

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D13/84

Board of Review:

Charles A. Ching, *Chairman*; William L. Chan & N. D. Dicker, *Members*.

4 September 1984.

Interest tax—section 28(1)(a) of the Inland Revenue Ordinance—interest on bank time deposits—meaning of “accrues”.

The appellant was a bank in Hong Kong. The appellant accepted deposits which at date of acceptance and date of maturity exceeded the specified exemption rate. Before the interest became payable the specified rate was increased above the deposit rate. The appellant was assessed to additional tax in respect of the interest. The appellant appealed on the ground that the interest did not accrue until the day on which it became payable.

Held:

There is a clear distinction between date of payment and date of accrual. Interest accrued either on maturity or from day to day but not on payment.

Appeal dismissed.

A. J. Halkyard for the Commissioner of Inland Revenue.
The appellant in person.

Reasons:

The taxpayer, which is a well known bank in Hong Kong, appeared before us by Mr. F. J. Anstock. The Inland Revenue Department was represented by Mr. A. J. Halkyard, Assessor (Appeals), and Mr. Leung Shing-tim.

There was no dispute on the facts which we find to be as follows. On 7 July 1981 in the Ordinary course of its business the taxpayer accepted three month deposits from six persons at the rate of 13.25% per annum. The taxpayer has no “Time Deposit Account Opening Form” which sets out the terms upon which the deposit is made. These deposits matured on 6 October 1981 and the interest was paid on 7 October 1981. On 30 November 1981, the taxpayer submitted an Interest Tax Return for October 1981, which showed that, when the interest was paid, the taxpayer had not deducted Interest Tax pursuant to section 29(1) of the Inland Revenue Ordinance, Cap. 112. The taxpayer was therefore assessed to additional interest tax. The taxpayer raised an objection which was determined against it on 30 November 1982. Hence this appeal.

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Section 28(1)(a) of the Ordinance provides that interest tax shall be charged on interest arising in or derived from the Colony on any deposit. That section has a proviso which reads:—

“Provided that there shall be exempt from interest tax—

- (a) any interest paid or payable by ... a bank licensed under the Banking Ordinance ... which accrues a such rate or rates, not exceeding 13½ per cent per annum, as the Financial Secretary may specify by notice in the Gazette ...”

The rates that were specified at the material time were:—

<i>Effective date</i>	<i>Exemption rate</i>
9–12–1980	11%
21–7–1981	12%
7–10–1981	13½%

Mr. Anstock took a very short point. The word “accrues” is not defined in the Ordinance but a dictionary definition is

“to fall as a natural growth or increment; to arise or spring from a natural growth or result.”

He argued that although it was possible to say that the interest on the deposits in question were accruing from day to day, it was not payable from day to day. It was payable only on 7 October 1981, after the deposits had matured on the previous day. That is to say, it was payable and paid on a day when the interest rate (13.25%) was outstripped by the exemption rate (13.5%).

Mr. Halkyard argued that there were only three possible interpretations of the word “accrued” in the context of the present appeal. They were that interest accrued:—

- (a) From day to day or
- (b) On 6 October 1981, or
- (c) On 7 October 1981.

This is obviously correct. The taxpayer argued for (c) while the Commissioner contended for either (a) or (b). He argued that at common law interest accrues from day to day even if it is payable at intervals and he relied upon dicta in **Willingale vs. International Commercial Bank, Ltd.**, 52 T.C. 242 at 269 and **Australian Guarantee Corporation vs. F.C. of T.** (1983) 15 A.T.R. 53 at 64. He drew our attention to the definition of “accrue” in Kohler’s Dictionary for Accountants (4th Edn.) p. 15 as being

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- “(1) To grow; to increase; to accumulate.
(2) to recognise in the accounts, usually at the end of a conventional period of time, as the result of the occurrence of accountable events or the emergence of accountable conditions that are in the process of continuous change. Interest on a debt, whether receivable or payable, increases day by day ...
(3) To come into existence; to become vested.”

Put briefly, Mr. Halkyard’s argument in relation to interpretation (*a*) was that the interest in question increased from day to day although it was not payable until the end of the period of deposit.

Mr. Halkyard’s argument on interpretation (*b*) was as follows. The interest “grew” or “increased” only up to 6 October 1981 and the taxpayer’s liability to pay it crystallised at the latest on close of business or at midnight on that date. To say that the interest only accrued on 7 October 1981 is to confuse the time of accrual with the time of payment.

Finally, Mr. Halkyard drew our attention to a possible anomaly if the taxpayer’s arguments were correct. A taxpayer could, intentionally or unintentionally, wait until the exemption rate exceeded his interest rate before uplifting his deposit. In that way he would escape interest tax even though the interest rate exceeded the exemption rate throughout the period of the deposit.

We think that Mr. Halkyard is right and that the common law rule that interest accrues from day to day, whenever it is payable, should apply. However, it is unnecessary for us to come to a firm decision on this point. We hold that there is a clear distinction between the date of payment and the date of accrual. If the taxpayer’s arguments were correct it would mean that a new exemption rate would have retrospective effect even though it was not expressed to have such effect. It matters not whether interpretation (*a*) or (*b*) is the correct one. It suffices that we hold that interpretation (*c*) cannot be correct and we therefore dismiss this appeal.