Bar Malaysia
Malaysian Bar
Circular No 250/2019
Dated 19 Nov 2019
To Members of the Malaysian Bar

## Update | Application for Declaratory Relief with Regard to Legal Professional Privilege: Malaysian Bar v Director General of Inland Revenue (19 Nov 2019)

We refer to Circular No 096/2018 dated 6 Apr 2018 entitled "Update | Application for Declaratory Relief with Regard to Legal Professional Privilege: Malaysian Bar v Director General of Inland Revenue (6 Apr 2018)", informing Members of the status of this pending matter.

The Director General of Inland Revenue ("DGIR")'s appeal to the Court of Appeal is likely to be fixed for hearing in early 2020.

To view the High Court Order dated 2 Apr 2018 containing prayers sought and obtained by the Malaysian Bar against the DGIR, please click here (see pages 2 to 7 ).

Members are advised to refer to paragraph 3 of the High Court Order, and note that if the DGIR or any of his officers requests or demands access to, or disclosure of, any information relating to the client accounts of a law firm, Members are required to reject any such request or demand unless legal professional privilege (also referred to as "solicitor-client privilege" or "legal privilege") is waived by the client.

Additionally, if any such requests or demands have been made by the DGIR or his officers since the date of the High Court Order, Members are requested to contact Vilashini Vijayan, Assistant Director, by telephone at 03-2050 2095 or by email at vila@ malaysianbar.org.my.

We will notify Members as and when there are developments.
Should you have any enquiries, please contact Vilashini Vijayan, Assistant Director, at the contact details provided above.

Thank you.

Anand Raj<br>Chairperson<br>Tax Subcommittee of the Corporate and Commercial Law Committee

WA-24-12-03/2017

# DALAM MAHKAMAH TINGGI MALAYA DH0.272101 (BAHAGIAN RAYUAN \& KUASA-KUASAA Kor <br> Jumlah RM <br> SAMAN PEMULA NO: WA-24-12-03/2017 

Dalam perkara Seksyen 3 Akta UndangUndang Sivil, 1956

Dan
Dalam perkara Seksyen-seksyen 126, 127, 128 dan 129 Akta Keterangan, 1950

Dan
Dalam perkara Akta Profesion Undang-Undang, 1976

Dan
Dalam perkara Seksyen-seksyen 80, 142(5) dan Bahagian V Akta Cukai Pendapatan, 1967

Dan
Dalam perkara, Perkara 5 dan 96 Perlembagaan Persekutuan

Dan
Dalam perkara Aturan 7, Aturan 15 kaedah 16 dan Aturan 28 Kaedah-Kaedah Mahkamah, 2012.

Antara
BAR MALAYSIA
PLAINTIF
Dan
KETUA PENGARAH HASIL DALAM NEGERI

DI HADAPAN HAKIM
KAMALUDIN BIN MD. SAID
PADA 2 APRIL 2018

## DALAM MAHKAMAH TERBUKA

## PERINTAH (Lampiran 1)

ATAS PERMOHONAN pihak Plaintif yang ditetapkan untuk keputusan pada hari ini DAN SETELAH MEMBACA Saman Pemula bertarikh 7 Mac 2017,

Afidavit-afidavit dan Hujahan-hujahan Bertulis pihak-pihak yang kesemuanya difailkan di sini DAN SETELAH MENDENGAR Anand Raj (Foong Pui Chi bersamanya), Peguambela bagi pihak Plaintif dan Ahmad Isyak Bin Mohd Hassan, Peguam Kanan Hasil (Ruzaidah bt. Yaacob, Peguam Hasil, bersamanya), bagi pihak Defendan, ADALAH DIPERINTAHKAN:

1. satu Deklarasi bahawa Seksyen 142(5) Akta Cukai Pendapatan 1967 ("ACP") tidak memberi hak atau kuasa kepada Defendan untuk mengetepikan hak keistimewaan ("privilege") di bawah undang-undang Malaysia yang melindungi kesemua komunikasi, buku, objek, artikel, material, dokumen, benda, perkara atau maklumat yang dihantar antara ("passing between") seorang Peguambela dan Peguamcara dan anakguamnya atau nasihat yang diberi oleh seorang Peguambela dan Peguamcara kepada anakguamnya, sama ada terkandung dalam mana-mana buku, pernyataan, akaun ataupun rekod lain yang merangkumi apa jua deskripsi (kemudian dari ini dirujuk secara kolektif sebagai "Komunikasi Anakguam"), dan yang mana hak keistimewaan tersebut dirujuk dengan pelbagai cara di bawah undang-undang Malaysia sebagai "hak keistimewaan profesional perundangan", "hak perlindungan profesional perundangan", "hak keistimewaan peguamanakguam", "hak perlindungan peguam-anakguam", "hak keistimewaan perundangan" atau "hak perlindungan perundangan" (kemudian dari ini dirujuk sebagai "Hak Keistimewaan") dengan meminta atau menuntut akses kepada, atau pendedahan, Komunikasi Anakguam sedemikian daripada mana-mana Peguambela dan Peguamcara, kecuali jika Hak Keistimewaan itu dilepaskan oleh anakguam;
2. satu Deklarasi bahawa Bahagian V ACP secara umumnya, dan Seksyen 80 ACP secara khususnya, tidak memberi hak atau kuasa kepada Defendan untuk mengetepikan Hak Keistimewaan yang melindungi kesemua Komunikasi Anakguam dengan meminta atau menuntut akses kepada, atau pendedahan, sebarang Komunikasi Anakguam sedemikian daripada mana-mana Peguambela dan Peguamcara, kecuali jika Hak Keistimewaan itu dilepaskan oleh anakguam;
3. satu Deklarasi bahawa Hak Keistimewaan di bawah undang-undang Malaysia secara umumnya, dan sepertimana yang dirujuk dalam Seksyen-seksyen 126, 127, 128 dan 129 Akta Keterangan 1950 secara khususnya, mengkehendaki seseorang Peguambela dan Peguamcara untuk menolak mana-mana permintaan atau tuntutan Defendan untuk diberikan akses kepada, atau pendedahan, sebarang Komunikasi Anakguam, kecuali jika Hak Keistimewaan itu dilepaskan oleh anakguam; dan
4. kos sebanyak RM5,000.00 dibayar oleh Defendan kepada Plaintif dan tertakluk kepada fi Alokatur.

Bertarikh 2 April 2018.



Perintah ini difailkan oleh Tetuan Shearn Delamore \& Co., Peguamcara bagi Plaintif yang alamat penyampaiannya di Tingkat 7, Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur. SD (TAX) 3471695 (AR) $1893193{ }_{\sim}^{1}$

## DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN \& KUASA-KUASA KHAS)
SAMAN PEMULA NO: WA-24-12-03/2017
Dalam perkara Seksyen 3 Akta Undang-
Undang Sivil, 1956
Dan
Dalam perkara Seksyen-seksyen 126, 127, 128 dan 129 Akta Keterangan, 1950

Dan
Dalam perkara Akta Profesion Undang-Undang, 1976

Dan
Dalam perkara Seksyen-seksyen 80, 142(5) dan Bahagian V Akta Cukai Pendapatan, 1967

Dan
Dalam perkara, Perkara 5 dan 96 Perlembagaan Persekutuan

Dan
Dalam perkara Aturan 7, Aturan 15 kaedah 16 dan Aturan 28 Kaedah-Kaedah Mahkamah, 2012.

Antara
BAR MALAYSIA
PLAINTIF

## Dan

KETUA PENGARAH HASIL DALAM NEGERI

BEFORE JUSTICE
KAMALUDIN BIN MD. SAID
ON 2 APRIL 2018
IN OPEN COURT
ORDER
(Enclosure 1)

UPON THE APPLICATION of the Plaintiff which was fixed for decision on this day AND UPON READING the Originating Summons dated 7 March 2017, the

Affidavits and the Written Submission of the parties which have all been filed herein AND UPON HEARING Anand Raj (Foong Pui Chi with him) of Counsel for the Plaintiff and Ahmad Isyak Bin Mohd Hassan, Senior Revenue Counsel (Ruzaidah bt. Yaacob, Revenue Counsel, with him), for the Defendant, THE FOLLOWING DECLARATIONS ARE ORDERED:

1. a Declaration that Section 142(5) of the Income Tax Act 1967 ("ITA") does not entitle nor empower the Defendant to disregard the privilege under Malaysian law that protects all communications, books, objects; articles, materials, documents, things, matters or information passing between an Advocate and Solicitor and his/her client or advice given by an Advocate and Solicitor to his/her client, whether contained in any book, statement, account or other record of any description whatsoever (hereinafter collectively referred to as "Client Communications"), and which privilege is referred to variously under Malaysian law as "legal professional privilege", "solicitor-client privilege" or "legal privilege" (hereinafter referred to as "Privilege") by requesting or demanding access to, or disclosure of, such Client Communications from any Advocate and Solicitor, unless Privilege is waived by the client;
2. a Declaration that Part V of the ITA generally, and Section 80 of the ITA in particular, do not entitle nor empower the Defendant to disregard the Privilege that protects all Client Communications by requesting or demanding access to, or disclosure of, any such Client Communications from any Advocate and Solicitor, unless Privilege is waived by the client;
3. a Declaration that Privilege under Malaysian law generally, and as referred to in Sections 126, 127, 128 and 129 of the Evidence Act 1950 in particular, require an Advocate and Solicitor to reject any request or demand of the Defendant for access to, or disclosure of, any Client Communications, unless Privilege is waived by the client; and
4. costs in the amount of RM5,000.00 be paid by the Defendant to the Plaintiff and subjected to an Allocatur fee.

Dated 2 April 2018.

Deputy Registrar
High Court of Malaya
Kuala Lumpur

This Order is filed by Messrs Shearn Delamore \& Co., Solicitors for the Plaintiff whose address for service is at 7th Floor, Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur. SD (TAX) 3471695 (AR) 1893186_1

