

Case No. D16/07

Penalty tax – appeal out of time - whether the Board has jurisdiction to extend time – sections 66(1), 66(1A), 82A(4), 82B(1), 82B(1A) and 82B(3) – any distinction between the notice of appeal and the specified accompanying documents – whether or not notice of appeal must be in writing – reasonable excuse for not submitting a copy of the section 82A(4) within the one month limit – reasonable cause for understating or omitting of the appellant’s income.

Panel: Kenneth Kwok Hing Wai SC (chairman), Eva Chan Yee Wah and Paul Lam Ting Kwok.

Date of hearing: 9 July 2007.

Date of decision: 13 August 2007.

The appellant was a teacher and also an examiner of an authority. The appellant understated or omitted her teacher’s income. The appellant was assessed to additional tax under section 82A of the Inland Revenue Ordinance (‘IRO’). Notice of assessment was delivered on 26 March 2007. The appellant’s notice of appeal dated 12 April 2007 arrived at the Clerk’s office on 17 April 2007. It was not accompanied by a copy of the section 82A(4) notice. The Clerk’s office received the copy section 82A(4) notice on 27 April 2007, the day after the expiry of the one month time limit. The appeal is thus out of time.

The appellant raise the issues: (a) whether her appeal is out of time; (b) if it is, whether the Board has jurisdiction to extend time for the appellant to submit to the Clerk to the Board the accompanying documents required under section 82B(1) of the IRO; (c) if her appeal is out of time and if the Board has jurisdiction to extend time, whether the Board should exercise its discretion to extend time in this case; and (d) if the appeal is not out of time, or if the Board, having jurisdiction to extend time, does so in this case, whether the Assessment is excessive having regard to the circumstances.

Held:

1. There is no material difference between section 66(1A) and section 82B(1A) on the Board’s power to extend time. The time limit is within one month after: (a) 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) the notice of assessment is given to him, as the case may be.

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2. The Board does not think that one can draw a distinction between the notice of appeal and the specified accompanying documents. Both are requirements for the entertainment of the notice of appeal (D41/05, (2005-06) IRBRD, vol 20, 590, considered).
3. Section 66(1) and section 82B(1) make it clear that the notice of appeal must be in writing. Section 66(2) is another reason why the notice of appeal has to be in writing. Section 66(2) is applicable to appeals from determinations and also to appeals from additional tax assessments because of section 82B(3). One simply cannot serve on the Commissioner a copy of the oral notice.
4. As the notice must be served on the Clerk within the one month time limit, the specified accompanying documents must also be served on the Clerk within the same time limit. If the written notice and the specified accompanying documents are not served on the Clerk within the one month time limit, the appeal is out of time (D48/05, (2005-06) IRBRD, vol 20, 638; D62/06, (2006-07) IRBRD, vol 21, 1154 and D2/07, (2007-08) IRBRD, vol 22, 219 followed).
5. The purpose of the amendment of section 66(1) and the addition of section 66(1A) in 1971 was to give the Board discretion to extend time for appealing against a determination of the Commissioner. The discretion was and is conferred in cases where ‘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 has considered, but has rejected, the construction that ‘in accordance with subsection (1)(a)’ means ‘within the time under subsection (1)(a)’. This was not what the Legislature enacted. Significantly the wording here is ‘in accordance with subsection (1)(a)’, in contrast with the wording in the clause which follows – ‘the time within which notice of appeal may be given under subsection (1)’. Our construction gives effect to the purpose for the amendment of section 66(1) and the addition of section 66(1A) in 1971 (D48/05, (2005-06) IRBRD, vol 20, 638; D62/06, (2006-07) IRBRD, vol 21, 1154 and D2/07, (2007-08) IRBRD, vol 22, 219 not followed; Chow Kwong Fai v Inland Revenue Board of Review [2004] 2 HKLRD 963; Lam Soon Trademark Limited v Commissioner of Inland Revenue (2006) 9 HKCFAR 391; Secretary for Transport v Delight World Ltd [2007] 1 HKLRD 647; Chan Min Ching (t/a Chan Siu Wah Herbalist Clinic) v Commissioner of Inland Revenue [1999] 2 HKLRD 586 considered).
6. There is no reason why on principle a taxpayer who has failed to give any notice at all should be treated differently from a taxpayer who gives a notice but without the specified accompanying documents. Both have failed to comply with the requirements to give a valid notice. It seems to the Board illogical that someone

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who has not given any notice at all within time may be better off than someone who has given notice within time but without one or more of the specified accompanying documents (D48/05, (2005-06) IRBRD, vol 20, 638; D62/06, (2006-07) IRBRD, vol 21, 1154 and D2/07, (2007-08) IRBRD, vol 22, 219 not followed; Chow Kwong Fai v Inland Revenue Board of Review [2004] 2 HKLRD 963; Lam Soon Trademark Limited v Commissioner of Inland Revenue (2006) 9 HKCFAR 391; Secretary for Transport v Delight World Ltd [2007] 1 HKLRD 647; Chan Min Ching (t/a Chan Siu Wah Herbalist Clinic) v Commissioner of Inland Revenue [1999] 2 HKLRD 586 considered).

7. The Board has jurisdiction to extend time for compliance with the requirements of giving notice of appeal in accordance with section 66(1)(a). Whether the Board will do so in the circumstances of a case is a difference issue. The amendment of section 82B in 2004 was to put appeals from additional tax assessments on the same footing as appeals from the Commissioner's determination insofar the Board's discretion to extend time is concerned. As stated in the Explanatory Memorandum, it seems clear that the purpose of the amendment was to mitigate the harshness of the then section 82B and to bring it in line with section 66(1A). There is no material difference in wording between section 66(1) & (1A) and section 82B(1) & (1A) on the Board's discretion to extend time. The Board's power to extend time under section 82B(1A) is similar to its power under section 66(1A). The Board has jurisdiction to extend time for compliance with the requirements of giving notice of appeal in accordance with section 82B(1)(a) (D48/05, (2005-06) IRBRD, vol 20, 638; D62/06, (2006-07) IRBRD, vol 21, 1154 and D2/07, (2007-08) IRBRD, vol 22, 219 not followed; Chow Kwong Fai v Inland Revenue Board of Review [2004] 2 HKLRD 963; Lam Soon Trademark Limited v Commissioner of Inland Revenue (2006) 9 HKCFAR 391; Secretary for Transport v Delight World Ltd [2007] 1 HKLRD 647; Chan Min Ching (t/a Chan Siu Wah Herbalist Clinic) v Commissioner of Inland Revenue [1999] 2 HKLRD 586 considered).
8. In the Board's decision, the appellant has no reasonable excuse for not submitting a copy of the section 82A(4) notice within the one month time limit. The Board declines to extend time (Chow Kwong Fai (Edward) v CIR [2005] 4 HKLRD 687 considered).
9. In the Board's view, there is no reasonable cause for understating or omitting of the taxpayer's income. The maximum amount of additional tax is treble the amount of tax undercharged or which would have been undercharged had her return been accepted as correct. The maximum amount of additional tax depends on the size of the tax undercharged or would have been undercharged if the return had been accepted as correct. If the tax undercharged or would have been undercharged if

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the return had been accepted as correct is large, the maximum amount is three times as large.

10. The appellant is in reckless disregard of her reporting duties and has shown neither remorse nor will to ensure compliance with her reporting duties under the Ordinance. Not only is the assessment neither incorrect nor excessive, it is manifestly inadequate in the circumstances of this case (D3/02, IRBRD, vol 17, 396; D31/03, IRBRD, vol 18, 477; D9/05, (2005-06) IRBRD, vol 20, 272; D47/05, (2005-06) IRBRD, vol 20, 625; D50/05, (2005-06) IRBRD, vol 20, 656; D59/05, (2005-06) IRBRD, vol 20, 821; D66/05, (2005-06) IRBRD, vol 20, 920; D4/06, (2006-07) IRBRD, vol 21, 139; D33/06, (2006-07) IRBRD, vol 21, 587; D56/06, (2006-07) IRBRD, vol 21, 1051; D57/06, (2006-07) IRBRD, vol 21, 1061; D80/06, unreported; D115/01, IRBRD, vol 16, 893; D118/02, IRBRD, vol 18, 90 and D62/96, IRBRD, vol 11, 633 considered).

Appeal dismissed.

Cases referred to:

D41/05, (2005-06) IRBRD, vol 20, 590
D48/05, (2005-06) IRBRD, vol 20, 638
D62/06, (2006-07) IRBRD, vol 21, 1154
D2/07, (2007-08) IRBRD, vol 22, 219
Chow Kwong Fai v Inland Revenue Board of Review [2004] 2 HKLRD 963
Lam Soon Trademark Limited v Commissioner of Inland Revenue (2006) 9
HKCFAR 391
Secretary for Transport v Delight World Ltd [2007] 1 HKLRD 647
Chan Min Ching (t/a Chan Siu Wah Herbalist Clinic) v Commissioner of Inland
Revenue [1999] 2 HKLRD 586
Chow Kwong Fai (Edward) v CIR [2005] 4 HKLRD 687
D3/02, IRBRD, vol 17, 396
D31/03, IRBRD, vol 18, 477
D9/05, (2005-06) IRBRD, vol 20, 272
D47/05, (2005-06) IRBRD, vol 20, 625
D50/05, (2005-06) IRBRD, vol 20, 656
D59/05, (2005-06) IRBRD, vol 20, 821
D66/05, (2005-06) IRBRD, vol 20, 920
D4/06, (2006-07) IRBRD, vol 21, 139
D33/06, (2006-07) IRBRD, vol 21, 587
D56/06, (2006-07) IRBRD, vol 21, 1051
D57/06, (2006-07) IRBRD, vol 21, 1061

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D80/06, unreported
D115/01, IRBRD, vol 16, 893
D118/02, IRBRD, vol 18, 90
D62/96, IRBRD, vol 11, 633

Taxpayer in person.

Lai Au Che Chun and Chu Hui Fun for the Commissioner of Inland Revenue.

Decision:

INTRODUCTION

1. By an assessment ('the Assessment') dated 19 March 2007, the Deputy Commissioner of Inland Revenue assessed the appellant to additional tax under section 82A of the Inland Revenue Ordinance, Chapter 112, ('the Ordinance') in the following sum:

Year of assessment	Additional tax	Charge no
2004/05	\$9,000	9-2065229-05-9

Issues in this case

2. The appellant's case raises the following issues:
- (a) whether her appeal is out of time;
 - (b) if it is, whether the Board of Review ('the Board') has jurisdiction to extend time for the appellant to submit to the Clerk to the Board ('the Clerk') the accompanying documents required under section 82B(1) of the Ordinance;
 - (c) if her appeal is out of time and if the Board has jurisdiction to extend time, whether the Board should exercise its discretion to extend time in this case; and
 - (d) if the appeal is not out of time, or if the Board, having jurisdiction to extend time, does so in this case, whether the Assessment is excessive having regard to the circumstances.

WHETHER THE APPEAL IS OUT OF TIME

Relevant authorities

3. Section 82B provides that:

- (1) Any person who has been assessed to additional tax under section 82A may within –*
- (a) 1 month after the notice of assessment is given to him; 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 –*
 - (i) a copy of the notice of assessment;*
 - (ii) a statement of the grounds of appeal from the assessment;*
 - (iii) a copy of the notice of intention to assess additional tax given under section 82A(4), if any such notice was given; and*
 - (iv) a copy of any written representations made under section 82A(4). (Replaced 12 of 2004 s. 18)*
- (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). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after the commencement of the Inland Revenue (Amendment) Ordinance 2004. (Added 12 of 2004 s. 18)*
- (2) On an appeal against assessment to additional tax, it shall be open to the appellant to argue that –*
- (a) he is not liable to additional tax;*
 - (b) the amount of additional tax assessed on him exceeds the amount for which he is liable under section 82A;*

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- (c) *the amount of additional tax, although not in excess of that for which he is liable under section 82A, is excessive having regard to the circumstances.*
- (3) *Sections 66(2) and (3), 68, 69 and 70 shall, so far as they are applicable, have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax.*

(Added 26 of 1969 s. 38)'

4. Section 66 is the provision on appeals from determinations of the Commissioner. It provides that:

- '(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. (Replaced 2 of 1971 s. 42)
- (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). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after 1 April 1971 (Added 2 of 1971 s. 42. Amended 7 of 1986 s. 12)*
- (2) The appellant shall at the same time as he gives notice of appeal to the Board serve on the Commissioner a copy of such notice and of the statement of the grounds of appeal.*

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- (3) *Save with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given in accordance with subsection (1).*

(Replaced 35 of 1965 s. 32)

5. There is no material difference between section 66(1A) and section 82B(1A) on the Board's power to extend time. The time limit is within one month after:

- (a) 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) the notice of assessment is given to him,

as the case may be.

6. Section 66(1) and section 82B(1) go on to provide that 'no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by' the specified documents.

7. There are three requirements for a notice of appeal to be entertained. The first is that it is given in writing. The second is that the written notice is given to the Clerk to the Board. The third is that the written notice is accompanied by the specified documents.

8. In D41/05, (2005-06) IRBRD, vol 20, 590, the Board (Kenneth Kwok Hing Wai SC, Sandy Fok Yue San and Kwong Kok Shi) held that in the context of section 66, giving notice of appeal to the Board means actual service of the notice on the Clerk and that as the written notice of appeal in that case was received by the Clerk after the one month time limit, the appeal was out of time (see paragraphs 11 – 17):

'Meaning of "give notice of appeal to the Board"'

11. *In our Decision, in the context of section 66, giving notice of appeal to the Board means actual service of the notice on the Clerk.*

12. *The wording of the phrase which follows the phrase "give notice to the Board" is:*

"no such notice shall be entertained unless it is given in writing to the clerk to the Board".

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13. *This phrase excludes oral notice. It also excludes notice which has not been received. The reason is simple. A notice which has not been received cannot be “entertained”.*

14. *We find some support in section 58(2) for our conclusion that giving a notice means serving a notice. Section 58(2) provides that (emphasis added):*

“ 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, place of abode, business or employment or any place at which he is, or was during the year to which the notice relates, employed or carrying on business or the land or buildings or land and buildings in respect of which he is chargeable to tax under Part II.”

15. *In Chow Kwong Fai v Inland Revenue Board of Review [2004] 2 HKLRD 963, the Honourable Mr Justice Hartmann used the words “give”, “file” and “submit” interchangeably. The learned judge quoted section 66(1) in paragraph 5 of his judgment and went on as follows:*

‘ 6. From a reading of the section it is apparent that the Board has a discretion to grant an appellant an extension of time within which to file his notice of appeal and its accompanying material. This is spelt out clearly in section 66(1A) which reads:

“ 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) ... ”

7. In the present case, the applicant failed to submit his notice of appeal within the one month period provided for in section 66(1). Indeed, the notice of appeal was not filed until 25 November 2002, three months out of time. The Board, in hearing the appeal, was therefore obliged as a preliminary issue to consider whether to exercise its discretion to condone the late filing.’

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16. *In re 88 Berkeley Road NW9 [1971] Ch 648, Plowman J referred to section 36(2) and section 196(4) of the Law of Property Act 1925 and held at page 652 that:*

‘where one is considering a notice in writing, there can be no difference between “serving” the notice and “giving” the notice’.

17. *In Holwell Securities Limited v Hughes [1974] 1 WLR 155, Lawton LJ held at pages 160 and 161 that giving a notice means the same as serving a notice and that a notice which cannot impinge on anyone’s mind is not functioning as such.*

‘A notice is a means of making something known. The Shorter Oxford English Dictionary gives as the primary meanings of the word: “Intimation, information, intelligence, warning, . . . Formal intimation or warning of something.” If a notice is to be of any value it must be an intimation to someone. A notice which cannot impinge on anyone’s mind is not functioning as such.’ (at page 160)

‘Giving a notice means the same as serving a notice: see In re 88 Berkeley Road, NW9 [1971] Ch 648.’ (at page 161)’.

9. We do not think that one can draw a distinction between the notice of appeal and the specified accompanying documents. Both are requirements for the entertainment of the notice of appeal.

10. The first clause in section section 66(1) and in section 82B(1), that is:

- (a) *‘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 ... either himself or by his authorized representative give notice of appeal to the Board’, section 66(1);*
- (b) *‘Any person who has been assessed to additional tax under section 82A may within ... either himself or by his authorized representative give notice of appeal to the Board’, section 82B(1);*

is silent on whether the notice of appeal may be given orally. However, if one reads on, the clause which follows, that is:

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‘ but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by’ the specified accompanying documents,

makes it clear that the notice of appeal must be in writing.

Section 66(2) is another reason why the notice of appeal has to be in writing. Section 66(2) is applicable to appeals from determinations and also to appeals from additional tax assessments because of section 82B(3). Section 66(2) provides that:

‘ The appellant shall at the same time as he gives notice of appeal to the Board serve on the Commissioner a copy of such notice and of the statement of the grounds of appeal.’

One simply cannot serve on the Commissioner a copy of the oral notice.

11. As the notice must be served on the Clerk within the one month time limit, the specified accompanying documents must also be served on the Clerk within the same time limit. If the written notice and the specified accompanying documents are not served on the Clerk within the one month time limit, the appeal is out of time.

12. Our conclusion is in line with the relevant parts of the following Board decisions on the requirements of a valid notice of appeal:

- (a) In D48/05, (2005-06) IRBRD, vol 20, 638, the Board (Jat Sew Tong SC, Paul Mok Yun Lee and Ronald Tong Wui Tung) concluded that *‘on the true construction of section 82B(1), a valid notice of appeal under the section must be accompanied by all the requisite documents (i) to (iv). Of course the grounds of appeal may appear in the notice itself; but the other documents, if they exist, must accompany the notice. A failure to comply with the section is not a mere irregularity but would render a notice of appeal ineffective’*, see paragraphs 16 – 24 at paragraph 23.
- (b) In D62/06, (2006-07) IRBRD, vol 21, 1154, the Board (Anna Chow Suk Han, Patrick James Harvey and Ho Kai Cheong) *‘having carefully perused section 66 of the IRO and the authorities produced, in particular, the Board of Review Case No.48/05, [was] of the view that the purported notice of appeal served by the Taxpayer on 17 March 2006, without the Determination, was not a valid notice of appeal under Section 66(1)(a)’*, see paragraphs 20 – 22 at paragraph 22.

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- (c) In D2/07, (2007-08) IRBRD, vol 22, 219 the Board (Anthony K K Chan SC, Patrick Ho Pak Tai and Albert To Tak Pui) agreed with paragraphs 19 – 24 of D48/05, see paragraph 7.

Application to the facts

13. We turn now to the facts relevant to the first issue in this case.
14. The appellant was evasive and elusive. So much so that it did her credibility no good and her testimony was quite unhelpful to her in the discharge of the burden of proof which fell on her. For these and other reasons given in paragraphs 20, 63, 130 and 132 below, we are not satisfied on a balance of probabilities that the appellant was a credible witness and we attach no weight to her testimony.
15. According to the Hongkong Post, the notice of assessment was delivered on 26 March 2007. Thus 26 April 2007 was the last day for an appeal within the one month time limit.
16. The Assessment is a one page document. It drew the appellant's attention to section 82B and to the requirements that written notice of appeal must be given to the Clerk within one month and that the notice of appeal must be accompanied by, among others, a copy of the notice of intention to assess additional tax given under section 82A(4), if such notice was given.
17. Her notice of appeal dated 12 April 2007 arrived at the Clerk's Office on 17 April 2007. It was not accompanied by a copy of the section 82A(4) notice.
18. By letter dated 18 April 2007, the Clerk drew the appellant's attention to the omission and requested the appellant to send the copy notice to the Clerk's Office within one month of the giving of the notice of assessment.
19. By paragraph 40 of the Statement of Facts which was agreed by the appellant and the respondent, the appellant accepted that she telephoned the assessor on 27 April 2007 to ask for a copy of the section 82A(4) notice and that she collected a copy from the Revenue in the afternoon.
20. When her attention was drawn to her signed receipt for a copy of section 82A(4) notice which she dated 27 April 2007, she claimed that she might have put a wrong date on it. When her attention was drawn to the fact that the Revenue also dated it 27 April 2007, she questioned whether Revenue could have made a mistake. Paragraph 40 of the agreed Statement of Facts shows how evasive and elusive she was.
21. The Clerk's Office received the copy section 82A(4) notice on 27 April 2007, Friday, the day after the expiry of the one month time limit.

22. The appeal is thus out of time.

WHETHER THE BOARD HAS JURISDICTION TO EXTEND TIME

23. As the appeal is out of time, the next issue is whether the Board has jurisdiction to extend time for appeal in cases where some or all of the specified accompanying documents were not received by the Clerk's office within the one month time limit.

24. The appellant made no submission on this issue.

25. Ms Lai Au Che-chun stated that the Board had jurisdiction to extend time and contended that the appellant had not made out a case for extension.

26. Since we did not have the benefit of any or any proper submission, we were much tempted to leave the issue open and assume in favour of the appellant that the Board has jurisdiction.

27. However, in view of the general importance of the issue, we will decide the issue despite the fact that we have not had the benefit of any or any proper submissions.

3 previous Board decisions

28. So far as we know, there are three Board decisions, that is, D48/05, D62/06 and D2/07 (collectively 'the 3 Board Decisions'), holding that the Board has no jurisdiction.

D48/05

29. In D48/05, the Board held that it had no jurisdiction but nevertheless went on immediately to consider whether to extend time. The reasons given by the Board were as follows:

'Whether notice of appeal given within time

16. *In the circumstances, the first question for the Board to decide is whether the appeal was lodged within time.*

17. *As mentioned above, the last day for appealing fell on 31 January 2005. On that day the notice of appeal and enclosures were delivered to the Board, but not accompanied by one of the documents required by section 82B(1). The question is whether the notice of appeal was validly given on 31 January 2005, or when the missing document was supplied on 7 February 2005.*

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18. *Mr King [Chi Hung for the Revenue] informed the Board that he was unable to find any previous decision on that question or throwing light on the answer. He also informed the Board that to his knowledge there was no known decision under the similarly worded section 66(1). In the absence of any previous decisions as guidance, we turn to the language of the section.*
19. *The section provides that a taxpayer who wishes to appeal under the section must give notice of appeal to the Board, but “no such notice [of appeal] shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by” the requisite documents. The section draws a distinction between a notice of appeal and the documents which must accompany it; and the one month limit applies to the giving of the notice of appeal. It may therefore be argued that as long as the notice of appeal itself is given within one month, the appeal is lodged within time.*
20. *On the other hand, the Board is enjoined by the section from “entertaining” – which we take to mean “admit for consideration” - any notice of appeal given unless it is accompanied by the requisite documents. In our view this points strongly to the requirement that the notice of appeal must have all the requisite documents enclosed in order to be valid. It makes no sense that a notice of appeal could be validly given despite the absence of the requisite documents, but the Board is not being able to entertain the appeal.*
21. *Further, the above interpretation is strengthened by the absence of any general discretion given to the Board to extend time to supply the requisite documents when the same do not accompany the notice of appeal. In this connection, it should be noted that the jurisdiction to extend time under section 82B(1A) only applies to the giving of the notice of appeal but not to any of the accompanying documents.*
22. *The Appellant contended that the failure to provide the section 82A(4) notice was only a technical failure. We cannot agree with that view. As pointed out in Case No D4/99, IRBRD, vol 14, 141, the statutory requirements are intended to be observed. Both the Inland Revenue and the taxpayer are entitled to have any disputes resolved as quickly as possible. For that reason, the time limit for appealing under section 66(1) is strictly construed. The same applies to the identically worded section 82B(1A). Non-compliance with the statutory requirements creates delay and may cause prejudice, and is not conducive to the efficient administration of the tax system.*

23. *For these reasons, it is our view that on the true construction of section 82B(1), a valid notice of appeal under the section must be accompanied by all the requisite documents (i) to (iv). Of course the grounds of appeal may appear in the notice itself; but the other documents, if they exist, must accompany the notice. A failure to comply with the section is not a mere irregularity but would render a notice of appeal ineffective.*
24. *The result is that notice of appeal in this case, although delivered to the Board on 31 January 2005, is not validly given until 7 February 2005 and is therefore seven days late.*

Whether extension of time to appeal should be given

25. *We can answer the second question very shortly. If, as we have concluded above, the notice of appeal was given late, the Appellant has failed to discharge the burden to show that he was prevented by any reasonable cause from giving notice of appeal within time.'*

D62/06

30. D62/06 is another case where the Board held that it had no jurisdiction but nevertheless went on immediately to consider whether to extend time. The reasons given by the Board were as follows:

'E. Analysis

20. *Under Section 66(1)(a) of the IRO, an appellant may, within one month after the transmission to him the Commissioner's written determination together with the reasons therefor and the statement of facts, give notice of appeal to the Board. In the present case, we have found that the Commissioner's Determination dated 17 February 2006, together with the other necessary documents was delivered to the Taxpayer at his address in Address C on 18 February 2006. Thus, the last day for the Taxpayer to file his notice of appeal fell on 17 March 2006. It is not in dispute that the Taxpayer's letter to the Board dated 15 March 2006, purportedly giving notice of his appeal was sent by the Taxpayer to the Board by facsimile on 17 March 2006. It is also not in dispute that the purported notice of appeal was sent without the Determination and the Determination was subsequently received by the Clerk to the Board on 23 March 2006.*

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21. *In the circumstances, the first question for the Board to decide is whether or not the purported notice of appeal served on 17 March 2006, without the Determination, was a valid notice of appeal under Section 66(1)(a), and if not, whether or not the Board may grant the Taxpayer an extension of time to file the Determination, and other relevant documents and, [if] not, whether or not the Board should extend the time for the Taxpayer to file a notice of appeal against the Determination.*

22. *Having carefully perused section 66 of the IRO and the authorities produced, in particular, the Board of Review Case No.48/05, we are of the view that the purported notice of appeal served by the Taxpayer on 17 March 2006, without the Determination, was not a valid notice of appeal under section 66(1)(a). Section 66(1)(a) provides that ‘no such notice [of appeal] 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’ the other requisite documents. Similar to section 82B(1) of the IRO, which deals with notice of appeal against assessment for additional tax, this section also draws a distinction between a notice of appeal and the documents which must accompany it. It also provides that no notice of appeal shall be entertained unless it is in writing and be accompanied by the Commissioner’s determination and other requisite documents. Thus, on the construction of the section, a failure to comply with the section is not a mere irregularity but would render a notice of appeal ineffective. We concur that the Taxpayer’s purported notice of appeal without the Determination as required by law is not a valid notice of appeal and secondly the Board has no jurisdiction to extend the time for filing the required documents, because section 66(1) of the IRO clearly states that a notice of appeal shall not be entertained unless it is given in writing and is accompanied by a copy of the Commissioner’s determination and other specified documents and section 66(1A) of the IRO provides only extension of time to file a notice of appeal and not the Commissioner’s determination and other specified documents.*

23. *After concluding that firstly the Taxpayer’s notice of appeal of 17 March 2006 without the Determination was not a valid notice of appeal under section 66(1)(a) of the IRO and secondly the Board has no jurisdiction to grant an extension of time to file the requisite documents, there remains the last question as to whether the Board should grant an extension of time for the Taxpayer to appeal.*

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24. *As submitted by the Revenue, the Board is constituted under the IRO, it only has such powers as are conferred by the IRO. The Board's authority to grant an extension of time to file an appeal is limited to the conditions specified in sub-section (1A) of section 66, namely that "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)". In order to succeed in an application for an extension of time to file the appeal, it is not sufficient for the taxpayer merely to prove that his failure to appeal in time was due to illness, absence from Hong Kong or other reasonable cause. He must also satisfy the Board that he was prevented by such illness, absence or reasonable cause to lodge an appeal within the stipulated time.*
25. *On the evidence submitted, we have found that the Taxpayer has failed to discharge the burden on him to show that he was prevented by illness, absence from Hong Kong or other reasonable cause to lodge an appeal within the one month period stipulated by law.'*

D2/07

31. In D2/07, the Board held that it had no jurisdiction and commented on the 'tension' which it perceived between the proposition that there was no general discretion given to the Board to extend time to supply the requisite documents and an exercise of discretion which had precisely that effect. After quoting paragraphs 19 – 24 in D48/05, the Board went on as follows:

- ' 7. *This Board agrees with the Decision in D48/05 as set out above. D48/05 was followed by a later decision of this Board in D62/06, unrep. This Board wishes to point out that the supply of a copy of the Determination is essential to enable an appeal to be properly processed. As an illustration, simply by looking at the Notice of Appeal [B1/1], the reader would not be in a position to adequately understand what the appeal is about.*
8. *In accordance with the analysis in D48/05, the Notice of Appeal was not validly given until 6.12.06, well outside the 1 month period prescribed under S.66(1). The question therefore is whether the invalidity can be cured.*
9. *In D48/05, after holding that the notice of appeal was not validly given within time the Board went on to consider, without going into the question whether it had the power to do so, an extension of time under S.66(1A). It was held that the appellant had failed to discharge the burden of proof and an extension was refused (paras. 25 to 27).*

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10. *With great respect, this Board perceives certain tension between the proposition that there was no general discretion given to the Board to extend time to supply the requisite documents (see para. 21 of the Decision in D48/05) and an exercise of discretion under S.66(1A) which has precisely that effect.*
11. *Likewise in D62/06, the Board did not address the issue whether S.66(1A) can be invoked to cure an invalidity of the kind in question (“the Invalidity”). Nevertheless, the Board went on to consider the exercise of its discretion under S.66(1A). However, there is a part of the Decision (p.9, para.22) which may be seen to highlight the tension identified above:*

“ We concur that the Taxpayer’s purported notice of appeal without the Determination as required by law is not a valid notice of appeal and secondly the Board has no jurisdiction to extend the time for filing the required documents, because Section 66(1) of the Ordinance clearly states that a notice of appeal shall not be entertained unless it is given in writing and is accompanied by a copy of the Commissioner’s determination and other specified documents and Section 66(1A) of the Ordinance provides only extension of time to file a notice of appeal and not the Commissioner’s determination and other specified documents.”
12. *In fairness, although it may be said that it is implicit from D48/05 and D62/06 that it was accepted by the Board that S.66(1A) could be invoked to cure the Invalidity, it is reasonably clear that the point was not argued and ruled upon.*
13. *For the reasons explained below, this Board is of the respectful opinion that S.66(1A) cannot be so invoked and the Invalidity cannot be cured under the existing legislation.*
14. *The key to the determination of the Preliminary Issue is the proper construction of S.66(1A) which is the source of the only power given to this Board in the event of non-compliance with S.66(1). On a proper reading of S.66(1A), it is quite clear that the power to enlarge time is confined to cases whether there is no notice of appeal given within the prescribed 1 month period and that the power is not applicable to cases where there is a notice of appeal given within time but the notice is an invalid one by reason of the absence of the relevant determination.*

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15. *This interpretation is clear because the enlargement power is only engaged when the appellant was prevented by illness, etc., from giving notice. In other words, no notice could have been given within time by reason of illness, etc. By definition, the Invalidity does not involve such a situation.*
16. *Can it be said that on a purposive construction of S.66(1A), either (i) “giving notice” means giving a valid notice or (ii) there is nothing to stop an appellant from giving a fresh notice with an enlargement of time? This Board is not attracted by such propositions. Firstly, they would do violence to the clear wording of the sub-section. Secondly, it is apparent that an invalid notice is nevertheless recognized as a notice, because S.66(1) refers to “no such notice shall be entertained ...”. Thirdly, there is no compelling reason to strain the meaning of S.66(1A).*
17. *Might it be said that if the construction set out in para. 14 above is correct, then an appellant who has given an invalid notice is in a worse position than one who has not given any notice within time (in the latter case S.66(1A) may be invoked)? On mature reflection, this “unfairness” is more apparent than real. Two things must be remembered. Firstly, the discretion given to the Board under S.66(1A) is very narrow. It is confined to cases where an appellant is prevented from giving a notice by one of three (possibly a combination thereof) “reasons”, namely, illness, absence from Hong Kong and other reasonable cause. Secondly, pursuant to S.66(1)(a) the 1 month period would not begin to run until all the requisite documents have been supplied to the appellant.*
18. *In the premises, in a case where an appellant has given a notice within time which was not accompanied by the requisite document(s), he cannot in any event maintain that he was prevented by illness or absence from Hong Kong from giving a valid notice (one accompanied by the requisite documents). As regards other reasonable cause, it is not easy to envisage what reasonable cause there can be which would prevent an appellant from enclosing the requisite documents with his notice given that he, by definition, had them. It must be said that the law normally assumes that people know the law and observe the same.*
19. *Further, in an unusual event where, e.g., the requisite documents have been stolen from the appellant, he would have the right not to give an invalid notice but to obtain replacement of the requisite documents and, if time has expired by then, apply for an enlargement of time under S.66(1A).*

20. *Finally and for completion, this Board has also considered the possible argument that no extension of time is required in respect of a notice which has been given within time but without the requisite documents. Once the documents are supplied, the notice becomes valid and can be entertained. This argument is rejected for two reasons. Firstly, the mandatory terms of S.66(1) is such that a notice of appeal “shall [not] be entertained unless ... it is ... accompanied by [the requisite documents] ...”. The suggestion that an invalid notice can later be entertained (when the invalidity is cured) is inconsistent with such wording. Secondly, if that argument is right, the appeal process can be subjected to lengthy delay because there is no time limit in S.66 for the subsequent supply of the requisite documents.’*

Chow Kwong Fai v Inland Revenue Board of Review

32. It would appear that neither the taxpayers nor the Revenue in the 3 Board Decisions drew the Board’s attention to the judgment of Hartmann J in Chow Kwong Fai v Inland Revenue Board of Review [2004] 2 HKLRD 963¹. The learned Judge was dealing with a judicial review application about the statement of facts as an accompanying document. From his lordship’s reading of section 66(1A), it was apparent to his lordship that ‘the Board has a discretion to grant an appellant an extension of time within which to file his notice of appeal and its accompanying material’, emphasis added, see paragraphs 5 and 6 which are quoted below:

- ‘5. *The applicant sought to appeal the Commissioner’s determination. His right to do so is contained in s.66 of the Ordinance. In this regard, s.66(1) reads:*

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 s.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 sub-s.(1A),*

¹ Ms Lai Au Che-chun cited the judgments of the Court of First Instance and the Court of Appeal in the appeal by way of case stated but did not cite the judgment in the judicial review proceedings

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.

6. *From a reading of the section, it is apparent that the Board has a discretion to grant an appellant an extension of time within which to file his notice of appeal and its accompanying material. This is spelt out clearly in s.66(1A) which reads:*

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 sub-s.1(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under sub-s.(1). ...'

Liberal construction and purposive approach

33. Section 19 of Interpretation and General Clauses Ordinance, Chapter 1, provides that:

'An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.'

34. The interpretation of revenue statutes is now purposive and the courts will, where the language of the statute so permits, avoid any literal interpretation that produces injustice, absurdity, anomaly or illogicality, see Lam Soon Trademark Limited v Commissioner of Inland Revenue (2006) 9 HKCFAR 391, also reported in [2006] 3 HKLRD 132, at paragraph 20, per Bokhary PJ:

'Counsel for the Taxpayer cited what the Privy Council said in Mangin v Inland Revenue Commissioner [1971] AC 739 at p.746E and Lloyds Bank Export Finance Ltd v Commissioner of Inland Revenue [1991] 2 AC 427 at p.437F. He did so for the proposition that the courts will, where the language of the statute so permits, avoid any literal interpretation that produces injustice, absurdity, anomaly or illogicality. Then he cited what Lord Nicholls of Birkenhead, giving the opinion of the House of Lords in Barclays Finance Ltd v Mawson [2005] 1 AC 684, said at p.695A-G. That was cited for the proposition that the

interpretation of revenue statutes is now purposive, having been liberated from being blinkered. These propositions are plainly right.'

History of enactment sections 66 and 82B

35. Section 66 was enacted before section 82B. The old section 66 was repealed and replaced by section 32 of the Inland Revenue (Amendment) Ordinance 1965, Ord No 35/65. The 1965 version of section 66 provided as follows:

- '(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 month after the transmission to him under subsection (4) of section 64 of the Commissioner's written determination together with the reasons therefor and the statement of facts, 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 therefrom.*
- (2) The appellant shall at the same time as he gives notice of appeal to the Board serve on the Commissioner a copy of such notice and of the statement of the grounds of appeal.*
- (3) Save with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given in accordance with subsection (1).'*

The Board had no jurisdiction then to extend time for appeal.

36. By section 42 of the Inland Revenue (Amendment) Ordinance 1971, Ord No 2/71, section 66(1) was amended by deleting sub-section (1) and substituting the following:

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

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(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 the Colony or other reasonable cause from giving notice of appeal in accordance with paragraph (a) of subsection (1), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after 1 April 1971.'*

37. An explanatory memorandum attached to a Bill is admissible as evidence of the mischief which it was the object of the proposed legislation to remedy. See Secretary for Transport v Delight World Ltd [2007] 1 HKLRD 647 at paragraph 21, per Bokhary PJ:

'It has been clearly recognised in Hong Kong since the decision of the Court of Appeal in Elson-Vernon Knitters Ltd v Sino-Indo-American Spinners Ltd [1972] HKLR 468 that an Explanatory Memorandum attached to a Bill is admissible as evidence of the mischief which it was the object of the proposed legislation to remedy. Such evidence is admissible, as Lord Millett NPJ explained in Director of Lands v Yin Shuen Enterprises Ltd & Another (2003) 6 HKCFAR 1 at p.15F-G, to enable the court "to understand the factual context in which the statute was enacted and the mischief at which it was aimed".'

38. Clause 21 of the Explanatory Memorandum to the Inland Revenue (Amendment) Bill 1970 stated that:

'Clause 42 gives the Board of Review discretion to extend the time for appealing against a determination of the Commissioner.'

39. Section 12 of the Inland Revenue (Amendment) Ordinance 1986, Ord No 7/86, amended the principal Ordinance by deleting 'the Colony' wherever it appears in the provisions specified in the Schedule (which included section 66(1A)) and substituting 'Hong Kong'.

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40. Sections 82A and 82B were added by section 38 of the Inland Revenue (Amendment) Ordinance 1969, Ord No 26/69.

41. As section 82B then stood, the Board had no jurisdiction to extend time for appeal, see Chan Min Ching (t/a Chan Siu Wah Herbalist Clinic) v Commissioner of Inland Revenue [1999] 2 HKLRD 586. There was no sub-section (1A) and sub-section (1) read as follows:

‘(1) Any person who has been assessed to additional tax may, within one month after notice of assessment is given to him, 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 notice of assessment and a statement of the grounds of appeal therefrom.’

42. By section 18 of the Inland Revenue (Amendment) Ordinance 2004, Ord No 12/04, section 82B(1) was amended by repealing sub-section (1) and substituting the following and by the addition of a new subsection (1A):

‘(1) Any person who has been assessed to additional tax under section 82A may within –

(a) 1 month after the notice of assessment is given to him; 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 –

(i) a copy of the notice of assessment;

(ii) a statement of the grounds of appeal from the assessment;

(iii) a copy of the notice of intention to assess additional tax given under section 82A(4), if any such notice was given; and

(iv) a copy of any written representations made under section 82A(4).’

‘(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

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given under subsection (1). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after the commencement of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004).'

43. Clause 17(k) of the Explanatory Memorandum to the Inland Revenue (Amendment) Bill 2000 stated that:

'The Bill ... empowers the Board of Review to extend the time for lodging notice of appeal under section 82B(1) of the Ordinance (clause 17).'

Decision on the jurisdiction issue

44. With respect, we disagree with the conclusion in the 3 Board Decisions on jurisdiction. In our view, the Board does have jurisdiction to extend time for a taxpayer to submit the specified accompanying documents. Whether the Board will extend time in the circumstances of any particular case is a different question.

45. The purpose of the amendment of section 66(1) and the addition of section 66(1A) in 1971 was to give the Board discretion to extend time for appealing against a determination of the Commissioner. The discretion was and is conferred in cases where '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).'

46. To recap, section 66(1) and (1A) provide that:

'(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. (Replaced 2 of 1971 s. 42)

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(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). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after 1 April 1971 (Added 2 of 1971 s. 42. Amended 7 of 1986 s. 12)'

47. The first clause in section 66(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)'

defines the circumstances under which the jurisdiction is exercisable, that is:

- (a) The Board is satisfied that;
- (b) an appellant was prevented by illness or absence from Hong Kong or other reasonable cause;
- (c) from giving notice of appeal in accordance with sub-section (1)(a).

48. Giving notice of appeal 'in accordance with subsection (1)(a)' requires more than just giving notice within the one month time limit. The requirements for giving notice 'in accordance with subsection (1)(a)' are as follows:

- (a) The notice of appeal must be given in writing.
- (b) The written notice must be given to the Clerk.
- (c) The written notice must be accompanied by all the specified accompanying documents.
- (d) Both the written notice and the specified accompanying documents must be served on the Clerk within the 1 month time limit.

49. The second clause:

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

confers a discretion on the Board to extend time. As the purpose is to extend time, the reference here to sub-section (1) on the giving of notice of appeal is to identify the time limit to be extended, **not** to restrict the Board’s jurisdiction to extend time which is dealt with in the first clause.

50. We have considered, but have rejected, the construction that ‘in accordance with subsection (1)(a)’ means ‘within the time under subsection (1)(a)’. This was not what the Legislature enacted. Significantly the wording here is ‘in accordance with subsection (1)(a)’, in contrast with the wording in the clause which follows – ‘the time within which notice of appeal may be given under subsection (1)’.

51. Our construction gives effect to the purpose for the amendment of section 66(1) and the addition of section 66(1A) in 1971.

52. In D2/07, the Board placed emphasis on the prevention from ‘giving notice’, see paragraph 15.

53. With respect, this approach ignores the words ‘in accordance with subsection (1)(a)’ which follow ‘giving notice’. Unless the requirements listed in paragraph 48 above are complied with, notice is not given ‘in accordance with subsection (1)(a)’.

54. What should a taxpayer do if he is prevented by illness or absence from Hong Kong or other reasonable cause from furnishing the Clerk with one or more specified accompanying documents within the one month time limit? He may be bedridden or may be imprisoned. He may be able to give notice of appeal but is unable to access or furnish the necessary documents. He may have lost one or more of the specified accompanying documents through no fault on his part. On the interpretation which found favour in the 3 Board Decisions, the only way seems to be to refrain from lodging any notice of appeal unless and until he is in a position to serve his notice of appeal with all the specified accompanying documents. There is no reason why on principle a taxpayer who has failed to give any notice at all should be treated differently from a taxpayer who gives a notice but without the specified accompanying documents. Both have failed to comply with the requirements to give a valid notice. It seems to us illogical that someone who has not given any notice at all within time may be better off than someone who has given notice within time but without one or more of the specified accompanying documents. In paragraphs 17 – 19 of D2/07, the Board considered that the ‘unfairness’ is more apparent than real. With respect, we disagree. As stated earlier in this paragraph, there may be circumstances where a taxpayer is prevented by illness or absence from Hong Kong or other reasonable cause from furnishing the Clerk with one or more specified accompanying documents within the one month time limit.

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55. To sum up, the Board has jurisdiction to extend time for compliance with the requirements of giving notice of appeal in accordance with section 66(1)(a). Whether or not the Board will do so in the circumstances of a case is a different issue.

56. The amendment of section 82B in 2004 was to put appeals from additional tax assessments on the same footing as appeals from the Commissioner's determinations insofar the Board's discretion to extend time is concerned. As stated in the Explanatory Memorandum, it seems clear that the purpose of the amendment was to mitigate the harshness of the then section 82B and to bring it in line with section 66(1A). There is no material difference in wording between section 66(1) & (1A) and section 82B(1) & (1A) on the Board's discretion to extend time. The Board's power to extend time under section 82B(1A) is similar to its power under section 66(1A).

57. The Board has jurisdiction to extend time for compliance with the requirements of giving notice of appeal in accordance with section 82B(1)(a).

WHETHER TO EXTEND TIME FOR APPEAL

58. Having concluded that the appeal is out of time and that the Board has jurisdiction to extend time, we must now consider whether we should extend time for appeal in this case.

59. In Chow Kwong Fai (Edward) v CIR [2005] 4 HKLRD 687, at paragraph 20, Woo VP (with whose judgment the other two members of the Court of Appeal agreed) said:

' 20. *In my opinion, while a liberal interpretation must be given to the word "prevented" used in s 66(1A), it should best be understood to bear the meaning of the term "未能" in the Chinese language version of the subsection (referred to in D176/98 cited above). 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. The rationale for the stringent time limit for raising tax objections and appeals was described in Case U175, 87 ATC 1007. Tang J had in the judgment under appeal cited quite extensively from that case. I will thus refer only to one short passage:*

" It seems that the need for taxation revenue to flow in predictable amounts according to projections as to cash flow have (sic) considered to be such that dispute as to the claims made by the community upon individuals for payment of tax have been treated as quite unlike any other classes of dispute within the community."

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60. At paragraph 46, Cheung JA (with whose observation Barma J agreed) added the following observation:

‘ 46. If there is a reasonable cause and because of that reason an appellant does not file the notice of appeal within time, then he has satisfied the requirement of section 66(1A). It is not necessary to put a gloss on the word “prevent” in its interpretation. If an appellant does not file the notice of appeal within time because of that reasonable cause, then it must be the reasonable cause which has “prevented” him from complying with the time requirement.’

61. There is no allegation of any prevention by sickness.

62. According to the Immigration Department, it has no movement record of the the appellant from 1 March 2007 to 6 May 2007. There is no allegation by the appellant of any absence from Hong Kong during such period.

63. The appellant asserted that she had not given any section 82A(4) notice. We disbelieve her.

- (a) Paragraph 22 of the agreed Statement of Facts stated that the Deputy Commissioner issued the section 82A(4) notice on 12 June 2006 and on the notice being returned to the Revenue because she did not collect it, the Revenue redirected it on 13 July 2006.
- (b) Paragraph 26 of the agreed Statement of Facts stated that the assessor sent her a letter dated 6 September 2006 enclosing a copy of the section 82A(4) notice and reminding her to make representations.
- (c) Paragraph 29 of the agreed Statement of Facts stated that she made representations by letter dated 17 October 2006. There was no allegation in her representations that she had not received the section 82A(4) notice or any copy of it.

We find as a fact that she received the section 82A(4) notice on about 13 July 2006 and a copy of such notice on about 6 September 2006.

64. As stated in paragraph 16 above, the notice of assessment stated that the written notice of appeal must be given to the Clerk within one month and must be accompanied by, among others, the section 82A(4) notice. The appellant ignored such statement at her own peril. Even if,

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contrary to our factual finding, she had not received the section 82A(4) or any copy of the notice, she should have asked the Revenue for a copy timeously and in any event within the one month limit.

65. As stated in paragraph 18 above, by letter dated 18 April 2007, the Clerk drew her attention to the omission and requested her to send the copy notice to the Clerk's office within one month of the giving of the notice of assessment. Even if, contrary to our factual finding, she had not received the section 82A(4) or any copy of the notice, she should have asked the Revenue for a copy timeously on receipt of the Clerk's letter and in any event within the one month limit. Yet she did not approach the assessor for a copy until 27 April 2007, Friday, after the expiry of the one month time limit.

66. If, as she claimed, she took time in collecting letters from the post office, in opening her letter box or in reading documents sent to her, that is her own problem.

67. In our Decision, the appellant has no reasonable cause for not submitting a copy of the section 82A(4) notice within the one month time limit.

68. We decline to extend time.

69. Our decision on the first three issues disposes of this case. The Assessment stands.

WHETHER THE ASSESSMENT IS EXCESSIVE

70. In view of our decision on the first three issues, the issue whether the Assessment is excessive does not arise.

71. Since we have heard both parties on the issue of excessiveness, we deal with it below in case we are wrong on the first or the third issues.

The salient facts

72. The parties agreed the facts in the agreed Statement of Facts and we find them as facts.

73. The salient facts are as follows.

74. The appellant has at all material times been employed by a school ('the School') as a teacher. She has been a teacher for decades.

75. She was also an examiner of an authority ('the Authority')

2001/02 year of assessment

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76. In her Tax Return – Individuals for the 2001/02 year of assessment dated 6 July 2002, she reported the following income under section 4.1 on salaries tax:

'Name of employer	Capacity employed	Period	Total amount (\$)
[The Authority]	2001 CE ENG LANG (SYLB) MARKER	01/4/2001- 31/03/2002	10656.95
"	2001 AL UE ORAL EXAMINER	"	6424./
"	2001 CE ENG LANG (SYLB) ORAL EXAMINER	"	11285./
Grand total: \$			28365'

77. In her return for 2001/02, she claimed deduction of \$2,500 as charitable donations and deduction of \$81,351 as home loan interest payments.

78. Employer's return filed by the School reported that her salary income for 2001/02 totalled \$573,446.

79. Employer's return filed by the Authority reported that her income as an 'independent contractor' for 2001/02 totalled \$28,365. There was no breakdown of the sum of \$28,365.

80. On 19 September 2002, the assessor assessed her in accordance with information provided by the School and the Authority. The appellant did not object to this assessment.

81. On 12 March 2003, the Deputy Commissioner issued a section 82A(4) notice in respect of her omission of her income by \$573,446.

82. Despite written and oral reminders by the assessor, the appellant did not submit any representations.

83. By letter dated 15 October 2003, the assessor informed the appellant that the Revenue did not intend to consider taking action under section 82A on that occasion but advised her 'to ensure that [her] tax returns are correctly completed in future'.

2002/03 year of assessment

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84. In her Tax Return – Individuals for the 2002/03 year of assessment dated 20 July 2003, she reported the following income under section 4.1 on salaries tax:

'Name of employer	Capacity employed	Period	Total amount (\$)
[The School]	TEACHER	01/4/02 to 31/03/03	567,507.00
[The Authority]	2002 AL USE OF ENG ORAL EXAMINER	01/4/02 to 31/30/03	6600./
	2002 CE ENG LANG (SYLB) ORAL EXAMINER	01/4/02 to 31/03/03	12285./
		Grand total: \$	586392'

85. In her return for 2002/03 she claimed deduction of \$2,500 as charitable donations, deduction of \$12,000 as mandatory contribution to recognised retirement scheme, and deduction of \$82,618 as home loan interest payments.

2003/04 year of assessment

86. In her Tax Return – Individuals for the 2003/04 year of assessment dated 14 July 2004, she reported the following income under section 4.1 on salaries tax:

'Name of employer	Capacity employed	Period	Total amount (\$)
[The School]	TEACHER	01/4/2003 to 31/03/2004	557,794
[The Authority]	2003 CE ENG LANG (SYLB) ORAL EXAMINER	01/4/2003 to 31/03/2004	10,980
		Grand total: \$	568774'

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87. In her return for 2003/04 she claimed deduction of \$2,500 as charitable donations, deduction of \$12,000 as mandatory contribution to recognised retirement scheme, and deduction of \$39,695 as home loan interest payments.

2004/05 year of assessment

88. In her Tax Return – Individuals for the 2004/05 year of assessment dated 24 July 2005, she reported the following income under section 4.1 on salaries tax:

'Name of employer	Capacity employed	Period	Total amount (\$)
2004 AL USE OF ENGLISH [The Authority]	2004 AL USE OF ENGLISH ORAL EXAMINER	01/04/2004 to 31/03/2005	\$6248.00
	2004 CE ENG LANG (SYLB) ORAL EXAMINER		\$12432.00
		Grand total: \$	18680'

89. In her return for 2004/05 she claimed deduction of \$2,500 as charitable donations, deduction of \$12,000 as mandatory contribution to recognised retirement scheme, and deduction of '後補' under home loan interest payments.

90. Employer's return filed by the School reported that her salary income for 2004/05 totalled \$540,195.

91. Employer's return filed by the Authority reported that her income as an 'independent contractor' for 2004/05 totalled \$18,680. There was no breakdown of the sum of \$18,680.

92. On 27 October 2005, the assessor assessed her in accordance with information provided by the School and the Authority.

93. On 12 June 2006, the Deputy Commissioner issued a section 82A(4) notice in respect of her understatement of her income by \$540,195. The notice was returned to the Revenue because she did not collect it. The Revenue redirected it on 13 July 2006.

94. The Revenue telephoned the appellant and left a voice message. The appellant returned call and the assessor explained the section 82A(4) notice.

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95. The assessor sent her a letter dated 6 September 2006 enclosing a copy of the section 82A(4) notice and reminding her to make representations.

96. On 7 September 2006, the assessor received particulars of her claim for deduction of \$35,967.94 as home loan interest payments.

97. On 16 October 2006, the assessor telephoned the appellant and told her that the Revenue had still not received her representations. The appellant said she would reply as soon as possible.

98. She made representations by letter dated 17 October 2006.

99. By letter dated 3 November 2006, the assessor asked the appellant for further information in respect of her objection to the 2004/05 salaries tax assessment. On 23 November 2006, the appellant faxed further information to the assessor.

100. By letter dated 12 December 2006, the assessor offered a revision of the 2004/05 assessment in settlement of the appellant's objection. By a reply slip dated 27 December 2006, the appellant accepted the assessor's offer.

101. On 17 January 2007, the assessor revised the salaries tax assessment in accordance with the settlement (that is on the basis of a total income of \$558,875) and refunded tax in the sum of \$6,384.

102. By letter dated 31 January 2007, the assessor informed the appellant that the amount of \$66,075 referred to in the section 82A(4) notice was reduced to \$59,691 and asked the appellant to send any further representation which she might wish to make within 21 days.

103. By a fax transmitted on 21 February 2007, the appellant made further representations.

104. No prosecution has been instituted under section 80(2) or 82(1) in respect of the omission of income of \$540,195 in her return for 2004/05.

105. The Assessment was issued on 19 March 2007. The amount of \$9,000 was equivalent to 15.08% of the tax which would have been undercharged if the return had been accepted as correct.

The appellant's contentions

106. The appellant contended, among others, that:

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- (a) Revenue officers were too bureaucratic in imposing such a high penalty;
- (b) Revenue officers ignored her representations and the factual reasons for her error;
- (c) She was afraid that there would not be enough space for filling in her income as a marker and forgot about her salary;
- (d) The box was too small;
- (e) She thought the School had reported her income;
- (f) She was slow in her reaction and was not used to the new format of the tax return;
- (g) She had a negative net asset value;
- (h) She had financial difficulties;
- (i) She had no intention to evade tax;
- (j) She was most insensitive to figures; and
- (k) She asked for a reduction of the Assessment by 50%.

Relevant authorities on additional tax

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

108. Section 64(3) provides that:

- ‘(3) *In the event of the Commissioner agreeing 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, any necessary adjustment of the assessment shall be made.*’

109. Section 70, so far as relevant, provides that:

- ‘*Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the assessable income ... assessed thereby ... or where the amount of the assessable income ...*

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has been agreed to under section 64(3) ... the assessment as made or agreed to ... as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income ...

Provided that nothing in this Part shall prevent an assessor from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on objection or appeal for the year.'

110. Section 82A(1) provides that:

'(1) Any person who without reasonable excuse-

*(a) makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person or a partnership;
or*

(b) ...

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-

(i) has been undercharged in consequence of such incorrect return, statement or information, or would have been so undercharged if the return, statement or information had been accepted as correct ...'

111. Section 82B(2) provides that:

'(2) On an appeal against assessment to additional tax, it shall open to the appellant to argue that-

(a) he is not liable to additional tax;

(b) the amount of additional tax assessed on him exceeds the amount for which he is liable under section 82A;

(c) the amount of additional tax, although not in excess of that for which he is liable under section 82A, is excessive having regard to the circumstances.'

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112. Section 82B(3) provides that section 68 shall, so far as applicable, have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax. The Board's power under section 68(8)(a) includes the power to increase the assessment appealed against.

113. Section 68(9) provides that:

'Where under subsection (8), the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding the amount specified in Part I of Schedule 5, which shall be added to the tax charged and recovered therewith.'

114. The amount specified in Part I of Schedule 5 is \$5,000.

Incorrect return

114. The appellant's objection to the 2004/05 salaries tax assessment referred to in paragraph 92 above was compromised and the salaries tax assessment objected to was revised by the assessor on 17 January 2007, see paragraph 101 above.

116. Thus the amount of the assessable income has been agreed to under section 64(3) and by virtue of section 70, the revised salaries tax assessment as agreed to shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income.

117. In any event, there was no objection against the revised salaries tax assessment referred to in paragraph 101 above and by virtue of section 70, the revised assessments as made shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income.

118. The appellant submitted her return reporting \$18,680 as her salary income.

119. The correct amount of her income was \$558,875.

120. Thus, the appellant made incorrect return by grossly understating her income or omitting her income from the School.

Whether liable for additional tax

121. The appellant understated or omitted her income.

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122. The appellant did not contend she had any reasonable cause for understating or omission of her income by \$540,195. In our view, there is none.

Maximum amount of additional tax

123. The maximum amount is treble the amount of tax undercharged or which would have been undercharged had her return been accepted as correct. The amount undercharged or which would have been undercharged was \$59,691 and treble that is \$179,073.

124. The maximum amount of additional tax depends on the size of the tax undercharged or would have been undercharged if the return had been accepted as correct. If the tax undercharged or would have been undercharged if the return had been accepted as correct is large, the maximum amount is three times as large.

Whether excessive having regard to the circumstances

125. The Board takes a serious view of omission or understatement of income, see, for example:

- (a) D3/02, IRBRD, vol 17, 396 (Kenneth Kwok Hing Wai SC, Winnie Lun Pong Hing and Daniel Wan Yim Keung);
- (b) D31/03, IRBRD, vol 18, 477 (Kenneth Kwok Hing Wai SC, Patrick Ho Pak Tai and David Li Ka Fai);
- (c) D9/05, (2005-06) IRBRD, vol 20, 272 (Kenneth Kwok Hing Wai SC, Edward Cheung Wing Yui and Adiran Wong Koon Man);
- (d) D47/05, (2005-06) IRBRD, vol 20, 625 (Kenneth Kwok Hing Wai SC, Francis T K Ip and Horace Wong Ho Ming);
- (e) D50/05, (2005-06) IRBRD, vol 20, 656 (Kenneth Kwok Hing Wai SC, Peter Sit Kien Ping and Adrian Wong Koon Man);
- (f) D59/05, (2005-06) IRBRD, vol 20, 821 (Kenneth Kwok Hing Wai SC, David Ho Chi Shing and David Wu Chung Shing);
- (g) D66/05, (2005-06) IRBRD, vol 20, 920 (Kenneth Kwok Hing Wai SC, Paul Chan Mo Po and William Tsui Hing Chuen);
- (h) D4/06, (2006-07) IRBRD, vol 21, 139 (Kenneth Kwok Hing Wai SC, David Li Ka Fai and Horace Wong Ho Ming)

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- (i) D33/06, (2006-07) IRBRD, vol 21, 587 (Kenneth Kwok Hing Wai SC, Wilson Chan Ka Shun and Mabel Lui Fung Mei Yee);
- (j) D56/06, (2006-07) IRBRD, vol 21, 1051 (Kenneth Kwok Hing Wai SC, William Tsui Hing Chuen and Wong Fung Yi);
- (k) D57/06, (2006-07) IRBRD, vol 21, 1061 (Kenneth Kwok Hing Wai SC, Ip Tak Keung and Horace Wong Yuk Lun, SC).
- (l) D80/06, (2007-08) IRBRD, vol 22, 61 (Kenneth Kwok Hing Wai SC, Ip Tak Keung and Susanna W Y Lee).

126. In D115/01, IRBRD, vol 16, 893 at paragraph 14, the Board (Patrick Fung Pak Tung SC, Michael Robert Daniel Bunting and Susan Beatrice Johnson) and the cases cited in paragraph 125 above stressed the importance of true and correct reporting by taxpayers:

‘The notes accompanying a tax return make it quite clear that the duty is on a taxpayer to complete a true and correct tax return. As is stated in the Guidelines, the effective operation of Hong Kong’s simple tax system requires a high degree of compliance by taxpayers. If every taxpayer is careless or reckless in making tax returns, the task of the already over-burdened IRD will become impossible to perform. This is unfair to the community at large. A taxpayer therefore cannot be heard to complain if a penalty is imposed against him or her according to the statutory provisions.’

127. D118/02, IRBRD, vol 18, 90, is a decision of a panel chaired by the then chairman of the Board, Mr Ronny Wong Fook Hum, SC, sitting with two deputy chairmen, Professor Andrew J Halkyard and Mr Kenneth KWOK Hing Wai, SC. The Board stated that the circumstances of each particular case must be examined bearing in mind that the maximum penalty is 300%, see paragraphs 48 and 50:

‘48. One of the earliest statement in relation to assessment at 100% of the tax involved is to be found in D53/88, IRBRD, vol 4, 10. The Board there pointed out that penalty at 100% of the amount of tax undercharged is appropriate to those cases:

- (a) where there has been no criminal intent and the taxpayer has totally failed in his or its obligations under the IRO or*

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(b) *where the Commissioner has had to resort to investigations or the preparation of assets betterment statements or has otherwise had difficulty in assessing the tax or*

(c) *where the failure by the taxpayer to fulfill his or its obligations under the IRO has persisted for a number of years.*

49. ...

50. *The circumstances of each particular case must be examined bearing in mind that the maximum penalty is 300%. Depending on the circumstances of each individual case, the Board has approved additional tax at 200% of the tax involved in D22/90, IRBRD, vol 5, 167 and in D53/92, IRBRD, vol 7, 446 and at 210% of the tax involved plus 7% compound interest per annum in D43/01, IRBRD, vol 16, 391.'*

128. We extract the following propositions from the cases listed in paragraph 125 above:

- (a) Receipt and accrual of income and the total amount in the 12-month period in a year of assessment are factual matters within the personal knowledge of the taxpayer. Such knowledge does not depend on the taxpayer being supplied with employer's return(s) or remembering about employer's return(s).
- (b) In cases where the taxpayer was paid by autopay or deposits into the taxpayer's bank account, the taxpayer could easily have ascertained and checked the correct total amount of income by reference to the banking records.
- (c) Carelessness or recklessness is not a licence to understate or omit one's income.
- (d) While an intention to evade tax is undoubtedly an aggravating factor, lack of intention to evade tax is not a mitigating factor for the simple reason that no taxpayer should have the intention to evade tax, see also D62/96, IRBRD, vol 11, 633, at paragraph 23 (Robert Wei Wen Nam QC, John Peter Victor Challen and Benjamin Kwok Chi Bun).
- (e) There is no duty on the part of the Revenue to warn a taxpayer before invoking section 82A.

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- (f) Payment of tax is not a relevant factor. It is the duty of every taxpayer to pay the correct amount of tax. If he/she does not pay tax, on time or at all, he/she will be subject to enforcement action.
- (g) The fact that the Revenue was vigilant enough to detect the understatement is not a mitigating factor. The fact that the Revenue suffered no financial loss is not a mitigating factor. It is an aggravating factor if the Revenue has suffered financial loss.
- (h) Financial difficulty or inability to pay the penalty must be proved by cogent evidence.
- (i) In cases of an incorrect return, it is wholly unrealistic for a taxpayer to ask for zero penalty. If anything, this is an indication that the taxpayer is still not taking his/her duties seriously.
- (j) There must be a real difference in penalty between those who mitigate their breaches by being co-operative and those who aggravate their breaches by being obstructive.
- (k) A second or further contravention is an aggravating factor. If a taxpayer does not get the message from the Revenue's or the Board's treatment of the first or earlier contraventions and does not take proper steps to ensure full and complete reporting of income, a heavier penalty should, as a general rule, be imposed for subsequent contraventions.
- (l) A blatant breach should be punished by a stiff penalty.
- (m) In cases where the Board concludes that the additional tax assessment is excessive, the Board will reduce the penalty assessment, for example D9/05 and D4/06.
- (n) In appropriate cases where the Board concludes that the additional tax assessment is manifestly inadequate, the Board will increase the additional tax assessment.
- (o) Where the Board concludes that the appeal is frivolous and vexatious or an abuse of the process of appeal, the Board may impose an order on costs.

129. The Assessment is in respect of the appellant's second contravention within three years. In respect of the contravention in respect of the 2001/02 year of assessment, the Revenue gave the appellant a chance by not proceeding further than a letter advising her to ensure

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compliance in future. This brought about compliance for two years and the appellant defaulted again.

130. The appellant claimed that she was most insensitive to figures. We are not persuaded on a balance of probabilities that she was or is insensitive to figures at all. In respect of the 2001/02 and the 2004/05 years of assessment, she gave a breakdown of the income from the Authority despite the fact that the Authority merely reported a global figure without any breakdown. She was sensitive enough to figures to claim deductions for home loan interests, donations and contribution to a recognised retirement scheme.

131. In any event, the incorrectness has nothing to do with sensitivity at all. It is a case of omission, not getting the figures wrong. Teaching was her occupation, having been a teacher for decades. Yet, she omitted her entire income as a teacher.

132. She also claimed that she was not familiar with the format of the tax return and that the box was too small. We reject both assertions. The format and size for the 2002/03 and 2003/04 years of assessments were the same as those for the 2001/02 and 2004/05 years of assessments. Even if the box was too small, she should have followed the instruction on top of Part 4 which stated that:

‘ If space is insufficient, provide particulars on a separate sheet.’

133. The fact that the School, as an employer, has to, and did, report her income as one of the School’s employees did not and does not detract from her duties to submit a correct and complete report of her income.

134. There is no evidence on the appellant’s financial position. We attach no weight to her bare assertions.

135. The amount omitted or understated is \$540,195, equivalent to 96.66% of the correct amount of \$558,875.

136. Had her return been accepted as correct, no tax would have been payable. The tax which would have been undercharged had her return been accepted as correct is \$59,691.

137. In answer to our question on further contravention, the appellant said she had to give up teaching.

138. We have carefully considered the appellant’s contentions. In our Decision, the appellant is in reckless disregard of her reporting duties and has shown neither remorse nor will to ensure compliance with her reporting duties under the Ordinance. Not only is the Assessment neither incorrect nor excessive, it is manifestly inadequate in the circumstances of this case.

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139. Had it been necessary for us to consider the appeal on its merits, we would have increased the Assessment from \$9,000 to \$17,900, about 30% of the tax which would have been undercharged had her return been accepted as correct.

DISPOSITION

140. As stated in paragraphs 68 and 69 above, we decline to extend time for appeal and the Assessment stands.