Case No. D7/82

Board of Review:

L. J. D'Almada Remedios, *Chairman*; Stephen C. C. Cheung, R. S. Sheldon & William Turnbull, *Members.*

30 June 1982.

Salaries Tax—section 8(1)—employee working on assignment outside Hong Kong—whether source of salary relevant.

The appellant was the employee of a local company which in 1978 assigned him to work in Saudi Arabia, on a project of which the local company was appointed manager by a Japanese company. The assignment lasted for sixteen months and at the end of the period the appellant returned to Hong Kong and continued with his employment. The appellant was assessed for salaries tax on his income for the whole period. He appealed on the grounds that he had two separate and distinct contracts of employment with the same employer, one outside and one in Hong Kong and that for the period in which he worked outside Hong Kong his income was derived from a source outside Hong Kong.

Held:

(i) There was only one contract of employment.

(ii) The source from which a local company obtains the funds to pay its employee is irrelevant when determining whether the employee's income is derived from Hong Kong.

Appeal dismissed.

Wong Ho-sang for the Commissioner of Inland Revenue.
Appellant in person.

Reasons:

This is an appeal by the Appellant against a Salaries Tax Assessment for the year 1979/80.

The facts, briefly, are as follows: The Appellant was employed as an Electrical Engineer by a local company (hereinafter referred to as "his employer"). The nature of his employer's business is the provision of consultancy and project management services. In the summer of 1977, his employer was appointed Project Manager by a Corporation of Japan to oversee the project of an electricity transmission system for the City of Riyadh, Saudi Arabia. The Appellant was then assigned to the Riyadh site to carry out duties pertinent to his employer's

obligations with the Corporation. The assignment was initially for a period of 6 months from the 7th June 1978, but subsequently extended up to the 6th October 1979. Thereafter the Appellant returned to Hong Kong and continued with his employment.

The Appellant was assessed for tax purposes on his total income from employment.

It is the Appellant's case that he is not chargeable to tax for the period from the 1st April 1979 to the 6th October 1979 (when he was throughout continuously working in Saudi Arabia) for two reasons which, for convenience, we will deal with separately.

His first reason is that when he returned to Hong Kong he negotiated for renewed terms and conditions of employment such as a salary review and leave entitlement. He, therefore, invites us to infer the existence of two separate and distinct contracts with the same employer: one in connection with his work abroad—in which event it could be said that all his services were rendered outside the Colony—and the other with his work in Hong Kong. On the evidence we are unable to draw such inference. There was only one contract of employment. It was not terminated. It was not a contract solely related to services he had to render outside Hong Kong. His basic salary remained the same. Although he may have been remunerated differently on his return (which is not to be unexpected in the circumstances of this case), a salary adjustment, with or without a variation of other contract terms. unaccompanied by a cessation of employment, would not secure to the Appellant the tax exemption which he claims.

The second reason advanced by the Appellant was that during the period he was working in Saudi Arabia the income from services rendered was derived from a source outside Hong Kong because the project management fee to his employer was paid by the Corporation, a non-Hongkong company; the project was for a Saudi Arabian utility company and the money for the Corporation and subsequently for his employer came from a non-Hongkong source and furthermore the nature and location of his services were entirely for the project and had no relation to his employer's operation in Hong Kong.

The Commissioner of Inland Revenue, in denying the Appellant's claim on this ground, states his reasons, *inter alia*, as follows:—

> "The first question I must consider is the location or source of the Taxpayer's employment. Although he did perform duties in Saudi Arabia this fact alone cannot give to his employment a source outside Hong Kong. In determining the question of source the Board of Review has invariably looked to the 'totality of the facts' surrounding the employment with no one factor having an overriding influence on the question. Applying this test to the Taxpayer I am of the view that throughout the period of his employment with his employer the source of his employment was Hong Kong. In coming to this decision I have had particular regard to the facts that his contract of employment was concluded in Hong Kong, that Hong Kong is his home base, that the part of his duties outside Hong Kong were performed in direct relation to his employer's operations based in Hong Kong, that he held a position with a Hong Kong company and that his emoluments were paid in Hong Kong."

We agree with the observations of the Commissioner. How and in what manner and from what place a local company obtains funds with which to discharge emoluments payable to its staff is irrelevant in determining whether the employee's income is derived from the Colony. Whilst the location of a company may be relevant, the source from which it obtains the means to enable it to pay remuneration to its employees is not.

In the circumstances, as the Appellant is caught by section 8(1) of the Ordinance and as all his services in connection with his employment during the year of assessment were not rendered outside the Colony, the appeal is dismissed and the assessment confirmed.