

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D31/89

Salaries tax – commission income – date when commission accrues for salaries tax purposes – sections 11B and 11D(b)(11) of the Inland Revenue Ordinance.

Panel: Robert Wei QC (chairman), Ronald J McAulay and Lincoln Yung Chu Kuen.

Date of hearing: 5 May 1989.

Date of decision: 11 August 1989.

The taxpayer resigned his employment on 28 February 1987. Under the terms of his employment, he was entitled to commission income on contracts procured by him during his employment. The commission income was paid to him after he had resigned and after the end of the year of assessment in which he resigned. The taxpayer argued that the commission received by him during the subsequent year should not be assessed to tax in the year in which he resigned.

Held:

Pursuant to the provisions of section 11D(b)(2) of the Inland Revenue Ordinance, the commission income was deemed to have accrued to the taxpayer on the last day of his employment. Accordingly, the commission income had been correctly assessed and the appeal was dismissed.

Appeal dismissed.

K A Lancaster for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

This appeal concerns the additional salaries tax assessment raised on Mr X for the year of assessment 1986/87. Mr X claims that the income which was the subject of the additional assessment should have been charged to salaries tax for the year of assessment 1987/88.

During the year of assessment 1986/87 Mr X was employed as deputy manager of a company (the employer) until he resigned in February 1987. His remuneration

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consisted of a salary plus commission on contracts procured by him for the sale of machinery by manufacturers in Japan to purchasers in Hong Kong or China. During the period 1 April 1987 to 30 June 1987 Mr X was paid commission of \$14,475 in relation to contracts procured by him prior to his resignation. The issue of this appeal is whether the sum of \$14,475 falls to be included in Mr X's assessable income for the year of assessment 1986/87 or for the next year of assessment.

Mr X raised the question whether his employment with the employer ceased on 28 February 1987 or at a later date. His testimony is to this effect. After the signing of a contract, there was follow-up work to be done until performance of the contract was completed, such as asking the customer to open the letter of credit, checking the progress of production in Japan and the date of shipment, assisting in the transportation of the machinery upon arrival in Hong Kong and checking the machinery, and asking the Japanese manufacturers to remit the commission to the employer. Upon his resignation on 28 February 1987, one Mr Y took his place. As Mr Y was unfamiliar with the work, the employer requested Mr X to assist him in following up Mr X's unfinished contracts. Mr X did so by making telephone calls to Mr Y from time to time checking the progress of the contract, such as enquiring about the opening of the letter of credit and the remitting of the commission. Such contact was maintained until June when Mr X had received all his commission. There was no term in Mr X's employment contract requiring him to work after resignation. Mr X would be paid his commission at the end of the same month as the commission was remitted to Hong Kong. His entitlement to commission on the unfinished contracts did not depend on any work he did after his resignation.

On the evidence as stated above we find that Mr X ceased to be employed by the employer on 28 February 1987, the date of his resignation.

The next question is the date when the sum of \$14,475 accrued to Mr X. It is necessary to answer this question because of section 11B of the Inland Revenue Ordinance which provides that the assessable income of a person in any year of assessment shall be the aggregate amount of income accruing to him from all sources in that year of assessment.

Section 11D(b)(ii) provides that subject to proviso (i)(which has no application in the present case), any payment made by an employer to a person after that person has ceased or been deemed to cease to derive income which, if it had been made on the last day of the period during which he derived income, would have been included in that person's assessable income for the year of assessment in which he ceased or is deemed to cease to derive income from that employment, shall be deemed to have accrued to that person on the last day of that employment. Section 11B, so far as relevant, provides that a person shall be deemed to commence or cease, as the case may be, to derive income from a source whenever and as often as he commences or ceases to hold any office or employment of profit.

In the present case, the commission was paid to Mr X after 28 February 1987. If it had been paid on 28 February 1987, it would have been included in his assessable income for the year of assessment 1986/87. Under section 11D(b)(ii), the commission is

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deemed to have accrued to Mr X on 28 February 1987. Therefore, under section 11B, it falls to be included in Mr X's assessable income for the year of assessment 1986/87.

It follows that this appeal is dismissed and that the additional salaries tax assessment is hereby confirmed.