

Tax

First Ruling After High Court's Endorsement of New Sentencing Framework for GST Evasion Offences

Introduction

In *Public Prosecutor v Pua Om Tee* (MA 9019 of 2021) ("**Pua Om Tee**"), the High Court found that previous sentencing decisions under section 62 of the Goods and Services Act 1993 ("**GST Act**") lacked a consistent approach in sentencing offenders for offences under the same. Accordingly, it laid down a new five-step sentencing framework for GST offences.

Rajah & Tann has acted in the first GST evasion case to be decided under this new sentencing framework for GST offences. In this Update, we consider how the Courts' application of the sentencing framework in *Pua Om Tee* may have an impact on future cases involving GST evasion.

Factual Background

In the present case, the accused, **AW**, was the director of a construction company which carried on the business of supplying architectural glass and aluminium. **AW** pleaded guilty to three charges under section 62(1)(a) of the GST Act with respect to his wilful intent to assist the company to evade tax by understating the latter's output tax.

The GST undercharged in respect of the 3 charges was as follows:

Charge No.	GST undercharged (S\$)
1	83,072.46
2	111,034.79
3	133,389.76

The evasion of GST by omission of output tax in quarterly GST returns is punishable under section 62(1)(a) of the GST Act with a term of imprisonment of up to seven years, a fine of up to S\$10,000, or a combination of both. There is also a mandatory financial penalty of treble the amount of GST undercharged.

Tax

The Sentencing Framework in *Pua Om Tee*

In accepting *A*'s plea of guilt, the State Court in the present case affirmed and applied the five-step sentencing framework for GST evasion offences adopted in *Pua Om Tee*. This framework was anchored in a harm-culpability analysis and was modelled after the five-step framework laid down in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609.

The five-step sentencing framework in *Pua Om Tee* is summarised as follows:

- Step 1: Identifying the level of harm and culpability of the accused.
- Step 2: Identifying the applicable sentencing range.
- Step 3: Identifying the starting point within the indicative sentencing range.
- Step 4: Adjustments to the starting point taking into account the offender-specific factors.
- Step 5: Adjustment of individual sentence to take into account one transaction rule and totality principle.

The Present Case

Steps 1 – 3 of the *Pua Om Tee* framework

The Judge had to first identify the level of harm and culpability of the accused. It was not disputed that the accused's level of culpability in the present case was low, but ascertaining the level of harm was more contentious.

The Prosecution had accepted that the second charge involving S\$111,034.79 fell within the 'slight' category of harm. However, for the third charge involving S\$133,389.76, the Prosecution submitted that the quantum undercharged should fall under the 'moderate' range. The Defence argued that it would be arbitrary to do so when there was only a difference of approximately S\$20,000 between the two charges, and the third charge should still fall under the 'slight' range.

After hearing both parties' submissions, the Judge found that the 'harm' component was at the high end of the 'slight' range, rather than in the 'moderate' range. It was generally not desirable to extrapolate the amount of GST evaded against the term of imprisonment linearly, since there was no theoretical limit to the former, whereas the maximum term of imprisonment is capped at 7 years. However, in cases where there were no other relevant factors (i.e. where the sum of GST evaded was the main consideration), the relationship between the quantum of GST evaded and the term of imprisonment would be more linear at the lower end of the harm-culpability matrix.

Accordingly, there was no basis to argue that the third charge did not fall within the same category. In this regard, the indicative sentences (before adjustments) were fixed as follows:

Client Update: Singapore

2022 APRIL

Tax

Charge No.	GST undercharged (S\$)	Harm	Culpability	Indicative sentence (before adjustments)
1	83,072.46	Slight	Low	36 weeks' imprisonment
2	111,034.79	Slight	Low	46 weeks' imprisonment
3	133,389.76	Slight	Low	56 weeks' imprisonment

Steps 4 – 5 of the *Pua Om Tee* framework

Having regard to the facts in *Pua Om Tee*, the Judge in the present decision observed that after applying the uplift in that case, the effective sentencing reduction was between 35-38%. However, he considered that the accused in the present case had not made any restitution in regards of the undercharged GST, thus warranting a lesser reduction. Nonetheless, he acknowledged the accused's timely plea of guilt, and so applied a **30% reduction**. The resultant sentences were as follows:

Charge No.	GST undercharged (S\$)	Harm	Culpability	Sentence (before adjustments)	Sentence (after adjustments)
1	83,072.46	Slight	Low	36 weeks' imprisonment	25 weeks' imprisonment
2	111,034.79	Slight	Low	46 weeks' imprisonment	32 weeks' imprisonment
3	133,389.76	Slight	Low	56 weeks' imprisonment	39 weeks' imprisonment

In applying the totality principle and one transaction rule, the Judge found that the first and third charges should run consecutively, for a total term of **64 weeks**, which was 2.6 times the term of imprisonment in *Pua Om Tee* and **24 weeks less than the Prosecution's suggested sentence**.

Concluding Remarks

The five-step framework in *Pua Om Tee* provides welcome clarity and consistency in respect of sentencing outcomes for GST evasion offences. The application of the framework in the present decision confirms the quantum of GST undercharged should not be regarded as the most important consideration in determining the harm involved and that it would be the *de facto* sole consideration only when the other relevant factors are absent.

Pua Om Tee runs parallel to *Tan Song Cheng v Public Prosecutor and another appeal* [2021] SGHC 138, in which the High Court likewise endorsed the same five-step framework for income tax offences, specifically in relation to the penalties set out in section 96(1) of the Income Tax Act. For more information, please see our August 2021 Legal Update titled "[High Court Sets out New Sentencing Framework for Tax Evasion Offences](#)".

Tax

Contacts



Vikna Rajah
Head, Tax and Trust & Private
Client Practices

T +65 6232 0597

vikna.rajah@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com.

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

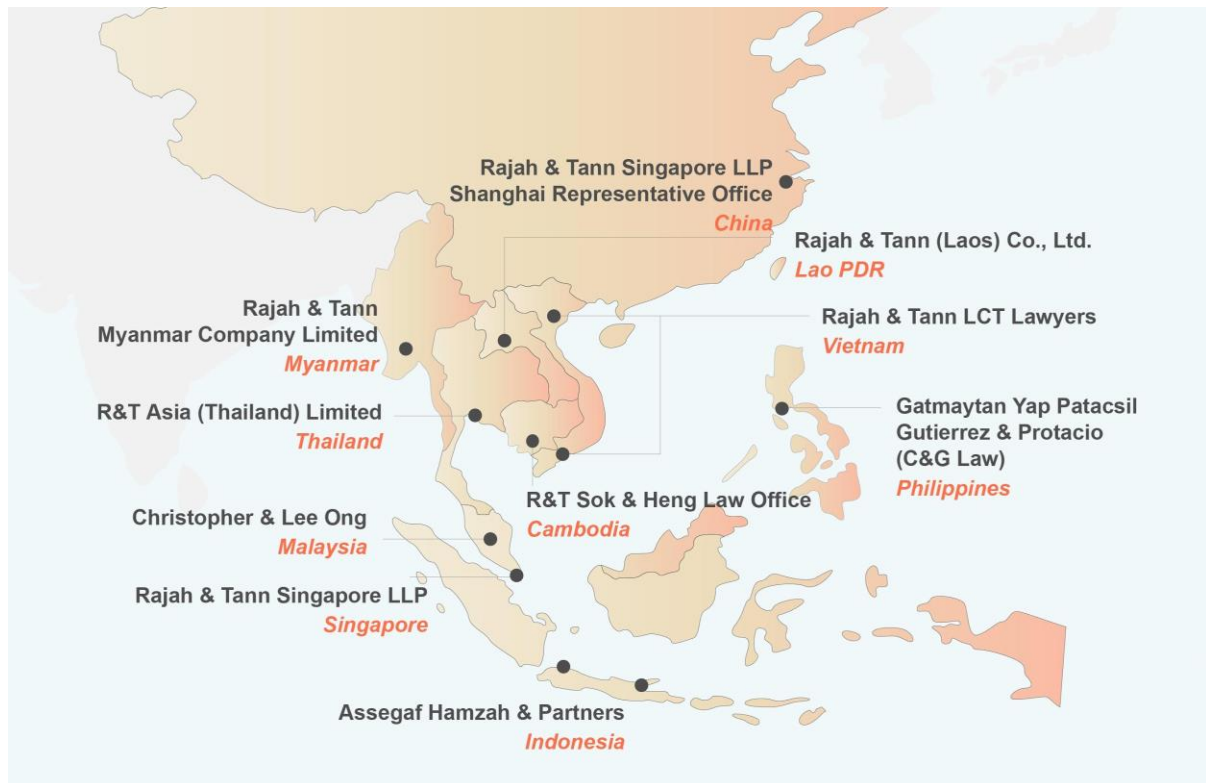
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.