

Case No. D27/13

Extension of time – section 82B(1A) of the Inland Revenue Ordinance – one-month time limit – whether unilateral mistake can be described as a reasonable cause – prominent notice of the requirements of giving notice of appeal given in the additional tax assessment – whether the Appellant was prevented from giving notice of appeal within time.

Panel: Kenneth Kwok Hing Wai SC (chairman), Lee Tak Yue Edmund and Leung Wai Keung Richard.

Date of hearing: 9 December 2013.

Date of decision: 13 January 2014.

The additional tax assessment was delivered on 1 June 2012. By letter dated 20 June 2012, the Appellant wrote to the IRD requiring waiver of the penalty. This letter did not constitute a notice of appeal. The Appellant did not give notice of appeal to the Clerk until her letter dated 18 July 2012 which was delivered to the Clerk's office on 19 July 2012. Despite what was stated in the additional tax assessment and again in the Assessor's letter dated 5 July 2012, her notice of appeal was not accompanied by a copy of the notice of intention to assess additional tax given under section 82A(4). By letter dated 20 July 2012, the Clerk drew the Appellant's attention to the omission. By letter dated 31 July 2012, received by the Clerk on 1 August 2012, the Appellant attached a copy of notice of intention to assess additional tax.

This is an application under section 82B(1A) of the Inland Revenue Ordinance, Chapter 112, for extension of time to appeal. There is no allegation of any illness during the one-month time limit. The Appellant was absent from Hong Kong from 22 May to 15 September 2012.

Held:

1. A unilateral mistake cannot be properly described as a reasonable cause which prevented the taxpayer from lodging the notice of appeal within time (Chow Kwong Fai v CIR, 4 HCTA 594 and Chow Kwong Fai Edward v CIR [2005] 4 HKLRD 687 followed).
2. The Appellant did not give notice of appeal to the Clerk within the one-month time limit and she was thus out of time.

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3. Had the Appellant taken the trouble to read the prominent notice of the requirements of giving notice of appeal given in the additional tax assessment and/or not overlooked by her, she could clearly have given proper notice of appeal within time.
4. The Appellant was not prevented from giving notice of appeal within time. The Appellant has failed to make out a case for extension of time. The Board declines to extend time and that is the end of the Appellant's intended appeal.

Appeal dismissed.

Cases referred to:

Chow Kwong Fai v CIR, 4 HCTA 594
Chow Kwong Fai Edward v CIR [2005] 4 HKLRD 687
D16/07, (2007-08) IRBRD, vol 22, 454

Appellant in person.

Tsang Yuk King and Tse Yuen Ling for the Commissioner of Inland Revenue.

Decision:

Application for extension of time

1. This is an application under section 82B(1A) of the Inland Revenue Ordinance, Chapter 112, for extension of time to appeal. Section 82B(1A) 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) ...'.

The rigour of the time limit in the lodging of tax appeals

2. In Chow Kwong Fai v CIR, 4 HCTA 594, Tang J, as he then was, cited quite extensively from the case of Case U175 and held at paragraph 24 that:

‘ In Hong Kong, unlike Australia, the legislature has not seen fit to modify the rigour of the time limit in the lodging of tax appeals.’

3. On appeal, [2005] 4 HKLRD 687, Woo VP construed the meaning of the word ‘prevent’ to give proper effect to the rigour of time limit imposed by a taxation statute and cited further from Case U175 in the context of the ‘rationale for the stringent time limit for raising tax objections and appeals’, see paragraph 4 below.

The relevant test

4. At paragraph 20, Woo VP stated that the word ‘prevented’ should best be understood to bear the meaning of the term ‘未能’ (‘unable to’) in the Chinese version.

‘ 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 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.” ’

Both Cheung JA¹ and Barma J², as he then was, agreed with the judgment of Woo VP.

¹ At paragraph 38.

² At paragraph 47.

5. Cheung JA formulated the following test:

*‘ 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. 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’*³.

Barma J⁴ agreed with the Cheung JA’s additional observation.

Unilateral mistake not reasonable cause

6. A unilateral mistake cannot be properly described as a reasonable cause which prevented the Taxpayer from lodging the notice of appeal within time⁵.

Relevant chronology

7. The relevant chronology is as follows:

31 May 2012	Date of additional tax assessment
31 May 2012	Date posting of additional tax assessment
1 June 2012	Date of delivery of additional tax assessment
20 June 2012	Date of letter from Appellant to IRD
5 July 2012	Date of letter from Assessor to Appellant
18 July 2012	Date of letter from Appellant to Clerk to the Board of Review (‘Clerk’)
19 July 2012	Date of delivery by hand of letter from Appellant to Clerk
20 July 2012	Date of letter from Clerk to Appellant
31 July 2012	Date of submission of missing prescribed accompanying document

³ At paragraph 46.

⁴ At paragraph 47.

⁵ At paragraphs 34 and 45.

22 May to 15 September 2012	The Appellant was absent from Hong Kong
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The additional tax assessment

8. The additional tax assessment is dated 31 May 2012 and the following paragraph appeared in the middle of the first page:

‘ Your attention is drawn to section 82B of the Inland Revenue Ordinance. If you wish to appeal against this assessment, you must give notice in writing to the Clerk to the Board of Review (PLEASE SEE CONTACT DETAILS OVERLEAF⁶) within 1 month after this notice of assessment is given to you. Your notice will not be entertained unless it is accompanied by:

- (a) a copy of this notice of assessment;*
- (b) a statement of the grounds of appeal from the assessment;*
- (c) a copy of the notice of intention to assess additional tax given under section 82A(4), if any such notice was given; and*
- (d) a copy of any written representations made under section 82A(4).*

At the same time you must serve upon me a copy of the notice of appeal and of the statement of the grounds of appeal.’

9. This passage gives clear and plain notice of the requirements under section 82A(4):

- Written notice must be given to the Clerk to the Board of Review, not IRD, on which a copy of the notice of appeal and of the statement of the grounds of appeal must be served.
- The notice of appeal must be accompanied by the accompanying documents specified.
- The time limit for giving written notice of appeal is within 1 month after the notice of assessment was given to the Appellant.

⁶ The address, telephone number, fax number, e-mail address and website of the Office of the Clerk to the Board of Review were printed on the reverse of the first page of the additional tax assessment.

10. In D16/07, (2007-08) IRBRD, vol 22, 454, the Board held that the specified accompanying documents must also be served within the same one month time limit as the notice of appeal.

Date of delivery of additional tax assessment

11. According to the records of the Post Office, the additional tax assessment was delivered on 1 June 2012.

12. The Appellant stated in her notice of appeal dated 18 July 2012 that:

‘ I wrote this letter to lodge an appeal on the notice of appeal I received on May 31, 2012 ... ’

The Appellant was out of time

13. The Appellant did not give notice of appeal to the Clerk within the one-month time limit and she was thus out of time.

The Appellant’s letter dated 20 June 2012

14. By letter dated 20 June 2012, she wrote to the IRD requesting waiver of the penalty. This letter did not constitute a notice of appeal because:

- (1) It was not given to the Clerk; and
- (2) It was not accompanied by any specified accompanying documents.

The Assessor’s letter dated 5 July 2012

15. By letter to the Appellant dated 5 July 2012, the Assessor

- drew attention to section 82B;
- gave the address of the Clerk; and
- noted that the appeal period had already expired.

The notice of appeal dated 18 July 2012 and the Appellant’s letter dated 31 July 2012

16. Nevertheless, the Appellant did not give notice of appeal to the Clerk until her letter dated 18 July 2012 which was delivered to the Clerk’s office on 19 July 2012.

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17. Despite what was stated in the additional tax assessment and again in the Assessor's letter dated 5 July 2012, her notice of appeal was not accompanied by a copy of the notice of intention to assess additional tax given under section 82A(4).

18. By letter dated 20 July 2012, the Clerk drew the Appellant's attention to the omission.

19. By letter dated 31 July 2012, received by the Clerk on 1 August 2012, the Appellant attached a copy of notice of intention to assess additional tax.

No reasonable cause

20. Had the Appellant taken the trouble to read the prominent notice of the requirements of giving notice of appeal given in the additional tax assessment and/or not overlooked by her, she could clearly have given proper notice of appeal within time.

21. Plainly she had no reasonable cause for failing to give notice of appeal within time.

Illness

22. There is no allegation of any illness during the one-month time limit.

Absence from Hong Kong

23. The Appellant was absent from Hong Kong from 22 May to 15 September 2012.

24. In our decision, she was not prevented from giving notice of appeal within time. Plainly, she could have given valid notice of appeal by the time she wrote to IRD on 20 June 2012.

Conclusion and decision

25. The Appellant has failed to make out a case for extension of time. We decline to extend time and that is the end of the Appellant's intended appeal. The merits or otherwise of her intended appeal do not arise for our decision and we express no views on the merits.