

## **Tax Appeal Board upholds Taxpayers' rights to claim refunds of Tax paid in excess of the amount Properly Chargeable**

1. On 20<sup>th</sup> July, 2015 the Tax Appeal Board delivered its decision in **Sagicor General Insurance Inc v The Board of Inland Revenue**. That appeal raised the important and novel issue of the right of taxpayers and the duties of the Board of Inland Revenue (“**BIR**”) where the Taxpayer discovers an error or mistake in an original Tax Return which formed the basis of an assessment by the BIR. That issue had never been considered before by a Tax Court in the Caribbean.

### **The Facts of the Case**

2. On 7<sup>th</sup> July, 2007 the Appellant submitted a Corporation Tax Return dated 29<sup>th</sup> April, 2008 (“**the original Return**”). The BIR accepted this Return and made an assessment on the Appellant for the years 2007. This was reflected in a Notice of Assessment issued by the BIR dated 2<sup>nd</sup> October, 2010 in which the assessed chargeable profits and the Corporation Tax liability thereon were consistent with the amounts as declared by the Appellant in the filed Tax Return.
3. Subsequently, the Appellant discovered that it had omitted in error a claim for loss relief in its original Return. Accordingly, it wrote by letter dated 10<sup>th</sup> October, 2013 to the Chairman of the BIR. The letter was accompanied by the Amended Tax Return of the Appellant for the 2007 year of income in which it claimed tax relief for losses far greater than that which had been claimed in the original Return.

4. The BIR however treated the letter as an Objection to its assessment which had been made since 2<sup>nd</sup> March, 2010. As a result, the Appellant's letter and Amended Return were treated as being made out of time and without any explanation for its lateness. Accordingly, by letter dated 29<sup>th</sup> October, 2013, the BIR refused to re-assess the Amended Return. The Appeal was commenced on 28<sup>th</sup> November, 2013 against the BIR's refusal to do so.
  
5. Before the Tax Appeal Board, the Appellant contended that the letter submitted to the BIR enclosing the Amended Return constituted a claim for repayment of tax paid in excess of what was properly chargeable pursuant to **section 90 of the Income Tax Act** and was not an objection to an assessment pursuant to **section 86(2) of the Income Tax Act**. Those sections state:

**“86. (2) If any person disputes the assessment he may apply to the Board by notice of objection in writing delivered to the Board to review and to revise the assessment made upon him. Such application shall state precisely the grounds of his objections to the assessment and shall be made within fifteen days from the date of the service of the notice of assessment.**

**(3) An application under subsection (2) may be made out of time if the Board is satisfied that there was a reasonable excuse for not making the application within the time limited and that the application was made thereafter without unreasonable delay.**

**90. (1) If it be proved to the satisfaction of the Board that any person for any year of income has paid tax in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of income to which the claim relates. The Board shall give a certificate of the amount to be repaid and upon the receipt of the certificate the**

**Comptroller of Accounts shall cause repayment to be made in conformity therewith...**

- (3) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of income as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Board that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person."**

### **The Decision**

6. The Tax Appeal Board held that the claim made by the Appellant was indeed a claim for a re-assessment pursuant to **section 90 of the Income Tax Act** and allowed the appeal. According to the Panel:

- 30. Section 90(1) provides the mechanism whereby a taxpayer may make a claim for a repayment of tax paid in that it must be proven to the satisfaction of the Respondent that for a particular year of income, the taxpayer has paid tax in excess of what he is properly chargeable. It therefore recognizes that a claim for a repayment of tax is a function of the excess of tax by way of difference of the tax paid and the amount properly chargeable on a taxpayer with respect to a particular year of income...**
- 34. It is our view that the amount properly chargeable is ascertained after the Respondent has raised an assessment under section 83 or an additional assessment under section 89 of the *Income Tax Act, Chap. 75:01* or where the dispute process has been activated and the amounts properly chargeable have been determined at the objection or appellate stages...**
- 42. The distinguishing feature between treating the application in question as being within the realm of s.90 as distinct from one made under the objection procedure under s.86 is the specific requirement under s.90(3) which provides that no repayment of tax shall be made where the taxpayer has been assessed in excess of**

**the amount contained in his return. In this instance, the taxpayer has been assessed for the 2007 year of income consistent with the amount in its filed return. If the taxpayer had been assessed in a greater amount and was in disagreement with such, the procedure to be followed would have been by way of filing an objection to the assessment with the Respondent as prescribed under s.86(2).**

7. The Appeal Board found that the procedure which the taxpayer elected to use to make its claim was sufficient and that all of the requirements for making such a claim had been satisfied. Accordingly, the BIR was ordered to determine the refund and/or loss relief to which the Appellant may be entitled and to issue a notice of re-assessment.
  
8. This decision creates a timely precedent which clarifies the appropriate legal process to be undertaken where a taxpayer seeks to correct a prejudicial mistake made in filed tax returns.