

Case No. D1/24

Profits tax – appeal out of time – transmission of determination – if appeal out of time, whether time to be extended – sections 66(1)(a) and 66(1A) of the Inland Revenue Ordinance (IRO)

Panel: Loh Lai Ping Phillis (chairman), Chan Kwok Tung and Kong Carey Kar Ming.

Date of hearing: 8 March 2024.

Date of decision: 17 April 2024.

In the taxpayer (Appellant)’s appeal (Appeal) against the determination dated 2 August 2023 (Determination) of the Deputy Commissioner of Inland Revenue (Commissioner) regarding an objection to the Profit Tax Assessments for the years of assessment 2014/2015 and 2015/2016, a preliminary issue arose as to whether the Appeal was out of time, and if so, whether an extension of time should be granted.

It was not disputed that: (i) the Commissioner had sent the original Determination (Packet) to the Appellant’s address on 2 August 2023, and on the same date a copy Packet was sent to the Appellant’s tax representative (Representative), both by registered post; (ii) the Representative acknowledged receipt of the copy Packet on 4 August 2023, whilst the Packet sent to the Appellant was returned marked ‘unclaimed’ on 29 August 2023; (iii) on 4 September 2023, the Packet was redirected to the Appellant’s address by ordinary post, and (as the Appellant accepted) there was ‘deemed’ receipt of the same on 5 September 2023; and (iv) the Representative had filed a Notice of Appeal on behalf of the Appellant on 3 October 2023.

The Appellant’s secretary, being the only contact person of the Appellant with the Representative, gave evidence at the hearing that the Appellant had no notice nor knowledge of the issue of the Determination until it was notified at least a month later by the Representative sometime in September to October 2023. The Representative supported the Appellant’s case that upon receipt of the copy Determination on 4 August 2023, she had failed to inform the Appellant of the matter or deliver the copy Determination to the Appellant.

The Board gave consideration to *inter alia* the question of whether transmission of the Determination to the Representative was effective and set the clock of the 1 month time limit running for the purposes of section 66(1)(a) IRO and, if the Appeal was out of time, whether to extend time under section 66(1A) IRO on the grounds that the Appellant was ‘prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal’ within time.

Held:

1. It was clearly established by previous decisions that transmission to the authorized tax representatives acting on behalf of the taxpayer was valid for the purpose of lodging appeals under section 66(1)(a) IRO. In the present case, transmission was effected or completed on 4 August 2023 when the copy Determination was delivered to the Representative. The time for lodging an appeal had commenced to run on that date, and expired on 3 September 2023. The appeal lodged on 3 October 2023 was out of time.
2. There was no evidence and it was not the Appellant's case that it was prevented by illness or absence from Hong Kong from giving notice within time.
3. The non-receipt or nil knowledge of the Determination due to the failure of the Representative to inform the Appellant could at best be said to be some internal reason or lack of communication, but could not constitute an external impediment to prevent the Appellant from giving due notice.
4. No reasonable cause had been established to have prevented the Appellant from filing the Notice of Appeal within the prescribed 1 month time limit. The conditions in section 66(1A) IRO were not satisfied and the Board had no jurisdiction to extend time to allow the Appellant to proceed with the Appeal lodged out of time.

Appeal dismissed.

Cases referred to:

D42/11, (2012-13) IRBRD, vol 27, 1
D76/04, IRBRD, vol 19, 590
D124/97, IRBRD, vol 13, 78
D31/12, (2012-13) IRBRD, vol 27, 667
D146/01, IRBRD, vol 17, 88
Excelter Investment Ltd v Inland Revenue Board of Review [2021] 6 HKC 36
D96/99, IRBRD, vol 14, 614
D19/01, IRBRD, vol 16, 183
D51/11, (2012-13) IRBRD, vol 27, 76
D3/91, IRBRD, vol 5, 537
Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687
Moulin Global Eyecare Trading Ltd (in liquidation) v The Commissioner of Inland Revenue (2014) 17 HKCFAR 218
D21/14, (2015-16) IRBRD, vol 30, 123
Chan Chun Chuen v Commissioner of Inland Revenue [2012] 2 HKLRD 379

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Godwin Ng, Counsel, instructed by Francis Kong & Co Solicitors, for the Appellant.
Joseph Wong, Counsel, instructed by the Department of Justice, for the Commissioner of Inland Revenue.

Decision:

Introduction

1. This is the appeal (**‘Appeal’**) of the Appellant/Taxpayer against the Determination of the Deputy Commissioner of Inland Revenue (**‘Commissioner’**) dated 2 August 2023 (**‘Determination’**) regarding the Appellant’s objection to the Profits Tax Assessments for the years of assessment 2014/2015 and 2015/2016 (**‘Assessments’**) raised on it.
2. As part of the appeal procedure, this Board is first required to determine whether the Appeal is out of time; and if so, whether the Appellant should be granted an extension of time (**‘Preliminary Issue’**) as prescribed under the Inland Revenue Ordinance (**‘IRO’**).
3. Therefore, this decision deals solely with the Preliminary Issue. This Board will only proceed to hear and determine merits of the Appeal, at another hearing to be scheduled, if the Preliminary Issue is decided in favour of the Appellant.
4. This Board held the hearing of the Preliminary Issue on 8 March 2024.
5. The Appellant was represented by Counsel Mr Godwin Ng.
6. The Commissioner was represented by Counsel Mr Joseph Wong.
7. The Appellant called one witness of fact Ms A who gave oral evidence. The Commissioner did not call any oral evidence. Both referred to documents submitted and exchanged before this Board.

Facts

8. Given the simplicity, the only facts that need to be briefly stated are those relevant to the Preliminary Issue in the following terms:
 - (1) the Commissioner issued a letter dated 2 August 2023 enclosing the original Determination (**‘Packet’**) to the Appellant at its address at Address B with a copy to the Appellant’s tax representative Messrs. Francis Kong & Co., Solicitors (**‘Representative’**), both by registered post;

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[In the letter, the Commissioner had advised the Appellant of its right of appeal under section 66 IRO, and the full text of section 66 IRO was also enclosed with the letter.]

- (2) a copy of the Packet was delivered to and acknowledged receipt by the Representative on 4 August 2023;
- (3) on 29 August 2023, the Packet sent to the Appellant at the Address B was returned marked ‘unclaimed’;
- (4) on 4 September 2023, the Packet was redirected to the Appellant at the Address B by ordinary post – the Appellant accepts ‘deemed receipt’ of the same on 5 September 2023 as confirmed by its Counsel Mr Ng at the hearing;
- (5) on 3 October 2023, the Representative filed on behalf of the Appellant to the Clerk of the Board a Notice of Appeal and Statement of the Grounds of Appeal appealing against the Determination.

9. The above-stated facts are not disputed.

10. The evidence of the Appellant’s factual witness Ms A, as set out in her witness statement dated 19 February 2024, and supplemented at the hearing, is that:

- (1) she was the Secretary of the Appellant by post but actually she did not attend work physically at any address. She mainly reported to the boss on letters and messages received from the Representative;
- (2) the Representative was appointed to be the tax representative of the Appellant in writing by a letter dated 31 March 2023 from the Appellant;
- (3) Ms A was the only contact person of the Appellant with the Representative;
- (4) at all material times during August to October 2023 and until the date of this hearing, the Appellant company had no business operation at the Address B and no staff attended work there;
- (5) she had only gone to the Address B once, sometime before August 2023. Hence she had not received the Packet when it was first delivered to the Address B by registered post on 4 August 2023, nor when it was re-directed by ordinary post on 4 September 2023;

- (6) she first came to have knowledge of the Determination upon being notified by the Representative; she cannot recall when but it should be sometime in September to October 2023; and
- (7) she confirmed that there was no communication problem/breakdown between her/the Appellant and the Representative during the period from 4 August to 4 September 2023.

11. Ms A's evidence is largely consistent with the undisputed facts, in gist, that the Appellant had no notice nor knowledge of the issue of the Determination until it was notified at least a month later by the Representative sometime in September to October 2023.

12. The Representative supports the Appellant's case that upon receipt of the copy Determination by registered post on 4 August 2023, it had failed to take any action (during the period from 4 August 2023 to 4 September) such as informing the Appellant of the matter or delivering the copy Determination to the Appellant. This is confirmed by the Representative in writing in its letter of apology dated 8 February 2024 to the Appellant.

Relevant Statutory Provisions

13. In considering the issue whether the appeal is out of time, the first and foremost matter is to decide when the Determination was *transmitted* to the Appellant.

14. The relevant provisions of the IRO are set out as follows:

Section 2 IRO defines 'authorized representative' as 'a person authorized in writing by any other person to act on his behalf for the purposes of this Ordinance (IRO)'

Section 58(2) IRO:

'Every notice given by virtue of this Ordinance may be served on a person either personally or by being delivered at, or sent by post to, his last known postal address...'

Section 64(4) IRO:

'In the event of the Commissioner failing to agree with any person assessed, who has validly objected to an assessment made upon him, as to the amount at which such person is liable to be assessed, the Commissioner shall, within 1 month after his determination of the objection, transmit in writing to the person objecting to the assessment his determination together with the reasons therefor and a statement of the facts upon which the determination was arrived at, and such person may appeal therefrom to the Board of Review as provided in section 66.'

(emphasis added)

Section 66(1) IRO:

‘Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may within –

- (a) *1 month after the transmission to him under section 64(4) of the Commissioner’s written determination together with the reasons therefor and the statement of facts; or*

(emphasis added)

- (b) *such further period as the Board may allow under subsection (1A),*

either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by a copy of the Commissioner’s written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal.’

Section 66(1A) IRO:

‘If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1).’

The Appellant’s Arguments

15. On the above-cited facts, the Appellant argues that the copy Determination sent by the Commissioner by registered post to and received by the Representative on 4 August 2023 was not validly *transmitted* to the Appellant in accordance with section 64(4) IRO. The sub-section expressly stipulates transmission of the Determination to the person objecting to the assessment, ie the Appellant but not any other person.

16. The Appellant hence argues that the transmission of the copy Determination to the Representative (not the Appellant) on 2 August 2023, fell foul of the strict wording of section 64(4) and was invalid.

17. Mr Ng argues that the definition under section 2 IRO of ‘authorized representative’ does not render the transmission to the Representative valid in the present case. It is a mere general definition not applicable for all purposes of IRO such as for

‘transmission’ under Section 64(4). The power of an authorized representative to receive transmission of the determination on behalf of the taxpayer, should it be the legislative intent, must be expressly stipulated.

18. He finds support in this argument by reference to section 66(1), in which it is expressly provided that, the taxpayer may, ‘...*either himself or by his authorized representative give notice of appeal to the Board*’ (emphasis added). The power of the authorized representative to give notice of appeal on behalf of the taxpayer is expressly provided. He therefore argues that absent the express provision ‘*or his authorized representative*’ in Section 64(4) IRO, transmission of the Determination to the Representative (or any person other than the Appellant) cannot be valid.

19. The Appellant goes on to argue that since the Commissioner was *not entitled* to transmit the Determination to the Representative under Section 64(4) IRO and the transmission was not valid, it could not be validly delivered to or accepted by the Representative for the purposes of the sub-section.

20. The Appellant was not notified by the Representative/ had no knowledge of the issue of the Determination until much later in September to October 2023.

21. Transmission to the Appellant (in accordance with section 64(4)) therefore only took place upon the deemed delivery date of the Packet (enclosing the original Determination) on 5 September 2023, ie one day after the Packet to the Appellant was re-directed by ordinary post to the Address B. The Notice of Appeal dated 3 October 2023 was thus filed within the requisite 1 month time limit, and not out of time.

22. Mr Ng confirms in the course of the hearing that the Appellant no longer takes issue of the transmission of the copy Determination to the Representative, as opposed to the original Determination. This Board agrees that this is a wholly immaterial distinction, and the argument unsustainable, when section 64(4) refers to ‘*determination in writing*’, and section 66(1)(a) refers to ‘*the Commissioner’s written determination*’, whether it is a copy or an original determination.

23. When asked by this Board for authorities in support of his proposed strict interpretation of the wording of section 64(4) that (i) the transmission must be made to the taxpayer personally but not to any other person; and (ii) the Commissioner is not entitled to transmit or issue the copy Determination to its tax representative, Mr Ng submits that this is a novel point, never argued before, hence there is no direct authority in support of his argument. He emphasizes that the strict interpretation is obvious from the clear wording (underlined hereinabove) of the sub-section, and nowhere in the IRO provides that the transmission of a determination can be made to a tax representative (or any person other than the taxpayer himself).

24. He further argues that the Commissioner’s conduct of re-directing the Packet (with the original Determination) to the Appellant on 4 September 2023 affirms the Commissioner’s understanding/acknowledgement that the transmission of the copy Determination to and received by the Representative on 4 August 2023 was invalid.

25. In the event that this Board finds the transmission of the copy Determination to and received by the Representative on 4 August 2023 to be valid for the purposes of section 64(4) IRO, the Appellant seems to argue that the time for appeal should be extended in accordance with section 66(1A) because the Appellant was *unable to* file the Notice of Appeal within the 1 month time limit (expired on 3 September 2023) as by then it had not had knowledge of the Determination.

Legal Principles/ Analysis

26. This Board has considered the relevant authorities and decisions, including those submitted by the Appellant and the Commissioner, on the interpretation of the relevant sections under IRO.

27. Mr Ng, in focusing on the argument of the proposed strict interpretation of the wording ‘...*transmit...to the person objecting to the assessment...*’ under Section 64(4), has in our view missed the point that a similar reference of ‘...*after the transmission to him under section 64(4)...*’ is also made in section 66(1)(a). The ‘transmission’ in the 2 sub-sections 64(4) and 66(1)(a) IRO should therefore carry the same meaning for the purposes of lodging an appeal, and can be read together.

Transmission under Section 64(4)/ Section 66(1)(a)

28. There are abundant authorities on the issue whether transmission of the determination to the authorized representative is effective and sets the clock of the 1 month time limit running for the purposes of section 66(1)(a).

29. It is artificial for Mr Ng to argue that there is no authority on the interpretation of transmission ‘*to the person objecting to the assessment*’ under section 64(4). Authorities on interpretation of section 66(1)(a), which refers to ‘... *transmission to him under section 64(4)...*’ are clearly applicable.

30. The following decisions are directly on the point and in our view applicable to the present case:

D42/11 IRBRD:

31. In that case, the determination was sent by registered post on 3 November 2010 (1) to the taxpayer’s previous business address which was a mistake on the part of the Commissioner and (2) copy thereof to the taxpayer’s authorized representative Company K. The copy determination was delivered to and received by Company K on 4 November 2010.

32. At issue was whether due delivery to and receipt by K on 4 November 2010 constitutes transmission of the determination to the taxpayer under section 66(1)(a) such that the notice of appeal received by the Board of Review on 10 December 2010 was lodged out of time.

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33. It was held, at paragraphs 7-8:

‘7. ... we do not need to resort to any authority other than the definition of authorized representative in the IRO. Section 2 of the IRO defines “authorized representative” (獲授權代表) as “a person authorized in writing by any other person to act on his behalf for the purposes of this Ordinance.”

8. This to us is very clear – Company K being the Taxpayer’s authorized representative was entitled under the IRO to receive the Determination on behalf of the Taxpayer. Transmission to Company K amounted to transmission to the Taxpayer.’

(emphasis added)

D76/04 IRBRD:

34. The determination dated 25 June 2004 was posted by registered post to the taxpayer’s authorized representative Mr C at his address in Hong Kong. It was delivered there on 26 June 2004.

35. It was claimed that the authorized representative Mr C was in China and did not return to Hong Kong until 27 July 2024. He was in China with the taxpayer (who did not personally receive the determination).

36. A notice of appeal was lodged on 8 September 2004.

37. It was held that the time for appeal had started to run when the determination was delivered to the authorized representative on 26 June 2004, and had expired on 26 July 2004. The appeal was ruled out of time.

D124/97 IRBRD:

38. In that case, the determination dated 24 March 1997 was sent (1) to the taxpayer’s previous address (as the taxpayer, though under an obligation, had failed to notify the Commissioner of his change of address) and (2) copy thereof to the taxpayer’s authorized representative.

39. The taxpayer did not receive the determination, but became aware of it sometime in late-April 1997. The notice of appeal was lodged on 18 June 1997.

40. It was held that the copy determination was sent to and received by the authorized representative in the ordinary course of mail. Any non-receipt by the taxpayer personally of the Commissioner’s determination does not of itself provide any reasonable excuse within the terms of section 66(1A).

41. Likewise in this Board's other decisions in D31/12 IRBRD and D146/01 IRBRD, the determinations were duly addressed and sent by the Commissioner to the taxpayers' authorized tax representatives. The transmission was ruled valid and that the time for the purpose of lodging an appeal under section 66(1A) was ruled to commence on the dates of receipt/delivery of the determinations by the authorized representatives. Invariably in these cases the taxpayers argued that they had not been promptly notified by the authorized representatives and had come to have notice or knowledge on later dates.

42. In D31/12 IRBRD, this Board, in considering whether the appeal was out of time and caught by Section 66(1)(a) IRO, also made reference to the section 2 IRO definition of '*authorized representative*' (獲授權代表) to mean '*a person authorized in writing to act on his behalf for the purposes including the purpose of transmission to him under section 64(4)*' (referred to in Section 66(1)(a))' as a basis for the ruling that transmission of the determination to the authorized representative was valid, which marked the commencement of the 1 month time limit for lodging an appeal.

43. It is clearly established from the above cited decisions that transmission to the authorized tax representatives acting on behalf of the taxpayers is valid for the purpose of lodging appeals under Section 66(1)(a) IRO. The 'purposes' referred to in the definition of '*authorized representative*' should include transmission of the Determination to the Representative in the present case.

44. This Board has no difficulty coming to the conclusion that transmission was effected or completed on 4 August 2023 when the copy Determination was delivered to the Representative. The time for lodging an appeal had commenced to run on that date, and had expired on 3 September 2023.

45. The appeal lodged on 3 October 2023 was out of time.

46. The fact that the Commissioner re-directed the Packet (with the original Determination) on 4 September 2023 has no bearing on the issue whether transmission was effected or completed when the copy Determination was delivered to the Representative on 4 August 2023. It would not have the effect of resetting the time limit which had commenced to run on 4 August 2023.

47. There is no basis or justification for the Appellant to argue that upon receipt of the Appellant's Notice of Appeal dated 3 October 2023 and by issuing a letter dated 4 October 2023 calling for an arrangement of an appeal hearing by this Board, the Commissioner had accepted the appeal as valid. The letter dated 4 October 2023 is in our view no more than a standard acknowledgement of receipt of the Notice of Appeal. It certainly would not have the effect of overriding the statutory time limit. In any event, the Commissioner had subsequently issued a letter dated 9 October 2023 to this Board carbon-copied the Appellant and the Representative, stating the request for this Board to consider that the Notice of Appeal is outside the time limit provided under section 66(1)(a) IRO.

Whether Extension of Time Should be Granted

48. Having concluded that the appeal is out of time, the next question for this Board is whether the Appellant should nevertheless be granted extension of time under section 66(1A) IRO, which provides that the time for filing the notice of appeal may be extended if this Board is satisfied that the Appellant was *prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal* within time.

49. This Board has no power to grant time extension other than as provided. As held by the Court of Appeal in Excelter Investment Ltd v Inland Revenue Board of Review [2021] 6 HKC 36 at paragraphs 22-23:

‘22. ... As a tribunal established by the IRO, the jurisdiction and powers of the Board of Review are to be found entirely within the confines of that legislation, see eg Wong Wing Biu v Commissioner of Inland Revenue [1985] 1 HKC 433, where Mantell J held that as a creature of the IRO, the Board of Review had no power to enlarge time other than as provided for in the IRO. It follows that the only power of the Board of Review to extend time for bringing an appeal is that found in section 66(1A), and it can only grant an extension of time if the appellant taxpayer can bring itself within the purview of section 66(1A), and the Board and the Judge did not err in this respect.

23. ... As noted above, the only source of the Board of Review’s power to extend time is section 66(1A) of the IRO, That provision permits the Board of Review to extend time only where it is satisfied that the appellant taxpayer has been prevented from giving notice of appeal within one month from the transmission of the Determination to it by illness, absence from Hong Kong or other reasonable cause. The focus is on the reasons why the appellant taxpayer was prevented from filing a compliant notice of appeal on time. Absent a qualifying reason (appellant’s illness, appellant’s absence from Hong Kong, or some other reasonable cause) which prevented the filing of such notice, the Board of Review has no power to extend time. The grounds of the taxpayer’s appeal, and its merits are not matters that relate to the reasons for his being prevented from filing a timely notice, and as such are not a relevant matter for consideration.’

50. There is no evidence and indeed it is not the Appellant’s case that it was prevented by illness or absence from Hong Kong from giving notice within time.

51. The burden rests on the Appellant to satisfy this Board that there was *other reasonable cause* which had *prevented* it from giving notice of appeal within time: see, for example, D96/99 IRBRD, D19/01, IRBRD and D51/11 IRBRD.

52. It seems that the Appellant has not raised or argued on any *other reasonable cause* that had *prevented* it from giving a due notice of appeal, other than the fact that it did not have knowledge of the Determination matter during the period from 4 August to 3 September 2023 due to failure to act of the Representative, hence did not/was *not able to* respond.

53. Strict adherence to the statutory time limits imposed must be observed. In D3/91 IRBRD, this Board refused to extend time without good reasons in favour of the taxpayer even though the delay in filing the notice of appeal was only one day.

‘Prevented’ from giving a notice of appeal under section 66(1A)

54. Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687 is the leading authority on the interpretation of section 66(1A) IRO, in which Woo VP of the Court of Appeal held that the word ‘prevented’ in section 66(1A) should best be understood to mean ‘unable to’, and further explained the standard of the threshold (page 696 paragraph 20) as follows:

‘In my opinion, while a liberal interpretation must be given to the word ‘prevented’ used in section 66(1A), it should best be understood to bear the meaning of the term “未能” in the Chinese language version of the subsection...The term means “unable to”. The choice of this meaning not only has the advantage of reconciling the versions in the two languages, if any reconciliation is needed, but also provides a less stringent test than the word “prevent”. On the other hand, ‘unable to’ imposes a higher threshold than a mere excuse and would appear to give proper effect to the rigour of time limit imposed by a taxation statute.’

55. In D31/12 IRBRD, this Board held that the provisions of section 66(1A) are unambiguous, very clear and restrictive, and the word ‘prevented’ is opposite to a situation where an appellant is able to give notice but failed to do so.

‘Other reasonable cause’

56. In the present case, the Appellant’s unchallenged evidence is that the Representative had upon receipt of the copy Determination on 4 August 2023 failed to notify it of the matter for more than a month and until after 4 September 2023. By then the 1 month time limit had expired. This is confirmed by the letter of apology dated 8 February 2024 from the Representative to the Appellant.

57. Ms A’s evidence given at the hearing is that the Appellant was subsequently notified of the matter sometime in September to October 2023, hence the late filing of the Notice of Appeal on 3 October 2023.

58. The question is thus whether the failure of the Representative to notify the Appellant of its receipt of the copy Determination would constitute a ‘reasonable cause’ under section 66(1A) IRO.

59. Reference is made to the judgment of Moulin Global Eyecare Trading Ltd (in liquidation) v The Commissioner of Inland Revenue (2014) 17 HKCFAR 218 in which the Court of Final Appeal ruled against the taxpayer and held (at paragraph 10), in the context of an objection made under section 64(1), that the legislation contemplates some

temporary impediment of an external and physical nature, rather than something internal and psychological, such as the wrong advice of the accountants or the undiscovered fraud of the management, in preventing the taxpayer from lodging an objection within time.

60. These stated principles were applied in D21/14 IRBRD in which this Board refused to grant an extension of time on the taxpayer's argument that its tax consultant/representative had failed to give any advice on the appeal time limit. It was held to be an internal reason and a unilateral mistake, and could not constitute an external impediment to prevent the taxpayer from giving due notice in accordance with under section 66(1A).

61. In D31/12 IRBRD, the taxpayer was physically not in Hong Kong when the determination was sent to him and alleged that there was a breakdown in relationship with his authorized representative (paragraph 13) who might not have sent him the determination. He had no notice of the matter and had therefore missed the deadline and filed the notice of appeal 6 months late. It was held, again in the context of section 66(1A), that his authorized representative was entitled to and did receive the determination on his behalf, and found that the transmission of the determination to his authorized representative amounted to transmission to the taxpayer (paragraph 26). The Board refused to grant leave to appeal out of time.

62. Similarly in the present case, this Board also takes the view that the lack of knowledge of the Appellant due to the Representative's failure to inform it of the Determination would not assist the Appellant's case. In the context of an application for judicial review against the Commissioner's refusal to grant a time extension for raising an objection under section 64(1) IRO, the Court of Appeal in Chan Chun Chuen v Commissioner of Inland Revenue [2012] 2 HKLRD 379 upheld the Commissioner's decision. At paragraph 46, Johnson Lam J (as he then was) stated that the mere lack of actual knowledge of the taxpayer *per se* would not be a reasonable cause if he did not exercise due diligence in ensuring the effectiveness of the arrangement he had with his instructing solicitors for transmission of documents to him.

63. Also in the above cited cases of D124/97 IRBRD, D146/01 IRBRD, D76/04 IRBRD, D42/11 IRBRD and D31/12 IRBRD, this Board has consistently refused to grant extension of time in circumstances where the taxpayers complained of non-receipt or nil knowledge, but it was shown that the determinations had been duly sent to and received by the authorized representatives.

64. Applying the stated principles to the present case, the non-receipt or nil knowledge of the Determination due to the failure of the Representative to inform it could at best be said to be some internal reason or lack of communication, but could not constitute an external impediment to *prevent* the Appellant from giving due notice.

65. Having considered carefully all submissions and the oral and documentary evidence, this Board has come to the conclusion that no reasonable cause has been established to have prevented the Appellant from filing the Notice of Appeal within the prescribed 1 month time limit.

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66. As the conditions set out in section 66(1A) IRO are not satisfied, this Board has no jurisdiction to extend time to allow the Appellant to proceed with the Appeal lodged out of time.

Conclusion

67. The Appeal is out of time and is dismissed.

Costs

68. This Board considers it just and fair to make no order as to costs.