Case No. D144/01

Salaries tax – whether housing allowance was chargeable to tax – whether housing allowance was paid as rental refund – intention at the time of entering into the contract of employment – control test to screen out the colourable scheme to save tax – section 9(2) of the Inland Revenue Ordinance ('IRO').

Panel: Anthony Ho Yiu Wah (chairman), Barry J Buttifant and Gregory Robert Scott Crichton.

Date of hearing: 19 October 2001.
Date of decision: 24 January 2002.

Under the terms of the employment, the taxpayer was entitled to, among other rights, salary and housing benefits. In respect of the taxpayer's housing benefits, housing allowance was paid as a cash allowance over which the taxpayer was free to spend. The taxpayer claimed that certain sums paid by his employer were rental refunds not chargeable to tax. The assessor rejected such claim and raised a tax assessment on the basis that the said sums so paid by his employer were cash allowances and therefore chargeable to tax. The taxpayer appealed against such decision.

The issue before the Board is whether the housing allowance was paid as a refund, that is, a repayment or a reimbursement.

Held:

1. The Board agreed that 'refund' connoted a repayment or reimbursement, not mere payment. Labelling a sum as 'refund of rent' is not determinative of the issue. The real nature of the payment has to be ascertained. Method and timing of payment albeit relevant are not decisive. The parties' intention at the time of entering into the contract of employment is highly relevant. The real test was the nature of the payment itself and this in turn depends on the intention of the parties at the time they entered into the contract of employment (D19/95, IRBRD, vol 10, 157; D92/95, IRBRD, vol 11, 173; D33/97, IRBRD, vol 12, 228; D21/98, IRBRD, vol 13, 203 and D18/99, IRBRD, vol 14, 204 followed).

2. The Board found that the starting point to ascertain the intention of the parties was to look at the contract of employment, which clearly provided for payment of a salary separate and distinct from the payment of housing benefits. Furthermore under the terms of the contract of employment, the taxpayer was only eligible for a housing

benefit with a cap and the taxpayer had to submit to his employer the evidence for the actual payment he paid for housing. The Board found that at the time they entered into the contract of employment the intention of the parties was to provide a place of residence to the taxpayer through a rental allowance scheme subject to a cap.

3. The Board agreed that the 'control' test would be extremely effective to screen out 'colourable' schemes jointly put up by employers and employees with saving tax for the employee being the sole objective. The Board was of the view that it was equally important that an employee should not be unduly penalized by the lax administration of a properly constituted rental allowance scheme already in place particularly when there had apparently been a change in the employer's policy towards such a scheme without the knowledge or consent of the employee.

4. Having considered all the evidence and the facts, the Board by a majority was of the view that the taxpayer has established that the sum paid to the taxpayer by his employer was rental refund and it should be assessed under the provision of section 9(2) of the IRO.

Appeal allowed.

Cases referred to:

D19/95, IRBRD, vol 10, 157
D92/95, IRBRD, vol 11, 173
D33/97, IRBRD, vol 12, 228
D21/98, IRBRD, vol 13, 203
D18/99, IRBRD, vol 14, 204
D8/82, IRBRD, vol 2, 8

Wong Kuen Fai for the Commissioner of Inland Revenue.

Taxpayer in absentia.

Decision:

A: Majority decision

The appeal

1. This is an appeal by Mr A ('the Taxpayer') against the determination by the Commissioner of Inland Revenue dated 24 July 2001. For the year of assessment 1998/99, the Taxpayer claimed that certain sums paid by his employer, Company B, were rental refunds not chargeable to tax. The assessor rejected such claim and raised a tax assessment for the year of assessment 1998/99 on the basis that the said sums so paid by Company B were cash allowances and therefore chargeable to tax. The Taxpayer objected against the assessment. The Taxpayer's objection was overruled by the Commissioner, who confirmed the salaries tax assessment for the year of assessment 1998/99.

2. The appeal was scheduled to be heard on 19 October 2001. By a letter dated 30 August 2001 to the Board, the Taxpayer expressed his wish that the appeal be heard in his absence as he would be leaving Hong Kong permanently on 10 October 2001.

3. The Taxpayer's request as contained in his said letter dated 30 August 2001 was treated as an application by the Taxpayer under section 68(2D) of the IRO and as the application fulfilled the conditions stipulated in section 68(2D) of the IRO, the Taxpayer's application was granted and on 19 October 2001, the Board proceeded to hear the appeal in the absence of the Taxpayer.

The facts

4. The following facts are not in dispute and we find them proved.

5. (a) By a resident site staff agreement dated 12 July 1997, the Taxpayer was employed as senior resident engineer (civil) by Company B. Other terms and conditions of the Taxpayer's engagement were detailed in a document titled 'Appendix on terms of employment for resident site staff (RSS)' ('the Appendix') which was annexed to the agreement.

(b) Under the terms of his employment, the Taxpayer was entitled to, among other things, salary and housing benefits.

(c) The Appendix contained, inter alia, the following terms and conditions:

'Clause 5.2 Housing benefits

The cap in respect of housing benefits for an individual on Resident Site Staff shall be:-

Government pay scale point	Cap (in HK$ per month)
MPS 45~D1	30,500*

The amount shall be adjusted ... in accordance with the movements of the corresponding scale of the Home Financing Allowance for Civil Servants. The person engaged shall submit to [Company B] the evidence for the actual payment they paid for the housing.'

6. Company B filed an employer's return for the year ended 31 March 1999 that showed the following particulars of the Taxpayer's remuneration:

(a)	Capacity in which employed	:	Senior resident engineer
(b)	Period of employment	:	1-4-1998 to 31-3-1999
(c)	Particulars of income – Salary	:	$1,045,140
(d)	Quarters provided –		
	Address	:	House 1 in District C
	Nature	:	House
	Period provided	:	1-4-1998 to 31-3-1999
	Rent refunded to the Taxpayer	:	$410,040 ('the Sum')

7. (a) In his tax return for the year of assessment 1998/99, the Taxpayer declared his income as follows:

	$
Income	1,045,140
Rental value	54,727
	1,099,867

(b) The Taxpayer declared the details of quarters provided to him as in paragraph 6(d) above. He also declared that rent paid by him to the landlord was $459,827.

8. In response to the assessor's enquiries, the Taxpayer provided the following particulars:

(a) During the year ended 31 March 1999, his housing benefit was $34,170 per month. The Sum was the total of his housing benefit for the year.

(b) The monthly housing benefit was paid together with his monthly salary.

(c) He was entitled to the same housing benefit even if he did not rent any property or rented a property at a rent lower than the amount of housing benefit.

(d) During the year ended 31 March 1999, he rented the following properties:

Period	**Location**
1-4-1998 to 30-4-1998	House 2 in District C
1-5-1998 to 31-3-1999	House 1 in District C

9. The Taxpayer also provided, inter alia, the following documents:

(a) payment advices for the months April 1998 and March 1999; and

(b) a breakdown of rent, management fee and rates paid amounting to $453,887 during the year ended 31 March 1999 in respect of the properties referred to in paragraph 6(d).

10. In response to the assessor's enquiry, Company B gave the following particulars in respect of the Taxpayer's housing benefits:

(a) '[Company B's] standing policy does not require employees to be accountable for the monthly allowance.'

(b) '... Housing allowance was paid as a cash allowance over which [the Taxpayer] was free to spend.'

(c) '[The Taxpayer] is not required to produce documentary evidences to claim the allowance.'

(d) '[Company B] did not request a copy of the tenancy agreement for the year ended 31 March 1999.'

11. The assessor formed the view that Company B did not provide any quarters to the Taxpayer and the Sum was a cash allowance because Company B did not exercise control on how the sum was expended. The assessor raised on the Taxpayer the following salaries tax assessment for the year of assessment 1998/99:

	$	$
Income from Company B –		
Salary	1,045,140	
The Sum	410,040	1,455,180
Less: Subscription	1,900	
Charitable donation	1,800	3,700
Net assessable income		1,451,480
Tax payable		217,722

12. The Taxpayer objected against the assessment referred to in paragraph 11 on the ground that the Sum represented a refund of rent and should not be assessed to tax.

13. The Taxpayer made the following averments:

(a) In each month, rental was paid by him to his landlord at the beginning of the month and he obtained reimbursement at the end of the month when he received the housing allowance together with his salary.

(b) The amount of rent paid by him to his landlord exceeded the amount of rent refunded by his employer.

(c) Under clause 5.2 of the Appendix, he was obliged to provide Company B with evidence of rental payment.

(d) His reply to the assessor whether he would continue to receive the full housing benefit if he had not expended it was only hypothetical. In any event, under clause 3.5 of the Appendix, Company B had a contractual avenue available for recovering overpayments from him.

(e) He forwarded copies of tenancy agreements and evidence of payment of rent, management fees and rates to Company B for inspection on 8 November 1999.

(f) The rental value should be computed as follows:

	$
Rent paid to landlord (paragraph 9(b))	453,887
Less: Rent refunded by employer – the Sum	410,040
Excess of rent paid	43,847
Rental value	
10% × $1,045,140 (paragraph 6(c)) - $43,847	60,667

14. In response to the assessor's enquiry, Company B replied that the documents referred to in paragraph 13(e) were not required by Company B but were forwarded by the Taxpayer to Company B for reference.

15. The Taxpayer has received a written memorandum from Company B dated 18 February 2000 requesting Company B's employees (including the Taxpayer) to accept an amendment in their employment agreements to delete the clause 'The Person engaged shall submit to the Consultant (i.e. the employer) the evidence for the actual payment they paid for housing.' And according to the Taxpayer, this request was rejected by him and his contract of employment with Company B had remained unchanged. The Commissioner's representative conceded that Company B did issue such a memo and that the Taxpayer did not consent to it and had not signed the memo but did not agree that this supported the Taxpayer's case that his housing benefits were rental reimbursements.

The law

16. Section 9(1A) of the IRO specifically deals with the case where the employer pays or refunds the rent payable or paid by the employee to the landlord as follows:

> ' *(a) Notwithstanding subsection (1)(a), where an employer or an associated corporation –*
>
> *(i) pays all or part of the rent payable by the employee; or*
>
> *(ii) refunds all or part of the rent paid by the employee,*
>
> *such payment or refund shall be deemed not to be income;*
>
> *(b) a place of residence in respect of which an employer or associated corporation has paid or refunded all the rent therefor shall be deemed for the purposes of subsection (1) to be provided rent free by the employer or associated corporation;*
>
> *(c) a place of residence in respect of which an employer or associated corporation has paid or refunded part of the rent therefor shall be deemed for the purposes of subsection (1) to be provided by the employer or associated corporation for a rent equal to the difference between the rent payable or paid by the employee and the part thereof paid or refunded by the employer or associated corporation.'*

17. Insofar as relevant, section 9(2) of the IRO deems the rental value to be 10% of the income as described in subsection (1)(a) derived from the employer, after deducting the outgoings and expenses provided for in section 12(1)(a).

18. The Commissioner's representative has drawn our attention to a number of previous Board of Review decisions and we agree that the following principles can be discerned from such decisions:

(a) 'refund' connotes a repayment or reimbursement, not mere payment: D19/95, IRBRD, vol 10, 157; D92/95, IRBRD, vol 11, 173; D33/97, IRBRD, vol 12, 228; D21/98, IRBRD, vol 13, 203;

(b) labelling a sum as 'refund of rent' is not determinative of the issue: D33/97;

(c) the real nature of the payment has to be ascertained: D18/99, IRBRD, vol 14, 204;

(d) method and timing of payment albeit relevant are not decisive: D18/99; and

(e) the parties' intention at the time of entering into the contract of employment is highly relevant: D92/95 and D18/99.

19. The Commissioner's representative further relied on a previous decision of the Board (D33/97) and submitted that:

(a) 'sufficient control must, as a matter of fact (and not just in theory), be exercised by the employer over the payment so that the allowance is effectively a refund of rent and not just an additional emolument to be spent in any way that an employee may desire.'

(b) 'in the absence of a system on the part of the employer to control the use of the payment, the payment is simply a cash allowance.'

Analysis of the case

20. The law on this matter is clear. The issue before us is whether the housing allowance was paid as a refund, that is, a repayment or a reimbursement. This does not depend solely on the method or the timing of payment nor does it depend solely on whether the employer has exercised stringent control over the payment (although these factors may all be of great relevance as showing intention of the parties). The real test was the nature of the payment itself and this in turn depends on the intention of the parties at the time they entered into the contract of employment.

21. First, we must look at the contract of employment. This provides for an initial salary at the rate of $72,435 per month in salary scale of $67,480 to $77,740 (master pay scale point 45 to 49) of the approved salary scales of the Hong Kong Government. The Taxpayer was further eligible for a housing benefit with a cap of $30,500 per month, which amount is adjustable in

accordance with the movements of the corresponding scale of the home financing allowance for civil servants (emphasis added).

22. The contract of employment also contains the following provisions:

(a) The person engaged shall submit to the Consultant (that is, the employer) the evidence for the actual payment they paid for the housing.

(b) The Consultant (that is, the employer) may deduct from the salary of the person engaged any amount that it may have overpaid him ... in respect of any facilities or benefits provided under the Appendix (which include housing benefits).

23. The Commissioner's representative argued that the provision in the contract of employment referred to in paragraph 22(a) above did not amount to a control on the use of housing benefits by the employer because, inter alia, the word 'they' was used in the sentence and the Commissioner's representative submitted that the paragraph should be read as follows:

> 'The person engaged shall submit to the Consultant the evidence for the actual payment <u>they (that is, the Consultant)</u> paid for the housing' (emphasis added)

meaning that the Taxpayer is required by this clause to submit to the Consultant a receipt of the housing benefits received by the Taxpayer from the Consultant.

We reject such an interpretation so put forward by the Commissioner's representative. We feel that there is no need to dream up such an imaginative interpretation when a natural interpretation would suffice if one accepts that the plural number had been inadvertently used. We are of the view that the relevant paragraph should be interpreted as requiring 'the Taxpayer to submit to the Consultant the evidence for the actual payment <u>he (that is, the Taxpayer)</u> paid for the housing.' (emphasis added).

24. The Commissioner's representative further argued that in the present case, the contract of employment contains no provisions

(a) requiring the Taxpayer to rent an accommodation before Company B would pay the housing benefits to him;

(b) stipulating that the housing benefits and any part of it would not be paid if the employee did not incur the sum for housing;

(c) requiring any refund or repayment of the housing benefits if the employee had not incurred any housing expenses or had incurred less than the amount of the benefit.

All in all, the Commissioner's representative contended that there is no indication that Company B intended to provide a place of residence to the Taxpayer through refund of rent.

25. We reject the sweeping statement by the Commissioner that Company B had no intention to provide a place of residence to the Taxpayer through refund of rent. The starting point to ascertain the intention of the parties is to look at the contract of employment which clearly provided for payment of a salary separate and distinct from the payment of housing benefits. Furthermore, under the terms of the contract of employment, the Taxpayer was only eligible for a housing benefit with a cap and the Taxpayer had to submit to his employer the evidence for the actual payment he paid for the housing. It is quite clear that at the time they entered into the contract of employment, the intention of the parties was to provide a place of residence to the Taxpayer through a rental allowance scheme subject to a cap.

26. We are therefore left to decide the narrower ground argued by the Commissioner that the sums paid by Company B to the Taxpayer were mere cash allowances as no control had been exercised on how they were spent.

27. At this juncture, we would like to make the point that we fully understood the reasoning behind the Commissioner's determination and the forceful arguments put forward by the Commissioner's representative before us. In response to questions by the assessor, Company B categorically replied that the Taxpayer was not required to provide documentary evidences to claim the housing allowance and that the copy tenancy agreement and rental receipts etc forwarded to Company B were not required by Company B but were forwarded by the Taxpayer for reference only. On the basis of such replies which showed that the employer simply did not care how the rental benefit was spent and that it did not and indeed refused to exercise any control over the rental benefit payments, it is hardly surprising that the assessor and the Commissioner refused to entertain the claim by the Taxpayer.

28. We do remind ourselves that in Hong Kong, the salaries tax treatment of rental allowances is quite generous and the rules are easy to comply with and that accordingly each of the employer and the employee must play his respective parts in order to ensure that the employee would obtain the desired taxation benefits. It is mainly for this reason that previous Board decisions have held that if rules, such as the operation of a control system by the employer, are not complied with, the employee would lose the desired tax benefits. We agree that the 'control' test would be extremely effective to screen out 'colourable' schemes jointly put up by employers and employees with saving tax for the employees being the sole objective. In this case, however, we are not facing an employer bending over to help his employee. In fact, we are facing an employer with a completely different mentality, an employer who did not want to take the trouble to check the rental documents submitted by its employees although its employees were contractually required to do so notwithstanding that such failure on the part of the employer could lead to the loss of tax benefits by its employees.

29. There was no evidence before us why in February 2000, the employer attempted to switch from a housing benefit system which would give its employees tax benefits to a system which would not give such benefits. It may well be that the employer wanted to save administration costs. Alternatively, the employer may be in the course of implementing a staff localization program and for policy reasons wish to adopt equal payment terms for expatriates and local employees. The Commissioner's representative submitted that such action taken by Company B has no relevance as it was *ex post facto*. We do not agree with this agrument. We are of the view that this action taken by Company B has relevance regarding the intention of the parties. It lent support to the Taxpayer's contention that when he entered into the contract of employment in July 1997, it was the intention of the parties that he would be eligible for a housing benefit subject to a cap and he had a contractual obligation to submit to his employer the evidence for the actual payment he paid for the housing. The employer did attempt to change this housing benefit arrangement but such attempt was not made until after the year of assessment 1998/99 and in any event the proposed change had not been accepted by the Taxpayer.

30. Just as the Board has been consistent in its past decisions not to accept 'colourable' schemes put up by overzealous employers simply to help their employees to save tax, we are of the view that it is equally important that an employee should not be unduly penalized by the lax administration of a properly constituted rental allowance scheme already in place particularly when there had apparently been a change in the employer's policy towards such a scheme without the knowledge or consent of the employee. In this case, the evidence clearly showed that the scheme in question was not a 'colourable' scheme, there was no dispute that the Taxpayer had an arms-length relationship with his landlord and it was quite clear that the Taxpayer has satisfied the 'refund' requirement of sections 9(1A) and 9(2) of the IRO as rent was first paid by the Taxpayer to his landlord followed by a refund by his employer. Regarding control over the rental allowance, the contract of employment did provide for a control system and we are of the view that in this particular case when the 'refund' requirement has been clearly satisfied, the lax administration of the control system by the employer would not change the nature of the payment from that of a rental refund to that of a mere cash allowance.

Conclusion

31. Having considered all the evidence and the facts before us, we have reached the following conclusions:

(a) The Taxpayer has established that the sum of $410,040 paid to him by his employer for the year of assessment 1998/99 was rental refund.

(b) The rental benefit derived by the Taxpayer should be assessed under the provision of section 9(2).

We therefore allow the appeal.

B: Dissenting decision of Mr Gregory Robert Scott Crichton

32. For the reasons set out below, I have come to a different conclusion than that of my learned colleagues.

33. I accept that the facts as set out in the decision are accurate and comprehensive, however I wish to emphasize some of those facts in a manner different to that of my learned colleagues.

34. I adopt what is set out by my learned colleagues as 'The law'.

Analysis of the case

35. I agree with my learned colleagues who found (at paragraph 26 of the decision) that we have to decide on the narrower ground argued by the Commissioner that the sums paid by Company B to the Taxpayer were mere cash allowances based on whether Company B had exercised control or care in how such allowances were spent.

36. I agree with the interpretation of my learned colleagues in respect of the crucial sentence in clause 5.2 of the Appendix. I too reject the interpretation of the Commissioner's representatives that the wording 'they' could refer to the 'Consultant'. To put such an interpretation on the wording would mean that it makes no sense for a person engaged by the Consultant to submit any evidence of payment if in fact the Consultant already paid the rent themselves.

37. Notwithstanding that I reject the contention of the Commissioner's representative, it is fair to say that there is some lack of clarity or ambiguity in the resident site staff agreement dated 12 July 1997. By reason of this and by reason of the representations put before us in writing, it is incumbent on us to examine in some detail the intention of the parties both at the time of the contract and subsequently in the performance of the contract. The agreement was signed prior to the year of assessment in contention. We are not provided with any documents or other facts which will allow us to see how the issue of housing payments was dealt with at an earlier stage.

38. Whilst we were not provided with a copy of the employer's return for the year ended 31 March 1999, we can see from the Commissioner's determination in bundle B1 that the employer stated in the said return that there was an amount of $410,040 as 'rent refunded to the Taxpayer'. This was less than the actual rent paid by the Taxpayer due to the cap in respect of housing benefits.

39. Regrettably we did not have the benefit of having the Taxpayer present, nor the employer before us. However, if we were to come to a decision based only on clause 5.2 in the Appendix and what we believe to be the return of the employer, I too could agree with my learned

colleagues in the conclusion which they have reached. What we do have before us however is further documentary evidence which leads me to a different conclusion.

40. After receiving the Commissioner's determination the Taxpayer lodged an objection for the year of assessment on 5 October 1999.

41. Copies of the tenancy agreement were only provided to the employer on 8 November 1999 (bundle R1, page 30). I can see no evidence from any of the documentation before us that there was ever any submission of such documents prior to this time, and nor was there any evidence provided to the employer of actual payment made by the Taxpayer for housing. Likewise there is no evidence that the employer has at any time requested any such documents or evidence to be provided to it.

42. It appears clear to me that notwithstanding the execution of a contract of employment with appendix 1 forming party thereof, neither party gave any thought to its terms in relation to housing nor performed their part of the bargain until such time as there was a challenge to the arrangement by the Revenue.

43. My view is further enhanced by the particulars provided by the employer, and this has been ably set out by my learned colleagues at paragraph 10 of the decision.

44. But for the existence of clause 5.2 as part of the agreement it would in my view be easy based on the arrangement between the employer and the Taxpayer to come to a decision that payments made by the employer in accordance with the Government pay scale were mere allowances. Even with the existence of clause 5.2 it is not sufficient in my mind for the parties to pay mere lip service to the term in the agreement. I agree with the principle that a 'refund' connotes a repayment or reimbursement and not a mere payment. The Revenue in their submission at paragraph 7 have helpfully provided us with a number of decisions of the Board of Review supporting this conclusion.

45. The Revenue have in their bundle R1 provided us with the decision in D19/95. The Board in that case quoted an extract from a previous decision, D8/82, IRBRD, vol 2, 8 at page 10, and I will also set out part of what was there stated:

> *' If a place of residence is not provided by the Employer or an associated company, the Taxpayer must be able to show that the sum he has received and claimed by him as a "housing allowance" is a rental refund, either wholly or in part ...'*

In my view, apart from reliance on the wording in clause 5.2, the Taxpayer has failed to show that the sum he received was anything other than a mere payment.

46. In another case decided earlier by the Board (bundle R2, D33/97) the employer paid an amount to the taxpayer as 'housing assistance'. In that case the employer never possessed a copy of the lease agreements nor made any attempt to reconcile the amount paid as housing assistance with the purported rental payments. The Board in that case found that proper control was not exercised over the so-called housing assistance and that the amount was cash allowance, not a rental refund. I whole-heartedly adopt the views of the Board in that case where it was stated:

> *' A "refund" of rent connotes a repayment or reimbursement, not mere payment (see D19/95, IRBRD, vol 10, 157). This means in the typical case, that sufficient control must, as a matter of fact (and not just in theory), be exercised by the employer over the payment so that the allowance is effectively a refund of rent and not just an additional emolument to be spent in any way that an employee may desire. Where, as is apparent from this case, an employee has acted in a way such that the employer's system of control cannot operate in the manner for which it was designed (for example, by the employee's failure to submit to the employer a lease agreement or rental receipts for verification), it ill-behooves the employee to then argue that a payment received from the employer must be a refund simply because rent was, in the event, paid by the employee. Conversely, if no system of employer control exists to verify that a payment made to an employee was a refund of rent, this is simply a cash allowance. In neither case would the payment in law amount to a rental refund for salaries tax purposes.'* (emphasis added).

47. In this case, neither the employer nor the Taxpayer did anything to give substance or effect to the requirements of clause 5.2, and therefore cannot come before us now, and ask for something which in substance was treated as a cash allowance, to be treated as a refund of rental.

48. In passing I would just mention the memorandum from the employer, Company B, dated 18 February 2000 (bundle A1, page 12). We are not privy to the intention behind this memorandum which sought to delete the last sentence for clause 5.2. I do not wish to speculate on the numerous interpretations. I would however only note that clause 14 of the Appendix did permit the employer to unilaterally vary the agreement. As nothing turns on this, I do not intend to deal with it further.

Conclusion

49. Having considered all the evidence and facts before us, I have regrettably reached a different conclusion to that of my learned colleagues. In my view, the Taxpayer has failed to establish that the Sum of $410,040 paid to him by his employer for the year of assessment 1998/99 was a rental refund. In my view, such sum comes within section 9(1) of the IRO and is accordingly so subject to tax. For all of the above reasons I would dismiss the appeal.

C: Order

50. The Board by a majority orders that the appeal be allowed and sets aside the assessment appealed against.