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25. REVENUE AND TAX LAW

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I. Introduction

25.1 The Supreme Court delivered six decisions in 2019, all decided in the High Court. They covered a range of issues besides substantive issues of revenue law, such as tax crime, enforcement by the tax authority to collect unpaid taxes and judicial review.

25.2 There are therefore, in our view, six cases for the year 2019 that had some relevance to revenue law:

Tax type	High Court	Court of Appeal
Income tax	3	No decisions
Stamp duty	2	
Property tax[1]	1	

1 The sole case on property tax went on appeal before the Court of Appeal and the appeal was dismissed in February 2020. For ease of reference, the authors have covered both the High Court and Court of Appeal decisions in the review this year.

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II. Income tax

A. Tax offences and sentencing involving penalties

25.3 In *Allswell Marketing Pte Ltd v Public Prosecutor*[2] ("*Allswell*"), the taxpayer was convicted by a magistrate on two charges relating to its failure to file income tax returns for more than two years. The relevant statutory provision for these charges was under s 94A(3) of the Income Tax Act[3] ("ITA"), which states:

> Any person who fails or neglects without reasonable excuse to comply with section 62 or 71(1) in respect of any year of assessment for 2 years or more shall be guilty of an offence and shall be liable on conviction to —
>
> (*a*) a *penalty* equal to double the amount of tax *which the Comptroller assesses* him to be liable for that year of assessment after determining, to *the best of the Comptroller's judgment*, the amount of his chargeable income; and
>
> (*b*) a fine not exceeding $1,000, and in default of payment to imprisonment for a term not exceeding 6 months.
>
> [emphasis added]

25.4 This provision therefore provides for both a penalty and a fine when sentencing a taxpayer that is convicted by the court. In *Allswell*, the magistrate found the taxpayer guilty and sentenced it to a fine as well as a penalty that was double of the tax assessed by the Comptroller of Income Tax ("the Comptroller") for the years of assessment 2010 and 2011, that is, double of $142,388.[4] The taxpayer disputed the amount of tax that should be assessed and argued that it ought to be in the range of $19,000.[5]

25.5 On appeal to the High Court, the taxpayer did not appeal against the conviction or the fines, but appealed only against the penalty ordered.[6] The sole issue turned on the interpretation of s 94A(3)(*a*) regarding the Comptroller's assessment of the tax relating to the years of assessment in question, which ought to have been done "to the best of the Comptroller's judgment".

2 [2019] 5 SLR 684.
3 Cap 134, 2008 Rev Ed.
4 The penalty was therefore $284,776.
5 For the facts of the proceedings before the magistrate, see *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [1]–[10].
6 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [11].

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25.6 The High Court judge, See Kee Oon J, observed that the court had no discretion whether to order the penalty as it was mandatory, or to determine its quantum once the amount of tax was assessed. The only basis for determining the penalty and its quantum was the Comptroller's assessment.[7]

25.7 The taxpayer's main line of argument was based on the availability of a right of appeal against the Comptroller's assessment to the Income Tax Board of Review ("the Board") (and possibly thereafter, to the High Court and Court of Appeal) under Pt XVIII of the ITA. As the Comptroller's assessment may be found to be inaccurate by the Board or the courts, the relevance of such finding in relation to the Comptroller's assessment for the purposes of s 94A(3)(*a*) arose for consideration in *Allswell*.[8]

25.8 Taking a step back, See J first addressed the "best judgment" requirement in s 94A(3)(*a*) and held that:[9]

> … the Comptroller must have made what he honestly believed to be a fair determination of the taxpayer's chargeable income based on the material available to him. This decision must not be capricious, vindictive, wholly unreasonable, or against the interests of good administration …

This view was essentially based on the well-known *Wednesbury* principle,[10] which was applied in an earlier revenue case in Singapore, namely, *JD Ltd v Comptroller of Income Tax*.[11]

25.9 See J then considered two differing scenarios: where the Comptroller's assessment has been revised on appeal at the time of sentencing in s 94A(3) proceedings, and where the appeal is still pending.

25.10 Where the assessment had been revised by the Board or the courts, the court found that any issue of the Comptroller disregarding the revised assessment was more illusory than real. Under s 80(14) of the ITA, the Comptroller had a statutory obligation to revise his assessment in line with the decision of the Board and courts. It was not open to the Comptroller to refuse to do so. Hence, even though a penalty under s 94A(3)(*a*) would be imposed on the basis of the Comptroller's assessment as it stood on the date of sentencing, the Comptroller was

7 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [31]–[32] and [34].
8 See para 25.3 above.
9 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [37]–[38].
10 See *Associated Provincial Picture Houses, Ltd v Wednesbury Corp* [1948] 1 KB 223.
11 [2006] 1 SLR(R) 484. For previous review of this case, see (2005) 6 SAL Ann Rev 464 at 465–467, paras 20.5–20.16.

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expected to and would revise the assessment in line with the decision of the Board and courts. There was "no issue of the sentencing court having to impose an anomalous or artificial order on the wrong factual premise". There would be no manifestly absurd or unreasonable outcomes.[12]

25.11 Where there is a pending appeal on the tax assessment, See J reiterated the point that s 94A(3)(*a*) makes no reference to the appeal process. The relevant assessment for computing the penalty is therefore the Comptroller's assessment at the time of sentencing. There is also nothing in the ITA to indicate that sentencing is to be deferred until the statutory appeal process has been exhausted.[13] This would not lead to a potentially absurd result when an assessment is revised downwards in the appeal process, since the court may be invited to exercise its revisionary powers:[14]

> No serious prejudice need result from this interpretation. I am conscious that should an appeal under Pt XVIII of the ITA succeed, this may result in a revised assessment and a lower penalty or possibly even none at all. Where the matter has proceeded before the High Court on appeal, the court may be invited upon a taxpayer's successful appeal to exercise its revisionary powers to revise the initial order for the penalty made below. Correspondingly, the Prosecution should take steps to rectify the initial order for the penalty, to set the record straight in the interests of fairness and justice.

25.12 On a procedural point, See J also ruled that under the relevant provisions of the Criminal Procedure Code,[15] the sentencing court has a discretion to adjourn proceedings in limited instances.[16] This includes primarily the instance:[17]

> … where the offender mounts a credible challenge to the Comptroller's assessment on the ground that he has not exercised his best judgment. This is since the Comptroller's exercise of best judgment is a pre-requisite for the imposition of the penalty.

25.13 On the facts, the court found that the taxpayer did not mount a credible challenge on the ground of the Comptroller's failure to exercise his best judgment in making the tax assessments. The magistrate was also correct to proceed with the sentencing, without adjourning the same due to the tax appeal pending before the Board. The appeal was therefore dismissed.[18]

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12 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [41]–[50].
13 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [51]–[55].
14 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [59].
15 Cap 68, 2012 Rev Ed.
16 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [62]–[67].
17 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [64].
18 *Allswell Marketing Pte Ltd v Public Prosecutor* [2019] 5 SLR 684 at [75]–[76].

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25.14 It may be helpful to highlight here that penalties under the ITA, including that under s 94A(3)(*a*), do *not* excuse or relieve the taxpayer from paying the taxes actually assessed. This is made clear by s 99 of the ITA. In other words, the penalties (or the fines as well, for that matter) are *wholly* punishments for the offences that the taxpayer is convicted of. That being so, the observations by See J on the availability of the court's revisionary powers to change an initial order imposing penalties are to be welcomed, since the punitive characteristic of the penalty persists even if it is revised downwards.[19]

B. Capital allowances and the meaning of control

25.15 The background to capital allowances and how a balancing charge may arise was succinctly summarised by the High Court in the case of *BZZ v Comptroller of Income Tax*[20] ("*BZZ*"):

> In the scheme of things, a taxpayer is given capital allowances on his capital assets to cover capital depreciation. When the capital asset is sold at a price exceeding the amount of capital allowances not claimed, or what is called the 'tax written-down' value, the Comptroller will recover the difference from the seller as the 'balancing charge', in this case, $40,476,347. There is no dispute that if a balancing charge were to be levied for the sale in this case, $40,476,347 would be the correct amount to be charged.

25.16 The issue in *BZZ* was whether an exception to the imposition of a balancing charge as provided in s 24 of the ITA was applicable. *BZZ* involved a sale of a property from the appellant to the trustee ("BMT") of a real estate investment trust ("FCOT"). The parties and their relationships in terms of shareholding and ownership are mentioned in the course of the judgment[21] and it is presented here pictorially as follows for ease of understanding:

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19 First-named author's comment: To alleviate the need for either the taxpayer or Prosecution to apply to the courts for a revision, it is suggested that consideration may be given as to whether the Income Tax Act (Cap 134, 2008 Rev Ed) may be appropriately amended to provide for a revision as a matter of course, either at the volition of the Comptroller or on the request of the taxpayer to the Comptroller to make a refund. If a dispute arises between the taxpayer and the Comptroller, an application may then be made to the courts to resolve the matter. This would result in cost savings for both the taxpayer and the Comptroller.

20 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [3].

21 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [1], [8], [9] and [11].

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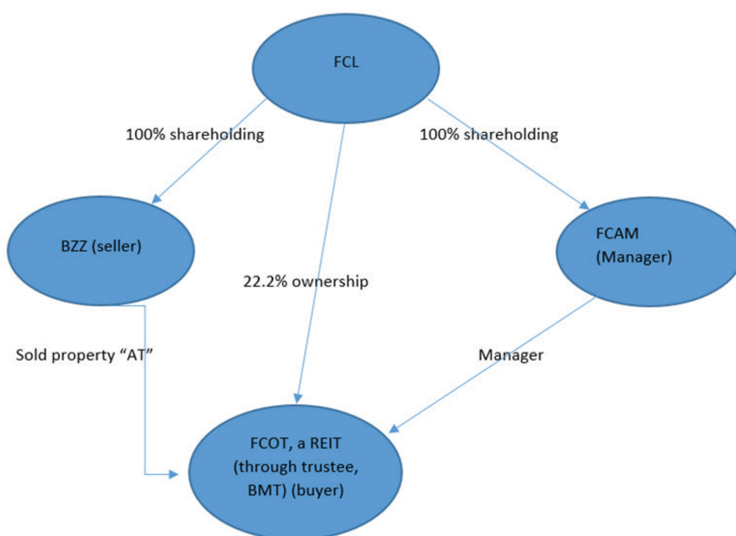

25.17 The issue turned on the meaning of "control" in s 24(1) of the ITA, in the context of control between the seller and the buyer allowing for an exception to imposing a balance charge. In this connection, s 24(1) provides:

> This section, except subsection (5), shall have effect in relation to any sale of any property where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and buyer are bodies of persons and some other person has control over both of them, and the sale is not one to which section 33 applies.

25.18 The appellant argued that control was to be contemplated in a wider sense, and this would be found in how the manager (FCAM) controlled BMT. The accounts of FCOT and FCL were also consolidated. Such control over BMT could be assumed, even though BMT also owed fiduciary duties to FCOT.[22]

25.19 The judge, Choo Han Teck J, ultimately rejected the appellant's arguments. He noted that BMT as trustee had duties and obligations rising above those to the manager, so the apparent control of the manager over BMT was not absolute. Choo J also noted that the "question of control is not about the control between the Manager and BMT, but by FCL over the appellant and FCOT".[23]

22 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [7]–[10].
23 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [9].

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25.20 Choo J also did not accept the argument that control by FCL could be exercised through the manager and BMT, as s 24(1) envisaged control to refer to the seller and the buyer. Legally, FCL did not control the buyer, BMT.[24] Further, FCL only had a 22.2% ownership interest in FCOT, which added to make "a much more complex situation" in relation to BMT's "core duties".[25] While FCL might be said to have "substantial influence" over FCOT, this was not control.[26] To hold otherwise would be "contrary to the true relationship of the entities," and would "give rise to a myriad of exceptions that will tax the simple and sensible application of [s 24]".[27]

25.21 In this case, Choo J held that the control envisaged under s 24(1) must refer to the seller and the buyer, and not to the control between the manager and BMT.[28]

25.22 Additionally, reference was made by the court to FCL's (limited) ownership interest of 22.2% in FCOT. The court did not say how this factored into the analysis of whether or not FCL had control over FCOT through the manager's control over BMT, for the purposes of s 24.[29]

C. Comptroller as creditor in bankruptcy proceedings

25.23 *DBS Bank Ltd v Davis, Colin Niel*[30] is not strictly on revenue law. It is included here to simply highlight that the Comptroller decided to defer his claim for outstanding income taxes to the determination of the Official Assignee ("OA"), in a case where a taxpayer had been made a bankrupt and some money was due to the taxpayer after the sale of a property by a bank. The brief facts are as follows:[31]

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24 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [10].
25 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [11].
26 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [12].
27 *BZZ v Comptroller of Income Tax* [2019] SGHC 252 at [12].
28 First-named author's comment: As mentioned, Choo Han Teck J noted that the manager's apparent control over BMT was not absolute. Section 24 of the Income Tax Act (Cap 134, 2008 Rev Ed) uses the term "control" without qualifying it as either absolute or otherwise, so the criterion of absolute control does not necessarily appear to be the test. The language in s 24 suggests control does not have to be absolute, otherwise the exception to imposing a balance charge would become limited to a very small number of cases only.
29 First-named author's comment: It is suggested that the following question may be asked: Does the ownership necessarily *undermine* whatever control FCL already has over FCOT, or on the contrary does it actually *add* to such control? If it adds to such control, this would affect the analysis as to how s 24 of the Income Tax Act (Cap 134, 2008 Rev Ed) would apply.
30 [2019] SGHC 245, also reported at paras 17.80–17.87 and 20.26–20.34.
31 *DBS Bank Ltd v Davis, Colin Niel* [2019] SGHC 245 at [1]–[4].

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(a) The taxpayer, Jannie Chan, mortgaged an apartment to the plaintiff (a bank) and defaulted on her mortgage payments. In May 2018, the plaintiff obtained possession of the property pursuant to a court order.

(b) In September 2018, Chan granted Davis and another person an option to purchase the apartment. The purchasers exercised the option and paid the deposit. Completion of the sale was scheduled in November 2018.

(c) Before completion, Chan's creditors filed a bankruptcy application against her. The sale was therefore not completed. The court awarded damages to the purchasers (including a refund of their deposit).

(d) In May 2019, the plaintiff sold the mortgaged apartment. There was an excess of about $210,000 from the mortgagee sale. This would ordinarily have been due to Chan.

(e) However, two weeks after the mortgagee sale, Chan was made a bankrupt. Her property thus vested in the OA. The plaintiff therefore took out this interpleader summons to determine to whom it should pay the balance $210,000.

25.24 Initially, the Comptroller laid claim to part of this $210,000. This was because Chan owed the Comptroller around $140,000 in income tax arrears. However, the Comptroller later decided to defer his claim to the OA's determination and filed two proofs of debt with the OA.[32] The judgment did not mention the *basis* of the Comptroller's initial submission that he was entitled to payment out of the disputed amount.

25.25 Under s 89 of the ITA, the Comptroller may bring a suit against a taxpayer to recover unpaid income taxes. However, any judgment debt remains an unsecured debt. Having said that, the Comptroller enjoys some priority in the payment of debts in the event of a winding up of a taxpayer where it is a company (under s 328(1)(*g*) of the Companies Act),[33] and in the event of the bankruptcy of a taxpayer who is an individual (under s 90(1)(*g*) of the Bankruptcy Act).[34] Whether this was a reason why the Comptroller was prepared to defer his claim to the OA's determination is not stated in the judgment.[35]

32 *DBS Bank Ltd v Davis, Colin Niel* [2019] SGHC 245 at [6].
33 Cap 50, 2006 Rev Ed.
34 Cap 20, 2009 Rev Ed.
35 Similar priority of payment applies to the Comptroller of Goods and Services Tax under these statutory provisions.

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III. Stamp duty

A. Whether stamp duty is chargeable for payment by a landlord to satisfy tenants' equity to recover vacant possession

25.26 The High Court had to decide this issue in *Ong Beng Chong v Commissioner of Stamp Duties*.[36]

25.27 The appellant owned a plot of land which was let to tenants, who had built seven terrace houses on the land. The appellant wanted to recover vacant possession of the land for redevelopment.

25.28 The appellant signed five agreements with the tenants (except one) to recover vacant possession of six of the houses in return for payment to these tenants.[37] It was common ground that the appellant had agreed to make these payments because the tenants owned the houses and they had an equity that needed to be satisfied before the appellant could recover vacant possession of his land ("tenants' equity").[38] Separately, the Court of Appeal ordered the remaining tenant of the seventh house to deliver vacant possession of the house to the appellant in exchange for $200,000 in compensation.

25.29 The Commissioner of Stamp Duties ("the Commissioner") levied stamp duties of $19,700 and penalties of $35,800 on the five agreements and the order of the Court of Appeal. The appellant appealed to the High Court.

25.30 Choo Han Teck J noted that under s 22 of and Art 3 of the First Schedule to the Stamp Duties Act[39] ("SDA") (read with the definition of a "conveyance on sale" under s 2 of the SDA), stamp duty is chargeable on the six instruments if the following requirements are satisfied:[40]

> (a) the instruments are executed in Singapore or relate to any property situated in Singapore;
>
> (b) the houses are immovable property; and
>
> (c) there is a conveyance, assignment or transfer on sale of the houses.

36 [2019] 4 SLR 1421.
37 These amounts ranged between $200,000 and $250,000.
38 *Ong Beng Chong v Commissioner of Stamp Duties* [2019] 4 SLR 1421 at [2].
39 Cap 312, 2006 Rev Ed.
40 *Ong Beng Chong v Commissioner of Stamp Duties* [2019] 4 SLR 1421 at [4].

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25.31 Choo J held that the first two requirements were satisfied;[41] but *not* the third requirement. He found that the appellant had made payment to the tenants to satisfy the tenants' equity in order to recover vacant possession of the land. Paying compensation to satisfy tenants' equity did *not* fall within the meaning of "conveyance on sale" under the SDA. The fact that the tenant (and not the appellant) owned the houses only meant that the compensation had to be higher to reflect the expenses the tenants had incurred in building or purchasing the houses.[42]

25.32 This case is now an authority for the proposition that an instrument under which payment is made to satisfy a tenant's equity for delivery of vacant possession of the property is not subject to stamp duty.

B. Judicial review of minister's power to grant remission

25.33 *Re Asia Development Pte Ltd*[43] is a follow-up case from *Asia Development v Commissioner of Stamp Duties*[44] ("*Asia Development*"). In the earlier case, the High Court (Choo Han Teck J) granted the applicant's application for the Commissioner to state a case to the High Court under the SDA. However, that case had been stayed due to a new application (*vide* an originating summons in the current case) for judicial review of the minister's decision refusing the applicant's request for remission of additional buyer's stamp duty ("ABSD") amounting to more than $500,000.[45]

25.34 The applicant argued that two significant events caused its failure to comply with stipulated deadlines to develop and sell the two semi-detached houses on the property in question. The deadline to develop (but not the deadline to sell) was extended by the Commissioner by nearly three months. The two events involved a requirement by the Urban Redevelopment Authority ("URA") that the applicant acquire a segment of remnant land adjacent to its property, and secondly, the applicant's termination of its project manager on the grounds of corruption.[46]

41 *Ong Beng Chong v Commissioner of Stamp Duties* [2019] 4 SLR 1421 at [5].
42 *Ong Beng Chong v Commissioner of Stamp Duties* [2019] 4 SLR 1421 at [9]. In view of the outcome, the High Court further held (at [10]) for avoidance of doubt that no penalties pursuant to s 46 of the Stamp Duties Act (Cap 312, 2006 Rev Ed) were payable.
43 [2020] 3 SLR 713.
44 [2018] SGHC 41, which was reviewed last year: see (2018) 19 SAL Ann Rev 721 at 736–737, paras 24.49–24.55.
45 *Re Asia Development Pte Ltd* [2020] 3 SLR 713 at [4].
46 *Re Asia Development Pte Ltd* [2020] 3 SLR 713 at [2]–[3].

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25.35 On these matters, the High Court (Choo J) disagreed with the applicant that it was "entitled to a remission of the ABSD as of right if the conditions imposed could not be met because of circumstances beyond his control" since the provisions on ABSD "are fiscal in nature and are not regulatory or punitive".[47]

25.36 Further, the deadlines imposed for the completion and sale of the houses were imposed by the minister within the discretion conferred on him by Parliament. His refusal to extend the deadlines could not be construed as an unreasonable or wrong exercise of the discretion conferred on him.[48]

25.37 Choo J also rejected the applicant's argument that the power conferred on the Minister to grant or refuse a remission had to be exercised by him *personally*, and not by his officer. In this case, it was the Chief Tax Policy Officer who made the decision. In so ruling, Choo J applied the English case of *Carltona Ltd v Commissioners of Works*[49] ("*Carltona*") "for the proposition that a reference to powers conferred on a Minister may be exercised by officials in the ministry of that Minister".[50] In a similar vein, Choo J agreed with this *dictum* by Lord Greene as regards the regulation under consideration in *Carltona*:[51]

> In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department.

25.38 Choo J considered that the Chief Tax Policy Officer had the requisite seniority and power to decide on behalf of the minister.[52] The application was therefore dismissed, as the decision not to grant a further extension of time was not justiciable.

47 *Re Asia Development Pte Ltd* [2020] 3 SLR 713 at [10].
48 *Re Asia Development Pte Ltd* [2020] 3 SLR 713 at [11].
49 [1943] 2 All ER 560.
50 *Re Asia Development Pte Ltd* [2020] 3 SLR 713 at [12].
51 Cited at *Re Asia Development Pte Ltd* [2020] 3 SLR 713 at [13].
52 [2020] 3 SLR 713 at [14].

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25.39 In following *Carltona*, it is worth noting that Choo J took cognisance of the actual seniority of the official who decided on the request for remission of ABSD.[53]

IV. Property tax

A. Annual value for cinema in shopping complex

25.40 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor*[54] was a dispute over the annual value for the year 2008 of the cinema complex on the seventh floor of Plaza Singapura. The appellant owns Plaza Singapura.

25.41 The previous owner of Plaza Singapura had leased the seventh floor to Golden Village Multiplex Pte Ltd ("GV") as a bare shell. GV spent around $7.8m to transform it into a cinema complex. In 2008, the property comprised a cinema complex, an office space, and a retail space.

25.42 The respondent assessed the annual value of the property for 2008 at over $3.2m. However, the appellant claimed the annual value should only be around $2.2m.

25.43 The High Court dismissed the appellant's appeal. Firstly, Mavis Chionh JC held that the Chief Assessor did *not* bear the onus of proof in the appeal.[55] The Property Tax Act[56] ("PTA") did not expressly specify on whom the burden fell.[57] But Chionh JC held that the appellant had the *legal* burden of proving that the Chief Assessor's decision was wrong. However, once the appellant had placed before the court the appellant's computations of the appropriate annual value and the evidence for those computations, the *evidential* burden would shift to the Chief Assessor.[58]

53 First-named author's comment: It is suggested there would be no real dispute here regarding the *seniority* of the Chief Tax Policy Officer as the responsible official in deciding on the remission request. It remains to be seen whether there may be a possibility of a challenge in a future case if another responsible official making the decision is perceived as *not* having the requisite seniority or ability to decide.

54 [2020] 3 SLR 510. In the interest of disclosure, the first-named author was counsel for the appellant before the High Court (but not the Court of Appeal).

55 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [36].

56 Cap 254, 2005 Rev Ed.

57 Unlike s 80(4) of the Income Tax Act (Cap 134, 2008 Rev Ed) and s 52(3) of the Goods and Services Tax Act (Cap 117A, 2005 Rev Ed).

58 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [35].

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25.44 Secondly, Chionh JC decided that the PTA did not prohibit the respondent from including a single annual value in the valuation list for 2008 in respect of the property.[59] This was despite the property having three different components – cinema complex, office space and retail space – with each having its own physical condition and being used for a different purpose. The *rebus sic stantibus* principle required each component to be valued according to its physical nature and condition as well as its usage.[60] It was not disputed that the respondent had power to assess tenements separately.[61]

25.45 Thirdly, Chionh JC decided that GV's fitting-out works were *fixtures*. Hence, they were to be *included* in assessing the annual value of the property. The items in question included leasehold improvements (such as air-conditioning, glass and shop front, fire protection system), projection equipment (including projectors, screens, sound system, wall drapes and curtains), cinema seats, signage, floor covering (carpets for the cinemas), wheelchair lifts to the cinema and a video display system.

25.46 Chionh JC extensively reviewed the applicable law concerning fixtures and chattels. Whether the items were fixtures or chattels depended on the *degree* and the *purpose* of annexation (with the purpose of annexation having greater importance). One ought also to ask whether the item in question was placed on the land in order to be *enjoyed as a chattel*, or whether it *enhanced the use of the land* and therefore its value.[62]

25.47 Ultimately, she found that all the disputed items were integral to GV's operation of cinemas on the property. GV did not install them to be enjoyed as chattels in themselves. Rather, the items were to enhance the experience of GV's customers when watching movies on the property.[63]

25.48 Fourthly, Chionh JC held that the Valuation Review Board did not err in accepting the Chief Assessor's determination of the annual value of the property in 2008. The Chief Assessor's valuer had used the

59 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [42] to [45].
60 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [39].
61 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [41].
62 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [68].
63 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [99].

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profits method for the cinema component of the property and the rental comparison method for the office and retail components.[64]

25.49 The profit method seeks to determine the rental value of a property based on the profits which may be expected to be generated by the business occupying the property.[65] Chionh JC found that GV was an "average occupier". Hence, it was reasonable to use GV's profit and loss statements (both pre-2008 and post-2008) to determine the amount of rent which a hypothetical tenant would be willing to pay for the property.[66]

25.50 As for the rental comparison method,[67] the appellant only objected to applying it to value GV's office. It was common ground that conceptually, the rental rate for a larger area would be lower than for a smaller area due to size adjustments.[68] Ultimately, Chionh JC accepted the valuation by the respondent's valuer of the property.

25.51 The High Court has clarified the law as to which party bears the burden of proof in appeals to the High Court under the PTA. The case also gives a comprehensive overview of the relevant authorities concerning fixtures and chattels (albeit focusing on property tax).[69] The court then proceeded to apply the law to the various items to ascertain if they were fixtures or chattels. This case is a useful authority for anyone who has to deal with similar issues in future.

(1) Court of Appeal's decision

25.52 The appellant finally appealed to the apex court. The Court of Appeal (Andrew Phang Boon Leong JA, Tay Yong Kwang JA and Belinda Ang Saw Ean J) dismissed the appeal in February 2020.[70] As the grounds of this *ex tempore* judgment were available at the time of writing, it would

64 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [154].

65 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [125].

66 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [130] and [136].

67 The rental comparison method, in brief, seeks to ascertain the rental value of a property based on rent payable for comparable properties (and making necessary adjustments).

68 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [152].

69 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510 at [58]–[68].

70 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 1 SLR 621.

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be convenient to include a discussion here (rather than in next year's Ann Rev).

25.53 The appellant did not pursue the first three grounds of appeal as canvassed before the High Court, but only challenged the decision of the High Court on the basis of the fourth ground, that is, the determination of the annual value by the Chief Assessor which was accepted by the Valuation Review Board and affirmed by the High Court.[71] In doing so, the appellant also "remodelled its arguments" before the Court of Appeal in two ways.

25.54 First, the appellant argued that GV's obligation as tenant to remove the fixtures at the end of the lease meant that these fixtures ought to be excluded from the application of the *rebus sic stantibus* principle. The Court of Appeal rejected this argument on the basis of the established common law position that fixtures are part of the land and are therefore subject to property tax assessment, since the statutory exceptions did not apply here. Further, the application of the *rebus sic stantibus* principle meant a consideration of the property as it was in 2008 and not the (later) hypothetical scenario where the fixtures had to be removed at the end of the tenancy.[72] As fixtures, it did not matter whether they were installed by the tenant or landlord.[73]

25.55 Second, the appellant argued that the hypothetical tenant would not ascribe any value to the fixtures, on the basis that *usability* to another tenant does not mean they would be *valuable* to the extent of fetching a higher rent. The Court of Appeal rejected this argument as the difference between usability and value had been overstated or even exaggerated. Further, the argument took annual value out of the sphere of the hypothetical tenant and turned it into a question of each tenant's personal preference instead. The court accepted the Chief Assessor's argument that most of the fixtures were generic and fundamental to the use of the premises as a movie theatre, and that the appellant had not shown why these generic fixtures might be found to be usable but of no value to the hypothetical tenant.[74]

71 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 1 SLR 621 at [2].
72 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 1 SLR 621 at [3]–[5].
73 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 1 SLR 621 at [6].
74 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 1 SLR 621 at [10]–[12].

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