

**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

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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.

**案件編號 D45/10**

**薪俸稅** – 針對評稅額過多或不正確的舉證責任 – 上訴人不提供自身稅務資料 – 委員會可否對上訴人作出不利推斷 – 上訴人在上訴聆訊完結前不肯接受稅務局和解條件 – 上訴人堅持上訴是否合理 – 訟費 – 《稅務條例》第26B、26C、26E、68(4)及68(9)條(《稅例》)

委員會：Albert T da Rosa, Jr (主席)、陳錦榮及陳妙蘭

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. 上訴人漠視自身的舉證責任。縱使稅務局多次給予上訴人舉證提示並給予上訴人和解機會，上訴人仍然堅持上訴，實在浪費公帑，對奉公守法的納稅人不公平。他的投訴更是無理取鬧及有濫用稅務上訴程序之嫌。然而非常幸運地答辯人在聆訊中仍接受和解，更無就《稅例》第

68(9)條申請訟費。故依照雙方申請，上訴人根據《稅例》第26E條的供樓利息問題上訴成立，而應課稅入息實額及應繳納薪俸稅額依照「附件1」的基礎修訂。但上訴通知書其他各點均不成立並予以駁回。

**上訴部份得直。**

參考案例：

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

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

納稅人親自出席聆訊。

陳綺雯、邱婉珍及陳慧儀代表稅務局局長出席聆訊。

**決定書：**

## 引言

1. 上訴人反對稅務局向他作出的 2007/08 課稅年度薪俸稅評稅。上訴人聲稱該評稅的應課稅入息實額款額過高。
2. 署理稅務局副局長於 2010 年 3 月 22 日發出決定書，認為根據《稅務條例》（以下簡稱《稅例》）第 VII 部揀選了接受個人入息課稅辦法評稅的上訴人，應就應課稅入息實額 163,799 元納繳薪俸稅 4,336 元。
3. 上訴人以日期為 2010 年 5 月 14 日的上訴通知書提出的 4 點作為上訴理由。
4. 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」的基礎評稅而和解，但未獲上訴人接受。
5. 在上訴聆訊時上訴人放棄上訴通知書內的第 3 及第 4 點。
6. 因此，就本上訴，委員會仍須處理上訴人上訴通知書內的第 1 及第 2 點；即：
  - 6.1. 上訴人根據《稅例》26E 條的供樓利息問題；和
  - 6.2. 上訴人《稅例》26C 條的捐款問題。

## 聆訊過程

7. 在上訴聆訊開始時，上訴人選擇在宣誓後作供，並願意接受稅務局代表的盤問。
8. 上訴人作供時，屢次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。
9. 此外，
  - 9.1. 就供樓利息問題，上訴人只向委員會提供了供款預算表(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；
  - 9.2. 就捐款問題，上訴人只向委員會提供了一些在 2008/09 課稅年度(即和本上訴個案 2007/08 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的入數紙。
10. 最後，直到上訴聆訊完結前，
  - 10.1. 上訴人才提供了他配偶提名申請扣除她就住所 A 所佔的居所貸款利息並獲得答辯人接受；
  - 10.2. 雙方同意以「附件 1」的基礎評稅，並要求委員會依照該基礎作出決定。
11. 考慮有關情況後，委員會接受雙方的申請依照「附件 1」的基礎作出決定。

## 上訴人提出的投訴

12. 委員會認為對上訴人提出的投訴須要作出回應。
13. 《稅務條例》(以下簡稱《稅例》)第 26B 條規定如下：

「關於特惠扣除的一般規定

- (1) 本部訂明可容許根據第 III 或 VII 部[即 .. 或.. 部]應課稅的人作出的扣除，以及在何種情形下可容許如此作出該等扣除。

- (2) 就本部所指的扣除<sup>1</sup>提出申索的任何人，須以指明的格式提出申索，亦只有在申索書載有局長所規定的資料並以局長所規定的證明支持的情況下，方可容許該人作出扣除。」

14. 在 D17/08, IRBRD (2008-09), vol 23, 301 一案中委員會認為香港的低稅制度是有賴納稅人提供準確資料。(英文原文照錄)

‘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.*

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<sup>1</sup> 包括稅例第 26C 條及 26E 條。

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*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. 這些在關於補加稅案中舉證責任的觀察及見解也適用於本案。

16. 在 D14/08, IRBRD (2008-09), vol 23, 244 一案批註(headnote)中記錄委員會的意見認為納稅人才是最能提供對他自身稅務事實資料的人，因此若然納稅人不提供這些資料委員會可對他作出不利的推斷。(英文原文照錄)

- '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. 《稅例》第 68(4)條訂明：

「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。」

18. 委員會認為上訴人漠視自身的舉證責任；縱使稅務局多次給予上訴人舉證提示並給予上訴人和解機會，上訴人仍然堅持上訴，實在浪費公帑，對奉公守法的納稅人不公平。他的投訴更是無理取鬧及有濫用稅務上訴程序之嫌。

19. 對上訴人非常幸運地，答辯人在聆訊中仍然接受和解，更無就《稅例》第 68(9)條申請可達致 5,000 元的訟費，委員會亦不就訟費作出命令。

## 案件處置

20. 經詳細考慮所有證據和雙方陳詞及論點，及基於上文的分析，本委員會認為：

20.1. 依照雙方的申請，上訴人有關根據《稅例》26E 條的供樓利息問題上訴成立；但

20.2. 上訴通知書內的第 2、3 及第 4 點不成立並予以駁回。

21. 委員會接受雙方的申請依照「附件 1」的基礎作出決定，把上文第 2 段應課稅入息實額及應繳納薪俸稅額依照「附件 1」的基礎修訂以使上訴人應就應課稅入息實額 143,584 元納繳薪俸稅 3,477 元。



附件1

2007/08課稅年度薪俸稅評稅

若你獲你配偶提名申請扣除她就住所A物業所佔的居所貸款利息

	元
入息	628,236
<u>減：</u> 居所貸款利息	(62,652)
向認可退休計劃支付的供款	<u>(12,000)</u>
入息淨額	553,584
<u>減：</u> 已婚人士免稅額	(200,000)
子女免稅額	(150,000)
供養父母免稅額	<u>(60,000)</u>
應課稅入息實額	<u>143,584</u>
按累進稅率計算的稅款	
首35,000元 @2%	700
另35,000元 @7%	2,450
另35,000元 @12%	4,200
餘額38,584元 @17%	<u>6,559</u>
	13,909
<u>減：</u> 75%稅款寬減	<u>(10,432)</u>
應繳稅款	3,477
<u>減：</u> 2007/08年度暫繳稅實額	(242)
先前已繳納稅款	<u>(434)</u>
應繳稅款淨額	<u>2,801</u>