

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D74/99

**Salaries Tax** – employment – place of service – source of income – 60 days limit – whether liable to salaries tax – section 8 of the Inland Revenue Ordinance.

Panel: Ronny Wong Fook Hum SC (chairman), Cheung Wai Hing and Lee Lo Lai Yee, Dora.

Date of hearing: 9 August 1999.

Date of decision: 8 October 1999.

In about July 1984, the taxpayer commenced employment as service engineer with Company A. As a result of company restructuring, the taxpayer became engaged by Company B, a company incorporated in Hong Kong, on 28 December 1992. On about 20 October 1995, the taxpayer was notified by a holding company of Company B of its decision to transfer the taxpayer to Company E with the result that the taxpayer commenced working in Country F on 22 January 1996. He ceased working in Country F on 26 February 1997. The issue was whether the taxpayer's income during the relevant period was excluded from the ambit of section 8 of the Inland Revenue Ordinance as the same constituted income derived from services rendered by a person who rendered outside Hong Kong all the services in connection with his employment.

#### **Held:**

- (1) The issue was one of credibility. The taxpayer appeared before the Board, which were impressed by his testimony. The taxpayer pointed out that he was not part of Company B's sales team. He had no responsibility in entertaining clients from Country F. He produced before the Board a letter from the administration manager of Company B in support of his claim.
- (2) The Board accepted the taxpayer's testimony and found that during the relevant period the taxpayer rendered all his services in connection with his employment outside Hong Kong.

**Appeal allowed.**

Leung Wing Chi for the Commissioner of Inland Revenue.

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Taxpayer in person.

### **Decision:**

1. In about July 1984, the Taxpayer commenced employment as service engineer with Company A.
2. As a result of company restructuring, the Taxpayer became engaged by Company B on 28 December 1992.
3. Company B is a company incorporated in Hong Kong. It is controlled by two holding companies:
  - (a) Company C and
  - (b) Company D
4. By a memorandum dated 20 October 1995, the Taxpayer was notified by Company C of its decision to transfer the Taxpayer to Company E on the following terms and conditions:
  - (a) The Taxpayer will remain an employee of Company B;
  - (b) The Taxpayer's salary will be paid into his Hong Kong bank account;
  - (c) The Taxpayer will work as part of the automold team, in the area of mold design, testing, debug, servicing and bringing up of younger staffs.
  - (d) The Taxpayer will follow Company E's working calendar and hours with 5 working days per week;
  - (e) The Taxpayer will be compensated for overtime as a Company B employee.
5. The Taxpayer commenced working in Country F on 22 January 1996. He ceased working in Country F on 26 February 1997.
6. According to records maintained by the Immigration Department, the movement of the Taxpayer between 22 January 1996 and 26 February 1997 ['the Relevant Period'] was as follows:

<b>Date returning to Hong Kong</b>	<b>Date leaving Hong Kong</b>	<b>No of days in Hong Kong</b>
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10-5-1996	22-5-1996	13
24-5-1996	27-5-1996	4
7-7-1996	1-8-1996	26
17-10-1996	17-11-1996	32
21-11-1996	1-12-1996	10
23-2-1997		5*

\* Up to 27 February 1997 when he ceased working for Company E.

7. The Taxpayer's holidays during the Relevant Period were as follows:

Year	Month	Holidays
1996	April	30 <sup>th</sup>
	May	2 <sup>nd</sup> , 3 <sup>rd</sup> , 6 <sup>th</sup> , 7 <sup>th</sup>
	July	8 <sup>th</sup> - 12 <sup>th</sup> , 17 <sup>th</sup> , 18 <sup>th</sup> , 22 <sup>nd</sup> , 24 <sup>th</sup> , 26 <sup>th</sup> , 29 <sup>th</sup> - 31 <sup>st</sup>
	August	1 <sup>st</sup>
	October	17 <sup>th</sup> , 18 <sup>th</sup> , 21 <sup>st</sup> -25 <sup>th</sup> , 28 <sup>th</sup> - 31 <sup>st</sup>
	November	1 <sup>st</sup> , 4 <sup>th</sup> - 8 <sup>th</sup> , 12 <sup>th</sup> -15 <sup>th</sup>
1997	December	24 <sup>th</sup> , 26 <sup>th</sup> , 27 <sup>th</sup>
	February	11 <sup>th</sup> , 12 <sup>th</sup>
	<b>Total</b>	<b>45 days</b>

8. During the Relevant Period, the Taxpayer was in Hong Kong during the following working days:

Year	Month	Day
1996	May	17 <sup>th</sup> , 20 <sup>th</sup> , 21 <sup>st</sup>
	July	15 <sup>th</sup> , 16 <sup>th</sup> , 19 <sup>th</sup> , 23 <sup>rd</sup> , 25 <sup>th</sup>
	December	31 <sup>st</sup>
1997	February	24 <sup>th</sup> , 25 <sup>th</sup>

9. The issue before us is whether the Taxpayer's income during the Relevant Period is excluded from the ambit of section 8 of the Inland Revenue Ordinance (the IRO) as the same constitutes income derived from services rendered by a person who renders outside Hong Kong all the services in connection with his employment.

10. The Revenue's case is based on its exchange of correspondence with Company B:

- (a) By letter dated 30 March 1998, Company B pointed out that 'During his secondment in Country F, the Taxpayer did not require to perform any duties and services to our Hong Kong office.'

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- (b) When pressed further for reasons and purpose of the Taxpayer's stay in Hong Kong, the administrative manager of Company B stated in letter dated 16 May 1998 that 'In some occasions, he had picked up the customers in Country F office to Hong Kong for site seeing and plant visit in a short period of time. I believe that these period of stays in Hong Kong may cause by such customer visits.'

11. The Taxpayer hotly denied that he rendered any service in Hong Kong. He explained that his father was hospitalised in early November 1996. The Taxpayer also acquired a flat in Hong Kong on or about 25 November 1996. The working days spent in Hong Kong were adjustments in respect of his overtime entitlements.

12. The issue therefore is one of credibility. The Taxpayer appeared before us. We are impressed by his testimony. He pointed out that he was not part of Company B's sales team. He had no responsibility in entertaining clients from Country F. He produced before us a further letter dated 28 July 1999 from the administration manager of Company B pointing out that 'There is no supporting data to indicate that the Taxpayer had accompanied customers for visiting Hong Kong ...'.

13. We accept the Taxpayer's testimony and we find that during the Relevant Period the Taxpayer rendered all his services in connection with his employment outside Hong Kong.

14. We allow the Taxpayer's appeal and discharge the assessment appealed against.