

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D6/88

Profits tax – company director – eight directorships – whether carrying on a profession and therefore subject to profits tax – s 14 of the Inland Revenue Ordinance.

Salaries tax – company director – eight directorships – whether holding an ‘office’ and therefore subject to salaries tax – s 8(1)(a) of the Inland Revenue Ordinance.

Salaries tax – shareholder owning company which carried on consultancy business – shareholder appointed director of other companies – whether director’s fees were earned by the shareholder or his company.

Panel: Charles A Ching QC (chairman), Ronald Arculli and Roland K C Chow.

Date of hearing: 19 October 1987.

Date of decision: 29 April 1988.

The taxpayer was a director of eight companies, some of which were listed. The Commissioner assessed him to salaries tax on his director’s fees.

The taxpayer appealed. He claimed that the fees were derived by a company which he owned, which carried on a consultancy business. Alternatively, he claimed that his activities were those of a professional so that he should be assessable to profits tax instead of salaries tax.

In addition, the taxpayer claimed deductions for rent paid for office space. [Editor’s note: deductions are more readily allowed in the case of a taxpayer carrying on a profession than in the case of an office-holder: hence the office-holder’s need to show that he was a professional.]

Held:

The director’s fees were subject to salaries tax in the hands of the taxpayer.

- (a) It was the taxpayer, and not his company, which had been appointed as a director, so the fees were earned by him.
- (b) A director holds an ‘office’ within the meaning of the salaries tax provisions, so that directors’ fees are subject to salaries tax.

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- (c) In the absence of evidence that the rent expense was ‘wholly, exclusively and necessarily incurred in the production of assessable income’, no deduction could be allowed.

Appeal dismissed.

D O’Dwyer for the Commissioner of Inland Revenue.
The taxpayer in person.

Decision:

In the year ended 31 March 1983, the Taxpayer was appointed a non-executive director of three limited companies. In the years since then, the appointments have grown so that, in the year ended 31 March 1986, he was a director of eight such companies. Some of the companies were publicly listed companies. One of the public companies paid him a bonus in two years in accordance with its Articles of Association. One of the private companies paid him a special consideration over two years for his services in relocating its factory and workers. The appointments to the directorships were on a personal basis having regard to the Taxpayer’s experience, expertise and wide business contacts. On occasion he would travel abroad on behalf of one or other of the companies, notably to the People’s Republic of China, when he would be reimbursed his expenses. Each of the companies paid him a director’s fee which was payable whether or not he did any work for the company. He was assessed to salaries tax on these fees for the years of assessment 1983/84 and 1984/85 and appealed against these assessments.

In the two years in question, the Taxpayer was the registered owner of 4,999 out of 5,000 issued shares in X Company which carried on the business of a business consultant. The Taxpayer argued that his appointments resulted from his connection with that company, of whose services the companies appointing him wanted to make use. That may well be so, but we agree with Mr O’Dwyer, who appeared for the Inland Revenue Department, that the appointment was an appointment of the Taxpayer himself and not of the company. The Taxpayer argued that his activities were those of a professional and that his fees ought therefore to have been assessable to profits tax rather than to salaries tax. Again, we agree with Mr O’Dwyer that the office of a director is an office within section 8 of the Inland Revenue Ordinance, and that the fees were therefore properly assessed to salaries tax.

The question then arose whether or not any deduction could be made from the assessable income under section 12 of the Ordinance. It was the Taxpayer’s case that he obviously needed an office from which to work and that X Company had provided indispensable support facilities for which he had reimbursed that company. However, in order to qualify for such a deduction it must be shown that the expenses were wholly, exclusively and necessarily incurred in the production of the assessable income. No such evidence was put before us.

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In these circumstances we dismiss the appeal.