

- (1) payment or benefit to eliminate or settle any threatened claim by the employee for, and the payment or benefit is paid or conferred in lieu of, a payment or benefit which if made had the contract of employment not been terminated would be chargeable to salaries tax;
- (2) a benefit being the entitlement to exercise a right to acquire shares contingently conferred on the taxpayer as the holder of an office in or an employee of the employer,

is the payment or benefit, or any gain from the exercise of any such benefit, so paid or conferred at termination chargeable to salaries tax under the Inland Revenue Ordinance (Cap 112)?”

3. As employee compensation packages frequently contain provisions for discretionary bonuses and stock options, but termination may occur under different circumstances, we take the view that it may be helpful for the Court of Final Appeal to follow up its decision in *Fuchs v CIR* (2011) 4 HKCFAR 74 (where the payment *was* paid under the provisions of the contract) with a decision on the facts of the present case (where the payment was *not* so paid).

4. Leave is granted on the usual conditions. The costs of this application should be costs in the cause of the appeal to the Court of Final Appeal.

(Andrew Macrae)
Vice President

(Maria Yuen)
Justice of Appeal

(Susan Kwan)
Justice of Appeal

Mr Adrian Huggins SC, instructed by King & Wood Mallesons, for the Appellant

Mr Stewart Wong SC, instructed by the Department of Justice, for the Respondent