



Court of Final Appeal ruled  
directors not liable to additional  
tax for signing incorrect returns

05/10/2022

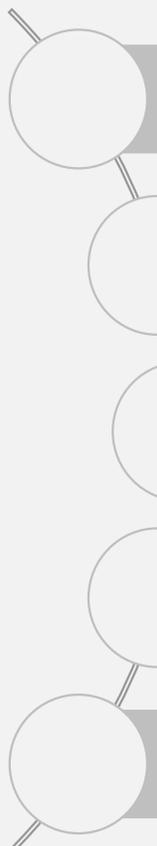
# 1. Summary

---

- The Court of Final Appeal in Hong Kong (“CFA”) ruled that directors were not liable to administrative penalty (in the form of additional tax) for signing incorrect tax returns of a company in a judgement released on 5 August 2022.
- In this newsletter, we would discuss
  - the facts of this court case; and
  - persons who would be liable to signing incorrect returns.

## 2. Background

---



Two individuals were directors of a Hong Kong incorporated company.

They signed the Company's profits tax returns for 1996/1997, 1997/1998 and 1999/2000 and claimed deductions of management fees paid to its parent company incorporated in BVI.

The IRD disallowed the deductions claims and raised additional assessment to the Company under a tax audit in 2002.

The Company failed to pay the tax and was wound up by the court on 4 June 2012.

The IRD assessed the directors who signed the Company's tax returns to additional tax which amounted to HK18 million in total on the basis that the two directors filed incorrect tax returns.

### 3. Technical argument of this case

---

#### The Inland Revenue Ordinance (“IRO”)

- Pursuant to Section 82A(1)(a) of the IRO, any person who without reasonable excuse makes an incorrect return in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person shall be liable to be assessed to additional tax.

#### IRD’s practice

- In normal circumstances the additional tax should be imposed on the taxpayer, i.e. the Company, itself.

#### The technical argument

- Whether Section 82(1)(a) permitted the IRD to assess additional tax on the person, i.e. the directors in this case, who signed an incorrect tax return of a corporate taxpayer.

## 4. Court decision

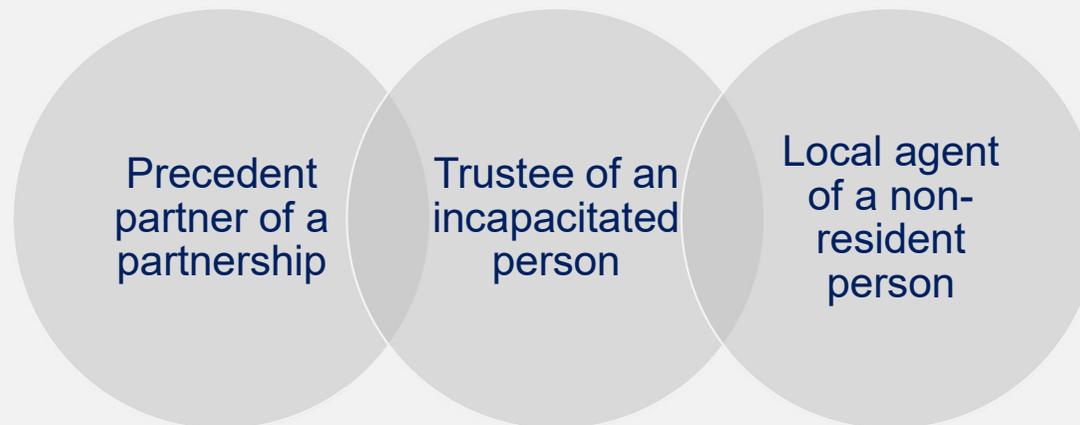
---

- The Court ruled in favor of the directors, concluding that the directors were not liable to additional tax under Section 82A(1)(a) of the IRO based on the followings:
  - It should be the Company, rather than the directors, who should be required to make or furnish the returns.
  - While secretary, manager, director or liquidator of a company are answerable for doing acts required to be done under the provision of the IRO under section 57(1) of the IRO, this section does not impose a legal obligation to do the act on behalf of the Company.
  - Directors should not be considered as signing the return as agent on behalf of the Company.

## 5. Persons liable for signing incorrect returns

---

- The following persons are required to make a return on behalf of other persons under the IRO and hence may have exposure to additional tax under section 82A(1)(a) of the IRO for the incorrect tax returns made or furnished by them:



# Contact

---

For further information, please contact:

**Marzio Morgante**

Managing Partner

Adv. L.L.M. (Leiden)

Certified Accountant and Tax Expert (Italy)

**Asian Tax Advisory Limited**

Rooms 501-2, Wilson House

19-27 Wyndham Street Central, Hong Kong

T: +852 3102 1995

F: +852 3102 0991

M: +852 6433 8018

E: [marzio@atatax.hk](mailto:marzio@atatax.hk)

W: [atatax.asia](http://atatax.asia)

