

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D63/04

**Penalty tax** – repeated delay in submitting tax returns – whether there is reasonable excuse for the delay – assessment of the additional tax – whether the assessment is excessive.

Panel: Ronny Wong Fook Hum SC (chairman), David Ho Chi Shing and Fannie Wong Fung Yi.

Date of hearing: 25 September 2004.

Date of decision: 8 December 2004.

The appellant, a company incorporated in Hong Kong and engaged in the business of manufacturing and sale of plastic products, had a history of filing its tax returns late. For the year of assessment 2002/03, the appellant was required to submit its tax return by 15 November 2003; however no submission was made until 27 December 2003. In consequence of the delay (a total of 42 days), the Commissioner imposed an additional tax on the appellant, in the sum of \$30,000 which amounted to about 5.2% of \$577,212 that would have been undercharged had the appellant's failure not been detected.

On appeal, the appellant mainly contended that the delay in submitting its tax return was attributed to the SARS crisis concerning atypical pneumonia that had badly affected every walk of life in Hong Kong. The appellant had delayed in the preparation and finalization of its accounts because additional time was required to pass the information and discuss with the relevant parties located both in and outside Hong Kong. As to the issue of assessment, the appellant contended that the sum involved was too high and that additional tax should be assessed on the loss of interest at the rate of 8% from 16 November 2003 to 27 December 2003.

#### **Held:**

1. The Board took into account that the appellant's case was within Group M cases wherein no general extension for submission of returns (from 15 August 2003 to 1 September 2003) had been granted by the Revenue, in response to the SARS crisis which lasted between March and June 2003.
2. The appellant only made general reference to the difficulties arising from the SARS crisis at the hearing. No explanation had been given by the appellant as to the steps taken within that period to comply with the deadline for submitting the returns and what were the obstacles leading to the non-compliance.

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3. Therefore, the Board was not persuaded that the SARS crisis had any material impact on the appellant's preparation of its accounts; and came to a view that the default was attributable to the appellant's general failure to pay due regard to its obligations under the Inland Revenue Ordinance.
4. As to the assessment of the additional tax to be imposed, the Board followed the Board decision in D118/02 which held that the loss of interest was merely one factor to be taken into account. Bearing in mind the appellant's poor history of compliance and the amount of tax involved, the Board was not prepared to interfere with the assessment of the Commissioner.

### **Appeal dismissed.**

Case referred to:

D118/02, IRBRD, vol 18, 90

Wan Leung for the Commissioner of Inland Revenue.

Taxpayer represented by its director.

### **Decision:**

1. This is the Appellant's appeal against the imposition by the Commissioner by notice dated 3 May 2004 of additional tax in the sum of \$30,000 by virtue of the delay on the part of the Appellant in submitting its return for the year 2002/03. The return was scheduled to be submitted on 15 November 2003. The Appellant made no submission until 27 December 2003. There was a total delay of 42 days. The additional tax imposed amounted to about 5.2% of \$577,212 which was the amount of tax which would have been undercharged had the Appellant's failure not been detected.

2. The Appellant is a company incorporated in Hong Kong on 8 May 1990 and carries on business of manufacturing and sale of plastic products.

3. The Appellant had repeatedly failed to submit its returns on time:

<b>Year of assessment</b>	<b>Date when return sent out to the</b>	<b>Scheduled date for submission</b>	<b>Actual date of submission</b>	<b>Period of delay</b>	<b>Profit assessed</b>
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	<b>Appellant</b>				
1998/99	7-4-1999	15-11-1999	11-1-2000	57 days	\$292,019
1999/2000	8-6-2001	9-7-2001	11-7-2001	2 days	\$1,436,992
2000/01	8-6-2001	15-11-2001	26-11-2001	11 days	\$3,001,602
2001/02	2-4-2002	15-11-2002	19-11-2002	4 days	\$2,879,783

In respect of the delay for the year of 1998/99, the Revenue had by notice dated 8 February 2000 levied a penalty of \$1,200.

4. For the year in question, the Appellant explained by letter dated 24 May 2004 that 'Every walk of life had been badly affected by atypical pneumonia last year. Additional time was required to pass the information and discuss with the relevant parties located both in and outside Hong Kong to finalize the accounts. Our client also had to make sure that the factory and staff, who traveling outside Hong Kong, would not be affected by atypical pneumonia. There was a delay in filing the tax return but the amount of delay is not significant'. By letter dated 9 September 2004, the Appellant further explained that it was heavily involved in moving its factory from City A to City B in Mainland. Its tax representative allegedly attended City B on 1 April 2003 to appraise the impact of the transfer. The appraisal could not be completed by virtue restrictions on movement imposed by the authorities in China.

5. The crisis involving atypical pneumonia lasted between March and June 2003. By notice dated 27 June 2003, the Revenue granted general extension to Group D cases for submission of their returns from 15 August 2003 to 1 September 2003. The Revenue did not grant any extension to Group M cases. The Revenue apparently took the view that the deadline of 15 November 2003 was sufficient for the work involved. The Appellant's case is within Group M.

6. At the hearing before us, the Appellant made general reference to the difficulties arising from the SARS crisis. It tendered for our consideration various custom documentation for the year 2002. We have difficulty in understanding how those documents could be said to be relevant to the crucial period of June 2003 to 15 November 2003. According to employer's returns submitted by the Appellant for 2002/03, the Appellant had in its employment three managers, an accountant and three clerks. No explanation was given to us on the steps taken within that period to comply with the deadline and what were the obstacles leading to the non-compliance. We are not at all persuaded that the SARS crisis had any material impact on the Appellant's preparation of its accounts. We are inclined to the view that the default was attributable to the Appellant's general failure to pay due regard to its obligations under the Inland Revenue Ordinance.

7. We are of the view that the Commissioner is fully justified in imposing additional tax in this case. The Appellant submitted that the sum involved is too high and that additional tax should be assessed on the loss of interest at the rate of 8% from 16 November 2003 to 27 December 2003. We do not agree. As pointed out by the decision of this Board in D118/02, IRBRD, vol 18,

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90, loss of interest is merely one factor to be taken into account. Bearing in mind the Appellant's poor history of compliance and the amount of tax involved, we are not prepared to interfere with the assessment of the Commissioner.

8. For these reasons, we dismiss the Appellant's appeal.