

Case No. D24/10

Salaries tax – whether taxpayer can rely on what was told by the Inland Revenue Department (‘IRD’) – allegation as to an abuse of power or unfairness – taxpayer in a similar position should be treated in the same way.

Panel: Colin Cohen (chairman), Chan Chung Yee Alan and Thomas Woon Mun Lee.

Date of hearing: 18 August 2010.

Date of decision: 21 September 2010.

The taxpayer is a pilot. The taxpayer has objected to the salaries tax assessments. By virtue of his appeal, the taxpayer accepts that he was in Hong Kong for more than 60 days but in turn argues that since he was informed by ‘my IRD inspector that my claims for the assessment had been allowed’, therefore he should be entitled to rely on what he was told and therefore appeals against the Determination.

Held:

1. Any allegation by the taxpayer as to an abuse of power or unfairness, the remedy for the taxpayer was by way of judicial review (Aspin v Estill (Inspector of Taxes) [1987] STC 723 followed).
2. Having regard to the various papers that were lodged by the taxpayer and having regard to the circumstances of this case, it does seem that various taxpayers may have been treated differently. The Board considered that it is incumbent upon the IRD to ensure that in future all taxpayers in a similar position should be treated in the same way unless, of course, the factual matrix of each case distinguishes one taxpayer from another and this has an inevitable bearing and impact on the outcome of their treatment.

Appeal dismissed.

Case referred to:

Aspin v Estill (Inspector of Taxes) [1987] STC 723

Taxpayer in person.

Chan Tsui Fung and Leung Wing Chi for the Commissioner of Inland Revenue.

Decision:

Introduction

1. The Taxpayer has objected to the salaries tax assessments for the years of assessment 2006/07 and 2007/08. The Taxpayer is a pilot. By virtue of his appeal dated 6 April 2010, he accepts that he was in Hong Kong for more than 60 days but in turn argues that since he was informed by ‘my IRD Inspector that my claims for the years 2006/7 and 2007/8 had been allowed’, therefore, he should be entitled to rely on what he was told and therefore appeals against the Determination by Acting Deputy Commissioner of Inland Revenue dated 19 March 2010 (‘the Determination’).

2. After the hearing commenced, the Board drew to the Taxpayer’s attention various authorities and in particular, the case of Aspin v Estill (Inspector of Taxes) [1987] STC 723. There, the Taxpayer claimed that he relied on the information given to him by the Revenue over the telephone that such income would not be subject to tax in the United Kingdom and therefore it would be unfair for the Revenue to assess him to tax on that income. The Court of Appeal rejected that submission and made it perfectly clear that any allegations by the Taxpayer as to an abuse of power or unfairness, the remedy for the taxpayer was by way of judicial review.

3. The Taxpayer was also given an opportunity to consider the written submissions that were prepared by Ms Chan.

4. After a short adjournment, the Taxpayer having discussed matters with Ms Chan after considering the various comments made by the Board and having read the cases and the written submissions, he asked for leave to withdraw his appeal.

5. We therefore granted such leave and in turn, dismissed the appeal.

6. However, having regard to the various papers that were lodged by the Taxpayer and having regard to the circumstances of this case, it does seem that various taxpayers may have been treated differently. We refer to B/R 45/09 where the following was said:

‘ 29. *However, we do wish to set out our concerns over the fact that the Taxpayer may very well have been treated differently compared to the way in which other assessors dealt with some of his colleagues. We would have thought that this should not have happened and it is incumbent upon the IRD to ensure that in future all taxpayers in a similar position should be treated in the same way unless, of course, the factual matrix of each case distinguishes one taxpayer from another and this has an inevitable bearing and impact on the outcome of their treatment. We*

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would have thought that having regard to this decision, the IRD should ensure that each and every taxpayer who falls within the ambit of s.8(2)(j) of the IRO should be treated in a similar way.'

7. This Board again echoes such sentiments.