



## Summary of Judgment

**Koo Ming Kown & Murakami Tadao (“the Respondents”) v The  
Commissioner of Inland Revenue (“CIR”)  
FACV 1/2022; [2022] HKCFA 18**

<b>Decision</b>	<b>: The CIR’s appeal dismissed</b>
<b>Date of Hearing</b>	<b>: 5 July 2022</b>
<b>Date of Judgment</b>	<b>: 5 August 2022</b>

### Background

1. The Respondents were directors of a local limited company (“**Company**”). In such capacity, they have signed the Company’s tax returns for 3 years of assessment (i.e. 1996/97, 1997/98 and 1999/2000) (collectively, “**Company’s Returns**”).
2. In 2002, the CIR found that the Returns were incorrect. The Company’s attempt to challenge the CIR’s assessment was unsuccessful. However, the Company never paid the additional tax assessed and was wound up by the Court in 2012.
3. The CIR thereafter invoked s.82A(1)(a) of the Inland Revenue Ordinance, Cap.112 (“**IRO**”) to levy additional tax on the Respondents on the ground that they had made incorrect tax returns on behalf of the Company.
4. The Respondents successfully appealed to the Court of First Instance (“**CFI**”) against the assessment of additional tax. The CFI found that the Returns were required to be made, and were made, by the Company, not the Respondents. Thus, the Respondents could not be liable for additional tax under s.82A(1)(a) of IRO. The CFI’s decision was upheld by the Court of Appeal.
5. Upon further appeal by the CIR, the Court of Final Appeal (“**CFA**”) dismissed the CIR’s appeal.

### Key issue

6. The key issue in this appeal is whether there is any liability imposed on officers of a company (e.g. secretaries, managers, directors and liquidators), who physically signed the tax return of a corporate taxpayer which proves to be incorrect, for

additional tax under s.82A of IRO.

7. The questions for determination by the CFA are:

“Does s.82A of the IRO permit the CIR to assess additional tax on a secretary, manager, director or liquidator (“**Signer**”) who has physically signed an incorrect tax return (“**Return**”) of a corporate taxpayer (“**Taxpayer**”)”? In particular:

(1) Whether, having regard to all the circumstances, including the actual words used in the Return, and the legislative context and purposes, the Signer is “making” the Return in his personal capacity on behalf of the Taxpayer?; and

(2) Whether the Signer, being a secretary, manager, director or liquidator of the Taxpayer, is “required” by the IRO to make the Return on behalf of the Taxpayer? (Emphasis added)

**Department of Justice’s Summary of the CFA’s rulings**

(full text of the Court’s judgment at [https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=146294&QS=%2B%7C%28FACV%2C1%29&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=146294&QS=%2B%7C%28FACV%2C1%29&TP=JU))

8. The CFA answered the questions in the negative.

9. In CFA’s view, “making” and “requirement” are not strictly separate questions so much as two aspects of the one problem, and in the ordinary case, the maker of a return is the person who is required to make it. The scheme of the IRO is that a written notice is given to a person under s.51(1) requiring that person to “furnish” a return. In the present case, the notices were addressed to the Company, not the Respondents (§46).

10. The CFA is also of the view that s.82A(1)(a) of the IRO does not cast the net of liability for any incorrectness in a company’s tax return as widely as possible, as IRO does not impose liability on those directors who did not sign the return (§64).

11. As held by the CFA, under s.57(1) of the IRO, the directors and other people are “answerable” for such acts as were required to be done under the IRO by the Company, but this section did not require the Respondents to make the Company’s Returns (§68) as: (i) s.57(1) concerns all members of a class, and there is nothing which singles out the Respondents as a subject to the requirement to make the

Company's Returns (§§69-70); (ii) the language of "answerability" in s. 57(1) does not impose a legal obligation to do anything – its purpose is to facilitate the exercise by the revenue authorities of their functions in relation to a corporation and confers authority on certain individuals to bind the corporation for the purposes of the IRO (§71-72); and (iii) there are provisions in the IRO that expressly impose a requirement on certain persons to do acts (including the making of returns) on behalf of others, and the instant situation is not one of them (§73).

12. Accordingly, the CFA ruled that the Company's Returns were not required to be made, and were not made, by the Respondents on behalf of the Company, and dismissed the appeal (§76).

**Civil Division**  
**Department of Justice**  
**5 August 2022**