

Case No. D15/22

Salaries tax – whether income chargeable – locality of the employment – whether employee working outside Hong Kong meant that the employment was located outside Hong Kong – sections 8 and 64 of the Inland Revenue Ordinance (‘IRO’)

Panel: Anson Wong SC (chairman), Cheng Wing Keung Raymond and Tang Kim Hung Andy.

Date of hearing: 15 January 2020.

Date of decision: 27 September 2022.

The Taxpayer was employed to work primarily in a city in the Mainland from April to October 2007. He was paid a basic salary and a monthly allowance. For the 2007/08 year of assessment, the part of his salary and allowance proportional to the dates he was in Hong Kong was assessed in 2011 for salaries tax. The Taxpayer objected to the assessment dated but the Deputy Commissioner confirmed the assessment by way of his Determination dated August 2019. The Taxpayer appealed.

Evidence shows that: (i) the Taxpayer’s employment contract was governed by Hong Kong law; (ii) he was required to contribute to Mandatory Provident Fund in Hong Kong; (iii) he was in Hong Kong for 129 days during his employment, covering both working days and rest days; (iv) his employer provided the train tickets for him to travel between his place of work in the Mainland and Hong Kong at the commencement and termination of the employment; (v) the Taxpayer’s employer signed a letter stating that the Taxpayer was not required to perform any work in Hong Kong, and he did not perform any duty in Hong Kong; (vi) whilst the Taxpayer argued that he only came back to Hong Kong for rest, he admitted to the Board that he would read information from the Internet on matters relating to work, and communicate with his colleagues in the Mainland when he was in Hong Kong.

The Taxpayer further argued that 11 years elapsed between the 2007/08 year of assessment, and the Determination by the Deputy Commissioner, such that the relevant personnel and records could no longer be retrieved by the time the Determination was made.

Held:

- (1) For the basic charge of salaries tax under section 8(1) of the IRO, the focus is on the locality of the employment, but not the locality where the services of the employee are actually rendered. The terms and spirit of the employment contract were that the Taxpayer’s employment was located and based in Hong Kong, even though he was expected to offer his services

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primarily in the Mainland (CIR v George Andrew Goepfert (1987) 2 HKTC 210; CIR v Lo Wa Ming Patrick [2021] 2 HKLRD 522 applied).

- (2) The Taxpayer is not entitled to exemption to salaries tax by way of section 8(1A)(b)(ii) of the IRO. Since the Taxpayer stayed in Hong Kong for more than 60 days in the relevant year of assessment, and that the evidence showed that he did perform some work in Hong Kong, the Taxpayer failed to discharge the burden of proof that he rendered all services in connection with his employment outside Hong Kong (CIR v So Chak Kwong, Jack (1986) 2 HKTC 174 followed; D90/03 18 IRBRD 860, D39/04 19 IRBRD 319 considered).
- (3) The Board is not bound to accept the letter from the Taxpayer's employer, as there is no evidence that the author of the letter had full knowledge of the duties performed by the Taxpayer during his employment, and it was inconceivable that the content of the letter was correct given the extent of time the Taxpayer spent in Hong Kong (D2/04 19 IRBRD 76 applied).
- (4) The Taxpayer could and should have gathered evidence in support of his case when he first raised objection to the salaries assessment in 2011. He cannot complain of any prejudice arising from any lapse of time after 2011.

Appeal dismissed.

Cases referred to:

Commissioner of Inland Revenue v George Andrew Goepfert (1987) 2 HKTC 210
Commissioner of Inland Revenue v Lo Wa Ming Patrick [2021] 2 HKLRD 522
Commissioner of Inland Revenue v So Chak Kwong Jack (1986) 2 HKTC 174
D90/03, IRBRD, vol 18, 860
D39/04, IRBRD, vol 19, 319
D2/04, IRBRD, vol 19, 76

Appellant in person.

Lai Ming Yee and Chan Wai Lin, for the Commissioner of Inland Revenue.

Decision:

A. INTRODUCTION

1. This is an appeal by Mr A (the ‘Taxpayer’) against the determination by the Deputy Commissioner dated 21 August 2019 (the ‘Determination’). In that determination, the Commission overruled the Taxpayer’s objection and confirmed the revised salaries tax assessment for the year of assessment 2007/08 on the Taxpayer of a net chargeable income of \$319,407 with the tax payable thereon of \$54,299 (the ‘Subject Assessment’).

B. FACTUAL BANKGROUND

2. The Taxpayer was employed by Company B as Position C stationed in City D, the Mainland with effect from 2 April 2007 by a letter dated 26 February 2017 (the ‘Employment Letter’)

3. The Employment Letter contained, *inter alia*, the following terms and conditions:

- (1) The Taxpayer would receive a monthly basic salary of 73,000 and a monthly special allowance of \$12,000 on a 12-month per annum basis.
- (2) The Taxpayer’s workplace would primarily be in City D, the Mainland, but it was agreed that he might be required to carry out duties in any other location as assigned by the management.
- (3) The Taxpayer’s working hours were 9 a.m. to 6 p.m. from Mondays to Fridays.
- (4) The Taxpayer’s rest days were Saturdays and Sundays. He was entitled to 18 working days annual leave per annum for each completed year of service of pro-rate based on the number of completed days of service.
- (5) In addition to annual leave, the Taxpayer would be entitled to all Mainland statutory holidays. The total number of such holidays amounted to 10 days per annum.
- (6) Company B was required to collect as agent the Taxpayer’s Individual Income Tax (‘IIT’) in China monthly at source in accordance with the Mainland tax rules. Company B had established a tax equalization scheme under which the Taxpayer’s Salaries Tax liabilities would be limited to 8.8 percent and the same percentage would be deducted monthly from his salary and other cash allowance.
- (7) The applicable laws were the laws of Hong Kong.

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4. On 2 October 2007, the Taxpayer was transferred to work as an employee in Company E in accordance with a set of substantially same terms and conditions of service of Company B.

5. For the period from 2 April 2007 to 1 October 2007 (the ‘Relevant Period’), Company B filed an employer’s return of remuneration and pensions for the year of assessment 2007/08 in respect of the Taxpayer reporting that salary income accrued to him was \$362,566.

6. For the period from 2 October 2007 to 31 March 2008, Company E filed an employer’s return of remuneration and pensions for the year of assessment 2007/08 in respect of the Taxpayer reporting that income accrued to him was \$507,257.

7. In his Tax Return – Individuals for the year of assessment 2007/08, the Taxpayer only declared total employment income of \$507,257 derived from Company E and did not object to the following Salaries Tax assessment raised by the Assessor for the year of assessment 2007/08:

	\$
Income from Company E	507,257
<u>Less: Retirement scheme contributions</u>	6,000
	<u>501,257</u>
<u>Less: Total allowances</u>	200,000
Net Chargeable Income	<u>301,257</u>
Tax Payable thereon (after tax reduction)	<u>15,713</u>

8. Based on the employer’s return filed by Company B, the Assessor raised on the Taxpayer the following additional Salaries Tax assessment for the year of assessment 2007/08 filed by Company B:

	\$
Additional Net Chargeable Income	362,566
Additional Tax Payable thereon	<u>61,636</u>

9. The Taxpayer objected to the said additional assessment. The objection was based on the ground that he stationed and rendered all employment services in Mainland and his income from Company B should be exempted from Hong Kong Salaries Tax under section 8(1A)(b)(ii) of the Inland Revenue Ordinance (‘IRO’).

10. To support the Taxpayer’s objection, he provided copies of the following documents:

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- (1) A letter dated 7 January 2011 issued by Company B certifying that the Taxpayer stationed and rendered all employment services in Mainland for Company B during the Relevant Period.
- (2) Monthly reports of withholding IIT showing that IIT withheld in respect of the Taxpayer for the period from April to September 2007; and

Period	Income	Standard Deduction	Taxable Income	Tax rate	Quick Deduction	No. of days in the Mainland for the period	No. of Days for the period	Tax payable
	(A)	(B)	(C)=(A)-(B)	(D)	(E)	(F)	(G)	(H)=[((C) x (D) - (E))] x (F) ÷ (G)
	RMB	RMB	RMB		RMB			RMB
April 2007	65,520	4800	60720	35%	6375	5	30	2,479.50
May 2007	65,520	4800	60720	35%	6375	14	31	6,718.65
June 2007	65,520	4800	60720	35%	6375	28	30	13,885.20
July 2007	65,520	4800	60720	35%	6375	17	31	8,158.35
August 2007	65,520	4800	60720	35%	6375	8	31	3,839.23
September 2017	65,520	4800	60720	35%	6375	0	30	0
								35,080.93

- (3) The IIT payment certificates of the amount of RMB 35,080.93 issued by City D District F Local Taxation Bureau.

11. Upon the Accessor's request, Company B by its own letter dated 24 May 2011 and by its tax advisers letter dated 16 August 2011 provided the following information that:-

- (1) During the Relevant Period, the Taxpayer's services were primarily performed in City D and he did not attend any meetings or trainings or perform other duties in Hong Kong;
- (2) The Taxpayer did not take any annual leave, sick leave and compensatory leave during the Relevant Period;
- (3) The monthly special allowance of \$12,000 was provided by Company B to him to cover his travelling and related expenses incurred for performing his duties in Mainland, which could not be brought into charge as assessable income in accordance with the Departmental Interpretation and Practice Notes ('DIPN') No.9; and
- (4) Under the tax equalization scheme of Company B, the Taxpayer was entitled to receive his remuneration net of the applicable hypothetical tax element and therefore his contractual remuneration for the

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Relevant Period should be \$405,695 instead of \$362,566 reported in the employer's return. The breakdown was as follows:

	\$
Notional salary for April 2007 (\$73,000 x 29/30)	70,566
Notional salary for May to September 2007 (\$73,000 x 5)	365,000
Notional salary for October 2007 (\$73,000 x 1/31)	<u>2355</u>
	437,921
<u>Less: Hypothetical tax element</u>	<u>(32,226)</u>
	<u>405,695</u>

12. According to the records of the Immigration Department, the Taxpayer was physically present in Hong Kong for a total of 129 days¹ during the Relevant Period. Out of the said 129 days, 62 days were working days², which were neither the statutory holidays in the Mainland and Hong Kong nor his leave days.

13. The Assessor did not accept the Taxpayer's claim that he rendered all the services in connection with his employment with Company B outside Hong Kong and, therefore, rejected the Taxpayer's claim for tax exemption under IRO section 8(1A)(b)(ii).

14. However, the Assessor accepted that part of the Taxpayer's income from Company B during the Relevant Period was attributable to his services rendered in the Mainland and had been taxed in the Mainland. Accordingly, part of the Taxpayer's income could be exempted from Salaries Tax under IRO section 8(1A)(c). By reference to the number of the Taxpayer's days in Mainland as reported to the Mainland tax authority, the Assessor computed that the Taxpayer's income which could be exempted from Salaries Tax under IRO section 8(1A)(c) is \$158,288.

15. By accepting the Taxpayer's income from Company B for the period from April to August 2007 was to be attributed to his service rendered in Mainland, the Assessor accepted that such part of the Taxpayer's income could be exempted from Salaries Tax under section 8(1A)(c) of the IRO and the computation of such is shown as follows:

¹ The date of arrival at or departure from Hong Kong would be counted as a half-day; and where arrival and departure happened on the same day, that would be counted as a half-day.

² The Revenue clarified at the hearing of the appeal that according to their calculation, the Taxpayer spent a total of 62 working days in Hong Kong, instead of 61.5 days as recorded at paragraph 2(12)(b) of the Determination.

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Period	Income reported to the Mainland tax authority	Average exchange rate	Income reported to the Mainland tax authority	No. of days in the Mainland for the period	No. of days for the period	Income excluded under section 8(1A)(c) of the IRO
	(I) = (A)	(J)	(K)=(I) ÷(J)	(L)=(F)	(M)	(N)=(K)x(L) ÷(M)
	RMB		\$			\$
April 2007	65,520	0.988412	66,289	5	30	11,049
May 2007	65,520	0.981924	66,727	14	31	30,135
June 2007	65,520	0.976960	67,066	28	30	62,595
July 2007	65,520	0.969478	67,583	17	31	37,062
August 2007	65,520	0.969144	67,607	8	31	17,447
						<u>158,288</u>

16. However, the Assessor considered that a total special allowance of \$72000 for 6 months from April to September 2007 paid to Taxpayer should be regarded as his income and is chargeable to Salaries Tax. Hence, the additional Salaries Tax assessment for the year of assessment 2007/08 is revised as follows:

	\$
Income from Company B -	
Contractual remuneration	405,695
The Allowance	72,000
	<u>477,695</u>
<u>Less: Income excluded under section 8(1A)(c) of the IRO</u>	<u>(158,288)</u>
Additional Net Chargeable Income	319,407
Additional Tax Payable thereon	<u>54,299</u>

C. THE DETERMINATION AND GROUNDS OF APPEAL

17. In the Determination, the Deputy Commissioner rejected the Taxpayer's allegation that he had rendered all the services in connection with his employment with Company B outside Hong Kong and affirmed the Subject Assessment.

18. In his Notice of Appeal dated 20 September 2019, the Taxpayer raised two main points in support of his appeal against the Determination:-

- (1) First, the Taxpayer claimed that his duties under the employment with Company B related to acquisition of lands in the Mainland; and accordingly, he worked in the Mainland and took rest when he was back to Hong Kong.
- (2) Second, a substantial period of time of over 11 years had lapsed between the year of assessment of 2007/08 and the Determination, such that the relevant personnel and records could no longer be retrieved by the time when the Determination was made.

19. Before the hearing of this appeal, this Board had given directions to the parties for the filing of witness statement(s). No witness statement had been filed by the Taxpayer in support of his appeal. Hence, this Board has to deal with this appeal based on the documents available and the submissions made by the parties

D. DISCUSSIONS

D1. Relevant Statutory Provisions and Legal Principles

20. IRO section 8 provides, so far as material, that:-

'(1) Salaries tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong from the following sources—

(a) any office or employment of profit; and

...

(1A) For the purposes of this Part, income arising in or derived from Hong Kong from any employment—

(a) includes, without in any way limiting the meaning of the expression and subject to paragraph (b), all income derived from services rendered in Hong Kong including leave pay attributable to such services;

(b) ... excludes income derived from services rendered by a person who—

...

(ii) renders outside Hong Kong all the services in connection

- with his employment; and*
- (a) ... *excludes income derived by a person from services rendered by him in any territory outside Hong Kong where—*
- (i) *by the laws of the territory where the services are rendered, the income is chargeable to tax of substantially the same nature as salaries tax under this Ordinance; and*
 - (ii) *the Commissioner is satisfied that that person has, by deduction or otherwise, paid tax of that nature in that territory in respect of the income.*

...

(1B) *In determining whether or not all services are rendered outside Hong Kong for the purposes of subsection (1A) no account shall be taken of services rendered in Hong Kong during visits not exceeding a total of 60 days in the basis period for the year of assessment.*

21. As observed by MacDougall J in CIR v. George Andrew Goepfert (1987) 2 HKTC 210 and further elaborated by K Yeung J in CIR v. Lo Wa Ming Patrick [2021] 2 HKLRD 522 (at paragraph 4)³, the broad structure of IRO section 8 and the charges it imposes can be summarized as follows:-

- (1) The basic charge of Salaries Tax is imposed by section 8(1). It is imposed on ‘*income arising in or derived from Hong Kong from any employment*’;
- (2) Once a taxpayer’s salary falls within the basic charge, there is no provision for apportionment. The entire salary is subject to Salaries Tax wherever his services may have been rendered, subject only to any claim for relief:-
 - (a) under section 8(1A)(b)(ii)⁴, as read with section 8(1B)⁵; or
 - (b) under section 8(1A)(c)⁶;

22. In relation to the basic charge under section 8(1), the focus is on the locality of the employment, but not the locality where the services of the employee are actually rendered. As observed in CIR v. George Andrew Goepfert (*supra*), ‘*in case of an employment, the locality of the source of income is not the place where the activities of the employees are exercised, but the place either where the contract for payment is deemed to have a locality or where the payments for the employments are made*’ (at p.235). ‘*It follows*

³ Although the decision of K Yeung J was overturned on appeal (*see* [2022] HKCA 710), the decision of the Court of Appeal only turns on the formula that should be adopted for apportioning income derived from services rendered outside Hong Kong during a Hong Kong employment. The correctness of the broad legal effect of IRO section 8 as summarized by K Yeung J was not under challenge.

⁴ ie the exclusion of income derived from services rendered by the taxpayer who renders outside Hong Kong all the services in connection with his employment.

⁵ ie the so-called ‘60 days rule’, that no account shall be taken of services rendered in Hong Kong during visits not exceeding a total of 60 days in the basis period.

⁶ ie the exclusion of income derived from services rendered outside Hong Kong, and the satisfaction of sections 8(1A)(c)(i) and (ii)

that the place where the services are rendered is not relevant to the enquiry under s.8 (1) as to whether income arises in or derived from Hong Kong from any employment. It should therefore be completely ignored (at p.236).

23. In an appeal of this nature, IRO section 68(4) places on the Taxpayer the burden of proving that the assessment appealed against is excessive or incorrect.

D2. Analysis

24. In the present case, the Taxpayer's Employment Letter with Company B was governed by Hong Kong law (Clause XVIII) and its termination was governed by Hong Kong Employment Ordinance (Clause II). Further, the remuneration was paid to the Taxpayer in Hong Kong dollars (Clause III), and that the Taxpayer had to participate in the Mandatory Provident Fund Scheme in Hong Kong (Clause V). Although it was stated in the Employment Letter that the Taxpayer's workplace would be primarily at City D (Clause I), this is irrelevant to the enquiry under IRO section 8(1) as to the locality of the employment. Further and in any event, it also clearly envisaged that Company B would provide train ticket to enable the Taxpayer to travel from Hong Kong to City D to work (Clause X), and also train ticket to enable the Taxpayer to travel back to Hong Kong upon termination of employment (Clause XIII). Clearly, the terms and spirit of the Employment Letter were that the Taxpayer's employment was located and based in Hong Kong, even though he was expected to offer his services primarily at City D.

25. At the hearing of this appeal, in answer to a question raised by this Board, the Taxpayer alleged that he had signed another employment contract in the Mainland. Despite raising his objection to the Subject Assessment back in January 2011, the Taxpayer had never produced such alleged employment contract signed in the Mainland.

26. In our view, it is clear that the locality of the Taxpayer's employment during the Relevant Period was in Hong Kong, and his income during the Relevant Period is chargeable to Salaries Tax under IRO section 8(1). The main issue of this appeal therefore is whether the Taxpayer is entitled to any exemption resulting from the rendering of his services in the Mainland.

27. This present case does not concern exemption under section 8(1A)(c). This is because, as explained in paragraphs 14 and 15 above, exemption had already been given to the Taxpayer under section 8(1A)(c) in relation to such part of his income for which tax had been paid in accordance with the applicable revenue law in the Mainland. Thus, this appeal only concerns whether the Taxpayer is entitled to further exemption under IRO section 8(1A)(b)(ii)⁷, as read with section 8(1B)⁸.

28. Section 8(1A)(b)(ii) exempts a person from Salaries Tax where who '*renders outside Hong Kong all the services in connection with his employment*'. In

⁷ ie the exclusion of income derived from services rendered by the taxpayer who renders outside Hong Kong all the services in connection with his employment.

⁸ ie the so-called "60 days rule", that no account shall be taken of services rendered in Hong Kong during visits not exceeding a total of 60 days in the basis period.

determining whether or not all services are rendered outside Hong Kong, section 8(1B) provides that *'no account shall be taken of services rendered in Hong Kong during visits not exceeding a total of 60 days in the basis period for the year of assessment'*.

29. In CIR v. So Chak Kwong, Jack (1986) 2 HKTC 174, Mortimer J held (at p.188) that *'[section 8(1B)] is clear and unambiguous. The words 'not exceeding a total of 60 days' qualify the word 'visits', and not the words 'services rendered'. Were it otherwise the Section would be expressed differently. In order to take the benefit of the Section therefore a Taxpayer must not render services during visits which exceed a total of 60 days in the relevant period'*. Further, in the Board of Review decision D90/03 18 IRBRD 860, it was held in counting the number of days of a taxpayer's visits in Hong Kong, a stay in Hong Kong shorter than a day should be counted as one whole day.

30. According to the immigration records, during the Relevant Period (ie 2 April 2007 and 1 October 2007), the Taxpayer had stayed Hong Kong for a total of 153 days. In the Determination, the Deputy Commissioner had adopted an approach more favourable to the Taxpayer by counting the day on which the Taxpayer arrived at or left Hong Kong as half a day, instead of one whole day as held in D90/03 (*supra*). Still, according to such calculation, the Taxpayer had also stayed in Hong Kong for a total of 129 days during the Relevant Period. Thus, one way or another, it is clear that the Taxpayer had 'visited' Hong Kong more than 60 days within the meaning of IRO section 8(1B). It follows that unless the Taxpayer did not render any services at all in connection with his employment when he stayed in Hong Kong during the Relevant Period, he would not be entitled to any exemption under IRO section 8(1A)(b)(ii).

31. At the hearing of this appeal, questions were raised by this Board as to whether the Taxpayer provided any services in connection with his employment during his stay in Hong Kong. Although the Taxpayer was initially adamant that he only worked in the Mainland, he later accepted that during his stay in Hong Kong, he would from time to time conduct search on the internet on matters concerning land auction or acquisition in the Mainland and would communicate with his team in the Mainland in relation to such matters.

32. In order to claim exemption under IRO section 8(1A)(b)(ii), it was held by the Board of Review in D39/04 19 IRBRD 319 (at p.329) that the taxpayer must show that *'he did not render a single jot of service for the benefit of his employer'* during his stay in Hong Kong.

33. We note that it was stated in a letter from Company B dated 24 May 2011 signed by one Mr G that *'[the Taxpayer's] services were primarily performed in City D ... he was not required to perform any work in Hong Kong'* and *'he did not attend any meetings or training or perform other duties in Hong Kong'*. However, these statements must be considered and assessed in its proper context. The decision of the Board of Review in D2/04 19 IRBRD 76 shows that this Board is not bound to accept the assertion contained in the letter from the taxpayer's employer that the taxpayer did not render any services in Hong Kong. In that case, the Board of Review held that the taxpayer did not discharge his burden of showing that he rendered all his services to his employer outside Hong Kong simply based on a confirmatory letter issued by the employer's financial controller.

34. In the present case, the said letter from Company B was issued by Mr G in his capacity as '*Position H – Human Resources and Administration*'. There is, however, no evidence before this Board that Mr G had full knowledge of the day-to-day duties performed by the Taxpayer during the Relevant Period. More importantly, we take the view that it is inconceivable that the Taxpayer would simply do nothing in connection with his employment in Hong Kong when he spent over two-third of his time during the Relevant Period in Hong Kong (ie 153 days, or 129 days according to the more favourable calculation adopted by the Deputy Commissioner in the Determination, out of 183 days). Further and in any event, the answers given by the Taxpayer in response to the enquiries of this Board show that the Taxpayer did render some services for the benefit of Company B when he stayed in Hong Kong during the Relevant Period.

35. Accordingly, the Taxpayer in our view plainly fails to discharge his burden of showing that throughout the Relevant Period, he did not render a single jot of service for the benefit of Company B during his stay in Hong Kong.

36. As to the Taxpayer's complaint that there had been substantial lapse of time which had led to his failure to provide relevant evidence (whether documentary or witness evidence) to substantiate his case, we do not accept such complaint. This is because:-

- (1) At the hearing, the Taxpayer fairly accepted that at the time when he raised his objection to the Revenue in 2011, he fully appreciated that a key issue of his objection is whether he had rendered any services in Hong Kong in connection with his employment during the Relevant Period. In other words, the Taxpayer could and should have gathered evidence in 2011 in support of his case that he rendered no services at all when he stayed in Hong Kong during the Relevant Period, and he cannot complain of any prejudice arising from any lapse of time after 2011.
- (2) Further and in any event, based on the responses given by the Taxpayer at the hearing of this appeal, it is plain that the Taxpayer himself also accepted that he did provide some services in connection with his employment when he stayed in Hong Kong during the Relevant Period.

37. Accordingly, subject to such exemption which had already been granted in favour of the Taxpayer under section 8(1A)(c), we agree that his salaries during the Relevant Period are chargeable to Salaries Tax.

38. With regard to the Taxpayer's special allowance in the total sum of HK\$72,000, the Taxpayer in his Notice of Appeal dated 20 September 2019 did not specifically challenge the Deputy Commissioner's decision that the same should also be chargeable to Salaries Tax, nor did he address the matter at the hearing of this appeal. Further and in any event, we cannot detect any error on the part of the Deputy Commissioner's ruling that given that the Taxpayer spent most of his time in Hong Kong

during the Relevant Period, the special allowance should not be regarded as payments covering the Taxpayer's travelling, accommodation and related expenses incurred whilst he was working away from Hong Kong as required by his employer, Company B. Insofar as it may be necessary, we affirm the decision of the Deputy Commissioner that the said special allowance should be chargeable to Salaries Tax pursuant to section 9(1)(A) which defines income to include allowance.

E. CONCLUSION

39. Having considered all the materials made available before us, we are of the view that the Taxpayer is unable to discharge his burden of showing that the Subject Assessment is excessive or incorrect. We, therefore, dismiss the Taxpayer's appeal and confirm the Subject Assessment.