

## Employer's Right to Employee's Medical Records

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



*Cathay Pacific Airways v. Administrative Appeals Board and Privacy Commissioner for Personal Data, HCAL 50/2008, 28 August 2008.*

In November 2005, Cathay instituted a revised programme known as the Attendance Monitoring Programme ('AMP') which is to investigate why a small minority of cabin crew members had levels or patterns of absence from work, purportedly due to illness or malingering. It also made clear that any crew member who did not co-operate in the AMP would be liable to be disciplined.

In January 2007, as a result of anonymous complaints, the Privacy Commissioner issued a report setting out his findings in respect of the requirement imposed under the AMP to consent to disclose relevant private medical records. The Commissioner found that the means of collection under the AMP were lawful but concluded that they were not fair. Cathay appealed to the Administrative Appeals Board and the appeal was dismissed. Then, Cathay instituted the judicial review proceedings in High Court.

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The court accepted that a data subject must be provided with all necessary information in order to make an informed choice. The data protection principles recognize that there may be circumstances in which the disclosure of data may properly be compulsory.

In some cases, the disclosure of medical records is quite properly and fairly made mandatory, for instance, employees in a nuclear power station may be required to attend regular medical checks and to disclose the results of those checks to ensure whether they had been contaminated by radiation. If these employees refused to disclose the results of medical examination, it would be too risky, in the interests of the employees and the public, for the employer to continue employing them. In the case, it might be necessary to advise the employee of the consequences of the failure to make disclosure; namely, the possible loss of his employment.

When the collection of data is obligatory, the person whose data is to be collected must be informed of the consequences of a refusal to supply the data. If the disclosure of medical records is properly and fairly mandatory, a failure to make such disclosure could not completely be free of adverse consequence.

Where disclosure of personal data is considered to be mandatory, it is necessary to advise the data subject of the adverse consequence of failing to make disclosure. Such kind of advice does not constitute a threat or the exertion of undue influence on the employee by employer.

*(Note: The Commissioner expressly dissatisfied with the Court's decision and an appeal against the decision will likely be lodged in view of substantial public importance.)*

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## Tax Practice: Value of Inventories

BY ANNIE K.Y. CHEUNG      ARA & ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS

The value of the opening and closing inventories (including raw materials and work in progress) greatly affects the computation of profits for a given period of an enterprise.

There are no specific provisions relating to stock valuation in the Inland Revenue Ordinance. Ordinary commercial principles and practice, and accounting standards prescribed by recognized accounting body are generally applied.



In the case of D19/07, the taxpayer carried on professional services of engineering and contracting, and recognized profits from incomplete long term contracts on the basis of the percentage of completion method in accordance with the Generally Accepted Accounting Practice, but used the completed contract method in the profits tax computation. The Board held that the taxation treatment should follow the accounting treatment unless it was in conflict with the statute. The taxpayer was not entitled to adjust or modify its assessable profits by way of a computational adjustment on the basis of the completed contract method.

Moreover, proper stock records should be kept. Under DIPN No.1:

- (1) Such records should include statements (including quantities and values) of trading stocks held by the person at the end of each accounting period.
- (2) All records of stocktaking should be retained.
- (3) Such records should include:
  - (a) a list describing each article of stock on hand (raw materials and work in progress) with the value of each;
  - (b) who did the stock-taking;
  - (c) how the stock-taking was done;
  - (d) the date of the stock-taking; and
  - (e) the basis of the valuation.

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## Life / Balance : London Bridge in Arizona, US

"London Bridge Is Falling Down" is a popular nursery rhyme. The true meaning of the rhyme is not known.

In fact, the old London Bridge was truly falling down in 1962 and sinking into the Thames River because of the increase in traffic. The British government decided to build a new bridge and put the old bridge up for auction. Robert P. McCulloch, an US entrepreneur and the Chairman of McCulloch Oil Corporation, purchased the bridge for US\$2.4 million, and paid about US\$700 million for reconstruction.

The bridge was dismantled brick by brick. All pieces were shipped to Lake Havasu City of Arizona for reassembling. The bridge was officially opened in 1971. This close to 200-year old bridge is now in the Arizona desert and is one of US biggest attractions.

Lake Havasu City is located on the beautiful Colorado River. With more than 300 days of sunshine per year, it is ideal for desert tours as well as water sports such as fishing and jet ski.

Lake Havasu City also situated at Mohave County which contains parts of Grand Canyon National Park. It takes you just two and a half hours drive (155 miles) from Las Vegas, Nevada; four hours from Phoenix, Arizona (195 miles); and five hours from Los Angeles, California (296 miles).



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