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**HKICPA
QP Module Preparation Seminar
Module D – Taxation**

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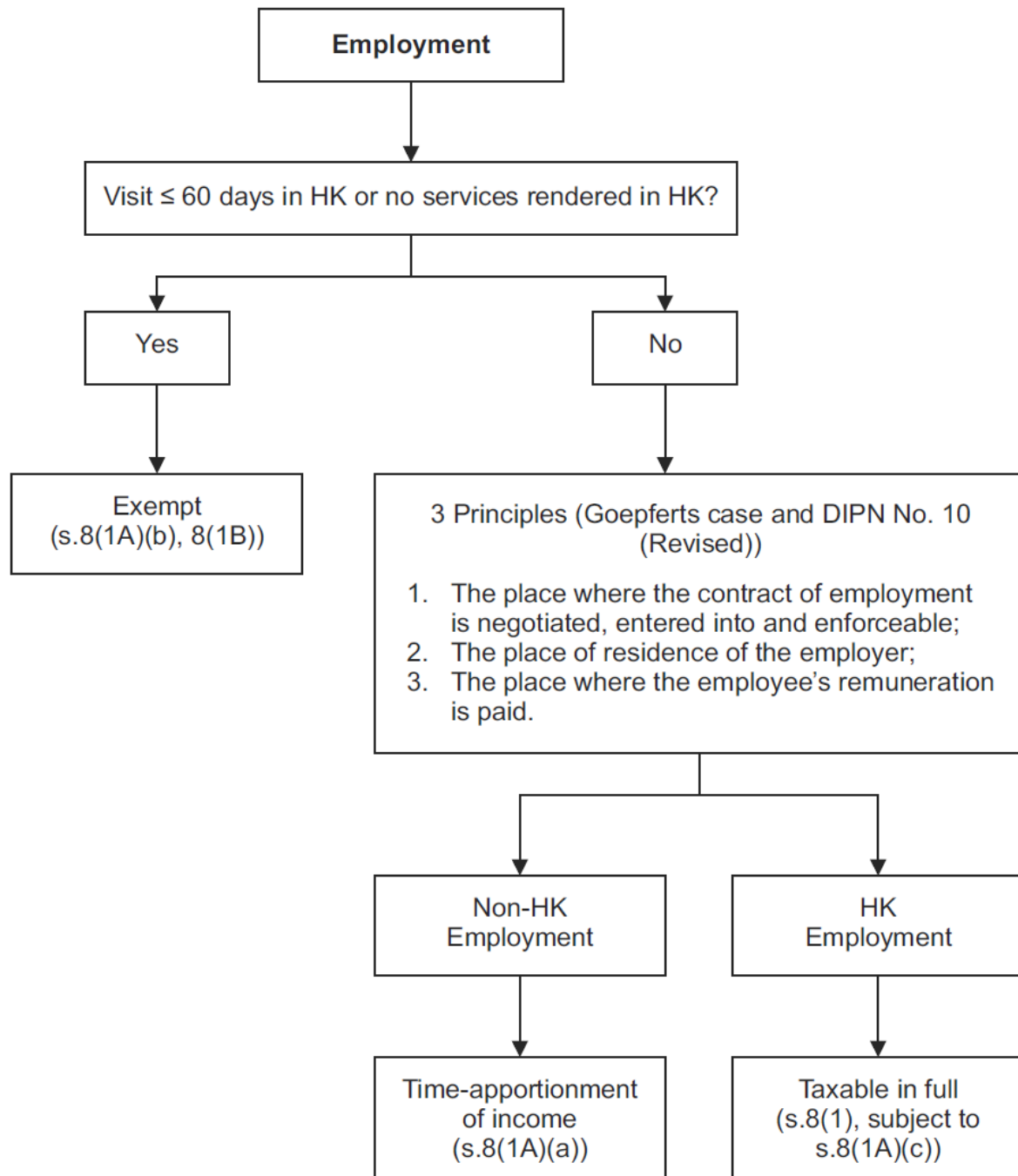
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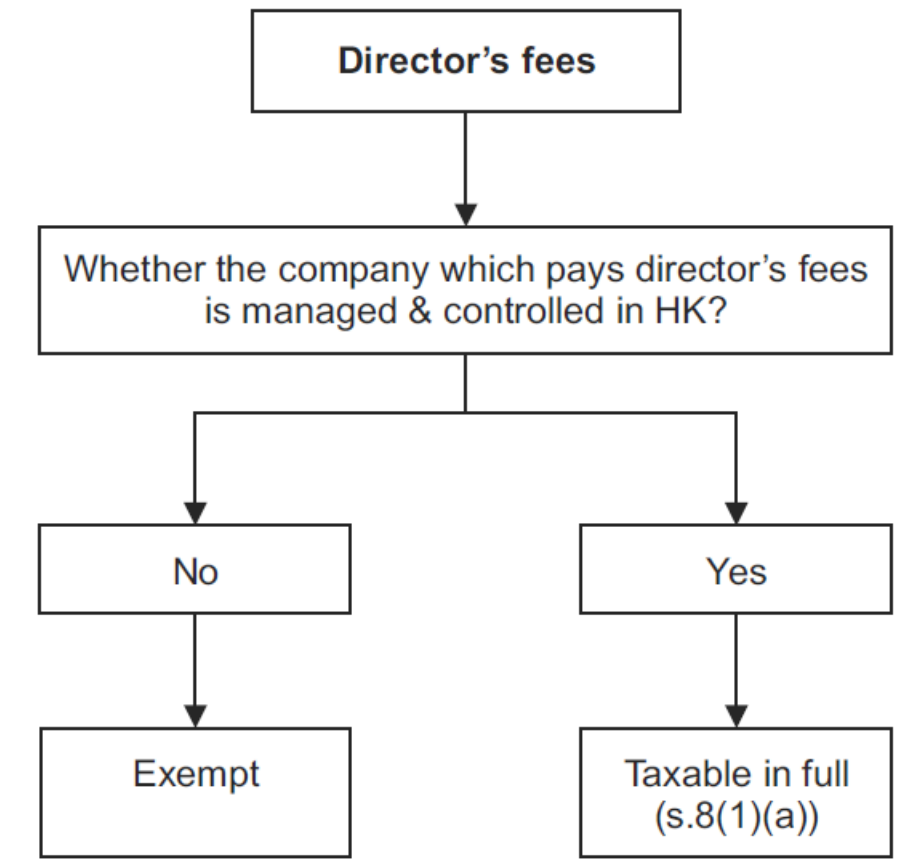
1. Salaries Tax

1.1 Scope of Charge

Salaries tax shall be charged for each year of assessment on every person in respect of his *income arising in or derived from HK* from office, employment or pension.



(Source: HKICPA Module D Learning Pack page 392)



(Source: HKICPA Module D Learning Pack page 393)

1.2 Definition of ‘Income from Office and Employment’

Income includes “**wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance**, whether derived from the employer **or others**.” For income to be assessable, it must be a payment for services rendered (past, present or future).

Basic principles on charge of income under salaries tax

There are two steps in the determination whether an income is chargeable to salaries tax:-

- i. whether the payment is derived from an employment or office.
- ii. whether the payment is in recognition of services rendered in the past, present or future.

(a) Payments in accordance with employment contract (根據僱傭合約付款)

If the payments are paid in accordance with the contract of employment or they are payments which the employee can reasonably expect, they are taxable, e.g. lump sum gratuity on retirement or termination of contract. They cannot escape liability simply because they may be capital in nature.

(b) Voluntary payments (非根據僱傭合約付款)

Whether made by the employer or a third party, such payments may be assessable if they are paid solely or mainly by reason of the employment (e.g. bonus or gratuity not provided for in the contract of employment, tips to a taxi-driver, tips to waiters in a restaurant, etc.) and for services rendered in the past, present or future, except:

- i. gift of an exceptional kind (not exceptional in amount), e.g. gift to an employee who has done well in an examination; and
- ii. testimonial given for personal reasons, e.g. wedding gift.

(c) Compensation payments (賠償金)

- i. If the source is not in the terms of service, e.g. damages for cancellation of a service agreement or compensation for deprivation of rights (e.g. loss of amateur status of a football player), such payments would not normally be assessable.
- ii. If such payments are provided for in contract of employment, or terms of service, they arise from employment and are therefore assessable.

(d) Payments made in lieu of notice (代通知金)

From 1 April 2012 onwards, any payment in lieu of notice that accrued to employee, whether paid under an explicit contract term or under an implied contract term (e.g. section 7 of the Employment Ordinance) will be assessed to tax as a result of the decision of Fuchs case. The amount of payment necessary to terminate an employment contract is equal to the amount of wages which would have been accrued to the employee during the period of notice.

1.3 Benefit-in-kind

Also named as fringe benefit (i.e. benefit not in form of cash payment). Taxable if benefit is in money's worth, i.e.

- (a) benefit in which employee's liability is discharged by employer (including refund of employee's private expenses), or
- (b) benefit convertible into cash

Examples of tax treatment of benefits-in-kind (DIPN 16 para 26-36)

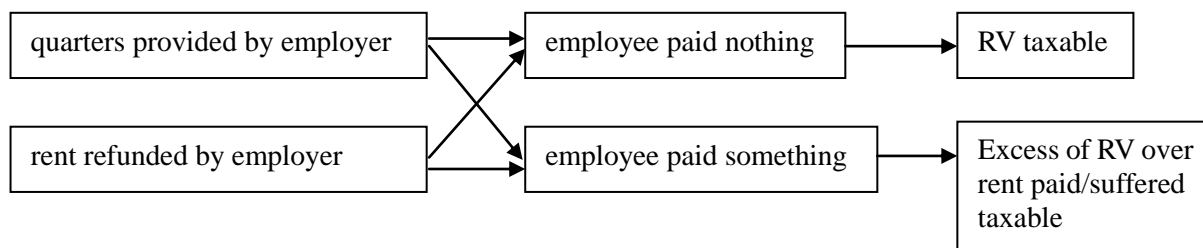
Assessable:

- (a) reimbursement of medical bill of employee
- (b) cash allowance for meals
- (c) benefit convertible into cash (e.g. use of company car with less salary or additional salary without that benefit)
- (d) education expenses for employee's children (except discretionary education trust)
- (e) reimbursement of petrol for private use of employer's car
- (f) payment of employee's utility bills by employer
- (g) use of employer's credit card for employee's private purpose
- (h) used or unused portion of holiday journey benefit since removal of exemption on 1.4.2003

Not assessable:

- (a) visiting employer's designated doctors
- (b) compensation money from medical insurance scheme
- (c) meal coupon not transferable
- (d) car (or boat) made available for employee's private use
- (e) recreational facilities provided by employer
- (f) corporate club membership fee paid by employer (but individual membership fee paid by employer is assessable)
- (g) payment of utilities bill of employee with bills directly charged on employer
- (h) low interest or interest-free loan granted by employer (However, if low interest or interest-free loan from a bank is arranged by employer and repayment is guaranteed by employee, then benefit is taxable)

1.4 Housing Benefits



1.4.1 Rental Value (RV) = (A – B) x 4%, 8% or 10%

where, A = income under s9(1)(a) during which a place of residence is provided, excluding lump sum / gratuity receipt upon retirement / termination of employment.
(note: share option benefit is taxable under s9(1)(d) and so not subject to RV)

B = allowable deductions under s12(1)(a) & (b) during the same period

Nature of accommodation	Relevant %
Hotel, hostel or boarding house with: ≤ 1 room	4 %
≤ 2 rooms (i.e. 2 rooms)	8 %
Other cases	10 % *

* Taxpayer can elect to use the rateable value of the accommodation to substitute the Rental Value.

1.4.2 Foreign employment

For non-HK employment case (i.e. tax on a time basis), the rental value is the relevant % on the apportioned income, not on his total income. However, the rent paid by the employee is not apportioned but deductible in full.

1.4.3 ‘Rent Allowance’ or ‘Rent Refund / Reimbursement’

Rent allowance:

- only a cash allowance that may be used freely by the employee
- falls within the definition of income under s9(1)(a)
- fully taxable

Rent refund/reimbursement:

Refund amount is not taxable [s9(1A)(a)]. Instead, Rental Value is taxable

Example 2: Rental value

Mrs. W was provided with rent-free accommodation by her employer for 2014/15. Her annual salary was \$320,000 and she was entitled to deductions under s.12(1)(a) of \$10,000.

Mrs. W's income for the year would include the following:

	\$
Salary	320,000
Less: Allowable deductions	(10,000)
Add: Rental value: $$(320,000 - 10,000) \times 10\%$	<u>31,000</u>
Total income	<u>341,000</u>

Example 3: Subsidised accommodation

Mr. X earned a salary of \$400,000 for 2014/15 and his employer also provided him with accommodation. However, Mr. X contributed \$850 per month towards the cost of the accommodation.

Mr. X's income for the year would include the following:

	\$	\$
Salary		400,000
Add: Rental value $$(400,000 \times 10\%)$	40,000	
Less: Rent suffered $$(850 \times 12 \text{ months})$	<u>(10,200)</u>	
Excess of rental value over rent suffered		<u>29,800</u>
Total income		<u>429,800</u>

(Source: HKICPA Module D Learning Pack page 407)

1.5 Share Option Benefit

According to s9(1)(d), ‘income from any office or employment’ includes any **gain realized** by the exercise, assignment or release of a right to acquire shares in a corporation obtained by a person because of his employment or office.

1.5.1 Exercise of option [s9(4)(a)]:

The gain realized is the *difference* between

- (a) the amount a person could reasonably expect to obtain from a sale of those shares in the open market, and
- (b) the consideration actually given for the option and for the shares.

1.5.2 Assignment or Release of option [s9(4)(b)]:

The gain realized is the *difference* between

- (a) the consideration received for the assignment or release, and
- (b) the consideration given for the grant of the option.

Salaries tax is not charged at the time of receipt of option, but until the option is exercised, assigned or released [s9(5)].

Situation	Non-HK Employment	Non-HK Employment	HK Employment
Employment date in Hong Kong	1 April 2011	1 April 2011	1 April 2011
Granting date	1 April 2011	1 April 2011	1 April 2011
Vesting date	31 March 2012	31 March 2013	31 March 2013
Exercising date	30 April 2013	30 April 2013	30 April 2013
Number of days rendering services in Hong Kong in 2011/12	203 days	56 days	56 days
Number of days rendering services in Hong Kong in 2012/13	170 days	235 days	235 days
Number of days rendering services in Hong Kong in 2013/14	168 days	250 days	250 days

Situation	Non-HK Employment	Non-HK Employment	HK Employment
Taxable amount in 2013/14	<ul style="list-style-type: none"> - Option gain will be taxed in 2013/14 using the 2011/12 time factor. $\\$100,000 \times 203/366 = \\$55,464$ This amount will be included in the salaries tax return for 2013/14 and will not be subject to further apportionment. - Other income from the employment for 2013/14 will be subject to the time factor of 168/365 applicable to 2013/14. 	<ul style="list-style-type: none"> - Since the employee visited Hong Kong for not more than 60 days in 2011/12, no salaries tax is payable for 2011/12. The portion of stock option gain to be assessed in 2013/14 will be: $\\$100,000 \times 235/731 = \\$32,148$ - Other income from the employment for 2013/14 will be subject to the time factor of 250/365 applicable to 2013/14. 	<ul style="list-style-type: none"> - In accordance with DIPN 38 (Revised), an apportionment is not applicable for Hong Kong employment. Thus, the whole option gain should be taxed in 2013/14 when the stock option was exercised. - Other income from the employment for 2013/14 will be fully taxable.

(Source: HKICPA Module D Learning Pack page 408-409)

1.6 Share Awards Benefit

Share awards are taxable *perquisites*. The taxable amount is its fair value at the *time of accrual*. The time of accrual depends on when the employee is regarded as fully entitled to ownership of the shares and whether the employee is entitled to the full economic benefit of the shares.

Characteristics	Upfront approach	Back end approach
Vesting period	No	Yes
Time of assessment	At the time the award is granted	At the time when the conditions are fulfilled, e.g. when vesting period is completed
Valuation	Market value as at granting date	Market value as at the date when conditions are fulfilled
Discount in valuation	Possible, if there is sale restriction of shares after the grant (generally speaking, 5% per year)	No
Distributions such as dividends or bonus shares	Received during the restriction period: Not taxable – regarded as investment income since the employee is entitled to the shares at the time of the award	Received during the vesting period: Taxable- since the employee is entitled to the shares only at the end of the vesting period

(Source: HKICPA Module D Learning Pack page 410)

The vesting period is the period from the date the share award is granted to the date the employee is entitled to ownership of the shares.

1.7 Retirement benefit

A lump sum payment received from a recognised occupational retirement scheme upon termination of service, death, incapacity or retirement of the employee is exempt from salaries tax.

If the employee's period of service is less than ten years, the lump sum payment received from a recognised occupational retirement scheme on termination of service is exempt from salaries tax if the amount does not exceed the proportionate benefit computed under s.8(4)(b) . Otherwise, the excess over the proportionate benefit is taxable. Accrued benefits received (or taken to have received) by a person from a MPF scheme on termination of service as attributable to the employer's voluntary contributions are also subject to the proportionate benefit rule.

	ORSO		MPF		
	Accrued Benefits Attributable to		Accrued Benefits Attributable to		
	Employee's Contributions	Employer's Contributions	Employee's Contributions (Mandatory and Voluntary)	Employer's Mandatory Contributions	Employer's Voluntary Contributions
Termination of service (with or without permanent departure from Hong Kong)	Exempt	Exempt but 'Proportionate Benefit Rule' applies	Exempt	Exempt	Exempt but 'Proportionate Benefit Rule' applies
Permanent departure from Hong Kong without terminating service	Exempt	Assessable	Exempt	Exempt	Assessable
Any circumstances other than listed above	Exempt	Assessable	Exempt	Assessable	Assessable

(Source: HKICPA Module D Learning Pack page 414)

In accordance with s.8(4)(b), the proportionate benefit is computed as follows:

$$\frac{\text{Completed months of service of the employee}}{120 \text{ months}} \times \text{Accrued benefit of the employee at date of termination of service}$$

If the period of service is ten years or more (i.e. ≥ 120 months), the lump sum payment is exempt from salaries tax. Otherwise, the amount in excess of the proportionate benefit which is calculated using the above formula would be taxable.

Example 1: Proportionate benefit

Mr. X has a period of service of five years with his employer. His accrued benefit on termination of his service was \$100,000 and the payment received from the scheme was \$70,000.

The calculation of the proportionate benefit (s.8(5)) is:

$$\text{Proportionate benefit} = \$100,000 \times 60/120 \text{ months} = \$50,000 \text{ (tax free)}$$

$$\text{The taxable benefit} = \text{Payment received} - \text{Proportionate benefit} = \$70,000 - \$50,000 = \$20,000$$

The accrued benefit is the maximum benefit that the person would have been entitled to receive from a recognized occupational retirement scheme in respect of his recognised service as if he had retired on the date of termination of employment.

(Source: HKICPA Module D Learning Pack page 405)

1.8 Salaries tax planning

1.8.1 Source of employment

- (a) If the employee is required to frequently travel outside HK and an employment can be structured in such a way that the source is outside HK, then income will be taxed on time basis only. If an expatriate is simultaneously an employee of the overseas parent company and also an employee of a local associated company (i.e. ‘dual employment contract’), then remuneration may be allocated between the overseas company and local company.

To be successful, arrangement must be genuine, employee always travelling outside HK, and overseas contract negotiated / concluded / enforceable outside HK with an employer resident outside HK. If the overseas company is merely a BVI company without any concrete business activity, this arrangement likely be failed under s61 and s61A.

- (b) If an employee was promoted to a director post and simultaneously taking up employment duties, he may arrange in such a way that he was providing services in due capacity (both an employee and a director) so that the source of income would be considered separately.

1.8.2 Tax efficient remuneration packages

The efficient package includes:

- employer provides quarters to employee, or reimburses rent paid by employee.
- contractual liability borne by employer e.g. medical / dental expense and insurance premium, domestic servant, utility bills, car hire charges and running expense, club subscription (i.e. employer enter into contract directly with doctor / insurance company / servant / utilities companies etc.)
- provide benefit cannot be convertible into cash e.g. low / free interest loan, company car etc.

All arrangement must be properly documented (e.g. tenancy stamped), genuine (e.g. real rent refund) and commercially realistic (e.g. not excessive rental). In addition, children education benefit and holiday journey benefit are no longer tax efficient under s9(2A)(b)/(c).

The salaries tax and profit tax implications must be considered from the points of view of the employee and employer. Consider the following main areas:

	Employee (under ST)	Employer (under PF)
Salary, bonus, commission etc.	Taxed on an annual basis	Deductible
Benefit-in-kind	Many benefits are tax-free or tax efficient (e.g. provision of quarter)	Deductible
Share option schemes	Taxable when options exercised, no tax on subsequent disposal	Cost of share options allocated and costs of running schemes is deductible

2. Stamp Duty

2.1 Scope of Charge

It is a tax on *instruments* and not on transactions, either of a fixed sum or ad valorem.

Stamp Duty payable is usually based on the value of the stated consideration which may be made up of money or money's worth, debts waived or assigned, and any further payment of money.

If the stated consideration is above / equal / below MV of property / stock transferred, duty is charged at **higher of (consideration, MV)** even though it was a genuine transaction.

Head 1	Immovable property situated in HK
	(1) Conveyance on sale (i.e. assignment) of non-residential property
	(1A) Agreement for sale of residential property
	(2) Lease
Head 2	HK stock
Head 3	HK bearer instruments
Head 4	Duplicates and counterparts

2.2 Chargeable instrument

Head	Instrument	Stamp duty
1 (1)	Conveyance on sale ('COS') chargeable with AVD	1.5% – 8.5% (Scale 1 rates), or \$100 or 1.5% – 4.25% (Scale 2 rates) on the higher of consideration and market value
1 (1AA)	COS chargeable with SSD	5% – 15% or 10% – 20% on the higher of consideration and market value
1 (1AAB)	COS chargeable with BSD	15% on the higher of consideration and market value
1 (1A)	AFS chargeable with AVD	1.5% – 8.5% (Scale 1 rates), or \$100 or 1.5% – 4.25% (Scale 2 rates) on the higher of consideration and market value
1 (1B)	AFS chargeable with SSD	5% – 15% or 10% – 20% on the higher of consideration and market value
1 (1C)	AFS chargeable with BSD	15% on the higher of consideration and market value
1(2)	Lease of immovable property:	
	With premium only	Same as COS (\$100 or 0.75 – 4.25% on the higher of consideration and market price)
	With premium and/or rent	4.25% on premium and/or
	Lease term not specified	0.25 % on average yearly rent, or
	Lease term ≤ 1 year	0.25 % on total rent payable, or
	Lease term > 1 year but ≤ 3 years	0.5% on average yearly rent, or
	Lease term > 3 years	1% on average yearly rent
	An agreement for lease executed in pursuance of a duly stamped AFS	\$3
2(1)	Contract note, not jobbing business	0.2% (0.1% on bought note, 0.1% on sold note)
2(2)	Contract note, jobbing business	\$5
2(3)	Instrument of transfer for voluntary disposition <i>inter vivos</i>	\$5 + 0.2% on value of stock
2(4)	Instrument of transfer of any other kind	\$5
3(1)	Hong Kong bearer instrument	3% on market value
3(2)	Instrument in substitution for duly stamped instrument under Head 3(1)	\$5
4	Duplicates and counterparts of any chargeable instrument	\$5

(Source: HKICPA Module D Learning Pack page 506-507)

2.3 Ad Valorem Duty (“AVD”)

The sale of immovable property involves signing:-

- (a) A provisional sale and purchase agreement
 - (b) A formal sale and purchase agreement
 - (c) An assignment (or conveyance on sale) which transfers legal title to the purchaser
- } or agreement for sale

2.3.1 Non-residential immovable property

Before 23 February 2013:

1. Stampable instrument: Assignment (i.e. the conveyance on sale).
2. Consideration: Duty is computed on the higher of:
 - (a) the stated consideration in the conveyance on sale; and
 - (b) the lower of the MV of the property
 - (i) at the time of the formal sale and purchase agreement; and
 - (ii) at the time of the conveyance on sale
3. Rates: Refer to Scale 2 (from \$100 to 4.25%)
4. Time of stamping: within 30 days after date of conveyance
5. Seller, purchaser are jointly and severally liable, usually collect from purchaser first.

Stamp duty rates (Up to 22 February 2013 “Scale 2”)

Amount or value of consideration	Duty payable
\$1 - \$2,000,000	\$100
\$2,000,001 - \$2,351,760	\$100 + (consideration - \$2,000,000) x 10%
\$2,351,761 - \$3,000,000	consideration x 1.5%
\$3,000,001 - \$3,290,320	\$45,000 + (consideration - \$3,000,000) x 10%
\$3,290,321 - \$4,000,000	consideration x 2.25%
\$4,000,001 - \$4,428,570	\$90,000 + (consideration - \$4,000,000) x 10%
\$4,428,571 - \$6,000,000	consideration x 3%
\$6,000,001 - \$6,720,000	\$180,000 + (consideration - \$6,000,000) x 10%
\$6,720,001 - \$20,000,000	consideration x 3.75%
\$20,000,001 - \$21,739,120	\$750,000 + (consideration - \$6,000,000) x 10%
\$21,739,121 and above	Consideration x 4.25%

Marginal relief is available to avoid hardship, and a fraction of \$1 is treated as \$1.

If duty below 4.25%, a certificate (usually a paragraph) is required in the agreement / conveyance / deed of gift declaring that the “transaction is not part of a series of transactions, the value of which will exceed the lower block of stamp duty”. If absence, duty rate at 4.25%.

Ad Valorem Stamp Duty (“AVD” or “DSD”)

The Stamp Duty (Amendment) (No. 2) Ordinance 2014 (“Amendment Ordinance”) was gazetted on 25 July 2014.

1. Advances the timing for charging AVD on non-residential property transactions from the conveyance on sale to the agreement for sale executed on or after the 23 February 2013.
2. Any non-residential property acquired on or after the 23 February 2013, either by an individual or a company, will be subject to AVD at Scale 1.

On or after 23 February 2013:

1. Stampable instrument: Sale and purchase agreement (i.e. the agreement for sale)
2. Duty computed on higher of (consideration, MV on S&P date) + \$100 on conveyance on sale.
3. Rates: Refer to Scale 1 (from 1.5% to 8.5%)
4. Time of stamping: within 30 days of S&P agreement.
5. Seller, purchaser are jointly and severally liable, usually collect from purchaser first.

Stamp duty rates (from 23 February 2013 “Scale 1”)

Consideration or value of the property	New AVD rates
Up to \$2,000,000	1.50%
\$2,000,001 to \$2,176,470	\$30,000+20% of the excess over \$2,000,000
\$2,176,471 to \$3,000,000	3.00%
\$3,000,001 to \$3,290,330	\$90,000+20% of the excess over \$3,000,000
\$3,290,331 to \$4,000,000	4.50%
\$4,000,001 to \$4,428,580	\$180,000+20% of the excess over \$4,000,000
\$4,428,581 to \$6,000,000	6.00%
\$6,000,001 to \$6,720,000	\$360,000+20% of the excess over \$6,000,000
\$6,720,001 to \$20,000,000	7.50%
\$20,000,001 to \$21,739,130	\$1,500,000+20% of the excess over \$20,000,000
\$21,739,131 and above	8.50%

2.3.2 Residential immovable property

1. Stampable instrument: sale and purchase agreement (i.e. the agreement for sale).
2. Consideration: Duty computed on higher of (consideration, MV on S&P date) + \$100 on conveyance on sale.
3. Rates: Refer to Scale 1 or 2.
4. Time for stamping: within 30 days of S&P agreement. It can be extended to 30 days after execution of the conveyance or 3 years after S&P date, whichever is the earlier.
5. Seller and purchaser are jointly and severally liable, usually collect from purchaser.

Ad Valorem Stamp Duty (“AVD” or “DSD”)

Any residential property and non-residential property acquired on or after the 23 February 2013, either by an individual or a company, will be subject to AVD at Scale 1, except that acquired by a Hong Kong Permanent Resident acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition.

Both the buyer and the seller will be jointly and severally liable to pay the New AVD.

Scale 1 will not be applicable under the following circumstances –

(A) When Scale 2 is applicable:

- (i) acquisition of a residential property by a HKPR and does not own any other residential property in Hong Kong at the time of acquisition;
- (ii) acquisition of a residential property by two or more HKPRs jointly as co-owners or joint owners and does not own any other residential property in Hong Kong at the time of acquisition;
- (iii) acquisition of a residential property by a HKPR jointly as a co-owner or joint owner with a close relative or close relatives (i.e. spouse, parents, children, brothers and sisters) who is/are not HKPR and does not own any other residential property in Hong Kong at the time of acquisition;
- (iv) acquisition or transfer of residential properties between close relatives, irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong at the time of the acquisition or transfer;
- (v) nomination of a close relative(s) (be they HKPRs or not) who is/are owner(s) of other residential property in Hong Kong at the time of nomination, to take up the assignment of a residential property.

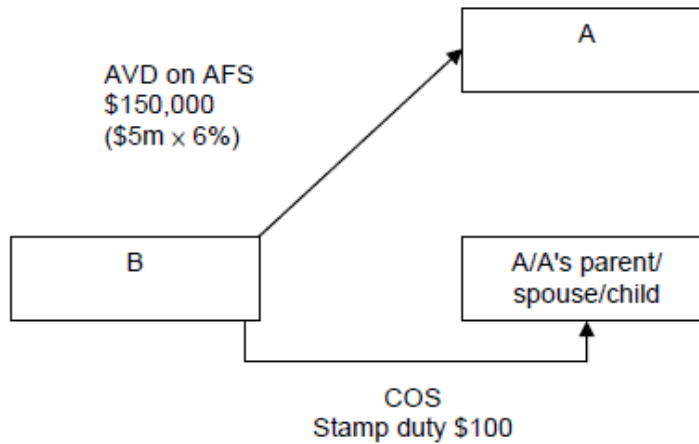
- (vi) acquisition or transfer of a property by a court order or pursuant to a court order, which includes a foreclosure order obtained by a mortgagee;
 - (vii) transfer/vesting of a mortgaged property under a conveyance to/in its mortgagee that is a financial institution or a receiver appointed by the mortgagee;
 - (viii) acquisition of a property by a person to replace another property which was owned by that person and that has been
 - purchased or acquired pursuant to redevelopment projects pursued by the Urban Renewal Authority; or the Lands Resumption Ordinance
 - acquired under an acquisition order of the Land Acquisition (Possessory Title) Ordinance; or
 - resumed under an order made under the Lands Resumption Ordinance; the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance; the Roads (Works, Use and Compensation) Ordinance; the Railways Ordinance; or the Land Drainage Ordinance
 - sold pursuant to an order for sale made by the Lands Tribunal of the Land (Compulsory Sale for Redevelopment).
- (B) When AVD is exempt:
- (i) Nomination of a close relative(s) (be they HKPRs or not) who do(es) not own any other residential property in Hong Kong at the time of nomination;
 - (ii) transfer of a property to a beneficiary of the estate of a deceased person in accordance with that provided under a will or the law of intestacy; or acquired the property by the right of survivorship;
 - (iii) acquisition or transfer of a property by or to a body corporate from an associated body corporate;
 - (iv) acquisition or transfer of properties by or to the Government;
 - (v) gift of properties received by charitable institutions exempted from tax under section 88 of the Inland Revenue Ordinance.
- (C) Entitled to partial refund of AVD
Acquisition of a residential or non-residential property (including bare sites) for the purpose of redevelopment;

2.3.3 Other matters

- (a) If 1st agreement is superseded by another agreement by same parties with same terms within 14 days, no stamp duty on 1st agreement.
- (b) If name is added / deleted before execution of the conveyance on sale is parent / spouse / children → no stamp duty on 2nd agreement.
- (c) If name is added / deleted after execution of the conveyance on sale → ad valorem duty in proportion to change in ownership share.

Example 11

A signed an AFS to purchase a non-RPPT from B at \$5 million, and AVD at Scale 1 rates on the AFS was charged at 6% on \$5 million. On conveyance, A admitted his parent, spouse and child as joint tenants of the property. In such circumstances, the stamp duty chargeable on conveyance will be \$100 as A's parent, spouse and child are deemed to be the same person as A.



If, instead of admitting his parent, spouse and child, A admitted his brother and sister as joint tenants, further AVD at Scale 1 rates will be payable on the COS in the amount of \$200,000 ($\$5 \text{ million} \times 6\% \times 2/3$); and SSD will also be payable (see the discussion in **section 3.3** on 'Special stamp duty' below).

(Source: HKICPA Module D Learning Pack page 518)

2.4 Special Stamp Duty (“SSD”)

The liability to SSD will arise if all of the following 3 conditions are met:

- (i) the transaction involves the sale and purchase or transfer of a residential property;
- (ii) the property is acquired by the seller or transferor on or after 20 November 2010; and
- (iii) the property is disposed of (which includes a resale or transfer) by the seller or transferor within 24 months (if the property was acquired between 20 November 2010 and 26 October 2012) or 36 months (if the property was acquired on or after 27 October 2012) from the date of acquisition.

SSD is calculated based on the stated consideration for the transaction on the market value of the property, whichever is higher, at following rates:

SSD (Phase 1) Acquired from 20 Nov 2010 to 26 Oct 2012		SSD (Phase 2) Acquired on or after 27 Oct 2012	
Resold:	Rates	Resold:	Rates
6 months or less	15%	6 months or less	20%
More than 6 months but for 12 months or less	10%	More than 6 months but for 12 months or less	15%
More than 12 months but for 24 months or less	5%	More than 12 months but for 36 months or less	10%

Person liable to pay SSD

Buyer and seller will be jointly and severally liable for payment of SSD.

Exemption

Payment of SSD is exempted in the following cases (ss.29CA and 29DA):

- (a) Nomination of a close relative to take up an assignment of a RPPT under an AFS (i.e. the assignment is treated as ‘in confirmatory with’ an AFS);
- (b) Sale or transfer of a RPPT to a close relative;
- (c) Addition/ deletion of a name to/from a chargeable AFS or COS of a RPPT if the person is a close relative of the original purchaser;
- (d) Sale, transfer or vesting of a RPPT made by a court or pursuant to a court order (including a compulsory sales order made under the Land (Compulsory Sale for Redevelopment) Ordinance, and a foreclosure order made to a mortgagee, irrespective of whether the mortgagee is a FI within the meaning of s.2 of the IRO), and the RPPT was sold to/ transferred to or vested in the seller by or pursuant to any decree or order of any court;
- (e) Sale or transfer of a RPPT that relates to the estate of a deceased person, and sale or transfer of a RPPT by a person whose property is inherited from a deceased person’s estate or is passed to that person under the right of survivorship;

- (f) The RPPT sold relates solely to a bankrupt's estate or the property of a company which is being wound up by the court by reason of its inability to pay debts;
- (g) Sale of a mortgaged property by a mortgagee which is a FI within the meaning of s.2 of the IRO, or by a receiver appointed by such a mortgagee;
- (h) Sale or transfer of a RPPT to the Government;
- (i) Gift of a RPPT to a charitable institution exempted from tax under s.88 of the IRO; and
- (j) Sale or transfer of a RPPT between associated bodies corporate.

Example 12 (Adapted from SOIPN 5 (Revised), Examples 2 to 5)

Mr. Ho acquired a RPPT on 10 November 2012 and disposes of it for \$6.5 million on:

- (a) 9 May 2013;
- (b) 10 August 2013;
- (c) 18 March 2014; or
- (d) 30 November 2015.

How is the holding period of the property calculated? What is the rate of SSD and what is the amount of SSD payable?

Solution

As the subject property was acquired after 27 October 2012, SSD will apply if the property is sold within 36 months from the date of acquisition. For SSD purposes, the property holding period is calculated based on the calendar months, i.e. the period from a certain day in a month to the preceding day in the following calendar month is counted as one month.

- (a) In this case, Mr. Ho has held the property for exactly six months. The applicable rate of SSD is 20%. The amount of SSD payable is \$1,300,000 (\$6.5 million × 20%).
- (b) In this case, Mr. Ho has held the property for more than six months but not more than 12 months. The applicable rate of SSD is 15%. The amount of SSD payable is \$975,000 (\$6.5 million × 15%).
- (c) In this case, the property was held for more than 12 months but within 36 months from the date of acquisition. The applicable rate of SSD is 10%. The amount of SSD payable is \$650,000 (\$6.5 million × 10%).
- (d) In this case, the property was disposed of after 36 months from the date of acquisition. Therefore, no SSD is payable.

(Source: HKICPA Module D Learning Pack page 520)

Exchange or partition of residential property

An agreement for exchange or partition of RPPT is in essence an AFS. The date of signing it is regarded as the date of 'acquisition' or 'disposal' of the property concerned; and SSD is calculated by reference to the 'equality money' payable for the exchange or partition (s.29C(10)).

If the dates of acquisition of the exchanged properties by the respective parties in the exchange are different, the earlier one will be taken for counting the holding period. Where a RPPT is exchanged for a non-RPPT, only the date of acquisition of the RPPT in the exchange is relevant for counting the holding period.

Example 14 (Adapted from SOIPN 5 (Revised), Scenario 5)

Mr. X acquired a RPPT A on 1 January 2015. Later, Mr. Y acquired a RPPT B on 1 July 2015. On 30 September 2015, they executed an agreement for exchange with equality money being \$1 million.

For the purpose of counting the holding period, the date of acquisition of property A (1 January 2015) which is earlier is taken. The holding period (from 1 January 2015 to 30 September 2015) is therefore more than six months but less than 12 months. The applicable SSD rate is 15%, and thus the amount of SSD payable is \$150,000 (\$1 million × 15%).

Example 15 (Adapted from SOIPN 5 (Revised), Scenario 6)

Facts are the same as in Example 14, except property A was a non-RPPT.

For the purpose of counting the holding period, the date of acquisition of the RPPT B (1 July 2015) is taken. The holding period (from 1 July 2015 to 30 September 2015) is therefore less than six months. The applicable SSD rate is 20%, and thus the amount of SSD payable is \$200,000 (\$1 million × 20%).

(Source: HKICPA Module D Learning Pack page 521)

2.5 Buyer's Stamp Duty ("BSD")

BSD is payable on an agreement for sale or a conveyance on sale for the acquisition of any residential property executed on or after 27 October 2012, except where the purchaser or the transferee is a Hong Kong permanent resident (HKPR) acquiring the property on his/her own behalf (i.e. the person is both the legal and beneficial owner).

A limited company, regardless the residency status of its shareholders and directors, will be liable to BSD if it acquires a residential property on or after 27 October 2012.

BSD is charged at a flat rate of 15% on the stated consideration or the market value of the property (whichever is the higher), on top of the existing stamp duty and the special stamp duty, if applicable.

Person liable to pay BSD

The buyer or the transferee is liable to pay the BSD.

Exemption

BSD will be exempted under the following circumstances (ss.29CB and 29DB):

- (a) Acquisition of a RPPT by a HKPR jointly with a close relative(s) who is/are not HKPR, and each of the purchasers is acting on his/her own behalf;
- (b) Transfer of a RPPT to a close relative who is not a HKPR, or to a close relative(s) jointly one or more of whom is/are not HKPR, and each of the transferees is acting on his/her own behalf;
- (c) Nomination of a close relative(s) who is/are not HKPR to take up the assignment of a RPPT, and each of the nominees is acting on his/her own behalf;
- (d) Addition/deletion of a close relative(s) who is/are not HKPR to/from a chargeable AFS or a COS of a RPPT, and each of the persons is acting on his/her own behalf;
- (e) Acquisition or transfer of a RPPT by a court order or pursuant to a court order, including a foreclosure order obtained by a mortgagee irrespective of whether it is a FI within the meaning of s.2 of the IRO;
- (f) Transfer/ vesting of a mortgaged RPPT under a conveyance to/in its mortgagee which is a FI within the meaning of s.2 of the IRO, or a receiver appointed by the mortgagee;
- (g) Acquisition or transfer of a RPPT between associated bodies corporate;
- (h) Acquisition of a RPPT by a person acting on his/her own behalf to replace another RPPT which was owned by that person and that has been:
 - (i) purchased or acquired pursuant to redevelopment projects pursued by the Urban Renewal Authority; or
 - (ii) resumed under an order made under s.3 of the Lands Resumption Ordinance or purchased under s.4A of that Ordinance; or

- (iii) sold pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance; or
- (iv) resumed under an order made under s.4(1) of the Mass Transit Railway (Land Resumption and Related provisions) Ordinance; or
- (v) resumed under an order made under s.13(1) of the Roads (Works, Use and Compensation) Ordinance; or
- (vi) resumed under an order made under s.16 or 28(1) of the Railways Ordinance; or
- (vii) acquired under an acquisition order made under s.3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance; or
- (viii) resumed under an order made under s.37(2) of the Land Drainage Ordinance.

(i) Acquisition or transfer of a RPPT by or to the Government; and

(j) Gift of a RPPT to charitable institutions exempted from tax under s.88 of the IRO.

If a RPPT is jointly acquired by a HKPR and a non-HKPR who is not a close relative of the HKPR, there will not be any exemption from BSD. BSD will be payable on the stated consideration or full value of the property, whichever is the higher, regardless of the share of interest of the non-HKPR in the property.

A RPPT which is inherited by a non-HKPR from a deceased person's estate under a will, the law of intestacy or right of survivorship by a beneficiary is exempted from stamp duty, which is defined under the SDO to include AVD, SSD and BSD.

Example 16

Mr. L and Mr. M, HKPRs, entered into a PAFS on 31 January 2015 to acquire a RPPT at a price of \$6 million from a seller who had held the property for more than three years. On 28 February 2015, Mr. N, a non-HKPR, was added in the AFS as one of the joint owners. The deed of assignment was executed on 31 March 2015. Mr. N is not a close relative of Mr. L nor Mr. M. All three owners do not own any other RPPT in Hong Kong.

Solution

As the seller had held the property for more than three years, no SSD is chargeable on the PAFS.

AVD at Scale 2 rates is payable on the PAFS under Head 1(1A) on \$6 million at 3%, i.e. \$180,000.

AVD at Scale 1 rates is payable on the AFS under Head 1(1A) on Mr. N's share of interest (\$6 million x 1/3) at 6%, i.e. \$120,000.

As 1/3 of the interest in the property was disposed of by Mr. L and Mr. M within six months from the date of acquisition, the applicable rate of SSD is 20%. The amount of SSD payable is \$400,000 (\$6m x 1/3 x 20%).

As Mr. N is a non-HKPR, BSD is payable on the AFS under Head 1(1C) at 15% on the full value of \$6 million, regardless of the non-HKPR's share of interest. The amount of SSD payable is \$900,000.

The deed of assignment is then subject to stamp duty of \$100.

(Source: HKICPA Module D Learning Pack page 524)

2.6 Exemption and Relief

Transfers within Group Companies [s45 exemption]

Transfers of immovable property and stocks within associated body corporate are exempt. The instrument must be adjudicated. Application for relief should be supported by a statutory declaration made by a responsible officer of the parent company, or its solicitor.

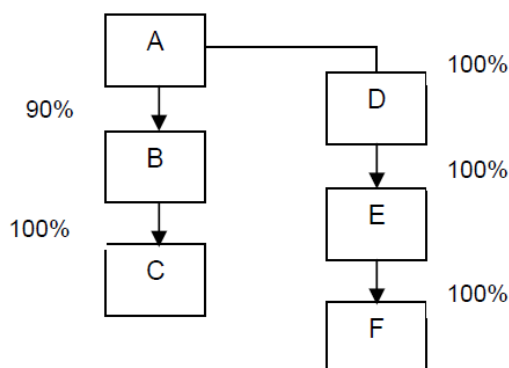
Meaning of "associated body corporate":

- a) one of the bodies is the beneficial owner of $\geq 90\%$ of the issued share capital of the other; or
- b) a third body corporate is the beneficial owner of $\geq 90\%$ of the issued capital of each of them.

The companies need not be incorporated in HK. Beneficial ownership either directly or indirectly through other body corporate.

Example 25

A, B, C, D, E and F with the following group structure are associated bodies corporate eligible for the relief under s.45. A holds directly 90% of B and indirectly 90% of C. In addition, A effectively holds 90% or more of the shareholdings in D, E and F.



(Source: HKICPA Module D Learning Pack page 536)

No s45 exemption if:

- (a) associated relationship ceased within 2 years. If so, transferor and transferee are required to notify the Collector within 30 days after the cessation, and jointly and severally liable for stamp duty which is computed on value on the date of original instrument. Penalty \$5,000 for non-compliance.

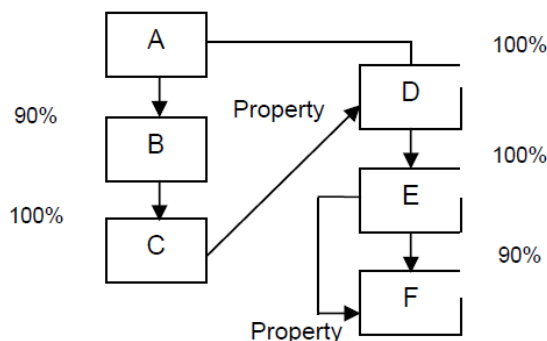
However, if the transferor company is liquidated within 2 years, s45 relief may not be revoked if:

- i) the transferor company is the holding company of the transferee company and there is another holding company of the transferor company which continues in existence during the 2-year period; or
 - ii) the transferor and the transferee companies are under common control of a holding company and that holding company retains $\geq 90\%$ of the shareholdings in the transferee company during the 2-year period.
- (b) there is an arrangement at the time of the transfer that the two companies will cease to be associated, even after two years of the transfer.
 - (c) any part of the consideration for the transfer between associated companies was provided by or paid to an unrelated person. (However, if money has been obtained from a F.I. and the Collector accepts that as long as the loan was made by the F.I. in its ordinary course of business and that F.I. had no interest in the property / stock other than as security, then s45 relief would not be rejected), or
 - (d) the purpose is for avoidance of stamp duty.

Example 28

Section 45 relief will not be revoked in the following situations:

- (a) E transfers a property to its subsidiary F. E may be liquidated within two years of the transfer (provided D remains as the holding company of F).
- (b) C transfers a property to D. C may be liquidated within two years of the transfer (provided A remains as the holding company of D).



(Source: HKICPA Module D Learning Pack page 538)

3. Tax administration

3.1 Assessment and additional assessment

Under s.59(1) of the IRO, an assessor shall assess every person (who is in the opinion of an assessor chargeable with tax under IRO) as soon as the time limited by the notice requiring him to furnish a return under s.51(1) has expired.

The assessor is not restricted by the above time limit and may assess any person at any time if the assessor is of the opinion that person is about to leave Hong Kong, or that for any other reason it is expedient to do so.

Under s.60(1) of the IRO, an assessor may raise an assessment or an additional assessment:

- Within the year of assessment;
- Within six years after the year of assessment; or
- Within ten years after the year of assessment if the non-assessment or under-assessment is due to fraud or wilful evasion.

Section	Assessment
59(1)	An assessment can be raised after the expiration of the time limit for submission of the return. See note below.
59(1) proviso	An assessment can be raised at any time when it is expedient to do so.
59(2)(a)	An assessment raised in accordance with a return accepted by an assessor.
59(2)(b)	An estimated assessment raised in the case that the return is not accepted by an assessor.
59(3)	An estimated assessment raised in the absence of a return.
59(4)	An estimated assessment raised on the basis of the usual rate of profit on the turnover of that trade or business if the accounts have not been kept in a satisfactory form.
60	An assessment (or additional assessment) raised where it appears to an assessor that taxpayer has not been assessed (or has been assessed at less than the proper amount) within the year of assessment or within 6 years after the expiration thereof.

(Source: HKICPA Module D Learning Pack page 44)

3.2 Statement of loss

A statement of loss is just an administrative document and not an assessment (*Common Empire Ltd v CIR*).

An assessment becomes final and conclusive under s.70 of the IRO if no valid objection or appeal is lodged or the assessable profits or income are determined following an objection or appeal.

An assessment becomes final and conclusive by reason of s.70 notwithstanding that it is incorrect but is not appealed in time or that it provides for a greater liability for tax than would have been the case if a proper return had been available at the date of assessment and any such disparity does not constitute an arithmetical error within the meaning of s.70A(1).

S.70 does not prevent an estimated assessment for profits tax becoming final and conclusive even if a late return shows that an actual loss was made.



**HKICPA
QP Module Preparation Seminar
Module D – Taxation**

Questions and Answers

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Q1.1 Mr. McDonald (Dec 2016 Q3)

Question 3 (8 marks – approximately 14 minutes)

Mr McDonald was the Development Manager of the Fantastic group's competitor. He commenced his Hong Kong employment by entering into an agreement with Fantastic HK on 1 August 2014 which provided that, apart from his monthly salary of HK\$100,000, he is entitled to receive from Fantastic HK a sum of HK\$800,000 ("the Sum") upon his taking up employment with the company on 1 December 2014. He, however, has to repay the Sum to Fantastic HK if he resigns on or before 30 November 2016. Mr McDonald took up the position of Innovative Director of Fantastic HK with effect from 1 December 2014. Fantastic HK paid him the Sum on 31 December 2014 along with his salary for December 2014. To date, Mr McDonald remains under the employment of Fantastic HK.

Required:

Analyse, with reference to the relevant legal principles, whether the Sum is chargeable to salaries tax; and if so, the year of assessment in which it is chargeable.

(8 marks)

Answer to Q1.1

Mr. McDonald

(Dec 2016 Q3)

Key notes

This question required candidates to discuss the income from employment.

S.9(1)(a) of the IRO provides that income from any office or employment includes any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, whether derived from the employers or others. S.11B of the IRO provides that the assessable income of a person in any year of assessment shall be the aggregate of income accruing to him from all sources in that year of assessment. S.11D(b) of the IRO further provides that income accrues to a person when he becomes entitled to claim payment thereof.

On the authority of *Hochstrassers v Mayers* (1959) 38 TC 673, to be liable to salaries tax, the relevant payment must arise from employment, be attributable to the taxpayer's services because of his employment and be in return for the taxpayer's services past, present or future. Besides, following the decision in *Shilton v Wilmshurst (Inspector of Taxes)* (1991) STC 88, an emolument from employment means an emolument from being or becoming an employee.

In the present case, the Sum was paid to Mr McDonald as an emolument for becoming an employee of Fantastic HK. It was an inducement for Mr McDonald to take up the employment. Accordingly, the Sum is chargeable to salaries tax by virtue of s.9(1)(a) of the IRO. Though Mr McDonald has a contingent liability to repay the Sum to Fantastic HK if he resigns on or before 30 November 2016, it is crystal clear that he was entitled to the Sum when he took up the employment on 1 December 2014. Fantastic HK did pay Mr McDonald the Sum according to the employment agreement. The Sum was accrued to Mr McDonald in the year of assessment 2014/15 when he took up the employment with Fantastic HK.

Examiner's comments

This question required candidates to analyse whether the Sum paid by the Hong Kong company to the employee upon his taking up the employment should be chargeable to salaries tax and the chargeable year of assessment. The performance in this question was fair. Generally, most candidates were able to quote s.9(1)(a) of the IRO as relevant to the case and drew the correct conclusion as to the chargeability of the Sum in the year of assessment 2014/15, though less than half of the candidates were able to identify s.11B and s.11D(b) as well. However, there were also quite a number of the candidates who started the analysis from s.8, which was not the question requirement. On the other hand, some candidates might have been confused with the repayment condition of the Sum and wrongly concluded that the Sum should be assessed over three years of assessment.

Q1.2 Mr. Richmond and Ms. Taylor (Dec 2016 Q5)

Shares participation plan

On 3 January 2011, the Fantastic group launched a shares participation plan (“the Plan”) to allot shares in Fantastic Holdings to chosen employees who have been working with the group for more than 20 years.

The market price of and the dividend paid by Fantastic Holdings were as follows:

	<u>Market price per ordinary share</u>
3 January 2011	HK\$100
1 June 2011	HK\$120
31 May 2013	HK\$105
30 May 2014	HK\$110
31 March 2016	HK\$90

<u>Dividend paid on</u>	<u>Dividend paid per ordinary share</u>
3 May 2011	HK\$1.6
18 May 2012	HK\$1.5
22 May 2013	HK\$1.1
15 May 2014	HK\$1.2

Mr Richmond

Mr Richmond was allotted 5,000 ordinary shares (“Shares A”) on 1 June 2011 by virtue of the Plan. Shares A would be vested in Mr Richmond on 30 May 2014 if he remained an employee of Fantastic HK on that date. On 30 May 2014, Shares A were vested in and awarded to Mr Richmond by allotment. In addition, an additional award equivalent to the value of dividends as declared by Fantastic Holdings during the vesting period was accumulated and paid to Mr Richmond on 30 May 2014. On 31 March 2016, Mr Richmond transferred 4,000 ordinary shares out of Shares A to his family trust (“the Trust”) at a consideration of HK\$40,000. Mr Richmond’s children are the sole beneficiaries of the Trust.

The number of days for which Mr Richmond was in Hong Kong and outside Hong Kong are as follows:

<u>Year ended</u>	<u>No. of days in Hong Kong</u>	<u>No. of days outside Hong Kong</u>
31 March 2011	290	75
31 March 2012	286	80
31 March 2013	310	55
31 March 2014	312	53
31 March 2015	296	69

Ms Taylor

Ms Taylor was allotted 3,000 ordinary shares (“Shares B”) on 1 June 2011 by virtue of the Plan. The rights attached to Shares B are the same as other ordinary shares in Fantastic Holdings except that Ms Taylor cannot sell Shares B until 31 May 2013. She has the right to vote and is entitled to dividend as other ordinary shareholders with regard to Shares B. Ms Taylor was registered as a shareholder of Fantastic Holdings on 1 June 2011.

Question 5 (12 marks – approximately 22 minutes)

- (a) Recommend an assessment approach as prescribed in the Departmental Interpretation and Practice Notes No. 38 (Revised) (“DIPN No. 38”) which is applicable to Mr Richmond’s case; state the year of assessment in which the assessable income in relation to Shares A is chargeable to tax and calculate the amount of assessable income, if any, on the basis that Mr Richmond’s employment with Fantastic HK throughout is (i) a Hong Kong employment; and (ii) a non-Hong Kong employment. Explain your analysis. (6 marks)
- (b) Recommend an assessment approach as prescribed in the DIPN No. 38 which is applicable to Ms Taylor’s case; state the year of assessment in which the assessable income in relation to Shares B is chargeable to tax and calculate the amount of assessable income. Explain your analysis. (6 marks)

Answer to Q1.2 Mr. Richmond and Ms Taylor (Dec 2016 Q5)

Key notes

This question required candidates to discuss the salaries tax treatment of share award.

Answer 5(a)

Vesting of shares was involved in Mr Richmond's case. As such, the back end approach is to be adopted in the computation of the relevant assessable income. Irrespective of whether Mr Richmond's employment with Fantastic HK is a Hong Kong employment or a non-Hong Kong employment, the assessable income in relation to Shares A is chargeable to salaries tax in the year of assessment 2014/15 because Shares A were vested in him on 30 May 2014. The relevant shares award is not to be assessed in the year of assessment in which the Plan was launched (i.e., 2010/11) or the year of assessment in which Shares A were granted to Mr Richmond (i.e., 2011/12). This is because Mr Richmond was not entitled to Shares A in those two years of assessment. By the same token, as Shares A had not been vested in Mr Richmond in the years of assessment 2012/13 and 2013/14, the relevant shares award is not to be assessed in those years of assessment either.

If Mr Richmond's employment with Fantastic HK is a Hong Kong employment, the relevant assessable income in respect of Shares A is as follows:

$$(5,000 \text{ shares} \times \text{HK}\$110^{\text{note 1}}) + [5,000 \text{ shares} \times (\text{HK}\$1.5 + \text{HK}\$1.1 + \text{HK}\$1.2)]^{\text{note 2}}$$
$$= \text{HK}\$569,000$$

If Mr Richmond's employment with Fantastic HK is a non-Hong Kong employment, the relevant assessable income in respect of Shares A is as follows:

$$\text{HK}\$569,000(\text{as above}) \times 296 / 365^{\text{note 3}} = \text{HK}\$461,435$$

Examiner's comments

This question required candidates to recommend the assessment approach prescribed in the Departmental Interpretation and Practice Notes No.38 ("DIPN No.38") on the share award granted under certain vesting conditions to an employee, and state the chargeable year of assessment with the calculation of the assessable income on both the basis of a Hong Kong employment and non-Hong Kong employment. The performance in this question was diverse, possibly due to the specific nature of the question. Of those who got the correct answer to the assessment approach in the first hand, they would generally come up with the correct answers to the other parts of the question, while the opposite might happen to those who answered wrong to the assessment approach initially. A lot of candidates were able to identify the "back end approach" as the correct assessment approach and state that the awards were chargeable in the year of assessment 2014/15. Many came up with the correct time factor for the non-Hong Kong employment scenario, though some did not show the detailed calculation. A few candidates also misinterpreted the share awards as share options and came up with the incorrect time factor. Some of the candidates mistakenly answered that the additional awards, being the value of dividends during the vesting period, were either not chargeable to salaries tax, or chargeable but assessable during the years of assessment 2011/12 to 2013/14.

Key notes

This question required candidates to discuss the salaries tax treatment of share award.

Answer 5(b)

As Ms Taylor was granted Shares B in the year of assessment 2011/12, the assessable income in relation thereto will be assessed in that year of assessment. Though restriction to sell was imposed on Shares B, it did not undermine Ms Taylor's rights to those shares. Indeed, she was registered as a shareholder of Fantastic Holdings on 1 June 2011. The upfront approach is to be adopted in the present case. Having said that, the Inland Revenue Department ("the IRD") will generally allow a 5% discount for each year of sale restriction (Para. 61, in DIPN No. 38 (Revised) issued in March 2008). Such being the case, the relevant assessable income in respect of Shares B is as follows:

$$3,000 \text{ shares} \times \text{HK\$}120^{\text{note 4}} \times (1 - 5\% \times 2^{\text{note 5}}) = \text{HK\$}324,000$$

Note 1: Being the market value of Shares A on the vesting date.

Note 2: Being the additional award equivalent to the value of dividends as declared by Fantastic Holdings during the vesting period.

Note 3: The value of the shares awarded is to be assessed on a time apportionment basis in the year of vesting, i.e., year of assessment 2014/15.

Note 4: Being the market value of Shares B on the date of grant.

Note 5: Being the 2-year restriction period.

Examiner's comments

Further to Question 5(a) above, this question required candidates to recommend the assessment approach in DIPN No.38 on the share award to another employee granted under different conditions without a vesting period, and state the chargeable year of assessment with the calculation of the assessable income without specifying the source of employment. Similar to Question 5(a), the performance in this question was diverse, possibly due to the specific nature of the question. Most candidates correctly applied the upfront assessment approach to the case. Many of them also gave the right answer that there should be a 5% discount on the award though not all were able to calculate this correctly. That aside, only a few candidates were able to state the exact reason why the award should be assessable in 2011/12 that most of them simply came up with the answer that it was because the shares were allotted in June 2011. This also showed that a number of candidates seemed to mix up the concepts of "restricted period" with "vesting period" and ended up with the wrong conclusion to assess the award in the year of assessment 2013/14.

Q1.3 Co. A (Jun 2016 Q3)

C. Salaries tax planning in providing fringe benefits to senior executives

Co. A is a Hong Kong company which has been carrying on a financial advisory business in Hong Kong for years. In a recent senior executives performance evaluation and remuneration review exercise, Co. A has been requested to revise and upgrade its remuneration package for senior executives by providing additional tax free benefits-in-kind on top of the existing rental reimbursement arrangement. Specifically, some senior executives suggested that if the additional benefits-in-kind available to them are directly provided by Co. A and cannot be converted into cash, the senior executives receiving such benefits-in-kind would not be subject to salaries tax.

Question 3 (5 marks – approximately 9 minutes)

Analyse the suggestion made by the senior executives as per Part C of the case in structuring the additional new tax free benefits-in-kind provided by Co. A from the salaries tax perspective in the context of the relevant IRO provisions.

Note: Comment on the existing rental reimbursement arrangement is not required.

(5 marks)

Answer to Q1.3 Co. A (Jun 2016 Q3)

Key notes

This question required candidates to discuss the salaries tax treatment of benefit in kind.

Under s.9(1)(a)(iv) and s.9(2A)(a) of the Inland Revenue Ordinance (“IRO”), income from employment assessable to salaries tax excludes 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, provided that the benefit is not capable of being converted into cash by the recipient. In this connection, benefits-in-kind structured and provided by Co. A to its senior executives should not be subject to salaries tax if they are structured in line with the regulatory framework as per the relevant IRO provisions.

However, Co. A and the senior executives should also note that the provision under s.9(1)(a)(iv) of the IRO shall not be applicable to the following benefits-in-kind, which are specifically excluded under other provisions in the IRO:

- i. Any amount paid by an employer in connection with the education of a child of an employee (s.9(2A)(b) of the IRO); and
- ii. Any amount paid by an employer in connection with a holiday journey (s.9(2A)(c) of the IRO).

Examiner’s comments

This question required candidates to discuss the issue of providing tax free benefit-in-kind from a salaries tax perspective in the context of the relevant Inland Revenue Ordinance (“IRO”) provisions. The performance in this question was below expectations. Some candidates evaluated the rental reimbursement scheme even though the question specifically excluded this requirement. Some candidates did not analyse the benefit-in-kind in the context of the relevant IRO provisions. Some candidates did not discuss the exclusion of child education and holiday journey benefits from tax-free treatment as stipulated specifically in the IRO.

Q1.4 Mr Koo (Dec 2015 Q8)

Question 8 (11 marks – approximately 20 minutes)

Mr Koo has been employed by Ocean View Limited (“Ocean View”) for 30 years and he is currently in the position of general manager responsible for the overall control and management of the company’s business activities. Ocean View has a sole director namely Mr Cheung and he is also the sole shareholder of the company since its incorporation 30 years ago. Mr Koo and Mr Cheung have maintained a very good and close relationship both in business and personally.

It has also been noted that on the recent Chinese New Year’s eve, Mr Koo received a sum of money directly from Mr Cheung which was approximately five times his current basic annual salary. Mr Cheung emphasised to Mr Koo that it was a gift to him for Chinese New Year in pursuance of their decades of friendship, and that the money was exclusively and directly given by Mr Cheung instead of cash from Ocean View.

Mr Koo only maintained one employment contract with Ocean View, and did not enter into any other written or verbal employment contract with Mr Cheung or any other parties. Specifically, Mr Koo stated that the money received by him was beyond his expectations.

Required:

- (a) If you were the Assessor of the Inland Revenue Department (“IRD”), how would you argue that the money received by Mr Koo should be subject to salaries tax?
(4 marks)
- (b) If you were Mr Koo, how would you argue that the above money should not be subject to salaries tax?
(4 marks)
- (c) What additional information should be obtained to further evaluate the taxability of the money received by Mr Koo?
(3 marks)

Answer to Q1.4 Mr. Koo (Dec 2015 Q8)

Key notes

This question required candidates to discuss the salaries tax treatment of gift.

Answer 8(a)

Possible arguments for subject to salaries tax

Under s.9(1)(a) of the IRO, income from employment includes wages, salary, etc, derived from the employer or others. In this regard, the income of Mr Koo derived from the employment with Ocean View Limited can be paid by others, especially from Mr Cheung as he is the sole director and shareholder of the company. The payment is possibly part and parcel of the remuneration of Mr Koo attributable to his employment with Ocean View.

There is no concrete evidence substantiating the argument that the money was a gift given because of personal friendship. The assertion of Mr Cheung is self-serving and has no objective justification.

The amount received by Mr Koo is substantially in proportion to his annual salary and the date of receipt is also the eve of Chinese New Year. This pattern is in line with the payment of a performance-based bonus typically found in generic employment arrangements.

Answer 8(b)

Possible arguments for not subject to salaries tax

There was no implicit or explicit agreement entered into by Mr Koo with Ocean View nor Mr Cheung for any new employment contract or extension of existing employment covering the payment of the subject amount to Mr Koo. Substantially the amount is a spontaneous payment and has no connection to the present or any other employment of Mr Koo.

The amount was substantially higher than Mr Koo's existing annual salary. The quantum was unlikely to be in line with any performance-based bonus paid principally and directly by the employer or others, and therefore should not be regarded as part of his employment income.

The payment to Mr Koo was unexpected and was solely on a discretionary basis made by Mr Cheung personally. This is not likely to be a pattern generically found in any contractual arrangement for employment of income.

Answer 8(c)

Relevant additional information for further evaluation could be obtained from the following perspectives:-

- Details of similar payments, if any, paid to Mr Koo by Mr Cheung in prior years.
 - Details of similar payments, if any, paid by Mr Cheung to other employees of Ocean View and / or other close contacts of Mr Cheung.
 - Evidence justifying the long-term friendship between Mr Koo and Mr Cheung.
 - Financial information and business performance of Ocean View for examination if there is any co-relation between the payment and the profitability of Ocean View during the relevant financial period.
 - Detailed comparison of the remuneration package of Mr Koo in current and prior years in order to evaluate if the prevailing package had been revised in line with the incorporation of the subject payment.
 - Examine whether Mr Koo has reached the retirement age and if the amount received by him is substantially a retirement gratuity paid by Mr Cheung.
-

Examiner's comments

Question 8(a) – 4 Marks

This question required candidates to put forward the arguments that the lump sum amount received by the recipient as provided in the question was chargeable to salaries tax. The performance in this question was considerably below expectations. Candidates generally could not comprehensively put forward concrete arguments justifying the taxability of the amount. Instead, some candidates wrongly analyzed the issue from the perspective of service companies and anti-avoidance provisions. In this connection, many candidates could only obtain very low marks.

Question 8(b) – 4 Marks

In contrast to Question 8(a), this question required the candidates to put forward the arguments that the subject amount received by the recipient was not chargeable to salaries tax. The performance in this question was below expectations. Candidates were generally only able to provide some simple arguments substantiating the non-taxable standpoint. The discussion and analysis of the candidates were not comprehensive enough to reach a satisfactory performance.

Question 8(c) – 3 Marks

This question required candidates to identify and elaborate relevant information from practical perspective in order to ascertain the taxability of the amount in the contexts of the IRO. The performance in this question was again not satisfactory. Candidates generally did not give comprehensive consideration to identifying possible and feasible information facilitating the assessment. In this regard, many candidates could only obtain very low marks or even no mark.

Q1.5 Marcus (Jun 2013 Q8)

Marcus commenced his employment with G Limited on 1 April 2011. His remuneration package included, among others, (a) monthly salary of \$40,000, (b) rent refund to the maximum of \$10,000 per month, (c) an option to acquire 10,000 shares in G Limited at \$1.5 per share and (d) benefits from a Mandatory Provident Fund (“MPF”) scheme, to which both Marcus and G Limited had to make contributions. On 31 March 2012, Marcus resigned from G Limited. He left Hong Kong and emigrated to Canada at the end of April 2012.

During the year ended 31 March 2012, Marcus rented a flat for residence at a monthly rent of \$12,000 for the first 10 months. In the last two months, he moved to a hotel room and incurred rental expenses of \$16,000 in total. On his last day of employment, Marcus exercised his share option when the market price of a share in G Limited was \$2. He also received his accrued benefits of \$80,000 under the MPF scheme (“the MPF Benefits”). Out of the MPF Benefits, \$12,000 was attributable to the mandatory contributions made by G Limited, whilst the balance arose from the mandatory and voluntary contributions made by Marcus.

In June 2011, Marcus married Diana, who did not have any income chargeable to tax. The couple are devout Christians. During the year ended 31 March 2012, they made donations of \$200,000 to a church, which is an approved charitable institution.

Required:

- (a) **Compute, with necessary explanations, the Net Chargeable Income of Marcus for the year of assessment 2011/12.**
(9 marks)
- (b) **Advise whether and, if so, how the computation for item (a) will be different if the MPF Benefits include an amount of \$20,000 attributable to the voluntary contributions made by G Limited.**
(3 marks)

Answer to Q1.5 Marcus (Jun 2013 Q8)

(a)

Key notes

This question required candidates to prepare a salaries tax computation with detailed explanation on tax treatment for each item.

	\$	Mark
Salary (\$40,000 x 12)	480,000	0.5
Share option gain [(\$2 - \$1.5) x 10,000]	5,000	1
Value of residence [Note (2)]	<u>23,200</u>	0.5
Assessable Income	508,200	
<u>Less: Mandatory contributions to MPF scheme [Note (3)]</u>	12,000	0.5
Approved charitable donations [Note (4)]	<u>177,870</u>	0.5
	318,330	
<u>Less: Married person's allowance</u>	<u>216,000</u>	0.5
Net Chargeable Income	<u><u>102,330</u></u>	0.5
Note:		
(1) The MPF Benefits attributable to Marcus' contributions are clearly not taxable.		
As Marcus left Hong Kong and emigrated to Canada after his resignation, the MPF Benefits attributable to the mandatory contributions by G Limited are exempted from salaries tax by virtue of s.8(2)(cb) of the IRO.		1
(2) Value of residence for the period from 1 April 2011 to 31 January 2012: \$480,000 x 10/12 x 10% - (\$12,000 - \$10,000) x 10 = \$20,000		0.5
Value of residence for the period from 1 February 2012 to 31 March 2012: \$480,000 x 2/12 x 4% = \$3,200		0.5
Total value of residence = \$20,000 + \$3,200 = \$23,200		0.5
(3) Under the MPF scheme, Marcus is required to make a mandatory contribution at 5% of his income, subject to an income ceiling of \$20,000 per month (for the year of assessment 2011/12). By virtue of s.26G and Schedule 3B of the IRO, such mandatory contributions (i.e. \$20,000 x 5% x 12 = \$12,000) are allowable for deduction.		0.5 1
(4) Under s.26C(2)(a)(ii) and (2A) of the IRO, the allowable amount of approved charitable donations is restricted to 35% of Assessable Income (i.e. \$508,200 x 35% = \$177,870).		1 ----- 9 -----

Examiner’s comments

This question covered various salaries tax issues including the computation of rental value and share option gain, taxability of MPF benefits, deduction of MPF contributions, and charitable donations. Save for the tax treatments for MPF benefits which seemed to be a bit difficult for the candidates, good answers were observed for most parts of the question.

(b)

Key notes

This question required candidates to consider the charge of salaries tax on the proportion of the voluntary contribution to MPF.

<p>If the MPF Benefits also include an amount of \$20,000 attributable to the voluntary contributions made by G Limited, such amount will only be exempted from salaries tax to the extent of the proportionate benefit (s.8(2)(cc)(ii) and (4) of the IRO), which is computed as $\\$20,000 \times 12 \text{ months} / 120 \text{ months} = \\$2,000$ (s.8(5) of the IRO). The balance (i.e. $\\$20,000 - \\$2,000 = \\$18,000$) will be included as part of Assessable Income (s.9(1)(ae) of the IRO).</p>	<p>Mark</p> <p>2</p> <p>1</p> <p>-----</p> <p>3</p> <p>-----</p>
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Examiner’s comments

This was a question on the taxability of MPF benefits attributable to employer’s contributions. The candidates who scored well in this question could correctly apply the proportionate benefit rule and compute the taxable amount of the benefits. Perhaps due to unsatisfactory time allocation, it was observed that some candidates did not allocate sufficient time to prepare their answers and this affected their performance in this simple question.

Q2.1 Co. A (Jun 2016 Q4)

D. Stamp duty exposure evaluation on assets realignment exercise

Co. A is a Hong Kong company which has been carrying on a financial advisory business in Hong Kong for years. Mr Thomas Ng (“Mr Ng”) is the sole shareholder and director of Co. A. In addition to the financial advisory business currently conducted through Co. A, Mr Ng has also invested in immovable properties in Hong Kong. Presently, Mr Ng is also the sole shareholder and director of a Hong Kong company namely Cognitive Limited (“Co. C”). Co. C has held two immovable properties (“Property X” and “Property Y”) in Hong Kong for more than a decade. Property X (market value of HK\$35 million as at today) is a commercial property and has been constantly used by Co. A as office premises free of charge. Property Y (market value of HK\$10 million as at today) is a residential property currently being leased out for generating rental income. In addition, Mr Ng also personally acquired a residential property (“Property Z”, with market value of HK\$16 million as at today) in year 2009 as a dwelling with his wife and children.

Recently, Mr Ng considered to conduct an assets realignment exercise by implementing the following transfers:

- (i) Property X will be conveyed from Co. C to Co. A at the current market value.
- (ii) Upon completion of transaction (i) above, Co. C will be put into liquidation by distribution in specie in transferring Property Y to Mr Ng.
- (iii) Property Z will be transferred from Mr Ng to both his wife (a Hong Kong permanent resident) and his mother (a non-Hong Kong permanent resident) by way of a gift.

Question 4 (15 marks – approximately 27 minutes)

Analyse the stamp duty exposure and compute, if any, the respective stamp duty liabilities in connection with the following properties under the assets realignment exercise as identified in Part D of the case:

- (a) **Property X.** **(5 marks)**
- (b) **Property Y.** **(3 marks)**
- (c) **Property Z.** **(7 marks)**

Answer to Q2.1 **Co. A** **(Jun 2016 Q4)**

Key note

The question required candidates to discuss the stamp duty implication on the property transaction.

Answer 4(a)

The transfer of Property X from Co. C to Co. A is chargeable to Ad Valorem Stamp Duty (“AVD”) under Head 1 in the First Schedule of the Stamp Duty Ordinance (“SDO”). The chargeable instrument with respect to the transfer is the Agreement for Sale under Head 1 (1A) or, in a case without any Agreement for Sale, the Conveyance on Sale (Deed of Assignment) under Head 1(1). The time for stamping is within 30 days after the execution of the respective instrument.

As Property X is a commercial property, the transfer is subject to Scale 1 rates under Head 1(1) or Head 1(1A). The respective AVD liability is thus HK\$2,975,000 (HK\$35,000,000 x 8.5%).

Notwithstanding that Co. A and Co. C are entirely owned by Mr Ng, this shareholding structure cannot be regarded as “associated companies” within the meaning under s.45(2) of the SDO. In this connection, stamp duty relief under s.45 of the SDO is not applicable accordingly.

As Property X is a commercial property, Special Stamp Duty (“SSD”) under Head 1 (1AA) and 1(1B), and Buyer’s Stamp Duty (“BSD”) under Head 1(1AAB) and Head 1(1C) are not applicable with respect to the transfer.

Answer 4(b)

On the basis that Co. C would be put into liquidation by distribution in specie, the shareholder of Co. C (i.e. Mr Ng) would be regarded as becoming a beneficial owner of Property Y previously owned by Co. C upon executing the instrument to effect the distribution in specie of Property Y to Mr Ng (Para.12, SOIPN No. 8 issued in October 2014). In this regard, the transfer should not be subject to any AVD, SSD and BSD as the beneficial owner of Property Y has not been changed with respect to the transfer.

Answer 4(c)

The transfer of Property Z from Mr Ng to his wife and his mother collectively by way of a gift is chargeable to stamp duty as a voluntary disposition inter vivos under s.27 of the SDO, and the relevant instrument effecting the transfer (i.e. Conveyance or Deed of Assignment) would be chargeable to AVD under Head 1(1) in the First Schedule of the SDO. The time for stamping is within 30 days after the execution of the instrument.

In ascertaining the relevant AVD rate for the transfer, Scale 2 rates under Head 1(1) would be applicable if all the transferees are close relatives of the transferor (i.e. Mr Ng) under s.29AL(2)(a) of the SDO, and all transferees are also close relatives amongst themselves under s.29AL(2)(b) of the SDO. As the wife of Mr Ng and the mother of Mr Ng are not close relatives within the meaning of s.29AD(b) of the SDO, Scale 2 rates are not applicable. The AVD is therefore HK\$1,200,000 (HK\$16,000,000 x 7.5%) in accordance to Scale 1 rates under Head 1(1) (Para.39, SOIPN No. 8 issued in October 2014).

On the same basis (i.e. the transferees are not closely related under s.29AD(b) of the SDO) and the mother of Mr Ng is a non-Hong Kong permanent resident, the exemption of BSD under s.29DB(2)(b)&(c) of the SDO is not applicable and therefore the transfer is subject to BSD at HK\$2,400,000 (HK\$16,000,000 x 15%) under Head 1(1AAB), payable within 30 days after the execution of the instrument.

SSD is not applicable to the transfer as Property Z was acquired by Mr Ng in year 2009, i.e. prior to the effective date of the SSD regime on 20 November 2010.

Examiner's comments

Question 4(a) – 5 Marks

This question required candidates to analyse stamp duty implications with respect to the transfer of immovable property between companies. The performance in this question was not satisfactory. Answers prepared by candidates were generally brief, and did not discuss in greater detail the chargeable instruments and the timeframe of stamping. Some candidates wrongly stated that Co. A and Co. C were associated companies and should therefore be exempted from the stamp duty requirement. Many candidates failed to analyse Ad Valorem Stamp Duty ("AVD"), Special Stamp Duty ("SSD") and Buyer's Stamp Duty ("BSD") separately.

Question 4(b) – 3 Marks

This question required candidates to analyse stamp duty implications with respect to the transfer of immovable property effected through liquidation by distribution in specie. The performance in this question was fair. Some candidates were able to analyse the distinctive nature of beneficial ownership in liquidation by distribution in specie, and could obtain satisfactory marks for doing so.

Question 4(c) – 7 Marks

This question required candidates to analyse stamp duty implications with respect to the transfer of immovable property by way of gift. The performance in this question was considerably below expectations. Only some candidates could discuss precisely the applicability of SSD and the chargeability of AVD. Many candidates could not correctly analyse the relationship between and amongst the transferor and transferees in the context of the Stamp Duty Ordinance. Only a few candidates correctly mentioned the chargeable instruments and the timeframe of stamping. As a result, many candidates could only obtain very low marks.

Q3.1 Cambridge (Dec 2016 Q9b)

Cambridge Holdings Limited (“Cambridge”) is a group holding company established in Hong Kong with subsidiaries engaging in various businesses locally. Since the year of assessment 2004/05, Cambridge has employed senior management executives and incurred substantial overheads for providing strategic management and administrative services to the subsidiaries. Yet due to adverse market sentiments and other economic factors, the operating performance of Cambridge’s subsidiaries was generally not satisfactory, and Cambridge did not charge nor derive any management fee income from the subsidiaries notwithstanding the provision of the abovementioned management services up to the year of assessment 2014/15. Cambridge did not derive any other income during the relevant years either.

In preparing the profits tax returns for the years of assessment from 2004/05 to 2014/15, Cambridge stated its principal business activity as “investment holding” and claimed tax loss for each year, which substantially resulted from the expenditure incurred in connection with the salaries of its management executives and other essential overhead expenses. However, the IRD consistently refused to allow any tax loss to Cambridge, and only issued notices with a remark “no trading, no loss agreed” as the tax position of Cambridge for the respective years.

In the year of assessment 2015/16, the subsidiaries of Cambridge experienced favorable business performances. Cambridge charged and derived management fee income from its subsidiaries, and generated a substantial amount of assessable profits for the year. Cambridge would like to utilise its tax loss brought forward from prior years to set off the assessable profits, notwithstanding that the tax loss was not agreed by the IRD as indicated above.

Required:

- (b) **On the assumption that the abovementioned expenses were essentially deductible, analyse how and when Cambridge could claim the set-off of the losses sustained against its assessable profits for the year of assessment 2015/16 pursuant to the relevant provisions stipulated in the IRO.**

(4 marks)

Answer to Q3.1 Cambridge (Dec 2016 Q9b)

Key note

The question required candidates to discuss the tax administration procedure for statement of loss.

Answer 6(b)

A statement of loss or loss notice (“the Notice”) issued by the IRD is an administrative document and not an assessment within the meaning of the IRO. As the Notice has no statutory force, it cannot become final and conclusive under s.70 of the IRO (***Common Empire Ltd v CIR*** [2007] 1 HKLRD 679). Taxpayers in this connection can lodge a disagreement with the Notice regarding the quantum of tax loss at any time, until any loss claimed affects an assessment to tax (Para. 26, DIPN No. 8 (Revised) issued in September 2009), under which a right of objection under s.64 of the IRO arises.

As there is no statutory time limit in lodging the disagreement with the Notices regarding the tax loss for the years of assessment 2004/05 to 2014/15, Cambridge may pursue the disagreement to revise its profits tax position for the years concerned with relevant justifications any time before the issue of the 2015/16 notice of assessment. Alternatively, Cambridge may lodge a written objection against the 2015/16 profits tax assessment claiming the set-off of the tax loss brought forward from prior years against the assessable profits within the one-month period after the date of the notice of assessment.

Examiner’s comments

This question required candidates to discuss administrative procedures in revising the tax loss quantum and position, and apply them to the case in question. The performance in this question was also considerably below expectations. Many candidates could not demonstrate their understanding of the nature of a loss notice, nor could they elaborate the submission to the IRD of disagreement against the loss notice. Some candidates wrongly discussed tax loss from other perspectives and provided irrelevant analyses. Only very few candidates correctly suggested that the taxpayer can lodge objection against the 2015/16 profits tax assessment claiming the set-off of the tax loss brought forward from prior years against the assessable profits.

Q3.2 Mr. Chan (Dec 2012 Q8a)

Comment on the circumstances below from the Hong Kong tax perspectives and, where appropriate, provide your recommendations. Support your answers with relevant provisions of the IRO rules and regulations:

Required:

- (a) **Mr. Chan recently received a 2011/12 assessment notice for his sole proprietorship business. After cross-checking the relevant details, he noticed that a trading receipt of \$100,000 originally derived in the year of assessment 2010/11 had been erroneously recorded in his 2011/12 books of accounts, and thereby assessed to profits tax in the 2011/12 assessment notice. Mr. Chan decided not to do anything to rectify the tax position for both years of assessment 2010/11 and 2011/12, and intended to settle the tax demanded for the year of assessment 2011/12 as his aggregate tax position for both years would be correctly reported after the tax settlement for the year of assessment 2011/12.**

(6 marks)

Answer to Q3.2 Mr. Chan (Dec 2012 Q8a)

(a)

Key notes

This question required candidates to consider the actions required for an overstatement of income in the return of one year of assessment with an understatement of the same amount of income in the return in the following year of assessment.

	Mark
Under s.14(1) of the IRO, profits tax is charged for each year of assessment. Therefore, the taxpayer cannot claim that the tax reporting is correct if the overall tax liabilities for two years were computed as a single assessment.	1
As a matter of fact, as there is an underpayment of tax for the year of assessment 2010/11, Mr. Chan should immediately inform IRD about the error and request a revision of his tax position for 2010/11 by issuing an additional assessment under s.60(1) of the IRO.	1
IRD may seek to impose a penalty in the form of additional tax under s.82A of the IRO for the undercharge of tax for 2010/11 if there is no reasonable excuse for making an incorrect return leading to the undercharge of tax.	1
Mr. Chan should lodge an objection against the 2011/12 assessment notice if the one month objection period stipulated under s.64(1) of the IRO has not yet lapsed. Otherwise, Mr. Chan should lodge a claim under s.70A of the IRO against the assessment based on the grounds that there is an error found in the respective tax return and statement submitted thereof.	1 1
If the taxpayer voluntarily provides full disclosure on the income received, the IRD may in practice or on a discretionary basis accept the taxpayer's tax position as reported or may revise the tax assessments for the relevant years.	1 ----- 6 -----

Examiner's comments

This question tested the candidates' ability to identify and apply various provisions in the IRO on tax administration, including additional assessment under s.60(1) of the IRO, additional tax under s.82A of the IRO, objection under 64(1) of the IRO and re-opening of assessments under s.70A of the IRO.

The performance in this question was fair. Some candidates could identify and apply some of the relevant provisions for circumstances found in respective years. However, some candidates generally could not distinguish clearly the correct treatment for the relevant years of assessment. Some candidates wrongly focused their discussion on anti-avoidance provisions, and only a few candidates were able to elaborate that profits tax is charged for each year of assessment under s.14(1) of the IRO.

Practice Makes Perfect!

Good luck!

End of Seminar