

BRITACOM

Expediting Tax Dispute Resolution

Singapore 15 October 2021

Opening

Good afternoon and good evening to colleagues of BRITACOM. I would like to thank the BRITACOM organisers for inviting Singapore to participate in this important webinar and to share Singapore's views on Expediting Tax Dispute resolution.

Topic 1: How to solve the problem that tax policy enforced by the government may be implemented inconsistently in different regions? (10 mins)

In Singapore, the Ministry of Finance is responsible for managing Singapore's fiscal policies, including tax policies.

The Inland Revenue Authority of Singapore (IRAS), where I come from, is the main tax administrator to the Government. We collect taxes that account for about 70% of the Government's Operating Revenue, supporting Singapore's economic and social programmes to achieve quality growth and an inclusive society. We represent the Government in tax treaty negotiations, support tax policy making and draft tax legislations and provide advice on property valuation to the Government. Beyond tax collection, IRAS supports the Government in disbursing various support grants to enterprises.

Tax policy is an integral part of fiscal policy. The main objectives of tax policy in Singapore are:

Revenue raising – This is the traditional aim of tax policy. Tax revenue is a substantial source of funding for government operations.

Promotion of Economic and Social Goals – Tax has been used to influence behaviour towards desirable social and economic goals. For instance, to encourage mechanisation and automation, the government allows accelerated capital allowance for most assets used for business purposes. Tax rebates are given to encourage Singaporeans to have more children.

The fundamental tenet of Singapore's tax policy is to keep tax rates competitive both for corporations as well as individuals. Keeping our corporate rate competitive will help us to continue to attract a good share of foreign investment. Keeping our individual rates low will encourage our people to work hard. It will also make risk-taking worthwhile and encourage entrepreneurship.

To increase the resilience of taxes as a source of government revenue, Goods & Services Tax (GST) was introduced in 1994. The balanced mix of tax on consumption and income reduces the vulnerability of revenue intake to adverse changes in economic conditions and strengthens the resilience of Singapore's fiscal position.

Singapore is a city-state. The city itself is the state. We do not have any regions in Singapore. Consequently, IRAS is the only tax office in Singapore.

For income tax, IRAS is the agency responsible for end-to-end administration of both Corporate Income Tax as well as Individual Income tax. Corporate Income Tax, as well as Gaming Taxes, comes under the Corporate Tax Division. Individual Income Tax is managed by the Individual Income Tax Division.

In terms of tax assessment, IRAS adopts a risk-based approach in the review of tax returns. In the case of Corporate Income tax, companies are profiled based on the complexity of their businesses and tax matters, and risk to revenue. Companies are segregated into two categories – companies with more complex tax affairs and companies with straight forward tax affairs.

Firstly, companies with more complex tax affairs. This takes up approximately 10% of the corporate income tax base. These are the taxpayers that our corporate tax colleagues would spend most of their time on reviewing their tax returns and engaging with them on their issues.

Secondly, companies with straight forward tax affairs. This accounts for the remaining 90% of corporate taxpayers. In general, a low-touch approach is adopted i.e. there is relatively less contact, in fact, sometimes, no contact. Consequently, relatively less time spent on the majority of these taxpayers. Instead, IRAS will select a small percentage of companies falling in this group and review their tax returns in detail.

In the case of Individual Income Tax, the considerations are different. Compliance efforts are focused in four areas. Firstly, timely filing of income tax returns. Secondly, under reporting of revenue and wrongful claims of purchases/expenses by cash-based industries. Thirdly, arrangements that constitute tax avoidance. Lastly, reconciliation of income declaration with assets purchased.

Topic 2: Introduction for the procedures of domestic tax disputes resolution (10 mins)

In Singapore, the Comptroller of Income Tax (CIT) is empowered to raise assessments based on the information furnished by taxpayers or in the absence of information, to the best of his judgement. If a taxpayer does not agree with an assessment raised by the CIT, the taxpayers may object to the assessment. The objection and appeal process comprises four stages, namely (1) objection, (2) Review, (3) Litigation and (4) Finalisation.

First, I will touch on the objection stage. A Notice of Objection must be filed with the CIT when the taxpayer disagrees with the assessment raised by the CIT. This is the same process for both Companies and Individuals. In the case of companies, they need to file their Notice of Objection with the CIT within two months from the date of receipt of the Notice of Assessment. In the case of individuals, they need to file their Notice of objection with the CIT within 30 days from the date of the Notice of Assessment. Taxpayers in Singapore are encouraged to file their objections through IRAS' online portal known as myTax Portal. When the objection is done through the Portal, taxpayers would receive an acknowledgement of the objection filed. Taxpayers in Singapore are also able to file their objections through e-mails or physical letters. In this case, there will be no acknowledgement provided. In the letter of objection, taxpayers are required to provide their precise grounds of objection.

Second, I will move on to the review stage. CIT would review the objection received. As and when necessary, CIT may request for additional information from taxpayers to facilitate the review process. Specifically, in the case of corporate income tax, IRAS has undertaken to review and convey our decision in writing within six months from the date of receipt of the last correspondence with taxpayers with complete information. For complex cases where more time is needed to review the tax issue under objection, IRAS will inform taxpayers of the estimated time required. When IRAS gets back with the decision, taxpayers will be asked to reply in writing whether they agree with the decision on the disputed tax issue by the due date stated in the letter. Where there is no specific due date given, taxpayers are given three months to respond to IRAS. If there is no response received by

the deadline, the objection will be considered as resolved and closed. Where there is agreement between CIT and taxpayer on the tax adjustments or where the objection is considered as resolved and closed, CIT would revise the assessment to incorporate the final tax adjustments. This closes off the entire process.

Where the taxpayer and CIT are unable to reach an agreement on the tax issue under objection, this brings us to the third stage i.e. litigation. CIT will issue a Notice of Refusal to amend. The taxpayer may then appeal to the Income Tax Board of Review (ITBR). The next level would be High Court and the final level would be the Court of Appeal. In terms of the issuance of the Notice of Refusal to Amend, I would also add that there are three other circumstances under which IRAS would issue it. The main objective is to ensure that objections are addressed and resolved in a timely manner. The first scenario is when information requested by IRAS remains outstanding after two years from the date of receipt of the Notice of Objection. The second scenario is when the company did not reply to the decision made by IRAS on the objection within three months from the date of our letter. The third scenario is where the company agreed to IRAS' decision but qualified the agreement with a caveat i.e. the company stated that it reserved the right to re-open the case in the event of a favourable decision/ruling by the Income Tax Board of Review/ high Court/Court of Appeal.

Finally, this brings us to the last stage i.e. finalisation. When the final judgement is given, by this, we are referring to the last judgement made by either the Income Tax Board of Review or High Court and there is no further notice of appeal filed within the statutory time limit or the judgement issued by the Court of Appeal, the process will be finalised. If the final judgement is in CIT's favour, CIT's assessment would be final and conclusive. If the final judgement is in taxpayer's favour, CIT revises the assessment in accordance with the judgement.

Topic 3: Introduction for the mechanism of cross-border tax disputes resolution (10 min)

When it comes to cross-border tax disputes resolution, this can best be summarised by the diagram that I have in the slide that you see.

When it comes to the resolution of dispute, please refer to the second row in the diagram. In terms of domestic mechanisms for the resolution of tax dispute, this would come in under "Appeal and Litigation". I have touched on this in detail in the earlier topic.

In Singapore, we provide the avenue to resolve tax disputes through cross-border mechanisms. This is the Mutual Agreement Procedure (MAP) in short. MAP is a dispute resolution facility provided under the MAP Article in Singapore's DTAs. It is a facility through which IRAS and the relevant foreign competent authority resolve disputes regarding the application of the DTAs. This will include transfer pricing and non-transfer pricing disputes. Usually a MAP is entered into between two competent authorities, but it is possible for IRAS to enter into a multilateral MAP involving three or more competent authorities.

From Singapore's perspective, MAP provides an amiable way for IRAS and the foreign competent authority to agree on the appropriate outcome for the issue on hand. When the agreed MAP outcome between IRAS and the foreign competent authority is accepted by the relevant taxpayers, it is binding on the relevant parties.

As an extension of MAP, where competent authorities are not able to resolve issues through the MAP discussion, arbitration offers a recourse. Under the arbitration provisions in the relevant DTA, where IRAS and the relevant foreign competent authority are unable to resolve the dispute under a

MAP within a stipulated period (generally between two and three years) or a period agreed between the competent authorities, the taxpayer may request in writing for any unresolved issues to be submitted to an arbitration panel.

The decision made by the arbitration panel based on the proposals or information provided by IRAS and the relevant foreign competent authority is binding on both competent authorities. Arbitration provides certainty to taxpayers and helps to resolve cross-border disputes in a more timely manner.

In terms of process, when faced with a cross-border tax dispute, taxpayers are required to notify IRAS of their intention to invoke MAP within the stipulated time limits in the DTA. They are then required to submit the minimum information required to help IRAS understand the request and to ensure that it meets the requirements of the DTA. Occasionally, IRAS may request to meet up with the taxpayers to walk through the request to better understand the case facts and the dispute faced by the taxpayer. When IRAS is certain that the MAP request is valid, IRAS will then contact the other foreign competent authority and engage with them in discussions to resolve the cross-border tax dispute. IRAS requirements on the minimum level of information that is required is published on IRAS' website.

Lastly, I would like to touch briefly on the dispute resolution mechanisms available in Singapore to prevent tax disputes from occurring.

On the domestic front, IRAS is able to provide upfront tax certainty to taxpayers under the advance ruling system. Where taxpayers require certainty on transfer pricing issues, IRAS is able to provide unilateral certainty by issuing a unilateral advance pricing agreement (APA). The requirements and details of both the advance ruling system and the unilateral APA can be found on IRAS' website.

On the international front, at present, limited to only transfer pricing issues, IRAS has an APA program. This is an arrangement between IRAS and the relevant foreign competent authority to agree in advance a set of criteria to ascertain the transfer pricing of the taxpayer's related party transactions for a specific period of time. It provides taxpayers with certainty on their transfer pricing to prevent double taxation i.e. cross border transfer pricing disputes in respect of the transactions covered under the APA will be prevented. Likewise, if you are interested to find out more on IRAS' APA program, please refer to IRAS' website.