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Tax alert

Stamp Duty Ordinance - appeal procedure

TAX

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The World Gain Limited v The Collector of Stamp Revenue [2010] DCSA 1/2008 case highlights the need for stamp duty appeals to be dealt with expeditiously. It focuses on two matters: (1) the Collector's summons to strike out the appeal against a stamp duty assessment lodged by World Gain; and (2) World Gain's summons for directions for an extension of time for setting the case down.

Background

On 15 January 2008, the Collector had made an assessment of stamp duty in respect of the sale and purchase of a property by an agreement dated 18 August 2004.

World Gain filed a notice of appeal against the assessment on 14 February 2008. This was within the period of one month provided in section 14(1) of the Stamp Duty Ordinance (SDO). World Gain required the Collector to state and to sign a case as to whether the assessment was correct or not under the SDO.

Subsequently World Gain applied to postpone payment of the stamp duty pending the appeal. Pursuant to a court order, the whole sum of the stamp duty assessed was paid into court in lieu of payment to the Collector.

Section 14(2) of the SDO provides that:

"The Collector shall upon being required to state and sign a case under subsection (1) state and sign the case and deliver the same to the person by whom it is required and the case may, within 7 days thereafter and after service thereof upon the Secretary for Justice, be set down by such person for hearing."

After the Stamp Office had prepared the draft case stated, there was an exchange of correspondence regarding the issues to be included in the draft case. The case stated was eventually delivered on 29 January 2010.

However, the appeal was not set down within seven days from 29 January 2010 and the Collector took out a summons to strike it out, which was resisted by World Gain. The court issued directions for the filing of affidavits in March 2010.

World Gain admitted receipt of service of the case stated on 29 January 2010. The signed case was delivered to the Secretary for Justice on 4 February 2010. On the same day, they sought to set down the case for hearing but this was allegedly refused on the ground that the case had been

Contact us

For more information on the new ruling and how it may affect your investments, please contact:

Corporate Tax, KPMG China

Lloyd Deverall

Partner in Charge, Tax
China and Hong Kong SAR
Tel: +852 2826 7295
lloyd.deverall@kpmg.com

Ayesha Macpherson

Partner in Charge, Tax – Hong Kong SAR
Tel: +852 2826 7165
ayesha.macpherson@kpmg.com

Chris Abbiss

Partner
Tel: +852 2826 7226
chris.abbiss@kpmg.com

Vaughn Barber

Partner
Tel: +852 2826 7130
vaughn.barber@kpmg.com

Darren Bowdern

Partner
Tel: +852 2826 7166
darren.bowdern@kpmg.com

Nigel Hobler

Partner
Tel: +852 2143 8784
nigel.hobler@kpmg.com

Charles Kinsley

Partner
Tel: +852 2826 8070
charles.kinsley@kpmg.com

Curtis Ng

Partner
Tel: +852 2143 8709
curtis.ng@kpmg.com

John Timpany

Partner
Tel: +852 2143 8790
john.timpany@kpmg.com

Jennifer Wong

Partner
Tel: +852 2978 8288
jennifer.wong@kpmg.com

inactive for more than a year. On 19 February 2010, World Gain filed a notice of intention to proceed.

The decision

The Collector's argument was that section 14(2) requires that the case can only be set down for hearing by the appellant within seven days of its delivery. The court has no jurisdiction to extend such time and therefore World Gain's appeal could not proceed and should be struck out.

World Gain contended that the time stipulation under section 14(2) for setting down the appeal was permissive, not mandatory. Therefore, the court had jurisdiction and discretion to extend such time.

However, the judge held that this construction of section 14(2) could not stand in the light of the case of *The Bangkok Capital Antique Co Ltd v The Collector of Stamp Revenue* (1984) 2 HKTC 83. That case had made clear that an appeal must be set down within seven days of its delivery. The court had no inherent jurisdiction to extend a period of time limited by statute for doing an act unless the statute provides so. Neither the time extension power in section 72 of the Interpretation and General Clauses SDO assists, nor Order 3, rule 5 of the rules of the court apply to a time limited by statute.

The judge noted that the appeal had by no means been proceeded with expeditiously. The appeal was lodged in February 2008. The first draft of the case stated was sent to the appellant in June 2009. Correspondence regarding the draft came to a halt since the end of November 2009. The signed case stated was delivered in 2010.

Accordingly, the judge dismissed World Gain's summons with costs and struck out the appeal. The security paid into court on 26 March 2008 by World Gain was to be released to the Collector in satisfaction of the stamp duty under appeal.