



The Science & Art of Dispute Resolution

*Looking Beyond the Processes and
Navigating Tax Disputes*

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“**E**ach tax dispute may be handled differently depending on the specific facts and circumstances of the case. In some disputes, it may be best to resolve them by legal arguments and statutory interpretation. In others, it may be through appropriate framing of facts or advocacy.” This is an interesting perspective forwarded by Vikna Rajah, Partner & Head Tax, Trust & Private Client, Rajah & Tann Singapore against the current backdrop of a fast-changing tax landscape where long-established norms are challenged, coupled with the increased scrutiny by tax authorities. Companies are progressively more susceptible to tax controversies in their countries of operation.

Assisting companies in understanding how best to navigate tax disputes, the [Singapore Institute of Accredited Tax Professionals \(SIATP\)](#) organised a *Tax Excellence Decoded* (TED) session facilitated by Mr Rajah where he shared his legal insights on the science and art of dispute resolution via several Singapore tax cases.

Legal Argument And Statutory Interpretation

DETERMINING AND RELYING ON THE CORRECT STATUTORY PROVISION

The taxpayer constructed a student hostel where the majority of floor space (90%) was to be used for student accommodation, and the remaining for a cafeteria and administrative purposes. On the basis that the construction expenditure was incurred to make exempt supplies (which are not subject to GST), the Comptroller of Goods and Services Tax (GST) disallowed the taxpayer's input tax claim on the construction expenditure.

The issue was whether the Comptroller was right to conclude that the construction expenditure was incurred to make exempt supplies.

In arriving at its conclusion, the Comptroller relied on Section 2(c) in Part 1 of the Fourth Schedule of the GST Act. It states that “any land or part thereof with any building, flat or tenement thereon, being a building, flat or tenement which is used or to be used **principally** for residential purposes” (emphasis added) would be an exempt supply.

At first glance, it would appear that the Comptroller was right to conclude that the construction expense was incurred to make exempt supplies as the student hostel was “to be used principally for residential purposes”.

However, it must be noted that the statutory provision was amended on 1 January 2011, and the construction expenditure was incurred before this amendment. As such, the applicable statutory provision (to determine whether the construction expense is an exempt supply) for this case has to be based on the earlier provision, which read “any land or part thereof with any building, flat or tenement thereon, being a building, flat or tenement which is approved **exclusively** for residential purposes under the planning act” (emphasis added).

As the taxpayer had specifically obtained an approval from the Urban Redevelopment Authority to change the use of the land to “mixed use”, the student hostel was found not to be approved exclusively for residential purposes. Accordingly, the taxpayer was allowed its input tax claim on the construction expenditure incurred on the student hostel.

Evidence

SELECTING RELEVANT INFORMATION AND EVIDENCE

The taxpayer constructed an office building and as part of the sale agreement, required a large deposit which is above market rate from the purchaser. In return, the taxpayer made coupon payments to the purchaser until the project was completed. The taxpayer also took a bank guarantee for the entire purchase price.



Vikna Rajah, Partner & Head Tax, Trust & Private Client, Rajah & Tann Singapore LLP, shared his insights on the various approaches to resolve civil and criminal tax disputes.

The taxpayer contended that the expenses should be tax deductible as they constituted part of the transaction cost. To support its contention, the taxpayer carefully selected only the essential evidence to demonstrate that the large deposit, together with the resulting coupon payments, was required to mitigate the genuine commercial risks as the sale was made during a financial crisis. The taxpayer also provided evidence to demonstrate that the bank guarantee was necessary to mitigate the risk of a failed transaction (in view of the gloomy economic climate during the sale).

By providing clear, concise and relevant evidence, the taxpayer ensured that the key arguments were not lost in a verbose submission and eventually convinced the tax authorities that both the coupon payment and bank guarantee interest fees were tax deductible.

In presenting the argument and supporting evidence, less is often more.

On the basis that the coupon payments and bank guarantee were not wholly and exclusively incurred in the production of income, the Inland Revenue Authority of Singapore (IRAS) disallowed the taxpayer’s deduction claims on these expenses.

APPLYING LOGIC TO DETERMINE THE TRUE INTENTION

The case involved a family business where several family-owned companies had liquidated some assets and distributed half of the resulting proceeds from the sale to the intended beneficiaries in accordance with the settlement deed.

As it was drafted in the settlement deed that all “advances” included an interest element which was payable, the companies’ accounts were prepared on this basis and accordingly, accrued interest was charged on the distributed proceeds. IRAS subjected the interest income to tax.

The taxpayer explained that all monies were meant to be returned to the beneficiaries eventually, and as such, it would not make sense for interest to be charged on the distributed proceeds. Despite the wordings in the settlement deed, the intention of the settlement deed was to charge interest only on loans extended to the beneficiaries. The proceeds distributed from the sale of assets were not “advances”.

IRAS agreed with the taxpayer’s logic and allowed the companies’ accounts to be restated. The tax charged on the interest income was subsequently refunded.



Participants made use of the Q&A session to gain clarity and exchange perspectives on various aspects of tax dispute resolution.

Negotiations And Framing Of Facts

TELLING THE RIGHT STORY WITH THE FACTS

The company, a distributor of computer memory products and hardware accessories, submitted a Productivity and Innovation Credit (PIC) cash payout application form and declared in the form that it had incurred time costs for five employees developing software systems. In reality, there was no such development of software systems and the five employees did not spend any time on such activity.

The company and its director were charged under section 37J(3) of the Income Tax Act (ITA) for wilfully with intent to obtain a PIC cash payout that they are not entitled to by giving false information to the Comptroller of Income Tax (CIT).

In mitigation, the company and its director highlighted that the entire scheme was concocted by a PIC promoter who had approached the director in a professional manner and represented that the scheme was legitimate. While the director might have been negligent in his role, the fact that he was led to believe that the scheme was legitimate by the PIC promoter showed that he did not have wilful intent to defraud the CIT.

IRAS agreed with the defence’s representations, and the charge was subsequently reduced from that of fraud to negligence.

ADVOCATING FOR A REDUCED PENALTY

The taxpayer had under-declared the import values of certain goods and faced charges for fraudulent evasion of GST under the Customs Act. To support its case, the prosecution submitted a list of past cases pertaining to fraudulent evasion of GST and sought a penalty of 10 to 20 times the amount of tax avoided by the taxpayer.

It was incontrovertible that the taxpayer had committed an offence of the evasion of GST. The issue at hand was whether the penalty sought by the prosecution was reasonable.

The defence argued that the list of precedents submitted by the prosecution had no precedential value as the prosecution did not consider the differing circumstances and varied mitigating factors of the precedents cited. The defence also argued that list of precedents was selective and incomplete. The Court agreed with the defence.

The defence further supported its case by citing a relevant precedent where the penalties imposed were five times the amount of tax avoided. In the absence of other relevant precedents, the Court agreed that the penalty to be imposed on the taxpayer should likewise be five times the amount of tax avoided (instead of the penalty sought by the prosecution).

Evolving Tax Landscape

In light of the various considerations to take note of when navigating a tax dispute, it is also useful for taxpayers and advisors to appreciate the evolving tax landscape and be aware of the global focus in the area of tax avoidance in recent years.



Participants listened intently to Vikna Rajah, Partner & Head Tax, Trust & Private Client, Rajah & Tann Singapore LLP, on the 'what's and 'how's in dispute resolution.

In Singapore, the general anti-avoidance rule is embodied in section 33 of the ITA, which essentially allows the CIT to reverse tax advantages arising from arrangements that, inter alia, alter the incidence of tax without bona fide commercial reasons.

In light of the Court of Appeal's landmark decision in *AQQ v CIT* [2014] 2 SLR 847 and subsequent section 33 cases, any tax planning arrangement that appears contrived or artificial would likely be heavily scrutinised by the Singapore tax authorities. This would be an area of potential tax disputes that taxpayers should be mindful of.

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For more tax insights, please visit www.siatp.org.sg.

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