# GIQ v The Comptroller of Income Tax
# [2025] SGITBR 1

**Case Number** : ITBR Appeal Nos 20 to 21 of 2020

**Decision Date** : 07 February 2025

**Tribunal/Court** : Income Tax Board of Review

**Coram** : Amy Tung; Yeo Wico; Chiu Wu Hong

**Counsel Name(s)** : Appellant-in-person, Yeow Ing Yee for the respondent

**Parties** : GIQ — The Comptroller of Income Tax

*Revenue Law – Income taxation – Appeals – [Taxable income] – [Application of sections 10(1)(a) and (g) of the Income Tax Act]*

**Introduction**

1 The Appellant, [GIQ] has appealed against the decision of the Respondent, the Comptroller of Income Tax to treat the gain of $18,492,555 arising from the sale and repurchase of a portfolio of unsecured non-performing loans ("**NPL**s") between the Appellant and a bank (the "**Bank**") as taxable under section 10(1)(a) of the Income Tax Act 1947 ("**ITA**").

**Facts of the case**

2 An agreement was executed on 29 June 2012 for the Appellant to purchase from the Bank a portfolio of NPLs (the "**Loan Portfolio**"). The Loan Portfolio was notionally valued at $233,708,084, which the Appellant purchased for a consideration of $12,124,458.[note: 1]

3 Following the sale of the Loan Portfolio, the Appellant made some debt recoveries on the Loan Portfolio. Less than a year later, on 4 June 2013, the Bank repurchased the Loan Portfolio for a consideration of $24,180,000. [note: 2]

4 At the appeal hearing, the Respondent tendered a document "Tax Assessments for the Disputed YAs" (Exhibit ASF-1) which contained the detailed computation of how the Respondent had assessed the amount of $18,492,555 as taxable. The Appellant did not have any objections to the document being tendered or the figures within. The Board therefore accepts the breakdown of the figures indicated in the exhibit as accurate and agreed between the Parties.

5 There are two components (making up the sum of $18,492,555) which the Respondent has subjected to tax: -

(a) **Net Recoveries** – This arose from the recovery of debts by the Appellant from the Loan Portfolio for the YA2013 and YA2014; and

(b) **Net Gain** – This arose from the repurchase of the Loan Portfolio by the Bank from the Appellant at a consideration of $24,180,000. The amount of $12,055,542 assessed as taxable by the Respondent is the difference between what the Appellant had to pay for the Loan Portfolio ($12,124,458) and what the Bank paid the Appellant for the repurchase of the Loan Portfolio ($24,180,000).

**Issues on appeal**

6 In our view, there are 3 issues for the Board's determination: -

(a) Whether the Net Recoveries are taxable under section 10(1)(a) of the ITA;

(b) Whether the Net Gain is taxable under section 10(1)(a) of the ITA;

(c) If the answers to 6(a) and (b) are in the negative, whether the Net Recoveries and/or Net Gain are nevertheless taxable under section 10(1)(g) of the ITA.

7 It is the Appellant's case that both the Net Recoveries and Net Gain are of a capital nature and therefore not liable to income taxation. Its case is premised on the following arguments which the Appellant made before the Board: -

(a) The Appellant is in the business of debt collection and their principal revenue income has materially been service fees for debt collections acting as debt-collecting agents for financial institutions. Neither the sale nor the repurchase of the Loan Portfolio formed any part of the Appellant's principal business activity in debts collection.

(b) There is no financial market where the sales and purchases of portfolios of loans are commercially traded. In entering into the sale and repurchase of the Loan Portfolio, the Appellant was not involved in trading in portfolios of loans. In any event, the Appellant was specifically prohibited by clause 13 of the Sale and Purchase Agreement for Portfolio of Unsecured Loans from further selling or assigning the Loan Portfolio.

(c) Both the sale of the Loan Portfolio to the Appellant and the subsequent repurchase of the same by the Bank were unsolicited by the Appellant. In particular, there were circumstances that made the Bank decide to repurchase the Loan Portfolio which were outside the control of the Appellant. In the words of the representative of the Appellant at the appeal hearing, the Appellant was "compelled"[note: 3] to sell the Loan Portfolio to the Bank (which was further described by the representative at the hearing as an unwinding of the sale of the Loan Portfolio to the Appellant).[note: 4] Further, the side letter dated 4 June 2013 which the Bank issued to the Appellant indicated that "apart from agreeing to the repurchase, [the Appellant] is not involved in any decision by [the Bank] or the circumstances of the repurchase".[note: 5] The gain is therefore treated by the Appellant as "an unforeseen windfall gain" in the FY2013 amended financial statements.[note: 6]

(d) There was destruction of the profit-making apparatus within the Appellant as the Appellant had "terminated its engagements with other clients in order to wholly concentrate to realise the Loan Portfolio with maximum efforts"[note: 7]. Given that clause 9.1 of the Repurchase Agreement for Portfolio of Unsecured Loans means that the Appellant had to terminate its debt collections for the Loan Portfolio, the Appellant's business has come to a standstill and the Appellant has remained dormant to date.[note: 8]

***Issue 1: Whether the Net Recoveries are taxable under section 10(1)(a) of the ITA***

8 The ITA imposes a tax upon income under the charging section 10(1). The relevant limbs under section 10(1), for the purposes of the present appeal, are sections 10(1)(a) and 10(1)(g):

> **"10. –(1)** Income tax is, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of –
>
> (a) Gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
>
> …
>
> (g) any gains or profits of an income nature not falling within any of the preceding paragraphs.

9 For the case in question to fall under section 10(1)(a), the relevant income must be made in an operation of business in carrying out a scheme for profit making and not a mere enhancement of value guided by realising the asset: see ***Comptroller of Income Tax v BBO***[note: 9] [2014] SGCA 10 at [18] to [19]***.*** The Court of Appeal went on to explain (at [19]): -

> "Put another way, the decision is between the profit that arises when property has been committed to a business as part of its stock in trade and is then realised in the course of trading operations and the gain that arises from a realisation of property not so committed. The former is taxable income, the latter not."

10 If the NPLs were stock in trade, the gains that arose from the recovery of the NPLs (i.e. the Net Recoveries) would be taxable income under section 10(1)(a); however, if the NPLs were an investment, then the Net Recoveries would not be taxable income

11 In our view, the NPLs were the Appellant's ***stock in trade*** and not an investment.

12 First, the Appellant had recovered or collected the debts arising from the NPLs as part of its debt collection business. In ***Waylee Investment Ltd v The Commissioner of Inland Revenue*** [1991] 1 HKLR 237***,*** the Privy Council stated (at 242) that "[t]he stock in trade of a bank is money and securities readily convertible to money." Just like how the stock in trade of a bank would be the money and securities readily convertible to money, for a debt collection business, the debts that are owned by the Appellant and recoverable in the course of its debt collection business would be the stock in trade of the Appellant. In essence, the Appellant had carried on the business of converting the debts that it owned into its own income by recovering from the debts.

13 Secondly, but more importantly, the issue of whether the Net Recoveries are taxable under section 10(1)(a) of the ITA can be simply answered having regard to how the Appellant had treated the Loan Portfolio following its sale to them by the Bank. In this regard, the Appellant's audited financial statements for FY ended 31 December 2012 (dated 27 June 2013) are instructive. The Appellant had described its principal activities in this set of financial statements as "those of debt-collecting agents and ***recovery of debts arising from the purchase of a portfolio of unsecured loans***" (our emphasis).[note: 10] The Appellant had also listed a new income item, that being "Recoveries from portfolio of unsecured bank loans" of $4,370,288.

14 It is clear that the Appellant had considered the recovery of debts arising from the Loan Portfolio *as part of* its business activities and monies collected from such recovery of debts to be income to the company. The Appellant had also stated that "whilst the Appellant was prepared to initially bring the initial recoveries in 2012 of the [Loan Portfolio] to taxation in the [YA] 2013, subsequent critical events have arisen in 2013 to frustrate and disable the Appellant from continuing with its recoveries". [note: 11] This statement indicated that the Appellant was treating the Net Recoveries as income before the repurchase by the Bank of the Loan Portfolio. If the repurchase did not take place, the Appellant would have continued to treat the recoveries of debts arising from the Loan Portfolio as income. Therefore, the arguments made by the Appellant regarding the repurchase and the circumstances relating to it, do not convince us that the repurchase could somehow, as an intervening event, cause the underlying nature of the recoveries and its treatment as income to change. Furthermore, the

audited financial statements for FY ended 31 December 2012 were dated 27 June 2013; this was after the repurchase of the Loan Portfolio by the Bank on 4 June 2013. It appears to us that the Appellant had continued to treat the Net Recoveries as income even after the repurchase of the Loan Portfolio.

15 We are therefore of the view that the Respondent has rightly treated the Net Recoveries as income under section 10(1)(a) of the ITA.

***Issue 2: Whether the Net Gain is taxable under section 10(1)(a) of the ITA***

16 As part of the Appellant's debt collection business in relation to the NPLs, other than by collecting on the debts owed by debtors, the Appellant may also convert the debts into money by selling the debts off to another entity (i.e. in this case, the Bank). Hence, the Net Gain that arose from the repurchase of the Loan Portfolio was made by the Appellant pursuant to the carrying on of a scheme of profit making. Following from our determination of the NPLs as stock in trade, the Appellant has through the repurchase converted its stock in trade of NPLs into income (i.e. the Net Gain).

17 Another way to look at it would be that the Net Gain represented the compensation from the debt recoveries which the Appellant could otherwise have collected had it retained the NPLs. Since the debt recoveries from the NPLs were revenue in nature (as part and parcel of its trade), it follows that such compensation should also be regarded as revenue and therefore taxable. In ***Burmah Steam Ship Co Ltd v The Commissioners of Inland Revenue*** (1930) 16 TC 67*[note: 12]* (***"Burmah"***) and ***Short Bros Ltd v The Commissioners of Inland Revenue*** (1927) 12 TC 955*[note: 13]* ("***Short Bros***")***,*** the taxpayers were compensated for the profits that they had expected to earn if not for an intervening event. In ***Short Bros,*** it was the cancellation of contract to build two ships. For ***Burmah***, it was the delay in the repairs of the ship that was to be chartered out. The same applies to the present case in that the Appellant was expected to earn income from the recoveries of debts from the NPLs, but the Appellant ended up selling the NPLs to the Bank.

18 The fact that there was an unsolicited repurchase of the NPLs by the Bank does not change the nature of the compensation. It was simply an earlier realisation of the Appellant's stock in trade than anticipated. This position is supported by the case of ***The Commissioners of Inland Revenue v Newcastle Breweries*** 12 TC 927*[note: 14]****.*** In that case, the taxpayer carried on a business as brewers of wine and spirit merchants. The government had compulsorily acquired a substantial portion of raw rum in the taxpayer's stock. The taxpayer argued that the compensation it received from this compulsory acquisition was not a receipt of his trade nor a profit arising from its trade or business. The House of Lords disagreed and held that the compensation was a profit from the taxpayer's trade and the compensation simply represented the realisation of a proportion of the trade in stock, at an earlier stage of the process, as compared to when it would have been ordinarily realised.

19 We do not agree that the NPLs were the Appellant's profit-making apparatus. As we had determined under Issue 1 above, the NPLs are stock in trade; they could not conceivably function as the Appellant's profit-making apparatus at all. In fact, as the Appellant had been carrying on its debt collection business before it purchased the Loan Portfolio, it would have possessed the necessary profit-making apparatus for such business prior to the acquisition of the Loan Portfolio.

20 The Appellant had referred to Clause 9.1 of the Repurchase Agreement to support their contention that the Bank had imposed substantial restrictions on the activities of the Appellant and as a result, the Appellant's business came to a standstill and became dormant. However, a careful reading of Clause 9.1 shows that it only requires the Appellant to cease its activities in respect of the NPLs that the Bank was repurchasing and does not apply to the rest of the Appellant's business. As such, the sale of the NPLs to the Bank was not a destruction of the Appellant's profit-making apparatus; it was but the realisation of the Appellant's stock in trade. The case of ***Van den Berghs v Clark (H.M Inspector of Taxes)*** (1933-1935) 19 TC 390[note: 15] cited by the Appellant can thus be distinguished; the cancelled agreements in that case related to the whole structure of the tax-payer's profit-making apparatus.

21 In view of the above, we conclude that the Net Gain is income which is taxable under Section 10(1)(a) of the ITA.

***Issue 3: Whether the Net Recoveries and/or Net Gain are nevertheless taxable under section 10(1)(g) of the ITA***

22 For completeness, we shall also examine whether section 10(1)(g) is applicable to the present case. The relevant test is found in the case of ***IB v Comptroller of Income Tax*** [2004] SGITBR 10[note: 16] where the Board held (at [39]): -

> "In our view, section 10(1)(g) can apply to profits arising out of a transaction which is not activity in the ordinary course of trade or business, or an ordinary incident of some other business activity, and at the time the transaction was entered into, the taxpayer had the intention or purpose of making a profit from that transaction. ***The means or mode of realising the profit need not be specific or precisely determined at the outset.***" (our emphasis)

23 In one of the correspondence letters exchanged with the Respondent, the Appellant stated that "*Since the company does debt recovery and not loan origination, the company seized the godsend opportunity hoping to make potential income to augment its hitherto fees income derived from collecting other parties' receivables acting as debt-collecting agents.*"[note: 17] We agree with the Respondent that the Appellant had the intention to profit from the acquisition of the NPLs. The mode of realising the profits turned out to be either through the Appellant's own debt recovery efforts or by reselling the NPLs to the Bank. Hence, the Net Gain and Net Recoveries should also be taxable under Section 10(1)(g) of the ITA.

24 For the reasons above, the Board will dismiss this appeal with costs.

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[note: 1] Agreed Bundle of Documents ("ABD") Tab 1

[note: 2] ABD Tab 3

[note: 3] Line 20, page 20 of the Certified Transcript

[note: 4] Lines 10-20, page 21 of the Certified Transcript

[note: 5] Para 2 of the side letter (ABD Tab 2)

[note: 6] Para 1e. of the Appellant's Submissions

[note: 7] Para 1fv. of the Appellant's Submissions

[note: 8] Para 1fv. of the Appellant's Submissions

[note: 9] Respondent's Bundle of Authorities (RBA) Tab 4

[note: 10] Page 132 of the ABD Tab 4

[note: 11] Para 3eii. of the Appellant's Submissions

[note: 12] RBA Tab 3

[note: 13] RBA Tab 6

[note: 14] RBA Tab 7

[note: 15] Appellant's Bundle of Authorities Tab 1

[note: 16] RBA Tab 5

[note: 17] Para 3 of the letter dated 9 February 2015 at ABD Tab 7

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