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TAX, CUSTOMS & TRADE

21 AUGUST 2026

REINVESTMENT ALLOWANCE & INVESTMENT TAX ALLOWANCE — COURT OF APPEAL CONFIRMS BOTH INCENTIVES CAN CO-EXIST

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

We previously issued alerts on the High Court's ("**HC**") decision in this case and its written grounds of judgment, which held in favour of the taxpayer ("**Taxpayer**") 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**") are not necessarily mutually exclusive where the incentives and the capital expenditure ("**CAPEX**") incurred relate to different products and activities. The alert can be viewed here.

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The Director General of Inland Revenue ("**Revenue**") appealed against the HC's decision. On 13 July 2026, the Court of Appeal ("**COA**") dismissed the Revenue's appeal, leaving the HC's decision in favour of the Taxpayer undisturbed.

The decision is particularly significant for manufacturers with both promoted and non-promoted business lines. This includes taxpayers that previously claimed ITA but not RA—or whose RA claims were disallowed—because of the Revenue's position that the two incentives were mutually exclusive at company level. Such taxpayers should review open years, ongoing audits or appeals, and unabsorbed RA positions to determine whether RA may be available for distinct non-promoted activities or products. Any claim remains subject to the requirements of Schedule 7A, adequate segregation of the relevant expenditure, and applicable procedural and time limits. More broadly, the decision is relevant to diversified manufacturers planning investments across promoted and non-promoted business lines.

Recap of the Case

In YA 2003, the Taxpayer had been granted approval for ITA under the PIA in respect of its electronic musical instrument products ("**Promoted Products**"). The Taxpayer did not claim RA on those products. Separately, it incurred CAPEX to expand, modernise and automate its manufacturing business for audio and video equipment ("**Non-Promoted Products**") and claimed RA under Schedule 7A in respect of that CAPEX.

The Revenue disallowed the RA claim. The central issue before the COA was whether paragraph 7(b) of Schedule 7A, as it stood in YA 2003 ("**Disputed Provision**"), imposed a blanket prohibition preventing a company which enjoyed ITA for a promoted product from claiming RA for CAPEX incurred on a separate non-promoted product.

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

In February 2018, the SCIT dismissed the Taxpayer's appeal, holding in substance that Schedule 7A did not apply during the relevant period once the company had been granted the relevant PIA approval, regardless of whether the RA claim related to promoted or non-promoted products.

The HC's Decision

In May 2025, the HC reversed the SCIT's decision. It held that the Disputed Provision only excludes RA in respect of the promoted activity or promoted product for which PIA approval had been granted and does not impose a blanket company-level exclusion. The HC placed particular emphasis on Parliament's insertion of the words "in respect of a promoted activity or promoted product" ("**Additional Wording**"), which had to be given meaning and effect.

The Revenue's Appeal to the COA

Before the COA, the Revenue maintained that the Disputed Provision operated at the level of the company rather than the particular product or activity. In substance, the Revenue contended that:

(a) the opening words "This Schedule shall not apply to a company" showed that the exclusion was triggered by the <u>status of the company</u> once the company enjoyed the relevant PIA incentive;

(b) the Additional Wording merely mirrored an amendment to the definition of "pioneer company" in the PIA and did not indicate any legislative intention to narrow the exclusion in paragraph 7(b);

(c) allowing RA while the Taxpayer enjoyed ITA in the same YA was inconsistent with the structure and objectives of the statutory incentive regime; and

(d) the HC erred in applying the general principle that ambiguity in a taxing provision is construed in favour of the taxpayer, as the Revenue characterised the Disputed Provision as one relating to incentives and/or exemptions, to which that principle does not apply.

The Taxpayer's Position

The Taxpayer maintained that the HC had correctly construed the Disputed Provision. Its principal arguments included the following:

(a) **Purposive interpretation.** ITA and RA serve distinct legislative purposes. ITA encourages new investment in promoted products or activities, whereas RA encourages reinvestment in an existing manufacturing business through expansion, modernisation and automation. Paragraph 7(b) should therefore preserve both regimes while preventing duplicate incentives in respect of the same product or activity.

(b) **The Additional Wording must be given effect.** If paragraph 7(b) imposed a blanket company-wide prohibition merely because a company had obtained PIA approval, the Additional Wording would serve no meaningful function. The Taxpayer submitted that those words confine the exclusion to overlapping claims involving the same promoted product or activity.

(c) There was no double claim. ITA was claimed only for the Promoted Products, while RA was claimed only for the Non-Promoted Products. The claims involved separate product lines and separate expenditure.

(d) **The authorities did not justify a blanket exclusion.** The Taxpayer relied on the reasoning in ***Syarikat Kion Hoong v Ketua Pengarah Hasil Dalam Negeri (2010) MSTC 30-006*** and distinguished ***Opto-Sensors v Ketua Pengarah Hasil Dalam Negeri (2016) MSTC 30-121***. The learned High Court Judge was therefore correct to depart from ***Opto-Sensors (supra)*** and prefer the High Court's reasoning in ***Syarikat Kion Hoong (supra).***

Key Takeaways from the COA's Decision

The COA dismissed the Revenue's appeal and upheld the HC's decision. The COA's written grounds, once available, will be important in clarifying the precise basis of the appellate decision. In the meantime, our key takeaways from the COA's decision are:

1. **The HC's Interpretation of the Additional Wording Inserted in Paragraph 7(b) Remains Undisturbed**

   The dismissal leaves intact the HC's conclusion that paragraph 7(b) does not impose a blanket company-level prohibition merely because a taxpayer enjoys ITA under the PIA. On the HC's interpretation, the exclusion is directed at RA claims in respect of the promoted activity or promoted product for which the relevant PIA approval was granted. This is particularly important for diversified manufacturers which undertake new promoted investments while continuing to reinvest in established product lines.

2. **RA and ITA Are Not Necessarily Mutually Exclusive**

   The outcome reinforces the distinction between the two incentive regimes. Where ITA and RA relate to different products and activities, the taxpayer is not necessarily obtaining two incentives in respect of the same investment. The factual segregation in this case was therefore critical: ITA was claimed for the Promoted Products, while RA was claimed for the separate Non-Promoted Products.

3. **The Additional Wording in Paragraph 7(b) Remains Significant**

   A central feature of the dispute was the Additional Wording i.e., the phrase "in respect of a promoted activity or promoted product". The Taxpayer argued, and the HC accepted, that Parliament's deliberate insertion of those words must be given substantive effect. The Revenue's interpretation would, on the Taxpayer's case, require the Court to disregard the Additional Wording. On the Revenue's case, once a taxpayer has been granted ITA or pioneer status, it is barred from claiming RA altogether, regardless of whether the RA claim relates to the same promoted product or activity. That interpretation renders the Additional Wording meaningless. If Parliament intended a blanket prohibition based only on the taxpayer's status, there would have been no need to insert the words "in respect of a promoted activity or promoted product".

4. **Clear Segregation of CAPEX and Product Lines Is Important**

   Companies which enjoy ITA or other PIA incentives should maintain clear contemporaneous records identifying the products or activities for which those incentives are claimed and separately identify the CAPEX forming the basis of any RA claim. This will assist in establishing that there is no duplication of incentives in respect of the same expenditure.

5. The Decision Does Not Permit Duplicate Claims on the Same Expenditure

The outcome should not be read as permitting a taxpayer to claim both ITA and RA on the same promoted product or activity. The Taxpayer's case was expressly premised on the absence of any overlap between its ITA and RA claims. A taxpayer seeking RA must still independently satisfy the requirements of Schedule 7A and be able to demonstrate that the expenditure supporting the RA claim is distinct from expenditure for which the relevant PIA incentive has been obtained.

Conclusion

The HC's written grounds of judgment provide greater clarity for companies engaged in both promoted and non-promoted activities or products. By dismissing the Revenue's appeal, the Court of Appeal ("**COA**") has left undisturbed the HC's interpretation that companies with pioneer status, or those enjoying ITA on promoted products, may still claim RA under Schedule 7A of the Income Tax Act 1967 for capital expenditure incurred on non-promoted activities or products, provided that the conditions of Schedule 7A are satisfied.

The COA's decision therefore reinforces the position that the availability of ITA for promoted activities or products does not, in itself, result in a blanket exclusion from claiming RA in respect of separate non-promoted activities or products. Taxpayers whose RA claims were previously denied solely because they enjoyed pioneer status or ITA on promoted activities or products may therefore consider reassessing their eligibility where the RA claim relates to distinct non-promoted activities or products.

The decision is particularly significant for both past-claim reviews and future incentive planning. It underscores the need to map each incentive to the relevant product, activity and item of expenditure, and to preserve contemporaneous records establishing that there is no overlap.

The Taxpayer was successfully represented in the Court of Appeal by **Dato' Nitin Nadkarni**, **Chris Toh Pei Roo** and **Soon Jia Ying** of Lee Hishammuddin Allen & Gledhill's Tax, Customs & Trade Practice.

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