review proceedings, statutory appeals through the SCIT and CAT do not confer on the tribunal the power to grant a stay of the effect of tax assessments issued by the IRB or Customs.

Where payment has not been made and no stay has been granted by the courts, the government may commence civil recovery proceedings against the taxpayer to recover the outstanding tax as a debt due to the government.[23] However, taxpayers may still be able to obtain a stay of the civil recovery proceedings. The courts have held that sections 103 and 106 of the ITA do not preclude the court from exercising its inherent jurisdiction to grant a stay where special circumstances exist.[24] This was previously confirmed by the Court of Appeal (COA) in *Berjaya Times Square*.[25] The legality and constitutionality of section 106 of the ITA has been upheld by the Federal Court in *Mohd Najib Hj Abd Razak v Government of Malaysia & Another Appeal*,[26] which arose from a high-profile challenge brought by a former Prime Minister of Malaysia.

The courts and tribunals

The SCIT and CAT

The SCIT is an institution created under the ITA, which prescribes a minimum of three commissioners (the Commissioners). Appointment of the Commissioners is by the Yang di-Pertuan Agong (the Ruler), and their tenure, remuneration and allowances are determined by the Minister of Finance (MoF).[27] The procedure for hearings at the SCIT and their powers are stipulated under Schedule 5 to the ITA 1967.

SCIT appeals are usually heard before a panel of three Commissioners, with at least one having judicial or other legal experience. With effect from 31 December 2019, appeals may be heard by a single Commissioner if the chair deems it expeditious and efficient.[28] Two or more appeals may be heard concurrently, and taxpayers may be represented by either an advocate, a tax agent, or both during the hearing. Subject to the ITA, the SCIT is statutorily empowered to regulate its own procedure. Where no procedure is prescribed, the procedure and practice of the Subordinate Courts or the HC shall apply with the necessary modifications.[29]

The CAT is established under the CA.[30] The CAT consists of a chair and up to two deputy chairs from members of the Judicial and Legal Service, together with a minimum of seven other members who are deemed to have "wide" knowledge or "extensive" experience in customs or taxation matters. Tribunal members are appointed by the MoF, who also determines the terms, conditions and remuneration of their appointments.[31]

As with SCIT proceedings, hearings before the CAT are typically presided over by a panel of three tribunal members.[32] However, the chair of the CAT may assign a single-member panel in the interest of expeditious and efficient disposal of the appeal.[33] Once a tribunal appeal has been lodged, the same issues cannot be raised between the same parties in another court,[34] unless the other proceedings were commenced earlier, or unless the tribunal appeal is withdrawn, abandoned or struck out. Following an amendment in 2018,[35] advocates and solicitors, who were previously prohibited from appearing at the tribunal, are now permitted to do so.

Generally, the role of both the SCIT and the CAT is to make findings of facts and decide questions of law. Their decisions provide guidance to taxpayers and the tax authorities on how similar issues will be decided. However, their decisions may be overruled by the appellate courts, or departed from by a different panel of the SCIT or CAT, as the case may be, in subsequent cases. While the SCIT and CAT are independent of the IRB and RMCD, respectively, they are both organisations under the MOF, which also oversees the tax authorities.

HC, COA and FC

Parties dissatisfied with the SCIT's decision may appeal to the HC on questions of law. The HC, in its appellate role, would be slow to intervene on findings of fact by the SCIT but may intervene where findings are wholly unsupported by facts or evidence.[36] An appeal to the HC is commenced by filing a written notice with the Secretary of the SCIT within the 21 days following the date of the decision. A copy of the notice must be extended to the Registry of the HC and served on all parties to the proceedings. The appellant must also apply in writing to the Secretary for the notes of proceedings and grounds of decision, and must prepare the records of appeal.[37] Upon hearing and determining the appeal, the HC may, among others, order the assessments to be confirmed, discharged or amended.

A party dissatisfied with the CAT's decision may file an appeal to the HC on a question of law or a mixed question of law and fact.[38] Such an appeal is commenced by filing an originating summons, supported by an affidavit affirming the relevant facts and enclosing all material documents. The originating summons must be filed within one month from the date of the CAT's decision and served on the opposing party.[39]

Parties dissatisfied with the HC's decision have a further right of appeal to the COA. The appeal must be filed within 30 days of the HC's decision. Appeals before the COA are heard and decided by a panel of three judges. However, no further appeal lies to the Federal Court (FC) in respect of matters originating from the SCIT and CAT.

Appeals to the FC against the decisions of the COA are, however, possible in proceedings commenced by way of judicial review at the HC and in relation to stamp duty appeals. Prospective appellants do not have an automatic right to appeal and must first obtain leave from the FC by filing an application for leave within one month of the date of the COA's decision. For leave to be granted, applicants must satisfy the court that the proposed question to be answered involves either a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the FC would be to the public advantage.[40] Appeals before the FC are heard and decided by a panel of between five and 11 judges, depending on the complexity and significance of the matter.

Penalties and remedies

Penalties

The ITA imposes various responsibilities on taxpayers and their principal officers. Failure to comply with these obligations may constitute an offence that is punishable by a range of penalties, including fines and imprisonment.[41] A common offence is the failure to furnish returns, which attracts a fine of between 200 and 20,000 ringgit or imprisonment for up to six months, or both. Where the failure concerns two or more years of assessment, a special penalty equal to treble the amount of taxes underpaid may be imposed.

Another frequent offence is the furnishing of incorrect tax returns, which carries a fine of between 1,000 and 10,000 ringgit and a special penalty of double the amount of taxes underpaid. Where a taxpayer has not been prosecuted for furnishing incorrect returns, the DGIR may still impose a penalty of up to 100% of the amount of taxes underpaid. Additionally, it is an offence for taxpayers to fail to furnish contemporaneous transfer pricing documentation, which is punishable by a fine of between 20,000 and 100,000 ringgit, or imprisonment for up to six months, or both. Alternatively, the DGIR may impose a penalty within the same monetary range in lieu of prosecution.

Pursuant to the IRB's Tax Audit Framework, in cases involving the understatement of income, penalties are imposed at a scale rate of 15% for a first offence, 30% for a second offence and 45% for the third and any subsequent offences. Penalties are not imposed where the understatements arise from technical adjustments. However, penalties at the rate of 100% may be imposed where taxpayers are found to have intentionally underreported income.

Generally, the tax authorities would impose civil or financial penalties in lieu of criminal prosecution. However, the tax authorities have demonstrated an increasing willingness to initiate criminal proceedings against recalcitrant tax evaders. Taxpayers facing criminal charges are entitled to put forth any available defences relevant to the offences charged.

Remedies

A taxpayer who has paid taxes due to an error or mistake in an income tax return or statement may apply to the DGIR for relief under section 131(1) of the ITA. The application must be made within five years from the end of the relevant year of assessment. In assessing the application, the DGIR shall have regard to all relevant circumstances and may grant a refund if it appears that a just and reasonable error or mistake exists. However, section 131(4) restricts relief where the return or statement was made in accordance with the generally prevailing practice of the DGIR at the relevant time. If a taxpayer is dissatisfied with the DGIR's decision, an appeal may be made within six months by requesting that the application be forwarded for determination by the SCIT. Notably, the ITA does not prescribe a time limit for the DGIR to decide on a section 131 application, and delays are common in practice.

Separately, taxpayers may also apply for discretionary relief through remission, which is generally available across all tax regimes. Under section 129(1) of the ITA, tax, penalty or surcharge may be remitted either by the DGIR on grounds of poverty or by the MoF on grounds of justice and equity. Similar remission provisions exist under Malaysia's indirect tax laws. For example, section 14A of the CA empowers the MoF to remit any customs duty, surcharge, penalty, fee or other sums payable under the Act if deemed just and equitable. In the context of service tax and sales tax, section 40 of the Service Tax Act 2018 and section 41 of the Sales Tax Act 2018 empower the MoF to remit tax, and the DGC to remit surcharges, penalties, fees or other monies payable under the respective Acts. For stamp duty, section 80 of the Stamp Act 1949 empowers the MoF to exempt, reduce or remit the duties chargeable on any instrument or scheme under the Act. While remission is discretionary, a refusal may, in appropriate cases, be subject to judicial review.

Tax claims

Recovering overpaid tax

A taxpayer who has overpaid taxes can submit a claim for a refund within five years from the end of the YA to which the claim relates.[42] If a taxpayer is dissatisfied with the amount of the refund granted, they may appeal to the SCIT within 30 days of being notified of the amount.

Where a refund is due, taxpayers may also be entitled to compensation for late refund, calculated in accordance with the formula prescribed under the ITA.[43] This formula entitles taxpayers to a compensation of 2% per annum for late refunds. The IRB has issued an Operational Guideline, which outlines the criteria and procedure for refund applications.[44]

Separately, there are no specific statutory measures addressing tax disputes between commercial parties. These disputes are, generally, governed by the usual rules of civil litigation, with actions subject to a limitation period of six years as prescribed by section 6 of the Limitation Act 1953.

Challenging administrative decisions

Judicial review in some jurisdictions "focuses on the process and the scope of the decision rather than the merits of the decision taken".[45] In Malaysia, however, the courts are not confined merely to the decision-making process, but may examine the substantive merits of the decision itself.[46]

As discussed, exceptional circumstances must be demonstrated to obtain leave for judicial review, particularly, where an alternative remedy, such as an appeal to the SCIT, exists. One such exceptional circumstance may arise where legitimate expectations are created in favour of taxpayers, resulting from the tax authorities' past conduct, whether towards the taxpayer themselves or towards other taxpayers.

Apart from challenges to tax assessments, other administrative decisions in tax matters are also amenable to judicial review. For instance, decisions made by the MoF under section 127(3A) of the ITA concerning tax exemptions, or decisions on pioneer status under the Promotion of Investment Act 1986, may also be susceptible to challenges by judicial review.

Claimants and related parties

In tax disputes, the primary claimant is typically the taxpayer who has been aggrieved by the decision of the tax authority. However, there are limited situations where related parties, namely persons or entities other than the immediate taxpayer, may also have standing to bring a claim or to be joined in the proceedings. Standing to challenge a tax decision generally requires a party to demonstrate that they are "adversely affected" by the decision in a direct, substantial and genuine way.

For instance, in *Akamai Technologies Malaysia Sdn Bhd & Anor v Ketua Pengarah Hasil Dalam Negeri*,[47] the DGIR took the position that certain payments made by a Malaysian company to a non-resident entity amounted to royalty and were therefore subject to withholding tax. The non-resident entity pursued the action against the DGIR as a co-applicant on the basis that it was also an aggrieved party adversely affected by the DGIR’s decision.

In judicial review proceedings, an applicant need only show a genuine and real interest in the decision being challenged (ie, satisfying the "adversely affected" test) to be a claimant to the proceedings.[48] Specifically in the context of indirect taxes, it is arguable that a party to whom disputed sales or service tax has been passed on, such as a purchaser of goods or services, may also qualify as a person aggrieved by the decision of the DGC. Such persons may challenge the DGC's decision even if it was formally issued to another party (eg, the supplier), provided they can demonstrate a real and genuine interest in the matter. In such cases, standing could be satisfied on the basis that the potential applicant's financial position would be adversely affected by the sales or service tax ultimately imposed as a result of the DGC's decision.

Costs

Cost awards by the SCIT are strictly regulated by the ITA, which stipulates that no order as to costs may be made except as expressly provided.[49] Under the ITA, the SCIT may only order costs of up to 5,000 ringgit to be paid to it where the appeal is found to be frivolous or vexatious in nature.[50] A taxpayer may make representations within 21 days of service of the deciding order as to why such an order ought not to be made. Notably, there is no provision under the ITA for the recovery of costs by successful taxpayers.

In proceedings before the CAT, each party shall generally bear its own costs. However, where the Tribunal affirms the decision of the DGC and finds that the appeal was scandalous, frivolous or vexatious, it may order the appellant to pay costs to the Tribunal up to a maximum sum of 10,000 ringgit.[51] The Tribunal may make such a cost order even if the appellant was absent at the hearing.[52] In addition, the Tribunal may, in its discretion, order costs to be paid by the appellant if the case was conducted frivolously or vexatiously, or by any party where, considering all circumstances of the case, it would be unjust or inequitable not to do so.[53]

In proceedings before the HC, COA and the FC,[54] cost awards are discretionary in nature[55] and are typically governed by the principle that costs follow the event (ie, the successful party is generally awarded costs). However, in practice, cost awards are often nominal and may not fully reflect the actual legal costs incurred by the parties. Where proceedings are settled through a consent order, it is common for parties to agree that there will be no order as to costs, with each party bearing its own costs.

Alternative dispute resolution

Other than litigation, the only formal method of resolving tax disputes is through DRP during the 12-month review period after the filing of a Form Q but before the matter is forwarded to the SCIT for registration. These proceedings are chaired by either a dedicated DRP Department, which operates separately from the assessing branch that issued the assessments, or the relevant State Director's office, which acts as a neutral party in the discussions.

Separately, taxpayers seeking certainty may apply for an advance ruling from the IRB regarding the application of provisions of the ITA to proposed arrangements.[56] Once a taxpayer has duly relied and acted upon an advance ruling, the DGIR is legally bound by the ruling.[57] However, a taxpayer dissatisfied with an advance ruling cannot challenge it by way of judicial review, as an advance ruling is not deemed a decision of the IRB. A decision is only considered to have been made once an assessment is issued. In *Ketua Pengarah Hasil Dalam Negeri v IBM Malaysia Sdn Bhd,*[58] the Federal Court held that a taxpayer would not be considered "adversely affected" until an assessment is issued.

Anti-avoidance

As with most countries, Malaysia's tax legislation contains general anti-avoidance provisions. Section 140 of the ITA empowers the DGIR to disregard, vary or adjust as it deems fit transactions that have the direct or indirect effect of altering tax incidence, relieving, evading or avoiding tax liability or hindering or preventing the operation of the ITA.

Effective January 2009, section 140A of the ITA was introduced to specifically address transfer pricing issues. In short, the DGIR may substitute the price in respect of any transaction involving the acquisition or supply of property or services if there is reason to believe that the transacted price was not at arm's length.[59] Furthermore, the DGIR may disregard any structure adopted by a taxpayer if the economic substance of the transaction differs from its form, or if the arrangement differs from what independent persons acting in a commercially rational manner would have adopted.[60]

As can be gleaned from these provisions, the DGIR's powers under the ITA are wide. However, the courts have imposed certain limitations on the exercise of these powers. Among others, the HC has held that the burden lies on the DGIR to prove that a taxpayer's transaction constitutes a sham.[61] The COA has also drawn a distinction between tax mitigation and tax avoidance, holding that a taxpayer is free to mitigate their tax liability and that such conduct will not be caught by section 140 of the ITA.[62] Accordingly, a taxpayer is entitled to mitigate their tax liability, provided that they do not engage in tax evasion or avoidance, for, as noted by the courts, "it is never the province of either the DGIR or even the courts to tell people how to conduct their business".[63] The courts have maintained this approach in recent years,[64] and have increasingly emphasised the requirement for the DGIR to provide reasons when invoking its powers under these anti-avoidance provisions.

Malaysia is also increasingly aligning its domestic tax regime with international anti-avoidance standards. It is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, and an associate member of the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS) Package. Malaysia has implemented various regulations in line with the BEPS action plans.

With effect from 1 January 2025, in line with Pillar 2 of the BEPS Action Plan 1, Malaysia introduced the global minimum tax, which requires multinational enterprise (MNE) groups with annual consolidated revenues exceeding €750 million in at least two of the four immediately preceding financial years to maintain a minimum effective tax rate (ETR) of 15%. The GMT framework includes provisions for both a domestic top-up tax (DTT) and a multinational top-up tax (MTT). The DTT imposes a top-up tax on constituent entities (CEs) that do not meet the 15% ETR, while the MTT imposes a top-up tax on the MNE's parent company in Malaysia if its CEs in other jurisdictions fall below the 15% ETR. In both cases, the top-up tax rate will be adjusted to ensure that the ETR reaches 15%.

Double taxation treaties

As of 24 April 2026, Malaysia has entered into comprehensive double taxation agreements (DTAs) with 75 countries and limited DTAs with three countries.[65] Comprehensive DTAs cover all types of income, whereas limited DTAs are restricted to certain types of income, such as income derived from shipping or air transport activities. These DTAs have legal effect under the ITA.[66] The courts have also confirmed that, in the event of a conflict between DTA and ITA provisions, it is the former that is to prevail.[67]

In *Lembaga Hasil Dalam Negeri Malaysia v Alam Maritim*,[68] the FC held that the taxpayer was precluded from relief under the Malaysia–Singapore DTA, as the disputed payments fell within section 4A of the ITA, which created a special class of income taxable in Malaysia. However, this decision was subsequently distinguished in *Wira Swire Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*,[69] where the HC agreed with the taxpayer that the Malaysia–Denmark DTA, which had been ratified subsequent to the enactment of section 4A, must have clearly been intended by parliament to take precedence over section 4A.

Year in review

The past year has seen several significant developments in Malaysia's tax litigation landscape. The main issues addressed include the recovery of taxes paid under laws that have been declared unconstitutional, procedural fairness in RPGT assessments and the stamp duty treatment of novation agreements.

The cases of *Lush Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*[70] and *Tanda Bestari Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*[71] addressed the aftermath of the FC's decision in *Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*,[72] which struck down section 4C of the ITA as unconstitutional. Section 4C had the effect of treating gains or profits from the disposal of stock-in-trade, even when parted with under compulsion (such as compulsory acquisition), as taxable business income. Both taxpayers were property development companies whose lands had been compulsorily acquired and who had paid income tax on the compensation received pursuant to section 4C. Following *Wiramuda*, the taxpayers sought refunds of taxes paid under section 4C from the DGIR, who failed to respond, and subsequently commenced judicial review proceedings. The DGIR resisted the applications on the grounds that *Wiramuda* should apply prospectively, that the assessments had become final and conclusive, and that section 111 of the ITA was the proper refund mechanism. The HC rejected all of these arguments, holding that in the absence of an express direction of prospective overruling by the FC, *Wiramuda* applied retrospectively, and ordered the DGIR to refund the taxes paid with interest at 5% per annum from the date of filing of the judicial review applications.

Separately, in *Speed Modulation Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*,[73] the HC considered the limits of the DGIR's powers in substituting the market value of land for RPGT purposes. The taxpayer had disposed of four parcels of land for 102 million ringgit, supported by an independent valuation report, and filed its RPGT returns accordingly. The DGIR, without furnishing the taxpayer with the Valuation Department's report or affording the taxpayer an opportunity to comment, issued assessments based on a significantly higher valuation of approximately 199 million ringgit. The HC allowed the taxpayer's judicial review application on two grounds of exceptional circumstances. First, the DGIR had committed a blatant breach of the taxpayer's right to be heard by relying on a valuation that had not been disclosed to the taxpayer, rendering any appeal to the SCIT effectively meaningless. Second, the DGIR had acted in excess of jurisdiction under paragraph 11(2) of the Second Schedule to the RPGTA, having failed to specify the limb under which he was exercising his power to substitute market value, and having relied on a Valuation Department report that was only produced after the impugned assessments had already been issued. The HC quashed the assessments and ordered a fresh RPGT assessment to be issued in accordance with the taxpayer's original returns.

Finally, in *Nike Global Trading BV, Singapore Branch v Pemungut Duti Setem, Malaysia*,[74] the Court of Appeal considered whether a novation agreement was chargeable to stamp duty under section 16(1) of the SA, read together with item 32(a) of the First Schedule, which applies to instruments transferring or conveying property. The dispute arose from a novation agreement entered into between NIKE European Operations Netherlands BV (NEON), NIKE Sales (Malaysia) Sdn Bhd and the appellant, under which all rights, obligations, duties and liabilities under an existing intercompany loan agreement were novated from NEON to the appellant. The Collector of Stamp Duties assessed stamp duty of 1,716,004 ringgit on the novation agreement, treating it as a transfer or conveyance of property. The HC upheld the assessment, finding that the novation agreement effected a transfer of the right to repayment of the debt. The Court of Appeal disagreed and allowed the appeal, holding that a novation, by operation of section 63 of the Contracts Act 1950, does not transfer property but instead extinguishes the existing contractual relationship entirely, creating in its place a new and independent agreement by consent. As no property transfer or conveyance had occurred, section 16(1) of the SA was inapplicable. The Court of Appeal further held that consideration in a novation agreement need not be monetary, and that the mutual agreement to release NEON and substitute the appellant constituted valid consideration. The novation agreement was accordingly directed to be stamped under item 4 of the First Schedule, attracting only nominal duty of 10 ringgit.

Special considerations

Certain areas of taxation are increasingly prone to scrutiny and dispute. Stamp duty warrants particular attention in the near term. The introduction of the self-assessment system from 1 January 2026, together with the IRB's Stamp Duty Audit Framework, signals a new era of heightened scrutiny. With the IRB now empowered to conduct post-filing audits and issue additional assessments, taxpayers and their advisers must approach stamp duty with the same rigour as other areas of taxation. Proactive review of existing and future instruments, accurate characterisation of transactions and early engagement with legal advisers will be critical to managing stamp duty risk.

Within the income tax regime, transfer pricing remains one of the most active and challenging areas. The IRB has increased enforcement on related party transactions, particularly intercompany financing arrangements such as interest-free loans. These are frequently challenged under section 140A of the ITA and the Income Tax (Transfer Pricing) Rules 2023, with the IRB asserting that the transactions are not conducted on an arm’s-length basis.

For RPGT, the introduction of the self-assessment regime effective 1 January 2025 represents a significant shift in compliance responsibility. Taxpayers are now required to compute and declare gains arising from the disposal of chargeable assets, including shares in real property companies. The IRB retains broad audit powers and may scrutinise whether the correct tax regime has been applied, particularly in cases where transaction characterisation is unclear or disposals are fragmented over time. Under this new regime, accurate classification, consistent tax treatment and early legal review will be essential to managing RPGT risks and mitigating audit exposure.

More broadly, the IRB's enforcement posture has intensified through a series of compliance operations in 2025. In June, OP Metro 3.0 targeted 682 cases across the construction, manufacturing, services, consultancy and wholesale sectors in the Klang Valley. In August 2025, OP Titan deployed 313 officers nationwide to audit 103 large and multinational corporations identified as high-risk for aggressive tax planning, improper incentive claims and related party transactions. Taxpayers across all sectors should expect heightened audit scrutiny in the coming years.

Outlook and conclusions

Malaysia's tax landscape is undergoing a period of significant transformation. The shift towards self-assessment across multiple tax regimes – most recently for stamp duty – marks a fundamental change in the compliance burden borne by taxpayers. Where previously the tax authorities played a gatekeeping role in determining tax liability, taxpayers are now squarely responsible for declaring, and paying, the correct amount of tax. This shift, coupled with the IRB's intensifying audit and enforcement activity, means that the risk of disputes is higher than ever.

That said, recent decisions reflect a judiciary that is willing to scrutinise the conduct of the tax authorities and hold them to the standards of legality, procedural fairness and constitutional compliance. Taxpayers have meaningful recourse where the tax authorities have acted unlawfully or in excess of jurisdiction, and judicial review remains a vital avenue of challenge beyond the conventional appeal process.

Against this backdrop, in-house counsel and tax professionals would do well to take a proactive rather than reactive approach to tax risk management. This means conducting regular internal reviews of related party transactions, stamped instruments and RPGT positions, staying abreast of developments in tax legislation, audit frameworks and case law and building robust documentation to support the tax positions taken. Where disputes arise or where the tax treatment of a transaction is unclear, early engagement with experienced tax legal advisers will be essential to navigating the increasingly complex and enforcement-focused environment that lies ahead.

Endnotes

1 *Government of Malaysia v Mohd Najib bin Hj Abd Razak* [2020] 9 MLJ 618. ^ Back to section

2 *Arumugam Pillai v Government Of Malaysia* [1980] 2 MLJ 283. ^ Back to section

3 *Kerajaan Malaysia v Nooryana Najwa bt Dato Sri Mohd Najib* [2020] 11 MLJ 242. ^ Back to section

4 *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561. ^ Back to section

5 Section 39, ITA. ^ Back to section

6 https://phl.hasil.gov.my/pdf/pdfam/RK_Audit_Cukai_2022_1.pdf (available in Malay language only). ^ Back to section

7 https://phl.hasil.gov.my/pdf/pdfam/RK_Audit_Cukai_2022_1.pdf (available in Malay language only). ^ Back to section

8 Section 36CA, Stamp Act 1949. ^ Back to section

9 Section 143(1) CA; section 96(1), Sales Tax Act 2018; section 81(1), Service Tax Act 2018. ^ Back to section

10 Section 143(3) CA; section 96(3), Sales Tax Act 2018; section 81(3), Service Tax Act 2018. ^ Back to section

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12 Paragraph 5, Customs (Appeal Tribunal) Regulations 2007. ^ Back to section

13 Paragraph 13(2), Customs (Appeal Tribunal) Regulations 2007. ^ Back to section

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15 Section 38A(5), Stamp Act 1949. ^ Back to section

16 Section 39, Stamp Act 1949. ^ Back to section

17 Order 55A, rule 1, Rules of Court 2012. ^ Back to section

18 Section 39, Stamp Act 1949. ^ Back to section

19 Order 53, Rules of Court 2012 (ROC 2012). ^ Back to section

20 *Government of Malaysia & Anor v Jagdis Singh* [1987] CLJ (Rep) 110. ^ Back to section

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22 Section 103(5), ITA. ^ Back to section

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24 *Kerajaan Malaysia v Jasanusa Sdn Bhd* [1995] 2 CLJ 701; *Chong Woo Yit v Government of Malaysia* [1989] 1 CLJ Rep 9. ^ Back to section

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26 [2023] 10 CLJ 329. ^ Back to section

27 Section 98, ITA 1967. ^ Back to section

28 Paragraph 1A, Schedule 5, ITA as inserted by section 4(a) of the Income Tax (Amendment) Act 2019. ^ Back to section

29 Paragraph 42A, Schedule 5, ITA 1967. ^ Back to section

30 Section 141B, CA 1967. ^ Back to section

31 Section 141C, CA 1967. ^ Back to section

32 Section 141J, CA. ^ Back to section

33 Section 141K, CA. ^ Back to section

34 Section 141N, CA 1967. ^ Back to section

35 Section 11, Customs (Amendment) Act 2018 amending section 141Q, CA 1967. ^ Back to section

36 *Ketua Pengarah Hasil Dalam Negeri v Teraju Sinar Sdn Bhd* [2014] 8 CLJ 169. ^ Back to section

37 Paragraph 34A, Schedule 5 ITA as inserted by section 4(g) of the Income Tax (Amendment) Act 2019. ^ Back to section

38 Section 141W, CA. ^ Back to section

39 Order 55A, rule 1, Rules of Court 2012. ^ Back to section

40 Section 96, Courts of Judicature Act 1964 (CJA 1964). Appeals against decisions of constitutional importance may also merit leave under Section 96(b) CJA 1964. ^ Back to section

41 Sections 116 to 120, ITA 1967. ^ Back to section

42 Section 111, ITA 1967 (or within five years after the assessment was raised where the overpayment was subsequent to an assessment raised). ^ Back to section

43 Section 111D, ITA 1967. ^ Back to section

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45 See the *Tax Disputes and Litigation Review* – edition 6, Singapore chapter. ^ Back to section

46 *Datuk Bandar Kuala Lumpur v Zain Azahari Zainal Abidin* [1997] 2 CLJ 248. ^ Back to section

47 (2022) MSTC 30-511. ^ Back to section

48 *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145. ^ Back to section

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50 Paragraph 29, Schedule 5, ITA 1967. ^ Back to section

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52 Paragraph 19(2), Customs (Appeal Tribunal) Regulations 2007. ^ Back to section

53 Section 141TA, CA. ^ Back to section

54 For appeals originating from the High Court. ^ Back to section

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66 Section 132, ITA 1967. ^ Back to section

67 *Director General of Inland Revenue v Euromedical Industries Ltd* [1983] CLJ (Rep) 128; *Damco Logistics Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2011) MSTC 30-033; *Maersk Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2013) MSTC 10-046. ^ Back to section

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69 *Wira Swire Sdn Bhd. v Ketua Pengarah Hasil Dalam Negeri* [2019] 1 LNS 1026. ^ Back to section

70 *Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2023] 4 MLJ 753. ^ Back to section

71 [2025] MLJU 1608. ^ Back to section

72 *Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2023] 4 MLJ 753. ^ Back to section

73 [2025] MLJU 1608. ^ Back to section

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