



## By The Power Of The Comptroller *Interplay Of The Comptroller's Office And Tax Provisions*

31 October 2019, Thursday

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**T**he Inland Revenue Authority of Singapore (IRAS) is the main tax administrator in Singapore and handles income tax, goods and services tax (GST), property tax and stamp duty, among others.

IRAS is headed by the Commissioner of Inland Revenue, who wears many hats. Besides acting as IRAS' Chief Executive Officer, the Commissioner also concurrently holds the titles of the Comptroller of Income Tax (CIT), Comptroller of GST, Comptroller of Property Tax, Commissioner of Stamp Duties (CSD) and Commissioner of Betting Duties.

"Each title of the Commissioner of Inland Revenue is a separate statutory office," explained Accredited Tax Advisor (Income Tax & GST) Ong Sim Ho, Director, Drew & Napier LLC, at a Tax Excellence Decoded session organised by the [Singapore Institute of Accredited Tax Professionals \(SIATP\)](#). "The Comptroller is a 'creature of statute', and may only do things allowed in terms of its empowering legislation, being the respective tax Acts. The powers of the CIT, for example, are derived from the Income Tax Act (ITA)."

### *Comptroller's Role and Implied Powers*

#### **WHAT IS THE COMPTROLLER'S STATUTORY ROLE?**

The Comptroller is responsible for carrying out the provisions of the Act and for the collection of taxes. The specific duties and powers of the Comptroller are set out in the respective tax Acts.

Using the ITA as an example, Section 3(1) provides that "for the due administration of this Act, the Minister may, by notification in the Gazette, appoint a Comptroller of Income Tax..." Section 4(3) goes on to set out the Comptroller's responsibility, such that "the Comptroller shall be *responsible for the assessment and collection of [income] tax* (emphasis added) and shall pay all amounts collected in respect thereof into the Consolidated Fund".

The Comptroller's responsibility to assess and collect tax is illustrated in the English case of *R v Inland Revenue Commissioners (IRC), ex parte Preston* [1985] (the "Preston Case"). In the Preston Case, a tax investigator of the Inland Revenue informed the taxpayer that he would not raise further queries if the taxpayer withdrew certain claims for interest relief and capital loss. The taxpayer did so. Subsequently, upon receiving new information, the Commissioners invoked a specific anti-avoidance provision to raise new queries and to issue an additional assessment to counteract a tax advantage.

The issue before the Court was whether the Commissioners were entitled to exercise and perform their statutory powers and duties to counteract a tax advantage, despite the fact that its investigator had initially informed that no further queries would be raised if the taxpayer withdrew his claims.

The House of Lords held that there was no remedy against the Commissioners for breach of contract or breach of representation. The Commissioners did not have the power to relinquish themselves from their statutory duty, and were bound to invoke the specific anti-avoidance provision to counteract the tax advantage.

The House of Lords also remarked that while “a taxpayer cannot complain of unfairness, merely because the Commissioners decide to perform their statutory duties...”, if the conduct of the Commissioners is so unfair in an appropriate case, the Courts can intervene to direct the Commissioners to abstain from performing their statutory duties or from exercising their statutory powers.

In the Preston Case, the Commissioners were obliged to perform their statutory duties. Applying this concept in Singapore, it would mean that the Comptroller cannot, by contract or promise given in good faith by himself, decide against performing his statutory duty where mandated by the tax Act.

### **DOES THE COMPTROLLER’S STATUTORY ROLE IMPLY A WIDE MANAGERIAL DISCRETION?**

In the English case of IRC v National Federation of Self-Employed and Small Business Ltd (NFSE) [1982] (the “Self-employed Case”), the Commissioners had granted amnesty to some casual workers who had evaded taxes. The NFSE, a federation representing other taxpayers, claimed that this was unfair as no such amnesty was granted to its members, and applied for a mandatory order to compel the Commissioners to collect tax from the casual workers.

The issue before the Court was whether the Commissioners had acted unlawfully in not pursuing the claim for the full amount of tax due and had acted beyond its powers in granting amnesty. It was held that the Commissioners had “acted in the bona fide exercise of the wide managerial discretion conferred on them by statute”, and NFSE’s claim was dismissed.

The scope of the Inland Revenue’s management power was described in this case as “...a *wide managerial discretion* (emphasis added) as to the best means of obtaining for the (revenue) from the taxes committed to his charge, the highest net return that is practicable having regard to the staff available and the cost of collection”.

Based on the Self-employed Case, it would appear that the Comptroller generally has the discretion in administering the Act for the “protection of revenue”, and is entitled to take an overall view to obtain for the Revenue the highest return. It may, however, be difficult to define the scope of discretion or ascertain whether the discretion has been exercised in good faith in practice.

### **DOES THE COMPTROLLER HAVE THE IMPLIED POWER TO ISSUE GUIDANCE?**

The Comptroller has the power to issue guidelines as assistance to the administration of the Act. However, guidelines and practices of tax authorities are not law, as clearly highlighted by the Court in CIT v GE Pacific Pte Ltd [1994], “That this has been the practice of the Comptroller does not in any way illuminate the question of whether this should be the practice of the Comptroller. Practice is not law”.



Accredited Tax Advisor (Income Tax & GST) Ong Sim Ho, Director, Drew & Napier LLC, shared his insights on the legal nature of the Comptroller’s office and powers.

## Comptroller's Express Powers

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The Comptroller has four main types of express powers, namely, discretionary powers, powers of audit and investigation, powers of prosecution and composition, and powers of enforcement.

### DISCRETIONARY POWERS

The Comptroller's discretionary powers come from taxing provisions which explicitly confer a discretion on the Comptroller.

For example, Section 14(1)(a)(i) of the ITA explicitly states that "...there shall be deducted... (i) any sum payable by way of interest...upon any money borrowed by that person *where the Comptroller is satisfied* that such sum is payable on capital employed in acquiring the income". Section 33 of the ITA gives the Comptroller the discretion to "disregard or vary the arrangement and make such adjustments *as he considers appropriate*".

The Comptroller is generally required to exercise discretion in good faith and in the interest of good administration. Having said that, the Courts generally will not substitute their views as to how much discretion should be exercised.

Where the Comptroller exercises his discretionary powers and the taxpayer wishes to object, the taxpayer may seek recourse by way of an appeal or a judicial review.

## Who Is The Correct Decision-Maker?

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The ITA confers two main persons with duties and powers, namely, the Comptroller and the Minister for Finance. Unlike the Comptroller, the Minister for Finance is empowered mainly in the matters of policy (such as making rules for tax exemptions and incentives, and granting of remissions).

### POWERS OF AUDIT AND INVESTIGATION

The Comptroller's powers of audit and investigation were recently enhanced in 2018 to include the powers to arrest without warrant, conduct body searches, as well as break into and enter premises. Any person can be authorised by the Comptroller by notification in the *Gazette* or in writing to exercise these powers. Nevertheless, such audit and investigative powers must only be used for proper purposes.

### POWERS OF PROSECUTION AND COMPOSITION

The Comptroller's powers of prosecution and composition (that is, compounding of an offence) is provided for in the respective tax Acts.

Section 101 of the ITA, for example, confers the CIT the powers of prosecution and the power to delegate composition to authorised officers. Unlike some other powers within the ITA, the powers of prosecution generally cannot be exercised by a Deputy Comptroller or Assistant Comptroller.

### POWERS OF ENFORCEMENT

The Comptroller has very wide powers of enforcement. These include the discretionary powers to appoint agents for the collection of tax (such as the appointment of withholding tax agents under Section 57 of the ITA), as well as to impose travel restriction orders under Section 86(1) of the ITA.

While seemingly unimportant, it is critical to identify the correct decision-maker based on the tax Act, as illustrated in *Asia Development Pte Ltd (ADPL) v CSD* [2018].

The taxpayer, a property developer, was granted remission from additional buyer's stamp duty (ABSD), subject to meeting certain conditions on the completion and sale of the developed properties. The taxpayer failed to meet the conditions and applied for extensions of time. The application was rejected by the IRAS in the name of the CSD.

The taxpayer filed an appeal by way of case stated under the Stamp Duties Act. The CSD declined to state a case on the basis that the decision was made by the Minister for Finance and that the taxpayer should proceed by way of a judicial review application against the Minister for Finance. On the basis that it was unclear from documentary evidence whether it was the Minister for Finance or the Commissioner who made the decision to refuse the extension of time, the Court allowed the taxpayer's appeal to proceed.

In dealing with tax controversy, businesses should consider who would be the appropriate person to deal with.

Where the legal position is unclear or where the tax implication is significant, businesses should also consider whether it is worthwhile to obtain a legal opinion or an advance ruling.



Accredited Tax Advisor (Income Tax & GST) Ong Sim Ho dispelled doubts with his wealth of knowledge on the subject.

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