

Estate Duty Office

Penalty Policy

A. Introduction

1. Any person accountable for the estate duty ['accountable person'] under the Estate Duty Ordinance (Cap. 111) ['EDO'] has a legal duty to deliver a timely and accurate affidavit or account to the Estate Duty Office.
2. The EDO contains penal provisions for non-compliance cases. The amount of penalty varies according to the length of delay, the degree of co-operation extended by the accountable person, and the nature and the culpability of the offence.

B. Penal Provisions

1. Penal provisions under the EDO include:
 - (a) Charging double rates under Section 16(1) on any accountable person who without reasonable excuse delivers an affidavit or account after 12 months from the date of death or after 18 months from the date of death if a Grant of Probate or Letters of Administration or its equivalent has been obtained from a competent court outside Hong Kong.
 - (b) Imposing under Section 14(17) on any accountable person who without lawful authority or reasonable cause fails to deliver an affidavit or account a penalty:
 - (i) at level 3 (currently at \$10,000) or
 - (ii) equal to the unpaid estate duty for which he is accountable.

Depending on the circumstances of individual cases, the Commissioner may in her discretion remit or reduce the additional duty or penalty under Section 27 of the EDO.

2. In case of serious fraud, the Commissioner may institute prosecution for false declaration under the Crimes Ordinance (Cap 200).
3. Before invoking Section 16(1) or Section 14(17), the Commissioner will issue a written notice to the accountable person, setting out the particulars of the alleged offence, and inviting him to submit written representation with regard to the proposed double rates or penalty. In general, he will be given a period of not less than 21 days from the day of service of the notice to make his representation.

C. Policy for imposing additional duty under Section 16(1)

1. The law provides that estate duty is chargeable at double rates for any affidavit or account filed, without reasonable excuse, after the time allowed.
2. The Ordinance does not define “reasonable excuse”. However, given the 12 months’ or 18 months’ period for completion and delivery of an affidavit or account, it is considered that only in rare circumstances can an excuse be regarded as reasonable. Generally, the factor that prevents the accountable person from delivering a timely affidavit or account must be completely beyond his control before it could be considered as constituting a reasonable excuse.
3. Ignorance of law, bereavement, absence of information, complexity of the estate and negligence by the legal representatives are not considered as reasonable excuse.
4. Normally, additional duty will not be imposed if the late affidavit or account is submitted merely to formally acknowledge acceptance of an increased valuation of the dutiable property which has been previously declared.
5. Section 27 of the EDO empowers the Commissioner to reduce the additional duty. The main factors she will consider are:
 - (a) the length of the delay;
 - (b) the degree of co-operation of the accountable person;
 - (c) the discovering party; and
 - (d) the seriousness of the offence.

D. Computation of the additional duty

1. In calculating the amount of additional duty, 100% is taken as the starting point with the following abatement factors:
 - (a) Length of the delay – a maximum reduction of 30%
 - (b) Co-operation – a maximum reduction of 20%
 - (c) Discovery – a reduction of 20%
 - (d) Seriousness – a maximum reduction of 30%

Abatement for length of delay – a maximum reduction of 30%

2. This factor reflects the extent of delay for delivering the affidavit or account. The accountable person will be treated more leniently when he has made a genuine attempt to put things right as quickly as possible. In other words, the longer the delay the heavier the additional duty. The reduction rate decreases gradually from 30% to 0% over a range of 5 years.

Abatement for co-operation – a maximum reduction of 20%

3. This factor reflects the extent to which the accountable person has been prepared to co-operate and assist in shortening the process of enquiry. The degree of co-operation ranges from a complete, honest and accurate reply of all relevant enquiries to the non-disclosure of the relevant facts. Abatement for this factor will be given if the accountable person has made a voluntary disclosure or a prompt admission upon challenge.

Abatement for discovery – a reduction of 20%

4. Full abatement will be given if the omitted assets or gifts in the late affidavit or account are disclosed by the accountable person; otherwise, no abatement will be given.

Abatement for seriousness – a maximum reduction of 30%

5. This factor reflects the seriousness of the offence, ranging from an innocent error involving no culpability to an intentional disregard or calculated fraud, with negligence in between. Intentional disregard is taken to mean that the accountable person consciously decides to disregard clear obligations imposed

on him. Calculated fraud means falsification deliberately planned with an intent to deceive. Negligence is the absence of reasonable care which a reasonable man should exercise.

6. An example showing the computation of additional duty after abatement is as follows:

| | | |
|---|------------|--------------------|
| Estate duty | \$500,000 | |
| Maximum additional rate - | 100% | |
| But the case has the following factors qualifying for abatement | | |
| Length of delay | 15% | |
| Co-operation | 10% | |
| Discovery | 20% | |
| Gravity | 20% | |
| Total reduction | 65% | |
| The additional duty = \$500,000 x 35% | | \$175,000 ===== |

E. Policy for imposing penalty under Section 14(17)

1. The law provides for the imposition on an accountable person who without lawful authority or reasonable cause fails to deliver an affidavit or account according as the Commissioner elects, a penalty at level 3 (currently at \$10,000) or a penalty equal to the unpaid estate duty. In most of the cases, the Commissioner will choose the latter option subject to her discretionary remitting power under Section 27 of the EDO.
2. The mitigating factors the Commissioner considers are the same as those for Section 16(1) additional duty. However heavier penalty would be imposed for cases in which the accountable person is unco-operative or performs deliberate acts of obstruction.