

**Case No. D23/22**

**Salaries tax** – allowances – dependant brother or dependent sister allowance (‘DBSA’) – disabled dependant allowance (‘DDA’) – meaning of ‘*unmarried*’ – whether eligibility under Disability Allowance Scheme (‘DAS’) a necessary condition for DDA – sections 2(1), 30B, 30B(1), 31(1), 31A(1), 33 of the Inland Revenue Ordinance (the ‘IRO’)

Panel: William M F Wong SC (chairman), Kwan Wai Yi Janet and Yeung Chiu Fat Henry.

Date of hearing: 16 December 2021.

Date of decision: 9 December 2022.

The Taxpayer had a stepsister (‘Sister’), who was married in 1981 and divorced in 1990. The Sister was diagnosed with schizophrenia and had been hospitalised in Country A since 1999. Since 2011, she had also been wheelchair bound.

Between 2013 and 2016, the Taxpayer furnished tax returns in respect of the years of assessment 2012/13 to 2015/16 in which he claimed DBSA and DDA in respect of the Sister. On the basis of these returns, the Assessor raised Personal Assessments on the Taxpayer for the years of assessment 2012/13, 2014/15 and 2015/16 in which the Taxpayer was granted deductions for DBSA and DDA.

Subsequently, the Assessor conducted a review of the Taxpayer’s claims for DBSA and considered that the Taxpayer should not be granted DBSA and DDA for the Sister. Accordingly, the Assessor raised the Assessments on the Taxpayer.

By a Notice of Objection dated 20 December 2016, the Taxpayer objected to the Assessments. The Acting Deputy Commissioner rejected the Taxpayer’s objection in her Determination and set out her reasons as followed: (1) The Sister was not ‘*unmarried*’ within the meaning of section 30B (1) of the IRO as ‘*unmarried*’ meant ‘*never having been married*’. (2) In order for the Taxpayer to be granted DDA in respect of the Sister, the Sister must have been eligible to claim an allowance under the Government’s DAS. By a Notice of Appeal dated 20 August 2021, the Taxpayer appealed to the Board of Review (‘Board’).

**Held:**

1. The only factual issue raised by the Taxpayer had ‘*predominant care*’ of the Sister. The Sister was not present in Hong Kong during the years of assessment 2012/13 to 2015/16. The Taxpayer did not dispute that while the Sister returned to Hong Kong for short periods in 2001 and 2011, the Sister had resided in Country A since 1999. Also, the Sister was not present in

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Hong Kong during the years of assessment 2012/13 to 2015/16. Although this Board accepted that the Taxpayer did his best, within his ability to take care of the Sister, this Board agreed with the Commissioner that by reason of the above, the Sister was not eligible under the DAS for the years of assessment 2012/13 to 2015/16.

2. A taxing statute was construed in the same way as any other statute. The language was to be interpreted in light of its context and purpose – not only where there was some ambiguity in the language. However, the object of the exercise remained one of ascertaining the legislative intent of the language of the statute: the court cannot attribute to a provision a meaning which the language, understood in light of its context and purpose, could not bear. Context was to be understood ‘*in the widest sense*’, and included the existing rules and principles making up that area of law. (Ho Kwok Tai v Collector of Stamp Revenue [2016] 5 HKLRD 713 followed).
3. The term ‘*unmarried*’ was not defined in the IRO. This Board accepted that the reference to child allowances (‘CA’) in the Financial Secretary 1996/97 Budget Speech made clear that DBSA was intended to form part of a complete and coherent set of tax deductions for dependent family members alongside, *inter alia*, CA. Accordingly, the Board agreed that section 30B(1) of the IRO must be construed alongside section 31(1) of the IRO. More specifically, the term ‘*unmarried*’ should bear the same meaning across both provisions.
4. First, the purpose of CA and DBSA was to provide financial relief to taxpayers who financially support brothers, sisters and children who are reasonably dependent on them. It was immediately obvious that the classes of brothers, sisters and children identified in sections 30B(1)(a)-(c) and 31(1)(a)-(c) of the IRO were persons who might reasonably be expected to be dependent on their family members. Conversely, persons who were not reasonably expected to rely on their siblings or parents for support were excluded from the ambit of sections 30B(1) and 31(1). If a divorced or widowed person was not reasonably expected to look to their parents or siblings for financial support, there was no reason why their parents and siblings should be granted DBSA and CA for providing such financial support, having regard to the context and purpose of these allowances. Accordingly, the terms ‘*unmarried*’ in sections 30B(1) and 31A(1) should be properly read as meaning ‘*never having been married*’.
5. Secondly, the equivalent expression in the Chinese language text was ‘未婚’ (‘*never having been married*’). By virtue of section 10B of the Interpretation and General Clauses Ordinance (Cap 1), the English and Chinese language texts were equally authentic, and the provisions were presumed to have the same meaning in both texts. Upon careful consideration on the law, the Board agreed that the above analysis of the legal principles was accurate. It was for the legislature, for the purpose of

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strengthening our family values, to consider whether tax relief should be granted to married but divorced siblings.

6. This Board agreed that the language of section 31A (1) was clear and unambiguous. Under its provisions, DDA was only granted to those taxpayers who had a dependant eligible under the DAS. There was nothing in the language of section 31A (1) which indicated the existence of any alternative routes by which a taxpayer could claim DDA. Hence, eligibility under the DAS was therefore a necessary and sufficient condition for a claim for DDA under section 31A (1).
7. The Commissioner submitted that there was clear authority that a residence requirement for the grant of disability benefits satisfied the proportionality test. This Board agreed with the legal submission. There was no scope for any alternative routes for claiming DDA under section 31A (1). As the Sister was not eligible under the DAS, it followed that the Taxpayer was not entitled to DDA in respect of the Sister. (Lam Wo Lun v Director of Social Welfare HCAL133/2010 (unrep, 14 May 2012), Lam Hing Chung Martin v Director of Social Welfare HCAL110/2012 (unrep, 28 Sep 2012), and Fok Chun Wa v Hospital Authority (2012) 15 HKCFAR 409 followed).

**Appeal dismissed.**

Cases referred to:

Ho Kwok Tai v Collector of Stamp Revenue [2016] 5 HKLRD 713  
Bennion, Bailey and Norbury on Statutory Interpretation (8th ed)  
Re Sergeant (1884) 26 Ch D 575, 576 (Pearson J)  
R (Kehoe) v Secretary of State for Work and Pensions [2005] UKHL 48 [2006] 1  
AC 42  
Sit Kwok Keung v Commissioner of Inland Revenue [2002] 3 HKLRD 286  
AKJ v Commissioner of Police of the Metropolis [2013] EWCA Civ 1342  
Fok Chun Wa v Hospital Authority (2012) 15 HKCFAR 409  
Lam Wo Lun v Director of Social Welfare HCAL133/2010 (unrep, 14 May 2012)  
Lam Hing Chung Martin v Director of Social Welfare HCAL110/2012 (unrep, 28  
Sep 2012)

Appellant in person.

Justin Ho and Rachel Li, instructed by Department of Justice, for the Commissioner of Inland Revenue.

**Decision:**

**A APPEAL**

1. The Taxpayer appeals against the determination of the Acting Deputy Commissioner of the Inland Revenue dated 15 July 2021 ('Determination'), in which he contends the Determination is wrong as the Acting Deputy Commission of the Inland Revenue:

- (1) disallowed the Taxpayer's claims for dependent brother or dependent sister allowance ('DBSA') and disabled dependant allowance ('DDA') for the years of assessment 2012/13 to 2015/16 under sections 30B and 31A of the Inland Revenue Ordinance (Chapter 112) ('IRO'); and
- (2) confirmed Additional Personal Assessments raised on the Taxpayer for the years of assessment 2012/13, 2014/15 and 2015/16 and a Personal Assessment raised on him for the year of assessment 2013/14 (the 'Assessments').

**B MATERIAL FACTS**

2. The Taxpayer has a stepsister ('Sister'), who was married in 1981 and divorced in 1990: Determination paragraph 1(2). The Sister was diagnosed with schizophrenia and has been hospitalised in Country A since 1999. Since 2011, she has also been wheelchair bound: Determination paragraph 1(7)(a).

3. Between 2013 and 2016, the Taxpayer furnished tax returns in respect of the years of assessment 2012/13 to 2015/16 in which he claimed DBSA and DDA in respect of the Sister. On the basis of these returns, the Assessor raised Personal Assessments on the Taxpayer for the years of assessment 2012/13, 2014/15 and 2015/16 in which the Taxpayer was granted deductions for DBSA and DDA: Determination paragraph 1(4)-(5).

4. Subsequently, the Assessor conducted a review of the Taxpayer's claims for DBSA and considered that the Taxpayer should not be granted DBSA and DDA for the Sister. Accordingly, the Assessor raised the Assessments on the Taxpayer: Determination paragraph 1(6).

5. By a Notice of Objection dated 20 December 2016, the Taxpayer objected to the Assessments: Determination, Appendix A. The Acting Deputy Commissioner rejected the Taxpayer's objection in her Determination and set out her reasons as follows:

- (1) The Sister was not '*unmarried*' within the meaning of section 30B(1) IRO as '*unmarried*' meant '*never having been married*'. As such, the

Taxpayer was not entitled to DBSA in respect of the Sister: Determination paragraph 3(4).

- (2) In order for the Taxpayer to be granted DDA in respect of the Sister, the Sister must have been eligible to claim an allowance under the Government's Disability Allowance Scheme ('DAS'). As the Sister was not eligible under the DAS, the Taxpayer was not entitled to DDA in respect of the Sister: Determination paragraph 3(8).

6. By a Notice of Appeal dated 20 August 2021, the Taxpayer now appeals to the Board of Review ('Board') in relation to the following issues:

- (1) Whether the Taxpayer had '*predominant care*' of the Sister;
- (2) Whether the Sister is '*unmarried*' within the meaning of section 30B(1) of the IRO;
- (3) Whether the disabled dependant's eligibility under the DAS is a necessary condition for a taxpayer's entitlement to DDA under section 31A(1) of the IRO, or instead merely a sufficient condition.

7. By its letter to the Taxpayer and the Commissioner dated 4 November 2021, the Board gave directions for, *inter alia*, the filing of written submissions by both parties. By an email to the Board dated 29 November 2021, the Taxpayer indicated that he would rely on his letter to the Board dated 20 August 2021 as his opening submissions for the appeal.

## C ANALYSIS

8. In the present case, it is correct that the only factual issue raised by the Taxpayer had '*predominant care*' of the Sister. But this factual issue is agreed by the Commissioner for the purposes of this appeal (see: Letter from the Inland Revenue Department to the Taxpayer dated 20 August 2021.)

9. On the other hand, the Taxpayer does not dispute that while the Sister returned to Hong Kong for short periods in 2001 and 2011, the Sister has resided in Country A since 1999. Also the Sister was not present in Hong Kong during the years of assessment 2012/13 to 2015/16.

10. Although this Board accepts that the Taxpayer did his best, within his ability to take care of the Sister, this Board agrees with Mr Ho for the Commissioner that by reason of the above, the Sister was not eligible under the DAS for the years of assessment 2012/13 to 2015/16 (See: Determination paragraph 3(8).)

11. Mr Ho for the Commissioner further submitted that in light of these matters, and given that Taxpayer is confined to the grounds raised in his Notice of Appeal, it is

unnecessary for the Board to receive factual evidence in this appeal. The Board needs only concern itself with the two crisp issues of statutory construction identified in paragraphs 6(2) and 6(3) above. This Board agrees.

***Statutory meaning of ‘unmarried’***

12. Mr Ho for the Commissioner made the following legal submissions to which this Board agrees.

13. First, a taxing statute is construed in the same way as any other statute. The language is to be interpreted in light of its context and purpose – not only where there is some ambiguity in the language. However, the object of the exercise remains one of ascertaining the legislative intent of the language of the statute: the court cannot attribute to a provision a meaning which the language, understood in light of its context and purpose, cannot bear: Ho Kwok Tai v Collector of Stamp Revenue [2016] 5 HKLRD 713, at paragraphs 20-26 *per* (Chow J (as he then was), giving the judgment of the Court of Appeal).

14. Context is to be understood ‘*in the widest sense*’, and includes the existing rules and principles making up that area of law: Bennion, Bailey and Norbury on Statutory Interpretation (8th ed) at paragraphs 11.2, 25.3.

15. Section 30B of the IRO provides:

*‘(1) An allowance (dependent brother or dependent sister allowance) shall be granted under this section in the prescribed amount in any year of assessment if a person or the spouse of the person, not being a spouse living apart from the person, maintains an unmarried brother or unmarried sister, or an unmarried brother or unmarried sister of the spouse of the person, in the year of assessment and the person so maintained at any time in the year of assessment was—*

*(a) under the age of 18 years;*

*(b) of or over the age of 18 years but under the age of 25 years and was receiving full time education at a university, college, school or other similar educational establishment; or*

*(c) of or over the age of 18 years and was, by reason of physical or mental disability, incapacitated for work.’*

16. The term ‘*unmarried*’ is not defined in the IRO. ‘*Marriage*’ and ‘*married*’ are defined in section 2(1) of the IRO, but this does not shed light on issue at hand.

17. The Taxpayer’s case is that ‘*unmarried*’ means ‘*not married at the time in question*’ and not ‘*never having been married*’, relying on dictionary definitions and

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guidelines issued by the Internal Revenue Service of the United States: Notice of Appeal, p.3.

18. During the appeal hearing, the Taxpayer seems to accept in his Notice of Appeal, the word ‘*unmarried*’ is capable of being used in both senses as a matter of ordinary language: *Re Sergeant* (1884) 26 Ch D 575, 576 (Pearson J).

19. The Board is helpfully assisted by Mr Ho for the Commissioner to refer us to the fact that the DBSA was first introduced by the then Financial Secretary in his 1996/97 Budget Speech. It sets out that DBSA was introduced as a concession for taxpayers ‘*maintaining a brother or sister for whom no child allowance is being claimed, with an additional allowance ... where the brother or sister is disabled*’ in order to ‘*strengthen our family values*’.

20. This Board accepts that the reference to child allowances (‘CA’) in the speech makes clear that DBSA is intended to form part of a complete and coherent set of tax deductions for dependent family members alongside, *inter alia*, CA. This legislative intention is also evident in the statutory framework itself:

- (1) CA is governed by section 31(1) of the IRO. The conditions for the grant of CA mirror those for the grant of DBSA:

‘(1) *An allowance (child allowance) shall be granted under this section in the prescribed amount in any year of assessment if a person had living and was maintaining at any time during the year of assessment an unmarried child who was—*

(a) *under the age of 18 years;*

(b) *of or over the age of 18 years but under the age of 25 years and was receiving full time education at a university, college, school or other similar educational establishment; or*

(c) *of or over the age of 18 years and was, by reason of physical or mental disability, incapacitated for work.’*

- (2) Section 33 of the IRO provides, *inter alia*, that DBSA and CA are mutually exclusive:

‘(1) *Subject to sections 31(2) and 31A(2), a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance shall not be given to more than one person in any year of assessment in respect of the same parent, grandparent, brother, sister or child.*

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(1A) *In any year of assessment—*

(a) *a dependent parent allowance and a dependent grandparent allowance; or*

(b) *a dependent brother or dependent sister allowance and a child allowance,*

*shall not both be given for the same dependent person.*

*[...]*

21. Accordingly, we agree that section 30B (1) of the IRO must be construed alongside section 31(1) of the IRO. More specifically, the term ‘*unmarried*’ should bear the same meaning across both provisions: Bennion paragraph 21.3.

22. Mr Ho for the Commissioner submitted that there are two matters which decisively point in favour of construing ‘*unmarried*’ as meaning ‘*never having been married*’.

23. First, it is clear that the purpose of CA and DBSA is to provide financial relief to taxpayers who financially support (‘maintaining’) brothers, sisters and children who are reasonably dependent on them. It is immediately obvious that the classes of brothers, sisters and children identified in sections 30B(1)(a)-(c) and 31(1)(a)-(c) of the IRO are persons who may reasonably be expected to be dependent on their family members:

- (1) Persons under 18 are legally minors: section 3 Interpretation and General Clauses Ordinance (Chapter 1) (‘IGCO’). They have a right at common law to maintenance by their parents: see R (Kehoe) v Secretary of State for Work and Pensions [2005] UKHL 48 [2006] 1 AC 42, at paragraphs 50-53 *per* Lady Hale, which is given effect to by, *inter alia*, section 10 Guardianship of Minors Ordinance (Chapter 13).
- (2) With the increased importance of higher education in modern society, it is entirely reasonable for persons to pursue full-time education beyond the age of 18 during which their working capacity is necessarily highly limited. This societal norm is reflected in section 10 of the Matrimonial Proceedings and Property Ordinance (Chapter 192) (‘MPPO’) whereby the Court is entitled to make financial orders in respect of children who have attained the age of 18 but who are, will be, or would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation.



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- (3) Persons who are incapacitated for work by reason of a physical or mental disability *ex hypothesi* do not have the ability to financially support themselves by way of gainful employment.

24. Conversely, persons who are not reasonably expected to rely on their siblings or parents for support are excluded from the ambit of sections 30B(1) and 31(1):

- (1) Sections 30B(1)(b) and 31(1)(b) provide for an upper age limit of 25. This is reflective of a general societal expectation that individuals should transition from education to employment and become financially independent at some point in their lives.
- (2) Whichever definition of ‘*unmarried*’ is adopted, there can be no dispute that CA and DBSA are not available in respect of married persons (as defined in section 2 IRO). This is entirely unsurprising given that spouses are generally expected (and in fact legally obliged by section 8 MPPO) to provide reasonable maintenance for each other. This spousal obligation to maintain is also recognised by the IRO, in that married persons are granted a separate married person’s allowance under section 29 of the IRO, so long as either (i) husband and wife are living together, or (ii) the spouse claiming the allowance is maintaining or supporting the other: section 29(4) of the IRO.

25. The key question is therefore whether divorced or widowed persons (persons who ‘*have been married*’ but are no longer ‘*married*’ during the time in question) are reasonably expected to be dependent on their siblings or parents, so that their siblings and parents should be granted tax relief for maintaining them.

26. Mr Ho for the Commissioner submitted that this question should be answered in the negative. It was submitted that the clear policy of the law is that divorced or widowed persons should primarily look to their former spouses or their spouses’ estates for maintenance, as opposed to their siblings and parents as:

- (1) The Court has the power to make orders for financial provision upon divorce, and in so doing will take into account, *inter alia*, the financial resources and needs of both spouses: sections 4, 7(1) MPPO.
- (2) There is an apparent lacuna in the taxing statute in that divorced persons who are legally liable to maintain their ex-spouses do not receive any tax relief for so doing: Sit Kwok Keung v Commissioner of Inland Revenue [2002] 3 HKLRD 286, paragraphs 7-9 *per* Le Pichon JA. However, this does not detract from the existence of such a legal obligation on former spouses to maintain each other.
- (3) Upon the death of an intestate married person, that person’s estate devolves on his or her surviving spouse and children (if any): section 4 Intestates’ Estates Ordinance (Chapter 73). The Court further has

the power under sections 3 and 4 of the Inheritance (Provision for Family and Dependants) Ordinance (Chapter 481) to make financial orders in favour of (i) a surviving spouse, or (ii) a former spouse who has not remarried and was being maintained by the deceased immediately before his or her death, where the disposition of the deceased's estate (whether by will or intestacy) fails to make reasonable financial provision.

27. Mr Ho for the Commissioner submitted that if a divorced or widowed person is not reasonably expected to look to their parents or siblings for financial support, there is no reason why their parents and siblings should be granted DBSA and CA for providing such financial support, having regard to the context and purpose of these allowances. Accordingly, the terms '*unmarried*' in sections 30B(1) and 31A(1) should be properly read as meaning '*never having been married*'.

28. Secondly, and in any event, the equivalent expression in the Chinese language text is '未婚' ('*never having been married*'). By virtue of section 10B of the IGCO, the English and Chinese language texts are equally authentic, and the provisions are presumed to have the same meaning in both texts.

29. The Chinese expression '未婚' therefore serves to inform and clarify the English text, which for the reasons explained above, should be read as meaning '*never having been married*' even if it were to be construed on its own.

30. Hence, Mr Ho for the Commissioner submits that the Sister was not '*unmarried*' within the meaning of section 30B(1). She was therefore not a person in respect of whom the Taxpayer could be granted DBSA, and the Acting Deputy Commissioner was entirely correct to have held so.

31. Whilst this Board is sympathetic with the Taxpayer, upon careful consideration on the law, the Board agrees that Mr Ho's analysis of the legal principles is accurate. It is for the legislature, for the purpose of strengthening our family values, to consider whether tax relief should be granted to married but divorced siblings.

***Whether Eligibility under DAS is a necessary condition for DDA***

32. Section 31A(1) of the IRO provides:

*'An allowance (disabled dependant allowance) of the prescribed amount shall be granted in any year of assessment to a person in respect of every dependant of his or hers who is eligible to claim an allowance under the Government's Disability Allowance Scheme.'*

33. We agree that the language of section 31A(1) is clear and unambiguous. Under its provisions, DDA is only granted to those taxpayers who have a dependant eligible under the DAS. There is nothing in the language of section 31A(1) which indicates the

existence of any alternative routes by which a taxpayer can claim DDA. Hence, eligibility under the DAS is therefore a necessary and sufficient condition for a claim for DDA under section 31A(1).

34. The Taxpayer contends that the above reading of section 31A(1) discriminates against foreign or expatriate taxpayers whose disabled dependants are not eligible under the DAS. Mr Ho for the Commissioner submitted that it is unclear whether he is seeking to invoke the principle of legality by way of such an argument, or whether he is in truth seeking a remedial interpretation of section 31A(1) on the basis that the limitation to dependants eligible under the DAS is in breach of Article 25 of the Basic Law.

35. If it is the former, as far as the principle of legality is concerned, it is merely a presumption of statutory interpretation and cannot override the express words of the statute: AKJ v Commissioner of Police of the Metropolis [2013] EWCA Civ 1342, at paragraphs 22-32. It is therefore of no application in the present context, where a taxpayer's entitlement to DDA is expressly linked to his dependant's eligibility under the DAS and is therefore subject to all its limitations.

36. As for the constitutionality of section 31A(1):

- (1) The Commissioner accepts that there is differential treatment of taxpayers whose disabled dependants are resident in Hong Kong (and therefore eligible under the DAS), and those whose dependants are not so resident, which must be justified under the proportionality test.
- (2) While the monetary benefit of DDA *prima facie* accrues to a taxpayer maintaining a disabled person and not the disabled person himself, there can be little dispute that DDA is ultimately granted for the benefit of the disabled person. DDA must therefore be understood as an ancillary welfare provision for disabled persons, alongside, *inter alia*, allowances under the DAS.

37. Mr Ho for the Commissioner submitted that in this regard, there is clear authority that a residence requirement for the grant of disability benefits satisfies the proportionality test:

- (1) As a general principle, where differential treatment arises in the context of a socio-economic policy where public finances are at stake, the courts will generally leave it to the authorities to identify the relevant line to be drawn save where it is drawn in contravention of core values or manifestly without reasonable foundation. The courts can legitimately take into account the clarity of the line and administrative convenience of implementing the policy, and have consistently upheld policies which draw the line at residence status: (See: Fok Chun Wa v Hospital Authority (2012) 15 HKCFAR 409, at paragraph 71-73 *per* Ma CJ.

- (2) In Lam Wo Lun v Director of Social Welfare HCAL133/2010 (unrep, 14 May 2012), Lam J (as he then was) held that a residence requirement for the grant of old age allowances ('OAA') was not manifestly without reasonable foundation. His Lordship placed emphasis on the fact that OAA was not means-tested, with the effect that once granted, it was unlikely that payment would be discontinued. He reasoned that there was a much greater need for a requirement of continuous residence to safeguard the sustainability of the OAA regime: paragraphs 31-33.
- (3) Lam Wo Lun was followed by Lam Hing Chung Martin v Director of Social Welfare HCAL110/2012 (unrep, 28 Sep 2012), which was a challenge to the constitutionality of the one-year continuous residence requirement under the DAS on the basis. Lam JA (sitting as an additional judge of the Court of First Instance) refused leave to apply for judicial review, noting that the relevant features of the DAS were essentially similar to the OAA regime: paragraph 2.
- (4) As an ancillary benefit on top of DAS, DDA shares many features with allowances granted under the DAS. DDA is not means-tested, and once granted, would continue to be granted in respect of a disabled person so long as he continues to be maintained by the taxpayer.
- (5) It follows that the rationale for a continuous residence requirement applies *mutatis mutandis*. The existence of a continuous residence requirement for DDA is therefore not manifestly without reasonable foundation.

38. This Board agrees with the above legal submissions. There is no scope for any alternative routes for claiming DDA under section 31A(1). As the Sister was not eligible under the DAS, it follows that the Taxpayer is not entitled to DDA in respect of the Sister.

## **D DISPOSITION**

39. For all the reasons stated above, the Taxpayer is not entitled to DBSA and DDA in respect of the Sister. Accordingly, the Taxpayer's appeal against the Determination is dismissed.

40. As far as costs of the appeal is concerned, this Board takes into account the fact that this matter involves a matter of complicated legal principles which this Board would not expect the Taxpayer to have a good command of. He was legitimately concerned as he did take care of the Sister. Hence, we make no order as to costs as far as this appeal is concerned.

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41. Finally, this Board will like to thank Mr Ho for the Commissioner for his very helpful written submissions on the law which greatly assisted this Board.