

By Sundareswara Sharma

Arresting Tax Migraines



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INTRODUCTION

With the annual personal income tax filing deadline of April 15 drawing near, it would be prudent to take stock of the reporting obligations and the consequences for non-compliance in completing our tax returns. In addition to income tax, the tax authorities are getting more active in enforcing goods and services tax (GST) through prosecutions in court.

In an earlier article, titled 'Tax Headaches and How to Treat Them'¹ the situation then prevailing in Singapore was reviewed. Changes have taken place since then, both in terms of tax legislation and the cases before the courts on tax evasion and other tax headaches. This article serves to update readers on the current state of affairs.

NEW MORE SERIOUS TAX OFFENCE

Singapore's most serious tax offence used to be income tax evasion, found in Section 96 of the Income Tax Act. Now, there is an offence of

serious fraudulent tax evasion, not merely tax evasion. One might reasonably ask whether this is just semantics. Unfortunately, the answer is no. In reality, the new offence carries heavier penalties to deplete the taxpayer's financial means and reduce his liberty. It was introduced into law as Section 96A under the Income Tax (Amendment) Act 2003, effective from 3 December 2003².

The nature of this new tax animal is surprisingly familiar. Although one may have expected some new species of tax evasion to have evolved to justify the new offence, what has actually happened is that two of the original five alternative limbs of tax evasion under Section 96 of the Income Tax Act have been removed and re-introduced as the new offence, providing for enhanced sentences.

Readers of the earlier article may recall that income tax evasion required both a mental element and a form of physical conduct on the

part of the taxpayer. The mental element is that the conduct was engaged in willfully with intent to evade tax. Persons assisting the taxpayer to evade tax are also caught, and liable to face the same punishments as the taxpayer himself. The five types of conduct in income tax evasion, accompanying the mental element, used to be where a taxpayer:

- Omits from his tax return any income that should be included;
- Makes a false statement or entry in his tax return;
- Gives any false answer, whether verbally or in writing, to any question or request for information;
- Prepares or maintains, or authorises the preparation or maintenance of any false books of account or other records, or falsifies or authorises the falsification of any books of account or records; and
- Makes use of any art, fraud or contrivance or authorises the use of any art, fraud or contrivance.

What is new is that the last two limbs of conduct are now in Section 96A, and the punishments have been enhanced as shown in the table below for each charge of serious fraudulent tax evasion:

Nature of offence:	Tax Penalty:	Maximum fine:	Maximum jail:
Tax evasion	3 times tax evaded	\$10,000	3 years
Serious fraudulent tax evasion	4 times tax evaded	\$50,000	5 years

In addition, where a taxpayer is convicted of three or more offences of tax evasion under Section 96 there is a minimum jail sentence of six months. Now, a Court must also sentence a taxpayer to at least six months in jail, if he is found guilty and convicted of two or more offences under Section 96A. What about a taxpayer who is convicted of one tax evasion offence under each of Sections 96 and 96A? That has been taken care of as well under the 2003 amendments. A single conviction under Section 96 added to a single conviction under section 96A also qualifies the taxpayer for the minimum imprisonment term of six months.

LATEST CASES

Apart from the legislature, the courts too have been busy with tax offences. The recent

cases have involved both companies and the individuals behind them. This is not to say that other types of business entities such as partnerships and sole proprietorships are immune from the taxman's scope of inquiry and investigation. The taxman does not appear to discriminate between classes of taxpayers as typically, any tax evader will do.

In September 2002, a company making seals for hard disk drives, Cleanseal Pte Ltd, pleaded guilty to 10 charges of creating false invoices to evade taxes, and was fined \$40,000 in addition to the treble tax penalties imposed of \$200,000. A warrant of arrest was issued against a director who did not turn up in Court to face the charges issued against him, which were in addition to the charges against the company.

More recently, in September 2003, a sports apparel company, Sportz and Fitness Team Pte Ltd, and its director were charged and convicted of tax evasion. Aside from the treble tax penalties of \$113,582 each on the company and its director, and fines of \$5,000 on the company for each charge, the director was sentenced to one week and three weeks in jail for the two offences that he pleaded guilty to, with the jail sentences being ordered to run concurrently.

Most recently, in September 2005, another company, Gesco Marketing Pte Ltd³, was charged for evading tax of about \$205,000 over two years. The modus operandi of evasion was through the creation of fictitious invoices and payment vouchers, thus inflating expenses by about \$810,000 in the company's tax returns filed for 1999 and 2000. Although the case was heard and decided upon after the new offence of serious fraudulent tax evasion became law, the offences were committed before the law was changed. Hence, upon the plea of guilty by the company's representative before the Magistrate's Court to two charges of wilful intent to evade tax, the Court ordered the company to pay the mandatory penalty of three times the tax evaded, which amounted to \$615,000 and the maximum fine of \$20,000.

To-date, no individual or company appears to have been charged and convicted with the offence of serious fraudulent tax evasion, to set new benchmarks in sentencing by the Courts, but this state of affairs may not continue for much longer. This offence has been on the statute book for almost two years during which time it is unlikely that IRAS investigators have been idle in scouting for new cases.

JAIL TERMS FOR INDIVIDUALS

As a company is not a natural person, no jail term can be imposed upon it. An individual,

whether in professional practice or otherwise, is however, highly liable to a term of imprisonment in addition to the tax penalties, fines and the tax itself that was evaded. The jail sentences imposed on individuals have ranged from one week to four weeks, and sentences can be ordered to run concurrently to reduce the total time spent in jail.

The individuals sent to jail include two medical practitioners. On 3 April 2002, a general practitioner was sentenced to two weeks jail for evading taxes of \$195,545 out of income of about \$800,000 and made to pay tax penalties of \$589,835. On 26 April 2002, a gynaecologist was sentenced to four weeks jail for evasion of taxes amounting to \$822,000 out of income of more than \$3,000,000 and ordered to pay tax penalties totaling \$2,466,000. Both doctors were later suspended from practice for six months by the Singapore Medical Council. While no medical doctors have been found guilty of tax evasion in more recent times, it behoves all medical professionals, as it does equally professionals and generally all income earners of any shade or stripe, to take due care and attention in the reporting of income and the claiming of expenses, so that the correct amounts of taxable profits are reflected in tax returns. Tax offences can also arise in new and unexpected ways, as seen in the section below on goods and services tax.

So far the Courts have not had occasion to sentence any individual to the minimum mandatory jail term of six months, as no individuals have pleaded guilty or been found guilty after a trial, to three or more offences of tax evasion. But with the legislative changes in operation, future convictions for two offences can result in the mandatory jail term of six months, if these convictions are both under the new Section 96A, or if the two convictions are for an offence under Section 96 and another offence under Section 96A.

STATUS OF VOLUNTARY DISCLOSURES

The IRAS has been operating a scheme of imposing minimal penalties upon taxpayers who make voluntary disclosure of their past tax misdeeds. This revenue practice is still available to any taxpayer who wishes to avoid the risk of prosecution⁴ that may lead to a bar on emigration to work or practise professionally in other countries. A close examination of prior years' tax returns may be in order for the concerned taxpayer, before he embarks on his income tax return for Year of Assessment 2006⁵.

This proactive strategy where the taxpayer goes to the IRAS before a tax investigator comes knocking on his door or otherwise starts an audit or investigation into his tax affairs, can save much heartache and tax migraines. Adequate attention is needed so that the voluntary disclosures fully disclose the details of all income of past years from each and every source.

Although income tax evasion does require an intent to evade tax unlike other tax offences of less gravity⁶, the same statutory presumption found in Section 96 reappears in Section 96A: that in proceedings under the section, where a false statement is found to have been made in the taxpayer's accounts or records, this is proof of an intention to evade tax. The presumption is rebuttable, but the taxpayer has the burden of proving the contrary.

CONCLUDING COMMENTS

Income tax is probably the most obvious liability cast by law upon taxpayers, including medical general practitioners and specialists. However, obligations for other taxes and duties do exist.

Goods and Services Tax (GST)

With GST having been implemented in Singapore for the past 10 years, the taxpaying individual also needs to guard against GST offences as well, particularly in a corporatised or amalgamated medical practice. This is not just because the GST returns are to be filed every quarter as opposed to the annual income tax returns, but also due to a special provision in the Goods and Services Tax Act, not found in the Income Tax Act. Under Section 74 of the Goods and Services Tax Act, where a company or firm is guilty of a tax offence, automatically each director, manager, secretary or partner is also deemed to be guilty of the offence, that is, will suffer personal liability, unless he can show both that the offence was committed without his consent or connivance, and that he has exercised all such diligence necessary in his position to prevent the offence. Under this section, the holders of such key positions are liable for the acts, omissions, neglects and defaults of their employees and agents.

A case for a new offence on GST took place recently, and the implications of this case apply to all including medical practices carried out in any legal form, whether as sole-proprietor, in partnership or as a limited company. The case is also significant as it illustrates related prosecutions across different taxes. In August 2005⁷, an individual who had already been sent

to jail for two weeks for income tax evasion was found guilty of a further offence of failing to register his business for GST⁸. He had been ordered to pay more than \$160,000 – \$40,000 in evaded taxes and three times the tax in penalties, when the IRAS found out that in 2001 and 2002 he had under-reported his income by about \$230,000. This case demonstrates that being convicted of tax evasion does not necessarily bring an end to one's tax woes.

The 44-year-old co-owner of a jewellery business also earned the dubious distinction of being the first person to be charged and convicted of failing to register for GST, as his partnership had not registered for GST some nine years ago. The gentleman in question had to pay a total of \$224,905.08. The way this amount of fine was reached is instructive to all whose businesses or practices may fall on the wrong side of the threshold for GST registration⁹. The amount of \$224,905.08 comprised GST of \$200,822.83 not paid over five years from 1996 to 2001, further penalty equal to 10% of the tax due, and fine of another \$4,000. Hence, prosecution for non-registration for GST can follow upon conviction for income tax evasion. Additionally, the offence of not registering for GST carries with it a further penalty at 10% due upon the GST that should have been paid all those years ago when the business should have registered for GST, quite apart from the actual amount of GST due and the fine imposed. Following the jeweller's case, the IRAS is said to have urged managers of businesses in general to voluntarily disclose tax offences immediately to avoid prosecution. Greater care needs to be exercised where the structure of the medical practice changes, for example where there is a merger of two or more practices the combined annual turnover of the new business entity may exceed the threshold for GST registration and the offence of non-registration is then committed. As regards the offence of evasion of GST, there have also been at least five such cases prosecuted in the Courts¹⁰.

In the latest case of GST evasion, a manager of a sole proprietorship business was convicted on five charges of willful intent to assist the owner of the business to evade GST and was sentenced to three months jail and a penalty of \$114,945 which is three times the amount of GST evaded¹¹. Four other charges were taken into consideration in sentencing. The maximum penalty for such an offence is seven years jail, a fine of \$10,000 and the penalty of three times the tax evaded. This case shows that the tax authorities have

broadened the scope of their tax investigations not just across taxes but also within one tax into persons assisting the business owner, such as managers and other employees. Hence, the actions of employees of medical practices need to be overseen with care, as their actions can compromise the owners of the practice even if the owners were unaware of the wrongdoing of their employees in filing GST returns.

Legal responsibilities under differing laws need to be managed. For example, a corporatised medical practice that is an exempt private company is exempt from the audit requirements under the Companies Act if its annual turnover is less than \$5 million where the starting date of its financial year is after 1 June 2004, but it is still required under the Goods and Services Tax Act to register for GST if its annual turnover exceeds \$1 million and to maintain the necessary accounting records.

Stamp duties

Lastly, liability to stamp duties merits attention as well, in light of the recent circular from the IRAS¹² on stamp duty not being paid in a number of cases where business premises are leased. The maximum penalty is four times the stamp duty. The liability for stamping the lease agreement and having the proper stamp duty paid usually falls upon the lessee even though the agreements may have been prepared by estate agents. Apart from the civil liability to stamp duty and its penalties, if there has been evasion of stamp duty, the lessee may be charged for such evasion which carries a fine of up to \$10,000, or a jail term of up to three years, or both fine and jail. Hence private medical practices operating from leased premises may need to review the tenancy agreements to ensure another unwanted tax liability, whether in terms of civil or criminal liability, does not emerge here.

Regular comprehensive reviews of liabilities across the taxes and duties may be the best way to manage the myriad tax obligations that necessarily arise in all forms of business practice.

DISCLAIMER

This article being intended to provide only general guidance and information, it is not to be taken as professional legal or tax advice which may be sought and obtained from an appropriate professional advisor on the specifics of a particular case. ■

References:

1. *Published in SMA News May 2002 issue.*
2. *Act No. 21 of 2003.*
3. *See article in Straits Times of September 10, 2005.*

4. See article in *Straits Times* of September 10, 2005.
5. This is the personal tax return for income for the calendar year ending December 2005.
6. See the lesser offences contained in Section 95 of the *Income Tax Act*.
7. See article in *Business Times* of August 19, 2005.
8. The offence is constituted under Section 61 of the *Goods and Services Tax Act*, under which the taxpayer upon conviction (i) is to pay a penalty of 10% of the tax due; (ii) is liable to a fine not exceeding \$10,000; and (iii) is liable to a further penalty of \$50 for each day the offence continues after conviction.
9. Registration for GST is compulsory where the annual turnover exceeds or is likely to exceed \$1,000,000.
10. See article in *Business Times* of April 4, 2005.
11. See article in *Business Times* of February 8, 2006.
12. The letter dated 15 September 2005 was issued to all licensed house agencies.

Dear Editor

I read Hobbit's sonnet on 'Death of Family Medicine' in the November 2005 issue of the *SMA News* and it prompted me to write a response. What started out as an attempt to write a sonnet ended with five! Here they are: the hallmarks on Family Medicine – 'primary', 'personal', 'comprehensive' and 'continuing care' in the context of 'the family and community'.

SONNET*: A BREADTH OF PRIMARY CARE

The five-minute consultation is hard.
The science of three hundred seconds is art.
If we focus on the primary part –
Won't have to shatter FM's tender heart.

It's being there when the patients need the care.
Try the appointment system if you dare.
You might have given him the time's fair share,
But he'll be confused by the time he's there.

For when he has decided finally,
A better moment, there is not, to see.
Attend to him when he's in need. Really –
Succinct, the expression and history!

The science of three hundred seconds is hard.
The five-minute consultation is art.

SONNET*: A BREADTH OF PERSONAL CARE

The five-minute consultation is hard.
The science of three hundred seconds is art.
If we focus on the personal part –
Won't have to shatter FM's tender heart.

It is knowing the patient to the max.
No hidden meaning for you to be vexed.
If you really know what is the context,
Words are hardly needed, let alone text.

Never, ever, the SOAP and RICE forgo.
Don't focus on the medico-legal.
Just a few notes and symbols – Hey, presto!
Succinct, the record be, and what to do!

The science of three hundred seconds is hard.
The five-minute consultation is art.

SONNET*: A BREADTH OF COMPREHENSIVE CARE

The five-minute consultation is hard.
The science of three hundred seconds is art.
If we focus on comprehensive part –
Won't have to shatter FM's tender heart.

DM, lipid, BP in the same bowl –
Treating them as separate takes a toll.
Learn to manage the patient as a whole.
Make sure you level up the knowledge hole.

All the problems clearly written about –
In case notes, important points make it loud.
At the consult table sort it all out.
Take the FM, not the specialist route.

The science of three hundred seconds is hard.
The five-minute consultation is art.

SONNET*: A BREADTH OF CONTINUING CARE

The five-minute consultation is hard.
The science of three hundred seconds is art.
If we focus on continuing part –
Won't have to shatter FM's tender heart.

Problem list and nature will help bring out,
Anticipate and prevent the next bout.
Remember Stott's model for the consult.
Covering all angles brings good result.

Opportunistic screening is the best –
No need to come another day for test.
The patient gets to pay one consult less.
Being mindful of these things adds zest!

The science of three hundred seconds is hard.
The five-minute consultation is art.

SONNET*: A BREADTH OF FAMILY AND COMMUNITY

The five-minute consultation is hard.
The science of three hundred seconds is art.
The family and community part –
Won't have to shatter FM's tender heart.

Prepare the family tree way ahead –
For every member including maid.
Effective as a double checking aid –
Ask of the patient when maid comes instead!

Be alert to things in community
From news, magazines, radio and TV.
Refer to resources accordingly.
Root out patient's real cause of anxiety.

The science of three hundred seconds is hard.
The five-minute consultation is art.

DR JULIAN LIM, MBBS (1998)

**Sonnet: In common English form, a sonnet consists of three quatrains followed by a couplet.*