KETUA PENGARAH HASIL DALAM NEGERI

v.

LUSH DEVELOPMENT SDN BHD & ANOTHER APPEAL

Court of Appeal, Putrajaya
Azizul Azmi Adnan, Ong Chee Kwan, Mohd Radzi Harun JJCA
[Civil Appeal Nos: W-01(A)-392-08-2025 & W-01(A)-398-08-2025]
19 October 2026

Administrative Law: *Judicial review — Revenue's failure to give effect to Federal Court decision in Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri declaring s 4C Income Tax Act 1967 unconstitutional — Whether Federal Court's decision operated retrospectively or prospectively — Whether Revenue's non-response to taxpayer's request to recognise and give effect to Federal Court's decision constituted decision, action or omission amenable to judicial review under O 53 r 2(4) Rules of Court 2012 — Whether Revenue under continuing duty as arm of Executive to apply apex court ruling uniformly to affected taxpayers — Whether continuing failure to give effect to ruling an omission amenable to judicial review — Whether application filed within time under O 53 r 3(6) Rules of Court 2012 — Whether court deprived of jurisdiction where basis of challenge not pleaded in O 53 statement — Whether certiorari available to quash omission — Whether mandamus proper relief*

Revenue Law: *Income tax — Claim for refund of tax paid under s 4C Income Tax Act 1967 — Section 4C subsequently declared unconstitutional by Federal Court in Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri — Whether declaration of unconstitutionality operated retrospectively or prospectively — Whether retrospective effect confined to litigant and cases pending at date of decision — Whether retrospective application should be refused or confined on floodgates grounds — Whether claim barred by ss 97, 99 and 111 Income Tax Act 1967 — Whether interest on refunded tax correctly awarded*

On 19 October 2016, the Selangor State Authority compulsorily acquired seven parcels of land belonging to Lush Development Sdn Bhd ('the Taxpayer') and awarded compensation of RM22,470,845. At the material time, s 4C of the Income Tax Act 1967 ('the ITA') deemed gains or profits arising from the compulsory acquisition of stock-in-trade to be taxable business income. On 28 February 2018, the Taxpayer filed its Form C return for the year of assessment 2017 under the self-assessment regime, treating the compensation as taxable under s 4C, which gave rise to a deemed assessment under s 90 of the ITA. No appeal was lodged under s 99, and the assessment became final under s 97. On 9 December 2022, the Federal Court in *Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* held that s 4C was unconstitutional as it contravened art 13(2) of the Federal Constitution ('the Constitution'). Neither the Federal Court's order nor its grounds of judgment, which were issued on 31 May 2023, directed that the decision was to operate prospectively only. By

letter dated 21 February 2023 ('the Taxpayer's letter'), the Taxpayer requested the Ketua Pengarah Hasil Dalam Negeri ('the Revenue') to recognise and give effect to *Wiramuda*, to discharge the tax treatment previously applied to the compensation, to permit revision of its tax computation for the year of assessment 2017 and to refund the tax paid under s 4C. The letter stated that if no response was received by 6 March 2023, the Taxpayer would treat the Revenue's position as a rejection. Having not received any response from the Revenue, the Taxpayer commenced judicial review proceedings on 8 March 2023 seeking, *inter alia*, an order of *certiorari* to quash the deemed decision of the Revenue, various orders of *mandamus* and consequential declarations. Leave was granted on 13 September 2023. The Revenue's challenges to the grant of leave were struck out by the Court of Appeal on 16 May 2024 and by the Federal Court on 10 September 2024. On 8 October 2024 the Revenue wrote to the Federal Court panel that had decided *Wiramuda*, seeking clarification as to whether the decision applied retrospectively or prospectively. The panel responded on 5 November 2024, stating that the question ought to have been raised during the hearing of *Wiramuda*, and that, having already delivered its decision and issued its sealed order and grounds, it was *functus officio*. On 29 July 2025 the High Court allowed the judicial review application, holding that *Wiramuda* applied retrospectively in the absence of an express direction to the contrary; that once bound by *Wiramuda*, the Revenue was obliged to apply it consistently to affected taxpayers; that the Revenue's inaction in the face of the Taxpayer's letter amounted to an unlawful failure to give effect to *Wiramuda*; that ss 97, 99 and 111 of the ITA did not answer the Taxpayer's public law and constitutional claim; and that interest at 5% from the date of filing the judicial review was an appropriate exercise of discretion. The High Court accordingly ordered the Revenue to refund the tax paid under s 4C, with interest at 5% per annum from 8 March 2023. Hence, the instant appeal by the Revenue in Civil Appeal No. W-01(A)-392-08-2025 ('Appeal 392'). The Revenue also appealed in Civil Appeal No. W-01(A)-398-08-2025 against the High Court's decision in the judicial review proceedings brought by Tanda Bestari Development Sdn Bhd, and the parties agreed to be bound by the decision in Appeal 392. The issues that arose for determination were: (i) whether *Wiramuda* operated retrospectively or prospectively; (ii) whether the Revenue's non-response to the Taxpayer's letter, by itself, constituted a 'decision, action or omission' amenable to judicial review under O 53 r 2(4) of the Rules of Court 2012 ('the ROC 2012'); (iii) whether, independently of that letter, the Taxpayer had a reviewable complaint founded on the Revenue's continuing duty, as an arm of the Executive, to give effect to *Wiramuda*; (iv) whether ss 97, 99 and 111 of the ITA barred the claim; and (v) whether the award of interest was correctly made.

Held (dismissing the appellant's appeal):

(1) *Wiramuda* applied retrospectively, without any confinement to the litigant in that case or to cases pending as at 9 December 2022. The default rule was, and remained, that a court judgment was 'retrospective in effect… unless a

specific direction of prospectivity is expressed'. The authorities relied upon by the Revenue for the proposition that prospective effect was the norm were cases in which the court expressly considered and expressly ordered that its decision was to operate prospectively, generally after argument specifically directed to that question. Prospective overruling was not a default consequence of a declaration of invalidity, but an exceptional course requiring an express judicial choice, made after argument squarely directed to the point, against a demonstrated and substantial historical record of reliance. No such direction was made in *Wiramuda*. It was not open to the Court of Appeal, exercising a different and subordinate jurisdiction on an appeal from a judicial review, to achieve indirectly by declaring *Wiramuda* impliedly prospective what the Federal Court, which decided *Wiramuda* itself declined to do when squarely asked. (paras 12, 13, 14, 17, 18 & 39)

(2) The Revenue's fallback submission, founded on the more limited variant of prospective overruling described in *Re Spectrum Plus Ltd; National Westminster Bank plc v. Spectrum Plus Ltd ('Re Spectrum Plus')*, that the benefit of *Wiramuda* should be confined to Wiramuda (M) Sdn Bhd itself and to litigants whose cases were already pending as at 9 December 2022, was rejected. Every variant identified in *Re Spectrum Plus* was a departure from the 'default rule of full retrospectivity'. Each was in substance a form of prospective overruling and required an exercise of judicial choice by the court making the underlying declaration of invalidity, on a proper record, as to which form (if any) of prospective overruling it considered appropriate. The Federal Court in *Wiramuda* selected none of them. In any event, the Taxpayer, having filed its application on 8 March 2023, within three months of 9 December 2022, fell within the class of persons entitled to the benefit of *Wiramuda* even on the Revenue's own fallback formulation. (paras 19-22)

(3) Even if the more limited variant of prospective overruling described in *Re Spectrum Plus* were correct, which, for the aforesaid reasons, it was not, the Taxpayer would nonetheless succeed on that narrower basis. The court's reasoning on the Revenue's fallback submission was not, and was not to be read as, an independent or narrower ratio confining the benefit of *Wiramuda* to taxpayers who could demonstrate that they moved with particular diligence. (para 23)

(4) If s 4C never validly imposed a charge to tax, a taxpayer who paid under it was, from the moment of payment, subject to an exaction without lawful authority contrary to art 96 of the Constitution, and its restitutionary right arose at that moment. That right did not come into being, or vary in strength, according to the diligence with which the taxpayer had since pursued it. It was not for the courts to fashion, by inference and on a case-by-case basis, novel restrictions on a restitutionary right of this constitutional character. The restrictions properly available to the Revenue were the ordinary ones of general application, namely, whichever limitation period governed the particular vehicle by which the claim was brought, together with the ordinary equitable

defences of laches, acquiescence and estoppel to the extent applicable. *Murphy v. Attorney General* affirmatively supported the Taxpayer's case. The very principle on which the Revenue relied to limit the scope of retrospective relief, properly applied to the facts of this appeal, confirmed rather than defeated the Taxpayer's entitlement to it. (paras 24-26)

(5) The Revenue's floodgates submission did not justify a different outcome as: (i) the assertion that there were 13 refund claims by other taxpayers totalling approximately RM600 million and that the finding of unconfined retrospectivity would expose the Revenue to open-ended liability was unsupported by evidence; (ii) the universe of persons who could conceivably benefit from a retrospective reading of *Wiramuda* was not unlimited, as any other taxpayer had to independently satisfy the time limit in O 53 r 3(6) of the ROC 2012 or obtain an extension of time; (iii) the ITA itself contained machinery for correcting overpayments and relieving taxpayers who had paid under an error or mistake, and recognising the Taxpayer's claim introduced no novel or unplanned-for category of liability; (iv) a contingent and unproven exposure of RM600 million did not begin to approach the scale of systemic disruption recognised in *Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd* or *Aminah Ahmad v. Government of Malaysia*; and (v) confining retrospectivity would not avert an unwarranted transfer of wealth in this case, but would create one, and in the Revenue's own favour. Further, a party could not invoke, as an exceptional circumstance warranting relief from the ordinary consequences of a declaration of invalidity, a state of affairs of its own making, brought about in defiance of binding superior-court precedent. (paras 29, 30, 31, 32, 33, 34 & 38)

(6) A decision-maker's silence in the face of a deadline unilaterally imposed by the very party who stood to benefit from the deadline could not, without more, be elevated into a reviewable decision. Order 53 r 2(4) of the ROC 2012 did extend judicial review to an 'action or omission'. However, the authorities did not go so far as to hold that any unanswered letter, on any timetable the correspondent chose to set, thereby manufactured a 'decision' susceptible to *certiorari*. On the facts, the *Wiramuda* grounds of judgment were not issued until 31 May 2023, that is, after the deadline the Taxpayer fixed and after the filing of the judicial review on 8 March 2023. Silence or omission, without more, in response to a deadline unilaterally fixed by the applicant did not by itself found judicial review under O 53 r 2(4). To that extent, the judge's reasoning could not stand. (paras 41-44)

(7) The Taxpayer nonetheless had a proper cause for judicial review on an independent and freestanding basis. Once the apex court had ruled on a tax-related issue, the Director General, as an arm of the Executive bound by the doctrine of *stare decisis*, had to apply that ruling uniformly to all persons affected by it. That duty crystallised immediately upon the delivery of *Wiramuda* on 9 December 2022, and did not depend upon, and was not created by, the Taxpayer's subsequent letter. The Revenue's continuing failure,

from 9 December 2022 onward, to recognise the unconstitutionality of s 4C and to cease retaining tax collected under it was properly characterised as an 'omission' in relation to the exercise of a public duty within O 53 r 2(4) of the ROC 2012. The Taxpayer's judicial review application, filed on 8 March 2023, was within three months of that omission first arising, as required by O 53 r 3(6). Section 2(a) of the Public Authorities Protection Act 1948 did not displace the specific time limit in O 53 r 3(6). Even if it applied, the Taxpayer's claim fell comfortably within its 36-month period measured from 9 December 2022. (paras 45-51)

(8) The Revenue's objection, founded on *V Paul Raj Chelladurai v. Jabatan Telekom Malaysia Bhd & Ors*, that the Court of Appeal lacked jurisdiction to sustain the judicial review on a basis not pleaded in the O 53 statement, failed. Following *Acexide Technology Sdn Bhd & Anor v. Chang Heng Keong & Another Appeal*, non-compliance with O 53 r 3(2) did not quite amount to a lack of jurisdiction, and a pleading omission of this kind did not deprive the court of jurisdiction and could not be turned into a jurisdictional challenge raised for the first time on appeal. The Taxpayer's complaint, from the outset, was that the Revenue had unlawfully refused to give effect to *Wiramuda* and to refund the tax paid under s 4C. Recognising the Revenue's continuing duty as the true legal basis for that complaint was not a merits review of any kind. The Revenue suffered no surprise since it met the substance of the Taxpayer's complaint throughout the proceedings. (paras 52-56)

(9) *Certiorari* was a supervisory order directed at quashing a decision of a public decision-maker, and had no application to a pure omission or failure to act for the simple reason that there was, *ex hypothesi*, no decision in existence for *certiorari* to seize upon and quash. Where a public authority had simply failed to act, the remedy, if any lay, was *mandamus*. Since the non-response to the 21 February 2023 letter did not crystallise into a reviewable decision, there was no 'deemed decision' capable of being quashed by *certiorari*. Because *mandamus* orders were also prayed, the relief that properly gave effect to the Revenue's continuing breach of its freestanding public duty was available on the record as pleaded. The order of the High Court was accordingly affirmed not as an order of *certiorari* quashing a deemed decision, but as orders in the nature of *mandamus* compelling the Revenue to recognise the retrospective effect of *Wiramuda* and to refund the tax paid by the Taxpayer under s 4C for the year of assessment 2017, together with interest. (paras 57, 58, 59, 60, 61 & 74)

(10) Section 97 of the ITA provided finality to an assessment only 'for the purposes of' the ITA. It could not validate a statutory provision that had since been declared unconstitutional, nor could it authorise the Executive to retain money contrary to arts 13(2) and 96 of the Constitution, or oust the supervisory jurisdiction of the High Court. Section 99 of the ITA afforded no mechanism by which the Special Commissioners could grant *certiorari, mandamus*, constitutional declarations or public-law restitution of the kind sought in this instance. The subject matter of the proceedings was not the

correctness of the 2017 assessment, but the Revenue's post-*Wiramuda* refusal to recognise that the law under which the assessment was made had since been declared void. Accordingly, ss 97 and 99 of the ITA did not bar the Taxpayer's claim. (paras 63 & 67)

(11) Section 111 of the ITA was concerned with the refund of an 'over-payment' arising within an assessment that was, and remained, valid. It had no evident application to a claim for restitution of monies exacted under a provision subsequently declared void *ab initio* for unconstitutionality. The *generalia specialibus non derogant maxim* did not apply in this instance, as there was no conflict to resolve. A general limitation provision drafted to govern the administrative correction of overpayments could not, absent clear words, be read as extinguishing a restitutionary right of constitutional origin. (paras 65-67)

(12) Interest awarded upon the restitution of unlawfully retained tax was compensatory in nature. It reflected the fact that the Revenue had had the benefit of what was, in substance, an interest-free loan derived from the collection of tax subsequently held to be unlawful, and that the taxpayer had correspondingly been deprived of the use of its own money. The good faith of the parties at the time of collection was beside the point. The award of 5% per annum from 8 March 2023 rather than from the date of payment was, if anything, a conspicuously moderate exercise of discretion under s 11 of the Civil Law Act 1956. It excluded a period in excess of six years and was well below the 8% sought. Accordingly, the award of interest was affirmed. (paras 69-71)

Case(s) referred to:

Abillah Labo Khan v. PP [2002] 1 MLRA 294 (folld)

Acexide Technology Sdn Bhd & Anor v. Chang Heng Keong & Another Appeal [2026] 5 MLRA 455 (folld)

Aminah Ahmad v. The Government Of Malaysia & Anor [2022] 2 MLRA 623 (distd)

Amir Hariri Abd Hadi v. PP [2025] 5 MLRA 395 (refd)

Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals [2019] 6 MLRA 494 (refd)

Arumugam Pillai v. Government Of Malaysia [1980] 1 MLRA 427 (folld)

Ashton v. Cameron County Water Improvement District No 1 298 US 513 (1936) (refd)

Chicot County Drainage District v. Baxter State Bank 308 US 371 (1940) (distd)

HRS Murthy v. Collector of Chittoor [1964] 2 MLJ 125 (refd)

I C Golak Nath v. State of Punjab AIR [1967] SC 1643 (refd)

India Cement Ltd v. State of Tamil Nadu AIR [1990] SC 85 (refd)

Jalla v. Shell International Trading and Shipping Co Ltd [2023] UKSC 16 (refd)

Ketua Pengarah Hasil Dalam Negeri v. Penang Realty Sdn Bhd & Another Appeal [2006] 1 MLRA 585 (refd)

Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 1 MLRA 255 (refd)

Kingstreet Investments Ltd v. New Brunswick (Department of Finance) [2007] SCC 1 (folld)

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1996] 2 MLRA 194 (refd)

LB (Lian Bee) Confectionery Sdn Bhd v. QAF Limited [2012] 2 MLRA 211 (refd)

Ling Peek Hoe & Anor v. Ding Siew Ching & Another Appeal [2017] 4 MLRA 372 (refd)

Lower Perak Co-Operative Housing Society Berhad v. Ketua Pengarah Hasil Dalam Negeri [1994] 1 MLRA 262 (refd)

Mamat Daud & Ors v. The Government Of Malaysia [1987] 1 MLRA 292 (refd)

Metacorp Development v. Ketua Pengarah Hasil Dalam Negeri [2011] 10 MLRH 854 (folld)

Murphy v. Attorney General [1982] IR 241 (refd)

Nabors Drilling (Labuan) Corporation v. Lembaga Perkhidmatan Kewangan Labuan [2020] 2 SSLR 387; [2020] 6 MLRA 314 (refd)

Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd & Other Appeals [2024] 6 MLRA 1 (distd)

Peguam Negara v. UEM Land Berhad (Civil Appeal No. 01(I)-14-05/2025(W)) (distd)

Pelangi Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2011] 13 MLRH 33 (folld)

Perbadanan Pengurusan Sunrise Garden Kondominium v. Sunway City (Penang) Sdn Bhd & Ors And Another Appeal [2023] 3 MLRA 44 (refd)

Power Root (M) Sdn Bhd & Ors v. Ketua Pengarah Kastam [2013] 6 MLRH 301 (refd)

PP v. Dato' Yap Peng [1987] 1 MLRA 103 (refd)

PP v. Mohd Radzi Abu Bakar [2005] 2 MLRA 590 (folld)

Re Spectrum Plus Ltd; National Westminster Bank plc v. Spectrum Plus Ltd [2005] UKHL 41 (refd)

Repco Holdings Bhd v. PP [1997] 3 MLRH 304 (refd)

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 4 MLRA 554; [2017] 1 TCLR 316 (folld)

Sime Darby Ara Damansara Development Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2022] MLRHU 2476 (distd)

Sime Darby Property (Selangor) Sdn Bhd v. Menteri Kewangan Malaysia [2023] MLRHU 190 (distd)

Tanda Bestari Development Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri (Encl 1) [2023] MLRHU 2126 (refd)

Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors [2005] 2 MLRA 698 (refd)

The Government Of Malaysia & Anor v. Aminah Ahmad (Suing In Her Personal Capacity And On Behalf Of 56 Retired Members Of The Public Service) [2023] 5 MLRA 498 (refd)

V Paul Raj Chelladurai v. Jabatan Telekom Malaysia Bhd & Ors [2000] 1 MLRA 726 (refd)

Winsome Al-Yatama Sdn Bhd & Anor v. Pentadbir Tanah Kota Tinggi [2015] MLRHU 607 (distd)

Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2023] 5 MLRA 285 (folld)

Woolwich Equitable Building Society v. Inland Revenue Commissioners (No 2) [1992] 3 All ER 737 (refd)

Legislation referred to:

Civil Law Act 1956, s 11

Constitution of India [Ind], arts 13(2), 368, Seventh Schedule, List II, entry 49

Constitution of Ireland [Ireland], art 41

Federal Constitution, arts 4(1), 13(2), 96

Income Tax Act 1967, ss 4C, 24(1)(a), 90, 97, 99, 111, 127(3A), 131, 135

Income Tax Act 1967 [Ireland], ss 192, 193, 194, 195, 196, 197 & 198

Legal Profession (Practice and Etiquette) Rules 1978, r 22

Peaceful Assembly Act 2012, s 9(5)

Public Authorities Protection Act 1948, s 2(a)

Rules of Court 2012, O 53 rr 2(4), 3(2), (6)

Counsel:

[For Appeal No: W-01(A)-392-08-2025]

For the appellant: Cyrus V Das (Ahmad Isyak Mohd Hassan, Muazmir Mohd Yusof, Marina Ibrahim, Nur Farzana Mohammad Puat, Azleena Md Khairuddin & Fatimah Roslan with him); Lembaga Hasil Dalam Negeri

For the respondent: Nitin V Nadkarni (Chris Toh Pei Roo & Soon Jia Ying with him); M/s Lee Hishammuddin Allen & Gledhill

[For Appeal No: W-01(A)-398-08-2025]

For the appellant: Cyrus V Das (Ahmad Isyak Mohd Hassan, Muazmir Mohd Yusof, Marina Ibrahim, Nur Farzana Mohammad Puat, Azleena Md Khairuddin & Fatimah Roslan with him); Lembaga Hasil Dalam Negeri

For the respondent: Nitin V Nadkarni (Chris Toh Pei Roo & Soon Jia Ying with him); M/s Lee Hishammuddin Allen & Gledhill

For Amicus Curiae Bar Council: Anand Raj (Foong Pui Chi, Abhilaash Subramaniam & Cheong Wen Yie with him); M/s Abhilaash Subramaniam & Co

[For the High Court judgment, please refer to *Tanda Bestari Development Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri (Encl 1)* [2025] MLRHU 2116 & *Lush Development Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri (Encl 1)* [2025] MLRHU 2115]

JUDGMENT

Ong Chee Kwan JCA:

A. Introduction

[1] This is the appeal of the Ketua Pengarah Hasil Dalam Negeri ("the Revenue") against the decision of the High Court (Hayatul Akmal J, as Her Ladyship then was) delivered on 29 July 2025, whereby the Learned Judge allowed the application for judicial review filed by Lush Development Sdn Bhd ("the Taxpayer") and, among other relief, ordered the Revenue to refund tax paid by the Taxpayer pursuant to s 4C of the Income Tax Act 1967 ("the ITA") for the year of assessment 2017, together with interest at 5% per annum from 8 March 2023, being the date the judicial review proceedings were commenced.

[2] The claim arises out of the decision of the Federal Court in *Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2023] 5 MLRA 285 ("*Wiramuda*"), delivered on 9 December 2022 with grounds issued on 31 May 2023, in which the Federal Court held that s 4C of the ITA was unconstitutional as it contravened art 13(2) of the Federal Constitution. The Taxpayer had, prior to *Wiramuda*, treated compensation of approximately RM22,470,845.00 received on the compulsory acquisition of its land as taxable business income under s 4C for the year of assessment 2017, and paid tax accordingly.

[3] Five issues fall for determination on this appeal: (i) whether *Wiramuda* operates retrospectively or prospectively; (ii) whether the Revenue's non-response to the Taxpayer's letter of 21 February 2023, by itself, constituted a "decision, action or omission" amenable to judicial review under O 53 r 2(4) of the Rules of Court 2012 ("the ROC"); (iii) whether, independently of that letter, the Taxpayer nonetheless had a reviewable complaint founded on the Revenue's continuing duty, as an arm of the Executive, to give effect to *Wiramuda*; (iv) whether ss 97, 99 and 111 of the ITA bar the claim; and (v) whether the award of interest was correctly made.

[4] For the reasons set out below, we answer issue (i) in favour of the Taxpayer, issue (ii) in favour of the Revenue, issues (iii), (iv) and (v) in favour of the Taxpayer. The net effect is that the appeal is dismissed, though not for all of the reasons given by the Learned High Court Judge below.

B. Background Facts

[5] The material facts are not in dispute. On 19 October 2016, the Selangor State Authority compulsorily acquired seven parcels of land belonging to the Taxpayer and awarded compensation of RM22,470,845.00. At the material time, s 4C of the ITA deemed gains or profits arising from the compulsory acquisition of stock-in-trade to be taxable business income. On 28 February 2018, the Taxpayer filed its Form C return for the year of assessment 2017 under the self-assessment regime, treating the compensation as taxable under

s 4C, giving rise to a deemed assessment under s 90 of the ITA. No appeal was lodged under s 99, and the assessment became final under s 97.

[6] On 9 December 2022 the Federal Court delivered *Wiramuda*, holding that compensation received on compulsory acquisition contains no element of profit or gain, and that s 4C was unconstitutional as it diminished the adequate compensation guaranteed by art 13(2) of the Federal Constitution. The Federal Court's order and grounds of judgment (issued 31 May 2023) contained no direction that the decision was to operate prospectively only.

[7] By letter dated 21 February 2023, the Taxpayer requested the Revenue to (a) recognise and give effect to *Wiramuda*; (b) discharge the tax treatment previously applied to the compensation; (c) permit revision of the tax computation for the year of assessment 2017; and (d) refund the tax paid under s 4C. The Taxpayer stipulated that if no response was received by 6 March 2023, it would treat the Revenue's position as a rejection. The Revenue did not respond. On 8 March 2023 the Taxpayer commenced judicial review proceedings, and on 13 September 2023 the High Court (Ahmad Kamal J, as he then was) granted leave. The Revenue's challenges to the grant of leave, both to this Court and to the Federal Court, were struck out on 16 May 2024 and 10 September 2024 respectively. The Taxpayer's originating notice of motion, filed on 8 March 2023, identified the subject matter of challenge as "the decision of the Respondent as stated and deemed" in that letter and "deemed to have been conveyed to the Applicant on 6 March 2023", that is, a deemed decision and sought, among other reliefs, an order of *certiorari* to quash that deemed decision, various orders of *mandamus*, and consequential declarations.

[8] On 8 October 2024, the Revenue wrote to the panel of the Federal Court which decided *Wiramuda*, seeking clarification as to whether the decision applied retrospectively or prospectively. On 5 November 2024 the panel responded that the question ought to have been raised during the hearing of *Wiramuda*, and that having already delivered its decision and issued its sealed order and grounds, the Court was *functus officio* and had no further authority to make an additional order on the point.

[9] The substantive judicial review was allowed by the High Court on 29 July 2025. The Learned Judge held, in summary, that *Wiramuda* applied retrospectively in the absence of an express direction to the contrary. Her Ladyship further held that the Revenue, once bound by *Wiramuda*, was obliged to apply it consistently to affected taxpayers. She concluded that the Revenue's inaction in the face of the Taxpayer's letter was conscious, intentional, and amounted to an unlawful failure to give effect to *Wiramuda*. She further concluded that ss 97, 99 and 111 of the ITA did not answer the Taxpayer's public-law and constitutional claim, and that interest at 5% from the date of filing of the judicial review was an appropriate exercise of discretion. It is against that decision that the Revenue appeals.

C. Issue 1 — Does *Wiramuda* Apply Retrospectively?

[10] Before turning to this issue, we record that this Court granted the Malaysian Bar leave to intervene as *amicus curiae* on the question of the temporal effect of *Wiramuda*. We received from the Bar a comprehensive written submission, together with two volumes of authorities, in addition to the written submissions and speaking notes of the parties themselves. We are grateful for that assistance, which we have found of real value in resolving this issue.

[11] The Revenue's primary contention is that, as a matter of constitutional principle, a decision invalidating a legislative provision as unconstitutional should, as the norm, operate prospectively only, to protect reliance interests and avoid administrative and fiscal chaos. Reliance is placed on *I C Golak Nath v. State of Punjab* AIR [1967] SC 1643, *Ling Peek Hoe & Anor v. Ding Siew Ching & Another Appeal* [2017] 4 MLRA 372, *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 4 MLRA 554; [2017] 1 TCLR 316, *PP v. Dato' Yap Peng* [1987] 1 MLRA 103, *Mamat Daud & Ors v. The Government Of Malaysia* [1987] 1 MLRA 292, *Repco Holdings Bhd v. PP* [1997] 3 MLRH 304, *Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd & Other Appeals* [2024] 6 MLRA 1, *Aminah Ahmad v. The Government Of Malaysia & Anor* [2022] 2 MLRA 623 and *The Government Of Malaysia & Anor v. Aminah Ahmad (Suing In Her Personal Capacity And On Behalf Of 56 Retired Members Of The Public Service)* [2023] 5 MLRA 498, and the Indian authority of *India Cement Ltd v. State of Tamil Nadu AIR* [1990] SC 85, the Irish authority of *Murphy v. Attorney General* [1982] IR 241, and the United States authority of *Chicot County Drainage District v. Baxter State Bank* 308 US 371 (1940). In the further alternative, the Revenue submits that even if this Court declines to treat prospectivity as the norm, it should confine any retrospective effect of *Wiramuda* to what Lord Nicholls of Birkenhead, in *Re Spectrum Plus Ltd; National Westminster Bank plc v. Spectrum Plus Ltd* [2005] UKHL 41, described as a further, more limited variant of prospective overruling, what the Revenue calls the "fourth category", under which retrospective effect is confined to the litigant in the case in which the ruling was made and to cases already pending before the courts, and does not extend generally to closed transactions or unfiled claims. Finally, the Revenue submits that to hold *Wiramuda* retrospective in the unconfined sense contended for by the Taxpayer would open the floodgates to unlimited claims for refund by other taxpayers in a like position, exposing the Revenue to liability said to be in the region of RM600,000,000.00.

[12] With respect, we do not accept the Revenue's primary submission. Every one of the authorities relied upon by the Revenue for the proposition that prospective effect is the norm, without exception, is a case in which the court in question expressly considered and expressly ordered that its decision was to operate prospectively, generally after argument specifically directed to that question and, in the housing and pensioner cases, on an evidential record establishing the disruptive consequences that retrospective application would visit upon identifiable classes of persons who had relied on the law as it then

stood. *Semenyih Jaya* itself is the clearest illustration. The Federal Court did not treat prospective effect as a default consequence flowing automatically from unconstitutionality, it said, in terms, at [126], "since we have declared it to be unconstitutional, our decision is to have prospective effect". This is language of express order, not of unstated norm, and the Federal Court went on, at [133]-[134], to define with precision the temporal scope of that order, which is, proceedings already determined under the invalid provision were to remain undisturbed, but the ruling would bind pending cases at first instance or on appeal. The same is true of *Obata-Ambak Holdings*, where the Federal Court engaged in a detailed reliance-interest analysis, expressly invoking "exceptional circumstances," before concluding, at [167]-[168], that retrospective application of *Ang Ming Lee* would cause "great injustice and devastating consequences to the housing industry." It is equally true of *Mamat Daud*, where the declaration of invalidity was directed to "take effect from the date of its order, namely, 13 October 1987," and of *Dato' Yap Peng* and *Repco Holdings*, each of which contains an equivalent express direction.

[13] Nor, in our view, do the three further authorities specifically pressed on us, namely, *I C Golak Nath v. State of Punjab AIR* [1967] SC 1643, *India Cement Ltd v. State of Tamil Nadu AIR* [1990] SC 85, and the earlier decision of the Indian Supreme Court in *HRS Murthy v. Collector of Chittoor* [1964] 2 MLJ 125, which *India Cement* itself overruled, assist the Revenue. *Golak Nath* is the fountainhead of the doctrine of prospective overruling in Indian constitutional law. An eleven-judge bench, by a majority of six to five, held that a constitutional amendment made under art 368 of the Indian Constitution was "law" within the meaning of art 13(2) and could not abridge the fundamental rights guaranteed by Part III of that Constitution. Had that ruling been given ordinary retrospective effect, it would have invalidated, at a stroke, the First, Fourth and Seventeenth Amendments and the extensive body of land reform legislation enacted throughout India in reliance on them over the preceding sixteen years. It was precisely to avert that consequence that Subba Rao CJ, delivering the majority judgment, expressly and deliberately confined the ruling to prospective effect, holding that it would not affect the validity of the amendments already made and would bind only future exercises of the amending power. *Golak Nath* is, if anything, confirmatory of the point made at para 12 above that prospective overruling is not a default consequence of a declaration of invalidity, but an exceptional course requiring an express judicial choice, made after argument squarely directed to the point, against a demonstrated and substantial historical record of reliance. No such record exists here.

[14] India Cement is to the same effect, and illuminates the point further. There, the Supreme Court of India overruled its own earlier decision in *Murthy*, which for some twenty-five years had been treated as authority that a State cess computed by reference to mining royalty was a valid "tax on land" within entry 49 of List II of the Seventh Schedule to the Indian Constitution. In *India Cement*, the Court held that *Murthy* had been wrongly decided. The cess was, properly analysed, a tax on royalty in respect of mineral rights, which was a

field outside the competence of the State Legislature. Because State authorities across India had, for a quarter of a century, levied and collected the cess in reliance on *Murthy*, the Court, expressly, and only after considering the point, confined its ruling to prospective effect, holding that "the Court is therefore justified in declaring the levy of the said cess ... to be *ultra vires* the power of the State legislature prospectively only. The respondents will not be liable for any refund of cess already paid or collected." Three features of that order are, with respect, fatal to the Revenue's reliance on it. First, it was, again, an express order, not an assumed default. Second, it rested on a reliance record of twenty-five years of settled administrative practice under a binding precedent of the same apex court. This is of an entirely different order of magnitude from the six years and thirteen identified claims relied upon by the Revenue here (see paras 30 to 33 below). Third, and critically, the relief *India Cement* withheld was confined to a refund of cess "already paid or collected" as at the date of that judgment. It says nothing at all about, and does not purport to deny relief to, a party who, like the Taxpayer here, moves with reasonable diligence after the invalidating decision to assert its rights. *Murthy* itself, for its part, establishes only the unremarkable proposition that an apex court may revisit and overrule its own earlier decision. It has no independent bearing on the question of temporal effect, and features in this appeal only as the historical predicate that made *India Cement's* own express and evidence-based prospective order necessary.

[15] So too with the United States authority of *Chicot County Drainage District v. Baxter State Bank* 308 US 371 (1940), which is in fact the doctrinal ancestor of the very prospective-overruling jurisprudence considered above. Subba Rao CJ's judgment in *Golak Nath* itself drew on *Chicot County*, among other American authorities, in fashioning the doctrine for India. *Chicot County* held that a federal statute, even one later declared unconstitutional, is not for all purposes a nullity, opining that "the actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored," for "the past cannot always be erased by a new judicial declaration." On that basis, the Supreme Court upheld a decree entered in a debt-adjustment proceeding conducted under a statute later held unconstitutional in *Ashton v. Cameron County Water Improvement District*, because the bondholders bound by that decree had had a full opportunity, in the proceeding itself, to challenge the constitutionality of the statute and had not done so. The decree had become final and was accordingly protected by the ordinary doctrine of *res judicata*. Properly understood, *Chicot County* stands not for a general licence to confine the temporal reach of a later ruling of unconstitutionality, but for the narrower and unremarkable proposition that matters which have themselves achieved finality, that is, a concluded decree, a spent limitation period, a matter *res judicata*, are not automatically reopened merely because the statute under which they arose is later declared void. Nothing in the present case engages that principle. The Taxpayer's claim has achieved no such finality. It is not *res judicata*, no decree stands to be undone, and, for the reasons given at para 21

below, it was brought well within whatever limitation period may properly be said to govern it. *Chicot County* accordingly furnishes no support for confining the retrospective effect of *Wiramuda* in the manner the Revenue seeks.

[16] That distinction is worth drawing out precisely, because it is easy to elide. The statute under which the debt-adjustment decree in *Chicot County* was made was not treated as valid for some purposes and invalid for others, nor was its invalidity confined to operate only from some later date. It was void from the outset, in exactly the same unconfined sense in which we have held *Wiramuda* to operate. What the Supreme Court preserved was not the statute, nor any part of its temporal reach, but a single, discrete decree that had, independently of the constitutional question, already achieved finality by the ordinary operation of *res judicata*, because the bondholders bound by it had had their opportunity, in the very proceeding that produced it, to raise the constitutional objection, and had not taken it. Had those bondholders instead raised the objection at the time, and had the proceeding still been live, nothing in *Chicot County* suggests they would have been refused relief merely because other bondholders elsewhere had not objected, or because some further period of time had passed. The operative-fact doctrine, in other words, operates at the level of the individual matter that has already been brought to a final and binding conclusion on ordinary grounds. It says nothing about, and does not confine, the temporal reach of the underlying declaration of invalidity, which remains fully retrospective. It is that feature which distinguishes *Chicot County* from, and prevents it being pressed into service as, a covert form of prospective overruling. It protects what has already been finally decided, not what remains open for decision, and the Taxpayer's claim, for the reasons already given, remains open.

[17] These authorities therefore establish the opposite of what the Revenue contends. They demonstrate that our appellate courts are well aware of the doctrine of prospective overruling, know precisely how to invoke it, and do so only where the point has been squarely raised and a proper evidential and argumentative foundation for departing from the ordinary rule has been laid. The default rule is, and remains, that stated by *PP v. Mohd Radzi Abu Bakar* [2005] 2 MLRA 590 at [17], it is that a court judgment is "retrospective in effect… unless a specific direction of prospectivity is expressed". This is a principle that can be traced to *Abillah Labo Khan v. PP* [2002] 1 MLRA 294 at p 298, where it was described as "a fundamental principle of adjudicative jurisprudence that all judgments of a court are retrospective in effect," and affirmed by the Federal Court in *Semenyih Jaya* itself at [127]. It has since been applied by the Federal Court as recently as 1 July 2025, in *Amir Hariri Abd Hadi v. PP* [2025] 5 MLRA 395, where a five-member panel struck down s 9(5) of the Peaceful Assembly Act 2012 as void under art 4(1) of the Federal Constitution without making any order of prospective effect, and allowed the ruling to benefit the applicant notwithstanding that the assembly which gave rise to his prosecution had taken place almost three years earlier, on 14 August 2022. To treat prospective effect as the norm,

defeasible only by an express direction of retrospectivity, would invert that settled and repeatedly affirmed principle.

[18] It is common ground that no such direction was made in *Wiramuda*. We have examined the whole of the Federal Court's grounds of judgment, delivered 9 December 2022 and issued 31 May 2023, from [1] to [54], and nothing in them, still less in the Federal Court's sealed order, limits the decision to future assessments or transactions, or says anything at all about its temporal effect. That, in our judgment, is close to dispositive of this issue. It is reinforced, decisively in our view, by what followed. When the Revenue itself invited the very panel that decided *Wiramuda* to clarify whether the decision was retrospective or prospective, that panel declined to answer the question on the ground that it ought to have been raised at the hearing, and that the Court was *functus officio*. It is not open to this Court, exercising a different and subordinate jurisdiction on an appeal from a judicial review, to achieve indirectly by declaring *Wiramuda* impliedly prospective what the Federal Court, which decided *Wiramuda,* itself declined to do when squarely asked.

[19] We turn to the Revenue's fallback submission, founded on *Re Spectrum Plus*. Lord Nicholls' speech in that case, reproduced by the Federal Court in *Mohd Radzi* at [19], identifies a spectrum of forms which prospective overruling may take. More specifically, Lord Nicholls said that "[I]n its simplest form prospective overruling involves a court giving a ruling... [that] applies only to transactions or happenings occurring after the date of the court decision," with "all transactions entered into, or events occurring, before that date" continuing "to be governed by the law as it was conceived to be before the court gave its ruling"; but "other forms of prospective overruling are more limited and 'selective' in their departure from the normal effect of court decisions," including a form under which "the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts." It is this last, more limited variant which the Revenue styles the "fourth category", that the Revenue asks us to impose here, so as to confine the benefit of *Wiramuda* to Wiramuda (M) Sdn Bhd itself and to litigants whose cases were already pending as at 9 December 2022.

[20] We decline to do so, for essentially the same reason that we have declined to treat *Wiramuda* as prospective in the fuller sense contended for. Every variant identified by Lord Nicholls, from the "simplest" and most far-reaching to the most limited and "selective," is, on his own description, a departure "from the normal effect of court decisions". That is to say, from the default rule of full retrospectivity. Each is, in substance, a form of prospective overruling, and each therefore requires the same thing, namely, an exercise of judicial choice by the court making the underlying declaration of invalidity, on a proper record, as to which form (if any) of prospective overruling it considers appropriate. The Federal Court, which decided *Wiramuda,* selected none of them. It said nothing, at any point in its judgment, to suggest that its ruling

was to be confined even to the more limited, selective form identified by Lord Nicholls, still less that it turned its mind to the question at all. Nor, when the opportunity was squarely put to the very panel that decided *Wiramuda* by the Revenue's letter of 8 October 2024, did that panel take it up. It declined to answer on the footing that it was *functus officio*. For this Court now to graft the Revenue's preferred variant of Lord Nicholls' spectrum onto *Wiramuda*, a variant more modest than full prospectivity, but a departure from the default rule nonetheless, would be to exercise, on behalf of the Federal Court, a choice among competing forms of prospective overruling that only the Federal Court itself could make, and that it was not prepared to make even when expressly invited to do so.

[21] In any event, even if we were persuaded to import Lord Nicholls' more limited variant into *Wiramuda*, which for the reasons given, we are not, it would not avail the Revenue on the facts of this case. The variant relied upon extends retrospective benefit not only to the litigant in the case in which the ruling was given, but also to "the parties in any other cases already pending before the courts." As the High Court held in the companion proceedings, *Tanda Bestari Development Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri (Encl 1)* [2023] MLRHU 2126 at [52], the grounds for a taxpayer's claim founded on *Wiramuda* cannot sensibly be said to have arisen, still less to have been capable of being "pending," before *Wiramuda* was itself decided on 9 December 2022. No taxpayer could rationally have commenced such a claim earlier, for want of any juridical basis for it. The relevant universe of persons capable of falling within Lord Nicholls' "pending cases" limb, in a context such as this, must therefore include those who moved with reasonable diligence after 9 December 2022. In practice, this would be those who filed for judicial review within the ordinary three-month period prescribed by O 53 r 3(6) of the ROC, running from the date the grounds of their application first arose. The Taxpayer filed its application on 8 March 2023, within three months of 9 December 2022. Thus, even on the Revenue's own fallback formulation, the Taxpayer falls within the class of persons entitled to the benefit of *Wiramuda*.

[22] We accept, as we did in relation to the Revenue's primary submission, that the exceptional jurisdiction recognised in *Re Spectrum Plus*, in whichever of its forms, correctly describes an available judicial tool. But that tool is available to, and must be exercised by, the court making the underlying declaration of invalidity, on a proper record. The High Court below found, and that finding was not challenged before us, that the Revenue adduced no evidence of the kind of reliance-based hardship that justified prospective overruling in *Obata-Ambak* or *Aminah bt Ahmad*. There is, in short, no basis on this record for this Court to graft any prospectivity limitation, whether full or selective, onto *Wiramuda* that neither the Federal Court which decided it, nor the Federal Court panel asked to clarify it, was prepared to impose.

[23] We add one clarification, lest paras 19 to 21 above be read as qualifying, rather than merely testing in the alternative, the unconfined retrospective effect

we go on to hold *Wiramuda* to have. Those paragraphs address the Revenue's fallback submission on its own footing. They establish only that, even if the more limited variant of prospective overruling described in *Re Spectrum Plus* were correct, which for the reasons given at para 20 above, it is not, the Taxpayer would nonetheless succeed on that narrower basis. They are not, and are not to be read as, an independent or narrower ratio confining the benefit of *Wiramuda* to taxpayers who can demonstrate they moved with particular diligence after 9 December 2022. That question does not arise on the primary basis on which we in fact decide this appeal, which we record at para 39 below: s 4C, being unconstitutional, was *void ab initio*, and *Wiramuda's* declaration to that effect is fully retrospective, without confinement to the litigant in that case or to claims already pending as at the date it was decided.

[24] On that primary basis, the position for any taxpayer who paid tax under s 4C, not only the Taxpayer before us, is more straightforward than paras 19 to 21 above might, out of context, be thought to suggest. If s 4C never validly imposed a charge to tax, a taxpayer who paid under it was, from the moment of payment, subject to an exaction without lawful authority contrary to art 96 of the Federal Constitution, and its restitutionary right arose at that moment. It does not come into being, or vary in strength, according to the diligence with which the taxpayer has since pursued it. As the Supreme Court of Canada explained in *Kingstreet Investments Ltd v. New Brunswick (Department of Finance)* [2007] SCC 1, a case elaborated at paras 27 and 28 below, it is not for the courts to fashion, by inference and on a case-by-case basis, novel restrictions on a restitutionary right of this constitutional character. The legislature has not done so, and it is not for us to do so in its place. The restrictions properly available to the Revenue against any such claim are, accordingly, the ordinary ones of general application, that is, whichever limitation period governs the particular vehicle by which the claim is brought, three months under O 53 r 3(6) of the ROC where the claim proceeds by judicial review, the limitation period generally applicable to a civil suit for restitution where it proceeds by writ, or, where in issue, the thirty-six-month period under s 2(a) of the Public Authorities Protection Act 1948 ("PAPA") discussed at para 49 below, together with the ordinary equitable defences of laches, acquiescence and estoppel to the extent applicable on the facts of the particular claim. We say this to make clear, for the avoidance of doubt in relation to the other claims referred to at para 29 below and any other taxpayer affected by s 4C, that entitlement to restitution consequent upon *Wiramuda* is not conditioned on the kind of promptness discussed at paras 19 to 21 above. That discussion answers the Revenue's fallback submission only, and does not arise given the primary basis on which we decide this appeal.

[25] The Revenue places particular weight on the Irish authority of *Murphy v. Attorney General* [1982] IR 241. The plaintiffs, a husband and wife married in 1975, challenged provisions of Ireland's income tax code, ss 192 to 198 of the Income Tax Act 1967, which taxed a married couple on the aggregate of their two incomes and thereby increased their combined liability beyond what

they would have paid if unmarried. The Supreme Court of Ireland (Kenny J delivering the judgment of the Court) declared those provisions repugnant to the guarantee in art 41 of the Constitution of Ireland, to guard the institution of marriage against attack. On further argument as to the consequences of that declaration, the Supreme Court (Henchy, Griffin, Kenny and Parke JJ; O'Higgins CJ dissenting) held that the offending provisions were *void ab initio*, not merely voidable from the date of judicial condemnation. It does not, however, follow, and the Supreme Court did not hold, that retrospective invalidity of this kind translates without qualification into unlimited restitution. Henchy J, whose judgment on the question of redress was adopted by Griffin and Parke JJ so as to command a majority of the Court (O'Higgins CJ and Kenny J dissenting), held that the general rule of retrospective invalidity is properly qualified by the law's own doctrines of finality, what he described as "prescription (negative or positive), waiver, estoppel, laches, a statute of limitation, *res judicata*, or other matters (most of which may be grouped under the heading of public policy)." Applying those doctrines to the facts before him, Henchy J confined the plaintiffs' own recovery to tax collected from the tax year 1978-9 onward, and excluded even the tax year 1977-8, the very year in which they had commenced their proceedings, because they had done so, in his words, "in the last weeks of the tax year 1977-8 and after virtually all the income tax claimed for that year had been collected from them." Their recoverable period, he held, began only "for the year 1978-9, that is, the first year for which they effectively objected to the flow of those taxes into the central fund," a taxpayer who allows an entire tax year's deductions to be made without challenge being barred by laches from recovering that year's tax, since the State will, by the year's end, have altered its position in good faith on the strength of the presumption of constitutionality. Henchy J further held, and Griffin J agreed, that, in the absence of evidence that any other taxpayer had a claim pending, no taxpayer other than the plaintiffs themselves had standing to claim restitution of tax collected under the condemned provisions.

[26] Far from assisting the Revenue, *Murphy* affirmatively supports the Taxpayer's case, for four reasons. First, *Murphy* confirms that retrospective invalidity, voidness *ab initio* from the date of enactment, is the ordinary constitutional consequence of unconstitutionality, and that the confinement of remedy which may follow is the exception grafted onto that default rule, not the default rule itself. That is precisely the structure we have already adopted in holding, at paras 23 and 24 above, that s 4C was void *ab initio* and that *Wiramuda*'s declaration to that effect is fully retrospective, subject only to the ordinary defences of general application identified at para 24 above, which include the equitable doctrines of laches and estoppel that Henchy J invoked in *Murphy*. Second, the confinement Henchy J in fact applied to the plaintiffs' own recovery was not a matter of any fixed limitation period, but of the equitable doctrine of laches: a taxpayer who allows a complete tax year's deductions to be made without challenge cannot, in fairness to the State's good-faith reliance in the interim, undo that year's collection, whereas a taxpayer who

moves before the relevant period is complete preserves the claim in full. So understood, *Murphy*'s confining principle does not act against the Taxpayer; it acts for it. The Taxpayer's application, filed within three months of *Wiramuda*, at paras 19 to 21 above, reflects considerably greater promptness than the conduct which sufficed to preserve the *Murphy* plaintiffs' own recovery for the tax year in which they had, in Henchy J's phrase, "effectively objected." Third, quite apart from the equitable defences of laches, acquiescence and estoppel identified at para 24 above, Malaysian law does not need to improvise a substitute for the kind of confinement Henchy J fashioned in *Murphy*, because it already supplies, in terms, distinct statutory limitation regimes bearing directly on a claim of this kind, namely, the three-month period under O 53 r 3(6) of the ROC where the claim proceeds by judicial review, the ordinary limitation period applicable to a civil suit for restitution where it proceeds by writ, and, where in issue, the thirty-six-month period under s 2(a) of PAPA discussed at para 49 below. The Taxpayer's claim, filed on 8 March 2023, comfortably satisfies each of them. Nor is the equitable premise underlying Henchy J's own confinement, that the State should not be compelled to make full restitution once it has, in good faith, altered its position by spending the money collected, a difficulty peculiar to this appeal. The Income Tax Act 1967 itself, in ss 111 and 131 discussed at para 32 below, provides machinery for the refund of tax overpaid or paid under an error or mistake, machinery which proceeds, without exception, on the footing that the Revenue's obligation to make repayment is neither suspended nor diminished merely because the tax in question has already been remitted to the Consolidated Fund and expended in the ordinary course of public finance. That is the unremarkable condition of every refund the Revenue processes under those very sections, and Parliament has never treated it as a ground for withholding repayment. If the Revenue's change of position answers no ordinary claim for the refund of an overpayment under s 111, it is harder still to see why it should answer a claim of the more fundamental, constitutional kind advanced here, particularly where, as we note at para 34 below, it is the Revenue itself, and not any third party, that stands to be enriched should the objection succeed. Fourth, *Murphy*'s further holding, that the benefit of a successful constitutional challenge accrues only to the successful litigant and to any other taxpayer whose own claim was already pending, is, in substance, the Irish analogue of the "pending cases" limb of the very *Spectrum Plus* fallback already accepted, at paras 19 to 21 above, to avail the Taxpayer in any event. It is precisely because the Taxpayer moved with the diligence discussed at paras 19 to 21 above, filing within three months of *Wiramuda*, that it falls within the class *Murphy* identifies as entitled to the fruits of a successful challenge, not as the litigant who brought that challenge to success, a position properly attributed to *Wiramuda (M) Sdn Bhd* rather than to the Taxpayer, but as a taxpayer whose own claim, for the reasons already given, stands in no worse a position than one already pending when *Wiramuda* was decided. The very principle on which the Revenue relies to limit the scope of retrospective relief, properly applied to the facts of this appeal, confirms rather than defeats the Taxpayer's entitlement to it.

[27] *Kingstreet* itself deserves closer attention, because its facts and reasoning bear on more than the narrow question of s 111 alone. The case arose out of a "user charge" imposed by regulation under New Brunswick's Liquor Control Act where licensed premises like nightclubs and bars, purchasing alcohol from the province's own retail liquor stores, were charged a mark-up of between five and eleven per cent over the price paid by ordinary retail customers. The charge had never been enacted by the Legislative Assembly itself. It existed only by force of regulation. The trial judge held, and the Supreme Court of Canada agreed, that the charge was, in substance, an indirect tax which no regulation had the constitutional authority to impose, taxation being an act reserved to the legislature and incapable of being achieved by executive instrument however styled. Kingstreet, one of the nightclub operators subject to the charge, sued for the return of what it had paid. The trial judge accepted that the charge was unconstitutional but refused restitution on a "passing on" defence, holding that Kingstreet had recouped the charge from its own patrons through higher prices and so had suffered no recoverable loss. The New Brunswick Court of Appeal allowed recovery only from the date proceedings were commenced, treating the issuing of the writ as the operative act of protest.

[28] The Supreme Court of Canada reversed on every point material here, and each of its four principal holdings maps onto an issue argued before us. First, it held that a claim to recover tax exacted under an unconstitutional enactment does not sound in ordinary private-law unjust enrichment, with its apparatus of juristic reasons and defences developed for disputes between private parties, but rests instead on the constitutional principle, traced to the historic requirement of no taxation without representation, that a state which retains the fruits of an unauthorised exercise of the taxing power perpetuates, rather than remedies, the underlying constitutional wrong. That is the very principle we apply, at para 66 below, in holding that s 111, calibrated to the correction of an overpayment under an admittedly valid charge, has no purchase on a claim of this different and more fundamental kind. Second, the Court rejected the passing-on defence, reasoning that if a claimant's ability to pass a cost forward to its own customers could defeat restitution, no solvent commercial claimant could ever recover, since solvency itself typically implies some degree of pass-through, a result it regarded as incompatible with the constitutional character of the right. Third, the Court held that no requirement of payment "under protest" attaches to a claim of this kind: the right to restitution arises from the unconstitutionality of the exaction itself, not from the taxpayer's contemporaneous state of mind or diligence in objecting to it, precisely the point we have already made, at para 24 above, in holding that the Taxpayer's entitlement to restitution does not come into being, or vary in strength, according to the diligence with which it has pursued its claim. Fourth, the Court held that concerns about the fiscal consequences of full retrospective liability are for the legislature, not the courts, to address, whether by enacting a valid tax with retroactive effect or by other legislative means, and that, absent such intervention, recovery is governed by the ordinary limitation statute of

general application, which the Court applied without qualification to allow recovery for the six years preceding the commencement of proceedings under New Brunswick's Limitation of Actions Act. That is the same course we take, at para 49 below, in applying s 2(a) of PAPA according to its own terms, rather than fashioning a judge-made limitation confined to this litigant or to claims already in existence as at 9 December 2022.

[29] We turn to the Revenue's floodgates submission. The Revenue's written submissions assert that there are 13 refund claims by other taxpayers, said on a "broad estimation" to total approximately RM600,000,000.00, and that a finding of unconfined retrospectivity would expose the Revenue to open-ended liability on that scale. We do not accept that this consideration justifies a different outcome, for five cumulative reasons.

[30] First, the figure is unsupported by evidence. It appears only in the Revenue's written submissions, not on affidavit. No party, claim amount, legal basis, or limitation date is identified. Following *Obata-Ambak Holdings*, which recognises that a party seeking prospective overruling must adduce evidence of the exceptional circumstances relied upon, the Revenue applied for and was granted leave by the High Court to file an additional affidavit addressing this very point, by 28 November 2024. It did not do so. A bare assertion made from the bar table, after the opportunity to substantiate it on oath has been given and not taken up, cannot now be elevated into the kind of evidential foundation this Court would require before departing from the default rule of retrospectivity.

[31] Second, and in any event, the universe of persons who could conceivably benefit from a retrospective reading of *Wiramuda* is not unlimited. For the reasons given at para 21 above, any other taxpayer seeking to rely on *Wiramuda* must independently satisfy the ordinary time limit in O 53 r 3(6) of the ROC, running from 9 December 2022, or obtain an extension of time, which the Federal Court has shown is not lightly granted: see *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 1 MLRA 255, where the failure of an applicant to apply for an extension of time was itself treated as a basis for declining to exercise the discretion to extend. The Revenue's own figure of 13 claims is, on its own case, finite, quantified, and already known to it. It is not the kind of open-ended, unquantifiable exposure "to an industry as a whole" that concerned the Federal Court in *Obata-Ambak*, where the persons affected included the developer industry at large, represented before the Court by, among others, the Real Estate and Housing Developers' Association Malaysia and the National House Buyers Association, and where retrospective application would have required the unwinding of thousands of already-completed sale and purchase agreements with no statutory mechanism for doing so.

[32] Third, that last distinction is critical. Unlike the position in *Obata-Ambak*, this is not a case in which the wider legal system is unequipped to process a claim for the repayment of tax that is not properly due. The Income Tax Act 1967 itself contains machinery, for example, ss 111 and 131, for correcting

overpayments and relieving taxpayers who have paid under an error or mistake, which confirms that Parliament itself regards the repayment of tax not properly due as an ordinary and administratively unremarkable feature of the system it has created. Further, the general law separately recognises, and routinely administers, a restitutionary claim of the different and more fundamental kind advanced here, founded on the unconstitutionality of the taxing provision itself. We should make clear that we do not, by this observation, suggest that s 111 or s 131 themselves extend to a claim of that latter kind for the reasons given at paras 65 and 66 below. They do not. The point is the narrower one that recognising the Taxpayer's claim introduces no novel or unplanned-for category of liability into a system unused to it, in the way that retrospective application of *Ang Ming Lee* in *Obata-Ambak* required the unwinding of thousands of already-completed private transactions for which no mechanism of any kind, statutory or otherwise, existed. Here, by contrast, both the tax system's own general refund provisions and the courts' ordinary restitutionary jurisdiction show that repayment of tax exacted without lawful authority is a familiar and manageable incident of the legal order, not a source of the kind of systemic administrative or commercial chaos that justified prospective-only treatment of *Ang Ming Lee* in *Obata-Ambak*.

[33] Fourth, even taken at face value and without discounting for the matters above, the sum said to be in issue is not of a scale capable of grounding the kind of exceptional hardship recognised in *Obata-Ambak* or *Aminah Ahmad*. We were referred, without objection, to the Federal Government's own published revenue projections, under which federal revenue was projected at approximately RM343,100,000,000.00 for 2026, compared to RM334,100,000,000.00 estimated for 2025. A contingent and unproven exposure in the region of RM600,000,000.00, spread across thirteen identified claims, does not begin to approach the scale of systemic disruption that justified the exceptional course taken by the authorities upon which the Revenue relies.

[34] Fifth, the equities in fact point in the opposite direction from those that justified confining *Ang Ming Lee* to prospective effect in *Obata-Ambak*. There, retrospective application threatened to enrich third parties who were purchasers who had already accepted, and in many cases already been paid, liquidated ascertained damages calculated on the footing of the very completion-period extensions later held invalid by reopening settled bargains to confer on them a further, unbargained-for measure of damages calculated instead on the original statutory period, at the expense of developers who had relied in good faith on extensions the Controller was until then understood to have had power to grant. No comparable third party stands to profit from retrospective effect here. If anything, the position is the reverse. Were retrospective effect confined in the manner the Revenue seeks, it is the Revenue itself, the very party resisting retrospectivity, that would retain the benefit, in the form of tax exacted under a provision that, on our holding, never validly existed. That is precisely the state of affairs which the restitutionary right recognised at para 66 below exists to correct, whether that right is analysed, as we have held it must be, in

constitutional terms, or in the language of unjust enrichment invoked in *Ang Ming Lee* and *Obata-Ambak* themselves. Confining retrospectivity would not avert an unwarranted transfer of wealth in this case. It would create one, and in the Revenue's own favour.

[35] There is, moreover, a further and independent reason why we are not persuaded that this is a case for the exceptional, evidence-based departure from the default rule of retrospectivity contemplated by *Obata-Ambak* and *Aminah Ahmad*. The Malaysian Bar's submissions, and the material in the Bundles of Authorities placed before us, disclose that this is not the first occasion on which the Revenue has resisted a binding appellate ruling on the taxability of compensation received on the compulsory acquisition of land held as stock-in-trade.

[36] In *Ketua Pengarah Hasil Dalam Negeri v. Penang Realty Sdn Bhd & Another Appeal* [2006] 1 MLRA 585, this Court held, applying the earlier Supreme Court decision in *Lower Perak Co-operative Housing Society Berhad v. Ketua Pengarah Hasil Dalam Negeri* [1994] 1 MLRA 262, that compensation received on compulsory acquisition of land held as stock-in-trade was not taxable, because the element of compulsion negated any intention to trade. Rather than give effect to that ruling generally, the Revenue issued a Decision Impact Statement asserting that this Court had failed to consider s 24(1)(a) of the ITA, and that the Revenue would continue to tax such compensation in other cases on that basis. That position was held, in *Metacorp Development v. Ketua Pengarah Hasil Dalam Negeri* [2011] 10 MLRH 854 at [24], to be unlawful, holding that "the failure of the respondent to follow the decision of the Superior Courts in *Penang Realty* as well as Lower Perak renders its decision defective... such decision is in excess of its authority." That decision was affirmed by this Court, and the Revenue's application for leave to appeal to the Federal Court was dismissed, with costs of RM20,000.00 on 9 November 2011.

[37] The Revenue's response was to procure the enactment of s 4C itself, to tax such compensation prospectively from the year of assessment 2014 onward, a step which, as the High Court observed in *Sime Darby Ara Damansara Development Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2022] MLRHU 2476 at [58], was "fatal to the respondent's case" for earlier years of assessment, because it demonstrated that "the legal principle postulated by the Superior Courts in *Penang Realty* and *Metacorp*" has always been correct and finally accepted by the respondent. That decision, too, was affirmed by this Court on 14 January 2025. Section 4C has now, in turn, been struck down as unconstitutional in *Wiramuda*.

[38] On this history, the only party that has, over some two decades, persistently acted contrary to settled appellate authority on this subject matter is the Revenue itself, first through the Decision Impact Statement disapproved in *Metacorp*, and then through the enactment of s 4C, now held unconstitutional in *Wiramuda*. A party cannot invoke, as an exceptional circumstance warranting

relief from the ordinary consequences of a declaration of invalidity, a state of affairs of its own making, brought about in defiance of binding superior-court precedent: cf. *LB (Lian Bee) Confectionery Sdn Bhd v. QAF Limited* [2012] 2 MLRA 211, reflecting the broader principle that a person should not benefit from his own wrong. This consideration reinforces, rather than displaces, our conclusion that no basis exists on this record for departing from the default rule that *Wiramuda* applies retrospectively.

[39] We accordingly hold that *Wiramuda* applies retrospectively, without any confinement to the litigant in that case or to cases pending as at 9 December 2022, and we reject the Revenue's primary submission that prospectivity is the norm, its fallback submission founded on the more limited variant of prospective overruling described in *Re Spectrum Plus*, and its submission that retrospective application should be refused, or confined, on floodgates grounds. Grounds 8 and 9 of the Memorandum of Appeal are rejected.

D. Issue 2 — Did The Non-Response To The 21 February 2023 Letter, By Itself, Found Judicial Review?

[40] The Taxpayer's case, as pleaded and as accepted by the Learned Judge below, proceeded substantially on the footing that the Revenue's failure to respond to the letter of 21 February 2023 within the 13 days unilaterally stipulated by the Taxpayer itself constituted a reviewable "decision, action or omission" within the meaning of O 53 r 2(4) of the ROC, and that the Learned Judge's finding that the non-response was "conscious and intentional" was sufficient to sustain judicial review on that footing.

[41] We are unable to accept that a decision-maker's silence in the face of a deadline unilaterally imposed by the very party who stands to benefit from the deadline can, without more, be elevated into a reviewable decision. Order 53 r 2(4) does indeed extend judicial review to an "action or omission," and it is correct, as the Taxpayer submits by reference to *Arumugam Pillai v. Government Of Malaysia* [1980] 1 MLRA 427, *Metacorp Development v. Ketua Pengarah Hasil Dalam Negeri* [2011] 10 MLRH 854, *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1996] 2 MLRA 194 and *Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors* [2005] 2 MLRA 698, that a formal, express, written decision is not always a precondition to judicial review. But those authorities do not go so far as to hold that any unanswered letter, on any timetable the correspondent chooses to set, thereby manufactures a "decision" susceptible to *certiorari*.

[42] The point is settled, and settled against the Taxpayer's formulation, by the recent and closely analogous authorities of *Winsome Al-Yatama Sdn Bhd & Anor v. Pentadbir Tanah Kota Tinggi* [2015] MLRHU 607, *Sime Darby Property (Selangor) Sdn Bhd v. Menteri Kewangan Malaysia* [2023] MLRHU 190, and the Federal Court's decision of 8 October 2025 in the consolidated Bulk Appeal Cases. In each of those cases the applicant imposed its own deadline on a public decision-maker and, upon receiving no reply, treated the silence as a

deemed refusal amenable to judicial review. In each case the challenge failed. As the Federal Court put it in the Bulk Appeal Cases: "... it cannot be said that Minister refused or omitted to decide because he was never accorded a reasonable opportunity to do so. A timeline was simply thrust on the Minister arbitrarily, and it was then deemed to amount to refusal or omission. That is insufficient in our view." Nazlan J (as he then was) made the same point in *Winsome Al Yatam*a at [27], holding that a decision cannot be deemed from non-response to a stipulated deadline, as that "would give artificiality to the concept of a decision and a fiction to the date of the purported decision."

[43] We note further that the *Wiramuda* grounds of judgment were not issued until 31 May 2023, that is, after the Taxpayer's letter, after the 6 March 2023 deadline it fixed, and after the judicial review was filed on 8 March 2023. It is difficult, on that timeline, to characterise the Revenue's failure to respond within thirteen days as a considered and deliberate refusal to give effect to a ruling whose reasoned basis was not yet before it. To the extent the Taxpayer's case rested on treating the bare non-response to the 21 February 2023 letter as itself the reviewable decision, we would accept the Revenue's submission and reject it.

[44] We therefore accept the Revenue's submission that silence or omission, without more, in response to a deadline unilaterally fixed by the applicant, does not by itself found judicial review under O 53 r 2(4). To that extent, Grounds 1 to 6 of the Memorandum of Appeal succeed, and the Learned Judge's reasoning insofar as it rested on treating the non-response to the 21 February 2023 letter as the operative reviewable decision cannot stand.

E. Issue 3 — The Independent Ground: The Revenue's Continuing Duty To Give Effect To *Wiramuda*

[45] That conclusion does not, however, dispose of the appeal, because the Taxpayer's complaint was never confined to the 21 February 2023 letter and the Revenue's failure to answer it within the time the Taxpayer itself fixed. As the Taxpayer submitted in the alternative, and as we accept, the grounds for judicial review arose independently, and earlier, upon the delivery of *Wiramuda* itself on 9 December 2022.

[46] The critical distinction between the present case and the arbitrary-deadline cases relied upon by the Revenue, i.e., *Peguam Negara v. UEM Land Berhad* (Civil Appeal No. 01(I)-14-05/2025(W)), *Winsome Al-Yatama*, *Sime Darby Property*, and the Bulk Appeal Cases, is that in each of those cases the complaint depended entirely on characterising an unanswered request for the exercise of a discretionary power as a deemed refusal to exercise that discretion. No duty on the part of the Minister existed independently of, or before, the applicant's request. The discretion under ss 127(3A) and 135 of the ITA was not engaged until invoked, and had never been triggered because the Minister was, on the facts of those cases, never afforded a reasonable opportunity to consider the request at all.

[47] The present case is structurally different. The duty on which the Taxpayer's complaint truly rests is not a duty that came into being upon receipt of the 21 February 2023 letter and depended on the Revenue exercising some discretion in response to it. It is the duty recognised more than four decades ago in *Arumugam Pillai v. Government Of Malaysia* [1980] 1 MLRA 427, that once the apex court has ruled on a tax-related issue, the Director General, as an arm of the Executive bound by the doctrine of *stare decisis*, must apply that ruling uniformly to all persons affected by it. That duty crystallised, and the Revenue came under it, immediately upon the delivery of *Wiramuda* on 9 December 2022. It did not depend upon, and was not created by, the Taxpayer's subsequent letter. The letter was simply one occasion on which the Taxpayer sought to have that pre-existing duty performed in its favour. The same principle is reflected in *Metacorp Development v. Ketua Pengarah Hasil Dalam Negeri* [2011] 10 MLRH 854, where the Revenue's failure to follow binding superior-court authority was held to render its subsequent decision "defective" and "in excess of authority."

[48] Framed in that way, the Revenue's continuing failure, from 9 December 2022 onward, to recognise the unconstitutionality of s 4C and to cease retaining tax collected under it is properly characterised as an "omission" in relation to the exercise of a public duty within the meaning of O 53 r 2(4), independently of any deemed refusal manufactured by the 21 February 2023 letter. The Taxpayer's judicial review, filed on 8 March 2023, was filed within three months of that omission first arising on 9 December 2022, as required by O 53 r 3(6). It was accordingly filed within time on this independent basis, whatever view is taken of the effect of the 21 February 2023 letter standing alone.

[49] We add, for completeness, that this conclusion is reinforced rather than displaced by s 2(a) of PAPA, which prescribes a general limitation period of thirty-six months for any suit, action or proceeding against a person including, on the authorities, a public authority, in respect of an act, neglect or default done in pursuance or execution of a public duty, running, in the case of a continuance of injury or damage, from the date the continuance ceases. Two points follow. First, it is well established that PAPA's general limitation provision does not displace the self-contained and specific time limit prescribed by O 53 r 3(6) of the ROC for applications for judicial review, on the same *generalia specialibus non derogant* reasoning applied, at para 65 below, to s 111 of the ITA. The specific procedural regime governing judicial review, and not the general limitation applicable to civil suits against public authorities at large, governs the timeliness of this application. Second, and in any event, even if s 2(a) of PAPA were treated as applicable, the Taxpayer's claim, filed on 8 March 2023, falls comfortably within its thirty-six-month period measured from 9 December 2022, the date on which the Revenue's default crystallised. We do not accept, and it is unnecessary to our conclusion to assert, that the proviso for continuance of injury or damage means that s 2(a) can never run to completion against a claim of this kind for so long as the Revenue continues to withhold repayment. The Revenue's continuing retention of the tax is the

consequence of its original default, not a fresh default recurring day by day. A single wrong whose damaging consequences merely persist does not, without more, become a continuing wrong for limitation purposes merely because the loss it caused remains unremedied: cf. *Jalla v. Shell International Trading and Shipping Co Ltd* [2023] UKSC 16, distinguishing a continuing wrong, which generates a fresh cause of action for so long as it persists, from a single, completed wrong whose damaging consequences merely continue, which does not. It is sufficient for present purposes that the claim was filed well within the thirty-six months which s 2(a), on that footing, allows.

[50] We accept, in this respect, that the finding of the Learned Judge below that the Revenue's inaction was conscious, created an unwarranted impasse, and amounted to an intentional decision to remain silent, remains relevant, but its true significance lies not in converting an unanswered letter into a deemed decision, but in confirming, as a matter of fact, that the Revenue was, and remained, alive to *Wiramuda* and to its implications, and made a considered choice not to give effect to it notwithstanding its binding character. On this independent and freestanding basis, we are satisfied that the Taxpayer had a proper cause for judicial review, and that O 53 was correctly invoked.

[51] It follows that, notwithstanding our acceptance of the Revenue's narrower submission on O 53 addressed in the preceding section, the substance of the Learned Judge's conclusion that the Revenue's refusal to give effect to *Wiramuda* was amenable to judicial review, was correct, albeit properly grounded not in the non-response to the 21 February 2023 letter as such, but in the Revenue's continuing, freestanding public duty under *Arumugam Pillai*, breach of which began upon delivery of Wiramuda on 9 December 2022 and persisted thereafter. Grounds 1 to 6 of the Memorandum of Appeal accordingly do not avail the Revenue to the extent of disturbing the order below.

[52] Before turning to the Revenue's remaining grounds, we deal with a further submission on jurisdiction. The Revenue argued, relying on *V Paul Raj Chelladurai v. Jabatan Telekom Malaysia Bhd & Ors* [2000] 1 MLRA 726, that the Taxpayer's O 53 statement and originating notice of motion, as recorded at para 7 above, pleaded only the deemed decision arising from the Revenue's non-response to the letter of 21 February 2023, and that the Taxpayer could not depart from that pleaded case. On this footing, the Revenue submitted that this Court has no jurisdiction to sustain the judicial review on the broader basis identified in Section E above, namely, the Revenue's continuing duty under *Arumugam Pillai*, since that basis was never pleaded in those terms.

[53] That submission is answered by the recent decision of the Federal Court in *Acexide Technology Sdn Bhd & Anor v. Chang Heng Keong & Another Appeal* [2026] 5 MLRA 455, drawn to our attention after argument had concluded, pursuant to r 22 of the Legal Profession (Practice and Etiquette) Rules 1978. The Federal Court there considered whether an O 53 statement must identify which recognised ground of judicial review, namely illegality, irrationality

(*Wednesbury* unreasonableness), procedural impropriety, or proportionality, the applicant relies on, and, if it does not, whether the court is thereby stripped of jurisdiction to examine the substance of the impugned decision at all (at [44] to [75]).

[54] That question matters because judicial review is not an appeal. A court hearing judicial review checks whether a decision was lawfully made. It does not, as a general rule, re-weigh the evidence or substitute its own view of the facts for that of the original decision-maker, since that is the function of an appeal, not of review. What the Federal Court in *Acexide* called an "impermissible merits review" is exactly that: a court, under the guise of judicial review, going beyond checking legality and instead re-deciding the facts as if it were hearing an appeal. The difficulty is that two of the four recognised grounds, illegality and irrationality, cannot be assessed without looking at the substance of what was decided, since a court cannot say a decision is illegal or irrational without examining what was decided and why. The argument advanced in *Acexide*, and advanced by the Revenue before us, is that a court has no jurisdiction to look at the substance at all unless the applicant has first pleaded illegality or irrationality by name, so that any engagement with the substance of the decision, absent such pleading, is necessarily an impermissible merits review masquerading as judicial review.

[55] The Federal Court held that this goes too far. Compliance with O 53 r 3(2) "is not strictly a matter of jurisdiction for the court in undertaking a merit review or examining the substance of the case," and non-compliance "does not quite amount to a lack of jurisdiction on the part of the courts" (at [73]). A pleading omission of this kind does not deprive the court of jurisdiction; at most, it means that relief granted might, depending on the circumstances, later be held to have been made in error and be liable to be set aside on that account, not that it was made without jurisdiction. The Federal Court further held that this kind of pleading objection cannot be turned into a jurisdictional challenge and raised for the first time on appeal, which is precisely how the Revenue puts its objection to us (at [74]). The Federal Court added, applying *Perbadanan Pengurusan Sunrise Garden Kondominium v. Sunway City (Penang) Sdn Bhd & Ors And Another Appeal* [2023] 3 MLRA 44, that a court in any event retains a discretion to address illegality even where it was not expressly pleaded (at [61] to [68]).

[56] Applying *Acexide* to the facts before us, the Taxpayer's complaint, from the outset, was that the Revenue had unlawfully refused to give effect to *Wiramuda* and to refund the tax paid under s 4C. The deemed decision pleaded in the originating notice of motion was the occasion on which that complaint was formally brought to court, not the whole of the grievance. Recognising, as we do in Section E above, that the Revenue's continuing duty under *Arumugam Pillai* is the true legal basis for that complaint is not a merits review of any kind. We have not re-weighed any evidence or substituted our own findings of fact for those of any tribunal below, and we have applied settled law to facts

that are not in dispute. Nor did the Revenue suffer any surprise, since it met the substance of the Taxpayer's complaint throughout these proceedings. For these reasons, and following *Acexide*, the Revenue's objection founded on *V Paul Raj Chelladurai* does not deprive this Court of jurisdiction, and it fails.

F. The Form Of Relief: *Certiorari* Cannot Quash An Omission

[57] Before turning to the Revenue's remaining grounds, we deal with a distinct difficulty that arises from our conclusions in Sections D and E above, because it goes to the character of the relief properly available on this appeal. *Certiorari* is, and has always been, a supervisory order directed at quashing a decision, determination, order or other act of a public decision-maker. It operates upon something that has been decided, so that the decision may be brought up into this Court and quashed. It has no application to a pure omission or failure to act, for the simple reason that there is, *ex hypothesi*, no decision in existence for *certiorari* to seize upon and quash. Where a public authority has simply failed to act, the remedy, if any lies, is *mandamus*, compelling the authority to perform the duty it has failed to perform, and not *certiorari*.

[58] This distinction matters on the facts of this case. The Taxpayer's originating notice of motion, as recorded at para 7 above, was framed as an application to quash "the decision of the Respondent as stated and deemed" in its letter of 21 February 2023, that is, a deemed decision said to arise from the Revenue's non-response to that letter, by an order of *certiorari*, together with various orders of *mandamus* and consequential declarations. The application was not framed, and *certiorari* was not sought, to quash an "omission" as such. That framing was, with respect, correct as a matter of principle. Had the Taxpayer sought *certiorari* to quash a bare omission, the prayer would have been misconceived, because an omission is not a thing capable of being quashed.

[59] We have held in Section D above that the non-response to the 21 February 2023 letter, standing alone, did not crystallise into a reviewable decision at all. It follows that, on that ground, there was in the event no "deemed decision" in existence capable of being quashed by *certiorari*, and the order of the High Court, to the extent that it purported to grant *certiorari* on that footing, cannot be sustained on that basis.

[60] We have, however, sustained the Taxpayer's judicial review on the independent ground developed in Section E above, which is that the Revenue has been, since 9 December 2022, in continuing breach of its freestanding public duty, recognised in *Arumugam Pillai*, to apply *Wiramuda* uniformly to affected taxpayers, and that this continuing failure is properly characterised as an "omission" within the meaning of O 53 r 2(4) of the ROC. For the reasons given above, however, an omission of this kind is not, and could never be, a proper subject for *certiorari*. It is remediable, if at all, only by *mandamus* compelling the Revenue to recognise *Wiramuda* and to give effect to it by refunding the tax paid under s 4C together with appropriate interest. O 53 r 2(4)'s extension of judicial review to an "action or omission" enlarges the

range of conduct amenable to the supervisory jurisdiction. It does not, and could not, convert an omission into a decision, nor render it susceptible to an order of *certiorari* that is by its nature confined to quashing decisions that exist.

[61] It is on this point that the Taxpayer's inclusion, in its originating notice of motion, of prayers for *mandamus* in addition to *certiorari* proves decisive. Had the application sought *certiorari* alone, the omission-based ground on which we have sustained the judicial review in Section E above would have left the Taxpayer without any available form of order, however sound the underlying complaint. Because *mandamus* orders were also prayed, however, the relief that properly gives effect to our conclusion in Section E is available on the record as pleaded, without any need to stretch the nature of *certiorari* beyond its proper office. We accordingly hold that the order of the High Court is affirmed not as an order of *certiorari* quashing a deemed decision, since no such decision exists, for the reasons given in Section D above, but as orders in the nature of *mandamus*, compelling the Revenue to recognise the retrospective effect of *Wiramuda* and to refund the tax paid by the Taxpayer under s 4C for the year of assessment 2017, together with interest as set out in Section H below.

G. Issue 4 — Sections 97, 99 And 111 Of The ITA

[62] Ground 7 of the Memorandum of Appeal contends that the Taxpayer's claim is an abuse of process, alternatively time-barred, because the assessment dated 28 February 2018 became final and conclusive under ss 97 and 99 of the ITA in the absence of any appeal to the Special Commissioners.

[63] We reject that submission, for the reasons given by the Learned Judge below and by the Taxpayer. Section 97 provides finality to an assessment only "for the purposes of" the ITA. It cannot, on its ordinary meaning, validate a statutory provision that has since been declared unconstitutional, nor can it authorise the Executive to retain money contrary to arts 13(2) and 96 of the Federal Constitution, nor can it oust the supervisory jurisdiction of the High Court over illegality and constitutional non-compliance. Section 99, for its part, permits an appeal to the Special Commissioners against the quantum or factual basis of an assessment. It affords no mechanism by which the Special Commissioners could grant *certiorari*, *mandamus*, constitutional declarations, or public-law restitution of the kind sought here. The subject matter of the present proceedings is not the correctness of the YA 2017 assessment on its own terms, which was correctly computed on the law as it then stood, but the Revenue's post-*Wiramuda* refusal to recognise that the law under which the assessment was made has since been declared void. That is a public-law complaint of a different character altogether, to which the finality provisions of the ITA, on their true construction, simply do not speak.

[64] The Revenue additionally contends, for the first time in its written submissions rather than in the Memorandum of Appeal, that s 111 of the ITA, which imposes a five-year limitation on claims for repayment of overpaid tax, bars the claim, relying on the principle of *generalia specialibus non derogant*

discussed in *Nabors Drilling (Labuan) Corporation v. Lembaga Perkhidmatan Kewangan Labuan* [2020] 2 SSLR 387; [2020] 6 MLRA 314.

[65] We deal with this submission on its merits, without deciding whether it was properly open to the Revenue to raise it outside the pleaded grounds of appeal, because it fails in any event. Section 111 is concerned with the refund of an "over-payment", that is, with a species of arithmetic or computational excess arising within an assessment that is, and remains, valid. It proceeds on the premise that the underlying charge to tax was lawfully made, and merely addresses the mechanics and time limits for correcting excess payment under a valid regime. It has no evident application to a claim for restitution of monies exacted under a provision subsequently declared void *ab initio* for unconstitutionality. The *generalia specialibus* maxim has no work to do here. It resolves conflicts between a general provision and a specific provision that both otherwise apply to the same subject matter. Where, as here, the specific provision (s 111) does not on its true construction extend to the subject matter at all, which deals with restitution founded on constitutional invalidity, as opposed to correction of an overpayment under an admittedly valid charge, there is no conflict to resolve, and the maxim is not engaged.

[66] This construction is reinforced by the constitutional character of the underlying right. Article 96 of the Federal Constitution provides that no tax may be levied except by or under the authority of federal law. As more fully explained at paras 27 and 28 above, the Supreme Court of Canada held, in *Kingstreet Investments Ltd v. New Brunswick (Department of Finance)* [2007] SCC 1, applied by our own High Court in *Power Root (M) Sdn Bhd & Ors v. Ketua Pengarah Kastam* [2013] 6 MLRH 301, that a restitutionary claim founded on the unlawful exaction of an *ultra vires* tax rests not on ordinary unjust enrichment but on constitutional principle, and it is for the legislature, not the courts by inference, to decide what restrictions, if any, are to be placed on the right to such restitution. A general limitation provision drafted to govern the administrative correction of overpayments under a valid taxing statute cannot, absent clear words, be read as extinguishing a restitutionary right of constitutional origin arising only because the taxing provision itself has since been declared void. No such clear words appear in s 111. We accordingly hold that s 111 does not apply to bar a claim for restitution of tax collected under a provision subsequently declared unconstitutional.

[67] Ground 7, whether founded on ss 97 and 99 or on s 111, is accordingly rejected.

H. Issue 5 — Interest

[68] The Revenue submits, relying on the fact that the tax was levied and paid in good faith under a then-valid statutory provision, that interest ought not to have been awarded at all.

[69] We do not accept that submission. As Lord Goff of Chieveley explained in *Woolwich Equitable Building Society v. Inland Revenue Commissioners (No 2)* [1992] 3 All ER 737, and as Rohana Yusuf J (as Her Ladyship then was) applied in materially similar circumstances in *Pelangi Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2011] 13 MLRH 33, interest awarded upon the restitution of unlawfully retained tax is compensatory in nature. It reflects the fact that the Revenue has had the benefit of what is, in substance, an interest-free loan derived from the collection of a tax subsequently held to be unlawful, and that the taxpayer has correspondingly been deprived of the use of its own money. The good faith of the parties at the time of collection is beside the point. The question is whether the Revenue has, since that time, had the use of money that in law belongs to the Taxpayer. Section 11 of the Civil Law Act 1956 vests the Court with discretion to award such interest, and no principle cited by the Revenue displaces that discretion merely because the underlying sum is described as "tax."

[70] The award made by the Learned Judge below, namely, 5% per annum, running not from the date of payment but only from 8 March 2023, the date the judicial review proceedings were filed, was, if anything, a conspicuously moderate exercise of that discretion. It excluded the entire period, in excess of six years, during which the Revenue held and had the use of the Taxpayer's money before the judicial review was even commenced, and it was well below the 8% sought by the Taxpayer. We see no error of principle in that award, and decline to disturb it.

[71] Grounds 10 to 12 of the Memorandum of Appeal are accordingly rejected, and the award of interest at 5% per annum from 8 March 2023 is affirmed.

I. Conclusion

[72] In summary, we accept the Taxpayer's submission that *Wiramuda* applies retrospectively in the absence of any express direction of prospectivity, and that no basis exists on this record for this Court to impose such a limitation where the Federal Court itself declined to do so. We accept the Revenue's submission that the mere non-response to a deadline unilaterally fixed by the Taxpayer in its letter of 21 February 2023 did not, by itself, constitute a "decision, action or omission" amenable to judicial review under O 53 r 2(4) of the ROC. We reject the Revenue's fallback submission for a more limited, "selective" form of prospective overruling confined to the litigant in *Wiramuda* and to cases pending as at 9 December 2022, both because it was not open to this Court to impose such a limitation in place of the Federal Court's own unqualified ruling, and because, in any event, the Taxpayer's own claim would fall within even that narrower formulation. We further reject the Revenue's submission that retrospective effect should be refused or confined on floodgates grounds, that submission being unsupported by evidence, self-limiting by operation of the ordinary judicial review time bar, disproportionate when measured against the scale of federal revenue and the ordinary, manageable character of a claim

for the repayment of tax not properly due, and in any event undermined by the Revenue's own history of resisting compliance with binding appellate rulings on the taxability of compulsorily acquired land compensation, as most recently illustrated by its conduct following *Penang Realty*.

[73] We are satisfied that the Taxpayer's claim did not depend on that letter alone. It rested independently, and validly, on the Revenue's continuing public duty, as an arm of the Executive bound by the doctrine of *stare decisis*, to give effect to a binding Federal Court declaration that s 4C of the ITA was unconstitutional, a duty which crystallised upon delivery of *Wiramuda* on 9 December 2022 and which the Revenue continued to breach thereafter. On that independent ground, the judicial review was properly brought and properly allowed. We further reject the Revenue's reliance on ss 97, 99 and 111 of the ITA as a bar to the claim, and affirm the award of interest at 5% per annum from 8 March 2023. We also reject, for the reasons given at paras 52 to 56 above, the Revenue's objection, founded on *V Paul Raj Chelladurai* and said to be reinforced by *Acexide Technology*, that this Court lacked jurisdiction to sustain the judicial review on that independent basis.

[74] For these reasons, the appeal is dismissed, and the order of the High Court dated 29 July 2025 is affirmed, save that our affirmance of the finding of amenability to judicial review proceeds on the independent basis set out in Section E above, rather than on the basis that the non-response to the 21 February 2023 letter was itself a reviewable deemed decision. We further clarify, for the reasons given in Section F above, that the order below is affirmed as an order in the nature of *mandamus* compelling the Revenue to recognise the retrospective effect of *Wiramuda* and to refund the tax paid, and not as an order of *certiorari* quashing a deemed decision, no such decision having been found to exist for the reasons given in Section D above.

[75] We order that the costs of this appeal, in the sum of RM50,000.00, be paid by the Appellant to the Respondent, subject to the payment of the allocatur fee.

[76] As agreed, the parties in Appeal No. W-01(A)-398-08/2025 are bound by the judgment in this Appeal and similar orders are made in the said appeal.