KPMG

Tax alert

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Property Tax: Expected Annual Rent as Measure of Annual Value

Is it time to repeal section 2(7) of the Property Tax Act 1960?

Introduction

The property tax payable on a property is based on its assessed "annual value" (AV). The term "AV", which is defined in section 2(1) of the Property Tax Act 1960 (the Act), in gist, refers to the annual rent that a property is reasonably expected to fetch if it were to be let. In determining the annual value of a property, the approach is to assume that the property to be assessed is "vacant and to let", whether in fact the property is occupied or not. In this regard, "the way the AV is determined is the same regardless of whether the property is owner-occupied, vacant or rented out"[1].

The statutory hypothesis captured in the definition of AV is such that the actual occupational status of a property (i.e. whether it is owner-occupied, vacant or rented out) is not material in the determination of its AV. The AV is determined on the basis of the general market levels of rent affecting the property. It then follows that the actual rent of a particular property should not be determinative of the AV, which is defined as the expected annual rent. This is unlike income tax, where the tax is computed on the actual rent derived from the property. Yet there are provisions in section 2(7) of the Act, which seem to allow the adoption of actual rents in the determination of AV of a property. In this tax alert, we will discuss how section 2(7) sits with the definition of AV in section 2(1) of the Act.

Definition of AV

As mentioned above, the AV of a property is defined in section 2(1) of the Act as the gross amount at which the property can reasonably be expected to be let from year to year. This, in turn, gives rise to the concept of hypothetical tenancy. Under this concept, the AV is assessed on the basis that the property is "vacant and to let", whether or not the property is in fact occupied. The practical approach in arriving at the AV is therefore to look at rental evidence of comparable properties, including the rent of the subject property, if any.

Section 2(7) of the Act

Nevertheless, section 2(7) of the Act provides for the adoption of the actual rent at the option of the Chief Assessor as the AV, and it reads as follows:

> "In estimating the annual value of any house, building, land or tenement, the annual value of the house, building, land or tenement means, at the option of the Chief Assessor, the annual equivalent of the gross rent at which the same is let or licensed to the occupier or occupiers (as the case may be), and in arriving at that annual equivalent, the Chief Assessor may also give consideration to any capital or periodical sums or any other consideration whatsoever (if any) which, it appears to the Chief Assessor, may have also been paid."

[1] IRAS website < https://www.iras.gov.sg/taxes/property-tax/property-owners/annual-value>, accessed on 18 February 2024

Legislative history

As the definition of AV presupposes a hypothetical tenancy, what then is the purpose of section 2(7), which seems to allow for the adoption of the actual rent as the AV, and how does section 2(7) sit with the definition of AV in section 2(1)? To answer this question, we have to go back into legislative history.

The provisions in section 2(7) were introduced some 67 years ago as the fourth proviso of the definition of "annual value" in a legislative amendment of the Local Government Ordinance. The Local Government (Amendment) Bill 1956 containing the proposed amendment was sent by the colonial Legislative Assembly to a Select Committee for consideration.

At the meeting of the Select Committee on 21 January 1957, the Chairman (who was the Speaker of the Assembly) explained the purpose of the legislative amendment as follows:

> … the suggested amendment is something which the present definition of "annual value" does not carry. It is intended to bring on to our assessment list a new class of persons who will be called upon to pay assessment and that is the chief tenant. Frankly, Sir, it is to bring him on the assessment list. Suppose a landlord lets out a house at $50 to a person, and this person, the chief tenant, then sub-divides the house into cubicles and lets them out at a gross rent of $500. This last proviso is intended to bring him on the assessment list so that he will have to pay assessment on the annual value of $500, and against that $500, he will get a deduction of $50 which is the rent he has paid his landlord. That provision does not exist in the present definition of "annual value".

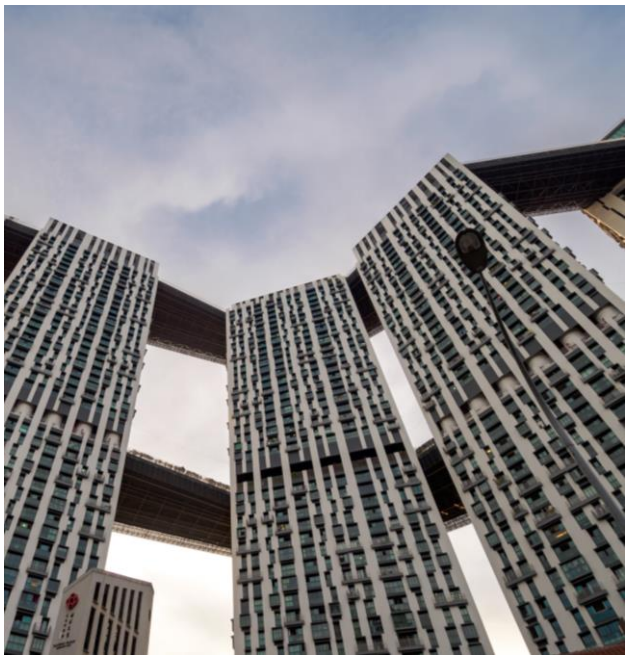
An appreciation of the historical context of the above legislative amendment is necessary to fully understand its purpose. At that time, the Control of Rent Ordinance was still in force. Under that Ordinance, premises built on or before 7 September 1947 were subject to a regime of rent control, and landlords were prohibited from increasing the rents of their properties beyond what was known as the "standard rent", which generally referred to a historic rent at which a property was earlier let. As a result of the rent control legislation, the annual values that could be assessed on the landlords were also constrained. Such a phenomenon did not cater to the growing financial needs of the local government, especially in the immediate post-war years[2].

From the environment of rent control and the shortage of accommodation in the post-war years arose a situation where the chief tenant of a property would license or let parts of the property to various occupiers or tenants. The result was that the chief tenant was able to collect a total rent from his occupiers/tenants which was much greater than what the chief tenant would have to pay the landlord under the rent control legislation. The legislative amendment was to empower the assessment of the chief tenant as the "owner" of the property on the basis of the rents that the chief tenant collected from his occupiers/tenants. Given the acute shortage of accommodation at that time, the chief tenant was notoriously known to have been even able to collect additional "tea money" for admitting an occupier. Such "tea money" may also be taken into account in the assessment of the annual value, as section 2(7) provides that "the Chief Assessor may also give consideration to any capital or periodical sums or any other consideration whatsoever (if any) which, it appears to the Chief Assessor, may have also been paid."

At the subsequent Select Committee meeting on 16 May 1957, the then Minister for Local Government, Lands and Housing, Inche Abdul Hamid bin Haji Jumat, also explained the purpose of the legislative amendment as follows:

> The reason for the new fourth proviso is that this is a new proviso and is designed to assess the person who is enjoying the full rental value paid by the occupier or occupiers of rateable premises. It also gives sanction to the present practice of assessing let out premises on the basis of actual rents received.

[2] See "Property Tax in Singapore" by Leung Yew Kwong and See Wei Hwa, Third Edition (LexisNexis, 2015) at pages 346-350.



At the meeting of the Select Committee on the same day, Mr John Ede, the Assemblyman for Tanglin, in responding to the proposed legislative amendment, proposed an amendment to clarify that the definition of the word "owner" in the Ordinance did not necessarily mean the legal owner of the property, given the chief tenant was to be assessed as the "owner". He said:

> I beg to move,
> In page 5, line 37, after "Ordinance" to insert:
>
> … and for the purposes of Part VII of this [Local Government] Ordinance, the word 'owner' does not necessarily mean only the person or persons holding legal title to any rateable or assessable premises or in whom such premises may, for the time being, be vested and the inclusion of the name of any owner in the valuation list shall not be taken as legal proof of the person so named is legally entitled to claim ownership of the premises in question.
>
> This amendment seems to be consequential to the last proviso which has been accepted as an amendment to the definition of "annual value" and the reference to the fact that it is designed to assess a chief tenant or the person who is enjoying the full rental value paid by the occupier or occupiers of rateable premise. It would seem to tie the matter up on the basis of the amendment proposed by the Government.

Mr Ede's proposed insertion was to clarify that the chief tenant was not necessarily the legal owner of the controlled premises. But Mr CH Butterfield, the Attorney-General in attendance at the committee hearing, explained that the amendment proposed by Mr Ede was not necessary, as the word "owner" as then defined in the Local Government Ordinance already reflected the position that the owner assessed to property tax need not necessarily be the person holding the legal title to the property.

Mr Ede then asked: "Is it the intention of Government, through introducing the new amendment which has now been accepted, to frame the definition of "annual value" in the last proviso so that the chief tenant should be caught for assessment and, following on that, is the Hon, the Attorney-General satisfied that he will so be caught without the advantage of the amendment which I have proposed?" The Attorney-General then replied: "We think that it will be --- that the chief tenant will be caught under the draft provision as it stands." It is therefore clear that the legislative amendment was to catch the chief tenant as the "owner" for property tax purposes even though the chief tenant may not be the legal owner of the property.

Application of section 2(7) today

It is to be noted that even before the repeal of the Control of Rent Act on 1 April 2001[3], the acute shortage of accommodation which gave rise to the "chief tenant" phenomenon was largely gone. This is due in no small measure to the intensive home building programme of the Government from 1959. As may be seen, the purpose for which section 2(7) was inserted into the Act has been overtaken by events. Even while section 2(7) remains in the statute book, there should be scarce occasion to invoke the option to adopt the actual rent to derive the AV as the *raison d'etre* for its application is no longer there.

Even with section 2(7) remaining in the Act, it is inconceivable that the Chief Assessor would choose to exercise the option therein for any property where he considers that the adoption of the actual rent for that property would give an AV below the expected annual rent. On the other hand, if the Chief Assessor were only to exercise the option in section 2(7) where he considers that the adoption of the actual rent would give an AV greater than the expected annual rent, such one-sided exercise of the discretion in section 2(7) would be unreasonable in the *Wednesbury*[4] sense. Such an exercise of the statutory discretion may be struck down on that account, given that the exercise of any statutory discretion is not unfettered and has its legal limits.

[3] See Control of Rent (Abolition) Act 2001.
[4] Named after the *cause celebre Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 176. *Wednesbury* unreasonableness refers to the situation where a decision is "so unreasonable that no reasonable authority could ever have come to it."

Indeed, such a result seemed to have been envisaged by the Select Committee, when in its Fifth Report in December 1956, it stated as follows:

> The last proviso is designed to assess chief tenants or the person who is enjoying the full rental value paid by the occupier or occupiers of rateable premises. It also gives sanction to the present practice of assessing let out premises on the basis of the actual rents received. Although there has been no serious opposition to this practice, *it might be argued successfully against the authority that the reasonable rent from year to year is not the same as multiplying of inflated monthly rent by 12 in order to arrive at annual value.*

Equal Protection of the Law under the Constitution

Additionally, any person is entitled to equal protection of the law under Article 12(1) of the Singapore Constitution. Where "the way the AV is determined is the same regardless of whether the property is owner-occupied, vacant or rented out", and in accordance with the definition of AV in section 2(1) for the vast majority of properties, a one-sided exercise of the option in section 2(7) in the case where the adoption of the actual rent for a particular property would give an AV greater than the expected annual rent would be discriminatory.

As Lord Parmoor said in the House of Lords case of *Assessment Committee of the Metropolitan Borough of Poplar v Roberts* [1922] 2 AC 93 at 119:

> *"It has long been recognised, as a matter of principle in rating law*[5]*, that to make actual rentals the basis of rateable value would contravene the fundamental principle of equality,* both from the rate contributions from individual ratepayers, and between the totals of rate contributions levied in different contributory rating areas. In effect, the result would be to make the amount on which the occupier of property is liable to pay rates dependent, in many cases, on the contractual relationship between a particular landlord and tenant, whereas it is dependent in all cases on a statutory direction applicable on the same principle to all hereditaments, and intended to insure equality of treatment as between the occupiers of rateable property and the rating authority. (Emphasis added)"

It is therefore submitted that an exercise of the statutory discretion in section 2(7) to provide an AV greater than the expected annual rent, which is within the meaning of AV in section 2(1), would be in breach of the provisions in Article 12(1) of the Singapore Constitution. As the Court of Appeal stated in *Eng Foong Ho and others v Attorney-General* [2009] 2 SLR(R) 342 at [30]:

> An executive act may be unconstitutional if it amounts to intention and arbitrary discrimination. In PP v Ang Soon Huat [1990] 2 SLR(R) 246, the Singapore High Court (per Chan Sek Keong J, delivering the judgment of the court), observed thus (at [23]):
>
> In *Howe Yoon Chong v Chief Assessor* [1990] 1 SLR(R) 78, the Privy Council held that the equal protection clause [in Art 12] is contravened if there is deliberate and arbitrary discrimination against a particular person. Arbitrariness implies the lack of rationality.

Conclusion

As may be seen from the above discussion, the provisions of section 2(7) of the Act have outlived their usefulness and should be repealed. In our view, any exercise of the statutory discretion in section 2(7) to provide an AV greater than that falling under the definition of AV in section 2(1) would be outside of the legislative intention. In any case, it is submitted that such exercise of the statutory discretion is unreasonable in the *Wednesbury* sense and/or in breach of the equal protection clause in Article 12(1) of the Singapore Constitution.

[5] Property tax in Singapore is the equivalent of rates in the United Kingdom, where rates are collected by the local authorities from occupiers of properties. Before 1961, rates were collected in Singapore by the City Council and the Rural Board. On 1 January 1961, property tax replaced rates in Singapore.

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