Case No. D17/17

Salaries tax – deductions – subscriptions paid to professional associations – whether 'wholly, exclusively and necessarily incurred' in producing income – section 12(1)(a) of the Inland Revenue Ordinance ('IRO')

Panel: Elaine Liu Yuk Ling (chairman), Chow Lap San Edward and Vincent Ho.

Date of hearing: 27 July 2017.
Date of decision: 1 November 2017.

The Appellant sought deductions from his assessable income for the 2015/16 year of assessment the membership subscription he paid to 4 professional associations in the UK and the US. He was employed as a physicist. The advertisement for his job showed that an applicant had to either hold a master's degree in physics or engineering, or as a corporate member of the Institute of Engineering and Technology of Hong Kong or of the UK. The Appellant qualified as he was such a corporate member, but this requirement was not specified in his employment contract. His employer also confirmed that it was not a condition of the Appellant's job to continue to hold membership of any professional association or incur any professional subscriptions. A physicist was not a profession which required registration in Hong Kong. The Revenue offered an extra-statutory concession that the Appellant would be allowed deduction of the subscription paid to one professional association, but this was refused by the Appellant. The Deputy Commissioner rejected the Appellant's objection. The Appellant appealed to the Board, arguing that (i) the subscription were prepayments and should be considered as expenses incurred for the performance of his job duties; (ii) the subscriptions he paid were not to qualify him to earn his income; and (iii) the Revenue's stance in DIPN No.9 (Revised) was not tested in court.

Held:

1. Even when subscription was actually paid, it would not be deductible under section 12(1)(a) of the IRO as such. The Appellant had to show that the subscription was wholly, exclusively and necessarily incurred in the production of his assessable income. The operation of section 12(1)(a) was rigid, narrow and restricted (Lomax v Newton 34 TC 558 applied). It was even not enough that the expenses were incurred in gaining income; they must be necessary for that purpose (Commissioner of Inland Revenue v Robert P Burns [1980] 1 HKTC 1181 considered).

2. The Appellant failed to satisfy section 12(1)(a) of the IRO. The subscription was paid out of his own volition. The fact that the

membership of the 4 professional associations would allow him better access to information relevant to his job, and to communicate with other members with similar background. These were not objectively necessary for the Appellant to perform his duties as a physicist, nor for him to produce his assessable income (Ricketts v Colquhoun 10 TC 118; Brown v Bullock 40 TC 1; Simpson v Tate 9 TC 314 applied; BR 19/73, IRBRD, vol 1, 121; Lomax v Newton 34 TC 558; Humbles v Brooks 40 TC 500; D23/90 IRBRD, vol 5, 178; D36/90, IRBRD, vol. 5, 295; D3/93, IRBRD, vol 8, 96; D7/04, IRBRD, vol 19, 93; D12/10, (2010-11) IRBRD, vol 25, 295 referred).

3. The extra-statutory concession allowed by the Revenue, as stated in DIPN No.9 (Revised), only set out its interpretation and practices. The Board and the court were not bound by the DIPN. Even if the DIPN were taken into account, it would not assist the Appellant, as the extra-statutory concession therein only allowed deduction of subscription paid to one professional association where the holding of the professional qualification was a prerequisite of employment, and where the retention of membership was of regular use and benefit to the taxpayer's job duties. This was not applicable to the present case.

Appeal dismissed and costs order in the amount of $5,000 imposed.

Cases referred to:

Commissioner of Inland Revenue v Humphrey [1970] 1 HKTC 451
D36/90, IRBRD, vol 5, 295
D7/04, IRBRD, vol 19, 93
Ricketts v Colquhoun 10 TC 118
Lomax v Newton 34 TC 558
Brown v Bullock 40 TC 1
Humbles v Brooks 40 TC 500
Simpson v Tate 9 TC 314
Commissioner of Inland Revenue v Robert P Burns [1980] 1 HKTC 1181
B/R 19/73, IRBRD, vol 1, 121
D23/90, IRBRD, vol 5, 178
D3/93, IRBRD, vol 8, 96
D12/10, (2010-11) IRBRD, vol 25, 295
D24/87, IRBRD, vol 2, 398

Appellant in person.
Yu Wai Lim, for the Commissioner of Inland Revenue.

Decision:

Introduction

1. The question to be determined in this appeal is whether deduction of membership subscriptions paid to four professional associations by the Appellant should be allowed in computing his net assessable income for the year of assessment 2015/16, in particular whether these subscriptions were 'wholly, exclusively and necessarily incurred in the production of the assessable income' pursuant to section 12(1)(a) of the Inland Revenue Ordinance.

Grounds of Appeal

2. The Appellant's grounds of appeal as stated in his Notice of Appeal, which we recite in verbatim, are as follows:

> 'My appeal is made on the following grounds:
>
> (i) The subscriptions were prepayments and there is no reason why this is disregarded as expenses incurred during the performance of my duties as Physicist in statutory body B.
>
> (ii) Following the legal authorities under section 12(1)(a) of the Ordinance, membership subscriptions were not deductible in precedent cases if the expenses are incurred in qualifying the taxpayer to earn his income which is not my case with all the evidences put forwards.
>
> (iii) The determination of the expenses deduction claim was not tested according to DIPN NO. 9 (Revised) – Major deductible items under salaries tax.'

Relevant Legal Principles

3. Deduction under Salaries Tax is governed by section 12(1) of the Inland Revenue Ordinance. Section 12(1)(a) provides that:

> '*In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person –*
>
> *(a) all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income …*'

4. There is a wealth of English authorities on the meaning of the requirement of 'wholly, exclusively and necessarily incurred' in the performance of the duties of the employment under the English Rule ('the Rule'). It has been accepted by Hong Kong court that these English authorities are relevant and applicable for the consideration of the equivalent provisions in the Hong Kong legislation, including section 12(1)(a), despite the different wordings. In section 12(1)(a), it was referred to the expenses incurred in the 'production of the assessable income'. The wordings used in the Rule are those incurred 'in the performance of the duties of the office or employment'. [See: Commissioner of Inland Revenue v Humphrey [1970] 1 HKTC 451; D36/90, IRBRD, vol 5, 295; D7/04, IRBRD, vol 19, 93].

5. In Ricketts v Colquhoun 10 TC 118, the House of Lords rejected the claim of a Recorder and practising barrister for deduction of items including travelling expenses between London (where the barrister resided and carried on his profession as a barrister) and Portsmouth (where he held his Recordership) and hotel expenses in Portsmouth.

6. Viscount Cave, L C held at page 133 that in order that the expenses may be deductible under the Rule,

> '*They must be expenses which the holder of an office is necessarily obliged to incur - that is to say, obliged by the very fact that he holds the office, and has to perform its duties – and they must be incurred in, that is, in the course of, the performance of those duties.*'

7. Lord Blanesburgh, at page 135 of the judgment, referred to the restricted language in the rules that requires the expenses to be necessarily obliged to incur in the performance of its duties and said:

> '*the terms employed are strictly, and, I cannot doubt, purposely, not personal but objective. The deductible expenses do not extend to those which the holder has to incur mainly and, it may be, only because of circumstances in relation to this office which are personal to himself or are the result of his own volition.*'

8. The 'rigid, narrow and restricted' operation of the Rule was expressed in a number of other authorities, including Lomax v Newton 34 TC 558, where Vaisey J had held at page 562 of the judgment that:

> '*I would observe that the provisions of the Rule are notoriously rigid, narrow and restricted in their operation. In order to satisfy the terms of the Rule it must be shewn that the expenditure incurred was not only necessarily but wholly and exclusively incurred in the performance of the relevant official duties. And it is certainly not enough merely to assert that a particular payment satisfies the requirements of the Rule, without specifying the detailed facts upon which the finding is based. An expenditure may be "necessary" for the holder of an office without being necessary to him in the performance of the duties of that office; it may be*

> *necessary in the performance of those duties without being exclusively referable to those duties; it may perhaps be both necessarily and exclusively, but still not wholly so referable. The words are indeed stringent and exacting; compliance with each and every one of them is obligatory if the benefit of the Rule is to be claimed successfully.*'

9. In Lomax, the court disallowed the claims of a territorial army officer on the deduction of various items including annual mess subscription, share of battalion mess guests expenditure, payment to batman at weekend and annual camps and other costs of tickets for mess and annual dinners etc.

10. In Brown v Bullock 40 TC 1, a manager of a West End branch of a bank claimed that it was virtually a condition of appointment that a manager should join a club suited to the purpose of fostering local contacts. The bank had paid for the subscription of one club and half of the subscription of the other club. The English Court of Appeal rejected the claim for deduction of these subscriptions. The court echoed the narrow and restrictive operation of the Rule, and remarked that the addition of the word 'necessarily' to the phrase 'performance of the duties' clearly narrows very much the scope of any expenditure which can fairly be deductible.

11. The test, as held by Donovan L J, is:

> '*… the taxpayer must show that any expense he wishes to be deducted in arriving at his assessable emoluments was, inter alia, necessarily incurred in the performance of the duties of the office or employment. … The test is not whether the employer imposes the expense but whether the duties do, in the sense that, irrespective of what the employer may prescribe, the duties cannot be performed without incurring the particular outlay.*'

12. In Humbles v Brooks 40 TC 500, a headmaster of a primary school was required to teach various subjects, including history. The headmaster attended a series of courses in history for the purpose of improving his background knowledge, keeping him up to date and providing him with materials which he reproduced in the history lessons which he was required to give. The English court applied the objective test propounded by Lord Blanesburgh in Ricketts v Colquhoun and Donovan L J in Brown v Bullock, and rejected the items claimed as deductible expenses.

13. Simpson v Tate 9 TC 314 concerned a claim by a county medical officer for the deduction of his subscriptions to certain professional societies. It was not a condition of his employment that he should be a member of these societies, but such membership is customary for county medical officers. Rowlatt J acknowledged that it was proper and correct for the county medical officer to keep himself abreast of all the highest development of the day. Such subscriptions were, nonetheless, not money expended wholly, exclusively and necessarily in the performance of the medical officer's duties, and were therefore held not deductible. Rowlatt J has said that:

> '*The gentleman of course qualified in one sense before he got this appointment, but he is continually keeping himself qualified very properly and rightly by keeping himself abreast of all the highest developments and knowledge of the day. But when one looks at it closely one sees that that is not in the performance of duties. He does not belong to societies in order that he may get the journals and read them to the patients. It is absurd to suggest anything of that sort, but, if he did, that would be quite different. He is qualifying himself in order that he may continue to hold this office, just as he did qualify himself, before he got the office, to enable him to perform it.*'

14. Rowlatt J has further laid down the principles as follows:

> '*I think it is desirable to lay down some principle. I think that all subscriptions to professional societies and all taking in of professional literature and all that sort of expenses, which enables a man to keep himself to fit for what he is doing, are things which can none of them be allowed. If they were allowed every professional man would say "I have to belong to this society and I have to belong to that society; I have to take this publication and I have to take in that publication, and to do all sort of things," and there would be no end to it. I think the principle is quite clear. Nothing of that sort can be allowed.*'

15. In Commissioner of Inland Revenue v Robert P Burns [1980] 1 HKTC 1181, the Court of Appeal followed weighty authorities discussed in that judgment for drawing the distinction between expenses incurred in gaining income and one incurred necessarily for the purpose of gaining it. In this case, a racehorse trainer was charged before the stewards of the Royal Hong Kong Jockey Club with contravening one of the rules of the racing and was disqualified. He appealed against the decision and succeeded. In the course of his appeal, he incurred legal expenses amounting to $40,000. He claimed this expenses as an allowable deduction from his assessable income. The Court of Appeal disallowed his claim and held that the legal expenses were incurred for the purpose of seeing that the taxpayer was not precluded from earning his assessable income, they were not incurred in the production of it.

16. The above legal principles have been applied in many previous decisions of this board. The following decisions were referred to by the Respondent:

(1) BR 19/73, IRBRD, vol 1, 121

(2) D23/90, IRBRD, vol 5, 178

(3) D36/90, IRBRD, vol 5, 295

(4) D3/93, IRBRD, vol 8, 96

(4) D7/04, IRBRD, vol 19, 93

(6) D12/10, (2010-11) IRBRD, vol 25, 295

17. BR 19/73 concerned an engineer, who was a member of two societies relating to his profession. He claimed for the deduction of subscriptions paid to these two societies. The Revenue, pursuant to its own departmental practice, allowed the deduction of subscription paid to one professional association, the membership of which was considered as a pre-requisite of the employment. The engineer appealed to the board claiming that the subscriptions to both societies were expenses wholly, exclusively and necessarily incurred in the production of his assessable income and were deductible in ascertaining his net chargeable income. The board considered and applied the principles derived from the English authorities including Lomax v Newton, and Simpson v Tate, decided that the subscriptions to both societies were not expenses wholly, exclusively and necessarily incurred in the production of the assessable income, and were not deductible.

18. The appeal in D23/90 was lodged by an accountant who claimed for the deduction of the amount paid by him in respect of a subscription to a professional journal. He claimed that as an audit manager in a professional firm, he had to be acquainted with the latest developments in the accountancy profession in order that he would be able to advise his clients efficiently and effectively. At the appeal before the board, the accountant conceded that his purpose in appealing was to persuade the board that the subscription should be allowed as an extra-statutory concession. He submitted that the provision in section 12(1)(a) was particularly harsh. The board, following the previous decision in D24/87, IRBRD, vol 2, 398 held that the board cannot extend the scope of an extra-statutory concession since it is administrative in nature. The board dismissed the appeal.

19. In D36/90, the taxpayer was employed as a mamasan of a night club, who claimed deduction of various items of expenditure including cosmetic expenses, entertainment, rents and so on. The duty of the taxpayer was to provide customers who asked for her or were introduced to her with hostesses. In exchange, she received an engagement fee at the inception of her employment and acquired the right to earn commission income at fixed rates. Applying the legal principles and tests stated above, the board came to a conclusion that the expenses were incurred merely for the purpose of producing income, and they were not wholly, exclusively and necessarily incurred in the production of the assessable income.

20. In D3/93, the taxpayer was employed as an accountant. He claimed deduction of tuition fees, a subscription and examination fee paid to a professional association. He submitted that the knowledge which he acquired was necessary for him to perform his duties, and that being a member of the professional association enabled him to obtain his then employment at a substantially enhanced salary. The board accepted that the taxpayer's studies, examination, and membership of a professional body assisted him in the performance of his duties, facilitated him to command a higher level of salary and improved promotion prospect. However, the taxpayer was not required to incur the expenses for the course and examinations he took, nor for the membership in the professional association. These were not performed or done by him in the course of

performing the duties for which he was paid his taxable emoluments. Accordingly, these expenses were not deductible under section 12(1)(a).

21. In D7/04, the taxpayer was employed as the first associate concertmaster with the main duty to play violin in its concert performances. The concertmaster contended that a good fine violin was an essential tool for a professional violinist and therefore he should be granted depreciation allowance in respect of his violin under section 12(1)(b) of the Inland Revenue Ordinance. In interpreting section 12(1)(b), the board accepted that there was no reason that the words 'production of the assessable income' in section 12(1)(a) and section 12(1)(b) should bear a different meaning. The jurisprudence governing section 12(1)(a) which imported the test of 'objective necessity' was considered and applied by the board.

22. D12/10 is about the claim for deduction of subscription of two professional associations. The taxpayer contended that membership of both organisations must be held together for the taxpayer to maintain her professional qualification and she felt that the payment she made was in respect of one global professional body. Extra-statutory concession was given by the Revenue to the subscription paid to one professional body. The board confirmed that deduction of subscription of professional association is not allowable under the strict interpretation of section 12(1)(a). The board considered the two organisations were separate and would not disturb the extra-statutory concession granted by the Revenue.

The Facts

23. Having heard the evidence testified by the Appellant and considered all the documents produced by both sides, we found the facts below.

24. The Appellant was employed by statutory body B as Physicist with income of $983,040 and by Company C as Position D with income of $4,500 for the year of assessment 2015/16.

25. By a letter dated 21 October 2013 ('the Employment Contract'), statutory body B offered to employ the Appellant in the post of physicist with effect from 1 January 2014. The offer was made on the conditions that:

(a) the Appellant continues to have commendable performance in the interim;

(b) the accuracy of all information provided by the Appellant in his application for the appointment; and

(c) the Appellant has obtained a valid employment permit from the Immigration Department (if required).

26. The Appellant accepted the above offer on 30 October 2013.

27. Due to the Appellant's failure to furnish his tax return for the year of assessment 2015/16 within the stipulated time limit, the assessor raised an estimated Salaries Tax Assessment on the Appellant.

28. The Appellant objected to the estimated salaries tax assessment raised on him for the year of assessment 2015/16. One of his grounds, which is the subject matter of the present appeal, is that deduction of annual maintenance fees of HK$9,699 ('the Subscriptions') paid to four professional bodies should be allowed.

29. The Appellant provided the following receipts in support of his claims for deduction:

(a) Receipt issued by Association E showing payment of association dues (Association E membership for 2016) in the sum of US$421;

(b) Receipt issued by Association F (previously known as Association F2) showing payment of basic membership dues in the sum of US$135 and other fees of US$100, making at total of US$235;

(c) Receipt issued by Institution G in the United Kingdom showing payment of membership subscription April 2015 in the sum of GBP178 and other fees of GBP44, making a total of GBP222;

(d) Receipt issued by Society H showing payment of 'MEM' in the sum of US$260.

30. The Assessor wrote to the Appellant explaining that membership subscriptions paid to professional societies were not deductible under section 12(1)(a) of the Inland Revenue Ordinance. It was the practice of the Revenue to allow, as an extra-statutory concession, deduction of a taxpayer's payment of membership subscription made to one professional body under the following circumstances:

(a) where the holding of a professional qualification was a prerequisite of employment; and

(b) where the retention of membership and the keeping abreast of current developments in the particular profession were of regular use and benefit in the performance of the duties.

31. The Revenue offered, as an extra-statutory concession, to allow the deduction of the subscription to one of the four professional organisations claimed by the Appellant, and the one that charged the highest fee is allowed.

32. The Appellant did not accept the above explanation or the offer of non-statutory concession. He referred the Revenue to the career advertisement of the post of physicist in statutory body B published on 2 January 2016 ('the Career Advertisement') and contended that:

(a) the job descriptions stipulated that the production of the assessable income weighted on providing consultation, support or advice on expert subject matters. The payment of membership subscriptions to overseas professional societies enabled a knowledge worker to be competent in fulfilling the job requirements with the latest evidences from professional guidelines, publications or peer communications on an international basis;

(b) the job descriptions highlighted the multi-disciplinary nature of a physicist including but not limited to engineering, physics, information technology, biomedical and radiological science. The Appellant wondered how payment of membership subscription to only one professional society and the keeping abreast of current development in one particular disciplinary was of use and benefit in the performance of duties.

33. The Appellant confirmed at his oral testimony at the hearing that the Career Advertisement, which was published in 2016, is not materially different from the one that he relied on in applying for the post in statutory body B in 2013.

34. In further correspondence with the Revenue, the Appellant contended that:

(a) the Career Advertisement stipulated that the job entry requirement of a physicist was a person holding a corporate membership of the Hong Kong Institution of Engineers ('HKIET') or the equivalent Chartered Engineer status of Engineering Council (UK);

(b) there was no legal requirement for a medical physicist to practice with a licence in Hong Kong. Actually he could opt to discontinue maintaining his Chartered Engineer status without joining any professional body once his employment was confirmed and to become non-productive as the practice kept evolving.

35. In the Career Advertisement, the entry requirements of the post of Physicist are stated as follows:

(a) a master degree in physics (general, medical, radiation, health or applied physics) or engineering (electronic, electrical, computer, microwave, biomedical, telecommunications or medical electronic engineering) from a local university or equivalent and two years' resident physicist training in statutory body B or other relevant training; or

(b) a corporate member of the HKIET (electrical or electronic disciplines) elected on or after 5 December 1975 or IET-UK.

36. In response to the Revenue's enquiry, statutory body B replied as follows:

(a) the Appellant had fulfilled the entry requirement of a Corporate Member of the Institute of Electrical Engineers (IEE), UK when he was appointed. The Institution of Engineering and Technology (IET), the membership of which was one of the current entry requirements for Physicists, was formed by a merger of the Institution of Electrical Engineers (IEE) and the Institution of Incorporated Engineers (IIE);

(b) although the Appellant had fulfilled the entry requirement of a Corporate Member of the IEE-UK when he was appointed, this requirement is not specified in the Employment Contract because Physicist is not one of the professions which require registration for practice as governed by the relevant legislations.

37. The Appellant did not dispute the above information provided by statutory body B.

38. The Appellant maintained that he should be entitled to the deduction of the subscriptions paid to all professional bodies.

39. By the Determination dated 27 March 2017, the Deputy Commissioner of Inland Revenue rejected the Appellant's objection and maintained the assessment without deduction of the claimed subscriptions. The Appellant appealed to this Board against the decision in the Determination.

Decision

40. The burden of proof is on the Appellant to show that the assessment was not correct or excessive.

41. The Appellant confirmed that he pursued all three grounds stated in his Notice of Appeal which we have recited in paragraph 2 above. However, he had not made any submission at the hearing on the first ground in respect of his point that the Subscriptions are prepayment; and the third ground that the Revenue has not tested his case in accordance with the Departmental Interpretation and Practice Notes No. 9 (Revised) ('DIPN').

42. The third ground in relation to the DIPN is flawed. Deduction under Salaries Tax is governed by the statutory provision (which is section 12(1) of the Inland Revenue Ordinance) and the relevant legal authorities. The DIPN only sets out the Revenue's interpretation and practices. The Board and the court are not bound by the interpretations set out in the DIPN. Even if the DIPN was taken into account, it does not assist the Appellant. Paragraph 17 of the DIPN expressly states that subscriptions to professional associations are not deductible under the Ordinance. It is only a practice of the Revenue, as an extra-statutory concession, that a taxpayer is allowed deduction of subscription paid to one professional association where the holding of a professional

qualification is a prerequisite of employment and where the retention of membership and the keeping abreast of current developments in the particular profession are of regular use and benefit in the performance of the duties.

43. As to the first ground, there was no dispute that the Subscriptions had been incurred, and indeed had actually been paid. However the Subscriptions would not be deductible under section 12(1)(a) of the Ordinance simply because they had been incurred. The Appellant has to show that they are wholly, exclusively and necessarily incurred in the production of the assessable income, which is the central question of this appeal.

44. The Appellant stated in the second ground that according to the legal authorities, membership subscriptions were not deductible if the expenses are incurred in qualifying the taxpayer to earn income. He suggested that his case is different. The Appellant's above expression of the propositions is not a comprehensive summary of the principles held in all the relevant legal authorities. In any event, the burden is on the Appellant to prove that the Subscriptions are within the expenses provided in section 12(1)(a) in that they are 'wholly, exclusively and necessarily incurred' in the production of the assessable income.

45. The Appellant's status as a Corporate Member of the Institution G was one of the entry requirements for his job as Physicist. These expenses, which were incurred for the purpose of enabling the Appellant to get the employment, are not deductible. This is to be distinguished from an expense incurred in gaining the income. [See: Commissioner of Inland Revenue v Robert P Burns]

46. The membership is not a condition for his remaining in the job. The Appellant's employer, statutory body B, does not require those who are in the position as Physicist to hold membership of any professional association or incur any professional subscriptions. A Physicist is not a profession which requires registration. Physicists in the statutory body B can continue their jobs and earn the income without being a member of any of these professional associations. It is thus clearly shown that membership of these professional associations are not necessary for the production of the assessable income earned from being a physicist in statutory body B.

47. In the Appellant's oral testimony, he said that the Subscriptions to the Association E would give him access to journals and information that would assist him when he needs to solve a problem or in case where a surrogate decision is required. Taking the Appellant's case to the highest, the information that the Appellant can obtain through his membership with Association E is something 'nice-to-have' for the performance of his duties. They are far from being 'necessary' for the performance of his duties as a physicist.

48. The Appellant accepted that access to the journals and information is not restricted to members of Association E although a member may have access to the information easier or less costly. The Appellant accepted that the information he would obtain through his membership with Association E is open and can be obtained through other channels including by internet search on search engines such as google or yahoo.

The information obtained through membership with Association E is not necessarily more authoritative than those obtained through internet search or other channels.

49. The Appellant further said that the communication with other members in the professional organizations would help in achieving the competence in his practice. These communications, the Appellant accepted, are no different from the communications with his colleagues or peer. The Appellant failed to show how these communications are necessary for the performance of his job.

50. If the information and communication opportunity that one would obtain through the membership in these professional organisations are so essential and necessary as the Appellant had contended, it is difficult to reconcile why statutory body B did not make the membership a job requirement. It does not sit well with the fact that the other physicists in statutory body B can perform their jobs without subscribing to these professional organisations.

51. There is in fact a paucity of evidence on the necessity in subscribing to the other three organisations claimed by the Appellant, namely Association F, Institution G and Society H, for the performance of his job as a physicist in statutory body B.

52. It is the Appellant's own evidence that subscriptions to these organisations are not the only way to obtain the articles in the professional journals or the information in the articles. The Subscriptions might give the Appellant an easier access to the journal without the need to conduct his own research. The Appellant also accepted that the benefit of having the opportunities to communicate with the other members in the organisations is not materially different from the opportunity to communicate with his peer or colleagues.

53. The Subscriptions were incurred by reason of the Appellant's own volition. They are clearly not objectively necessary for the Appellant to perform his duties as a Physicist nor were they necessary for the production of the Appellant's assessable income.

54. The Appellant took issue on the reported judgment of Simpson v Tate produced by the Respondent. The Appellant produced to the Board the judgment of Simpson v Tate reported at the King's Bench Report, which according to him, set out a clearer test. The Appellant specifically referred to the following extracts of judgment in the two reports:

(a) 'He does not belong to societies in order that he may get the journals and read them to the patients. It is absurd to suggest anything of that sort, but, if he did, that would be quite different.' (Tax Cases Report produced by the Respondent)

(b) 'He does not incur these expenses in conducting professional inquiries or get the journals in order to read them to the patients. If he did, the case would be altogether different.' (King's Bench Report at [1925] 2 KB 214 produced by the Appellant)

55. The Appellant submitted that according to the judgment reported at King's Bench Report, the expenses for the subscription are deductible if he incurred these expenses in conducting professional inquiries or get the journals in order to read them to the patient. This is entirely misguided. Although the court had said that in these situations, 'the case would be altogether different', the court has not stated how different it would be. There was no discussion or analysis and the remarks are *obiter*.

56. None of the above reported versions has formulated the legal proposition submitted by the Appellant. The legal principles laid down in Simpson v Tate, as we have set out in paragraph 14 above, are that 'all subscriptions to professional societies and all taking in of professional literature and all that sort of expenses, which enables a man to keep himself to fit for what he is doing, are things which can none of them be allowed.'

57. Applying the principles in Ricketts v Colquhoun, Brown v Bullock and Simpson v Tate as we have set out above, the Subscriptions are not expenses necessarily incurred in the production of the Appellant's assessable income and are not deductible from the Salaries Tax.

Disposition of the Appeal

58. By reasons of the above, we dismiss this appeal with costs against the Appellant in the sum of HK$5,000.