

INCOME TAX ACT

PART XVIII

APPEALS

Board of Review

78. —(1) For the purpose of hearing appeals in the manner hereinafter provided, there shall be a Board of Review (referred to in this Part as the Board) consisting of not more than 30 members appointed from time to time by the Minister.

[1/90]

(2) Members of the Board shall hold office for such period as may be determined by the Minister and shall be eligible for re-appointment.

(3) The Minister may at any time remove any member of the Board from office without assigning any reason.

(4) A member may resign his office by notice in writing to the Minister.

(5) The Minister may appoint from amongst the members of the Board —

(a) a Chairman of the Board; and

(b) such number of Deputy Chairmen of the Board as the Minister thinks fit.

[49/2004]

(6) No person may be appointed as Chairman of the Board or Deputy Chairman of the Board unless he is either qualified to be a District Judge or is an accountant.

[49/2004]

(7) Meetings of the Board shall be presided by —

(a) the Chairman of the Board;

(b) in the absence of the Chairman of the Board —

(i) where there is only one Deputy Chairman of the Board present, the Deputy Chairman; and

(ii) where there is more than one Deputy Chairman of the Board present, such Deputy Chairman as may be chosen by the Deputy Chairmen present; and

(c) where neither the Chairman of the Board nor any Deputy Chairman of the Board is present, such member of the Board as may be chosen by the members present.

[49/2004]

(8) The Minister may appoint a secretary or secretaries to the Board and such other officers and employees of the Board as may be necessary.

[53/2007]

(9) All the powers, functions and duties of the Board may be exercised, discharged and performed by any committee of the Board consisting of not less than 3 members of the Board, at least one of whom shall be the Chairman of the Board or a Deputy Chairman of the Board.

[49/2004]

(10) Any act, finding or decision of any such committee shall be deemed to be the act, finding or decision of the Board.

(11) The secretary shall, from time to time, summon such members of the Board as may be nominated by the Chairman to constitute a committee of the Board for the

purposes of giving effect to the provisions of this Part, and it shall be the duty of such members to attend at the times and places specified in the summons.

[49/2004; 53/2007]

(12) Meetings of a committee shall be presided by —

(a) where the Chairman of the Board is a member of the committee, the Chairman;

(b) where the Chairman of the Board is not a member of the committee and —

(i) there is only one Deputy Chairman of the Board on the committee, the Deputy Chairman; or

(ii) there is more than one Deputy Chairman of the Board on the committee, such Deputy Chairman as the Chairman may determine.

[49/2004]

(13) Where the Chairman of the Board or any Deputy Chairman of the Board, as the case may be, is absent from any meeting of a committee at which he ought under subsection (12) to be presiding, the meeting shall be presided by —

(a) where there is only one Deputy Chairman who is a member of the committee present, the Deputy Chairman;

(b) where there is more than one Deputy Chairman who is a member of the committee present, such Deputy Chairman as may be chosen by the Deputy Chairmen present; and

(c) where there is no Deputy Chairman who is a member of the committee present, such member of the Board as may be chosen by the members present.

[49/2004]

(14) All matters coming before the Board or a committee of the Board at any sitting thereof shall be decided by a majority of votes of the members of the Board present, and, in the event of an equality of votes, the Chairman of the Board, the Deputy Chairman of the Board or such other member as may be presiding, as the case may be, shall have a second or casting vote.

[49/2004]

(15) Members of the Board shall be entitled to receive such remuneration and such travelling and subsistence allowances as the Minister may determine.

(16) The Minister may make regulations —

(a) prescribing the manner in which appeals shall be made to the Board;

(b) prescribing the procedure to be adopted by the Board in hearing appeals and the records to be kept by the Board;

(c) prescribing the places where and the times at which appeals shall be heard by the Board;

(d) prescribing the fees to be paid in respect of any appeal under this Part;

(e) prescribing a scale of costs in respect of appeals to the Board; and

(f) generally for the better carrying out of the provisions of this Part.

Right of appeal

79. —(1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Comptroller in the manner provided in section 76(6) may appeal to the Board by lodging with the secretary —

(a) within 30 days from the date of the refusal of the Comptroller to amend the assessment, a written notice of appeal in duplicate; and

(b) within 30 days of the date on which such notice of appeal was lodged, a petition of appeal in quadruplicate containing a statement of the grounds of appeal.

[22/2011 wef 20/12/2011]

[53/2007]

(2) A notice of appeal shall contain —

(a) an address for service;

(b) a list of the names of any members of the Board to whom the appellant objects; and

(c) the reasons for such objection.

[49/2004]

(3) An appellant shall not be entitled to object to the Chairman or any Deputy Chairman of the Board and to more than one-third of the total number of members of the Board.

[49/2004]

(4) On receipt of a notice of appeal, the secretary shall immediately forward one copy thereof to the Comptroller who may, within 3 days of the receipt of such copy, lodge with the secretary a list of any members of the Board to whom he objects and the reasons for such objection.

[7/79; 49/2004; 53/2007]

(5) The Comptroller shall not be entitled to object to the Chairman or any Deputy Chairman of the Board and the number of members of the Board objected to by the Comptroller shall not, when added to the number objected to by the appellant, exceed one-half of the total number of members of the Board.

[49/2004]

(6) The Chairman of the Board, or such Deputy Chairman of the Board as the Chairman may authorise, shall determine whether the reason for any objection to any member under subsection (2) or (4) is valid.

[49/2004]

(7) Where the Chairman of the Board or a Deputy Chairman of the Board determines under subsection (6) that the reason for any objection is valid, the member of the Board in respect of whom the objection was made shall not attend the hearing of the appeal of the appellant.

[49/2004]

(8) Where the Chairman of the Board or a Deputy Chairman of the Board determines under subsection (6) that the reason for any objection is not valid, the Chairman or Deputy Chairman shall reject that objection and inform the appellant or the Comptroller accordingly.

[49/2004]

(9) Where an objection has been rejected by the Chairman of the Board or a Deputy Chairman of the Board under subsection (8), the member of the Board in respect of whom that objection was made may attend the hearing of the appeal of the appellant.

[49/2004]

(10) The decision of the Chairman of the Board or a Deputy Chairman of the Board under subsection (6) shall be final.

[49/2004]

(11) The Chairman of the Board may, in his discretion and on such terms as he thinks fit, permit any person to proceed with an appeal notwithstanding that the notice of appeal or petition of appeal was not lodged within the time limited therefor by this section, if it is shown to the satisfaction of the Chairman that the person was prevented from lodging the notice or petition in due time owing to absence, sickness or other reasonable cause and that there has been no unreasonable delay on his part.

[49/2004]

(12) Except with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds stated in his petition of appeal.

Hearing and disposal of appeals

80. —(1) On receipt of a petition of appeal, the secretary shall immediately forward one copy thereof to the Comptroller and shall, as soon as may be thereafter, fix a time and place for the hearing of the appeal and shall give 14 days' notice thereof both to the appellant and to the Comptroller.

[53/2007]

(2) The appellant and the Comptroller shall attend, either in person or by an advocate and solicitor or accountant, at such times and places as may be fixed for the hearing of the appeal.

(3) If it is proved to the satisfaction of the Board that, owing to absence, sickness or other reasonable cause, any person is prevented from so attending, the Board may postpone the hearing of the appeal for such reasonable time as it thinks necessary.

(4) 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.

[22/2011 wef 20/12/2011]

(5) The Board shall have the following powers:

(a) to summon to attend at the hearing of an appeal any person whom it may consider able to give evidence respecting the appeal, to examine such person as a witness either on oath or otherwise and to require such person to produce such books, papers or documents as the Board may think necessary for the purposes of the appeal;

(b) to allow any person so attending any reasonable expenses necessarily incurred by him in so attending; such expenses shall form part of the costs of the appeal and, pending and subject to any order by the Board as to such costs, shall be paid by the appellant or the Comptroller, as the Board may direct;

(c) all the powers of a District Court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;

(d) subject to section 79(12), to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence.

(6) Every person examined as a witness by or before the Board, whether on oath or otherwise, shall be legally bound to state the truth and to produce such books, papers or documents as the Board may require.

(7) The costs of an appeal shall be in the discretion of the Board and shall either be fixed by the Board or, on the order of the Board, taxed by the Registrar or an Assistant Registrar of the Supreme Court in accordance with the scale prescribed by regulations made under section 78(16).

(8) Where the Comptroller is awarded costs of an appeal, he shall be entitled to his full costs of the appeal, including a fee for any counsel appearing on his behalf in the appeal, and the amount of such costs shall be added to the tax charged (if any) and be recoverable as if it were tax imposed under this Act and payable by the appellant.

[22/2011 wef 20/12/2011]

(9) Notwithstanding anything in section 85, the Board may, on the application of the Comptroller made at any time after notice of appeal has been given, require the appellant to furnish security, in such sum and within such time as may be specified, for payment of tax, and if security is not furnished in the sum and within the time specified, the tax assessed by the Comptroller shall become payable and recoverable immediately.

(10) The Board may, after hearing an appeal, confirm, reduce, increase or annul the assessment (including the amount of any unabsorbed losses, allowances or donations that may be carried forward) or make such order thereon as it thinks fit.

[22/2011 wef 20/12/2011]

(11) Where, under subsection (10), the Board does not reduce or annul the assessment, the Board may, if in its opinion the appeal was vexatious or frivolous, order the appellant to pay, as costs of the Board and in addition to any costs awarded to the Comptroller, a sum not exceeding \$250, which sum shall be added to the tax charged (if any) and be recoverable as if it were tax imposed under this Act and payable by him.

[22/2011 wef 20/12/2011]

(12) Every member of the Board, when and so long as he is acting as such, shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224) and shall enjoy the same judicial immunity as is enjoyed by a District Judge.

(13) All proceedings in appeals to the Board under this Act shall be deemed to be judicial proceedings within the meaning of the Penal Code.

(14) Notice of the amount of tax payable under the assessment as determined by the Board shall be served by the Comptroller either personally or by registered post upon the appellant.

Appeals to High Court

81.—(1) Except as provided in this section, the decision of the Board shall be final.

(2) In any case in which the amount of tax payable, tax to be refunded as a result of the operation of section 46 or notional tax benefit, as determined by the Board (excluding the amount of any costs awarded) exceeds \$200, the appellant or the Comptroller may appeal to the High Court from the decision of the Board upon any question of law or of mixed law and fact.

[22/2011 wef 20/12/2011]

(3) The procedure governing and the costs of any such appeal to the High Court shall be as provided for in the Rules of Court.

[2/2011 wef 01/03/2012]

(4) The High Court shall hear and determine any such appeal and may confirm, reduce, increase or annul the assessment (including the amount of any unabsorbed losses, allowances or donations that may be carried forward) determined by the Board and make such further or other order on such appeal, whether as to costs or otherwise, as the Court may think fit.

[22/2011 wef 20/12/2011]

(5) There shall be such further right of appeal from decisions of the High Court under this section as exists in the case of decisions made by that Court in the exercise of its original civil jurisdiction.

(6) *[Deleted by Act 2 of 2012 wef 01/03/2012]*

(7) In this section, “notional tax benefit”, in relation to a year of assessment, means an amount ascertained in accordance with the formula

where A_1 is the amount of unabsorbed losses as at the end of the basis period for the year of assessment claimed by a person;

A_2 is the amount of unabsorbed allowances under section 16, 17, 18B, 18C, 19, 19A, 19B, 19C, 19D or 20 claimed by the person for the year of assessment;

A_3 is the amount of unabsorbed donations as at the end of the basis period for the year of assessment claimed by the person;

A_4 is the amount of unabsorbed losses as at the end of the basis period for the year of assessment as determined by the Comptroller;

A_5 is the amount of unabsorbed allowances under section 16, 17, 18B, 18C, 19, 19A, 19B, 19C, 19D or 20 for the year of assessment as determined by the Comptroller;

A_6 is the amount of unabsorbed donations as at the end of the basis period for the year of assessment as determined by the Comptroller; and

is —

(a)

in the case of an individual resident in Singapore, the highest rate of tax specified in Part A of the Second Schedule in respect of the year of assessment; and

(b)

in any other case, the rate of tax applicable to the person for the year of assessment as specified in section 43(1).

[22/2011 wef 20/12/2011]

Cases stated for High Court

82. —(1) The Board may at any time and in regard to any appeal, with or without proceeding to the determination of the appeal, state a case on a question of law for the opinion of the High Court.

(2) A stated case shall set forth the facts and any finding of fact by the Board, the decision, if any, of the Board, and the question for the opinion of the High Court, and shall be signed by the officiating chairman or, in his absence, by any other member attending the sitting at which the appeal was heard.

(3) The secretary shall transmit the case, when stated and signed as aforesaid, to the High Court, and shall forward a copy thereof to the appellant and to the Comptroller.

[53/2007]

(4) The High Court may cause a stated case to be sent back for amendment and thereupon the case shall be amended accordingly.

(5) In considering any stated case, the High Court shall afford opportunity for argument thereon to be put forward by or on behalf of the appellant and the Comptroller.

(6) The High Court shall hear and determine any question of law arising on a stated case and may in accordance with its decision thereon confirm, reduce, increase or annul any assessment (including the amount of any unabsorbed losses, allowances or donations that may be carried forward) determined by the Board in the appeal, or may remit the case to the Board with the opinion of the Court thereon.

[22/2011 wef 20/12/2011]

(7) Where a case is so remitted by the High Court, the Board shall be bound by the opinion of the Court and shall give effect thereto by its decision in the appeal or, as the case may be, by revising any previous decision made by it in the appeal to the extent, if any, to which that previous decision does not accord with the opinion of the Court.

Proceedings before Board and High Court

83. —(1) Subject to subsections (2) and (3), all proceedings before the Board and in appeals to, or in cases stated for the opinion of, the High Court under the provisions of this Part, and in appeals from decisions of the High Court under section 81(5) shall be heard in camera.

[5/77]

(2) Where the Comptroller or the taxpayer applies to the Board or the High Court, as the case may be, that the proceedings be heard by way of a hearing open to the public, the Board or the Court may direct that the proceedings be so heard, notwithstanding any objection from the other party to the proceedings.

(3) Where in the opinion of the Board or the High Court any proceedings heard in camera ought to be reported, the Board or the Court may publish or authorise the publication of the facts of the case, the arguments and the decision relating to these proceedings without disclosing the name of the taxpayer concerned.

Assessments to be final and conclusive

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

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