26. REVENUE AND TAX LAW

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I. Introduction

26.1 The Supreme Court delivered seven decisions in 2020 relating to various tax types. They covered a range of substantive issues of revenue law, such as deduction for research and development expenses, taxation of employment income, tax avoidance, judicial review in remission cases, determination of annual value, and offences relating to false entries in tax returns. There is also an eighth case that has some relevant *dicta* relating to expert evidence on foreign tax laws in court litigation.

26.2 There are therefore, in our view, eight cases for the year 2020 that had some relevance to revenue law:

Tax Type	High Court	Court of Appeal
Income tax	3	0
Stamp duty	0	1
Property tax	1	1
Goods and services tax	1	0
Miscellaneous	1	

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II. Income tax

A. Research and development expenses under cost-sharing agreement

26.3 In *Intevac Asia Pte Ltd v Comptroller of Income Tax*,[1] the issue of the deductibility of research and development ("R&D") expenses under a cost-sharing agreement ("CSA") came up for consideration. The appellant's appeal was dismissed by the Income Tax Board of Review ("ITBR"), and the further appeal went before the High Court. Choo Han Teck J dismissed the appeal.

26.4 The relevant statutory provisions are found in ss 14D(1)(*d*) and 14D(3) of the Income Tax Act[2] ("ITA"), which state:

> **14D.**—(1) For the purpose of ascertaining the income of any person carrying on any trade or business and subject to subsection (4), the following expenditure incurred (other than any amount which is allowable as a deduction under section 14) by that person shall be allowed as a deduction:
>
> (*d*) payments made by that person to a research and development organisation for *undertaking on his behalf* outside Singapore research and development related to that trade or business.
>
> …
>
> (3) For the purposes of subsection (1)(*d*), a claim for deduction shall be allowed to a person only if —
>
> (*a*) there is an undertaking by the person that *any* benefit which may arise from the conduct of the research and development shall accrue to the person; and
>
> (*b*) the claim is made by the person in such manner and subject to such conditions as the Comptroller may require.
>
> [emphasis added]

26.5 The appellant was a subsidiary of Intevac, Inc ("Intevac US") (US-listed company), and both companies were part of the Intevac group, which engaged in the business of manufacturing, repairing and trading in electromechanical systems and equipment. In 2009, the appellant and Intevac US entered into a CSA for the purpose of combining their R&D efforts and to share the costs and risks of their R&D activities. Each party to the CSA acquired the right to exploit any intellectual property ("IP") and intangible property generated in the performance of the CSA within

1 [2020] SGHC 218.
2 Cap 134, 2008 Rev Ed.

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their respective territories. Both parties therefore had a direct stake in any R&D developed for their joint benefit.[3]

26.6 Pursuant to the CSA, the appellant made payments totalling some US$4.85m and claimed deduction under s 14D(1)(*d*) read with s 14D(3) of the ITA. The Comptroller of Income Tax disallowed the claims.[4]

26.7 Taking a purposive interpretation of the statutory provisions, Choo J agreed with the ITBR that the prudent and common-sense approach was to adopt the year 2008 as the reference point for ascertaining the ordinary meaning and legislative purpose of the material phrase "for undertaking on his behalf" in s 14D(1)(*d*). 2008 was the year when the current provision was enacted, rather than 1980 when the material phrase was first introduced.[5]

26.8 Choo J proceeded to hold that the phrase "for undertaking on his behalf" referred to:[6]

> … an arrangement where payments are made by the taxpayer to an organisation which has undertaken R&D outside Singapore for the *exclusive* benefit of the taxpayer *only*. This is the interpretation which best coheres with Parliament's intention. [emphasis added]

The reasons for this conclusion are as follows:

> (a) Previously, s 19C of the ITA provided for writing down allowances in relation to approved CSAs and was operative in 2008 when s 14D(1)(*d*) was enacted. Parliament intended to create a differentiated scheme for CSAs and s 14D(1)(*d*) should not enable taxpayers to circumvent s 19C conditions via a backdoor route. There was a clear demarcation between CSAs covered by s 19C and the category of R&D arrangements that came under s 14D(1)(*d*).[7]
>
> (b) Based on ministerial statements in Parliament when s 14D was introduced in 1980, they suggested that:[8]
>
> > … the purpose of s 14D was to benefit companies in Singapore and to promote local expertise and technology. The corollary is that s 14D was not intended to subsidise the costs of R&D efforts which would not benefit the local economy.

3 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [2]–[4].
4 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [5]–[7].
5 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [10].
6 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [21].
7 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [12]–[16].
8 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [19] and [21].

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> …
>
> [Consequently,] s 14D had never been intended to allow relief for payments made under cost-sharing agreements in respect of R&D activities, and that s 19C was specifically enacted to create a new and distinct regime that provided allowances for such cost-sharing agreements.

26.9 On the approach to interpret the statutory provisions, Choo J also agreed with the High Court in *BFC v Comptroller of Income Tax*[9] that legislative intent should *not* be inferred from amendments that took place later (in this case, after 2008).[10] It bears reiterating this point by citing this *dictum* by Lai Siu Chiu J:[11]

> … [L]egislative intent is to be determined at or around the time the law is passed. If Parliament enacts subsequent legislation having proceeded on a particular interpretation of earlier legislation, Parliament's interpretation … is of no relevance to the interpretation of the earlier legislation. Similarly, ministerial statements uttered years after legislation is passed are unhelpful as interpretive instruments.

26.10 For completeness, Choo J also held that the appellant's undertaking (as given to the Comptroller) was not the requisite undertaking mentioned in s 14D(3)(*a*) of the ITA. The undertaking had to be made on the basis that "*all* benefits" must accrue to the taxpayer. In other words, "any" in that provision meant "all".[12]

26.11 This case is important, not just for the interpretation of the relevant statutory provisions relating to R&D expenses under cost-sharing agreements, but also as a useful illustration of how tax statutes ought to be interpreted. Where a category of expenses can be incurred in different scenarios, the relevant provisions need to be carefully reviewed to ascertain whether one or more of these provisions would apply to allow a deduction, or not apply at all if a particular scenario does not fall within the legislative intent of the tax statute.

9 [2013] 4 SLR 741. For a review of this case, see (2013) 14 SAL Ann Rev 490 at 497–499, paras 23.37–23.47.

10 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [23].

11 *BFC v Comptroller of Income Tax* [2013] 4 SLR 741 at [46].

12 *Intevac Asia Pte Ltd v Comptroller of Income Tax* [2020] SGHC 218 at [24]–[28].

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B. Tax avoidance

26.12 *Wee Teng Yau v Comptroller of Income Tax*[13] concerned a tax avoidance arrangement. The taxpayer, a dentist, was employed by Alfred Cheng Orthodontic Clinic Pte Ltd ("ACOC"). For year of assessment ("YA") 2012, ACOC paid the taxpayer fees of nearly $280,000.

26.13 On 1 May 2012, the taxpayer incorporated a company known as Straighten Pte Ltd ("SPL"). The taxpayer was SPL's sole director and shareholder.[14] For YAs 2013 to 2016, ACOC paid fees of around $1.47m to SPL instead of the taxpayer as in prior years. In turn, SPL paid the taxpayer annual remuneration of between $40,000 to $110,000 during this period. SPL further paid director's remuneration and tax-exempt dividends to the taxpayer.[15]

26.14 The Comptroller invoked the application of s 33 of the ITA and treated the fees of $1.47m, which ACOC had paid SPL as the taxpayer's income, and levied tax on the amount. The taxpayer argued that only the annual remuneration which SPL had paid him was taxable. The balance which ACOC had paid SPL should be taxed as SPL's corporate tax. The taxpayer's approach would have resulted in the taxpayer paying *less* tax than if ACOC's fees of $1.47m paid to SPL were treated as his income.[16]

26.15 Choo Han Teck J agreed with the Comptroller. The material portions of s 33 of the ITA provided as follows:

> **33.—**(1) Where the Comptroller is satisfied that the purpose or effect of *any arrangement is* directly or indirectly —
>
> (*a*) to *alter* the incidence of *any tax which is payable* by or which would otherwise have been payable by any person;
>
> (*b*) …; or
>
> (*c*) to reduce or avoid *any liability imposed* or which would otherwise have been imposed on any person by this Act,
>
> the Comptroller may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the arrangement and make such adjustments as he considers appropriate, including the computation or recomputation of gains or profits, or the imposition of liability to tax, so as to counteract any tax advantage obtained or obtainable by that person from or under that arrangement.

13 [2020] SGHC 236.
14 *Wee Teng Yau v Comptroller of Income Tax* [2020] SGHC 236 at [1].
15 *Wee Teng Yau v Comptroller of Income Tax* [2020] SGHC 236 at [3]–[4].
16 *Wee Teng Yau v Comptroller of Income Tax* [2020] SGHC 236 at [5].

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> (3) This section shall *not apply to* —
>
> …
>
> (*b*) any arrangement *carried out for bona fide commercial reasons and had not as one of its main purposes the avoidance or reduction of tax.*
>
> [emphasis added]

26.16 Choo J found the facts fitted directly under ss 33(1)(*a*) and 33(1)(*c*). The "simple" arrangement was for ACOC to pay to SPL what ACOC had previously paid the taxpayer directly. SPL could then pay a lower salary to the taxpayer. This enabled the taxpayer to pay less personal income tax. At the same time, SPL paid a lower rate of corporate tax (compared with personal income tax rates). The result was that the taxpayer received the same amount of pay from ACOC but avoided paying the tax he used to pay, because he could use SPL to extract tax benefits which he could not himself obtain.[17]

26.17 Choo J further held that s 33(*b*) of the ITA did not come into play. He held that the provision has an extremely broad reach and was conjunctive, that is, the arrangement must be for *bona fide* commercial reasons *and* must not have as one of its main purposes the avoidance of tax.[18] In this case, the facts showed that SPL's main, if not only, purpose was to enable the taxpayer to avoid tax. This was precisely the type of arrangement that was covered by s 33(1).[19]

26.18 Choo J, however, rejected the Comptroller's argument that the "personal exertion" principle should be applied in Singapore. This principle was taken from the New Zealand case of *Spratt v Commissioner of Inland Revenue*[20] as follows:

> No taxpayer can, by way of assignment, escape assessment of tax on income resulting from his personal activities – such income always remains truly his income and is derived by him irrespective of the method he may adopt to dispose of it.

26.19 Choo J held that this principle was *not* a common law exception which allows the Comptroller to levy tax that the ITA has not provided for. It was merely a judicial expression to emphasise that a person cannot avoid paying taxes for work done by him simply by assigning his pay to

17 *Wee Teng Yau v Comptroller of Income Tax* [2020] SGHC 236 at [8].
18 *Wee Teng Yau v Comptroller of Income Tax* [2020] SGHC 236 at [16] and [18].
19 *Wee Teng Yau v Comptroller of Income Tax* [2020] SGHC 236 at [19].
20 [1964] NZLR 272 at 277.

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someone else. In the present case, ss 33(1)(*a*) and 33(1)(*c*) of the ITA amply covered such arrangements.[21]

26.20 This is a useful addition to the body of case law on interpreting s 33 of the ITA and its application, specifically to a taxpayer who is a professional and has changed his arrangements as to how he would be paid for his services. The case has also helpfully decided that the "personal exertion" principle as regards taxation does not apply in Singapore.

C. Taxability of compensation for termination of employment

26.21 The High Court considered this issue in *Comptroller of Income Tax v Forsyth, John Russell*.[22] The taxpayer received a severance payment of $2,475,000 from a company after he was terminated as its managing director without notice. Under the separation agreement, the severance payment was payable in two equal instalments.

26.22 The Comptroller assessed $1.35m of this severance payment to be taxable as his employment income. The Comptroller argued that this amount had been paid under the taxpayer's employment agreement.[23] Clause 9 of the employment agreement provided that if the taxpayer were terminated in accordance with cl 15, the company would pay him certain sums (amounting to the taxable amount of $1.35m). Clause 15 provided (among other things) that the company was entitled, at its sole discretion, to "give [the taxpayer] payment in lieu of notice of termination".[24]

26.23 It was common ground that *ex gratia* payment as compensation for loss of employment was *not* income from employment but compensation for loss.[25] Choo Han Teck J noted that s 10(2)(*a*) of the ITA gave an exhaustive definition of "gains or profits from any employment" which excluded redundancy payments or compensation for loss of employment.[26]

26.24 Choo J held that one had to examine the nature of the payment itself to determine whether the amount was taxable. In this case, Choo J found that the $2,475,000 payment was compensation for the loss of

21 *Wee Teng Yau v Comptroller of Income Tax* [2020] SGHC 236 at [22].
22 [2020] SGHC 258.
23 *Comptroller of Income Tax v Forsyth, John Russell* [2020] SGHC 258 at [4] and [8].
24 *Comptroller of Income Tax v Forsyth, John Russell* [2020] SGHC 258 at [6].
25 *Comptroller of Income Tax v Forsyth, John Russell* [2020] SGHC 258 at [10].
26 *Comptroller of Income Tax v Forsyth, John Russell* [2020] SGHC 258 at [9].

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the taxpayer's employment (and hence not taxable).[27] His reasons were as follows:

> (a) From the terms of the separation agreement, the taxpayer was terminated without notice and not under cl 15 of the employment agreement. Clause 9 of the employment agreement was never triggered.[28]
>
> (b) The compensation under cl 9 of the employment agreement was immediately due and payable. But the severance payment was conditional and subject to clawbacks by the company if the taxpayer breached the terms of the separation agreement. This reinforced the taxpayer's argument that the severance payment was intended to substitute and not encompass the *ex gratia* payment under cl 9.[29]

26.25 This is a useful case to illustrate when payment for termination of a person's employment is taxable. In this case, the words of the separation agreement were decisive in showing the nature of the severance payment.

III. Stamp duty

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

26.26 The Court of Appeal in *Asia Development Pte Ltd v Attorney-General*[30] dismissed the appeal arising from *Re Asia Development Pte Ltd*.[31] The appellant had sought judicial review of the minister's decision refusing its request for remission of additional buyer's stamp duty ("ABSD").[32]

26.27 The key point of significance is the Court of Appeal's endorsement of the well-established principle in the English case of *Carltona Ltd v Commissioners of Works*[33] ("*Carltona*"), which was applied by the High Court in the instant case.[34] In particular, the following *dictum* of Lord Greene MR[35] was approved:

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27 *Comptroller of Income Tax v Forsyth, John Russell* [2020] SGHC 258 at [10].
28 *Comptroller of Income Tax v Forsyth, John Russell* [2020] SGHC 258 at [10].
29 *Comptroller of Income Tax v Forsyth, John Russell* [2020] SGHC 258 at [11].
30 [2020] 1 SLR 886.
31 [2020] 3 SLR 713, which was reviewed last year: see (2019) 20 SAL Ann Rev 662 at 671–673, paras 25.33–25.39.
32 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [1] and [4].
33 [1943] 2 All ER 560.
34 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [8].
35 *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 at 563.

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> … [T]he functions which are given to ministers … are functions so multifarious that no minister could ever personally attend to them. … It cannot be supposed that [the regulation concerned] 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. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. …

26.28 The court drew two propositions from *Carltona*:[36]

> (a) First, as a general rule, Ministers cannot be expected to exercise each of their functions in person. In our view, this is self-evidently correct. We do not mean by this to say that there are no functions that must be exercised by a Minister in person. Rather, whether the *Carltona* principle applies to allow powers conferred on a Minister to be exercised by his or her officers would depend on a contextual inquiry that considers the nature, scope and purpose of the function vested in the Minister, and the relevant language of the statute and of the specific provision in question. In particular, the court will have regard to whether the statutory language has the effect of excluding any devolution or delegation, as the case maybe.
>
> (b) Second, the Minister is responsible for the decisions of his or her officers acting under his or her authority. The Minister is answerable to Parliament for those decisions. It follows that it is generally a matter for Ministers, who are responsible to Parliament, to ensure that the duties and functions in question are carried out by duly experienced and qualified officers.

26.29 The court noted that the *Carltona* principle was "a sensible ad pragmatic one that makes the business of government practicable".[37] It went on to note that applications for remission of ABSD under ss 74(1) and 74(2B) of the Stamp Duties Act[38] ("SDA") were "unremarkable" and "likely to involve a substantial volume."[39] The statutory provisions also do not require the minister to exercise his powers personally.[40]

36 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [9].
37 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [10].
38 Cap 312, 2006 Rev Ed.
39 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [10].
40 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [10].

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26.30 In the event, the court held that the *Carltona* principle applied to the statutory provisions and ruled as follows:[41]

> It was not improper for the CTPO [Chief Tax Policy Officer], as a duly qualified officer, to act under the Minister's responsibility to consider whether an extension of time under s 74(1) read with s 74(2B) should be granted to the appellant to develop and sell the property for the purposes of ABSD remission. There was therefore nothing improper in the discharge by the CTPO of her duties and this ground of challenge therefore fails.

26.31 Noting that various communications by various agencies including the Commissioner of Stamp Duties and the Inland Revenue Authority of Singapore ("IRAS") were made which had given rise to concerns by parties dealing with these agencies, the court made this observation for future guidance:[42]

> Although we have said that there was nothing improper in the discharge by the CTPO of her duties, which we consider to have been an exercise of the responsibilities vested in the Minister, we think it is a matter of good practice for Government agencies in such circumstances to clearly identify the role and capacity in which they are acting and to explain this promptly when challenged.

26.32 The court also rejected the other grounds raised by the appellant as unmeritorious, including the allegations that there was no fair hearing and that the Minister's decision was unreasonable.[43]

26.33 The position is therefore clear that the *Carltona* principle applies in Singapore so that a minister may in certain contexts delegate his responsibilities to be performed by competent officials. In the present case, the courts agreed that it was not improper for the CTPO to decide on the request for remission of ABSD under s 74 of the SDA.[44]

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41 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [13].

42 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [14]; see also [15]–[16].

43 *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 at [17]–[23].

44 First-named author's comment: As observed in (2019) 20 SAL Ann Rev 662 at 673, para 25.39, fn 53, 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. Further, in light of the Court of Appeal's observation, the agencies involved are to clearly identify the role and capacity in which the responsible officials are acting and to explain this promptly when challenged. Clear communication is key.

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IV. Property tax

A. Annual value for cinema in shopping complex

26.34 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor*[45] was a Court of Appeal decision relating to a dispute over the annual value of a cinema complex at Plaza Singapura. The decision was reviewed together with the High Court decision in the Annual Review last year.[46]

B. Annual value of "iFly Singapore"

26.35 In *Chief Assessor v Skyventure VWT Singapore Pte Ltd*,[47] the respondent owned and operated an attraction known as the "iFly Singapore" located in Sentosa. This attraction provided a simulated skydiving experience through the operation of a vertical wind tunnel producing a flow of high-speed and high-pressure air that would cause the visitor to be suspended in mid-air.[48]

26.36 For the periods in question (stretching from April 2011 to December 2013), the issue was whether the wind tunnel ought to be included in assessing the annual value of the property, and more particularly, whether the wind tunnel ought not to be included by virtue of s 2(2) of the Property Tax Act[49] ("PTA") which provides:[50]

> In assessing the annual value of any premises in or upon which there is any *machinery* used for any of the following purposes:
>
> (*a*) the *making* of any article or part thereof;
>
> (*b*) the *altering*, repairing, ornamenting or finishing of any article; or
>
> (*c*) the *adapting* for sale of any article,
>
> the enhanced value given to the premises by the presence of such machinery shall not be taken into consideration, and for this purpose 'machinery' includes the steam engines, boilers and other motive power belonging to that machinery.
>
> [emphasis added]

45 [2020] 1 SLR 621.
46 See (2019) 20 SAL Ann Rev 662 at 675–676, paras 25.52–25.55.
47 [2020] SGHC 10.
48 *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 at [1].
49 Cap 254, 2005 Rev Ed.
50 *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 at [2]–[3].

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26.37 The Chief Assessor took the view that the wind tunnel ought to be included in assessing the annual value. At first instance, the Valuation Review Board ("VRB") (in a majority decision) allowed the respondent's appeal as it held, *inter alia*, that the wind tunnel fell within the definition of "machinery" since its predominant function was to generate the necessary aerodynamic conditions for skydiving. The VRB also held that s 2(2) of the PTA was not confined to industrial machinery or industrial premises.[51]

26.38 The High Court allowed the Chief Assessor's appeal. Choo Han Teck J held that in light of the purposive approach used to expand the definitions in s 2(2) of the PTA in *Chief Assessor v First DCS Pte Ltd*[52] ("*First DCS*"), the High Court was bound by the Court of Appeal's finding that the legislative purpose was to promote investments in manufacturing machinery. Choo J noted the distinction between "industrial" and "leisure" purposes and that there was no dispute that the wind tunnel was used for social events and not for any industrial purpose.[53]

26.39 Going further on the conditions in s 2(2) of the PTA, the court noted that there was no dispute that air could be an "article," but was not "made" in this case.[54] While the Chief Assessor agreed that air was "altered", he argued that not every alteration would fall under s 2(2). The court agreed with the Chief Assessor that:[55]

> … [b]earing in mind that the purpose of the provision is to promote investments in manufacturing, I agree that it would be unreasonable to find that any alteration would suffice.

26.40 Finally, the court disagreed with the respondent that the air was "adapted" for sale within the meaning of s 2(2)(*c*) as "the sale of the effect of pressurised air would not further the legislative purpose of promoting manufacturing". Choo J also expressed his reservation regarding the Court of Appeal's affirmation of the High Court's finding in *First DCS* that the sale of the cooling property of chilled water was a sale within the meaning of s 2(2)(*c*).[56]

26.41 It is interesting to note that *First DCS* remains a relevant decision to guide the courts in other cases involving machinery on the issue as

51 *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 at [4].
52 [2008] 2 SLR(R) 724. For a review of this case, see (2008) 9 SAL Ann Rev 455 at 460–464, paras 21.21–21.40.
53 *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 at [11].
54 *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 at [12] and [13].
55 *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 at [15].
56 *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 at [16].

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to whether s 2(2) of the PTA would apply. In the case of district cooling plants, part of the decision in *First DCS* was promptly reversed by legislative amendment, as noted previously.[57] However, *First DCS* remains authoritative on the interpretation of s 2(2), even though a court in a later case (as in the case of iFly Singapore) may express reservations on how the provision would apply to a given factual matrix.[58]

V. Goods and services tax

A. Offence of making false entries in returns to Comptroller

26.42 In *Loon Wai Yang v Public Prosecutor*,[59] the appellant was convicted of five charges of making false entries when submitting goods and services tax ("GST") returns for a company, under s 61(1)(*b*) of the Goods and Services Tax Act[60] ("GST Act"). This included under reporting output tax the company had collected or over reporting input tax which the company had incurred.[61] The offences spanned five quarters between the first quarter of 2006 and first quarter of 2008. The High Court judge, Chua Lee Ming J, allowed his appeal in part and acquitted him of four of the five charges.

26.43 The material facts relating to the four charges were as follows:

(a) The company was a small family-run company.[62]

(b) The appellant had ceased to be a director of the company since 1 August 2005 but remained as its business development manager.[63]

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57 See (2008) 9 SAL Ann Rev 455 at 464, paras 21.39–21.40.

58 For further reading, reference can be made to the majority and dissenting judgments delivered by the Valuation Review Board: see *Skyventure VWT Singapore Pte Ltd v Chief Assessor and Comptroller of Property Tax* [2019] SGVRB 1.

59 [2020] SGHC 34.

60 Cap 117A, 2005 Rev Ed. The material portion of s 62(1)(*b*) of the Goods and Services Tax Act provides:

> Any person who wilfully with intent to evade or to assist any other person to evade tax —
>
> …
>
> (*b*) *makes any false* statement or *entry in any return*, claim or application made under this Act;
>
> shall be guilty of an offence …
>
> [emphasis added]

61 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [9].

62 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [30].

63 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [22].

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(c) IRAS's tax investigator confirmed the appellant was not in charge of the company's accounting department or finance department. The appellant also had nothing to do with the GST returns submitted for these four charges.[64]

(d) The appellant's adopted sister had prepared and submitted these four GST returns. She had experience working in the financial industry and had taken over the finance function of the company since December 2005. The appellant had no oversight over his adopted sister's work.[65]

26.44 Chua J found the appellant had proved on a balance of probabilities that he had satisfied s 74(1) of the GST Act. It provides as follows:

> Where an offence under this Act has been committed by a company, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the company, firm, society or other body of persons or was purporting to act in that capacity shall be deemed to be guilty of that offence unless he proves that —
>
> (*a*) the offence was committed without his consent or connivance; and
>
> (*b*) he *exercised all such diligence to prevent* the commission of the offence *as he ought to have exercised*, having regard to the nature of his functions in that capacity and to all the circumstances.
>
> [emphasis added]

26.45 On s 74(1)(*a*), the District Judge had found that the appellant had not consented or connived to these offences being committed.

26.46 As regards s 74(1)(*b*), Chua J held that the mere fact that the company was a small family-run company did not in and of itself mean that there was therefore no demarcation of roles. All the circumstances had to be considered.[66] On the evidence, it was more probable than not that the appellant was not involved in and had no oversight over the preparation or filing of these four returns. The appellant's role in the company did not require him to be responsible for filing GST returns. Hence, he could not be expected to exercise any supervision over his adopted sister's preparation and filing of these GST returns.[67] He therefore set aside the conviction and sentences on these four charges.

64 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [24].
65 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [21], [23] and [28].
66 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [32].
67 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [33]–[34].

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26.47 However, the fifth charge was a different matter. The appellant had himself prepared the GST return. Accordingly, he could not avail himself of the defence in s 74(1) of the GST Act (that the offence had been committed without his consent).[68] Instead, the appellant tried to rely on s 79 of the Penal Code[69] read with s 52 of the GST Act. These provide as follows:

(a) Section 79 of the Penal Code:

> Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law *in good faith* believes himself to be justified by law, in doing it.

(b) Section 52 of the GST Act:

> Nothing is said to be done or believed in good faith which is done or believed *without due care and attention.* [emphasis added]

26.48 Chua J held that the appellant had to prove on a balance of probabilities that he had *exercised due care and attention* in making the claims in the GST return.[70]

26.49 The return which the appellant filed had claimed input tax of about $42,000 on alleged purchases amounting to just above $643,000. But IRAS's investigations showed purchases amounting only to approximately $12,300. This meant the company had only paid input tax of about $809.[71] Chua J accepted it was unbelievable that the appellant could have made such a huge mistake as to the value of purchases the company had made.[72] Moreover, the appellant did not seek help from a professional when preparing the return.[73] Accordingly, Chua J upheld his conviction and sentence of three weeks' imprisonment and a penalty of $123,757.95 (three times the amount of input tax overstated) payable to the Comptroller.[74]

26.50 This is a useful case illustrating the defences under s 74 of the GST Act that are available to an officer of a company where false entries are made in a GST return to the Comptroller. It is also a salutary reminder of an officer's responsibilities when preparing and filing such returns.

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68 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [37].
69 Cap 224, 1985 Rev Ed.
70 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [44].
71 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [38] and [43].
72 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [42].
73 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [45].
74 *Loon Wai Yang v Public Prosecutor* [2020] SGHC 34 at [49]–[50].

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VI. Miscellaneous

A. Expert evidence on foreign tax laws

26.51 *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd*[75] is not a revenue law case. However, it offers an illustration as to how expert evidence may be proffered where questions of foreign tax laws are involved. In this case, the High Court disagreed with the plaintiff's contention that in relation to Chinese withholding tax and whether one counterparty to a transaction (and not the other party) was liable for the tax, it was the relevant Chinese tax authority that was "the only entity which was competent to address the issue of whether there had been any under-declaration of tax".[76] See Kee Oon J held that Chinese tax law was amenable to expert opinion, which was tendered by the defendant in this case.

75 [2020] SGHC 171.

76 *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd* [2020] SGHC 171 at [126].

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