

Topic No.	Topics	Estimated Mark
1	Profits Tax – source of profit	10
2	Profits Tax – profit on sale of property	10
3	Profits Tax – capital nature versus revenue nature	5
4	Profits Tax – chargeable income	5
5	Profits Tax – non-resident	5
6	Profits Tax – deductible expenditures	15
7	Profits Tax – deduction of interest expense	5
8	Profits Tax – depreciation allowance	5
9	Salaries Tax – source of income	10
10	Salaries Tax – taxable items, deduction, allowance	15
11	Self-employed person	5
12	Property Tax, Personal Assessment	5
13	Field Audit and Tax Investigation	5
14	Penalty	5
15	Tax administration, Objection, Section 70A, tax recovery etc.	5
16	Stamp duty	5
17	China Tax	5
18	Double Taxation Arrangement with China	5
19	Tax avoidance	5
20	Transfer pricing	5
21	Partnership	5
22	Club / Non-resident company trading in HK stock	5
23	Deceased person	5
24	Tax Planning / Tax Advisory Service	5
25	Sales income / Trustee / Tax loss / Dual capacity of director	5

The course notes are based on my experience as a former marker. They aim to provide an answer key to candidates in an open book examination. The contents of each topic are analyzed by marking points according to their probability of occurrence and their estimated marks allocation. It should be noted that they are only a guess and therefore you must take them for reference only. The author is not responsible for any loss to anyone arising from the course notes – Raymond Yeung.

Authority	Law / Legal Principle / Tax Rule	Application / Relevant fact / Tax implication
S14, DIPN 21 (revised)	Profits tax is chargeable on a person who carries on a business in HK in respect of profits arising in or derived from HK –S14 • Carrying on business in HK is a question of facts • AP includes profits from business transacted by an agent -S2(1)	<ul style="list-style-type: none"> • A company incorporated in HK and engages a secretarial firm to issue purchase orders & sale invoices is carrying on business in HK. • Non-resident company: does it keep a permanent establishment in HK?
Case law	Profits earned outside HK are exempt.	What & Where is the profit earning activity?
DIPN 21	<ul style="list-style-type: none"> • State the IRD's policy on sources of profits. • No apportionment for trading activities. If sales or purchases are effected in HK, fully taxable. • 50:50 apportionment for contract processing. 	The nature of activities generating profit must be identified: trading or service or manufacturing or interest or royalty income or other?
Magna Case	Applicable to trading (buy and sell) transactions. Totality of facts: the place where the contracts for purchase and sale are effected; and other factors: How were the goods procured and stored? How were the sales solicited? How were the orders processed? How were the goods shipped? How was the financing arranged?	The operations of buying & selling goods were carried out in Hong Kong? Purchase and sales contracts were also signed and concluded in Hong Kong? After sale service was provided in HK? If yes, then, on a totality of facts, the profit should be fully chargeable to tax under S14.
Whampoa Dock	Operation test: Look at the location of operation that generated the profit.	If the operation generating profit was done outside HK, the related profit was not taxable.
Hang Seng Bank Ltd.	<ul style="list-style-type: none"> • One looks to see what the taxpayer has done to earn the profit and where he has done it. • Profit from rendering service is from the place where services are rendered. • Profit from manufacturing is from the place of manufacturing. 	Is the profit earned from service or manufacturing? Where is the service/manufacturing performed? For contract processing case (t/p has sale activities in HK and manufacturing activities in China), IRD grants 50:50 apportionment.
DIPN 21	Contract processing: 50:50 apportionment: HK Co. does not have a license to carry on business in China. It enters into a processing arrangement with a China entity under which it provides raw materials, machinery, know-how, management, money etc. Finished goods belong to HK Co • If the HK Co. has restrictive involvement in processing arrangement (e.g. subcontracting out the manufacturing process), profits fully assessable without apportionment.	Import Processing: a separate legal entity set up in China for the processing and the legal entity run the business on its own, own the finished goods and pay CIT. No apportionment is allowed because the arrangement is trading nature. • The processing fee paid to the China enterprise is a deductible expense. If the legal entity and HK Co. are closely related and the subcontracting fee is excessive, IRD may invoke S61A to counteract the tax benefit.
Datatronc Ltd/ C G Lighting	As the company did not have the ownership of the raw materials and the finished goods, t/p could not be regarded as carrying out manufacturing activities in China. So, apportionment is not allowed.	

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Orion Caribbean Ltd.	Source of interest (t/p not a financial institution) is determined by provision of credit: the place where the money is made available to the borrower • Interest received from overseas bank is offshore
Kwong Mile Service Ltd.	To grasp the reality of each case, focusing on effective causes without being distracted by antecedent or incidental matters • Profit from underwriting agreement: the assumption of risk did not generate profit; it was the marketing activity that generated the profit.
HK-TVB International Ltd	Acquisition of rights for films produced in HK and then granting the rights to overseas TV stations: these acts were regarded as being done in HK because the company had no overseas office. • Applicable if profit earned from granting of right/license/IP and such IP is owned by a HK company. It is a rare case that a taxpayer without an overseas office can earn offshore profit • Source of royalty income is determined by the place of acquisition and granting of the right - DIPN 21.
Wardley Investment	It is only the taxpayer's operations, not anybody else's, that are relevant • Overseas activities done by independent parties should be ignored. • In this case, the commission was derived from the performance of fund management services in HK: so it is taxable.
International Wood Product	Source of commission income is determined by the place where the service is rendered to earn the income. • The income is not taxable because the service was done by a dependent party outside HK.
ING Bearing Securities (HK) Ltd.	Activities done by overseas brokers on the taxpayer's behalf and under its instruction were considered. Consider t/p's own operations only: Whether any activities done by the t/p outside HK? and if done by other parties, are the overseas activities done on the t/p's behalf and under its instruction?
Kim Eng Securities (HK) Ltd.	If taxpayer employs others to act for him, his profit is earned at the place where they carry out his instruction • Activities of a member of group companies cannot be ascribed to another group company • Bringing together the need of the overseas brokers and their clients is done by t/p in HK: no matter how little it did in HK, where the profit derives from what it did in HK, the profit is fully taxable.
Exxon Chemical	The company purchased goods from a group company and sold it to another. Goods did not pass through HK. • Profit arising from what it did in HK, the matching of orders, is taxable.
Euro Tech (Far East) Ltd.	Re-invoicing centre: activities for bringing together the needs of buyer and seller in HK: taxable • The roles played by the overseas <u>independent party</u> should not be considered • Profit can arise in HK even though activities in HK are minimal.
Sinolink	Look to the pre-contract and post contract activities. • Use totality of facts for determination of source of trading transactions.
Conoco Trading	For trading business (purchases in Mainland China, sales to overseas customers, goods without routing via HK), the court rejected offshore exemption based on a totality of facts: (a) pre-contract negotiation (b) making of purchase contracts (c) making of sale contracts (d) processing of shipping documents (e) financing (f) opening of letters of credit (g) payment to suppliers.
D14/96	Profit from the sale of packaged tours to people in HK is HK sourced and taxable • Sale activities in HK generally give rise to HK sourced profit.
DIPN 39	E-commerce: Location of server is unimportant in determining source of profit • Conventional tax principles apply. Look to the activities and people doing the profit generating operations.
DIPN 21	Cross border land transportation: the source is normally determined by the place of uplift of goods and passengers. If the contract of carriage cannot distinguish inward and outward transportation, make apportionment.

S14	Profits tax is chargeable on a person who carries on a trade or business in Hong Kong. • Application: the taxpayer must supply evidence to prove that he did not carry on a business or a trade of selling property. Burden of proof for an assessment excessive or incorrect is on taxpayer – S68(4).	
Lee Yee Shing case	Carrying on business implies a repetition of acts - Smith v Anderson. • Business is the exercise of an activity in an organized and coherent way one which is directed to an end result – Calkin case. • Case analysis: Are there repetition of acts? Is the sale in an organized and coherent way? Does the taxpayer carry on a business of property dealing?	
S2	A trade includes every adventure in the nature of trade. • Tax implication: an occasional sale or a one-off sale of property can be a trade and its profit is taxable.	
Royal Commission on Taxation of Profits and Income	Six Badges of trade: <ol style="list-style-type: none"> 1. Subject matter of sale 2. Length of ownership 3. Frequency of similar transactions 4. Supplementary work done 5. Circumstances leading to sale 6. Motive (intention at acquisition) 	Arguments for trade: • Short period of ownership. The shop was held for one year. It is unlikely to be held on long term for rental income. • The renovations made it more attractive for sale and for a higher selling price. • T/P appointed a property agent to sell the shop soon after the shop was renovated • T/p's argument that he needs a bigger residence is unconvincing because he should know this when he bought the property.
Marson v Morton case	<ul style="list-style-type: none"> • A transaction relating to the trade carried out by taxpayer is likely a trade. History of dealing suggests a trade. • Short-term borrowing suggests a trade. • Items broken down into saleable parcels suggest a trade. • A resale contract before the purchase suggests a trade. • An item for purchaser's personal enjoyment is not trading. • An item for long term income is for investment, not for trading. 	<ul style="list-style-type: none"> • If the taxpayer carried on a property dealing business before, any similar transaction by his name or by a company under his control will be assessed to profits tax. • If he holds the property by means of a limited company and sell all the company shareholdings to the purchaser, the IRD may invoke Section 61A to assess him to profits tax for the tax benefit involved. • If the t/p had used the property as residence or as director /employee quarter, it is probably no trading. • The lease period of 3 years suggests long term investment.
S14	Assessable profits exclude profit from sale of capital assets	Classification of trading stock or fixed asset in accounts is not a strong argument for capital nature. Totality of all relevant facts applies.
Case law	Capital is what the owner turns to profit by keeping it in possession. • Capital assets are tools used by the business to make profits. <ul style="list-style-type: none"> • Revenue gain is taxable. • Trading stock is revenue nature because it is to be sold for profit. 	Premises, plant, machinery, tools etc. are capital assets because they form permanent structure of the business. Profit from sale is not taxable. <ul style="list-style-type: none"> • Land acquired for development is trading stock and profit from sale is taxable.

Case law	<ul style="list-style-type: none"> • Capital gain is not taxable. • Capital loss is not deductible. • Property held for own use (including director quarter) is capital nature. • Long-term investment is capital asset. • Profit on sale of long-term investment or capital asset is not taxable. 	<p>Arguments for long-term investment:</p> <ul style="list-style-type: none"> • The t/p's business was "Property Investment" and its major source of income was rental income. • Buying the shop for rental income is consistent with the nature of the business carried on by t/p. • T/p has no history of trading in property. • If the shop was trading stock, the t/p should have offered the Shop for sale immediately after the purchase. However, t/p decided to carry out extensive renovation to the shop. The renovation was special and done for 5 months. Such special renovation might not fit common buyers and long renovation caused delay in selling the shop. • Soon after the acquisition, the company told the property agent that it was willing to lease the shop.
Lionel Simmons Properties	Whether trading stock or investment, the intention of the purchaser at the time of acquisition is important.	Change of intention after acquisition must be proved by the party claiming for the change.
All Best Wishes case	Intention is determined on the whole of evidence, including the objective facts and circumstances	If the IRD issues an assessment and the t/p objects to the assessment, the burden of proof is on the t/p – S68(4).
Real Estate Investment case	It is the intention at acquisition. Such intention must be supported by evidence. The length of ownership is less important.	If the property has been held for use or for regular income for over 5 years, it is likely a long term investment.
HK Oxygen & Acetylene Co. Ltd. case	The company changed its intention from investment to trading before the property was transferred to its subsidiary. The proceeds received from the property developer are taxable.	The IRD must prove there is such a change - Wing On Cheong Investment Ltd. For the change of investment to trading stock, the market value (if available) at the time of change can be taken as cost of good sold.
HK Sheung Kung Hui case	<ul style="list-style-type: none"> • Redevelopment of orphanage site is a change of intention to start a trade. • Tax exemption under S88 fails for trading activities carried out by a charity 	Property has been held as non-trading stock for a long time. But subsequent redevelopment can make it become trading stock and profit from redevelopment chargeable to profits tax.
S88	Charitable body is exempt from profits tax. If it carries on a trade or business, the profits will be exempt if they are applied <u>solely for charitable purposes</u> and <u>not expended outside HK</u> and either (a) the trade or business is exercised <u>in the course of the objects of charity</u> or (b) the work is <u>done by the persons for whose benefit such charity is established</u> . Case analysis: comment on the underlined conditions with the facts provided in the question: Can S88 exemption be obtained?	
Pemsel	Charitable purpose means (1) relief of poverty (2) advancement of education or (3) advancement of religion (4) other charitable purposes beneficial to public community. Case analysis: comment with the facts provided in the question: Whether charitable purposes be accepted by IRD?	

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以上只是 qp module d taxation course 的部份筆記，給你作為參考。全部筆記及答題精要，共 44 頁，會給與參加補習的學生。

這些 taxation course notes 稅務課程筆記及 examination answer key 考試答題精要，是基於本人 Raymond Yeung 多年的稅務工作，包括稅務教學及評卷經驗，以常考及可能考的題目，按評分準則 marking scheme，為了快速取分而編寫：筆記列出稅務考試內可能考的題目及其內容，與及能取分的要點 points。

同學請注意，對課題有全面及深入的認識是十分重要，最好是由我講解如何運用這些答題精要，及其餘未列入筆記的稅務知識。課題筆記及答題精要，會在補習有關題目時免費給與學生。

想要齊我的答題筆記，就請你參加由我親自教授的補習班了，或直接購買全套筆記。詳情請到 rytc.com.hk。

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