

Since the commencement of the [Income Tax \(Amendment\) Act 2018](#) and the [Goods and Services Tax \(Amendment\) Act 2018](#) on 12 November 2018 and 1 January 2019 respectively, the power of the Inland Revenue Authority of Singapore (IRAS) to investigate tax crimes in relation to both income tax and goods and services tax (GST) was enhanced. In addition, IRAS is also empowered to share information with other law enforcement agencies (LEAs) going forward.

Accredited Tax Advisor (Income Tax and GST) S. Sharma, Partner at Malkin & Maxwell LLP, shared his insights on IRAS' enhanced powers of investigation and the safeguards provided in the law at a recent *Tax Excellence Decoded* session titled "Tax Arrests and More"; the session was organised by the [Singapore Institute of Accredited Tax Professionals \(SIATP\)](#).

Powers to Investigate Tax Crimes

Prior to the enhancements, IRAS had powers under the Income Tax Act (ITA) to require persons to provide information, record statements and take possession of documents or items that constitute evidence of tax offences, and powers under the GST Act (GSTA) to gather information (including documents) relating to a person's business transactions. These powers, however, were deemed inadequate in the evolving landscape.

Second Minister for Finance Lawrence Wong provided the government's rationale for the enhanced powers in his second reading speeches on both amendment Acts when he said, "Tax offenders and criminal syndicates are employing more sophisticated schemes to defraud the authorities. As so, enhanced investigative powers are required to more effectively deal with serious tax offenders, as well as acts of obstruction which may hamper IRAS' investigations and prosecution".

[On 13 November 2019, IRAS exercised for the first time its enhanced powers to arrest alleged key members of a criminal syndicate suspected of perpetuating GST carousel fraud.](#)¹ In a GST carousel fraud, the same goods are traded through a contrived supply chain which eventually results in the export of the goods. The exporter company would claim input GST paid on the exported goods, which is effectively seeking a refund of GST that IRAS never received in the first place. The enhanced investigative powers are aimed at allowing IRAS to deal with such criminal syndicates more effectively.

With new Sections 65B(1A), 65B(1D) and 65F of ITA and Sections 84(1A), 84(1D) and 83E of GSTA, authorised IRAS officers are now given the power of forced entry, the power to carry out body search, and the power to arrest without warrant, respectively. The Minister said that investigation officers of other tax authorities (such as in the UK and the US) have similar powers to facilitate their investigations.

¹ ["IRAS Cuffs for the First Time in Island-Wide Raids"](#), 13 November 2019, Inland Revenue Authority of Singapore

POWERS TO OBTAIN INFORMATION

In addition to the enhanced powers mentioned above, the scope of IRAS' powers to obtain information has also been expanded. IRAS is now empowered under Section 65B of ITA and Section 84 of GSTA to gather from any person all information relevant to its investigations or prosecution of tax offences (for example, information relating to a person's income or assets, business transactions or those of accomplices').



Accredited Tax Advisor (Income Tax and GST) S. Sharma, Partner, Malkin & Maxwell LLP, guided participants through the nature and extent of IRAS' enhanced powers for income tax and GST.

Sharing of Information With Other LEAs

Prior to the legislative amendments, IRAS was only allowed to provide information to LEAs under limited circumstances (for example, pursuant to a court order). On the basis that information may be necessary for the investigation or prosecution of serious crimes, as the activities of criminals (including syndicates) are often multifaceted and may not be limited to tax evasion, both ITA and GSTA have been amended to allow IRAS to share with other LEAs information that is relevant for the investigation or prosecution of specified serious crimes.

The enhancement to allow sharing of information with other LEAs facilitates a whole-of-government approach against serious crimes, and is in line with international trends where tax authorities are increasingly allowed to disclose tax information to other LEAs to combat non-tax crimes.

Checking Against Possible Abuse of Powers

While the government has good reasons to provide IRAS with enhanced powers to investigate and to share information, taxpayers must be cognisant of their own rights and the scope of IRAS' powers to ensure that such powers are not abused.

Fundamentally, any given power must be granted under written law and exercised within its prescribed limits. The powers of CIT and CGST are granted under the ITA and GSTA respectively, and do not arise inherently from the office held. Accordingly, they may only act within the scope of the power granted to them under the relevant tax law. The tax authorities cannot exercise such powers arbitrarily. Instead, the powers have to be exercised reasonably (with proper basis) and for proper purposes (for example, investigation purposes).

Where such power is sought to be exercised, the affected taxpayer may check the actions or proposed actions against the nature and scope of the powers granted. If the exercise of the particular power is questionable, taxpayers should review the various safeguards provided in the tax law to ascertain whether the power has been exercised properly by those authorised to do so.

SAFEGUARDS AGAINST ABUSE

Essentially, all enhanced investigative powers may only be exercised by officers authorised by CIT or CGST and who have received training consistent with those in other enforcement agencies (such as the Singapore Customs and Singapore Police Force).

Power of forced entry

The power of forced entry may only be exercised if entry cannot be gained to a building or place in two situations: firstly, when it involves an investigation of a serious tax offence and there is reason to believe that there is in a place an item relevant to the investigation or prosecution that may otherwise be concealed, removed or destroyed, and secondly, when there is a reason to believe that a person liable to be arrested under ITA or GSTA is in the building or place.

Power to arrest without warrant

The power to arrest without warrant may only be exercised for an investigation of serious tax offences (such as tax evasion), or where a suspect attempts to destroy evidence with a view to hindering or obstructing IRAS' investigations.

Power to carry out a body search

The power to carry out a body search may only be exercised on a person found in a place in which IRAS has lawfully gained entry into for the purpose of investigating a tax offence, and to search for items which may be relevant for investigation or required as evidence. Further, a woman may only be searched by a female officer.

Powers to share information

It is essential to note that information being shared with other LEAs can only be disclosed by CIT or CGST to the head of LEA, either for the purpose of investigation or prosecution of serious crimes as prescribed in the First and Second Schedules of the [Corruption, Drug Trafficking and Other Serious Crimes \(Confiscation of Benefits\) Act \(CDSA\)](#), or where the Comptroller has reasonable grounds to suspect the information affords evidence of the commission of such offences.

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Income tax crimes which are listed as serious offences under CDSA are tax evasion (Section 96 of ITA), serious fraudulent evasion (Section 96A of ITA), giving false information to CIT to obtain or to assist another person to obtain cash payout or Productivity and Innovation Credit (PIC) bonus (or both) (Section 37J(3) of ITA), and falsifying records or using contrivances to obtain or assist another person to obtain cash payout or PIC bonus (or both) (Section 37J(4) of ITA).

GST crimes which are listed as serious offences under CDSA are fraud and improperly obtaining refund of GST (Sections 62 and 63 of GSTA respectively).

In a nutshell, the government has entrusted IRAS with enhanced investigative powers and powers to share information with other LEAs to deal with specific types of criminals and syndicates amid the evolving landscape. As popularised in the Spider Man franchise, "with great power comes great responsibility", and IRAS too would be expected to exercise its enhanced powers with due care to avoid potentially sticky situations.

Taxpayers being investigated should review any notice received or action taken by the tax authorities and decide on the appropriate response. When in doubt over the validity of the power exercised by IRAS, taxpayers may consider obtaining external advice on a timely basis, but should nonetheless keep in mind that non-compliance carries risks of sanctions or penalties if the power exercised is ultimately determined by the court to be valid.



Sharma sheds light on new perspectives about IRAS' additional heft and the first-ever arrests last quarter by the tax authority.

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