Case No. D30/07

Salaries tax – Additional Dependent Parent Allowance – meaning of 'resided … with' under section 30(3)(b) of Inland Revenue Ordinance ('IRO').

Panel: Horace Wong Yuk Lun SC (chairman), Fred Kan and Kwok Siu Man.

Dates of hearing: 30 April and 4 May 2007.
Date of decision: 7 November 2007.

The Appellant appeals against the determination of the Deputy Commissioner of Inland Revenue ('the Commissioner') dated 29 December 2006, by which the Commissioner determined that the Appellant was not entitled to the grant of the Additional Dependant Parent Allowance ('ADPA') under section 30(3)(b) in respect of his salaries tax assessment for the year 2005/06.

In determining that the Appellant was not entitled to ADPA, the Commissioner was of the view that the Appellant had not shown that he was residing with his parent, namely his mother Madam A, continuously throughout the year of assessment 2005/06.

During the relevant year of assessment, the Appellant did not reside with his mother, Madam A, in the same property. Madam A lived in Property C, which was purchased and registered in the names of Madam A and the Appellant's late father, Mr D as joint tenants. The Appellant and his wife lived in Property G, which was owned and registered in their names as joint tenants. Property G was close to Property C, being about seven minutes away in terms of walking distance. Despite that they did not live together, the Appellant maintained close contact with his mother and maintained her living.

The Appellant argued that the term 'residing with' should be given a purposive interpretation in accordance with section 19 of the Interpretation and General Clauses Ordinance ('IGCO') and it was unreasonable to equate 'resides with' with 'same place of residence'. Although having the same residential address was prima facie that the parent and taxpayer were living together, the interactions between the parent and the taxpayer were more crucial in determining whether they were living together. Both Property C and Property G should be considered as the Appellant's home, only that different members of the family occupied different bedrooms in different flats. His living with his mother extended beyond the flats.

Held:

1. Where an object (other than a purely fiscal one) can be discerned of the relevant tax provision, the provision is deemed to be remedial and a fair, large and liberal construction should be adopted in order to ensure the attainment of the object in accordance with the true intent, meaning and spirit of the statute (Owen Thomas Mangin v Inland Revenue Commissioner [1971] AC 739 and Commissioner of Inland Revenue v International Importing Limited [1972] NZLR 1095 considered).

2. In the present case, the Board is concerned with an allowance provided in a tax statute, as opposed to a mere fiscal provision designed to collect tax for the benefit of the general revenue. Clearly there is a purpose or object behind the granting of such a statutory allowance. The question is to ascertain the object behind the granting of ADPA, and the relevant statutory provisions should be construed following the approach mandated by section 19 of IGCO.

3. In applying section 19 of IGCO, the Board is required not merely to give the relevant statutory provision a fair, large and liberal construction but 'one which combines all elements in such a way as will best ensure the object of the statute as a whole and the provision under consideration in particular according to its true intent, meaning and spirit': see judgment of Wilson J in Union Motors Ltd and another v Motor Spirits Licensing Authority and another [1964] NZLR 146 at 150, where the learned judge considered the effect of section 5(j) of the Acts Interpretation Act 1924 which, as pointed out above, was in terms similar to section 19 of IGCO.

4. Following the approach of section 19 of IGCO and adopting a fair, large and liberal construction is not the same as giving the statute an 'equitable construction', nor does it mean that the rules of equity should be applied to the task of statutory construction. As is often said, there is no equity about a tax. The word 'fair' in section 19 of IGCO refers to the construction of the relevant provision itself and not to the result of that construction: see the Union Motors Ltd Case, supra, at page 150 (Wong Tai Wai, David and another v Commissioner of Inland Revenue 6 HKTC 460 followed).

5. Under section 30(3)(b) of IRO, the words 'resided … with' are expressly qualified by the words 'otherwise than for full valuable consideration'. Hence the intention of the legislature must be that, by residing with the taxpayer, the parent would obtain a benefit, and that benefit is capable of being paid for by the parent giving full valuable consideration. If it is not intended that some benefit would be obtained by the parent residing with the taxpayer, there would be no question of consideration. Moreover, the benefit concerned must be some tangible benefit capable of being

valued, or else it would be impossible to tell whether full valuable consideration has been given or not. Intangible benefits such as love and care, or the spiritual satisfaction of togetherness etc are not benefits that can be valued and it cannot be the intention of the legislature to provide for full valuable consideration to be given for such benefits. Hence it must be intended by the legislature, in so providing, that the benefit that will be obtained by the parent residing with the taxpayer is a kind of benefit that is capable of being paid for by full valuable consideration.

6. The legislature intended to provide for a legislative scheme for the grant of Dependent Parent Allowance under section 30(1) of IRO and ADPA that is simple and easy to apply and does not depend on the detailed examination of the vicissitudes of human relationships. In giving the relevant statutory provisions a fair, large and liberal construction, the Board would construe the provisions as to ensure the attainment of the object mentioned above, namely, that it is the object of the scheme to strike a balance between the simplicity of application and the encouragement of taxpayers to maintain their aged parents.

7. Under section 30(3)(b) of IRO, the benefit contemplated by the legislature (as the benefit that would be obtained by the parent residing with the taxpayer) is the benefit that the parent obtain in being able to share the taxpayer' s residence, that is to use the taxpayer' s residence also as his (or her) own residence. This is a tangible benefit that can be easily valued and capable of being paid for by the giving of full valuable consideration. Normally the value of the benefit is represented by the market rental value of the premises, with an appropriate discount to allow for the fact that the parent would have to share the same with the taxpayer and his family. If the parent has fully paid for this benefit (by giving full valuable consideration for the same), the taxpayer is not eligible to claim ADPA. Otherwise, the taxpayer is eligible to claim ADPA provided that the other requirements provided in the subsection are satisfied.

8. Hence the words ' resided … with' is to be construed as meaning that the parent shared the same residence or dwelling with the taxpayer. Although the word ' residence' is not used in the statute, on proper construction of the legislation, the words ' resided ... with' refers to the fact that the parent and the taxpayer lived in the same dwelling; or in other words, shared a common place of residence.

9. Further, the common residence or dwelling shared by the parent and the taxpayer must be one for which the parent would have no prior right to reside or live in. If, for example, the residence or dwelling is a property which is owned by the parent so that the parent has the legal right to live or reside therein anyway, there can be no question of the parent having to pay any consideration in exercising his right to use the property as his residence. If the parent then agrees to allow the taxpayer to

share the residence with him, there is no question of the taxpayer being eligible to claim ADPA on the basis that he shares a common residence with the parent. The reason is simple: section 30(3)(b) contemplates that the parent, by residing with the taxpayer, has obtained a benefit for which he would otherwise be required to pay, or to give consideration. If the parent lives in his own property, but agrees that the taxpayer can live with him, he obtains no benefit for which he would be required to give any consideration. Accordingly, subsection (3)(b) does not apply to enable the taxpayer to claim ADPA.

10. The same conclusion may be arrived at by analysing the matter from a slightly different angle. Section 30, as is made clear by subsections (1) and (4), is a section that provides for the grant of tax allowances to taxpayers who ***maintain*** their aged parents (in ways recognised or approved by the section). Subsection 3(b) is to be read together with the other parts of section 30, and must be construed in the context and the object of the legislative scheme provided under section 30. Construed in that light, subsection 3(b) clearly cannot be construed as providing for the grant of ADPA to taxpayers who were not maintaining the parent in any sense. In the scenario mentioned above, it can hardly be said that by sharing the residence of the parent at the parent's own property, the taxpayer is in any way maintaining the parent. The ADPA provided in section 30(3)(b) is only granted to a taxpayer who share his residence with their parent without requiring the parent to give full valuable consideration, not the other way round.

11. For the sake of completeness, the Board does not see any need at all to refer to extrinsic materials, including in particular the legislative debate, for the purpose of construction. Although the word 'reside' itself may be ambiguous in the sense that it may be capable of bearing different meanings in different contexts; in the context of section 30, we do not find any ambiguity, obscurity or absurdity in the terms of the statute. When the section is read as a whole, it is clear what the language of the section means. It is also clear what object or purpose the statutory language is intended to achieve. Pepper v Hart [1992] 3 WLR 1032 considered. However, if, contrary to the Board's view above, reference to the legislative debate is indeed necessary, the Board has considered the legislative debate referred to the Board but does not consider that there is anything therein which would change the Board's view on the statutory construction set out above.

12. As far as the Property C is concerned, that property was owned by Madam A, and Madam A would have the undoubted right to reside in that property without paying any consideration to anyone at all. There can be no question of the Appellant being eligible to claim ADPA, even if he ***were*** residing in that property in the relevant year of assessment.

13. Accordingly, it is not necessary the Board to make any finding on whether the Appellant resided in Property C, for he would not be entitled to claim ADPA in any event. Suffice for the Board to say that if it were necessary for the Board to make a finding on this point, the Board would hold that on the evidence, the Appellant did not reside in Property C even though he might have spent a lot of time with his mother in that property and had his dinners almost every day after work at that property. The fact remains that it was Property G which was the home of the Appellant and his wife. They slept at Property G and kept their personal belongings there. Although sleeping on the premises is not conclusive of residence, the place of residence is normally the place where the person lives and sleeps (D46/87, IRBRD, vol 2, 447 considered).

14. As far as Property G is concerned, on the evidence Madam A never resided there or used the property as her residence or dwelling. She never slept there and rarely went there at all during weekdays. The Board finds that although Madam A had the keys and the resident card to enable her to access the property, in fact she spent little time at Property G. By no stretch of imagination could it be said that she was using Property G as her residence, and clearly she never intended to do so. Hence there is no question of her residing with the Appellant in Property G in the year of assessment 2005/06.

Appeal dismissed.

Cases referred to:

Owen Thomas Mangin v Inland Revenue Commissioner [1971] AC 739
qCommissioner of Inland Revenue v International Importing Limited [1972] NZLR 1095
Union Motors Ltd and another v Motor Spirits Licensing Authority and another [1964] NZLR 146
Wong Tai Wai, David and another v Commissioner of Inland Revenue 6 HKTC 460
Levene v The Commissioners of Inland Revenue [1928] 13 TC 486
B/R 12/76, IRBRD, vol 1, 218
R v Fermanagh Justices [1897] 2 LR 563
D46/87, IRBRD, vol 2, 447
Bate v Chief Adjudication Officer [1996] 1 WLR 814
Pepper v Hart [1992] 3 WLR 1032

Taxpayer in person.
Chan Sze Wai Benjamin and Lai Wing Man for the Commissioner of Inland Revenue.

Decision:

Appeal

1. This is an appeal by the Appellant against the determination ('**the Determination**') of the Deputy Commissioner of Inland Revenue ('**the Commissioner**') dated 29 December 2006, by which the Commissioner determined that the Appellant was not entitled to the grant of the Additional Dependant Parent Allowance ('**ADPA**') in respect of his salaries tax assessment for the year 2005/06.

2. The statutory requirements for ADPA are provided in section 30(3)(b) of the Inland Revenue Ordinance (Chapter 112). Insofar as it is relevant, section 30 provides as follows:

> *'(1AA) In this section, "dependent parent allowance" means an allowance granted under subsection (1) or (1A).)*
>
> *(1) An allowance shall be granted in any year of assessment to a person –*
>
> *(a) if –*
>
> *(i) the person; or*
>
> *(ii) his or her spouse who is not living apart from that person, maintains a parent or a parent of his or her spouse in that year; and*
>
> *(b) if that parent –*
>
> *(i) was ordinarily resident in Hong Kong; and*
>
> *(ii) was –*
>
> *(A) aged 60 or more; or*
>
> *(B) under the age of 60 and was eligible to claim an allowance under the Government's Disability Allowance Scheme, at any time in that year*
>
> *(1A) …*

(2) A dependent parent allowance may be granted in respect of each such parent who is so maintained.

(3) A dependent parent allowance grantable in respect of a parent under subsection (1) is –

(a) an allowance of the prescribed amount;

*(b) **an additional allowance** of the prescribed amount if that parent **resided, otherwise than for full valuable consideration**, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (Amended 8 of 2005 s. 3)*

(3A) …

(4) For the purposes of this section –

(a) a parent shall only be treated as being maintained by a person or his or her spouse if –

(i) the parent resides, otherwise than for full valuable consideration, with that person and his or her spouse for a continuous period of not less than 6 months in the year of assessment; or

(ii) the person or his or her spouse contributes not less than the prescribed amount in money towards the maintenance of that parent in the year of assessment.'

3. In determining that the Appellant was not entitled to ADPA, the Commissioner was of the view that the Appellant had not shown that he was residing with his parent, namely his mother Madam A, continuously throughout the year of assessment 2005/06.

4. Indeed in his tax return filed for the relevant year of assessment, in answer to the question whether Madam A resided with him continuously during the year without paying full costs, the Appellant gave the answer 'no'. One would have thought that this was a clear admission by the Appellant that he was not residing with Madam A during the relevant year of assessment, which disqualified him from claiming ADPA. However, this was explained by the Appellant in his evidence, which we shall consider in greater detail below.

Findings of fact

5. The Appellant gave evidence at the appeal. He also called Madam A to give evidence.

6. We have no doubt that the Appellant is an honest witness. We have closely observed the Appellant's demeanour when he gave evidence and we have no hesitation in accepting his evidence. His evidence is also corroborated by the documents that he submitted to the Board and also supported by the evidence of his mother, whose evidence we also accept.

7. According to the tax return filed by the Appellant, Madam A was born in February 1944. Accordingly, she was over 60 years old in the year of assessment 2005/06. This fact is not challenged or disputed by the Commissioner.

8. We summarise the evidence of the Appellant and Madam A, which we find as facts, as follows:

(a) In 1991, the property known as Address B ('**Property C'**) was purchased and registered in the names of Madam A and the Appellant's late father, Mr D as joint tenants;

(b) The Appellant's father passed away in March 2000. Thereupon Madam A became the sole legal owner of the Property C in right of her right of survivorship;

(c) The initial deposit for the acquisition of the Property C was paid by the Appellant's parents, and the rest of the purchase price was raised by mortgage. In the same year, the Appellant graduated from university and started to work, initially as a teacher and subsequently as an accountant. The mortgage repayments were made by the Appellant and the mortgage was fully paid off by late 2001;

(d) Although the mortgage repayments of the Property C was made by the Appellant, the Appellant frankly admitted in evidence that he never regarded himself as having any proprietary interest in the same. In evidence the Appellant agreed that the Property C was exclusively owned by his parents, and his payment of the mortgage installments was intended as a gift to his parents. The Appellant confirmed in evidence that he claimed no interest in the Property C, and agreed that upon the death of his mother, the said property would be passed to her estate. Although, given the very good relationship between himself and his mother, there was no question of his mother objecting to his entering the Property C, he agreed that because the property was solely

owned by his mother, he would, strictly speaking, have required the permission of his mother to enter or to stay in the Property C;

(e) Prior to mid-2002, the Appellant lived with his parents in the Property C. Prior to her emigration to Country E (in around 1994 or 1995), the Appellant's elder sister also lived in that property. The Appellant's elder brother (who never married but had a daughter) also lived in the property from time to time. After the death of the Appellant's father, the Appellant's elder brother and his daughter lived with Madam A at the Property C on a more permanent basis;

(f) In about mid-2002, shortly after the Appellant married, the Appellant and his wife purchased another property, being the property known as Address F ('**Property G'**). The Property G was owned and registered in the names of the Appellant and his wife as joint tenants;

(g) After the purchase of the Property G, the Appellant moved to live in the Property G, initially alone, and subsequently with his wife. The Property G is close to the Property C, being only about seven minutes away in terms of walking distance;

(h) The Appellant gave two reasons for purchasing and moving into the Property G after his marriage. Firstly, the Property C would be too small to house his own family. Secondly, he wanted to avoid any possible conflicts between his mother and his wife in having to live in a small flat together. However, in order to maintain close contact with his mother, the Property G was chosen for its proximity to the Property C;

(i) The Appellant continued to maintain close contact with his mother after moving into the Property G. During the weekdays he and his wife would go to the Property C to have dinner after work. Madam A would cook for them;

(j) We have no doubt that the Appellant was a man of great filial piety. He treated his mother very well. This is confirmed by the evidence of Madam A. Not only did he support his mother financially (see below), he took good care of his mother personally. He would take his mother to see the doctor. He taught his mother how to swim. He helped his mother out in organizing her household expenses. They also shared many activities together. As alluded to above, during weekdays the Appellant and his wife would go to the Property C to have dinner and they would watch television with Madam A after dinner before going back to the Property G to sleep. During weekends they would often go out to have tea and meals. They would play badminton together and would also go on holidays together. He obviously spent a lot of time with his mother

to ensure her well-being. In evidence, the Appellant very modestly described his close relationship with his mother as one of mutual care. We have no doubt, however, that the Appellant was a pious son and treated his filial duty seriously;

(k) The Appellant maintained a joint account with his mother. That account was also his salary account in that the Appellant's salary is paid into that account monthly. He had an arrangement with his mother whereby his mother would withdraw from the joint account a monthly sum of $8,000 for payment of the food expenses and her own personal expenses. Any surplus would be kept by his mother as her pocket money. Apart from this, the Appellant would also pay for the utility charges, the rates and other expenses of Property C;

(l) Madam A was given the keys and was issued a resident permit to the Property G. Accordingly she could, if she wished, have access to the Property G anytime. However she never slept in the Property G. This was despite the invitation by the Appellant that she could spend the night at the Property G any time she liked. Obviously Madam A preferred to sleep in her own property, namely the Property C. She rarely went to the Property G during weekdays. During weekends, she might go to the Property G to watch videos with the Appellant. There was no need to, and Madam A did not, do the household chores for Property G. Although the Appellant had suggested that his mother could go to the Property G to take her bath after swimming, his mother never in fact did so, apparently because Madam A did not like the swimming pool at [the facilities of Property G], which she found to be too small. It would appear from the Appellant's evidence that although Madam A had the keys to the Property G, she did not actually spend much time in that property and we so find;

(m) On the other hand, it would appear to us that the Appellant did spend quite a lot of time with his mother at the Property C, particularly during weekdays. He would go there to have dinner after work and would only go back to the Property G to sleep sometime after 11 pm. However, the Appellant and his wife never slept at the Property G. The personal belongings were kept in the Property G which he described in evidence as his home, although he had a towel for his use in the Property C.

Appellant's explanation of his tax return

9. The Appellant was asked why, if he was claiming that he was entitled to ADPA, he had stated in his tax return that Madam A was not residing with him continuously during the relevant year of assessment without paying full cost. His explanation was that he had so stated because he was aware (being a professional accountant himself) of the Revenue's usual interpretation of the

term 'resided with' as requiring the taxpayer to have the same place of residence as that of the parent. Although he did not agree with that interpretation, he had submitted his tax return and answered the relevant question therein following what he understood to be the Revenue's usual interpretation. However, as he genuinely considered himself to be eligible to ADPA, he had separately written to the Commissioner to ask if the Commissioner would be prepared to broaden the scope of his usual interpretation so as to cover his particular situation. In itself, the explanation may not appear to be convincing, but in the particularly circumstances of this case, we are persuaded that this was a true explanation. We are so persuaded not only because we are satisfied that the Appellant is an honest witness. We consider the explanation to be true also because of the existence of a contemporaneous document which, in our view, sufficiently explained the Appellant's otherwise inexplicable conduct in this regard.

10. On 14 June 2006, barely 10 days after the Appellant filed his tax return, the Appellant wrote to the Commissioner and stated that he would like to claim ADPA. He stated that it was his understanding that in order to be eligible for ADPA, his mother would have to reside with him throughout the year of assessment. He then set out certain circumstances (including the fact that he continued to maintain close contact with his mother after marriage, that he kept a joint bank account with his mother, and the fact that he paid for all expenses of the Property C) and inquired with the Commissioner whether in these circumstances, his mother could be considered as residing with him.

11. As pointed out above, the letter of 14 June 2006 was written by the Appellant barely 10 days after he submitted his tax return, and in that letter he indicated clearly that he intended to claim ADPA and that he understood that in order to be eligible his mother would have to reside with him continuously throughout the year of assessment. He asked the Commissioner to confirm if his particular situation would satisfy the requirement of 'residing with'. This letter is consistent with the explanation given by the Appellant in his oral evidence. In these circumstances, we are prepared to accept the Appellant's explanation. In the light of the letter of 14 June 2006 and the proximate timing between that letter and the tax return, we would not hold the Appellant as having admitted by his tax return that his mother was not residing with him during the relevant year of assessment.

Grounds of appeal

12. As we understand the Appellant's statement of grounds of appeal, his grounds of appeal are as follows:

(a) the Commissioner's interpretation of the term 'residing with' as provided under section 30(3)(b) of the IRO was too literal, and that he should have given a purposive interpretation to the term in accordance with section 19 of the Interpretation and General Clauses Ordinance (chapter 1);

(b) it is unreasonable to equate 'resides with' with 'same place of residence';

(c) although having the same residential address is prima facie evidence that the parent and taxpayer are living together, the interactions between the parent and the taxpayer are more crucial in determining whether they are living together;

(d) the Commissioner's interpretation may lead to many 'unreasonable situations' which are inconsistent with the purpose which ADPA is intended to achieve or to encourage;

(e) both the Property C and the Property G should be considered as the Appellant's home, only that different members of the family occupied different bedrooms in different flats. His living with his mother extends beyond the flats. In the Appellant's words, his living with his mother 'happens in her flat, [the Appellant's] flat, and also outside all these';

(f) the 'Home loan interest' cases relied upon by the Commissioner are not applicable as the statutory provisions regarding ADPA and deductions for home loan interests serve different purposes;

(g) instead of looking at the 'Home loan interest' cases, it is more appropriate to look at the new statutory relief relating to deduction of Elderly Residential Care Expenses.

13. In his submissions made at the hearing of the appeal, the Appellant instanced the following situations which he claimed would arise if the term 'reside with' is to be construed literally as meaning 'having the same place of residence'. We quote from his submissions:

' a. Someone who lives with his parent in his parent's owned flat and only pays the minimum maintenance money, no matter he cares about his parent or not, can have the ADPA.

b. However, someone who always supports and cares for his parent cannot have the relief provided by ADPA, only because he lives in a different flat from his parent.

c. Moreover, the ADPA discourage taxpayer to improve his and his parent's living conditions …'

14. The Appellant contends that the legislative purpose behind the grant of ADPA is to encourage taxpayers to take care of their parents. This being the object of the legislation, the expression 'resides with' in section 30(3)(b) should be construed to ensure the attainment of such object. According to the Appellant, the expression 'resides with' should be construed as 'living together', and a taxpayer may live together with his parent even though they do not have the same

place of residence. Although the Appellant accepts that having the same place of residence is prima facie evidence of living together, he submits that a taxpayer may nonetheless live together with his parent without sleeping in the same flat. He contends that whether a taxpayer lives together with his parent is a question of fact and degree. The question is to be answered by looking at the overall relationship between the taxpayer and his parent. If, upon the examination of such overall relationship, it is found that the taxpayer and his parent in fact share a lot of their living activities together, they should be treated as living together. And if they live together, they are residing with each other. The Appellant emphasizes that section 30(3)(b) does not in terms provide that the parent has to reside ***in*** the same place as that of the taxpayer, and if the legislature had intended to make this a requirement for ADPA, it could have easily so provided.

15. Applying such reasoning to the present case, the Appellant submits that, if one looks at the overall relationship between himself and Madam A, it is abundantly clear that they share a lot of their living activities together and must therefore be treated as living together. This was the position throughout the year 2005/06, and accordingly Madam A had resided with him continuously throughout that year of assessment. On this basis, the Appellant contends that he is eligible to the grant of ADPA for the relevant year of assessment.

General principles applicable to the interpretation of tax statutes

16. In Owen Thomas Mangin v Inland Revenue Commissioner [1971] AC 739, Lord Donovan, giving the majority judgment of the Privy Council, recalled some of the rules of interpretation applicable to the construction of tax statutes as follows (at page 746):

> '*First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner J says in his (albeit dissenting) judgment in Marx v Inland Revenue Commissioner [1970] NZLR 192.208, moral percepts are not applicable to the interpretation of revenue statutes.*
>
> *Secondly, "…one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used": per Rawlatt J in Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB 64, 71, approved by Viscount Simons LC in Canadian Eagle Oil Co Ltd v The King [1946] AC 119,140.*
>
> *Thirdly, the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.*

> *Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.'*

17. In Hong Kong, however, these principles must be set against the statutory requirement provided by section 19 of the Interpretation and General Clauses Ordinance ('IGCO'), which requires:

> '*An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.*'

18. It is sometimes said that, despite the language of section 19 of IGCO, not all statutes are capable of being deemed remedial, and that revenue statutes are in this category (see, for example, Burrows, Statute Law in New Zealand, 2nd ed, 1999, at page 140, Note 3). In New Zealand, where section 5(j) of the Acts Interpretation Act 1924 were in terms almost the same as section 19 of IGCO, Turner P was reported to have made the following observations in the case of Commissioner of Inland Revenue v International Importing Limited [1972] NZLR 1095:

> '*The approach enjoined upon Courts of construction by s.5(j) of the Acts Interpretation Act 1924 is normally of little material assistance in the construction of revenue statutes. The "object of the Act" which the section designates as a key to questions of statutory construction is often only too clearly simply the collection of funds to swell the general revenues of the State; and Courts of construction have consistently declined to read implications into such statutes to catch a taxpayer, who in his business dealings has relied upon the text of the statute, by some extension of the wording accepting the notion of moral duty to pay a "proper" amount of tax. The taxing provision is read as prescribing the tax for which its text plainly provides, no more and no less.*'

19. Turner P's observations are appropriate where the object of the relevant provisions is simply fiscal (as many provisions in tax statutes are), and section 19 of IGCO would be of little assistance in the construction of such provisions, as the fiscal object of such provisions are normally attained by adopting the traditional approach of 'literal' interpretation of the language of the statute, as adumbrated by the principles 'recalled' by Lord Donovan in the Mangin case cited above. However, modern day revenue statutes often contain provisions whose primary purpose is not fiscal (as Turner P himself recognised in the case of International Importing Limited , where he observed that 'in modern times a practice has developed of inserting in revenue statutes provisions whose primary purpose is not fiscal but economic'). In those cases, the approach mandated by section 19 of IGCO would be of great assistance, and must be followed. Where an object (other than a purely fiscal one) can be discerned of the relevant tax provision, the provision is deemed to

be remedial and a fair, large and liberal construction should be adopted in order to ensure the attainment of the object in accordance with the true intent, meaning and spirit of the statute.

20. In the present case, we are concerned with an allowance provided in a tax statute, as opposed to a mere fiscal provision designed to collect tax for the benefit of the general revenue. Clearly there is a purpose or object behind the granting of such a statutory allowance. The question is to ascertain the object behind the granting of ADPA, and the relevant statutory provisions should be construed following the approach mandated by section 19 of IGCO.

21. We would add this. In applying section 19 of IGCO, the Board is required not merely to give the relevant statutory provision a fair, large and liberal construction but 'one which combines all elements in such a way as will best ensure the object of the statute as a whole and the provision under consideration in particular according to its true intent, meaning and spirit': see judgment of Wilson J in Union Motors Ltd and another v Motor Spirits Licensing Authority and another [1964] NZLR 146 at 150, where the learned judge considered the effect of section 5(j) of the Acts Interpretation Act 1924 which, as pointed out above, was in terms similar to section 19 of IGCO.

22. Following the approach of section 19 of IGCO and adopting a fair, large and liberal construction is not the same as giving the statute an 'equitable construction', nor does it mean that the rules of equity should be applied to the task of statutory construction. As is often said, there is no equity about a tax. The word 'fair' in section 19 of IGCO refers to the construction of the relevant provision itself and not to the result of that construction: see the Union Motors Ltd Case, supra, at page 150.

23. In this connection, we would draw attention to what Deputy High Court Judge To said in the case of Wong Tai Wai, David and another v Commissioner of Inland Revenue 6 HKTC 460 at pages 472-473, as follows:

> '*Tax is essentially a liability created by statute. By nature, any tax statute is inequitable in the wide sense of the word. It takes away that a person has earned by his sweat and labour and puts it in general revenue for purposes, many of which have no interest or concern to the taxpayer, such as making welfare payments to the unemployed, providing subsidised housing to a section of the general public and funding litigation for those who cannot afford it. There could be an endless list of such purposes which are of no interest to the taxpayer. Yet he has to provide funds for those purposes with the tax he pays. Thus there is no equity about a tax, as by nature it is "inequitable" in that it takes away what one has earned by his sweat and labour. It is therefore a contradiction in terms to say that a taxing statute should be construed "equitably". Since a taxing statute purports to deprive a person of what he has, it should be construed restrictively so that a person would only be taxed if he is*

> *caught within the letter of the law. Apart from that, there is no room for giving any taxing statute an "equitable construction" as suggested by the Appellants.'*

24. The judgment of Deputy Judge To was taken on appeal, but the Court of Appeal dismissed the appeal. In particular, Rogers VP held that the Deputy Judge had carefully set out his reasons which were correct. Cheung JA, citing Hanbury & Martin, Modern Equity, 16th ed, page 3, observed that 'Equity is not synonymous with justice in the broad sense.'

25. With these general considerations in mind, we now turn to the construction of the statutory provisions governing ADPA.

Construction of the relevant statutory provisions

26. In construing the relevant statutory provisions governing ADPA, the first point to note is that the ADPA provided in section 30(3)(b) is an allowance *additional* to a principal allowance ('**DPA**') provided for in section 30(1). DPA under section 30(1) is granted to a taxpayer if he or his spouse (not living apart) ***maintained*** a parent (or his spouse's parent) in the relevant year of assessment, and the parent concerned was ordinarily resident in Hong Kong and was aged 60 or more (or if less than 60 was eligible to claim an allowance under the Government's Disability Allowance Scheme) at any time in that year.

27. It is important to note that subsection (4) defines the circumstances whereby a parent to be treated as being maintained by the taxpayer or his spouse. The subsection provides that for the purposes of section 30, a parent shall ***only*** be treated as being so maintained if <u>either</u> (i) the parent resides, otherwise than for full valuable consideration, with that person (that is the taxpayer) and his spouse for a continuous period of not less than 6 months in the year of assessment; <u>or</u> (ii) the person or his spouse contributes not less than the prescribed amount in money towards the maintenance of that parent in the year of assessment. For the year 2005/06, the prescribed amount was HK$12,000. This subsection warrants careful consideration, to which we will return in the later part of this decision.

28. In the present case, as pointed out above it is not disputed by the Commissioner that Madam A was more than 60 years old in the year of assessment 2005/06. We are also satisfied that Madam A was ordinarily resident in Hong Kong. In his tax return, the Appellant stated that he or his spouse contributed not less than HK$12,000 in money during the year towards the dependant's maintenance. This is not disputed by the Commissioner. Hence there is no dispute that the Appellant is eligible for DPA.

29. At this point, we would observe that it is clear that the object of DPA is to encourage taxpayers to 'maintain' their parents in either one of two ways: either by contributing money in amount not less than the prescribed amount (in 2005/06, not less than HK$12,000) towards the maintenance of the parent, or by residing continuously with the parent for not less than six months

without requiring the parent to pay 'full valuable consideration' for such residence. If the taxpayer did one of these things in the year of assessment, he would be entitled to DPA. If he did not, he would not be able to satisfy the requirement under subsection (1). Subsection (4) makes it clear that the statute does not recognise any other way of maintaining a parent for the purpose of claiming DPA.

30. Turning to subsection 3(b), ADPA is granted if the parent ***resided***, otherwise than for full valuable consideration, ***continuously throughout the year of assessment. with*** the taxpayer who is entitled to claim DPA.

31. It is thus clear that ADPA is granted to encourage a particular form of maintenance recognised by subsection (4), namely to maintain a parent by residing with him without requiring the parent to give full valuable consideration for such residence. Merely contributing more money towards the maintenance of the parent (say by paying the parent more than HK$12,000 in the year 2005/06) will not entitle the taxpayer to this additional allowance. What is required of the taxpayer, for him to be eligible for this additional allowance, is for him to maintain his parent by continuously residing with him (or her) during the whole year of assessment without requiring the parent to give full consideration.

32. One can thus discern the difference between DPA and ADPA in terms of the form of maintenance required to satisfy the statutory requirements. A taxpayer who did not reside with his parent (or his spouse' s) but had simply paid the parent money towards maintaining him (assuming that the money is more than the prescribed amount) would only be entitled to claim DPA, but not ADPA. To be eligible for ADPA, the taxpayer must have resided with the parent concerned throughout the whole year of assessment without the parent giving full valuable consideration. The legislature has clearly thought it fit to confer an ***additional*** tax incentive to those taxpayers who maintain their aged parents in this particular way.

33. As ADPA is only granted to those taxpayers who maintain their aged parents in the particular way mentioned above, it is necessary to examine carefully the expression used in the statute, namely, 'if that parent resided, otherwise than for full valuable consideration, with [the taxpayer]'. Under what circumstances is the parent concerned to be treated as residing with the taxpayer otherwise than for full valuable consideration?

34. As noted above, the Appellant submitted that 'reside with' simply means living together, and whether a parent lives together with the taxpayer is a matter of fact and degree. He contends that a holistic approach should be taken, and a parent may live together with a taxpayer even if they do not sleep in the same place or have the same residential address. The holistic approach entails an examination of the overall relationship between the parent and the taxpayer, for example, how much do they share their daily living activities, how much do they care for each other, to what extent do they support each other in their lives, and the closeness or otherwise of their relationship. If, upon examination of the overall relationship, it is found that there are substantial

interactions between the lives of the parent and the taxpayer, then it may be said that they live together, and hence reside with each other. On this approach, whether a parent is to be considered as residing with the taxpayer would largely depend on the intimacy of their relationship. If this approach is to be adopted, in applying the statutory provisions governing ADPA, the Commissioner would always have to examine the overall relationship between the parent and the taxpayer in every case, and form a view as to the closeness or intimacy of the relationship, before he could conclude whether the parent was indeed residing with the taxpayer in any particular year of assessment. We note, however, that in his submissions, the Appellant has not addressed us on the impact of the words 'otherwise than for full valuable consideration' on the construction of section 30(3)(b) of IRO.

35. On the other hand, Mr Chan for the Commissioner submits that the word 'reside' is an ordinary word. He cited a number of cases and other decisions of this Board where the words 'reside', 'residence', or 'place of residence' were construed in connection with other statutory provisions, including provisions in the IRO. It is however necessary to caution ourselves that these decisions were made in the context of other legislations, and of course the same word or words may bear different meanings in different legislative schemes, and words must be construed in their proper context. As rightly pointed out by the Appellant, in the present case, we are not merely concerned with construing the word 'reside' in isolation. Neither are the words 'residence', or 'place of residence', used in the subsection. Hence the decisions cited by Mr Chan must be looked at with that caution in mind.

36. It is accordingly not necessary for us to cite extensively the cases or decisions referred to us by Mr Chan. We would only refer to three cases cited by Mr Chan where the Court or the Board referred to the dictionary meaning of the word 'reside', but emphasised that such dictionary meaning must be taken in context, for words must be construed according to the object and intent of the particular legislation where the words are found. In Levene v The Commissioners of Inland Revenue [1928] 13 TC 486, Viscount Cave, LC said at page 505:

> '*… the word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place". No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word "reside".*'

37. We note that Levene is a case where the Court is concerned with the question whether the taxpayer concerned was 'ordinarily resident in the United Kingdom' and entitled to exemption under section 46 of the Income Tax Act 1918. That question is of course a very different question from the one that we are concerned with now. Whether a person is resident or ordinarily resident in a country is a wholly different question from the one asking whether a person resides with

another person in any period of time. We can derive little assistance from Levene other than noting the dictionary meaning referred to by Viscount Cave.

38. In B/R 12/76, IRBRD, vol 1, 218, this Board cited the judgment of Gibson J in R v Fermanagh Justices [1897] 2 LR 563 as follows:

> '*The words "residence" and "place of abode" are flexible, and must be construed according to the object and intent of the particular legislation where they may be found. Primarily, they mean the dwelling and home where a man is supposed to live and sleep; they may also include a man's business abode, the place where he is to be found daily.*'

39. In D46/87, IRBRD, vol 2, 447, the Board said at pages 450 and 451:

> '*Earl Jowitt [in Stroud's Judicial Dictionary] describes residence, inter alia, as "to denote the fact that a person dwells in a given place", "the idea of home, or at least of habitation, and need not necessarily be permanent or exclusive. The word denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink and sleep". Earl Jowitt makes clear that the meaning of the word residence depends upon the context in which it is used or appears and also clearly demonstrates the distinction between residence as describing the situation of a person and residence referring to a place or building.*
>
> *Reference to Stroud makes it clear that when Earl Jowitt refers to residence as the place where an individual eats, drinks and sleeps, etc., in fact the definition in question is relating to the verb "reside" and not the noun "residence". Perhaps the most meaningful statement is in Stroud where it states that residence has a variety of meanings according to the statute in which it is used and that it is an ambiguous word which may receive a different meaning according to the position in which it is found. The word residence is flexible and must be construed according to the object and intent of the particular legislation where it may be found. Stroud goes on to say that primarily the word residence means the dwelling and home where a man is supposed usually to live and sleep…*'

40. Quite apart from the fact that the two Board decisions mentioned above are concerned with different provisions in the IRO, they are concerned with construing the meaning of 'residence' and 'place of residence'. Here the focus is more on whether the parent resided with the taxpayer than on the place where they reside.

41. Of more assistance is the case of Bate v Chief Adjudication Officer [1996] 1 WLR 814, where the House of Lords was concerned with construing the words 'resides with' in regulation 3(1) of the Income Support (General) Regulations 1987. At page 823, Lord Slynn said:

> '*I do not see any indication in the regulation that "resides with" is to be given any meaning other than its ordinary meaning. It seems to me to mean no more than that the claimant and the other person* ***live in the same residence or dwelling****.'*

42. Although Bate is of more assistance in that there the House of Lords was also concerned with construing the words 'resides with', it must not be forgotten that the Bate case was concerned with a different legislative scheme. Moreover, the context in which the words 'resides with' appeared in the English legislation was wholly different from the case here, and the words 'otherwise than for full valuable consideration' were not found in the English legislation. The assistance that can be derived from that decision is necessarily limited by the different statutory contexts.

43. So, in the end, we do not find the cases cited by Mr Chan to be of great assistance in the exercise of construction in the present case.

44. Obviously the Board must construe the words of the statute as a whole and not in isolation. We set out below the considerations that we have taken into account in construing the relevant statutory provisions and our views thereon:

(a) the words 'resided … with' are expressly qualified by the words 'otherwise than for full valuable consideration'. Hence the intention of the legislature must be that, by residing with the taxpayer, the parent would obtain a benefit, and that benefit is capable of being paid for by the parent giving full valuable consideration. If it is not intended that some benefit would be obtained by the parent residing with the taxpayer, there would be no question of consideration. Moreover, the benefit concerned must be some tangible benefit capable of being valued, or else it would be impossible to tell whether full valuable consideration has been given or not. Intangible benefits such as love and care, or the spiritual satisfaction of togetherness etc are not benefits that can be valued and it cannot be the intention of the legislature to provide for full valuable consideration to be given for such benefits. Hence it must be intended by the legislature, in so providing, that the benefit that will be obtained by the parent residing with the taxpayer is a kind of benefit that is capable of being paid for by full valuable consideration;

(b) this being the case, it is difficult to see how the holistic approach urged upon us by the Appellant could work in deciding whether the parent resided with the

taxpayer. The holistic approach would require one to examine the overall relationship between the taxpayer and his (or his spouse's) parent and form a view as to how close they are, how much they care for each other, and to what extent their lives interact with each other. Whether they 'live together' (to use the words of the Appellant) would depend ultimately on the view taken of the intimacy or closeness of the relationship between the taxpayer and the parent. Such an approach is clearly inconsistent with the 'benefit-consideration' analysis referred to above, for the closeness or otherwise of the relationship between persons can not possibly be valued as a benefit for which full valuable consideration could be given. How possibly could the Commissioner, charged with the task of determining whether a parent had resided with the taxpayer in a particular year of assessment, say whether the parent had given full valuable consideration for having a close relationship with the taxpayer? If, as described by the Appellant in the present case, the relationship is one of ***mutual*** care and support between the Appellant and Madam A, how can one say whether Madam A had given full valuable consideration for the benefit derived from her relationship with the Appellant? Is one to do so by asking whether the love and care extended by Madam A to the Appellant is such that it outweighs the love and care extended to her by her son? The answer must be no. For this reason, we cannot accept the approach recommended to us by the Appellant in the construction of the words 'resided…with';

(c) moreover, we do not believe that the legislature intends to make the scheme granting DPA or ADPA a complicated process to apply. To adopt the holistic approach would mean that in each case of a claim for ADPA, or a claim for DPA based on section 30(4)(a)(i) (which uses the same statutory formula as that in section 30(3)(b), except that the requisite period is a minimum of six months rather that whole year), the overall relationship of the taxpayer and the parent would have to be examined. The dynamic forces of human relationship are such that it is often difficult to give an answer to the question, 'how close are they?'; but under the holistic approach that is a highly relevant question that has to be answered before one can form a view as to whether the parent 'lives together' with the taxpayer. We cannot imagine that the legislature could have intended that such a complicated process would have be gone through every time a decision is made whether a taxpayer is eligible to claim ADPA;

(d) it was argued by the Appellant in this appeal that the object of section 30 was to encourage taxpayers to take care of their parents. We believe that that is an over-simplification. As pointed out above, subsection (4) makes it quite clear that only two ways of maintaining a parent are recognised for the purpose of section 30. The law does not recognise other ways of taking care of the parents for the purpose of DPA or ADPA. A taxpayer who spent much time

and effort in personally looking after the parent, but who does not satisfy one of the two conditions provided for in subsection (4), would not be eligible to claim DPA. Conversely, a taxpayer who contributed not less than the prescribed amount in money towards the maintenance of the parent, but otherwise took no personal care of them, would be entitled to claim DPA. It is not for us to comment on the justice of this, as it is a matter solely for the legislature. But it is clear to us that the legislative scheme is structured in the statute to achieve a balance between simplicity of application and the encouragement of maintenance of aged parents. Section 30 is not simply a section designed to foster filial piety at any cost. A tax allowance that is complicated to apply, or requires costly investigation before eligibility can be established, may not be of much use to deserving taxpayers;

(e) For the above reasons, we reject the holistic approach. We are of the view that the legislature intended to provide for a legislative scheme for the grant of DPA and ADPA that is simple and easy to apply and does not depend on the detailed examination of the vicissitudes of human relationships. In giving the relevant statutory provisions a fair, large and liberal construction, which we do, we would construe the provisions as to ensure the attainment of the object mentioned above, namely, that it is the object of the scheme to strike a balance between the simplicity of application and the encouragement of taxpayers to maintain their aged parents.

(f) Returning to the construction of section 30(3)(b) and the 'benefit-consideration' analysis, it is our view that the benefit contemplated by the legislature (as the benefit that would be obtained by the parent residing with the taxpayer) is the benefit that the parent obtain in being able to share the taxpayer' s residence, that is to use the taxpayer' s residence also as his (or her) own residence. This is a tangible benefit that can be easily valued and capable of being paid for by the giving of full valuable consideration. Normally the value of the benefit is represented by the market rental value of the premises, with an appropriate discount to allow for the fact that the parent would have to share the same with the taxpayer and his family. If the parent has fully paid for this benefit (by giving full valuable consideration for the same), the taxpayer is not eligible to claim ADPA. Otherwise, the taxpayer is eligible to claim ADPA provided that the other requirements provided in the subsection are satisfied.

(g) Hence the words 'resided … with' is to be construed as meaning that the parent shared the same residence or dwelling with the taxpayer. Although the word 'residence' is not used in the statute, on proper construction of the legislation, we are of the view that the words 'resided ...with' refers to the fact

that the parent and the taxpayer lived in the same dwelling; or in other words, shared a common place of residence.

(h) Further, it follows from the 'benefit-consideration' analysis referred to above that the common residence or dwelling shared by the parent and the taxpayer must be one for which the parent would have no prior right to reside or live in. If, for example, the residence or dwelling is a property which is owned by the parent so that the parent has the legal right to live or reside therein anyway, there can be no question of the parent having to pay any consideration in exercising his right to use the property as his residence. If the parent then agrees to allow the taxpayer to share the residence with him, there is no question of the taxpayer being eligible to claim ADPA on the basis that he shares a common residence with the parent. The reason is simple: as pointed out above, section 30(3)(b) contemplates that the parent, by residing with the taxpayer, has obtained a benefit for which he would otherwise be required to pay, or to give consideration. If the parent lives in his own property, but agrees that the taxpayer can live with him, he obtains no benefit for which he would be required to give any consideration. Accordingly, subsection (3)(b) does not apply to enable the taxpayer to claim ADPA;

(i) The same conclusion may be arrived at by analysing the matter from a slightly different angle. Section 30, as is made clear by subsections (1) and (4), is a section that provides for the grant of tax allowances to taxpayers who ***maintain*** their aged parents (in ways recognised or approved by the section). Subsection 3(b) is to be read together with the other parts of section 30, and must be construed in the context and the object of the legislative scheme provided under section 30. Construed in that light, subsection 3(b) clearly cannot be construed as providing for the grant of ADPA to taxpayers who were not maintaining the parent in any sense. In the scenario mentioned in (h) above, it can hardly be said that by sharing the residence of the parent at the parent's own property, the taxpayer is in any way maintaining the parent. In our view, the ADPA provided in section 30(3)(b) is only granted to a taxpayer who share his residence with their parent without requiring the parent to give full valuable consideration, not the other way round.

(j) Hence, the 'unreasonable situation' postulated by the Appellant (referred to in paragraph 13a above) would not arise. A person who lives in his parent's home and only pays the parent 'minimal maintenance money' is clearly not eligible for ADPA. Depending on how much 'maintenance money' he pays to the parent, he may or may not be eligible for DPA.

45. Before we leave the question of construction, we would mention one matter for the sake of completeness. In the course of submissions in this appeal, both Mr Chan and the Appellant have referred to the Budget Debate in the Legislative Council for the year of assessment 1983/84, and the second reading of the Inland Revenue (Amendment) (No 3) Bill 1983, which first introduced ADPA into our statute book. Mr Chan referred in particular to the speech of the Financial Secretary, while the Appellant relied on some comments made by Mr Wong Lam (a legislative councillor at the time) during the legislative debate. In our consideration of the construction of the relevant statutory provisions governing ADPA, we do not consider it necessary to take into account the comments made by either the Financial Secretary or Mr Wong Lam. As held by the House of Lords in the famous decision of Pepper v Hart [1992] 3 WLR 1032, reference to Parliamentary material as an aid to statutory construction is only permissible where, inter alia, the legislation concerned was ambiguous or obscure or led to absurdity. We do not think that the statutory provisions in the present case falls within that category. Although the word 'reside' itself may be ambiguous in the sense that it may be capable of bearing different meanings in different contexts; in the context of section 30, we do not find any ambiguity, obscurity or absurdity in the terms of the statute. When the section is read as a whole, it is clear what the language of the section means. It is also clear what object or purpose the statutory language is intended to achieve. Accordingly we do not see any need at all to refer to extrinsic materials, including in particular the legislative debate, for the purpose of construction. However, if, contrary to our view above, reference to the legislative debate is indeed necessary, we have considered the legislative debate referred to us but we do not consider that there is anything therein which would change our view on the statutory construction that we have set out above.

Applying the relevant statutory provisions to the present case

46. Applying the relevant statutory provisions, as we construe them, to the present case, the conclusion is clear.

47. We have no doubt that the Appellant is a man of filial piety. Over the years he took care of his mother well and even after his marriage, he continued to maintain a very close relationship with his mother. Indeed that was the reason why he chose the Property G when he decided to move out of the Property C after marriage. The Property G was chosen because it was within walking distance from the Property C. The Appellant wanted to live close to his mother, so that he could go to the Property C to have dinner after work, and conveniently return to the Property G to sleep. The Appellant continued to look after his mother after marriage and also financially supported her by giving her HK$8,000 a month and paying for the utility charges and other expenses of the Property C.

48. But the fact remains that the Appellant and Madam A never shared a common place of residence or dwelling. They therefore did not reside with each other and the Appellant is not eligible for ADPA.

49. As far as the Property C is concerned, that property was owned by Madam A, and Madam A would have the undoubted right to reside in that property without paying any consideration to anyone at all. This is not disputed by the Appellant. For the reasons set out in paragraph 44(h) and (i) above, there can be no question of the Appellant being eligible to claim ADPA, even if he ***were*** residing in that property in the relevant year of assessment. Accordingly, it is not necessary for us to make any finding on whether the Appellant resided in the Property C, for he would not be entitled to claim ADPA in any event. Suffice for us to say that if it were necessary for us to make a finding on this point, we would hold that on the evidence, the Appellant did not reside in the Property C even though he might have spent a lot of time with his mother in that property and had his dinners almost every day after work at that property. The fact remains that it was the Property G which was the home of the Appellant and his wife. They slept at the Property G and kept their personal belongings there. As pointed out above, the Appellant decided to move out the Property C after he married as that property was too small to house himself and his wife. In our view, since moving into the Property G, the Appellant had been using that property as his residence or dwelling and not the Property C. Like many people in Hong Kong, he would go back to Property C to have dinners, which would be prepared by Madam A. But that did not make the Property C his home, or his residence. Although sleeping on the premises is not conclusive of residence, the place of residence is normally the place where the person lives and sleeps. We have referred to the Board' s decision in D46/87 above where reference was made to Stroud' s Judicial Dictionary where Earl Jowitt stated that the word 'residence' denoted 'the idea of home', and 'the place where an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep.'. Words and Phrases (3rd edition) stated that 'the residence of a person is by implication that person' s home, where at least he or she has a sleeping apartment or shares one, although merely sleeping on the premises is not conclusive of residence'. For this reason, if it were necessary for us to make a finding, we would find that during the relevant year of assessment, the Appellant did not reside in the Property C. It was the Property G that was his home and his residence.

50. As far as the Property G is concerned, on the evidence Madam A never resided there or used the property as her residence or dwelling. She never slept there and rarely went there at all during weekdays. As pointed out above, we find that although Madam A had the keys and the resident card to enable her to access the property, in fact she spent little time at the Property G. By no stretch of imagination could it be said that she was using the Property G as her residence, and clearly she never intended to do so. Hence there is no question of her residing with the Appellant in the Property G in the year of assessment 2005/06.

51. Accordingly the claim for ADPA by the Appellant must fail.

Decision

52. For reasons set out above, we would dismiss the appeal.