



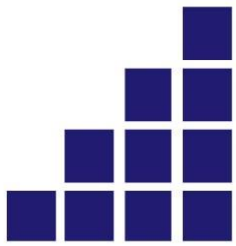
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**TAX APPEALS
&
TAX RULINGS**



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**WHEN IS A TAX ASSESSMENT
FINALLY SETTLED?**

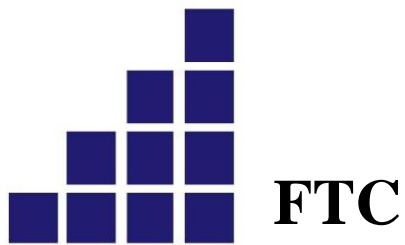


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s.84 Assessments to be Final and Conclusive

→ s. 84(1) Final and conclusive assessment

Except as expressly provided in the Act, where no valid notice of appeal has been lodged within the time limited against an assessment, or where an assessment has been determined on appeal, the assessment as made or **agreed to under s.76(6) or determined on appeal**, as the case may be, shall be final and conclusive for the purposes of the Act.



s.76 Service of Notices of Assessment and Revision of Assessment

→ s.76(6) Amendment or refusal to amend assessment

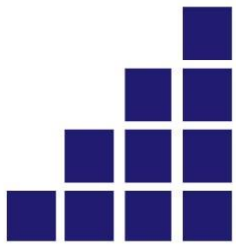
In the event of any person who has objected to an assessment made upon him:

(a) **Agreeing with the Comptroller** as to the amount at which he (taxpayer) is liable to be assessed, the assessment shall be amended accordingly, and notice of the revised assessment shall be served on the taxpayer, **OR**

(b) **Failing to agree with the Comptroller** as to the amount at which he (taxpayer) is liable to be assessed, the Comptroller shall

(i) give the taxpayer **Notice of Refusal to Amend the Assessment**, **AND**

(ii) **may revise the assessment** to such amount as the Comptroller may determine, to the best of his judgement

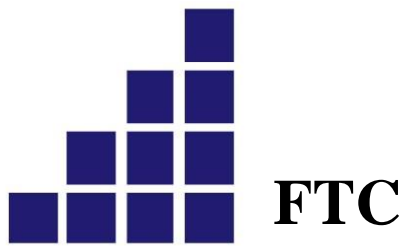


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s.84 Assessments to be Final and Conclusive

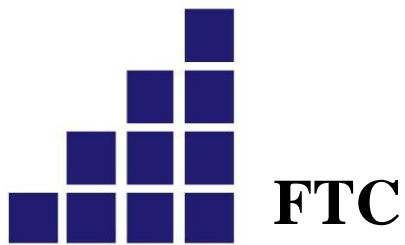
→ s.84(2) Comptroller may make assessments and additional assessment

Nothing in this section (s.84) shall prevent the Comptroller from making any assessment or additional assessment under **s.74** which does not involve reopening any matter which has been determined on appeal.



s.74 (Comptroller's Right to Raise) Additional Assessments
→ s.74(2) Fraud or wilful deceit

Notwithstanding subsection (1), where **in the opinion of the Comptroller**, any form of fraud or wilful deceit has been committed by or on behalf of any person in connection with or in relation to tax, the Comptroller may, for the purpose of making good **any loss of tax attributable to fraud or wilful deceit**, **assess that person at any time.**



s.74 (Comptroller's Right to Raise) Additional Assessments

→ s.74(1) Time bar for making additional assessment

Where **it appears to the Comptroller** that any person liable to tax (i) has not been assessed or (ii) **has been assessed at a lesser amount than that which ought to have been charged,**

the Comptroller may, within the year of assessment or within **4 years** (if the year of assessment is 2008 or a subsequent year of assessment) **after the expiration thereof,** assess that person at such amount or additional amount as according to his judgement ought to have been charged.

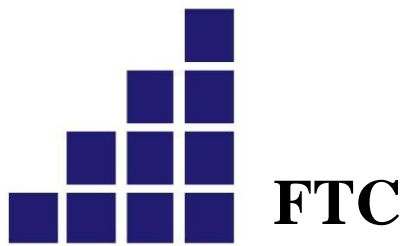
The expiry of YA 2015 is 31 Dec 2015. The 4 years time bar for making additional assessment (on your tax payable for YA 2015) starts on 1.1.2016 (1st year) and will end on 31.12.2019 (4th year).



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THE DISCRETIONARY POWERS OF THE COMPTROLLER

“responsible for the assessment
and collection of tax” s.4(3)



The Comptroller's discretionary powers are necessary for the discharge of his functions under the Act

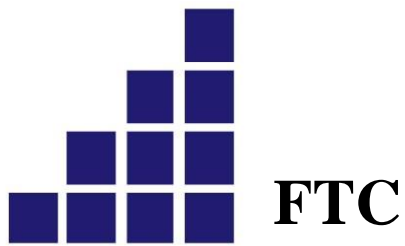
“to the best of his judgment”

“in the opinion of the Comptroller”

“where it appears to the Comptroller”

“where the Comptroller is satisfied”

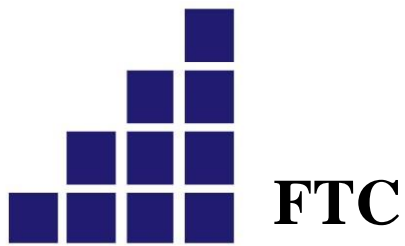
“the Comptroller may, if he thinks fit”



But there are limits :

- a) “It is a discretion which is to be exercised according to law” [Lord Denning]

- b) Judicial Review by the High Court – remedy of last resort

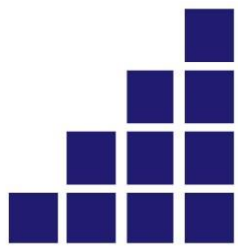


But there are limits :

Without the Income Tax Act, there is no liability to pay Income Tax.

“.....in a taxing Act one has to look merely at what is clearly said. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied” [Rowlatt J *Cape Brandy Syndicate v IRC* [1921] 1 KB 64

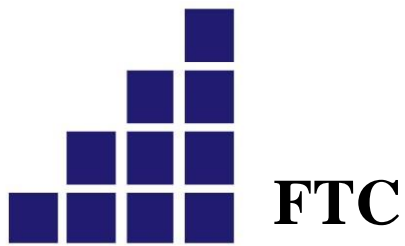
“... the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him.” [Lord Simons *Russell v Scott* (30 TC 394)]



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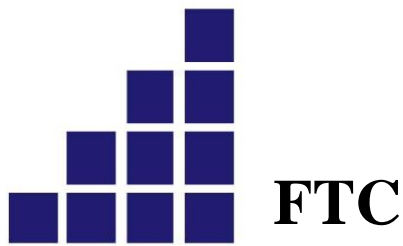
Where the Comptroller raises Additional Assessments under s74 or under any other sections of the Act and the taxpayer appeals, the burden of proof is on the taxpayer. **The taxpayer has to prove he is right, the Comptroller does not have to prove the taxpayer is wrong.**

S. 80 of the Act specifically requires that the onus of proving that the Comptroller's tax assessment is excessive shall be on the taxpayer. The burden imposed on the taxpayer follows the general rule of evidence that where the facts are peculiarly within the knowledge of one party, that party should bear the burden of proving those facts.



In a tax case adjudicated by the Income Tax Board of Review, the tax tribunal agreed that the Comptroller is entitled to revise an earlier assessment (under s.74) when new facts come to his attention which were not taken into consideration earlier.

AQQ v The Comptroller of Income Tax [2011 SGITBR1]

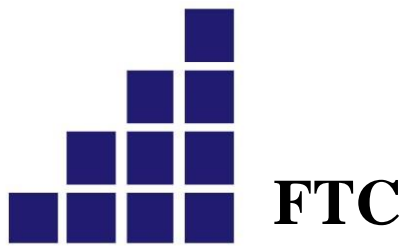


The Burden Of Proof Is On The Taxpayer

s.80 Hearing and Disposal of Appeals

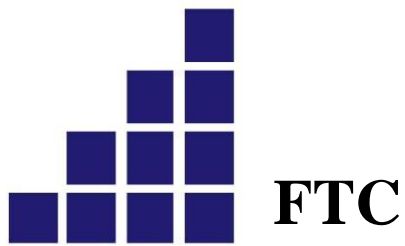
→ s.80(4) Onus of proving assessment excessive

The onus of proving that **the assessment is excessive** or that the amount of any unabsorbed **losses, allowances or donations that may be carried forward** ought to be of a higher amount than that assessed (as the case may be) shall be on the appellant.



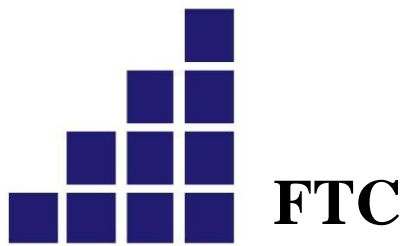
Some Tax Issues that you can Appeal :

- 1) 1997 GST tax appeal for a foreign company (subsidiary of a listed corporation in Europe) to be allowed input tax refunds;
- 2) 1999 tax ruling agreeing to exemption (under section 23 and 37) to allow the utilisation of unused tax losses (S\$4 mil) and unused capital allowances (S\$2.5 mil) as there was a 100% change in shareholdings, following the management buy-out of a Singapore subsidiary of a Singapore listed group;
- 3) 2008 tax appeal against the taxation of gains from a foreign employee share options, arising from a takeover of one listed corporation by another listed corporation, in Europe – unique set of circumstances;



Some Tax Issues that you can Appeal :

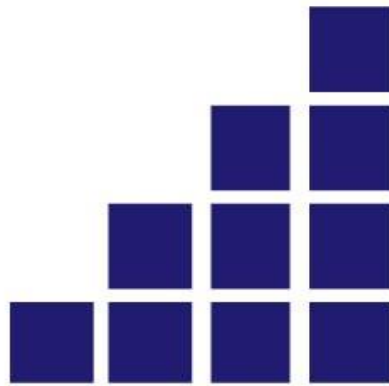
- 4) 2010 Goods & Services Tax liability for foreign contractors on projects in Singapore;
- 5) 2010 application for tax waivers under section 34C of the Income Tax Act following a corporate amalgamation under section 215D of the Singapore Companies Act, for 2 Singapore subsidiaries of an international listed corporation;
- 6) 2012 Tax appeals and tax waivers under the Property Tax Act, for a major manufacturer in Jurong Island;



Some Tax Issues that you can Appeal :

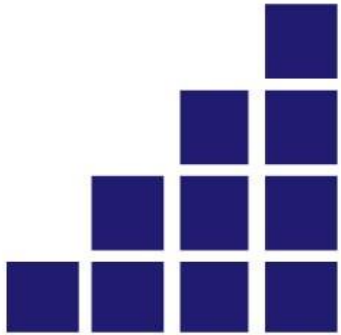
- 7) 2013 application for stamp duty relief under section 15A (mergers and acquisition) of the Stamp Duty Act ;
- 8) 2013 tax appeal for exemption (under section 23 and 37) to allow the utilisation of unused tax losses and unused capital allowances as there was a 100% change in shareholdings, following the takeover of a Singapore subsidiary of an Australian group by a listed corporation in Japan;
- 9) Appeals for refund and waiver of withholding tax
- 10) 2014 tax appeals on the “tax-on-tax treatment” on tax allowances for expatriates of 3 Singapore subsidiaries of a world-wide manufacturer listed in Europe

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