

In this case there is no such evidence but only the fact that the asset was held for some time before sale.

On the assumption that the Appellant had previously traded in shares and that the profit arising from the Wharf Company shares was a trading profit it would be artificial to attempt to differentiate the profit arising on the sale of the Trafalgar shares and the Hong Kong Land shares. The Trafalgar shares were purchased at the end of 1979 and sold some six to twelve months later in 1980 on various dates. The Hong Kong Land shares were purchased in 1980 and sold a few months later. Looked at objectively and in the light of the history of the Appellant it would be hard to say that these transactions were anything other than share trading transactions.

As mentioned above, on the evidence before the Board and with some reluctance the Board decides that the Appellant has failed to discharge the onus of proof placed upon her and dismisses the appeal.

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**Case No. D4/85**

*Board of Review:*

William Turnbull, *Chairman*; Chen Yuan-chu and Lee Wing-kit, *Members*.

**25 April 1985.**

Salaries tax—mandatory contributions to National Insurance Scheme—whether deductible expense—Section 12(1)(a) of the Inland Revenue Ordinance.

The appellant, a resident of the United Kingdom, made mandatory contributions to a National Insurance Scheme operated by the United Kingdom Government during his employment in Hong Kong and claimed that they were expenses wholly, exclusively and necessarily incurred in the production of his assessable income. He further argued that in the United Kingdom the contributions were deductible allowance from taxable emoluments.

*Held:*

The contributions do not fall within the category of an allowable expense under S. 12(1)(a).

Appeal dismissed.

Tai Sheung Yan for the Commissioner.  
The Appellant was absent and unrepresented.

*Reasons:*

This appeal came before the Board of Review in the absence of the Appellant. Section 68(2D) permits the Board of Review to proceed to hear an appeal in the absence of the Appellant where the Appellant is absent from Hong Kong. The Appellant had written to the Board of Review stating that he was now permanently resident in the United Kingdom and that it would not be practical for him to attend or be represented by anyone.

The Appellant's Grounds of Appeal relate to a claim by the Appellant that his assessable income should be reduced by the sum of HK\$10,270.74 being contributions made by the Appellant to a National Insurance Scheme operated in the United Kingdom by the United Kingdom Government. The Appellant claimed that these were mandatory contributions to the United Kingdom Government which he was obliged to pay during his employment in Hong Kong. The Appellant submit the argument that these payments were wholly, exclusively and necessarily incurred by him in the production of his assessable income. The Appellant had further pointed out that National Insurance contributions in the United Kingdom are a deductible allowance from taxable emoluments.

Section 12(1)(a) of the Inland Revenue Ordinance states that an expense to be deductible must be wholly, exclusively and necessarily incurred in the production of the assessable income. This Board finds that National Insurance contributions made to a National Insurance Scheme in the United Kingdom are not such expenses. The Appellant filed with the Board of Review a copy of part of a printed pamphlet relating to National Insurance contributions which must be paid when a person who was or is resident in the United Kingdom earns money outside of the United Kingdom. It would appear that the National Insurance Scheme in operation in the United Kingdom is some form of mandatory insurance scheme applicable to persons who are or have been resident in the United Kingdom and under which they are entitled to certain benefits on retirement at a certain age or perhaps earlier. It is clear that although the contributions are mandatory they do not fall within the category of an expense wholly, exclusively and necessarily incurred in the production of the assessable income.

The Board takes note of the Appellant's submissions that such payments are tax deductible in the United Kingdom. Tax law in Hong Kong is very different from that of the United Kingdom and it is worth noting that payments by an employee to a provident fund which has been approved under the Inland Revenue Ordinance in

Hong Kong are not tax deductible so far as the employee is concerned. Employees' contributions to a provident fund in Hong Kong may well be a contractual requirement of employment but are nevertheless certainly not deductible from taxable emoluments.

The Board of Review upholds the decision of the Commissioner and dismisses the Appeal.

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**Case No. D5/85**

*Board of Review:*

H. F. G. Hobson, *Chairman*; Robert W. N. Wei and Patrick P. K. Wu, *Members*.

**9 May 1985.**

Interest Tax—section 28(1)(a) of Inland Revenue Ordinance—whether interest accruing upon a credit sale balance of price paid for the purchase of shares in an overseas corporation was “interest arising in or derived from” Hong Kong within the meaning of section 28(1)(a) and consequently subject to deduction under section 29.

A Hong Kong company (the Appellant) was set up to act as the buyer for an overseas corporation of the shares of a Taiwan Company (a wholly-owned subsidiary of the overseas corporation) in order to minimize the amount of tax payable in the U.S. The proposed terms of sale were settled upon at a meeting in June 1977. In a letter of 3 October 1977 addressed by the Taipei branch of the overseas corporation to a shareholder of the Hong Kong Company, the terms of the sale were set out in some detail. A formal agreement for the sale of the shares was executed on 1 December 1977 in Hong Kong, the price due to the vendor as well as the interest subsequently accrued were credited in the Appellant's books in Hong Kong. The question was whether the formal agreement was the key to the provision of credit.

*Held:*

The location of the credit was Tai Wan since that was where title to the shares was completed. The passing of title was performed in Taiwan 22 days before the formal agreement was executed. No delivery of the share certificates took place in Hong Kong. The formal agreement was as between the parties of little purpose.

Appeal allowed.

Luk Nai Man for the Commissioner of Inland Revenue.  
A. L. Brown of Price Waterhouse for the Appellant.

*Reasons:*

Was interest accruing to a D corporation upon a credit sale balance of the price for the purchase by the Taxpayer company of the entirety of shares (“Taiwan shares”) in a Taiwan corporation