

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D2/03

Salaries tax – appeal out of time – whether reasonable excuse – section 66 of the Inland Revenue Ordinance ('IRO').

Panel: Ronny Wong Fook Hum SC (chairman), Krishnan Arjunan and Charles Nicholas Brooke.

Dates of hearing: 28 December 2002 and 17 March 2003.

Date of decision: 8 April 2003.

The appellant was residing in Macau but often came back to Hong Kong.

On 23 August 2002, a determination by the Revenue was sent to the post box maintained by the appellant in the General Post Office in Central. On 29 August 2002, it was collected by the appellant.

By letter to the Revenue dated 18 September 2002, the appellant challenged the determination. The letter was received by the Revenue on 24 September 2002. By letter dated 26 September 2002, the Revenue informed the appellant that he should lodge his notice of appeal with the Board. This letter was received by the appellant on 30 September 2002.

On 3 October 2002, the appellant sent this letter to the Board and was received by the Board on 11 October 2002.

The issue was whether the Board should extend time in favour of the appellant.

Held:

1. Though the appellant was a resident in Macau, he made regular trips to Hong Kong. His residence in Macau did not prevent him from sending the requisite notice to the Board.
2. The appellant's delay was attributable solely to his failure to read the letter that accompanied the determination properly. It was not a reasonable cause for granting extension (D9/79 followed).

INLAND REVENUE BOARD OF REVIEW DECISIONS

Appeal dismissed.

Cases referred to:

D9/79, IRBRD, vol 1, 354

Cheung Wah Keung v Commissioner of Inland Revenue CACV 154/2002

Chan Siu Ying for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

The issues

1. There are two broad issues before us:
 - (a) whether we should extend time in favour of the Appellant under section 66(1A) of the IRO; and
 - (b) whether the Appellant is correctly assessed to salaries tax for the years of assessment 1994/95, 1995/96 and 1996/97.

The section 66(1A) point

2. By a determination dated 22 August 2002, the Commissioner of Inland Revenue confirmed the assessments on the Appellant for the years of assessment in question. This determination (accompanied by the usual letter in relation to the proper channel for appeal against the determination) was sent on 23 August 2002 to the post box maintained by the Appellant in the General Post Office in Central. Commencing from about March 1996, the Appellant has been residing in Macau.
3. The Appellant collected the determination on 29 August 2002. Taking the most benevolent view in favour of the Appellant, he is obliged to give his notice of appeal to this Board by 29 September 2002.
4. The Appellant says that he had a discussion with his accountant in Hong Kong on 11 September 2002. By letter sent to the Revenue dated 18 September 2002, the Appellant challenged the determination and pressed for a meeting with representatives of the Revenue. The Revenue received this letter on 24 September 2002.

INLAND REVENUE BOARD OF REVIEW DECISIONS

5. By letter dated 26 September 2002, the Revenue pointed out to the Appellant that he should lodge his notice of appeal with this Board should he wish to challenge the determination. The Appellant received this letter on 30 September 2002.

6. On 3 October 2002, the Appellant sent to this Board his 18 September 2002 letter addressed to the Revenue. This was received by this Board on 11 October 2002. The question therefore is whether we should extend time in favour of the Appellant from 29 September 2002 to 11 October 2002.

7. Our jurisdiction is prescribed by section 66 of the IRO which provides that:

‘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).’

8. In D9/79, IRBRD, vol 1, 354, the Board pointed out that:

‘... a Board of Review has jurisdiction to extend time if it is satisfied that an Appellant was ‘prevented’ by illness or absence from the Colony or other reasonable cause from giving the requisite notice of appeal ... The word ‘prevented’, as we see it, is opposed to a situation where an appellant is able to give notice but has 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.’

9. At the material times, the Appellant was a resident in Macau. He made regular trips to Hong Kong. He had a meeting with his accountant in Hong Kong in relation to the determination on 11 September 2002. He had no difficulty in sending his letter of challenge to the Revenue on 18 September 2002. His residence in Macau therefore did not prevent him from sending the requisite notice to this Board.

10. We are of the view that the Appellant’s delay was attributable solely to his failure to read properly the letter that accompanied the determination. As indicated by D9/79, that is not a ‘reasonable cause’ for granting any extension. We therefore refuse the extension sought by the Appellant.

11. It follows from this refusal that there is no proper appeal before this Board. The assessments as confirmed by the determination cannot be disturbed.

The substantive point

INLAND REVENUE BOARD OF REVIEW DECISIONS

12. As we have heard evidence on the merits of this appeal, we would like to state briefly our views had we been called upon to adjudicate the same.

13. We have no doubt whatsoever that the Appellant interposed Company A between himself and his 'clients' for the sole or dominant purpose of obtaining for himself a tax benefit and the Revenue is fully entitled to invoke section 61A of the IRO and assess the Appellant accordingly. Throughout his evidence before us, the Appellant laid emphasis on his own expertise in the treatment of toxic waste and in the arrangement of corporate finance. These are his personal attributes. Indeed by a letter dated 29 November 1994, Company B engaged the Appellant personally as its 'financial advisor'. By letter dated 8 February 1995, the Appellant requested Company B to remit his personal entitlements under the engagement letter to Company A. There was no commercial justification for such direction. Such direction indicates that Company A was interposed for no other purpose than to facilitate the generous discharge of the Appellant's personal expenses through that company.

14. As indicated by the judgment of the Court of Appeal in Cheung Wah Keung v Commissioner of Inland Revenue CACV 154/2002 there is no rule of law which prevents a taxpayer from conducting his affairs via a corporation. The effect of section 61A is to enable the Commissioner to disregard such transaction should the conditions of section 61A be satisfied. On the facts of this case, we would have held that the conditions were so satisfied.

15. For reasons outlined in paragraph 11 above, the assessments as confirmed by the determination stand.