

We are informed and it is not disputed that by Macau law the quotas are non-transferable. However, there was a device whereby the quotas purchased could be made available for B in Macau for export allocation of textiles to the U.S.A. We, therefore, find that the essence of the business and the location of the profits were outside the Colony notwithstanding that payment was made to the Company in Hong Kong.

In the circumstances, this appeal is allowed and the assessment set aside. We would add that the Commissioner in arriving at his determination did not have the advantage of much of the additional and salient facts as were before us.

Case No. D18/82

Board of Review:

S. V. Gittins, Chairman; Charles A. Ching, N. D. Dicker & Daniel S. H. Lam, Members.

31 December 1982.

Property Tax—owner occupied flat part let—assessable value—whether owner occupied portion exempt.

The appellant was the owner of a flat, one fifth of which he let out and the remainder of which he occupied himself. The appellant was assessed to Property Tax on the whole flat at an amount equal to the reasonable rent. The appellant appealed on the ground that the assessment should be on the actual rent received and that the owner occupied portion should be exempt.

Held:

- (1) The owner occupied portion was not exempt as the flat as a whole constituted a single tenement for rating purposes and only separate tenements can be exempt.
- (2) However the assessable value could be accepted at five times the actual rent received in respect of the let portion.

Appeal allowed.

So Chau-chuen for the Commissioner of Inland Revenue.
Lin Chiao-shih of C. S. Lin & Co. for the appellant.

Reasons:

The Taxpayer is the owner of a fiat with an area of 550 sq. feet. He occupied 440 sq. feet himself and let out 110 sq. feet at \$360 per month, i.e. \$4,320 per annum.

The flat, not being wholly occupied by the owner, was assessed for Property Tax under section 5A(2) at an amount equal to the rent at which on the first day of the year of assessment it might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and the landlord undertook to pay the Crown rent, the costs of repair and maintenance.

The assessable value on this basis was \$42,000 with Property Tax payable thereon of \$5,040.

This was the Determination of the Commissioner of Inland Revenue and the Taxpayer has appealed to the Board of Review against this.

The Taxpayer's contention is that Property Tax should only be charged on the portion of his flat which is let, on the assessable value based on the actual rent viz. \$4,320 per annum, and that the owner occupied portion of the flat should be exempt from Property Tax.

This contention is in accord with the general principles of taxation applied in Hong Kong and is fair; whereas the effect of the Commissioner's Determination is that a Taxpayer is liable to the same levy of Property Tax whether he lets his flat wholly or only a fraction of it. The effect of the Determination is manifestly unfair, but the question is whether the Inland Revenue Ordinance permits any mitigation of this unfairness.

Unfortunately the Board cannot accept the contention that where a flat is partly let, the owner occupied portion should be exempt from Property Tax for the following reasons:—

- (a) The only provision for exemption from Property Tax for owner occupation of a part of a building is section 5(3)(a) of the Inland Revenue Ordinance, but reference to a part of a building for exemption is restricted by section 5(5)(c) to a part of a building which is separately estimated under section 10 of the Rating Ordinance Cap. 116.
- (b) Under section 10 of the Rating Ordinance only separate tenements are separately estimated and the Taxpayer's flat has been estimated as a single tenement.
- (c) Section 7A of the Inland Revenue Ordinance defines "buildings" to include any part of a building, but it expressly excludes this beneficial definition from inter alia section 5(3).

However, the definition of “buildings” in section 7A is applicable to section 5A so that the Board is able to accept the submission on behalf of the Commissioner at the hearing that the assessable value of the let portion of 1/5 be reduced to the actual annual rent of \$4,320 and the assessable value of the owner occupied portion of 4/5 be $4 \times \$4,320 = \$17,280$.

We hold that the total assessable value of the whole flat is $\$4,320 + \$17,280 = \$21,600$ and the Property Tax thereon to be \$2,592.

The appeal is allowed and the Property Tax reduced to \$2,592.

Case No. D20/82

Board of Review:

L. J. D’Almada Remedios, *Chairman*; N. J. Gillanders, D. J. McIntosh & B. H. Tisdall, *Members*.

10 March 1983.

Salaries Tax—section 8(1)—employee of foreign corporation recruited and residing in Hong Kong by regional office located in Hong Kong—whether income arose in or derived from Hong Kong.

The appellant was employed by a foreign corporation, both in Hong Kong and abroad to undertake auditing, having been recruited and offered employment by the corporation’s Regional Office in Hong Kong. The appellant reported to the Regional Office. He resided and was paid in Hong Kong. The appellant was assessed to Salaries Tax on the income from his employment for the years 1978/79 and 1979/80. The appellant appealed on the grounds that he was employed by a foreign corporation which did not engage in business in Hong Kong and that only the apportioned part of his salary in respect of days actually worked in Hong Kong was chargeable to tax.

Held:

- (1) The foreign corporation carried on business in Hong Kong although it made no profit here.
- (2) The appellant’s employment was controlled by the Hong Kong Regional Office and the source of payment was of peripheral importance.

Appeal dismissed.

Woo Sai-hong for the Commissioners of Inland Revenue.
Appellant in Person.