IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 138

Magistrate's Appeal No 9758 of 2020

Between

Tan Song Cheng

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9768 of 2020

Between

Lin Shaohua

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Income Tax Act]
[Criminal Procedure And Sentencing] — [Sentencing] — [Benchmark sentences]

TABLE OF CONTENTS

Tan Song Cheng
v
Public Prosecutor and another appeal

[2021] SGHC 138

General Division of the High Court — Magistrate's Appeal Nos 9758 and 9768 of 2020
See Kee Oon J
1 April 2021

9 June 2021 Judgment reserved.

See Kee Oon J:

1 The appellants had pleaded guilty to charges under s 96(1)(*b*) of the Income Tax Act (Cap 134, 2008 Rev Ed) ("ITA") alongside other charges under the Goods and Services Tax Act (Cap 117A, 2005 Rev Ed) ("GSTA"). They were convicted and sentenced by the same District Judge ("DJ"), sitting in his *ex officio* capacity as a Magistrate, in separate and unrelated proceedings. The Prosecution proposed a sentencing framework for s 96(1) ITA offences, which was adopted by the DJ. Dissatisfied with their sentences, both appellants filed their respective appeals. As the issues concerning both appeals were substantially the same, I heard both appeals together.

2 Having heard the parties' submissions and considered the materials before me, it is clear that there has been no consistent or coherent sentencing trend in the sentencing decisions in respect of offences under s 96(1) of the ITA.

Moreover, there has not been any sentencing guidance from this court since *Chng Gim Huat v Public Prosecutor* [2000] 2 SLR(R) 360 ("*Chng Gim Huat*").

3 In this judgment, I address the need to develop a sentencing framework to guide sentencing for offences under s 96(1) of the ITA. I proceed to explain my reasons for substantially endorsing the Prosecution's proposed framework and demonstrate the application of the framework to these appeals, to reach my conclusion that the sentences imposed were not manifestly excessive and that the appeals should therefore be dismissed.

The material facts

MA 9758/2020

4 In this appeal, the appellant, Tan Song Cheng ("the First Appellant") was the director of TNT Cards & Silkscreen Pte Ltd ("TNTPL") and the precedent partner of TNT Art & Silkscreen ("TAS"), which he ran together with one Lim Geok Mee ("Lim"). Between 2008 and 2014, whenever TNTPL's sales revenue exceeded $1 million, Lim, with the approval of the First Appellant, would falsely reduce TNTPL's report sales revenue, by transferring the revenue to three other business entities, one of which was TAS. For failing to report TNTPL's liability to register for Goods and Services Tax ("GST"), TNTPL had committed an offence under s 61(*a*) of the GSTA. At the time of the commission of the aforesaid offence, the First Appellant was a director of TNTPL and hence, the First Appellant had committed an offence under s 61(*a*) read with s 74 of the GSTA. The First Appellant was fined $2,000 for the offence under the GSTA and is not appealing that sentence.

5 In addition to the above, in 2009 and 2011, the First Appellant agreed to Lim's false reduction of TAS's net profit, so that it would fall beneath an

artificially-imposed cap of $100,000. This led to the under-reporting of the First Appellant's share of TAS's trade income. In addition, the First Appellant failed to declare holiday reimbursements received from TNTPL as a "performance reward". This led to the under-reporting of the First Appellant's employment income from TNTPL. The resulting amount of tax undercharged was $34,992.26 in 2009 and $34,444.18 in 2011. The mandatory penalties the First Appellant was liable for under s 96(1)(i) of the ITA were $104,976.78 and $103, 332.54 respectively.

6 The First Appellant pleaded guilty to the two proceeded charges under s 96(1)(*b*) of the ITA as well as the s 61(*a*) GSTA charge and was sentenced on 20 July 2020. Six similar s 96(1) ITA charges were taken into consideration for the purpose of sentencing. Through his nine offences, the First Appellant had evaded taxes totalling $221,938.01. At the proceedings below, the DJ observed that there was no consistency in the sentences imposed for s 96(1) ITA offences save that the sentences were always under two months' imprisonment. He also observed that there was little or no correlation between the amount of tax evaded and the sentences imposed for cases decided post-*Chng Gim Huat*, and that the current sentencing norm did not utilise the full sentencing spectrum provided for by Parliament, which in turn undermined the seriousness of s 96(1) ITA offences. The DJ held that *Chng Gim Huat* did not establish a sentencing benchmark of a short custodial sentence of up to two months for s 96(1) ITA offences, and proceeded to adopt the Prosecution's proposed five-step sentencing framework based on a harm-culpability analysis.

7 The DJ found that the harm occasioned, and the culpability of the First Appellant came within the low range. Taking into account the First Appellant's plea of guilt and the six other charges taken into consideration, the DJ imposed a sentence of six weeks' imprisonment in respect of each proceeded charge, and

ordered the sentences for the two charges to run consecutively, resulting in a global sentence of 12 weeks' imprisonment for the s 96(1) ITA offences. The DJ's grounds of decision are reported at *Public Prosecutor v Tan Song Cheng* [2020] SGMC 50.

MA 9768/2020

8 In this appeal, the appellant Lin Shaohua ("the Second Appellant") was the precedent partner of two partnerships, Furniture Collection Centre ("FCC") and Yang Hua Furniture Trading ("YHFT"). From 2009 to 2015, one Lim Sai Cheok ("Lucy") prepared the accounts of both FCC and YHFT, and filed the income tax returns of FCC and YHFT, as well as the personal income tax returns of the Second Appellant. At the material times, whenever the actual sales figures of either FCC or YHFT exceeded the $1 million threshold for GST registration, the Second Appellant would instruct Lucy to reduce the reported sales to below the $1 million threshold. At the time of the commission of the aforesaid offences, the Second Appellant was a partner of FCC and YHFT and hence, the Second Appellant had committed an offence under s 61(*a*) read with s 74 of the GSTA. The Second Appellant was fined $4,000 for the offence under the GSTA and is not appealing that sentence.

9 In addition to the above, by instructing Lucy to reduce the reported sales figures for FCC and YHFT to below the $1 million threshold, the Second Appellant's reported partnership income in 2016 was correspondingly reduced, leading to her personal income being under-reported. The resulting amount of tax undercharged was $79,142.13. The mandatory penalty the Second Appellant was liable for under s 96(1)(i) of the ITA was $237,426.39.

10 The Second Appellant pleaded guilty to one proceeded charge under s 96(1)(*b*) of the ITA as well as the s 61(*a*) GSTA charge and was sentenced on 7 August 2020. Two similar charges, one each under s 96(1) of the ITA and s 61(*a*) read with s 74(1) of the GSTA respectively, were taken into consideration for the purpose of sentencing. Through her four offences, the Second Appellant had evaded taxes totalling $536,379. At the proceedings below, the DJ made the same substantive observations of law as he had done in MA 9758/2020.

11 Once again, the DJ adopted the Prosecution's proposed five-step sentencing framework based on a harm-culpability analysis, and found that the harm occasioned and culpability of the Second Appellant came within the low range. Taking into account the Second Appellant's plea of guilt and the two charges taken into consideration for the purposes of sentencing, the DJ imposed a sentence of ten weeks' imprisonment for the s 96(1) ITA offences. The DJ's grounds of decision are reported at *Public Prosecutor v Lin Shaohua* [2020] SGMC 53.

The parties' submissions

The First Appellant's Case

12 On appeal, the First Appellant contends that while the aim of s 96(1) of the ITA is to deter tax evasion, the mandatory penalty of treble the quantum of tax evaded already constitutes sufficient deterrence, and that the amount involved in financial crimes should not be the sole or overriding metric for the assessment of harm.

13 In respect of the Prosecution's proposed sentencing framework, the First Appellant submits that as there is no upper limit to the amount of tax evaded, the proposed sentencing bands which are based solely on the amount of tax

evaded would run the risk of arbitrariness. In addition, it was submitted that the Prosecution's proposed sentencing framework had omitted the sentence of a fine.

14 On the facts, the First Appellant contends that he was not an "active participant" of the tax evasion scheme and consequently he is less culpable than Lim, who received a sentence of four weeks' imprisonment and a mandatory penalty of $63,422.82. The First Appellant also contends that the DJ had given insufficient weight to his plea of guilt, that the consecutive sentences had offended the one-transaction rule, and that the sentence of 12 weeks' imprisonment in addition to the mandatory penalty was crushing.

The Second Appellant's case

15 On appeal, the Second Appellant contends that under the Prosecution's proposed sentencing framework, the quantum of tax evaded has a disproportionate influence on the length of the custodial sentence. As the quantum of tax is also the sole determinant of the mandatory treble penalty, using it as the determinant of harm caused would lend disproportionate emphasis to it. In addition, the Second Appellant contends that the Prosecution's framework had not adequately accounted for the possibility of a non-custodial sentence.

16 On the facts, the Second Appellant argues that the DJ had not placed sufficient weight on her personal circumstances and that the sentence of ten weeks' imprisonment was inconsistent with the sentencing precedents. An appropriate sentence would be a fine or four weeks' imprisonment according to the alternative sentencing framework proposed in her submissions.

The Prosecution's case

17 In response to both appeals, the Prosecution submits that a sentencing framework is called for in respect of s 96(1) ITA offences. According to the Prosecution, the full sentencing range has not been utilised in the precedent cases, resulting in a lack of correlation in sentences to the severity of the offences, and the sentences clustering at the lower end of the sentencing range. To this end, the Prosecution proposed a modified five-step sentencing framework ("the proposed sentencing framework") adapted from *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") for the offences under s 96(1) of the ITA. In the proposed sentencing framework, the Prosecution pegged the various levels of harm primarily on the quantum of tax evaded, alongside the additional factors of involvement of a syndicate or a transnational element. In this regard, the Prosecution submits that the proposed ranges of tax evaded for each level of harm are not arbitrary, and that the mandatory penalty should not have an impact on the determination of the sentence.

18 On the facts, the Prosecution takes the position that the DJ had been correct in his assessment of the Appellants' culpability and the harm caused, as well as their respective offender-specific factors, in calibrating the sentences.

The amicus curiae's submissions

19 Mr Kok Yee Keong ("the *amicus curiae*") was appointed under the Supreme Court's young *amicus curiae* scheme to assist the court with his opinion as to whether it was appropriate for the court to develop a sentencing framework for s 96(1) ITA offences. The *amicus curiae* was also requested to consider what an appropriate framework might be, and to provide his views on the Prosecution's proposed sentencing framework. In addition, he was

requested to consider whether the quantum of tax evaded should be the primary determinant of harm in calibrating the appropriate sentence and the impact of the mandatory penalty, if any, on the determination of the sentence.

20 The *amicus curiae*'s submissions are broadly in line with the Prosecution's position. He agrees that a sentencing framework ought to be developed as there is a paucity of reasoned decisions on s 96(1) ITA offences, the sentences cluster around the minimum sentence, and the sentences appear inconsistent despite the fact that the cases are not that factually diverse.

21 In this regard, the *amicus curiae* also agrees with the Prosecution that the modified *Logachev* sentencing framework should be adopted, although he proposes modifying the framework in various ways, such as using the quantum of tax evaded as the sole determinant of the level of harm, and bringing the other harm considerations within the ambit of culpability.

22 I note that the *amicus curiae*'s submissions attempt to take the proposed sentencing framework a step further by proposing that the court should also use this opportunity to endorse the *Logachev* framework as a universal approach towards determining the sentence for *any* given offence, with suitable modifications. I appreciate that this suggestion is well-intentioned but with respect, I decline to adopt it. It may well merit reconsideration at a future point, but it is unnecessary for the purpose of dealing with the present appeals. Moreover, it is unclear whether a universal approach would be adequate to address the breadth and variance of criminal offences in Singapore.

The need to develop a sentencing framework

The sentencing precedents

23 Hitherto, *Chng Gim Huat* has been the sole High Court decision regarding the sentencing approach for s 96(1) of the ITA offences. In that case, the appellant failed to report income amounting to $1,314,000 and had claimed trial to two charges under s 96(1)(*a*) of the Income Tax Act (Cap 134, 1994 Ed). At first instance, he was sentenced to imprisonment of two and four months on the two charges, with both sentences running concurrently, in addition to the mandatory penalty of $1,069,936.90. Yong Pung How CJ dismissed the appeal against conviction but allowed the appeal against sentence, and reduced the period of imprisonment to one month and two months on the two charges with both sentences ordered to run concurrently. Yong CJ took into account the appellant's swift action in notifying the Inland Revenue Authority of Singapore ("IRAS"), his contributions to the community, and his age. In doing so, Yong CJ also stated that the imposition of the treble penalty was mandatory, and that in view of the need for general deterrence, a custodial sentence would normally be warranted: see [105] and [107].

24 Since the decision in *Chng Gim Huat*, there has been a relative paucity of reasoned decisions regarding offences under s 96(1) of the ITA. As the *amicus curiae* has pointed out, apart from the DJ's two judgments in the present appeals, there are apparently only two other judgments:

(a) *Public Prosecutor v Onn Ping Lan* [2005] SGMC 8, where the offender had pleaded guilty in the midst of trial to 20 counts of tax evasion. He was sentenced to a mandatory minimum aggregate sentence of six months' imprisonment by virtue of s 96(2)(*a*) of the ITA. The mandatory penalty imposed was $546,471.01.

(b) *Public Prosecutor v Chew Tiong Wei* [2016] SGDC 59, where the offender had pleaded guilty to 28 charges which included three counts for tax-related offences. He was sentenced to an aggregate sentence of six months' imprisonment for two charges under s 96(1)(*b*) and one charge under s 37J(3)(*a*) of the ITA, due to the requirement in s 37J(4)(*a*) of the ITA stipulating that a person who is convicted for three or more offences under the relevant provisions would be subject to a mandatory minimum imprisonment term of six months. The mandatory penalty imposed was $152,893.95. His appeal was dismissed but no reasons were given for the High Court's decision.

25 Bearing in mind the need for caution in relying on sentencing precedents without fully-reasoned grounds or explanations as to how the sentencing judge reached a sentencing decision (see *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 at [13(b)]), I turn next to consider the range of sentences meted out in tax evasion cases which are unreported. From the cases cited by the Prosecution and *amicus curiae*, it is clear that while imprisonment terms have been the norm for tax evasion cases, the sentences meted out have ranged between one- to six-weeks' imprisonment (see also Darren Koh, Poh Eng Hin & Tang Siau Yan, *The Law and Practice of Singapore Income Tax* (LexisNexis, 3rd Ed, 2020) ("*Singapore Income Tax*") at paras 19.212–19.213).

26 As observed by the authors of *Singapore Income Tax* at paras 19.213–19.214, this range does not utilise the full sentencing range prescribed by Parliament, which allows for a maximum sentence of up to three years' imprisonment under s 96(1) of the ITA. As a result, the sentences have clustered at the lower end of the permissible custodial sentencing range in s 96(1) of the ITA. This appears to reflect an anchoring effect which may have been the unintended upshot of the decision in *Chng Gim Huat*. As emphasised by the

Court of Appeal in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher*") at [29] (citing *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [45]–[46]), the courts should generally seek to utilise the full spectrum of possible sentences. To do so otherwise would run the risk of promulgating a sentencing trend inconsistent with Parliament's stance with respect to each particular offence (see *Suventher* at [26]). On the facts of the present appeals, this would mean that any sentencing framework specified by this court would necessarily have to encompass sentences up to three years' imprisonment, as well as non-custodial sentences.

Consistency in sentencing

27 As Chan Seng Onn J had observed in *Takaaki Masui v Public Prosecutor and another appeal* [2020] SGHC 265 at [91]–[92], consistency in sentencing encompasses both the issue of adopting a consistent methodology as well as reaching consistent sentencing outcomes. The use of a sentencing framework squarely deals with the former issue (see *Public Prosecutor v Wong Chee Meng and another appeal* [2020] 5 SLR 807 ("*Wong Chee Meng*") at [55]–[57]). However, the latter issue is equally important in that when a court is faced with two very similar cases, it should arrive at broadly similar outcomes. This accords with the principle of consistency namely, that "like cases should be treated alike" (see *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [73], citing *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [17]), and by extension, that unlike cases should be treated differently.

28 It is clear from the sentencing precedents for s 96(1) ITA offences that the precedents do not evince any consistent sentencing trend. For example, it was highlighted by the Prosecution in the hearing below that an offender who had evaded tax of over $400,000 had been sentenced to the same sentence of

one month's imprisonment as an offender who had evaded tax of over $20,000. While I accept that every sentence reflects a complex aggregation of factors which has to be considered with respect to the particular facts of each individual case, the fact that an offence may encompass a "wide variety of circumstances does not, in and of itself, preclude the adoption of a sentencing framework" (see *Wong Chee Meng* at [56]).

29 However, from a review of the sentencing precedents tendered, it appears that offences under s 96(1) of the ITA do not in fact encompass a wide-ranging variety of circumstances. The cases, with the exception of *Chng Gim Huat*, tend to fall generally into two categories. In the first, the offender deliberately fails to declare the full income he has received. In the second, the offender falsifies records to denote a lower income. Accordingly, my observation that the cases concerning s 96(1) of the ITA are not that factually diverse reinforces my view that a sentencing framework would be appropriate, and can be capable of general application.

Did Chng Gim Huat set a benchmark?

30 I note that the First Appellant had initially adopted the position that *Chng Gim Huat* sets the sentencing benchmark for s 96(1) ITA offences, but now accepts that *Chng Gim Huat* does not represent a sentencing benchmark. The Second Appellant has not made any submissions to the effect of whether *Chng Gim Huat* sets a sentencing benchmark. She has however advocated both here and below that the court should adhere to the overall trend of sentencing precedents.

31 As stated in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [31]–[32], a "benchmark" approach to sentencing is characterised by the following features:

(a) The sentence is imposed in respect of an archetypal case (or a series of archetypal cases) (*Terence Ng* at [31]);

(b) The notional case must be defined in terms of the factual matrix of the case as well as the sentencing considerations (*Terence Ng* at [31]);

(c) It provides a focal point against which sentences in subsequent cases with differing degrees of criminal culpability can be accurately determined (*Terence Ng* at [31]);

(d) It lays out the parameters of its reasoning to allow future judges to determine what falls within the scope of the 'norm' (*Terence Ng* at [31]);

(e) The benchmark approach is particularly suited for offences which overwhelmingly manifest in a particular way or where the manner of offending is extremely common (*Terence Ng* at [32]).

32 While *Chng Gim Huat* had explicitly set out the primary sentencing consideration of deterrence for s 96(1) ITA offences, as well as some other sentencing considerations, such as the time span of the offences, the systems and methods used to evade tax, whether there was restitution of the tax evaded, the amount of tax evaded, and the culpability and circumstances of the defendant, it does not appear to have provided a focal point for comparison or calibration of sentences in subsequent cases. In addition, as alluded to above at [29], the facts of *Chng Gim Huat* do not appear to be typical of the usual *modus*

of tax evasion – the appellant had wilfully omitted to declare interest income he had obtained from repayments that were made towards personal loans he had extended. I agree with the DJ's view that *Chng Gim Huat* did not lay down a benchmark sentence for s 96(1) ITA offences, and should not have been regarded as a sentencing guideline judgment as such.

33 In summary, in view of the relative paucity of reasoned decisions, lack of consistency in sentencing decisions, as well as the fact that the full sentencing range set out by Parliament has not been utilised, I agree with the DJ that a sentencing framework is called for with respect to offences under s 96(1) of the ITA.

The rationale underlying offences under s 96(1) of the ITA

34 In *Chng Gim Huat*, Yong CJ held that offences under s 96(1) of the ITA could be construed as a "deliberate fraud on the State", and as such offences are difficult to detect or investigate, a custodial sentence is normally warranted on the grounds of general deterrence (see *Chng Gim Huat* at [107]).

35 This is also illustrated by the statement of Mr Hon Sui Sen, the Minister for Finance, when presenting the second reading of the Income Tax (Amendment) Bill in Parliament in 1975 (*Singapore Parliamentary Debates, Official Report* (27 March 1975) vol 34 at cols 1100–1101):

> I now come to the amendments in the Bill designed to tighten the law against income tax offenders. Income tax is the mainstay of our revenue structure accounting for more than one-third of total revenue. *Compliance by taxpayers is therefore of paramount importance and Government must see to it that every person who is liable pays his fair share.*
>
> *The design of a penalty system for tax evasion which without excessive harshness would yet be punitive enough to deter would-be offenders is no easy task.* Some guidance is provided by experience in the day-to-day administration of the law. And

> such experience has shown that certain modifications in the law dealing with offenders should be made.
>
> …
>
> It is also proposed to remove the requirement of a possible minimum of six months' imprisonment in addition to a fine for taxpayers who are convicted for omitting or making false returns without reasonable excuse or through fraud. A minimum six months' imprisonment seems too harsh in this case and invariably this has led to offenders being let off with only a fine. *Clauses 14 and 15 of the Bill will allow for the length of imprisonment to he decided by the Court.* However, for cases of fraudulent evasion for more than three years, a minimum six months' sentence will remain.
>
> [emphasis added]

36 While no evidence was placed before me as to whether income tax remains the mainstay of the State's revenue, this does not displace the fact that the primary mischief sought to be addressed by criminalisation of tax evasion under s 96(1) of the ITA is the failure of the offender to hand over what is due to the State. As Yong CJ noted in *Chng Gim Huat* at [107], tax evasion offences affect society as a whole since any resulting deficiencies in revenue would have to be made up by other law-abiding taxpayers. Additionally, prior to the amendments to the ITA in 1975, under s 96(1) of the Income Tax Act (Cap 141, 1970 Rev Ed), apart from the mandatory treble penalty, the punishment for tax evasion was a fine not exceeding ten thousand dollars, or imprisonment for a term of not less than six months and not exceeding three years, or both fine and imprisonment. As a consequence of Parliament's removal of the minimum of six months' imprisonment, I am reinforced in my view that Parliament had intended for the *entire* sentencing spectrum to be utilised.

The relevant sentencing considerations for offences punishable under section 96(1) of the ITA

37 I turn now to the relevant sentencing considerations that apply in the context of offences punishable under s 96(1) of the ITA. In *Terence Ng* at [39], the Court of Appeal drew a distinction between offence-specific and offender-specific factors, with the former relating to the manner and mode in which the offence was committed, while the latter related to aggravating and mitigating factors which were personal to the offender. In *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [41], I had held that in evaluating the seriousness of a crime, the court has to consider the harm caused by the offence and the culpability of the offender. In *Logachev* at [36], having considered the two aforementioned cases, Menon CJ held:

> Reading *Terence Ng* and *Koh Thiam Huat* together, it seems to me that offence-specific factors would comprise factors going towards: (a) the harm caused by the offence; and (b) the offender's culpability. These factors may be aggravating or mitigating, and different factors may apply depending on the particular offence in question. In comparison, offender-specific factors would comprise other aggravating and mitigating factors which do not directly relate to the commission of the offence. These factors are generally applicable across all criminal offences.

38 The categorisation set out in *Logachev* neatly encapsulates and delineates the various sentencing considerations that the court should consider in exercising its sentencing discretion. In addition, while there appeared to have been some hesitation on the part of Menon CJ in *Logachev* to comparing casino cheating cases with cheating *simplicter* cases under s 420 of the Penal Code (Cap 224, 2008 Rev Ed), I note that this hesitation may have arisen having regard to the differences in sentencing ranges in the offences concerned, and not because the offences bore significant differences (see *Logachev* at [32]–[33]).

39 In my view, many of the offence-specific factors listed in *Logachev* are also present and relevant to offences involving tax evasion. Accordingly, I have incorporated the relevant sentencing considerations from *Logachev*, that would apply with equal rigour in the context of offences punishable under s 96(1) of the ITA:

<table>
<tr><th colspan="2">Offence-specific factors</th></tr>
<tr><td><u>Factors going to harm</u>
(a) The amount of income tax evaded
(b) Involvement of a syndicate
(c) Involvement of a transnational element</td><td><u>Factors going towards culpability</u>
(a) The degree of planning and premeditation
(b) Sophistication of the systems and methods used to evade income tax or to avoid detection
(c) Evidence of a sustained period of offending
(d) Offender’s role
(e) Abuse of position and breach of trust</td></tr>
<tr><th colspan="2">Offender-specific factors</th></tr>
<tr><td><u>Aggravating factors</u>
(a) Offences taken into consideration for the purpose of sentencing
(b) Relevant antecedents
(c) Evident lack of remorse</td><td><u>Mitigating factors</u>
(a) A guilty plea
(b) Voluntary restitution
(c) Co-operation with the authorities</td></tr>
</table>

Offence-specific factors

Factors going to harm

(1) Quantum of tax evaded

40 The First Appellant argues that the quantum of tax should not be a determinant of harm for s 96(1) ITA offences, as it is already accounted for by virtue of the mandatory penalty of treble the quantum of tax evaded, which has a strong deterrent effect. On the other hand, the Prosecution argues that notwithstanding the fact that the quantum of tax evaded is considered in the mandatory penalty, relying on the same factor as the primary determinant of harm would not amount to double-counting.

41 In this regard, it is my view that the objective of the mandatory penalty is not simply to reclaim the revenue defrauded since the multiplier bears no correlation with the time-value of money. Rather, the primary purpose of the high prescribed penalty is to deter tax evasion. This is entirely in keeping with Yong CJ's opinion in *Chng Gim Huat* at [105] that the treble penalty is of a different genus from the usual sentencing option of a fine, and is *additional* to the sentencing options prescribed under s 96(1) of the ITA.

42 Following from the discussion above, it is apparent that despite the fact that the quantum of income tax evaded necessarily determines the sum of the mandatory penalty imposed, that same quantum can be a primary, albeit not sole, determinant of the harm caused to the State.

(2) Involvement of a syndicate

43 The fact of involvement of an offender in a criminal syndicate, as well as the size and scale of the syndicate concerned, is an independent aggravating

factor that exists quite apart from the element of premeditation, sophistication and planning (see *Logachev* at [52]–[53]).

44 In my view, the existence of such an element justifies enhancing the sentence. At the second reading of the Income Tax (Amendment) Bill, the Second Minister for Finance, Mr Lawrence Wong, said as follows (see *Singapore Parliamentary Debates, Official Report* (2 October 2018) vol 94):

> The second broad change pertains to the proposed amendment of the Income Tax Act to allow IRAS to share with law enforcement agencies (LEAs) information that may be necessary for investigation or prosecution of serious crimes. Serious crimes are offences listed in the First and Second Schedules to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.
>
> *We need the proposed amendments as the activities of criminals including syndicates are often multi-faceted. Their criminal activities may not be limited to tax evasion, and may extend to other forms of illegal activities like drug dealing and corruption. A Whole-of-Government approach is required to better tackle such serious crimes.* And again, I would highlight that other countries, including Australia, Norway, Sweden and the UK, also allow for the disclosure of tax information to LEAs to combat non-tax crimes.
>
> Under the proposed amendments, information shared is to be disclosed by the Comptroller to the head of an LEA for the purpose of investigation or prosecution of serious crimes.
>
> [emphasis added]

45 It is plain from the above statements that a tough stance against criminal syndication is warranted. Parliament had made clear its concerns over the involvement of criminal syndicates in tax evasion schemes.

(3) Involvement of a transnational element

46 In *Logachev*, Menon CJ held that the involvement of a transnational element is an aggravating factor, because of the increased difficulty of detection

as well as the need to prevent Singapore from becoming an essential cog in criminal enterprises (see *Logachev* at [54]–[55]).

47 The Prosecution has suggested that in considering this element, the court should consider issues such as whether there was the use of cross-border transactions or offshore companies and trusts to obfuscate the purpose of fund transfers, and conceal the beneficial ownership of taxable assets. Bearing in mind the fine line that can exist between tax avoidance and tax evasion, I am of the view that the approach that the Prosecution submits is sensible, especially in light of the difficulties that underpin the detection of tax evasion when offshore corporate structures are utilised. Such difficulties were among the reasons why Parliament introduced amendments to the Income Tax Act in 2016 to allow for the automatic exchange of financial account information ("AEOI"). At the second reading of the Income Tax (Amendment No. 2) Bill, the Senior Minister of State for Finance, Ms Indranee Rajah, explained as follows (see *Singapore Parliamentary Debates, Official Report* (9 May 2016) vol 94):

> First, and as pointed out by Ms Foo Mee Har, there must be a level playing field amongst all major financial centres, including Hong Kong and Switzerland, to minimise regulatory arbitrage. These financial centres have endorsed AEOI under the common reporting standard and are committed to implementation timelines of 2017 or 2018.
>
> Second, and as also highlighted by Ms Foo, it is critical that we protect taxpayers' confidentiality. This is why we will engage in AEOI only with jurisdictions that have a strong rule of law and the ability to ensure the confidentiality of information exchanged and prevent its unauthorised use. The CRS includes specific rules on confidentiality and data safeguards that must be in place before information is exchanged.
>
> The Global Forum on Transparency and Exchange of Information for Tax Purposes has also set up an expert panel to review jurisdictions' implementation of these safeguards to ensure that AEOI takes place in a secure environment. Singapore will take into consideration the outcome of such

> reviews when we consider which jurisdictions to engage in AEOI with.
>
> Third, there must be full reciprocity with AEOI partners in terms of information exchanged. *These conditions are necessary to make sure that we continue to respect the legitimate expectations for confidentiality even as we implement AEOI to contribute to the global effort to tackle offshore tax evasion.* In this regard, Singapore will prioritise AEOI with jurisdictions which meet the conditions stated, such as the UK and France.
>
> [emphasis added]

48 In addition, the Prosecution has suggested an additional harm indicium of "undermining of government schemes or harm done to the confidence in public administration". However, in my judgment, such a harm factor would run the risk of double-counting, as the premise of tax evasion *is* the subversion of the governmental scheme of taxation, and the offence attracts a deterrent sentence in view of the impact those very acts will have on public administration and public confidence. Nevertheless, as the categories are non-exhaustive, I accept that the occasion may arise where it can be shown that an act of tax evasion indeed has the additional effect of undermining governmental schemes or damaging the confidence reposed in public administration.

Factors going towards the offender's culpability

(1) The degree of planning and premeditation.

49 It is settled law that the presence of planning and premeditation is an aggravating factor, and reflects greater criminality, compared to an offence committed opportunistically or on impulse (see *Logachev* at [56]). The Prosecution has suggested that examples of such planning and premeditation include the creation of false transactions to reduce the offender's tax liability. I agree that, in general, evidence that the offender had attempted to hide his

income from the scrutiny of the authorities is an aggravating factor. However, I do note that there can be significant overlap between the various factors that go towards the offender's culpability, and the court should be careful not to double-count the aggravating factors.

(2) Sophistication of the means used to evade income tax or to avoid detection

50 An offence committed through the use of sophisticated methods will be an aggravating factor in sentencing compared to one done more simply (see *Logachev* at [57]). I agree with the Prosecution that an indicator of sophistication would be the level of obfuscation employed by the offender, which would possibly encompass the use of complex corporate structures. However, I would again make the observation that the court should be cognisant of the risk of double-counting as there is potential overlap with the aggravating factor of planning and premeditation.

(3) Evidence of a sustained period of offending

51 While an offence being perpetrated over a sustained period of time is an aggravating factor which could be subject to the sentencing principle of specific deterrence (see *Logachev* at [59]), the court has to guard against the risk of double-counting especially where the offender has other charges concerning similar offending behaviour which are taken into consideration for sentencing. In this regard, I would also make the observation that offences under s 96(1) of the ITA are unique in the sense that each offence or charge engendered necessarily relates to the offender's conduct in evading tax for a specific calendar year (*ie*, year of assessment). Consequently, this offence-specific factor may have only a limited impact on the overall sentence, barring exceptional circumstances.

(4) Offender's role

52 The offender's role may be a relevant aggravating factor, where the facts indicate the involvement of a criminal syndicate. The more influential the offender or the larger the role he has in that syndicate, the stronger the inference that the offender is more culpable and consequently deserving of heavier punishment (see *Logachev* at [60]).

(5) Abuse of position and breach of trust

53 In the event that the offender is found to have abused a position of trust or authority or breached the trust reposed in him/her, this would be a relevant aggravating factor (see *Logachev* at [62]). An example of this would include where the offender has utilised client accounts to evade taxes.

Offender-specific factors

Aggravating factors

54 The offender-specific aggravating factors of having offences taken into consideration for sentencing purposes, relevant antecedents, and evident lack of remorse, are all well-established in case law and I do not propose to revisit them (see *Logachev* at [63]–[66]; *Terence Ng* at [64]).

Mitigating factors

(1) A guilty plea

55 A guilty plea is a clear mitigating factor in sentencing, on the ground that it would have saved the criminal justice system resources, and that it represents genuine remorse on the part of the offender to accept the consequences of his conduct (see *Logachev* at [67]). However, with regard to

tax evasion offences under s 96(1) of the ITA, there may be cases where the documentary evidence in the form of a "paper trail" is incontrovertible. Coupled with the presumption found in s 96(3) of the ITA, it may be argued that offenders in such circumstances would have been caught red-handed. As noted in *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [14] and in *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [33], a guilty plea may therefore be quite inevitable and therefore of little or no mitigating value.

(2) Voluntary restitution

56 It is generally accepted that restitution made by the offender, without the party cheated having to resort to attempts at recovery, is generally accepted as a mitigating factor on the ground that it reflects the offender's remorse (see *Logachev* at [69]). This would similarly apply in the context of s 96(1) of the ITA, as the mischief sought to be addressed, as mentioned above at [36], is the loss of revenue caused to the State.

(3) Co-operation with the authorities

57 While co-operation with the authorities can be a mitigating factor, the weight to be given to it would very much depend on the specific circumstances of the case (see *Logachev* at [70]). In the context of offences under s 96(1) of the ITA, this is all the more important in view of the difficulty in detecting such offences, and the fact that income tax returns are heavily dependent on self-reporting.

The sentencing framework for offences punishable under section 96(1) of the ITA

58 Turning next to the sentencing framework, following from my view at [39] above that the sentencing considerations in *Logachev* are applicable, I am also of the view that the DJ had correctly accepted that the five-step sentencing framework in *Logachev* can be transposed to offences punishable under s 96(1) of the ITA, which would apply to offenders who claim trial. The *Logachev* framework itself has already been adapted for offences concerning financial and commercial crimes. In *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606, I had adapted the same framework, with suitable modifications, to offences of money-laundering under s 44(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed). In *Wong Chee Meng*, Menon CJ had also similarly adapted the *Logachev* framework for offences of corruption under s 6 read with s 7 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed).

First step: Identify the level of harm and the level of culpability

59 Having regard to the various offence-specific factors set out in the table at [39] above, the first step is for the sentencing court to identify the fact-specific level of harm caused and the offender's level of culpability.

60 I note that the Appellants have each proposed alternative approaches to address the harm element. The First Appellant argues that the determinant of the harm caused should be the proportion of unreported income to the reported income, while the Second Appellant contends that the determinant of harm should be the amount (and proportion) of restitution.

61 The First Appellant's suggested approach, appended at Annex A, looks primarily to the amount of unreported income divided by the reported income. This determines whether the offender falls into either of three specified "harm levels", calibrated according to whether the quotient is up to five times, between five to ten times or above ten times the reported income. In my view, the First Appellant's suggested "proportion of unreported income" approach is untenable as it would allow individuals with a higher overall income to avoid a higher sentence, as long as the amount of income tax they evade is below a certain proportion. For example, applying the First Appellant's approach, an individual A who earns $1 million a year and under-reports his income as $900,000, would have an unreported to reported income ratio of one to 0.11, which would fall into the First Appellant's definition of level 1 harm. On the other hand, an individual B who earns $22,000 a year and under-reports an income of $2,000, would have an unreported to reported income ratio of one to 10, which would fall into the First Appellant's definition of level 2 or level 3 harm. In such a situation, individual A would be liable for significantly less punishment as the income he had under-reported was far smaller in proportion to the income he had earned, notwithstanding the fact that individual A would have "cheated" the State of five times the amount of tax that individual B did. In my view, such an approach unnecessarily conflates the harm caused to the State with the harm that could have been caused had the offender decided to under-report a greater proportion of his income.

62 The Second Appellant's suggested approach, appended at Annex B, proposes that the presence or absence of restitution, or the extent to which restitution has been made, should be the main indicia of harm caused by tax evasion offences. Under this approach, the offender can be said to fall within three specified "harm levels", with the lowest level involving cases where full

restitution has been made. In my view, the Second Appellant's approach would also not be appropriate for two reasons. First, there may be many reasons why an offender may be unable to make restitution or would choose not to make restitution. Second, if the harm caused is correlated with the amount of restitution made, an offender would be able to "escape" the full consequences of his act no matter how egregious his actions, by simply "reducing" the harm caused by paying back the tax evaded. This would effectively subvert the deterrent effect of s 96(1) of the ITA.

63 In any event, I note that on either the First or Second Appellant's suggested alternative approaches, their respective cases would fall within the lowest level of the harm/culpability matrix. This actually mirrors the DJ's approach, based on the sentencing matrix proposed by the Prosecution, which is set out at [71] below. As such, I do not propose to delve into the details of each of the appellants' suggested alternative approaches. The real point in contention is where their respective cases ought to appropriately lie within the relevant sentencing range, and how their sentences ought to be calibrated.

64 In both the Prosecution and the *amicus curiae*'s submissions, it was submitted that the level of harm should be stratified into one of three levels of severity, based on the quantum of the tax evaded. Both the Appellants argue that the Prosecution's stratification into the three bands of less than $75,000 (Level 1 harm), $75,000–$150,000 (Level 2 harm), and more than $150,000 (Level 3 harm), are arbitrary, but neither has made substantial submissions as to why it is arbitrary other than pointing to the fact that there appears to be no upper limit.

65 I do not find the stratification of harm submitted by the Prosecution and the *amicus curiae* to be arbitrary. The respective levels were derived with

reference to the data available from the sentencing precedents. In particular, about 75% of the prosecuted cases involved a quantum of tax evaded of less than $75,000, with roughly 12% of the prosecuted cases encompassing the other two levels of harm proposed respectively. While I am mindful that sentencing is neither a science nor an administrative exercise which can be determined with mathematical certainty (see *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24]), it does not mean that the sentencing court should eschew a sensible rationalisation of the various sentencing considerations, where it will facilitate the formulation of a framework to provide clearer practical guidance. On the other hand, it would be inadvisable to attempt to derive a "mathematically perfect graph" to identify a precise point for the sentencing court to arrive at in each case. The latter approach was not favoured by the Court of Appeal in *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 at [20]. Similar views were expressed by the three-judge Panel of the High Court in *Lee Shing Chan v Public Prosecutor and another appeal* [2020] 4 SLR 1174 at [34].

66 In *Logachev* at [43]–[50], in relation to an offence of cheating under s 172A of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA"), Menon CJ declined to adopt the Prosecution's proposed sentencing bands based on the amount cheated for the following reasons:

> (a) There is the potential to divert attention away from the other relevant sentencing considerations that go towards the harm caused by the offence. Such an approach is suitable where the offence in question is clearly targeted at a particular mischief which is measurable according to a single (usually quantitative) metric that assumes primacy in the sentencing analysis. On the facts in *Logachev*, it was determined that

s 172A of the CCA sought to target criminal activity in general and not just the amount cheated (see *Logachev* at [44]);

(b) There is the potential to divert attention away from the relevant sentencing considerations that go towards the offender's culpability (see *Logachev* at [47]–[48]);

(c) Singling out the amount cheated is not an approach necessarily supported by precedent (see *Logachev* at [49]);

(d) Where there is no upper limit to the amount cheated, there is a danger that sentencing bands based solely on the amount cheated might be arbitrary. On the facts of *Logachev*, it was noted that the lack of evidence to justify the banding militated against the placement of sentencing bands, although the absence of an upper limit did not necessarily bar the creation of sentencing bands (see *Logachev* at [50]).

67 With regard to [66(d)] above, in both *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Edwin*") and *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*") (referenced by *Logachev* at [50]) Menon CJ had set out sentencing frameworks based on a specific metric notwithstanding the fact that the statutes in question had not set an upper limit. Reading *Logachev* together with *Yap Ah Lai*, it appears that Menon CJ had justified his approach on the basis of Parliament's intention to control the importation of the controlled substance in question (see *Yap Ah Lai* at [24]). On this note, Menon CJ also observed in *Edwin* at [22] in relation to the sentencing benchmark he had set out for offences of drink-driving under s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) that:

> [22] …*These benchmarks are neutral starting points based on the relative seriousness of the offence* considering only the level

> of alcohol in the offender's blood or breath and not yet having regard to any aggravating or mitigating circumstances. *Nor are these categories to be seen as rigid or impermeable.* The precise sentence to be imposed in any individual case will, as it must always do, depend on an overall assessment of all the factual circumstances. But in general, the higher the alcohol level, the greater should be the fine and the longer should be the disqualification period.
>
> [emphasis added]

68 While there is no upper limit to the amount of tax evaded under s 96(1) of the ITA, it is clear that the harm caused is to the State and is measurable according to a single quantitative metric vis-à-vis the amount of income tax evaded. Furthermore, the purpose of s 96(1) of the ITA can be contrasted against the purpose of s 172A of the CCA, in that the former is targeted specifically at tax evasion (see [35]–[36] above) as opposed to the targeting of "criminal activity in general" for the latter (see *Logachev* at [46]).

69 As to the effect that the mandatory penalty should have on the determination of the sentence, I am of the view that it should have little influence on the determination of the sentence for two reasons. First, the court has no discretion to determine if the mandatory penalty should be imposed (see *Chng Gim Huat* at [105]). Second, it would be plainly illogical that the greater the tax avoided and consequently the greater the mandatory penalty, the less likely an offender would be subject to a more severe sentence or longer period of imprisonment.

70 Accordingly, I am in agreement with the Prosecution that the primary indicium of harm should be the amount of tax evaded as stratified into the three separate levels of harm, which may then be adjusted in terms of "severity" on account of the other non-exhaustive indicia of harm, such as the involvement of a syndicate or the involvement of a transnational element. That being said, I am

cognisant of the fact that the average income of the population will change with time. The various stratified levels of harm set out in the sentencing framework are not cast in stone and may have to be revisited from time to time.

Second step: Identify the applicable indicative sentencing range

71 Having identified the level of harm caused by the offence and the level of the offender's culpability, the next step is to identify the applicable indicative sentencing range. Bearing in mind the sentencing range set out in s 96(1) of the ITA, and the stratified levels of harm identified, I adopt the indicative sentencing ranges in the Prosecution's sentencing matrix:

Harm / **Culpability**	**Level 1 Harm (below $75,000 tax evaded)**	**Level 2 Harm ($75,000 – $150,000 tax evaded)**	**Level 3 Harm (Above $150,000 tax evaded)**
Low Culpability	Fine or up to 6 months' imprisonment	6 to 12 months' imprisonment	12 to 18 months' imprisonment
Moderate Culpability	6 to 12 months' imprisonment	12 to 18 months' imprisonment	18 to 24 months' imprisonment
High Culpability	12 to 18 months' imprisonment	18 to 24 months' imprisonment	24 to 36 months' imprisonment

72 In this regard, I note that the Prosecution has argued that a fine should only be imposed in "exceptional circumstances" following *Chng Gim Huat*. The peculiarity of s 96(1) of the ITA is that the mandatory imposition of the treble penalty for tax evaded potentially outstrips the "utility" of the maximum $10,000 fine. Deterrence remains the foremost consideration in sentencing for s 96(1) ITA offences, and a custodial sentence is generally the norm, but it is certainly not the case that a custodial sentence must invariably be imposed.

73 The possibility of a non-custodial sentence should be considered where appropriate, and to that extent, I agree with the Second Appellant's submission. In my view, a fine can be imposed for offences where the deterrent effect of the fine would not be eclipsed by the imposition of the mandatory treble penalty, for example where the amount of tax evaded is in the lower range. Viewed thus, the holding in *Chng Gim Huat* at [107] that "a custodial sentence should normally be imposed in order to meet the needs of general deterrence" would not be inconsistent insofar as where the amount of tax evaded would result in a mandatory penalty that would outstrip the maximum fine, a custodial sentence should be imposed as a fine would have little or no deterrent effect. On the facts of *Chng Gim Huat*, the offender had evaded a total tax liability of $354,645.65 and was subject to a mandatory penalty of over $1 million, which would have rendered the deterrent effect of the maximum $10,000 fine nugatory.

Third step: Identify the appropriate starting point within the indicative sentencing range

74 Having identified the indicative sentencing range, the third step is to identify the appropriate starting point within that range. The court will have to re-examine the offence-specific factors again. As explained above at [70], in view of the fact that the primary indicium of harm is the amount of tax evaded,

the court must be mindful to adjust the "severity" of the harm in relation to the other harm factors, as well as the culpability factors.

Fourth step: Make adjustments to the starting point to take into account offender-specific factors

75 The fourth step is for the court to make adjustments to the starting point identified in the preceding steps, based on the applicable offender-specific aggravating and mitigating factors. At this stage, it is possible for the adjustment to bring the sentence outside the indicative sentencing range, which are themselves not cast in stone, provided that clear and coherent reasons are given (see *Logachev* at [80]).

76 In this regard, the total amount of tax evaded must also be considered at this step. This is consistent with *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Anne*") at [39] and [75], where Menon CJ held that the total amount involved in the charges proceeded with and taken into consideration should be analysed as part of the totality of the offender's conduct:

> [39] At the first step of the analysis, therefore, I think it would have been difficult to justify a custodial sentence for each charge in this case given that the amount of the unauthorised claim involved in each charge was small, and further because none of the charges pertained to circumstances where the improper claim was intended to accrue to the appellant's benefit. ***But when the amounts paid on the claims reflected in*** *all* ***the charges, both proceeded with and taken into consideration, are aggregated, it will readily be seen that that the property which the victim has parted with was of more than negligible value. What follows from this is that the conclusion that the custodial threshold was crossed is one that pertains to the totality of the First Appellant's***

> ***offending conduct, and it could properly be drawn only at the second step of the analysis***…
>
> …
>
> [75] In my judgment, these deterrent and retributive aims can be satisfactorily met only with a sentence of imprisonment. The **totality** of her criminal conduct justifies increases in the individual sentences for her charges from what would, taken alone, have been fines, to short custodial sentences.
>
> [High Court's emphasis in *Anne* in italics; emphasis added in bold and underline]

Fifth step: Make further adjustments to take into account the totality principle

77 The fifth step is for the sentencing court to make further adjustments to the sentence on account of the totality principle. In cases where an offender is convicted of multiple charges, the general rule is that consecutive sentences should be ordered for unrelated offences, subject to the totality principle, the one-transaction rule, and any statutory provisions that supersede the general rule (see *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [65]–[67]).

78 In relation to the totality principle, the court has to first examine whether the aggregate sentence is substantially above the sentences normally meted out for the most serious of the individual sentences committed, then proceed to consider whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [54] and [57]).

Application of the sentencing framework to the First Appellant

79 I now turn to consider the First Appellant's case, and to determine if the sentencing framework, which had been similarly adopted by the DJ, had been appropriately applied.

80 Based on the amount of tax evaded, which was between $34,000 to $35,000 for each of the proceeded charges, I agree with the DJ that the harm caused was justifiably classified as "Level 1 harm". As to the culpability of the First Appellant, I agree that there was a degree of planning and premeditation on his part when he conspired with Lim to ensure that TNTPL's sales revenue did not exceed $1 million in order to avoid GST registration, and to ensure that TAS's net profit was kept below $100,000, in addition to having failed to report holiday reimbursements. I also agree that there was no evidence of the First Appellant having used sophisticated means to evade his income tax. The substantial length of time the scheme was in place as well as the First Appellant's role in the scheme had been accounted for.

81 However, I find it difficult to accept the DJ's finding that the primary aim of the scheme was not for the First Appellant to evade income tax for two reasons. First, while the artificial transfer of sales from TNTPL to TAS was necessary to enable TNTPL to avoid GST registration, I do not see why TAS's net profit figures had to be subject to an artificial cap of $100,000. The First Appellant could have just as easily ensured that the total amount of income he actually received was reported even if he had sought to avoid GST registration for TNTPL. Second, the First Appellant's deliberate failure to report his holiday reimbursements is another indicator that he had attempted to artificially reduce the amount of income he had received for each of the taxable years involved.

82 Notwithstanding, I agree that at the first step of the sentencing framework, the First Appellant's culpability was low, and that consequently the applicable sentencing range at the second step of the sentencing framework is up to six months' imprisonment. At the third step of the sentencing framework, I agree that in light of the absence of other harm factors, a "starting point" sentence of ten weeks' imprisonment was appropriate. In the First Appellant's case, in view of the quantum of income tax evaded per charge which was in itself already over three times the maximum fine that can be imposed, a fine would manifestly not be an appropriate sentence.

83 At the fourth step, I agree with the aggravating factor identified by the DJ, which is the six other charges under s 96(1) of the ITA being taken into consideration for the purposes of sentencing, and which amounted to a total tax evaded of $119,186.21.

84 With regard to the First Appellant's contention that the DJ had failed to consider the mitigating value of the First Appellant's early plea of guilt, cooperation with IRAS, and full restitution for all the charges concerned, I am of the view that this submission is without merit. The DJ had correctly identified and given careful consideration to these factors in calibrating the First Appellant's sentence downwards substantially from ten weeks' imprisonment to six weeks' imprisonment on each charge. I agree with the Prosecution that the sentences in fact appear to be fairly lenient, rather than being manifestly excessive.

85 At the fifth step, I am of the view that the DJ had not breached the one-transaction rule in any way by ordering both sentences to run consecutively. In *Raveen*, Menon CJ had stated:

> [39] … The question of whether the various offences form part of a single transaction in turn depends on whether they entail a "single invasion of the same legally protected interest" … In determining this, *the proximities in time, place, continuity of action, and continuity in purpose or design all have utility*… The premise is that if there is a single invasion of a legally protected interest, then even if this might give rise to several offences, it is, in the final analysis, the violation of that single interest that is being punished and concurrent sentences would thus ordinarily suffice to reflect the seriousness of the offences….
>
> …
>
> [70] …It suffices for present purposes to stress that the question of whether the offences are related or otherwise should be addressed with due sensitivity to the facts and a healthy dose of common sense….
>
> [emphasis added]

As the proceeded charges occurred in separate years of assessment (*ie*, 2009 and 2011), these were separate instances of fraudulent income tax filings committed by the First Appellant separated by two years. It cannot be said that the two offences were committed as part of the same transaction.

Application of the sentencing framework to the Second Appellant

86 Next, I turn to consider the Second Appellant's case, and whether the sentencing framework had been appropriately applied by the DJ.

87 Based on the amount of tax evaded, which was $79,142.13 for the proceeded s 96(1) ITA charge, the harm caused would be justifiably classified as "Level 2 harm". I note that the DJ had re-classified the harm caused into "Level 1 harm", in view of the lack of other harm factors, but conceptually it would be more appropriate to make such an adjustment at the third step of the sentencing framework.

88 With regard to the culpability of the Second Appellant, I agree with the DJ that the Second Appellant's scheme was unsophisticated, as it essentially comprised of her asking Lucy to reduce the actual sales figures of either FCC or YHFT to below the $1 million threshold in order to avoid GST registration. No other subterfuge was employed to disguise her scheme.

89 However, I find difficulty agreeing with the DJ's finding that the primary aim of the scheme was not for the Second Appellant to personally benefit from income tax fraud but to benefit her businesses instead. While the act of evading income tax was inextricably linked to the lowering of FCC's and YHFT's sales income in order to avoid GST registration, the Second Appellant was not prevented from declaring the total income she received for that year of assessment. It cannot be said that whenever an offender commits an offence under s 96(1)(*b*) of the ITA in consequence of having committed another tax offence, his culpability is reduced just because his primary intention was not to evade paying income tax.

90 Notwithstanding, I agree that at the first step of the sentencing framework, the Second Appellant's culpability was low. However, in light of my finding that the harm caused was pegged at "Level 2 harm", the applicable indicative sentencing range lay between six to 12 months' imprisonment. At the third step of the sentencing framework, in light of the absence of other harm factors and the fact that the amount of tax evaded (*ie*, $79,142.13) lay just between the two levels of harm, the DJ was not wrong to have exercised his discretion to adjust the indicative starting sentence substantially downwards to 16 weeks' imprisonment, bearing in mind that the categories set out in the sentencing matrix should not be regarded as "rigid or impermeable" (see *Edwin* at [22] and my observations to a similar effect in *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [32]).

91 At the fourth step, I agree with the aggravating factor identified by the DJ, which is the additional charge under s 96(1) of the ITA being taken into consideration for the purposes of sentencing. The tax evaded amounted to $7,654.46. The DJ however also gave full consideration to the mitigating factors, namely her early plea of guilt and cooperation during the investigations and emphasised the fact that full restitution had been made.

92 With regard to the Second Appellant's contention that the DJ had failed to consider the Second Appellant's personal circumstances, I am of the view that this submission is unmeritorious. The DJ had given due consideration to the Second Appellant's personal circumstances and found that they did not warrant a further discount on the sentence. I am in agreement with the DJ on this point. The case of *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR 1 submitted by the Second Appellant is clearly distinguishable as the Second Appellant's personal circumstances did not create a dire and exceptional situation which compelled her to commit the offences.

93 Finally, at the fifth step, as only one charge was proceeded with in the case of the Second Appellant, there is no need to adjust the sentence of ten weeks' imprisonment on the basis of the totality principle. Overall, I do not see the need to disturb the sentence, though I do agree with the Prosecution that the sentence would appear to have been slightly lenient.

Conclusion

94 For the foregoing reasons, I am of the view that the individual and aggregate sentences in respect of both appellants are not manifestly excessive. Accordingly, I dismiss both appeals. I would like to convey my appreciation to

the *amicus curiae* for diligently preparing an objective, detailed and comprehensive analysis from which I derived considerable assistance.

See Kee Oon J
Judge of the High Court

Koh Weijin, Leon and Tay Xi Ying (N S Kang) for the Appellant in MA 9758/2020;
Tan Tse Chia Patrick, Andrew Wong Wei Kiat, Yip Jian Yang and Caitlyn Wee (Fortis Law Corporation) for the Appellant in MA 9768/2020;
Christopher Ong, Tan Zhi Hao and Charis Low (Attorney-General's Chambers) for the Respondent;
Kok Yee Keong (Harry Elias Partnership LLP) as *amicus curiae*.

Annex A

First Appellant's suggested sentencing matrix

Harm / **Culpability**	**Level 1 Harm (Unreported Income/ Reported Income Up to 5X)**	**Level 2 Harm (Unreported Income/ Reported Income 5X to 10X)**	**Level 3 Harm (Unreported Income/ Reported Income 10X and Up)**
Low Culpability	Fine or up to 6 months' imprisonment	6 to 12 months' imprisonment	12 to 18 months' imprisonment
Moderate Culpability	6 to 12 months' imprisonment	12 to 18 months' imprisonment	18 to 24 months' imprisonment
High Culpability	12 to 18 months' imprisonment	18 to 24 months' imprisonment	24 to 36 months' imprisonment

Annex B

Second Appellant's suggested sentencing matrix

Harm / **Culpability**	**Level 1 Harm (100% Restitution of Taxes Evaded Made)**	**Level 2 Harm (Up to 50% Restitution of Taxes Evaded Made)**	**Level 3 Harm (0% Restitution of Taxes Evaded Made)**
Low Culpability	Fine or up to 6 months' imprisonment	3 to 12 months' imprisonment	9 to 16 months' imprisonment
Moderate Culpability	6 to 12 months' imprisonment	9 to 18 months' imprisonment	15 to 24 months' imprisonment
High Culpability	12 to 18 months' imprisonment	15 to 24 months' imprisonment	21 to 36 months' imprisonment