

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D30/92

Salaries tax – quarters provided by employer – taxpayer required to occupy quarters under terms of employment – whether value of quarters should be subject to salaries tax and whether it was excessive.

Panel: William Turnbull (chairman), Erwin A Hardy and Richard Lee.

Date of hearing: 6 August 1992.

Date of decision: 15 October 1992.

The taxpayer was an employee of the Hong Kong Government who was provided with residential quarters under the terms of his employment and was required as part of his employment to live in the quarters to enable him to perform his duties. The taxpayer submitted that the provision of the quarters by his employer was not a benefit and should not be assessed to salaries tax. He said that in fact the provision of the quarters had been detrimental to his family.

Held:

The Board dismissed the appeal. Section 9 of the Inland Revenue Ordinance makes it clear that quarters provided by an employer must be assessed to salaries tax on the basis set out in the Ordinance.

Appeal dismissed.

Case referred to:

D46/87, IRBRD, vol 2, 447

May Chan Wai Mi for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

This is an appeal by a taxpayer against a salaries tax assessment for the year of assessment 1989/90 wherein the rental value of quarters provided to the Taxpayer by his employer was included. The Taxpayer challenged the inclusion of the value of the quarters

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on the ground that the same was excessive and unreasonable. The facts of the case are as follows:

1. The Taxpayer was employed by the Hong Kong Government ('the employer').
2. As part of the terms of employment of the Taxpayer he was required to live in a residential unit in the estate of which he was the caretaker. The residential unit was similar to those occupied by other residents in the estate and was provided to the Taxpayer under the terms of his employment as a quarter for which he was required to pay \$207.25 per month. Other residents in the estate were required to pay a monthly rent of \$450 for similar residential units and the rateable value for the unit for the year ended 31 March 1990 as assessed by the Rating and Valuation Department was \$19,560.
3. Under the terms of his employment the Taxpayer was allowed to live with his wife and family in the residential unit provided to him by his employer and he did in fact so reside.
4. The reason why the Taxpayer was required to live in a residential unit was because he was on call at all times.
5. The assessor raised on the Taxpayer a salaries tax assessment for the year of assessment 1989/90 which included the value of the quarters provided by the employer calculated in accordance with the provisions of the Inland Revenue Ordinance, that is 10% of the taxable emoluments of the Taxpayer less the amount which he was required to pay to the employer in respect thereof. The Taxpayer objected to the assessment on the grounds that full allowances had not been granted in respect of his children and that the rental value of his quarters exceeded the actual benefits he received. The assessor agreed to allow the full amount of the children allowances but rejected the claim regarding the quarters. The assessor proposed to amend the assessment as follows:

Income		\$72,088
Quarters Value: 10% x (\$72,088-\$1,000)-\$2,487		<u>4,621</u>
		\$76,709
Less: Outgoings & Expenses		<u>1,000</u>
		\$75,709
Less: Personal allowance	\$32,000	
Additional allowance	\$ 3,330	
\$7,000 – 10% (\$75,709-39,000)		
Child allowance	<u>\$22,000</u>	<u>\$57,330</u>
Net Chargeable Income		\$18,379
		=====
Tax Payable thereon		\$ 802
		=====

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6. The Taxpayer did not agree with the proposal made by the assessor and contended that he was required to occupy the quarter and that it should not be regarded as a benefit conferred on him.

7. By his determination dated 1 May 1992 the Deputy Commissioner agreed with the assessor and directed that the assessment should be reduced as set out in fact 5 above. By notice dated 26 May 1992 the Taxpayer appealed to this Board of Review.

At the hearing of the appeal the Taxpayer appeared in person and submitted that the provision of the quarter by his employer was not a benefit and should not be treated as a benefit for salaries tax purposes. He submitted that as a Hong Kong resident he was entitled to public housing and should have been allocated a public housing residential unit. Because he was employed by the Hong Kong Government in the Housing Department he was not offered a residential unit in a public housing estate and accordingly had failed to enjoy a housing benefit provided to other persons in Hong Kong by the Hong Kong Government. He submitted that he and his family were required to live in the residential unit and that this also prejudiced his family who likewise had lost their right to occupy a residential unit in a housing estate.

The Taxpayer went on to say that he was on call after normal office hours and very often was disturbed by other residents in the estate after midnight which created a nuisance to his family and caused them mental stress.

The Taxpayer went on to submit that colleagues of his in the civil service received more favourable tax treatment than he received. He then submitted that he was required to pay tax on the notional benefit which he received whereas other persons living in the housing estate paid \$450 (now \$458) per month for a similar residential unit. The Rating and Valuation Department valued all of these units at \$19,560 per annum which meant that all of the other residents in the estate were being given a significant benefit by the Hong Kong Government but were not required to pay tax on that benefit. In contrast he was required to pay tax on a much smaller alleged benefit.

The representative for the Commissioner reviewed the facts of the case and referred us to section 9 of the Inland Revenue Ordinance. She made reference to D46/87, IRBRD, vol 2, 447. She said that the Taxpayer was being correctly assessed to tax in accordance with the Inland Revenue Ordinance and that the tax affairs of any colleagues of the Taxpayer were not relevant.

It is quite clear that the Taxpayer in this case had a substantial feeling of grievance but it is difficult to understand the logic of what the Taxpayer submitted to us. It is well-known and established that the tax affairs of each individual are unique and must be decided upon the facts of each particular case.

Whether the Taxpayer considers the provision of quarters by his employer as a benefit or not is of no relevance. The fact is that he was provided with quarters in which he

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and his family lived. It is also immaterial whether it was a term of his employment that he was required to live in such quarters.

Section 9 of the Inland Revenue Ordinance clearly states that where quarters are provided to an employee tax calculated in accordance with the Ordinance must be paid in respect thereof.

In the present case the Taxpayer has actually received a significant benefit. His employer has provided him with quarters which have a rateable value of \$19,560 per annum and a monthly value of \$450 at a cost to the Taxpayer of only \$2,487 per annum. The Inland Revenue Ordinance states that the tax to be paid in such circumstances is an amount equal to 10% of the taxable emoluments of the Taxpayer less whatever he is required to pay to the employer.

The fact that the Taxpayer is required to be on call at night is totally irrelevant. Likewise the fact that the Taxpayer is not entitled to be allocated public housing and pay a monthly rent which would be much in excess of what he actually pays is likewise totally irrelevant. These are matters which the Taxpayer can take into account in deciding whether or not he wishes to be employed by the employer but have no relevance to his taxation affairs.

For the reasons given we find in favour of the Commissioner and dismiss this appeal.