

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D94/98

**Penalty tax** – incorrect salaries tax return – failure to disclose certain income chargeable to tax – unintentional – whether a reasonable excuse existed under section 82A of Inland Revenue Ordinance – demeanour of the taxpayer – 10% penalty under section 82A of Inland Revenue Ordinance.

Panel: Terence Tai Chun To (chairman), Aarif Tyebjee Barma and Roger Leung Wai Man.

Date of hearing: 8 September 1998.

Date of decision: 9 October 1998.

Mr X (the taxpayer) omitted to include in his tax return income chargeable to tax to the amount of \$93,827. The Commissioner held that there was no reasonable excuse for such an omission and charged additional tax of \$4,000 to the taxpayer. The taxpayer appealed to the Board.

The taxpayer argued that he should not be liable for to pay additional tax because:

- (a) When completing his tax return for the relevant year of assessment, he was not in possession of the employer's return filed by his employer, Company Y, which he had relied upon in the past;
- (b) He had no intention to evade paying tax on this income as he had been paying tax on this source of income in the past.

Held:

The Board had the benefit of hearing the taxpayer's evidence and considering his demeanour. It concluded that although the taxpayer took an off-hand approach in managing his tax affairs, he had no intention to evade tax. The Board followed the tariff in recent cases and decided that the penalty tax under section 82A of the IRO be reduced to 10%.

**Appeal allowed.**

Yip Sham Yin Har for the Commissioner of Inland Revenue.

Taxpayer in person.

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### Decision:

1. This is an appeal by Mr X (the Taxpayer) against the assessment of additional tax under section 82A of the Inland Revenue Ordinance (the IRO) for the year of assessment 1996/97.
2. Section 82A (1) of the IRO provides, inter alia, that:  
  
*‘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... 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*
  - (b) *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.’*
3. By notice dated 26 January 1998 served on the Taxpayer, the Commissioner stated that he was of the opinion that the Taxpayer had without reasonable excuse, made incorrect tax returns for the relevant year of assessment by omitting the income chargeable to tax to the extent of \$93,827.
4. By notice dated 12 June 1998, the Commissioner assessed the Taxpayer to additional tax in the sum of \$4,000.
5. The Taxpayer appealed before us against the imposition of such additional tax.
6. The Taxpayer elected to give evidence and affirmed before the Board.
7. The Taxpayer also confirmed the statement of facts prepared by the Revenue.
8. In his candid manner, the Taxpayer explained that he had omitted to include the income of \$93,827 because at the time he completed his tax returns, he was not in possession of the employers’ returns filed by his employers, Company Y upon which he relied for completing his tax returns as in the past.
9. The Taxpayer further explained that he had no intention to evade. Indeed, according to the Taxpayer, he could not possibly evade to pay tax on his income from Company Y because he had been paying tax on this source of income in the past.
10. The Taxpayer had no reasonable excuse for making an incorrect return but we are persuaded that, after hearing the Taxpayer and watching his demeanour, the Taxpayer

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had no intention to evade tax and any omission was a result of his of-hand approach in the management of his tax affairs.

11. We are inclined to the view that a penalty of 10% of the tax undercharged would not be inappropriate and would not be out of line with the 10% level of penalty for cases of this type.

12. We therefore allow the appeal to the extent that the additional tax by way of penalty be reduced to 10% of the tax undercharged.