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QP Module D - Taxation

Module Preparation Seminar (Part I)

Seminar Handout

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Topic 1: Ascertainment of salaries tax liability under separate assessment and joint assessment

For an individual, salaries tax is to be computed in the following manner:

Salaries Tax Computation			
s.9	Assessable Income		A
	Less: Allowable Expenses		
s.12(1)(a)	Allowable Outgoings and expenses	B1	LP p.467 <i>(#5.1 Outgoings and expenses)</i>
s.12(1)(b)	Depreciation Allowances	B2	LP p. 467 <i>(#5.2 Dep'n allowance on P&M)</i>
s.12(1)(c)	Losses brought forwards	B3	LP p. 467 <i>(#5.3 Loss brought forward)</i>
s.12(1)(d)	Inter-spouse set off	B4	LP p. 467 <i>(#5.4 Excess allowable deductions of a spouse under Joint Assessment)</i>
s.12(1)(e)	Self-education Expenses	B5	LP p. 467–468 <i>(#5.5 Self-education expenses)</i>
			B
	Net Assessable Income		C
	Less: Concessionary Deductions	D1	
s.26C	Approved Charitable Donations (max: 35% of (A-B1-B2))	D2	LP p. 468–469 <i>(#5.6 Approved charitable donations)</i>
s.26D	Elderly Residential Care Expenses	D3	LP p. 469–470 <i>(#5.7 Elderly residential care expenses)</i>
s.26E	Home Loan Interest	D4	LP p. 470–471 <i>(#5.8 Home loan interest)</i>
s.26G	MPF / RORS contribution	D5	LP p. 472–473 <i>(#5.9 Contributions to recognised retirement schemes)</i>
			D
	Less: Personal Allowances		E F
			LP p.474–478 <i>(#6 Personal allowances)</i>
	Net Chargeable Income		G
Tax Liabilities:			
lower of Standard Rate on E		or	Progressive Rate on G
The standard tax rates are as follows:		The progressive tax rates are as follows:	
2008/09 onwards		2008/09 to 2016/17	2017/18 and onwards
15.0%		First \$40,000	2.0%
		Next \$40,000	7.0%
		Next \$40,000	12.0%
		Balance	17.0%

For husband and wife, unless a valid election for joint assessment under s.10(2) is made, salaries tax will be payable on the net chargeable income of each spouse. Concerning the child allowances, one spouse would have to be nominated to claim the child allowance in respect of all the children.

Joint Assessment

Where in any year of assessment a husband and wife, not being a wife living apart from her husband, both have assessable income and—

- (a) either the husband or wife is entitled to concessionary deductions under Part 4A and personal allowances under Part 5 which, in aggregate, are in excess of his or her net assessable income; or
- (b) both have a net chargeable income and the aggregate of the salaries tax payable exceeds the salaries tax payable on their aggregated net chargeable income,

an election may be made by them to be assessed to salaries tax under joint assessment.

Where an election is made by a husband and wife, salaries tax shall be payable on their aggregated net chargeable income. In the case of an election—

- under condition (a) above, the spouse who would have been chargeable to salaries tax in the absence of such an election;
- under condition (b), the spouse who is nominated by them,

shall be chargeable to salaries tax in respect of such aggregated net chargeable income. Only one assessment will be issued by the IRD.

The election has to be made in a specified form jointly by the husband and wife. Such election has to be made:

- Within that year of assessment or the following year of assessment;
- Before the expiration of a period of one month following the time when the assessment for the year of assessment becomes final and conclusive under s.70, whichever is the later; or
- Within such further time as the Commissioner considers reasonable in the circumstances.

If the husband and wife have withdrawn an election for joint assessment jointly, they may not make an election for the same year of assessment again.

Topic 2: Personal assessment

Personal assessment is not a separate charge of tax. It only provides an alternative method of computing the tax liability of an individual (and his or her spouse, if any) by aggregating that individual's (and the spouse's) taxable income under property tax, salaries tax and profits tax.

By electing for personal assessment, the business loss (or losses) suffered by the individual (and his or her spouse) can be used to set-off against other taxable income (e.g. assessable income under salaries tax, net assessable value under property tax) and therefore reduce the tax burden of the individual (and his or her spouse).

The interest payable on money borrowed for producing rental income of property owned by the individual (and his or her spouse) will also be allowed under personal assessment (the amount of interest deduction is limited to the net assessable value of the property).

For individuals who do not have income chargeable to salaries tax, they will be entitled to concessionary deductions (i.e. approved charitable donations, elderly residential care expenses, home loan interest, and contributions to recognised retirement schemes), personal allowances and progressive tax rates by electing to be assessed under personal assessment.

Depending on the individual's (and his or her spouse's) circumstances, personal assessment may not always be beneficial.

Eligibility criteria

Personal assessment may be elected by a person who is:

- an individual;
- aged 18 or above, or under that age if both his or her parents are dead; and
- either a permanent or temporary resident in Hong Kong or, if he or she is married, whose spouse is either a permanent or temporary resident.

'Permanent resident' means an individual who ordinarily resides in Hong Kong.

'Temporary resident' refers to an individual who stays in Hong Kong for more than:

- 180 days during the year of assessment in respect of which the election is made, or
- 300 days in two consecutive years of assessment, one of which is the year of assessment in respect of which he or she elects for personal assessment.

Time limit for election

Elections for personal assessment must be made in writing and lodged with the Commissioner within:

- two years after the end of the year of assessment in respect of which the election is made; or
- one month after an assessment of income or profits forming part of the individual's total income for such year of assessment becomes final and conclusive under s.70 (i.e. two months after the issue of the assessment), or
- such further period, if any, as the Commissioner may allow as being reasonable in the particular circumstances,

whichever is the later.

Husband and wife

Where an individual is married, he/she is not living apart from his or her spouse and both he/she and his/her spouse:

- have income assessable under the IRO; and
 - are eligible to make an election for personal assessment,
- then personal assessment must be elected by both of them.

For a couple who got married during a year of assessment to which the election for personal assessment relates, they shall be deemed to be married at the commencement of that year.

It should be noted that, unlike salaries tax, there is no separate assessment for husband and wife under personal assessment. The tax liability of a married couple is calculated based on the aggregate of their respective taxable income.

The couple will have two separate demand notes for payment of their total tax liabilities (i.e. by apportionment of the total tax payable on their joint income).

Topic 3: Stamp Duty (AVD, BSD, SSD and exemptions/reliefs)

Ad Valorem Duty (AVD)

Unless specifically exempted or otherwise provided, AVD is payable at Scale 1 on an agreement for sales (AFS) or on conveyance on sale for the acquisition of **any residential property or non-residential property**, if the agreement is executed on or after 23 February 2013.

However, lower rates (Scale 2) will apply to agreement/conveyance for a residential property where the purchaser is a Hong Kong permanent resident (HKPR) acting on his own behalf and he does not own any other residential property in Hong Kong at the time of acquisition of the subject property.

A limited company, regardless the residency status of its shareholders and directors, AVD would be based on Scale 1 if it acquires the property is acquired on or after 23 February 2013.

Sale or Transfer of Immovable Property

For immovable property in Hong Kong, stamp duty is calculated at rates which vary with the amount/value of the consideration or value of the property as follows:-

Higher Rates of Ad Valorem Stamp Duty Rate (Scale 1)

Amount or value of the consideration or Value of the Property		Rate (with effect from 23 February 2013)
Exceeds	Does not exceed	
	\$2,000,000	1.5%
\$2,000,000	\$2,176,470	\$30,000 + 20% of excess over \$2,000,000
\$2,176,470	\$3,000,000	3.00%
\$3,000,000	\$3,290,330	\$90,000 + 20% of excess over \$3,000,000
\$3,290,330	\$4,000,000	4.5%
\$4,000,000	\$4,428,580	\$180,000 + 20% of excess over \$4,000,000
\$4,428,580	\$6,000,000	6.00%
\$6,000,000	\$6,720,000	\$360,000 + 20% of excess over \$6,000,000
\$6,720,000	\$20,000,000	7.5%
\$20,000,000	\$21,739,130	\$1,500,000 + 20% of excess over \$20,000,000
\$21,739,130		8.5%

Lower Rate of Ad Valorem Stamp Duty (Scale 2)

Amount or value of the consideration or Value of the Property		Rate (with effect from 1 April 2010)
Exceeds	Does not exceed	
	\$2,000,000	\$100
\$2,000,000	\$2,351,760	\$100 + 10% of excess over \$2,000,000
\$2,351,760	\$3,000,000	1.5%
\$3,000,000	\$3,290,320	\$45,000 + 10% of excess over \$3,000,000
\$3,290,320	\$4,000,000	2.25%
\$4,000,000	\$4,428,570	\$90,000 + 10% of excess over \$4,000,000
\$4,428,570	\$6,000,000	3.00%
\$6,000,000	\$6,720,000	\$180,000 + 10% of excess over \$6,000,000
\$6,720,000	\$20,000,000	3.75%
\$20,000,000	\$21,739,120	\$750,000 + 10% of excess over \$20,000,000
\$21,739,120		4.25%

Effective from 5 November 2016*, AVD at Scale 1 are divided into:

Part 1	flat rate of 15%	applies to instruments of residential property
Part 2	original Scale 1 rates	applies to instruments of non-residential property

*Stamp Duty (Amendment) Ordinance 2018 enacted on 19 January 2018

If a conveyance on sale of residential property is executed in **conformity** with a chargeable AFS, the conveyance is chargeable with Stamp Duty of \$100 only.

All parties to the transaction and all other persons executing the conveyance are jointly and severally liable to pay Stamp Duty.

Stamp Duty normally payable within 30 days after the relevant date (i.e. Date of original AFS).

Section 45/29H exemption

The following transactions between associated corporations are exempt from AVD:

- Conveyance of immovable property
- Transfer of beneficial interest in Hong Kong stock
- AFS of residential immovable property

Associated Corporations means two corporations where:

- one is directly or indirectly the beneficial owner of not less than 90 per cent of the other; or
- a third corporate is owner of not less than 90% of the issued share capital of each corporation

The following anti-avoidance provisions stated that relief is not applicable if:

- (1) any part of the consideration for the transfer of immovable property or Hong Kong stock between associated companies was provided by an unrelated non-associated person (s.45(4)(a)).
- (2) the said interest was previously conveyed, transferred, purchased or sold, directly or indirectly, by such a person (s.45(4)(b)).
- (3) the transferor and transferee cease to be associated within the two-year period **by reason of a change in the percentage of the issued share capital of the transferee** (s.45(4)(c)).

Where a transferor and transferee cease to be associated within 2 years after the date of execution of the instrument and relief from stamp duty has been claimed:

- the transferor and transferee shall notify the Collector the cessation within 30 days after the date of the cessation;
- the transferor and transferee are jointly and severally liable to pay within 30 days after the date of the cessation by way of stamp duty an amount equal to the stamp duty which would have been chargeable on the instrument had relief not been granted.

If the amount is not paid within the 30 days, penalty may be imposed.

Special Stamp Duty (SSD)

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

- (a) The transaction involves the sale and purchase or transfer of a residential property;
- (b) The property is acquired by the vendor or transferor on or after 20 November 2010; and
- (c) The property is disposed of by the vendor or transferor within 24 months from the date of acquisition (if acquired on or after 20 Nov 2010 and before 27 Oct 2012) or within 36 months from the date of acquisition (if acquired on or after 27 Oct 2012).

The amount of SSD payable is calculated by reference to the stated consideration or the market value of the residential property, whichever is the higher, at the following regressive rates for different holding periods by the vendor or transferor before the disposal –

Holding Period	The property was acquired on or after 20 November 2010 and before 27 October 2012	The property was acquired on or after 27 October 2012
6 months or less	15%	20%
More than 6 months but for 12 months or less	10%	15%
More than 12 months but for 24 months or less	5%	10%
More than 24 months but for 36 months or less	-	10%

For the purposes of SSD, the counting of the holding period of a residential property is based on calendar months. The period from a certain day in a month to the preceding day in the following calendar month is counted as 1 month.

All parties to the transaction and all other persons executing the AFS / Conveyance are jointly and severally liable to pay Stamp Duty.

Chargeable agreement for sale or conveyance on sales is to be stamped with SSD at the same time as that for the ad valorem stamp duty.

SSD is exempted if:

- (a) Nomination of the spouse, parents, children, brothers or sisters to take up the assignment of the residential property, and sale or transfer of the residential property to the spouse, parents, children, brothers or sisters.
- (b) Addition / deletion of name(s) to / from a chargeable agreement for sale or a conveyance on sale in respect of the residential property if the person(s) is the spouse, parents, children, brothers or sisters of the original purchaser(s).
- (c) Sale or transfer of residential properties by a court order or pursuant to a court order (including a compulsory sale of residential or a foreclosure order).
- (d) Sale of the estate of a deceased person, which involves residential property, by the executor or personal representative and sale or transfer of a residential property by a person whose property is inherited from a deceased person's estate or passed to that person under the right of survivorship.
- (e) The residential property 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.
- (f) Sale of mortgaged residential properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of the IRO, or by a receiver appointed by such a mortgagee.
- (g) Sale or transfer of residential properties to the Government; and
- (h) Sale or transfer of residential properties between associated bodies corporate.

Buyer Stamp Duty (BSD)

BSD is payable on an agreement for sale or a conveyance on sale for the acquisition of any residential property if the residential property is acquired by any person on or after 27 October 2012, except 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 15% on the stated consideration or the market value of the property (whichever is the higher). The buyer or the transferee is liable to pay the BSD.

BSD has to be paid within 30 days after the execution of the chargeable document.

BSD is exempted if:

- (a) acquisition of a residential property by a HKPR jointly with a close relative or close relatives (i.e. spouse, parents, children, brothers and sisters) who is/are not HKPR and each of the purchaser is acting on his/her own behalf;
- (b) transfer of a residential property to a close relative who is not a HKPR, or to close relative(s) jointly one or more of whom not being HKPR and each of the transferee 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 residential property and each of the nominee is acting on his/her own behalf;
- (d) addition/deletion of name(s) of a person(s) who is/are not HKPR to/from a chargeable agreement for sale or a conveyance on sale in respect of a residential property if the person(s) is/are a close relative(s) of the original purchaser(s) and each of the person is acting on his/her own behalf;
- (e) acquisition or transfer of a residential property by a court order or pursuant to a court order, which includes a foreclosure order obtained by a mortgagee whether or not it falls under the definition of a financial institution within the meaning of section 2 of the Inland Revenue Ordinance;
- (f) acquisition or transfer of a mortgaged residential property under a conveyance by or to a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap.112), or by a receiver appointed by such a mortgagee;
- (g) acquisition or transfer of residential properties by or to the Government; and
- (h) acquisition or transfer of a residential property by or to a body corporate from an associated body corporate;
- (i) acquisition of a residential property by a person to replace another residential 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 is resumed under the Lands Resumption Ordinance (Cap. 124) or purchased under section 4A of that Ordinance, or is sold pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545) and the person is acting on his/her own behalf;
- (j) gift of residential properties to charitable institutions exempted from tax under section 88 of the Inland Revenue Ordinance.

Topic 4: Offences and penalties

IRO	Offences	Penalties
s.80(1)	<ul style="list-style-type: none"> • Failure to comply without reasonable excuse – mainly relates to failures to supply information when requested or failures to notify the CIR of certain information. 	<ul style="list-style-type: none"> • A fine at level 3 or • Court order for compliance
s.80(1A)	<ul style="list-style-type: none"> • Failure to keep business records 	<ul style="list-style-type: none"> • A fine at level 6 + • Court order for compliance
s.80(2)	<ul style="list-style-type: none"> • Incorrect statement or return, failure to submit return or failure to inform chargeability to tax without reasonable excuse. • Offences <ol style="list-style-type: none"> (a) makes an incorrect return by omitting or understating anything in respect of which he is required to make a return; (b) makes an incorrect statement when claiming any deduction or allowance; gives any incorrect information in respect of own or any other person's tax liability; (c) See obligations of taxpayer 	<ul style="list-style-type: none"> • A fine at level 3 + • A further fine of 3 times the tax undercharged or would have been undercharged <p>Or</p> <ul style="list-style-type: none"> • Additional tax of up to three times the tax undercharged or that would have been undercharged (s.82A).
s.82(1)	<ul style="list-style-type: none"> • Willful intent to evade tax or to assist any other person to evade tax (tax evasion) • 6 offences <ol style="list-style-type: none"> (a) omits from a return any sum which should be included; (b) makes any false statement or entry in any return; (c) makes any false statement in connection with a claim for any deduction or allowance; (d) signs any statement or return furnished without reasonable grounds for believing the same to be true; (e) gives any false answer whether verbally or in writing to any question or request for information asked; (f) prepares, maintains or authorizes false books and records; or makes use of or authorizes the use of any fraud, art or contrivance 	<p>On summary conviction</p> <ul style="list-style-type: none"> • A fine at level 3 + • A further fine of 3 times of tax undercharged or would have been undercharged + • Imprisonment for 6 months <p>On indictment</p> <ul style="list-style-type: none"> • A fine at level 5 + • A further fine of 3 times of tax undercharged or would have been undercharged + • Imprisonment for 3 years

Additional Tax

If no prosecution under S.80(2) and S.82(1) has been instituted in respect of the same facts, a penalty assessment (additional tax) of an amount not exceeding treble the amount of tax undercharged may be imposed by the Commissioner or the Deputy Commissioner personally.

A person who has been assessed to additional tax shall not be liable to be charged on the same facts with an offence under s.80(2) or s.82(1).

Appeal to Additional Tax Assessment

Under s.82B of the IRO, a taxpayer may, within one month after the Notice of Assessment to additional tax, lodge an appeal in writing to the Clerk to the Board of Review together with copies of:

- the Notice of Assessment;
- the Commissioner's notice under s.82A(4) ;
- the taxpayer's representations under s.82A(4) ; and
- a statement of the grounds of appeal.

There are three grounds of appeal provided under s.82B(2) as follows:

- There is a reasonable excuse;
- The additional tax exceeds the maximum amount allowed under s.82A; and
- The additional tax is excessive having regard to the circumstances.

For any s.82A notice of assessment given on or after 25 June 2004, the Board of Review may extend the time limit for an appeal under s.82B as it thinks fit if it is satisfied that the appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving the notice of appeal within the one-month period.

Notes on Examination Technique:

1. Read the question carefully

It is important to identify the issue or issues that the question is referring to. Plan ahead before you start writing. A well-structured answer would enable you to capture more relevant issues.

2. Be relevant

Use your time wisely. You won't score by rote-copying irrelevant materials. In an open book examination like QP, marks would be allocated to the theoretical part but there must be more marks on the discussion part. So it is important to explain and apply the theory or rules that is relevant in the scenario given.

3. Time management

On top of the 1.8 minutes per mark guideline stated in the question, do plan your "productive" and "non-productive" time in advance and **MUST** attempt all the questions.

4. Avoid unnecessary panics

Questions in section B are usually independent to each other. A good strategy is to answer the questions in accordance with your confidence level.

5. Produce a marker-friendly answer script

Markers would not demand for some elegant English and/or handwriting, but something readable would suffice. Start a new page for every question and write in short paragraphs with lines between paragraphs would facilitate the markers' marking. It is also good for yourself when you want to add something to your answer.

Plan your time from today
to 27 June

and

make a good attempt on
28 June!

Good Luck!