

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D42/00

Penalty tax – incorrect return – omit to report income from the exercise of share options – section 82A of the Inland Revenue Ordinance (‘ IRO ’).

Panel: Ronny Wong Fook Hum SC (chairman), Gerard Chung Wai Hung and Paul Ng Kam Yuen.

Date of hearing: 19 June 2000.

Date of decision: 19 July 2000.

The taxpayer was an employee of Company A. By his return he reported to the Revenue that his income for the year of assessment concerned was \$1,129,325 but omitted to inform the Revenue that on five occasions he exercised share options granted in his favour by Company A resulting in additional chargeable income of \$753,403. The Commissioner imposed additional tax in the sum of \$10,000.

The taxpayer admitted that he received Company A’ s letter reporting to the Revenue the exercise of his share options prior to submission of his return.

Held, dismissing the appeal:

The taxpayer clearly had no reasonable excuse in submitting his incorrect return. His omission was a glaring error. The omission was about 40% of his income. The taxpayer took no step to rectify his error. The amount of additional tax was reasonable. The penalty was in line with the level of penalties for cause of this type.

Appeal dismissed.

INLAND REVENUE BOARD OF REVIEW DECISIONS

Richard Lock for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. The Taxpayer was an employee of Company A. By his return dated 31 May 1998, the Taxpayer reported to the Revenue that his income for the year of assessment 1997/98 was \$1,129,325. He omitted to inform the Revenue that on five occasions between 2 June 1997 and 18 July 1997, he exercised share options granted in his favour by Company A resulting in additional chargeable income of \$753,403.

2. By notice dated 5 February 1999, the Commissioner of Inland Revenue informed the Taxpayer of her intention to exercise her powers under section 82A of the IRO. After considering representations from the Taxpayer dated 21 May 1999, the Commissioner imposed additional tax in the sum of \$10,000. The Taxpayer appealed against that assessment.

3. The Taxpayer submitted that :

- (a) he had no intention to evade any tax.
- (b) he was assessed on his correct income by notice dated 25 September 1998. He duly paid the tax so assessed.
- (c) the amount of additional tax is excessive.

4. In answer to question from this Board, the Taxpayer admitted that he received Company A's letter dated 18 May 1998 reporting to the Revenue the exercise of his share options prior to submission of his return of 31 May 1998.

5. The Taxpayer clearly has no reasonable excuse in submitting his incorrect return. We are of the further view that the amount of additional tax is reasonable bearing in mind the following factors. First, the Taxpayer had notice of Company A's letter of 18 May 1998 before he submitted his return. His omission is therefore a glaring error. Secondly, the amount omitted is about 40% of his total income. Thirdly, he took no step to rectify his error. Finally, the penalty is in line with the level of penalties for cases of this type.

6. For these reasons, we dismiss the Taxpayer's appeal