

**Case No. D29/10**

**Salaries tax** – deduction – professional subscriptions – whether deductible from assessable income.

Panel: Colin Cohen (chairman), Vincent P C Kwan and Carlye W L Tsui.

Date of hearing: 27 October 2010.

Date of decision: 15 November 2010.

The appellant appealed against the determination of the Commissioner for her salaries tax assessments and, in particular, claimed that she was entitled to deduction from her assessable income for: (a) subscriptions made to a company for obtaining medical indemnity insurance; and (b) fees for irradiating apparatus licence. Having perused the Commissioner's submissions and the relevant authorities, the appellant asked for leave to withdraw her appeal.

**Held:**

1. Having regard to all the circumstances, leave to withdraw the appeal was given and the appeal was dismissed. (D91/03, IRBRD, vol 18, 870; D102/03, IRBRD, vol 18, 952 & D82/06, (2007-08) IRBRD, vol 22, 71 were referred to)
2. There might be good reasons for the salaries tax deduction rules to be both strict and rigorously applied. One might also say that it was good administration to 'hold the line' in this area, and indeed hold it very firmly. The fact remained, however, that the line had not been firmly held in relation to professional subscriptions. And when regard was also paid to the inherent unfairness in the contrasting rules governing salaries tax and profits tax deductions, the time might well be high to consider allowing employees some tax relief for expenditure, which really was necessitated by the employment and the changing nature of Hong Kong's legal, social and economic conditions. (D102/03, IRBRD, vol 18, 952 was referred to)

**Appeal dismissed.**

Cases referred to:

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

D91/03, IRBRD, vol 18, 870  
D102/03, IRBRD, vol 18, 952  
D82/06, (2007-08) IRBRD, vol 22, 71

Taxpayer in person.

Wong Ka Yee and Chan Wai Yee for the Commissioner of Inland Revenue.

**Decision:**

**Introduction**

1. This is an appeal by the Taxpayer in respect of a determination dated 28 April 2010 by the Acting Deputy Commissioner of Inland Revenue arising out of the salaries tax assessments for the years 2007/08 and 2008/09 ('the Determination').

**The issue**

2. The issue which the Board was to decide was whether the Taxpayer is entitled to claim various deductions from her assessable income for the years 2007/08 and 2008/09. These were:

- (a) subscriptions made to Company A for obtaining medical indemnity insurance; and
- (b) fees for irradiating apparatus licence.

3. After the hearing commenced, the Taxpayer was given the opportunity to consider and review the various submissions prepared by Ms Wong Ka-yee and was given the opportunity to read the various authorities. The Taxpayer also had regard to various comments made by the Board especially with regard to the relevant authorities and in particular, D91/03, IRBRD, vol 18, 870, D102/03, IRBRD, vol 18, 952 and D82/06, (2007-08) IRBRD, vol 22, 71. After a short adjournment and having had the opportunity to consider various matters, the Taxpayer asked the Board for leave to withdraw her appeal.

4. Hence, having regard to all the circumstances, the Board was prepared to give the necessary leave and in turn, the appeal was dismissed.

5. However, the Board does have regard to the general comments that were raised by the Board in D102/03, IRBRD, vol 18, 952 and in particular have regard to the following paragraphs:

- '12. *On the other hand, it must be said that there may be good reasons for the salaries tax deduction rules to be both strict and rigorously applied (see*

*Simpson v Tate*) [1925] 2 KB 214, per Rowlatt J). One may also say that it is good administration to 'hold the line' in this area, and indeed hold it very firmly.

13. *The fact remains, however, that the line has not been firmly held in relation to professional subscriptions (see Departmental Interpretation and Practice Note No 9, paragraph 17, referred to above). 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.'*

6. This Board again echoes such sentiments.