TAXATION OF EMPLOYEES IN TROUBLED TIMES:
A CASE OF ADDING FUEL TO THE FIRE?

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Introduction

Consequent upon the Asian financial turmoil occurring around the end of 1997, the total revenue collected by the Inland Revenue Department for the fiscal year 1998/99 experienced a fall of 26.6% from the previous year.1 Although key government officials have been saying that the local economy is recovering,2 given the persistently high unemployment rate and contracting business environment, at least in some sectors,3 Hong Kong has not been totally out of troubled waters. In particular, salaried workers may possibly be the group that suffers ultimately and most. During these difficult times, what recent issues particularly concern employees and what are the tax implications arising therefrom? From their perspective, is it a case of adding fuel to the fire?

Termination/premature termination of employment

Generally, payments received either on the premature termination by an employer of an office or employment or in consideration of a variation of the terms of employment are exempt from salaries tax because they flow from the breach of contract and not from the employment itself.4 In this regard, it has been generally considered in Hong Kong that

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1 Inland Revenue Department, Annual Report 1998-99.
2 For example, briefing legislators on the economic outlook by the Financial Secretary reported in the South China Morning Post, 7 December 1999.
3 The most recent unemployment rate announced has remained at 5.7%; South China Morning Post, 21 March 2000. It has also been known that recently in April 2000, one of the prestigious law firms in HK has just closed down its branches and dismissed around 50 of its employees.
4 Generally Chibett v Joseph Robinson & Sons (1924) 9 TC 48 and Hunter v Dewhurst (1932) 16 TC 605, both approved in CGIT (Malaya) v Knight [1973] AC 428 (PC); in Hong Kong, e.g., D 13/94 (1994) 9 IRBRD 136 and more recently D 37/99 (1999) 14 IRBRD 421.
payment in lieu of notice made under an express contractual provision is exempt income.\(^5\)

However, a recent UK case, *EMI Group Electronics Ltd v Coldicott*, \(^6\) has cast some doubt on this conclusion. The appellant company terminated the employments of two senior employees and exercised its contractual right to make payments in lieu of giving the prescribed notice. The Inspector of Taxes took the view that those payments were taxable emoluments in respect of which the appellant company, under the relevant UK legislation, ought to have deducted income tax at source and accounted for it to the Revenue. At all levels of hearing this case, the appellant company lost. The payment made pursuant to a contractual provision, agreed at the outset of the employment, was considered as a security, or continuity, of salary that each employee required as an inducement to enter the employment.\(^7\) It remains to be seen whether the taxing attitude of the Inland Revenue Department in Hong Kong in respect of such payments may change.\(^8\) In fact, there has been a Board of Review case in which a contractual redundancy provision was taken to have induced the employee to enter into employment and, therefore, a payment made under the provision was taxable income.\(^9\)

Despite the Board of Review decision mentioned in the preceding paragraph, the Commissioner of Inland Revenue still accepts that redundancy payments and long service payments made under the terms of the Employment Ordinance\(^10\) are not taxable receipts.\(^11\) Nevertheless, in a less straightforward case of the employer undergoing restructuring, immediate re-engagement with an outgoing employee constitutes no

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\(^{5}\) See e.g., BR 116/77 (1978) 1 IRBRD 283 and D 84/97 (1997) 12 IRBRD 487.

\(^{6}\) [1997] STC 1372 (ChD), [1999] STC 803 (CA).


\(^{8}\) See further note 17 below and dictum of the Board of Review in *D 2/99* (1999) 14 IRBRD 84 suggesting that leading UK decisions remain of strong persuasive authority in the interpretation of certain salaries tax charging provisions in Hong Kong.

\(^{9}\) *D 24/97* (1997) 12 IRBRD 195. However, it appears that contractual payments in lieu of notice are still not generally taxed in Hong Kong notwithstanding this Board of Review decision.

\(^{10}\) Under ss 31B(1) or 31R(1)(a), Employment Ordinance (Cap 57).

dismissal. As a result, any payment for such termination does not accord with the spirit of the Employment Ordinance and, therefore, constitutes taxable income. Any label attached to the sum purportedly to make the same outside the charge will doubtless be disregarded. The result will not differ even if the amount is calculated according to the formula prescribed under the Employment Ordinance.

It is an undisputable principle that any payment made in the nature of a reward for services, past, present or future, will be included as taxable income for salaries tax purposes. It follows that any payment made to ensure continuing services of an outgoing employee until an agreed later date than the official termination date is a taxable receipt. The tax implication has been held to be the same even if the employee was actually not required to render any services at all during the period.

Secondment

The scenario envisaged is where an employee originally having a Hong Kong employment is, during the same year of assessment, seconded to work overseas and render almost all services outside Hong Kong. The usual misconceptions in this type of cases relate to the exclusion from salaries tax income of an employee rendering outside Hong Kong all the services in connection with his employment and the so-called 60-day rule that disregards any services rendered in Hong Kong during visits not exceeding a total of 60 days in a year of assessment in determining the

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13 See note 12 above.
14 For example, D 25/99 (1999) 14 IRBRD 280; also see D 2/99 (1999) 14 IRBRD 84.
15 For example, D 25/99 (1999) 14 IRBRD 280.
16 S 9(1), Inland Revenue Ordinance (Cap 112), and Hochstrasser v Mayes [1960] AC 376.
17 D 167/98 (1999) 14 IRBRD 25. In fact this is in line with the attitude and practice of the Inland Revenue in UK.
18 D 2/99 (1999) 14 IRBRD 84.
19 S 8(1), Inland Revenue Ordinance (Cap 112) imposes salaries tax charge on employment income arising in or derived from Hong Kong. For determining whether an employment is a Hong Kong one, see CIR v George Andrew Goetzfert (1987) 2 HKTC 210 and Departmental Interpretation and Practice Notes No. 10.
20 See s 8(1A)(b)(ii), Inland Revenue Ordinance (Cap 112).
question. Caution should be paid to the fact that the 60-day rule applies in favour of 'visitors' only which has been interpreted not to include a person who is based in Hong Kong. In addition, the 60-day grace period relates to a year of assessment. If, before the secondment, the employee has stayed in Hong Kong for more than 60 days in the year of assessment and rendered some services during his stay, he cannot have his income in respect of services in connection with the secondment exempt from salaries tax unless he has a new non-Hong Kong employment for the secondment and thereafter renders all services outside Hong Kong.

The issue in dispute essentially relates to the question of what amounts to a separate employment. A transfer abroad to different duties undertaken for the same Hong Kong employer without any new contract of employment will not normally be sufficient to imply the existence of two distinct contracts. If a new contract of employment exists but is with the original Hong Kong employer, it may be difficult to persuade the Inland Revenue Department that there is a separate employment. Even if a new contract is entered into with another offshore entity, the arrangement will still be under the scrutiny of, or even disregarded by, the Inland Revenue Department if evidence inconsistent with the purported scheme can be relied upon and is not satisfactorily rebutted by the taxpayer.

In D 35/99, the taxpayer originally commenced an employment with a Hong Kong company. Subsequently, he was appointed to work for the head office outside Hong Kong. For the relevant years of assessment, however, the Hong Kong company filed the employer's returns and declared the taxpayer as its director. Shortly after, the taxpayer resigned as director and the Hong Kong company declared a severance payment to him. Upon enquiries, the Inland Revenue Department found that a

21 See ibid s 8(1B); c.f., government employees are specifically excluded from taking the advantage of the 60-day rule; s 8(1A)(b)(i); ship and aircraft personnel are separately provided for: see s 8(2)(j); and, the grace period for PRC Mainland residents working in Hong Kong is extended to 183 days: see the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income.
24 See D 43/94 (1994) 9 IRBRD 278 generally for factors to be considered.
26 See e.g., D 43/94 (1994) 9 IRBRD 278.
27 (1999) 14 IRBRD 381.
new contract had been entered into with the head office as an overseas executive with reference to the Hong Kong company as the taxpayer's previous employer. At the same time, the taxpayer kept another contract with the Hong Kong company as its director. Nevertheless, this company reported the severance payment as part of the taxpayer's taxable income. The taxpayer, alleging that the sum was paid under the contract with the head office, objected on the ground that the income had a non-Hong Kong source. The Commissioner determined against the taxpayer who subsequent appealed to the Board of Review.

The questions for the Board to decide involved the number of employments the taxpayer had, the location of such employments and to which employment the payment related. However, no representative from the Hong Kong company had been called to give any evidence in support of the taxpayer's allegation. Worse still, the taxpayer admitted that the two contracts identified were in reality not carried through. As a result, the Board concluded that there was only one employment—and that was between the taxpayer and the Hong Kong company. In addition, the employment was sourced in Hong Kong. Accordingly, the disputed sum was held to be subject to Hong Kong tax.

The taxpayer in D 146/9828 had a better outcome. He signed two employment contracts on the same date: one with a Hong Kong company and the other a PRC Mainland joint venture. Although the two contracts related to one and the same post which was within the joint venture, the Hong Kong company, in addition to what had been paid by the joint venture to the taxpayer in the Mainland, paid salary into the taxpayer's bank account in Hong Kong. In the employer's return, the Hong Kong company reported the taxpayer's income and furnished his address in the Mainland. They also advised the assessor that the taxpayer had not rendered any services to it in Hong Kong. Nevertheless, the assessor raised an assessment on the taxpayer's income received from the Hong Kong company. The taxpayer ultimately appealed to the Board of Review. On evidence, the Board found that the Hong Kong company appeared to have no role in the taxpayer's employment apart from that of another paymaster. As a result, the taxpayer had only one employment with the Mainland joint venture that was located outside Hong Kong.

These two cases not only show the taxing policy and attitude of the Inland Revenue Department but also remind us of the burden of proof on the taxpayer on appealing against an assessment that requires the production of cogent evidence.29

Rental refund vs. Home loan interest relief

Housing has always been one of the most serious problems in Hong Kong and therefore, housing benefit is often regarded as an attractive fringe benefit to senior employees or executives. However, to be tax efficient from the employee's point of view, it should not be in the form of a general allowance.30 Instead, it should be either by way of residence provided rent-free or payment or refund of rent by the employer or an associated corporation. In such circumstances, the taxable benefits only amount to the notional rental value31 which is deemed to be 10% of the income from the office or employment derived from the employer after deducting outgoings, expenses and allowance (not including personal allowances) during the period for which the residence is so provided.32 If the employee is required to pay part of the rent, the sum can be deducted from the rental value.33

In order for there to be any refund of rent, as distinguished from payment of a general housing allowance, there must exist a legally binding relationship of landlord and tenant with the employee or office holder as the tenant or licensee.34 In addition, the employer cannot keep its eyes simply shut while paying but is required to exercise and maintain a certain degree of control.35 In particular, the employee's entitlement should be with reference to the actual rental expense that has been incurred; otherwise, it will probably be construed as a fully taxable general housing allowance.36

29 S 68(4), Inland Revenue Ordinance (Cap 112) and e.g., D 76/94 (1995) 9 IRBRD 394. Most recently, an appeal against an assessment was successful because the testimony given by the taxpayer before the Board of Review was accepted: D 74/99 (1999) 14 IRBRD 521.
30 S 9(1)(a), Inland Revenue Ordinance (Cap 112).
31 Ibid s 9(1)(b) and 9(1A)(b). Further, the value of the residence or such payment or refund of rent, as the case may be, is deemed not to be income of the employee: see s 9(1A)(a).
32 Ibid s 9(2).
33 Ibid ss 9(1)(c) and 9(1A)(c).
For various reasons, particularly for local employees, it is often considered better to have one's own flat. Because of the comparatively high property price in Hong Kong, purchases are very often facilitated with a mortgage loan. As one of the various steps to encourage such purchases, especially by the 'sandwich' class, the Inland Revenue Ordinance has recently amended to provided for the deduction of home loan interest. The relief is available to an individual owner-occupant of the property who pays home loan interest. However, the deduction is limited to the lesser of the amount of interest paid or currently $100,000 per annum and for a maximum of only 5 years (whether continuous or not). The amount of deduction available to an individual will be further reduced if he jointly owns the property with another.

For a simple comparison between the rental benefit and the home loan interest relief, consider two individuals whose annual income amount to $300,000, one having both basic salary and rental reimbursement and the other only salary but has his flat subject to a mortgage. Given that both are entitled to the same amount of deduction and allowances, the table below shows that the former will have a lower assessable income. The difference will become greater as the level of annual income increases. Accordingly, from the taxation perspective, the home loan interest relief is, at least to the extent shown, comparatively less attractive.

<table>
<thead>
<tr>
<th>Rental Refund</th>
<th>Home Loan Interest Relief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic salary: $180,000 p.a.</td>
<td>Salary: $300,000 p.a.</td>
</tr>
<tr>
<td>Rental reimbursement: $120,000 p.a.</td>
<td>LESS mortgage interest: $100,000 p.a.</td>
</tr>
<tr>
<td>(ADD only rental value: $18,000)</td>
<td>(i.e. only $8,333 per month)</td>
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<tr>
<td>Total assessable income: $198,000</td>
<td>Total assessable income: $200,000</td>
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</tbody>
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37 S 26E, Inland Revenue Ordinance (Cap 112), effective since 1 April 1998.
38 Ibid s 26E(1).
39 Ibid s 26E(2)(a).
40 Ibid s 26E(4).
41 Ibid ss 26E(2)(b) and (c).
43 This figure is chosen because according to the Inland Revenue Department Annual Report 1998-99, among different income groups, the one with annual income ranging from $300,000 to $400,000 has the greatest number of taxpayers.
Stock option

Stock option, a right to acquire shares or stock in a corporation, is another tax efficient fringe benefit for quality senior employees or executives commonly used in Hong Kong and other parts of the world.\(^{44}\) However, it is not an exempted, but only deferred, fringe benefit. Although the option is not subject to tax at the time it is granted, taxable income includes any gain realized by the exercise of, or by the assignment or release of such a right.\(^{45}\) The gain realized by the exercise of the option is taken to be the difference between the amount which a person might reasonably expect to obtain from a sale in the open market at that time of the shares or stock acquired and the amount or value of the consideration given whether for them or for the grant of the right or for both.\(^{46}\) Similarly, the gain realized by assignment or release is the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration given for the grant of the right.\(^{47}\) In respect of consideration given for the grant of the option, performance of duties in or in connection with the office or employment is not relevant.\(^{48}\)

Because of its deferred liability, taxability of the gain realized has often been easily overlooked. Even worse, the consequence can be costly.\(^{49}\) In D 27/99,\(^{50}\) the taxpayer failed to declare his gains from stock options exercised by him. The Commissioner of Inland Revenue not only assessed the gains to salaries tax, but also notified the taxpayer of his intention to impose a penalty tax (see further the section on penalty tax below). Eventually a penalty of 9.07% of the tax undercharged was levied. The taxpayer appealed to the Board of Review but failed to prove any reasonable excuse for his omission. Similarly, in D 76/99,\(^{51}\) the
taxpayer was held not to have any reasonable excuse for failing to report his gain from exercising the share option. Additional tax was imposed, but the amount was reduced by the Board of Review for some other reasons.\(^5\)

**Mandatory Provident Fund**

As a step to further protect employees' retirement benefit, the government has introduced the Mandatory Provident Fund Schemes Ordinance (Cap 425) to be fully implemented by 1 December this year.\(^5\) Under the Ordinance, self-employed persons as well as employees, whether full-time or part-time, and aged between 18 and 64 must be included in a Mandatory Provident Fund scheme 60 days after joining a company unless otherwise being exempt. Exemption is for, inter alia, self-employed hawkers, domestic helpers, people covered by statutory pension and provident fund schemes, expatriates working in Hong Kong for not more than one year or already covered by a scheme in their home country, and members of the Occupational Retirement Schemes.\(^5\) Employees, as well as employers, are each required to contribute 5% of the relevant income to the scheme.\(^5\) Relevant income is defined to include, inter alia, salaries, wages, leave pay, bonus, gratuity and allowances, but excluding any housing benefit.\(^5\) The maximum level of monthly relevant income is set at $20,000.\(^7\) It means that the maximum compulsory contribution that an employee is required to make amounts to $1,000 a month. If the monthly relevant income does not exceed $4,000, only the employer is required to make the statutory contribution.\(^8\)

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\(^5\) See note 77 below.
\(^5\) The Chief Executive in Council has just finally and officially appointed it as the date for full implementation on 27 April 2000.
\(^5\) For all these exemptions, see generally ss 4(1) to (3), 5, Parts I and II of Schedule 1, Mandatory Provident Fund Schemes Ordinance (Cap 425) and further Mandatory Provident Fund Schemes (Exemption) Regulations (Cap 425, sub. leg.).
\(^5\) See ss 7A(5) and 7C(3), Mandatory Provident Fund Schemes Ordinance (Cap 425).
\(^5\) Ibid s 2.
\(^5\) Ibid s 10(1) and Schedule 3.
\(^5\) Ibid s 9 and Schedule 2.
As far as employees are concerned,59 the first issue concerns deductibility of employees' contributions.60 Employees will be allowed to deduct only their mandatory contributions to the scheme.61 Moreover, the allowable deduction cannot exceed $12,000 per year,62 which represents the maximum mandatory contributions by employees who reach the maximum level of monthly relevant income so prescribed. However, no voluntary contributions by employees will be deductible for salaries tax purposes.

The second issue concerns taxability of benefits accrued under the scheme. Any accrued benefits received from the scheme on an employee's retirement, death or incapacity or permanent departure from Hong Kong as is attributable to his mandatory contributions will not be taxable employment income.63 Similarly, any sum equal to so much of the accrued benefit as is attributable to voluntary contributions by the employer will be, prima facie, exempt income.64 However, if the sum is to be paid on termination of services, only the extent that it is attributable to voluntary contributions by the employer and not exceeding the proportionate benefit so calculated will be excluded from taxable income.65

The third issue relates to the implication brought by switching to a mandatory provident fund scheme from an existing retirement plan. Employees should be aware that any benefits received from the existing plan while they are still serving the same employer will constitute taxable income.66 However, if the benefits accrued are to be transferred to the mandatory provident fund scheme, immediate tax liability can be avoided. So be it if the existing plan is to be frozen and employees can get the benefit only when they leave the company.

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59 For obligations and possible liabilities of employers, see David Adams and Lusina Ho, ‘Mandatory Provident Funds: Challenges for Employers’ in this booklet.

60 See s 26G, Inland Revenue Ordinance (Cap 112). The section is to be brought into force when the mandatory provident fund schemes legislation is fully implemented: see note 53 above.

61 Ibid s 26G(3)(b). Also see note 60 above.

62 Ibid s 26G(2)(b) and Schedule 3B. Also see note 60 above.

63 Ibid s 8(2)(cb) as amended by s 6 and Schedule 5 of Ordinance No.4 of 1998. This section is to be brought into force when the mandatory provident fund schemes legislation is fully implemented: see note 53 above.

64 Ibid s 8(2)(cc)(ii). Also see note 63 above.

65 Ibid s 8(4). For calculation of proportionate benefit, see further s 8(5).

66 Contrast ibid ss 8(2)(c) - (cb) currently in force.
Penalty tax—another trap

Part IX (sections 51 to 58) of the Inland Revenue Ordinance contains, inter alia, a number of compliance obligations among which an ordinary employee may only be aware of some. Non-compliance of any of such obligations, however, can be rather costly. Both criminal and civil liabilities are provided for as alternatives but in practice, the Inland Revenue Department often prefers compound penalties or additional tax assessment to criminal prosecution of the offenders. To dispute the liability to additional or penalty tax, the taxpayer must show reasonable excuse, failing which the taxpayer will only have the assessment reduced if he can rely on any mitigating factor.

In D 134/98, the taxpayer, having two employers that had subsequently merged during the relevant year of assessment, omitted to declare her income from the previous employer in her tax return. The omission came to the notice of the Inland Revenue Department, which then rectified the mistake. The Department went on to issue to the taxpayer an assessment having taken into account the rectification and the latter paid the tax so assessed without any objection. More than a year later, the taxpayer was assessed a penalty tax of $7,000. During the one year gap, the personal fortune of the taxpayer changed for the worse partly because of the general economic downturn. At the time of the case being heard before the Board, the taxpayer had no job and was in financial difficulty. As a defence, the taxpayer pled that she had not received a copy of the employer's return from her previous employer. She also submitted that her omission was due to her busy travel schedule at the relevant time.

The Board was sympathetic to the taxpayer but found no reasonable excuse for her omission. Nevertheless, it was held that since she had been

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67 See ibid ss 80(1), (2), 82(1) and 82A(1).
68 See ibid s 82A(7).
69 For the year 1998-99, the number of convictions in respect of offences committed was 9,245 whereas that of imposing compound penalties and additional tax amounted to 18,021 involving an amount of $8,86181,086: Inland Revenue Department Annual Report 1998-99.
70 See ss 80(1), (2) and 82A(1), Inland Revenue Ordinance (Cap 112).
co-operative and her omission was just an intention slip, the penalty was reduced by half. Further, by way of obiter, the Board suggested the Inland Revenue Department considering 'it sensible giving the taxpayer advance warning of any potential imposition of penalty at the earliest opportunity' in order to 'avoid inflicting unwitting hardship on the taxpayer and to promote better relationship between the Inland Revenue Department and the public'. The motive of the Board making this statement is undoubtedly for the benefit of taxpayers. However, it remains to be seen whether in reality this may encourage imposition of penalty so far as it may be possible and as soon as practicable. After all, statistics support that objection cases have been mostly settled without going so far to the Board of Review.

It has also been recently reconfirmed that the duty to disclose correct information to the Inland Revenue Department is a personal one and reliance on omission of the employer is no answer to non-compliance. What may possibly happen if a taxpayer claim reliance on any opinion sought from an assessor?

In D 14/99, the taxpayer received a taxable gratuity from his employer for three consecutive years. He had duly reported the sums to the Inland Revenue Department in the two earlier years of assessment but omitted to declare for the last. Incidentally, the amount was also omitted on his employer's return in electronic form though was mentioned on the hard copy. When the taxpayer phoned to ask the assessor whether he should elect for personal assessment for the relevant year, he was informed of a lower taxable income, apparently not including the gratuity. However, the Commissioner, three months thereafter, discovered the omission and raised an additional assessment against the taxpayer. In

72 However, financial difficulty of the taxpayer is, at most, just a factor to consider the method for payment but not a reason for appeal: see D 13/99 (1999) 14 IRBRD 174.
73 See note 71 above, at 633.
74 For the year 1998-99, there were 70,950 cases received during the year in addition to another 21,399 cases carried forward. 70,877 cases were disposed of, among which 70,001 cases were either settled or withdrawn and only 323 cases were lodged with the Board of Review that fiscal year: Inland Revenue Department Annual Report 1998-99. In fact, an offer for settlement by the taxpayer may render it impossible to challenge subsequently the amount reached: see D 13/99 (1999) 14 IRBRD 174.
75 See D 27/99 (1999) 14 IRBRD 293. Also see D 179/98 (1999) 14 IRBRD 78 in which, though the facts relate to profits tax, the taxpayer claimed reliance on her "employer's" opinion but failed. On the same token, negligence of tax representatives has been held not even a mitigating factor: D 31/99 (1999) 14 IRBRD 341.
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addition, a penalty of 20% of the tax undercharged was imposed. The taxpayer admitted of his mistake but explained that he had been very busy, confused and under stressful circumstances. Moreover, he also contended that the Inland Revenue had misled him.

On evidence, the Board found that the taxpayer had received the hard copy of his employer's return at the time he called up the assessor. As a result, it was held that there existed no ground for alleging being misled by the Inland Revenue. His other grounds were not in any way helpful to him even though he appeared to have a good track record before the omission.  

It is also crystal clear the ignorance of the law is not a reasonable excuse for non-compliance. The expectation on professionals may even be higher. Nevertheless, sympathy from the Board may be obtained in exceptionally tragic circumstances as the follow case illustrates.

The taxpayer in D 33/99 was a widow and the administratrix of her late husband's estate, objecting to additional assessments raised against the deceased husband's business for several years of assessment. However, she failed, on request, to provide full information as to the husband's accounting records and explanations of his bank account entries. Neither could she confirm the correctness of assets better statements compiled by the assessor. She even failed to seek leave to appeal out of time. After the assessment became final, the Commissioner further imposed penalties at an average of 60% of the tax undercharged each year.

On her appeal to the Board of Review, the lady submitted that she could not locate the relevant records because her husband had passed away for six years. Moreover, she had been caring for her two sons who were, coincidentally, terminally ill so that she had not asked her husband about his source of income. The Board, having taken into account the tragic background of the lady, reduced the penalty to a uniform rate of 17% for each year.

77 Also see D 66/99 (1999) 14 IRBRD 519 in which the taxpayer submitted that she had not erred in the past but no reduction of penalty was granted; c.f., D 76/99 (1999) 14 IRBRD 525 in which the additional tax was reduced partly because of the taxpayer's impressive record of compliance.


79 See e.g., D 13/99 (1999) 14 IRBRD 174 in which the taxpayer was a medical doctor and was expected to be aware of his duty to make proper and accurate returns of his business but failed to do so repeatedly.

Concluding remarks

The recent Board of Review decisions mentioned in previous sections may only represent the tip of the iceberg. Although we do not know the exact number of disputes in relation to any particular subject matter, it appears, from the decisions reported in the latest volume of the Inland Revenue Board of Review Decisions, that there has recently been an increase in the number of salaries tax cases, in particular, in relation to the assessability of payment to employees upon termination of employment. Moreover, continuing efforts have been made in tax investigation and audit that can also be mirrored from the consistently high number of impositions and the amount collected in respect of penalties and additional tax assessment arising from non-compliance. Interestingly, although profits taxpayers remain the prime targets of investigation, the year 1998-99 saw a larger percentage increase in the number of convictions charged against employers and employees. Time will show that these two trends may probably continue for the couple of years ahead.

Encountering the troubled times and coupled with lacking knowledge in the rather specialized area of tax law, employees may find themselves easily exposed to the various trends and traps identified above. There can be a case of adding fuel to the fire if an employee adopts a casual attitude to such matters.

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81 Similar view has also been suggested in David Tarn, 'A Review of Some Board of Review Decisions', Asia-Pacific Journal of Taxation, Vol.3 No.4 – Winter 1999, at 16. Statistics also show that out of the 63 cases reported so far in Inland Revenue Board of Review Decisions Volume 14 (including its first and second supplements), 22 related to salaries tax matters, in which 6 involved penalty tax and 5 dealt with payment in relation to termination of employment. For comparison, the total number of cases reported in Volume 13 was 78, number of cases related to salaries tax matters 22, out of which 10 for penalty tax and 6 for payment in relation to termination.

82 For the year 1998-99, the Investigation Unit, from 901 completed cases, assessed back tax and penalties of $1.07 billion. Meanwhile, the Field Audit Group completed 911 cases (including 156 avoidance cases) and assessed back tax and penalties of $1.08 billion: Inland Revenue Department Annual Report 1998-99.

83 See note 69 above.

84 There has been an increase from 569 (against employees) and 520 (against employers) to 911 and 768 respectively while the increase in the number of convictions against profits taxpayers was just from 7,053 to 7,535: See Inland Revenue Department Annual Reports 1997-98 and 1998-99.