

(b) 60-day exemption

Section 8(1A)(b)(ii) provides exemption from salaries tax in respect of income derived from services rendered by a person who renders outside Hong Kong all the services in connection with his employment. In determining whether or not a person renders all services outside Hong Kong, section 8(1B) provides that no account shall be taken of services rendered in Hong Kong during visits not exceeding a total of 60 days in the basis period for the year of assessment. (This exemption is commonly known as the "60-day exemption".) The Institute would like to seek the IRD's clarification on its general practice in applying the 60-day exemption in cases involving a change of employment during the year of assessment. For example, an employee may have visited Hong Kong during a year of assessment, spending a limited number of days here (i.e., not exceeding 60 days) under an employment. He then returns to Hong Kong to take up another employment. In these circumstances, the Institute would like to know the IRD's view in respect of the tax position of the employee for that year of assessment, and what factors would need to be considered in determining the employee's tax position.

Mr Chiu advised that in Decision *D30/03*, the Board of Review explained that section 8(1B) provided a statutory relief that exempt a person from salaries tax in circumstances where that person's connection with Hong Kong during the tax year was not significant and could be disregarded for assessment purposes. Per the decision, section 8(1B) did not refer to "visits not exceeding a total of 60 days in the basis period for the year of assessment for each separate employment" but to "visits not exceeding a total of 60 days in the basis period for the year of assessment". Further, in *So Chak Kwong v. CIR* 2 HKTC 174, Mortimer J (as he then was) said that the words "not exceeding a total of 60 days" qualified the word "visits" and not the words "services rendered" in section 8(1B).