

Tax Practice:**No late for Notice of Appeal**

BY ANNIE K.Y. CHEUNG

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Taxpayers who intend to lodge tax appeal should duly observe the time limit under Section 66(1)(a) of the IRO (i.e. where notice of appeal on Commissioner's determination shall be made within 1 month after receiving the written determination). Section 66(1)(b) provides no late notice will be entertained unless the Board have allowed extension. In D3/91, the taxpayer therein was late in giving his notice of appeal for one day. The Board refused to allow delay for even one day.

Under section 66(1A), the Board may not extend time unless an appellant was prevented from giving timely notice of appeal on three grounds, (i) by illness or (ii) he was absent from Hong Kong, or (iii) other reasonable cause. Therefore, if the taxpayer was neither ill nor absent from Hong Kong in the relevant period, he has to show "other reasonable cause" why the Board should grant him time extension for his late.

One should not underestimate the burden on showing other reasonable cause. "Anyone seeking to obtain the exercise of the discretion of a legal tribunal must

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demonstrate that they are "with clean hands" and that there are good reasons for the extension of time." (D3/91)

In *Chow Kwong Fai v. Commissioner of Inland Revenue* [2005] 4 HKLRD 687 the taxpayer was late for three months. The reason given was that he misunderstood section 66(1) of the IRO and took time to prepare a detailed statement of facts. Such kind of unilateral mistake was not accepted as a reasonable cause which prevented him from lodging the notice of appeal within time. Furthermore, the Board in D41/05 ruled that the one month period would end on the date when the taxpayer's notice of appeal had reached the Board.

In a recent case D28/07, the Board accepted that the taxpayer did telephone the Office of the Board and was mistakenly informed by someone on the date of the service of the notice, and that it is reasonable for a taxpayer to rely on an answer obtained from the Office of the Board and acted on it. One day time extension in the giving of notice of appeal is allowed.

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Life/Balance

Bonneville Speedway – Utah

(by Mr. Eric CK Yeung)

Bonneville Speedway is an area of the Bonneville Salt Flats near Wendover, Utah. This is a famous place for motor sports and particularly as the venue for numerous land speed records.

The Bonneville Salt Flats is located along I-80 near the Utah-Nevada border and stretching over 30,000 acres. Travellers may drive from Salt Lake City and take the very straight road westwards along I-80. At the first hour drive, the scenic view of Great Salt Lake can be seen from the right hand side. You may stop and pick up bottle of mineral salts for souvenir. After around two hours ride, a sign board can be viewed on the roadside showing "Bonneville Salt Flats".

Vehicles can access this salt flat but one should be careful to the elasticity of the flat. Stay off the salt surface which is covered by water. Despite the appearance of a hard surface, much of the area is a thin salt crust over soft mud. It easily breaks under the weight of a vehicle. When wet, the salt surface is soft and easily damaged by vehicles. Moreover, the salt water is highly corrosive and can "short



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-out" the electrical system in your vehicle. The speedway is marked out by the Utah State Highway Department at the start of each summer. Usually two tracks are prepared; a 10 mile long straightway for speed trials and an oval or circular track for distance runs, which is typically between 10 and 12 miles (16 and 19 km) long depending on the condition of the salt surface.

In recent years, there has also been a 5 mile (8 km) long straightway for qualifying slower vehicles. Typically, speed trials are scheduled throughout the summer and fall at the Bonneville Raceway. Most events are open to the public. Indeed, most visitors would not attempt to ruin their vehicle under this salty land condition. Actually, the surrounding scenic views might be more impressive than running on the track speedway. When heading westward and upon reaching at the boundary of Nevada, lodging and casinos can be found on I-15.

Security For Costs

BY CURTIS H.L. WONG CPA, LLB, PCLL

Legal costs plays an important role in litigation and arbitration. Generally, the loser in legal proceedings is required to pay a substantial part (normally about 60%-70%) of the legal costs of the successful party.

Security for costs is the provision of an amount of money sufficient to cover a party's liability for costs in proceedings should they lose.

If the defendant felt confident in defending the case successfully and that the legal costs would not be paid for by the plaintiff, he may apply to the court for an order that the plaintiff provide security for costs. This equally applies for the plaintiff against the defendant's counterclaim.

Typically, if the claimant is resident outside the jurisdiction of the court or is insolvent, the court might recognize that it might be very difficult to enforce the costs order, and so order security be given.

Security for costs is a useful safeguard against vexatious claims and insolvent claimants. Such order costs may put the claimant in a disadvantage position, and therefore the court will ensure that it would not be used to hinder a genuine claim. The applicant should show that there's good prospects of success of the claim and adverse financial position of the opponent.



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HONG KONG UPDATE**Key tax relief measures of 2008-09 Budget**

1. One-off reduction of 75% of the 2007-08 on final salaries tax, profits tax, property tax and tax under personal assessment subject to a ceiling of \$25,000.
2. Tax concessions from 2008-09 onwards:

	Proposed 2008/09	2007/2008
Standard rate	15%	16%
Corporate profits tax rate	16.5%	17.5%
Change on Personal allowance		
Basic	108,000	100,000
Married person	216,000	200,000
Single parent	108,000	100,000
Change on marginal tax band for individual's chargeable income		
2%	First \$40,000	First \$35,000
7%	Next \$40,000	Next \$35,000
12%	Next \$40,000	Next \$35,000
17%	Remainder	Remainder
Other		
Deduction ceiling for approved charitable donation	35% of adjusted assessable income/ profits	25% of adjusted assessable income/ profits

3. Deduction for capital expenditure on specified environmental protection facilities: 100% on machinery or plant, and 20% deduction for 5 consecutive years on building structure.
4. Waiver of the 2008-09 business registration fees (i.e. \$2,000 for business and \$73 for branch. The levy for the Protection of Wages on Insolvency Fund at \$450 per year is still required.)

Note: The above proposal is subject to legislative amendments and the passage of the Legislative Council.

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