Case No. D5/07

Penalty tax – section 9A, 68(9) and 82A of the Inland Revenue Ordinance ('IRO') – service companies – personal belief that income to the service companies is not employment income is not reasonable excuse – appellant's conduct of an appeal is a factor to consider whether to make an order for costs.

Panel: Kenneth Kwok Hing Wai SC (chairman), Malcolm Merry and Kenny Suen Wai Cheung.

Date of hearing: 27 April 2007.
Date of decision: 29 May 2007.

The appellant and her husband were the only and equal shareholders of a private company. The appellant is an information technology professional. The Deputy Commissioner determined that the income derived by the company should be treated as the appellant's income and chargeable to salaries tax pursuant to section 9A of the IRO. The appellant was informed of the intention to assess additional tax.

The appellant argued that the appellant's view was honestly held thus constituting a reasonable excuse for so doing and the appellant accused the Revenue of various matters including 'sitting on the files for 6 years', 'blatant entrapment', 'maladministration and inefficiency', 'sloppiness' and 'unjust enrichment'.

Held:

1. Individuals who use service companies do so as a matter of choice. By using service companies, they run the risk that one or more of the anti-avoidance provisions, e.g. sections 61, 61A and 9A, may apply to the transactions or agreements. Personal belief, even if honestly held that income to the service companies is not employment income of the individuals is unlikely to constitute reasonable excuse for submitting incorrect tax returns.

2. It is clear from the wording of section 82A that the excuse relied on must exist at the time when the taxpayer makes his or her return. The appellant has not begun to prove the factual basis of any of her accusations. Without proving the factual basis, the 'reasonable excuse' contention does not get off the ground. The appellant has no reasonable excuse.

3. It was quite irresponsible to make serious accusations without making any attempt to lay the factual foundation. A appellant's conduct of an appeal is a factor which the Board takes into account in considering whether to make an order for costs under section 68(9).

4. The appellant who chose to enter into anti-avoidance schemes take a risk. They can hardly expect much, if any, sympathy from the Board if their schemes are held to be ineffective. They have had the use of the amounts which should have been paid as tax and the Revenue have suffered actual loss.

Appeal dismissed.

Case referred to:

D14/06, IRBRD, vol 21, 371

Taxpayer represented by her husband.
Leung Wing Chau and Lam Chuen Kee for the Commissioner of Inland Revenue.

Decision:

1. This is an appeal against the following additional assessments ('the Assessments') all dated 22 December 2006 by the Deputy Commissioner of Inland Revenue, assessing the appellant to tax under section 82A of the Inland Revenue Ordinance, Chapter 112, ('the Ordinance') in the following sums:

Year of assessment	**Additional tax**	**Charge no**
1996/97	$47,000	9-2630822-97-8
1999/2000	$54,000	9-2323303-00-0
2001/02	$29,000	9-3656580-02-6
Total:	$130,000	

The agreed facts

2. Paragraphs 1 – 6, 8 – 30, and 32 – 37 of the facts stated in the Statement of Facts were agreed by the parties. Subject to deleting sub-paragraphs (a) – (f) and replacing the phrase 'inter alia, the following terms:' by 'the terms on page 32 of the R1 bundle.', paragraph 7 was also agreed.

3. We find the facts agreed by the parties as facts.

The salient facts

4. The salient facts are as follows.

5. A private company ('ServiceCo') was incorporated in Hong Kong on 13 September 1994. The appellant and her husband have been the only and equal shareholders of ServiceCo since its incorporation. The appellant and her mother were appointed as directors of ServiceCo on 5 December 1995. ServiceCo made up its accounts to 31 March each year.

6. The appellant is an information technology professional.

7. The appellant reported the following salary income in her Tax Return – Individuals for the years of assessment 1996/97, 1999/2000, 2001/02:

Year of assessment	**Name of employer**	**Capacity employed**	**Period**	**Total amount** $	**Date of return**
1996/97	[a named company]	(blank)	[illegible]	260,000	19-6-1997
1999/2000	[another named company ('Employer 1')]	XXX Director	1-12-1999 31-3-2000	222,795	13-1-2001
2001/02	[Employer 1]	XXX Director	1/4/2001 – 31/8/2001	301,507	30-5-2002

8. The assessor raised on the appellant the following salaries tax assessments (collectively referred to as 'the original salaries tax assessments'):

Year of assessment	**Assessable income**	**Tax**	**Date of issue**
1996/97	$272,000[1]	$28,600	10-12-1997
1999/2000	$244,984[2]	$12,421	22-5-2001
2001/02	$301,507	$5,628[3]	10-7-2003
	$818,491	$46,649	

[1] Assessed in accordance with the amount reported by Employer 1 in the Employers' Returns in respect of the appellant

[2] Comprising income of $222,795 from Employer 1 and rental value of residence $22,189

[3] After tax rebate of $3,000 pursuant to the Tax Exemption (2001 Tax Year) Order

9. There was no objection against the original salaries tax assessments.

10. ServiceCo and a limited company ('Employer 2') made an agreement in writing dated 6 December 1995. It was signed by the appellant on behalf of ServiceCo.

11. ServiceCo and Employer 1 made an agreement in writing dated 1 April 1999. It was signed by the appellant on behalf of ServiceCo.

12. ServiceCo filed the following profits tax returns, signed by the appellant:

Year of assessment	**Date of issue of return**	**Date of receipt of return**	**Assessable profits / (loss) reported**	**Net assessable profits after set off of loss brought forward**	**Loss carried forward**
			$		$
1995/96	19-4-1996	18-7-1996	(120,858)	NIL	120,858
1996/97	24-3-2003	29-4-2003	2,560	NIL	118,298
1999/2000	5-12-2003	29-12-2003	(111,667)	NIL	1,151,876
2001/02	3-4-2002	18-11-2002	139,797	NIL	1,050,420

ServiceCo's reported income included the following from Employer 1 and Employer 2:

Year of assessment	**Nature of income**	**Amount**
		$
1996/97	Consultancy service to Employer 2	390,476
1999/2000	Consultancy service to Employer 1	484,000
2001/02	Consultancy service to Employer 1	333,000

13. On the basis of the returns submitted, no profits tax was payable by ServiceCo for 1996/97, 1999/2000 and 2001/02.

14. In early 2003, the Revenue commenced a tax audit on the appellant's tax affairs. By letter dated 3 March 2003, the assessor informed the appellant of the tax audit.

15. The assessor raised on the appellant the following additional salaries tax assessments (referred to collectively as 'the additional salaries tax assessments'):

Year of assessment	Date of assessment	Revised total amount assessed	Amount previously assessed	Additional assessment
		$	$	$
1996/97	24 March 2003	722,000	272,000	450,000[4]
1999/2000	5 December 2003	728,984[5]	244,984	484,000[6]
2001/02	5 December 2003	634,507	301,507	333,000[7]

16. The appellant objected against the Additional Salaries Tax Assessments.

17. By a Determination dated 3 June 2005, the Deputy Commissioner determined that the income derived by ServiceCo from Employer 2 and Employer 1 should be treated as the appellant's income and chargeable to salaries tax pursuant to section 9A of the Ordinance. He confirmed the Additional Salaries Tax Assessments for 1999/2000 and 2001/02 but reduced the Additional Salaries Tax Assessment for 1996/97 to show additional assessable income of $390,476[8].

18. Thus, the amounts of the assessable income assessed by the Additional Salaries Tax Assessments, as determined on objection, are as follows:

Year of assessment	(Revised) Assessable income	Additional assessable income
	$	$
1996/97	722,000	390,476
1999/2000	728,984[9]	484,000
2001/02	634,507	333,000

19. On 30 June 2005, the appellant gave notice of appeal. No ground of appeal was stated and the notice was not accompanied by any of the documents required under section 66(1).

[4] This was an estimated assessment under section 60 and is sometimes called a 'protective assessment' in view of the imminent expiry of the 6-year time limit under the section
[5] Income of $706,795 and rental value of residence of $22,189
[6] Same amount as the amount received by ServiceCo from Employer 1
[7] Same amount as the amount received by ServiceCo from Employer 1
[8] Same amount as the amount received by ServiceCo from Employer 2
[9] Income of $706,795 and rental value of residence of $22,189

20. By a decision dated 27 April 2006, D14/06, (2006-07) IRBRD, vol 21, 371, the Board [Colin COHEN, James MAILER and James WARDELL] stated that the Board was not satisfied that the appellant had made out any basis for an extension of time and declined to extend the time for appealing.

21. On 14 July 2006, the assessor reduced the Additional Salaries Tax Assessment for 1996/97 in accordance with the Determination.

22. By a notice dated 9 October 2006, the Deputy Commissioner informed the appellant of his intention to assess additional tax in respect of the following:

> ' According to our information, you have made incorrect tax returns by understating your income. If the Department had accepted the returns as correct, tax would have been undercharged. The details are as follows:

Years of Assessment	**Amount of tax**
	$
1996/97	70,771
1999/2000	82,280
2001/2001	56,610
Total	209,661'

23. The section 82A(4) notice in this case stated the alleged amounts of tax involved but was conspicuously silent on the amounts of alleged understatement. The appellant did not take any point and we say no more about it.

24. No prosecution under section 80(2) or 82(1) has been instituted in respect of the same facts. On 22 December 2006, the Deputy Commissioner made the Assessments after considering the appellant' s representations.

25. By letter dated 15 January 2007, the appellant gave notice of appeal against the Assessments.

Grounds of appeal

26. The Grounds of Appeal read as follows:

> ' (a) I have never given any incorrect return, statement or information to the Commissioner (she has not specified the specific ground). I operated under [ServiceCo] all these years and have duly reported profits tax through a qualified tax consultant every year. I was an independent contractor during the

relevant periods and the Commissioner, in coming to the conclusion that I was an employee, had applied the wrong tests;

(b) The commissioner has misapplied s. 9A to my case as my service was not provided to the "relevant person or any other person". The "other person" should be associated (or have a control relationship) with the "relevant person" according to the objects stated in para. 4 of DIPN 25. None of the "relevant persons" and "other persons" in my projects were "associated". They dealt with each other at arms length after proper tendering process;

(c) even if I were wrong in not reporting myself as an employee (I still maintain, on professional advice, that I was never an employee during the relevant times), my view was honestly held thus constituting a reasonable excuse for so doing;

(d) S. 9A was introduced in November 1995. The first of my returns was filed in 1996/97 and the Commissioner did not see fit to query it until 2003. The only Board of Review case on s. 9A was decided on 26 November 2001 (Case No. D108/01 - incidentally it is precisely the type of case that s. 9A is intended for which is plainly different from mine). There was no guidance during all relevant times on how to interpret s. 9A apart from DIPN 25. If the employment/independent contractor issue was straight forward, or had the Commissioner acted promptly instead of sitting on my files for 6 years, I would have complied with her requirement (or challenged its legality) earlier. The Commissioner is therefore estopped from asserting that my reporting was incorrect for s. 82A purposes, if not for 1996/97 then for the later years. Her acquiescence lulled me into not getting a second professional opinion on how my returns should be filed, thus amounting to a reasonable excuse for me;

(e) Good administration would entail Government taking reasonable measures to help citizens not to break the law unwittingly when new laws are introduced. That is why when new road signs or speed limits are introduced, the Commissioner of Police would post conspicuous advisories at "black spots" to educate motorists of the change. Here the Commissioner of Inland Revenue should have known long time ago that my 1996/97 tax return did not tally with her understanding of s. 9A, yet she raised no objection until 2003. In the meantime I prepared my subsequent tax returns the same "errant" way because I had no reason to believe that she did not agree with it. It is blatant entrapment for her now to impose surcharges of 66% to 51% on those returns;

(f) On the other hand, if she had had no knowledge that my 1996/97 tax return had "breached" the then newly introduced s. 9A until 2003, it would reflect badly on her administration. To allow her now to impose such hefty surcharges,

> indeed any surcharge, is to legitimise maladministration and inefficiency. There is no equity when Government can profit from its own sloppiness. If this is not unjust enrichment, what is?'

The appeal hearing

27. At the hearing of the appeal, the appellant was represented by her husband, a non-practising solicitor. The respondent was represented by Mr Leung Wing-chau, a senior assessor.

28. The appellant's husband called the appellant to give oral evidence. Mr Leung Wing-chau did not call any witness.

29. The appellant furnished us with a copy of the following authorities:

(a) Hansard 5 July 1995 pages 5167-5174

(b) Inland Revenue Ordinance, Chapter 112, section 70

(c) Inland Revenue Ordinance, Chapter 112, section 82A

(d) D108/01, no citation given

(e) The Queen and Commissioners of Inland Revenue – ex parte – (1) Professional Contractors Group Ltd and others [2001] EWHC Admin 236

(f) Hall (Inspector of Taxes) v Lorimer [1994] 1 WLR 209

(g) Golobiewska v The Commissioners of Customs and Excise [2005] EWCA Civ 607

(h) Carmichael and Another v National Power Plc. [1999] 1 WLR 2042

(i) Future On-Line Ltd v Foulds (2004) 76 TC 590

(j) 2 pages of an unidentified book

(k) Inland Revenue Ordinance, Chapter 112, sections 51 – 54

(l) Inland Revenue Ordinance, Chapter 112, sections 79 and 80

(m) Basic Law, Article 87

30. The respondent furnished us with a copy of the following authorities:

(a) Inland Revenue Ordinance, Chapter 112, sections 9A, 68, 70, 82A, 82B and Schedule 5

(b) D69/03, IRBRD, vol 18, 699

(c) D18/91, IRBRD, vol 6, 36

(d) D46/01, IRBRD, vol 16, 412

(e) D168/01, IRBRD, vol 17, 329

(f) D118/02, IRBRD, vol 18, 90

(g) D9/05, (2005-06) IRBRD, vol 20, 272

(h) D40/03, IRBRD, vol 18, 526

(i) D78/02, IRBRD, vol 17, 978

(j) D45/05, (2005-06) IRBRD, vol 20, 606

(k) D4/06, (2006-07) IRBRD, vol 21, 139

(l) D65/00, IRBRD, vol 15, 610

(m) D53/88, IRBRD, vol 4, 10

(n) D40/88, IRBRD, vol 3, 377

The relevant statutory provisions on additional tax appeals

31. In respect of the original salaries tax assessments, section 70, so far as relevant, provides as follows:

> *'Where no valid objection ... has been lodged within the time limited by this Part against an assessment as regards the amount of the assessable income ... assessed thereby ... the assessment as made ... shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income'.*

32. In respect of the Additional Salaries Tax Assessments, section 70, so far as relevant, provides as follows:

> *'Where no valid ... appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the assessable income ... assessed thereby ... or where the amount of such assessable income ... has been determined on objection ... the assessment as ... determined on objection ... shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income'.*

33. Section 82A(1) provides that:

> *'(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) ...*
>
> *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 ...'*

34. Section 82B(2) provides that:

> *'(2) On an appeal against assessment to additional tax, it shall be open to the appellant to argue that-*
>
> *(a) he is not liable to additional tax;*
>
> *(b) the amount of additional tax assessed on him exceeds the amount for which he is liable under section 82A;*

(c) *the amount of additional tax, although not in excess of that for which he is liable under section 82A, is excessive having regard to the circumstances.'*

35. Section 82B(3) provides that section 68 shall, so far as applicable, have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax.

36. Section 68(4) provides that the onus of proving that the assessment appealed against is excessive or incorrect shall lie on the appellant.

37. The Board's power under section 68(8)(a) includes the power to increase the assessment appealed against.

38. Section 68(9) provides that:

'Where under subsection (8), the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding the amount specified in Part I of Schedule 5, which shall be added to the tax charged and recovered therewith.'

39. The amount specified in Part I of Schedule 5 is $5,000.

Whether returns incorrect

40. Section 51(1) provides that:

'An assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for –

(a) property tax, salaries tax or profits tax; or

(b) property tax, salaries tax and profits tax,

under Parts II, III, IV, XA, XB, and XC.'

41. What section 51(1) required the appellant to do was to furnish the composite tax returns specified by the Board of Inland Revenue for individuals. Such returns required the appellant to state whether she had any income chargeable to salaries tax during the year and to report the total amount of income which accrued to her during the year.

42. She reported that she had chargeable income and that the following amounts accrued to her during the years:

Year of assessment	Total amount
	$
1996/97	260,000
1999/2000	222,795
2001/02	301,507

43. Section 11B defines 'assessable income' as follows:

> *'The assessable income of a person in any year of assessment shall be the aggregate amount of income accruing to him from all sources in that year of assessment.'*

44. In respect of the original salaries tax assessments, as there was no objection against the original salaries tax assessments, the assessments as made are final and conclusive for all purposes of the Ordinance as regards the amounts of such assessable income by virtue of section 70.

45. In respect of the Additional Salaries Tax Assessments, as there was no valid appeal against the Determination, the amounts of the assessable income assessed by the Additional Salaries Tax Assessments, as determined on objection, are final and conclusive for all purposes of the Ordinance as regards the amounts of such assessable income by virtue of section 70. Thus, the following amounts of assessable income are final and conclusive. Another way to put it is that the following additional assessable income are final and conclusive and by adding these amounts to the amounts of assessable income which are final and conclusive under the original salaries tax assessments, one arrives at the same amounts of total assessable income:

Year of assessment	Assessable income	Additional assessable income
	$	$
1996/97	722,000	390,476
1999/2000	728,984	484,000
2001/02	634,507	333,000

46. By virtue of section 70, it is not open to the appellant now to dispute that the correct amounts of the assessable income are:

Year of	Assessable

assessment	income
	$
1996/97	722,000
1999/2000	728,984
2001/02	634,507

47. The appellant' s husband argued that the Determination was wrong, that the Deputy Commissioner was wrong and that the reasons given by the Deputy Commissioner were wrong. The appellant had the right of appeal if she had lodged an appeal within time. She did not. By virtue of section 70, it is too late to raise these arguments in this appeal. Raising them here gets her nowhere unless she is seeking to dispute the correct amounts of assessable income. By virtue of section 70, she is precluded from disputing that the amounts of assessable income as set out in the preceding paragraph are correct.

48. The appellant' s husband also contended that the returns were not incorrect because the amendment ordinance which added section 9A and section 80(1AA) to the principal Ordinance only made it an offence if a person contravenes section 80(1AC).

49. This contention is convoluted and perhaps unintelligible.

50. Section 80(1AA) – (1AC) provide as follows:

> '*(1AA) Without prejudice to the generality of the term "reasonable excuse" as it is used in subsection (1) in relation to section 52(4), (5), (6) or (7), where a person has failed to comply with the requirements of that section in the case of an individual in respect of whom that person is treated as the employer by virtue of the operation of section 9A, then it shall constitute a defence in any proceedings under this section against that person in respect of such failure if he shows that –*
>
> *(a) he did not comply with those requirements because he relied upon a statement in writing-*
>
> *(i) by that individual; and*
>
> *(ii) in the form specified under subsection (1AC); and*
>
> *(b) it was reasonable for him to rely upon that statement.*
>
> *(1AB) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (1AA)(a) which in a material respect is false or misleading shall be guilty of an offence: Penalty a fine at level 3.*

(1AC) The Commissioner may, by notice in the Gazette, specify a form for the purposes of subsection (1AA)(a).

(1AD) For the avoidance of doubt, it is hereby declared that a form specified under subsection (1AC) is not subsidiary legislation.'

51. Section 52(4) – (7) provide as follows:

'*(4) Where any person who is an employer commences to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part III, or any married person, he shall give notice thereof in writing to the Commissioner not later than 3 months after the date of commencement of such employment, stating the full name and address of the individual, the date of commencement and the terms of employment.*

(5) Where any person who is an employer ceases or is about to cease to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part III, or any married person, he shall give notice thereof in writing to the Commissioner not later than 1 month before such individual ceases to be employed in Hong Kong, stating the name and address of the individual and the expected date of cessation:

Provided that the Commissioner may accept such shorter notice as he may deem reasonable.

(6) The employer of any individual who is chargeable to tax under Part III and is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of the expected date of departure of such individual. Such notice shall be given not later than 1 month before the expected date of departure:

Provided that-

(a) the Commissioner may accept such shorter notice as he may deem reasonable; and

(b) this subsection shall not apply in the case of an individual who is required in the course of his employment to leave Hong Kong at frequent intervals.

> *(7) An employer who is required by subsection (6) to give notice to the Commissioner of the expected departure of an individual shall not, in the case of an individual whom he has ceased, or is about to cease, to employ in Hong Kong, except with the consent in writing of the Commissioner or in the case of money paid to the Commissioner on the direction of the individual, make any payment of money or money's worth to or for the benefit of the individual for a period of 1 month from the date on which he gave the notice; and compliance with this subsection shall constitute a defence in any proceedings against an employer in respect of his failure to make any payment to or for the benefit of the individual during the said period.'*

52. The Inland Revenue (Amendment) (No 2) Ordinance 1995 was an amendment ordinance. There was no amendment of sections 70 and 82A which remain in full force. The purpose of the then new section 80(1AA) was to introduce a new defence to employers in respect of section 52(4) – (7) matters. No defence was enacted for the benefit of employees or 'relevant persons' caught by the then new 9A. On the contrary, the then new section 80(1AB) introduced a new offence. There is no substance in the contention.

53. The returns filed by the appellant were plainly incorrect in that she understated her assessable income by only reporting assessable income in the following amounts:

Year of assessment	Assessable income
	$
1996/97	260,000
1999/2000	222,795
2001/02	301,507

Whether reasonable excuse

54. Generally speaking, individuals who use service companies do so as a matter of choice. By using service companies, they run the risk that one or more of the anti-avoidance provisions, e.g. sections 61, 61A and 9A, may apply to the transactions or agreements. Personal belief, even if honestly held, that income to the service companies is not employment income of the individuals is unlikely to constitute reasonable excuse for submitting incorrect tax returns.

55. On the facts of this case, the appellant submitted the composite tax returns herself and not through a professional accountant. On her own sworn testimony, she did not seek any professional advice prior to 2003. She did not seek an advance ruling under Departmental Interpretation and Practice Notes No 25. Moreover, section 9A is not the only anti-avoidance provision. The Revenue has successfully invoked sections 61 and 61A in dealing with cases

involving service companies. Her belief, even if honestly held, does not constitute reasonable excuse.

56. The appellant and her husband took great liberty in accusing the Revenue of various matters including 'sitting on [her] files for 6 years', 'blatant entrapment', 'maladministration and inefficiency', 'sloppiness' and 'unjust enrichment'.

57. To start with, it is clear from the wording of section 82A that the excuse relied on must exist at the time when a taxpayer makes his or her return. The appellant's husband made no attempt to correlate the accusations with the making of the returns on 19 June 1997, 13 January 2001 and 30 May 2002.

58. We asked the appellant's husband to tell us when the Revenue was alleged to have acquired knowledge of the relevant matters. The appellant's husband evaded the issue. He made no attempt to tell us or point to any evidence on the date or dates when the Revenue acquired knowledge of the 6 December 1995 agreement made between ServiceCo and Employer 2 and the 1 April 1999 agreement made between ServiceCo and Employer 1. He persisted in his accusations.

59. The appellant has not begun to prove the factual basis of any of her accusations. Without proving the factual basis, the 'reasonable excuse' contention does not get off the ground.

60. The appellant has no reasonable excuse.

61. Nursing an unfounded sense of grievance may do the appellant more harm than good.

62. It was quite irresponsible for her husband who is a solicitor, although non-practising, to make serious accusations without making any attempt to lay the factual foundation. A taxpayer's conduct of an appeal is a factor which the Board takes into account in considering whether to make an order for costs under section 68(9).

Whether excessive

63. The appellant's husband told us that whether the Assessments were excessive was not in issue.

64. Taxpayers who chose to enter into anti-avoidance schemes take a risk. They can hardly expect much, if any, sympathy from the Board if their schemes are held to be ineffective. They have had the use of the amounts which should have been paid as tax and the Revenue have suffered actual loss.

Drafting of a statement of fact

65. Some years ago, the Board was often content to quote in full the agreed statement of facts in penalty tax appeal cases. We look forward to the day when the Board will happily do what it did and to have more occasions in future to thank assessors for their able and helpful assistance.

Disposition

66. There is no merit in this appeal. We dismiss it and confirm the Assessments.