INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D176/98

Salaries Tax – notice of appeal – extension of time – Inland Revenue Ordinance section 66(1A).

Panel: Ronny Wong Fook Hum (chairman), Ng Ching Wo and Michael Neale Somerville.

Dates of hearing: 14 November 1998 and 9 January 1999.
Date of decision: 23 March 1999.

The Commissioner made the determination in this case on 18 June 1998. It was sent to the taxpayer and was collected on 22 June 1998. On 12 July 1998, the taxpayer left Hong Kong for a course in China and returned on 18 July 1998. The notice of appeal was dated 20 July 1998 but was not received by the Board until 14 August 1998. The taxpayer adduced no evidence as to the actual date when she despatched her notice to the Board.

The taxpayer contended that the sum of $206,400 and $249,557 paid by Company X to the taxpayer for the years of assessment 1995/96 and 1996/97 are not salaries or cash allowances chargeable to tax.

Held:

The Board must be satisfied that the taxpayer 'was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a)' to extend time for lodging the appeal.(section 66(1A))

The Chinese version of the IRO might connote a lighter burden on the taxpayer. The Board has to consider both texts to see if the two could be reconciled and, if so, which interpretation best reconciled the difference in the two texts, having regard to the objects and purposes of the IRO. (R v Tam Yuk Ha applied) In the absence of argument on this point, the Board is of the view that the principle in D28/88, remains applicable.

The Board is not satisfied that the taxpayer has made out any ground for extending time in her favour. No explanation has been given of her inactivity between 22 June 1998 and 12 July 1998. The taxpayer also gave no assistance as to the actual date she despatched the notice.

Had it been necessary, the Board would have found that no rent was paid by Company X to the taxpayer/her husband and there was no 'rental refund' by Company X in favour of the taxpayer. Thus the two sums are clearly taxable.

Appeal dismissed.

Cases referred to:

R v Tam Yuk Ha [1996] 3 HKC 606
D9/79, IRBRD, vol 1, 354

Chan Wai Mi for the Commissioner of Inland Revenue.
Taxpayers in person.

Decision:

The issues

1. This appeal involves 2 principal issues:

(a) Whether this Board should exercise its discretion under section 66(1A) of the Inland Revenue Ordinance ['the IRO'] and extend time in favour of the Taxpayer for the lodgement of her notice of appeal ['the Notice Point'].

(b) Whether the sums of $206,400 and $249,557 paid by Company X to the Taxpayer for the years of assessment 1995/96 and 1996/97 are salaries or cash allowances chargeable to tax ['the Substantive Point'].

The Notice Point

2. The determination by the Commissioner in this case made on 18 June 1998. It was sent to the Taxpayer by registered post at her office address. The item was collected at the post office against her company's chop on 22 June 1998.

3. On 12 July 1998, the Taxpayer left Hong Kong for a course in China. She returned to Hong Kong on 18 July 1998.

4. The notice of appeal was dated 20 July 1998. That notice was not received by this Board until 14 August 1998. The Taxpayer adduced no evidence as to the actual date when she despatched her notice to this Board.

5. The jurisdiction of this Board to extend time for lodging of appeal is closely defined by section 66(1A) of the IRO. This Board must be satisfied that the Taxpayer '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 the Chinese version of the IRO, the relevant phrase is '未能按照第(1)(a)款規定發出上訴通知'which might connote a lighter burden on the Taxpayer. According to ***R v Tam Yuk Ha* [1996] 3HKC 606** both the English language text and the Chinese language text of an IRO are equally authentic. It is necessary for the Court to consider both texts to see if the two could be reconciled and, if so, which interpretation best reconciled the difference in the two texts, having regard to the objects and purposes of the IRO. In the absence of argument on this point, we are of the view that the principle as stated by this Board in ***D9/79*, IRBRD, vol 1, 354** remains applicable:

> *'The word "prevented" … is opposed to a situation when an appellant is able to give notice but failed to do so. In our view, therefore, neither laches nor ignorance of one's rights or of the steps to be taken is a ground upon which an extension may be granted.'*

6. The Taxpayer relied on 3 grounds:

(a) She was unaware of the applicable provision requiring her to submit her notice within 1 month.

(b) She was in China between 12 and 18 July 1998 for her tertiary degree course.

(c) It is unfair that the Revenue should have months after her objections for preparation of the determination whilst she is confined to 1 month for her notice of appeal.

7. We are not satisfied that the Taxpayer has made out any ground for extending time in her favour. No explanation has been given of her inactivity between 22 June 1998 and 12 July 1998. The IRO has clearly defined the period for her to give her notice of appeal. Her ignorance of her position is no basis for us extending the time limit. The Taxpayer has also given us no assistance as to the actual date when she despatched the notice.

8. For these reasons, we reject the Taxpayer's application for extension of time. It follows that no appeal is properly before us and the assessments in question cannot be disturbed.

The substantive point

9. We heard evidence on the Substantive Pint pending our decision on the Procedural Point. Given our decision on the Procedural Point, we would only briefly express our views on the Substantive Point.

10. We recognise that a taxpayer is fully entitled to arrange his or her affairs in order to take the maximum benefit conferred by tax legislation. Such arrangement must, however, falls squarely within the bounds of the tax legislation.

11. Had it been necessary for us to adjudicate on the Substantive Point,:

(a) we would have found that no 'rent' was paid by Company X to the Taxpayer/her husband. We would have placed no reliance whatsoever on the 'rent receipts' which the Taxpayer produced for her own convenience. We are particularly disturbed by her conduct in dating and altering those receipts simply at her own whims and fancies.

(b) we would have found that there was no 'rental refund' by Company X in favour of the Taxpayer.

(c) we would have been left with no doubt that the two sums in question are clearly taxable.