



Bar Malaysia
Malaysian Bar

www.malaysianbar.org.my

15 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2026 1313, 2034 2825, 2072 5818
Email : council@malaysianbar.org.my

Circular No 267/2017
Dated 24 Nov 2017

To Members of the Malaysian Bar

**Application for Declaratory Reliefs with regard to Legal Professional Privilege:
Malaysian Bar v Director General of Inland Revenue**

The Bar Council received several complaints in 2016 and 2017 from Members of the Bar situated in Negeri Sembilan, Penang and Kuala Lumpur, that officers of the Inland Revenue Board were undertaking tax audits on the Members' law firms and their client accounts, and issuing notices to be given access to, *inter alia*, all books and records pertaining to such client accounts.

This raised concerns as to potential breaches of the privilege that covers all communications, documents and information passing between an advocate and solicitor and his/her client, whether standing alone or contained in any books, records or accounts of any description whatsoever, and which is referred to variously as "legal professional privilege", "solicitor-client privilege" or "legal privilege" (hereinafter referred to as "**Privilege**", for ease of reference).

The Bar Council wrote a letter to the Director General of Inland Revenue ("DGIR") on 3 Nov 2016, which, *inter alia*:

- (1) stated that such audits on law firms were in breach of Privilege;
- (2) stated that section 142(5) of the Income Tax Act 1967 ("ITA") does not override Privilege; and
- (3) sought confirmation that no further actions would be taken in violation of Privilege.

The DGIR, in its letter dated 7 Dec 2016, stated that:

- (1) the audits carried out on law firms did not breach Privilege, on the grounds that section 142(5) of the ITA overrides the provisions of Chapter IX of Part III of the Evidence Act 1950 and the Legal Profession Act 1976 pertaining to the Privilege; and
- (2) the audits carried out on law firms were thus not contrary to Privilege.

The Bar Council maintains its position that the DGIR has misconstrued and misinterpreted the law pertaining to the scope of its powers under sections 80 and 142(5) of the ITA, and acted in excess of its powers by insisting on conducting audits of the client accounts of law firms.

In view of the above, the Bar Council filed an application at the High Court of Malaya at Kuala Lumpur on 7 Mar 2017, to seek, amongst others, declaratory relief that Privilege prevails over sections 142(5) and 80 of the ITA.

We will notify Members as and when there are developments.

Should you have any enquiries, please contact:

- (1) Ida Shaheezah bt Ismail, Officer, by telephone at 03-2050 2107 or by email at shaheezah@malaysianbar.org.my (until 31 Dec 2017); or
- (2) Anusha Gopala Krishnan, Officer by telephone at 03-2050 2097 or by email at anusha@malaysianbar.org.my (from 2 Jan 2018).

Thank you.

Roger Chan Weng Keng
Secretary
Malaysian Bar