

# Evidence of Intention is Key: Taxation of Real Property Gains under Section 10(1)(g) of the Income Tax Act

While the charging provision under section 10(1) of the Income Tax Act (**Section 10(1)**) provides that certain specific categories of income (e.g., trade or business income, employment income and rental income) are chargeable to income tax, there is a “catch-all” provision under Section 10(1)(g) that brings to tax “any gains or profits of an income nature” that does not fall within any of the specific heads of charge. The age-old question thus arises: under what circumstances would gains be chargeable to income tax under this provision? The underlying concern is whether such a “catch-all” provision would be interpreted widely or narrowly. As we shall see, it is all a matter of intention and whether there is sufficient evidence to prove intention.

This update takes a look at the recent Income Tax Board of Review (**ITBR**) decision of *GIO v Comptroller of Income Tax* [2024] SGITBR 1 which involves the taxation of gains under Section 10(1)(g) arising from the disposal of two immovable properties. This case provides important guidance to investors who are moving from non-real estate investments (such as shares, mutual funds or saving accounts) to investments in real estate, and are not limiting their gains to only rental income received from real estate.

## Our Comments

Section 10(1)(g) was introduced to enlarge the scope of income tax charging provisions, thus rendering liable to income tax miscellaneous forms of income not covered by any specific head of charge. Previous ITBR decisions have held that Section 10(1)(g) can apply to profits arising out of a transaction which is not an activity in the ordinary course of trade or business or an ordinary incident of some other business activity, where the taxpayer had the intention or purpose of making a profit from that transaction at the time it was entered into. While there is no limitation on the types of transactions that may potentially fall within Section 10(1)(g), it is interesting that most, if not all, of the local tax cases concerning Section 10(1)(g) involve disposals of real property or shares.

It is important to note that previous local cases involving the taxation of gains under Section 10(1)(g) arising from the disposal of assets focused on the intention of the taxpayer at the time the asset was acquired. If the court is satisfied that the intention was to hold the assets as investments for capital gain, then the gains, if any, on disposal would be capital in nature and not caught by Section 10(1)(g). The case of *GIO v Comptroller of Income Tax* reaffirms this principle.

## Background

The Comptroller of Income Tax had assessed to tax the individual taxpayer’s gains from the disposal of two properties.

The taxpayer had purchased the first real property by exercising an option to purchase (**OTP**) on 6 March 2007. Prior to the completion of the purchase, the taxpayer had sold the property to another person by granting an OTP on 10 April 2007, which was exercised on 30 April 2007. The purchase of the first property by the taxpayer was completed on 15 June 2007, while the sale of the same property was completed on 2 July 2007.

The taxpayer had purchased the second real property by exercising an OTP on 9 July 2007. Prior to the completion of the purchase, the second property was sold to another person, and the OTP was exercised on 13

August 2007. The purchase of the second property by the taxpayer and the sale of the same property were both completed on 17 September 2007.

## The ITBR's Decision

The following key issues arose for decision before the ITBR:

- (a) Whether gains from the realisation of real property are capital in nature and therefore not subject to income tax; and
- (b) In the alternative, whether the taxpayer intended to purchase both properties for capital gains.

### *No absolute bar to the increase in value of an item normally regarded as capital in nature to be caught by income tax*

The ITBR rejected the taxpayer's argument that gains from the realisation of real property are capital in nature and should not be subject to income tax. This was "a mere assertion" that ran counter to the weight of decided cases where dealings in real property were found to be of an income nature, and therefore taxable.

Ultimately, the ITBR concluded that the dividing line between the realisation of a capital investment (the profits on which are capital in nature and therefore not subject to income tax unless otherwise provided for) and the realisation of a quick profit through a buy-sell transaction (that is subject to income tax for being of an income nature) depends on the facts and circumstances of each case. The taxpayer's argument that isolated transactions would not be caught by income tax, unlike in the past where specific provisions subjected such gains to income tax (such as the repealed section 10F which previously covered gains from real properties held for less than three years) was also rejected.

### *Insufficient evidence to show that the taxpayer had intended to purchase both properties for capital gains*

As to the taxpayer's intention at the time of the purchases, the ITBR noted that if he had purchased the properties with the intention of holding them as investments for capital gain, then the gains, if any, on disposal were capital in nature and would not be caught by Section 10(1)(g). The burden to prove such intention lies with the taxpayer.

With regard to the first property, the taxpayer contended that it was bought with a sitting tenant as a long-term investment. However, prior to the completion of the purchase, the tenant terminated the tenancy. The property was then sold after an offer was brought to the taxpayer by an agent. However, it was unclear whether the agent was engaged to find a new tenant for the property or to market the property.

There was also an overdraft facility secured on the first property by the taxpayer. This included a condition that the taxpayer was to provide the bank with a copy of the duly exercised OTP for the sale of the first property. Although the taxpayer asserted that this clause was to facilitate repayment of the overdraft, there was no other evidence to support this assertion.

With regard to the second property, the taxpayer claimed that it was jointly purchased with another individual who had difficulty obtaining financing when they received an unsolicited offer. Therefore, the property was sold on the same day the purchase was completed. However, there was no documentation or other evidence to support these claims.

Given the dearth of evidence supporting the taxpayer's assertions, the ITBR found that the taxpayer had not proved that the two properties were purchased for capital gains.

## Concluding Remarks

The main focus of this dispute was the taxpayer's intention at the time he purchased the properties. If he had convinced the ITBR that he had purchased the two properties as investments for capital gains, his gains on disposal would not have been subject to income tax under Section 10(1)(g).

It is therefore important for taxpayers to properly document their intentions when purchasing real properties, especially if such properties are intended to be held as long-term investments. Otherwise, taxpayers run the risk of any gains from the disposal of such properties being subject to income tax, especially since the burden lies on them to prove that they had intended the properties to be long-term investments. In this regard, taxpayers should also ensure that their conduct and actions surrounding the acquisition and use of the investments are also properly documented and reflect their intention, as courts take all relevant evidence into account when ascertaining their intention.

We also make a few other observations on this case. First, the ITBR acknowledged that, while legislative provisions in other common law countries are different, such differences are not of themselves a bar to drawing guidance from cases from these countries, although caution needs to be exercised in doing so. Second, the ITBR rejected the taxpayer's application to state a case for the determination of the General Division of the High Court (**High Court**) under section 82 of the Income Tax Act. The ITBR explained that the case stated procedure is neither a substitute for the appeals process nor a way to leapfrog the ITBR for an opinion of the High Court. It is to be used only where there is uncertainty in the law, and early clarification of the law would be beneficial to the disposal of the case.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



**TAN Kay Kheng**

Head – Tax

d: +65 6416 8102

e: [kaykheng.tan](mailto:kaykheng.tan)

[@wongpartnership.com](mailto:kaykheng.tan@wongpartnership.com)

Click [here](#) to view Kay Kheng's CV.



**TAN Shao Tong**

Deputy Head – Tax

d: +65 6416 8186

e: [shaotong.tan](mailto:shaotong.tan)

[@wongpartnership.com](mailto:shaotong.tan@wongpartnership.com)

Click [here](#) to view Shao Tong's CV.



**GOH Ziluo**

Partner – Tax

d: +65 6416 8189

e: [ziluo.goh](mailto:ziluo.goh)

[@wongpartnership.com](mailto:ziluo.goh@wongpartnership.com)

Click [here](#) to view Ziluo's CV.

 Connect with WongPartnership.

# WPG MEMBERS AND OFFICES

- [contactus@wongpartnership.com](mailto:contactus@wongpartnership.com)

## SINGAPORE

-

WongPartnership LLP  
12 Marina Boulevard Level 28  
Marina Bay Financial Centre Tower 3  
Singapore 018982  
t +65 6416 8000  
f +65 6532 5711/5722

## CHINA

-

WongPartnership LLP  
Shanghai Representative Office  
Unit 1015 Link Square 1  
222 Hubin Road  
Shanghai 200021, PRC  
t +86 21 6340 3131  
f +86 21 6340 3315

## INDONESIA

-

Makes & Partners Law Firm  
Menara Batavia, 7th Floor  
Jl. KH. Mas Mansyur Kav. 126  
Jakarta 10220, Indonesia  
t +62 21 574 7181  
f +62 21 574 7180  
w [makeslaw.com](http://makeslaw.com)

## MALAYSIA

-

Foong & Partners  
Advocates & Solicitors  
13-1, Menara 1MK, Kompleks 1 Mont' Kiara  
No 1 Jalan Kiara, Mont' Kiara  
50480 Kuala Lumpur, Malaysia  
t +60 3 6419 0822  
f +60 3 6419 0823  
w [foongpartners.com](http://foongpartners.com)

[wongpartnership.com](http://wongpartnership.com)

## MIDDLE EAST

-

Al Aidarous Advocates and Legal Consultants  
Abdullah Al Mulla Building, Mezzanine Suite 02  
39 Hameem Street (side street of Al Murroor Street)  
Al Nahyan Camp Area  
P.O. Box No. 71284  
Abu Dhabi, UAE  
t +971 2 6439 222  
f +971 2 6349 229  
w [aidarous.com](http://aidarous.com)

-

Al Aidarous Advocates and Legal Consultants  
Oberoi Centre, 13th Floor, Marasi Drive, Business Bay  
P.O. Box No. 33299  
Dubai, UAE  
t +971 4 2828 000  
f +971 4 2828 011

## PHILIPPINES

-

Gruba Law  
27/F 88 Corporate Center  
141 Valero St., Salcedo Village  
Makati City 1227, Philippines  
t +63 2 889 6060  
f +63 2 889 6066  
w [grubalaw.com](http://grubalaw.com)