INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D102/00

Penalty tax – failure to report chargeability without reasonable excuse – grossly understated assessable profits in tax return for several years of assessment – no evidence of absence of intention to evade tax – duty on taxpayer to notify IRD of his chargeability – no duty on IRD to issue Form IRC 6121 – absence of Form IRC 6121 is no licence nor reasonable excuse for failing to notify IRD of a taxpayer's chargeability – penalty in the rate of 100% of the tax undercharged – sections 51 and 82A of Inland Revenue Ordinance ('IRO').

Panel: Kenneth Kwok Hing Wai SC (chairman), Vincent Lo Wing Sang and Duffy Wong Chun Nam.

Date of hearing: 3 November 2000.
Date of decision: 7 December 2000.

The taxpayer had understated assessable profits for the years of assessment 1995/96, 1996/97 and 1997/98. The total amount of understated assessable profits was 97.92% of the assessable profits after investigation.

This appeal was concerned only with the additional tax assessment for the year of assessment 1997/98. The sole ground of appeal was that the additional tax was excessive having regard to the circumstances.

Held:

1. There was no dispute and the Board found as a fact that the taxpayer was chargeable to tax for the year of assessment 1997/98 and the Taxpayer had not informed the Commissioner in writing that he was chargeable to tax within four months after the end of the basis period which ended on 31 March 1998. Indeed, the taxpayer had never notified IRD in writing of his chargeability for the year of assessment 1997/98.

2. Subject to the question of reasonable excuse, the taxpayer was clearly liable to be assessed to additional tax. Whether the taxpayer was 'detectable' played no part in deciding whether he was liable to additional tax.

3. The maximum amount of additional tax was ' treble the amount of tax which has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2A) or a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected' .

4. The meaning of the phrase ' in consequence of' as regard an incorrect tax return had been considered in CIR v Kwok Siu-tong [1978] HKLR 26 at page 34.

5. The Board saw no reason why the phrase ' in consequence of' in section 82A(1)(ii) should not have the same meaning as the same phrase in section 82A(1)(i).

6. The was no causal link between the taxpayer' s failure to report chargeability and the assessment issued on 13 May 1999, which was not issued ' in consequence of' the taxpayer' s failure to report chargeability. In other words, the amount of tax undercharged in consequence of the taxpayer' s failure to report chargeability was $689,933. The result was the same under the other alternative which was ' the amount of tax which would have been undercharged if such failure had not been detected' . This formulation gave precisely the same amount of $689,933.

7. To submit that the taxpayer ' overlooked' his obligation to notify chargeability presupposed that the taxpayer knew his obligation to notify the Commissioner of his chargeability which flew in the face of the taxpayer' s assertion in his representations to the Commissioner dated 20 April 2000 that he knew absolutely nothing about revenue laws.

8. It is trite law that ignorance of law was no excuse. Taken into account of the amount of assessable profits concerned, the taxpayer should have employed or instructed a person or persons competent to handle his accounting and taxation matters. The duty was on a person to notify IRD of his chargeability. IRD had no duty to issue a Form IRC 6121. The fact that IRD had not done so is no licence and no excuse for non-compliance with section 51(2). The fact that IRD did not issue Form IRC 6121 was not a reasonable excuse of failing to notify IRD of his chargeability.

9. Although this appeal was concerned only with the additional tax assessment for the year of assessment 1997/98, this did not mean that the Board looked only at the circumstances in the year of assessment 1997/98. The circumstances included circumstances during the investigation and the circumstances after the investigation up to his conduct of this appeal.

10. The taxpayer grossly understated his assessable profits in his return for the years of assessment 1995/96 and 1996/97. By reason of his reported loss and reported

assessable profits, the taxpayer could hardly be surprised that IRD had issued no return for the year of assessment 1997/98 before IRD commenced its investigation.

11. The taxpayer was evasive in his answer to the question of the Board on why he did not report the profits from the operation in District B in his tax returns for the years of assessment 1995/96 and 1996/97.

12. The taxpayer made no claim in his testimony that he did not intend to evade tax.

13. The taxpayer had not kept any proper accounting records.

14. The taxpayer' s return for the year of assessment 1997/98 was not submitted until eight months after he had been informed in writing by IRD that it had commenced an investigation into his tax affairs.

15. The assessable profits for the years of assessment 1995/96, 1996/97 and 1997/98 were not agreed between the taxpayer and the IRD until after more than 17 months of investigation of his tax affairs by IRD.

16. The cooperation of the taxpayer with IRD seemed to have ceased on appeal in that he put forward two thoroughly bad arguments that section 82A was not applicable to him.

17. The Board saw no reason to divorce the failure to report chargeability in the year of assessment 1997/98 from the incorrect returns in the years of assessment 1995/96 and 1996/97.

18. The Board did not accept that there was no actual loss of interest in revenue. With the total amount of understated assessable profits at 97.92% of the assessable profits after investigation, the absence of any actual loss in revenue pales in significance.

19. The assessment of additional tax at 85% was not excessive, it was manifestly inadequate in all the circumstances of this case.

20. Pursuant to sections 68(8)(a) and 82B(3) of the IRO, the Board increased the assessment to $689,933,100% being the absolute minimum in all the circumstances of this case.

21. The taxpayer' s case on appeal was frivolous and vexatious. But for the fact that the appeal had served the useful purpose of increasing the penalty to what the Board

considered should be the absolute minimum, the Board would have made an order for costs under section 68(9).

Appeal dismissed.

Cases referred to:

D2/88, IRBRD, vol 3, 125
CIR v Kwok Siu-tong, [1978] HKLR 26
D41/89, IRBRD, vol 4, 472

Tsui Yuk Kwan for the Commissioner of Inland Revenue.
Li Kin Hong Pius of Messrs Leung Yau Wing & Co for the Taxpayer.

Decision:

1. This is an appeal against the assessment ('the Assessment') dated 25 May 2000, charge number 3-3821817-98-9, by the Commissioner of Inland Revenue, assessing the Taxpayer to additional tax under section 82A of the IRO, Chapter 112, in the sum of $584,000 in respect of the year of assessment 1997/98.

2. The relevant provision is section 82A(1)(e) of the IRO for failing to comply with section 51(2) to inform the Commissioner in writing that he was chargeable to tax for the year of assessment 1997/98 not later than four months after the end of the basis period for that year of assessment.

The agreed facts

3. Based on the agreed statement of facts, we make the following findings of fact.

4. The Taxpayer has been operating food and beverage businesses since 1986.

5. On 15 March 1996, he started the relevant business as a sole proprietor ('the Business').

6. On 20 August 1996, he furnished his tax return for individuals for the year of assessment 1995/96 issued on 10 May 1996, stating that the business address of the Business was in District A and reporting a loss of $9,867 for the period from the commencement of business of the Business on 1 March 1996 to 31 March 1996.

7. On 22 August 1997, he furnished his tax return for individuals for the year of assessment 1996/97 issued on 20 June 1997, stating that the business address of the Business was in District A and reporting a profit of $158,296 for the period from 1 April 1996 to 31 March 1997.

8. The assessor issued a loss computation for the year of assessment 1995/96 and an assessment for the year of assessment 1996/97 based on the loss or profit (as the case may be) reported by the Taxpayer. The Taxpayer and his wife elected personal assessment for these two years of assessment and there was no need to pay any tax as the profit was lower than the personal allowances.

9. The Inland Revenue Department (' IRD') commenced an investigation into the tax affairs of the Taxpayer. By letter dated 14 August 1998, IRD invited the Taxpayer to a meeting at IRD within 14 days.

10. By letter dated 27 August 1998, the Taxpayer informed IRD that he had appointed the firm of certified public accountants who represented him at the hearing of this appeal as his tax representatives (' CPA').

11. By letter dated 28 August 1998, CPA requested the postponement of the meeting until after mid-September.

12. The Taxpayer and CPA met the assessors on 29 September 1998. The Taxpayer told the assessors that:

(a) in early 1996, the Business took over a business selling meal boxes at a project then under construction in District B;

(b) in July 1996, the Business was appointed a sub-contractor to supply meal boxes at a building in that project by the company having the exclusive right to supply food to the building (' the Main Contractor'); and

(c) he estimated that he made a net profit of about $5,000,000 plus during the time when the Business operated in District B; and confirmed that he did not report this profit in his tax returns for individuals for the years of assessment 1995/96 and 1996/97 [paragraph 8 (b) of the agreed statement of facts refers].

The Taxpayer gave the assessors a copy of the agreement dated 13 July 1996 made with the Main Contractor and schedules of the properties, businesses and bank accounts of the Taxpayer and his wife. The assessors pointed out to the Taxpayer that he had not informed the Commissioner in

writing that he was chargeable to tax for the year of assessment 1997/98 within four months after the end of the basis period for that year of assessment.

13. By letter dated 23 October 1998, the assessor required the Taxpayer to supply information and documents in connection with the period from 1 April 1992 to 31 March 1998, including copies of all agreements entered into with the Main Contractor (other than the one dated 13 July 1996) and schedules with supporting documents of payments to the Main Contractor.

14. By another letter also dated 23 October 1998, the assessor required the Taxpayer to furnish all accounting records, including invoices and vouchers, of the Business for the period from 1 April 1992 to 31 March 1998.

15. On 3 November 1998, IRD issued the tax return for individuals for the year of assessment 1997/98 to the Taxpayer requiring him to return it within three months.

16. On 14 April 1999, IRD received the Taxpayer' s return for the year of assessment 1997/98 reporting a profit of $5,110,618 on the part of the Business.

17. On 13 May 1999, the assessor issued an assessment for the year of assessment 1997/98 showing assessable profits of $5,110,618.

18. On 28 July 1999, the assessor telephoned CPA to ask the basis on which the submitted 1997/98 profit and loss account of the Business was prepared. CPA replied that it was based on the Taxpayer' s bank passbooks, statements and cheque stubs.

19. IRD' s investigation of the Taxpayer' s tax affairs, including the Business' profits for the year of assessment 1997/98, continued.

20. On 20 October 1999, the Taxpayer and CPA met the assessors who showed them the first draft of an assets betterment statement of the Taxpayer and his wife for the period between 31 March 1995 and 31 March 1998.

21. On 20 January 2000, the Taxpayer and CPA met the assessors who showed them a revised assets betterment statement. The assessors agreed the Taxpayer' s amendments of the revised assets betterment statement. The Taxpayer agreed that the assessable profits of the Business be computed as follows:

Years of assessment	**Assessable profits**
	$
1995/96	354,515
1996/97	1,670,296
1997/98	5,110,618

22. On 17 February 2000, the assessor issued a profits tax assessment for the year of assessment 1995/96 in respect of the Business showing assessable profits of $354,515 and an additional profits tax assessment for the year of assessment 1996/97 showing additional assessable profits of $1,512,000.

23. The following is a comparison for the years of assessment 1995/96 to 1997/98 of the amounts of assessable profits before and after investigation and amounts of tax undercharged:

Year of assessment	**Assessable profits after investigation $**	**Assessable profits before investigation $**	**Understated assessable profits $**	**Tax undercharged $**
1995/96	354,515	(9,867)	364,382	27,103
1996/97	1,670,296	158,296	1,512,000	250,544
1997/98	5,110,618	0	5,110,618	689,933
Total	7,135,429	148,429	6,987,000	967,580

The total amount of understated assessable profits is 97.92% of the assessable profits after investigation.

24. By letter dated 24 March 2000, the Commissioner gave the Taxpayer notice under section 82A(4) of the IRO of her intention to assess the Taxpayer to additional tax for making incorrect tax returns for the years of assessment 1995/96 and 1996/97 and for failing to inform the Commissioner in writing that he was chargeable to tax for the year of assessment 1997/98 within the period prescribed under section 51(2) of the IRO.

25. By a letter dated 20 April 2000, the Taxpayer submitted written representations to the Commissioner.

26. On 25 May 2000 the Commissioner issued the following additional tax assessments:

Year of assessment	**Tax undercharged $**	**Additional tax $**	**Additional tax as percentage of tax undercharged**
1995/96	27,103	29,000	107%
1996/97	250,544	253,000	101%
1997/98	689,933	584,000	85%
Total	967,580	866,000	90%

27. By CPA' s letter dated 23 June 2000, the Taxpayer gave notice of appeal against the Assessment.

The appeal hearing

28. This appeal is concerned only with the additional tax assessment for the year of assessment 1997/98. There is no appeal against the additional tax assessments for the year of assessment 1995/96 or 1996/97.

29. The only ground in the notice of appeal dated 23 June 2000 is that the additional tax is excessive having regard to the circumstances.

30. Under cover of a fax dated 24 June 2000, CPA sent a revised Statement of grounds of appeal. Upon being reminded that the Taxpayer required our consent to rely on the revised grounds, Mr Li Kin-hong, Pius, who represented the Taxpayer at the hearing of the appeal, applied for and obtained our consent under section 66(3) of the IRO to rely on the revised grounds.

31. In the course of his submission, Mr Pius Li raised a number of contentions which were not in the revised grounds. As Miss Tsui Yuk-kwan who represented the Respondent at the hearing of the appeal had no objection, we gave Mr Pius Li consent to rely on yet further grounds which were raised for the first time in his written submission.

32. At the end of Mr Pius Li' s submissions, we asked him if there was any reason why we should not increase the additional tax if we should consider it inadequate. Mr Pius Li accepted that we had jurisdiction to do so and said that the Board of Review would reach a wise decision.

33. We also asked Mr Pius Li whether there was any reason why we should not order costs against the Taxpayer if we should dismiss the appeal. Mr Pius Li submitted that we should not add costs.

34. We told the parties that we would give our decision in writing which we now do.

Our decision

Whether section 82A was ' not applicable to the appellant' because he was ' detectable'

35. Mr Pius Li submitted in his written submission that section 82A was ' not applicable to the appellant' (emphasis in Mr Pius Li' s submission) because :

> ' 3. Relevant guiding principles have been established in some decided cases:

(a) Section 82A applicable to cases of which failure to comply with section 51(2) might be detected

In computing the amount of additional tax, the implication of '**if such failure had not been detected**' in section 82A was analysed in D2/88, IRBRD, vol 3, 125. It is said (page 17 of R1):

"*Section 82A specifically covers the situation where the failure to comply has been detected. It creates a hypothetical set of circumstances in which it is to be assumed that the failure has gone undetected. If a person either fails to submit a tax return when so required or fails to inform the Commissioner of his liability to be assessed and such failures go undetected, it is clear that the taxpayer would altogether avoid paying any tax.*"

Section 82A therefore attempts to assess additional tax on cases which can go undetected, but eventually be detected by the Inland Revenue Department ("IRD").

...

5. Section 82A not applicable to the appellant

(a) The appellant is "detectable"

For the purposes of analyzing the applicability of section 51(2) and section 82A, individual taxpayers can be classified in 3 categories:

(A) A person has no file in the IRD.

(B) A person's file is in the IRD's Review Section so that no annual return is issued.

(C) A person's file is in IRD's Temporary Section and Assessing Section so that annual return is issued.

For classes (A) and (B), if the taxpayers fail to notify the Commissioner of his chargeability, such failure would go undetected. If they are in fact detected, penalty under section 82A is applicable.

However, for class (C) to whom IRD normally issues return in May of each year, the chargeability of such taxpayers will NOT go undetected in normal circumstances. The issue of return by itself is a detect mechanism so that section 51(2) specifically excludes the notification requirement by stating "... unless he has already been required to furnish a return under the provision of subsection (1)".

> Following the rationale mentioned in paragraph 3(a) above, section 82A created a hypothetical assumption that failure to notify chargeability may go undetected. WE SUBMIT THAT section 82A only attempts to assess additional tax on cases which can go undetected, but in fact be detected by the IRD. As the appellant is in class (C) whose chargeability will NOT go undetected, section 82A is not applicable.'

36. With all due respect to Mr Pius Li, his submission seems non sequitur. Section 82A(1)(e) provides that:

> *' Any person who without reasonable excuse ... fails to comply with section 51(2), shall, if no prosecution under section 80(2) or 82(1) has been instituted in respect of the same facts, be liable to be assessed under this section to additional tax of an amount not exceeding treble the amount of tax which ... (ii) has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2A) or a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected.'*

Section 51(2) provides that:-

> *' Every person chargeable to tax for any year of assessment shall inform the Commissioner in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a return under the provisions of subsection (1).'*

37. There is no dispute and we find as a fact that the Taxpayer was chargeable to tax for the year of assessment 1997/98. There is also no dispute and we further find as a fact that the Taxpayer had not informed the Commissioner in writing that he was chargeable to tax by 31 July 1998, that is, within four months after the end of the basis period which ended on 31 March 1998. Indeed, the Taxpayer has never notified IRD in writing of his chargeability for the year of assessment 1997/98. It is an agreed fact that the return for the year of assessment 1997/98 had not been issued until 3 November 1998. No prosecution has been instituted in respect of the same facts. Subject to the question of reasonable excuse which we shall deal with later in our decision, the Taxpayer is clearly liable to be assessed to additional tax. Whether the Taxpayer was ' detectable' plays no part in deciding whether he is liable to additional tax. This is sufficient to dispose of Mr Pius Li' s submission that section 82A was not ' applicable to' the Taxpayer.

Tax undercharged ' in consequence of' failure to report chargeability

38. The maximum amount of additional tax is ' treble the amount of tax which has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2A) or

a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected' .

39. In CIR v Kwok Siu-tong, misspelt as ' Kwok Sui-tong' in the case name in the Hong Kong Law Reports, [1978] HKLR 26 at page 34, Mr Commissioner Liu, as he then was, considered the meaning of the phrase ' in consequence of' in respect of an incorrect tax return and held that:

> ' *The phrase "in consequence of" is defined in the Concise Oxford Dictionary as "as a result of". For the term under discussion to become operative, a causal link between two occurrences must be established.'*

40. We see no reason why the phrase ' in consequence of' in section 82A(1)(ii) should not have the same meaning as the same phrase in section 82A(1)(i).

41. In our decision, there is no causal link between the Taxpayer' s failure to report chargeability and the assessment issued on 13 May 1999 (see paragraph 17 above). The assessment issued on 13 May 1999 was not issued ' in consequence of' the Taxpayer' s failure to report chargeability. No assessment has been issued ' in consequence of' the Taxpayer' s failure to report chargeability. In other words, the amount of tax undercharged in consequence of the Taxpayer' s failure to report chargeability is $689,933 (see paragraph 23 above).

42. The result is the same under the other alternative which is ' the amount of tax ... which would have been undercharged if such failure had not been detected' . This formulation gives precisely the same amount of $689,933.

Whether reasonable excuse

43. Mr Pius Li drew our attention to the fact that the return for the year of assessment 1995/96 was issued on 10 May 1996 and the return for the year of assessment 1996/97 was issued on 20 June 1997 and that the Taxpayer had not received Form IRC6121 which states that:

> ' In future years I may not be asking you to submit an annual tax return because you have not earned income subject to tax or your total chargeable income according to the returns submitted by you has always been less than the personal allowances to which you are entitled.
>
> 2. Nevertheless you MUST notify me if any of the following situation occurs:
>
> (i) your annual income including profits from rental, employment and business exceed your entitled personal allowances;

(ii) ...

3. Failure to make notification stated in paragraph (2) may amount to an offence under the Inland Revenue Ordinance Chapter 112 punishable on conviction by a FINE.'

44. Mr Pius Li went on to submit that:

' In view of the irregular date of issuing returns in the previous 2 years, there is reasonable excuse for the appellant to expect the issue of the 1997/98 return in due course and overlook his obligation to notify the Commissioner of his chargeability by 31 July 1998 until the Revenue' s letter dated 14 August 1998 ... was received.'

45. To submit that the Taxpayer ' overlooked' his obligation to notify chargeability presupposed that the Taxpayer knew his obligation to notify the Commissioner of his chargeability which flew in the face of the Taxpayer' s assertion in his representations to the Commissioner dated 20 April 2000 that he knew absolutely nothing about revenue laws.

46. It is trite law that ignorance of law is no excuse. With assessable profits of $354,515 in the one month period of March 1996 and $1,670,296 in the year of assessment 1996/97, the Taxpayer should have employed or instructed a person or persons competent to handle his accounting and taxation matters. The duty is on a person to notify IRD of his chargeability. IRD has no duty to issue a Form IRC6121. The fact that IRD has not done so is no licence and no excuse for non-compliance with section 51(2). No authority has been cited by Mr Pius Li that it may amount to a reasonable excuse within the meaning of section 82A(1) and we decide that it is not.

Whether excessive having regard to the circumstances

47. Mr Pius Li submitted that having regard to the following circumstances, the ' yardstick of 100% is not applicable to this case:

(a) IRD had not issued Form IRC6121;

(b) The Taxpayer had only failed to notify his chargeability for the year of assessment 1997/98.

(c) There is no loss of revenue.

(d) The return for the year of assessment 1997/98 was accepted as correct.

(e) The Taxpayer is cooperative in the course of investigation.'

48. We are consciously aware of the fact that this appeal is concerned only with the additional tax assessment for the year of assessment 1997/98. This does not mean that we look only at the circumstances in the year of assessment 1997/98. The circumstances include circumstances before IRD commenced its investigation into the Taxpayer's tax affairs, the circumstances during the investigation and the circumstances after the investigation up to his conduct of this appeal.

49. This is a case where the Taxpayer's assessable profits were substantial - $354,515 for the one month period in the year of assessment 1995/96, $1,670,296 for the year of assessment 1996/97, and $5,110,618 for the year of assessment 1997/98.

50. He grossly understated his assessable profits in his return for the year of assessment 1995/96, reporting a **loss** of $9,867 when he had assessable profits of $354,515; and in his return for the year of assessment 1996/97 reporting assessable profits of $158,296 which was 9.48% of $1,670,296. With such reported loss and reported assessable profits, he could hardly be surprised that IRD had issued no return for the year of assessment 1997/98 before IRD commenced its investigation.

51. He was evasive in his answer to our question why he did not report the profits from the operation in District B in his tax returns for the years of assessment 1995/96 and 1996/97 [see paragraph 12(c) above]. The term under the agreement dated 13 July 1996 commenced on 22 July 1996 and ran for more than eight months in the year of assessment 1996/97.

52. He made no claim in his testimony that he did not intend to evade tax.

53. He had not kept any proper accounting records. His assessable profits for the years of assessment 1995/96 and 1996/97 were agreed by reference to assets betterment statements. His assessable profits for the year of assessment 1997/98 were calculated by reference to his bank passbooks, statements and cheque stubs (see paragraph 18 above).

54. His return for the year of assessment 1997/98 was not submitted until 14 April 1999 (see paragraph 16 above), eight months after he had been informed by the letter dated 14 August 1998 (see paragraph 9 above) that IRD had commenced an investigation into his tax affairs.

55. His assessable profits for the years of assessment 1995/96, 1996/97 and 1997/98 were not agreed between him and IRD until 20 January 2000 (see paragraph 21 above), after more than 17 months of investigation of his tax affairs by IRD.

56. He co-operated with IRD. We note in passing that his cooperation with IRD seemed to have ceased on appeal in that he put forward two thoroughly bad arguments that section 82A was not 'applicable to' him.

57. He blamed IRD for two ' errors' .

58. The first ' error' is that IRD failed to distinguish between the seriousness of incorrect return with failure to report chargeability. In our decision, we see no reason to divorce the failure to report chargeability in the year of assessment 1997/98 from the incorrect returns in the years of assessment 1995/96 and 1996/97.

59. The second ' error' is that IRD did not issue Form IRC6121. We have already decided that this is not a reasonable excuse. Further, we have no reason to assume and decline to assume that the issue of Form IRC6121 would have made any difference. We have no reason to assume and decline to assume that the Taxpayer would have read it and that if he had he would have notified IRD of his chargeability.

60. We do not accept that there was no actual loss of interest in revenue. With the total amount of understated assessable profits at 97.92% of the assessable profits after investigation (see paragraph 23 above), the absence of any actual loss in revenue pales in significance.

61. The maximum amount for which the Taxpayer is liable is three times the amount of tax undercharged or which would have been undercharged. We have carefully considered all the points raised by Mr Pius Li in his oral and written submissions. In our decision, not only is the Assessment at 85% not excessive, it is manifestly inadequate in all the circumstances of this case.

Increasing the Assessment under sections 68(8)(a) and 82B(3)

62. Pursuant to sections 68(8)(a) and 82B(3) of the IRO, we increase the Assessment to $689,933, 100% being in our decision the absolute minimum in all the circumstances of this case (compare D41/89, IRBRD, vol 4, 472).

Costs under section 68(9)

63. We consider the Taxpayer' s case on appeal to be frivolous and vexatious. But for the fact that the appeal has served the useful purpose of increasing the penalty to what we consider should be the absolute minimum, we would have made an order for costs under section 68(9).