



IRAS' New Investigative Powers vs Taxpayers' Rights

Understanding the Enhanced Powers of the CIT

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Facilitated by:
Accredited Tax Advisor (Income Tax & GST) Mr S. Sharma

The [Income Tax \(Amendment\) Act 2018](#)

was gazetted on 12 November 2018, codifying Budget 2018 income tax changes as well as other non-budget tax changes arising from the periodic review of Singapore's income tax system. Among the non-budget tax changes were the enhancement of the Inland Revenue Authority of Singapore (IRAS)' powers to investigate tax crimes and the amendment to allow the sharing of information by IRAS with other law enforcement agencies (LEAs).

At a recent Tax Excellence Decoded session organised by the [Singapore Institute of Accredited Tax Professionals \(SIATP\)](#), Accredited Tax Advisor (Income Tax and GST) S. Sharma, Partner at Malkin & Maxwell LLP, shed light on the legislative changes and provided insights on how taxpayers can navigate the new landscape.

IRAS' Enhanced Powers to Investigate Tax Crimes

Prior to 12 November 2018, IRAS had the powers to require persons to provide information, record statements and take possession of documents or items that constitute evidence of tax offences. However, these powers were deemed insufficient by the authorities amid the changing environment.

In his second reading on the Income Tax (Amendment) Bill 2018, Second Minister for Finance Lawrence Wong said, "Tax offenders and criminal syndicates are becoming more obstructive and are employing more sophisticated schemes to defraud the authorities and cover up their crimes... 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".

With the new legislative amendments (broadly, amendments made to Sections 2, 4 and 65B, and the enactment of new Sections 65F to 65K in the Income Tax Act (ITA)), IRAS' investigative powers have been enhanced. Authorised IRAS officers are now given the power of forced entry (conferred by new Section 65B(1A)), the power to carry out body search (conferred by new Section 65B(1D)), and the power to arrest without warrant (conferred by new Section 65F). In addition, the new Sections 65G to 65K also confer various powers to the arresting officer while providing safeguards to taxpayers.

For example, Section 65G on no unnecessary restraint empowers the arresting officer to use reasonable means necessary to make the arrest (if the person forcibly resists or tries to evade arrest), while Section 65H empowers the arresting officer to be armed with batons and other accoutrements. Under Section 65I, an arresting officer may enter and search a building or place if he has reasons to believe that a person liable to be arrested is inside the building or place, while under Section 65J, the Comptroller of Income Tax (CIT) or investigation officer may examine orally an arrested person who need not state anything which is subject to legal privilege or where he is under certain statutory obligation to observe secrecy. The CIT or investigation officer may also dispose of items furnished or seized and not produced in criminal proceedings under Section 65K.

POWERS TO OBTAIN INFORMATION UNDER SECTION 65B

Under Section 65B, the scope of IRAS' information-gathering powers has been enhanced. IRAS is no longer restricted to only gathering information relating to taxpayers' income, assets and liabilities. Instead, it is now allowed to gather all information relevant to the investigations or prosecution of tax offences from any person (for example, information relating to business transactions or that of accomplices).

IRAS' powers to obtain information under Section 65B apply notwithstanding the duty of secrecy under the Banking Act or Trust Companies Act (relevant laws). Under Section 65D, a person who is issued notice or required to give information (or produce documents) is not excused from doing so only by reason that he is under statutory duty of secrecy. The person who in good faith complies with the notice to provide information will not be breaching any statutory provision on secrecy or relevant laws. Section 65D does not apply to information required for investigation or prosecution of tax offences.

POWERS TO OBTAIN INFORMATION FOR INTERNATIONAL TAX COMPLIANCE

Under Section 105F of the ITA, the CIT is empowered to obtain information for the purpose of complying with an exchange of information request by a foreign tax authority (Section 105D) and for purposes connected with international tax compliance agreements (Section 105N).

Amendments have been made to Sections 105F and 105N to specifically exclude Section 65B(1D) from their ambit, such that IRAS' new investigative powers under Section 65B(1D) cannot be used to obtain information for the purpose of international tax compliance.



Accredited Tax Advisor (Income Tax and GST) S. Sharma, Partner, Malkin & Maxwell LLP, shared his insights on IRAS' increased powers and their implications.

SAFEGUARDS AGAINST ENHANCED INVESTIGATIVE POWERS

Various safeguards have been put in place to restrict the way IRAS can exercise its enhanced investigative powers. Fundamentally, all enhanced investigative powers may only be exercised by officers specially authorised by the CIT, and who have received training consistent with those in other law enforcement agencies (such as Singapore Customs).

Specifically, the power to arrest without warrant may only be exercised for an investigation of serious tax offences, or where a suspect attempts to destroy evidence with a view to hindering or obstructing IRAS' investigations. An arrested person must be produced in Court without unnecessary delay and must not be detained for more than 48 hours. An arrested person may be released on bail or bond.

The power of forced entry can only be exercised if entry cannot be gained to a building or place in two situations. The first situation is when it is for an investigation of a serious tax offence (such as tax evasion or wilful action to obtain a Productivity and Innovation Credit bonus) 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. The second situation is when there is reason to believe that a person liable to be arrested under the ITA is in the building or place.

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. There is also an additional safeguard where a woman may only be searched by a female officer.

Sharing of Information by IRAS with Other LEAS

Previously, under Section 6 of the ITA, 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, and that the activities of criminals (including syndicates) are often multi-faceted, Section 6 of the ITA has been amended to allow IRAS to share information with other LEAs for the investigation or prosecution of specified serious crimes, so as to facilitate the whole-of-government approach against serious crimes.

Specifically, the new Section 6(10B) allows the CIT to furnish to the head of a LEA information either required for investigation or prosecution for offences specified in the First or Second Schedule to the [Corruption, Drug Trafficking and Other Serious Crimes \(Confiscation of Benefits\) Act](#), or information that the Comptroller has reasonable grounds to suspect affords evidence of the commission of such offences.

Knowing Your Rights: Navigating the New Landscape

Amid the changing landscape, it would be helpful for taxpayers to familiarise themselves with the CIT's enhanced powers and their limitations, and take cognisance of their rights in relation to the CIT's new powers.

SAFEGUARDS ON SHARING OF INFORMATION

The information being shared is to be disclosed by the CIT only to the head of the LEA for the purpose of investigation or prosecution of serious crimes. The head of the LEA is defined as the Commissioner of Police, Director of Commercial Affairs Department, Director of Central Narcotics Bureau, and the head or equivalent of any other LEA. Any unauthorised onward disclosure of information would constitute an offence.

On the CIT's enhanced powers to obtain information, it should be noted that a person is not obliged to disclose (including through production of a document) any information which he is under statutory obligation (other than Sections 128, 128A, 129 and 131 of the [Evidence Act](#)) to observe secrecy, or any information subject to legal privilege based on Section 65B(2).

Separately, taxpayers should note that the application of IRAS' new investigative powers varies between information sought for domestic tax compliance and international tax compliance. Unlike domestic cases, IRAS' new powers under Section 65B(1D) cannot be used to obtain information for the purposes of Parts XXA and XXB of the ITA (which deal with exchange of information under Avoidance of Double Taxation Agreements and Exchange of Information Arrangements, and with International Agreements to Improve Tax Compliance respectively).

In the event of an arrest, Section 65G provides that an arrested person must not be subject to more restraint than is necessary, and that handcuffs or other similar means of restraint must not be used for the purpose of punishment.

Conclusion

By understanding the CIT's powers, taxpayers may be able to review any exercise of powers by IRAS and assess its validity. If the validity is questionable, taxpayers can consider obtaining external advice on their rights and liabilities before deciding on the next course of action. In deciding on the next steps, taxpayers should be aware that non-compliance carries risks if the power exercised is ultimately determined (for example, by the Court) to be valid. Nonetheless, it is essential that taxpayers are mindful of their options and make informed decisions.

In this new landscape, it is imperative to keep abreast of the changes to the tax legislation and IRAS' practice on both investigative powers and sharing of information. Most importantly for you as a taxpayer, know your rights and those of the CIT's.

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Facilitator



Mr S Sharma

Partner

Malkin & Maxwell LLP

Accredited Tax Advisor (Income Tax and GST)

T: +65 6327 1088

E: sharma@malkin-maxwell.com

Felix Wong is Head of Tax, and Angelina Tan is Technical Specialist, SIATP. This article is based on SIATP's Tax Excellence Decoded session facilitated by Accredited Tax Advisor (Income Tax and GST) S. Sharma, Partner at Malkin & Maxwell LLP.

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