

Case No. D26/10

Salaries tax – rental value of residence provided by employer – whether residence a hotel, hostel or a boarding house – taxpayers in similar situation to be treated similarly – section 9(2)(a) of the Inland Revenue Ordinance (‘IRO’).

Panel: Colin Cohen (chairman), Kumar Ramanathan SC and Erik Shum.

Date of hearing: 20 September 2010.

Date of decision: 19 October 2010.

The taxpayer was provided accommodation by her employer at Resort B. The Acting Deputy Commissioner confirmed the assessment for the year 2007/08, in which the rental value of the accommodation was assessed to be 10% of the taxpayer’s income. The taxpayer contended that the accommodation falls within the meaning of a hotel, hostel or a boarding house under section 9(2)(a) of the IRO, and the rental value thus should be assessed at 4% of her income. Some of her colleagues received an assessment at 4% as well.

After considering the written submissions by the Inland Revenue Department, the taxpayer sought leave to withdraw her appeal.

Held:

Leave to withdraw the appeal was granted. Each case must be decided on its own facts. But if two taxpayers are in a similar position, they should be treated in the same way. The Inland Revenue Department (‘IRD’) should ensure that each and every taxpayer who falls within the ambit of section 9(2)(a) is treated in a similar way (B/R45/09 (unpublished), agreed).

Appeal dismissed.

Taxpayer in person.

Leung To Shan and Leung Wing Chi for the Commissioner of Inland Revenue.

Decision:

Introduction

(2010-11) VOLUME 25 INLAND REVENUE BOARD OF REVIEW DECISIONS

1. This is an appeal by the Taxpayer in respect of a determination dated 17 March 2010 by the Acting Deputy Commissioner of Inland Revenue arising out of a salaries tax assessment for the year 2007/08 ('the Determination'). The Taxpayer was a flight purser employed by Company A.

2. The issue which the Board was to decide was whether the rental value of the places of the Taxpayer's residence provided should be taken as 4% or 10% of the Taxpayer's income. The issue which the Board would need to have determined was whether each place of residence in question, which is a serviced unit at Resort B constituted a 'hotel, hostel or boarding house' in the context of proviso (a) of section 9(2) of the Inland Revenue Ordinance.

3. After the hearing commenced, the Taxpayer was given the opportunity to consider and review the various written submissions prepared by Ms Leung To-shan ('Ms Leung') and was given the opportunity to read the relevant authorities in the bundle of the Inland Revenue Department ('IRD').

4. Having had the opportunity to consider various matters and discuss matters with Ms Leung, the Taxpayer asked the Board for leave to withdraw her appeal.

5. Having regard to all circumstances, the Board was prepared to give her the necessary leave and in turn, the appeal was dismissed.

6. The Taxpayer told the Board that other staff members of Company A who lived in Resort B were treated differently in that the IRD accepted that they resided in a hotel and as such, the rental value was taken as 4% as opposed to 10%.

7. Of course, each case must be decided on its own facts. However, we do reiterate various comments made by a previous Board in B/R 45/09 where the following was said:

‘ 29. *However, we do wish to set out our concerns over the fact that the Taxpayer may very well have been treated differently compared to the way in which other assessors dealt with some of his colleagues. We would have thought that this should not have happened and it is incumbent upon the IRD to ensure that in future all taxpayers in a similar position should be treated in the same way unless, of course, the factual matrix of each case distinguishes one taxpayer from another and this has an inevitable bearing and impact on the outcome of their treatment. We would have thought that having regard to this decision, the IRD should ensure that each and every taxpayer who falls within the ambit of s.8(2)(j) of the IRO should be treated in a similar way.*’

8. This Board again echoes such sentiments.