

Case No. D45/10

Salaries tax – burden of proof against excessive or incorrect assessment – appellant refused to provide tax information – whether the Board could draw adverse inference against appellant – appellant refused to accept Commissioner’s settlement terms until the end of appeal hearing – whether reasonable for appellant to insist on the appeal – costs – sections 26B, 26C, 26E, 68(4) and 68(9) of the Inland Revenue Ordinance (‘IRO’). [Decision in Chinese]

Panel: Albert T da Rosa, Jr (chairman), Chan Kam Wing Clement and Chan Miu Lan Anita.

Date of hearing: 14 January 2011.

Date of decision: 18 March 2011.

The appellant objected to the Commissioner’s salaries tax assessment, alleging that the assessable income determined by the Commissioner was excessive. Before the appeal hearing, the Commissioner proposed a settlement with the appellant by assessing his salaries tax on the basis of ‘Annex 1’ upon his provision of his spouse’s application for tax deduction for mortgage loan interest of their jointly owned property. The said proposal was rejected by the appellant.

In the appeal hearing, the appellant testified, complaining that the Commissioner did not allow tax deduction by realising the possibility of the appellant paying interest on mortgage loan and making donations. As to the issue of mortgage loan interest, the appellant only provided a repayment schedule to the Board, but did not provide any information relating to his spouse’s application for tax deduction for mortgage loan interest of their jointly owned property. In relation to the donations, the appellant only provided to the Board deposit slips allegedly regarding deposits made to three charities of financial years unrelated to the present. The appellant did not provide any information relating to his spouse’s application for tax deduction for mortgage loan interest of their jointly owned property until the very end of the appeal hearing although the same was accepted by the respondent. The parties further agreed that assessment should be made on the basis of ‘Annex 1’.

Held:

1. The low tax rate system of Hong Kong relies on taxpayers to provide accurate information to the Commissioner. Since a taxpayer is in the best position to provide information relating to his or her own tax affairs, the Board is entitled to draw adverse inference against a taxpayer if he or she refuses to provide the relevant information. Under section 68(4) of IRO, the

(2011-12) VOLUME 26 INLAND REVENUE BOARD OF REVIEW DECISIONS

burden of proving that the assessment is excessive or incorrect is on the appellant. (D17/08, IRBRD (2008-09), vol 23, 301 and D14/08, IRBRD (2008-09), vol 23, 244 considered)

2. The appellant disregarded his burden of proof. The appellant insisted on the appeal notwithstanding that the Commissioner had on various occasions indicated to the appellant to discharge his burden of proof and proposed for settlement. The conduct of the appellant was a waste of public money and unfair to taxpayers who abided the law. The appellant's complaints were also unreasonable and susceptible to be an abuse of the appeal process. Fortunately, the respondent was willing to accept settlement in the course of the hearing, and did not pursue for costs under section 68(9) of IRO. The Board therefore allowed the appellant's appeal on mortgage loan interest under section 26E of IRO pursuant to the parties' joint application, and the assessable income and tax payable were assessed on the basis of 'Annex 1'. The other points under the Notice of Appeal were dismissed.

Appeal allowed in part.

Cases referred to:

D17/08, IRBRD (2008-09), vol 23, 301
D14/08, IRBRD (2008-09), vol 23, 244

Taxpayer in person.

To Yee Man, Yau Yuen Chun and Chan Wai Yee for the Commissioner of Inland Revenue.

案件编号 D45/10

薪俸稅 – 针对评稅額过多或不正确的举证责任 – 上诉人不提供自身稅務数据 – 委员会可否对上诉人作出不利推断 – 上诉人在上诉聆訊完結前不肯接受稅務局和解条件 – 上诉人坚持上诉是否合理 – 讼費 – 《稅務條例》第26B、26C、26E、68(4)及68(9)条(《稅例》)

委员会：Albert T da Rosa, Jr (主席)、陈锦荣及陈妙兰

聆訊日期：2011年1月14日

裁決日期：2011年3月18日

上訴人反對稅務局向他作出的薪俸稅評稅，並聲稱該評稅的應課稅入息實額款額過高。在上訴聆訊前，稅務局曾向上訴人提出在他提供他配偶提名申請扣除她就上訴人和她共同擁有的物業所佔的居所貸款利息後以「附件1」的基礎評稅和解，但未獲上訴人接受。

上訴人在作供時投訴稅務局未有主動地意識到上訴人的供樓利息及捐款支出的可能性而批准稅務扣減。就供樓利息問題，上訴人只向委員會提供供款預算表(repayment schedule)，而就他和配偶共同擁有的物業則未提供他配偶提名申請扣除她就該物業所佔的居所貸款利息。就捐款問題，上訴人只向委員會提供了一些在和本上訴課稅年度無關的年度向三個他聲稱是慈善團體的銀行戶口入數紙。直到上訴完結前，上訴人才提供了他配偶提名申請扣除她在該物業所佔的居所貸款利息並獲得答辯人接受。另外雙方亦同意以「附件1」的基礎評稅。

裁決：

1. 香港的低稅制度是有賴納稅人提供準確資料。納稅人才是最能提供對他自身稅務事實資料的人，因此若納稅人不提供這些資料，委員會可對他作出不利的推斷。根據《稅例》第68(4)條，證明上訴所針對的評稅額過多或不正確的舉證責任須由上訴人承擔。(參考 D17/08, IRBRD (2008-09), vol 23, 301 及 D14/08, IRBRD (2008-09), vol 23, 244)
2. 上訴人漠視自身的举证责任。纵使稅務局多次给予上訴人举证提示并给予上訴人和解机会，上訴人仍然坚持上诉，实在浪费公帑，对奉公守法的納稅人不公平。他的投訴更是无理取鬧及有濫用稅務上訴程序之嫌。然而非常幸运地答辯人在聆訊中仍接受和解，更无就《稅例》第

68(9)条申请讼费。故依照双方申请，上诉人根据《税例》第26E条的供楼利息问题上訴成立，而应课税入息实额及应缴纳薪俸税额依照「附件1」的基础修订。但上訴通知书其它各点均不成立并予以驳回。

上訴部份得直。

参考案例：

D17/08, IRBRD, (2008-09) vol 23, 301
D14/08, IRBRD, (2008-09) vol 23, 244

纳税人亲自出席聆讯。

陈绮雯、邱婉珍及陈慧仪代表税务局局长出席聆讯。

决定书：

引言

1. 上诉人反对税务局向他作出的2007/08课税年度薪俸税评税。上诉人声称该评税的应课税入息实额款额过高。
2. 署理税务局副局长于2010年3月22日发出决定书，认为根据《税务条例》（以下简称《税例》）第VII部拣选了接受个人入息课税办法评税的上诉人，应就应课税入息实额163,799元纳缴薪俸税4,336元。
3. 上诉人以日期为2010年5月14日的上訴通知书提出的4点作为上訴理由。
4. 在上訴聆讯前，税务局曾向上诉人提出在他提供他配偶提名申请扣除她就上诉人和她共同拥有的物业所占的居所贷款利息后以「附件1」的基础评税而和解，但未获上诉人接受。
5. 在上訴聆讯时上诉人放弃上訴通知书内的第3及第4点。
6. 因此，就本上訴，委员会仍须处理上诉人上訴通知书内的第1及第2点；即：
 - 6.1. 上诉人根据《税例》26E条的供楼利息问题；和
 - 6.2. 上诉人《税例》26C条的捐款问题。

聆讯过程

7. 在上诉聆讯开始时，上诉人选择在宣誓后作供，并愿意接受税务局代表的盘问。
8. 上诉人作供时，屡次投诉税务局未有主动地意识到上诉人的供楼利息及捐款支出的可能性而批准税务扣减。
9. 此外，
 - 9.1. 就供楼利息问题，上诉人只向委员会提供了供款预算表(repayment schedule)，而就他和配偶共同拥有的物业则未提供他配偶提名申请扣除她就该物业所占的居所贷款利息；
 - 9.2. 就捐款问题，上诉人只向委员会提供了一些在 2008/09 课税年度(即和本上诉个案 2007/08 课税年度无关的年度)向三个他声称是慈善团体的银行户口入数的入数纸。
10. 最后，直到上诉聆讯完结前，
 - 10.1. 上诉人才提供了他配偶提名申请扣除她就住所 A 所占的居所贷款利息并获得答辩人接受；
 - 10.2. 双方同意以「附件 1」的基础评税，并要求委员会依照该基础作出决定。
11. 考虑有关情况后，委员会接受双方的申请依照「附件 1」的基础作出决定。

上诉人提出的投诉

12. 委员会认为对上诉人提出的投诉须要作出响应。
13. 《税务条例》(以下简称《税例》)第 26B 条规定如下：

「关于特惠扣除的一般规定

- (1) 本部订明可容许根据第 III 或 VII 部[即 .. 或.. 部]应课税的人作出的扣除，以及在何种情形下可容许如此作出该等扣除。

- (2) 就本部所指的扣除¹提出申索的任何人，须以指明的格式提出申索，亦只有在申索书载有局长所规定的资料并以局长所规定的证明支持的情况下，方可容许该人作出扣除。」

14. 在 D17/08, IRBRD (2008-09), vol 23, 301 一案中委员会认为香港的低税制度是有赖纳税人提供准确数据。(英文原文照录)

‘201. *The Hong Kong Special Administrative Region (“HKSAR”) enjoys financial autonomy under Article 106 but is constrained by Articles 107 and 108 to:*

- (a) *take the low tax policy previously pursued in Hong Kong as reference in enacting laws on its own on matters of taxation;*
- (b) *keep expenditure within the limits of revenue in drawing up its budget;*
- (c) *strive to achieve a fiscal balance;*
- (d) *avoid deficits; and*
- (e) *keep the budget commensurate with the growth rate of its gross domestic product.*

201. *To put the low tax policy in perspective:*

- (a) *the standard rate [Footnote 23: See Schedule 1 to the Ordinance.] ranges from a minimum of 10% for the years of assessment 1947/48 – 1949/50 to a maximum of 17% for the years of assessment 1984/85 – 1986/87; and*
- (b) *the corporate profits tax rate [Footnote 24: See section 90 and Schedule 8 to the Ordinance.] ranges from a minimum of 16% for the years of assessment 1998/99 – 2002/03 to a maximum of 17.5% for the years of assessment 1992/93 to 1993/94 and 2003/04 – 2006/07.*

203. *Direct taxation on earnings and profits brought in 40% - 55% of government’s general revenue. As stated by the Financial Secretary in his speech on 18 June 1977, our fiscal system is also narrowly based. Introducing new taxes, whether direct or indirect, is easier said than done. In enacting new type of taxes under Article 108, HKSAR must still take the low tax policy previously pursued in Hong Kong as reference.*

¹ 包括税例第 26C 条及 26E 条。

(2011-12) VOLUME 26 INLAND REVENUE BOARD OF REVIEW DECISIONS

When times are bad, it is unpopular to try to bring in new taxes. When times are good, some will argue that there is no need to do so.

204. *While the tax rate is low and the fiscal system narrowly based, the demands on general revenue are ever increasing.*
205. *Omission or understatement of receipts in tax returns, if accepted by the Revenue causes loss in revenue. Failure to notify chargeability, if undetected by the Revenue, causes loss in revenue. Delay in submitting returns may delay the timely collection of revenue.*
206. *With a total of 2.98 million to 3.63 million assessments being made by the Revenue each year, a high degree of compliance by the taxpayers in submitting timely and correct tax returns and information to the Revenue is crucial for the effective operation of HKSAR's tax system.*
207. *The revelations by the Financial Secretary on 2 April 1975 showed that non-compliance was somewhat frightening. If the Board's experience is anything to go by, there is still a lot more to be done to improve compliance.*
208. *Defaults, if not deterred and punished, put our fiscal system at risk. It is also unfair to the honest taxpayers.*
209. *With limited income and ever increasing demands on expenditure, there is a limit to which the Revenue and the Department of Justice could and should deploy resources to check the accuracy of returns, conduct field audits and prosecute suspected offenders. These may be time and cost intensive. Even in cases where the Revenue has decided to conduct an investigation into a taxpayer's tax affairs, the Revenue may not know where to look. Once having been caught out, the taxpayer often sits back and leaves it to the Revenue to find out and build up its case. This is a laborious, painstaking and costly task. As we shall see, despite the reverse burden the appellant's attitude is one of "catch us if you can".'*
15. 这些在关于补加税案中举证责任的观察及见解也适用于本案。

16. 在 D14/08, IRBRD (2008-09), vol 23, 244 一案批注(headnote)中记录委员会的意见认为纳税人才是最能提供对他自身税务事实数据的人，因此若然纳税人不提供这些数据委员会可对他作出不利的推断。(英文原文照录)

- '2 *A taxpayer's tax affairs are matters peculiarly within the knowledge of the taxpayer and the taxpayer might be expected to have material evidence to give on its taxation affairs. The absence or silence of a witness does not assist the taxpayer and the Board might draw adverse inferences in appropriate circumstances: Kao Lee & Yip v Koo Hoi Yan*

and others [2003] 3 HKLRD 296 at paragraph 34 (per Ma J (as he then was); and Wisniewski v Central Manchester HA [1998] Lloyd's Rep Med 223, 240 (per Brooke LJ), which was applied in Bank of China (Hong Kong) Limited v Wong Tang and others, HCMP 4222 of 2003, 24 August 2006.

17. 《税例》第 68(4)条订明：

「证明上诉所针对的评税额过多或不正确的举证责任，须由上诉人承担。」

18. 委员会认为上诉人漠视自身的举证责任；纵使税务局多次给予上诉人举证提示并给予上诉人和解机会，上诉人仍然坚持上诉，实在浪费公帑，对奉公守法的纳税人不公平。他的投诉更是无理取闹及有滥用税务上诉程序之嫌。

19. 对上诉人非常幸运地，答辩人在聆讯中仍然接受和解，更无就《税例》第 68(9)条申请可达致 5,000 元的讼费，委员会亦不就讼费作出命令。

案件处置

20. 经详细考虑所有证据和双方陈词及论点，及基于上文的分析，本委员会认为：

20.1. 依照双方的申请，上诉人有关根据《税例》26E 条的供楼利息问题上诉成立；但

20.2. 上诉通知书内的第 2、3 及第 4 点不成立并予以驳回。

21. 委员会接受双方的申请依照「附件 1」的基础作出决定，把上文第 2 段应课税入息实额及应缴纳薪俸税额依照「附件 1」的基础修订以使上诉人应就应课税入息实额 143,584 元纳缴薪俸税 3,477 元。

附件1

2007/08课税年度薪俸税评税

若你获你配偶提名申请扣除她就住所A物业所占的居所贷款利息

	元
入息	628,236
<u>减：</u> 居所贷款利息	(62,652)
向认可退休计划支付的供款	<u>(12,000)</u>
入息净额	553,584
<u>减：</u> 已婚人士免税额	(200,000)
子女免税额	(150,000)
供养父母免税额	<u>(60,000)</u>
应课税入息实额	<u>143,584</u>
按累进税率计算的税款	
首35,000元 @2%	700
另35,000元 @7%	2,450
另35,000元 @12%	4,200
余额38,584元 @17%	<u>6,559</u>
	13,909
<u>减：</u> 75%税款宽减	<u>(10,432)</u>
应缴税款	3,477
<u>减：</u> 2007/08年度暂缴税实额	(242)
先前已缴纳税款	<u>(434)</u>
应缴税款净额	<u>2,801</u>