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**FEDERAL COURT**

**YAA TAN SRI DATUK AMAR ABANG ISKANDAR BIN ABANG HASHIM**
**YA DATO' NORDIN BIN HASSAN**
**YA DATUK HANIPAH BINTI FARIKULLAH**

**11th MARCH 2025**

**Order 53 Rules of Court 2012 &**
**Section 81 Income Tax Act 1967**

## GENTING MALAYSIA BERHAD
## v
## KETUA PENGARAH HASIL DALAM NEGERI
## [08(f)-145-05/2024(W)]

The Federal Court unanimously dismissed the motion for leave to appeal to Federal Court filed by Genting Malaysia Berhad ("Genting"). This case emanates from a judicial review application ("JR") filed by Genting in the High Court against three Respondents, namely Personal Data Protection Commissioner (1st Respondent), Personal Data Protection Deputy Commissioner (2nd Respondent) and the Director General of Inland Revenue (3rd Respondent) ("DGIR").

The JR was allowed against all the Respondents and all the Respondents had appealed to the Court of Appeal. However, the 1st and 2nd Respondents had later withdrawn their respective appeal and thus, leaving the DGIR as the remaining appellant before the Court of Appeal.

The dispute which led to the JR began in 2018 when the DGIR requested Genting to provide the personal data of members of Genting Rewards Loyalty Programme. The request was refused by Genting on the basis that such disclosure would be in breach of the Personal Data Protection Act 2010 ("PDPA 2010") whereas the DGIR was of the view that such request was legally made under Section 81 of Income Tax Act 1967 ("ITA 1967") as the provision fell within the purview of Section 39(b)(ii) of PDPA 2010. The DGIR then wrote to the Department of Personal Data Protection ("DPDP") for confirmation relating to the request for information. On 8.11.2019, the 2nd Respondent confirmed that such disclosure of information was allowable under Section 39(b)(ii) of PDPA 2010 as Section 81 of ITA 1967 authorized the DGIR to request such information. On 12.11.2019, the said letter was forwarded by the DGIR via e-mail to Genting. JR was filed against the DGIR for what was purported to be the DGIR's decision in conveying the letter via the said e-mail on 12.11.2019. The JR also prayed for several declarations against the DGIR, among others, that the request for information under Section 81 of ITA 1967 was in breach of the personal data protection provided under the PDPA 2010.

The Court of Appeal held that the e-mail dated 12.11.2019 was not a 'decision' and thus the learned High Court Judge had erred in allowing the JR against the DGIR. The Decision contained in the earlier letters dated 23.11.2018, 29.4.2019 and 17.5.2019. Since the JR application was filed out of time, the High Court had no power to grant leave for the JR application. The High Court had further erred in deciding that the High Court was *functus officio* when the DGIR raised the argument of jurisdiction at the substantive stage, as argument on the issue of jurisdiction may be raised at any stage.

Before the Federal Court, Genting argued that the JR was timely, as the earlier letters were merely requests ("*Permohonan*") whereas the DGIR's act of forwarding the e-mail constituted an "action" that impacted Genting. Meanwhile, it was argued for the DGIR that it was not a 'decision' and the decision if any, had been wrongly identified and thus, the JR had been filed out of time. Further, the proposed questions lacked the merit and justification for the Federal Court to allow leave. The questions clearly involved adjudication of principles of law that had long been settled by the Federal Court.

The Federal Court held that Genting would not have a prospect of success if the appeal were to proceed to the substantive stage since the JR was filed out of time. The motion was dismissed with cost of RM30,000.00 to the DGIR.