

Tax Bulletin

Dispute Resolution for Corporate Taxpayers: IRAS Consultation Paper

October 2011

Dispute Resolution for Corporate Taxpayers: IRAS Consultation Paper

Highlights:

- Much of the process described is in line with current practice.
- Proposed initiatives apply only to corporate taxpayers: companies, business trusts and real estate investment trusts.
- Concessionary extension of objection timeline to two months.
- Taxpayers “encouraged” to submit a prescribed objection form.
- Guidelines on what constitutes a valid objection.
- Comptroller will either acknowledge that objection lodged is valid or reject it.
- Proposed two-month timeline for taxpayer to respond to queries raised post-objection lodged and six-month review timeline (or more) for the Comptroller.
- Notice of Refusal to Amend will be issued if taxpayer accepts the Comptroller’s adjustment conditionally.

On 24 August 2011, the IRAS (Inland Revenue Authority of Singapore) issued a consultation paper on the process of lodging objections against Notices of Assessment for corporate taxpayers. It sets out the process involved, including initiatives to be introduced with the view to provide guidance and clarity on the process of objection and with the objective to have timely resolution. The key message is the need to have precise grounds of objection, which means that taxpayers should have sufficient information to support the objection. To facilitate that, the IRAS proposes extending the objection deadline to two months.

The consultation paper, issued through the Singapore Institute of Accredited Tax Professionals, describes the four stages in a dispute resolution process: events, review, litigation and finalisation (see diagram below). This is effectively a description of the current practice.

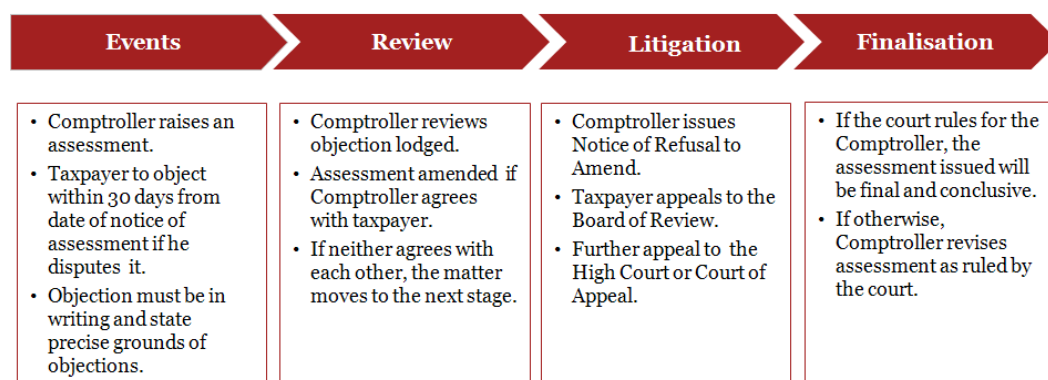


Diagram: Stages in a dispute resolution process.

Proposed changes

The IRAS proposes to allow corporate taxpayers – companies, business trusts and real estate investment trusts – two months to lodge an objection against a Notice of Assessment. This is instead of the statutory provision of 30 days from the date of service of the Notice of Assessment.

The extended period is to allow the corporate taxpayer enough time to submit its objection with precise grounds. The IRAS has stated that it will issue an acknowledgement within two weeks upon receipt of a valid objection (which in this context means an objection with precise grounds and not necessarily one that the Comptroller may agree with). If the Comptroller views that the objection is not valid he will inform the corporate taxpayer that the objection has been rejected. The taxpayer may follow up with another objection if it is lodged within two months from the Notice of Assessment.

To help corporate taxpayers ensure that they lodge a valid objection, the taxpayers are encouraged to complete and submit a prescribed form.¹ Other than details of the objection (eg year of assessment, date of notice of assessment, proposed tax adjustment and reasons), this form also contains a checklist which is meant to assist a taxpayer to

¹ Appendix A to the consultation paper

determine if the objection is valid. It includes questions such as whether the objection is filed within the two-month deadline, whether it is in relation to an adjustment already finalised earlier, etc. Two examples are also given to illustrate what is considered to be objections without precise grounds.

If the Comptroller accepts that a valid objection has been lodged, it may raise questions and the taxpayer is asked to reply to the queries within two months from the date of the query letter. For more straightforward cases, the Comptroller will decide within six months from the date of receipt of all relevant information and supporting documents. For more complex cases, the Comptroller will update the taxpayer on the status of his review and the estimated date of completion after six months. Where the information requested by the Comptroller remains outstanding after two years from the date of objection, he will send a final reminder before issuing the Notice of Refusal to Amend, assuming he still does not hear from the taxpayer.

The Comptroller will also issue the Notice of Refusal to Amend where the taxpayer reserves the right to reopen the case should a favourable test case comes up later ie, where the company's acceptance of the Comptroller's decision is conditional.

Our thoughts

The thrust of the paper appears to be the need for having precise grounds of objection; frivolous claims will not be entertained. Corporate taxpayers are expected to put in an effort to make their case and not just attempt to keep the matters open without substantiating their position in their notices of objection. This probably explains the IRAS's idea of extending the objection deadline; it is meant to give taxpayers more time to collate information to build up their case. Once that hurdle is crossed can one talk about dispute resolution proper.

While it is heartening to see the IRAS introduce measures to bring greater transparency to the process and facilitate the timely resolution of tax disputes, it may be overly prescriptive in certain areas and seemingly inequitable in others. We have given our feedback and set out some of our thoughts below.

- A valid objection

To give taxpayers a helping hand in lodging a valid objection, the form for filing notice of objection can be used. The form's lay-out suggests that it is more suitable for simpler objections eg omission of claims. It is curious why a revised tax computation should be submitted at that stage when the matters are still under discussion and the type of adjustments made by the Comptroller may make it premature to submit a revised tax computation with the objection. The taxpayer's proposed treatment might already be in the original computation submitted. Where there are multiple items or where the issues are more complex, it would usually be more meaningful to submit a revised computation once the tax treatments are agreed. While the form could be useful in more straightforward cases, it is unlikely to be suitable for complex cases where it involves detailed discussions of interaction of statutory provisions, legal precedents, etc.

It is said that the Comptroller will acknowledge a valid objection within two weeks of receipt of such an objection. If it is not valid (ie without precise grounds), the Comptroller will inform the taxpayer that the objection has been rejected. We assume that this will be done within the same timeline and it would be good to have that confirmation.

- Timeline for taxpayers and the Comptroller

While the taxpayer has two months to reply to queries by the Comptroller regarding the objection, the Comptroller has six months to look into the information provided. The longer the Comptroller takes to revert to the taxpayer, the more time a taxpayer may need later on to revisit the issues queried. It also appears rather lop-sided when in a complex case, the Comptroller has six months before informing the taxpayer of his review status and expected completion date, while the taxpayer is still required to provide all information within two months from the date of the query letter. No doubt these are merely guidelines; from experience, the Comptroller is generally reasonable when asked to extend the deadline to reply to a query. But it would be fairer to taxpayers if the final guidelines issued give some leeway as to the milestones applicable to taxpayers.

- Unconditional acceptance of Comptroller's adjustments

A taxpayer is required to accept the Comptroller's decision unconditionally; a conditional acceptance will be followed by a Notice of Refusal to Amend. It is currently rather common for companies to accept the Comptroller's adjustments on a without prejudice basis in the interest of early finalisation of tax matters. It is not apparent whether this practice has led to a whole host of cases being re-opened years later when a favourable test case arises, hence the proposed measure. Even so, it seems inequitable to deny a taxpayer his right to pursue the case when the opportunity arises. That is, unless, the Comptroller fulfils the bargain by accepting that he will not later re-open what has been already been agreed where a subsequent test case finds in his favour.

- Negotiations

The consultation paper does not talk about negotiations or settlement discussions, which are rather common. It therefore gives the impression that tax disputes end in an all-or-nothing fashion. Disputes are rarely pleasant and negotiation or settlement is a real option. We believe that some sort of flexibility is warranted if only to let taxpayers know that there is an alternative to litigation.

Get in touch

Contact us

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