

**Commissioner of Inland Revenue
and
Pang Fai**

(Applicant)

(Respondent)

**Court of First Instance
(Inland Revenue Appeal No. 2 of 2016)**

Hon Chow J in Chambers

Date of Hearing: 2 February 2017

Date of Decision: 6 February 2017

**Court of First Instance
(Inland Revenue Appeal No. 2 of 2016)**

Hon Chow J in Court

Date of Hearing: 20 September 2017

Date of Judgment: 3 November 2017

Inland Revenue Ordinance (Cap. 112) – Salaries Tax – section 8(1) – workshop facilitator and examination marker receiving honorarium from professional institution – whether employer-employee relationship existed - whether honorarium chargeable to salaries tax

The Taxpayer is a certified public accountant and a member of The Hong Kong Institute of Certified Public Accountants (“the Institute”). He was engaged by the Institute as a Workshop Facilitator and Examination Marker for the Qualification Programme in 2010 and 2011. In return for the services provided, he received a total sum of \$50,400 (“the Sum”) as honorarium in the year of assessment 2010/11, which was assessed to salaries tax.

The Board of Review (“the Board”) allowed the Taxpayer’s appeal and held that there was no employer-employee relationship between the Taxpayer and the Institution. The Board further ruled that the Sum should be regarded as the Taxpayer’s assessable profits and was chargeable to profits tax.

The Court of First Instance granted leave to the Commissioner to appeal against the Board’s decision.

Held:

- (1) Whether the indicia embodied in the control test and economic reality test are relevant, and the degree of their relevance, in any given case must depend on the circumstances of that case.
- (2) The Board was not considered to have “brushed aside” the control test or economic reality test. The approach adopted by the Board by examining all the facts and taking a macro holistic view of the whole case is consistent with the overall evaluative-impressionistic approach for determining the question of whether the relationship is one of employment.
- (3) The question of whether the Taxpayer was an employee or independent contractor of the Institute is a fine one, and reasonable minds might come to different conclusions. It would not be justifiable for the Court to interfere in the Board’s conclusion.
- (4) Whether an employment relationship existed should not depend on the personal circumstances of the individual concerned.
- (5) In the absence of any clear evidence to the contrary, the Board was entitled to make its finding. It was open to the Board to find, on the evidence before it, the Institute did not regard the Taxpayer as its full-time or part-time employee.

Appeal dismissed.

In the Court of First Instance

Mr Paul H M Leung, instructed by Department of Justice, for the applicant

The respondent acting in person

Cases referred to in the judgment of the Court of First Instance

Hall (Inspector of Taxes) v Lorimer [1994] 1 WLR 209

Kwong Mile Services Ltd v Commissioner of Inland Revenue (2004) 7 HKCFAR 275

Lee Ting Sang v Chung Chi-keung [1990] 1 HKLR 764

Leung Kam Wah v Fung Yuk Ching HCLA 43/2006 (23 April 2008)

Market Investigations v Minister of Social Security [1969] 2 QB 173

Poon Chau Nam v Yim Siu Cheung (2007) 10 HKCFAR 156

Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1967] 1 QB 156

Sae-Lee Srikanya v Chung Yat Ming [2009] 3 HKLRD 152