

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D10/03

Penalty tax – failure to submit return as required – quantum – whether excessive.

Panel: Ronny Wong Fook Hum SC (chairman), Dennis Law Shiu Ming and Tang Chi Chuen.

Date of hearing: 24 February 2003.

Date of decision: 7 May 2003.

The appellant (a company) had to submit a return for the year of assessment 2000/01 within one month from 2 April 2001. The appellant requested the Revenue to extend time for its submission of the return to 15 November 2001 on the ground that its financial year end had been changed from 31 December 2000 to 31 March 2001. The Revenue acceded to it.

The appellant, however, failed to submit its return by the extended deadline.

Profits were assessed by an estimated assessment. On 15 December 2001, the appellant objected against the estimated assessment and submitted its return. As a result, the assessment was revised.

The Commissioner imposed additional tax of \$10,000 which amounted to 6.16% of the tax which would have been undercharged had the appellant's failure not been detected.

The appellant explained that the delay was owing to the additional work done to reallocate accounting records for the change of the financial year end.

Held:

1. The Board held that the Commissioner was fully justified in imposing additional tax on the appellant.
2. The additional tax was assessed at 6.16% of the tax involved. The Board was of the view that the Commissioner had made due allowance of the mitigating factors in favour of the appellant (D100/97 considered).

Appeal dismissed.

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Case referred to:

D100/97, IRBRD, vol 12, 544

Tang Yiu Fai for the Commissioner of Inland Revenue.

Taxpayer represented by its manager.

Decision:

1. The Appellant is a company incorporated in Hong Kong on 24 September 1996. Its business consists of sale of 'POS' and other accounting systems.
2. On 2 April 2001, the Revenue issued to the Appellant a return for the year of assessment 2000/01. By virtue of section 51(1) of the Inland Revenue Ordinance ('IRO'), the Appellant had to submit this return within one month from 2 April 2001.
3. By letter dated 31 July 2001, the Appellant requested the Revenue to extend the time for its submission of the return to 15 November 2001 on the ground that its financial year end 'has been changed from 31 December 2000 to 31 March 2001'. The Revenue acceded to this application.
4. The Appellant failed to submit its return by the extended deadline of 15 November 2001.
5. By a notice of estimated assessment dated 29 November 2001, the Appellant was assessed on the basis of assessable profits at \$2,420,000 with tax payable thereon at \$387,200.
6. The Appellant objected against this estimated assessment on 15 December 2001. In support of its objection, the Appellant submitted its return for the year of assessment 2000/01 on the same day. According to this return, the assessable profits of the Appellant was \$1,014,269.
7. By a notice of revised assessment dated 8 January 2002, the Appellant was assessed on the basis of \$1,014,269 with tax payable thereon at \$162,283.
8. By notice dated 18 June 2002, the Appellant was informed by the Commissioner of his intention to impose additional tax by virtue of the Appellant's failure to comply with section 51(1) of the IRO.

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9. By letter dated 3 October 2002, the Appellant tendered the following explanations to the Commissioner:

- (a) '... since our accounting year ended date has been changed from December 31 to March 31 with effective from this Y/A, there has been additional work done to reallocate all accounting records to the proper period of time ...' and
- (b) '... we are shortage of resources which has not only delayed us to submit the subject return in due course, but also hasn't sent in another letter for applying further extension because of negligent'.

10. After considering these representations from the Appellant, the Commissioner by notice dated 28 October 2002 imposed additional tax on the Appellant in the sum of \$10,000. This amounts to 6.16% of \$162,283 which is the amount of tax which would have been undercharged had the Appellant's failure not been detected.

11. This is the Appellant's appeal against the additional tax so imposed. Its notice of appeal repeated substantially the same grounds as those outlined in its letter to the Commissioner dated 3 October 2002.

12. We have no doubt that the Commissioner is fully justified in imposing additional tax on the Appellant. The Appellant was given an extended period to submit its return. It is the duty of the Appellant to arrange its affairs to meet this extended deadline. The Appellant adduced no evidence before us on the steps it took to comply with its fiscal responsibilities.

13. We turn to the issue of quantum. We take into account the following:

- (a) The length and nature of delay: the delay is one month but the Appellant had the benefit of an extended period. Furthermore, the return was only submitted after an estimated assessment.
- (b) The amount of tax involved is \$162,283.
- (c) We accept that there was no intention on the part of the Appellant to evade its fiscal responsibility.
- (d) There is loss in revenue. The collection of the tax involved was delayed.
- (e) There is no evidence of any previous default on the part of the Appellant.
- (f) The tax return eventually submitted by the Appellant was accepted by the assessor without further investigation.

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14. The Revenue drew our attention to the decision of this Board in D100/97, IRBRD, vol 12, 544. The taxpayer there also had an unblemished record. The delay involved was 38 days. The return eventually submitted was accepted by the assessor. The tax involved was \$183,161. By a majority of 2:1, the Board upheld an assessment of additional tax at 9.83% of the tax involved.

15. The facts of this case are indistinguishable from those in D100/97. In assessing additional tax at 6.16% of the tax involved, we are of the view that the Commissioner had made due allowance of the mitigating factors in favour of the Appellant. We are not prepared to disturb the assessment.

16. For these reasons, we dismiss the appeal and confirm the assessment.