



Hong Kong Institute of
Certified Public Accountants
香港會計師公會



Module Preparation Seminar (Part II)
for
Module D on Taxation

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QP Module D - Taxation

Module Preparation Seminar on Major or Difficult Syllabus Topics (Part II)

Seminar Handout

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Topic 1: Tax Obligation

Obligations of the taxpayer – s.51

| Obligations | Time Limit | IRO Ref. | Penalty |
|---|---|----------|----------|
| (a) To complete an issued tax return | Within the time limit stated in the notice | S.51(1) | S.80(2) |
| (b) To notify Commissioner of his being chargeable to tax (unless he has already been required to furnish a return) | Within four months from the end of the year of assessment concerned | S.51(2) | S.80(2) |
| (c) Respond to enquiries raised by the assessor | Within the time limit stated in the notice | S.51(3) | S.80(1) |
| (d) To notify Commissioner of the cessation of a source of income | Within one month of cessation | S.51(6) | S.80(1) |
| (e) To notify Commissioner if about to leave HK for over 1 month except for trips for purpose of employment or business (not applicable to property tax payers) | One month before the date of departure | S.51(7) | S.80(1) |
| (f) To notify Commissioner of any change of address | Within one month of change | S.51(8) | S.80(1) |
| (g) To keep records | (i) Business records for not less than 7 years | S.51C | S.80(1A) |
| | (ii) Rent records for not less than 7 years | S.51D | S.80(1) |

Obligations of an employer s.52

| Obligation | Time Limit | IRO Ref. | Penalty |
|---|---|-----------------|----------------|
| (a) Make a return of remuneration of employees, including directors | Time specified in the return (usually one month) | S.52(2) | S.80(1) |
| (b) Information of all new employees liable or likely to be liable to salaries tax | Within 3 months of commencement of employment | S.52(4) | |
| (c) Notification of employees who are about to cease to be employed | One month before cessation | S.52(5) | |
| (d) Notification of employees who are about to leave HK for more than one month (other than business trips) | One month before departure | S.52(6) | |
| (e) Retention of money payable to employee who is about to leave HK for more than one month | One month from the date of the notice under s.52(6) | S.52(7) | |

Obligations of property owners

The obligations of property owners are summarized in DIPN 14 as outlined below:

1. *Filing of Returns – s.51(1)*

Property owners must complete the tax returns issued to them under s.51(1) and return them to the IRD within the time limit stipulated in the tax returns (which is normally one month from the date of issuing the return). This should be done even if the property is occupied by the owner or any other person without consideration.

2. *Notification of Chargeability to Tax – s.51(2)*

Every person who is chargeable to Property Tax for any year of assessment but has not received a return form should notify the CIR in writing that he is so chargeable within four months after the end of that year of assessment (e.g. on or before 31 July 2011 for the year of assessment 2010/11).

3. *Notification of Cessation of Ownership – s.51(6)*

Where the property has been sold or transferred, the vendor or the transferor must notify the IRD of the change in writing within one month after the sale or transfer is effected.

4. *Notification of Change of Address – s.51(8)*

A person chargeable to Property Tax who changes his address should, within one month, inform the CIR in writing of the particulars of the change.

5. *Keeping of Sufficient Rental Records – s.51D*

Property owners must keep sufficient records of not less than seven years of rent received, such as lease agreements and duplicates of rent receipts, to enable their tax liability to be readily ascertained.

6. *Notification of Change in Exemption Status – s.5(2)(c)*

Where the owner is a corporation exempted from Property Tax under s.5(2)(a), the owner should notify the CIR in writing within 30 days of any change in the ownership or use of the property or any other circumstances affecting the exemption previously granted.

7. *Responsibility of Joint Owners or Co-owners – s.56A*

Where two or more persons are joint owners or owners in common of any property, each and every owner is fully responsible in fulfilling the obligations of a property owner as if he is the sole owner, including the filing of tax returns and paying the tax [s.56A(1)].

It should be noted that this section does not relieve any person of any obligation under the IRO or affect any right or obligation of the joint owners or owners in common as between themselves [s.56A(2)].

Further, if any person has paid Property Tax for which he would not have been liable except for the provisions of s.56A(1) , he may recover such tax from the person who is liable to pay it [s.56A(3)].

[**Note:** in D80/02, an individual owner of a residential unit in a building complex was held to be a co-owner of the car parking spaces in the building. S.56A would apply to him. It is not necessary to have an instrument naming all co-owners, past or present.]

8. *Letting of Common Areas of a Building*

Where any part of the common areas of a building is let out, the rental income derived is chargeable to Property Tax. The owners collectively are responsible for reporting the rental income and paying the tax. If the owners have not received the Property Tax return relating to the common areas let, they are required to notify the CIR in writing. If an owners' corporation is formed, s.16 of the Building Management Ordinance (Cap. 344) provides that the rights and duties of the owners relating to the common parts of the building shall be exercised and performed by the incorporated owners of the building. Therefore, the incorporated owner is required, on behalf of all the owners of the building, to report the income and pay the tax.

Topic 2: Penalties and Appeals

| 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"> makes an incorrect return by omitting or understating anything in respect of which he is required to make a return; 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; 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"> omits from a return any sum which should be included; makes any false statement or entry in any return; makes any false statement in connection with a claim for any deduction or allowance; signs any statement or return furnished without reasonable grounds for believing the same to be true; gives any false answer whether verbally or in writing to any question or request for information asked; 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.

Topic 3: Advance Ruling

S.88A was enacted in 1998 to formalize the advance rulings system.

Any person who wishes to ascertain the tax position of a contemplated transaction or arrangement may apply to obtain an advance ruling from the Commissioner.

Such application has to be mailed to the Deputy Commissioner of Inland Revenue (Technical) by completing Form IR 1297, together with requested supporting documents and specified application fee (\$30,000 for source of income, \$10,000 for other cases).

If the time spent by the IRD in considering the application exceeds seven hours (or eleven hours in the case of s.9A or twenty three hours in case of s.14), the applicant will need to pay additional fees computed on an hourly basis (\$1,000 - \$1,330 per hour).

The following information has to be provided in applying for an advance ruling:

- Details of the applicant (name, address and tax file number);
- Details of other parties to the transaction (name, address and tax file number);
- Period(s) to which the ruling request relates;
- If the application is by a tax representative, written authorization or notification of consent from the taxpayer to act on his or her behalf;
- The relevant facts of the applicant's case together with supporting documentation;
- The provision of the IRO upon which a ruling is sought;
- The proposition of law that relates to the issues raised in the ruling;
- Copies of any professional advice already received regarding the proposed transaction;
- Confirmation on whether a ruling request has been lodged about the arrangement for another period; and
- A draft of the requested ruling.

The Commissioner **will not issue a ruling** if the matter on which the ruling is sought is:

- not seriously contemplated by the applicant;
- frivolous or vexatious; or
- similar to an arrangement currently in place which is the subject of a tax audit.

The Commissioner may **refuse to issue a ruling** if the ruling:

- is the subject of a return which has been or is due to be lodged;
- is the subject to an objection or appeal (even if the objection or appeal is in relation to a person other than the applicant);
- requires the Commissioner to determine or establish any question of fact; or
- depends upon the Commissioner making an assumption in respect of a future event or other matter.

A ruling made by the Commissioner must state:

- (a) the name of the person, the provision of the IRO, and the arrangement to which the ruling applies;
- (b) the period for which the ruling applies; and
- (c) any material assumptions in respect of a future event or any other matter made by the Commissioner.

Where the Commissioner has made a ruling for a person on the application of any provision of the IRO in relation to an arrangement and that person implements the arrangement in the way stated in the ruling, the Commissioner shall apply the provision in relation to the person and the arrangement in accordance with the ruling.

The person who has obtained a ruling should disclose in the return:

- (a) the existence of the ruling and the reference number;
- (b) whether or not the person has relied on the ruling in preparing and providing the return; and
- (c) any material changes to the arrangement identified in the ruling.

A ruling issued by the Commissioner will be legally binding on the Commissioner on condition that the taxpayer adheres precisely to the facts as outlined in the ruling request. If the actual arrangement is materially different from that contained in the application or alternatively there was a material omission or misrepresentation in the application, the ruling will not be binding on the Commissioner.

The Commissioner has the power to withdraw any ruling at any time by notifying the applicant in writing of the withdrawal and the reasons for the withdrawal. The ruling will remain in force until the end of the period indicated in the initial ruling, provided that the arrangement has been entered into or effected on or before the date of the withdrawal of the ruling and that the taxpayer has disclosed in the tax return that he has relied on the ruling. In other cases, the ruling will cease to apply once it has been withdrawn.

The IRD has indicated in DIPN No. 31 (Revised) that a ruling will generally not be valid for more than two years of assessment from the year of issue of the ruling.


The IRD has selected some rulings of general interest and published them in the 'Publications and Press Releases' section of the IRD's website <http://www.ird.gov.hk>. The following are two examples of Advance Ruling Case:

Advance Ruling Case No. 50


<http://www.ird.gov.hk/eng/ppr/advance50.htm>

Advance Ruling Case No.51

<http://www.ird.gov.hk/eng/ppr/advance51.htm>



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Publications and Press Releases : Advance Ruling Cases : Advance Ruling Case No. 50

Advance Ruling Case No. 50

1. The provisions of the Ordinance

This ruling applies in respect of sections 14 and 15(1)(f) of the Inland Revenue Ordinance ("the Ordinance").

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2. Background

- (a) The Company is a member of a Group with its headquarters located in Country X where the group management functions are performed.
- (b) The Company was incorporated in Hong Kong. It acts as an investment holding company and engages in management of subsidiaries. It has an office in Hong Kong.
- (c) Company A, a fellow subsidiary of the Company, was incorporated in Country X. It acts as the global financing centre of the Group and provides financial services, among others, short and long term funding to its affiliates.
- (d) Under the inter-company loan and short-term deposit arrangements, the Group Companies with surplus funds will receive interest from Company A.

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3. The arrangement

- (a) The Company will place its surplus funds with Company A under interest bearing agreements.
- (b) The Company will remit the funds by direct wire transfer through its bank account in Hong Kong to Company A's bank account in Country X. Company A does not maintain any bank account in Hong Kong. The funds will not pass through a bank within Hong Kong before being transferred to Country X.

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4. The material assumptions in respect of a future event or any other matter made by the Commissioner

- (a) The arrangement does not form a transaction or scheme, or a part thereof, contrived to avoid or evade any fiscal liabilities whether in Hong Kong or other tax jurisdictions.

- (b) The Company will not lend to or borrow from Group Companies other than Company A.

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5. The ruling

The interest income to be derived by the Company from Company A under the interest bearing agreements will not be subject to Hong Kong Profits Tax under sections 14 and 15(1)(f) of the Ordinance.

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6. The period for which the ruling applies

This ruling will apply for the year of assessment 2012/13 and subsequent years of assessment.

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7. Date of ruling issued

26 April 2012.

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8. Commentary


Under section 14 of the Ordinance, every person who carries on a trade, profession or business in Hong Kong is chargeable to Profits Tax on the profits arising in or derived from Hong Kong from such trade, profession or business.

Section 15(1)(f) of the Ordinance deems sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong to be chargeable receipts.


For the purpose of determining the place where interest arises or is derived from, it is the location of the originating cause that normally determines the source. Basically, the place of derivation of interest is the place where the credit was provided to the borrower, i.e., the place where the funds from which the interest is derived were provided to the borrower, commonly known as the "provision of credit" test. This test, however, is not applicable where the loans are not simple loans of money. In the case of a money lending business, the Department will apply the operation test in determining the source of the interest income.

In the present case, the Company is not carrying on a money lending business but just receives interest income by placing its surplus funds with Company A. The "provision of credit" test will apply in determining the source of the interest income. Since the credit is provided to Company A outside Hong Kong, the interest income does not arise in Hong Kong and thus is not chargeable to Hong Kong Profits Tax.

(This commentary is not a legally binding statement and it does not form part of the Ruling.)



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Advance Ruling Case No. 51

1. The provisions of the Ordinance

This ruling applies in respect of section 18E of the IRO.

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2. Background

(a) The Applicants are members of a group of companies, some of which commenced businesses before 1 April 1974 (the "Old Businesses") while others commenced businesses on or after 1 April 1974 (the "New Businesses").

(b) Most of the group companies, including the Applicants, make up their accounts to 30 June annually. One of the Applicants, Company X, makes up its accounts to 31 March.

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3. The arrangement

(a) The group and accordingly the Applicants have changed their accounting date from 30 June (31 March, in the case of Company X) to 31 December in the year of assessment 2011/12.

(b) The group has put forward the following reasons for the change of accounting date:

- (i) to conform to the accounting date of their Mainland entities; and
- (ii) to improve administrative efficiency, reduce administrative costs and facilitate the preparation of consolidated financial statements.

(c) Among the Old Businesses, 5 Applicant companies' accounts show that they are dormant and/or do not have any assessable profits/adjusted losses for Profits Tax purposes throughout the period from 1 July 2009 to 31 December 2011.

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4. The material assumptions in respect of a future event or any other matter made by the Commissioner

Each of the 5 Applicant companies in 3(c) above has no assessable profits / adjusted losses for Profits Tax purposes throughout the period from 1 July 2009 to 31 December 2011.

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5. The ruling

- (a) For those Applicant companies which are New Businesses with 30 June as their accounting date,
 - (i) the Commissioner will adopt the 18-month period from 1 July 2010 to 31 December 2011 as the basis period for the year of assessment 2011/12; and
 - (ii) the Commissioner will adopt or continue to adopt the 12-month period from 1 July 2009 to 30 June 2010 as the basis period for the year of assessment 2010/11.
- (b) For the remaining Applicant company which is a New Business, namely Company X, with 31 March as its accounting date,
 - (i) the Commissioner will adopt the 9-month period from 1 April 2011 to 31 December 2011 as the basis period for the year of assessment 2011/12; and
 - (ii) the Commissioner will adopt or continue to adopt the 12-month period from 1 April 2010 to 31 March 2011 as the basis period for the year of assessment 2010/11.
- (c) For the 5 Applicant companies in 3(c) above which are Old Businesses with 30 June as their accounting date and are dormant and/or do not have any assessable profits and/or adjusted losses for Profits Tax purposes throughout the period from 1 July 2009 to 31 December 2011,
 - (i) the Commissioner will adopt the 12-month period from 1 January 2011 to 31 December 2011 as the basis period for the year of assessment 2011/12; and
 - (ii) the Commissioner will adopt or continue to adopt the 12-month period from 1 July 2009 to 30 June 2010 as the basis period for the year of assessment 2010/11.

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6. The ruling declined

The Commissioner declined to make a ruling in respect of:

- (a) the Applicant companies which are Old Businesses with assessable profits and/or adjusted losses for Profits Tax purposes for the period from 1 July 2009 to 31 December 2011; and
- (b) whether the provision of section 61A of the IRO should apply to all the Applicant companies including the New Businesses;

because the correctness of the ruling would depend on the making of assumptions about the seven factors laid down in section 61A of the IRO, the trading results of the Applicant companies, the amount of profits that would be dropped out in the year of change/year preceding the year of change, and/or the deferment in tax payments.

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7. The period for which the ruling applies

This ruling applies to the Applicants for the years of assessment 2010/11 and 2011/12.

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8. Date of ruling issued

23 July 2012

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Section 2 in Part 1 of Schedule 10 of the IRO provides that the Commissioner may decline to make a ruling if he considers that the correctness of the ruling would depend on the making of assumptions in respect of a future event or any other matter. In the present application, assumptions have to be made on the seven factors in section 61A of the IRO, the trading results and the amount of profits that would be dropped out in the year of change/year preceding the year of change, and/or the deferment in tax payments for those Old Businesses that have assessable profits and/or adjusted losses for Profits Tax for the period from 1 July 2009 to 31 December 2011. In this connection and so far as the Old Businesses are concerned, ruling is only given to those Applicant companies that are dormant and/or do not have any assessable profits and/or adjusted losses for Profits Tax purposes throughout the period from 1 July 2009 to 31 December 2011.

(This commentary is not a legally binding statement and it does not form part of the Ruling.)

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Topic 4: Stamp Duty Administration

Time limit and person liable for stamping

All dutiable instruments must be stamped either before execution or within a certain period of time after execution, as follows:

| Instrument | Time limit for stamping | Person liable |
|---|--|--|
| Conveyance on sale and AFS of immovable property in Hong Kong | 30 days after execution | All parties (usually payable by the purchaser) |
| Lease of immovable property in Hong Kong | 30 days after execution | All parties |
| Contract notes (bought and sold notes) of Hong Kong stock | 2 days after the sale or purchase if effected in Hong Kong; or 30 days after the sale or purchase if effected outside Hong Kong | Agent or principal |
| Transfer as voluntary disposition of Hong Kong stock | 7 days after execution if executed in Hong Kong; or 30 days after execution if executed outside Hong Kong | Transferor and transferee |
| Instrument of transfer of Hong Kong stock | Before execution; or 30 days after execution if executed outside Hong Kong, | Transferor and transferee |
| Hong Kong bearer instrument | Before issue | Issuer or agent |
| Duplicates and counterparts of chargeable instruments | 7 days after execution or such longer period as the time for stamping the original instrument would allow | --- |

Stamp duty cannot be avoided by executing the dutiable instruments outside Hong Kong and then bringing them into Hong Kong. If there are particular difficulties in stamping the documents executed outside Hong Kong within the specified time limits, the persons liable for stamp duty may apply for remission of the penalty for late stamping from the Collector.

Penalty for late stamping

Pursuant to s.9, any dutiable instrument not stamped within the specified time limit may be subject to a penalty for late stamping as follows:

| Period late for stamping | Penalty |
|----------------------------|-------------------|
| Not exceeding one month | 2 times the duty |
| Between one and two months | 4 times the duty |
| More than two months | 10 times the duty |

The Collector may remit the whole or any part of the penalty.

Subject to a time limit of six years, the Collector may take legal proceedings against any person or persons liable for the payment of duty for recovery of the unpaid duty and any penalty for late stamping.

Adjudication

Adjudication is a procedure under which the Collector adjudicates (i.e. determines) whether an instrument is chargeable to stamp duty and, if so, the amount of stamp duty payable.

After adjudication, if the Collector is of the opinion that the instrument is not chargeable with stamp duty, the instrument will be stamped with a stamp denoting that it is not chargeable with stamp duty.

Otherwise, the Collector will assess the instrument for stamp duty. He will issue a notice of assessment of stamp duty to the person who requires the Collector to express an opinion or who is liable for stamping such instrument. If no appeal is made against the assessment, the assessment shall, after the expiration of a period of one month, be final and conclusive.

If the Collector finds that the amount of stamp duty so assessed is excessive within one month from the assessment, he may cancel the assessment and make another assessment in substitution as he may deem proper.

Importance of adjudication

Adjudication is important for the following reasons:

- (a) An adjudicated instrument will satisfy any third party as to the correctness of stamping.
- (b) Certain instruments will not be regarded as properly stamped unless adjudicated (e.g. deeds of gift).
- (c) Adjudication is part of the process of appeal in any dispute as to liability to stamp duty.
- (d) There is doubt as to the chargeability or amount of stamp duty payable.

Compulsory adjudication

Adjudication is compulsory in the following cases:

- (a) A conveyance or transfer operating as a voluntary disposition *inter vivos* under s.27;
- (b) An instrument conveying or transferring property in contemplation of sale which is treated as a conveyance or transfer operating as a voluntary disposition *inter vivos* under s.27;
- (c) An instrument claimed to be exempt from duty under the provisions of s.45 relating to certain transfers between associated bodies corporate;
- (d) An instrument (or duplicate or counterpart) claimed to be specially exempt from stamp duty or where it is claimed that no person is liable for the payment of the stamp duty;
- (e) A conveyance or contract note to which s.24(2) applies (i.e. a transaction in consideration of a debt where the consideration would otherwise exceed the value of the property);
- (f) An instrument to which s.44 applies (i.e. gifts to exempted institutions);
- (g) Foreclosure orders; and
- (h) Appeal against a stamp duty assessment under s.14.

Adjudication fee

The adjudication fee is generally \$50 as prescribed in the Fifth Schedule. However, no adjudication fee shall be payable in respect of the following instruments for which compulsory adjudication is required.

Appeal against stamp duty assessment

Pursuant to s.14, any person who is dissatisfied with the assessment raised by the Collector after adjudication may:

- (a) within a period of one month from the date on which the assessment is made or within such further period as the Court may allow if the Court, on application made by the person, is satisfied that the person was prevented by illness or absence from Hong Kong or other reasonable cause from bringing the appeal within the time limit;
- (b) subject to any order of the Court, on payment of the stamp duty in conformity therewith or; where payment of the stamp duty or any part thereof is allowed to be postponed, on payment of the part (if any) of the stamp duty which is not allowed to be postponed; and
- (c) by notice served on the Register of the District Court;

appeal against the assessment to the District Court and may, for that purpose, require the Collector to state and sign a case. The District Court will determine the correctness of the assessment. If the person is not satisfied with the determination of the District Court, further appeals may be made to the Court of Appeal (application for leave to appeal needs to be made within fourteen days of the judgment or order) and finally, to the Court of Final Appeal.

For the purposes of an appeal, the Collector may allow payment of stamp duty to be postponed (for such period, to such extent and on such terms as he may think fit) on an application in writing by the person liable for payment of stamp duty within fourteen days from the date on which the assessment is made, supported by a security to the satisfaction of the Collector.

The Court may, on an application made by the person who intends to appeal against the stamp duty assessment, allow an appeal to the Court without payment of the stamp duty or on security being given to the satisfaction of the Court if it considers the payment of the duty would impose hardship on the person.

Possible grounds for stamp duty appeals include:

- whether a transaction is to be regarded as a voluntary disposition *inter vivos*;
- whether there is any change in beneficial ownership;
- whether the instrument is exempt from stamp duty;
- whether a conveyance on sale forms part of a larger transaction or a series of transactions;
- the valuation of immovable property; and
- the valuation of private company shares.

Pursuant to s.14(5A), the District Court may call upon opinions from members of the Lands Tribunal in respect of the valuation of immovable property.

Effect of non-stamping**1) Non-admissibility of instruments**

In the case of a legal proceeding, s.15(1) stipulates that, subject to court orders or an endorsement of the Collector, no unstamped instruments can be accepted in evidence in any proceedings except in:

- a. criminal proceedings; or
- b. civil proceedings instituted by the Collector to recover stamp duty or penalty.

The court may order that an instrument not duly stamped be received in evidence in civil proceedings upon the personal undertaking of a solicitor to cause:

- i. such instrument to be stamped in respect of the stamp duty chargeable thereon; and
- ii. (ii) any penalty payable under s.9 for late stamping in respect thereof to be paid (s.15(1A)).

The Collector will endorse an instrument not duly stamped if he has approved the postponement of the payment of the stamp duty or that the court has made an order allowing an appeal against the stamp duty assessment without payment of the stamp duty or with part payment only.

2) Filing, registration, brokerage, commission and dividends

No instrument chargeable with stamp duty shall be acted upon, filed or registered by any public officer or body corporate unless such instrument is duly stamped; or endorsed by the Collector under s.14(1C) when the stamp duty is under appeal (s.15(2)). Therefore,

- a. the Land Registrar at the Land Registry cannot register an unstamped assignment of immovable property.
- b. the registrar of a company cannot register the change of shareholders upon the presentation of an unstamped instrument of transfer.
- c. the court cannot give judgment on the recovery of outstanding rent under an unstamped lease.

No broker or agent can legally claim charge for brokerage or commission for the sale or purchase of Hong Kong stock if he failed to comply with s.19 to execute the contract notes.

The unregistered shareholders are not entitled to any dividend, bonus or rights issues in respect of the shares bought.

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!