

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D27/99

Penalty Tax – incorrect salaries tax return – failure to disclose certain sums chargeable to tax – lack of detailed knowledge of Hong Kong tax law – 10% penalty – whether a reasonable excuse existed under section 82A of the Inland Revenue Ordinance.

Panel: Ronny Wong Fook Hum SC (chairman), Benjamin Chain and Ho Kai Cheong.

Date of hearing: 23 April 1999.

Date of decision: 17 June 1999.

The taxpayer submitted his tax return to the Revenue for the year of assessment 1995/96 in relation to salary and bonus earned from Company X. On 5 December 1995, the taxpayers had exercised 3 options in respect of Company X's shares and secured gains of US \$28,554.5 which he omitted to include in his tax return.

Upon additional tax of 10% being levied against him by the Commissioner, the taxpayer appealed to the Board that, inter alia, he did not have detailed knowledge of Hong Kong tax law and that Company X, his employer, had not given him advice as to his tax position.

Held by the Board:

- (1) Ignorance of the law was not a reasonable excuse for omission (D112/97, IRBRD, vol 13, 31 approved);
- (2) The duty to disclose is a personal one and reliance on the omission of one's employer was no answer;
- (3) The taxpayer himself had been aware of the omission but made no effort to properly follow up the matter at an early stage.

Appeal dismissed.

Cases referred to:

D112/97, IRBRD, vol 13, 31

Yam Pak Lin for the Commissioner of Inland Revenue.
Taxpayer in person.

INLAND REVENUE BOARD OF REVIEW DECISIONS

Decision:

Background

1. In his return for the year of assessment 1995/96, the Taxpayer reported to the Revenue a sum of \$1,088,739 as his total income from Company X. The sum of \$1,088,739 was made up of \$962,400 by way of salary and \$126,339 by way of bonus. By a notice of assessment dated 4 October 1996, the Taxpayer was assessed on the basis of his submitted return.
2. On 5 December 1995, the Taxpayer exercised 3 options in respect of Company X's shares and secured gains therefrom in the sum of US\$28,554.5. The Taxpayer omitted to include this sum in his return for the year of assessment 1995/96.
3. By a notice of additional assessment dated 27 January 1998, the Taxpayer was further assessed in respect of the gains arising from his exercise of the share option at \$220,466.
4. By notice dated 20 July 1998, the Commissioner notified the Taxpayer of his intention to impose additional tax under section 82A of the Inland Revenue Ordinance. The Taxpayer was informed of his right to submit representations for the Commissioner's consideration. The Taxpayer failed to avail himself of this opportunity.
5. By notice dated 21 January 1999, the Commissioner imposed on the Taxpayer additional tax in the sum of \$3,000. This amounts to 9.07% of \$33,070 being the amount of tax which has been undercharged in consequence of the Taxpayer's incorrect return.
6. By his notice of appeal dated 29 January 1999, the Taxpayer urged this Board to reconsider his case bearing in mind that he does not have any detail knowledge of Hong Kong tax law and his difficulties in finding alternative employment after termination of his employment with Company X on 1 April 1998.
7. At the hearing before us, the Taxpayer pointed out that:
 - (a) he relied on Company X's return in completing his own return.
 - (b) he was not the only one in Company X who failed to include the option gains in the tax returns.
 - (c) since leaving Company X he has no access to Company X's advice on his tax position.

INLAND REVENUE BOARD OF REVIEW DECISIONS

8. We are of the view that the Taxpayer has not made out any reasonable excuse for his omission. As pointed out by the Board in D112/97, IRBRD, vol 13, 31:

'... it is settled law that ignorance of the law is no excuse. It is the duty of every citizen, including the Taxpayer, to acquaint himself with the relevant law.'

The duty is a personal one and reliance on one's employer is no answer to omissions in an individual's return.

9. Further, the Taxpayer admitted that after his attention was drawn to the possible omission, he made no effort to follow up the matter until additional assessment was raised by the Revenue.

10. For a simple omission, the level of penalty is normally 10% of the amount of tax that has been undercharged. The penalty in this case is therefore well within the norm. We see no reason to disturb the amount imposed by the Commissioner.

11. For these reasons, we dismiss the appeal.