

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D76/99

**Salaries Tax** – additional tax – failures to state gains under option scheme of employer company – factors taken into account for reduction of additional tax.

Panel: Ronny Wong Fook Hum SC (chairman), Duffy Wong Chun Nam and William Zao Sing Tsun.

Date of hearing: 10 August 1999.

Date of decision: 13 October 1999.

The taxpayer's tax return dated 24 July 1998 stated that his income for assessment for the year of assessment 1997/98 from his salary and wages from Company A was \$502,515. However, his employer Company A's return stated the same to be \$745,515. The discrepancy was due to the taxpayer's omission to report the gains under option scheme of Company A for \$243,000.

The taxpayer explained that he had no intention in misstating his income. The share option given to him by Company A was once in a lifetime. Prior to his emigration he had been a taxpayer in Hong Kong for well over 20 years. His returns had always been accurate.

#### **Held:**

1. The taxpayer did not have any reasonable excuse for his omission.
2. However the additional tax of \$4,000 was excessive for the following reasons:
  - (1) The taxpayer has an impressive record of compliance;
  - (2) Given his emigration, there is little likelihood of the offence being repeated;
  - (3) The gain in question arose from an option which the taxpayer encountered for the first time.
3. The additional tax was reduced from \$4,000 to \$2,000.

**Appeal allowed in part.**

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Yam Pik Lin for the Commissioner of Inland Revenue.  
Taxpayer in person.

### Decision:

1. At the hearing held on 10 August 1999, we allowed the Taxpayer's appeal in part. We reduced the amount of additional tax assessed on him from \$4,000 to \$2,000. These are our reasons from arriving at that decision.
2. By his return dated 24 July 1998, the Taxpayer reported to the Revenue his income for the year of assessment 1997/98 made up as follows:
  - (a) Salaries/Wages from Company A for the period between 1 April 1997 to 13 December 1997 : \$502,515;
  - (b) Salaries/Wages from Company B for the period between 17 February 1998 to 31 March 1998 : \$50,000.
3. According to the employer return of Company A dated 21 April 1998, the Taxpayer's earnings from that company for the period between 1 April 1997 to 13 December 1997 amounted to \$745,515 made up as follows:
  - (a) Salary/Wages : \$502,515 and
  - (b) Gain realised under share option scheme : \$243,000.
4. By his letter dated 7 October 1998, the Taxpayer explained to the Revenue that:

*'My income ... from Company A amount to \$502,515 only. Whereas the gain under option scheme for \$243,000 that I never have. The shares are still in my possession (sic) until the time of my writing. They were not sold since I got them. I was told to include the gain when I sell the shares in that particular financial year.'*
5. After considering this explanation, the Commissioner by notice dated 25 May 1999 imposed additional tax in the sum of \$4,000.
6. At the hearing before us, the Taxpayer explained that he had no intention in misstating his income. The share option given to him by Company A was once in a lifetime. Prior to his emigration he had been a taxpayer in Hong Kong for well over 20 years. His returns had always been accurate.

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7. Given the full explanatory notes in the Revenue's return, we are of the view that the Taxpayer did not have any reasonable excuse for his omission. However we are of the view that the assessment is excessive bearing in mind the following:

- (a) The Taxpayer has an impressive record of compliance;
- (b) Given his emigration, there is little likelihood of the offence being repeated.
- (c) The gain in question arose from an option which the Taxpayer encountered for the first time.

8. In those circumstances, we are of the view that additional tax in the sum of \$2,000 is sufficient penalty for the Taxpayer's innocent omission.