AXY and others *v* Comptroller of Income Tax
[2015] SGHC 291

Case Number	: Originating Summons No [X] (Registrar's Appeal No [Y] and Summons No [Z])
Decision Date	: 04 November 2015
Tribunal/Court	: High Court
Coram	: Edmund Leow JC
Counsel Name(s)	: Melanie Ho, Charmaine Neo and Jocelyn Ngiam (WongPartnership LLP) for the applicants; Patrick Nai and Pang Mei Yu (Inland Revenue Authority of Singapore, Law Division) for the respondent.
Parties	: AXY — AXZ — AYA — AYB — Comptroller of Income Tax

Civil Procedure – Discovery of documents – Application

Administrative Law – Judicial review

4 November 2015

Edmund Leow JC:

Introduction

1 The exchange of information ("EOI") between tax administrations is a key aspect of global cooperation in the fight against tax evasion and the protection of the integrity of tax systems. The contemporary framework of the exchange of information between countries is a controversial and oft-debated topic, especially in the light of how it has evolved in recent years. In this case, the National Tax Service of the Republic of Korea ("NTS") had issued a request dated 23 September 2013 to the Comptroller of Income Tax in Singapore (the "Comptroller") for the provision of information on the applicants' banking activity in Singapore ("Request") under s 105D of the Income Tax Act (Cap 134, 2008 Rev Ed) ("the 2008 Act") and Article 25 of the Convention between the Republic of Singapore and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol (the "Treaty"). This Request was issued after tax investigations had commenced in Korea against the applicants who are Korean nationals. Pursuant to the Request, the Inland Revenue Authority of Singapore ("IRAS") issued notices to various banks in Singapore under ss 65B and 105F of the 2008 Act ("the Notices") for information on all banking activity within the accounts of the applicants and their companies from 2003 to the date of the letter.

2 The applicants had applied for leave by way of Originating Summons No [X] ("OS [X]") to commence judicial review of the Comptroller's decision to issue the Notices, seeking a prohibition order against the Comptroller from disclosing any banking activity relating to the applicants to NTS, and a quashing order against the Notices issued. Registrar's Appeal No [Y] ("RA [Y]") was filed by the applicants after the assistant registrar ("AR") had dismissed the applicants' application in Summons No [U] ("SUM [U]") to obtain production of 14 categories of documents ("the Documents") for inspection. These documents had allegedly been referred to in an affidavit filed on behalf of the Comptroller. Summons No [Z] ("SUM [Z]") was the Comptroller's application to expunge the Documents from the court record and to destroy all copies of the same. I dealt with RA [Y] and SUM [Z] concurrently as they were essentially mirror images.

3 The specific question that had to be answered in this case was whether production of the Documents was necessary either for disposing fairly of OS [X] and/or for saving costs. After hearing both parties and perusing the affidavits, I allowed RA [Y] in part and SUM [Z] in part. I now outline my reasons for allowing the appeal in part, and take the opportunity to consider the interesting and contemporary issues which this case has raised concerning the international tax cooperation framework, in particular, how judicial review in the context of the exchange of information between countries raises important public policy considerations.

Background to the current proceedings

4 In response to the filing of OS [X], the Comptroller filed the affidavit of Ms Wai Yean Tze ("Ms Wai's First Affidavit") on 2 April 2014 and served it on the applicants. However, the copy of Ms Wai's First Affidavit that was served on the applicants were missing certain exhibits as compared to the copy that was filed in court (via upload onto eLitigation), namely, the documents exhibited in "WYT-3", "WYT-5" and "WYT-7" ("the Missing Exhibits"). The applicants thus obtained the Missing Exhibits by downloading a copy of Ms Wai's First Affidavit from eLitigation, and promptly proceeded to file Summons No [W] ("SUM [W]") on 2 May 2014 for, *inter alia*, leave to use and refer to those exhibits. The Comptroller also filed Summons No [V] for proceedings to be held in camera and a sealing order. Lee Kim Shin JC (as he then was) heard both summonses concurrently and ordered that Ms Wai's First Affidavit, as uploaded onto eLitigation, be expunged with leave given to the Comptroller to file a fresh affidavit in lieu of the expunged affidavit. The applicants were also ordered to immediately destroy all hard copies and any electronic copy of the full version of Ms Wai's First Affidavit which contained the Missing Exhibits. Ms Wai's First Affidavit was thus expunged and the Comptroller filed a fresh affidavit of Ms Wai Yean Tze on 21 August 2014 in lieu of the expunged affidavit ("Ms Wai's Second Affidavit").

5 Although Ms Wai's Second Affidavit did not contain any of the Missing Exhibits, it did make reference to some of those documents. SUM [U] before the AR was thus the applicants' application for discovery of the documents contained in the expunged affidavit and more. The applicants appealed the AR's decision to dismiss SUM [U] and, as mentioned in [3] above, I allowed the appeal in part. Before proceeding to my reasons for doing so, I am of the view that it is helpful and instructive to consider the context in which the proceedings had been commenced, with a focus on the international context of the exchange of information between countries for tax purposes.

Context in which the proceedings had been commenced

6 It is an age-old and universally recognised principle that one sovereign does not assist another in the collection of their taxes. The gathering of information by one state for another to enforce the latter's taxes was also consequently limited. But the political sentiment in many countries has changed radically over the years in the light of increasing tax evasion. The imbalance between unprecedented liberalisation of national economies and the relatively confined administration of tax systems to their respective national jurisdictions enabled the concealment of offshore assets and income by taxpayers. Bank secrecy laws were originally imposed as a restriction on banks from misusing customer information, but banks started to make use of the same laws as a marketing tool to promote their business to taxpayers in other countries who wished to conceal their assets. This practice by some banks became highly controversial, particularly after the global financial crisis, as the same banks which had been on the verge of collapse and had been rescued by their own governments, then ironically assisted taxpayers to evade tax obligations to their very own governments that had rescued them, and who had even become their main shareholder. The revelation of such banking practices had a huge impact on public opinion in the western countries on bank secrecy laws.

7 Fuelled by the political discontent that such practices generated over time, the impetus to improve transparency and cooperation between tax authorities to clamp down on tax evasion increased. Countries started to insert EOI provisions into Avoidance of Double Taxation Agreements ("DTAs") which serve to prevent double taxation of income earned in one jurisdiction by a resident of the other jurisdiction. Prior to the financial crisis, western countries had already adopted EOI provisions into their DTAs but after the financial crisis, increased political pressure on other countries led to them similarly adopting EOI provisions into their DTAs. The exchange of information is crucial in allowing countries to obtain the necessary information on the offshore assets of their taxpayers to enable them to investigate possible allegations of tax evasion properly. Hence nowadays, countries assist others in conducting investigations and collecting information within their jurisdiction with a view to assisting another country in administering or enforcing its domestic tax law. Similarly, the Treaty signed between Singapore and Korea includes a provision on the exchange of information (Article 25 of the Treaty) which follows Article 26 of the Organisation for Economic Co-operation and Development ("OECD") Model Convention with respect to Taxes on Income and on Capital ("Model Convention"), as an international standard on the exchange of information.

8 Article 26 of the Model Convention has not remained static in its form; its amendments reflect the evolution of the principles of transparency and exchange of information for tax purposes over time. For example, in July 2005, the obligation for tax authorities of Contracting States to exchange information was amended from what was merely "*necessary* for carrying out the provisions of this Convention" to what was *foreseeably relevant.* Additional obligations were imposed on Contracting States, which compelled the requested State to use its information gathering measures to obtain the requested information even though the requested State may not need such information for its own tax purposes, and even if the information was held by a financial institution, or a nominee or person acting in an agency or fiduciary capacity. Effectively, this curtailed limitations imposed on the obligation of Contracting States to use information gathering measures to obtain the requested information for another Contracting State. Though the commentary to Article 26 appears to state that the amendments made to the Article were largely to "remove doubts as to the proper interpretation of the Article" it was recognised that changes were made "to take into account recent developments and current country practices". Singapore did not initially adopt the standard set out in Article 26 as it was promulgated by the OECD, of which it was not a member, and the standard was not an internationally recognised one at that time.

9 Following the endorsement of Article 26 of the 2008 OECD Model Convention as an internationally agreed standard for the exchange of information for tax purposes (the "Standard") by the United Nations Committee of Experts on International Cooperation in Tax Matters in October 2008, Singapore decided to endorse the Standard in March 2009 "in keeping with our role as a trusted international financial centre and a responsible jurisdiction" and it was emphasised that "[o]ur confidentiality laws are not intended to shelter tax criminals" (*Singapore Parliamentary Debates, Official Report* (19 October 2009) vol 86 at col 1602 (Tharman Shanmugaratnam, Acting Minister for Finance)). In April 2009 after the G20 London Summit, the OECD published a list of tax jurisdictions classified according to whether they had committed to the Standard and whether they had already substantially implemented it. Singapore was listed under the "grey-list" jurisdictions who were those that had already committed to the Standard but had not substantially implemented it yet, but was subsequently upgraded to the "white-list" after entering into several DTAs pursuant to its implementation of the Standard.

10 Since then, Singapore has amended its laws to implement the Standard (see Income Tax (Amendment) (Exchange of Information) Act 2009 (Act 24 of 2009) ("the 2009 Amendments")) and renegotiated several tax agreements to incorporate it. Previously, although Singapore had already been providing tax information in response to foreign requests through the DTAs, assistance through

DTAs was subject to the "domestic interest" condition. This condition meant that the information had to be relevant to the enforcement of domestic tax laws before the Comptroller could gather and exchange it with DTA partners. Where there was a domestic interest, Singapore's banking and trust confidentiality laws allowed information to be obtained for the purposes of investigating or prosecuting a tax offence. But Singapore generally had no domestic interest in these situations. If a foreigner has a bank account in Singapore but otherwise has no connection with Singapore, the Comptroller would not require information on the bank account for the purposes of administering tax as Singapore would not tax that bank account. The adoption of the Standard however, enhanced the scope of information exchange cooperation under DTAs by lifting the "domestic interest" condition and allowing the Comptroller to compel disclosure of information protected by secrecy laws. It is interesting to note that if the facts of the present case had occurred prior to the 2009 Amendments, in my view, it is unlikely that the Comptroller would exchange information with Korea given that such information did not fall within the usual scope of information gathered in Singapore.

11 But even after the 2009 Amendments, a limitation to the Comptroller's wide powers to obtain information remained. If the Comptroller was of the opinion that the information was protected from unauthorised disclosure under s 47 of the Banking Act (Cap 19, 2008 Rev Ed) or s 49 of the Trust Companies Act (Cap 336, 2006 Rev Ed), the Comptroller was still required to apply to the High Court for an order under s 105J(2) of the 2008 Act to permit the Comptroller access to the information. Under such a regime, the court had to be independently satisfied as to the justification of the request but was not required to substantively review a request to the extent of inquiring into the truth of the factual assertions contained therein, *eg*, whether the requesting country has in fact pursued all means available in its territory to obtain the requested information (*ABU v Comptroller of Income Tax* [2015] 2 SLR 420 ("*ABU*") at [40]). The Comptroller would then need to serve the order on the relevant bank or trust company, and even at that stage the relevant financial institution and taxpayer could decide to challenge the court order, resulting in a somewhat cumbersome process.

12 This is no longer a requirement under the current version of the Income Tax Act (Cap 134, 2014 Rev Ed) ("the 2014 Act"). The creeping expansion of the exchange of information between tax jurisdictions has continued, and in 2013, Singapore amended its laws such that it would no longer be necessary to obtain a court order prior to accessing protected banking information for the purposes of responding to a request from a foreign state. The role of scrutinising the request from the foreign state and deciding whether to issue a notice to the bank or trust company falls to the Comptroller solely, without the need for a court order. But though the exchange of information between countries has become a much more fluid and flexible process, Parliament has specifically stated that "[t]axpayers still have access to the judicial process through a judicial review" (*Singapore Parliamentary Debates, Official Report* (21 October 2013) vol 90 (Josephine Teo, former Senior Minister of State for Finance) as a safeguard to prevent the Comptroller from acting arbitrarily and providing taxpayers a specific avenue to bring their claims.

13 The trajectory of exchange of information frameworks progressively widening is likely to continue into the future. On 9 December 2014, the government of Singapore and the government of the United States ("US") signed an intergovernmental agreement to facilitate the implementation of the Foreign Account Tax Compliance Act ("FATCA") in Singapore. FATCA was enacted by the US in March 2010 to detect and deter US tax evasion and has extra territorial effect by requiring financial institutions outside the US to provide information to the US Internal Revenue Service directly, in relation to accounts held by all US persons. Reporting is to be done immediately without request, and non-compliance will result in financial penalties on the financial institutions. Based on traditional principles, what the US is seeking to impose on other countries would have been regarded as a clear infringement of the sovereignty of other nations.

14 But the OECD countries have agreed to cooperate through inter-governmental agreements, instead of protesting, in the light of the global trend and in the hope that in the long-run they may take advantage of a similar regime which would be agreed upon on a multilateral basis. To them, it is a matter of time before there is a multilateral system for automatic exchange. Because the OECD countries have followed, other countries have similarly followed suit. To this end, the OECD has recently released guidance on implementing a multilateral automatic exchange of financial account information under the Common Reporting Standard ("CRS"). This regime is similar to FATCA but whereas FATCA is unilateral, this regime is conducted on a multilateral basis, and is the main reason why OECD countries did not protest over FATCA. The US was merely the first to embark on a regime for the automatic exchange of information, but eventually many countries are likely to embark on a similar regime on a multilateral basis. The automatic information exchange system already exists under the European Union ("EU") Savings Directive, and requires banks in the EU to automatically provide information on EU customers to other EU member states. Singapore has committed to implementing CRS, although the details of CRS have not been released, and given the trajectory which the international tax regime seems to be taking and which Singapore has followed, the automatic exchange of information for tax purposes on a global scale seems to be an imminent change. At the same time however, the scope of information falling under CRS will not be unlimited, and countries will still need to make specific requests for information which falls outside of what has been agreed to under CRS. In those situations, the judicial review process can still be invoked and it is thus unlikely that it will become moot.

15 Since the filing of the summons for discovery (SUM [U]) and by way of the Income Tax (Amendment) Act 2014 (No 37 of 2014), s 105HA has been inserted into the 2014 Act to state that in the context of judicial review proceedings, the court shall not grant leave for discovery of the request issued by the foreign tax authority and related documents if the court is satisfied that the foreign tax authority has requested the Comptroller not to disclose the said documents to any person. This has effectively restricted the right of taxpayers to apply for the discovery of documents relating to EOI in judicial review proceedings, but is not applicable to the present case primarily because the application for judicial review was filed before the effective date of the amendment, and also because NTS no longer objects to the disclosure of redacted copies of NTS-related documents.

Application for discovery

16 SUM [U] was an application for discovery in the context of leave to commence judicial review proceedings. Judicial review in the context as outlined above plays an important role in operating as a safeguard of the taxpayer's interest in an exchange of information framework which is rapidly expanding in recent times, but should not be relied on to unnecessarily delay tax investigations commenced against the taxpayers, and must not result in the foreign state being hamstrung in its investigations as a result of the judicial review application in Singapore. It was clear from the legislative history of the Income Tax Act that the court, in determining the scope of discovery for a judicial review application, should consider the overriding principle that the gathering of information in a foreign state for tax investigation purposes must not be prejudiced by court proceedings in Singapore, a consideration which is not usually present in judicial review applications. The Singapore court also does not second-guess what the foreign tax authority is doing outside of Singapore as that is something for the foreign court to determine (*ABU* at [40]).

The application for discovery before the AR

17 The applicants sought discovery of the following documents in SUM [U]:

(a) request from the competent authority of the Republic of Korea dated 23 September 2013;

(b) document uncovered in AXY's USB drive, found in the Korean office of [A];

(c) income tax returns of [B], [C], [D] and [E] (collectively referred to as the "Singapore Companies");

(d) letter from the Comptroller to the competent authority of the Republic of Korea dated 7 November 2013;

(e) letter from the competent authority of the Republic of Korea to the Comptroller dated 16 December 2013;

(f) letter from the Comptroller to the competent authority of the Republic of Korea dated 17 January 2014;

(g) notice to [F] pursuant to section 105E of the Income Tax Act dated 21 January 2014;

(h) notice to [G] pursuant to section 105E of the Income Tax Act dated 27 January 2014;

(i) notice to [H] pursuant to section 105E of the Income Tax Act dated 27 January 2014;

(j) all relevant documents of the EOI Review Committee in reviewing the request, including but not limited to minutes of meeting, and documents reviewed and referred to;

(k) documents provided by the competent authority of the Republic of Korea to the Comptroller at the meeting in Korea on 21 and 22 January 2014;

(l) search and seizure warrant obtained from the Seoul Central District Court on 27 September 2013;

(m) notification of imposition of a fine on the applicants on 20 March 2014; and

(n) notification of upgrade of tax investigations from a civil investigation to a criminal investigation status.

18 The AR considered the application for discovery in the context of the purposes of OS [X], *ie*, leave to commence judicial review proceedings, and the relief sought, and dismissed the application.

Analysis

19 The framework of discovery under O 24 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) compels a party to a suit to disclose to the opposing party all documents which are, or have been, in his possession, custody or power that are relevant to the issues in dispute, subject to the requirement in O 24 r 13 of the Rules of Court that discovery must be "necessary either for disposing fairly of the cause or matter or for saving costs". Lee Seiu Kin J very helpfully stated in [20] of *Breezeway Overseas Ltd and another v UBS AG and others* [2012] 4 SLR 1035 that the discovery process encapsulates the tension between an attempt to achieve both justice and efficiency:

> The perennial tension in the law of civil procedure, *viz*, the attempt to achieve both justice and efficiency, comes to the forefront in the discovery process. On the one hand, it is *ex hypothesi* in the interest of justice that all relevant material is discovered, while on the other, there is a pressing need to ensure efficiency lest injustice be occasioned through the well-meaning but

disproportionate attempt to ensure that all relevant material is disclosed. As Jacob LJ succinctly observed in *Nichia Corp v Argos Ltd* [2007] EWCA Civ 741 at [50]-[51]:

> 50. … 'Perfect justice' in one sense involves a tribunal examining every conceivable aspect of a dispute. All relevant witnesses and all relevant documents need to be considered. And each party must be given a full opportunity of considering everything and challenging anything it wishes. No stone, however small, should remain unturned. …
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> 51. But a system which sought such 'perfect justice' in every case would actually defeat justice. The cost and time involved would make it impossible to decide all but the most vastly funded cases. The cost of nearly every case would be greater than what it is about. Life is too short to investigate everything in that way. So a compromise is made: one makes do with a lesser procedure even though it may result in the justice being rougher. Putting it another way, better justice is achieved by risking a little bit of injustice.

20 Pursuant to the fact that judicial review proceedings in the present context should be subject to the overriding principle that this would not prejudice investigations commenced by foreign authorities against the applicants (*supra* at [16]), the Comptroller had previously objected to the production of NTS documents at the hearings on 31 July 2014 and 15 May 2015 on the basis that NTS had specifically requested for confidentiality of those documents, and Singapore is bound by its treaty obligations to keep the said documents confidential. But this request for confidentiality was communicated at a point in time when the applicants were not aware of the investigations that had been commenced against them and it was important not to alert them. Such a concern was no longer valid at the time of my decision as the fact that investigations had been commenced against the applicants had been reported in the media in Korea. The Comptroller then admitted in their submissions that NTS was now willing to consent to the disclosure of redacted copies of the NTS-related documents to avoid further delays. I will now consider each category of documents requested by the applicants in turn.

Application for the Request

21 The Comptroller objected to the production of the Request on the basis that it was unnecessary for the court to substantively review a request for information by inquiring into the truth of the factual assertions contained therein. The AR agreed that the production of the Request was not necessary for the fair disposal of the matter for similar reasons, and further, because parties are in agreement on the breadth of its scope – which includes a request for the banking activities of up to 51 companies, of which only four are incorporated in Singapore, the AR reasoned that it was not necessary for the applicants to have reference to the Request to ascertain its exact scope in preparing their case for leave for judicial review.

22 In my view, the Request was necessary quite apart from using it to substantively review the truth of the factual assertions contained therein. It was necessary to consider the context in which such a wide scope was put forth, and to examine the reasons provided by NTS to justify its scope. This might in turn affect the court's determination of the exercise of the Comptroller's discretion pursuant to such a Request. The Comptroller had originally disclosed the Request to the court without realising that by disclosing it to the court through eLitigation, this would have allowed the applicants access to the Request. But given that the Request was disclosed to the court previously, it was probably thought to be a relevant piece of information for the fair disposal of the matter in this regard.

23 The applicants' grounds for review also did not simply relate to the scope and extent of the

Request. The applicants were seeking to establish a *prima facie* case of reasonable suspicion that the Comptroller had failed to *independently* exercise its discretion prior to issuing the Notices. The relevant question then became whether it was necessary to disclose the Request for the court to determine whether the applicants have a *prima facie* case against the Comptroller at the leave to commence judicial review stage? I found that it was necessary because the Request was the starting point from which the court could begin to assess the Comptroller's exercise of discretion, and decide whether an arguable case has been made out on the facts. As the applicants have submitted, the Request also contained the reasons for the request of information by NTS, which would have further informed the subsequent exercise of the Comptroller's discretion.

24 I also dismissed the Comptroller's objections to disclosing the Request on the basis of "Singapore's secrecy and confidentiality obligations owed to [Korea]", given that NTS was no longer objecting to NTS-related documents being disclosed. In my view, the public interest would not be "gravely affected" by disclosure of the Request for reasons of the same.

25 In addition, the Comptroller had asserted that the disclosure of NTS-related documents would affect Singapore's grading and reputation in the international arena. By way of background, Singapore is being observed by various bodies like the Financial Action Task Force ("FATF") and the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum"). These inter-governmental bodies seek to promote effective implementation of measures combating threats to the integrity of the international financial system and address risks to tax compliance. The progress of countries in implementing standards set by the FATF and the Global Forum is closely monitored to ensure effective implementation of standards in exchange of information, and in combating money laundering and terrorist financing. The Comptroller had thus asserted that the disclosure of NTS-related documents would affect Singapore's grading and reputation in peer review at the Global Forum, and that "this would have a chilling effect on Singapore's international relations". However, the OECD Model Convention and its Commentary on Article 26 ("the Commentary") specifically allows for disclosure of information to the court so I did not agree that Singapore's reputation would be damaged as a result. I thus ordered the Request in [17(a)] to be produced by the Comptroller to the applicants.

Application for the correspondence between NTS and the Comptroller

26 The application to produce the subsequent correspondence between NTS and the Comptroller (in the form of three letters) and the documents provided by NTS to the Comptroller at a meeting in Korea ("the Further Documents") were similarly dismissed by the AR on the basis that they were unnecessary for the fair disposal of the matter or for the saving of costs, and that the applicants appeared to be fishing for documents. In my view, given that the applicants had been able to pinpoint the exact dates of the letters exchanged, this did not appear to be a fishing expedition. The subsequent correspondence and the further documents were necessary insofar as they would demonstrate whether or not there was an arguable case that the Comptroller had not exercised its discretion independently. This was especially so when the Comptroller had relied on the further documents in Ms Wai's Second Affidavit to state that "it was only upon receipt of the further documents … that the [Comptroller], after carefully considering them, had thereafter proceeded to issue Notices". The Comptroller had also stated that the further documents would show "how all the 51 foreign companies were linked and/or related to AXY and the other [a]pplicants."

27 Despite the fact that NTS was no longer objecting to NTS-related documents being disclosed, the Comptroller maintained its objection to the production of the documents on the basis that it would be a breach of the clear guiding principles provided in the Update to the Commentary as only "minimum information" should be disclosed. But the underlying basis for such a principle was to

prevent tipping off the taxpayers being investigated, and the inherent concern that such disclosure would "frustrate[e] the efforts of the requesting State". This did not apply to the present case in which the relevant taxpayers (*ie*, the applicants) have discovered that proceedings have already been commenced against them, and NTS did not object to the production of such documents. Hence, I ordered production of the documents in [17(d)], [17(e)], [17(f)] and [17(k)].

Application for the Notices issued to the banks

28 I also ordered for the production of the Notices issued to the banks in [17(g)], [17(h)] and [17(i)] on the basis that they are relevant and necessary to the fair disposal of the case. The Notices are the subject of the judicial review in that they contain the outcome of the Comptroller's exercise of its discretion in reviewing the Request. If the Request which triggers the exercise of the Comptroller's discretion was necessary, the Notices which demonstrate the outcome of the Comptroller's exercise of discretion were also necessary for the court to decide whether the Applicants had an arguable case of reasonable suspicion that the Comptroller had failed to exercise its discretion in an independent manner.

Application for documents relating to investigations in Korea

29 On the other hand, in my view, the documents in [17(b)], [17(l)], [17(m)] and [17(n)] should not be disclosed. These documents relate to the factual accuracy of the Request issued by NTS, and whether NTS had in fact pursued all available means in Korea to obtain the information requested except those that would give rise to disproportionate difficulties. Following the reasoning of *ABU* (at [40]), there is no need for the court to second-guess what NTS had done in Korea and these documents were hence not relevant to the fair disposal of the case. The AR's approach in respect of these documents was reasonable and correct. A Singapore court is unsuited and should not be deciding such matters which were, essentially, a matter of Korean law. It was further reasonable to think that the applicants were in possession of the documents in [17(l)], [17(m)] and [17(n)] as these were notifications that would have been issued to the applicants. In all probability, the applicants would have another copy of the document in [17(b)] as well. I thus dismissed their application concerning the abovementioned documents.

Application for income tax returns

30 In relation to the income tax returns in [17(c)], the applicants simply submitted that these documents will assist in the court's evaluation on the "adequacy" of the information relied on by the Comptroller. But these documents were neither material to the present case nor necessary for the fair disposal of the matter. Whether or not a court agreed with the adequacy of the information relied on by the Comptroller is immaterial. Even if the information is inadequate, it did not necessarily follow that the Comptroller's decision to issue the Notices was irrational, illegal or procedurally improper. I thus dismissed the Applicants' application for the production of the documents stated in [17(c)].

Application for EOI Review Committee documents

31 The documents relating to the review of the Request by the EOI Review Committee including minutes of the meeting would relate to the internal procedures of IRAS which may be very sensitive in nature. I also noted that the Comptroller did not specifically rely on the contents of these documents in Ms Wai's Second Affidavit. The fact that the applicants were unable to point to specific documents of the EOI Review Committee which should be disclosed further indicated that this application was akin to a fishing expedition. I thus did not find it necessary for the fair disposal of the matter to order the production of the document stated in [17(j)].

Conclusion

32 Therefore, I ordered that the documents stated in [17(a)], [17(d)], [17(e)], [17(f)], [17(g)], [17(h)], [17(i)] and [17(k)] were to be disclosed to the applicants. The documents disclosed could be subject to redaction if there were matters contained therein which were particularly sensitive. The remaining categories of documents were ordered to be expunged from the court record and copies of the said documents were to be destroyed. With the introduction of s 105HA of the Act, and the ongoing global trend towards automatic exchange of information in tax matters, I was of the view that the Comptroller's concerns with respect to this case creating a bad precedent fall away. In future applications, requests made by a foreign tax authority and related documents will no longer be subject to discovery or inspection if the court is satisfied that the foreign tax authority has requested the Comptroller to keep the document confidential (s 105HA(3) of the Act). Finally, I ordered for costs of this appeal, as well as costs before the AR below, to be reserved to the judge hearing OS [X].