

Workshop Outline and Learning Methodologies

Session	Methodologies	Chapters covered	Guidance Notes
Workshop 1			
1. Introduction	<ul style="list-style-type: none">• Presentation• Group discussion		
2. Profits tax	<ul style="list-style-type: none">• Group exercise	Ch.2, 3, 4 & 9	Pg. 1 to 3
3. Negotiation	<ul style="list-style-type: none">• Role play• Group exercise		
4. Tax for individuals	<ul style="list-style-type: none">• Case study• Group discussion	Ch.5, 6, 7 & 9	Pg. 4 to 6
Workshop 2			
5. Reboot	<ul style="list-style-type: none">• Presentation• Group discussion		To be released in 2 nd batch
6. Anti-avoidance	<ul style="list-style-type: none">• Group discussion	Ch. 9, 11 & 12	
7. Tax planning	<ul style="list-style-type: none">• Case study• Group reflection	Ch.3, 4, 5, 9, 11 & 12	
8. China tax / Cross border tax issues	<ul style="list-style-type: none">• Group discussion	Ch. 12 & 13	
9. Conclusion	<ul style="list-style-type: none">• Presentation• Group discussion		

Preamble

The focus of the workshops under the Enhanced Qualification Programme is on formative development of skills, i.e. to train candidates to become future CPAs.

As such, many of the cases and issues discussed during the workshops were designed to encourage different points of view which may result in different conclusions being drawn by the candidates during the workshops.

These guidance notes will point out some of the main observation points from these discussions to facilitate a better understanding of those cases or issues. These guidance notes are not intended to be 'model answers' and should not be used for any purpose other than for a better understanding of the key points discussed during the workshops.

Session 2 – Part 1 – Profits Tax Computation (Group Discussion Exercise)

Reason for activity

Being a CPA, it is important to have a basic understanding of the Hong Kong tax system and be able to exercise your professional judgement in determining the possible tax liability and exposure for a business.

Case Study: Samuel & Co Limited

Details of Samuel & Co Limited, a company incorporated in Hong Kong, were provided and candidates were required to compute the profits tax liability of Samuel & Co Limited for the year of assessment 2009/10.

Main observation points

The computation was straightforward and most candidates provided good reasoning for their treatment of the items highlighted in the notes to the profit and loss account provided.

Adjustable items

- Interest income from bank deposit in Singapore
- Profit on sale of patent
- Refurbishment of staff quarters
- Charitable donations
- Loan made to a debtor written off
- Decrease in general provision of bad debts

Part 2 – Contentious Issues (Group Discussion and Negotiation Exercise)

Reason for activity

CPAs may encounter contentious tax issues, often with no definite right or wrong answers. CPAs will need to use their professional judgement and negotiation skills to resolve each case based on their particular facts and circumstances.

The negotiation exercise will provide an opportunity for the candidates to develop the above-mentioned skills and also allow them to see these issues from different perspectives.

Issue 1: Gain on disposal of property

Details were provided about a property purchased and sold by Samuel & Co Limited. The property was renovated and sold in 2 years time.

Role of Taxpayer

It is likely that the taxpayer will claim that the gain on disposal is capital in nature and therefore not taxable under section 14 of the Inland Revenue Ordinance (IRO).

Role of the Inland Revenue Department (IRD)

It is likely that the IRD will treat the gain on disposal as revenue in nature and therefore taxable under section 14 of the IRO.

The starting point to determine whether the property in question was a capital or trading asset would be to apply the six badges of trade which are as follow:

Six Badges of Trade

Subject matter	Nature or quantity of the asset which may indicate a trade is being carried on
Intention or motive	Intention at the time of acquisition
Length of ownership	Period of ownership before sale
Frequency of similar transactions	Similar transactions carried out by taxpayer
Supplementary work done	Additional work done to enhance the value of the asset or make it more marketable
Circumstances for realisation	Reason for selling the asset

Issue 2: Apportionment of profits and depreciation allowance claim for a Hong Kong company with subcontractor in Mainland China

Details of the arrangement between Samuel & Co Limited and CPC, a subsidiary in Mainland China, were provided. The taxpayer would like to know if it could claim part of its profits as not subject to profits tax in Hong Kong and whether it could claim depreciation allowances on the machines purchased for use in Mainland China.

Role of Taxpayer

It is likely that the taxpayer would claim that part of its profits were derived from the manufacturing activities outside Hong Kong and therefore should not be assessable under profits tax. It would also claim that depreciation allowance should be allowed for machines purchased for use in Mainland China as the amounts were incurred in production of assessable profits.

Role of the Inland Revenue Department (IRD)

It is likely that the IRD will treat the taxpayer as a trader and that the profits were derived from the sale of goods to the customers, rather than from the manufacturing activities of the subcontractor in the Mainland. The IRD is likely to deny the claim for depreciation allowance for the machines based on S39E of the IRO.

The contentious point on whether the entire profits should be chargeable to profits tax in Hong Kong is likely to be Substance versus Legal Form.

For the depreciation allowance, the contentious point is likely to be the interpretation (including the legislative intention) of S39E of the IRO.

Session 4 – Part 1 – Salaries Tax Computations (Group Discussion Exercise)

Reason for activity

A CPA should have a good understanding of the basic concept in determining the possible tax liability of an individual.

Case Study: Mr Johnson

Details of Mr Johnson were provided and candidates were required to compute Mr Johnson's salaries tax liability for the year of assessment 2009/10.

Main observation points

The computation was relatively straightforward, although some items require the candidates' professional judgment to determine the tax effect of certain items.

Points noted from discussion

Salary from Sea Limited

Mr Johnson has paid individual income tax. As such, that part of his income which has been taxed will be excluded from his assessable income under Hong Kong salaries tax (section 8(1A)(c) of the IRO).

Payment for Share Options

If Mr Johnson had agreed to the discharge of his right to exercise the share options granted to him previously in return for a sum of money, the gain he made on release of his share options would be assessable under section 9(1)(d) of the IRO.

Compensation from Fir Limited

The IRD may treat the amount paid to Mr Johnson as income from services provided under his employment and therefore assessable under salaries tax.

Mr Johnson may be able to claim that part of the payment represented long service payment paid to him in accordance to the Employment Ordinance.

The excess amount will be assessable unless Mr Johnson can prove that the remaining amount paid was capital in nature and therefore not assessable.

Part 2 – Contentious Issues

(Group Discussion Exercise)

Reason for activity

CPAs may encounter contentious tax issues, often with no definite right or wrong answers. CPAs will need to use their professional judgement and negotiation skills to resolve each case based on their particular facts and circumstances.

Issue 1: Reporting Obligations – Departure from Hong Kong

Details were provided on Mr Johnson's acceptance of a job offer in Singapore and his plan to move with his family to live in Singapore. Candidates were required to advise Mr Johnson on the reporting obligations as well as the consequence for non-compliance.

Main observation points

Most candidates were aware that Mr Johnson should notify the Commissioner of Inland Revenue (CIR) of his departure from Hong Kong as part of his tax clearance process. This is in addition to the employer's obligation to notify the CIR of Mr Johnson's departure from Hong Kong.

Non-compliance may lead to penalties under S80 or S82A of the IRO, although the IRD may impose surcharge instead.

Issue 2: Dependent Parent Allowance

New facts were provided on Mr Johnson's parent-in-laws. Candidates were required to advise whether Mr Johnson is entitled to claim dependant parent allowance in respect of his parent-in-laws and the possible tax consequence for doing so.

Main observation points

Most candidates correctly identified that the dependent parent must be ordinarily resident in Hong Kong before Mr Johnson can claim the dependent parent allowance for his parent-in-laws.

Candidates made different assumptions on the length of time in which the parent-in-laws lived in Hong Kong, whether they have a residential home in Hong Kong etc to arrive at different conclusions on Mr Johnson's entitlement to claim dependent parent allowance in respect of his parent-in-laws.

If it was decided that the parent-in-laws were not ordinarily resident in Hong Kong, then Mr Johnson may be penalised under section 80(2), section 82A or section 82 of the IRO, depending on whether Mr Johnson had a reasonable excuse and also whether it was a blatant tax evasion.

Issue 3: Property Tax Assessment on Owner of Common Areas

Details were provided on a Property Tax Return issued to Mr Johnson and other owners of common areas in his residential building. It was uncovered that the building management have received income for granting to telecommunication companies the right to use the roofs for installation and operation of certain equipment and antennae. Candidates were required to advise Mr Johnson on whether it was legitimate for the IRD to issue the tax return to Mr Johnson and the other owners of the common area and the tax liability under property tax.

Main observation points

Section 56A of the IRO provides that each and every joint owner or owners in common of any property have the full responsibility of a sole owner under the IRO, including the filing of tax returns and payment of tax.

As such, the tax return was properly issued by the IRD and Mr Johnson and the other owners of the common area are jointly and severally liable to the above-mentioned obligations.

Property tax is calculated based on the assessable value of the property for each year of assessment which in this case would be based upon the licence fee received from the telecommunication companies during the year of assessment. Mr Johnson and the other owners of the common area will be liable even though the licence fees were not paid directly to them.