



The Duke of Westminster. How Graven an Idol?

by

Professor Andrew Halkyard

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In this lecture, Professor Halkyard shared with the audience his views on the interpretation and application of various anti-avoidance provisions in the Inland Revenue Ordinance (Cap. 112), specifically sections 20, 61 and 61A.

Professor Halkyard shared with us the importance of careful reading of the statute in handling tax cases and the history of the enactment of section 61A. He also talked about the elements of section 61A and some of the most famous cases relating to anti-avoidance law, from *IRC v Duke of Westminster*, *Commissioner of Taxation of the Commonwealth of Australia v Spotless Services Limited*, *Yick Fung Estates Limited v CIR*, *Cheung Wah Keung v CIR* to the recent Court of Final Appeal cases such as *CIR v Hit Finance Ltd*, *CIR v Tai Hing Cotton Mill (Development) Ltd*, *Ngai Lik Electronics Company Limited v CIR* and *Shui On Credit Company Limited v CIR*.

Professor Halkyard further briefly looked at the change of international tax environment and mentioned the trend of purposive approach in the interpretation of tax provisions. Finally, he talked about what is being stressed in international tax circle and they are substance, economic reality, ownership, the assumption of risk, the degree of activity, responsibility and legal liability that justifies a profit being somewhere other than subject to a s.61A assessment.

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