



Singapore Tax Cases 2024 (Part 2 of 2)

Key Tax Cases And Implications For Taxpayers

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Facilitated by:

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KEY TAKEAWAYS

- The Board rejected the taxpayer's argument that gains from immovable property are capital in nature, as it runs counter to the weight of decided cases where dealings in real property have been found to be of an income nature.
- In light of Section 80(4) of the ITA, which places the onus of proving that an assessment is excessive on the taxpayer, it is crucial for individuals to maintain clear and comprehensive documentary evidence when conducting significant transactions.
- As the Accused was the first person to be convicted under Section 64A(2) of the GSTA, it was necessary for the Court to approach the issue of sentencing from first principles and consider where the Accused's case lies along the entire sentencing range provided for in this section.

In [Singapore Tax Cases 2024 \(Part 1\)](#), published in May, we focused on the landmark Singapore

High Court decision of *Changi Airport Group (Singapore) Pte Ltd v Comptroller of Income Tax* [2024] SGHC 281, based on a seminar organised by the [Singapore Chartered Tax Professionals](#) (SCTP). The session was facilitated by Accredited Tax Advisor (Income Tax) & Accredited Tax Practitioner (GST) Allen Tan, Principal; Jeremiah Soh, Local Principal; Shawn Joo, Senior Associate; and Clinston Chiok, Associate, from Baker & McKenzie.Wong & Leow.

In this article, we delve into the Board of Review decision of *GIO v Comptroller of Income Tax* [2024] SGITBR 1, which examines the nature of disposal of real property.

Whether Disposal of Real Property is Capital or Income in Nature – GIO V Comptroller of Income Tax [2024] SGITBR 1

BACKGROUND

In 2007, the taxpayer entered into two property transactions in quick succession:

Property 1

On 6 March 2007, the taxpayer purchased Property 1 by exercising an Option to Purchase (OTP). Prior to the completion of the purchase on 15 June 2007, the taxpayer sold the property through granting an OTP on 10 April 2027, which was subsequently exercised on 30 April 2027.

The sale was completed on 2 July 2007 for a profit of \$451,510.

Property 2

The taxpayer purchased Property 2 by exercising an OTP on 9 July 2007. Before the completion of the purchase, a buyer exercised an OTP on 13 August 2007 to purchase the property from the taxpayer. The purchase and the subsequent sale of Property 2 were completed on the same day, on 17 September 2007, for a profit of \$1,273,840.

The Comptroller of Income Tax issued an Additional Assessment to tax the gains from the respective sales of Properties 1 and 2 under Section 10(1)(g) of the Income Tax Act 1947 (ITA).

The taxpayer appealed to the Income Tax Board of Review (the “Board”) on the basis that the realisation of gains from the disposal of real property was capital in nature and therefore not subject to income tax under Section 10(1)(g) of the ITA.

THE BOARD’S DECISION

Whether The Disposal of Real Property is Inherently Capital in Nature

The taxpayer agreed that a trader in real property is rightly subject to income tax, but posited that in other cases, gains from movable property were income in nature while gains from immovable property were capital in nature. The Board rejected the taxpayer’s argument as it runs counter to the weight of decided cases, including those at the Singapore High Court, where dealings in real property have been found to be of an income nature, and therefore taxable.

The taxpayer also argued that the repeal of Section 10F(1) of the ITA, which imposed income tax on properties that were disposed of within three years of acquisition, demonstrates that there is no longer any legally prescribed requirement that the property must be owned for any specific length of time to qualify as a capital gain. Essentially, the taxpayer was suggesting that all isolated transactions in real property are of a capital nature and not subject to tax under the ITA.

The Board clarified that Section 10F(1) was introduced as a temporary “cooling measure” to curb the problem of excessive property speculation at that time. The now-repealed section was meant to impose tax on all short-term property transactions (except a few selected categories), including those that were taken up as a long-term investment, but for a legitimate change of purpose.

Ultimately, the Board held that the repeal of Section 10F(1) did not render Section 10(1)(g) inapplicable to such property transactions.

Whether The Myers Test Applied in Singapore in Determining if A Particular Gain or Profit Was of An Income Nature

The taxpayer argued that the Comptroller had, in determining if a particular gain or profit had an income nature, applied a test derived from the Australian authorities (the *Myers* test) which should not be applied in Singapore. The Board rejected the taxpayer’s argument and held that the *Myers* test was appropriately adopted in line with local jurisprudence, and that the differences between legislative provisions in Australia and Singapore are not in themselves a bar to drawing guidance from these cases.

Myers at p 4366 - “if circumstances are such as to give rise to the **inference that the taxpayer’s intention or purpose in entering into the transaction was to make a profit or gain**, the profit or gain will be income, notwithstanding that the transaction was extraordinary judged by reference to the ordinary course of the taxpayer’s business” (emphasis added).

On the taxpayer’s argument that real property transactions are capital in nature as long as one is not a property trader, the Board was of the view that there was no absolute bar to the increase in value of an item that is normally regarded as capital in nature, to be caught by income tax. The key question was whether the taxpayer bought the properties with the intention of holding them as investments for capital gain or for a quick sale as income.

With respect to Property 1, the tenancy had been terminated prior to the completion of the purchase, even though the taxpayer claimed that it was acquired as a long-term investment with a sitting tenant. While an offer was subsequently brought to the taxpayer by an agent and the property was sold, the evidence was unclear as to whether the agent was engaged to find a new tenant or to market the property.

Separately, the Board found the overdraft facility taken up by the taxpayer to be indicative of his anticipation of a sale due to the special conditions attached.

In particular, the conditions dictate that the property be sold at a certain minimum price, and the overdraft be fully repaid within two months from the implementation of the overdraft or completion of the sale, whichever is earlier. While the taxpayer claimed that the conditions were imposed by the bank, the Board rejected this assertion due to the lack of documentary evidence.

With respect to Property 2, the taxpayer asserted that it was a joint purchase with another individual, and the subsequent sale had resulted from an unsolicited offer. There was, however, no documentation or evidence adduced to support any of these assertions.

The onus of proving that the assessment is excessive is on the taxpayer. As the Board found that the taxpayer has not proven that the assessments were excessive, the taxpayer's appeal was dismissed.

FOOD FOR THOUGHT

Individuals operate very differently from companies. Unlike companies which tend to have standard procedures in place to document important decisions (through board minutes, directors' resolution or other written documentation), individuals often do not document their own intentions in a contemporaneous manner. In this regard, individuals may find it much more challenging to provide relevant documentary evidence to support their assertions when asked to demonstrate their intent at a particular point in time.

In light of Section 80(4) of the ITA, which places the onus of proving that an assessment is excessive on the taxpayer, it is crucial for individuals to maintain clear and comprehensive documentary evidence when conducting significant transactions. Although it may seem cumbersome, this practice is essential to demonstrate what is on their minds at that particular point in time.

Conclusion

And that's a wrap for the notable 2024 tax cases. Be sure to stay updated to navigate the ever-changing tax landscape.

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