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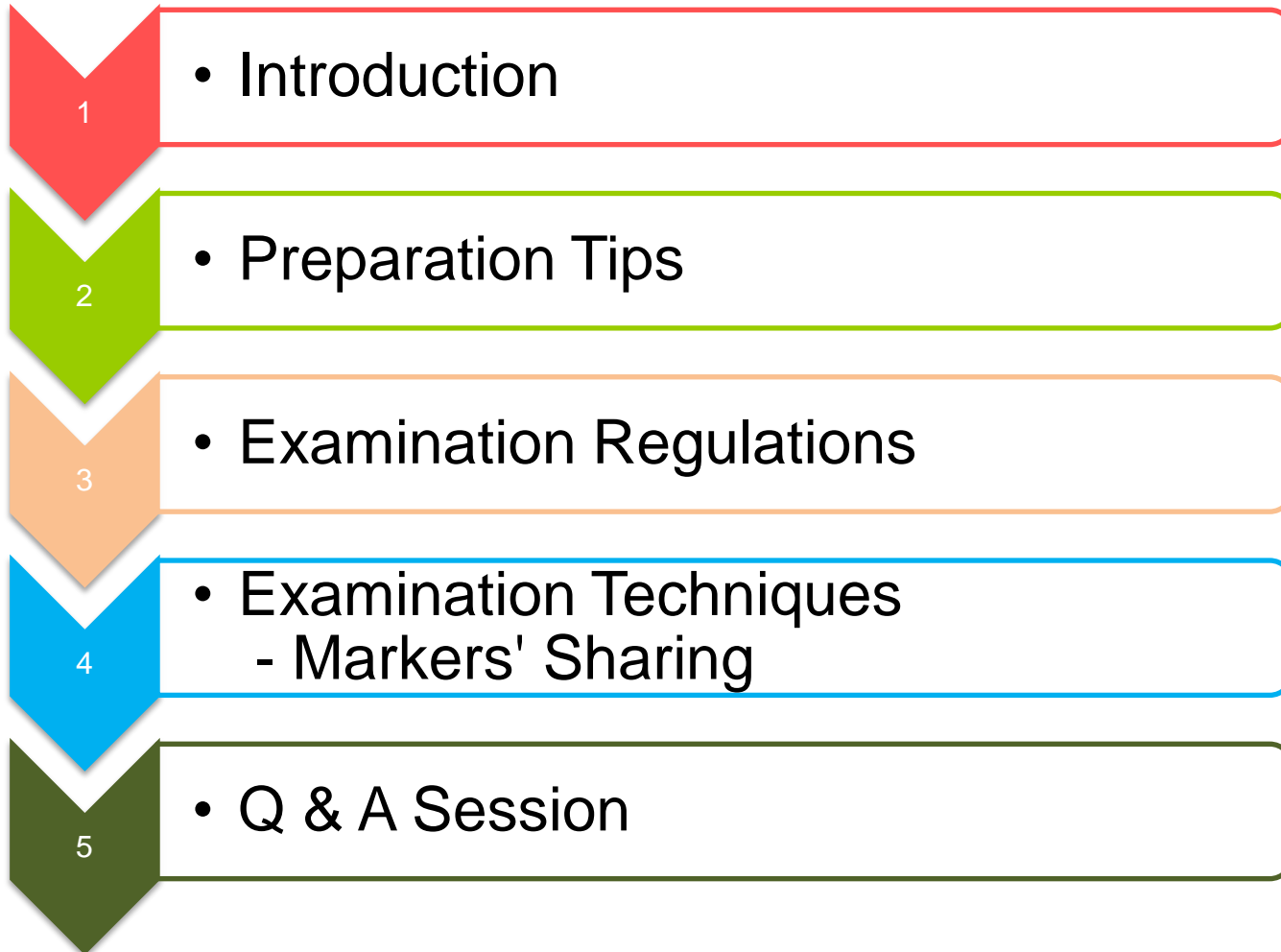
# Examination Techniques Seminar on QP Module Examinations

## Module D (June 2018 Session)

Date: 2 May 2018



# Agenda





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# Part 1: Introduction



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**Today's objective:**  
***Finding ways to pass the  
Module Examination!***



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# HKICPA QP Module Examinations

## Examination Format:

- Section A – Case Questions (50%)
- Section B – Essay / Short Questions (50%)
- 3 hours duration for each Module
- All compulsory questions



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# Part 2: Preparation Tips



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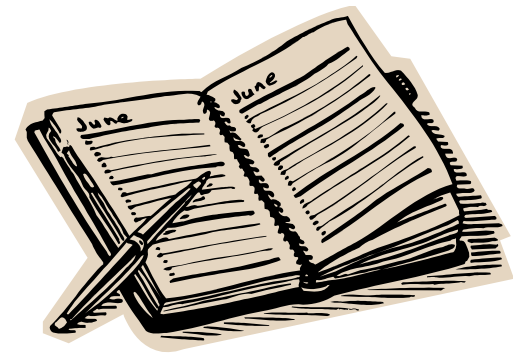


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# Commit to your Study Plan

## Advantages:

- Schedule ahead
- Build long term memories → maximize efficiency
- Avoid last minute work and minimize impact of unpredicted events...







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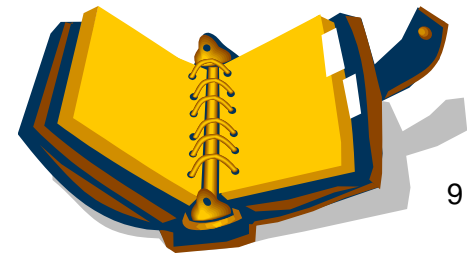
## Prepare Critical File

### How to prepare:

- Use different colour post-it for different standards / topics
- Organise materials by different standards / topics
- Understand theories behind each standards / topics
- Get familiar with this file

### Advantages:

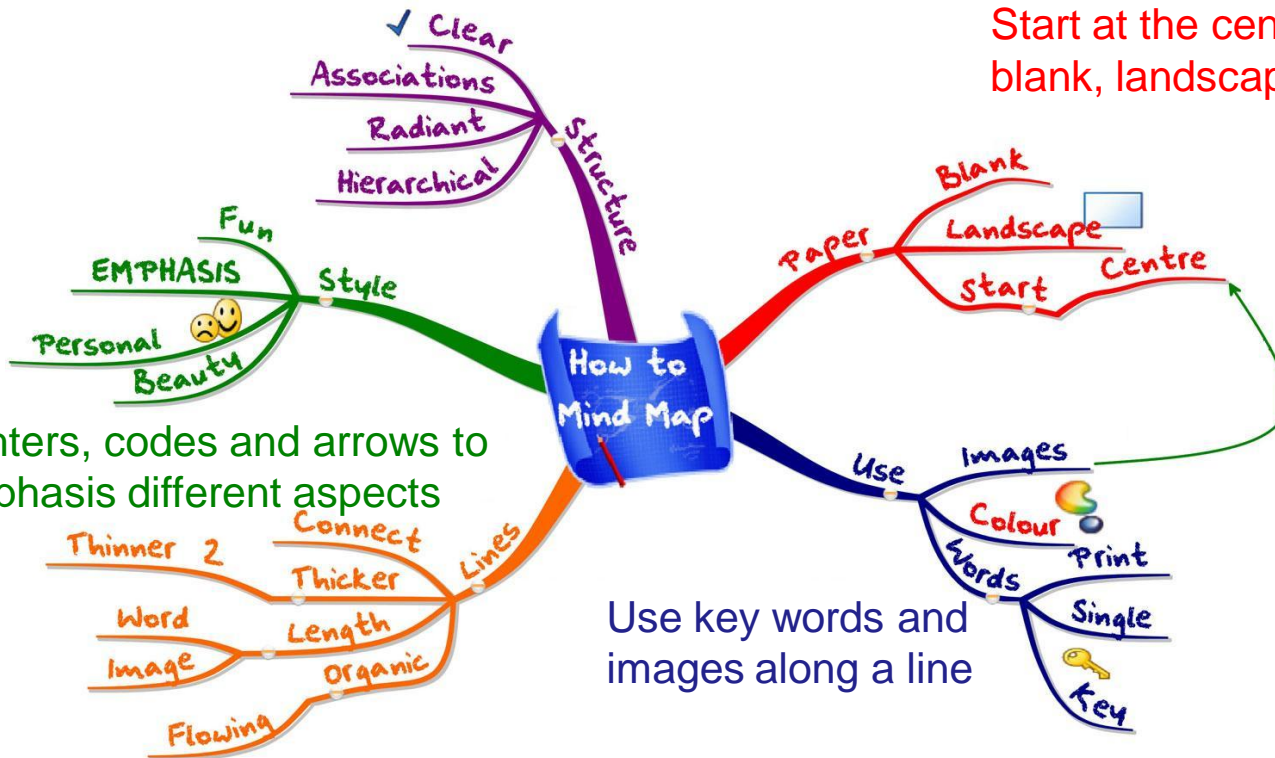
- Colour coding for standards / topics allows easy identification (same file used in examination – time saving!)
- Build up long term memories
- Avoid indexing without understanding



# Mind Map

Radiate the ideas out from the central theme and main branches

Start at the centre of a blank, landscape paper



Use highlighters, codes and arrows to link and emphasize different aspects

Use key words and images along a line

Make the lines associate as clear as possible



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## Other Preparation Tips

- Cover beyond LP
- Form Study Group with fellow students
- Visit QP Learning Centre
  - Past papers and Examiners' reports;
  - Special topics and/or Important notice; and
  - Module preparation seminar archives



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# Part 3: Examination Regulations



## Examination Regulations (highlights)

- Bring HKID card and Examination Attendance Docket ("EAD")
- Be aware of the **examination regulations** printed on the EAD which will be posted to students two weeks before the examination
- Arrive 45 minutes before the examination start
- Turn off your mobile phone or other electronic communication devices
- Don't write on the script booklet during the reading time (FE only)
- Don't write your name or personal information on anywhere of your script booklets
- Use blue or black ink pen
- Use appropriate script booklet to answer each section
- Stop writing immediately once the end of examination is announced

**Failure to follow any of the examination regulations may result in marks penalty or even disqualification from the entire examination!**

Noticeboard

Module A

Module B

Module C

Module D

Final Examination

**Examination Support**

Technical Articles

Webcasted Video

Audio Archives

Download

**I'M INTERESTED IN**

[Help for students](#)

[QP timetable](#)

[CPA recruitment - A-List](#)

[Becoming a Hong Kong CPA](#)



## Examination guidelines

This [video](#) provides guidance on preparing for your upcoming examinations. Make sure you are familiar with these guidelines.

*If you are unable to open the video by Internet Explorer, try opening it in a different browser (e.g. Chrome).*

## Examination assistance

Here are some study tips to help QP students to get through their examinations (please click [here](#)).

To help QP students prepare for the four module examinations, the Institute organizes a series of examination assistance functions for each examination session. For more details, please click [here](#).



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# Part 4:

## Examination Techniques

### - Markers' Sharing



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## Key points recapped

- Interpretation of the requirements
- Understanding and application of knowledge
- Structure of the answer
- Time management







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# Section A – Case Questions



## Case background

### 1. Case

Mr Wong and Ms Chan are husband and wife.

#### Ms Chan

Ms Chan was employed as Sales Manager-Asia Pacific by RAB International Limited (“RAB”) on 1 September 2015. Her employment contract contained, among others, the following terms and conditions:

- (a) Monthly salary was HK\$40,000, payable on the 28th of each month.
- (b) Either party might terminate the employment by giving two months’ notice or payment in lieu of notice.

➤ Q1

➤ Q4



## Case background

### 1. Case

By a separation agreement dated 28 February 2017 (“the Separation Agreement”), RAB informed Ms Chan that due to the downsizing of the company, her employment with RAB would be terminated on 31 March 2017. In the Separation Agreement, it was stated that if Ms Chan accepted the terms of the Separation Agreement,

- (a) She was not required to work for the month of March 2017.
- (b) She would waive all claims against RAB.
- (c) She would receive the following payments on 7 April 2017:
  - (i) Salary for March 2017 - HK\$40,000 and all staff benefits up to 31 March 2017;
  - (ii) Payment in lieu of notice - HK\$40,000; and
  - (iii) Compensation payment (equivalent to two months' salary) - HK\$80,000.

➤Q1

Ms Chan accepted the Separation Agreement on 3 March 2017.



## Case background

### 1. Case

In January 2017, Ms Chan enrolled onto a one-year MBA course in Hong Kong organised by a university in the United States. The course fee was payable in two instalments, HK\$50,000 due on 31 January 2017 for the six months from January to June 2017 and HK\$50,000 due on 30 June 2017 for the six months from July to December 2017. Ms Chan paid all the course fees in one go on 15 January 2017.

➤ Q2



## Case background

### 1. Case

In the Tax Return – Individuals for the year of assessment 2016/17, Ms Chan claimed that all the three payments provided under the Separation Agreement should not be subject to salaries tax as they were all compensation payments made by RAB due to redundancy and she was not required to work in March 2017. She also claimed deduction for self-education expenses of HK\$100,000 in respect of the MBA course fees, approved charitable donations totalling HK\$7,000 (HK\$5,000 paid by her and HK\$2,000 paid by Mr Wong) and contributions to a recognised occupational retirement scheme of HK\$1,800 per month. Moreover, she claimed married person's allowance by declaring that Mr Wong had no employment income for the year.

➤ Q4



## Case background

### 1. Case

#### Mr Wong

Mr Wong has operated a sole proprietorship business in the name of Brick Toy Shop (“Brick”) since 1 April 2010 which closes its accounts on 31 December annually. Mr Wong leased a shop at 123 Shopping Mall (“the Mall”) for the retail of brick toys. All along, Brick only accepts cash payments from customers. As more and more toy shops opened in the Mall in the past two years, the Mall has become famous for selling toys and the footfall has increased significantly. As such, the turnover of Brick for the year of assessment 2016/17 has nearly doubled from the past two years. However, Brick sustained losses throughout the years of assessment from 2010/11 up to 2015/16. Only small assessable profits of HK\$100,000 were reported for the year of assessment 2016/17.

➤ Q6

➤ Q7



## Case background

Mr Wong owned two immovable properties in Hong Kong and both of them were let out for rental income. Property A was solely owned by Mr Wong while Property B was newly bought in joint names with his mother in October 2016. The purchase transaction was completed on 1 November 2016. Details of the leases and mortgage loans in respect of Property A and Property B are as follows:

	<u>Property A</u>	<u>Property B</u>
Lease terms	01/01/2016 – 31/12/2017	01/01/2017 – 31/10/2017
Rent	HK\$10,000 per month	HK\$15,000 per month
Deposit	HK\$20,000	HK\$30,000
Rates*	HK\$1,000 per quarter (after rates concession)	HK\$2,000 per quarter (after rates concession)
Government rent*	HK\$900 per quarter	HK\$1,300 per quarter
Management fee*	HK\$800 per month	HK\$1,200 per month
Renovation expenses	NIL	HK\$50,000
Mortgage loan		
• Principal repayment	HK\$5,000 per month	HK\$20,000 per month
• Interest expenses	HK\$5,000 per month	HK\$15,000 per month

\* payable by landlord

➤ Q5





## Case background

Mr Wong's father, aged 80, was living at an elderly residential care home located in Yuen Long during the year of assessment 2016/17. The fee, being HK\$9,000 per month, was paid by Ms Wong (i.e. Mr Wong's sister). The receipt was issued by the residential care home to Ms Wong directly. Mr Wong shared half of the fee by depositing it into Ms Wong's bank account on a monthly basis.

➤ Q3

In the Tax Return – Individuals for the year of assessment 2016/17, Mr Wong claimed deduction for mortgage interest expenses in respect of Property A and Property B as well as elderly residential care expenses in respect of his father. He also elected for personal assessment in the abovementioned tax return.

➤ Q6

For the year of assessment 2015/16, the Assessor issued a computation of loss in respect of Brick showing that the amount of loss carried forward was HK\$250,000.



## **December 2017 Session – Sect A – Q1** **(14 marks – approximately 25 minutes)**

For each of the following three payments provided in the Separation Agreement, analyse, with reference to the relevant legal principles, whether it is chargeable to salaries tax, and if yes, determine the year of assessment in which it is chargeable:

**(a) Salary for March 2017**

**(5 marks)**

**(b) Payment in lieu of notice**

**(4 marks)**

**(c) Compensation payment**

**(5 marks)**



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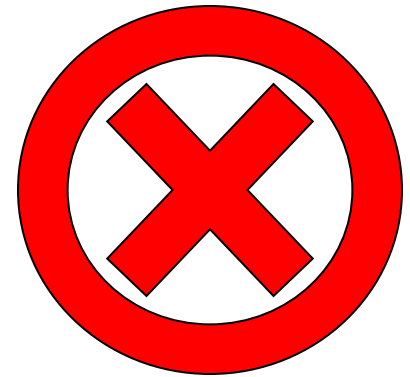
Question 1(a)(b)(c)



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## Problem

- Overlooked the requirement to determine the year of assessment in which it is chargeable
- Did not analyse with reference to the relevant legal principles



## Wrong answers

- Incorrect reasoning for the conclusion
- Cite irrelevant provisions (e.g. S11D(a))
- Incorrectly discussed relating back

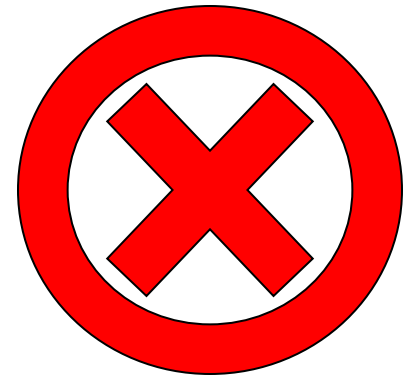


## Answer 1(a)

- Under s.8(1)(a) of the Inland Revenue Ordinance (“IRO”), salaries tax shall be charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong from any office or employment of profit. S.9(1)(a) of the IRO defines income from any office or employment to include salary. There is nothing in ss.8 or 9 of the IRO which limit taxable payments to remuneration for services rendered or to be rendered (D19/92, IRBRD, vol 7, 156; D88/00, IRBRD, vol 15, 175).
- Given that the salary was derived from Ms Chan’s employment which subsisted right up to 31 March 2017 and that the sum came squarely within the ambit of s.9(1)(a) of the IRO, it should be regarded as income from employment assessable to salaries tax. The payment is assessable to salaries tax in the year of assessment 2016/17 because post-cessation payments should be deemed to have accrued on the last date of employment under s.11D(b)(ii) of the IRO (i.e. 31 March 2017).



Question 1(b)



## Wrong answers

- Cite irrelevant provisions (e.g. S11D(a))



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## Answer 1(b)

- It is a contractual payment made in accordance with the employment contract and thus should be regarded as an income from employment and chargeable to salaries tax. (*Fuchs v Commissioner of Inland Revenue* [2011] 2 HKC 422). *The payment is assessable to salaries tax in the year of assessment 2016/17 because post-cessation payments should be deemed to have accrued on the last date of employment under s.11D(b)(ii) of the IRO (i.e. 31 March 2017).*



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## Question 1(c)



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## Problem

- Unable to provide a comprehensive analysis based on the facts of the case (too simple)
- Just copied the materials without any analysis
- Inappropriate analysis
- Wrong conclusion





## Answer 1(c)

- To ascertain whether a sum is assessable to salaries tax, it is required to find out its exact nature and the circumstances under which it is paid. The label of the payment given by the taxpayer or employer is not conclusive. In the present case, the compensation payment is not a severance payment or long service payment provided for under the Employment Ordinance. It is neither a contractual payment nor a payment made for services rendered or to be rendered or for acting as an employee. Besides, it is paid due to redundancy and not due to retirement or resignation. On the whole, it can be accepted as a compensation payment made by RAB for loss of employment due to restructuring and therefore not chargeable to salaries tax.



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## **December 2017 Session – Sect A – Q2** **(4 marks – approximately 7 minutes)**

Analyse, with reference to the relevant provisions in the Inland Revenue Ordinance (“IRO”), whether Ms Chan is entitled to claim deduction of self-education expenses in respect of the MBA course fee for the years of assessment 2016/2017 and 2017/2018, and if yes, determine the respective amounts of self-education expenses allowable for deduction to Ms Chan for the abovementioned years of assessment.

(4 marks)



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## Question 2



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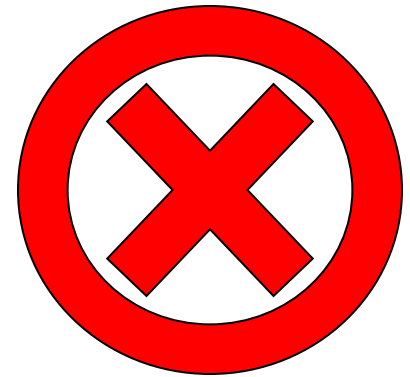
## Problem

- Overlooked the requirement to determine the deductible amounts for years of assessment 2016/17 and 2017/18.
- Did not realize that the timing for deduction should be the date of payment not the due date for payment nor the commencement date of the course



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Question 2



## Wrong answers

- Wrongly discussed S.12(1)(a)



## Answer 2

- Under s.12(1)(e) of the IRO, any self-education expenses paid in the year of assessment not exceeding the prescribed amount shall be deducted from the assessable income. S.12(6)(b) of the IRO defines self-education expenses to mean expenses paid by the taxpayer as tuition and examination fees in connection with a prescribed course of education undertaken by the taxpayer. A prescribed course of education is defined under s.12(6)(c) of the IRO as a course undertaken to gain or maintain qualifications for use in any employment and being a course of education provided by an education provider, which includes a university according to s.12(6)(d) of the IRO.



## Answer 2 (cont'd)

- As the course fee paid by Ms Chan is in relation to an MBA course paid to a university and likely for use in her employment, it satisfies s.12(1)(e) of IRO and so the amount paid during the year ended 31 March 2017 can be allowed for deduction in the year of assessment 2016/17.
- Both the period of the course and the due date for payments are irrelevant. Therefore, the amount eligible for deduction as self-education expenses for the year of assessment 2016/17 is HK\$100,000, but the amount that can be allowed for deduction is limited to the prescribed amount for the year, i.e. HK\$80,000. On the other hand, the amount allowable for deduction for the year of assessment 2017/18 is nil.



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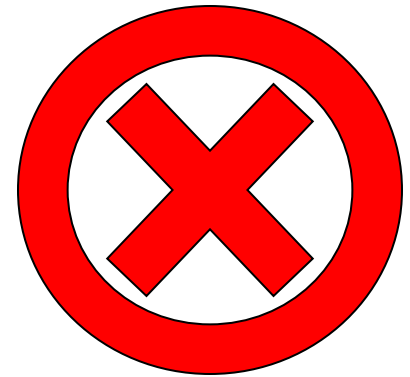


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## **December 2017 Session – Sect A – Q3** **(3 marks – approximately 6 minutes)**

Analyse, with reference to the relevant provisions in the IRO and practices established by the Inland Revenue Department (“IRD”), whether Mr Wong is entitled to claim deduction of elderly residential care expenses for the year of assessment 2016/17 in respect of his father, and if yes, determine the amount that can be allowed.

(9 marks)



## Wrong answers

- Wrongly stated that the taxpayer was entitled to claim deduction in respect of half of the fees which was shared by him
- Wrongly discussed whether the taxpayer was entitled to claim dependent parent allowance





## Answer 3

- S.26D(1) of the IRO provides that, where a person or his / her spouse, pays during any year of assessment any residential care expenses in respect of a parent or grandparent who meets the specified age requirement, a deduction shall be allowed to that person for that year of assessment. S.26D(5) defines residential care expenses to mean any expenses payable in respect of the residential care received at a residential care home and paid to that residential care home. S.26D(4) specifies that only one person can claim elderly residential care expenses (“ERCE”) in respect of the same dependent parent. Therefore, only the person with legal responsibility for the payment (i.e. the one named in the invoice) can claim deduction for the total amount paid (para.19, DIPN No.36 issued in January 2000).
- As Mr Wong only shared the fee by paying Ms Wong and was not the person who paid the residential care home, he is not entitled to claim a deduction for any ERCE for the year of assessment 2016/17.



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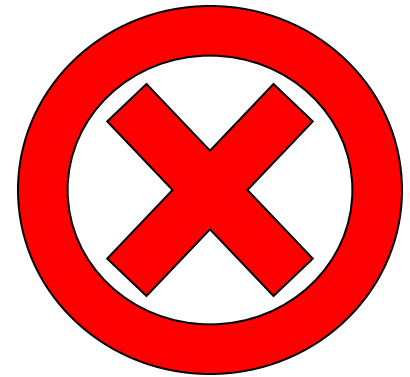
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## **December 2017 Session – Sect A – Q4** **(4 marks – approximately 7 minutes)**

Compute the salaries tax liability of Ms Chan for the year of assessment 2016/17.

Assuming that no tax reduction is available in the year of assessment 2016/17.

(4 marks)



## Wrong answers

- Incorrect amount of deductions for
  - (i) charitable donation
  - (ii) retired scheme contributions
- Incorrect amount of personal allowance was used (e.g. basic allowance)
- Wrongly calculated the tax liability at standard rate
- Wrongly included tax reduction in the computation even though it was clearly stated not required



## Answer 4

Ms Chan

Salaries Tax Computation – Year of assessment 2016/17

	HK\$
Income	
Salary (HK\$40,000 x 12)	480,000
Payment in lieu of notice	<u>40,000</u>
	520,000
<u>Less:</u> Self-education expense [s.12(1)(e)]	<u>(80,000)</u>
Net assessable income	440,000
<u>Less:</u> <u>Concessionary deductions</u>	
Charitable donations [s.26C]	(7,000)
Retirement scheme contributions [s.26G and schedule 3B]	<u>(18,000)</u>
Net income	415,000
<u>Less:</u> Married person's allowance	<u>(264,000)</u>
Net chargeable income	<u>151,000</u>
Tax payable thereon at standard rate (HK\$415,000 x 15%)	<u>62,250</u>
Tax payable thereon at progressive rates	
First HK\$40,000 x 2%	800
Next HK\$40,000 x 7%	2,800
Next HK\$40,000 x 12%	4,800
Balance HK\$31,000 x 17%	<u>5,270</u>
	<u>13,670</u>

The salaries tax liability of Ms Chan for the year of assessment 2016/17 is HK\$13,670.



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## **December 2017 Session – Sect A – Q5** **(6 marks – approximately 11 minutes)**

Compute the property tax liability of Mr Wong in respect of Property A and Property B for the year of assessment 2016/17.

(6 marks)



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## Question 5



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## Problem

- Not aware that the taxpayer only held a 50% interest in property B



## Answer 5

Mr Wong

Property Tax Computation – Year of assessment 2016/17

<u>Property A</u>	HK\$
Rent (HK\$10,000 x 12) [s.5B(2)]	120,000
Less: Rates (HK\$1,000 x 4) [s.5(1A)(b)(i)]	<u>(4,000)</u>
	116,000
Less: 20% statutory outgoings [s.5(1A)(b)(ii)]	<u>(23,200)</u>
Net assessable value	<u>92,800</u>
<b>Property tax payable thereon at 15%</b>	<b><u>13,920</u></b>
<u>Property B</u>	
Rent (HK\$15,000 x 3) [s.5B(2)]	45,000
Less: Rates (HK\$2,000 x 1) [s.5(1A)(b)(i)]	<u>(2,000)</u>
	43,000
Less: 20% statutory outgoings [s.5(1A)(b)(ii)]	<u>(8,600)</u>
Net assessable value	34,400
	<u>x 50%</u>
Mr Wong's share of net assessable value	<u>17,200</u>
<b>Mr Wong's share of property tax payable at 15%</b>	<b><u>2,580</u></b>

The total property tax liability of Mr Wong for the year of assessment 2016/17 is HK\$16,500 (HK\$13,920 + HK\$2,580).



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## **December 2017 Session – Sect A – Q6** **(10 marks – approximately 18 minutes)**

Compute the tax liability of Mr Wong and Ms Chan under personal assessment for the year of assessment 2016/17 and analyse whether it is advantageous for the couple to elect for personal assessment.

Assuming that no tax reduction is available in the year of assessment 2016/17.

(10 marks)





## Problem

- Not familiar with personal assessment computation
- Misunderstood that the tax liabilities of husband and wife under personal assessment can be computed separately
- Did not understand the tax treatment of business loss brought forward from the prior years
- Did not aware that the deduction of mortgage interest under personal assessment should be restricted to NAV
- Did not aware that it was required to work out the tax liability in respect of each spouse



## Answer 6

	<u>Ms Chan</u> HK\$	<u>Mr Wong</u> HK\$	<u>Total</u> HK\$
Net assessable value [s.42(1)(a)]			
- Property A		92,800	
- Property B		<u>17,200</u>	
		110,000	110,000
Assessable income	520,000		
<u>Less:</u> Self-education expenses	<u>(80,000)</u>		
Net assessable income [s.42(1)(b)]	440,000		440,000
Net assessable profits [s.42(1)(c)]	<u>-</u>	<u>-</u>	<u>-</u>
	440,000	110,000	550,000
<u>Less:</u> Mortgage interest [s.42(1) proviso] (HK\$60,000 + HK\$17,200)	<u>-</u>	<u>(77,200)</u>	<u>(77,200)</u>
Total income [s.42(1)]	440,000	32,800	472,800
<u>Less:</u> <u>Concessionary deductions</u>			
Charitable donations	(7,000)	-	(7,000)
Retirement scheme contributions	<u>(18,000)</u>	<u>-</u>	<u>(18,000)</u>
Reduced total income [s.42(2)]	415,000	32,800	447,800
<u>Less:</u> Married person's allowance			<u>(264,000)</u>
Net chargeable income			<u>183,800</u>
Tax payable thereon at standard rate (HK\$447,800 x 15%)			<u>67,170</u>



## Answer 6 (cont'd)

Tax payable thereon at progressive rates

First	HK\$40,000 x 2%	800
Next	HK\$40,000 x 7%	2,800
Next	HK\$40,000 x 12%	4,800
Balance	HK\$63,800 x 17%	<u>10,846</u>
		<u>19,246</u>

[s.43(2B)]

Ms Chan's share of tax liability:

HK\$19,246 x (HK\$415,000 / HK\$447,800) 17,836

Mr Wong's share of tax liability:

HK\$19,246 x (HK\$32,800 / HK\$447,800) 1,410

**Total tax payable if personal assessment is elected** **19,246**

If no personal assessment, tax payable under:

- Salaries tax	13,670	-	13,670
- Property tax	-	16,500	16,500
- Profits tax	-	-	-

**Total tax payable if no personal assessment is elected** **30,170**

It is more tax advantageous for the couple to elect for personal assessment for the year of assessment 2016/17.



## December 2017 Session – Sect A – Q7 (9 marks – approximately 16 minutes)

- (a) In view of the trend that online shops are increasingly popular and are welcomed by youngsters, Mr Wong is considering expanding the business of Brick by building up a website for online sales. He learns from his friend that if the relevant server is set up outside Hong Kong, then the profits derived from the online sales can be regarded as offshore sourced and not subject to profits tax in Hong Kong. Assuming that Mr Wong approaches you for tax advice, analyse, with reference to the relevant legal principles, the rules governing the source of profits in Hong Kong that are relevant to the case of Brick, and comment as to whether keeping the server outside Hong Kong is feasible for offshore claim purposes.

(5 marks)



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## Question 7(a)



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## Problem

- Only discussed the general principles relating to locality of profits
- Analysis too simple
- Wrongly discussed permanent establishment
- Only copied the material without any analysis, then made conclusion



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## Answer 7(a)

- Under s.14(1) of the IRO, profits tax shall be charged on each person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business. To determine the source of profits, the broad guiding principle is that one looks to see what the taxpayer has done to earn the profits in question and where he has done it (*CIR v Hang Seng Bank Limited* [1991] 1 AC 306 or *HK-TVB International Limited v CIR* [1992] 2 AC 397).



## Answer 7(a) (cont'd)

- Brick is a trading company and derives trading profits. To determine the source of trading profits, the location where the purchase and sale transactions took place are important. However, the following factors should also be taken into account:
  - How were the goods procured or stored?
  - How were the sales solicited?
  - How were the orders processed?
  - How were the goods shipped?
  - How was the financing arranged?
  - How was the payment effected?



## Answer 7(a) (cont'd)

- Regarding e-commerce, the Inland Revenue Department (“IRD”) would apply the provisions of the IRO to electronic commerce on the same basis as those applied to conventional forms of business (para.2, DIPN No.39 issued in July 2001). The mere presence of a server (even if an intelligent one) outside Hong Kong would not turn onshore profits to being offshore sourced if all the physical business operations of Brick remain to be carried out in Hong Kong (para.9, DIPN No.39 issued in July 2001). Therefore, it is not feasible to make an offshore claim on the profits derived from online sales simply by maintaining a server outside Hong Kong.





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## December 2017 Session – Sect A – Q7 (cont'd)

(9 marks – approximately 16 minutes)

(b) Mr Wong recently received a letter from the IRD advising him that Brick had been chosen for a field audit. Analyse the possible reasons why Brick was chosen for field audit and advise as to the possible actions that the field auditor would take in the case of Mr Wong in respect of Brick before the field auditor quantifies the amount of discrepancy.

(4 marks)



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## Question 7(b)



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## Problem

- Just copied the materials, without analysis
- Analysis too simple



## Answer 7(b)

- Brick was chosen for a field audit possibly because it is a business involving cash sales. It is a small scale business where internal control would likely be insufficient. Persistent losses were recorded over the past years. Lastly, Brick might simply be selected by the IRD on a random basis.
- The field auditor might interview Mr Wong and visit Brick's shop so as to gain a thorough understanding of the business operations of Brick and to understand and examine the internal control procedures. He might request books and records (usually general ledgers, accounting vouchers and bank statements) for checking and examination. For example, he may look for unusual transactions and entries in books, particularly periodic or large payments made to private personal accounts. He may also look for unusual transactions and entries in bank statements, particularly periodic or large receipts without proper accounting vouchers and entries to support them. Moreover, he might ask Mr Wong to explain the source of funding, e.g. how he can maintain the business of Brick despite the fact that Brick has been operating at a loss for years.



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# Section B – Essay/Short Questions

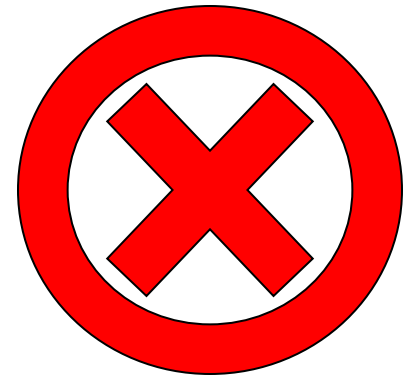


## December 2017 Session – Sect B – Q8 (13 marks – approximately 23 minutes)

Analyse whether stamp duty is payable by any of the parties involved in the following independent circumstances, and if yes, compute the amount of stamp duty payable:

(a) A Limited wishes to enter into a lease arrangement with B Limited to lease an office premises owned by B Limited in Causeway Bay, Hong Kong. According to the arrangement, A Limited as the tenant shall pay a fixed monthly rental of HK\$150,000 to B Limited for a 24 months' tenancy period. B Limited is an associated company of A Limited on the basis that 30% of the shareholding is owned by A Limited. In view of the associate relationship, both of the parties agree that a written lease contract or other documents would not be prepared for the sake of simplicity.

(3 marks)



## Wrong answers

- Wrongly discussed S.45 relief and so wrongly analyse the relationship between the lesser and lessee



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## Answer 8(a)

Stamp duty is levied on instruments or documents instead of on transactions under the Stamp Duty Ordinance (“SDO”). As no written lease contract or any other documents would be entered between A Limited and B Limited with respect to the tenancy arrangement, no stamp duty is chargeable with respect to the lease. The shareholding relationship between A Limited and B Limited is irrelevant to the analysis.



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## **December 2017 Session – Sect B – Q8** **(13 marks – approximately 23 minutes)**

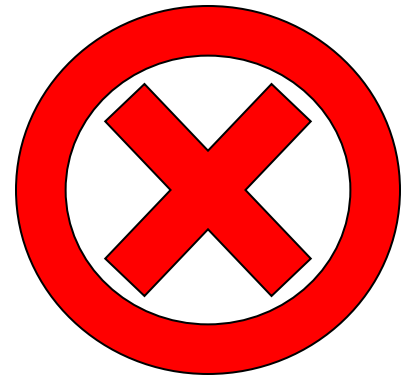
(b) Mr C has owned a residential property in Tsimshatsui, Hong Kong (“the Property”) for more than five years. Yesterday, D Limited, an unrelated party, approached Mr C proposing to acquire the Property together with the existing tenancy contract at the price of HK\$17 million. According to the latest surveyor report, the current market value of the Property is HK\$15 million.

(6 marks)





Question 8(b)



## Wrong answers

- Used wrong AVD rates
- Wrongly concluded that no BSD was required
- Wrongly used the market value to calculate AVD and BSD



## Answer 8(b)

The relevant instruments effecting the transfer of the Property are subject to stamp duty in accordance with Head 1 of the SDO. Essentially, the transaction would be subject to Ad Valorem Duty (“AVD”) and a fixed duty of HK\$100.

As the Property is a residential property and the purchaser (i.e. D Limited) is not a Hong Kong permanent resident, the relevant instrument would be subject to AVD at a flat rate of 15% with respect to the stated consideration or market value, whichever is the higher. The amount of AVD is therefore HK\$2.55 million (HK\$17 million x 15%). Both Mr C as the seller and D Limited as the buyer are jointly and severally liable to pay the AVD.



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## Answer 8(b) (cont'd)

As Mr C has held the Property for more than 36 months, the transfer of the Property would not be subject to Special Stamp Duty (“SSD”). However, as D Limited is not a Hong Kong permanent resident and the Property is a residential property, the transfer would be subject to Buyer’s Stamp Duty (“BSD”) under Heads 1 (1AAB) and 1(1C) of the SDO at a rate of 15% on the stated consideration or market value, whichever is the higher. D Limited is liable to pay the BSD and the amount is HK\$2.55 million (HK\$17 million x 15%).



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## **December 2017 Session – Sect B – Q8** **(13 marks – approximately 23 minutes)**

(c) For the purpose of portfolio re-alignment, E Limited would like to transfer its shop premises in Mongkok, Hong Kong, to its wholly owned subsidiary, F Limited, at the current market value of HK\$30 million and the shop premises would be held for long-term investment purposes. F Limited plans to borrow the same amount from a bank in Hong Kong for the settlement of the transfer consideration.

(4 marks)



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## Question 8(c)



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## Problem

- Did not address the restrictions which applied to the exemption under S.45
- Analysis too simple
- Just copied the materials, without analysis and jump to conclusion



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## Answer 8(c)

E Limited and F Limited are associated body corporates under s.45(2) of the SDO as F Limited is the wholly owned subsidiary of E Limited. In this connection, the transfer of the shop premises may be exempt from AVD, SSD and BSD subject to the fulfillment of the restrictions as stipulated under s.45(4) of the SDO. As the consideration of the transfer would be settled through bank borrowing and the bank is prima facie an unrelated person, the exemption is deniable pursuant to s.45(4)(a) of the SDO. However, the Collector of Stamp Revenue has issued a ruling that if the bank loan is made by a bank in the ordinary course of business and the bank does not have any interest in the shop premises other than as security, the stamp duty exemption would still be applicable.



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## **December 2017 Session – Sect B – Q9** **(14 marks – approximately 25 minutes)**

JAY Limited (“the Company”) is a company listed on the Stock Exchange of Hong Kong and carries on a business in Hong Kong. In February 2017, the Company appointed Mr Zhang as its Independent Non-Executive Director. Mr Zhang is a Chinese resident and did not visit Hong Kong during the year ended 31 March 2017, notwithstanding that he participated in the director’s meetings of the Company held in Hong Kong through teleconferencing.



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## **December 2017 Session – Sect B – Q9** **(14 marks – approximately 25 minutes)**

Recently, the human resources department of the Company was about to prepare the Employer's Returns for the Company for the year ended 31 March 2017, and would include the remuneration details of Mr Zhang in the Employer's Returns as he had received a director's fee of HK\$200,000. After due discussions, Mr Zhang argued that the Company should not file any Employer's Return in respect of him, as he should not be assessable to salaries tax on the basis that (i) he was not a Hong Kong resident and did not visit Hong Kong, and (ii) he did not render any services in Hong Kong during the year ended 31 March 2017. As the head of the human resources department did not have any relevant tax knowledge, the management of the Company appointed Messrs. Ko & Ko to obtain tax advice in relation to its Employer's Return filing obligations.





## December 2017 Session – Sect B – Q9 (14 marks – approximately 25 minutes)

### Required:

(a) Analyse the arguments of Mr Zhang in the contexts of (i) his chargeability to salaries tax and (ii) whether the Company has any Employer's Return filing obligations in respect of him for the year ended 31 March 2017, and if so, specify the details.

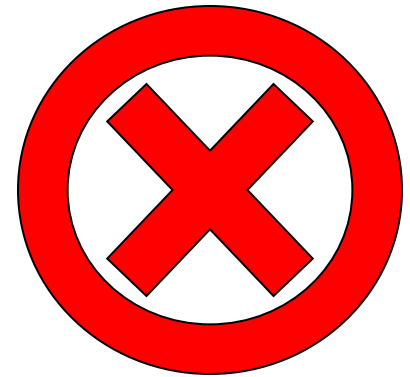
(5 marks)

(b) On the assumption that the Company has filing obligations as the employer of Mr Zhang and the Company erroneously failed to do so, analyse the possible penal actions applicable to and the maximum penalties that could be imposed on the Company in the contexts of the IRO.

(4 marks)

(c) Describe the ethical considerations Messrs. Ko & Ko should be aware of in the course of providing the tax advisory services to the Company.

(5 marks) 74



## Wrong answers

- Wrongly discussed the source of income from an employment rather than an office
- Wrongly discussed 60 days rule exemption
- Wrongly discuss DTA arrangement between Mainland China and Hong Kong



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## Question 9(a)



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## Problem

- Overlooked the requirement to discuss the employer's return filing obligations



## Answer 9 (a)

The source of a director's remuneration should be determined by the place where the company exercises its central management and control, i.e. the location of the office of the director. As JAY Limited carries on a business in Hong Kong, it is probable that its central management and control are also exercised in Hong Kong. As such, it is likely that the director's fee derived by Mr Zhang would be wholly assessable to salaries tax under s.8(1)(a) of the IRO. The facts that Mr Zhang is not a Hong Kong resident, did not visit Hong Kong and did not render any services in Hong Kong are irrelevant to the consideration. According to ss.52(3) and (4) of the IRO, JAY Limited has the obligation to notify the IRD of the commencement of employment of Mr Zhang not later than three months after the date of commencement of the employment as he is or is likely to be chargeable to salaries tax.

In addition, JAY Limited, pursuant to s.52(2) of the IRO has to furnish an employer's return reporting details of Mr Zhang's remuneration for the year ended 31 March 2017 regardless of his chargeability to salaries tax.



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## Question 9(b)



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## Problem

- Did not aware to discuss the compound provision
- Just stated all the penalty provisions, without referring to the facts of the case
- Discuss the penal actions for not complying with one filing obligation only, in fact, there were two filing obligations



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## Answer 9 (b)

If JAY Limited, without reasonable excuse, fails to (i) comply with s.52(4) of the IRO to notify the IRD of the commencement of employment of an employee chargeable to tax within three months after the date of commencement of employment; and (ii) furnish the employer's return of an employee as requested by the IRD under s.52(2) of the IRO, JAY Limited commits an offence, and is liable on conviction to a fine at level 3 (i.e. HK\$10,000) for each of the offence under s.80(1) of the IRO. The Court may also order JAY Limited to comply with the requirements as stipulated under ss.52(2) and 52(4) of the IRO within a specified timeframe. Moreover, s.80(5) of the IRO provides that the Commissioner of Inland Revenue may compound the offence and may before judgment stay or compound any proceedings thereunder.



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## Question 9(c)



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## Problem

- Just copied from LP or reference materials
- No analysis
- Did not address the answers to the relevant ethics in practice provisions



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## Answer 9 (c)

In the course of providing tax advisory services to JAY Limited, Messrs. Ko & Ko should comply with s.430 'Ethics in tax Practice' in the Code of Ethics for Professional Accountants (Revised in June 2010) published by the Hong Kong Institute of Certified Public Accountants ("the Code"). Specifically, Messrs. Ko & Ko should:

- (i) put forward the best position in favour of JAY Limited with professional competence and not in any way impair its standard of integrity and objectivity;
- (ii) ensure that JAY Limited is aware of the limitations attaching to its tax advice;





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## Answer 9 (c) (cont'd)

- (iii) ensure that the tax advice is properly prepared based on the information received from JAY Limited, provided that the information appears to be reasonable;
- (iv) record the tax advice given to JAY Limited either in the form of a letter or in a memorandum for the files; and
- (v) not associate themselves with any false or misleading information.



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## **December 2017 Session – Sect B – Q10** **(17 marks – approximately 31 minutes)**

Information recently available to the IRD indicated that Ms Tsoi, a Hong Kong resident, acquired a carpark space (“the Carpark”) in Homantin, Hong Kong, with an existing tenancy agreement in July 2015 at the acquisition cost of HK\$1.2 million. Ms Tsoi subsequently disposed of the Carpark in January 2017 for HK\$2.1 million. Assume that you are the Assessor of the IRD, and you are required to examine whether the gain derived by Ms Tsoi from the disposal of the Carpark (“the Gain”) should be chargeable to profits tax under the IRO.



## December 2017 Session – Sect B – Q10 (17 marks – approximately 31 minutes)

### Required:

- (a) Based on the relevant provisions in the IRO and the established legal principles, advise as to the approach you would use in determining whether the Gain derived by Ms Tsoi is chargeable to profits tax.  
(9 marks)
- (b) Recommend further information or documents you would request in order to facilitate your examination.  
(4 marks)
- (c) Advise other relevant matters you need to examine in order to ensure that Ms Tsoi has complied with the statutory requirements as the owner of the Carpark in the context of the IRO.  
(4 marks)



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## Question 10(a)



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## Problem

- Did not provide a detailed discussion and analysis
- Just copied the 6 badges of trade, no analysis and made conclusion



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## Answer 10 (a)

Under s.14(1) of the IRO, profits tax shall be charged on every person carrying on a trade, profession or business in Hong Kong except profits arising from sales of capital assets. A trade is defined in s.2 of the IRO to include every adventure in the nature of trade. Whether a trade is carried on is a question of fact to be determined by looking at all the circumstances of the case. In determining whether the Gain derived by Ms Tsoi is chargeable to profits tax, it is necessary to ascertain Ms Tsoi's intention at the time of the acquisition of the Carpark. The stated intention has to be tested against objective facts. Furthermore, the Assessor of the IRD should conduct an evaluation and examination to see whether the six badges of trade are present.



## Answer 10 (a) (cont'd)

(i) Subject matter of the realisation

The Carpark may be used by Ms Tsoi as a capital asset (e.g. personal use or producing rental income, etc) or for trading purposes. As the subject matter can be held either as a long-term investment or for resale purpose, further examination should be made in connection with the motive for acquiring the asset.

(ii) Motive

If the Carpark was acquired as a capital asset, Ms Tsoi should demonstrate that she had personal need of the Carpark, or that the Carpark had been let out for rental income which generated a favourable rental yield. Examination of the actual usage of the Carpark should be looked into.



## Answer 10 (a) (cont'd)

### (iii) Length of ownership

The Carpark was owned by Ms Tsoi for less than two years. The relatively short period of ownership points towards a trading transaction unless there were specific circumstances leading to its disposal in January 2017. Examination from this perspective may be conducted for further consideration.

### (iv) Circumstances responsible for the disposal

Assets disposed of for reaping profits without other concrete circumstances may indicate that the transaction constituted a trade. The circumstances leading to the sale of the Carpark should be investigated and verified against objective facts.



## Answer 10 (a) (cont'd)

### (v) Frequency of similar transactions

Examination of the frequency of similar transactions, if any, by Ms Tsoi is essential as it could constitute an indication of trade. The presence of property trading history lends support to the idea that a trade is being carried on.

### (vi) Supplementary work done

Due to the nature of the Carpark, the examination from this perspective is irrelevant to the analysis.

(Analysis from other perspectives with proper elaborations, e.g. method of financing the acquisition and utilisation of the sales proceeds, are also acceptable.)





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## Question 10(b)



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## Problem

- Provided a list of information irrelevant to the analysis
- Irrelevant elaboration
- Repeated some of the answer as provided in Q.10(a) again



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## Answer 10 (b)

Further information or documents to be obtained for evaluation include the following:

(i) Subject matter of the realisation/motive

- Information substantiating personal use, or investment plan demonstrating the long-term investment purpose of Ms Tsoi.
- Details of the tenancy agreement attached to the Carpark upon acquisition with a copy of such agreement.
- Effort paid for renting out the Carpark upon expiration of the tenancy period, if any, and the supporting documentation (e.g. a copy of the advertisement).



## Answer 10 (b) (cont'd)

### (ii) Frequency of similar transactions

- Other property transactions history of Ms Tsoi before and after the disposal of the Carpark, if any.
- Other business, if any, conducted by Ms Tsoi in the same field and the details.

### (iii) Circumstances responsible for the realisation

- Reason for disposing of the Carpark by Ms Tsoi with supporting documentary evidence.
- Whether the disposal was initiated by a third party or actively pursued by Ms Tsoi.
- The usage of the sales proceeds.
- Whether the Carpark was disposed of together with the existing tenancy agreement.
- The purchase of replacement property, if any, subsequent to the sale of the Carpark.



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## Answer 10 (b)

### (iv) Others

- Method of financing the acquisition of the Carpark.
- Professional knowledge and expertise of Ms Tsoi in property transactions.
- Any other relevant information/documents for evaluation.



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## Question 10(c)



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## Problem

- Just copied from LP or reference materials
- Not link to the facts of the case
- Wrongly discussed employee's obligation and taxpayer's obligation



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## Answer 10 (c)

Examination should also be made in order to ascertain whether Ms Tsoi has complied with the obligations of a property owner in the contexts of the IRO. It should include whether Ms Tsoi has informed the chargeability to property tax (s.51(2) of the IRO), completed and filed a tax return reporting the rental income derived (s.51(1) of the IRO), notified the disposal or transfer of the Carpark (s.51(6) of the IRO), informed the change of corresponding address, if any, (s.51(8) of the IRO), and kept sufficient rental records of not less than seven years (s.51D of the IRO).



## **December 2017 Session – Sect B – Q11**

**(6 marks – approximately 11 minutes)**

New Year Limited (“New Year”) is a wholly foreign owned enterprise established in mainland China and engages in the import and sale of luxury goods at its retail shop in Beijing. In November 2017, New Year expanded its business by importing and selling the following products (“the Products”):

- Smartphones
- Cosmetics
- Signature golf balls

In addition, New Year would pay dividends to its shareholder. It is noted that the sole shareholder of New Year is an individual who is a Hong Kong permanent resident.

New Year is a general taxpayer of Value-added Tax.



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## **December 2017 Session – Sect B – Q11** **(6 marks – approximately 11 minutes)**

### **Required:**

Analyse the China turnover tax and withholding tax implications for New Year with respect to (i) import and sale of the Products, and (ii) payment of dividends to its sole shareholder.

(6 marks)





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## Question 11



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## Problem

- Not familiar with PRC tax
- Just copied irrelevant materials
- Not aware that dividend would be subject to withholding tax rate
- Not aware that the withholding tax rate would be reduced to 5% for Hong Kong residents under DTA



## Answer 11

Import of the Products into mainland China from foreign jurisdictions is first subject to creditable Value-added Tax (“VAT”) at 17% under the prevailing Provisional Regulations on Value-added Tax of the People’s Republic of China (“the PRVAT”). The PRVAT also specifies that sales of the Products within the territory of mainland China are also subject to VAT, and the tax rate is 17% (borne by the customers).

Turnover tax in mainland China also includes, inter alia, Consumption Tax (“CT”). Under the prevailing Provisional Regulations on Consumption Tax of the People’s Republic of China (“PRCT”), the import of cosmetics and signature golf balls are subject to CT at the rates of 30% and 10% respectively (per the latest Cai Shui Circular, the rate of CT is revised to 0% and 15% for low-end and high-end cosmetics respectively). However, the import of smartphones is not subject to CT. In addition, the sales of the Products within the territory of mainland China are also not subject to CT. The import and sale of the Products did not have any withholding tax implications for New Year in mainland China.



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## Answer 11 (cont'd)

Dividends paid to a non-Chinese tax resident would normally be subject to withholding tax at the rate of 10%. Subject to relevant application procedures, the withholding tax rate could be reduced to 5% for Hong Kong residents in accordance with the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Incomes.

There is no turnover tax exposure on the payment of dividends to non-Chinese tax residents.



## June 2017 Session – Sect B – Q6 (16 marks – approximately 29 minutes)

Equator Corporation ("Equator") is a wholly owned subsidiary of Universe Limited ("Universe"). Equator is engaged in providing consultancy services in business mergers and acquisitions. It closes its accounts on 31 March.

On 20 March 2015, Equator entered into a contract to provide services to A Ltd, which was a company jointly owned by Universe and other companies. A Ltd closes its accounts on 31 March. The service fee was agreed at HK\$1,500,000 and Equator would provide the services to A Ltd from 15 June 2015 to 31 October 2015. It was also agreed that A Ltd would pay an advance payment of HK\$500,000 to Equator on 31 March 2015. The balance would be payable upon completion of the services by Equator. ➤ Q6



## June 2017 Session – Sect B – Q6 (16 marks – approximately 29 minutes)

A Ltd had cash flow problems and failed to settle the advance payment. Following the contract term, Equator proceeded to provide the services to A Ltd. A Ltd did not settle the payment of the service fee ultimately.

In view of the close relationship, Equator only sent a few reminders to A Ltd to urge payment. A Ltd could not resolve its cash flow problem even though it was making more than HK\$100 million of profits on its books.

A Ltd replied to Equator's reminders by requesting extensions of time for payment. Having said that, A Ltd claimed the service fee as deductible expenses in its tax computation for the year ended 31 March 2016.



## June 2017 Session – Sect B – Q6 (16 marks – approximately 29 minutes)

Meanwhile, Equator claimed for a tax deduction of the outstanding advance payment for the year ended 31 March 2015 and a tax deduction of the balance of service fee for the year ended 31 March 2017 ("Outstanding Service Fees").

On 5 April 2017, Equator sold its rights to the Outstanding Service Fees ("the Rights") under the contract with A Ltd to Universe at HK\$600,000 and claimed the receipt being capital in nature. The sale was a genuine commercial transaction conducted on an arm's length basis. On 15 April 2017, Universe agreed with A Ltd that it was not required to settle the payment of the Outstanding Service Fees.



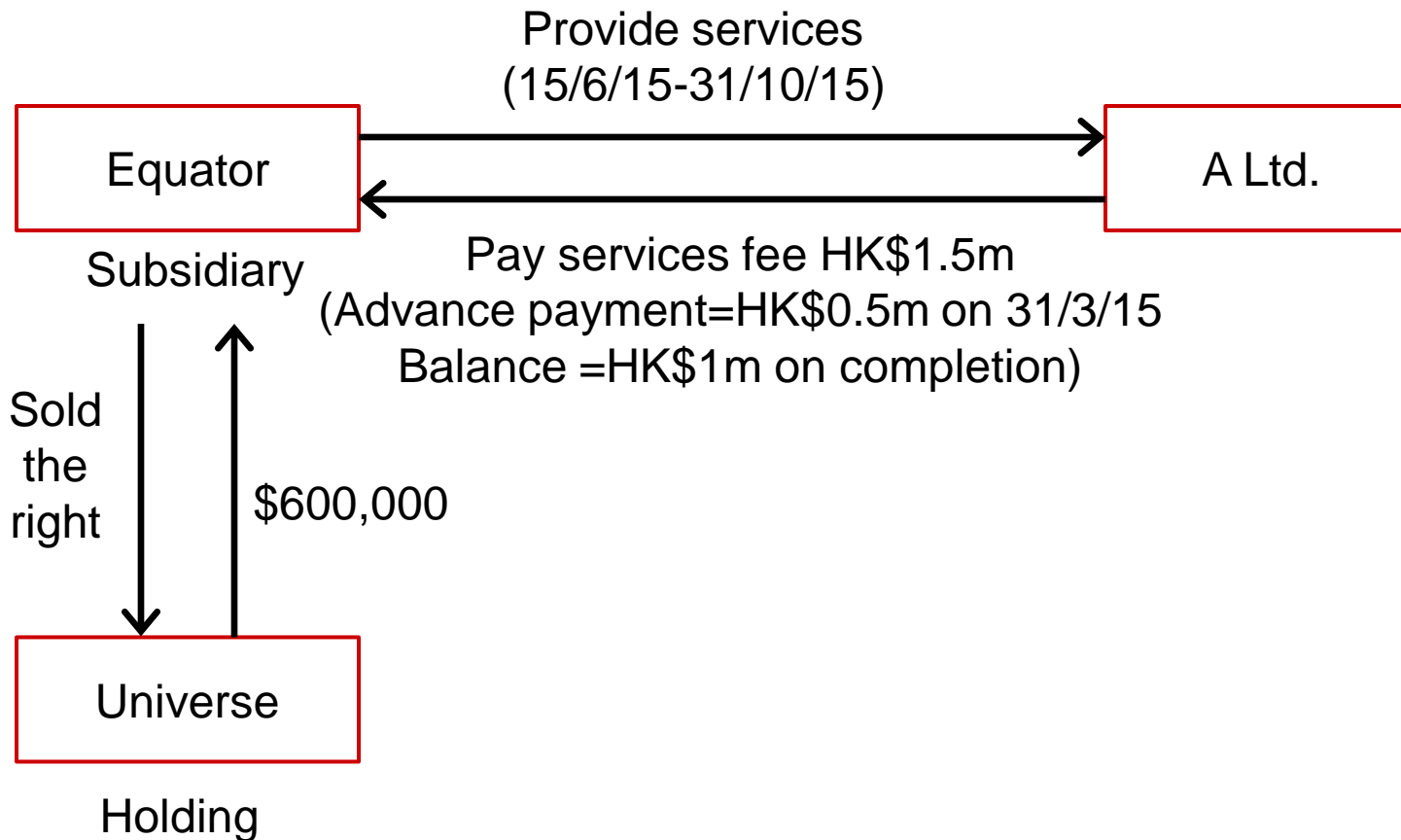
## June 2017 Session – Sect B – Q6 (16 marks – approximately 29 minutes)

### Required:

- (a) Analyse the deductibility of the Outstanding Service Fees claimed by Equator with reference to the relevant provision(s) in the Inland Revenue Ordinance ("IRO") for each of the years of assessment 2014/15 and 2016/17.  
(9 marks)
- (b) Evaluate the taxability of the sale of the Rights by Equator to Universe and how the sale would affect Equator's deduction claims.  
(4 marks)
- (c) Analyse the tax implications applicable to A Ltd, if any, when (i) Equator sold the Rights to Universe and when (ii) Universe reached the agreement with A Ltd on the settlement of the Outstanding Service Fees.  
(3 marks)



## Analysis







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## Question 6(a)



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## Problem

- Unable to analyze bad debt deductibility on a year by year basis
- Only write down the content under S16(1)(d)



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## Question 6(a)



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## Irrelevant answers

- Wrongly discuss source of profits, transfer pricing and anti-avoidance provisions



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## Answer 6(a)

Equator may rely on s.16(1)(d) of the IRO for its deduction claim of the Outstanding Service Fees.

To satisfy the deductibility, Equator had to prove to the satisfaction of the assessor of the IRD that the Outstanding Service Fees were included in its trading receipts chargeable to tax before, and had become bad debts, or doubtful debts estimated to the extent that they had become bad, during the year of claim for deduction. This is a question of fact and there should be evidence of some definite action to recover the debt or reasonable justification for non-action.



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## Answer 6(a) (cont'd)

As the advance payment of HK\$500,000 was only due on 31 March 2015, and by that time Equator had not yet rendered the service to A Ltd, the relevant amount has not been accrued to Equator as income for the year of assessment 2014/15. Therefore, the bad debts claim for the advance payment will not be considered under s.16(1)(d) in the year of assessment 2014/15.



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## Answer 6(a) (cont'd)

On the assumption that Equator had included the whole service fee payable by A Ltd in its chargeable profits for the year of assessment 2015/16, the assessor would not accept the claim of bad debts by Equator for the year of assessment 2016/17 either.

Although A Ltd subsequently failed to pay any of the service fee to Equator, apart from sending the reminders, Equator had not taken any concrete recovery actions (e.g. commencement of legal actions) against A Ltd due to the close relationship.

In addition, though A Ltd had cash flow problems, it was a profitable business on accounts and sought for extensions of time for repayment rather than refused to pay at all.

Under such circumstances, the assessor would not be satisfied that the Outstanding Service Fees had become bad or irrecoverable under s.16(1)(d). No deduction would be allowed on the bad debts claimed by Equator for the year of assessment 2016/17. 110



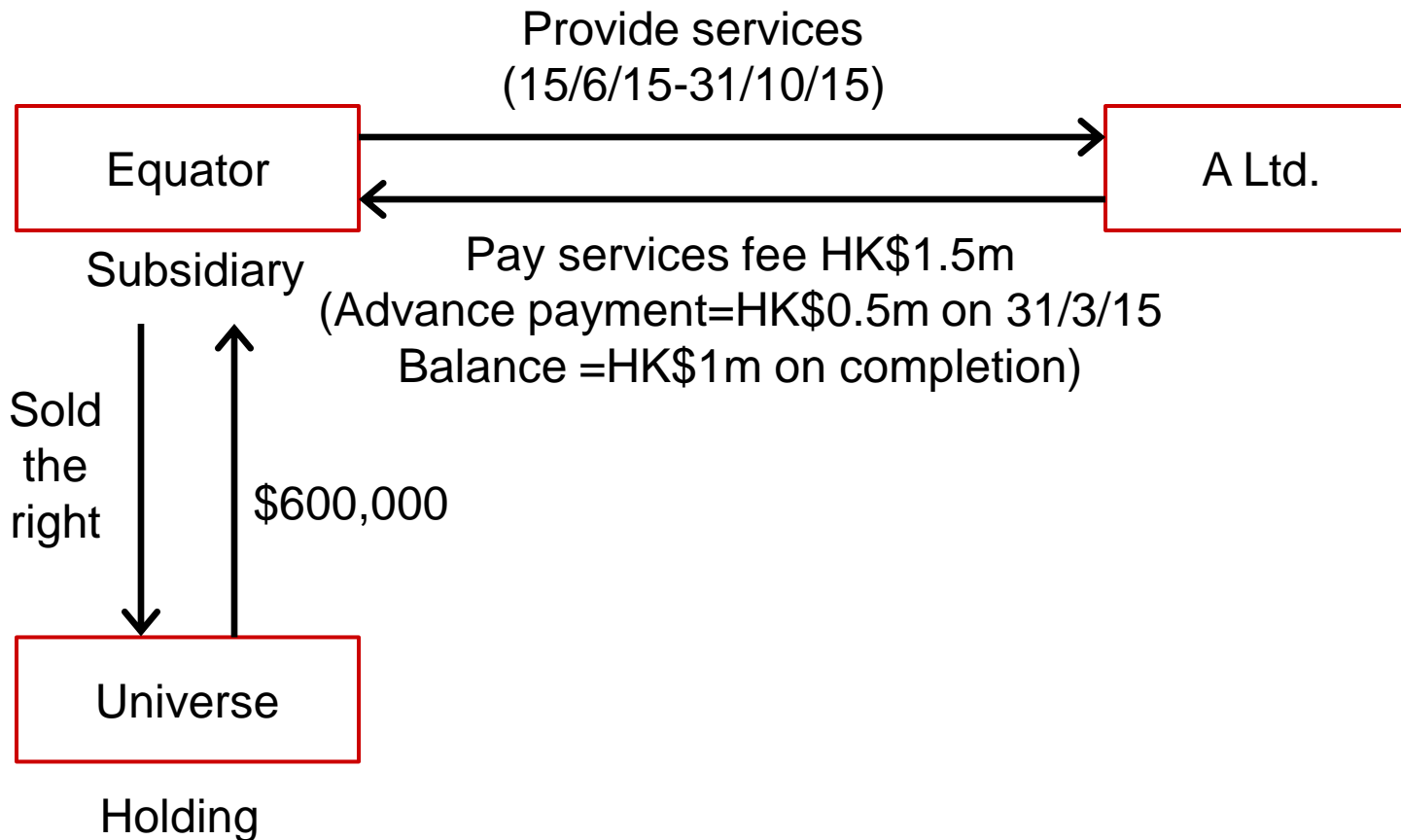
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- (a) Analyse the deductibility of the Outstanding Service Fees claimed by Equator with reference to the relevant provision(s) in the Inland Revenue Ordinance ("IRO") for each of the years of assessment 2014/15 and 2016/17.  
(9 marks)
- (b) Evaluate the taxability of the sale of the Rights by Equator to Universe and how the sale would affect Equator's deduction claims.  
(4 marks)
- (c) Analyse the tax implications applicable to A Ltd, if any, when (i) Equator sold the Rights to Universe and when (ii) Universe reached the agreement with A Ltd on the settlement of the Outstanding Service Fees.  
(3 marks)



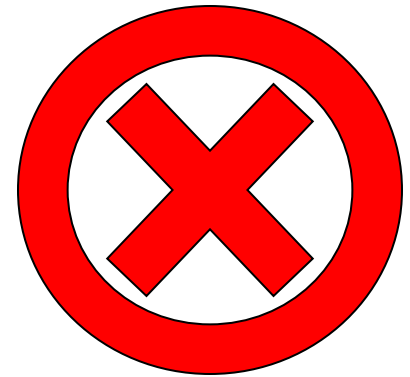
## Analysis





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Question 6(b)



## Wrong answers

- The receipt was capital in nature, not taxable





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## Question 6(b)



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## Problem

- Did not discuss how the sale would affect Equator's deduction claims



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## Answer 6(b)

The service fee, if not outstanding, should be included in the revenue of Equator from its ordinary business operation. On such a basis, the consideration of HK\$600,000 in respect of the sale of the Rights should form part of the assessable profits of Equator for the year of assessment 2017/18.

In *Barr Crombie & Co Ltd v CIR* [1945] 26TC406, it was held that where a company received a payment for the loss of the contract upon which the whole trade of the company has been built, where the expected profits of the contract are used to measure the loss of them for a period of future years, and where in consequence of the loss the company's structure and character are greatly affected, the payment should be beyond doubt a capital payment. Following this authority, unless Equator can prove that the service contract with A Ltd is its capital asset and that the loss had undermined its business structure, there is no ground to accept the sale of the Rights under the contract as being capital in nature. 115



## Answer 6(b)

However, with the sale of the Rights on 5 April 2017, the outstanding balance due from A Ltd is clearly irrecoverable by Equator. As such, Equator can claim the tax deduction of bad debts for the year of assessment 2017/18.

As such, the overall net effect is that Equator will be able to claim bad debts deduction of HK\$900,000 (HK\$1,500,000 - HK\$600,000) for the year of assessment 2017/18.



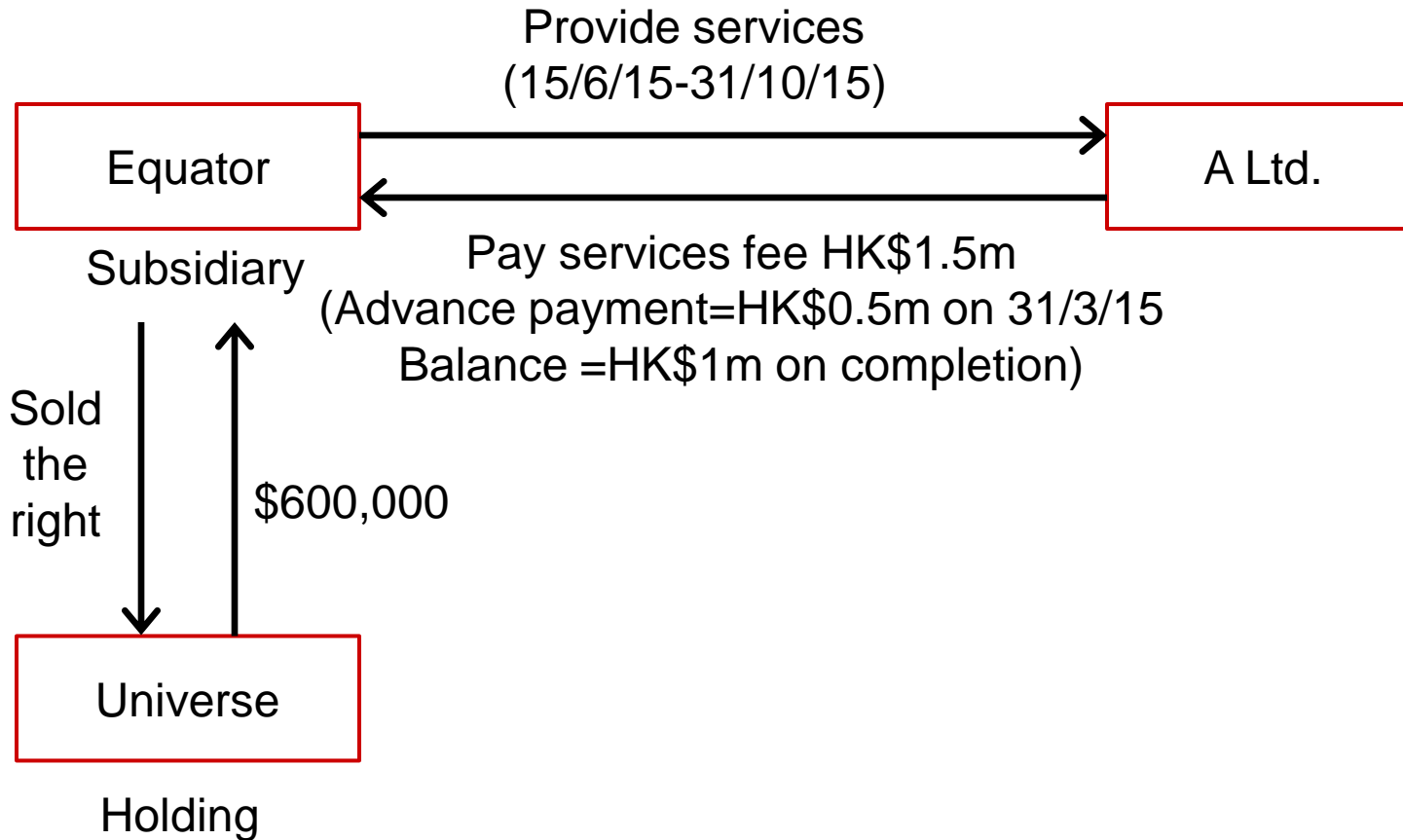
## June 2017 Session – Sect B – Q6 (16 marks – approximately 29 minutes)

### Required:

- (a) Analyse the deductibility of the Outstanding Service Fees claimed by Equator with reference to the relevant provision(s) in the Inland Revenue Ordinance ("IRO") for each of the years of assessment 2014/15 and 2016/17.  
(9 marks)
- (b) Evaluate the taxability of the sale of the Rights by Equator to Universe and how the sale would affect Equator's deduction claims.  
(4 marks)
- (c) Analyse the tax implications applicable to A Ltd, if any, when (i) Equator sold the Rights to Universe and when (ii) Universe reached the agreement with A Ltd on the settlement of the Outstanding Service Fees.  
(3 marks)



## Analysis





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## Question 6(c)



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## Problem

- Did not understand the requirement
- Confused the parties involved in the transactions regarding the provision of service fee, payment of service fee, sale of the right, deduction of bad debt



## Answer 6(c)

- (i) There is no tax effect on A Ltd when Equator sold the Rights to Universe. The transfer of the Rights from Equator to Universe does not mean A Ltd was released from its liability.
- (ii) S.15(2) of the IRO provides that where a deduction has been allowed for any debt incurred for the purposes of the trade, profession or business, the whole or any part of that debt being released afterwards shall be deemed to be the trading receipts at the time when the release is effected.

As A Ltd had claimed deductions of the service fee in its tax computation for the year of assessment 2015/16, when Universe released A Ltd from the liability to settle the Outstanding Service Fees on 15 April 2017, A Ltd should include the forgiven debts of HK\$1,500,000 in computing its chargeable profits for the year of assessment 2017/18.



## June 2017 Session – Sect B – Q9 (10 marks – approximately 18 minutes)

Describe the legal obligations and liability under the IRO and the Stamp Duty Ordinance, with the computation where appropriate, in the following independent scenarios:

➤ Q9

- (a) X Limited commenced its business on 12 May 2012. Its first set of accounts was made up to 31 January 2014, with assessable profits of HK\$1,000,000 and the directors signed the accounts on 1 March 2014. The directors considered the Profits Tax Return would be automatically issued by the IRD to the company sooner or later and that all they had to do was only to wait. X Limited finally received the Profits Tax Return on 10 January 2015 with a due date of three months. However, since the directors were out of Hong Kong, X Limited submitted the completed return and accounts to the IRD on 15 May 2015.

(4 marks)





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## Question 9(a)



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## Problem

- Mentioned some obligations unrelated to the facts of the case (e.g. employee obligation)
- Did not discuss the penalty under various provisions



## Answer 9 (a)

By its failure to submit the profits tax return by the due date, X Limited breached s.51(1) of the IRO.

As X Limited's first set of accounts were prepared up to a date (i.e. 31 January 2014) within the basis period of the year of assessment 2013/14, it also failed to notify its chargeability to profits tax to the IRD by 31 May 2014 as required under s.51(2) of the IRO.

The IRD may take different courses of punitive actions against X Limited. Possible actions include compounding the offences under s.80(5) of the IRO, initiating prosecution under s.80(2) of the IRO, or making an assessment of additional tax under s.82A(1) of the IRO.



## June 2017 Session – Sect B – Q9 (10 marks – approximately 18 minutes)

(b) Mr. B is a Hong Kong permanent resident without any immovable property. Miss A is a resident in mainland China without a Hong Kong identity card and any immovable property in Hong Kong. Mr. B was going to marry Miss A in December 2015.

On 1 October 2015, the father of Mr. B transferred his solely-owned property in Hong Kong to Mr. B as a wedding gift. After the marriage ceremony, Mr. B assigned the same property to Miss A as a gift on 1 March 2016. Mr. B and Miss A were not sure if they had to pay ad valorem stamp duty, special stamp duty and buyer's stamp duty. The market value of the property was HK\$8,500,000 on 1 October 2015, and HK\$9,200,000 on 1 March 2016.

(6 marks)



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## Question 9(b)



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## Problem

- Did not understand the treatment of a marriage gift
- Mixed up S.27(1) with S.27(4) of SDO



## Answer 9 (b)

Mr. B might rely on s.27(4) of the Stamp Duty Ordinance (“SDO”) to claim exemption from ad valorem stamp duty (“AVD”) on the conveyance of the property in Hong Kong from his father. However, it had to clearly provide in the related instrument for conveyance that the voluntary disposition of the property by Mr. B’s father was in consideration of Mr. B’s marriage.

The further assignment of the property from Mr. B to Miss A would be subject to AVD. The conveyance was operating as voluntary disposition inter vivos chargeable to AVD under s.27(1) of the SDO.

The AVD will be calculated by reference to the scale 2 rate in Head 1(1)(i) in the First Schedule to the SDO.



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## Answer 9 (b) (cont'd)

Computation of AVD is as follows:

HK\$9,200,000 x 3.75%

= HK\$345,000

While Mr. B had transferred the interests to Miss A without a resale within 36 months from the date of his acquiring the interests from his father, as Miss A was his wife, the conveyance would not be subject to special stamp duty as provided under s.29CA(10) of the SDO.

Even though Miss A is not a Hong Kong permanent resident, she would not be liable to the buyer's stamp duty ("BSD") on the assignment. This is because she and Mr. B are closely related persons under s.29AD of the SDO. By virtue of s.29CB(2)(c) of the SDO, BSD is not chargeable on the transfer of a residential property between closely related persons and where the transferee is acting on his/her own behalf.



## Summary of Examination Techniques

- Don't panic
- Manage your time (1.8 mins./mark)
- Attempt all questions and review your answers at last
- Read question requirements and identify the issues carefully
  - Highlight key words (e.g. Calculate / Advise / Propose etc...)
- Pay attention to specific format requirement (e.g. Memo)
- Give relevant answers
- Write clearly and check for careless mistakes
- Apply technical knowledge and don't copy from LP



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# Part 5: Q & A Session