



## Singapore tax developments

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### ***BQY and another v CIT (2018) SGHC 75***

The Singapore Income Tax Board of Review (Board) case of *GCA and GCB v The Comptroller of Income Tax (2017) SGITBR 5* has been appealed to the Singapore High Court as *BQY and another v Comptroller of Income Tax (2018) SGHC 75*.

Briefly, the appeal centred around whether gains from the sale of three Good Class Bungalows (the Properties) are assessable to tax. The taxpayers' appeal was dismissed by the High Court.

The background of the appeal is as follows:

#### **1. Background**

- 1.1. BQY and another are husband and wife (collectively, the Appellants). The Appellants are the sole directors and shareholders of a company that is engaged in the engineering and construction business.
- 1.2. The Appellants and their four children resided in a property at West Coast Road until December 2012, when the family moved into a property at Binjai Park.
- 1.3. Whilst residing in the West Coast Road property, the Appellants, during April 2005 and November 2010, acquired and disposed of the following properties and made an aggregate net profit in excess of S\$16 million:

<b>Property</b>	<b>Ownership period</b>	<b>Net profit</b>
Wilby Road	9.5 months	S\$580,255
Bizray Park	10.1 months	S\$13,617,092

- 1.4 On 3 February 2012, the Comptroller of Income Tax (Comptroller) raised queries on, amongst others, the purchase and sale of the Properties. Subsequently, the Comptroller issued assessments to bring the net gains from all three properties to tax.

## 2. Issue

- 2.1. The issue before the High Court (as well as the Board in the earlier appeal) was whether the gains or profits derived from the sale of the Properties are assessable to tax under section 10(1)(g) of the Income Tax Act (ITA).
- 2.2. There was no dispute between the Comptroller and the Appellants that the relevant charging section is section 10(1)(g) and that the applicability of this section turns on whether the Appellants had, at the time of the acquisition of each of the properties, an intention to derive a gain or profit from the disposal of each of the properties.

## 3. Facts/evidence adduced

- 3.1 The stated intention of the Appellants in purchasing each property and the reason for their sale may be briefly summarised as follows:

Property	Purpose of purchase	Reason for sale
Wilby Road	Own use	To realise profit
Bizray Park	Rental	To realise profit
Garlick Avenue	Rental	To realise profit

- 3.2 When the appeal was heard before the Board, various evidence in relation to each property was adduced by both the Appellants and the Comptroller. The High Court was of the view that the findings of fact by the Board relating to the purchase and sale of the properties was properly made and ought not to be disturbed.
- 3.3 A sampling of the evidence adduced is reproduced for context:

Evidence adduced by the Appellants and other witnesses	Evidence adduced by the Comptroller
Wilby Road property was 'too big'. Wife and children are uncomfortable moving in.	The net floor area of Wilby Road property was actually smaller than their current residence, although total land area was bigger.
There is a large old tree on premises of Wilby Road. This poses a danger to the children and the tree cannot be felled as it was	There was no such tree on premises. There was a tree on an adjacent plot of land, and in any case there was no evidence to

conserved under the Parks and Trees Act.	suggest the tree was conserved.
There was an unsolicited offer to purchase Bizray Park.	Comptroller re-produced advertisement placed by property agent for sale of Bizray Park
There was an unsolicited offer to purchase Garlick Avenue.	Comptroller re-produced advertisement placed by property agent for sale of Garlick Avenue

3.4 The High Court also noted that the Appellants did not occupy the Properties after their purchase, nor were tenants found for any of the Properties.

#### 4. Judgement

4.1 The High Court stated, as a matter of first principles, that:

“When a person makes a profits from a house initially purchased as a residential home, he should not be taxed, under s10(1)(g) of the Act, on any gains made because that gain cannot be described as a “gain or profit of an income nature”. The gain would merely [sic] a capital gain. ***This is undisputed.***” (emphasis added)

4.2 This being the case, the issue turns to whether the home was purchased by the individual with the intent of living in it. This intention should be ascertained at the time when the property was purchased, and is a re-articulation of the principle stated by Lord Wilberforce in *Simmons v IRC* (1980) 53 TC 461, wherein:

“Trading requires an intention to trade: normally the question to be asked is ***whether this intention existed at the time of the acquisition of the asset...***” (emphasis added)

4.3 Since intention is a subjective enquiry of the taxpayer’s mind, and arguably neither the IRAS nor the Courts are mind-readers, the determination of a taxpayer’s intention by the authorities often entails an examination of observable actions or conduct by the taxpayer.

4.4 The High Court appeared to place heavy emphasis on the fact that the Appellant did not move into any of the Properties but were living in their original home at West Coast Road during the period when the Properties were bought and sold. As such, the Court was not convinced that the taxpayer’s intention was to purchase the Properties as residential homes but sold them as they repeatedly found each Property to be unsuitable.

#### Deloitte Singapore’s view

Given that there was no dispute between the Comptroller and the Appellants on the applicable law and the interpretation of the law, this was a case that turned largely on its facts.

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