Case No. D11/05

Salaries tax – time apportionment for employment outside Hong Kong – double taxation – sections 8(1A)(a), 8(1A)(c), 11B and 11D(b) of the Inland Revenue Ordinance ('IRO').

Panel: Andrew J Halkyard (chairman), Krishnan Arjunan and James Mailer.

Date of hearing: 20 April 2005.
Date of decision: 6 May 2005.

The appellant had employment income in Hong Kong and Country A. At all relevant times when the appellant was having an employment in Country A, his income tax payable in Country A was deducted from salary paid into his bank account in Country A in favour of the IRAS. The Commissioner adopted a time apportioned basis in computing the appellant's income. The appellant was subject to double taxation upon his employment income in Hong Kong and Country A.

Held:

1. The time apportionment method was an acceptable basis of assessment and has consistently been followed in virtually all cases to which section 8(1A)(a) of the IRO applies. The time apportioned basis adopted by the Commissioner in computing the appellant's income was a fair, reasonable, and an appropriate basis in the circumstance of the present case.

2. The appellant has – most unfortunately – been subject to double taxation upon his employment income in Hong Kong and Country A. In this regard, section 8(1A)(c) of the IRO could not assist him – since he was only taxed in Hong Kong on his income referable to the time he actually spent in Hong Kong.

Appeal dismissed.

Case referred to:

D28/04, IRBRD, vol 19, 226

Taxpayer in person.
Poon So Chi and Tsui Siu Fong for the Commissioner of Inland Revenue.

Decision:

1. This is an appeal against the salaries tax assessment raised on the Appellant for the year of assessment 2000/01. The facts, which were not in dispute and which we so find, are set out in the Deputy Commissioner's determination dated 10 December 2004.

2. During the course of the Board hearing, we explained to the Appellant the conceptual basis of the assessment (namely, a time apportioned, or days in / days out, assessment for an employee having an employment located outside Hong Kong). Following this discussion, the Appellant appreciated that, on the strength of the precedents cited to him by the Commissioner's representative, the time apportionment method was an acceptable basis and has consistently been followed in virtually all cases to which section 8(1A)(a) of the Inland Revenue Ordinance ('IRO') applies (see, for instance, D28/04, IRBRD, vol 19, 226). We agree, and conclude that the time apportioned basis adopted by the Commissioner in computing the Appellant's income was a fair, reasonable, and an appropriate basis in the circumstance of the present case.

3. On the basis of the Appellant's notice of appeal, the above conclusion is sufficient for us to dismiss the appeal. However, during the hearing the Appellant invited us to consider whether the assessment could be reduced and recomputed on the basis that his salary paid in Country A was taxed at source under the Instalment Plan B. After questioning the Appellant, and having examined the documents placed before us by both parties, we find that all relevant times his employer paid his gross salary directly into his bank account in Country A with Bank C. Thereafter, the income tax payable in Country A on that salary was deducted by autopay in favour of the IRAS by virtue of a direct debit instruction given by the Appellant to Bank C. In these circumstances, it is clear that the Appellant's gross salary accrued to, and was received by, him in terms of sections 11B and 11D(b) of the IRO. The gross salary was thus properly included in the computation for the time apportioned assessment raised on the Appellant.

4. In the event, we have no option but to dismiss the appeal and confirm the assessment in dispute. The fact remains, however, that the Appellant has – most unfortunately – been subject to double taxation upon his employment income in Hong Kong and Country A. In this regard, section 8(1A)(c) of the IRO could not assist him – since he was only taxed in Hong Kong on his income referable to the time he actually spent in Hong Kong. It may be trite to state that Hong Kong has no comprehensive double taxation agreement with Country A – but the fact again remains that this has acted to the Appellant's detriment.

5. Before concluding, we are pleased to record our compliments to the Appellant who, at all times, acted with the highest degree of integrity in appearing before us.