

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D70/95**

**Salaries tax** – remuneration by way of commission – whether profits tax or salaries tax.

Panel: Ronny Wong Fook Hum QC (chairman), Douglas C Oxley and Tse Tak Yin.

Dates of hearing: 27 and 28 July and 1 August 1995.

Date of decision: 24 October 1995.

The taxpayer registered a business in her personal name. Remuneration was, *inter alia*, by way of commission. The issue was whether her income should be assessable to salaries tax or profits tax.

Held:

The applicable principles are summarised in Market Investigation v Minister of Social Security [1969] 2 QB 173. Whether on all of the evidence the taxpayer was carrying on a business is to be asked which the taxpayer failed to do. The onus is on the taxpayer to satisfy the Board the basis of her engagement. The taxpayer was not carrying a business on her own.

**Appeal dismissed.**

Cases referred to:

Market Investigations v Minister of Social Security [1969] 2 QB 173  
Lee Ting Sang v Chung Chi Kung [1990] 2 WLR 1173  
D54/90, IRBRD, vol 5, 414  
D22/92, IRBRD, vol 7, 246

Wong Kuen Fai for the Commissioner of Inland Revenue.  
Taxpayer in person.

**Decision:**

**I. BACKGROUND**

1. The first tax return submitted by the Taxpayer on 27 October 1988 was a salaries tax return for the year of assessment 1987/88. She was then about 18 years of age.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

She reported to the Revenue \$37,100 which she earned as assistant secretary and with a computer company.

2. By a written agreement [‘the Company A Agreement’] dated 16 February 1989 between Company A and the Taxpayer, Company A appointed the Taxpayer as ‘its trading agent for the procurement of clients and trading orders from 16 February 1989’. The remuneration of the Taxpayer shall ‘be by way of commission’. The Taxpayer further guaranteed ‘all the obligations and liabilities’ of her clients.

3. Company A however was not incorporated until 11 September 1990. Prior to that day, a company by the name of Company B carried on an ‘exchange’ business in 2 offices in the same district. By an employer’s return dated 20 May 1990, Company B reported to the Revenue a sum of \$7,123 paid to the Taxpayer by way of commission, bonus and other reward as ‘accounts executive’ for the period between 16 February 1989 to 31 March 1989.

4. Company B provided the following information pertaining to their relationship with the Taxpayer:

(a) Duties and responsibilities

‘[The Taxpayer] served as our agent in introducing our company to potential customers interested in foreign exchange, bullion and precious metal tradings. [The Taxpayer] had her existing client basis and developed her own clientele. She had a free working schedule her own.

[The Taxpayer] normally rendered her service both within and outside our office premises. She contacted her own clients and made appointments with them at whatever place convenient to her clients. She was offered to attend briefings at certain particular hours of the day in our office in order to update her information. With her professional knowledge in the field and all necessary information of our company in hand, [the Taxpayer] would sell our service to her clients and introduces them as our customers. After a customer had opened a trading account with our company by introduction of [the Taxpayer], [the Taxpayer] was required to pass updated trading information and the latest account status to the customer on behalf of our company as our agent.

In passing, we would like to mention that although [the Taxpayer] was not required to risk her capital, she needed to make commercial decisions as to who was a potential customer, worthwhile for her to spend her time in selling our company’s service. In addition, if loss suffered by her client cannot be recovered, [the Taxpayer] had to bear the loss.’

(b) Working for other organisations

## INLAND REVENUE BOARD OF REVIEW DECISIONS

‘Should she want to work for other organization, acknowledgement by the company was expected.’

(c) Working hours and work regulations

‘[the Taxpayer] had no fixed working hours and no entitlement to holidays as our other employees. [The Taxpayer] required to keep in contact with our company and leave her contact number especially when we needed to clarify matters in the accounts under her supervision. However, she was not required to report duty at all when the relevant trading/exchange market closed.’

(d) Equipment and assistants

The Taxpayer was not required to provide her own equipment or employ her own assistant in performing her duties.

(e) Expenses

The Taxpayer was not required to incur outgoings and expenses in the performance of her duties.

5. On 1 April 1989, the Taxpayer commenced working for 2 companies. The first company was Company C. She worked as its ‘account executive’. According to Company C’s employer return dated 20 May 1990, the Taxpayer was paid a total of \$20,335.1 between 1 April 1989 and 31 March 1990 made up of \$13,382.4 by way of salary and \$6,952.7 by way of commission. The other company was Company D. The Taxpayer worked as Company D’s agent and for the period between 1 April 1989 and 1 February 1990, she earned \$10,669.1 by way of commission.

6. Company C did not respond to the assessor’s enquiry on the Taxpayer’s terms of engagement with them.

7. By a letter dated 10 October 1989 [‘the Company E Letter’] sent by Company E to the Taxpayer, Company E confirmed the Taxpayer’s enrolment in their ‘account executive training course’. Company E further pointed out that upon completion of the training course, the Taxpayer ‘will be employed as an assistant marketing manager of our company’. The ‘starting salary will be \$4,000 per month and ... monthly allowance will be \$1,000. The Taxpayer’s leave entitlements were also spelt out. These terms were accepted by the Taxpayer who was then about 19 years of age.

8. There is another document also dated 10 October 1989 which is hotly challenged by the Revenue. This purports to be an agreement [‘the Company E Agreement’] between Company E and a company in the personal name of the Taxpayer [‘Company F’]. Under this Company E Agreement, Company F agreed to ‘provide services in administration, financial advisory and marketing of financial services’ to Company E.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

Company E was to pay to Company F 'a monthly fee to be mutually agreed from time to time'.

9. On 31 May 1990, Company E submitted an employer's return in respect of the remuneration of the Taxpayer for the period between 9 October 1989 to 31 March 1990. The Taxpayer earned a total of \$74,398 as Company E's 'senior marketing manager' comprising of \$38,549 by way of salary/wages, \$35,349 by way of commission and \$500 by way of bounty.

10. Company E provided the Revenue with the following particulars concerning the Taxpayer's appointment:

- (a) The Taxpayer's duties and responsibilities

The Taxpayer was required to recruit new staff, find new clients, supervise her subordinates and handle all trading activities of her clients. She was required to perform these duties personally.

- (b) Basis of remuneration

Generally, the Taxpayer's remuneration was divided into fixed salary, commission, overriding commission and incentive.

- (c) Working for other organisations

The Taxpayer was not allowed to work for other organisations.

- (d) Working hours and work regulations

The Taxpayer was required to attend work at regular hours and to observe regulations stipulated by her supervisors. The Taxpayer had to report all her activities to her supervisors.

- (e) Equipment and assistants

The Taxpayer was not required to provide her own equipment or employ her own assistant in performing her duties.

- (f) Expenses

The Taxpayer was not required to incur outgoings and expenses in the performance of her duties.

- (g) Annual leave

## INLAND REVENUE BOARD OF REVIEW DECISIONS

The Taxpayer was entitled to annual leave. However, approval from her supervisor was required if leave was to be taken.

(h) Termination of appointment

Appointment could be terminated because of bad behaviour and bad performance.

11. Between 1 December 1989 and 31 January 1990, the Taxpayer further worked as sales representative of a company called Company G. She earned a total of \$15,662.5 for this period made up as to \$14,000 by way of salary and \$1,662.5 by way of commission. This was on the basis of a letter of employment between Company G and the Taxpayer providing for salary at \$7,000 per month and working hours between 9 am to 6 pm between Monday to Friday and 9 am to noon for Saturday.

12. The Taxpayer worked in Company G for 2 months. According to information furnished by Company G:

- (a) the Taxpayer's schedule and assignments were arranged by sales directors.
- (b) the Taxpayer reported to the sales director.
- (c) the Taxpayer could claim normal transportation charges and some luncheon with prior approval.

13. The Taxpayer first registered a business in the name of Company F on 26 February 1991. The business of Company F as 'commission agent' is said to have commenced on 25 March 1989. Her residential address was given as the principal place of business of Company F.

14. On 30 May 1991, Company E submitted an employer's return in respect of the remuneration of the Taxpayer as 'senior marketing manager' for the period between 1 April 1990 to 31 March 1991. The Taxpayer is said to have earned a total of \$328,183 made up as to \$110,710 by way of salary/wages, \$130,873 by way of commission and \$86,600 by way of incentives.

15. By letter dated 22 May 1992, Company E informed the Revenue that the sum of \$328,183 reported in its employer's return of 30 May 1991 'should be subject to profit tax' on the basis that the Taxpayer 'is the sales representative of Company F in our company'. An amended employer's return was submitted to the Revenue. The entire sum of \$328,183 is said to have been paid by way of commission.

16. In response to repeated requests from the Revenue for the service contract between Company E and Company F, Company E sent to the Revenue a copy of the Company E Agreement by their letter dated 13 September 1993. The Revenue was further informed that all the 'service incomes were directly paid to [Company F].'

## INLAND REVENUE BOARD OF REVIEW DECISIONS

17. We have been shown copies of cheques drawn by Company E in favour of Company F. Those cheques were however all dated the second half of 1992 and the first quarter of 1993. A 'commission payout report (detail)' for the period between 1 January 1992 to 31 January 1992 was produced at the hearing. The account was in the personal name of the Taxpayer. The position that she occupied was that of senior marketing manager.

18. Company E submitted further employer's returns of remuneration and pensions for the years ended 31 March 1992 and 1993. Their returns for the 3 years between 1991 to 1993 can be summarised as follows:

<b>Year of Assessment</b>	Year ended 1991	Year ended 1992	Year ended 1993
<b>Name of employee</b>	The Taxpayer	The Taxpayer	Company F
<b>Capacity in which employed</b>	Senior Marketing Manager	Senior Marketing Manager	-
<b>Salary</b>	\$110,710	-	-
<b>Commission</b>	\$130,873	\$325,643	\$144,442
<b>Incentives</b>	\$86,600	-	-
	\$328,183	\$325,643	\$144,442

19. The Taxpayer agreed that her income from Company G is subject to salaries tax. The issue is whether her income from Company E, Company C and Company A should be assessable to salaries tax or profits tax. By his determination of 17 December 1994, the Commissioner concluded that her income from these 3 concerns for the years between 1989/90 to 1992/93 are chargeable to salaries tax. The Taxpayer appeals before us.

### **II. EVIDENCE CALLED BY THE TAXPAYER**

1. The Taxpayer called the following evidence:

- (a) The Taxpayer herself;
- (b) Mr U;
- (c) Mr V;
- (d) Mr W.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### 2. Evidence of the Taxpayer:

- (a) When she first joined Company A in February 1989, she was given the title of 'accounts manager'. Her engagement by Company A was for a few months. There was no formal termination. She simply did not bring any business back to that company. After negotiations the Company A Agreement was received for her signature. It was sometime later that she approached the company for a copy of the Company A Agreement. 'So there is a possibility that the company just had this document dated then, and also some confusion had occurred as far as the name of the company is concerned.'
- (b) She cannot recall when she was first appointed by Company C. There was no written agreement. She was given the title 'assistant marketing manageress'. It was agreed that she be paid an allowance of \$5,000 plus commission on condition that she had to bring in business to the company. The reference to 'salary' in Company C's employer's return for the year ended 31 March 1990 should properly be referred to 'allowance'. She worked there for just a few months because the terms 'were not so good to me'.
- (c) She discussed with Mr W, marketing manager of Company E with the view of joining that company. She did not attend the account executive training course as referred to in the Company E Letter as no such training course was in existence at all.
- (d) After signing the Company E Letter she failed to bring any business into Company E in October 1989. She then realised there were other modes of doing business with Company E. She entered into a new agreement with Mr X, sales director of Company E. The oral agreement entered 'was a service contract agreement' superseding the Company E Letter. Later 'when it became necessary to sign formal written agreement then [the Company E Agreement] was given to me'. She can only remember that this took place subsequent to the verbal agreement and before she raised her objection to salary tax assessment in May 1992. However she cannot remember the year that this took place. A director of Company E signed on behalf of that company. His signature was witnessed by Mr V.
- (e) Initially the Taxpayer accepted in her evidence that she did not provide any administration services or marketing or financial services to Company E as envisaged by the Company E Agreement. There was also no 'qualified and experienced employee' in Company F as envisaged by clause c of that Agreement. The principal work performed under the Company E Agreement was 'just to introduce clients to [Company E]'. Pursuant to this Agreement, she was given the title 'marketing manageress'. She modified this piece of evidence in her re-examination contending that 'the process of recruiting clients for the company and also entering into agreements with the clients'

## INLAND REVENUE BOARD OF REVIEW DECISIONS

could be regarded as 'administration'. The intention under clause c was for her to promote Company F's sale of business.

- (f) She was paid a monthly allowance of \$7,000 by Company E. This was increased a few months after October 1989 to \$9,000 and further revised to \$10,000 per month. If the business turnover 'was insufficient', her monthly allowance would be reduced. She was also entitled to commission, overriding commission and bounties. Commission was not payable until her clients liquidate their open positions. She was paid at the rate of \$120 up to \$200 per contract. She received overriding commission at the rate of \$30 to \$50 per contract in respect of business generated by subordinates that she recruited. She recruited these subordinates or sub-agents 'for the company as its agent'. These subordinates had to sign employment letter with Company E. Her recruits would work with her in the same team. If her team managed to bring in business up to a particular limit, Company E would pay her 'bounty'.
- (g) She had to visit her clients in their offices and entertain clients in order to procure business. She had to shoulder the entertainment expenses.
- (h) She also purchased equipments such as pager, portable telephone set and data information machines in helping her clients in the trading.
- (i) At that juncture she had name cards which showed her name and the name of Company E. She would call on her clients using her own name. She would not introduce herself as Miss F trading in the name of Company F. She would only enquire whether her client was interested in foreign currency trading. If so, she would introduce that client to Company E and thereafter handle the affairs of that client.
- (j) She was not entitled to any holiday or medical allowance and she was not given any share in Company E's provident fund.
- (k) When she commenced her business of Company F, she did not keep any ledgers or journals. She only kept receipts or bills and the balance sheet.
- (l) She does not know how Company E worked out the figures as set out in Company E's return dated 31 May 1990. She is however sure that those figures are inconsistent with the Company E Letter. The reference in this return to \$110,710 being paid by way of 'salary/wages' was a mistake. The sum should properly be described as 'allowance'. She also challenged the reference in that return to 'senior marketing manager' as the capacity in which she was employed.
- (m) She lodged her objection to the 1991 salaries tax assessment on 22 May 1992. An amended return of Company E was filed on the same day to rectify these mistakes.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

- (n) She lodged her business registration in the name of Company F on 26 February 1991 when she 'came to know that as an agent in the insurance industry and in foreign currency trading [she] could run [her] business in the name of the company or firm run by [her].' The Government had also lowered the age limit for such registration.
  - (o) She left Hong Kong for studies in Canada in mid-1992. Company E continued to pay her commission in respect of liquidation by her clients of their positions opened prior to her departure.
3. Evidence of Mr U
- (a) He works as a stage hand fixing stage lights and sound effects.
  - (b) He first started working for the taxpayer at the beginning of 1992. There was no written contract.
  - (c) He only introduced 1 person to the Taxpayer for business with Company E. He was paid \$50 per contract. He did not declare that in his return to the Revenue.
  - (d) During the year 1992/93 he received from Company F a total of \$9,850. He had not signed any acknowledgement or receipt in favour of Company F in respect of such payment.
4. Evidence of Mr V:
- (a) He is the accountant of Company E.
  - (b) Initially the Taxpayer joined Company E as an employee. Sometime later through negotiation the Taxpayer 'was working for our company by rendering her services in the capacity as a consultant.' He cannot recall when this took place with the Taxpayer. He also cannot recall when the first saw the Company E Agreement.
  - (c) His attention was drawn to a computer print-out of Company E bearing the title 'A/E income tax report' for the period between April 1991 to March 1992. That print-out was in respect of the Taxpayer as the 'A/E' or account executive in question. The print out listed various columns including a column for 'salary'. The word 'salary' was amended by hand by Mr V to 'fixed commission'. The Taxpayer received 'fixed commission' ranging between \$2,000 to \$11,000 for the period in question.
  - (d) Mr V confirmed that according to an 'organisation chart of sales & marketing department' of Company E, for the period up to 31 January 1993, account

## INLAND REVENUE BOARD OF REVIEW DECISIONS

executive, marketing manager and senior marketing manager were all members 'falling into this organisation structure'.

- (e) Although he stated in his letter to the Revenue dated 26 May 1993 that all the cheques were 'directly payable to [Company F]', there was a period 'at the earlier stage I really was not sure if the company was in existence' so there would be a period of time that payments were made directly to the Taxpayer.
  - (f) There was no reimbursement of entertainment or travelling expenses to the Taxpayer. The Taxpayer was also not entitled to any employment benefit.
5. Evidence of Mr W:
- (a) He made clear to the Taxpayer when she signed the Company E letter that if there was no business from her she would not be entitled to the sums of \$4,000 'starting salary' or \$1,000 'monthly allowance' referred to in that letter.
  - (b) After the first month, the Taxpayer did not bring any business to Company E and she negotiated with the director of Company E for a different agreement. Mr W was not clear as to the terms reached.
  - (c) He confirmed that the Taxpayer was not entitled to long vacation leave and had to put up margins in the event of her clients defaulting.
  - (d) She was not required to attend the office of Company E and to sign her attendance.

### III. THE APPLICABLE PRINCIPLES

1. Cooke J's judgment in Market Investigations v Minister of Social Security [1969] 2 QB 173 summarised the applicable principles thus:

*'The observations of Lord Wright, of Denning LJ and of the judges of the Supreme Court suggest that the fundamental test to be applied is this: "Is the person who has engaged himself to perform these services performing them as a person in business on his own account?" If the answer to that question is "yes", then the contract is a contract for services. If the answer is "no", then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of the considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors which may be of importance are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of*

## INLAND REVENUE BOARD OF REVIEW DECISIONS

*responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task.'*

2. These words of Cooke J were approved by the Privy Council in Lee Ting Sang v Chung Chi Kung [1990] 2 WLR 1173. Lord Griffiths concluded at page 1177H on the facts in that case that:

*'Taking all the foregoing considerations into account the picture emerges of a skilled artisan earning his living by working for more than one employer as an employee and not as a small businessman venturing into business on his own account as an independent contractor with all its attendant risks.'*

3. The Taxpayer laid considerable emphasis on D54/90. It is a decision of this Board delivered on 4 January 1991. The Taxpayer in that case entered into an agreement with a company under which he was described as an account manager and subsequently designated as assistant marketing manager. His duties consisted of soliciting orders for investing and trading in bullion and foreign currencies. He was not required to attend the office regularly. If a client's margin was exceeded, he would have to bear the loss. Clause 18 of the agreement that he made with the company declared that the agreement 'will under no circumstances be construed as creating between the parties the relationship of employer and employee'. The Board of Review considered the factors relating to control; the labelling factors and the economic factors and concluded that the factors in favour of a contract for services outweighed those in favour of a contract of service. The Board was of the view that any doubt was removed by clause 18 of the agreement in that case.

4. The Revenue drew our attention to D22/92, a decision of this Board dated 25 August 1992. D54/90 was not cited in D22/92. The Taxpayer there was employed by Company Z which carried on foreign exchange business. He signed an agreement with Company Z in terms similar to the Company E Letter. The Taxpayer also registered himself under the business registration regulations as carrying on a business of 'investment of currencies and bullion'. The Taxpayer there gave evidence that he was not required to attend Company Z; Company Z did not provide him with any pager or calculator and that it was necessary for him to spend substantial sums on entertainment and rebates. The learned chairman pointed out that:

- (a) the question of whether or not the Taxpayer was carrying on business or whether he was an employee *'is an interesting question and it appears to us that it would be beneficial if we review the authorities and make a number of statements with regard to the principles to be applied.'*
- (b) *'It is dangerous to try either to categorise cases or to develop tests of universal application. To do so tends to lead to distorting the facts to make them fit the category or the test. If there is any comprehensive test then it must be to ask oneself what would an ordinary person in Queen's Road Central decide if confronted with all of the facts. Perhaps the approach to take in most cases is*

## INLAND REVENUE BOARD OF REVIEW DECISIONS

*to ask oneself whether, on all of the evidence, a person is carrying on a business rather than whether or not a person is an employee. Whether a person is an employee or not may in some cases be equivocal whereas the answer to the question whether or not a person has embarked upon a business with all of the trappings and attributes of a business may be much clearer'*

- (c) *'... in cases of this nature it may sometimes help to ask the question whether the Taxpayer was carrying on his own business rather than whether he was an employee.'*

The learned chairman concluded in relation to the facts of that case that:

*'One would expect a person carrying on business on their own account to keep proper accounts, separate bank accounts etc. The Taxpayer appears to have done none of this. His "business accounts" comprise not more than a list of alleged expenses which raises more questions than it answers. For example he claimed to have paid rent, electricity and sanitation expenses but when asked by the assessor for particulars he revealed that this was nothing more than a fiction. In fact he paid no rent but used premises which comprised his home. The so-called electricity and sanitation expenses are nothing more than part of his domestic expenses. He apparently owned a Mercedes motor car and no doubt he had expenses relating to the same but what is very much in doubt is whether these expenses related to the so-called business or whether they were simply once again his own personal expenses. The more one looks at the conduct and the attitude of the Taxpayer the more one doubts the genuineness of what he claims. On the evidence before us there is little to show that the Taxpayer was an independent contractor who had ventured into business on his own account with all its attendant risks. He has all of the appearances of an employee who, for tax reasons, has sought to try to show himself as carrying on a business.'*

The Board of Review concluded that the terms of the engagement letter in that case established an employee/employer relationship and 'In reality [the Taxpayer] did little more than to take out a business registration which in itself is totally meaningless.'

### **IV. OUR FINDINGS**

1. We find the statements of principles in D22/92 most helpful as to the proper approach to be adopted in this case. We ask ourselves whether, on all of the evidence, the Taxpayer was carrying on a business.
2. In relation to Company A, the Company A Agreement was entered into on 16 February 1989 when the Taxpayer was slightly over 18 years of age. This was before the date when (according to her subsequent business registration of 26 February 1991) she commenced her commission agent business on 25 March 1989 in the name of Company F.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

The earnings of \$7,123 was for the period between 16 February 1989 and 31 March 1989. We are not satisfied on these facts that such earnings derived from a business that this young lady had deliberately embarked upon.

3. In relation to Company C, there is a distinct lack of information pertaining to the precise terms whereby the Taxpayer was engaged by Company C. The onus is on the Taxpayer to satisfy us the basis of her engagement. We have not been furnished with any explanation as to how the sum of \$13,382.4 by way of 'salary/wages' was arrived at.

4. The main dispute relates to Company E. We reject the Company E Agreement. We have no doubt that this is a self-serving document produced for the purpose of the dispute with the Revenue. It had nothing to do with what actually transpired between Company E and the Taxpayer. The Taxpayer appears to us to be a lady of high intelligence and ability. Her unfortunate reliance on this document tainted her credibility.

5. We also reject the Taxpayer's evidence that a new oral service agreement was entered into between Company E and her a month after the Company E Letter. On her own admissions, she failed to generate any business within the month. There was no evidence indicating that Company F was then on foot with a track record that could prompt Company E into accepting a new arrangement. The evidence of Mr V and Mr W shed little light. We find that the Company E Letter constituted the basis of the Taxpayer's engagement. No doubt her earnings and title were subsequently revised but there is no evidence to suggest that such revisions were the results of fundamental departure from the relationship established by the Company E Letter. The terms of that letter are indicative of an employer/employee relationship.

6. It is difficult to discern from the evidence presented any material in support of 'the trappings and attributes of a business':

- (a) The Taxpayer kept no book of account in the name of Company F. There is also no evidence of any separate bank account in the name of Company F. The first cheque in evidence drawn by Company E in favour of Company F was dated 7 July 1992. That was after she took objection as to her proper basis of assessment.
- (b) As in D22/92, the receipts and vouchers produced are consistent with personal expenditure incurred in the Taxpayer's daily life. The balance sheet comprised of various items of expenditure which raises more questions than it answers...
- (c) Company F was no more than the firm name of the Taxpayer. It employed no staff. Some of the sub-agents that the Taxpayer recruited signed on with Company E. Mr U was merely one such sub-agent with a one off client. We have not seen any document issued by Company F over the period in question. The name card that the Taxpayer had at the material time displayed the name of Company E as opposed to Company F.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

- (d) There is no evidence as to the amount of capital that the Taxpayer injected into Company F. If it was seriously contemplated that the business of Company F would shoulder potential defaults of clients that it introduced to Company E, one would expect some indication as to its ability to face such consequence.
- (e) The employer's returns of Company C (for the period between 1 April 1989 to 31 March 1990), of Company G (for the period between 1 December 1989 to 31 January 1990) and initially those of Company E indicate that they employed the Taxpayer as opposed to Company F. Little weight can therefore be given to the Taxpayer's assertion in the business registration that the commission agent business of Company F started on 25 March 1989.
- (f) Since the signing of the Company E Letter of 10 October 1989, apart from a brief period of between 1 December 1989 to 31 January 1990 when the Taxpayer worked for Company G, there is no evidence indicating that the Taxpayer had (either in her personal name or in the name of Company F) rendered her services to entities other than Company E. In relation to Company C, her evidence is that she worked there only for a few months from 1 April 1989. If she was indeed carrying on a business as commission agent, she had not given any explanation as to why she should confine her business to only 1 customer.

7. We have not lost sight of the strong emphasis which the Taxpayer laid on D54/90. We would point out that the Board D54/90 placed reliance on an express clause in the parties' relationship to resolve any doubt in finding a contract for services. There is no evidence indicating the existence of such a clause in this case. The evidence before us points towards the conclusion that the Taxpayer was very much a part of the organisation of Company E. She was not carrying on a business of her own. She worked as a member of Company E in accordance with a pay structure dictated by Company E to ensure maximum efforts on the part of the Taxpayer. As in D22/92, we take the view that this is a case of an employee who, for tax reasons, has sought to try to show herself as carrying on a business.

8. For these reasons, we would dismiss the Taxpayer's appeal and confirm the assessment.