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TAX, CUSTOMS & TRADE

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APPEAL PRESERVED, JUDICIAL REVIEW MAY PROCEED: HIGH COURT GRANTS LEAVE TO CHALLENGE RM36.28 MILLION IN TAX ASSESSMENTS AND PENALTIES

by Chris Toh Pei Roo & Alvin Chong Jian Loong

***Pioneer Rich (Malaysia) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*[1]**

On 14 July 2026, the Kuala Lumpur High Court (**High Court**) granted Pioneer Rich (Malaysia) Sdn Bhd (**Taxpayer**) leave to commence judicial review against income tax assessments and penalties totalling RM36,280,781.67. The Court also granted an interim stay pending disposal of the *inter partes* stay hearing. The High Court has made available grounds of judgment which can be viewed here.

The decision at this stage does not determine the merits of the judicial review. It confirms that the following questions

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of law are sufficiently arguable to proceed to substantive determination:

1. **Can tax be imposed where the taxpayer says no income was received?**

   The taxpayer contended that it did not receive income from the relevant trading activities and that the Revenue had therefore imposed income tax on income that did not exist, contrary to Section 3 of the Income Tax Act 1967 (**ITA**). In support of that position, the taxpayer relied on its audited reports and financial statements for the disputed YAs. The Court held that the challenge raised an important question of law suitable for determination in judicial review.

2. **Must an income estimation method have a legal basis under the ITA?**

   The Revenue had applied a gross profit margin method to estimate the taxpayer's income. The taxpayer challenged whether that methodology was provided for or authorised by the ITA. The Court accepted that the legal basis for the methodology was an arguable question of law.

3. **Must reasons be given for a time-barred assessment and penalties?**

   The challenge also concerned the assessment for YA 2019, which the taxpayer contended was time-barred, and penalties imposed under sections 112(3) and 113(2) of the ITA. The Court considered it arguable that the Revenue was required to justify the exercise of its discretion and give sufficient reasons for the assessment and penalties.

Form Q: A Prudent Parallel Step

The Court also rejected the contention that filing a Form Q made the judicial review an abuse of process. Filing a Form Q is a requirement under Section 99 of the ITA if the taxpayer decides to proceed with an appeal. The Form Q had been filed as a matter of prudence to preserve the taxpayer's statutory right of appeal in the event that leave for judicial review was refused. It was not filed to give the taxpayer to have a "second bite of the cherry" or to permit litigation in instalments.

The distinction is important. The judicial review concerns the legality of the Revenue's conduct and the proper interpretation of the ITA. The Form Q preserves the taxpayer's statutory route to contest the amount of tax and penalties before the Special Commissioners of Income Tax (**SCIT**). However, any determination by the superior courts in judicial review proceedings on the interpretation of the relevant provisions would bind the parties. A final decision would give rise to the application of the doctrines of *res judicata* and issue estoppel. The possibility of an unsuccessful party in judicial review seeking to relitigate the same issues afresh before the SCIT does not arise.

Key Takeaway

The availability—and even the filing—of a Form Q appeal does not, by itself, bar judicial review where the challenge raises genuine questions of law going to the legality of the Revenue's decision, rather than merely a dispute over quantum. Filing Form Q may nevertheless be prudent to preserve the statutory appeal route.

The High Court granted leave on the low threshold applicable at the leave stage. The substantive questions remain to be determined.

The taxpayer was successfully represented at the leave stage by ***Chris Toh Pei Roo*** of Lee Hishammuddin Allen & Gledhill's Tax, Customs & Trade Practice, who appeared as counsel instructed by Messrs. Jack & Cheng. He was assisted by ***Alvin Chong Jian Loong*** of LHAG and appeared together with ***Ng Jack Ming*** of Messrs. Jack & Cheng.

For inquiries regarding tax assessments issued by the Director General of Inland Revenue (DGIR), judicial review of tax decisions, or related tax disputes, please contact the Team Partners at Tax@lh-ag.com.

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