Case No. D14/21

Profits tax – deductions – whether Appellant incurred the alleged expenditure – whether appellant can prove that the expenditure was incurred in the production of profits – sections 16, 17, 68(4), 68(9) of the Inland Revenue Ordinance ('the Ordinance') [Decision in Chinese]

Panel: Wu Pui Ching Teresa (chairman), Lee Ian Philip and Ken To.

Date of hearing: 18 June 2021.
Date of decision: 28 January 2022.

The Appellant company was a property agent in Hong Kong. In reporting for Profits Tax Assessment for the 2019/20 year of assessment, the Appellant reported a deduction of $1,880,000 ('the Sum'). It was alleged that the Sum was paid to an intermediary ('Mr E') as his commission for introducing clients and their associates. Responding to the queries made by the Assessor, the Appellant said it only had an oral agreement with Mr E for referring potential clients from the Mainland. The Sum was paid as consultancy commission to Mr E, and did not correspond to his reference of any specific clients. It was further alleged that the Sum was paid to Mr E in the Mainland around May 2019. The Assessor refused to recognise the Sum as deductions, and raised Profits Tax Assessment accordingly.

The Appellant appealed against the above assessment. Before the Board, the Appellant claimed that, according to the oral agreement it had with Mr E, if the friends of a client referred by Mr E purchased or rented any property through the Appellant, Mr E would be entitled to 45% of the commission it received. It was further claimed that the Appellant received commission between August 2018 and May 2019 on 3 property transactions, in which the buyers were the friends of a client referred by Mr E. Therefore, the Appellant needed to pay 45% of the commission received, which was subsequently agreed to be the Sum.

Mr E died in 2020, before the Appellant sought to appeal against the assessment. He thus did not give evidence before the Board. Records showed that the Appellant's witness was only absent from Hong Kong in May 2009 days before the Appellant received the commissions from the last of the 3 property transactions, and before the date of the cheques allegedly used to pay Mr E. There was also no evidence to show that the buyers were indeed the friends of the client referred by Mr E.

Held:

1. The Board would not draw adverse inference against the Appellant for the failure to call the intermediary to give evidence (Li Sau Keung v Maxcredit Engineering Ltd & Another, CACV 16/2003 (unrep., 25-11-2003); Pacific Electric Wire & Cable Company Limited v Texan Management Limited & Others, CACV 90, 91, 93-96/2012 (unrep., 17/9/2013) considered). Nevertheless, the Appellant could not prove that it did pay the intermediary his commission as alleged when the evidence is objective considered (So Kai Tong v Commissioner of Inland Revenue [2004] 2 HKLRD 416; D94/99, IRBRD, vol 14, 603 followed). The claims made before the Board about the existence and the terms of the oral agreement with the intermediary were not made in response to the queries made by the Assessor. Hence, these claims were incredible (Goldbay Fortis v Asia Allied Infrastructure Holdings Ltd & Another [2021] HKCFI 1684 considered).

2. The Appellant also could not prove that the commission, if indeed paid, was incurred in the production of profits. There was insufficient evidence to show that the commission was paid to the intermediary as a result of the 3 property transactions relied on by the Appellant before the Board.

3. As a result, the Appellant failed in its appeal because it failed to prove its contention before the Board (Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue (2008) 11 HKCFAR 433 considered). The Board exercised the power under section 68(9) of the Ordinance to impose costs of $10,000.

Appeal dismissed and costs order in the amount of $10,000 imposed.

Cases referred to:

Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue [2008] 11 HKCFAR 433
So Kai Tong v Commissioner of Inland Revenue [2004] 2 HKLRD 416
D94/99, IRBRD, vol 14, 603
Commissioner of Inland Revenue v Chu Fung Chee [2006] 2 HKLRD 718
Lo Tim Fat v Commissioner of Inland Revenue [2006] 2 HKLRD 689
Li Sau Keung v Maxcredit Engineering Ltd & Another, CACV 16/2003 (unrep., 25-11-2003)
Pacific Electric Wire & Cable Company Limited v Texan Management Limited & Others, CACV 90, 91, 93-96/2012 (unrep., 17-09-2013)
Goldbay Fortis Ltd v Asia Allied Infrastructure Holdings Ltd & Another [2021] HKCFI 1684
Yu Man Fung Alice v Chiau Sing Chi Stephen [2020] HKCFI 2923

Appellant's Position C appeared for the Appellant.
Chan Wun Fai, Yu Wai Lim and Ching Wa Kong, for the Commissioner of Inland Revenue.

案件編號 D14/21

利得稅－扣減－曾否招致聲稱的開支－聲稱的開支是否為產生應課稅利潤而招致－《稅務條例》(下稱「該條例」)第16, 17, 68(4), 68(9)條

委員會：烏佩貞（主席）、李承沛及杜中

聆訊日期：2021年6月18日
裁決日期：2022年1月28日

上訴人公司是在香港的物業代理。就2019/20課稅年度的利得稅報稅，上訴人公司申報了一項$1,880,000的扣減(下稱「該款項」)。上訴人公司聲稱它支付該款項給一名中介人(「E先生」)，作為轉介客戶或客戶相關人士的服務費。在回覆評稅主任的查詢時，上訴人公司指它與E先生就轉介內地客戶一事上只有口頭協議。該款項是E先生的佣金顧問費，並不是指向轉介了任何指定客戶。上訴人公司進一步指稱它於2019年5月在內地向E先生支付該款項。評稅主任不同意該款項作出扣減，並基於此決定作出利得稅評稅。

上訴人公司就評稅向委員會提出上訴。在委員會席前，上訴人公司指跟據它與E先生的口頭協議，如果E先生介紹的客戶的朋友通過上訴人公司購買或租賃單位，E先生可得到上訴人公司收到的佣金的45%。上訴人公司指出E先生介紹的客戶的朋友購買了3個物業；它在2018年8月至2019年5月期間收到相關佣金。因此，上於人公司須向E先生支付該些佣金的45%。雙方其後同意金額為該款項。

E先生於2020年身故，早於上訴人公司就評稅提出的上訴。因此，他沒有在委員會席前作供。記錄顯示上訴人公司的證人只是在2019年5月不在香港，而且這是在上訴人公司收到3個物業交易的最後一個的相關佣金，及上訴人公司聲稱用以支付E先生的支票的日子數天前發生的。同時，沒有證據顯示3個物業的買家確是E先生介紹的客戶的朋友。

決定：

1. 委員會不會因上訴人公司沒有傳召中介人作供而對它作出不利的推論(考慮Li Sau Keung v Maxcredit Engineering Ltd & Another, CACV 16/2003 (unrep., 25-11-2003); Pacific Electric Wire & Cable Company Limited v Texan Management Limited & Others, CACV 90, 91, 93-96/2012 (unrep., 17/9/2013))。縱使如此，當委員會客觀考慮席前證據

時,上訴人公司未能證明它確曾如聲稱般向中介人支付他的佣金(跟從So Kai Tong v Commissioner of Inland Revenue [2004] 2 HKLRD 416; D94/99, IRBRD, vol 14, 603)。上訴人公司在委員會席前有關口頭協議的架在及其條款的指稱,並未曾於回應評稅主任的查詢時提出,所以這些指稱並不可信(考慮Goldbay Fortis v Asia Allied Infrastructure Holdings Ltd & Another [2021] HKCFI 1684 considered)。

2. 上訴人公司也未能證明該些佣金(如曾支付的話)是在產生利潤的過程衍生。委員會席前沒有足夠的證據顯示上訴人公司是基於它在委員會席前依賴的3個物業交易而向中介人支付佣金。

3. 根據上述,上訴人公司因未能證明它在委員會席前的說法而未能成功上訴(考慮Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue (2008) 11 HKCFAR 433)。委員會行使該條例第68(9)條的權力,命令上訴人繳付 $10,000 訟費。

上訴駁回及判處港幣10,000元的訟費命令。

參考案例:

Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue [2008] 11 HKCFAR 433
So Kai Tong v Commissioner of Inland Revenue [2004] 2 HKLRD 416
D94/99, IRBRD, vol 14, 603
Commissioner of Inland Revenue v Chu Fung Chee [2006] 2 HKLRD 718
Lo Tim Fat v Commissioner of Inland Revenue [2006] 2 HKLRD 689
Li Sau Keung v Maxcredit Engineering Ltd & Another, CACV 16/2003 (unrep., 25-11-2003)
Pacific Electric Wire & Cable Company Limited v Texan Management Limited & Others, CACV 90, 91, 93-96/2012 (unrep., 17-09-2013)
Goldbay Fortis Ltd v Asia Allied Infrastructure Holdings Ltd & Another [2021] HKCFI 1684
Yu Man Fung Alice v Chiau Sing Chi Stephen [2020] HKCFI 2923

上訴人公司C職位代表上訴人出席聆訊。
陳煥輝、余偉濂及程華港代表稅務局局長出席聆訊。

決 定 書:

本上訴

1. 上訴人A公司反對稅務局向其作出的2019/20課稅年度利得稅評稅，聲稱相關的應評稅利潤過高，認為一筆1,880,000元的聲稱佣金(以下簡稱「該筆聲稱佣金」)應可獲得扣減。2021年2月1日，稅務局以書面通知A公司未能同意其反對(以下簡稱「該決定」)，並附上書面決定 (以下簡稱「該決定書」)、決定理由及事實陳述書。

2. A公司根據《稅務條例》(第112章)(以下簡稱「稅例」)第66條向稅務上訴委員會(以下簡稱「本上訴委員會」)提出上訴該決定(以下簡稱「本上訴」)。經考慮後，本上訴委員會一致裁定上訴人敗訴，理由詳述如下。

雙方同意的事實

3. 就本上訴，A公司與稅務局局長代表同意採用該決定書中列出的「決定所據事實」的第1(1)至(8)段作為事實基礎(以下簡稱「雙方同意的事實」)，其中包括如下：

(1) 2011年，A公司在香港註冊成立為私人有限公司，A公司在利得稅報稅表內申報其主要業務性質為「提供物業代理服務」(provision of property agency service)。B女士在相關期間是A公司唯一的C職位，而A公司的股東則分別為B女士及D女士。A公司的會計帳目年結日期為每年6月30日。

(2) 由於A公司未有在指定期限前提交2019/20課稅年度利得稅報稅表，故評稅主任按稅例第59(3)條的規定向A公司作出下列2019/20課稅年度利得稅評稅：

	(元)
應評稅利潤	710,000
應繳稅款	97,150

(3) A公司透過會計師事務所反對上述評稅，認為應評稅利潤過高，並選擇以兩級制利得稅稅率課稅。

(4) 其後，A公司提交2019/20課稅年度利得稅報稅表及截至2019年6月30日(評稅基期為2018年7月1日至2019年6月30日)的財務報表和利得稅計算表。在報稅表內，A公司申報應評稅利潤為1,241,239元，該筆聲稱佣金於A公司截至2019年6月30日的損益

帳中被提及，A公司並於利得稅計算表的附表顯示該筆聲稱佣金是用以支付E先生的：

	(元)
代理費	7,991,664
加：其他收入	4,545
	7,996,209
減：佣金	1,880,000
	(註：即該筆聲稱佣金)
其他行政及財務支出	4,898,603
稅前利潤	1,217,606

(5) 評稅主任曾致函A公司查詢該筆聲稱佣金的資料。A公司回覆，該筆聲稱佣金是用以支付E先生作為轉介客戶或客戶相關人士的服務費，如客戶成功購入物業，E先生便可獲得佣金。該筆聲稱佣金大約於2019年5月以現金方式支付，沒有憑證。另外，A公司與E先生沒有簽訂書面合同，只有口頭協議，而協議內容規定A公司須按E先生要求的數目支付他，並沒有比例基準。A公司提供了E先生在中國G省份的地址作參考。A公司亦指出，E先生與B女士沒有任何關係，屬不相關人士。

(6) 評稅主任曾要求A公司就該筆聲稱佣金提交進一步的資料和文件：A公司須在整個物業交易中的哪個階段支付佣金予E先生、A公司須支付E先生佣金的物業交易詳情(包括買家名稱、物業地點、合同價格、交易日期、A公司從每宗相關交易中所獲得的佣金金額及A公司須支付E先生佣金的資料)、A公司每次支付E先生佣金的記錄及E先生每次收取佣金所發出的憑證，以及A公司以現金支付E先生佣金的證明文件如銀行記錄等。

(7) A公司就E先生遞交一份日期為2020年11月2日「支付酬金給僱員以外人士的通知書」，以申報E先生於2019年4月1日至2020年3月31日期間以中國地區顧問的身份收取該筆聲稱佣金。根據A公司的說法，E先生與A公司達成口頭協議，E先生負責在國內推廣及轉介潛在客戶予A公司，而A公司則支付佣金顧問費予E先生。由於客戶在國內都是經「轉介再轉介再轉介」，所以並沒有指定客戶，E先生負責推廣A公司在國內的知名度，令更多人士推介及直接介紹物業予A公司。此外，A公司聲稱，B女士在國內是以現金支付該筆聲稱佣金予E先生，而B女士則與A公司於往來帳對數。

稅務局的書面決定

4. 評稅主任並不接納A公司可就該筆聲稱佣金獲得扣減，並修訂A公司2019/20課稅年度利得稅評稅，於2020年8月20日所發出的2019/20課稅年度利得稅評稅通知書上所顯示的應評稅利潤及應繳稅款應分別由710,000元及97,150元增至3,121,239元及330,004元：

	(元)
報稅表申報的利潤	1,241,239 (見上述第3(4)段的雙方同意的事實)
加：該筆聲稱佣金	1,880,000
應評稅利潤	3,121,239
按課稅率計算的稅款	
首2,000,000元 x 8.25%	165,000
餘額1,121,239元 x 16.5%	185,004
	350,004
減：稅款寬減	20,000
應繳稅款	330,004

A公司的上訴理據

5. 就稅務局的上述決定，A公司向本上訴委員會提出上訴，所依賴的是A公司與E先生聲稱達成的口頭協議(以下簡稱「該聲稱口頭協議」)。根據A公司於「上訴理由陳述書」的描述，該聲稱口頭協議的內容是E先生為A公司推廣及介紹客戶，E先生成功為A公司帶來實際佣金收入則可獲分相關佣金，並按以下三種情況分配：

(1) E先生直接介紹客戶A君，A君成功通過A公司購買或租賃單位，該筆交易產生的佣金A公司佔50%、E先生佔50%。

(2) E先生直接介紹客戶A君，A君又順帶介紹B君或B君的相關朋友等，B君或B君的相關朋友等成功通過A公司購買或租賃單位，則該筆交易產生的佣金會有兩個分配方式：

(a) 如A君只屬友好介紹，沒有收取佣金，則該佣金E先生佔45%、A公司佔55%。

(b) 如A君要分配佣金，則該筆佣金A君佔40%、A公司佔40%、E先生佔20%。

6. A公司於上訴理由陳述書指出，A公司及其股東、C職位與E先生沒有任何關係。根據A公司，E先生介紹F小姐予A公司，F小姐並於2016年通過A公司購買一個A公司名為「J物業」的物業，當時E先生表示不會分該筆交易佣金，說當作是送

給A公司的賀禮，並期望F小姐的廣闊人脈日後能直接或間接給A公司帶來不少相關客戶，可長期合作，但E先生表明希望A公司能遵守口頭承諾，將來分佣金給他。

7. 有關該筆聲稱佣金，A公司於上訴理由陳述書提出的案情是A公司是通過F小姐介紹的相關朋友成功促成以下三個新樓盤的交易的：

物業地址	K物業	L物業	M物業
買方	H買家	N買家	P買家
成交價 (元)	20,602,450	15,661,400	265,860,000
成交日期	28/5/2018	9/3/2018	28/3/2019
佣金 (元)	700,483	663,909.50	10,634,400
收佣日期	28/8/2018	5/11/2018	6/5/2019
回贈買方新居賀禮 (元)	38,000	-	7,975,800

8. 根據A公司，F小姐在上述三個物業成交只以友好身份介紹，並沒收取任何佣金，按該聲稱口頭協議，A公司應佔佣金的55%，而E先生應獲分45%，即共1,793,246元：

物業地址	交易所產生佣金 (元)	該聲稱口頭協議下E先生獲分比例	金額 (元)
K物業	(700,483–38,000) = 662,483	45%	298,117
L物業	663,909.50	45%	298,759
M物業	(10,634,400–7,975,800) = 2,658,600	45%	1,196,370
		共	1,793,246

9. A公司亦於上訴理由陳述書聲稱，E先生曾表示誠如他當日預期，F小姐確實為A公司帶來實際生意及可觀佣金收入，為求合作愉快及討一個好彩頭，E先生要求A公司上調他的佣金至1,880,000元，並獲A公司同意。由於E先生在國內，故A公司於2019年5月14日開出兩張支票(分別為1,000,000元及1,390,000元(支票號碼XXXXXX & XXXXXX))予B女士轉付E先生1,880,000元。

本上訴的相關問題與適用法律條文及原則

10. 本上訴委員會於本上訴中須決定的相關問題是該筆聲稱佣金在計算A公司的應評稅利潤時是否應獲得扣減(以下簡稱「本上訴的相關問題」)。

11. 根據稅例第68(4)條，本上訴的舉證責任落在身為上訴人的A公司身上：

> 「*證明上訴所針對的評稅額過多或不正確的舉證責任，**須由上訴人承擔**。**(語氣強調)***」

12. 終審庭於Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue (2008) 11 HKCFAR 433解釋並重申向上訴委員會提出上訴的納稅人須證明其聲稱及相關要求如下述：

> '*47. Suppose a tax assessment is made on the footing that the position is X and the taxpayer appeals against the assessment by contending that the position is Y.* ***The taxpayer will have to prove his contention. So his appeal to the Board of Review would fail if the Board positively determines that, contrary to his contention, the position is X. And it would likewise fail if the Board merely determines that he has not proved his contention that the position is Y. Either way, no appeal by the taxpayer against the Board's decision could succeed on the 'true and only reasonable conclusion' basis unless the court is of the view that the true and only reasonable conclusion is that the position is Y (語氣強調)****.*'

13. 相關本上訴的稅例第16(1)條明確訂明：

> 「*在確定任何人在任何課稅年度根據本部應課稅的利潤時，該人在該課稅年度的評稅基期內，****為產生根據本部應課稅的其在任何期間的利潤而招致的一切支出及開支****，均須予扣除...****(語氣強調)***」

14. 至於稅例第17條則訂明，為確定任何人的利得稅應課稅利潤時，以下項目不得容許扣除：

> 「*(1) 為確定任何人根據本部應課稅的利潤，以下各項均不得容許扣除——*
>
> *...*
>
> *(b) ... 任何支出或開支****而又並非為產生上述利潤而花費者****...****(語氣強調)***」

15. Chu J於So Kai Tong v Commissioner of Inland Revenue [2004] 2 HKLRD 416詳細檢視稅例第16及17條，並指出在決定相關支出及開支是否為產生應課稅利潤而招致時，法庭應採用客觀標準，考慮所有相關情況：

> '*27. The appellant argues that there is under the IRO no concept of a computation of expenses. He says that s. 16(1) is a "qualifying section" that sets out the allowable tax deductions. Section 17(1), on the other hand, is a "disallowing section" that sets out the expenses that cannot be allowed, even though they are qualified under s. 16.* ***The appellant contends that where an expense is qualified as a***

deduction under s. 16(1), so long as it is not disallowed by s. 17(1), then it should be allowed in whole, and there is no room for apportionment. In other words, the appellant suggests that s. 16(1) has to be read subject to s. 17(1).

28. ***I am unable to accept this submission.*** *Firstly, there is nothing in the two sections to suggest, let alone permit, such a construction. It is unsupported by any authority. Neither do the judgments of the Privy Council in CIR v Mutual Investment Co Ltd [1967] 1 AC 587 and Lo & Lo v CIR (1986) 2 HKTC 34 support such construction.* ***Secondly, the appellant is effectively saying that once an expense of the kind recognized under s. 16(1), but not disallowed under s. 17(1), had been effected, then irrespective of the amount involved or the reason for it, the Revenue cannot question its genuineness or the amount of the expense. This plainly defies logic and defeats the role of the Revenue in determining the amount of chargeable profits.***

…

30. *It is correct for the appellant to say that the words "wholly and exclusively" had been removed from s. 16(1).* ***In its place, however, the words "to the extent to which" the outgoings and expenses had been enacted.*** *In Lo & Lo v CIR (1986) 2 HKTC 34, Lord Brightman (at p. 71) pointed out that:*

"Sections 16 and 17 provide exhaustively for deductions in the sense that permitted deductions are confined to outgoings and expenses incurred in the production of profits in respect of which tax is chargeable; that such permitted deductions expressly include those specified in (a) to (h) of s. 16(1), and expressly exclude those in s. 17." *(Emphasis added).*

31. ***Therefore, notwithstanding the deletion of the words "wholly and exclusively", it remains necessary to identify what part of the outgoings and expenses are incurred for the production of chargeable profits.*** *As noted above, once the Commissioner, on the material before her, comes to the view that only part of the outgoing or expense under examination is incurred for the production of chargeable profits, she is under a duty to ascertain the extent to which such outgoing and expense is so incurred…*

32. ***As noted above, an objective approach is called for in determining what part of the outgoing or expense is deductible. This involves looking at all the circumstances, including commercial considerations****: Lo & Lo v CIR (1986) 2 HKTC 34 at p. 71…****(語氣強調)***'

16. 上訴個案D94/99的判詞亦有就這點討論如下：

> '*24. Mr. B said that it was solely a matter for the Taxpayer and Company D as to what the fair and reasonable service would be.* ***We accept the Revenue's submission that the matter had to be assessed objectively.*** *That is not to say that we are lifting the corporate veil. Nor are we saying that the Taxpayer is not free to decide its own affairs.* ***The Taxpayer is free to give away part of its income as it so wishes to a related company or to a relative or indeed to any third party. The question here is whether that payment is a deductible expense in law when computing the chargeable profits. This question must be answered objectively.*** *The agreement between the Taxpayer and Company D does not preclude us from examining whether the payment is or is not a deductible expense incurred in the production of profits.*
>
> *25.* ***Such expense must have been bona fide incurred in the production of profits. We must look at all surrounding circumstances.*** *For example,* ***the relation between the payer and the payee is a relevant circumstance. So is the purpose or the reason of the payment. The basis and the breakdown of the amount are also important. The lack of a rational basis may lead us to the conclusion that the amount is wholly arbitrary, lacking in commercial reality, and thus not bona fide incurred (語氣強調)****.*'

17. Chung J於Commissioner of Inland Revenue v Chu Fung Chee [2006] 2 HKLRD 718闡釋稅例第16條。其中，Chung J在援引案例後作出結論，認為 'for the purposes of the trade'及'in the production of profits'的意思相同：

> '*19. In Strong & Co of Romsey Ltd v Woodifield (Surveyor of Taxes) [1906] AC 448, the House of Lords dealt with an appeal which concerned the Third Rule, Sch. D, Income Tax Act 1842, which contained the phrase "for the purposes of the trade". The taxpayer in Strong &^ Co v Woodifield (Surveyor of Taxes) claimed that damages and costs were deductible. The Court said:*
>
> *"In my opinion, however, it does not follow that if a loss is in any sense connected with the trade, it must always be allowed as a deduction; for it may be only remotely connected with the trade, ...I think only such losses can be deducted as are connected with in the sense that they are really incidental to the trade itself. They cannot be deducted if they are mainly incidental to some other vocation or fall on the trader in some character other than that of trader. The nature of the trade is to be considered..."*

"I think that the payment of these damages was not money expended 'for the purpose of the trade'. These words are used in other rules, and appear to me to mean for the purpose of enabling a person to carry on and earn profits in the trade, etc. ***I think the disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with, the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits…"***

Thus, the degree of connection between the expenses and the profit-earning process of the trade, profession or business is important…and must satisfy the tests of being "really incidental to the trade itself" or having been incurred "for the purpose of earning the profits"*.*

20. *Although the wordings in the English tax statutes were different from that in our s. 16(1), the Privy Council said in Commissioner of Inland Revenue v Cosmotron Manufacturing Co Ltd [1997] HKLRD 1161 (on appeal from Hong Kong):*

"…[Liu JA] regarded the words 'in the production of profits' as having a much narrower ambit than the words 'for the purposes of the trade' which appear in the Income and Corporation Taxes Act 1988.

The difference in language is undeniable, but the phrase used in the United Kingdom legislation has generally been interpreted by the courts in a manner, consistent with that of the Inland Revenue Ordinance. *Thus in [Woodifield], Lord Davey said: [the above passage was quoted] (p. 1167)."*

In short, therefore, the two phrases were considered to have the same meaning.

21. *In Commissioner of Inland Revenue v Tai Hing Cotton Mill (Development) Ltd [2006] 2 HKLRD 325, the test adopted for determining this point was expressed as:*

It is the nature of the payment that matters. "It is necessary to…attend to the true nature of the expenditure, and to ask oneself the question,…is it expenditure laid out as part of the process of profit earning?" *(para 94).*

I consider the court in Commissioner of Inland Revenue v Tai Hing Cotton Mill (Development) Ltd to be stating the same tests propounded in Strong & Co of Romsey Ltd v Woodifield (Surveyor of Taxes) [1906] AC 448 in a different way. (語氣強調)'

18. 就稅例第16條，Recorder Edward Chan SC於Lo Tim Fat v Commissioner of Inland Revenue [2006] 2 HKLRD 689的判詞中提到：

> '*16.* ***It is clear that the deduction could only be made in respect of expenses incurred during the basis period for the year of assessment.*** *Hence it may be the case that in order to produce any particular profit in a particular year, the taxpayer would have to incur expenses in the years before or after that year of assessment,* ***and yet the deduction permitted is restricted to those incurred "during the basis period for that year of assessment****". Thus the section envisages that there is a possibility that a certain profit for one year of assessment may be the result of certain expenses incurred in other assessment years. The corollary is that the fact that expenses may have to be incurred in a number of years does not necessarily mean that the profit resulted from such expenses must be treated as profits for the years when the expenses are incurred.* ***(語氣強調)***'

A公司未能證明該筆聲稱佣金及/或該筆$1,880,000的款項(如有的話)是為產生應課稅利潤而招致的

19. 根據稅例第16(1)條，在確定A公司在2019/20課稅年度應課稅的利潤時，A公司在該課稅年度的評稅基期內，為產生應課稅的利潤而招致的一切支出及開支須予扣除；而稅例第17條則明確規定，任何支出或開支而又並非為產生上述利潤而花費者則不得容許扣除。本上訴委員會認為，A公司所依賴的該聲稱口頭協議並不可信，A公司未能證明根據該聲稱口頭協議A公司須要並且確實已通過B女士支付該筆聲稱佣金予E先生(見上述12段；Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue第47段)。另外，即使假設A公司曾支付E先生一筆1,880,000元的款項，A公司仍未能證明該筆款項是為產生A公司的應課稅利潤而招致的。

20. 本上訴委員會質疑該聲稱口頭協議並不存在，以及認為A公司的相關案情不可信的原因及理據包括下列各項。

21. 首先，B女士是A公司在本上訴中的唯一證人，A公司並沒有傳召另一關鍵人士E先生作證。E先生的證供與A公司於本上訴的案情有密切關連，根據A公司的說法，E先生從B女士手中收取了A公司該筆聲稱佣金共1,880,000元。就這方面的案情，A公司提供了兩張日期為2019年6月15日的文件，其中一張連同E先生的公民身份證副本及手寫筆錄「致：A公司 本人E先生收到由貴公司股東B女士付於本人應收之佣金港幣壹佰捌拾捌萬元整(K物業$298117元 L物業$298759元 M物業$196370元及獎金幾萬元)共$1880000」，至於另一張則電腦打印如下：「收據 本人收到A公司佣金共港幣壹佰捌拾捌萬元整」。兩張文件都備有看起來是E先生中文全名的簽署(「E先生」)。A公司於上訴理由陳述書形容該兩張文件為「E先生收到我司的佣金收據」(以下簡稱「該聲稱的佣金收據」)。

22. 就與訟雙方其中一方沒有傳召相關人士作證人這一點，上訴庭於Li Sau Keung v Maxcredit Engineering Ltd & Another, CACV 16/2003 (unrep., 25-11-2003)提到：

> '*28. But the plaintiff's evidence was unequivocal: he maintained that he had told So about the fall. Not only was it not put to the plaintiff that he never told So about it,* ***So, who was an employee of the 2nd defendant, was not called to give evidence. Mr Chan SC rightly submitted that this was a matter that may properly be taken into account.*** *In* ***Cavendish Funding Ltd v Henry Spencer & Sons Ltd*** *[1998] 6 EG 146 at 148-149, Aldous LJ cited the following passage from the judgment of Newton and Norris JJ in* ***O'Donnell v Reichard*** *[1975] VR 916 at 929:*
>
> *"It is sufficient to say that in our opinion for the purposes of the present case* ***the law may be stated to be that where a person without explanation fails to call as a witness a person who he might reasonably be expected to call, if that person's evidence would be favourable to him, then, although the jury may not treat as evidence what they may as a matter of speculation think that that person would have said if he had been called as a witness, nevertheless it is open to the jury to infer that that person's evidence would not have helped that party's case; if the jury draw that inference then they may properly take it into account against the party in question for two purposes, namely****:*
>
> ***(a) in deciding whether to accept any particular evidence, which has in fact been given, either for or against that party, and which relates to a matter with respect to which the person not called as a witness could have spoken****...****(語氣強調)"***'

23. 另一上訴庭的案件Pacific Electric Wire & Cable Company Limited v Texan Management Limited & Others, CACV 90, 91, 93-96/2012 (unrep., 17/9/2013)列出適用這方面的法律原則如下：

> '*106. The relevant principles are set out by Brooke LJ in Wisniewski v Central Manchester Health Authority [1998] PIQR 324 at 340:*
>
> ***(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.***
>
> ***(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other***

party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified. (語氣強調)'

24. 對於A公司沒有傳召E先生作證人一事，B女士解釋，E先生於2020年下半年身故，B女士是於2020年底從E先生的家人方面得悉此事。根據B女士，E先生的媳婦是B女士的同學、朋友，她們的「上一代」認識了多年，居於「同一條村」。如B女士所言屬實，A公司於2021年2月提出本上訴申請時已無法傳召E先生作證。雖然A公司未有提供任何文件作佐證，但另一方面亦沒有證據顯示或證明B女士的解釋不可信或屬謊言，按本上訴委員會理解，稅務局局長代表亦沒有提出這方面的指控(亦應沒有足夠理據提出此等指控)，故本上訴委員會認為，在本上訴對A公司未有傳召E先生作證人作出「不利推定」(adverse inference)並不合適或穩妥。

25. 接下來，在考慮B女士作為A公司唯一的證人的證供是否可信時，本上訴委員會應用了Yeung J於Goldbay Fortis Ltd v Asia Allied Infrastructure Holdings Ltd & Another [2021] HKCFI 1684 提及的法律原則：

'*73. The approach for assessing credibility is not in dispute. I have been cited a number of authorities, which include Hui Cheung Fai & Another v Daiwa Development Ltd & Others, unrep., HCA 1734/2009, 8 April 2014, §§77-79 per DHCJ Eugene Fung SC and Hua Tyan Development Ltd v Zurich Insurance Co Ltd [2012] 4 HKLRD 827 §27 per Andrew Chung J, Hung Fung Enterprises Holdings Ltd and Other v The Agricultural Bank of China, unrep., HCA 16459/1998, 4 October 2010, §47 per To J.* ***I remind myself when considering a witness' credibility the importance of considering the inherent likelihood or unlikelihood of the witness' evidence, the consistency of the witness' evidence with undisputed or indisputable evidence, with contemporaneous conduct and documents, and the internal consistency of the witness' evidence. I need to consider the totality of the evidence.*** *I warn myself against attaching undue weight on demeanour, though demeanour is obviously relevant when considering credibility. I also bear in mind Re H (Minors) [1996] AC 563, which Mr. Li has reminded me of, that*

> *the more serious the allegation sought to be proved is, the more cogent the evidence relied upon to support it must be.* ***(語氣強調)***'

A公司未能證明曾招致該筆聲稱佣金

26. 本上訴委員會認為，B女士聲稱A公司與E先生曾達成該聲稱口頭協議，並根據該聲稱口頭協議，A公司須支付並確實已通過B女士以現金方式支付E先生該筆聲稱佣金共1,880,000元存在根本問題(inherent difficulties)，且與A公司自身提供的文件不相符，B女士的證供亦有前後不一、自相矛盾的問題，並不可信。

27. 第一，A公司於上訴理由陳述書提出該聲稱口頭協議及其內容作為上訴理據，但A公司卻從未提及A公司與E先生是如何達成該聲稱口頭協議的詳情，包括A公司是透過誰(是否B女士)、雙方是在何時，以及在何種情況下(例如，是A公司還是E先生提出「邀約」(offer)、另一方如何回應、洽談中有否「反邀約」(counter-offer)等情況及邀約是如何被「接納」(acceptance) 等) 達成該聲稱口頭協議的。早於2020年9月30日，當A公司回覆稅務局的查詢時 (以下簡稱「2020年9月30日的回覆」)，A公司只簡略地提出A公司與E先生「並沒有合同，只有口頭協定」。A公司於較後時段亦沒作其他補充。最後，A公司雖然於上訴理由陳述書表明希望詳細表述「整個過程」，但A公司於上訴理由陳述書仍未對該聲稱口頭協議達成的相關情況作任何描述。

28. 該等A公司從未能提供的詳情及細節關乎該聲稱口頭協議是否存在。Yu Man Fung Alice v Chiau Sing Chi Stephen [2020] HKCFI 2923 的判決曾就口頭協議成立的要求及法庭在定奪口頭協議是否存在時應用的客觀標準等作詳細討論，並重申相關法律原則如下：

> '*17. The basic requirements for a contract are trite.* ***Those requirements are that: (1) the parties have reached an agreement, which (2) is intended to be legally binding, (3) is supported by consideration, and (4) is sufficiently certain and complete to be enforceable.***
>
> *18.* ***There is, of course, no legal requirement that a contract must be concluded in writing, or be evidenced in some form of written record.*** *It is in general possible and permissible in Hong Kong law to make a contract without any formality, and to do so simply orally.*
>
> *19.* ***But it is obvious that the absence of a written record may make the existence and terms of a contract harder to prove. Anyone with business experience will understand the value of a written record. Therefore, the absence of any written record may – depending on the circumstances – tend to suggest that no contract was in fact, concluded.***
>
> *20.* ***Hong Kong law applies an "objective" test in determining whether an agreement has been made, what its terms are and whether it is***

intended to be legally binding. *It is settled that for questions of meaning in the law of contract, the "touchstone" is how the words used, in their context, would be understood by a reasonable person. For these purposes, the context includes all relevant matters of background fact known to both parties. It may also be important to recall that the relevant intentions are, in most cases, those at the time of the alleged agreement/contract, and not any subsequent intention.*

...

22. ***As to reaching an agreement, all law students know that an agreement is reached when one party makes an offer which the other accepts. An offer is a person's expression, by words or conduct, of a willingness to be bound by specified terms if and as soon as there is acceptance by the person to whom the offer is made.*** *It may, however, be necessary to look closely at the words actually used, as in some circumstances they may be such that it is unlikely that anyone could reasonably have thought that the words were meant seriously.*

23. Acceptance may also be by words (whether written or oral) or by conduct. Likewise, it may be necessary to look closely at the words actually used, as in some circumstances they may be such that it is unlikely that anyone could reasonably have thought the words were meant as a serious acceptance of the offer.

24. There is a separate and independent requirement of a contract that there be certainty and completeness of terms. So even in cases where the Court concludes that the parties have made an agreement which is intended to be legally binding, the court may nevertheless also conclude that the agreement is too uncertain or incomplete to be enforceable. A typical example is because the agreement lacks an essential term which the court cannot supply for the parties. But the court will only hold that the contract, or some part of it, is void for uncertainty if it is legally or practically impossible to give the agreement, or that part of it, any sensible content.

25. Vagueness in what is said or omission of important terms may also be a ground for concluding either that no agreement has been reached at all or that, although an agreement has been reached, it is not intended to be legally binding. ***(語氣強調)***'

29. 第二，稅務局於2020年10月28日(以下簡稱「2020年10月28日的查詢」)曾明確要求A公司「**細項列出由[E先生]所轉介客戶而須繳付[E先生]佣金的物業交易**，包括**買家名稱**、**交易日期**、**有關物業地點**、**合同價格**、**公司從該宗交易所得佣金**、

公司收取佣金方式、**需付[E先生]的佣金金額資料**，並提供有關交易文件副本，文件當中顯示公司從該宗交易收取的協議佣金數額 **(語氣強調)**」。

30. A公司於2020年11月23日的回覆(以下簡稱「2020年11月23日的回覆」)中表示，「[E先生]與我司是口頭協議在國內負責推廣，轉介潛在客戶，**故我司支付的佣金顧問費無特定指向哪個客戶**，**因為國內的轉介再轉介再轉介**，**他負責推廣我司在國內的知名度及令到更多人士推介及直接介紹物業等... (語氣強調)**」。

31. 這與A公司現時於上訴理由陳述書列出的案情以及B女士的證供，聲稱該筆聲稱佣金與A公司通過F小姐介紹的相關朋友成功促成的三個物業(即K物業、L物業及M物業)成交完全不符。

32. 除此以外，A公司於2020年9月30日的回覆時提到，「當時口頭協定，只按他[E先生]要求的數目辦理**沒有比例基準 (語氣強調)**」，A公司當時的聲稱亦與現在所依賴作為上訴理據的E先生可獲分佣金的情況及佣金比例截然不同(即如E先生直接介紹客戶A君，而A君又順帶介紹B君或B君的相關朋友，B君或B君的相關朋友等成功通過A公司購買單位，則該筆交易產生的佣金，在A君只屬友好介紹，沒有收取佣金的情況下，E先生佔45%，A公司佔55%)。

33. 就A公司的案情而言，上述差異毫無疑問地屬根本性的差異，但B女士的證供並沒有提供任何合理或可信的解釋。

34. 第三，於2020年10月28日的查詢，稅務局亦要求A公司確認，「根據聲稱口頭協議，進一步說明在整個物業交易中，公司[A公司]**在何階段需支付E [E先生]的佣金 (語氣強調)**」。A公司於2020年11月23日的回覆並未提出相關的付款階段。A公司只於較早前(見2020年9月30日的回覆)提到支付E先生該筆聲稱佣金的日期大約是2019年5月。承上，如當時A公司與E先生達成的口頭協定既不包括E先生可獲分佣金的情況、佣金比例基準(而是按E先生要求的數目辦理)，又不包括付款階段等，那麼該所謂「口頭協定」是否具備足夠肯定(sufficiently certain)的條款以及是否完整(complete)而可被予以執行的效力(enforceable)亦成疑問。

35. 第四，明顯地，B女士的證供已完全推翻A公司於2020年9月30日的回覆及上訴理由陳述書中聲稱指「[E先生]與本公司[C職位]股東**沒有任何關係**，屬於**不相關人士 (語氣強調)**」。至於A公司當時為何要隱瞞稅務局B女士與E先生是相識及他們兩家人多年的關係，甚至向稅務局作出虛假的回覆，及在上訴理由陳述書一再強調，B女士並沒有提供任何合理解釋。

36. 第五，於2020年9月30日的回覆，A公司提到該筆聲稱佣金「沒有憑證」，是以「現金方式交收」，而付款日期則大約是2019年5月。於2020年10月28日的查詢，稅務局要求A公司確認「公司每次支付[E先生]佣金的記錄方法、[E先生]每次收取佣金所發出的憑證及提供證明文件(包括銀行記錄)，顯示每次公司從銀行提取現金從而支付[E先生]佣金的資料」。

37. 根據A公司於2020年11月23日的回覆，A公司只提出「...我司給予[E先生]的佣金顧問費由股東[B女士]在國內支付現金給予[E先生]，而公司則和[B女士]股東在公司的往來帳之間對數」。A公司沒有提供稅務局要求關於支付E先生佣金的記錄方法、E先生收取佣金後發出的憑證或其他證明文件顯示A公司從銀行提取現金支付E先生或註明該等稅務局要求的文件的存在。

38. A公司亦未有披露與B女士之間的「往來賬」，不過，即使A公司提供該等「往來帳」，B女士的證供已確認它們仍不能準確顯示A公司與B女士之間的相關「對數」過程。

39. B女士作供時解釋，A公司是「細公司」，以家庭模式經營，沒有聘用文員、秘書，亦不需向其他人交代，因另一位股東是弟婦，是「代持」的身份。B女士亦提到，A公司面臨經營困難、租金的壓力等，故沒有向稅務局提出滿意解釋，只是「係咁意寫幾隻字...拖延住...希望稅務局能夠體諒...」。本上訴委員會認為，這種種都不是能令人信服或接受的解釋，亦不是處理稅務相關事宜應有的正確態度，況且，不要忘記的是，A公司絕對有實際誘因把資料整理好，以期望可以獲得扣減佣金。

40. 第六，至於該聲稱的佣金收據，本上訴委員會同意稅務局局長代表的有關陳詞，提出A公司截至2019年6月30日的收益表中顯示，該年度的一般行政費用(General And Administrative Expense)總額為6,587,826.73元，其中包括該筆聲稱佣金(1,880,000元)，收款人的姓名(E先生)以及其國內身份證號碼亦有被註明。2020年8月21日，B女士作為A公司的單一C職位為A公司簽署該年度的財務報表，A公司理應已備存充分的記錄以證明曾支付E先生該筆聲稱佣金，但於2020年9月30日的回覆，A公司卻確認沒有支付該筆聲稱佣金予E先生的憑證。之後，於2020年11月23日的回覆，A公司同樣未能提供支付憑證(除「支付酬金給僱員以外人士的通知書」(以下簡稱「該通知書」)外)。A公司是直至2021年2月10日才向本上訴委員會提供該聲稱的佣金收據。

41. 本上訴委員會同意稅務局局長代表對該聲稱的佣金收據的真確性的質疑。究竟A公司於2020年8月簽署2019/20課稅年度的財務報表時是否已從E先生獲取該聲稱的佣金收據?如已收到的話，為何A公司不早於2020年9月30日的回覆及2020年11月23日的回覆提供該聲稱的佣金收據供稅務局考慮?

42. 除此以外，該聲稱的佣金收據的其中一張所提及E先生就M物業交易所獲得的佣金就只有196,370元，而A公司於上訴理由陳述書提出的則是1,196,370元。

43. B女士對上述的所有質疑、疑團均未能提供任何合理、圓滿的解釋供本上訴委員會考慮。

44. 第七，A公司於2020年11月23日的回覆中提供該通知書(IR56M表格)的副本供考慮，但值得留意的是，A公司承認「忘記」填寫IR56M表格，而該通知書

是A公司於2020年11月「讓會計師補上申報稅局的」，換言之，該通知書是在稅務局開始查詢A公司有關該筆聲稱佣金之後才存在。而且，該通知書是截至2020年3月31日止的年度內，該通知書上顯示E先生作為A公司的「中國地區顧問」的服務期間為2019年4月1日至2020年3月31日，而A公司所依賴的相關物業交易及A公司的收佣日期則分別為2018年8月28日(K物業)、2018年11月5日(L物業)及2019年5月6日(M物業)。至於A公司應於何時支付E先生佣金，稅務局曾於2020年10月28日的查詢提出，但A公司於2020年11月23日的回覆未有明確答覆，亦未於上訴理由陳述書交代。

45. 第八，根據A公司於上訴理由陳述書列出有關E先生佣金的比例(45%)及其計算方式，A公司須支付E先生的金額應為1,793,246元，這與A公司聲稱該筆聲稱佣金的總數1,880,000元有著明顯差異。根據A公司詳列於上訴理由陳述書的案情，E先生要求A公司「多給他幾萬佣金」，加至1,880,000元是「好彩頭」的數目，但這方面A公司卻從未在較早前向稅務局作的回覆中提出。

46. A公司所提供於2019年5月14日開出給B女士的Q銀行支票號碼XXXXXX (1,000,000元)和XXXXXX (1,390,000元)只能證明B女士曾從A公司收到總數2,390,000元，但卻未能進一步證明A公司須支付E先生的金額為1,793,246元、A公司與E先生的該聲稱口頭協議包括將該筆聲稱佣金調高至1,880,000元，以及B女士曾以現金方式支付該筆聲稱佣金共1,880,000元予E先生。

47. 至於A公司依賴的該聲稱的佣金收據，如上述，本上訴委員會接納稅務局局長代表的陳詞，對它們的真確性存疑。

48. 另外，B女士的證供提到，她在國內以現金支付E先生，以「商議出來」的0.9港幣兌人民幣的換算率換算。B女士亦聲稱，她在國內有「親朋戚友」幫忙，從他們處取得人民幣，另在香港「對數」。當被問及此等「對數」有否記錄時，B女士答覆沒有，理由是她「自己對數」，所以沒有記錄，B女士又提及她有時會以「手袋」作「對數」之用等。B女士上述的說法不但全部是新提出的，沒有佐證，A公司亦沒有傳召該等聲稱曾為B女士於國內支付該筆聲稱佣金予E先生時提供幫忙及牽涉於與B女士「對數」過程的人士作證，極不可信。

49. 最後，B女士的證供重申，以她「記憶」所及，是她本人親身於2019年5月將該筆聲稱佣金交給E先生的，但她卻不記得確實日期。根據稅務局提供的入境事務處記錄，於2019年4月1日至2019年6月30日，B女士只曾在2019年5月3日離開香港，並於2019年5月5日回港。

50. 本上訴委員會同意稅務局局長代表提出的質疑，如B女士確實在國內以現金支付該筆聲稱佣金予E先生，那便意味著B女士是在A公司尚未在2019年5月6日收取M物業的佣金及她自己尚未收取A公司於2019年5月14日開出的兩張共值2,390,000元的支票之前已預先支付E先生該筆聲稱佣金共1,880,000元，但A公司卻從未於上訴理由陳述書提及B女士曾替A公司墊付該筆聲稱佣金予E先生。相反，A公司於上訴理由陳述書的說法是B女士在收取A公司於2019年5月14日開出的兩張支票

後，A公司「讓股東[B女士]**轉付**[E先生]**(語氣強調)**」該筆聲稱佣金的。另外，B女士是否有足夠的現金流在A公司尚未收取M物業的佣金前先支付E先生該筆聲稱佣金，B女士並沒有解釋或提供任何證明作支持。

51. 基於上述，本上訴委員會未能接納A公司曾與E先生達成該聲稱口頭協議，以及根據該聲稱口頭協議，A公司須支付並確實已通過B女士以現金方式支付E先生該筆聲稱佣金共1,880,000元。

A公司未能證明該筆1,880,000元的款項(如有的話)是為產生應課稅利潤而招致的

52. 再者，即使假設A公司曾支付E先生一筆1,880,000元的款項，本上訴委員會認為，A公司亦未能證明該筆款項是為產生應課稅利潤而招致的。

53. 首先，正如稅務局局長代表陳詞指出，根據A公司於上訴理由陳述書的案情，A公司是通過F小姐介紹的「相關朋友」，成功促成K物業、L物業和M物業的三宗物業買賣而賺取佣金共11,998,793元。A公司現依賴作為支持E先生可獲分佣金的情況是，E先生直接介紹客戶A君(F小姐)，A君(F小姐)又順帶介紹B君或B君的相關朋友(F小姐介紹的「相關朋友」)等，B君或B君的相關朋友(F小姐介紹的「相關朋友」)等成功通過A公司購買單位，如A君(F小姐)只屬友好介紹，沒有收取佣金，則該筆交易產生的佣金E先生佔45%而A公司佔55%。

54. 即使E先生可在該情況獲分佣金，A公司仍須但卻未能提供足夠及可信的資料顯示或證明F小姐是由E先生介紹給A公司的，以及K物業、L物業和M物業的買家是F小姐的「相關朋友」。A公司只在上訴理由陳述書聲稱「[E先生]介紹[F小姐]給我司」，另外，A公司甚至從未明確指出F小姐的「相關朋友」的身份。因此，即使假設A公司曾支付E先生1,880,000元，本上訴委員會仍未能接納該筆款項與A公司從該三宗物業買賣所賺取的佣金有關，是為產生應課稅利潤而招致的。

55. 另外，A公司分別是在2018年8月28日(K物業)、2018年11月5日(L物業)及2019年5月6日(M物業)收取該三宗物業買賣的佣金的，但A公司卻未能提出須支付E先生該1,880,000元的確實時間。本上訴委員會未能接納該1,880,000元(如A公司確實曾通過B女士支付E先生的話)必然與A公司從該三宗物業買賣賺取的佣金有關，是為產生應課稅利潤而招致的。

結論

56. 綜合上述各項原因，本上訴委員會不接納A公司可就該筆聲稱佣金獲得扣減，本上訴委員會認為A公司未能證明本上訴所針對的評稅額過多或不正確，因此決定駁回本上訴及確認稅務局於該決定書第1(9)段作出的修訂及第2段作出的決定。

57. 另外，本上訴委員會根據稅例第68(9)條命令A公司繳付10,000元作為本上訴委員會的訟費，該筆款項須加在徵收的稅款內一併追討。