

Case No. D44/11

Salaries tax – appeal out of time – sections 66(1) and 66(1A) of the Inland Revenue Ordinance.

Panel: Albert T da Rosa, Jr (chairman), Hui Cheuk Lun Lawrence and Susanna W Y Lee.

Date of hearing: 15 September 2011.

Date of decision: 6 January 2012.

The Appellant claims that all his income for the year of assessment 2006/07 should be exempted from salaries tax as it had been subjected to tax in Macau.

The one-month statutory appeal period expired on 18 December 2010. However the Board received the Appellant's notice of appeal on 14 March 2011.

There is no question of any illness affecting the Appellant's ability to lodge the appeal.

The Appellant explains that he works full-time in China and just comes back to Hong Kong during week-ends. The Appellant also contends that the Revenue was slow in handling his objection.

Held:

1. Absence from Hong Kong does not confer an automatic right for extension of time for filing the appeal. The Appellant fails to satisfy the Board that he was so prevented from giving the requisite notice.
2. The length of time spent by the Revenue in processing the Appellant's objection does not constitute any reasonable cause.
3. The Appellant was not prevented from lodging an appeal by illness or absence from Hong Kong or other reasonable cause.
4. The Board does not think it fit to extend the time for the appeal and it is not necessary for the Board to deal with the substantive issues.

Appeal dismissed.

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Cases referred to:

- D19/01, IRBRD, vol 16, 183
- D26/04, IRBRD, vol 19, 214
- D11/89, IRBRD, vol 4, 230
- D14/06, (2006-07) IRBRD, vol 21, 371
- D55/09, (2009-10) IRBRD, vol 24, 993

Taxpayer in person.

Ong Wai Man and Chan Siu Ying for the Commissioner of Inland Revenue.

Decision:

Introduction

1. This is the appeal by, Mr A ('the Appellant'), from the determination ('the Determination') of the Deputy Commissioner of Inland Revenue dated 15 November 2010, against the assessment of salaries tax for the year of assessment 2006/07 as confirmed by the Determination.
2. The grounds of appeal are set out in the Appellant's two letters dated 9 March 2011 and 10 March 2011 both of which were received by the Board on 14 March 2011.
3. The Appellant claims that all his income should be exempted from salaries tax as it had been subjected to tax in Macau.
4. At the hearing, the Appellant chose not to give evidence on oath and relied on submissions on the documents before us.
5. He agreed to the facts as set out in paragraphs 1(1) to (18) of the Determination except that he contends the '233.5 days' shown in the formula in paragraph 1(12) of the Determination showing the days he was outside Hong Kong should be '240.5 days' to tally with his total number of days in Macau shown in the sixth Column of paragraph 1(17) of the Determination. The Respondent explained that the '240.5 days' is the proposal that the Respondent initially gave to the Appellant which was subsequently revised, and the assessment in the Determination is set out in paragraph (18) and the proposal in paragraph (12) is no longer valid.

Late Appeal

6. In his notice of appeal dated 9 March 2011 and letter dated 10 March 2011, the Appellant gave the following reasons for filing appeal late:

6.1. 'I understand that my appeal to you has exceeded the one month period ... I need to thoroughly review my case & seek advices before I can make a reply. The IRD has taken over a year to come to a determination & it is unfair to set a one-month time limit on me.'

6.2. 'I do not agree that there should be a time limit for me to reply [the Determination] as I have to reviewed the case thoroughly & seek advices. I tried as fast as I can and I have replied to IRD on 27 Feb 2011. Besides, you may notice that IRD has taken an extremely long period of time before answering my objection ...'

7. Section 66(1)(a) of the Inland Revenue Ordinance (Chapter 112) ('the IRO') provides that the time limit for lodging an appeal to the Board against a determination is within one month after the transmission of the determination to a taxpayer. Section 66(1) provides that no notice of appeal shall be entertained unless given in writing to the Clerk to the Board and is accompanied by a copy of the determination together with a copy of the reasons therefor and of the statement of facts and a statement of grounds of appeal.

8. The Determination was delivered to the Appellant's address by registered post on 18 November 2010 (Thursday). The one-month appeal period under section 66(1)(a) of the IRO commenced to run on 19 November 2010 (that is after the transmission of the Determination to the Appellant on 18 November 2010) and expired on 18 December 2010 (Saturday).

9. The Board received the Appellant's notice of appeal on 14 March 2011, that is 2 months and 24 days after the statutory time limit. Clearly, the Appellant's notice of appeal was out of time under section 66(1)(a) of the IRO and the Appellant so admits. Therefore there is no question that the Appellant's appeal was out of time.

Exercise of discretion?

10. Section 66(1A) of the IRO provides that the Board may extend for such period as it thinks fit 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) ...'

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11. There is no question of any illness affecting the Appellant's ability to lodge the Appeal.

12. The records from the Immigration Department showed that during the period from 15 November 2010 to 18 December 2010, the Appellant departed from and arrived at Hong Kong on dates and times as follows:

	<u>Date</u>	<u>Day of week</u>	<u>Time of departure</u>	<u>Date</u>	<u>Day of week</u>	<u>Time of arrival</u>
	-	-	-	19-11-2010	Friday	17:18
12.1.	21-11-2010	Sunday	20:44	03-12-2010	Friday	18:23
12.2.	06-12-2010	Monday	8:30	10-12-2010	Friday	17:45
12.3.	12-12-2010	Sunday	22:09	17-12-2010	Friday	22:29
12.4.	21-12-2010				

13. During the statutory appeal period of one month from 19 November 2010 to 18 December 2010, the Appellant had been absent from Hong Kong and was in Hong Kong only for four full days during weekends.

14. In his oral submission, the Appellant said 'Because I am full-time working in China since 2007, I just come back to Hong Kong, as the record shows, during week-ends. In case I have to ask for some professional advice, I need more time to summarise whether I am entitled to an appeal and whether I have a case. That's why I take a much longer time than the statutory period.'

15. The Appellant's absence from Hong Kong, however, does not confer an automatic right for extension of time for filing the appeal (D19/01, IRBRD, vol 16, 183 and D26/04, IRBRD, vol 19, 214 where the Board refused to allow extension despite the taxpayer's absence from Hong Kong and his travels).

16. In D19/01, the Board held that:

'Absence from Hong Kong does not confer an automatic right for extension of time. It is for the Taxpayer to satisfy us that he was so prevented from giving the requisite notice ... No explanation was furnished to us as to why the determination escaped his attention. We are therefore not prepared to extend time in favour of the Taxpayer.'

17. In the present case, there is no evidence showing that the Appellant was **prevented** from lodging an appeal up to 14 March 2011 by reason of his absence from Hong Kong.

18. When the Determination was sent to the Appellant, the cover letter, apart from enclosing the full text of section 66 of the IRO, broadly sets out the taxpayer's rights, the procedures and time limit in lodging an appeal to the board.

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19. On 27 January and 28 February 2011 the Appellant was able to write to the Respondent to object to the Determination. However, the Board only received the notice of appeal of the Appellant on 14 March 2011.

20. It remains for the Board to consider whether the Appellant was prevented by other reasonable cause from filing a timely appeal:

20.1. The Appellant's right, procedures and time limit in appealing to the Board were set out in details in the Letter. The Appellant noted there was time limit for lodging an appeal. However, he considered that it was unfair to impose a time limit on him.

20.2. We agree with the Respondent's submission that the time limits imposed must be observed and the Appellant's decision to ignore statutory requirements cannot possibly be a 'reasonable cause' for lodging the appeal out of time.

20.3. The Appellant contended that the Revenue was slow in handling his objection. On the authority of D26/04, the length of time spent by the Revenue in processing the Appellant's objection does not constitute reasonable cause within the meaning of section 66(1A). The Appellant's remedy is to lodge and pursue his appeal in accordance with section 66(1) of the IRO following receipt of the Determination.

20.4. Various Boards have held that time taken in gathering information, sorting out certain issues, doing research or seeking advices is not a reason for accepting late appeal (D11/89, IRBRD, vol 4, 230, D14/06, (2006-07) IRBRD, vol 21, 371 and D55/09, (2009-10) IRBRD, vol 24, 993). In any event, the Appellant has not given evidence as to the nature of any such difficulties in preparing his grounds of appeal which require the extra time. Likewise, the Appellant's need to review his case and seek advice does not amount to a 'reasonable cause' which has prevented him from lodging a timely appeal.

21. In the circumstances we find that the Appellant has failed to discharge the burden to show that he was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal within one-month statutory time limit and we therefore refuse to extend the time for appeal for the Appellant.

Conclusions

22. Having refused to extend the time for the Appellant's appeal, it is not necessary for us to deal with the substantive issues.

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23. For the above reasons, we do not find any ground to extend the time for appeal beyond the statutory one month period and all the more not up to 14 March 2011. The Appellant's application to extend the time of appeal is hereby dismissed. This ends the Appellant's intended appeal.