

## **Financial Services Director’s claim for deduction of management fees disallowed**

The decision of *GBT v The Comptroller of Income Tax* [2017] SGITBR 2 is the first Income Tax Board of Review (“Board”) case involving a Financial Services Director’s claim for deduction of management fees under section 14 of the Income Tax Act (“the Act”). The Board dismissed the Appellant’s appeal. Briefly, section 14 of the Act deals with expenses which are allowed as deductions. For an expense to be deductible, the expense has to be wholly and exclusively incurred in the production of income.

### **Issue**

The case concerns the appeal of the Appellant, a Financial Services Director with [B] against the decision of the Comptroller of Income Tax (“the Comptroller”) to disallow the Appellant’s claim for deduction of management fees under section 14 of the Act.

### **Background**

The Appellant and his wife incorporated [C] (“C Company”), a company of which the Appellant and his wife were the sole shareholders and directors.

The commission (“Commission Income”) paid by [B] to the Appellant was paid in its entirety to C Company.

Under the terms of the Appellant’s employment, he was responsible for the recruitment, training and supervision of Financial Services Consultants operating under him, as well as the provision of services to policy holders whose policies were purchased through him or the Consultants. In exchange, the Appellant was paid Commission Income, the quantum of which was determined by the sales achieved by those Consultants.

The question before the Board was whether the Commission Income should be taxed as the Appellant’s personal income or that of C Company.

The Comptroller’s position was that the Commission Income should be taxed as the Appellant’s personal income, while the Appellant’s position was that the Commission Income should be taxed as that of C Company. The Appellant did not seriously dispute that the Commission Income was his personal income.

The Appellant’s case was that there had been an oral agreement between him and C Company for the entire of any commission received by him to be paid to B company in exchange for the services provided by B. He argued that the Commission Income ought to be deducted under section 14 of the Act from his personal income for the purpose of ascertaining the income to be taxed.

## **The Board's decision**

The Board dismissed the Appellant's appeal. The Board agreed with the Comptroller there appeared to be insufficient evidence of this agreement, oral or implied, putting aside the Board's reservations as to the commercial sensibilities of such an arrangement

The Board was of the view that as the Appellant had asserted the existence of the contract, the Appellant bore the burden of proof in this regard.

The evidence adduced by the Appellant included (a) a list of employees of C Company in the relevant time period; (b) the employment of these employees; and (c) a CPF Record of Payment showing CPF contributions made by C Company to the CPF accounts of its employees. In the Board's judgement, the evidence adduced by the Appellant should at best go to show that C Company was not a shell company. That alone was not sufficient; what should be shown was that C Company had in fact provided services to the Appellant in order for the Board to infer the existence of an agreement for the Appellant to pay the entire Commission Income for those services. The only evidence that hinted at services being provided by C Company to the Appellant were exhibits appended to the third affidavit of the Appellant's wife stated by the Appellant's wife to be for the purchase of a resume search facility to recruit Financial Services Consultants for the Appellant's district. Nevertheless, the Board noted that the invoice did not state the underlying purpose of the purchase, and it was unclear as to whether the facility was in fact used by C Company for the Appellant's benefit.

The Board was of the view that there could be no commercial motive for the expenditure of a sum equivalent to the entire of the Commission Income in order to earn that sum. As to the allegations that the Appellant's wife had been instructed by the Comptroller to declare all of the Commission Income as the income of C Company, there was no objective evidence that corroborated her account and the Board was not persuaded that such a representation had been made.

All of the Commission Income was held in the personal accounts of the Appellant and his wife and not the account of C Company. The Appellant's wife had given evidence that the expenses of C Company would then be paid from these personal accounts and book entries would be made at the end of the year reflecting the Commission Income as that of C Company. While this arrangement in itself did not necessarily lead to the conclusion that there had been no agreement between the Appellant and C Company, the ad-hoc nature of these payments which appeared to be wholly improper weighed against the inference of implication of an agreement that all of the Commission Income would be paid to C Company. Money was never paid directly to C Company.

The Board was of the view that there was insufficient evidence of an agreement between the Appellant and C Company for the entire of the Commission Income to be paid to C Company. Accordingly, the Board was not persuaded that the Commission Income was "wholly and exclusively incurred" for its production, and the Board found the Appellant had failed to discharge his burden of proving that the assessments in question are excessive under section 80(4) of the Act. This was sufficient to dismiss appeal without canvassing the parties' arguments on section 33 of the Act, which is the section on tax avoidance.

### **Significance of the Board's decision**

The Board's decision serves as a precedent on the ambit of section 14. For an expense to be deductible, the taxpayer has to produce evidence to show that the expense is wholly and exclusively incurred in the production of income. The Board's decision also signifies that the evidential burden is on the taxpayer when he asserts a fact.

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