CACV 94/2016 [2019] HKCA 303

## IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION **COURT OF APPEAL**

CIVIL APPEAL NO 94 OF 2016 (ON APPEAL FROM INLAND REVENUE APPEAL NO 2 OF 2015)

**BETWEEN** 

POON CHO-MING, JOHN **Appellant** and COMMISSIONER OF INLAND REVENUE

Respondent

Before: Hon Macrae VP, Yuen and Kwan JJA in Court Dates of Respondent's Submissions: 13 and 31 July 2018

Date of Appellant's Submissions: 25 July 2018

Date of Judgment: 11 March 2019

JUDGMENT

Hon Yuen JA (giving the Judgment of the Court):

- 1. By an Amended Notice of Motion filed on 5 September 2018, the Commissioner of Inland Revenue has applied for leave to appeal to the Court of Final Appeal to appeal the Judgment of this court given on 1 June 2018 allowing the Taxpayer's appeal from the judgment of Anthony Chan J who dismissed an appeal by way of case stated from the decision of the Board of Review which confirmed salaries tax assessments on sums referred to as Sum D and the Share Gain Option.
- 2. The question which the Commissioner says is of great general or public importance is as follows:

"Where a contract of employment is terminated by the employer, and the employer agrees at termination to pay to or confer on the employee

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- (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) (Maria Yuen) (Susan Kwan)
Vice President Justice of Appeal 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