

Case No. D14/17

Property tax – sections 5 and 5B of the Inland Revenue Ordinance ('IRO') – rental income from property – whether the property is the only property a person owns or that person rents another property to dwell in for which rental is payable – whether or not the rent paid by the Appellant for the residence could be deducted from or set off against the assessable value of the Property

Panel: Wong Kwai Huen Albert (chairman), Chan Wai Kam Caroline and Lee Tsung Wah Jonathan.

Date of hearing: 5 July 2017.

Date of decision: 27 October 2017.

The Appellant has objected to the Property Tax Assessment raised on her. The Appellant acquired the Property while she was renting the residence at a monthly rental of \$30,000 as her dwelling in the same building. In order to honour the lease agreement, to avoid spending any additional renovation cost and to minimize her dwelling expenses, the Appellant decided to stay at the residence and let out the Property at the same monthly rental of \$30,000.

The Appellant argued that she did not have any problem with paying Property Tax but she did not consider that she should pay tax on her 'rental income'. She further submitted that she did not generate any income from the Property that was her 'dwelling/basic shelter'. The Property should not be considered as a property in the general sense. It was inappropriate and unreasonable for the Respondent to charge tax on the Property for the years of assessment.

Held:

1. As the owner of the Property, the Appellant is the person chargeable to Property Tax which is computed on the net assessable value of the Property under section 5(1) of the IRO. Property tax is based on actual rental profits derived from the ownership of immovable property and is levied on the owner of land and/or buildings in Hong Kong.
2. Section 5B(2) of the IRO provides that the assessable value of a property for each year of assessment shall be the consideration, in money or money's worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that property. Section 5B(6) provides that 'consideration' includes any consideration payable in respect of the provision of any services or benefits connected with or related to

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

the right of use. Generally, it is the gross income by way of rental derived by the landlord from his property.

3. Whilst it is correct to say that no one is forced to dwell in a property one owns, it is equally true that if one has generated rental income from a property, one is subject to paying Property Tax. It matters not that the property is the only property a person owns and that person rents another property to dwell in for which rental is payable. The law allows certain deductions as mentioned in Section 5(1A) of the IRO including rates, repairs and other outgoings. To be deductible, rates in respect of any property must be the liability of and be paid by the landlord. The statutory allowance for repairs and outgoings is 20% on the assessable value after the deduction of rates actually paid by the landlord. It does not allow any deduction of rentals payable for another property even if two properties are located in the same building.
4. The Appellant chose not to terminate the tenancy agreement of her residence by giving one month's notice to her landlord and dwell in the property. Instead she leased the Property to another party at a monthly rental of \$30,000. This sum of rental income would constitute the assessable value of the Property and chargeable to Property Tax under sections 5 and 5B of the IRO. Whereas the rent paid by the Appellant for the Residence, albeit in the same amount, could not be deducted from or set off against the assessable value of the Property.

Appeal dismissed and costs order in the amount of \$6,000 imposed.

Cases referred to:

Owen Thomas Mangin v Inland Revenue Commissioner [1971] AC 739
D6/10, (2010-11) IRBRD, vol 25, 234
D71/02, IRBRD, vol 17, 943
D20/08, (2008-09) IRBRD, vol 23, 442
D17/11, (2011-12) IRBRD, vol 26, 274

Appellant in person.

Lee Chui Mei and To Yee Man, for the Commissioner of Inland Revenue.

Decision:

1. The Facts

- (1) Ms A ('the Appellant') has objected to the Property Tax Assessments for the years of assessment 2014/15 and 2015/16 raised on her.
- (2) By a tenancy agreement dated 10 June 2013, the Appellant leased the property at Address B ('the Residence') from the landlord at a monthly rent of \$30,000 for the period from 10 June 2013 to 9 June 2015.
- (3) By an assignment dated 3 September 2013, the Appellant acquired the property at Address C ('the Property') as a sole owner.
- (4) By a tenancy agreement dated 20 August 2014, the Appellant let out the Property at a monthly rent of \$30,000 for the period from 8 September 2014 to 7 September 2016. The Appellant was responsible for the payment of rates in respect of the Property.
- (5) In her Tax Return – Individuals for the year of assessment 2014/15, the Appellant declared that she had solely owned property which was let during the year but did not provide any details of the property.
- (6) In her Tax Return – Individuals for the year of assessment 2015/16, the Appellant declared a total rental income of \$360,000 from letting the Property for the period from 1 April 2015 to 31 March 2016.
- (7) The Appellant claimed for rates deduction in the amount of \$16,065 for the year of assessment 2015/16. To support her claim, the Appellant provided copies of the demand for rates in respect of the Property issued by the Rating and Valuation Department, which showed the following particulars:

<u>Period covered</u>	<u>Rates Payable</u> (a) \$	<u>Rates concession</u> (b) \$	<u>Net rates</u> (a) – (b) \$
01-04-2015 – 30-06-2015	4,016.25	2,500.00	1,516.25
01-07-2015 – 30-09-2015	4,016.25	2,500.00	1,516.25
01-10-2015 – 31-12-2015	4,016.25	-	4,016.25
01-01-2016 – 31-03-2016	<u>4,016.25</u>	<u>-</u>	<u>4,016.25</u>
	<u>16,065.00</u>	<u>5,000.00</u>	<u>11,065.00</u>

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

- (8) On divers dates, the Respondent raised on the Appellant the following Property Tax Assessments for the years of assessment 2014/15 and 2015/16:

	<u>2014/15</u>	<u>2015/16</u>
	\$	\$
Assessable Value	203,000 ^[1]	360,000 ^[2]
<u>Less: Rates</u>	<u>-</u>	<u>10,744</u>
	203,000	349,256
<u>Less: 20% statutory allowance for repairs and outgoings</u>	<u>40,600</u>	<u>69,852</u>
Net Assessable Value	<u>162,400</u>	<u>279,404</u>
 Tax Payable thereon	 <u>24,360</u>	 <u>41,910</u>

1. \$30,000 x (6 + 23/30) (for the period from 08-09-2014 to 31-03-2015)
= \$203,000
 2. As declared by the Appellant in paragraph 1(6) above.
- (9) The Appellant objected to the Property Tax Assessment for the year of assessment 2014/15 on the ground that no income was generated since her rental income from the Property was wholly set off by her rental payments for the Residence.
- (10) Subsequently, the Appellant elected for Personal Assessment for the year of assessment 2014/15.
- (11) According to the information provided by the Rating and Valuation Department, details of the rates paid in respect of the Property for the period from 1 April 2014 to 31 March 2015 are as follows:

<u>Period covered</u>	<u>Rates Payable</u>	<u>Rates concession</u>	<u>Net rates</u>
	(a)	(b)	(a) – (b)
	\$	\$	\$
01-04-2014 – 30-06-2014	4,016.25	1,500.00	2,516.25
01-07-2014 – 30-09-2014	4,016.25	1,500.00	2,516.25
01-10-2014 – 31-12-2014	4,016.25	-	4,016.25
01-01-2015 – 31-03-2015	<u>4,016.25</u>	<u>-</u>	<u>4,016.25</u>
	<u>16,065.00</u>	<u>3,000.00</u>	<u>13,065.00</u>

- (12) The Respondent explained to the Appellant that in arriving at the net assessable value of the Property, only the rates paid by the owner and a 20% statutory allowance could be allowed for deduction pursuant to the relevant provisions of the Inland Revenue Ordinance

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

(‘IRO’). The Respondent proposed that the Property Tax Assessment for the year of assessment 2014/15 be revised as follows:

	\$
Assessable Value	203,000
<u>Less: Rates paid by owner [Fact (11)]</u>	<u>13,065</u>
	189,935
<u>Less: 20% statutory allowance for repairs and outgoings</u>	<u>37,987</u>
Net Assessable Value transferred to Personal Assessment	<u>151,948</u>

(13) The Appellant did not accept the Respondent’s proposal for the year of assessment 2014/15. She also objected to the Property Tax Assessment for the year of assessment 2015/16. The Appellant made the following claims:

- (a) Tax was levied on income. However, she did not generate any income from letting the Property since she had been leasing the Residence as her shelter in the same amount of rent at the same building.
- (b) The IRO should be revised to take into account the deduction of rental payouts made by taxpayers who require a ‘basic shelter’.

(14) For the year of assessment 2015/16, the Respondent considers that the rates deduction should be adjusted in accordance with the information provided by the Appellant and the Property Tax assessment should be revised as follows:

	\$
Assessable Value	360,000
<u>Less: Rates [Fact (7)]</u>	<u>11,065</u>
	348,935
<u>Less: 20% statutory allowance for repairs and outgoings</u>	<u>69,787</u>
Net Assessable Value	<u>279,148</u>
Tax Payable thereon	<u>41,872</u>

(15) The Respondent made a determination on 7 March 2017 and rejected the Appellant’s objection by confirming that:

- (a) Property Tax Assessment for the year of assessment 2014/15 under Charge Number X-XXXXXXXX-XX-X, dated 29 April 2016, showing Net Assessable Value of \$162,400 be reduced

to Net Assessment Value of \$151,948 (and be transferred to Personal Assessment).

- (b) Property Tax Assessment for the year of assessment 2015/16 under Charge Number X-XXXXXXXX-XX-X, dated 3 November 2016, showing Net Assessable Value of \$279,404 with Tax Payable thereon of \$41,910 be reduced to Net Assessable Value of \$279,148 with Tax Payable thereon of \$41,872.

(16) The Appellant appeals to this Board against the determination.

2. **The Relevant Statutory Provisions**

The relevant provisions of the IRO governing Property Tax are as follows:

(1) **Section 5 – Charge of Property Tax**

‘(1) Property Tax shall, subject to the provisions of [the IRO], be charged for each year of assessment on every person being the owner of any land or buildings or land and buildings wherever situate in Hong Kong and shall be computed at the standard rate on the net assessable value of such land or buildings or land and buildings for each such year.

...

*(1A) In subsection (1), **net assessable value** (應評稅淨值) means the assessable value of land or buildings or land and buildings, ascertained in accordance with section 5B –*

(a) ...

(b) less –

(i) where the owner agrees to pay the rates in respect of the land or buildings or land and buildings, those rates paid by him; and

(ii) an allowance for repairs and outgoings of 20% of that assessable value after deduction of any rates under subparagraph (i)’

(2) **Section 5B(2) – Ascertainment of assessable value**

‘The assessable value of land or buildings or land and buildings for each year of assessment shall be the consideration, in money or

money's worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or buildings or land and buildings.'

(3) Interpretation of 'owner'

Section 2 of the IRO defines:

'owner (擁有人), in respect of land or buildings or land and buildings, includes –

(a) a person holding the land or buildings or land and buildings directly from the Government;

...'

(4) Section 68(4) – Onus of proof

The onus is on the Appellant to prove that the assessment appealed against is excessive or incorrect under section 68(4) of the IRO.

3. The Case Law

The Respondent referred the Board to the following cases:

(1) Principles for the interpretation of tax statutes

In Owen Thomas Mangin v Inland Revenue Commissioner [1971] AC 739, Lord Donovan recalled some of the rules of interpretation which were applicable to the construction of tax statutes at page 746B-E:

'First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices moral precepts are not applicable to the interpretation of revenue statutes.

Secondly, "... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used"'

(2) ***Property Tax***

Chargeable person

- (a) In D6/10, (2010-11) IRBRD, vol 25, 234, the taxpayer agreed that he was only an agent holding the property on behalf of his mother, who was the beneficial owner receiving the monthly rent. The Board held that Property Tax should be chargeable on the taxpayer who was the registered owner of the property even though he never received any rental income.

Ascertainment of net assessable value

- (b) In D71/02, IRBRD, vol 17, 943, the taxpayer claimed that certain sums could be deducted from the rental income for the purpose of arriving at a net sum chargeable to Property Tax. The Board dismissed the appeal and held:
- (i) Generally, the ‘assessable value’ under section 5B was the gross income by way of rental derived by the landlord from his property.
- (ii) The Legislature had, in its wisdom, decided that an annual deduction of 20% should be given for repairs and outgoings. The IRO made it plain that a flat rate of 20% should be deducted per annum.
- (c) In D20/08, (2008-09) IRBRD, vol 23, 442, the Board held that the IRO did not allow other deductions than rates and statutory allowance.
- (d) In D17/11, (2011-12) IRBRD, vol 26, 274, the Board held that sections 5 and 5B of the IRO clearly provided a 20% allowance which could not be substituted by actual expenditures. The Legislature in its wisdom decided on the figure which included any and all repairs or outgoings, be it higher or lower than 20% of the actual rental income and actually incurred or otherwise.

4. Grounds of Appeal

The Appellant’s grounds of appeal are summarized as follows:

- (1) The Appellant acquired the Property in September 2013 while she was renting the Residence at a monthly rental of \$30,000 as her dwelling in the same building. In order to honor the lease agreement, to avoid spending any additional renovation cost and to

minimize her dwelling expenses, she decided to stay at the Residence and let out the Property at the same monthly rental of \$30,000.

- (2) In her submissions, the Appellant argued that she did not have any problem with paying Property Tax but she did not consider that she should pay tax on her 'rental income'. She further submitted that she did not generate any income from the Property that was her 'dwelling/basic shelter'. The Property should not be considered as a property in the general sense. It was inappropriate and unreasonable for the Respondent to charge tax on the Property for the years of assessment 2014/15 and 2015/16.

5. The Board's Findings

- (1) According to the land records, the Appellant became the registered owner of the Property by way of an assignment dated 3 September 2013. As the owner of the Property, the Appellant is the person chargeable to Property Tax which is computed on the net assessable value of the Property under section 5(1) of the IRO. Property tax is based on actual rental profits derived from the ownership of immovable property and is levied on the owner of land and/or buildings in Hong Kong.
- (2) Section 5B(2) of the IRO provides that the assessable value of a property for each year of assessment shall be the consideration, in money or money's worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that property. Section 5B(6) provides that 'consideration' includes any consideration payable in respect of the provision of any services or benefits connected with or related to the right of use. Generally, it is the gross income by way of rental derived by the landlord from his property.
- (3) By a tenancy agreement dated 20 August 2014, the Appellant as the landlord let and the tenant took the Property at a monthly rent of \$30,000 for the period from 8 September 2014 to 7 September 2016. Clearly, the rental income derived by the Appellant from the Property in the respective amounts of \$203,000 and \$360,000 were the assessable value chargeable to Property Tax for the years of assessment 2014/15 and 2015/16.
- (4) The Board has difficulty in understanding the Appellant's submission that there is no law to require a person to stay in a property which that person owns. Whilst it is correct to say that no one is forced to dwell in a property one owns, it is equally true that if one has generated rental income from a property, one is subject to

paying Property Tax. It matters not that the property is the only property a person owns and that person rents another property to dwell in for which rental is payable. The law allows certain deductions as mentioned in Section 5(1A) of the IRO including rates, repairs and other outgoings. To be deductible, rates in respect of any property must be the liability of and be paid by the landlord. The statutory allowance for repairs and outgoings is 20% on the assessable value after the deduction of rates actually paid by the landlord. It does not allow any deduction of rentals payable for another property even if two properties are located in the same building.

- (5) The Appellant chose not to terminate the tenancy agreement of her Residence in 2014 by giving one month's notice to her landlord and dwell in the Property. Instead she leased the Property to another party at a monthly rental of \$30,000. This sum of rental income would constitute the assessable value of the Property and chargeable to Property Tax under Sections 5 and 5B of the IRO. Whereas the rent paid by the Appellant for the Residence, albeit in the same amount, could not be deducted from or set off against the assessable value of the Property.
- (6) The Appellant seemed to criticize that the law operates unfairly and unreasonably to property owners who choose not to dwell in the sole property which they own. This is a matter for the authority and the Legislature. The Board is not concerned with the reasonableness and fairness of the law.

6. Conclusion

- (1) The Appellant has not discharged the onus of proving that the relevant tax assessments are excessive or incorrect. This appeal is rejected.
- (2) By reasons of the above, the Board found no merits in this appeal. It accordingly dismissed this appeal and confirmed the assessments appealed against. The Appellant is ordered to pay costs in the sum of \$6,000.