Complaint against the Inland Revenue Department - raising demand for salaries tax on a taxpayer without ascertaining his chargeability, and failing to effectively convey its tax demand and taking tax recovery action unjustifiably.

The complainant was an expatriate once recruited by a local enterprise, company A, to work in an overseas territory during the period from April 1993 to September 1994. He came to Hong Kong in October 1994 and joined the workforce of company B. His employment lasted until February 1996 after which he left Hong Kong. In October 1996, however, he was notified by his Hong Kong banker that the Department had issued a notice for recovery of tax against him, such that his bank accounts were frozen at its disposal. The complainant felt aggrieved because he had not received any tax demand from the Department nor any warning prior to the tax recovery action. In addition, he noticed that the Department had used company A's address as his correspondence address in the recovery notice and other correspondences, and hence suspected that the tax being demanded was in fact related to the salaries which he earned whilst working for company A and for which taxes were already paid in the overseas territory where he worked. He therefore complained to this Office against the Department for : (a). failing to ascertain his liability to salaries tax before raising a tax demand on him; and (b). failing to effectively convey its tax demand and unjustifiably issuing a recovery notice against him.

2. Upon investigation, this Office notes that company A did file an employer's return for the period ending March 1994 in respect of the complainant to the Department in May 1994. A notification to inform the Department that the complainant had ceased employment in September 1994 was also filed subsequently. Considering that the complainant's residential address as given in both of these documents had appeared incomplete, the Department decided to substitute it with company A's address and updated the record in its database. Towards the end of 1994, however, company A informed the Department that it had erroneously filed employer's returns for the assessment year 1993/94 in respect a number of workers recruited to work overseas, and it later confirmed that the complainant who had rendered his full services there from May 1993 to September 1994, was one among the workers involved. On the other hand, in May 1995 the Department received an employer's return from company B in respect of the complainant's employment from October 1994 to March 1995. In this return, company B's correspondence address was reported as the complainant's residential address. However, considering it inappropriate to update its database with third party information, the Department had not updated the complainant's address with the one provided in the

employer's return. Company B later notified the Department that the complainant's employment had ceased since February 1996.

3. The Department issued a tax return for 1994/95 to the complainant at company A's address (i.e. the address recorded in its database) in December 1995, and when this was found outstanding, issued him with a reminder. In the absence of any response, the Department raised an estimated assessment for 1994/95 on him in May 1996, and subsequently a surcharge notice, both of which were also sent to company A's address. In August 1996, however, the 1994/95 demand note was returned undelivered. This was followed by the returning of the reminder. The Department tried but failed to obtain the complainant's last known forwarding address from company B, and hence proceeded to take recovery action by issuing a recovery notice to the complainant's banker.

4. In respect of complaint point (a), this Office observes that the Department's recovery action on the present occasion was related to the tax demanded from the complainant for the assessment year 1994/95, and was computed from an assessment estimated by the Department on the basis of employer's returns filed by company A and company B. In this connection, this Office notes that the Department was in fact informed by company A that the employer's return in respect of the complainant for the period of his employment up to September 1994 had been filed erroneously, since the complainant had all this while been working in an overseas territory. The Department had not taken into consideration such information in raising a tax demand on the complainant. Complaint point (a) is therefore substantiated.

5. Regarding complaint point (b), it is apparent that the 1994/95 tax return and the subsequent demand note and reminder issued by the Department had not reached the complainant, and the cause was probably that they had been sent to an "obsolete" address, namely, that of the complainant's previous employer. When the 1994/95 tax return was raised in December 1995, the complainant had already ceased employment with company A for over a year. In this regard, this Office observes that when the Department initially created a tax file for the complainant in November 1994, it was then already known to the Department, through company A's notification, that he had left the company's service. Yet, after the Department came to notice that the complainant's residential address as reported in the employer's return was incomplete, the Department did not seek clarification but simply replaced it with the employer's address in its database. Had immediate action been taken to verify the address, the

Department might perhaps be able to trace the whereabouts of the complainant who had then left the service of company A only shortly.

6. The submission of an employer's return by company B in May 1995 had presented a good opportunity for the Department to update its database or to contact the complainant to clarify his address, since he was then working and staying right in Hong Kong. Yet the Department would rather retain company A's address in its database and took no action to clarify the matter. On the other hand, this Office notes that the non-delivery of the demand note should have sounded a warning to the Department as to the appropriateness and effectiveness of sending further documents to the same address, particularly that it would next be taking steps to advance its tax recovery action. However, the Department proceeded with issuing the recovery notice to the same address when attempts to obtain more up-to-date information in this respect proved futile. As evidenced by the record of non-delivery, the tax demand had not been successfully delivered to the taxpayer, who therefore did not have the opportunity to raise any objection on the tax assessment before recovery action was implemented. To be fair, in circumstances as such, the taxpayer might well be given the benefits of the doubt before the Department would proceed to recovery action. Complaint point (b) is therefore considered substantiated.

7. The Ombudsman concludes that this complaint is substantiated.

8. The Ombudsman recommends to the C of IR to -

(a) issue a letter of apology to the complainant;

(b) review the existing procedures/practices in tax recovery action with a view to ascertaining that all reasonable steps will be taken to duly notify a taxpayer of the Department's tax demand before recovery action would be initiated; and

(c) provide suitable guidance and instructions to the Department's staff in recording, updating, and seeking clarification on information pertaining to taxpayers' particulars and especially their forwarding addresses.

9. In response, the C of IR indicated his acceptance of the recommendations, but expressed that the complainant's failure to fulfill his various obligations under the Inland Revenue Ordinance, namely to give notice to the Department regarding his chargeability to tax, to file tax returns, to report address changes and his impending departure from Hong Kong, did play a contributory role in leading to the Department's recovery action and hence his present complaint. If he had complied with his various

obligations under the Ordinance, the Department could have contacted him and finalized his tax liabilities before he left Hong Kong. On the other hand, the C of IR expressed that timely action was essential in successful recovery of outstanding tax, and that generally it would not be appropriate to stop all recovery actions once a taxpayer became untraceable. Nevertheless, the Department would be reviewing its practice to see if further tracing actions could be taken in appropriate cases before initiating recovery actions.

10. This Office appreciates the C of IR's concern over the taxpayer's compliance with his various responsibilities under the Inland Revenue Ordinance which is crucial to the effective operation of the tax assessment and collection system, and which this Office agrees to be valid. However, this Office opines that the failure of taxpayers to duly and fully comply with the statutory obligations could not be taken as mitigation to balance off the inadequacies observed in the tax collector's operation in the tax collection process. This Office is not at all suggesting that tax recovery action should terminate once a taxpayer becomes untraceable. The point, rather, is that further steps to continue recovery action should be meaningfully and practically conceived, and actions without regard to their appropriateness and effectiveness, such as the sending of a recovery notice to an obsolete address despite repeated records of non-delivery, are mere gestures that action is in progress, but which cannot be considered as making the best use of available resources. Taking into consideration the C of IR's comments, The Ombudsman concludes that the findings and conclusion of this investigation should stand.

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