

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D46/01

**Penalty tax** – submission of incorrect tax returns by corporate taxpayer without reasonable excuse – ignorance or unfamiliarity with accounting matters or the fact that it entrusted professionals to discharge its legal duties on its behalf is no defence – no deliberate intention to evade profits tax or understate the same is not a defence – penalty imposed in the rate of 103% of the tax undercharged – sections 68(4), 82 and 82A of the Inland Revenue Ordinance (‘IRO’).

Panel: Patrick Fung Pak Tung SC (chairman), Susan Beatrice Johnson and Robert Kwok Chin Kung.

Dates of hearing: 2 and 3 April 2001.

Date of decision: 20 June 2001.

The taxpayer, which was a director in charge of a company (‘the Company’), appealed against the additional tax imposed against him personally on the ground that the Company entrusted on its former auditors and tax representatives to file the tax returns, which the Company honestly believed to be correct, albeit it turned out to be incorrect. It is noteworthy that the Company agreed to pay a penalty of \$50,000 for failing to comply with the requirement of section 51C by keeping sufficient records of the income and expenditure for the relevant years of assessment.

#### **Held:**

1. Having heard the witnesses and considered all the circumstances of the case, the Board was not convinced that the keeping of books and accounts of the Company was left to a staff of it and that the taxpayer took no part or substantial part in accounting matters in the Company as alleged. This was so especially in light of the fact that the taxpayer obtained a degree in accountancy from an overseas reputable university.
2. There was no excuse for directors to shirk their responsibility in keeping proper books and accounts and in submitting proper tax returns promptly to the Revenue.
3. It is trite law that a taxpayer may not shelter behind its own ignorance or unfamiliarity with accounting matters or the fact that it entrusted professionals to discharge its legal duties on its behalf: see D34/88, IRBRD, vol 3, 336; D53/88

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IRBRD, vol 4, 10; D52/93, IRBRD vol. 8, 372; D31/99, IRBRD, vol 14, 341; D118/99, IRBRD, vol 14, 673 and D36/00, IRBRD, vol 15, 356.

4. The fact that there was no intention on the part of the Company or its director (the taxpayer) to evade profits tax or understate the liability for the same deliberately also does not constitute a defence. If there had been such intention, the consequence would have been a criminal prosecution under section 82 of the IRO.
5. By virtue of section 82A of the IRO, the Commissioner has power to make an assessment against a director or the person in charge of a corporate taxpayer in circumstances similar to those in the present case.
6. As regards the quantum of the additional tax assessed, it is well established that the standard penalty for defaults of the kind in this case is 100% of the profits tax understated: see D179/98, IRBRD, vol 14, 78; D7/95, IRBRD, vol 10, 79.
7. Under section 68(4) of the IRO, in an appeal, the onus is on the appellant to prove that the assessment appealed against is excessive or incorrect.
8. The Board was of the view that the penalties levied were in line with the level of additional tax as approved by this Board.

**Appeal dismissed and a cost of \$5,000 charged.**

Cases referred to:

D34/88, IRBRD, vol 3, 336  
D53/88, IRBRD, vol 4, 10  
D52/93, IRBRD, vol 8, 372  
D31/99, IRBRD, vol 14, 341  
D118/99, IRBRD, vol 14, 673  
D36/00, IRBRD, vol 15, 356  
D179/98, IRBRD, vol 14, 78  
D7/95, IRBRD, vol 10, 79

Chin Heh Ching for the Commissioner of Inland Revenue.

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Richard Leung Wai Keung Counsel instructed by Messrs Lau Leigh Choi & Co for the taxpayer.

### **Decision:**

1. This is an appeal by Mr A (‘ the Taxpayer’ ), the director of Company B, against two notices of assessment and demand for additional tax issued by the Commissioner against him on 26 October 2000 pursuant to section 82A of the IRO. The first notice is for the year of assessment 1997/98 and demands additional tax assessed at \$474,200 (‘ the First Assessment’ ). The second notice is for the year of assessment 1998/99 and demands additional tax assessed at \$441,200 (‘ the Second Assessment’ ).

2. The Taxpayer has brought this appeal pursuant to section 82B of the IRO.

3. Before the commencement of the hearing of the appeal, the parties presented to the Board an agreed statement of facts which is annexed hereto as Appendix I. It sets out the relevant history of this matter succinctly. In consequence, it is not necessary for us to recite the facts at length in the body of this decision. We need only refer to such facts as are directly relevant to the points we make in this decision.

4. It will be seen from paragraph 20 of the agreed statement of facts that on 24 July 2000 the Taxpayer on behalf of Company B and the Commissioner reached a compromise agreement whereby it was agreed that Company B would pay tax on assessable profits and additional assessable profits as set out therein. As a result of such compromise agreement, the Commissioner sent to Company B the notices of revised assessment on 11 August 2000 for the two years of assessment in question (see paragraph 23 of the agreed statement of facts).

5. By reason of section 70 of the IRO, an assessment made on the basis of such a compromise agreement is final and conclusive. Neither the Taxpayer nor Company B is seeking to challenge or re-open the notices of revised assessment dated 11 August 2000.

6. The Taxpayer only seeks to challenge the First Assessment and the Second Assessment as particularised in paragraph 28 of the agreed statement of facts on one single ground which is concisely set out in the notice of appeal contained in the letter dated 24 November 2000 by Messrs Lau Leigh Choi & Co to the Clerk to the Board of Review as follows:

‘ Statement of the ground of appeal

The tax returns filed by Company B for the years of assessment 1997/98 and 1998/99 (‘ the said returns’ ) were submitted to the Inland Revenue Department pursuant to professional advice by Company B’s former auditors and tax

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representatives, a firm of certified public accountants (‘ the CPA’ ) which Company B honestly believed to be correct. In the premises, there is a reasonable excuse in respect of the statements in the said returns which later the assessor of Inland Revenue Department determined that there had been understatement of profits.’

7. Accordingly, the matters for consideration by the Board in this appeal are confined within a relatively narrow compass.

### **The case of the Taxpayer**

8. The case of the Taxpayer can be summarised as follows:

- (i) Company B was incorporated as a private company by his father in 1992. It succeeded to the business of construction and engineering work of another private company owned by his parents, Company C, in 1997.
- (ii) He graduated from University D in Country G in 1994 with a degree in accountancy.
- (iii) After having worked for one year in the securities business, he joined his father’ s business in Company C.
- (iv) In about April 1997, he joined Company B as a manager and then later as ‘ the director responsible for all the affairs of the Company’ (see paragraph 2 of the Taxpayer’ s witness statement).
- (v) Company B has not had a large staff. Although the Taxpayer has a degree in accountancy, he really does not like accounts. There is no proper accountant in Company B and whatever keeping of books and accounts there needs to be done has been carried out by a gentleman by the name of Mr E.
- (vi) The auditing of the accounts of Company B had been done by the CPA, who had done the audit for the Taxpayer’ s father’ s company, presumably Company C, for many years.
- (vii) After Company B had received a profits tax return form for the year of assessment 1997/98 on about 5 March 1999, no return was submitted because the Taxpayer was too pre-occupied with construction projects. The CPA was subsequently instructed to handle the matter of dealing with the Revenue about the tax returns. They in turn recommended a firm by the name of Company F to do the accounts for Company B.

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- (viii) The relationship between Company B on the one hand and Company F and the CPA became very unpleasant.
- (ix) The default and deficiencies in the submission of the tax returns and books and accounts of Company B in support were caused wholly or substantially by Company F and/or the CPA.
- (x) Company B had no intention of evading or understating profits tax payable to the Revenue.

9. Both the Taxpayer and Mr E gave sworn evidence and they both adopted their own respective witness statements.

### **Our conclusion**

10. Having heard the witnesses and considered all the circumstances of the case, we are not convinced that the keeping of books and accounts of Company B was left to Mr E alone and that the Taxpayer took no part or substantial part in accounting matters in Company B as alleged. This is so especially in light of the fact that the Taxpayer obtained a degree in accountancy from a reputable university in Country G.

11. Even if the true situation was as alleged, there is no excuse for the directors of Company B, especially 'the director responsible for all the affairs of the Company', to shirk their responsibility in keeping proper books and accounts and in submitting proper tax returns promptly to the Revenue. In this regard, it is appropriate to note that Company B did agree to pay a penalty of \$50,000 for failing to comply with the requirement of section 51C by keeping sufficient records of the income and expenditure for the two years of assessment in question (see paragraph 21 of the agreed statement of facts).

12. Further, even if the default or deficiencies in Company B's submission to the Revenue of tax returns and accounting records in support were caused by Company F and/or the CPA as alleged, the same would still not afford a defence to Company B or the Taxpayer. It is trite law that a taxpayer may not shelter behind its own ignorance or unfamiliarity with accounting matters or the fact that it entrusted professionals to discharge its legal duties on its behalf. See, for example, the decisions in Board of Review D34/88, IRBRD, vol 3, 336; D53/88 IRBRD, vol 4, 10; D52/93, IRBRD, vol 8, 372; D31/99, IRBRD, vol 14, 341; D118/99, IRBRD, vol 14, 673 and D36/00, IRBRD, vol 15, 356.

13. The fact that there was no intention on the part of Company B or the Taxpayer to evade profits tax or understate the liability for the same deliberately also does not constitute a defence. If there had been such intention, the consequence would have been a criminal prosecution under section 82 of the IRO.

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14. On the question of the personal liability of the Taxpayer for the additional tax assessed, we have been informed by Mr Chin for the Commissioner that it has been the practice of the Commissioner to make an assessment on the person in charge of a corporate taxpayer in circumstances similar to those in the present case. On the Taxpayer's own admission, he has been in charge of Company B and he has been the person dealing with the Revenue on behalf of Company B in all the negotiations for a compromise.

15. We are satisfied that the Commissioner has power to make an assessment against a director of a corporate taxpayer under the wording of section 82A (1) of the IRO which reads as follows:

***' 82A. Additional tax in certain cases***

- (1) *Any person who without reasonable excuse –*
- (a) *makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, **either on his behalf or on behalf of another person or a partnership; or***
  - (b) *makes an incorrect statement in connection with a claim for any deduction or allowance under this Ordinance; or*
  - (c) *gives any incorrect information in relation to any matter or thing affecting his own liability to tax **or the liability of any other person or of a partnership; or***
  - (d) *fails to comply with the requirements of a notice given to him under section 51(1) or (2A); or*
  - (e) *fails to comply with section 51(2), shall, if no prosecution under section 80(2) or 82 (1) has been instituted in respect of the same facts, be liable to be assessed under this section to additional tax of an amount not exceeding treble the amount of tax which –*
    - (i) *has been undercharged in consequence of such incorrect return, statement or information, or would have been so undercharged if the return, statement or information had been accepted as correct; or*

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- (ii) *has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2) or a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected.*  
(emphasis supplied).

16. Our abovementioned view is confirmed by Mr Leung's concession in paragraph 3 of his closing submissions for the Taxpayer.

17. As regards the quantum of the additional tax assessed, it is well established that the standard penalty for defaults of the kind in this case is 100% of the profits tax understated. See, for example, the decisions in Board of Review D179/98, IRBRD, vol 14, 78 and D7/95, IRBRD, vol 10, 79. In the present case, the average penalty is 103% of the tax undercharged.

18. Under section 68(4) of the IRO, in an appeal, the onus is on the Taxpayer to prove that the assessment appealed against is excessive or incorrect. We have no reason to think that it has been proved that the First Assessment or the Second Assessment is either excessive or incorrect.

19. Accordingly, we dismiss the appeal of the Taxpayer.

20. We also order that the Taxpayer should pay the costs of the Board in the sum of \$5,000.

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**Appendix I**

Appeal to the Board of Review  
Assessment of additional tax under section 82A  
Inland Revenue Ordinance (Chapter 112)  
Mr A the director of Company B  
Years of assessment 1997/98 and 1998/99

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- I. Statement of facts
- II. List of annexes to statement of facts
  - (a) Annex A: The agreement dated 24 July 2000
  - (b) Annex B: Note of interview dated 24 July 2000 with the Taxpayer's insertions



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### I. Statement of facts

1. Mr A ( ' the Taxpayer' ), the director of Company B, is appealing against the imposition of additional tax assessed on him under section 82A of the IRO for failure to comply with the requirements under section 51(2) of the IRO for the years of assessment 1997/98 and 1998/99.
2. Company B was incorporated as a private company in Hong Kong on 18 February 1992. It succeeded to the business of construction and engineering work of another private company owned by his parents and commenced to provide similar piling and pile cap construction works on 21 April 1997. During the period in question, Company B was managed by the Taxpayer as the manager initially and then as the controlling director.
3. On 4 February 1999, the Inland Revenue Department ( ' the Revenue' ) commenced an audit on the tax affairs of Company B and issued a profits tax return for the year of assessment 1997/98 to Company B on 5 March 1999 requiring Company B to complete and return it within one month as specified in the tax return. No return was submitted within the stipulated time.
4. By letter of 29 April 1999, the Revenue informed Company B that it had failed to submit the profits tax return for the year of assessment 1997/98 within the time allowed and required it to pay a penalty of \$1,200 by compounding the offence under section 80(2)(d) of the IRO and to submit the completed return within fourteen days from the date of the letter.
5. On 4 May 1999, the CPA, the first appointed auditors of Company B, informed that Company B only commenced business in April 1997 and would draw up its first accounts for period from the date of incorporation to 31 March 1999 and requested the due date for submission of profits tax return for the year of assessment 1997/98 be extended to 15 November 1999.
6. By letter dated 11 May 1999, the Revenue refused to grant further extension of time for submission of the said return. The profits tax return for the year of assessment 1997/98 without enclosure of any auditor' s report and audited accounts was received by the Revenue on 20 May 1999. No amount of any assessable profits/loss had been stated in the said return. It was therefore statutorily invalid and unacceptable to the Revenue. This return was signed on 19 May 1999 by the Taxpayer in his capacity as a director of Company B.
7. By letter dated 11 June 1999, the Revenue refused to accept the tax return as a valid return with reasons thereof and also informed Company B that no further extension of time would be considered. A duplicate profits tax return for the captioned year of assessment 1997/98 was issued to Company B on the same day.
8. By letter dated 24 June 1999, the CPA requested the Revenue to reconsider the extension of time and informed that Company B was doing its utmost to finalize its accounts for audit and profits tax filing purposes. The request was also refused by the Revenue on 30 June 1999.

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9. On 5 August 1999, the Revenue informed the Taxpayer in writing that an audit on the tax affairs of Company B was being conducted and requested the Taxpayer to contact the case assessor by phone to arrange a mutually convenient time and place for an interview.

10. On 17 August 1999, the profits tax return for the year of assessment 1998/99 was issued to Company B requiring it be completed and returned within one month.

11. On 30 August 1999, the Taxpayer attended an interview with the assessor in the presence of two other assessing officers at the office of the Inland Revenue Department. During the interview, the Taxpayer was informed of the penalty provisions as provided for under the IRO, including those involving late filing of tax return and failing to inform chargeability to tax. He was advised that the law provides for, in case of additional tax penalty, a maximum penalty of three times of the tax found to have or would have been undercharged. The Taxpayer noted and disclosed, inter alia, that he was the only person, among other directors (his brother and sister), in charge of Company B's affairs and that Company B was the successor to the business previously carried on by his father. The Taxpayer further informed that he had passed all the business records to an accounting firm for the preparation of books and financial accounts.

12. On 20 October 1999, the Revenue raised on Company B estimated profits tax assessments under section 59(3) of the IRO for the years of assessment 1997/98 and 1998/99 with estimated assessable profits of \$1,500,000 and \$2,000,000 and tax payable thereon of \$222,750 and \$320,000 respectively.

13. By letters dated 18 November 1999 and 19 November 1999, the CPA on behalf of Company B lodged objections to the estimated assessments for the two years of assessment 1997/98 and 1998/99.

14. By two letters dated 24 November 1999, also copied to the CPA, the Revenue informed the Taxpayer that the objections lodged against the estimated assessments for the two years concerned could not be accepted as valid because no valid tax returns were submitted.

15. The CPA completed the audit of Company B's account for the period from 18 February 1992 to 31 March 1999 on 17 December 1999. This was approved on the same day by the Taxpayer in his capacity as a director of Company B. Company B's profits tax returns for the years of assessment 1997/98 and 1998/99 were submitted to the Revenue on the same day. The returns for the two years concerned showed assessable profits of \$1,083,976 and \$1,137,743 respectively.

16. After repeated requests, books and accounting records of Company B were finally submitted by the CPA to the Revenue for tax audit on 31 January 2000, 1 and 2 February 2000 respectively.

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17. On 13 April 2000, the assessor interviewed the Taxpayer to discuss the audit findings and asked the Taxpayer to furnish further information with regard to the details of Company B's income and expenses on or before 1 May 2000.

18. On 4 May 2000, the Revenue raised on Company B estimated additional profits tax assessments under section 59(2)(b) of the IRO for the years of assessment 1997/98 and 1998/99 with estimated additional assessable profits of \$1,300,000 and \$1,000,000 and tax payable thereon of \$193,050 and \$160,000 respectively.

19. Company B lodged objections to the estimated additional assessments on 1 June 2000.

20. On 24 July 2000, the Taxpayer came for another interview with the assessing officers to further discuss the tax audit conducted on Company B. Subject to the approval of the Commissioner of Inland Revenue, a basis of settlement by compromise was finally agreed between the Taxpayer and the assessing officers. By the agreement dated 24 July 2000, the Taxpayer on behalf of Company B agreed that the total assessable profits and the revised additional assessable profits of Company B with respective taxes thereon in settlement of the objections for the relevant two years of assessment should be as follows:

### Agreed assessable profits and taxes thereon

Year of assessment	Profits already reported/assessed before tax audit \$	Agreed assessable profits after tax audit \$	Discrepancy \$	Total tax undercharged \$
1997/98	Nil	2,621,929	2,621,929	389,356
1998/99	Nil	2,764,853	2,764,853	442,376
Total	Nil	5,386,782	5,386,782	831,732

### Revised additional assessable profits and taxes thereon

Year of assessment	Revised additional assessable profits \$	Revised additional tax undercharged \$
1997/98	1,121,929	166,606
1998/99	764,853	122,376
Total	1,886,782	288,982

Before the Taxpayer indicated his acceptance of the basis of settlement by signing the agreement of assessable profits after the tax audit, he was reminded of the penalty provisions in the IRO. The Taxpayer expressly acknowledged that the acceptance of these assessable profits does not

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conclude the whole matter and if additional tax is imposed, the maximum amount could be treble the amount of tax undercharged (Annex A). A copy of the duly signed agreement cum acknowledgment was also given to the Taxpayer for record purposes.

21. On the same date, the Taxpayer on behalf of Company B proposed to the Revenue a total penalty of \$50,000 by compounding in respect of the offences committed under section 80(1A) of the IRO for failing to comply with the requirements of section 51C to keep sufficient records of the income and expenditure of the Company for these two years of assessment.

22. On 28 July 2000, the note of interview, in duplicate, taken for the interview on 24 July 2000 was sent to the Taxpayer with one copy for the Taxpayer's confirmation and/or comment to be returned to the Revenue and the other copy for Taxpayer's own record purposes.

23. As a result of the agreement reached on 24 July 2000, the Revenue sent to Company B the notices of revised assessment on 11 August 2000 for the two years of assessment in question.

24. On 24 August 2000, the Taxpayer returned, and confirmed as being correct without any amendment, one copy of the note of interview referred to in paragraph 22 above but requested the insertion of two paragraphs of sentences as to his excuses of tax liabilities (Annex B).

25. On 5 September 2000, the Commissioner of Inland Revenue gave notice ('the Notice') to the Taxpayer under section 82A(4) of the IRO that he was of the opinion that the Taxpayer had, without reasonable excuse, failed to inform the Commissioner in writing that he was chargeable to tax for the years of assessment 1997/98 and 1998/99 within the period prescribed under section 51(2) of the IRO and he, among other things, proposed to assess the Taxpayer additional tax under section 82A in respect of the failure to comply with the requirements under section 51(2) of the IRO. The Taxpayer was invited to submit written representations with regard to the proposed assessment of additional tax within one month from the date of the notice (copy already with the Board).

26. The Taxpayer did not make any written or even verbal representations with regard to the proposed assessments of additional tax within the due date.

27. On 20 October 2000, the Taxpayer settled the penalty of \$50,000 imposed for breach of section 51C of the IRO.

28. Having considered and taken into account all the relevant information and mitigating factors in the case, the Commissioner, issued on 26 October 2000, the following notices of assessment and demand for additional tax under section 82A of the IRO to the Taxpayer as director of Company B (copies already with the Board):

Year of	Assessable profits	Amount of tax	Additional tax	Additional tax as a
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<b>assessment</b>	<b>understated</b>	<b>undercharged</b>	<b>imposed</b>	<b>percentage of tax undercharged</b>
	\$	\$	\$	%
1997/98	2,621,929	389,356	414,200	106
1998/99	2,764,853	442,376	441,200	100
Total	5,386,782	831,732	855,400	103

29. By a letter dated 24 November 2000, Messrs Lau Leigh Choi & Co, the newly appointed tax representatives of the Taxpayer, gave notice of appeal against the imposition of additional tax for the years of assessment 1997/98 and 1998/99 to the Board of Review (copy already with the Board).

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### II. List of annexes

<b>Annex</b>	<b>Documents</b>
A	The agreement dated 24 July 2000
B	Note of interview dated 24 July 2000 with the Taxpayer' s insertions on 24 August 2000

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Annex A

利得稅 Profits tax

關於 : Company B

Re :

1. 本人現同意上述業務之應評稅利潤計算如下：

1. I hereby agree that the assessable profits of the above business be computed as follows:

課稅年度 Year of assessment	應評稅利潤 Assessable profits	已申報/評定之 利潤/(虧損) Profits/(Loss) already reported/assessed	差額 Discrepancy
	\$	\$	\$
1997/98	2,621,929	NIL	2,621,929
1998/99	2,764,853	NIL	2,764,853

2. 本人亦同時接納下述之修訂/修訂補加應評稅利潤作為了結先前對有關評稅所提出之反對：

2. I also agree to accept the following revised assessable/additional assessable profits in settlement of the objections against the previous assessments:

課稅年度 Year of assessment	修訂應評稅利潤 Revised assessable profits	修訂補加應評稅利潤 Revised additional assessable profits
	\$	\$
1997/98	N/A	1,121,929
1998/99	N/A	764,853

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3. 本人明白接納上述應評稅利潤並不表示事件已告終結，整個個案還須上呈稅務局局長或副局長根據稅務條例第十四部考慮罰則，其中包括起訴、代替起訴之罰款或補加稅。假若被評定補加稅，最高款額為少徵收的稅款的三倍。

3. I also understand that acceptance of the above-mentioned assessable profits does not conclude the whole matter and that the case will be put up to the Commissioner or Deputy Commissioner for consideration of penal actions under Part XIV of the Inland Revenue Ordinance, which include prosecution, compounding or imposition of additional tax. If additional tax is imposed, the maximum amount could be treble the amount of the tax undercharged.

簽署: (signed)  
Signature

姓名: Mr A  
Name

職位: Director  
Designation

日期: 24 July 2000  
Date

見證人簽署:  
Witness signature

姓名:  
Name

日期:  
Date



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Annex B

Note of interview

Date:	<u>24 July 2000</u>	File number	
Caller(s):	<u>Mr A (Director)</u>	and name:	<u>4A6-C008586-MKL(10)</u>
			<u>Company B</u>
		Officer(s):	<u>Mr Chin Heh-ching</u>
			<u>(Senior assessor)</u>
			<u>Mr Mak Kong-lam (Assessor)</u>
			<u>Ms Suen Shuk-fong</u>
Time:	<u>10:30 a.m. to 12:45 p.m.</u>		<u>(Assistant assessor)</u>

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By prior appointment, Mr A called at 10:30 a.m. to discuss about the tax audit case.

2. Officer Mak asked Mr A whether further information was obtained during the previous weekend. Mr A replied that he had tried his best to find out more evidences to substantiate that the bank transactions in his personal accounts were of the private nature. Unfortunately, the transactions occurred years ago and most of the relevant statements and documents were disposed of. Mr A explained that he frequently involved in the speculation of quoted shares in both of the Hong Kong and the US stock markets and so he got many bought and sold notes and statements from the securities companies such as Company H. As Mr A considered that the speculation of quoted shares would not give rise to any tax implication, he did not keep all the bulky documents and therefore threw them away by time intervals. Because of the above reason, Mr A could only produce documents of his personal transactions for the recent months.
3. Mr A emphasized that apart from the sales of quoted shares, the deposits in his personal bank accounts also comprised loans from his wife, his friends and banks. Because of his tight financial position, Mr A usually made cash advances from his credit card accounts. Some of his cash deposits came from those cash advances. Mr A added that he had already showed officers his recent credit card statements and the loan agreements during his previous interview to make evident to his financial situation. In addition, Mr A explained that in order to obtain more evidences to substantiate his claims, he had even pleaded his wife to seek from the bank for a list of the bank transactions under her personal bank accounts. The transaction list so retrieved showed that Mr A's wife gave him a sum of \$120,000 during the period concerned.
4. Mr A insisted that all the bank deposits in his private bank accounts were of the private nature and unrelated to Company B. He also considered that officers should not challenge his private bank transactions before 7 September 1998 as he had not yet become the

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director and shareholder of Company B until that date. Officer Mak asked who the former director was. Mr A replied that the former director was his father.

5. Officer Chin asked Mr A if he could produce the statements from Company H. Mr A advised that he still retained some before October 1997 and agreed to supply officers with copies of the documents later.
6. Officer Mak observed that Mr A got an overdraft in his personal Bank I account. Mr A responded that he had drawn an overdraft line for financial support because he had suffered a loss from the dealing of quoted shares. He also advised that a sum from his parents rolled over from years ago had been used as a pledge for this overdraft facilities.
7. Officer Chin asked Mr A about the property held by Company J, a company owned by Mr A and his brother, Mr K. Mr A answered that the downpayment was borne by his father and the balance was financed by a mortgage loan. The repayment of the mortgage bank loan amounted to over \$20,000 per month. Mr A and his brother made the monthly instalment at a ratio of 50:50.
8. Mr A advised that he had appointed another certified public accountant, CPA II, to be the company auditor and the tax advisor of Company B. Letters to CPA II and the former company auditor, the CPA, had been sent out to advise the new appointment. Officer Mak requested and Mr A asked his colleagues by phone to fax in copies of the letters. Officer Chin also asked Mr A about the bookkeeper, Ms L of Company F. Mr A replied that he had some arguments with her on the reproducing of accounting records and the setting of the accounting fee. In these respect, soliciores' letter had been issued. After negotiation, Mr A and Ms L came to a compromise that Company B was only required to pay part of the accounting fee.
9. Officers advised Mr A that they would leave the interview room for the preparation of the tax computation for further discussion. Mr A noted and the meeting adjourned at 11:20 a.m. The meeting resumed at 11:55 a.m.
10. Officer Chin advised Mr A that after consideration of his representations and the available information on hand, officers would like to reach a compromise in settlement of the case. As a result, the tax computation now for discussion was mainly prepared basing on the result of examination of the books and records of Company B. The following further adjustments were made on the returned assessable profits of the company:
  - (a) the adding back of omitted receipts from some projects and the unexplained temporary receipts (\$713,546);
  - (b) the adding back of provision for doubtful debts (\$950,530);

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- (c) the adding back of suspense account of unsupported cash expenses (\$1,613,017), testing fee (\$120,000) and design fee (\$60,700);
- (d) the deduction of irrecoverable bad debts (\$292,200); and
- (e) the deduction of noise permit fee (\$530).

Officer Mak showed and duly explained to Mr A the tax computation in which the total adjusted assessable profits of Company B for the period from 21 April 1997 to 31 March 1999 were \$5,396,665. After consideration, Mr A agreed to settle the case accordingly.

11. Officer Chin informed Mr A that the basis of settlement previously discussed would be subject to the approval of the senior officers. Before Mr A indicated his acceptance of the basis of settlement by signing the agreement of the revised profits, he was reminded of the penalty provisions contained in the IRO. In particular, he was refreshed that the law provided for a maximum penalty by way of additional tax of three times the amount of tax found to have been undercharged. Mr A was, however, further advised that the imposition of penalties was a matter within the personal jurisdiction of the Commissioner or Deputy Commissioner to whom the case would be submitted following the agreement of the basic tax liability. He could propose a compound offer to the Commissioner or Deputy Commissioners for consideration. It was also explained to Mr A that if no compound offer was proposed or if the quantum of compound offer was not agreed, the Commissioner or Deputy Commissioner would write to him inviting him to submit written representations with regard to the proposed assessment of additional tax. The caller indicated that he fully understood the explanations.
12. Officer Mak then explained to the caller the contents of the agreement of the revised profits. After Mr A had checked the document, he duly signed it. A copy of the document was given to the caller for record purposes. Mr A advised that he was not with intent to evade tax and had tried his best to co-operate with officers in the tax audit case. He pleaded for a lower penalty in settlement of the case. Officer Chin advised Mr A that as he failed to inform chargeability and to submit tax returns in time, the total tax so undercharged in this case was \$831,732. In the circumstances of this case, the quantum of the penalty might be about 1.2 times of the total tax undercharged. However, any compound penalty offered had to be submitted to the Commissioner or Deputy Commissioners for their personal consideration. Mr A responded that he was unable to pay for such a large sum of the penalty. Should the penalty imposed be at such a large amount, Company B would probably be winding up. Mr A finally advised that he would contact officers on coming Wednesday to advise if he would make a compound offer.

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13. Mr A was reminded of the requirements to keep proper accounting records and file correct tax returns in time in future. He was also told that under section 51C of the IRO, the maximum fine for failure to keep the prescribed business records could be \$100,000. A booklet of the keeping of business records was given to Mr A on spot for reference. Mr A noted and explained that he had asked the bookkeeping firm to prepare the general ledger soon after this field audit commenced. Officer Mak commented that Company B did fail to keep proper accounting records before the tax audit case commenced. The preparation of general ledger was made after the case was opened. Mr A pleaded for lower penalty and offered for a compound penalty of \$50,000 for his failure to comply with section 51C for the two years concerned. Officers agreed to submit his offer to the senior officer for approval.
14. The meeting closed at 12:45 p.m.

(signed) _____ (Chin Heh-ching) Senior assessor	(signed) _____ (Mak Kong-lam) Assessor	(signed) _____ (Suen Shuk-fong) Assistant assessor
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I confirm that the above note of interview is a true and correct record of my meeting with officers of the Inland Revenue Department on 24 July 2000.

Date: 24 August 2000

Signed: \_\_\_\_\_  
(Signed)  
(Mr A)  
Director of Company B

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- 13.5 I understand all the statements (points 2 to 13) I have made above are true and fair and within the responsibility and rights as a director of a limited company. However, I am only fulfilling my obligation as a novice director to co-operate with your department to clarify this taxation matter.

During this few months of your clarification process, I am undergoing a lot of personal stress and pressure both from your department and my wife.

I certainly agree with your department of carrying out an usual duty, but I believe I am becoming an innocent victim arising from the ignorance and confused matter happened well before I took up my position as a director.

I have not attempted or even planned to evade tax and I am also responsible to pay up all the outstanding taxes under a timely fashion.