

Tax Evasion and Tax Avoidance

When it comes to tax evasion and abusive tax avoidance practices, Inland Revenue Authority of Singapore (IRAS) closely monitors such activities and takes a firm stance against them.

Prosecution cases for Income Tax and Goods and Services Tax (GST) have been published on the newspaper periodically to deter undesirable tax arrangements (e.g. creating fictitious transactions, falsifying the accounts, underreporting income, inflating expenses, etc). A person can be criminally charged under the Income Tax Act (ITA) and/or the GST Act for tax evasion when being investigated by the IRAS and the penalties, fines and jail terms are:

ITA/GST Act	Maximum Penalty	Maximum Fine	Maximum Jail Term
Section 96A of ITA	4 times of the tax undercharged	SGD50,000	5 years
Section 62 of GST Act	3 times of the tax undercharged	SGD10,000	7 years

If the person has no intention to evade tax but submits an incorrect tax return negligently, the person can still face a penalty of up to 2 times the tax undercharged, a fine of up to SGD5,000 and/or a jail sentence of up to 3 years (under Section 95(2) of ITA or Section 59(2) of GST Act).

Unlike an IRAS tax audit where prior appointment is scheduled to visit the taxpayer's premises, an IRAS tax investigation usually comes as a surprise visit to catch the taxpayer off-guard. It is natural for the taxpayer to feel unease and react defensively during such a surprise visit. However, it may not be wise to prevent the investigators from accessing the documents or be seen as uncooperative because it is a chargeable offence for obstructing the IRAS tax investigators from performing their duties (Section 65C(1)(b) of ITA and Section 66 of GST Act).

While tax evasion is an illegitimate attempt to reduce tax liability by deceit or concealment, tax avoidance, on the other hand, arranges the financial affairs to minimise tax liability within the boundaries of tax laws. However, when the tax avoidance scheme is abusive, the IRAS can invoke the anti-avoidance provision under section 33 of ITA or section 47 of GST Act to disregard the arrangement and reassess the income of the taxpayer. In addition, the IRAS can impose a surcharge of 50% of the tax recoverable under Section 33A of ITA or section 47A of GST Act.

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What is considered abusive tax avoidance?

When it comes to determining whether the tax benefit derived from a tax avoidance arrangement is abusive and whether the anti-avoidance provision should be invoked, the IRAS relies on the following questions laid out by the Court of Appeal in *Comptroller of Income Tax v AQQ* [2014]:

- ▶ Whether the arrangement is carried out for bona fide commercial reasons (i.e. the avoidance or reduction of tax is not one of the main purposes); and
- ▶ Whether the specific ITA provision used to obtain the tax advantage was within the Parliament's intent.

If the answer to any of the above questions is "No", it is likely that the arrangement may be abusive and subject to reassessment.

How can we help?

We understand the psychological and financial stress which you may have in view of the IRAS tax queries, audit or investigation. Not all tax evasion cases have to end up the same way, i.e. prosecution and imprisonment. Let us represent you to mitigate the negative consequences of tax evasion or abusive tax avoidance and negotiate for a settlement with the IRAS.

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逃税和避税

在逃税和滥用避税行为方面，新加坡税务局（IRAS）密切监控此类活动，并采取坚定立场。

所得税和消费税的起诉案例定期在报纸上公布，以阻止不良税务安排（例如虚构交易、伪造账目、少报收入、虚报费用等）。个人在接受 IRAS 调查时，可能会根据《所得税法》和/或《消费税法》因逃税而受到刑事指控，处罚、罚款和监禁如下：

所得税/消费税法	最高金钱处罚	最高罚款	最长监禁期
所得税法 第 96A 条	少缴税款的 4 倍	50,000 新元	5 年
消费税法 第 62 条	少缴税款的 3 倍	10,000 新元	7 年

如果该人无意逃税，但疏忽提交了错误的纳税申报表，该人面临的金钱罚款可以高达两倍所少缴的税款、高达 5,000 新元的罚款和/或高达 3 年监禁定罪后（根据《所得税法》第 95(2) 条或《消费税法》第 59(2) 条）。

IRAS 税务调查与税务审计不同，税务调查会在没有事先通知的情况下进行突击检查，让纳税人措手不及。当面对 IRAS 的突击检查时，纳税人自然会表现出非常防御性的态度。但是，不与调查人员合作或阻止调查人员查阅文件都是不明智的行为，因为阻碍 IRAS 税务调查员履行职责属于应受指控的犯罪行为（根据《所得税法》第 65C(1)(b) 条和《消费税法》第 66 条）。

逃税是通过欺骗或隐瞒来减少纳税义务的非法行为，而避税则是在税法范围内安排财务以尽量减少纳税义务。然而，当避税计划被滥用时，IRAS 可以援引《所得税法》第 33 条或《消费税法》第 47 条下的反避税条款来无视该安排并重新评估纳税人的收入。此外，IRAS 还可根据《所得税法》第 33A 条或《消费税法》第 47A 条征收可收回税款 50% 的附加费。

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什么被视为滥用避税策略？

在确定避税安排所带来的税收优惠是否滥用以及是否应适用反避税条款时，IRAS 依赖上诉法院在 Comptroller of Income Tax v AQQ [2014] 案中提出的问题：

- ▶ 该安排是否出于善意商业原因（即避税或减税不是主要目的之一）；和
- ▶ 应用所得税法特定条款的税收优惠是否符合国会的意图。

如果上述任何一个问题的答案为“否”，则该避税安排很可能会视为滥用避税策略，并且需要进行重新评估。

我们可以提供什么帮助？

我们了解您在 IRAS 税务查询、审计或调查中可能面临的精神和财务压力。并非所有逃税案件都必须以同样的方式结束，即起诉和监禁。让我们代表您减轻逃税或滥用避税策略的负面后果，并与IRAS协商达成和解。

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