
TECHNICAL

Direct Taxation**TAX CASE UPDATE****Application For Stay Of Proceeding****LEAW TUA CHOON v KPHDN**

[In the matter of the Application for Judicial Review (No. MA-25-01-03/2018) before the **High Court in Melaka –**

Between

Leaw Tua Choon (Plaintiff)

And

Ketua Pengarah Hasil Dalam Negeri (Defendant)]

Date of Judgment: 25 May 2018

Background:

This is an application for stay pending appeal to the Court of Appeal against the decision of the High Court in dismissing the Applicant's application for leave to commence judicial review (JR) under Order 53 Rule 3 of the Rules of Court 2012 vide the Notice of Application dated 14/3/2018 for certiorari to quash the decision of the Respondent (KPHDN) in the form of a notice of assessment and notice of additional assessment for the year of assessment (YA) 2017 dated 19/2/2018.

The High Court had also dismissed the Applicant's application for all further proceedings to be stayed until the full and final determination of JR application.

The Applicant proceeded to make an oral application for stay of proceeding pending the filing of an appeal against the above decision of the High Court.

Decision:

The application is granted where it is plain that such application had been supported by sufficient or special circumstances that merit the exercise of the Court's discretionary power to warrant a stay order.

Finding of Court

Briefly, the decision is based on the following grounds –

1. The Court has considered the following –

- It is a well established principle that the party seeking a stay must show "special circumstances" which varies from case to case. In this case, Court has considered the rights of both parties in the matter that the appeal would be rendered nugatory if the stay application was refused.
- S73 of the Courts of Judicature Act 1965 was referred to, where a stay of proceeding pending appeal at the Court of Appeal must be so ordered by the Court below or the Court of Appeal.

2. Under the consideration that there is always a possibility that the decision of KPHDN and the Court's decision (to dismiss the JR application) may "*be reversed or varied because no human being is infallible*", the stay must necessarily be granted in order to preserve the status quo of the parties involved who have legitimate interest and expectation which the Court should protect.
3. The Court notes that it must be able to exercise its discretion sufficiently and appropriately in protecting the taxpayers' interests at all times, against arbitrary or incorrect assessments, if any (taking into account the possibility that assessments may be influenced by the target to be achieved rather than the correctness of such assessments).
4. The stay is granted to avoid the Applicant being deprived of the results of the appeal and to ensure that the appeal will not become academic.
5. In the present case, the thrust of the application for stay is that "an enormous amount of money" (RM9,244,167) would have to be paid by the Applicant (if stay was not granted), hence regard must be had to "(maintaining) *the status quo* and (preserving) *the integrity of the appeal ...balancing the judicial principle of fairness and natural justice as well as the extent of the prejudice that may be suffered by the Applicant if the proceeding is not being stayed...*"

Members may read the full Grounds of Judgment at the [Institute's website](#) and the [LHDNM website](#).

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