Case No. D23/19

Salaries tax – deduction of expenses under salaries tax – 'wholly, exclusively and necessarily' incurred in the production of the assessable income – sections 12(1)(a), 66, 68(4) of the Inland Revenue Ordinance (the 'IRO')

Panel: Chui Pak Ming Norman (chairman), Poon Shik Kwong Stephen and Anita H K Yip SC.

Date of hearing: 19 November 2019.
Date of decision: 16 March 2020.

The Appellant was a medical practitioner and obtained his specialist registration in the year of 2004. He was in the employ of Hospital A as Position B in the year of assessment 2016/17 (the '2016/17 Assessment'). In his Tax Return- Individuals for the 2016/17 Assessment, the Appellant declared income of HK$2,797,488, and claimed, amongst others, deduction of the annual insurance paid to Professional Organization D in the sum of HK$25,900 (the 'Subscription'). The assessor did not allow the deduction of the Subscription from his assessable income. The Appellant filed his notice of objection to the aforesaid assessment. The Assessor considered the Subscription was not deductible. The Appellant made, *inter alia*, the assertion that he should be allowed deduction of the Subscription because it was a prerequisite for his clinical practice in Hospital A. It was compulsory for him to have medical protection in order to practice in the hospital.

By the determination dated 3 May 2019 (the 'Determination'), the Deputy Commissioner of Inland Revenue rejected the Appellant's objection and confirmed the revised 2016/17 Assessment of the Appellant's Salaries Tax. The Appellant lodged this appeal against the Determination to the Board of Review on 3 June 2019.

Held:

1. The English authorities of 'wholly, exclusively and necessarily incurred in the performance of the duties of the office or employment' were relevant and applicable for consideration of section 12(1)(a) of the IRO. The rule was notoriously rigid, narrow and restricted (Commissioner of Inland Revenue v Humphrey [1970] 1 HKTC 451 followed; and Lomas v Newton 34 TC 558, Ricketts v Colquhoun 10 TC 118, Brown v Bullock 40 TC 1, Humbles v Brooke 40 TC 500, Commissioner of Inland Revenue v P Burns [1980] 1 HKTC 1181, Snowdon v Charnock (Inspector of Taxes) [2001] STC 152, D82/06, (2007-08), IRBRD, Vol 22, 71, and D2/08, (2008-09), IRBRD, Vol 23, 48 considered).

2. It appeared to the Board that the Appellant could discharge his duties without being a member of Professional Organization D. The Appellant could earn the same assessable income without a medical negligence insurance policy. The Subscription was for the personal protection of the Appellant from the liability of medical negligence and for legal advice in case of need.

3. This Board found that the payment of Subscription was not incurred to produce the Appellant's assessable income. The Subscription was incurred by the Appellant for production of assessable income, not in production of assessable income.

4. The Board agreed that time was right to consider allowing medical practitioners or other professionals some tax relief for expenditure which really were necessitated by the employment and changing nature of Hong Kong's legal, social and economic conditions (D102/03, IRBRD, Vol 18, 952 considered).

Appeal dismissed.

Cases referred to:

Humbles v Brooks [1962] 40 TC 500
Commissioner of Inland Revenue v Robert P Burns [1980] 1 HKTC 1191
Lomas v Newton 34 TC 558
Commissioner of Inland Revenue v Humphrey [1970] 1 HKTC 451
Ricketts v Colquhoun 10 TC 118
Brown v Bullock 40 TC 1
Commissioner of Inland Revenue v P Burns [1980] 1 HKTC 1181
Snowdon v Charnock (Inspector of Taxes) [2001] STC 152
D102/03, IRBRD, vol 18, 952
D82/06, (2007-08) IRBRD, vol 22, 71
D2/08, (2008-09) IRBRD, vol 23, 48

Appellant in person.
Chan Wun Fai, Yu Wai Lim and Ho Lut Him, for the Commissioner of Inland Revenue.

Decision:

Introduction

1. The Appellant objected to the Salaries Tax Assessment for the year of assessment 2016/17 raised on him. The Appellant claimed that he should be allowed deduction of certain expenses in ascertaining his net chargeable income.

2. By the determination dated 3 May 2019 ('Determination'), the Deputy Commissioner of Inland Revenue ('Deputy Commissioner') rejected the Appellant's objection and confirmed the revised assessment of the Appellant's Salaries Tax in the sum of HK$334,891.00 for the year of assessment 2016/17.

3. The Appellant was not satisfied with the Determination and on 3 June 2019 lodged this appeal against the Determination to the Board of Review ('Board') pursuant to the provisions of section 66 of the Inland Revenue Ordinance, Chapter 112 ('the Ordinance').

Grounds of Appeal

4. The grounds of the appeal raised by the Appellant in his Statement of the Grounds of Appeal dated 3 June 2019 and filed with the Board on 3 June 2019 can be summarized as follows:

(a) Medical practice is a profession which requires registration in Hong Kong. The professional indemnity insurance is wholly incurred in his employment as a medical practitioner. The insurance fee is incurred entirely for the office. He has no other benefits from the insurance besides the performance of his employment duties.

(b) His case is different from the facts of Humbles v Brooks [1962] 40 TC 500. There is no other alternative to insurance protection. The professional indemnity insurance is exclusively incurred in the production of his assessment income.

(c) His employer requires all doctors to have appropriate insurance in place to cover all procedures and treatments that they perform and discharge their duties of employments. The duties cannot be performed without incurring the outlay. That is not something nice to have, but an expense necessarily obliged to incur in the production of his assessable income.

(d) In Commissioner of Inland Revenue v Robert P Burns [1980] 1 HKTC 1191, the legal expenses incurred in his appeal against the disqualification decision of the Royal Hong Kong Jockey Club was for the purpose of seeing that the taxpayer was not precluded from earning his assessable income, and not incurred in the production of it. In his case, the insurance was not incurred as a pre-requisite of his employment, but incurred in the course of performance of his employment duties because even after he accepted the employment, he has to continually maintain the insurance protection as long as he continues his employment.

(e) In 1960s or even 1980s, it was not common to make claims against doctors in relation to their clinical practice, but nowadays claims against doctors for clinical negligence have increased a lot. Old law

cases that happened half a century ago may still be good law today, but as far as professional indemnity insurance is concerned, the expectation of the general public and the importance of such insurance are totally different. It is necessary to have insurance in place, in and during the performance of the duties of the employment.

Language of the hearing

5. The Appellant appeared in person at the hearing. The hearing was originally scheduled to be conducted in English. At the request of the Appellant and with the consent from the Respondent, the hearing was switched to bi-lingual hearing. The parties agreed that the Decision is to be rendered in English.

The Evidence

6. The Appellant testified before the Board. There were two bundles of documents before the Board, namely (a) the Appellant's Bundle ('A1 Bundle') submitted by the Appellant and (b) The Revenue's Document Bundle ('R1 Bundle') submitted by the Respondent.

The Facts of the Appeal

7. From the evidence before the Board, the Board finds the following facts of the Appeal.

8. The Appellant is a medical practitioner and obtained his specialist registration in the year of 2004. He was in the employ of Hospital A as Position B in the relevant year of assessment 2016/17.

9. His contract of employment is evidenced by an Employment Agreement dated 16 May 2016 and signed between Hospital A and the Appellant.

10. The salient terms of the employment agreement which are relevant to the appeal are as follows:

Clause 1.1	The Employee commenced employment as Position C with the Hospital on 9th June 2014.
Clause 1.2	The Employee shall be employed to carry out such professional services for the Hospital in accordance with the Employee's qualification, training and experience and as assigned to the Employee by the Hospital Management from time to time.
Clause 2.2	The Employee shall be employed by the Hospital for the period from 9th June 2016 to 8th June 2017, subject to the termination rights set out in clause 10 of this Agreement.

Clause 3.4 The Employee agrees with and undertake to the Hospital that, at all times during his/her employment with the Hospital, he/she:

a. Shall remain a member of Professional Organization D, or other similar recognized defence organization, pay up-to-date the appropriate subscription fee for the category of membership to which Employee's Services relate, or has acquired a professional indemnity policy;

b. Is a duly registered medical practitioner in Hong Kong and holds the medical practitioner's license under the Medical Registration Ordinance (Chapter 161); and

c. Shall maintain the highest standard of professional conduct, deal honestly with patients and act only in the patient's interest when providing medical care.

Clause 4.1 The Hospital shall pay the Employee a monthly incentive payment ('Incentive Payment'), comprising 56% of the professional fee received by the Hospital from each patient (net of any applicable bank charges or credit card charges) regarding the medical consultation, care, treatment and/or surgery the Employee provided to such patient.

11. The annual income of the Appellant was comprised of 4 components; namely agreed sharing on (a) consultation fees paid by patients; (b) fees for procedures performed on patients; (c) ward round fees; and (d) annual bonus, if any.

12. In the Tax Return – Individuals for the year of assessment 2016/17, the Appellant declared the income for the period from 1 April 2016 to 31 March 2017 was $2,797,488. In the said Tax Return, he also claimed, amongst others, deduction of the annual insurance paid to Professional Organization D in the sum of $25,900.

13. Assessment Demanding Final Tax for 2016/17 and Notice of Payment of Provision Tax for 2017/18 dated 29 November 2017 was issued by the Respondent to the Appellant. His income was assessed at HK$2,797,488 and the tax payable was assessed at HK$334,891. The Assessor did not allow the deduction of the subscription of HK$25,900 paid to Professional Organization D from his assessable income. The Appellant filed his notice of objection to the aforesaid assessment on 3 January 2018.

14. In his letter dated 19 January 2018 to the Appellant, the Assessor considered that the annual insurance paid to Professional Organization D was not deductible. The Appellant disagreed with the reply from the Assessor. He made, *inter alia*, the assertion that

he should be allowed deduction of the subscription to Professional Organization D because it was a prerequisite for his clinical practice in Hospital A. It was compulsory for him to have medical protection in order to practice in the hospital.

15. On 10 October 2018, the Appellant sent a letter to the Respondent annexing *inter alia* a memo dated 18 September 2018 and issued by Hospital A to its doctors for the Respondent's consideration. The memo reminded the doctors to send copies of up-to-date annual practicing certificates and receipts of appropriate insurance cover in order to maintain their admission privileges at Hospital A and that the insurance should cover all procedures and treatments they performed in Hospital A.

16. In his letter dated 5 March 2019 to the Appellant, the Assessor explained to the Appellant that payment to Professional Organization D was not incurred in the production of his income and he could not be allowed deduction of payment to Professional Organization D.

17. In his letter dated 11 April 2019 to the Respondent, the Appellant made the assertions that:

(a) the subscription fee paid to Professional Organization D is wholly, exclusively and necessarily incurred in the production of the assessable income, because if he does not pay such fee, he simply cannot not perform the duties of his employment. The fee is not purely a prerequisite for his clinical practice. The fee is necessary in and during his performance of the duties of his employment.

(b) As per his understanding, companies are allowed to claim such fee paid to Professional Organization D for their practicing doctors. Those insurance (sic) are also in the individual names of the practicing doctors. This is not a fair treatment for individual persons versus companies, as the same fees are allowed for companies claiming expenses deduction via their accountants, but not for individuals claiming on their own.

(c) Finally, the reference cases quoted are dated several decades ago, back in 1970 and 1980. At that time, it was not common to lodge claims against doctors in relation to their clinical practice, but nowadays, claims against doctors for clinical negligence have increased a lot.

18. Around late September 2019, the Appellant filed a copy of the memo dated 24 September 2019 issued by Hospital A to its doctors reminding them to send copies of their valid annual practicing certificate and receipt of appropriate insurance cover upon renewal of their current certificates. The said memo also reminded that the insurance must cover all procedures and treatments they perform in Hospital A.

Relevant Provisions of the Ordinance

19. For salaries tax purposes, deduction of expenses under Salaries Tax is governed by section 12(1)(a) of the Ordinance which provides *inter alia*:

> '*(1) 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; ....*'

20. Section 68(4) of the Ordinance places the burden of proof on the Appellant:

> '*(a) The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.*'

Relevant Legal Principles

21. Under section 12(1)(a) of the Ordinance, an expense which is deductible from assessable income should be 'wholly, exclusively and necessarily' incurred in the production of the assessable income in question.

22. There is a pool of English authorities on the wordings of 'wholly, exclusively and necessarily' incurred 'in the performance of the duties of the office or employment' in the rules made under different English Income Tax acts ('Rule'). Although the wordings of section 12(1)(a) of the Ordinance are different from the wordings of the Rule, it was accepted and held by the Hong Kong court that the English authorities of 'wholly, exclusively and necessarily incurred in the performance of the duties of the office or employment' are relevant and applicable for consideration of section 12(1)(a) of the Ordinance[1].

23. The operation of the Rule is notoriously rigid, narrow and restricted. As Vaisey J said at page 561 of the judgment of Lomas v Newton 34 TC 558:

> '*Before coming to the particular items, I would observe that the provisions of that 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. .....*'

24. Ricketts v Colquhoun 10 TC 118 is a case decided by the House of Lords which rejected the claim of a Recorder and a practicing barrister for deduction of his

[1] Commissioner of Inland Revenue v Humphrey [1970] 1 HKTC 451.

expenses incurred for traveling between London and Portsmouth and the hotel expenses incurred in Portsmouth during the period he discharged his duty as a Recorder in Portsmouth.

25. Viscount Cave, LC held at page 133:

> '*In order that travelling expenses may be deductible under this Rule from an assessment under Schedule E, 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. The expenses in question in this case do not appear to me to satisfy either test. They are incurred, not because the Appellant holds the office of Recorder of Portsmouth, but because, living and practicing away from Portsmouth, he must travel to that place before he can begin to perform his duties as Recorder, and having concluded those duties, desires to return to his home. They are not incurred in the course of performing those duties, but partly before he enters upon them, and partly after he has fulfilled them.*'

26. The appellant in Brown v Bullock 40 TC 1, was the manager of Pall Mall branch of the Midland Bank Ltd in the City of Westminster. On his appointment as manager, he became a member of a West End club. It was virtually a condition of appointment that a manager should join a club suited to the purpose of fostering local contacts and the bank paid the annual subscription. The manager was already a member of another club but some personal advantage from this membership was admitted and the bank paid only one half of the subscription. There was no dispute that the amount paid by the bank formed part of the emolument of the appellant. The appellant claimed that the subscriptions paid by the bank should be allowed as a deduction under the Rule. Such claim was dismissed by the Court of Appeal.

27. Donovan LJ held that under the Rule, 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 emoluments. The test held by Donovan LJ is:

> '*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.*'

28. In Humbles v Brooks 40 TC 500, Brooks, the taxpayer was a headmaster at a primary school and was required to teach various subjects including history. He attended a series of weekend lectures in history at a college for adult education for the purpose of improving his background knowledge. He felt the course was essential to keep himself up to date and to provide him with material which he reproduced in the history lessons which he was required to give. He claimed that his attendance at the course fell within the Rule in that he was necessarily obliged to incur and defray and expend out of his emolument's

moneys wholly, exclusively and necessarily in the performance of his duties. The English court rejected his claim for deduction.

29. Ungoed-Thomas J said at page 502 that

> '*"in the performance of the said duties" means "in doing the work of the office, in doing the things which it is his duty to do while doing the work of the office". .... The requirement of the employer that the expenditure shall be incurred does not, of itself, bring the expense within the Rule, nor does the absence of such a requirement exclude it from the application of the Rule.*'

30. In Commissioner of Inland Revenue v P Burns [1980] 1 HKTC 1181, the Hong Kong Court of Appeal made a distinction between 'expenses incurred for the purpose of seeing that the taxpayer was not precluded from earning his assessable income' and 'expenses incurred in the production of his assessable income'.

31. Mr Burns, a licensed racehorse trainer, incurred legal costs in having his disqualification order set aside in an appeal proceeding by the Hong Kong Jockey Club. He claimed deduction of the legal expenses from his assessable income. His claim was allowed by the then board of review. In allowing the appeal taken out by the Commissioner, the Court of Appeal held that the legal expenses were not incurred while the taxpayer was on duty and therefore could not be regarded as incurred in the production of his assessable income. The legal expenses were incurred for the purpose of seeing that the taxpayer was not precluded from earning his assessable income.

32. In Snowdon v Charnock (Inspector of Taxes) [2001] STC 152, the taxpayer was a doctor and a psychiatrist. He took up an employment with a national health service trust as a specialist registrar trainee in psychotherapy. It was a specific condition of the post that the trainee should undergo personal psychotherapy during the terms of the employment. The trust met 50% of the expenses of the personal psychotherapy sessions attended by the taxpayer and the taxpayer paid the balance of the fees. The taxpayer sought to deduct the fees he had paid from the emoluments of his employment on the grounds that he had been necessarily obliged to incur the expenses of the personal psychotherapy sessions wholly, exclusively and necessarily in the performance of the duties of his employment. The Inland Revenue disallowed his claim. On appeal against the decision of the Inland Revenue, the Special Commissioner dismissed the taxpayer's appeal and held that the personal psychotherapy sessions were for the purpose of enabling the taxpayer to be qualified for his duties and were not in the performance of his duties.

33. The Respondent also referred the Board to a number of previous decisions of this board, which applied the above legal principles. The decisions are:

(a) D102/03, IRBRD, vol 18, 952;

(b) D82/06, (2007-08) IRBRD, vol 22, 71; and

(c) D2/08, (2008-09) IRBRD, vol 23, 48

34. In D82/06, the appellant was a practicing solicitor who claimed *inter alia* deduction of his mandatory contribution to professional insurance/indemnity payment in the assessment year 2002/03. His claim was disallowed by the Commissioner. Rule 6 of the Solicitors (Professional Indemnity) Rules ('Indemnity Rule') provides that every solicitor who is, or is held out to the public as, a solicitor in Practice in Hong Kong shall be required to have and maintain Indemnity (as defined in the Indemnity Rule). The appellant contended that such payment was wholly, exclusively and necessarily incurred in the production of his assessable income in which he earned as a solicitor. The board dismissed his appeal and held that the indemnity payment was incurred for the purpose of enabling the taxpayer to earn his income, and not incurred in the production of his assessable income.

35. In D2/08, the taxpayer was a medical practitioner and had made professional indemnity payment to The Medical Protection Society Limited in the assessment year 2005/06. She claimed that the payment was deductible as it was a condition of her employment to take out the insurance indemnity. Such claim was disallowed by the Commissioner. On appeal, this board dismissed her appeal and held that the payment to The Medical Protection Society Limited was incurred for the production of assessable income and not incurred in the production of assessable income.

The Submission of the Appellant

36. It was the submission of the Appellant that the insurance payment to Professional Organization D was wholly, exclusively and necessarily in the production of his assessment income. There was no other purpose and no other benefit he gained by taking out the insurance. It was a condition of his employment that he should remain a member of Professional Organization D or similar recognized defence organization, and pay up-to-date the appropriate subscription fee; or acquire a professional indemnity policy.

37. It was also his submission that the quoted cases were decided several decades ago and the reasons given may not be appropriate to the current situation. He submitted that claims against doctors were not prevalent when those cases were decided. Social environments have changed a lot since then. Now it is prevalent that doctors are subject to medical negligence claim. It is his submission that the payment of an insurance premium to cover the doctor's negligence liability is a 'must' today. Such payment is wholly, exclusively and necessarily in the production of assessable income and should be deductible.

38. The Appellant also referred the Board to the decision of D102/03, IRBRD, vol 18, 952. He particularly drew the Board's attention to paragraph 9 and paragraph 15 of the General Comments, which are rendered as below:

> '*9. The Board queried why an individual in the taxpayer's position should be allowed (or denied) a deduction for a professional subscription and for mandatory insurance according to whether she is a profits taxpayer or a salaries taxpayer.*
>
> ……

> *15. And when regard is also paid to the inherent unfairness in the contrasting rules governing salaries tax and profits tax deductions, the time may well be nigh to consider allowing employees some tax relief for expenditure – such as that illustrated by this appeal – which really are necessitated by the employment and the changing nature of Hong Kong's legal, social and economic conditions.*'

The Submission of the Respondent

39. It was submitted by the Respondent that the requirements under section 12(1)(a) of the Ordinance are notoriously rigid and strict. In order to be allowed deduction of subscription, the Appellant must show that (a) the subscription had been incurred; (b) the subscription was 'wholly, exclusively and necessarily' incurred; and (c) the subscription was incurred 'in the production of the assessable income'. He submitted that the Appellant failed to prove that the subscription was incurred 'in the production of assessable income'.

40. It was also the Respondent's submission that the purpose of protecting the Appellant professionally was not deductible because it was not a purpose wholly and exclusively referable to the performance of the duties of his employment but for the purpose of seeing that he was not precluded from earning his assessable income. It follows that the payment to Professional Organization D was not deductible.

41. The Respondent further submitted that the cases cited are venerable authorities and are still good law. They are constantly applied by the board when deciding cases in relation to deduction under section 12(1)(a) of the Ordinance.

Discussion

42. In this Appeal, the main issue is whether the Appellant was required to make payment to Professional Organization D in the performance of his duties of a resident medical officer of Hospital A or in the production of his assessable income. The above authorities, quoted by the Respondent, distinguish between expenditure incurred in the production of assessable income and expenditure incurred for the production of assessable income. If the expenditure is incurred in the production of assessable income, it is deductible. In the other case, it is not.

43. The duties of the Appellant as set out in his employment agreement are to carry out the professional services for the Hospital in accordance with the Appellant's qualification as a medical specialist. Setting aside the condition of the employment that he should remain a member of Professional Organization D or other similar recognized defence organization for a moment, it appears to the Board that the Appellant can discharge his duties without being a member of Professional Organization D. The Appellant could earn the same assessable income without a medical negligence insurance policy. The payment of subscription fee to Professional Organization D was for the personal protection of the Appellant from the liability of medical negligence and for legal advice in case of need.

44. From another angle to see the matter, the mere payment of Professional Organization D subscription itself by the Appellant would not produce any assessable income on the part of the Appellant. The payment of Professional Organization D subscription was for the purpose of enabling the Appellant to produce assessable income in a liability free (or limited liability) situation.

45. The Board has considerable sympathy with the Appellant's submission that the payment to Professional Organization D was incurred in order to meet the condition of his employment which are wholly and necessarily incurred for his assessment income. If he did not pay the subscription, he would not be employed and there would not be assessable income for taxation purpose.

46. However, the decision as to whether the payment of Professional Organization D subscription is deductible within the meaning of Section 12(1)(a) of the Ordinance is a matter to be decided by the Board upon the facts and evidence of the case and in the light of the relevant authorities. The Board has to follow the principles established in decided cases so long as they have not been revoked or altered by later court decisions or by legislation. The fact that the cases were decided several decades ago would not alter their validity and applicability on subsequent cases.

47. Applying the principles enunciated by the quoted cases to the facts of the Appeal, the Board finds that the payment of Professional Organization D subscription was not incurred to produce the Appellant's assessable income. The expenditure was wholly, exclusively and necessarily incurred to meet the Appellant's employment's condition so as to enable the Appellant to produce assessment income. In other words, Professional Organization D subscription was incurred by the Appellant for the production of assessable income, not in the production of assessable income.

Disposition of the Appeal

48. For the reasons and conclusion set out above, we dismiss the appeal and confirm the Salaries Tax Assessment for the year of assessment 2016/17 as revised by the Deputy Commissioner on 3 May 2019.

Comments

49. The Appellant, being a medical specialist, earned annual income in the region of HK$2.8 million in the year of 2016/17. That being the case, the Appellant could earn about $8,000 a day. To him, time is money. The deductible item in dispute was only $25,900. The tax payable on this item would be around $3,885 (calculated at the rate of 15%).

50. In this Appeal, he spent a lot of time to correspond with the Respondent, to prepare the Appeal papers, materials and arguments, to consider the cases and to attend the hearing. The fact that he spent so much time (or in terms of money, so much money) on the case for a disproportionate amount of $3,885 could show that he felt he was aggrieved by the decision of the Respondent not allowing the deduction of Professional Organization D

subscription from his assessable income or he felt it was unfair to the salaried medical professionals.

51. From a layman's point of view, he felt that the payment of Professional Organization D subscription in question was to meet the employment conditions. It was incurred wholly, exclusively and necessarily for him to earn the assessable income. He could not have earned the assessable income had he not paid Professional Organization D subscription.

52. He advocated that the social, economic and legal conditions had changed a lot ever since the applicable legal principles of 'wholly, exclusively and necessarily incurred in the production of assessable income' were established. He submitted that medical practitioners have to take out necessary insurance protection no matter they are in the employ of Hospital Authority or private medical organizations because medical negligence claims are prevalent nowadays.

53. Another point he felt being aggrieved by the established principles is that the payment of Professional Organization D subscription is deductible if he is a profits taxpayer. He queried why it is so. His point is also understandable but the Board has to point out that the legislation regarding the Salary Tax and the Profits Tax are different. An item which is deductible under Profits Tax regime may not be deductible under Salary Tax regime.

54. Despite the fact that the Board has made its decision which may frustrate the Appellant, the Board should not lightly miss the points addressed by the Appellant. The Appellant referred the Board to the comments made by the board in D102/03. At page 13 of the decision the board said:

> '*And when regard is also paid to the inherent unfairness in the contrasting rules governing salaries tax and profits tax deductions, the time may well be nigh to consider allowing employees some tax relief for expenditure – such as that illustrated by this appeal – which really are necessitated by the employment and the changing nature of Hong Kong's legal, social and economic conditions.*'

55. The said decision was rendered in February 2004, about 16 years ago. Yet it appears that there is no sight of steps being taken to address the issue. The Board understands the Appellant's points and feels the grievance or unfairness experienced by the Appellant. Therefore, the Board echoes the said comment that time is nigh to consider allowing medical practitioners or other professionals some tax relief for expenditure which really are necessitated by the employment and the changing nature of Hong Kong's legal, social and economic conditions. The Board hopes very much that the administration could look into the matter to see if some tax relief for expenditure incurred by medical practitioners or other professionals in respect of professional negligence claim could be allowed.