

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 2015

INTRODUCTION

A At the meeting of the Executive Council on 9 June 2015, the Council ADVISED and the Acting Chief Executive ORDERED that the Inland Revenue (Amendment) (No. 3) Bill 2015 (the Bill), at **Annex A**, should be introduced into the Legislative Council (LegCo). The Bill seeks to enhance the tax appeal mechanism and improve the efficiency and effectiveness of the Board of Review (Inland Revenue Ordinance) (the Board), in the following areas –

- (a) allow an appeal against the decision of the Board on a question of law to go direct to the Court of First Instance (CFI) or, if applicable, the Court of Appeal (CA), by abolishing the present case stated procedure under the Board;
- (b) empower the person presiding at the hearing of an appeal before the Board to give directions on the provision of documents and information for the hearing;
- (c) provide privileges and immunities to the Chairman, Deputy Chairmen (DCs) and other members of the Board, and the parties to a hearing as well as other persons appearing before the Board; and
- (d) raise the ceiling of costs to be paid by the appellant as may be ordered by the Board from \$5,000 to \$25,000, to strengthen the deterrent effect against frivolous appeals.

JUSTIFICATIONS

(a) Need for enhancing the tax appeal mechanism

2. The Board is an independent statutory body constituted under Inland Revenue Ordinance (IRO) to hear and determine tax appeals lodged by taxpayers. The Government has conducted a review on the existing tax appeal mechanism and identified four key areas for improvement as follows –

- (a) the statutory requirement for the case stated procedure for dealing with appeals against the decision of the Board on questions of law is time-consuming and costly, and worse still, affects the capacity of the Board to hear other appeals;
- (b) the lack of statutory power for the Board to give pre-hearing directions has led to the deferral or unnecessary lengthening of hearings;
- (c) the lack of provision of privileges and immunities, as in the case of other statutory appeal boards (SABs), for the Chairman, DCs and members of the Board and parties attending hearings may expose them to unnecessary risks of litigation, which is undesirable to the Board in performing its statutory duty of determining tax appeals without fear or favour; and
- (d) the ceiling of costs which the Board may order from appellants has not been adjusted since 1993. This has reduced the deterrent effect against frivolous appeals.

3. Details of the above areas for improvement and our proposals are set out in paragraphs 4 to 18 below.

(b) Allowing direct appeal to the court on question of law

4. Under the current regime, appeals against the decision of the Board on questions of law could only be made through the case stated procedure. As provided for under section 69(1) of IRO, either the taxpayer or the Commissioner of Inland Revenue (CIR) may make an application within one month of the date of the Board's decision for the Board to state a case on a question of law arising from its decision for the opinion of CFI. However, the process of producing a stated case could be time-consuming. Not only does it lead to delay in lodging an appeal to the court, but it also affects the

Board's capacity and efficiency in handling other appeals. Further, both the taxpayer concerned and CIR may incur substantial legal expenses in reviewing the draft case stated and in proposing amendments thereto.

5. To avoid the time-consuming and costly process for stating a case, we propose to abolish the procedure as required under the law, such that a taxpayer or CIR is allowed to apply to CFI direct for leave to appeal against the Board's decision on a question of law. The leave application should be made *inter partes*. If CFI grants leave to appeal, it will hear and determine the substantive issue of the appeal. If CFI refuses to grant leave to appeal, the taxpayer concerned or CIR may make a further application to CA for leave to appeal. If CA grants leave to appeal, the case will be heard by CFI. For clarity purpose, we have set out in the Bill the proposed arrangements for CFI and CA to determine applications for leave, which are broadly in line with the court procedures as set out in the Rules of the High Court (Cap. 4 sub. leg. A). It is worth noting that, upon suggestions of the Judiciary, we have included specific provisions for the following arrangements in the enhanced tax appeal mechanism –

- (a) if CFI determines the application for leave on the basis of written submission and a party is aggrieved by the determination, CFI must, at the request of the aggrieved party, carry out a hearing to reconsider the application for leave; and
- (b) CA is provided with the flexibility to handle the application for leave by one or more Justices of Appeal to cater for cases of different nature and complexity, and after CA (whether or not consisting of a single Justice of Appeal only) has determined the application for leave, no further application may be made to CA for leave to appeal against the Board's decision.

6. Under section 69A of IRO, an appeal by way of case stated can be brought to CA direct without a hearing before CFI, provided that CA has granted leave on the application by the taxpayer or CIR. We propose to keep the existing arrangement, which is commonly known as the leapfrog arrangement, except that the requirement for case stated will be replaced by that for leave to appeal. Specifically, this will mean –

- (a) if CFI grants leave to appeal, the taxpayer concerned or CIR may apply for leave from CA for leapfrogging;

- (b) if CFI refuses to grant leave to appeal in the first place but CA subsequently grants leave upon application by the taxpayer or CIR, another leave is still required from CA for leapfrogging; and
- (c) if CA refuses to grant leave for leapfrogging, the appeal will be heard by CFI.

7. The proposed requirement for applying to CFI for leave to appeal against the Board's decision (with leapfrogging to CA or not) will preserve the sifting function currently performed by the case stated procedure whereby appeals on issues of fact will be screened out. As such, the issue of whether the appeal involves a question of law will first be dealt with by the CFI under the enhanced appeal mechanism.

8. When handling an appeal with leave granted, CFI or CA (whether under the leapfrog arrangement or not) may confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions (including a direction for a new hearing) that the court thinks fit. CFI or CA¹, on hearing an appeal against the decision of the Board, which involves a question of law, would not receive any further evidence, or reverse or vary any conclusion made by the Board on questions of fact unless the court finds that the conclusion is erroneous in point of law.

9. The proposed enhanced appeal mechanism will be applicable to parties bringing appeals to CFI (or CA under the leapfrog arrangement) on or after a commencement date to be specified. Case stated applications received by the Board before the proposed legislative amendments come into operation will be handled in accordance with the existing arrangement. We propose to include in the Bill relevant provisions such that an application that has been made and delivered to the Board under the existing section 69 of IRO before the commencement date will continue to be processed in a manner as if the amending Ordinance had not been enacted, notwithstanding the enactment of the amendment Ordinance. Relevant parties will be duly informed.

10. We have consulted the Judiciary, and comments and suggestions from the Judiciary in relation to the court procedures have been incorporated.

¹ This is similar to the approach in Labour Tribunal Ordinance (Cap. 25) and Small Claims Tribunal Ordinance (Cap. 338).

(c) Empowering the Board to issue directions and to sanction non-compliance

11. Under section 68(6) and (10) of IRO, the Board is empowered to order a person to attend before the Board and give evidence. Any person who fails to comply with such order without reasonable excuse commits an offence and is liable on conviction to a fine at level 3 (\$10,000). IRO, however, does not contain any provisions empowering the Board, as in the case of other SABs, to issue directions to parties to the appeal or sanction non-compliance with such directions. As such, from time to time, there are late submissions of documents and information for the Board's hearings. This has affected the proceedings of the Board and may also lead to re-scheduling of hearings for the hearing panel and parties concerned to review the documents and information.

12. With reference to the approach commonly adopted by other SABs², we propose to empower the person presiding at the hearing (i.e. the Chairman, or a DC of the Board) to give directions on the provision of documents and information for the hearing of an appeal.

13. To deter non-compliance with the Board's decision, we propose to empower the presiding person to refuse to admit any documents and information as evidence in the hearing of an appeal if they are not produced in compliance with the directions given. That said, in order to avoid undermining a party's right to a fair hearing, we propose to provide a channel for the party in default to apply to the presiding person for relief from sanction. The decisions to refuse to admit any documents and information as evidence or to refuse to grant relief from sanction are administrative decisions amenable to judicial review.

(d) Providing Privileges and Immunities

14. IRO does not provide privileges and immunities to the Chairman, DCs and other members of the Board, as well as persons appearing before the Board. This is unfair to parties to the appeal and may affect the Board in performing its statutory duty of determining tax appeals impartially without fear or favour.

² Examples include the Clearing and Settlement Systems Appeals Tribunal, the Telecommunications (Competition Provisions) Appeal Board, the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board and the Mandatory Provident Fund Schemes Appeal Board.

15. In line with the arrangement of other SABs³, we propose to provide in IRO that –

- (a) the Chairman, DCs and other members of the Board have, in performing their duties under IRO, the same privileges and immunities as a judge of the CFI in civil proceedings in that court; and
- (b) the witnesses, parties to any proceedings and representatives or other persons appearing before the Board have the same privileges and immunities as they would have in civil proceedings in the CFI.

(e) Strengthening deterrent effect against frivolous tax appeals

16. Under section 68(9) of IRO, the Board is empowered to order the appellant to pay a sum as costs of the Board, subject to a ceiling specified in the law. The Board, in practice, imposes costs only for frivolous appeals or appeals that are devoid of any merit. The current ceiling of \$5,000 has not been adjusted since 1993 and has lost its deterrent effect. In the past five years, out of the average 43 tax appeals on which the Board had decided, it ordered costs for 9 cases (21% of total), with an average of \$4,191. The Chairman of the Board has advised that the ceiling rate should be reviewed.

17. To preserve the deterrent effect against frivolous tax appeals, we propose to raise the cost ceiling from \$5,000 to \$25,000. The proposed increase is not meant to recover the full costs of hearings, which, as reflected in the latest costing exercise as at December 2014, was estimated to be \$80,800. The following are some examples of the tax appeals to which the Board has ordered costs in the past –

- (a) taxpayers failing in their responsibilities to file complete and accurate tax returns;
- (b) taxpayers trying to abuse the tax appeal procedure to defer payment of tax; and
- (c) re-offending and outright default cases.

³ Examples include the Administrative Appeals Board, the Appeal Tribunal Panel (Buildings), Municipal Services Appeals Board and the Telecommunications (Competition Provisions) Appeal Board.

18. In line with the established practice of the Board, the maximum amount of costs would be reserved for blatant cases of abuse and the hearing panel of the Board would continue to exercise careful discretion in ordering the payment of costs taking into account the merits of individual cases. Raising the costs ceiling will not discourage those appellants with genuine and reasonable grounds from lodging their appeals.

OTHER OPTIONS

19. We must amend the IRO to give effect to the relevant proposals. There is no other option.

THE BILL

20. The major provisions of the Bill are as follows –

(a) **Clause 7 -**

(i) adds the new section 68AA to provide for the power of the person presiding at the hearing of an appeal before the Board to give directions on the provision of documents and information, and to refuse to admit any document or information that is not provided in compliance with the directions (see paragraphs 12 and 13 above); and

(ii) adds the new section 68AAB to provide for the privileges and immunities of the members of the Board, the parties to the hearing, and other persons appearing before the Board (see paragraph 15 above).

(b) **Clause 8** substitutes section 69, and **Clause 9** adds the new section 69AA, to provide for the right to appeal directly to CFI against the Board's decision on a question of law (see paragraph 5 above);

(c) **Clause 10** amends section 69A to provide that a person who has been granted leave to appeal to CFI may, with the leave of CA, appeal directly to CA (see paragraph 6 above);

- (d) **Clauses 12 and 14** add the new section 89(15) and Schedule 35 respectively, to provide for transitional arrangements relating to appeals against the Board’s decisions that have been made before the Bill comes into operation (see paragraph 9 above); and
- (e) **Clause 13(2)** amends Part 1 of Schedule 5 to IRO to increase the maximum amount that the Board may, after hearing an appeal, order the appellant to pay as costs of the Board if the Board does not reduce or annul the assessment appealed against (see paragraph 17 above).

B The existing provisions of the IRO being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be as follows –

Publication in the Gazette	12 June 2015
First Reading and commencement of Second Reading debate	24 June 2015
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

22. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. There are no economic, sustainability, productivity, family, gender or environmental implications. The financial and civil service implications of the proposal are set out at **Annex C**.

C

PUBLIC CONSULTATION

23. We briefed the LegCo Panel on Financial Affairs (FA Panel) on the

legislative proposals in January 2014. Panel Members raised no objection to the proposals⁴. The Joint Liaison Committee on Taxation also has no difficulty with the broad directions of the proposals.

PUBLICITY

24. We will issue a press release on the Bill on 12 June 2015. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

25. The statutory membership of the Board comprises a Chairman, ten DCs and a maximum of 150 members. The Chairman and DCs must be persons with legal training and experience. In operation, the Board forms panel to hear individual tax appeals. Each hearing panel must comprise at least three members, including the Chairman or a DC of the Board as chairperson of the panel. After completing the hearing of an appeal, the Board may confirm, reduce, increase or annul the assessment appealed against, or remit the case to the CIR for re-assessment. The Board is the ultimate authority for fact finding, and its decisions cannot be challenged on the grounds of facts. Under section 69(1) of IRO, either the taxpayer concerned or CIR may make an application within one month of the date of the Board's decision for the Board to state a case on a question of law arising from its decision for the opinion of CFI. If so convinced that there exists a proper question of law, the Board will state a case on the question of law for the opinion of the CFI. On the other hand, if the Board considers that there is no proper question of law, it will refuse to state a case. The taxpayer concerned or CIR may challenge the Board's refusal to state a case by seeking judicial review.

26. While the Board processes an average of around 50 tax appeals per year, the appeal cases have become more and more complex and the average hearing time per case has increased from 1.3 sessions (half-day for each) in 2010-11 to 3 sessions in 2014-15. The case stated procedure has taken up much of the valuable time and resources of the Board at the expense of the efficiency in handling other appeals, particularly those complex ones. Under

⁴ Subsequent to the FA Panel meeting in January 2014, we reviewed the ceiling of costs to be paid by the appellant as may be ordered by the Board. As such, the proposal presented to FA Panel did not include the proposed increase in costs ceiling. Nevertheless, the objective of strengthening the deterrent effect against frivolous tax appeals via the proposed increase in the costs ceiling is consistent with the overall objective of the Amendment Bill.

the case stated procedure, the Board has to review the draft case stated prepared by the applicant and ascertain whether there is a genuine question of law involved. It takes about six months on average for the Board to process the stated cases before they could be heard before the court. The workload of the Board in the past five years is set out in the table below –

Financial Year	Cases processed / No. of hearing sessions per case	No. of case stated applications received
2010-11	46 cases / 1.3 sessions	1
2011-12	58 cases / 1.5 sessions	8
2012-13	40 cases / 1.6 sessions	4
2013-14	48 cases / 1.7 sessions	2
2014-15	34 cases / 3.0 sessions	4

ENQUIRIES

27. Enquiries on this Brief can be addressed to Mr Gary Poon, Principal Assistant Secretary for Financial Services and the Treasury (Treasury) at 2810 2370.

Financial Services and the Treasury Bureau
10 June 2015

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 2015

ANNEXES

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Inland Revenue (Amendment) (No. 3) Bill 2015

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A BILL

To

Amend the Inland Revenue Ordinance to empower the person presiding at the hearing of an appeal before the Board of Review to give directions on the provision of documents and information; to enable a party aggrieved by the Board's decision to appeal directly to the Court of First Instance on a question of law; to confer privileges and immunities on members of the Board; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) (No. 3) Ordinance 2015.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 14.

3. Section 65 amended (constitution of the Board of Review)

- (1) Section 65(2)—

Repeal

“of Review (hereinafter referred to as the Board)”.

- (2) Section 65(4), Chinese text—

Repeal

“某宗”

Substitute

“某項”.

- (3) Section 65(7)(b)—

Repeal

“68(2C) or 69(1) or (5)”

Substitute

“68(2C), 69AA(1)(a)(ii) or 69A(3)(a)(ii)”.

- (4) Section 65(7), Chinese text—

Repeal

“某宗”

Substitute

“某項”.

- (5) Section 65(7), Chinese text—

Repeal

“該宗” (wherever appearing)

Substitute

“該項”.

4. Section 66 amended (right of appeal to the Board of Review)

Section 66(1)(b), after “Board”—

Add

“of Review”.

5. **Section 67 amended (transfer of appeals under section 66 for hearing and determination by Court of First Instance instead of Board of Review)**

(1) Section 67(1), after “Board”—

Add

“of Review”.

(2) Section 67(5)(a)—

Repeal

“clear”.

6. **Section 68 amended (hearing and disposal of appeals to the Board of Review)**

(1) Section 68(1)(a), after “Board”—

Add

“of Review”.

(2) Section 68(1)—

Repeal

“clear”.

(3) Section 68(1), Chinese text, proviso—

Repeal

“，不得早於以下時間”。

(4) Section 68(1), Chinese text, proviso, paragraph (a)—

Repeal

everything before “不得”

Substitute

“(a) 在上訴各方均無根據第 67(1)條就有關上訴發出通知書的情況下，”。

(5) Section 68(1), Chinese text, proviso—

Repeal paragraph (b)

Substitute

“(b) 在以下的人根據第 67(1)條就有關上訴發出通知書的情況下，不得早於該通知書發出日期後的 21 天屆滿之時 —

(i) 上訴人；或

(ii) 局長，而非上訴人。”。

(6) Section 68(2), Chinese text—

Repeal

“一名”。

(7) Section 68(3), Chinese text—

Repeal

“作出受到反對的評稅的評稅主任”

Substitute

“如上訴是針對某項評稅提出的，則作出該項評稅的評稅主任，”。

(8) After section 68(10)—

Add

“(11) Subject to section 69, the Board’s decision on the appeal is final.”。

7. **Sections 68AA and 68AAB added**

After section 68—

Add

“68AA. Directions on provision of documents and information

- (1) Without limiting section 68, the person who is to preside, or is presiding, at the hearing of an appeal under section 66 (*presiding person*) may—
 - (a) give directions on the provision of documents and information for the hearing; and
 - (b) refuse to admit in evidence any document or information that is not provided in compliance with directions given under paragraph (a).
- (2) If the presiding person decides to exercise the power under subsection (1)(b) to refuse to admit in evidence any document or information provided by a party (*defaulting party*), the presiding person must, as soon as practicable after making the decision, by notice in writing given to the party—
 - (a) notify the party of the decision; and
 - (b) give reasons for the decision.
- (3) The defaulting party may, within 14 days after the date on which the notice is given to the party or within a longer period that the presiding person allows, apply to the presiding person for relief against the decision.
- (4) The application for relief—
 - (a) does not suspend the decision;
 - (b) must be supported by evidence proving the statements made in the application; and
 - (c) may be determined without a hearing.
- (5) The presiding person must, as soon as practicable after determining the application for relief, by notice in writing given to the defaulting party—
 - (a) notify the party of the determination; and

- (b) give reasons for the determination.
- (6) In determining the application for relief, the presiding person must consider all the circumstances, including—
 - (a) the interests of the administration of justice;
 - (b) whether the application has been made promptly;
 - (c) whether the failure to comply with the directions given under subsection (1)(a) was intentional;
 - (d) whether there is a good explanation for the failure;
 - (e) the extent to which the defaulting party has complied with other directions of the presiding person;
 - (f) whether the failure was caused by the defaulting party (or the party’s authorized representative);
 - (g) where the defaulting party is not legally represented—
 - (i) whether the party was unaware of the directions given under subsection (1)(a); or
 - (ii) if the party was aware of the directions given under subsection (1)(a), whether the party was able to comply with them without legal assistance;
 - (h) whether the hearing date or the likely hearing date can still be met if relief is granted;
 - (i) the effect that the failure had on each party; and
 - (j) the effect that the granting of relief would have on each party.

68AAB. Privileges and immunities

- (1) Subsection (2) applies to the chairman, a deputy chairman or any other member of the panel mentioned in section 65(1).
- (2) A person to whom this subsection applies has, in performing the person's duties under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that Court.
- (3) Subsection (4) applies to—
 - (a) a party to a hearing before the Board of Review; or
 - (b) a witness, counsel, solicitor or person representing a party appearing before the Board.
- (4) A person to whom this subsection applies has the same privileges and immunities as the person would have in civil proceedings in the Court of First Instance.”.

8. Section 69 substituted

Section 69—

Repeal the section**Substitute****“69. Appeal against Board of Review's decision: leave to appeal**

- (1) Where the Board of Review has made a decision on an appeal under section 68, the appellant or the Commissioner may appeal to the Court of First Instance against the Board's decision on a ground involving only a question of law.
- (2) No appeal may be made under subsection (1) unless leave to appeal has been granted, on the application of the appellant or the Commissioner—

- (a) by the Court of First Instance; or
- (b) if a further application is made under subsection (4), by the Court of Appeal.
- (3) For the purposes of an application to the Court of First Instance under subsection (2)(a) for leave to appeal—
 - (a) the application—
 - (i) must be lodged with the Registrar of the High Court, and served on the other party, within 1 month after the following date—
 - (A) subject to sub-subparagraph (B), the date on which the Board's decision is made;
 - (B) if the Board's decision is notified to the appellant or the Commissioner by notice in writing, the date of the communication by which the decision is notified; and
 - (ii) must be made by a summons supported by a statement setting out—
 - (A) the grounds of the appeal; and
 - (B) the reasons why leave should be granted;
 - (b) if the other party intends to resist the application, that party must, within 14 days after the date on which the application is served on that party, file in the Court of First Instance and serve on the applicant a statement as to why leave should not be granted;
 - (c) the Court of First Instance may—

- (i) determine the application without a hearing on the basis of written submissions only; or
 - (ii) direct that the application be considered at a hearing,
- and, in both cases, the Court of First Instance may give any directions it thinks fit in relation to the application;
- (d) if the Court of First Instance directs that the application be considered at a hearing, it must give 14 days' notice to the parties of the date and place fixed for the hearing;
 - (e) leave to appeal must not be granted unless the Court of First Instance is satisfied—
 - (i) that a question of law is involved in the proposed appeal; and
 - (ii) that—
 - (A) the proposed appeal has a reasonable prospect of success; or
 - (B) there is some other reason in the interests of justice why the proposed appeal should be heard;
 - (f) if the Court of First Instance grants leave to appeal—
 - (i) it must give 14 days' notice to the parties of the date and place fixed for the hearing of the appeal; and
 - (ii) it may impose any terms it thinks fit;
 - (g) if the application is determined by the Court of First Instance on the basis of written submissions only, a party aggrieved by the determination may,

- within 7 days after the date on which the party is notified of the determination, request the Court of First Instance to reconsider the determination at a hearing inter partes; and
 - (h) a hearing held in response to a request under paragraph (g) may be before the judge who has determined the application on the basis of written submissions only.
- (4) If the Court of First Instance refuses to grant leave to appeal, the applicant may make a further application to the Court of Appeal for leave to appeal against the Board's decision.
 - (5) For the purposes of an application to the Court of Appeal under subsection (4) for leave to appeal—
 - (a) the application—
 - (i) must be lodged with the Registrar of the High Court, and served on the other party, within 14 days after the date on which the Court of First Instance refuses to grant leave; and
 - (ii) must be made by a summons supported by a statement setting out—
 - (A) the grounds of the appeal; and
 - (B) the reasons why leave should be granted;
 - (b) if the other party intends to resist the application, that party must, within 14 days after the date on which the application is served on that party, file in the Court of Appeal and serve on the applicant a statement as to why leave should not be granted;
 - (c) the Court of Appeal consisting of one or more Justices of Appeal may—

- (i) determine the application without a hearing on the basis of written submissions only; or
 - (ii) direct that the application be considered at a hearing,
- and, in both cases, the Court of Appeal may give any directions it thinks fit in relation to the application;
- (d) paragraphs (d), (e) and (f) of subsection (3) apply to the application as if references in those paragraphs to the Court of First Instance were references to the Court of Appeal;
 - (e) subject to paragraph (f), if the application is determined by the Court of Appeal on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after the date on which the party is notified of the determination, request the Court of Appeal to reconsider the determination at a hearing *inter partes*;
 - (f) if—
 - (i) the application is determined by the Court of Appeal consisting of more than one Justice of Appeal on the basis of written submissions only; and
 - (ii) the Court of Appeal considers that the application is totally without merit,
 the Court of Appeal may make an order that no party may make a request under paragraph (e);
 - (g) a hearing held in response to a request under paragraph (e) may be before the Court of Appeal consisting of—

- (i) (if the application was determined by a single Justice of Appeal on the basis of written submissions only) that Justice of Appeal; or
- (ii) (if the application was determined by more than one Justice of Appeal on the basis of written submissions only) one or more of those Justices of Appeal; and
- (h) subject to paragraph (e), after the Court of Appeal (whether or not consisting of a single Justice of Appeal only) has determined the application (whether or not on the basis of written submissions only), no further application may be made to the Court of Appeal for leave to appeal against the Board's decision.”.

9. Section 69AA added

After section 69—

Add

“69AA. Appeal against Board of Review’s decision: hearing of appeal

- (1) Where leave to appeal has been granted under section 69 in respect of a decision of the Board of Review, the Court of First Instance, on hearing the appeal—
 - (a) may—
 - (i) draw any inference of fact;
 - (ii) confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions (including a direction for a new hearing) that the Court of First Instance thinks fit; and

(iii) make any order as to costs that the Court of First Instance thinks fit; and

(b) must not—

(i) receive any further evidence; or

(ii) reverse or vary any conclusion made by the Board on questions of fact unless the Court of First Instance finds that the conclusion is erroneous in point of law.

(2) Where—

(a) the Court of First Instance has made a determination on an appeal for which leave has been granted under section 69; and

(b) there is an appeal to the Court of Appeal against the Court of First Instance's determination,

paragraphs (a) and (b) of subsection (1) apply to the Court of Appeal on hearing the appeal as if references in those paragraphs to the Court of First Instance were references to the Court of Appeal.

(3) Subject to subsection (2), the High Court Ordinance (Cap. 4) applies to proceedings before the Court of Appeal under this section.”

10. Section 69A amended (right to appeal directly to Court of Appeal against decision of Board of Review)

(1) Section 69A—

Repeal subsection (1)

Substitute

“(1) Where leave to appeal has been granted under section 69 in respect of a decision of the Board of Review, the

appellant or the Commissioner may appeal directly to the Court of Appeal against the Board's decision.

(1A) No appeal may be made under subsection (1) unless leave to appeal directly to the Court of Appeal has been granted, on the application of the appellant or the Commissioner, by the Court of Appeal.”

(2) Section 69A(2)—

Repeal

“under this section may be granted”

Substitute

“may be granted under subsection (1A)”.

(3) Section 69A—

Repeal subsection (3)

Substitute

“(3) On hearing an appeal for which leave has been granted under subsection (1A), the Court of Appeal—

(a) may—

(i) draw any inference of fact;

(ii) confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions (including a direction for a new hearing) that the Court of Appeal thinks fit; and

(iii) make any order as to costs that the Court of Appeal thinks fit; and

(b) must not—

(i) receive any further evidence; or

(ii) reverse or vary any conclusion made by the Board on questions of fact unless the Court of Appeal finds that the conclusion is erroneous in point of law.

(4) Subject to subsection (3), the High Court Ordinance (Cap. 4) applies to proceedings before the Court of Appeal under this section.”

11. Section 82B amended (appeals against assessment to additional tax to Board of Review)

(1) Section 82B(1)(b), after “Board”—

Add

“of Review”.

(2) Section 82B(1), Chinese text—

Repeal

“該委員會的書記”

Substitute

“委員會書記”.

(3) Section 82B(3), after “68,”—

Add

“68AA, 68AAB,”.

12. Section 89 amended (transitional provisions)

At the end of section 89—

Add

“(15) Schedule 35 sets out transitional provisions relating to appeals against decisions of the Board of Review made before the commencement date of the Inland Revenue (Amendment) (No. 3) Ordinance 2015 (of 2015).”.

13. Schedule 5 amended

(1) Schedule 5—

Repeal

“[ss. 68 & 69]”

Substitute

“[s. 68]”.

(2) Schedule 5, Part 1, item 1—

Repeal

“\$5,000”

Substitute

“\$25,000”.

(3) Schedule 5—

Repeal Part 2.

14. Schedule 35 added

At the end of the Ordinance—

Add

“**Schedule 35**

[s. 89(15)]

Transitional Provisions: Appeals against Decisions of Board of Review Made before Commencement Date of Inland Revenue (Amendment) (No. 3) Ordinance 2015

1. Interpretation

In this Schedule—

amending Ordinance (《修訂條例》) means the Inland Revenue (Amendment) (No. 3) Ordinance 2015 (of 2015);

commencement date (生效日期) means the date on which section 8 of the amending Ordinance comes into operation;

former section 69 (原有的第 69 條) means section 69 as in force immediately before the commencement date.

2. Applications not made before commencement date

Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), if—

- (a) but for the enactment of the amending Ordinance, a person has a right to make an application under the former section 69 in respect of a decision of the Board of Review made under section 68;
- (b) the person has not made the application before the commencement date; and
- (c) the time within which the person may make the application has not expired on the commencement date,

on or after the commencement date, the person may not make the application, but may appeal to the Court of First Instance against the Board's decision under section 69.

3. Applications made before commencement date

An application that has been made and delivered under the former section 69 before the commencement date is to be continued on and after the commencement date as if the amending Ordinance had not been enacted.”.

Explanatory Memorandum

Under the Inland Revenue Ordinance (Cap. 112) (**Ordinance**), a person (**appellant**) may appeal to the Board of Review established by the Ordinance (**Board**) against an assessment of the Commissioner of Inland Revenue (**Commissioner**) in specified circumstances, and the appellant or the Commissioner may make an application in respect of the Board's decision on the appeal, requiring the Board to state a case on a question of law for the opinion of the Court of First Instance (**Court**). The main object of this Bill is to amend the Ordinance—

- (a) to empower the person who is to preside, or is presiding, at the hearing of the appeal before the Board (**presiding person**) to give directions on the provision of documents and information;
- (b) to abolish the requirement to state a case for the opinion of the Court, and enable the appellant and the Commissioner to appeal directly to the Court (or, if applicable, the Court of Appeal) against the Board's decision on a question of law; and
- (c) to confer privileges and immunities on members of the Board.

2. Clause 1 sets out the short title and provides for commencement.

3. Clause 7—

- (a) adds a new section 68AA to the Ordinance to provide for the power of the presiding person to give directions on the provision of documents and information; and
- (b) adds a new section 68AAB to the Ordinance to provide for the privileges and immunities of—
 - (i) the members of the Board; and

(ii) the parties to the hearing, and other persons appearing, before the Board.

4. Clause 8 substitutes section 69 of the Ordinance, and clause 9 adds a new section 69AA to the Ordinance, to provide for the right to appeal directly to the Court against the Board's decision on a question of law.
5. Clause 10 amends section 69A of the Ordinance to make further provisions for the right to appeal directly to the Court of Appeal.
6. Clause 12 adds a new section 89(15), and clause 14 adds a new Schedule 35, to the Ordinance to provide for transitional arrangements relating to appeals against the Board's decisions that have been made before the Bill comes into operation.
7. Clause 13(2) amends item 1 of Part 1 of Schedule 5 to the Ordinance to increase the maximum amount that the Board may, after hearing an appeal, order the appellant to pay as costs of the Board if the Board does not reduce or annul the assessment appealed against.
8. Clauses 3, 4, 5, 6, 11 and 13(1) and (3) contain textual and consequential amendments to the Ordinance.

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	65	Constitution of the Board of Review	E.R. 1 of 2012	09/02/2012
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- (1) For the purpose of hearing and determining appeals in the manner hereinafter provided, there shall be a panel for a Board of Review consisting of a chairman and 10 deputy chairmen, who shall be persons with legal training and experience, and not more than 150 other members, all of whom shall be appointed from time to time by the Chief Executive. The members of the panel shall hold office for a term of 3 years but shall be eligible for reappointment. (Amended 49 of 1956 s. 48; 35 of 1965 s. 31; 51 of 1969 s. 2; 65 of 1970 s. 9; 32 of 1977 s. 3; 11 of 1985 s. 4; 4 of 1989 s. 3; 12 of 1999 s. 3; 4 of 2010 s. 9)
- (2) There shall be a clerk to the Board of Review (hereinafter referred to as the Board) who shall be appointed by the Chief Executive. (Amended 12 of 1999 s. 3)
- (3) (Repealed 49 of 1956 s. 48)
- (4) For the purpose of hearing and determining an appeal-
 - (a) the Board comprises 3 or more members of the panel as follows-
 - (i) the chairman or a deputy chairman nominated by the chairman; and
 - (ii) at least 2 more members of the panel nominated by the chairman;
 - (b) the member mentioned in paragraph (a)(i) is to preside at the hearing;
 - (c) the clerk must summon the members mentioned in paragraph (a)(i) and (ii) to attend meetings of the Board at which the appeal is to be heard;
 - (d) the quorum for a meeting of the Board hearing the appeal is 3 members; and
 - (e) a matter arising at a meeting of the Board is determined by a majority of votes of the members present and voting on the matter and, if there is an equality of votes, the member presiding has a casting vote in addition to his or her original vote. (Replaced 4 of 2010 s. 9)
- (5) At the request of the Chief Secretary for Administration, the clerk to the Board shall summon a meeting of the Board consisting of all the members of the panel available in Hong Kong. At such a meeting a quorum shall consist of 5 members. (Amended 7 of 1986 s. 12; L.N. 362 of 1997)
- (6) The remuneration, if any, of the chairman, deputy chairmen and other members of the Board and the clerk to the Board shall be determined by the Chief Executive. (Replaced 49 of 1956 s. 48. Amended 65 of 1970 s. 9; 12 of 1999 s. 3)
- (7) If a person ceases to be the chairman, a deputy chairman or a member of the panel and, at the time of that event, the person is or has been involved in the hearing or determination of an appeal by the Board, that person may continue to-
 - (a) hear and determine the appeal; or
 - (b) perform any other function as a member of the Board in relation to the appeal in accordance with section 68(2C) or 69(1) or (5) until the appeal is finally disposed of by the Board. (Replaced 4 of 2010 s. 9)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	66	Right of appeal to the Board of Review	E.R. 1 of 2012	09/02/2012
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- (1) Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may within-
 - (a) 1 month after the transmission to him under section 64(4) of the Commissioner's written determination together with the reasons therefor and the statement of facts; or
 - (b) such further period as the Board may allow under subsection (1A), either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal. (Replaced 2 of 1971 s. 42)
- (1A) If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1). (Added 2 of 1971 s. 42. Amended 7 of 1986 s. 12; 4 of 2010 s. 10)

- (2) The appellant shall at the same time as he gives notice of appeal to the Board serve on the Commissioner a copy of such notice and of the statement of the grounds of appeal.
- (3) Save with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given in accordance with subsection (1).

(Replaced 35 of 1965 s. 32)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Section:	67	Transfer of appeals under section 66 for hearing and determination by Court of First Instance instead of Board of Review	E.R. 1 of 2012	09/02/2012

- (1) Where notice of appeal is given to the Board under section 66, the appellant or the Commissioner may give notice in writing in accordance with this section that he desires the appeal to be transferred to the Court of First Instance:
 Provided that if both the appellant and the Commissioner give such notice, the notice given by the Commissioner shall have no effect and shall be deemed not to have been given.
- (2) A notice under subsection (1) shall, if given by the appellant, be given to the Commissioner, or, if given by the Commissioner, be given to the appellant within-
 - (a) 21 days after the date on which the notice of appeal is received by the clerk to the Board; or
 - (b) such further time as the Board may in any particular case permit upon application in writing by the appellant or the Commissioner,
 and the person giving such notice shall at the same time send a copy thereof to the Board. (Amended 63 of 1997 s. 5)
- (3) If the person to whom notice is given under subsection (1) consents thereto, he shall, within-
 - (a) 21 days after the date on which the notice is given; or
 - (b) such further time as the Board may in any particular case permit upon application in writing by the person, notify his consent in writing to the Board and serve a copy of such notification on the person giving the notice, and on receipt of such notification by the Board the clerk to the Board shall transmit the notice of appeal to the Court of First Instance together with the documents delivered to the Board under this section and section 66(1) in connection with the appeal. (Amended L.N. 262 of 1985; 63 of 1997 s. 5)
- (4) An appeal in respect of which notice of appeal is transmitted to the Court of First Instance under subsection (3) shall be heard and determined by the Court of First Instance as in all respects an appeal to the Court of First Instance against the determination to which the notice of appeal relates.
- (5) The following provisions shall apply in relation to the hearing of an appeal under this section-
 - (a) the Court of First Instance shall give 14 clear days' notice to the appellant and the Commissioner of the date fixed for the hearing of the appeal, and may adjourn the hearing to any other date as the Court of First Instance may deem fit;
 - (b) the Commissioner shall be entitled to appear and be heard at the hearing of the appeal;
 - (c) save with the leave of the Court of First Instance and on such terms as to costs or otherwise as the Court of First Instance may order, the appellant shall not at the hearing of the appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given with the notice of appeal under section 66(1);
 - (d) the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant;
 - (e) the Court of First Instance may summon any person appearing to the Court of First Instance to be able to give evidence respecting the appeal to attend at the hearing of the appeal and may examine any such person as a witness on oath or otherwise.
- (6) An appeal in respect of which notice of appeal is transmitted to the Court of First Instance under subsection (3) shall not be withdrawn without the leave of the Court of First Instance and except on such terms as to costs or otherwise as the Court of First Instance may order.
- (7) In determining an appeal under this section, the Court of First Instance may-
 - (a) confirm, reduce, increase or annul the assessment determined by the Commissioner;
 - (b) make any assessment which the Commissioner was empowered to make at the time he determined the assessment, or direct the Commissioner to make such an assessment, in which case an assessment shall be

- made by the Commissioner so as to conform to that direction;
- (c) make such order as to costs as the Court of First Instance may deem fit.

(Added 12 of 1979 s. 3. Amended 25 of 1998 s. 2)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	68	Hearing and disposal of appeals to the Board of Review	E.R. 1 of 2012	09/02/2012
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- (1) Except where-
- (a) a notification of consent in respect of the transfer of any appeal under section 67 is received by the Board within the time allowed in that behalf by that section; or
 - (b) the Board endorses under subsection (1B)(b) a settlement reached in respect of the relevant appeal, every appeal under section 66 shall be heard by the Board in accordance with this section and the clerk to the Board shall, as soon as may be after the receipt of the notice of appeal, fix a time and place for the hearing of the appeal, and shall give 14 clear days' notice thereof to the appellant and the Commissioner: (Amended 63 of 1997 s. 6)
- Provided that the time so fixed for the hearing of the appeal shall not be earlier than-
- (a) in the case of an appeal in respect of which neither party to the appeal gives notice under section 67(1), the expiration of the time allowed by that section for giving such notice; or
 - (b) in the case of an appeal in respect of which notice under section 67(1) is given-
 - (i) by the appellant; or
 - (ii) by the Commissioner but not by the appellant,
 the expiration of a period of 21 days after the date on which such notice is given. (Replaced 12 of 1979 s. 4)
- (1A) At any time before the hearing of an appeal-
- (a) the appellant may withdraw the appeal by notice in writing addressed to the clerk to the Board;
 - (b) the appellant and the Commissioner may reach a settlement on the amount at which the appellant is liable to be assessed. (Added 63 of 1997 s. 6)
- (1B) Where a settlement of an appeal is reached under subsection (1A)(b)-
- (a) the terms of the settlement shall be reduced to writing in a form specified by the Board and signed by the appellant and the Commissioner; and
 - (b) the settlement shall be submitted to the Board for endorsement by it. (Added 63 of 1997 s. 6)
- (1C) Subject to subsection (1D), where a settlement is submitted to and endorsed by the Board, any necessary adjustment of the assessment shall be made and such assessment shall be final and conclusive for all purposes of this Ordinance as regards the amount of relevant assessable income or profits or net assessable value. (Added 63 of 1997 s. 6)
- (1D) Nothing in subsection (1A), (1B) or (1C) shall prevent an assessor from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been endorsed by the Board under subsection (1B)(b) for the year. (Added 63 of 1997 s. 6)
- (1E) In the event that a settlement reached under subsection (1A)(b) is not endorsed by the Board, the relevant appeal shall be heard by it. (Added 63 of 1997 s. 6)
- (2) Subject to subsection (2B), an appellant shall attend at the meeting of the Board at which the appeal is heard in person or by an authorized representative. (Amended 40 of 1972 s. 8)
- (2A) (Repealed 63 of 1997 s. 6)
- (2B) If, on the date fixed for the hearing of an appeal, the appellant fails to attend at the meeting of the Board either in person or by his authorized representative the Board may-
- (a) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;
 - (b) proceed to hear the appeal under subsection (2D); or
 - (c) dismiss the appeal. (Added 40 of 1972 s. 8)
- (2C) If an appeal has been dismissed by the Board under subsection (2B)(c) the appellant may, within 30 days after the making of the order for dismissal by notice in writing addressed to the clerk to the Board, apply to the Board to review its order and the Board may, if satisfied that the appellant's failure to attend at the meeting of the Board for the hearing of the appeal was due to sickness or any other reasonable cause, set aside the order for dismissal and proceed to hear the appeal. (Added 40 of 1972 s. 8)
- (2D) 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 application of the appellant made by notice in writing addressed to the clerk to the Board and received by him at least 7 days prior to the date fixed for the hearing of the appeal, proceed to hear the appeal in the absence of the appellant or his authorized representative. (Added 40 of 1972 s. 8. Amended 7 of 1986 s. 12)

- (2E) The Board may, if it hears an appeal in the absence of an appellant or his authorized representative under subsection (2D), consider such written submissions as the appellant may submit to the Board. (Added 40 of 1972 s. 8. Amended 7 of 1975 s. 42)
- (3) The assessor who made the assessment appealed against or some other person authorized by the Commissioner shall attend such meeting of the Board in support of the assessment.
- (4) The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant. (Replaced 35 of 1965 s. 34)
- (5) All appeals shall be heard in camera, but any appeal may be reported in such publications as may be approved by the Secretary for Justice in such a manner that the identity of the appellant is not disclosed. (Replaced 2 of 1971 s. 43. Amended L.N. 362 of 1997)
- (6) The Board shall have power to summon to attend at the hearing any person whom it may consider able to give evidence respecting the appeal and may examine him as a witness either on oath or otherwise. Any person so attending may be allowed by the Board any reasonable expenses necessarily incurred by him in so attending.
- (7) At the hearing of the appeal the Board may, subject to the provisions of section 66(3), admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Evidence Ordinance (Cap 8), relating to the admissibility of evidence shall not apply.
- (8) (a) After hearing the appeal, the Board shall confirm, reduce, increase or annul the assessment appealed against or may remit the case to the Commissioner with the opinion of the Board thereon.
 (b) Where a case is so remitted by the Board, the Commissioner shall revise the assessment as the opinion of the Board may require and in accordance with such directions (if any) as the Board, at the request at any time of the Commissioner, may give concerning the revision required in order to give effect to such opinion. (Replaced 35 of 1965 s. 34)
- (9) Where under subsection (8), 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 the amount specified in Part 1 of Schedule 5, which shall be added to the tax charged and recovered therewith. (Amended 11 of 1985 s. 5; 56 of 1993 s. 27; 12 of 2004 s. 14)
- (9A) The Secretary for Financial Services and the Treasury may by order amend the amount specified in Part 1 of Schedule 5. (Added 12 of 2004 s. 14)
- (10) The Board shall for the purpose of this section have the powers granted under section 4(1)(d), (e), (f) and (g) of the Commissions of Inquiry Ordinance (Cap 86), subject to the provisions of section 80 of this Ordinance. (Added 35 of 1965 s. 34. Amended 26 of 1969 s. 35)

(Amended E.R. 1 of 2012)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	69	Appeals to the Court of First Instance	E.R. 1 of 2012	09/02/2012
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- (1) The decision of the Board shall be final:
 Provided that either the appellant or the Commissioner may make an application requiring the Board to state a case on a question of law for the opinion of the Court of First Instance. Such application shall not be entertained unless it is made in writing and delivered to the clerk to the Board, together with a fee of the amount specified in Part 2 of Schedule 5, within 1 month of the date of the Board's decision. If the decision of the Board shall be notified to the Commissioner or to the appellant in writing, the date of the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him. (Amended 49 of 1956 s. 50; 11 of 1985 s. 6; 4 of 1989 s. 4; 56 of 1993 s. 28; 12 of 2004 s. 15)
- (1A) The Secretary for Financial Services and the Treasury may by order amend the amount specified in Part 2 of Schedule 5. (Added 12 of 2004 s. 15)
- (2) The stated case shall set forth the facts and the decision of the Board, and the party requiring it shall transmit the case, when stated and signed, to the Court of First Instance within 14 days after receiving the same.
- (3) At or before the time when he transmits the stated case to the Court of First Instance, the party requiring it shall

send to the other party notice in writing of the fact that the case has been stated on his application and shall supply him with a copy of the stated case.

- (4) Any judge of the Court of First Instance may cause a stated case to be sent back for amendment and thereupon the case shall be amended accordingly.
- (5) Any judge of the Court of First Instance shall hear and determine any question of law arising on the stated case and may in accordance with the decision of the court upon such question confirm, reduce, increase or annul the assessment determined by the Board, or may remit the case to the Board with the opinion of the court thereon. Where a case is so remitted by the court, the Board shall revise the assessment as the opinion of the court may require.
- (6) In any proceedings before the Court of First Instance under this section, the court may make such order in regard to costs in the Court of First Instance and in regard to the sum paid under subsection (1) as to the court may seem fit.
- (7) Appeals from decisions of the Court of First Instance under this section shall be governed by the provisions of the High Court Ordinance (Cap 4), the Rules of the High Court (Cap 4 sub. leg. A), and the Orders and Rules governing appeals to the Court of Final Appeal. (Amended 92 of 1975 s. 58; 79 of 1995 s. 50)
- (8) (Repealed 12 of 2004 s. 15)

(Amended 92 of 1975 s. 59; 25 of 1998 s. 2; E.R. 1 of 2012)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Section:	69A	Right to appeal directly to Court of Appeal against decision of Board of Review	E.R. 1 of 2012	09/02/2012

- (1) Notwithstanding section 69, the appellant or the Commissioner may, with the leave of the Court of Appeal granted on the application of the appellant or the Commissioner, as the case may be, appeal directly to the Court of Appeal against the decision of the Board.
- (2) Leave to appeal under this section may be granted on the ground that in the opinion of the Court of Appeal it is desirable that, by reason of the amount of tax in dispute or of the general or public importance of the matter or its extraordinary difficulty or for any other reason, the appeal be heard and determined by the Court of Appeal instead of the Court of First Instance.
- (3) Section 69 shall apply in relation to appeals under this section as it applies in relation to appeals under that section except that for references in that section to the Court of First Instance or a judge of the Court of First Instance there shall be substituted references to the Court of Appeal.

(Added 12 of 1979 s. 5. Amended 25 of 1998 s. 2)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Section:	82B	Appeals against assessment to additional tax to Board of Review	E.R. 1 of 2012	09/02/2012

- (1) Any person who has been assessed to additional tax under section 82A may within-
 - (a) 1 month after the notice of assessment is given to him; or
 - (b) such further period as the Board may allow under subsection (1A), either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by—
 - (i) a copy of the notice of assessment;
 - (ii) a statement of the grounds of appeal from the assessment;
 - (iii) a copy of the notice of intention to assess additional tax given under section 82A(4), if any such notice was given; and
 - (iv) a copy of any written representations made under section 82A(4). (Replaced 12 of 2004 s. 18)
- (1A) If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given

on or after the commencement* of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004). (Added 12 of 2004 s. 18)

- (2) On an appeal against assessment to additional tax, it shall be open to the appellant to argue that-
 - (a) he is not liable to additional tax;
 - (b) the amount of additional tax assessed on him exceeds the amount for which he is liable under section 82A;
 - (c) the amount of additional tax, although not in excess of that for which he is liable under section 82A, is excessive having regard to the circumstances.
- (3) Sections 66(2) and (3), 68, 68A, 69 and 70 shall, so far as they are applicable, have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax. (Amended 4 of 2010 s. 16)

(Added 26 of 1969 s. 38)

Note:

* **Commencement date: 25 June 2004.**

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	89	Transitional provisions	10 of 2014	04/07/2014
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- (1) (Repealed 12 of 2004 s. 20)
- (2) In relation to amendments made by the Inland Revenue (Amendment) (No. 2) Ordinance 1993 (52 of 1993)-
 - (a) it is declared that the amendments shall be without prejudice to the provisions of Part 14. (Amended 4 of 2010 s. 17)
 - (b) (Repealed 4 of 2010 s. 17)
- (3) The transitional provisions of Schedule 9 shall have effect in relation to recognized occupational retirement schemes approved under section 87A prior to the repeal of that section by the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993). (Added 76 of 1993 s. 10)
- (4) The transitional provisions of Schedule 12 shall have effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2001/02. (Added 29 of 2001 s. 2)
- (5) Schedule 14 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2005/06. (Added 8 of 2005 s. 6)
- (6) Schedule 21 has effect in relation to the amendments made by the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011). (Added 4 of 2011 s. 5)
- (7) Schedule 22 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2011. (Added 9 of 2011 s. 3)
- (8) Schedule 24 sets out transitional provisions that have effect for the purposes of the Inland Revenue (Amendment) (No. 3) Ordinance 2011 (21 of 2011). (Added 21 of 2011 s. 8)
- (9) Schedule 25 has effect in relation to the following persons-
 - (a) a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2012 or the year of assessment commencing on 1 April 2013;
 - (b) a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2012 or the year of assessment commencing on 1 April 2013. (Added 21 of 2012 s. 5)
- (10) Schedule 27 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2013. (Added 5 of 2013 s. 3)
- (11) Schedule 29 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013). (Added 10 of 2013 s. 17)
- (12) Schedule 30 has effect in relation to the following persons-
 - (a) a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2014 or the year of assessment commencing on 1 April 2015;
 - (b) a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2014 or the year of assessment commencing on 1 April 2015. (Added 3 of 2014 s. 8)
- (13) Schedule 31 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2014. (Added 10 of 2014 s. 3)

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[sections 68 & 69]

Part 1

Order for Appellant to Pay Costs

1. Maximum amount which the Board of Review may order the appellant to pay as costs of the Board \$5000

Part 2

Application Fee for Case Stated

1. Fee payable for application requiring the Board of Review to state a case (Amended L.N. 3 of 2006) \$770

(Schedule 5 replaced 12 of 2004 s. 21)

Financial and Civil Service Implications of the Proposal

With the abolition of the Board's case stated procedure, parties will need to apply for leave from the court to appeal against the Board's decisions. This may increase the workload to the court. Under the established funding arrangements agreed between the Judiciary and the Government, the Government will provide any such additional resources to the Judiciary, through the established resource allocation mechanism as necessary.

2. As regards the proposal to raise the costs ceiling from \$5,000 to \$25,000, it is not possible to estimate the total amount of additional costs required to be paid by the appellants, as it depends on the actual number of tax appeals in respect of which the Board orders payment of costs and the actual amount so ordered having regard to the nature of the appeals involved.