

Tax Headaches & How to Treat Them

INTRODUCTION

This short article is written in the wake of recent prosecutions against doctors for income tax evasion. It is aimed at providing doctors in private practice with a general understanding of tax offences and penalties under our Income Tax Act, the consequences of under-declaration of fees from patients, and how this issue can be resolved with the tax authorities without the doctor being prosecuted in court for tax evasion.

SINGAPORE'S TAX

STRUCTURE AND LAWS

Income tax forms the main source of tax revenue for the government, and this tax is administered and collected by the Inland Revenue Authority of Singapore (IRAS), along with other taxes and duties, including the goods and services tax (GST). Within IRAS, the Tax Investigation Division investigates errant taxpayers for tax evasion, and the Taxpayer Audit Division examines cases of under-reporting of income through desk audits and field audits. Both Divisions can compound tax offences by accepting penalties from taxpayers. Cases for prosecution involve the Law Division of IRAS, and its legal officers conduct the prosecution in the Courts.

RECENT ANTECEDENTS

In the past, previous cases of doctors trying to evade tax were settled out of court. More recently, doctors have been charged in court for tax evasion, convicted and sent to jail. In the 3 cases of tax evasion prosecuted by IRAS last month, set out below, 2 cases involved doctors:

TAX OFFENCES & PENALTIES

Income tax evasion is the most serious tax offence and carries with it a penalty of 3 times the tax evaded, as well as a possible fine of up to S\$10,000 or a possible jail term of up to 3 years, or both fine and jail. Not every case of unreported income is necessarily a case of tax evasion. Where taxpayers have just made a simple mistake in omitting some income from their tax return, this is the lightest offence which carries a penalty equal to the tax under-declared in the incorrect tax return. The intermediate-level offence of making an incorrect tax return, either through negligence or without a reasonable excuse, carries a penalty of double the tax under-declared and a possible fine of up to S\$5,000 or a possible jail term of up to 3 years, or both fine and jail. In every case of unreported or under-declared income, the amount of tax involved must be paid to IRAS and this is distinct from any penalty or other punishment.

TAX EVASION

The type of conduct that constitutes tax evasion can arise from any one of five forms that apply equally to all individuals, whether they are doctors or not. For a case to amount to tax evasion, it must be proved or admitted that the particular conduct was engaged in wilfully with intent to evade tax or to assist another person to evade tax. Briefly, the 5 forms of conduct are:

- Where the taxpayer omits from a tax return any income which should be included;

- Where the taxpayer makes any false statement or entry in a tax return;
- Where the taxpayer gives any false answer, whether verbally or in writing, to any question or request for information from IRAS;
- Where the taxpayer prepares or maintains, or authorizes the preparation or maintenance of any false books of account or other records, or falsifies or authorizes the falsification of any books or account or records; and
- Where the taxpayer makes use of any art, fraud or contrivance or authorizes the use of any such art, fraud or contrivance.

A few salient points can be made. First, tax evasion has a broad scope and need not arise solely from the tax return. This applies to the lesser tax offences as well. Secondly, the keeping of records and books of account is critical. Records include invoices, vouchers and receipts. Thirdly, there is a key mental element to the offence, and this requirement of wilful intent to evade tax can lead to difficulties in continuing professional medical practice. There is more.

Where IRAS decides to prosecute a taxpayer in Court for tax evasion, it can rely on a legal presumption. Where IRAS proves to the Court that any false entry is made in any tax return by or on behalf of any person or in any books or account or other records maintained by that person or on his behalf, that person shall be presumed to have made that false entry with intent to evade tax. This legal



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Date	Person	Sentence	Income	Taxes evaded	Penalties
3 Apr	General Practitioner	2 weeks jail	about S\$800,000	S\$196,545	S\$589,835
15 Apr	Businessman	2 weeks jail	S\$219,934	S\$38,285	S\$114,855
26 Apr	Gynaecologist	4 weeks jail	> S\$3,000,000	S\$822,000	S\$2,466,000

presumption is rebuttable, and to clear himself the person has to rebut it based on evidence he or another can give for his case.

Another crucial point about convictions for tax evasion is that where a person is convicted of 3 or more such offences, the jail term he is liable for, must be at least 6 months. With the Court's current sentencing policy of sending tax offenders to jail, it is not just the likelihood of being sent to jail that looms large in the mind of every tax evader but the length of the jail sentence having regard to the number of offences he is charged with by IRAS.

VOLUNTARY DISCLOSURE TO AVOID PROSECUTION AND MINIMISE PENALTIES

Once a tax prosecution has been launched, the person is left with a stark choice to defend himself against these charges by claiming trial, or to accept the tax charges and plead guilty to them. If the Court convicts the person of tax evasion, whether upon his plea of guilt or after a trial, it is now clear that in sentencing tax offenders, the Court's position is that "offenders of income tax will not be let off lightly", i.e. they are likely to be sent to jail. Therefore, any particular taxpayer who has reason to believe that he has not declared all his income to IRAS may wish to consider going to IRAS to make voluntary disclosure of his tax affairs before IRAS comes knocking on his door.

When a taxpayer goes to IRAS to make voluntary disclosure, he should be aware that IRAS need not accept his word on the information provided on past years' income, and may conduct its own enquiries. He will also be required to provide a written statement confirming he has now declared fully his income from all sources. Examples of other income are bank interest and rental income, and it should be noted that the businessman who was convicted on 15 April 2002 was also charged for evasion of bank interest. The

taxpayer will be given a reasonable time to verify his own affairs before providing the written statement of full and complete disclosure. Once the statement is given, it will be kept by IRAS and can be used in future if IRAS discovers any other item of income was not reported for those past years to which the disclosure statement pertains.

If IRAS agrees that a case amounts to voluntary disclosure, it would compound the matter for reduced penalties, and not take the case to Court. As such, the taxpayer would save himself the adverse publicity, and be able to settle the case with his liberty and livelihood intact, though with less in his pockets. Presently, besides the tax itself that must be paid, IRAS would accept a penalty/interest of 10% per annum of the tax underpaid.

It is for IRAS to determine whether to compound or prosecute a case, whether the case arises from the taxpayer's own disclosure or from other information given or known to IRAS. IRAS considers several factors in deciding whether to compound a case or prosecute the offender in Court. These factors include the evidence and evasion method used, the cooperation of the taxpayer during the investigation process, the amount involved, the number of transactions, and the period of tax evasion.

WHEN IRAS WILL NOT ACCEPT A CASE AS BEING VOLUNTARY DISCLOSURE

IRAS will not regard a case as being one of voluntary disclosure if the taxpayer comes to IRAS after it has commenced a tax audit or tax investigation. A tax audit or investigation can be triggered by information available to IRAS from its own records about the taxpayer concerned, or from what it

knows about the earnings of other professionals in the same industry. IRAS can use the income of other taxpayers, being in the same profession (and this may extend to the same speciality or sub-speciality if it has the details) as a benchmark to compare with those taxpayers who file exceptionally low returns. Moreover, the investigation officers in IRAS actively trawl their tax database to look for suspicious income and expenditure patterns. An individual's ostentatious lifestyle may also indicate he has more assets, usually in the form of luxury cars and houses, than is consistent with his declared income. Additionally, IRAS may learn about an individual taxpayer's real income from informants among the general public, including dissatisfied patients, estranged spouses or unhappy employees. Tax evasion does not pay. Voluntary disclosure secures reduced penalties while safeguarding a taxpayer's liberty and professional livelihood.

OTHER TAX CONSIDERATIONS

Apart from declaring all the fees from patients to IRAS for income tax, a taxpayer should also be alert to other tax implications, arising from goods and services tax (GST), corporatisation of a medical practice, carrying on more than one medical practice, interest-free loans taken as a director of a corporatised medical practice, being both in employment and private practice, visiting consultancies, and the like, which are beyond the scope of this brief article.

DISCLAIMER

As this article is intended to provide only general guidance and information, it does not amount to professional legal or tax advice, which may be sought in specific cases from an appropriate professional advisor. ■

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