

Technical Group Discussion

The Bedrock of Tax Advisory

- statutory interpretation and case analysis

18 September 2013, Wednesday

Tax practitioners are like professional chauffeurs, helping customers get from one point to another in the most efficient manner. Tax lawyers, on the other hand, are like engineers who may not be able to advise the best roads to take in order to shorten the journey, but possess the skill to design the best car according to the clients' needs.



Darren kept the audience captivated as he brought the tax statutes alive with his vivid explanations.

This was the metaphor Associate Professor and Head of SIM University's Master of Taxation Programme, Darren Koh, used to illustrate the different set of skills required of tax agents and tax lawyers in a seminar organised by the Singapore Institute of Accredited Tax Professionals.

Tax agents who intend to extend their services beyond tax compliance offerings and venture into tax advisory will not need in-depth legal knowledge required of a full-fledged tax

lawyer. However, they should at least have a good grasp of *how* to read and interpret the legislation in addition to being familiar with tax computations and filing requirements.

Scope of Tax Legislation

In Singapore, tax legislation refers to the various sources of Singapore Revenue Law, such as Income Tax Act, Stamp Duties Act, Goods and Services Tax, to name a few; subsidiary legislation such as the income tax regulations and double tax treaties; and case laws. These are legally binding. All other references are not.

Tax professionals wishing to progress from tax compliance to advisory should have a helicopter view of the various legislation, particularly the Income Tax Act (ITA). As a start, tax specialists should have a dipstick knowledge of the twenty one sections within the ITA

and an overview of what is covered in each section. This will enable the practitioner to have an idea where to start any line of research when dealing with a novel issue.

Interpretation of Tax Statutes

Once you know the layout of the legislation, the next step would be to unlock the meaning of the words of the legislation. Interpreting tax statutes is not necessarily a mind boggling exercise. The most important rule in interpreting tax statutes is that the purpose underlying the written law dictates the interpretation, regardless of whether the purpose is explicitly stated in the written law or not.

Material that assists in the confirmation of the meaning of a provision may be used as aids in interpretation. This includes any treaty or international agreement referred to in the written law, speeches in Parliament and explanatory statements attached to a Bill. Tax specialists are thus advised to retain the accompanying explanatory statement when the Ministry of Finance issues the annual Income Tax (Amendment) Bill, typically in November.

The following general rules apply:

- The literal interpretation using the ordinary meaning of the language of the statute should be adopted unless explicitly defined;
- When words may be subjected to more than one meaning, the option that avoids absurdity should be adopted;
- Sometimes, it is necessary to understand the law before amendment to the Act, the context (“mischief”) that resulted in the change; and the resulting remedy to the Act which resolved the “mischief”.
- All laws apply only within Singapore unless clearly stated otherwise.
- Singapore Parliament will not contradict with its obligations under international law.
- Legislation only takes effect after it comes into force, unless indicated otherwise. This means that in a dispute with the tax authority, the Income Tax Act at the point of the incident applies and not the current Income Tax Act.

Language Interpretation

Besides the general rules, tax professionals should bear in mind the following guiding principles pertaining to the interpretation of the language:

- *Expressio unius est exclusion alterius*
Where one or more things of a particular class are mentioned, other members of that class are excluded. For example, if the legislation on the car industry refers to cars and Nissan, Mercedes and Opel are mentioned, all other brands would be excluded in the legislation.
- *Ejusdem generis*
Where there is an enumeration of things in one category, the interpretation of general words would then be restricted to things of that category. For example, “swing, see-saw, merry-go-round and other structures” would imply that “other structures” are confined to playground structures.
- *Expressum facit cessare tacitum*
If the provision makes an explicit provision about a matter, there is no room to imply another term. Therefore if a contract states a period of 30 days, this must be strictly followed, and there is no room to imply a “reasonable time”.

- *Generalia specialibus non derogat*
The general provisions do not apply when there are special provisions covering the specific matter at hand.
- *Noscitur a sociis*
Words are affected by the words in context they are associated, thus the context should be based on the context surrounding the words.

An example of statutory interpretation in action is found in *Comptroller of Income Tax v GE Pacific Pte Ltd*, where a company sold an asset qualifying for three years writing down allowances to an associated company. The election was made to transfer the asset at tax written down value. The seller however, continued to claim for capital allowance despite the sale because the legislation S24(2)(c) (as it then was) stated:

“...notwithstanding anything in section 19A, where the sale is of machinery or plant, the special allowances provided under that section shall continue to be available as if no sale had taken place.”

The seller had interpreted the law literally and continued to claim for capital allowance as if no sale had taken place. However, taking the structure of the capital allowances system into consideration which stipulated that the taxpayer was required to have possession of the asset at year end before capital allowances might be claimed, and the purpose of the three-year allowance which was meant to provide a relief to the buyer for the investment, it was ruled that the seller was no longer entitled to the capital allowance, but that the buyer could continue to claim the allowances “as if no sale had taken place” - meaning there was no need to compute a balancing allowance or charge.

Thus, when interpreting tax legislation, an understanding of the provision’s purpose must be sought after the initial read of the literal meaning of the provision.

Understanding Case Laws

In Singapore, appeals in tax cases starts with the Board of Review which hears the appeal on matters of law and fact. Facts are drawn from the evidence presented. Beyond the Board of Review, the Courts will only consider the points of law and not dispute the primary facts. In Singapore the burden of proof lies on the Appellant (the taxpayer).

It is also important to know the different sections in a case law report, which portions are binding, known as the *ratio*, and which areas are persuasive. The *ratio* is usually said to comprise facts and decisions of the case and explains the factors considered, the underlying reasons why the decision was as such.

In *NE v Comptroller of Income Tax*, the disagreement was whether expenditure on a bodyguard for a director would qualify as “wholly and exclusively” in order to claim a tax deduction as there was undoubtedly a degree of personal benefit. However, the taxpayer was unable to produce any evidence as to why the decision to employ a bodyguard was “wholly and exclusively” for the purpose of trade. That being the case, the taxpayer failed to discharge his burden of proof, and therefore lost the appeal purely on the grounds of lack of evidence.

Thus, in interpreting this case, tax specialists should note that while this case looks as if it considered if the expenditure on a bodyguard was tax deductible, the courts eventually did not make any such decision as facts were lacking due to a lack of evidence.

To conclude, in analysing case laws, the essential steps include determining the extrinsic factors such as the date of the decision and if there was a subsequent rule by a higher court; the intrinsic factors such as what the court needed to decide, the arguments put forward and the decision made.

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About SIATP's Technical Discussions

SIATP's technical discussions have continually been very well received by accredited tax professionals. Unlike the run-of-mill Continuing Professional Educational courses which typically cover tax fundamentals, SIATP's interactive technical discussions are designed to cover tax issues that do not have clear-cut solutions or situations that may have different interpretations. Over time, these discussions contribute in boosting the overall tax standards in Singapore.

About Mr Darren Koh



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Darren has a keen interest in international taxation, particularly in the field of transfer pricing and the tax efficient supply-chain structuring. Besides being a member of the Bar of England and Wales, Darren is also a member of the Institute of Chartered Accountants in England and Wales, the Chartered Institute of Taxation (United Kingdom), the Malaysian Institute of Accountants and the Institute of Singapore Chartered Accountants.

Darren's interest in international tax is reflected in his comprehensive career starting with PricewaterhouseCoopers in London and later at KPMG in Hong Kong before he moved to the industry with Procter & Gamble (P&G).

He also spent two years with a branch of the United Nations Security Council known as the United Nations Compensation Commission, advising Commissioners on the verification and valuation of war reparation claims filed against Iraq after the first Gulf War. He returned to P&G after his stint at the UN, and later left P&G as Associate Director for the ASEAN/Australasia/India region to pursue a career in academia. Darren's other passion is in education and training, and is always seeking ways to inspire people on the fact that tax is not boring!

This technical event commentary is written by SIATP's Senior Manager, Joanna Wong.