

**Case No. D8/21**

**Profits tax** – appeal out of time – whether extension of time to be granted – section 66 of the Inland Revenue Ordinance

Panel: Elaine Liu Yuk Ling (chairman), Butt Yiu Yu and Law Shuk Wah.

Date of hearing: 7 July 2021.

Date of decision: 6 September 2021.

The Appellant applied for a time extension to lodge the notice of appeal out of time on the following two grounds:

- the health problem of the Appellant's only director, Mr A; and
- impact of COVID-19.

**Held:**

1. Mr A's health problem is not a reasonable cause that prevented the Appellant from giving the notice of appeal in time. On Mr A's own evidence, he was able to communicate with the tax representative of the Appellant and he was able to work a few hours every day.
2. The Board are not satisfied that the spread of COVID-19 virus prevented the Appellant from filing the notice of appeal in time.
  - Mr A was not able to tell the Board when he ever made the enquiry with the bank.
  - The Appellant did not provide any particulars on the alleged failure to obtain documents from the lawyers or other parties.
3. There is no basis to grant a time extension under section 66(1A) of the Ordinance.

**Appeal dismissed.**

Cases referred to:

Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687

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Lai Po Yin of APG Business Services Limited, for the Appellant.  
Ching Wa Kong, Yu Wai Lim and Ho Lut Him, for the Commissioner of Inland Revenue.

**Decision:**

**The Issue**

1. On 1 April 2021, the Board received a notice of appeal dated 31 March 2021 from the Appellant against the Respondent's determination dated 23 February 2021 ('Determination') concerning Additional Profits Tax Assessment for the years of assessment 2014/15 to 2016/17.

2. Sections 66(1) and 66(1A) of the Inland Revenue Ordinance ('the Ordinance') provide as follows:

*'66 (1) 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*

*(b) such further period as the Board of Review 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.*

*(1A) 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).'*

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3. The questions to be determined in this hearing are whether the Appeal was lodged out of time under section 66 of the Ordinance, and if so, whether any extension of time shall be granted. This Board would not deal with the merits of the appeal at this hearing.

4. In the beginning of the hearing, the Appellant accepted that this appeal was lodged out of time. The Appellant submitted that it was prevented by ‘reasonable causes’ from giving the notice appeal in accordance with the time required by section 66(1) of the Ordinance, and invited the Board to give a time extension for the lodging of the appeal.

5. The Appellant relied on the following two grounds as ‘reasonable cause’ under section 66(1A) of the Ordinance:

- (1) the health problem of the Appellant’s only director, Mr A; and
- (2) the impact of COVID-19 that caused delay in obtaining information from the banks and the lawyers.

### **The Appellant’s Evidence**

6. Mr A gave oral evidence at the hearing.

7. Mr A said that he is the only director and ultimate beneficiary owner of the Appellant. The Appellant owned properties and earned rental income. Mr A acquired the Appellant in 2013 for long term investments. During the past years, the Appellant was solely managed by Mr A with the assistance of a junior clerk. Mr A did not understand English. He had not kept the documents in relation to the sale and purchase of the property concerned.

8. Mr A is 74 years old and was suffering from Cerebrovascular Accident, Diabetes Mellitus, Hypertension, Ischaemic Heart Disease and Sleep Apnea since September 2007. He could only work a few hours every day. Mr A produced six receipts issued by medical doctors within the period from 12 November 2020 to 12 April 2021. These receipts showed that Mr A had attended medical consultation once every month.

9. Mr A also testified that because of the fourth wave of the epidemic hit Hong Kong during November 2020 to April 2021, he stayed at home and did not go out except for attending medical consultation or urgent matters. Further, there was a delay in obtaining the information from the auditors, the bank, and/or the tax representatives during this period.

### **Decision**

10. The Appellant only relied on the ‘reasonable cause’ ground in section 66 (1A) of the Ordinance. Whether there is a reasonable cause will depend on the facts of an individual case. The Appellant has to establish that the ‘reasonable cause’ ‘prevented’ it from giving the notice of appeal in time, in the words, it made the Appellant ‘unable to’ give the notice of appeal in time. (Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687)

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11. It is the Appellant's evidence that at the material times, the Appellant had engaged Company B as its tax representative. Mr A was able to communicate with the tax representative. On Mr A's own evidence, he was able to work a few hours every day. Mr A's health problem is plainly not a reasonable cause that prevented the Appellant from giving the notice of appeal in time.

12. Mr A suggested that he had difficulties in obtaining information from the bank and the lawyers due to the spread of COVID-19. He said that he had telephone conversations with the bank staff and asked for the information and documents. When he was asked by the Board when he made the enquiry with the bank, he was not able to tell. The Appellant did not provide any particulars on the alleged failure to obtain documents from the lawyers or other parties. We are not satisfied that the spread of COVID-19 virus at the material time prevented the Appellant from filing the notice of appeal in time.

13. The Appellant failed to show that the two grounds it contended are 'reasonable causes' that 'prevented' the Appellant from giving the notice of appeal within the statutory time limit. There is no basis to grant a time extension under section 66(1A) of the Ordinance. In the circumstance, we dismiss the application for a time extension to lodge the notice of appeal by the Appellant.