

**Tax, Trade & Customs Practice
Group: Team Profile &
Capability Statement**

30 November 2023

Strictly confidential and privileged

Our Team & Experience

Our Team consists of our Consultant **Dato' Nitin Nadkarni**, Partner **Jason Tan** and Senior Associate **Chris Toh**. The Team will be associated by other Associates of the Firm as and when necessary. Our Team's and Partners' full profiles are enclosed herein.

Nitin Nadkarni has been involved in many recent tax disputes and litigation before all levels of court. He has obtained the following recognitions recently:

1. **"Malaysia Lawyer of the Year 2022 & 2023"** by Euromoney's Benchmark Litigation Asia-Pacific Awards
2. **"Asia's Top 15 Litigators 2022"** by Thomson Reuters Asian Legal Business. Nitin is the sole Malaysian on the list¹ alongside 14 other litigators in Asia.
3. **"Malaysia Lawyer of the Year 2021"** by Thomson Reuters Asian Legal Business Malaysia Law Awards
4. **"Leading Individual"** by Legal 500 – Tax 2023
5. **"Leading Lawyer"** by Chambers and Partners – Tax 2023

Partner Jason Tan has obtained the following recognitions:

1. **"Rising Star of the Year"** by Euromoney's Benchmark Litigation Asia-Pacific Awards 2023
2. **"Leading Individual"** by Legal 500 – Tax 2023
3. **"Future Star"** by Euromoney's Benchmark Litigation – Tax 2022

Senior Associate Chris Toh has also been recognised by Legal 500 (Tax 2023) as a **"Rising Star"** for Tax.

The firm has the honour of being ranked Tier 1 in **Dispute Resolution** by **Legal 500** in their recent 2023 rankings. The Firm's Tax Practice has recently been named **"Tax Firm of the Year"** in the Euromoney's Benchmark Litigation Asia-Pacific Awards 2023 and **"Tax Firm of the Year"** in the Asialaw Awards 2022/2023.

The firm was also named **"Malaysia Law Firm of the Year 2021"** and **"Litigation Law Firm of the Year 2021"** by Thomson Reuters Asian Legal Business.

¹ <https://legalbusinessonline.com/features/alb-asia%E2%80%99s-top-15-litigators-2022>

Some of our commendations from independent legal rankers for tax include:

Legal 500 (2023) – Tax: *‘The lawyers in the firm’s tax practice are helpful, and importantly, accessible. The tax team also provides commercial sound and practical tax advice, deep, practical knowledge of tax laws and are able to provide practical recommendations’.*

‘The tax team is very responsive and inspire confidence with their tax expertise. Partners Nitin Nadkarni and Jason Tan are known in the market as effective tax counsels, whilst senior associate Chris Toh is able to provide relevant and solid practical advice with a quick turnaround time.’

Chambers (2023) – Tax: *‘Lee Hishammuddin Allen & Gledhill’s tax team is able to take on complex matters and is always a step ahead in its planning to solve our issues.’*

‘They are experienced and able to think outside the box. Excellent communications and responsiveness’.

Selected Recent Experience in Tax Litigation

- (a) Successfully represented **Sandakan Edible Oils Sdn Bhd**, a Malaysian subsidiary of a Fortune Global 500 company Wilmar International Limited in a landmark transfer pricing appeal before the High Court and the SCIT. This is the first decision to address Section 140A of the Income Tax Act 1967 (“ITA”) and the Income Tax (Transfer Pricing) Rules 2012.
- (b) Successfully represented **Deloitte**, the professional liquidators of a company in liquidation in judicial review proceedings at the High Court. In August 2022, the Director General of Inland Revenue (“**DGIR**”) agreed to discharge the entire tax assessment of more than RM 100 million issued against the company. The issue concerns the tax treatment of gains from the disposal of lands by the company during liquidation.
- (c) Successfully represented **Cash Band Berhad**, in a landmark dispute before the High Court on whether proceeds received from a joint venture development in the form of percentage of GDV is chargeable to income tax. We successfully argued before both the High Court and SCIT that such proceeds are capital gains and not chargeable to income tax.
- (d) Successfully represented a **subsidiary of the Naza Group** in property development in a RM 200 million dispute before the SCIT. The SCIT held that

gains from the taxpayer's disposal of 11 parcels of land are capital gains taxable under the Real Property Gains Tax Act 1976 and not taxable under the ITA.

- (e) Successfully represented **Tower Real Estate Investment Trust**, a listed REIT before the High Court in respect of a RPGT assessment raised by the Inland Revenue Board ("**IRB**"). This is the first decision to address the legal status of a REIT and its taxability under the Real Property Gains Tax Act 1976.
- (f) Acted for an entity of the **Standard Chartered Group** in judicial review proceedings against the Malaysian Digital Economy Corporation ("**MDEC**"). The dispute concerns the extent and scope of certain MSC incentives granted by MDEC and the Ministry of Finance ("**MOF**"). Upon extensive settlement negotiations, MDEC together with the MOF agreed to grant the tax incentives to the company based on MSC status.
- (g) Successfully represented the **Swiss and Malaysian entities of a global software company** in 2 separate judicial review proceedings at the High Court. The dispute concerns the definition of royalty in the Malaysian Income Tax Act 1967 ("ITA") and the Swiss-Malaysian DTA. In September 2022, the High Court granted leave for the companies to commence judicial review and a stay against the disputed decisions made by the DGIR and the IRB.
- (h) Successfully represented an entity of **the DRB-HICOM Group** in judicial review proceedings to challenge bills of demand issued by the Director General of Customers ("**DGOC**") for excise duties. The case involves a dispute relating to method of computing the Open Market Excise Value of automobiles manufactured by the Company. We successfully obtained leave to commence judicial review and a stay against payment of the disputed duties.
- (i) Representing a Bursa-listed entity of **the IOI Group** in judicial review proceedings to challenge tax assessments of RM 16 + million by the DGIR. The dispute relates to the DGIR's decision to disallow tax deduction of interest expenses incurred by the company. We successfully secured an interim stay against payment of the disputed taxes.

Dato' Nitin Nadkarni



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LLB Hons, London
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Called to the Bar of
England and Wales
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Advocate and
Solicitor, High Court of
Malaya (1985)

Nitin is a Consultant in and Head of the Tax, Customs & Trade Practice and International Arbitration Practice of LHAG. Nitin has more than 38 years' experience representing major governmental organisations, multinational corporations, financial institutions, and high-profile individuals in commercial disputes. He has acted and advised on various aspects of tax law including on the deductibility of expenditures, transfer pricing, withholding tax, recognition of income, double taxation agreements, and indirect taxes.

Nitin acts primarily as counsel and has appeared at all tiers of the Malaysian courts. Nitin has been consistently ranked by rankers as a leading litigation lawyer with an "excellent reputation", and a "sharp advocate who presents his cases decisively and convincingly". He has been ranked amongst Malaysia's Top 100 Lawyers by the Asia Business Law Journal in 2021 and has published widely including as contributor to the Malaysian Civil Procedure (White Book). Thomson Reuters Asian Legal Business has also recently named Nitin as Malaysia's Dispute Resolution Lawyer of the Year 2021.

Nitin has acted for and advised clients in various industries including in investment holding, property development, construction and engineering, finance, and insurance. Nitin's experience and technical industry knowledge enables him to devise and craft commercially minded strategies in the resolution of tax disputes across industries. In tax matters of an international nature, Nitin brings with him his wealth of multi-jurisdictional experience as counsel including in Malaysia, Singapore, Korea, London, Switzerland, Vietnam, United Arab Emirates, Sudan, Paris, and Algeria.

One of Nitin's fortes is his ability to immediately grasp the "big picture" commercial logic at the heart of each legal dispute. When allied with Nitin's masterful advocacy and legal erudition, the result is a potent aptitude for simplifying the legal, technical intricacies of complex disputes into persuasive, pithy arguments that win clients' cases in court, even when the odds appear unfavourable.

Jason Tan Jia Xin



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LLB Hons, University
of Cardiff

Called to the Bar of
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(Lincoln's Inn)

Advocate and
Solicitor, High Court
of Malaya

Jason is a partner of the firm's Tax, Customs & Trade Practice. Jason's broad practice includes income tax litigation, customs law, trade remedy investigations, and advisory, income tax and customs investigations, and trade facilitation.

He has represented taxpayers in many of Malaysia's largest income tax disputes at all levels of the Malaysian courts, from the Special Commissioners of Income Tax to the Federal Court. The disputes involve issues such as transfer pricing, withholding tax, income recognition, capital allowance, reinvestment allowance, double taxation agreements, deductibility of expenditure, excise valuation and customs procedures.

Jason also has extensive experience in negotiating and dealing with the IRB and Royal Malaysian Customs Department. He regularly advises and represents large corporations in tax and transfer pricing investigations and audits. His familiarity with the practices of the tax authorities and insights gained from litigation enables him to offer practical solutions to clients in resolving their tax disputes and achieving defensible tax outcomes. Jason has advised, amongst others, financial institutions, government-linked companies, multinational groups, manufacturers and traders, and trusts.

Jason is active on issues relating to excise duty valuation, import and export controls, customs compliance, international trade regulations, customs valuation, sales and services tax, and customs penalties. He currently represents a sizeable number of manufacturers in local and foreign trade remedy investigations such as anti-dumping, safeguard duties, countervailing duties and anti-circumvention investigations. Where customs law is concerned, he routinely advises importers on customs compliance, penalties and prior disclosures as well as litigating in customs disputes.

Jason was recently ranked as an 'Leading Individual' for Tax by Legal 500 Asia Pacific 2023. Jason was also recognised as an 'Up-and-coming Practitioner' for Tax by Chambers 2023.

Chris Toh Pei Roo



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LLB Hons, University
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LLM (International
Commercial Law,
University College
London

Called to the Bar of
England and Wales
(Middle Temple)

Advocate and
Solicitor, High Court
of Malaya

Chris represents and advises taxpayers in all aspects of tax law. He is particularly well experienced in judicial review, having represented and advised leading multinational corporations, charitable bodies, listed companies and prominent individuals in challenging decisions by the Inland Revenue, Customs and the Ministry of Finance in a wide spectrum of tax disputes. He has also acted for taxpayers in tax appeals, defending civil recovery proceedings, and resisting applications by the Inland Revenue under the Companies Act.

Chris speaks regularly on tax issues for various professional and trade organisations, including the Chartered Tax Institute of Malaysia (CTIM), the Malaysian Institute of Accountants, and the Federation of Malaysian Manufacturers. He is an Associate Member of CTIM and an examiner in Revenue Law for CTIM's Professional Examinations and has been published in the Tax Disputes and Litigation Review, The Private Wealth & Private Client Review, and the Current Law Journal. He is also a contributor to the Malaysia Civil Procedure 2021 (White Book) on Order 53 (Judicial Review).

Chris holds a First-Class law degree from the University of Leeds, and a LLM in International Commercial Law from University College London and won the St Philips Chambers Prize for Commercial Dispute Resolution during the Bar Professional Training Course. Chris was recently recognised as a "Rising Star" for Tax in The Legal 500 Asia Pacific 2023 rankings.
