CIT's Widening Powers to Obtain Information

Understand The New Landscape And Know Your Rights

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Tax authorities across the world have placed renewed emphasis on tax transparency. With global initiatives such as Automatic Exchange of Information (AEOI), tax authorities are increasingly collaborating with their counterparts to gather and share taxpayer information. Tax authorities now have greater information-gathering powers and have access to broader information on taxpayers.

While the power to gain access to taxpayers' information has increased, new measures have also been put in place to prevent foreign tax authorities from gaining excessive information or having access to information merely for exploratory purposes. Useful guidance to taxpayers and tax advisors on managing such matters was shared at a recent *Tax Excellence Decoded* session by the Singapore Institute of Accredited Tax Professionals (SIATP), facilitated by Accredited Tax Advisor (Income Tax and GST) S. Sharma, Partner at Malkin & Maxwell LLP.

CIT's Powers to Obtain Information

The Comptroller of Income Tax (CIT)'s powers to obtain information are enshrined in Part XVI – Returns in the Income Tax Act (ITA). Section 62, for example, empowers the Comptroller to obtain information through prescribed forms which must be completed by the taxpayer, while Section 65A allows the Comptroller to give notice to taxpayers requiring them to furnish financial information such as bank accounts, assets, income and information regarding their tax liabilities.

The Comptroller or authorised officers also have access to buildings, places, documents and computers, as well as the power to inspect, copy and seize documents, computers or devices if necessary, under Section 65B(1). This provision also allows the Comptroller or authorised officers to request documents and question individuals acquainted with facts or circumstances regarding the taxpayer.

Under Section 65D, CIT can compel an individual to provide information or documents protected by Section 47 of the Banking Act or Section 49 of the Trust Companies Act despite the individual's statutory duty of secrecy.

CIT also has the power, under Section 65E, to require recipients of notices issued under Section 65B to keep the notices confidential. Taxpayers may, however, disclose information to an advocate or solicitor for the purpose of seeking legal advice.

For international exchange of information under avoidance of double taxation arrangements and exchange of information arrangements, Part XXA of the ITA empowers CIT or authorised officers to obtain information using Sections 65 through 65E. This Part comprises Sections 105A through 105HA. In addition, Sections 105I through 105Q are under Part XXB which pertains to international agreements to improve tax compliance. This applies to international tax compliance agreements such as Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS) and Country-by-Country Reporting (CbCR).

Developments are ongoing in this area of exchange of information and the requests for information. Just last year, Singapore signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion And Profit Shifting (MLI) together with over 60 jurisdictions. Singapore can now swiftly amend its tax treaties, if it wishes, to align them with recommendations made in accordance with the Action Plan on Base Erosion and Profit Shifting (BEPS).

In addition, Singapore also signed the Multilateral Competent Authority Agreements (MCCAs) on the Automatic Exchange of Financial Account Information under the CRS and the Exchange of CbC Reports. The MCAA, in the case of CbCR, enables Singapore to efficiently establish a wide network of exchange relationships for the automatic exchange of CbC Reports.

Disputes on Request for Information

US V COINBASE, INC

In November 2016, the United States (US) Internal Revenue Service (IRS) served a summons on Coinbase, Inc., a cryptocurrency exchange and wallet business headquartered in San Francisco, requesting information on all US persons who conducted transactions from 1 January 2013 to 31 December 2015, numbering approximately 480,000 users. The information requested included account registration records, Know-Your-Customer due diligence, transaction and payment logs, correspondences, account statements and invoices, and anti-money laundering system reports.

After motions to intervene filed by Coinbase and anonymous individuals, the IRS narrowed the summons to US users with at least US$20,000 in transactions in a one-year period from 2013 to 2015, and excluded user records for users known to IRS or reported to IRS by Coinbase. Coinbase again refused to comply and the issue was brought to the District Court.

In the court judgement on 28 November 2017, the court used a four-factor test to establish good faith by IRS issuing the summons, through demonstrating that it was issued for a legitimate purpose, the information sought was relevant for that purpose and was not already in IRS' possession, and the summons satisfied all administrative steps in the Internal Revenue Code (ITA-equivalent in US).

A discussion on handling information requests by tax authorities was facilitated by Accredited Tax Advisor (Income Tax and GST) S. Sharma, Partner at Malkin & Maxwell LLP

The court did not dispute that IRS satisfied the administrative steps in issuing the summons, that the summons was issued for a legitimate purpose, and that the information was not in IRS' possession. However, the court had concluded that the information sought in the summons was broader than necessary, as the information was only necessary if the account holder had a taxable gain and there was doubt on the taxpayer's identity. As such, the court reduced the information to be provided to taxpayer's ID number, name, date of birth, address, transaction logs, account statements and invoices; the remaining information was deemed unnecessary for IRS' purpose. This also reduced the number of affected users to approximately 14,000 users, a significant reduction from the initial 480,000.

ABU v CIT [2015] SGCA 4

In November 2012, the National Tax Agency of Japan (JNTA) requested for bank statements for eight bank accounts of a Japanese national, his child and related entities in a Letter of Request (LoR). As required under the ITA then, CIT applied for a High Court order in April 2013 for the bank information. However, the application was for all bank statements of all bank accounts of the Japanese taxpayer, his child and related entities – far more than what the JNTA had requested.

Although the taxpayer was granted leave to intervene in the proceedings in the High Court, the taxpayer was denied the LoR filed by CIT and therefore was handicapped in establishing that the request by CIT was excessive beyond what JNTA requested. The taxpayer appealed to the Court of Appeal (CA) including a claim that that CIT had acted beyond the terms of the Request. The JNTA's LoR, obtained independently following legal action in Japan, was filed in court and highlighted for CA's attention. The CA ruled, among other things, that based on Section 105J of the ITA (which states that CIT could only apply for a High Court order to comply with a request for information under section 105D), any application from CIT cannot go beyond the ambit of the request.

CIT v AZP [2012] SGHC 112

Similar to *ABU v CIT*, a request for information was sent by the Indian tax authority to CIT, requesting for records and information relating to two bank accounts in the names of two different companies held with the defendant, a bank in Singapore. This was on the basis of documents seized by the tax authority that indicated the existence of undeclared incomes remitted to overseas bank accounts. CIT applied for a High Court order in 2012, seeking for bank records and information from 1 January 2008 till the date of request.

The High Court concluded that the relevant issues to consider in this case were, whether the information requested was "foreseeably relevant" for the administration or enforcement of India's tax laws, and if granting the application was justified in the circumstances of the case and not contrary to public interest.

In this aspect, the application was dismissed as the judge felt that the information requested did not satisfy the criteria of being "foreseeably relevant" due to the inadequacy of supporting documentation provided by the Indian tax authority.

The judge went on to clarify that the requirement of foreseeable relevance required CIT, on behalf of the requesting state, was to show clear and specific evidence connecting the information requested to the enforcement of the requesting state's tax laws. This requirement, in addition to documentary requirements in the Eighth Schedule, were set out to prevent "fishing expeditions" and ensure that requests are specific, detailed and relevant to the tax affairs of the taxpayer.

S. Sharma, an Accredited Tax Advisor (Income Tax and GST) and a Partner at Malkin & Maxwell LLP, illuminates and clarifies recent developments on the information gathering and exchange between tax authorities.

With more international agreements being signed and greater cooperation between tax authorities, the landscape surrounding the exchange of information, including automatic exchange of information, has been transformed yet again. In this brave new world for taxpayers and tax advisors, it is not only important to keep abreast of these developments but more importantly, know what the rights are for both taxpayers and the CIT in this aspect – just in case the Comptroller comes knocking on your door.

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