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COURT OF APPEAL UPHOLDS TAX REFUNDS WITH INTEREST: WIRAMUDA APPLIES RETROSPECTIVELY AND REVENUE MUST COMPLY WITH BINDING COURT DECISIONS

by Chris Toh Pei Roo & Soon Jia Ying

Ketua Pengarah Hasil Dalam Negeri v Lush Development Sdn Bhd
(Civil Appeal No. W-01(A)-392-08/2025)

**Ketua Pengarah Hasil Dalam Negeri v Tanda Bestari Development
Sdn Bhd**
(Civil Appeal No. W-01(A)-398-08/2025)

In a significant decision delivered on 19 October 2026, the Court of Appeal unanimously dismissed the appeals by the Director General of Inland Revenue (“**DGIR**”) against the Kuala Lumpur High Court’s decisions in favour of Lush Development Sdn Bhd (“**Lush Development**”) and Tanda Bestari Development Sdn Bhd (“**Tanda Bestari**”) (collectively, the “**Taxpayers**”).

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The Court of Appeal affirmed that the Federal Court's decision in *Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2023] 5 MLRA 285 ("**Wiramuda**"), which declared Section 4C of the Income Tax Act 1967 ("**ITA**") unconstitutional, applies retrospectively. Consequently, the Taxpayers are entitled to refunds of taxes paid under Section 4C, together with interest at 5% per annum.

Importantly, the Court of Appeal reiterated the DGIR's continuing public duty to give effect to binding decisions of the superior courts, the circumstances in which administrative inaction may be challenged by judicial review, and the entitlement of taxpayers to interest on unlawfully retained taxes.

The decision has broader implications for tax disputes involving constitutional invalidity, the finality of tax assessments, limitation periods for judicial review, and claims for restitution against revenue authorities.

Background

As reported in our earlier LHAG Insights dated 7 August 2025¹, the Taxpayers are property development companies whose lands, held as stock-in-trade, were compulsorily acquired by the State Authority.

At the material time, Section 4C of the ITA deemed gains or profits arising from the compulsory acquisition of stock-in-trade to be taxable business income. Accordingly, the Taxpayers declared the compensation received as taxable income and paid tax pursuant to Section 4C.

On 9 December 2022, the Federal Court in *Wiramuda* declared Section 4C unconstitutional for contravening Article 13(2) of the Federal Constitution, which guarantees adequate compensation for compulsory acquisition of property.

Following the Federal Court's decision, the Taxpayers wrote to the DGIR requesting refunds of the taxes paid under Section 4C. The DGIR did not respond, prompting the Taxpayers to commence judicial review proceedings on 8 March 2023.

On 29 July 2025, the Kuala Lumpur High Court allowed the Taxpayers' judicial review applications, holding that *Wiramuda* applied retrospectively and ordering refunds of the taxes paid, together with interest at 5% per annum from the commencement of the judicial review proceedings.

The DGIR appealed against the High Court's decisions.

[1] <https://lh-ag.com/tax-customs-trade-high-court-rules-taxpayers-entitled-to-refunds-with-interest-for-taxes-paid-under-unconstitutional-section-4c-of-the-ita-federal-courts-decision-in-wiramuda-apply/>

The Court of Appeal's Decision

In dismissing the appeals, the Court of Appeal made several important findings.

1. Wiramuda Applies Retrospectively — Section 4C Was Void from the Outset

The Court of Appeal reaffirmed the established principle that judicial decisions ordinarily operate retrospectively unless the court expressly directs otherwise.

In *Wiramuda*, the Federal Court had made no order limiting its declaration of unconstitutionality to prospective application. It was therefore not open to the Court of Appeal to impose such a restriction retrospectively.

The Court of Appeal also rejected the DGIR's alternative argument that the benefit of *Wiramuda* should be confined to the taxpayer in that case and to proceedings already pending before the courts as at 9 December 2022.

The Court of Appeal held that Section 4C was void *ab initio*, and that the declaration of its unconstitutionality applies retrospectively without being confined to any particular taxpayer or category of pending proceedings.

The DGIR had argued that retrospective application could expose the Revenue to approximately RM600 million in refund claims involving 13 taxpayers. However, the Court of Appeal found that the asserted financial exposure was unsupported by affidavit evidence and did not establish the exceptional circumstances necessary to justify prospective-only application.

The Court further observed that restricting the retrospective effect of *Wiramuda* would effectively allow the Revenue to retain taxes collected under legislation that was unconstitutional from the outset.

2. The DGIR Has a Continuing Public Duty to Give Effect to Binding Court Decisions

The Court of Appeal reaffirmed the principle established in *Arumugam Pillai v Government of Malaysia* [1980] 2 MLJ 283 and *Metacorp Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2011] 5 MLJ 447 that the DGIR, as an arm of the Executive, is bound by the doctrine of *stare decisis* and must apply decisions of the superior courts uniformly to taxpayers affected by them.

The Court held that the DGIR's public duty to give effect to *Wiramuda* arose immediately upon the Federal Court delivering its decision on 9 December 2022.

Crucially, this duty existed **independently of any request, representation or demand made by the Taxpayers**. The Taxpayers' subsequent letters merely sought the performance of an obligation which the DGIR was already legally bound to discharge.

The DGIR's continuing failure to recognise the unconstitutionality of Section 4C and give effect to *Wiramuda* was therefore an omission in the performance of a public duty, amenable to judicial review under Order 53 rule 2(4) of the Rules of Court 2012.

The decision reinforces that revenue authorities cannot disregard binding judicial decisions or avoid their legal obligations merely by declining to take action.

3. **Administrative Silence Alone Does Not Constitute a Reviewable Decision**

The Court of Appeal nevertheless departed from one aspect of the High Court's reasoning.

The High Court had found that the DGIR's failure to respond to the Taxpayers' letters within the stipulated deadline amounted to a conscious decision not to give effect to *Wiramuda*, which was amenable to judicial review.

The Court of Appeal clarified that **the mere failure of a public authority to respond within a deadline unilaterally imposed by an applicant does not, without more, constitute a reviewable decision or refusal**.

A taxpayer cannot create a deemed decision simply by imposing an arbitrary deadline upon the DGIR and treating the absence of a response as a rejection.

In reaching this conclusion, the Court of Appeal considered, amongst others, the Federal Court's decision in the consolidated *Bulk Appeal Cases* i.e., *Peguan Negara v UEM Land Berhad* (Bulk Appeal)² concerning applications for tax exemptions.

However, this did not defeat the Taxpayers' claims.

[2] Bulk Appeal Cases Nos.: 01(i)-19-05/2025(W), 01(i)-20-05/2025(W), 01(i)-22-05/2025(W), 01(i)-26-05/2025(W), 01(i)-27-05/2025(W), 01(i)-23-05/2025(W), 01(i)-17-05/2025(W), 01(i)-24-05/2025(W), 01(i)-21-05/2025(W), 01(i)-25-05/2025(W), 01(i)-15-05/2025(W), 01(i)-18-05/2025(W), 01(i)-28-05/2025(B)

The critical distinction was that the DGIR's obligation to comply with *Wiramuda* was a pre-existing public duty, rather than a discretionary power which could only be invoked upon the Taxpayers' request.

The judicial review applications were therefore sustainable on the independent ground that the DGIR had failed to discharge that public duty.

The Court of Appeal also clarified the appropriate remedy. Where the complaint concerns a failure to perform a public duty, an order of **mandamus**, compelling the authority to act, is appropriate. In contrast, an order of **certiorari**, which operates to quash an existing decision, cannot be used to quash a mere omission.

As the Taxpayers had sought orders of mandamus in addition to certiorari, the Court of Appeal affirmed the High Court's orders on that basis.

4. The Three-Month Judicial Review Deadline — The Importance of Acting Promptly

The Court of Appeal's discussion of the applicable limitation periods provides important guidance for taxpayers seeking to enforce their rights following a binding judicial decision.

Under Order 53 rule 3(6) of the Rules of Court 2012, an application for judicial review must ordinarily be made promptly and, in any event, within three months from the date when the grounds of the application first arose or when the decision was first communicated to the applicant, subject to the court's power to extend time.

In the present cases:

- **9 December 2022:** The Federal Court delivered its decision in *Wiramuda*, giving rise to the DGIR's duty to comply with that decision.
- **21 February 2023:** The Taxpayers wrote to the DGIR requesting refunds.
- **8 March 2023:** The Taxpayers commenced judicial review proceedings, within three months of the Federal Court's decision.

The Court of Appeal held that the Taxpayers had commenced their proceedings within the prescribed period, calculated from the date on which the DGIR's obligation to comply with *Wiramuda* arose.

Significantly, the Court also considered the DGIR's alternative argument that the benefit of *Wiramuda* should be restricted to cases already pending when the Federal Court delivered its decision.

Even if such a restriction were permissible, which the Court of Appeal rejected, the Taxpayers' prompt commencement of proceedings within three months of *Wiramuda* would have brought them within the class of taxpayers entitled to relief.

However, the Court of Appeal expressly distinguished the underlying constitutional right to restitution from the procedural requirements governing its enforcement.

The Court clarified that a taxpayer's substantive right to recover taxes unlawfully collected under an unconstitutional provision does not arise only upon making a prompt claim, nor does that right vary according to the taxpayer's diligence in pursuing it.

Nevertheless, the enforcement of that right remains subject to applicable limitation periods, depending on the proceedings commenced, as well as ordinary equitable defences such as laches, acquiescence and estoppel.

The Court also considered the Public Authorities Protection Act 1948, but clarified that its general 36-month limitation period does not displace the specific three-month period prescribed for judicial review under Order 53.

Further, the mere fact that the Revenue continues to retain unlawfully collected money does not necessarily mean that a fresh cause of action arises every day or that the applicable limitation period is indefinitely extended.

Practical implication: Taxpayers should act promptly when grounds for challenging a decision or omission by the Revenue arise. In particular, taxpayers should not assume that issuing a demand letter or characterising the Revenue's inaction as continuing will extend or restart the three-month judicial review period.

5. Finality of Tax Assessments Does Not Bar Constitutional Restitution

The Court of Appeal also rejected the DGIR's argument that the Taxpayers' claims were barred by Sections 97, 99 and 111 of the ITA.

The DGIR contended that the assessments had become final and conclusive, as the Taxpayers had not appealed against them within the prescribed statutory period.

The Court of Appeal distinguished between an ordinary dispute concerning the correctness of a tax assessment and a claim for restitution arising from the subsequent declaration that the charging provision itself was unconstitutional.

In particular

A. Section 97 — Finality of assessments

The finality conferred upon assessments under Section 97 is for the purposes of the ITA. It cannot validate an unconstitutional taxing provision or authorise the Revenue to retain money collected contrary to the Federal Constitution.

B. Section 99 — Appeals against assessments

The statutory appeal mechanism before the Special Commissioners of Income Tax does not provide the constitutional and public-law remedies sought by the Taxpayers, including mandamus and restitution founded on constitutional invalidity.

C. Section 111 — Refund of overpaid tax

The Court of Appeal held that Section 111, which governs claims for repayment of overpaid tax, concerns overpayments arising under an otherwise valid taxing regime.

It does not apply to a claim for restitution of tax collected under a statutory provision subsequently declared unconstitutional and void from the outset.

The Court emphasised the constitutional character of the Taxpayers' claims, particularly Article 96 of the Federal Constitution, which prohibits the levying of taxes except by or under the authority of federal law.

Accordingly, the finality of the original assessments and the statutory mechanism for ordinary tax refunds did not preclude the Taxpayers from pursuing restitution of the taxes unlawfully collected under Section 4C.

6. Interest on Unlawfully Retained Taxes — Compensating Taxpayers for Loss of Use of Their Money

Another significant aspect of the judgment is the Court of Appeal's affirmation that taxpayers may be entitled to interest on taxes unlawfully collected and retained by the Revenue.

The DGIR argued that interest should not have been awarded because the taxes were originally levied and collected in good faith under legislation then presumed to be valid.

The Court of Appeal rejected this argument.

Referring to *Woolwich Equitable Building Society v Inland Revenue Commissioners (No 2)* [1992] 3 All ER 737 and *Pelangi Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2012] 1 MLJ 825, the Court explained that interest awarded upon restitution of unlawfully retained taxes is **compensatory rather than punitive in nature**.

The underlying rationale is that the Revenue has enjoyed the use of money which legally belongs to the taxpayer, while the taxpayer has been deprived of the benefit and use of those funds.

In substance, the Revenue has enjoyed the benefit of an interest-free loan at the taxpayer's expense.

The Court held that the good faith of the parties at the time of collection was immaterial to the question of whether compensatory interest should be awarded. Section 11 of the Civil Law Act 1956 confers discretion upon the courts to award interest, and that discretion is not displaced merely because the money unlawfully retained was originally collected as tax.

In the present cases, the High Court had awarded interest at **5% per annum from 8 March 2023**, being the date on which the judicial review proceedings commenced.

The Court of Appeal considered this a moderate exercise of discretion, particularly as the interest award excluded the period between the original tax payment and the commencement of proceedings, and was lower than the 8% sought by the Taxpayers.

The Court accordingly affirmed the award.

Practical implication: Taxpayers pursuing restitution of unlawfully collected taxes should consider seeking interest in addition to repayment of the principal tax sum. Depending on the amounts involved and the period of retention, the interest component may be commercially significant.

Our Observations

The Court of Appeal's decision represents an important development in Malaysian tax jurisprudence, particularly in relation to the constitutional limits of the Revenue's powers and the remedies available to taxpayers.

First, the Revenue's obligation to comply with binding superior court decisions is not discretionary. Once the apex court has determined the law, the DGIR is obliged to give effect to that decision in administering the tax system. This duty does not depend upon taxpayers first securing individual decisions or making formal demands for compliance.

Second, taxpayers must carefully identify the legal basis and timing of any judicial review challenge. Although a failure to discharge an existing public duty may constitute a reviewable omission, silence in response to a self-imposed deadline does not automatically amount to a deemed refusal. The correct identification of the impugned conduct, the grounds of review and the appropriate remedies is therefore critical. Equally, the existence of a continuing obligation should not be treated as dispensing with the need to comply with applicable limitation periods.

Third, the Court has reinforced the distinction between ordinary tax refund claims and constitutional restitution. Where tax has been collected pursuant to an unconstitutional provision, the taxpayer's right to recover that money rests upon constitutional principles and is not necessarily extinguished by the finality of an assessment or the time limits governing statutory refund applications. However, the Court's reasoning must be understood in the specific context of taxation imposed under legislation declared unconstitutional.

Fourth, interest is an important element of effective relief. The Court's recognition that interest compensates taxpayers for being deprived of the use of their money is particularly significant in tax disputes involving substantial payments retained over prolonged periods. While an award of interest remains subject to judicial discretion, the fact that the Revenue initially collected tax in good faith does not, by itself, preclude such an award.

Conclusion

The Court of Appeal's decision in *Lush Development and Tanda Bestari* reaffirms that taxes collected without lawful constitutional authority must be capable of restitution, notwithstanding the Revenue's reliance on the finality of assessments or ordinary statutory refund mechanisms.

Beyond the retrospective application of *Wiramuda*, the decision provides important guidance on the Revenue's continuing duty to comply with binding judicial decisions, the procedural requirements for challenging administrative inaction, and the availability of compensatory interest on unlawfully retained taxes.

The decision is therefore significant not only for taxpayers affected by Section 4C of the ITA, but also for the broader development of constitutional and public-law remedies in Malaysian tax disputes.

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

During the appeals, the **Malaysian Bar was granted leave to appear as *amicus curiae*** on the question of the retrospective application of *Wiramuda*. The Malaysian Bar was represented by **Anand Raj, Foong Pui Chi, Abhilaash Subramaniam and Analise Cheong**. In its Grounds of Judgment, the Court of Appeal expressly acknowledged the Malaysian Bar's comprehensive written submissions and supporting authorities, which the Court found to be of real value in resolving the issue of retrospectivity.

For further information on this decision or assistance with tax disputes, please contact **Chris Toh Pei Roo** (tpr@lh-ag.com) or **Soon Jia Ying** (jys@lh-ag.com).

This article is intended to provide general information and does not constitute legal advice.

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