

Information Leaflet
Board of Review (Inland Revenue Ordinance)
(Effective from 1 April 2016)

Constitution

The Board of Review (Inland Revenue Ordinance) (hereinafter referred to as the Board) is an independent statutory body constituted since 1947 under section 65 of the Inland Revenue Ordinance (Cap 112) (hereinafter referred to as the IRO) to hear and determine tax appeals. The law provides that a panel for a Board of Review shall consist of a chairman and ten deputy chairmen, who shall be persons with legal training and experience, and not more than 150 other members, all of whom shall be appointed by the Chief Executive.

Functions and Procedures

Any person (hereinafter referred to as the appellant) may lodge an appeal by giving notice of appeal in writing to the clerk of the Board (hereinafter referred to as the clerk) if his case comes within one of the following sets of circumstances :-

- (i) He has validly objected to an assessment by the Commissioner of Inland Revenue (hereinafter referred to as the Commissioner), but the Commissioner has not agreed with the objection after consideration. He may lodge an appeal within one month after the transmission of the Commissioner's written determination. The notice of appeal must be accompanied by :-
 - (a) a copy of the Commissioner's written determination; and
 - (b) a statement of the grounds of appeal.

- (ii) He has been assessed to additional tax under section 82A of the IRO. He may lodge an appeal within one month after the date of issue of the notice of assessment. The notice of appeal must be accompanied by :-
 - (a) a copy of the notice of assessment;
 - (b) a statement of the grounds of appeal;
 - (c) a copy of the notice of intention to assess additional tax under section 82A(4), if any such notice was given by the Commissioner; and
 - (d) a copy of any written representations made under section 82A(4) by the appellant.

A panel with at least three members, one of whom shall always be either the chairman or a deputy chairman (hereinafter referred to as presiding person), is formed to hear and determine a tax appeal. Decision is made on the basis of a majority of votes, and if there is an equality of votes, the presiding person has a casting vote in addition to his original vote.

On receipt of a notice of appeal, the clerk shall fix a time for the hearing of the appeal and give 14 days' notice to the appellant and the Commissioner. At any time before the hearing of an appeal, the appellant may withdraw the appeal by notice in writing addressed to the clerk; or the appellant and the Commissioner may reach a settlement on the amount at which the appellant is liable to be assessed. Where a settlement of an appeal is reached, the terms of the settlement shall be reduced in writing and signed by the appellant and the Commissioner. The settlement shall be submitted to the Board for endorsement.

An appellant shall attend the meeting of the Board at which the appeal is heard in person or by an authorised representative. Notwithstanding the above, the Board may, if satisfied that an appellant will be or is outside Hong Kong on the date fixed for the hearing of the appeal and is unlikely to be in Hong Kong within such period thereafter as the Board considers reasonable, on the appellant's written application received by the clerk at least 7 days before the hearing date, proceed to hear the appeal in the absence of the appellant or his authorised representative. In such a case, the Board may consider the written submissions as the appellant may submit to the Board.

All appeals shall be heard in camera. The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant. He should therefore ensure that he has available at the hearing all witnesses he intends to call and all documents he intends to rely on in support of his appeal. Unless otherwise directed, he should have 7 paginated copies of each relevant document with 5 copies for the Board, 1 copy for the Commissioner and 1 copy for the witness. The appellant and the Commissioner should lodge all documents or information with the Board before the scheduled hearing date, in compliance with the directions given by the presiding person.

If a party (hereinafter referred to the defaulting party) does not submit the relevant documents or information in accordance with the directions given by the presiding person, the presiding person may refuse to admit those documents or information as evidence and notify the defaulting party of the decision by written notice. The defaulting party may apply to the presiding person for relief against the decision within 14 days after the date on which the notice is given and must provide evidence proving the statements made in the application. The application for relief does not suspend the above decision and may be determined without a hearing. In determining the application for relief, the presiding person will consider all the circumstances and notify the party of the determination by written notice.

An appellant may have to decide at the hearing on either only making an unsworn submission or alternatively giving evidence on oath in support of his appeal and make submission. The appellant will not be cross examined if the former option is adopted but will be cross examined by representative of the Commissioner should the latter option be chosen. If he gives no evidence, the Board may deal with the case by considering agreed facts (if any) and those documents, whose authenticity is not in dispute, as admissible documentary evidence. In deciding which of the two courses to adopt, the appellant should bear in mind that the onus of proving that the assessment appealed against is excessive or incorrect rests on him. The Board in general will not attach evidential weight on mere submission and will attach greater weight to evidence tested by the process of cross-examination. An appellant may also call other persons as witnesses in support of his appeal at the hearing and the usual practice is that the witness will give evidence on oath and be subject to cross-examination.

After hearing an appeal, the Board shall deliver the decision of the Board which is normally in written form. The Board shall confirm, reduce, increase or annul the assessment appealed against or may remit the case to the Commissioner for re-assessment. Where the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding \$25,000 which shall be added to the tax charged. Such order is in the discretion of the Board. It is a material consideration in the exercise of such a discretion by the Board to ask if the appeal has been conducted frivolously, vexatiously or an abuse of process.

Privileges and Immunities

The Chairman, the deputy chairman or any other member of the Board has, in performing such persons' duties as such, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in the High Court.

A party to a hearing before the Board, or any witness, counsel, solicitor or person representing a party appearing before the Board has the same privileges and immunities as that person would have in civil proceedings in the Court of First Instance of the High Court.

Appeal to the Decision of the Board

Where the Board has made a decision, the appellant or the Commissioner may make an application to the Court of First Instance of the High Court for leave to appeal against the Board's decision on a ground involving only a question of law. Such application for leave must be:

- (i) made by a summons supported by a statement setting out the grounds of the appeal, identifying and stating precisely the question of law involved in each ground;
- (ii) annexed to it a copy of the decision of the Board against which leave to appeal is sought;
- (iii) as concise as is practicable, and avoid repeating matters already set out in the decision of the Board;
- (iv) signed by counsel and solicitors if it has been prepared by them, or by the applicant himself if he has not engaged legal representative; and
- (v) lodged with the Registrar of the High Court and served on the other party (i.e. the appellant or the Commissioner as the case may be) within 1 month after the date on which the Board's decision is made or (if the Board's decision is notified to the appellant or the Commissioner by notice in writing) the date of communication by which the Board's decision is notified.

Please refer to the Practice Direction 34 issued by the Judiciary (<http://legalref.judiciary.gov.hk/doc/npd/eng/PD34.htm>) for detailed arrangement about the application for leave to appeal. For enquiries, please contact the Clerk of the High Court Office (Civil Matters) (Telephone: 2825 4672).

Enquiries and appeal applications can be directed to us electronically at bor@fstb.gov.hk. You are also welcome to visit our homepage at <http://www.info.gov.hk/bor>.

(Note: The above information is for general reference by members of the public. The conduct of hearing and disposal of appeals by the Board are governed by relevant sections of the Inland Revenue Ordinance (Cap 112).)

Office of the Clerk to the Board of
Review (Inland Revenue Ordinance)
May 2016