INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D89/02

Salaries tax – whether salaries tax is chargeable on a sum paid as provident scheme contribution by an employer directly to the provider of an employee's personal pension account overseas – it is neither paid to the taxpayer as salary – nor at no time did the taxpayer have direct control of – sections 8(1), 9(1), 9(2A), 11B, 11D and 68(4) of the Inland Revenue Ordinance ('IRO').

Panel: Anna Chow Suk Han (chairman), Lester Kwok Chi Hang and Norman Ngai Wai Yiu.

Date of hearing: 9 October 2002.
Date of decision: 25 November 2002.

The taxpayer, a senior captain, appealed against salaries tax assessments for the years of assessment 1995/96 and 1996/97 raised on him.

The taxpayer claimed that certain sums paid as provident scheme contributions by his employer directly to the provider of his personal pension account in the United Kingdom ('the Relevant Sums') did not form part of his employment income and should not be assessed to salaries tax.

The issue on appeal was whether the Relevant Sums, which were not paid to the taxpayer as salary and at no time did he have direct control of, should be chargeable to salaries tax.

The facts appear sufficiently in the following judgment.

Held:

1. The relevant statutory provisions were contained in sections 8(1), 9(1), 9(2A), 11B and 11D of the IRO.

2. According to section 68(4) of the IRO, the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.

3. The Board did not harbour any doubts as to the genuineness of the taxpayer's expressed intention that he earmarked Company C's contributions comprising the Relevant Sums for his retirement and he had no intention to use them for his benefits

as and when they were paid monthly by Company C to his provident fund provider. Regrettably, however, the law was not on his side.

4. A person is chargeable to salaries tax for each year of assessment in respect of income from his office or employment arising in or derived from Hong Kong which has accrued to and has been received or is deemed to have been received by him during the year of assessment.

5. Section 9(1) of the IRO provides the definition of 'income from office or employment'.

6. Section 11D(b) provides that income accrues to a person when he becomes entitled to claim payment thereof.

7. Section 11D(a) provides that income which has accrued to a person is not assessable to tax until such time as he shall have received such income provided that if such income has either been made available to him or has been dealt with on his behalf or according to his directions, such income shall be deemed to have been received by him.

8. In the case of David Hardy Glynn v CIR 3 HKTC 245, the Privy Council held that the school fees paid by an employer in respect of an employee's child constituted income from the employee's employment: per Lord Templeman at pages 250 to 251 therein.

9. By reason of the ratio of Glynn case, the Board could not accept the taxpayer's contention that the Relevant Sums were not income from his employment.

10. In the present case, the Relevant Sums were paid by Company C to the taxpayer's provident fund provider by reason of the taxpayer's contract of employment with Company C whereby he was entitled to receive a provident fund scheme contribution equal to 15.5% of his salary which was to be paid with his salary or by such other arrangements as he might request.

11. The taxpayer chose not to have the contributions paid with his salary, instead he directed Company C to pay them directly to the provident fund provider of his choice.

12. Most payments or benefits arising from a person's office or employment clearly fall within one of the obvious categories stated in section 9(1)(a), such as wages, salary, leave pay, fee, commission or bonus. However, if a payment or benefit did not fall within one of those obvious categories, it would normally fall to be

determined whether it may be regarded as a 'perquisite' which expression has been interpreted to have a wide meaning.

13. As held in the Glynn case, a perquisite was said to include 'money paid to the taxpayer and money expended in discharge of a debt of the taxpayer and that there was no difference between a debt of the taxpayer discharged by an employer pursuant to the contract of service and money paid for the benefit of an employee by his employer pursuant to the contract of service'.

14. In the present case, since the provident fund provider to which the Relevant Sums were paid was the taxpayer's choice and the payment of the Relevant Sums was made by Company C in discharge of the taxpayer's liability towards his provident fund provider and also for the benefit of the taxpayer, the Relevant Sums were thus income from his employment falling within the category of 'perquisite' and as such were assessable to tax.

15. The Board noted the taxpayer's argument that the Relevant Sums did not accrue to him during the years of assessment because he did not have control and could not enjoy the benefit of the Relevant Sums until retirement.

16. However, the Board disagreed with the taxpayer that the Relevant Sums did not accrue to him during the years of assessment. Under his contract of employment, he was entitled to receive a provident fund scheme contribution which was to be paid with his salary or by such other arrangements as he might request. In other words, he was entitled to and expected payment of the contribution by Company C each month. Had Company C not paid the Relevant Sums to the provident fund provider as directed by the taxpayer when they fell due, the taxpayer would forthwith have a right of action against Company C to recover the same and not until the time of his retirement.

17. Section 11D(b) provides that income accrues to a person when he becomes entitled to claim payment thereof. Thus, the Relevant Sums had accrued to the taxpayer in the years of assessment in question. Since the Relevant Sums had been dealt with by Company C on his behalf and according to his directions, the Relevant Sums were also deemed to have been received by him in the relevant years of assessment when they were paid by Company C to his provident fund provider. Hence the Relevant Sums constitute the taxpayer's taxable income in the years of assessment in question.

18. As to the taxpayer's contention that the Relevant Sums were provident fund contributions paid to a recognized occupational retirement scheme and should not be taxable, it is clear that, for salaries tax purposes, there is no provision in the IRO

which exempts contributions paid to a recognized occupational retirement scheme from tax. Only because of the provision in section 9(1)(a)(iv), an employer's contributions for the benefit of its employees which are made in discharge of its own obligation towards the recognized provident fund provider which it has set up or with which it has made arrangements for contributions are, for salaries tax purposes, not treated as 'income from employment'.

19. The Scheme was a scheme set up by Company C and there was a privity of contract for payment of contributions between Company C and the Scheme and the contributions made by Company C to the Scheme for the benefits of its employees were in discharge of its own legal obligations towards the Scheme and not those of the taxpayer.

20. It was on the basis of the provision of section 9(1)(a)(iv) that Company C's contributions to the Scheme as from January 2000 were exempt from tax.

21. On the other hand, the Relevant Sums were contributions made by Company C to the taxpayer's provident fund provider. They were contributions made by Company C on behalf of the taxpayer and as directed by him.

22. Although the Relevant Sums never reached the taxpayer's pocket, they were contributions made by Company C in discharge of the taxpayer's legal obligations towards the provident fund provider of his choice. The privity of contract for payment of those contributions was between the taxpayer and the provident fund provider of his choice and not Company C. That being the case, the Relevant Sums did not come within the exclusion provided by section 9(1)(a)(iv) since they were not paid in discharge of Company C's liability but that of the taxpayer and consequently did not qualify for exemption.

23. It followed that it was not illogical, as contended by the taxpayer, that one portion of Company C's contribution (that paid between 1 April 1994 and 31 December 1999) was subject to tax while the other portion (that paid from January 2000 onward) was not.

24. The Board also agreed with the Revenue that the fact that the taxpayer later on took the option to repay the total amount of cash received in lieu of Company C's provident fund scheme contribution since the taxpayer joined Company C did not alter the nature of the Relevant Sums.

25. Since the Relevant Sums were the taxpayer's income from his employment accrued to and were deemed to have been received by him during the years of assessment in question, they were thus income taxable in the years of assessment in

question. What happened to the taxpayer or to the Relevant Sums in subsequent years cannot affect the chargeability of the Relevant Sums to salaries tax in the relevant years of assessment.

26. For the aforesaid reasons, the taxpayer's appeal must fail and the Board confirmed the assessments raised on the taxpayer.

Appeal dismissed.

Case referred to:

David Hardy Glynn v CIR 3 HKTC 245

Lai Wing Man for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

1. Mr A ('the Taxpayer') has objected to salaries tax assessments for the years of assessment 1995/96 and 1996/97 raised on him. The Taxpayer claims that certain sums paid as provident scheme contributions by his employer directly to the provider of his personal pension account in the United Kingdom did not form part of this employment income and should not be assessed to salaries tax.

2. By a letter of 28 July 2002 which was received by the Board on 3 August 2002, the Taxpayer served his notice of appeal against the determination of the Commissioner of Inland Revenue of 28 June 2002 ('the Determination'). Notwithstanding that the notice of appeal was not served within the time stipulated under section 66(1)(a) of the IRO, having considered the explanation given by the Taxpayer, the assessor did not contest the validity of the Taxpayer's notice of appeal. Being also satisfied with the explanation given by the Taxpayer, the Board did not disturb the validity of the notice of appeal given and accordingly proceeded to hear this appeal.

3. The facts upon which the Determination was arrived at were not disputed by the Taxpayer. They are taken as if they were contained herein.

Background

4. The Taxpayer was employed as a pilot by Company B on 28 December 1974.

5. On 1 April 1994, the Taxpayer was transferred from Company B to Company C, a wholly owned subsidiary of Company B, as a senior captain to be based in the United Kingdom.

6. The terms and conditions of the Taxpayer's employment with Company C were initially laid down in a document called 'Conditions of Service Pilots & Flight Engineers (Based & Expatriate Officers)' issued in April 1993. Some of the terms and conditions were subsequently revised and were referred to in a document called '[Company C] Aircrew Conditions of Service (1994)' issued in July 1994 which provided, inter alia, the following:

> ' F. PROVIDENT FUND
>
> Officers will receive a Provident Scheme contribution of 15½% of Salary (less all mandatory payments paid by the Company in respect of that Officer) paid with salary or by such other arrangements as the Officer may request subject to mutual agreement. The salary upon which contributions will be calculated will include the annual bonus (if any).'

7. In June 1994 the Taxpayer gave instruction to Company C to pay with effect from 1 June 1994 his 15.5% provident scheme contribution (after deducting bank charges) to a provident fund company chosen by him and known as Company D in the United Kingdom.

8. By a notice dated 28 October 1999, Company C offered to all its crew members including the Taxpayer to join a scheme called '[Company C] Basings Benefit Scheme' ('the Scheme') on an entirely voluntary basis. The Scheme is a scheme registered under the Occupational Retirement Schemes Ordinance. At the time of the offer, the Taxpayer was given three different choices of joining the Scheme and on 29 November 1999, Company C made available the following further option to its crew including the Taxpayer in relation to their joining of the Scheme:

> ' Additionally now employees of [Company C] … may elect to join the new [Scheme] … and repay the total cash received, since joining [Company C] … in lieu of a provident fund. This will buy the Officer the number of vesting years in [the Scheme] equal to their length of service with [Company C] …'

9. In January 2000, by a buyback service notification, the Taxpayer elected to repay the total amount of cash received in lieu of Company C's provident scheme contributions since he joined Company C. The repayment was made on the understanding that his full length of service with Company C would be counted for the purpose of calculating his benefits from the Scheme upon his termination of services with Company C.

10. In the employer's returns for the years of assessment 1995/96 and 1996/97, Company C informed the Revenue that among other payments, GBP28,801.74 and

GBP29,472.07 ('the Relevant Sums') were respectively paid to the Taxpayer in the years of assessment 1995/96 and 1996/97. The Relevant Sums represented the 15.5% provident scheme contribution referred to in '[Company C] Aircrew Conditions of Service (1994)' above mentioned.

11. The assessor was of the view that the Relevant Sums formed part of the Taxpayer's assessable income and raised on the Taxpayer salaries tax assessments based on the income including the Relevant Sums reported by Company C in the employer's returns for the years of assessment 1995/96 and 1996/97. The Taxpayer objected to the salaries tax assessments raised on him for both years of assessment which were duly confirmed in the Determination.

12. The issue now under appeal is whether the Relevant Sums should be chargeable to salaries tax.

The relevant statutory provisions

13. Section 8(1) of the IRO reads as:

> *'Salaries tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong from the following sources –*
>
> *(a) any office or employment of profit; and*
>
> *(b) …'*

14. Section 9(1) of the IRO reads as:

> *'Income from any office or employment includes –*
>
> *(a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance, whether derived from the employer or others, except –*
>
> *(i) …*
>
> *(ii) …*
>
> *(iii) …*
>
> *(iv) subject to subsection (2A), any amount paid by the employer to or for the credit of a person other than the employee in discharge of a*

sole and primary liability of the employer to that other person, not being a liability for which any person was surety;'

15. Section 9(2A) of the IRO reads as:

'Subsection (1)(a)(iv) shall not operate to exclude –

(a) any benefit capable of being converted into money by the recipient; or

(b) …,

from income from any office or employment.'

16. Section 11B of the IRO 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.'

17. Section 11D of the IRO further provides that:

'For the purpose of section 11B –

(a) income which has accrued to a person during the basis period for a year of assessment but which has not been received by him in such basis period shall not be included in his assessable income for that year of assessment until such time as he shall have received such income, when notwithstanding anything contained in this Ordinance, an additional assessment shall be raised in respect of such income:

Provided that for the purposes of this paragraph income which has either been made available to the person to whom it has accrued or has been dealt with on his behalf or according to his directions shall be deemed to have been received by such person;

(b) income accrues to a person when he becomes entitled to claim payment thereof:

Provided that –

(i) …

(ii) *…'*

18. Section 68(4) of the IRO stipulates that:

> *'The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.'*

The Taxpayer's case

19. The Taxpayer's grounds of appeal were succinctly summarized by the Revenue in its written submission as follows.

20. The Relevant Sums were not paid to the Taxpayer as salary and at no time did he have direct control of the Relevant Sums.

21 It was illogical that one portion of Company C's contribution (paid between 1 April 1994 and 31 December 1999, including the Relevant Sums) was subject to tax whilst another portion of Company C's contribution (paid from January 2000) into the Scheme was tax exempt.

22. At the relevant times, the Relevant Sums were paid direct to the provident fund provider. Whilst it was true the benefit of those contributions would accrue to him upon his retirement, as was normal with any pension arrangement, benefit did not directly accrue to him in the years of assessment under appeal. The payments were not a gratuity, nor even a 'payment in lieu of a retirement gratuity', and therefore did not fall within the definition of income under section 9(1)(a).

23. At the time of payment of the Relevant Sums, they were not made into a recognized occupational retirement scheme. However, there was no time limit laid down in the IRO as to when contributions should be paid into a recognized occupational retirement scheme. Company contributions paid into a recognized occupational retirement scheme did not fall within the definition of taxable income.

The Revenue's submission

24. The Revenue's written submission is summarized as below.

25. Were the Relevant Sums income from employment? In determining whether the Relevant Sums were income from the Taxpayer's employment, one had to ascertain the real nature of the payments and the circumstances under which they were made. The labels given to them were by no means conclusive. Under section 9(1)(a) of the IRO, income from employment was by no means restricted to 'salary' only. It included, among other things, perquisite. As held in David Hardy Glynn v CIR 3 HKTC 245, a perquisite included money paid for the benefit of an employee

by his employer pursuant to the contract of service. An identifiable sum of money required to be expended by an employer pursuant to a contract of service for the benefit of the employee was a monetary perquisite taxable as such. The Relevant Sums paid by Company C for the Taxpayer's sole benefit which were identifiable sums were 'perquisite' for the purposes of section 9(1)(a) and should be taxable unless specific exemption was applicable. Section 9(1)(a)(iv), however, was not applicable to the Relevant Sums. The Relevant Sums were paid to the pension fund provider of the Taxpayer's choice, which was not set up by Company C. The Relevant Sums were not made in discharge of Company C's obligation towards the pension fund provider but were in discharge of Company C's obligation to the Taxpayer pursuant to the contract of service.

26. Had the Relevant Sums accrued to the Taxpayer in the years of assessment in question? Section 11D(b) provided that income accrued to a person when he became entitled to claim payment thereof. The Taxpayer was entitled to demand Company C to pay directly to the pension fund 15.5% of his salary at the time when he was entitled to his salary payment. Since the proviso to section 11D(a) stipulated that income which had either been made available to the person to whom it had accrued or had been dealt with on his behalf or according to his directions should be deemed to have been received by such person, and as such, Company C paid the Relevant Sums into the account of Company E pursuant to the Taxpayer's instruction, the Relevant Sums had duly been accrued to and received by the Taxpayer during the relevant years.

27. Were the Relevant Sums part of Company C's contribution into the provident fund under the Scheme? The initial sum of $2,039,058.42 ('the Initial Sum') which comprised a sum equivalent to the Relevant Sums paid by the Taxpayer into the Scheme's fund was the Taxpayer's balance and not Company C's contribution into the Scheme's fund. The Initial Sum paid into the Scheme's fund was in fact credited as the 'Member's Balance'. The Initial Sum was not Company C's contribution into the Scheme's fund but a payment made voluntarily by the Taxpayer to acquire a right to receive future benefits from the fund based on the number of his full years of service with Company C instead of merely counting from the actual date of his joining the fund. The nature of the Initial Sum was distinguished from Company C's monthly contribution into the fund after the joining date which represented the discharge of Company C's primary obligation to the fund which was set up by Company C itself. In summary, the subsequent introduction of the fund and the election by the Taxpayer to repay the Relevant Sums did not alter the nature of the Relevant Sums as an income from his employment during the relevant years.

The conclusion

28. The Taxpayer attended the hearing and chose to give sworn evidence on his own behalf. We were impressed by the manners in which the Taxpayer conducted his case. He presented it with commendable clarity and eloquence. We also find him an open and forthright witness. At the hearing his case was essentially the same as that contained in his grounds of appeal.

29. The Taxpayer contended that the Relevant Sums did not form part of his salary nor were they gratuities or perquisites but were Company C's provident fund contributions made directly to his provident fund provider and thus they did not come within the meaning of 'income from employment' as provided under section 9(1). He argued that the Relevant Sums did not accrue to him during the years of assessment in question since he did not have any control over them and could not enjoy the benefit of the Relevant Sums until his retirement. Furthermore, the Taxpayer contended that the Relevant Sums were contributions paid to a recognized occupational retirement scheme and as such, they should not be subject to salaries tax. He said that since the IRO did not set a time limit for provident fund contributions to be paid into a recognized occupational retirement scheme, although the Relevant Sums were not paid to a recognized occupational retirement scheme at the material times, they were so paid subsequently and thus, the Relevant Sums qualified for exemption of salaries tax.

30. We do not harbour any doubts as to the genuineness of the Taxpayer's expressed intention that he earmarked the Company C's contributions comprising the Relevant Sums for his retirement and he had no intention to use them for his benefits as and when they were paid monthly by Company C to his provident fund provider. Regrettably, however, the law is not on his side.

31. A person is chargeable to salaries tax for each year of assessment in respect of income from his office or employment arising in or derived from Hong Kong which has accrued to and has been received or is deemed to have been received by him during the year of assessment. Section 9(1) of the IRO provides the definition of 'income from office or employment'. Section 11D(b) provides that income accrues to a person when he becomes entitled to claim payment thereof, and section 11D(a) provides that income which has accrued to a person is not assessable to tax until such time as he shall have received such income provided that if such income has either been made available to him or has been dealt with on his behalf or according to his directions, such income shall be deemed to have been received by him.

32. In the case of David Hardy Glynn v CIR 3 HKTC 245, the Privy Council held that the school fees paid by an employer in respect of an employee's child constituted income from the employee's employment. Lord Templeman in that case said at pages 250 to 251:

> *'The result of the authorities is that a perquisite includes money paid to the taxpayer and money expended in discharge of a debt of the taxpayer. There is no difference between a debt of the taxpayer discharged by an employer pursuant to the contract of service and money paid for the benefit of an employee by his employer pursuant to the contract of service. ... For present purposes it suffices that an identifiable sum of money required to be expended by an employer, pursuant to a contract of service for the benefit of the employee, is money paid at the request of the employee and is either part of the employee's salary or is a monetary perquisite taxable as such …'*

And at page 251:

> *'There is nothing in Section 9 to suggest that the expressions "salary" and "perquisite" do not include sums contracted to be paid by the employer for the benefit of the employee.'*

33. It follows from the above that we cannot accept the Taxpayer's contention that the Relevant Sums were not income from his employment. In the present case, the Relevant Sums were paid by Company C to the Taxpayer's provident fund provider by reason of the Taxpayer's contract of employment with Company C whereby he was entitled to receive a provident fund scheme contribution equal to 15.5% of his salary which was to be paid with his salary or by such other arrangements as he might request. The Taxpayer chose not to have the contributions paid with his salary, instead he directed Company C to pay them directly to the provident fund provider of his choice. Most payments or benefits arising from a person's office or employment clearly fall within one of the obvious categories stated in section 9(1)(a), such as wages, salary, leave pay, fee, commission or bonus. However, if a payment or benefit does not fall within one of those obvious categories, it will normally fall to be determined whether it may be regarded as a 'perquisite' which expression has been interpreted to have a wide meaning. As held in the Glynn case, a perquisite was said to include 'money paid to the taxpayer and money expended in discharge of a debt of the taxpayer and that there was no difference between a debt of the taxpayer discharged by an employer pursuant to the contract of service and money paid for the benefit of an employee by his employer pursuant to the contract of service'. In the present case, since the provident fund provider to which the Relevant Sums were paid was the Taxpayer's choice and the payment of the Relevant Sums was made by Company C in discharge of the Taxpayer's liability towards his provident fund provider and also for the benefit of the Taxpayer, the Relevant Sums were thus income from his employment falling within the category of 'perquisite' and as such are assessable to tax.

34. We note the Taxpayer's argument that the Relevant Sums did not accrue to him during the years of assessment because he did not have control and could not enjoy the benefit of the Relevant Sums until retirement. However, we disagree with the Taxpayer that the Relevant Sums did not accrue to him during the years of assessment. Under his contract of employment, he was entitled to receive a provident fund scheme contribution which was to be paid with his salary or by such other arrangements as he might request. In other words, he was entitled to and expected payment of the contribution by Company C each month. Had Company C not paid the Relevant Sums to the provident fund provider as directed by the Taxpayer when they fell due, the Taxpayer would forthwith have a right of action against Company C to recover the same and not until the time of his retirement. Section 11D(b) provides that income accrues to a person when he becomes entitled to claim payment thereof. Thus, the Relevant Sums had accrued to the Taxpayer in the years of assessment in question. Since the Relevant Sums had been dealt with by Company C on his behalf and according to his directions, the Relevant Sums were also deemed to have been received by him in the relevant years of assessment when they were paid by Company C to his

provident fund provider. Hence the Relevant Sums constitute the Taxpayer's taxable income in the years of assessment in question.

35. As to the Taxpayer's contention that the Relevant Sums were provident fund contributions paid to a recognized occupational retirement scheme and should not be taxable, it is clear that, for salaries tax purposes, there is no provision in the IRO which exempts contributions paid to a recognized occupational retirement scheme from tax. Only because of the provision in section 9(1)(a)(iv), an employer's contributions for the benefit of its employees which are made in discharge of its own obligation towards the recognized provident fund provider which it has set up or with which it has made arrangements for contributions are, for salaries tax purposes, not treated as 'income from employment'. The Scheme was a scheme set up by Company C and there was a privity of contract for payment of contributions between Company C and the Scheme and the contributions made by Company C to the Scheme for the benefits of its employees were in discharge of its own legal obligations towards the Scheme and not those of the Taxpayer. It is on the basis of the provision of section 9(1)(a)(iv) that Company C's contributions to the Scheme as from January 2000 were exempt from tax. On the other hand, the Relevant Sums were contributions made by Company C to the Taxpayer's provident fund provider. They were contributions made by Company C on behalf of the Taxpayer and as directed by him. Although the Relevant Sums never reached the Taxpayer's pocket, they were contributions made by Company C in discharge of the Taxpayer's legal obligations towards the provident fund provider of his choice. The privity of contract for payment of those contributions was between the Taxpayer and the provident fund provider of his choice and not Company C. That being the case, the Relevant Sums did not come within the exclusion provided by section 9(1)(a)(iv) since they were not paid in discharge of Company C's liability but that of the Taxpayer and consequently do not qualify for exemption. It follows that it was not illogical, as contended by the Taxpayer, that one portion of Company C's contribution (that paid between 1 April 1994 and 31 December 1999) was subject to tax while the other portion (that paid from January 2000 onward) was not. We also agree with the Revenue that the fact that the Taxpayer later on took the option to repay the total amount of cash received in lieu of Company C's provident fund scheme contribution since the Taxpayer joined Company C does not alter the nature of the Relevant Sums. Since the Relevant Sums were the Taxpayer's income from his employment accrued to and were deemed to have been received by him during the years of assessment in question, they are thus income taxable in the years of assessment in question. What happened to the Taxpayer or to the Relevant Sums in subsequent years cannot affect the chargeability of the Relevant Sums to salaries tax in the relevant years of assessment.

36. For the aforesaid reasons, the Taxpayer's appeal must fail and we hereby confirm the assessments raised on the Taxpayer.