



Revenue Authority Discretions and the Rule of Law in Hong Kong

Professor Andrew Halkyard

9th March, 2011

Professor Andrew Halkyard in his incisive and thought provoking lecture provided his audience with his views as to the role of the Revenue Authority with regard to various discretions it has in the collection of taxes and the rule of law in Hong Kong.

In particular, he spoke about the constitutional power to impose tax in Hong Kong and the role of the Hong Kong tax law within that particular dimension. He discussed the conflict between the rule of law and the role of the Commissioner in collecting in taxes in Hong Kong.

He addressed the issues of a Tax Charter. He also identified the discretion on the Commissioner with regard to various administrative matters vis-à-vis tax administration and collection of taxes in Hong Kong.

In particular, he outlined and questioned the importance of the Departmental Interpretation and Practice Notes (“DIPNs”) and whether or not these are of persuasiveness basis and their role and impact. In particular, he identified the difficulties faced by a taxpayer in challenging the DIPNs

He also reviewed the position of an appeal from the Board of Review under the case stated as well as discussing judicial review proceedings that are now being embarked upon within the existing regime.

The conclusions were interesting in that Hong Kong has a simple and straightforward system with regard to the collection of taxes. However, he accepted that there are undoubtedly stresses between the role of the IRD and tax advisers in ensuring that the current system is co-operative rather than confrontational.

He takes the view that the various performance pledges and promulgation of a Tax Charter perhaps need to be reviewed and looked at and that perhaps reform is needed within this particular area.

He also concluded that he was somewhat critical over the current position of the DIPNs and their impact.

Hong Kong needs clear tax legislation with certainty as well as clear and unequivocal application of those laws. He concludes that Hong Kong was not drifting towards an authoritarian and discretionary taxation system but takes the view that there is always room for formalising protection for taxpayers with regard to the relationship between them and the Government. As he stated, there can never be room for any complacency.

His talk was illuminating, thought provoking and as always, he sows the seeds for further discussion. Professor Halkyard in 2010 gave a lecture entitled “The Duke of Westminster. How Graven an Idol?” No doubt, we are looking forward to his next talk in 2012!

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A former teacher of the Law Faculty