

Introduction for the Procedures of Domestic Tax Disputes Resolution – Hong Kong, China (“Hong Kong”)

A. Script of the presentation

Objection by a taxpayer

1. Taxpayers in Hong Kong have the right to challenge tax assessments through the mechanisms of reviews by the tax administration, by an external body or by a Court. If a taxpayer disagrees with an assessment upon receipt of a notice of assessment, an objection may be made against the assessment. This is the first stage of the formal dispute process.
2. On receipt of a valid notice of objection, the Commissioner of Inland Revenue (“the Commissioner”) shall consider the same and may confirm, reduce, increase or annul the assessment under objection. In the event of the Commissioner failing to agree with the taxpayer as to the amount to be assessed, the Commissioner shall transmit to the taxpayer his written determination, the reasons for the determination, and a statement of the facts upon which the determination was made.

Appeal to the Board of Review

3. An appeal against the determination of the Commissioner on any valid objection may be made to the Board of Review (“the Board”). The Board is an independent statutory body to hear and determine tax appeals. It forms panels to hear individual tax appeals. Each hearing panel must comprise at least three members, including the Chairman or a Deputy Chairman, who have legal training and experience. The Board serves as a fact-finding body responsible for making findings of facts. It is also a reviewing body responsible for reviewing the Commissioner’s application of the law. The onus of proving that an assessment is excessive or incorrect shall be on the taxpayer. After hearing the appeal, the Board shall confirm, reduce, increase or annul the assessment or may remit the case to the Commissioner together with its opinion.

Appeal to the Courts

4. If either the taxpayer or the Commissioner is dissatisfied with a decision of the Board, they may apply to the Court of First Instance for leave to appeal against the Board's decision on a ground involving only a question of law. On hearing an appeal with leave granted, the Court of First Instance may draw any inference of fact; and confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions that the Court thinks fit. If the party is not satisfied with the judgment of the Court of First Instance, he or she may lodge an appeal to the Court of Appeal upon fulfillment of some specified conditions. Any further appeal against the judgment of the Court of Appeal is to the Court of Final Appeal, i.e. the final appellate court within the court system of Hong Kong.

Correction of an error or omission

5. Where no valid objection or appeal has been lodged within the relevant time limit against an assessment as regards the amount of the assessable income or profits or net assessable value assessed thereby", the assessment would be deemed final and conclusive as regards the amount assessed. The same would be deemed where (1) an appeal against an assessment has been withdrawn or dismissed; (2) an assessment has been revised by the Commissioner allowing the taxpayer's objection; and (3) an assessment has been determined on objection or appeal.
6. Notwithstanding the effect of finality of an assessment, a taxpayer may re-open an assessment in certain circumstances. If the tax charged is excessive by reason of an error or omission in any tax return (or statement submitted in respect of a tax return) or by reason of an arithmetical error or omission in the relevant tax calculation, the taxpayer may apply for revision of assessment within 6 years after the end of the relevant year of assessment or within 6 months after the date on which the relevant notice of assessment was served, whichever is the later. As established by case law, the term "error" meant "something incorrectly done through ignorance or inadvertence". In cases where there is only a change of opinion of the taxpayer in connection with how any part of the accounts should be made up, the previous decision will not be regarded as an error or omission. In addition, no correction shall be allowed if the error or omission was in fact made in a tax return or statement prepared

on the basis of the general practice prevailing at the time when the return or statement was made. Where an assessor refuses to correct an assessment, he shall give written notice thereof to the taxpayer who shall thereupon have the same rights of objection and appeal as if such notice were a notice of assessment.

A. Profile of the speaker

Ms Leung To-shan is a Chief Assessor of the Inland Revenue Department of Hong Kong, China. She is now working in the Appeals Section of the Department which is mainly responsible for processing objections and appeals.