

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D39/00

**Salaries tax** – sections 61 and 61A of the Inland Revenue Ordinance (‘IRO’) – whether or not there was commercial reality in the transaction – additional salaries tax assessments – section 58 of the IRO.

Panel: Terence TAI Chun To (chairman), Patrick James Harvey and Norman Ngai Wai Yiu.

Dates of hearing: 28 March and 16 May 2000.

Date of decision: 6 July 2000.

Company B was a private company incorporated in Hong Kong in 1982. The taxpayer owned 80% of the shares of Company B on 12 July 1985. Company B appointed the taxpayer as a director of Company B on 12 July 1985 and received director’s salaries. The principal activity of Company B was acting as a commission agent for the years of assessment 1992/93 to 1995/96. For the years 1991 to 1995, Company A and Company B entered into annual service contracts to which Company B was to assign the taxpayer to render services to Company A. The Commissioner raised on the taxpayer additional salaries tax assessments for the years of assessment 1992/93 to 1995/96 under section 61A of the IRO.

It was the taxpayer’s contentions that the acting deputy commissioner should not have involved section 61 in his determination because no assessment had previously been made by an assessor as required by section 61. In addition, the assistant commissioner had failed to pay regard to the elements stipulated in section 61 of the IRO. Moreover, the taxpayer challenged the validity of the assistant commissioner’s assessment made under section 61A on the ground that the name of the assistant commissioner had not been given. It was submitted by the tax representative that the IRO did not have any provisions deeming the income of one person to be the income of another person before the enactment of section 9A with the result that the taxpayer should not have any tax liability on income received by Company B.

The taxpayer further submitted that the transaction was not entered into for the sole and dominant purpose of enabling the taxpayer to obtain a tax benefit and the transaction had conferred no tax benefit on the taxpayer.

**Held :**

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1. The Board found that without the interposition of Company B, the taxpayer would not be able to claim as deductions his personal and private expenses and there was no commercial reality in the transaction which was aimed at procuring the services of the taxpayer to Company A and reducing the taxpayer's tax liabilities. It was commercially unrealistic and therefore artificial within the meaning of section 61 and should be disregarded. Accordingly, the payments made by Company A to Company B should be treated as the taxpayer's income.
2. The Board did not find that the assessment contemplated in section 61 must be exercised by an assessor exclusively. Section 3(4) of the IRO provides that 'all powers conferred upon an assessor by this Inland Revenue Ordinance may be exercised by an assistant commissioner.' In any event, the Commissioner, in the course of his determination, steps into the shoes of an assessor and is entitled to make the assessment afresh. And the taxpayer still can object to the assessment.
3. Taking into account the assistant commissioner's note to the additional assessments as a whole and the determination of the acting deputy commissioner, the Board found that the seven elements in section 61A had duly be considered before forming their view. Moreover, having had regarded to all the seven elements referred to in section 61A, the Board concluded that the transaction was entered into for the sole or dominant purpose of obtaining a tax benefit.
4. The Board found that section 58 of the IRO only required the name of an assistant commissioner to be disclosed in the case of a notice to be given by him, as distinct from an assessment made by him.
5. The Board found that sections 61 and 61A were general anti-avoidance sections and can be resorted to by the Revenue in an appropriate case before or after the enactment of section 9A. The Board did not detect anything contained in either section 61A or section 61, which fetters the assessor or the assistant commissioner in the exercise of the powers of assessment.

### **Appeal dismissed.**

Cases referred to :

Market Investigations Ltd v Minister of Social Security [1969] 2 QB 173  
CIR v Yick Fung Estates Ltd, IRBRD, vol 13, 708  
D69/98, IRBRD, vol 13, 412  
D78/88, IRBRD, vol 4, 155

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CIR v Quitsubdue, IRBRD, vol 14, 541  
D52/86, IRBRD, vol 2, 314  
D59/96, IRBRD, vol 12, 8

Chan Tak Hong for the Commissioner of Inland Revenue.  
So Kai Tong Stanley of Messrs Stanley So & Co for the taxpayer.

### Decision:

1. This is an appeal by the Taxpayer against the determination of the Commissioner dated 20 August 1999 in respect of additional salaries tax assessments for the years of assessment 1992/93, 1993/94, 1994/95 and 1995/96.
2. The parties have agreed to the following facts.

#### (A) Company A

1. Company A is a motor car dealer.
2. The shareholders and directors of Company A do not have any relationship with both the Taxpayer and Company B.
3. For the years 1991 to 1995, Company A and Company B entered into annual service contracts.
4. Company A declared the following payments to Company B in the employer's returns for the years of assessment 1992/93 to 1995/96:

Year of assessment	1992/93	1993/94	1994/95	1995/96
Period covered	1-4-1992 to 31-3-1993	1-4-1993 to 31-3-1994	1-4-1994 to 31-3-1995	1-4-1995 to 11-8-1995
Position	Salesman	-	-	Sales Manager
Services fee	-	-	-	\$57,400
Commission/fees	\$451,397	\$495,578	\$358,155	\$97,762
Allowance & Compensation	-	-	-	\$44,000
	<u>\$451,397</u>	<u>\$495,578</u>	<u>\$358,155</u>	<u>\$199,162</u>

#### (B) Company B

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5. Company B is a private company incorporated in Hong Kong on 26 November 1982.
6. Company B reported in its financial statements for the years of assessment 1992/93 to 1995/96 that its principal activity was acting as a commission agent.
7. The Taxpayer subscribed 80% of the issued capital of \$100,000 of Company B on 12 July 1985.
8. Company B appointed the Taxpayer a director of Company B on 12 July 1985.
9. Company B closed its rented office at Building C on 13 May 1989 and maintained a registered business address with its company secretary at Building D which moved to Building E at in 1991. The addresses at Building D and Building E were also the addresses of its tax representatives.
10. During the five years ended 31 March 1997, Company B reported the following commission income:

	1992/93	1993/94	1994/95	1995/96	1996/97
	\$	\$	\$	\$	\$
Company A	451,397	495,578	358,156	199,162	-
Company F	44,000	-	-	-	-
Company G	12,667	-	-	-	-
Company H	30,000	-	-	-	-
Company I	-	-	-	-	63,462
Company J	-	-	-	5,000	-
Miscellaneous	-	-	-	94,530	-
Total as per audited accounts	<u>538,064</u>	<u>495,578</u>	<u>358,156</u>	<u>298,692</u>	<u>63,462</u>

11. The assessable profit/(loss) before set-off of the loss brought forward as per Company B's tax returns for the years of assessment 1992/93 to 1995/96 were as follows:

	Assessable profits/(loss)
	\$
1992/93	15,150
1993/94	(13,666)

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1994/95	15,197
1995/96	(61,204)

The assessor raised profits tax assessments for the years of assessment 1992/93 to 1995/96 as per the returns.

(C) **Taxpayer**

12. Tax returns for the years of assessment 1992/93 to 1995/96 submitted by the Taxpayer are at the exhibits.
13. The assessor raised on the Taxpayer the following salaries tax assessments in accordance with the income reported in the tax returns submitted:

	1992/93	1993/94	1994/95	1995/96
	\$	\$	\$	\$
Income	95,000	90,000	92,000	90,000
Quarters value	<u>9,500</u>	<u>9,000</u>	<u>-</u>	<u>9,000</u>
	104,500	99,000	92,000	99,000
<u>Less : Allowances</u>	<u>84,500</u>	<u>56,000</u>	<u>72,000</u>	<u>79,000</u>
Net chargeable income	<u>20,000</u>	<u>43,000</u>	<u>20,000</u>	<u>20,000</u>
Tax payable thereon	<u>400</u>	<u>2,470</u>	<u>400</u>	<u>400</u>

14. On 23 March 1999, the Commissioner raised on the Taxpayer additional salaries tax assessments for the years of assessment 1992/93 to 1995/96 under section 61A of the IRO.
15. Messrs Stanley So & Co (' the Tax Representatives' ), on behalf of the Taxpayer, objected against the above additional assessments on the grounds that the assessments were excessive, unrealistic and not in accordance with the tax returns previously filed and that the Taxpayer had no relationship or employment with Company A.
16. The assessor raised enquiries with the Taxpayer and Company A and there was an exchange of correspondence.

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17. On 5 August 1999, the assessor forwarded a draft statement of facts to the Tax Representatives for comment.

18. On 9 August 1999, the Tax Representatives, by a letter, gave his comments to the assessor's draft statement of facts.

### The issues

3. There are two main issues to be decided.

(1) whether section 61 is applicable to the present case

#### Section 61

*‘Certain transactions and dispositions to be disregarded –*

*Where an assessor is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the person concerned shall be assessable accordingly.’*

(2) whether section 61A is applicable to the present case.

#### Section 61A

*‘Transaction designed to avoid liability for tax –*

*(1) This section shall apply where any transaction has been entered into or effected after the commencement of the Inland Revenue (Amendment) Ordinance 1986 (7 of 1986) (other than a transaction in pursuance of a legally enforceable obligation incurred prior to such commencement) and that transaction has, or would have had but for this section, the effect of conferring a tax benefit on a person (in this section referred to as “the relevant person”), and, having regard to –*

*(a) the manner in which the transaction was entered into or carried out;*

*(b) the form and substance of the transaction;*

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- (c) the result in relation to the operation of this Ordinance that, but for this section, would have been achieved by the transaction;*
- (d) any change in the financial position of the relevant person that has resulted, will result, or may reasonably be expected to result, from the transaction;*
- (e) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the relevant person, being a change that has resulted or may reasonably be expected to result from the transaction;*
- (f) whether the transaction has created rights or obligations which would not normally be created between persons dealing with each other at arm's length under a transaction of the kind in question; and*
- (g) the participation in the transaction of a corporation resident or carrying on business outside Hong Kong,*

*it would be concluded that the person, or one of the persons, who entered into or carried out the transaction, did so for the sole or dominant purpose of enabling the relevant person, either alone or in conjunction with other persons, to obtain a tax benefit.*

- (2) Where subsection (1) applies, the powers conferred upon an assessor under Part X shall be exercised by an assistant commissioner, and such assistant commissioner shall, without derogation from the powers which he may exercise under that Part, assess the liability to tax of the relevant person –*
  - (a) as if the transaction or any part thereof had not been entered into or carried out; or*
  - (b) in such other manner as the assistant commissioner considers appropriate to counteract the tax benefit which would otherwise be obtained.*
- (3) In this section – “tax benefit(稅項利益)” means the avoidance or postponement of the liability to pay tax or the reduction in the amount thereof; “transaction(交易)” includes a transaction,*

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*operation or scheme whether or not such transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings.'*

4. At the hearing, the Taxpayer gave evidence on oath and was represented by Mr Stanley So of Stanley So & Co, certified public accounts.
5. The Commissioner was represented by Miss Chan Tak-hong, Ivy, assessor.

### **The law**

6. In the course of the hearing, we were referred to the following authorities:

Market Investigations Ltd v Minister of Social Security [1969] 2 QB 173;  
CIR v Yick Fung Estate Ltd, IRBRD, vol 13, 708;  
D69/98, IRBRD, vol 13, 412;  
D78/88, IRBRD, vol 4, 155;  
CIR v Quitsubdue, IRBRD, vol 14, 541  
D52/86, IRBRD, vol 2, 314;  
D59/96, IRBRD, vol 12, 8;  
Case of Ng Siu Chau, SCMP 10/3/20.

7. Several sections of the IRO were also drawn to our attention, section 61 and section 61A in particular.

### **The Revenue's case**

8. The purpose of the five contracts entered into between Company A and Company B during the relevant years was to secure the services of the Taxpayer through Company B as sales manager of Company A.
9. According to the terms of the contracts, the Taxpayer was the person authorised by Company B to be responsible for observing and performing the contracts. Company B had no employee and the Taxpayer was the only person capable of carrying out the terms of the contracts.
10. Company B was to receive a fixed rate of remuneration in addition to commission based on transactions done by the Taxpayer.
11. Depending on the overall performance of Company A, Company B was to receive a special bonus not being less than the monthly fee payable to Company B.



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12. There was no commercial justification for Company B to enter into the contracts with Company A. The Taxpayer could have rendered the same services to Company A without Company B which was controlled by the Taxpayer. It was commercially unrealistic for the Taxpayer to draw a small salary which was disproportionate to the considerably higher commission received by Company B for services rendered by the Taxpayer himself to Company A. The reality of the position was that the Taxpayer was an employee of Company A. The transaction (consisting of the five contracts and the interposition of Company B between Company A and the Taxpayer) had the effect of reducing the Taxpayer's salaries tax liabilities because the Taxpayer's private and personal expenses, which would not otherwise be deductible, could then be set off against the income from Company A which was siphoned into the accounts of Company B. In the circumstances, section 61 is applicable; the Taxpayer should be assessed on the basis that the transaction should be disregarded and the payment made by Company A to Company B should be treated as the Taxpayer's income for services rendered to Company A by the Taxpayer as an employee of Company A.

13. It was further submitted by the representative for the Revenue that the Commissioner, having considered the seven specific factors mentioned in section 61A, was correct in forming the view that the transaction was aimed at procuring the Taxpayer's personal services to Company A and was entered into for the sole or dominant purpose of enabling the Taxpayer to obtain a tax benefit and that in the circumstances, section 61A was applicable with the result that the transaction was to be disregarded and that income derived from Company A for the services rendered by the Taxpayer should be assessed as the Taxpayer's income.

### **The Taxpayer's case**

14. The Revenue's original assessment was made by assistant commissioner in accordance with section 61A. The Taxpayer duly raised an objection to the assessment.

15. However, when the acting deputy commissioner made his determination, he relied on an additional section, that is, section 61.

16. It was the Taxpayer's contention that before section 61 could come into operation, an assessment had first to be made by an assessor under the section. No such assessment had been made.

17. In his determination, the acting deputy commissioner invoked section 61 and made an assessment. His role should have been one of an arbitrator and he should not have done the same job of an assessor commissioner while making a determination.

18. In any event, the acting deputy commissioner did not identify the transaction, which he wanted to disregard. Even if he had identified the transaction, he did not state whether the transaction was artificial or fictitious nor did he show how he made an assessment as a result of the transaction being disregarded.

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19. The Tax Representative went on to challenge the validity of the assessment made by the assistant commissioner under section 61A, because the name of the assistant commissioner had not been given. The Tax Representative quoted section 58 which states :

*‘ Every notice to be given by the commissioner, an assistant commissioner, an assessor or an inspector under this Ordinance shall bear the name of the commissioner, assistant commissioner, assessor or inspector, as the case may be, and every such notice shall be valid if the name of the commissioner, assistant commissioner, assessor or inspector is duly printed or signed thereon.’*

20. The Tax Representative of the Taxpayer further submitted:

- (a) The transaction was not entered into for the sole and dominant purpose of enabling the Taxpayer to obtain a tax benefit. It was Company A which wanted to appoint a sales agent. It dictated the terms of the contracts. Company B accepted the terms. The Taxpayer could not treat himself as an employee of Company A.
- (b) The transaction had conferred no tax benefit on the Taxpayer. The Taxpayer was not a party to the contracts. He was not employed by Company A. He had no right to sue Company A for the commission. No income accrued to the Taxpayer.
- (c) The Taxpayer should not have any liability for tax on income never received by him. He said in evidence that he never received any actual income from Company A nor did he receive any actual income in connection with the five contracts.
- (d) The director's fees paid by Company B to the Taxpayer which formed part of the transaction should be disregarded and should not be included in the additional assessments relating to the Taxpayer if it was held that the transaction was covered by section 61A.

### **Conclusion**

21. The anti-avoidance provisions in sections 61 and 61A of the IRO are relied on by the Revenue in this case.

22. Sections 61 and 61A have been set out in full in the early part of this decision.

23. Company B was a private company incorporated in Hong Kong in 1982.

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24. At the material time during the relevant years of assessment (1982-1996), there were three directors, namely, the Taxpayer, the Taxpayer's son and one Ms K. Ms K resigned in September 1995.

25. The Taxpayer owned 80% of the shares of Company B.

26. No information was before the Board as to who owned the remaining 20%.

27. The Taxpayer's son was born in 1973. He was still a student in 1992 and wholly maintained by the Taxpayer.

28. The Taxpayer admitted in evidence that Company B was controlled and operated by him.

29. Company B entered into five contracts with Company A according to which Company B was to assign the Taxpayer to render services to Company A.

30. The seven addresses which the Taxpayer gave on his name card were all Company A's addresses, including showrooms, services centres and workshops.

31. For services rendered by the Taxpayer, the following payments were made by Company A to Company B:

- (a) a fixed rate of remuneration
- (b) commission based on transactions completed
- (c) special bonus based on the overall performance of Company A

In addition, Company A agreed to pay for the labour insurance and the medical insurance in respect of the Taxpayer.

32. As per his own return, the Taxpayer received director's salaries from Company B namely \$95,000 for the year of assessment 1992/93, \$90,000 for the year of assessment 1993/94, \$92,000 for the year of assessment 1994/95 and \$90,000 for the year of assessment 1995/96. Although Company B reported director's salaries to be \$141,000 for the years of assessment 1992/93 and 1993/94, we are satisfied that the balance of \$46,000 for the year of assessment 1992/93 and the balance of \$56,000 for the year of assessment 1993/94 were salaries purportedly given to the Taxpayer's son.

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33. In his evidence, the Taxpayer said he did not know the details of the figures. We find that these salaries were conveniently pitched at \$46,000 and \$56,000 for the relevant years so that the Taxpayer's son could claim his full personal allowance. These salaries were nothing more than a book entry.

34. Except for the director's salaries aforesaid, Company B did not pay any wages or salaries, substantiating strongly that no one other than the Taxpayer was available from Company B to render services to Company A. Indeed, as one of the conditions of the contracts, Company B specially assigned the Taxpayer to render services to Company A.

35. The terms of the contracts pointed to an employer employee relationship between Company A and the Taxpayer but for the interposition of Company B.

36. Without the interposition of Company B, the Taxpayer would not be able to claim as deductions his personal and private expenses. When Company B was interposed between Company A and the Taxpayer, the Taxpayer's expenses would be disguised as director's benefits of Company B and claimed by Company B as deductible and as a result the Taxpayer's ultimate salaries tax liabilities were reduced. There was no commercial reality in the transaction (consisting of the five contracts between Company A and Company B and the interposition of Company B between Company A and the Taxpayer) which was aimed at procuring the services of the Taxpayer to Company A and reducing the Taxpayer's tax liabilities. It was commercially unrealistic and therefore artificial within the meaning of section 61 and should be disregarded. Accordingly, the payments made by Company A to Company B should be treated as the Taxpayer's income.

37. The Tax Representative submitted that the acting deputy commissioner should not have invoked section 61 in his determination because no assessment had previously been made by an assessor as required by section 61.

38. We do not find that the assessment contemplated in the section must be exercised by an assessor exclusively. Section 3(4) of the IRO provides that 'all powers conferred upon an assessor by this IRO may be exercised by an assistant commissioner'. In an event, the Commissioner, in the course of his determination, steps into the shoes of an assessor and is entitled to make the assessment afresh. And the Taxpayer still can object to the assessment.

39. We hold that it was not improper for the acting deputy commissioner to invoke section 61 in his determination.

40. As to section 61A, it was submitted by the Tax Representative that the additional assessments should be annulled because there was no evidence showing that the assistant commissioner had paid regard to the seven elements stipulated in that section before he formed the

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view in his additional assessment for the relevant years that the transaction was entered into for the sole or dominant purpose of enabling the Taxpayer to obtain a tax benefit.

41. In his note to the additional assessments, the assistant commissioner stated that ‘ it is my view that the interposition of Company B between Company A and your goodself is a scheme entered into for the sole or dominant purpose of enabling you to obtain a tax benefit. It is a form of disguised employment. As such, the scheme is challengeable by authority of section 61A of the IRO and the income allegedly received by Company B from Company A is now treated as your income from the employment with the latter.’

42. Reading the note as a whole, the reasonable inference must be that the assistant commissioner had had regard to the seven elements in section 61A before forming his view. We find no ground for setting aside the additional assessments as urged by the Tax Representative.

43. If there should be any doubt about the assistant commissioner’s compliance with section 61A, the acting deputy commissioner, in his determination, showed clearly that he had duly considered the seven elements before endorsing, quite correctly, the view of the acting commissioner.

44. We have examined the seven elements in the light of the circumstances of the present case:

(a) *The manner in which the transaction was entered into or carried out*

In the present case, the transaction consisted of the five contracts between Company A and Company B and the interposition of Company B between the Taxpayer and Company A. The contracts between Company A and Company B specially required the Taxpayer to provide services to Company A. As Company B did not have any paid staff, the Taxpayer was the only one available from Company B to provide the services. The transaction was entered into the purpose of procuring the services of the Taxpayer to Company A. There did not appear to be any other purpose.

(b) *The form and substance of the transaction*

Although the contracts were entered into between Company A and Company B, the reality of the transaction was that the Taxpayer was working as an employee of Company A, receiving a fixed fee, a special bonus and commission based on deals completed. Company A also took care of the labour insurance and the medical insurance of the Taxpayer.

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- (c) *The result in relation to the operation of this IRO that, but for this section, would have been achieved by the transaction*

The transaction would, but for this anti-avoidance provision, allow the Taxpayer's personal expenses and the expenses of Company B to be set off against the income from Company A which would not otherwise be deductible under salaries tax.

- (d) *Any change in the financial position of the Taxpayer that has resulted, will result, or may reasonably be expected to result, from the transaction*

By virtue of the transaction, the Taxpayer would have achieved considerable savings in his salaries tax because he would only be assessed on his income from Company B. The amount of salaries tax thus saved would benefit the Taxpayer financially.

- (e) *Any change in the financial position of any person who has or has had, any connection (whether of a business, family or other nature) with the relevant person, being a change that has resulted or may reasonably be expected to result from the transaction*

The financial position of Company A was not affected by the transaction. Notwithstanding that income from Company A was assigned to the accounts of Company B, Company B was not chargeable to tax as it was a company suffering loss.

- (f) *Whether the transaction has created rights or obligations which would not normally be created between persons dealing with each other at arm's length under a transaction of the kind in question*

Company B was controlled by the Taxpayer. The Taxpayer's annual income from Company B was only 25% of what Company A paid for his services for the years of assessment 1992/93 to 1994/95. Company B would get the remaining 75%. There was no need for Company B to enter into the picture and there was nothing which Company B did to earn the 75%. There was simply no commercial sense in the transaction. We do not find it at all probable that such transaction would have been entered into if all parties were at arm's length.

- (g) *This is not applicable to the present case.*

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45. Having had regard to all the seven elements referred to in section 61A, we hold that it would be concluded that the transaction was entered into for the sole or dominant purpose of obtaining a tax benefit.

46. According to the submission made by the Tax Representative, the directors' fees paid by Company B to the Taxpayer were part of the transaction and as such should not have been included in the additional assessments. However the Taxpayer adduced no evidence to show that the directors' fees were attributable to the transaction. In fact there was evidence showing that the Taxpayer performed other duties for Company B which were outside the scope of the transaction. We conclude that the directors' fees paid by Company B to the Taxpayer were correctly included in the assessable income of the Taxpayer.

47. The Tax Representative also challenged the validity of the assistant commissioner's assessment made under section 61A on the ground that the name of the assistant commissioner had not been given. The Tax Representative relied on section 58 of the IRO. With respect, the Tax Representative must have misconstrued section 58 because the name of an assistant commissioner is only required to be disclosed in the case of a notice to be given by him, as distinct from an assessment made by him.

48. It will be noticed that the notice of assessment given by the Commissioner does bear the name of the Commissioner, albeit in printed form.

49. It was submitted by the Tax Representative that the IRO did not have any provisions deeming the income of one person to be the income of another person before the enactment of section 9A with the result that the Taxpayer should not have any tax liability on income received by Company B. We do not agree. Section 61A is a general anti-avoidance section and can be resorted to by the Revenue in an appropriate case before or after the enactment of section 9A. We find that it was open to the Revenue to invoke section 61A in the present case, which empowers an assistant commissioner to assess the tax liability of the Taxpayer without prejudice to the powers which he might exercise by virtue of Part X of the IRO. Similarly, section 61 is a general anti-avoidance section which the Revenue can invoke in an appropriate case, such as the present. We do not detect anything contained in either section 61A or section 61 which fetters the assessor or the assistant commissioner in the exercise of the powers of assessment.

50. Under section 68(4) of the IRO, the burden of proving that the assessments appealed against are incorrect or excessive shall be on the Taxpayer.

51. We have carefully considered all the evidence and matters put before us, including those to which we have not referred in our decision. We have also considered the Tax Representative's submission and the authorities to which he referred us and the submission of the Representative for the Commissioner.

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52. Having regard to all the circumstances of this case, we are not persuaded that the Taxpayer has discharged his onus and we would dismiss the appeal accordingly.