

## Tax: Profit from Sale of Property

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Many people may doubt whether the sale of their property in Hong Kong would attract tax. In general, "profits arising from the sale of capital assets" are outside the scope of charge for profits tax. Therefore, if the property sold is a capital asset, the profit arrived from the disposal will not be subject to tax. On the other hand, if the purchase and sale of property was in the nature of trade, the profit will be assessable to profits tax.

In determining whether an asset was acquired as a capital asset or trading stock, the Revenue will look at (1) the taxpayer's intention at the time of the acquisition; and consider (2) whether the taxpayer had engaged an adventure in the nature of trade.

Generally, if the taxpayer bought a property and resold it within a short period, say, within 2 years, it is more likely that the Revenue will hold the profit is subject to tax. However, long holding period is not a decisive factor.

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In *Chinachem Investment Co. Ltd v. CIR (1987) 2 HKTC 261*, the properties in question had been held for substantial periods, in some instances for as long as 15 years and had generally been let throughout. The court held that these might indicate the taxpayer was waiting for a 'favourable opportunity to sell' and the lettings would be more beneficial than sales within the letting periods.

To ascertain the taxpayer's intention, the Revenue will examine all the surrounding circumstances to see if the professed intention of the taxpayer is genuinely held. In considering whether there is an adventure in the nature of trade, the Revenue will see if "badges of trade" exists, such as frequently engaged in similar transactions; held the asset or commodity for a lengthy period; add re-sale value to the asset by additions or repair; and etc. This indicates an intention to trade or, perhaps, the carrying on of a trade. For example, what was the source of finance of the transaction? If money was borrowed in short term, that could be a pointer towards an intention to buy the property with a view to resell in the short term. Then, it is a trade and the profit thereof is subject to tax.

There is no exhaustive list for the above criteria. The burden of proof is on the taxpayer. In *Case No. D53/06*, the taxpayer bought a property still in construction at HK\$4.43 million, and sold it at about HK\$6.48 million 16 months later before the construction completed. The crux of the taxpayer's reason for wanting to sell the property was that she was worried about the great inconvenience which her mother would have to suffer because of hoardings and the big detour by taking shuttle bus to the MTR station nearby. The Board of Review accepted the taxpayer's evidence and found that she did intend to acquire the property as residence, a capital asset. The gain on disposal was not subject to tax.

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## The Benefits of Conflict

BY CURTIS H.L. WONG CPA, LLB, PCLL

**C**onflict is inevitable between people. Without conflict, there will be no social and personal change.

Conflict may arise due to differences in values, beliefs, interests need, and goals. It may be due to error, ignorance, competition and hostility. At best, conflict is only disruptive. But, at worst, it is completely destructive.



Professor Richard Walton of Harvard School of Business mentioned that conflict can of course be constructive:

- Conflict may increase the motivation and energy available to do certain tasks.
- The diversity of viewpoints and enhanced sense of necessity may stimulate innovativeness.
- Conflict forces one to think of his view and supporting arguments, and each participant may have a better understanding of his position and identity.
- Managing interpersonal conflict may be a means for managing the participants' internal conflicts.

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Curtis has extensive accounting and business management experience in multinational and listed corporations. He had been in legal practice for about 10 years and used to deliver lectures in tertiary education institutions and training courses to HKSAR Government Departments and various professions. He also got publications on law and accounting topics.

## Leisure Reading

[The Leader's Guide to Storytelling - Mastering the Art and Discipline of Business Narrative](#) by Stephen Denning

Deliver the right story at the right time is an important leadership challenge today. *"The world of marketing was amazed when it discovered that firms like Starbucks, The Body Shop, and Google had grown rapidly without expensive advertising campaigns. The secret is that the stories about these companies are being spread by their customers."* (Page 113, Chapter 5 Build Trust in Your Company) You may know more on the power of storytelling from this book.

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**Hong Kong Update:****Reserve directors**

Companies Registry announces that, with effect from 11 July 2008, the Index of Directors kept by the Registrar of Companies will be expanded to include particulars of reserve directors.

(Note: According to Section 153A(6) of the Companies Ordinance, a private company, the sole member of which is also its sole director, may nominate an individual who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of the latter's death.)

**Tax Update**

Inland Revenue Department has entered into avoidance of double taxation arrangements/agreements (DTA) with the Mainland and three other jurisdictions, namely, Belgium, Thailand and Luxembourg. The proposed DTA with the Government of Vietnam was initialed after the negotiation in May 2008.

The Second Protocol to 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 has come into effect on 11 June 2008.

**Hong Kong Tax Reminder: Profits Tax Returns****Due date**

15 Aug 2008	Extended due date for "D" code returns. (i.e. Accounting year ended between 1 December 2007 - 31 December 2007)
31 Oct 2008	Deadline for submitting further extension list for "M" code current year loss cases. (i.e. "M" code cases refer to those Accounting year ended between 1 January 2008 - 31 March 2008)
15 Nov 2008	Extended due date for "M" code returns.
13 Feb 2009	Final extended due date for "M" code current year loss cases.

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