

Hong kong taxation and employment



**ASSIGN
BUSTER**

Edinburgh Napier University/SCOPE of City U Hong Kong Taxation LECTURE

1: Salaries tax and salaries tax planning, Double taxation arrangement with

Mainland China Outline Salaries tax | - | Scope of charge, format and

presentation of salaries tax | - | Locality of employment | - | Taxability of

fringe benefits | | Salaries tax planning | - | Remuneration package and

fringe benefits | | Double taxation relief | - | Arrangement between Mainland

China and the HKSAR | Textbook - Dora Lee, Advanced Taxation in Hong

Kong, 15th edition, 2012, Pearson, Hong Kong, Chapters 2 to 5, 23 & 24

LECTURE 1: Salaries tax

Under s8 of the Inland Revenue Ordinance, salaries tax is charged on every person in respect of his income arising in, or derived from Hong Kong from the

following sources: 1) an office 2) employment 3) pension Source of Income

from Office The source of income from an office is determined by the location of the office, which is at the place where the central management

and control of the company is located. Normally, this means the place where directors hold their meetings. Once it is determined that an office is located

in Hong Kong, the whole income from such office is chargeable to salaries tax. No question of apportionment arises. Source of Income from Pension

The source of income from pension is the place where the pension fund is managed. Source of Income from Employment A taxpayer having an

employment located in Hong Kong (Hong Kong employment) is chargeable under s8 above. Taxpayers whose employment is not in fact located in Hong

Kong (Non-Hong Kong employment) may still be liable to salaries tax if they render services in Hong Kong. The basic charge to salaries tax is specifically

extended to include the income of overseas employees working in Hong

Kong during visits exceeding 60 days [S8(1A)]. Hong Kong Employment a) No time-apportionment b) All income included despite part of services rendered outside Hong Kong c) Exceptions: i) rendered ALL services outside Hong Kong i) visited Hong Kong for 60 days or less in a year of assessment concerned d) Relief: i) income excluded for income attributable to services rendered in that territory and foreign tax paid ii) tax credit under Double Tax Arrangement with Mainland China and other tax treaty countries According to DIPN10, the IRD accepts that employment is located outside Hong Kong where all the following factors are present: a) the contract of employment was negotiated, and entered into, and is enforceable outside Hong Kong; b) the employer is resident outside Hong Kong; c) the employee's remuneration is paid to him outside Hong Kong. In appropriate cases, the IRD may need to look further facts.

Comparison of Hong Kong employment and non-Hong Kong employment: | |
 Hong Kong employment | Non-Hong Kong employment | | All services rendered in Hong Kong | Taxable in full | Taxable in full | | Services partly rendered in Hong Kong | Taxable in full | Time apportionment | | All services rendered outside Hong Kong | Exempt | Exempt | | Services rendered in Hong Kong for less than 60 days or less | | | visits in Hong Kong | Exempt | Exempt | | Services rendered in Hong Kong for more than 60 days visits in | | | | Hong Kong | Taxable in full | Time apportionment | | Services rendered in Hong Kong for 60 days or less but presence in | | | Hong Kong did not constitute visit to Hong Kong | | | | Taxable in full | Time apportionment | | Services rendered outside Hong Kong with foreign tax paid | Foreign services income | | | exempt | Not applicable | If a taxpayer with Hong Kong

employment is seconded to work overseas with a new non-Hong Kong employment, clear evidence must be shown such that the old employment has been terminated and that a distinctively new employment has commenced.

Format of salaries tax computation – Individual

Income from principal employment	A	9	Less: Allowable outgoings and expenses	B	12(1)(a)	Depreciation allowances	C	D	12(1)(b)	E	Add: Rental value (10% on E)	F	9	Less: Rent suffered	G	Net rental value	H	I	Income from other employment	J	K	Less: Loss brought forward	L	12(1)(c)	Self-education expenses	M	N	12(1)(e)	NET ASSESSABLE INCOME	O	Less: Concessionary deductions	P	26C	Elderly residential care expenses	Q	26D	Home loan interest	R	26E	Contributions to recognized retirement scheme	S	T	26G	Net assessable income after concessionary deductions	U	Less: Personal allowances	V	Part V	Net chargeable income	W	Salaries tax payable	X	Lower of (a) progressive rate on W or (b) standard rate on U	Y
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Format of salaries tax under joint assessment

Husband	Wife	Joint	Net assessable income	X1	X2	X	Less: Concessionary deductions	Y	Approved charitable donations (limited to 35% of X)	P	Elderly residential care expenses	Q	Home loan interest	R	Contributions to recognized retirement scheme	S	T	Net assessable income after concessionary deductions	U	Less: Personal allowances (married person's, etc)	V	Net chargeable income	W	Salaries tax payable by the nominated spouse or the spouse who would have been liable to pay salaries tax under separate taxation.	X	100% of salaries tax will be waived, subject to a ceiling of
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\$8, 000 (2008/09). | | 75% of salaries tax will be waived, subject to a ceiling of \$6, 000 (2009/10 & 2010/11) and \$12, 000 for 2011/12. |

Case law establishes that income from employment: a) includes income for services rendered or to be rendered; b) excludes voluntary receipts for personal reasons; c) excludes compensation for loss of rights Assessable income includes reward for services rendered, past, present and future. If the employer makes a payment to a third party for which the employer itself was solely and primarily liable, then the benefiting employee is not chargeable to tax on such benefit, unless: a) the benefit can be converted into money; or b) the payment was paid for the education of a child of the employee. c) any amount paid in connection with a holiday journey.

Considering whether an income is chargeable to salaries tax: a) whether the payment is derived from an employment or office; b) whether the payment is in recognition of services rendered in the past, present or future. In D19/92, The taxpayer was offered and accepted employment by a Hong Kong company. The company paid him a lump sum at the beginning of his employment as an inducement to join the company. The Board held that this payment was incorporated into his contract of employment with the company. The source of the inducement payment was the employment of the taxpayer with the company. It was not a gift. Compensation for loss of employment Generally speaking, compensation for a loss of employment which does not represent a payment for past, present or future services is not chargeable to salaries tax.

This is considered as a sum paid in consideration of the surrender by the employee of his/her rights in respect of the employment. Such payments

should be distinguished from the termination gratuities which usually relate to services previously rendered by the employee and hence taxable. The taxable termination gratuities may be related back for a maximum period of 36 months. A sum specified in the contract of employment may be taxed even though it was described as compensation for termination of employment. In *CIR v Yung Tze-kwong*, the Court has apportioned 10% of the severance pay as the inducement to enter into employment and 90% of the sum was attributable to restrictive covenants, which was not taxable.

In *Fuchs, Walter Alfred Heinz v CIR*, the Taxpayer was entitled to termination payments according to his 3-year contract of employment. The contract of employment was terminated about two years. Under a termination agreement, the Taxpayer received a compensation made up of: • Sum A – equivalent to his salary under the remaining period of his contract (12 months); • Sum B – two annual salaries; and • Sum C – the average of his three previous annual bonuses. IRD levied tax on Sum B and C on the basis that they were paid pursuant to his contract of employment and the Taxpayer was contractually entitled to receive them on premature termination.

The Court of Appeal held that Sum B and C were assessable because they were not paid in abrogation of the contract of employment but in accordance with the contract of employment. The Court of Final Appeal upheld the decision. Payment in lieu of notice After the decision of *Fuchs* case, IRD is now of the view that payment made in lieu of notice is an incentive for joining an employment and the payment is made under the terms of employment contract, the amount is chargeable to salaries tax if it accrues

to an employee on or after 1 April 2012. EMPLOYEE SHARE-BASED BENEFIT

Share Option Benefit	Time of assessment	At the time of exercise, assignment or release of share option.	Taxable Gain Situations	Assessable Amount	Exercise of option	Market value at the time of taking up the shares over total consideration	Option assigned/released	Consideration for assignment/release of option less total consideration	Timing of exercise of share option
According to the DIPN 38, a taxpayer is generally considered to have exercised an option when he has taken whatever steps are necessary to convert the offer contained in the option agreement into a contract to purchase the relevant shares	Locality of share option benefits	The gain is chargeable to Salaries Tax if it comes within the scope of s 8(1)(a), ie if it can correctly be described as “ income arising in or derived from Hong Kong”.	If a person had a Hong Kong employment at the time of grant of the right, the income is also regarded as having been derived from Hong Kong.						

If a right is granted to an employee on an unconditional basis during a year of assessment in which the person renders all services in respect of his employment outside Hong Kong, any gain subsequently realized, even if realized whilst the person is working in Hong Kong will not be charged to Salaries Tax. No liability to salaries tax arises where a right is granted on an unconditional basis prior to a person rendering any services in Hong Kong, notwithstanding that the right may be exercised after the person commences to render such services. Where a person with a non-Hong Kong employment is granted the right subject to a vesting period during which services are rendered both in and outside Hong Kong, the gain should to

some extent be chargeable to Salaries Tax based on the following formula:

Days spent rendering services Gain calculated in accordance

In Hong Kong during vesting periodX with s 9(1)(d) and s 9(4) Total number of days in vesting period Definition of ‘ vesting period’: ‘ Vesting period’ normally means the period from the date of grant of the option to the first available date that an employee is entitled to exercise the option. An option will generally be considered to have vested when all conditions for its exercise have been satisfied. E. g. an employee required to work for a certain period of time. Share Award Benefit Shares obtained through share-based remuneration schemes are taxable perquisites forming part of a taxpayer’s employment income. When does the perquisite accrue to the employee?

Referring to section 11D(b), this means “ entitled to ownership of the shares”. Generally, two approaches in assessing such awards, viz: ‘ Upfront’ and ‘ Back End’. Summary of the two broad approaches: | | ‘ Upfront’ approach | ‘ Back End’ approach | | Vesting period applies? | No. | Yes. | | Time of assessment | Upfront, ie at the time of the grant. | Back end, ie upon fulfillment of conditions. | | Valuation | Market value at time of grant. | Market value at time of fulfillment of | | | conditions. | | Discount in valuation? | Yes.

The discount is to be determined in the | No | | | light of the facts of each particular case. | | | Distributions | Received during the restriction period: Not | Received during the vesting period: Taxable, | |(eg dividends, bonus shares) | taxable; regarded as investment income since | since employee is entitled to the shares only | | | employee is entitled to the shares at the time| at the end of the vesting period. | | | of award | |

Example (Extracted from DIPN 38, eg 11) The taxpayer had a non-Hong Kong employment. On 1 May 2005, he was granted 10, 000 shares by his employer subject to a vesting period. Shares would only be vested on condition that he remained an employee of his company on the vesting dates. 5, 000 shares vested in him on 1 May 2007 and the remaining 5, 000 on 1 May 2008. The number of days in Hong Kong and outside Hong Kong was ascertained as follows:

Year ended	Days in Hong Kong	Days outside Hong Kong	Total days	(A)/(C)
31. 3. 006	275	90	365	75
31. 3. 2007	260	105	365	71
31. 3. 2008	250	116	366	68
31. 3. 2009	255	110	365	70

The assessor and taxpayer agreed that the “ back end” approach is applicable to assess the vested shares. The share-award benefits are assessed as follows:) the value of the first 5, 000 vested shares is to be included with the taxpayer’s other remuneration in the year of assessment 2007/08 and 250/366 of the value is to be subject to tax, while b) the remaining 5, 000 vested shares is to be included in the year of assessment 2008/09 and 255/365 of their values is subject to tax. Holiday journey benefits Starting from 1 April 2003, holiday warrant or allowance to purchase holiday warrant will be subject to salaries tax. Section 9(2A)(c) provides that ‘ any amount paid by an employer in connection with a holiday journey’ is taxable. The term “ holiday journey” is defined in section 9(6) as either: a) a journey taken for holiday purposes, or b) where a journey is taken for holiday and other purposes, the part of the journey taken for holiday purposes. The amount to be assessed is based on the actual amount paid by the employer, i. e. the actual costs that an employer pays. DIPN 41

Taxation of Holiday Journey Benefits

The CIR issued DIPN 41 Taxation of Holiday Journey Benefits in August 2003 to lay down broad statements on the interpretation and practice to be adopted by the Inland Revenue Department in relation to the above amendments. (a) Business trip (including a holiday incidental to such business trip) will not be taxable. (b) If it could be established that a journey is not for holiday, such as for the relocation of an employee and his family- i) in Hong Kong upon assumption of a new post or ii) out of Hong Kong upon termination of an existing post here, the payment made by the employer will not be taxable. For such trips, any stop over visits to another place en route to or from Hong Kong would be disregarded as a concession. c) If an employer was given a certain mileage for a business trip paid by his employer and he redeemed it for a free ticket to a territory for holiday, the value of the free ticket is not assessable as no payment was made by the employer in connection therewith. Rental refund or Cash allowance It is necessary to decide whether a sum is a rental refund and a cash allowance paid by an employer to his employee. A cash allowance is fully taxable as an income from employment. In CIR v Page (2002), to qualify as a refund of rent, there is no requirement for sufficient control, the production of tenancy agreement and/or rental receipt to the employer.

However, the taxpayer must prove that the intention of the employer is to refund the rent paid and not to pay an allowance that can be spent in whatever way the employee wishes. For computation of rental value, it is based on a certain percentage on net assessable income (before self-education expense) depending on the nature of accommodation. (Refer to D91/04 regarding the definition of hostel, boarding house & hotel). Allowable

outgoings and expenses include all outgoings and expenses (other than domestic, private or capital expenditure), wholly, exclusively and necessarily incurred in the production of the assessable income. There is a distinction between expenses incurred ‘in’ the production of the assessable income and expenses ‘for’ the production of the assessable income.

The expression ‘in the production of assessable income’ bore the same meaning as ‘incurred in the performance of the duties of the office or employment’ and without such expenses the employee may not be able to earn the income. CIR v Humphrey (1970) 1HKTC451 – traveling expenses incurred by a taxpayer in getting to his place of employment were not allowed (when traveling to his place of work, the taxpayer was not on duty). It is the taxpayer’s responsibility to attend to the place of work. CIR v Robert P Burns (1980) 1HKTC1181 – legal expenses incurred by a taxpayer in an appeal against disqualification was not allowed as the expenses were incurred in order to prevent the taxpayer from being precluded from earning income, not incurred in the production of the income. In D91/03, a solicitor was denied a deduction claim on professional indemnity insurance.

The Board held that the amount was incurred so as to put the taxpayer in a position to earn her income and so as to qualify the taxpayer to perform the duties of her office as a solicitor. In D35/04, the taxpayer was required to repay part of the commission to his employer, being bad debt of his client. The repayment was required because he failed to observe the employer’s credit policy. The Board disallowed the sum as it was not incurred for the performance of duties but for deviation from his duties. Home loan interest deduction 1) mortgage loan to acquire dwelling in Hong Kong 2) interest paid

to recognized organization 3) prescribed amount 4) claim for ten years In D5/02, a taxpayer held to be entitled to claim deduction of 50% only of the mortgage loan interest paid in respect of the property held by her and her mother as joint tenant although all mortgage payments were financed by her. In D106/00, it was held that only the portion of interest payment for the second bank loan used to repay the outstanding principal on the first bank loan is allowable. In D2/01, interest paid for the bank loan for the payment of the premium paid to the Housing Authority is not deductible as the premium was not deferred consideration for the acquisition of the dwelling house. In D108/02, it is considered that ‘owner’ does not include beneficial owner.

SALARIES TAX PLANNING Common areas of salaries tax planning are source of employment, using statutory exemption and fringe benefit. Territorial source – Employment

If the following three factors are present, IRD will normally accept that employment is located outside Hong Kong: 1. the contract of employment was negotiated and entered into, and is enforceable outside Hong Kong; 2. the employer is resident outside Hong Kong; 3. the employee’s remuneration is paid to him outside Hong Kong. a) ensure foreign employment – only income attributable to Hong Kong services is taxable. Ensure all the above three factors are met. b) render all services outside Hong Kong or performed services during visits not exceeding 60 days in the year of assessment. c) dual employment – one covering Hong Kong duties with HK employer and the other covering overseas services with overseas company.

Ensure the nature of the employment duties is clearly differentiated. d) dual capacity as a director and an employee – not taxable if no services rendered

in respect of the employment. Benefits-in-kind or Fringe Benefits Arranged to provide the following fringe benefits which are not taxable: 1. discharge of employer's liability which is not guaranteed by any other person 2. benefits which are not convertible into cash 3. benefits which are not attributable to a particular employee Not convertible into cash The employer should not give an asset to an employee free or at a price below market value. Assets should be lent to the employee for use without transfer of ownership. Utilities of Employee's Home

The contracts should be made between the employer and the utilities suppliers for the supply of facilities to the employee's home. Domestic Servant/driver The servant or driver should be employed by the employer to serve the employee. Low Interest loan or Interest free loan Such a loan provided by the employer is not taxable provided that no other person provides surety to the loan. The benefit must not be convertible into cash by the employee. Club The employer should become a member and allow its employee to enjoy the club's facilities. Medical and Dental benefits 1. engage a doctor/dentist by the employer 2. join a group medical/dental insurance scheme Quarters 1. reimbursement of rent 2. provision of place of residence Share option Only gain realized by the exercise of share options is taxable. So do not exercise the right unless you derive very little income from that transaction at that time. Comprehensive Double Taxation Arrangement On 21 August 2006, the Hong Kong Special Administrative Region (" Hong Kong") and the Mainland of China (" Mainland China") entered into a comprehensive double taxation arrangement known as " 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 Income” (the “ Arrangement”). Salaries Tax Implications

Generally speaking, income from employment by a Mainland resident shall be taxable only in Mainland China unless the employment is exercised in Hong Kong. If the employment is exercised in Hong Kong, such remuneration as is derived from Hong Kong may be chargeable to salaries tax in Hong Kong. A Mainland resident in respect of an employment exercised in Hong Kong will not be chargeable to salaries tax in Hong Kong if all the following three conditions are satisfied: 9 the recipient is present in Hong Kong for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned; 10 the remuneration is paid by, or on behalf of, an employer who is not a Hong Kong resident; c)the remuneration is not borne by a permanent establishment which the employer has in Hong Kong. If a Mainland resident renders employment services in Hong Kong but his remuneration is paid by a Hong Kong employer, he will still be exempt from tax under the IRO if his visit to Hong Kong in a year of assessment concerned does not exceed a total of 60 days according to the “ preferential treatment”. Section 50 of the IRO provides the basis for the granting of a tax credit in relation to an item of income stipulated in the Comprehensive Arrangement and in respect of which tax has been paid in the Mainland. Example of calculation in the Arrangement is extracted as follows:

Total Hong Kong assessable income	200, 000
Including gross income from the Mainland before tax	120, 000
Tax paid in the Mainland	10, 000
Tax rate in the Mainland	

8. 33% | | Net income after tax from the Mainland | 110, 000 | | | | The effective tax rate in HK and the tax credit are computed as follows: | | | |

Total HK assessable income	200, 000		Less: Deductible items	(12, 000)	
Net assessable income	188, 000		Less: Personal allowance	(100, 000)	
Net chargeable income	88, 000		Tax payable	6, 340	

The effective tax rate in HK: $\text{Tax payable} \times 100\% \div \text{Net assessable income} = 6, 340 \times 100\% \div 188, 000 = 3. 37\%$ | | | |

Net income from the Mainland after tax | | (grossed up at the effective rate in HK)(Note) | | | |

$\$110, 000 \times 100\%$	113, 836		$(100\% - 3. 37\%)$		Less: Net income from the Mainland after tax	(110, 000)		Tax credit limit of tax paid in the Mainland	3, 836	
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Under section 50, the actual tax payable in HK is computed as follows: | | | |

Assessable income (Hong Kong)	80, 000																							
Assessable income (the Mainland) after deduction of tax	110, 000																							
Add: tax deducted in the Mainland	10, 000																							
Gross income from the Mainland before tax	120, 000		Total HK assessable income	200, 000																				
Less: amount not allowed as a tax credit (10, 000-3, 836)	(6, 164)		193, 836		Less: Deductible items	(12, 000)		181, 836		Less: Personal allowance	(100, 000)		Net chargeable income	81, 836		Tax thereon	5, 538		Less: tax credit allowed	(3, 836)		Hong Kong tax payable	1, 702	

Note: | | | Under section 50(5), tax paid in the Mainland which is not allowed as a tax credit can be deducted from the income | | Amount not allowed as a ax credit $\$10, 000 - \$3, 836 = \$6, 164$ | | Net income from the Mainland after tax $\$120, 000 - \$6, 164 = \$113, 836$ | | | | | | | | | |

Lecture 1: Tutorial Questions 1. Mr Lee supplies you the following information in relation to the year ended 31 March 2012:) He was recruited five years ago in Singapore by Multinet Ltd, a company incorporated and carried on <https://assignbuster.com/hong-kong-taxation-and-employment/>

business in Hong Kong, as the company's regional manager. He was paid an annual salary of \$800, 000. During the year he only spent six months in Hong Kong as he was required to travel around Asia to carrying out his duties. By arrangement with his employer, his salary was paid directly into his bank account in Singapore from which he had money remitted periodically to Hong Kong. b) Multinet Ltd operates a medical insurance scheme for all its employees through an insurance company based in Hong Kong. Under this scheme Multinet, as insurer, arranges with the insurance company to insure each employee against illness and related hospital costs.

It pays an annual premium to the insurance company of \$6, 000 for each employee. Mr Lee paid visits to his own doctors and paid the doctor's bill first, which was later reimbursed by the insurance company. The insurance company reimbursed him the total cost of \$7, 500. c) He considered that it would be productive to have a personal laptop computer for use while traveling on business trips. He therefore purchased a computer for \$12, 000. He used it solely for his employment. d) Before he was employed by Multinet, he was working with an international company incorporated in Singapore. All his services were rendered in Singapore. In March 2005, he was granted an option to subscribe for 100, 000 shares at a cost of \$2 per share. At the time of the grant, the market price was \$5 per share. In January 2012, he exercised the option and the market price was \$4 per share. In March 2012, he sold the shares for \$6. e) Mrs Lee is a housewife and is living in Hong Kong. f) Multinet paid school fees amounting to \$60, 000 for the education of his younger son in Hong Kong. Under an arrangement entered between the school and Multinet, Mr Lee was not liable for the payment of

the school fees. g) Mr Lee paid residential care expense of \$60, 000 to the residential care home situated in Kowloon Tong in respect of his father who is aged 64. He also paid \$12, 000 to his father.) He has two children, aged 16 and 22. The younger son is the child as described in (f) above and the elder son is receiving full time education in Singapore. He has apart-time job for his daily expenses. i) Mr Lee lives in a flat owned by himself and his wife as joint tenants. During the year they paid mortgage loan interest to the bank of \$130, 000. Required: a) Explain whether Mr Lee is liable to Hong Kong salaries tax. b) Assuming Mr Lee's income is liable to Hong Kong tax, comment your tax treatment for items (b) to (i) above; and c) Compute Mr Lee's salaries tax liability for the year of assessment 2011/12. Ignore provisional salaries tax. Note to students: distinguish between the HK employment and non-HK employment and apply the three factors to the case) 2. Mr Brown was employed by B Ltd as a sales manager for many years. B Ltd was incorporated and carrying on business in Singapore. Mr Brown used to live and perform duties in Singapore. In order to expand its market in China and South East Asia, he was assigned by B Ltd to work for two years from 1 April 2009 to 31 March 2011 to in charge of the sales activities of the company in that area, including Hong Kong, at an annual salary of \$1, 095, 000. In consideration of his taking up the two years' assignment, B Ltd would grant him a share option (Option 1) to purchase 100, 000 shares in B Ltd at a price of \$3 each upon completion of the assignment.

On completion of the contract on 31 March 2011, B Ltd granted him the share option and he exercised the option on 30 June 2011. The share price

per share of B Ltd was \$5 and \$8 as at 31 March 2011 and 30 June 2011 respectively. On 1 April 2011, Mr Brown signed another contract with B Ltd for another two years with annual salary of \$1, 171, 200. In consideration of the taking up of a new contract, B Ltd unconditionally granted Mr Brown another option (Option 2) to purchase 150, 000 shares in B Ltd at a price of \$3. 50 each when the price per share was \$5. 50. Mr Brown paid \$10, 000 for purchasing the option. On 1 October 2011, Mr Brown assigned the share option (Option 2) to his colleague for \$330, 000 when the price per share was \$6.

Starting from 1 April 2011, B Ltd rented a flat in Hong Kong at a monthly rent of \$35, 000 for Mr Brown's residence and Mr Brown was required to pay monthly nominal rent of \$1, 500 to B Ltd. In the year of assessment 2011/12, Mr Brown took a 5-day business trip to Thailand to be followed by 5 days' vacation there. Mr Brown's wife accompanied him to take the 10-day trip to Thailand. B Ltd paid \$50, 000 for each of them to a travel company for the entire trip including air ticket, accommodation, meals, transportation expenses, etc. The cost of the air ticket was estimated to be \$5, 000 each. During the following years of assessment, Mr Brown's stay in Hong Kong is as follows: Year of assessment No. of days in Hong Kong 2009/1055 2010/11280 011/12200 Required: a) Explain to Mr Brown whether his income is subject to salaries tax for the year of assessment 2009/10. b) Compute the assessable income of Mr Brown for the years of assessment 2010/11 and 2011/12. 3(a)Mr Fong is a financial manager of A Ltd, a company incorporated in Hong Kong, since December 2006. In April 2011, he was posted to Macau to set up the financial system of a subsidiary of A Ltd. His

salary is directly deposited in his bank account in Hong Kong. He returns to Hong Kong regularly and stays with his friends, as he does not have a home in Hong Kong. In the year of assessment 2011/12, he spent 58 days in Hong Kong.

During the period, he carried some of the work with him from Macau and worked in the office of A Ltd for a total of 50 days. Required: Comment on the salaries tax liability of Mr Fong for the year of assessment 2011/12.

3(b) Mr Kam was having a non-Hong Kong employment before 31 March 2010. On 10 April 2009, he was granted an option (Option A) unconditionally to purchase 80,000 shares of his employer's holding company at a price of \$2.00 each when the price per share was \$3.50. During the year ended 31 March 2010, he visited Hong Kong for 160 days for performing his employment duties. Starting from 1 April 2010, he was employed by C Ltd, a company incorporated and carrying on business in Hong Kong.

He supplied you the following information for the year ended 31 March 2011:

(a) Salary: \$1,500,000
b) On 1 December 2010, he was granted an option to purchase 120,000 shares in C Ltd at a price of \$1.50 each when the price per share was \$4.25. He exercised the option on 20 March 2011 when the price per share was \$5.50. On 31 March 2011, he received dividend of \$12,000 for the shares.
c) Starting from 1 April 2010, he leased a flat at a monthly rent of \$40,000 and C Ltd refunded monthly rent of \$35,000 to him.
d) Starting from 1 April 2010, C Ltd leased a motor car for the free use of Mr Kam. C Ltd paid monthly rental of \$8,000 to the car leasing company.)
On 20 March 2011, he exercised Option A when the price per share was \$3.30. He sold the shares on 31 March 2011 when the price per share was \$4.

80. f) He made cash donations to the Hong Kong Red Cross of \$100, 000. Mr Kam is married and his spouse is a housewife. They have a son aged 20 and is studying in a university in Singapore. Required: i) Explain your tax treatment of items (c) and (d) above. ii) Compute Mr Kam's salaries tax liability for the year of assessment 2010/11. Ignore provisional salaries tax.

4. Mr Pang is a senior management of a company in Hong Kong. Due to the Board of Director's decision, Mr Pang's employment was terminated immediately on 29 June 2012.

When Mr Pang left the company, he received a total sum of \$3, 960, 000 consisting of the following: a) final month's salary of \$120, 000; b) bonus of \$100, 000; c) payment in lieu of notice of \$120, 000; d) compensation for leave not taken of \$60, 000 e) lump sum payment of \$1, 000, 000 agreeing for not participate with the company's business for two years; f) a further sum of \$2, 560, 000 being final settlement between the company and Mr Pang. According to the employment contract, the company is responsible for the traveling expenses for returning to Mr Pang's home country. In this regard, the company had incurred cost of air tickets of \$80, 000 for Mr Pang's return to his home country with his spouse.

Required: Advise the tax treatment of the above items. (Note to students: you have to consider what additional information you may require to determine if the income is taxable or not) 5(a). Mr Chan owns Property A and Ms Lee owns Property B. Mr Chan married Ms Lee on 1 September 2010. Before their marriage, Mr Chan and Ms Lee lived at their own property. After marriage, Ms Lee moved into Mr Chan's property. Ms Lee's property was still used by her parents as their residence. Mr Chan and Ms Lee paid the

following home loan interest during the year ended 31 March 2011: 1. 4. 2010 – 31. 8. 2010 1. 9. 2010 – 31. 3. 2011 Mr Chan \$60, 000 \$84, 000

Ms Lee \$65, 000 \$30, 000 5(b). Mr and Mrs Ko lived together in their jointly owned residence up to 31 December 2010. On 1 January 2011, they separated and Mr Ko moved out to a rental accommodation. Under the Deed of Separation, Mr Ko would assign the property to Mrs Ko at the date of divorce. The date of divorce was 1 July 2011 and the legal ownership of the property was assigned to Mrs Ko on that day. They paid the following home loan interest during the year ended 31 March 2011: 1. 4. 2010 – 31. 12. 2010 \$90, 000 1. 1. 2011 – 31. 3. 2011 \$30, 000 Mrs Ko was responsible for the payment of loan interest during the period from 1. 1. 2011 – 31. 3. 2011. 5(c).

On 1 March 2010, Mr Ma purchased Property D at cost of \$4, 000, 000 with downpayment of \$1, 200, 000 and the balance was paid with the finance of mortgage loan obtained from a local bank and secured by Property D. The downpayment was financed by a bank's overdraft, which was secured by his personal guarantee. He used Property D as his residence starting from 1 April 2010. During the year ended 31 March 2011, he paid the following interest to the bank: Bank overdraft interest: \$60, 000 Mortgage loan interest: \$56, 000 Required: Compute the amount of home loan interest that each of the above person was entitled to claim for the year of assessment 2010/11.

You are required to state the principles/reasons to support your calculation.

[Note to students: refers to DIPN No. 35(Revised)] 6. Mr Chung is going to renew a contract of employment with his employer. The company's director

has provided him with the following proposed changes:

Current benefits	Proposed benefits
(a) 13 months salary per annum	12 months salary per annum plus discretionary bonus, depending on the company's profitability and the employee's performance
(b) Company car (the car is owned by the company)	A monthly sum of \$12,000 will be paid to him for his transportation
(c) Meal coupons from canteen	Cancelled, business meals to be reimbursed upon approval
(d) Medical insurance (the company participated with a scheme for the employees)	Cancelled, medical bills to be reimbursed upon approval, up to a maximum of 80% of the bill amount
(e) Monthly housing allowance of \$20,000	Cancelled, rental reimbursement of \$15,000 upon production of rental receipts and tenancy agreement
(f) -	Share option for employees to acquire shares in the employer's listed holding company
(g) Children's education cash allowance, paid by the company	Cancelled, a one-off lump sum compensation payment to company directly to the school to be made at the commencement of the new contract

Required: Advise Mr Chung on the Hong Kong salaries tax implications arising from the proposed changes to the respective benefit items. (Note to students: comments on whether such changes will affect the tax liability)