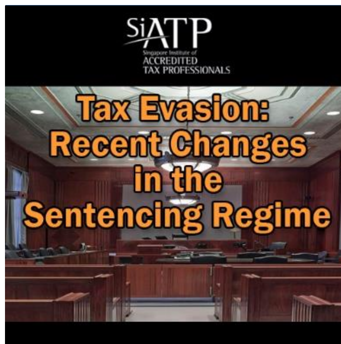

Sentencing Regime For Tax Offences

Recent Developments In The Sentencing Regime

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"Thank you for your contribution towards nation-building."

The above statement, which can be found in Notices of Assessment, can perhaps offer a glimpse into Singapore's zero-tolerance stance towards tax evasion – tax evasion is unfair towards those who comply and contribute their fair share towards nation-building.

Tax evasion is a criminal offence. Over the years, the sentencing framework for tax evasion has evolved and new sentencing benchmarks are set. In 2019, the Inland Revenue Authority of Singapore (IRAS) adopted a new sentencing framework in its sentencing submissions to the Courts. Coincidentally, the length of the imprisonment terms imposed in some recent tax cases has increased.

Against this backdrop, Yang Shi Yong, Director, and Charles Li, Associate Director, Tax & Private Client Services, Drew & Napier LLC, shared their insights on the recent development of the sentencing framework for tax cases in Singapore at an event organised by the Singapore Chartered Tax Professionals (SCTP).

Sentencing Range and Penalties for Tax Offences

The prescribed sentencing range and mandatory penalties for major income tax and goods and services tax (GST) offences are stipulated in the Income Tax Act (ITA) and the GST Act (GSTA) respectively.

Not every case of under-reporting of income is necessarily a case of tax evasion. Where a person has made an incorrect return, he may be charged under Section 95(1) of the ITA. If the error is made through negligence or without reasonable excuse, a person may be charged under Section 95(2) instead.

Unlike Section 95 which covers incorrect returns, Sections 96 and 96A deal with tax evasion and serious fraudulent tax evasion respectively. Under Section 96, any person with willful intent to evade tax, if convicted, shall be liable to pay a penalty of treble the tax undercharged, and a fine not exceeding $10,000 or imprisonment for a term not exceeding three years or both. Taxpayers engaging in serious fraudulent tax evasion (such as the falsification of any books of account or records) are liable to pay a penalty of four times of the tax undercharged, and a fine not exceeding $50,000 or imprisonment for a term not exceeding five years or both, if convicted under Section 96A. Sections 96(2) and 96A(2) prescribe a minimum imprisonment sentence of six months where there are multiple convictions.

In determining the appropriate punishment, the Courts take into consideration various factors relating to the offence and the offender, and are guided by the four general sentencing principles: retribution, deterrence, prevention, and rehabilitation.

CHNG GIM HUAT V PUBLIC PROSECUTOR (PP) [2000] ("CHNG GIM HUAT")

In *Chng Gim Huat*, the taxpayer omitted income from his tax returns for the Years of Assessment (YAs) 1995 and 1996, and was charged with one count of tax evasion for each YA under Section 96(1)(a) of the ITA. He was sentenced to imprisonment of two months and four months for the respective charges and the penalty of treble the tax undercharged.

The taxpayer appealed to substitute his sentence of imprisonment with a fine. On the basis that the charges were grave and were tantamount to a deliberate fraud on the State, and that the type of offences affected the society as a whole as any deficiencies in revenue would have to be made up by other taxpayers, the High Court held that public interest was significant and that a sentence of imprisonment should be imposed in order to meet the needs of general deterrence.

The High Court, however, reduced the imprisonment sentence to one month and two months respectively after considering several mitigating factors, including the taxpayer's voluntary disclosure before investigation commenced, the restitution of tax owed and the fact that he was a first offender.

Since *Chng Gim Huat*, a sentencing benchmark for Section 96 tax evasion cases at two to four weeks per charge has been observed.

PP V ONN PING LAN [2005]

In *PP v Onn Ping Lan* [2005], a certified public accountant systematically falsified her accounts by obtaining blank payment vouchers from her clients (even though no money was paid by her) and omitted a substantial amount of income.

The Court considered several aggravating factors, such as the taxpayer being a certified public accountant, the systematic and deliberate falsification of accounts, and the fraud being perpetuated over a substantial period of five years. Accordingly, the Court sentenced the taxpayer to a total of six months imprisonment and the penalty of treble the tax undercharged (27 weeks imprisonment in default).

In arriving at the sentence, the Court considered the principle of deterrence and decided that a sentence of between one week to one month per charge (depending on the quantum of tax undercharged) was sufficient to reflect the severity of tax evasion offences and to deter like-minded individuals from tax evasion.

Charles Li, Associate Director, Tax & Private Client Services, Drew & Napier LLC, shed light on general sentencing principles and how the sentencing framework for tax cases has evolved in Singapore recently.

New Sentencing Regime for Income Tax Evasion Cases

It is noted that IRAS has adopted a new sentencing matrix approach in its sentencing submissions for recent income tax evasion cases. The sentencing matrix approach is based on a harm-culpability analysis which involves the identification of a ‘starting point sentence’ reflecting the intrinsic seriousness of the offending act, and then adjusted either up or down to reflect circumstances which are personal to the offender.

The harm-culpability sentencing matrix approach allows the Court the flexibility to take into account a multitude of factors, and ensures that actual harm caused by the offence and the actual culpability of the offender are taken into consideration.

Application of the New Sentencing Framework

Case No. 1 [2019]

In the first case involving the new sentencing framework, the taxpayer (an insurance agent) forged payment vouchers to cover up fictitious business expense claims. This resulted in the under-declaration of his trade income for YAs 2013 and 2014.

Applying the sentencing matrix approach, IRAS sought a stiff imprisonment term on the basis that there was a significant degree of premeditation – multiple false entries were made in the income tax returns to claim fictitious expenses – and that the taxpayer had gone further to forge payment vouchers in an attempt to cover up these fictitious expenses.

While the Court expressly stated that it did not endorse IRAS’ sentencing matrix as this would not be appropriate at the District Court level, it took guidance from the matrix and sentenced the taxpayer to four months imprisonment and the penalty of treble the tax undercharged.

Charles Li, Associate Director, Tax & Private Client Services, Drew & Napier LLC, sharing his insights on the issues that participants brought up during the networking break.

Case No. 2 [2019]

The new sentencing framework was also adopted in another case in 2019. The taxpayer (a sole proprietor who provided consultancy services) had understated his chargeable income for YAs 2014 to 2017. IRAS proceeded on two charges (for YAs 2015 and 2016 respectively) where the taxpayer had understated a total of $1.28 million in trade income, and applied to have the remaining two charges taken into consideration for the purposes of sentencing.

IRAS submitted that the high quantum of tax evaded pointed to a high level of harm while the long timespan of four YAs suggested high culpability. Using these to identify the appropriate starting point within the indicative sentencing range and taking into account offender-specific mitigating factors (such as the taxpayer’s guilty plea at the earliest instance, cooperation with the investigating officer, and the restitution made before the charges), IRAS sought a sentence of at least eight months imprisonment for the YA 2015 charge, six months imprisonment for YA 2016 charge, and the penalty of treble the tax undercharged (74 weeks imprisonment in default of payment).

The Court accepted the sentencing matrix and held that the quantum of tax evaded and the sentencing range proposed for each sentencing band in the matrix were appropriate, and that the matrix was not inconsistent with the mandatory penalty.

However, the Court noted that the quantum of tax evaded ought to be only one of the harm factors and that the absence of other harm factors in this matter justified a lower sentence. Accordingly, the Court sentenced the taxpayer to four months imprisonment for the YA 2015 charge and six months imprisonment for the YA 2016 charge, with both imprisonment terms to run concurrently, on top of the penalty of treble the tax undercharged (11 months imprisonment in default).

Notably, it is observed that new sentencing frameworks are being developed by the Courts to utilise the full spectrum of sentences enacted by Parliament. There is judicial disapproval of clustering of sentencing outcomes. An increasing trend of harm-culpability sentencing matrices is noted.

As the saying goes, "An ounce of prevention is worth a pound of cure." A taxpayer who has reason to believe that he has not declared all his income to IRAS (whether knowingly or unknowingly) should consider making a voluntary disclosure to make good his tax affairs before IRAS comes knocking on the door.

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