

Case No. D26/19

Salaries tax – appeal out of time – frivolous and vexatious appeal – costs of the Board – sections 58(2), 66, 66(1)(a), 66(1A), 68(2D), 68(4), 68(9) of the Inland Revenue Ordinance (the ‘IRO’)

Panel: Chui Pak Ming Norman (chairman), Lee Wong Wai Ling Winnie and Tong Pui Keung Sidney.

Date of hearing: 19 December 2019.

Date of decision: 25 March 2020.

The Appellant objected to the Salaries Tax Assessment for the year of assessment 2012/13 (the ‘2012/13 Assessment’) raised on him. The Appellant claimed that he did not render any employment services in Hong Kong and his income should be wholly exempted from salary tax. On 20 March 2019, the Appellant confirmed by way of an email to the Respondent of his corresponding address (the ‘Old Address’). By the determination dated 29 May 2019 (the ‘Determination’), the Deputy Commissioner of Inland Revenue rejected the Appellant’s objection and confirmed the revised 2012/13 Assessment in the sum of HK\$738,275.00. The Appellant lodged this appeal against the Determination to the Board of Review on 30 August 2019 (by way of an email). On the same day, the Board advised the Appellant by way of an email that his application could not be entertained as he did not enclose the Determination. The Appellant only sent his notice of appeal together with the Determination on 1 September 2019.

The Appellant was absent at the scheduled time of the hearing. In an email on 10 December 2019, the Appellant applied to the Board to have the appeal heard in his absence. The Appellant did not mention in the 10 December email that he suffered from any sickness. Ever since the Appellant filed the appeal papers, it did not appear that the Appellant had diligently taken any step to prosecute the appeal. In proceeding with the hearing of the appeal, the Board would not make any adverse inference solely because of the absence of the Appellant or his authorized representative.

After the Board had made its decision to hear the appeal in the absence of the Appellant, the Respondent made an application to the Board to decide whether the Appeal was bought out of time, and if it was so, whether an extension of time for appeal should be allowed.

Held:

1. The Board considered the meaning of ‘one-month’ and ‘its commencement’ under IRO section 66(a). The one-month period under IRO section 66

commenced to run after the process of the transmission of the determination had been completed and the process of transmission would normally end when the determination reached the address that it was sent to. The service would be completed when the requirements stipulated for service under IRO section 58(2) had been fulfilled. Once the document was properly served under section 58(2), it was up to the taxpayer to ensure that the document which was sent to an address chosen by him was brought to his attention (D2/04, IRBRD, vol 19, 76, Chan Chun Chuen v Commissioner of Inland Revenue [2010] 2 HKLRD 379 followed).

2. The meaning of ‘prevented’ from giving notice of appeal under IRO section 66(1A) was also considered by the Board. A mere absence from Hong Kong did not necessarily prevent a timely appeal within the statutory one-month period. The Board had dismissed the appeal even though the delay was only one day. The word ‘prevented’ used in IRO section 66(1A) imposed a higher threshold than a mere excuse. ‘Reasonable excuse’ could not possibly be extended to cover unilateral mistakes made by taxpayer (D19/01, IRBRD, IRBRD, vol 16, 183 followed; D3/91, IRBRD, vol 5, 537 and Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687 considered).
3. The Old Address was provided and confirmed by the Appellant to the Respondent. The Packet (including the Determination) was posted by registered post to the Old Address on 29 May 2019, the receipt of acknowledgement of which was signed on 12 June 2019. Once the Packet was served by way of postal service pursuant to IRO section 58(2), actual notice was deemed to have been given to the Appellant. As such, the time for filing an appeal under IRO section 66(1) should run on 12 June 2019 and end on 12 July 2019 (D2/04, IRBRD, vol 19, 76, Chan Chun Chuen v Commissioner of Inland Revenue [2010] 2 HKLRD 379 followed).
4. In order that the Board could exercise its discretion to extend the time to file a notice of appeal, the Board should be satisfied that there a reasonable cause which prevented the Appellant from giving notice of appeal in accordance with IRO section 66(1)(a). The Appellant did not provide evidence to substantiate any reason why he could not file a notice of appeal. The Board declined to extend the time under IRO section 66(1A) in favour of the Appellant. The Appeal was dismissed and the Determination was confirmed.
5. The Board was of the view that this appeal was frivolous and vexatious. Pursuant to IRO section 68(9), the Board ordered that the Appellant was to pay a sum of HK\$ 25,000 as costs of the Board.

Appeal dismissed and costs order in the amount of \$25,000 imposed.

Cases referred to:

D2/04, IRBRD, vol 19, 76
Chan Chun Chuen v Commissioner of Inland Revenue [2010] 2 HKLRD 379
D19/01, IRBRD, vol 16, 183
D3/91, IRBRD, vol 5, 537
Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687

Appellant in absentia.

Lee Chui Mei and Ng Sui Ling Louisa, for the Commissioner of Inland Revenue.

Decision:

Introduction

1. The Appellant objected to the Salaries Tax Assessment for the year of assessment 2012/13 raised on him. The Appellant claimed that he did not render any employment services in Hong Kong and his income should be wholly exempt from salary tax.

2. By the determination dated 29 May 2019 ('Determination'), the Deputy Commissioner of Inland Revenue ('Deputy Commissioner') rejected the Appellant's objection and confirmed the revised assessment of the Appellant's Salaries Tax in the sum of HK\$738,275.00 for the year of assessment 2012/13.

3. The Appellant was not satisfied with the Determination and lodged this appeal against the Determination to the Board of Review ('Board') pursuant to the provisions of section 66 of the Inland Revenue Ordinance, Chapter 112 ('the Ordinance').

Grounds of Appeal

4. The grounds of the appeal raised by the Appellant in his Letter of Appeal (sic) sent by e-mail to the Board on 30 August 2019 can be summarized as follows:

- (a) The letter dated 1 August 2011 ('the 2011 Letter') was neither signed nor agreed on by himself. As a result of his removal from services and responsibility for Macau and Hong Kong (North Asia), he was no longer employed by the Hong Kong entity and his employment reverted back to his previous contract.
- (b) He maintained that he did not render any services in Hong Kong.

- (c) He acknowledged that he was in Hong Kong for over 200 days. He attended to and nursed his pregnant wife who was diagnosed with suspected cervical cancer. He was permitted by the Company (employer) to attend his wife's medical checks and care which resulted in his frequent visits to Hong Kong.
- (d) The Commissioner was correct that he took only 35 days' annual leave/long service leave but failed to acknowledge his parental and paternal leave, sick leave entitlement which he was privileged to as an Country A expatriate. The entitlement included 18 weeks' paid parental and paternal leave and 10 to 21 days' paid sick leave.
- (e) The Company (employer) was sympathetic to and permitted him to extend the time with his family. His daughter was born in June 2012. The time leading up to and after her birth required his extended presence in Hong Kong assisting his wife and his 3-year old son.

The hearing

5. The Appellant was absent at the scheduled time of the hearing. Neither any person claiming to be the Appellant's authorized representative was present. The situation remained so after 15 minutes. It is therefore concluded by the Board that the Appellant was absent from the hearing of the Appeal.

6. If, on the date fixed for the hearing of an appeal, the appellant fails to attend at the meeting of the Board either in person or by his authorized representative the Board may¹ –

- (a) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;
- (b) proceed to hear the appeal under subsection (2D); or
- (c) dismiss the appeal.

7. By an e-mail sent to the Board on 10 December 2019 ('10th December e-mail'), the Appellant indicated that he would not be able to attend the hearing date (sic). Although he had tried to change some personal dates (sic), his daughter was undergoing surgery and required him to attend to her. In the same e-mail he mentioned that he had not been able to convince any witnesses (sic). His key witnesses were in fact in China and under a restrictive order from his ex-employer Company B due to criminal charges. The several witnesses he wanted to invite played a large part in the hearing. He also mentioned that his daughter had been diagnosed with Stage 1 Thyroid cancer, as such he would appeal to the

¹ Section 68(2B) of the Ordinance

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Board to consider a postponement. However, he did not indicate how long the adjournment should be and when he could attend the adjourned hearing.

8. In the 10th December e-mail, the Appellant also applied to the Board to have the appeal heard in his absence.

9. The Appellant did not mention in the 10th December e-mail that he suffered from any sickness. The Appellant alleged that his daughter suffered from Stage 1 Thyroid cancer, but he saw fit not to submit any medical report or certificate to support his daughter's Thyroid cancer. The Appellant also alleged that some of his key witnesses could not be called because they were under a restrictive order. However, he provided no particulars of the witnesses and details of their evidence. Neither did he explain the reason why their evidence was important to the appeal. In short, the aforesaid allegations were bare allegations without particulars or evidence to substantiate.

10. Ever since the Appellant filed the appeal papers, it does not appear that the Appellant had diligently taken any step to prosecute this appeal. He did not file any witness statement(s) including a statement from himself for the appeal. If the Appellant filed the witness statements of his key witnesses, the Board would at least know the reasons why they were important to the Appellant's case. Accordingly, the bare allegations of sickness of her daughter and the lack of key witnesses made by the Appellant could not be reasonable causes for his absence in the hearing.

11. From the e-mails exchanged between the Appellant and the Clerk of the Board, one could get the impression that the Appellant had no intention to attend the hearing. Had he intended to prosecute the appeal, one would expect that he would follow the directions given by the Board on 21 October 2019 or would appoint a representative to handle the appeal and to attend the hearing even if the sickness of his daughter made him uncomfortable to travel to Hong Kong for a few days.

12. The Appellant was absent on the date of hearing because he was in Country C. In the 10th December e-mail, the Appellant did not mention that he would return to Hong Kong. In the circumstances, the Board is satisfied that the Appellant is unlikely to be in Hong Kong within a reasonable period, say, 3 months from the hearing date. Given the fact that the Appellant made an application to the Board to have the appeal heard in his absence, the Board exercises its discretion under section 68(2D) of the Ordinance to proceed to hear the appeal in the absence of the Appellant or his authorized representative.

13. In proceeding with the hearing of the appeal, the Board has to state clearly that the Board would not make any adverse inference solely because of the absence of the Appellant or his authorized representative. Despite there is no oral testimony advanced by the Appellant or his witnesses, the Board will, if the situation permits the Board to do so, take all reasonable steps to contest the Respondent's evidence or to test the Respondent's evidence against the Appellant's evidence to ensure that it is a fair hearing and the Appellant would not be affected by his absence.

Preliminary Issue

14. After the Board has made its decision to hear the appeal in the absence of the Appellant, the Respondent made an application to the Board to decide whether the Appeal was brought out of time, and if it is so, whether an extension of time for appeal should be allowed.

The Statutory Provisions relating to appeal out of time

15. Section 66 of the Ordinance provides:

‘(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 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).’

16. Section 68(4) of the Ordinance provides that *the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.*

Facts relevant to the Preliminary Issue

17. The following facts are relevant to the preliminary issue.

<u>Date</u>	<u>Facts or Events</u>
(a) 19 March 2019	An e-mail was sent by the Assessor to the Appellant requesting him to confirm his current correspondence address.

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	<u>Date</u>	<u>Facts or Events</u>
(b)	20 March 2019	The Appellant confirmed by way of an e-mail to the Respondent that his correspondence address remained to be Address D, Country C ('Old Address').
(c)	29 May 2019	The Determination under a cover letter dated 29 May 2019 was sent to the Appellant ('the Packet') by registered post at the Old Address. The cover letter sets out the appeal procedures and the time limit and annexes a copy of the full text of section 66 of the Ordinance.
(d)	12 June 2019	The Packet was delivered to the Appellant at the Old Address and an acknowledgement of receipt was signed.
(e)	14 July 2019	The Appellant sent an e-mail to the Assessor notifying the change of his correspondence address to Address E, Country C ('New Address').
(f)	16 July 2019	The Assessor informed the Appellant by way of an e-mail that the Packet had been issued on 29 May 2019 and drew his attention to the appeal procedure.
(g)	17 July 2019	The Appellant informed the Assessor by way of an e-mail that he had not received any correspondence from the Revenue and requested a copy of the Determination to be re-sent to him.
(h)	22 July 2019	The Assessor informed the Appellant by way of an e-mail and by way of a letter that a copy of the Packet was re-sent by registered post to him pursuant to his request.
(i)	31 July 2019	The Packet was delivered to the Appellant at the New Address and an acknowledgement of receipt was signed.
(j)	5 August 2019	The Appellant informed the Assessor by way of an e-mail that he still did not receive any correspondence from the Assessor.

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	<u>Date</u>	<u>Facts or Events</u>
(k)	7 August 2019	The Assessor informed the Appellant by way of an e-mail that the Packet had been delivered to the New Address on 31 July 2019.
(l)	8 August 2019	The Appellant informed the Assessor by way of an e-mail that he had received the Packet.
(m)	9 August 2019	The Appellant informed the Board by way of an e-mail that he wishes to appeal against the Determination.
(n)	30 August 2019	The Appellant gave a notice of appeal (letter of appeal) by way of an e-mail to the Board.
(o)	30 August 2019	An e-mail was sent by the Board to the Appellant advising him that his application could not be entertained as he did not enclose the Determination.
(p)	1 September 2019	The Appellant sent his notice of appeal together with the Determination by way of an e-mail which was received by the Board on the same day.

Relevant authorities on Extension of Time

The meaning of ‘one month’ and ‘its commencement’ under section 66(a) of the Ordinance

18. In D2/04, IRBRD, vol 19, 76, the Board held that the one-month period under section 66 of the Ordinance commences to run after the process of the transmission of the determination had been completed and the process of transmission would normally end when the determination reaches the address that it was sent to. The Board said at page 80:

‘7. *The question is whether those words [1 month after the transmission to him under section 64(4) of the Commissioner’s written determination] mean that the intended appellant has one month from the date when the process of transmission begins (that is, when Commissioner despatched his determination), or whether he has the one month period after the process of transmission has been completed. In our view the latter meaning is more consonant with the legislative intention..... We should observe that the end of the process of transmission does not depend upon whether the determination has physically reached the recipient. The process of transmission would normally end when the determination reaches the address that it was sent to.*’

19. In Chan Chun Chuen v Commissioner of Inland Revenue [2010] 2 HKLRD 379, the Court of Appeal held that the giving of notice under section 58(2) of the Ordinance

does not imply that the taxpayer must have actual knowledge of the notice. The service would be completed when the requirements stipulated for service under section 58(2) have been fulfilled. Once the document was properly served under section 58(2), it is up to the taxpayer to ensure that the document which was sent to an address chosen by him was brought to his attention. Hon. Cheung JA at page 388 paragraph 27(2) said:

‘Section 58(2) is the governing provision for giving notice by way of postal service. Once it is invoked the Commissioner does not need to show further that the notice had “actually” come to the knowledge of the taxpayer. This is because, first, the very fact that a mode of service other than personal service is permitted, is by itself an indication that service will be completed when the requirements stipulated for service have been fulfilled..... In my view, once the document was properly served under s.58(2), actual notice was treated to have been given to the taxpayer. It is then up to the taxpayer to ensure that the document which he had chosen to be sent to a specified address would be brought to his attention.’

The meaning of ‘prevented’ from giving notice of appeal under section 66(1A) of the Ordinance

20. In D19/01², the Board held that a mere absence from Hong Kong does not necessarily prevent a timely appeal within the statutory one-month period. The board stated at paragraph 14 on page 185:

‘Absence from Hong Kong does not confer an automatic right for extension of time. It is for the Taxpayer to satisfy us that he was so prevented from giving the requisite notice’.

21. In D3/91³, the Board dismissed the appeal even though the delay was only one day. The Board said at paragraph 2 on page 541:

‘The delay in filing the second notice of appeal was only one day but that is not the point. Time limits are imposed and must be observed. Anyone seeking to obtain the exercise of the discretion of a legal tribunal must demonstrate that they are “with clean hands” and that there are good reasons for the extension of time.’

22. In Chow Kwong Fai v Commissioner of Inland Revenue⁴, the taxpayer alleged that his lateness in filing an appeal to the Board was due to his misunderstanding of section 66(1) of the Ordinance. In dismissing the appeal to the Board’s refusal to grant an extension of time under section 66(1A) of Ordinance, the Court of Appeal held that:

² IRBRD, vol 16, 183.

³ IRBRD, vol 5, 537.

⁴ [2005] 4 HKLRD 687.

- (a) The word “prevent” in section 66(1A) should best be understood to bear the meaning of the term “unable to”. The term, although providing a less stringent test than the word “prevent” imposed a higher threshold than a mere excuse and would appear to give proper effect to the rigour of time limit imposed by a taxation statute⁵; and*
- (b) “Reasonable cause” could not possibly be extended to cover unilateral mistakes made by the taxpayer. A unilateral mistake on the taxpayer’s part cannot be properly described as a reasonable cause which prevented him from lodging a timely notice of appeal.⁶*

Analysis and Discussion

23. The Old Address was provided and confirmed by the Appellant to the Respondent⁷. The Packet (including the Determination) was posted by registered post to the Old Address on 29 May 2019, the receipt of acknowledgement of which was signed on 12 June 2019. According to the decision of D2/04, the Packet reached the Old Address on 12 June 2019. Once the Packet was served by way of postal service pursuant to section 58(2) of the Ordinance, actual notice was deemed to have been given to the Appellant according to Chan Chun Chuen v Commissioner of Inland Revenue. There was no need for the Respondent to prove whether the Appellant actually received the Packet. As such, the time for filing an appeal under section 66(1) of the Ordinance should run on 12 June 2019 and end on 12 July 2019.

24. The Appellant on 14 July 2019 sent an e-mail to the Respondent informing the Respondent of the change of his address [of service] from the Old Address to the New Address⁸. Upon receipt of his e-mail, the Respondent on 16 July 2019 sent a reply e-mail to the Appellant informing him of the fact that the Packet was issued on 29 May 2019. On 17 July 2019, the Appellant informed the Assessor that he had not received any correspondence from the Revenue and requested for a copy of the Determination to be re-sent to him⁹.

25. On 22 July 2019, the Respondent then re-sent the Packet by way of registered post to the Appellant at the New Address provided. The Respondent also informed the Appellant of the fact by way of an e-mail on the same day¹⁰.

26. The Packet was delivered to the Appellant at the New Address and an acknowledge of receipt was signed on 31 July 2019¹¹. On 8 August 2019, the Appellant informed the Respondent by way of an e-mail that he had received the Packet¹².

⁵ Page 696 E - F.

⁶ Page 701 E - F.

⁷ Paragraphs 17(a) and 17(b) of this Decision.

⁸ Paragraph 17(e) of this Decision.

⁹ Paragraph 17(g) of this Decision.

¹⁰ Paragraph 17(h) of this Decision.

¹¹ Paragraph 17(i) of this Decision.

¹² Paragraph 17(l) of this Decision.

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27. The Appellant sent his notice of appeal (by way of an e-mail) to the Board on 30 August 2019¹³. On the same day, the Board advised the Appellant by way of an e-mail that his application could not be entertained as he did not enclose the Determination¹⁴. The Appellant eventually sent his notice of appeal together with the Determination by way of an e-mail on 1 September 2019 which was received by the Board on the same day¹⁵.

28. It should be noted that the letter dated 29 May 2019 under which the Determination was sent to the Appellant contains, amongst others, the following notices:

- (i) You or your authorized representative may give notice of appeal to the Clerk to the Board of Review. This notice must be given within one month after the transmission to you of the written determination.
- (ii) The notice of appeal must be in writing and must be accompanied by a statement of the grounds of appeal. It is also necessary to send with the notice a copy of each of the following: the written determination; the reasons for my decision, and the statement of facts.

29. The full text of section 66 of the Ordinance was also annexed in the said letter.

30. As discussed in the above, the time of filing an appeal should run on 12 June 2019. Purely for discussion purpose but not otherwise, even if we assume that the Determination was not deemed to have been transmitted to the Appellant on 12 June 2019, the Packet sent on the second occasion to the Appellant at the New Address should have been received by the Appellant on 31 July 2019. The reason is very simple - a receipt of acknowledged was signed by the person at the New Address. It follows that even if the time for filing an appeal did not run on 12 June 2019, it should commence on 31 July 2019. The one-month period should therefore end on 31 August 2019.

31. Under section 66(1)(a) of the Ordinance, a notice of appeal should be accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and the statement of facts and a statement of the grounds of appeal. Otherwise, it could not be a valid notice of appeal. The Appellant only sent his notice of appeal together with the Determination on 1 September 2019. In the Appellant's best scenario, the fact remains that the Appellant did not file a complete and valid notice of appeal pursuant to section 66(1)(a) of the Ordinance with the Board within the one-month period referred thereto.

32. Under section 66(1A) of the Ordinance, 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

¹³ Paragraph 17(n) of this Decision.

¹⁴ Paragraph 17(o) of this Decision

¹⁵ Paragraph b17(p) of this Decision.

for such period as it thinks fit the time within which notice of appeal may be given under subsection (1).

33. There is no assertion by the Appellant that he was sick during the relevant period. It is not disputed that the Appellant was not in Hong Kong during the relevant period. However, absence from Hong Kong does not confer an automatic right for extension of time¹⁶. Even if the Appellant was not in Hong Kong during the relevant period, he is not prevented from filing an appeal. The reason is very simple, if he chose to do so, he was free to engage an authorized representative to file a notice of appeal on his behalf. In the letter dated 29 May 2019, the Appellant's attention was drawn to the fact that he could appoint an authorized representative to give the notice of appeal. The Appellant simply ignored the said notice.

34. In order that the Board could exercise its discretion to extend the time to file a notice of appeal (whether from 12 July 2019; or for argument sake, from 31 August 2019), the Board should be satisfied that there was a reasonable cause which prevented the Appellant from giving the notice of appeal in accordance with section 66(1)(a) of the Ordinance. The Appellant did not provide any evidence to substantiate any reason why he could not file a notice of appeal within the statutory period (no matter from 12 July 2019 or from 31 August 2019). The Board therefore is not in a position to find whether there was any reasonable cause which prevented the Appellant from giving a notice of appeal to the Board. In the circumstance, the Board declines to extend the time under section 66(1A) of the Ordinance in favor of the Appellant. The Board refuses to do so even if the Appellant was present at the hearing. In the circumstances, the Appeal must be dismissed and the Determination is hereby confirmed.

Costs

35. Since the Board does not reduce or annul the assessment being appealed and confirms the Determination, the Board may order the Appellant to pay as costs of the Board a sum not exceeding the amount of \$25,000 (being the amount specified in Part 1 of Schedule 5 of the Ordinance) pursuant to section 68(9) of the Inland Revenue Ordinance.

36. The Appellant, being a senior Position F of a reputable entertainment company earning an annual income around HK\$5.0 million, should be well educated. He should have the ability to prosecute the Appeal with diligence, if he intends to do so. He should have the ability to follow the procedure and file the necessary documents on time as the Packet contained all the necessary information to guide an appellant to do so.

37. From the e-mails exchanged between the Appellant and the Clerk to the Board, the Board gets the impression that he does not genuinely appeal against the Determination. He just made use of different excuses to justify why he would be absent in the hearing, which include (a) his daughter was suffering from stage 1 of thyroid cancer; (b) his sole witness was not willing/legally unable to take part in any proceedings; and (c) he was not able to attend the hearing nor did he wish to engage any 3rd party representative

¹⁶ Re D19/01, paragraph 21 of this Decision.

(sic). However, such allegations were empty without any evidence to substantiate.

38. The Packet was first sent to the Old Address provided by the Appellant to the Respondent. Although there was a receipt of the Packet signed and returned to the Respondent through the post office on 12 June 2019, the Appellant pretended that he received nothing from the Respondent and on 14 July 2019 informed the Respondent by an e-mail of the New Address. However, he was silent on when he changed his address from the Old Address to the New Address. The Packet was then sent again to the Appellant's New Address and a receipt of acknowledgement was signed on 31 July 2019 and returned to the Respondent. Yet the Appellant on 5 August 2019 saw fit to inform the Respondent that he still did not receive any correspondence from the Respondent. The Appellant only acknowledged his receipt of the Packet by sending an e-mail to the Respondent on 7 August 2019 upon the Respondent's e-mail sent to him on the same date confirming the delivery of the Packet to the New Address on 31 July 2019. In the Board's view, the Appellant was just to make use of all sort of excuses to delay the matter or make the Respondent difficult in recovering the outstanding tax from him. The Board's view is reinforced by the fact that in several e-mails he had mentioned to the Clerk to the Board that he proposed to seek settlement with the Respondent yet no proposal for settlement had been made by him to the Respondent. If the Appellant genuinely intended to appeal against the Determination, he should have taken active steps to do so and/or appoint a representative to handle the appeal for him.

39. By reason of the aforesaid, the Board is of the view that this appeal is frivolous and vexatious.

40. Substantial amount of public fund is incurred in the appeal. The Board sees no reason why the general public has to bear the costs of the Board in dealing with this frivolous and vexatious appeal.

41. Pursuant to section 68(9) of the Ordinance, we order that the Appellant is to pay a sum of HK\$25,000 as costs of the Board, and this sum of HK\$25,000 be added to the tax charged and recovered therewith.

Disposition of the Appeal

42. For the reasons and conclusion set out above, we dismiss the appeal and confirm the Salaries Tax Assessment for the year of assessment 2012/13 as revised by the Deputy Commissioner on 29 May 2019. The Appellant is to pay a sum of HK\$25,000 as costs of the Board which is to be added to the tax charged and recovered therewith.