

Select Committee to Inquire into Matters about the Agreement between Mr LEUNG Chun-ying and the Australian firm UGL Limited

Summary of information obtained

Matters to be inquired by the Select Committee under its terms of reference	Major areas of study corresponding to the matter on the left	Information relevant to the matter on the left [SC Paper No.]
<p>1. Whether Mr LEUNG Chun-ying ("Mr LEUNG") had complied with the declaration requirements under Article 47 of the Basic Law ("BL") and the system of declaration of interests by Members of the Executive Council ("ExCo")</p>	<p>I. Background, nature and details of the agreement between Mr LEUNG and the Australian firm UGL Limited ("UGL") signed in 2011 ("UGL Agreement")</p> <p>(a) whether or not Mr LEUNG and UGL signed and/or executed the UGL Agreement;</p> <p>(b) if so, what were the major terms and conditions of the UGL Agreement;</p> <p>(c) whether or not Mr LEUNG received any payment(s) from UGL pursuant to the UGL Agreement and if Mr LEUNG did receive payment(s), the amount and nature of the payment(s) made to Mr LEUNG by UGL ("Payments"), the payment method(s) and timing of payment(s);</p> <p>(d) the nature and effect of the term under the UGL Agreement "to provide such assistance in the promotion of the UGL Group and the DTZ Group as UGL may reasonably require, including but not limited to acting as a referee and adviser from time to time"¹ ("Term"); and</p> <p>(e) whether the Term had been modified in any way and, if so, by whom and the effect of the Term as modified.</p>	<p>1.1 <u>Reply dated 15 September 2017 from Mr LEUNG (English version only) [CY1] together with 12 enclosures [CY1.1 to CY1.12]</u></p> <p>(a) in the second paragraph of CY1, Mr LEUNG stated that:</p> <p>"All information relevant to the so-called major areas of study can be found in or deduced from the various statements and reports already in circulation for some time in the public domain. I append a file containing copies of twelve relevant documents (see index attached).";</p> <p>(b) CY1.1 to CY1.4 contained media's reports on UGL's responses in relation to media speculation concerning the UGL Agreement and Mr LEUNG's receipt of the Payments amounting to £4 million from UGL in connection with the UGL Agreement after assuming the office of CE, and UGL's media releases on the same subject matter. The parts relevant to the background, nature and details of the UGL Agreement are extracted as follows:</p> <p>(i) "The arrangement was a standard non-poach, non-compete arrangement. It was entered solely to ensure CY LEUNG did not move to a competitor or set up or promote any business in competition with DTZ, or poach any people from DTZ, and hence to ensure the business retained its value after UGL acquisition. It is standard business practice to pay for such undertakings, as you are requiring the individual to take on obligations and to forgo future opportunities." [CY1.1];</p> <p>(ii) "The agreement ensured both non-compete and non-poach arrangements, to ensure key personnel remained with DTZ post the acquisition, as demonstrated by the fact that payment was subject to satisfaction of these provisions (including a proportional reduction for each senior manager that left DTZ's employment during the term of the agreement)." [CY 1.1];</p> <p>(iii) "UGL entered into an agreement with Mr LEUNG to protect UGL's commercial interests in North Asia by preventing him from competing with DTZ or employing DTZ staff for two years following UGL's acquisition of the subsidiaries of DTZ Holdings plc. Payments were staggered over this period to ensure that these non-compete and non-poach obligations were met and the agreement provided mechanisms to reduce these payments if key individuals left DTZ over this period." [CY1.2];</p> <p>(iv) "The agreement also protected UGL's right to operate in the region by ensuring existing licencing arrangements held by Mr LEUNG were maintained and transferred to UGL. Again the agreement was in accordance with normal market practices and terms." [CY1.2]; and</p> <p>(v) "The article erroneously makes reference to 'secret payments'. This is a baseless and misleading reference as the arrangements were made with Mr LEUNG, then a private individual, on commercial terms and with full knowledge of the vendor, in keeping with standard businesses practice for non-compete and non-poach agreements. Such agreements are common confidential commercial arrangements when a business is being acquired." [CY1.2]; and</p>

¹ The original text of the Term is in English and the text in Chinese is a translated version (see Official Record of Proceedings of the Legislative Council meeting of 5 November 2014, Pages 1157 and 1169 in Hansard (Chinese version)). Readers should refer to the original English text as it appeared in the copy of the purported UGL Agreement (Appendix II to IN03/16-17) for the authentic version.

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		<p>(c) CY1.5 to CY1.10 contained speeches of the then Chief Secretary for Administration ("CS") delivered at various Council meetings in respect of the UGL Agreement and Mr LEUNG's receipt of the Payments amounting to £4 million from UGL in connection with the UGL Agreement after assuming the office of CE. The parts relevant to the background, nature and details of the UGL Agreement are extracted as follows:</p> <p>(i) "Mr LEUNG Chun-ying was the Asia Pacific Director of DTZ before he stood for the Chief Executive election. He announced his resignation from the post of Director and other offices he held in DTZ on 24 November 2011. In view of his resignation, UGL, which was at that time trying to acquire DTZ, concluded with Mr LEUNG a resignation agreement on 2 December 2011. Under the agreement, UGL undertook to make payments to Mr LEUNG over a two-year period and to underwrite for DTZ the payment of outstanding agreed bonus to Mr LEUNG, subject to key personnel remaining with DTZ during the two years subsequent to Mr LEUNG's resignation." [Page 1232 of CY1.7];</p> <p>(ii) "The fact is that the resignation agreement signed between Mr LEUNG and UGL on 2 December 2011 was simply a non-compete arrangement between UGL and Mr LEUNG, whereby UGL would pay a total of £4 million to Mr LEUNG over a two-year period, subject to key personnel remaining with DTZ during the two years subsequent to Mr LEUNG's resignation. Of the said total sum of payment, £2 million was paid to ensure that Mr LEUNG would not be in competition with UGL, and another £2 million was the compensation for his undertaking not to poach employees." [Page 1233 of CY1.7];</p> <p>(iii) "[U]nder the 'Additional Commitments' of the resignation agreement, Mr LEUNG had agreed to – as the agreement is in English, I will read out the original provision in English – 'provide such assistance in the promotion of the UGL Group and the DTZ Group as UGL may reasonably require, including but not limited to acting as a referee and adviser from time to time'. Nonetheless, I would like to draw Members' attention to the following remarks added specifically by Mr LEUNG to this provision when signing the resignation agreement, that is, 'provided that such assistance does not create any conflict of interest'." [Page 15 of CY1.5]; and</p> <p>(iv) "This agreement is kept as a confidential commercial arrangement in line with common commercial practices." [Page 121 of CY1.6].</p> <p>1.2 <u>Reply dated 24 November 2017 from Mr LEUNG (English version only) [CY2]</u></p> <p>Mr LEUNG stated that:</p> <p>"All information relevant to the so-called major areas of study can be found in or deduced from the various statements and reports already in circulation for some time in the public domain.</p> <p>I have provided the Select Committee with a file of twelve relevant documents which are sufficient in helping the Select Committee to reach the correct conclusions."</p> <p>1.3 <u>Reply dated 16 October 2017 from UGL (English version only) [U1]</u></p> <p>UGL stated that:</p> <p>"UGL's policy is to co-operate with any regulatory or other investigative body. To ensure that UGL's confidentiality and legal professional privilege is preserved in any investigation UGL will only co-operate in accordance with the relevant body's authority and powers and pursuant to specific legal requirements."</p>

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		<p>1.4 <u>Reply dated 27 October 2017 from UGL (English version only) [U2]</u></p> <p>UGL stated that:</p> <p>"[I]t is UGL's policy to co-operate with any regulatory or other investigative body. At the same time, UGL considers it essential to be able to rely on its rights to confidentiality and legal professional privilege, amongst others, when co-operating with regulatory and investigative bodies.</p> <p>UGL respectfully declines to meet the terms of the Committee's requests set out in your letter dated 1 September 2017."</p>
	<p>II. Declaration requirements under BL 47 and the system of declaration of interests by ExCo Members</p> <p>(a) what were the requirements applicable to the Chief Executive ("CE") in relation to declaration of interests under BL 47 and the relevant system of declaration of interests of ExCo at the time Mr LEUNG assumed the office of CE;</p> <p>(b) whether such requirements had to be complied with at the assumption of office or whether such requirements had to be complied with at the assumption of office and throughout the term of the office;</p> <p>(c) whether the Payments fell within the scope of interests required to be declared under BL 47 and the relevant system of declaration of interests of ExCo; and</p> <p>(d) if so, whether Mr LEUNG had complied with those requirements to declare his interests in receiving the Payments, upon assumption or during the term of the office of CE.</p>	<p>1.5 <u>Reply dated 15 September 2017 from Mr LEUNG (English version only) [CY1]</u></p> <p>The parts in CY1.5 to CY1.10 relevant to the declaration requirements under BL 47 and the system of declaration of interests by ExCo Members are extracted as follows:</p> <p>(a) "Article 47 of the Basic Law stipulates that the Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region (CJ), and that this declaration shall be put on record. On assuming office, the Chief Executive made such declaration to the CJ in accordance with the Basic Law. The term 'assets' is not specifically defined under the Basic Law. The relevant declaration is confidential." [Page 13 of CY1.5];</p> <p>(b) "As President of the Executive Council, the Chief Executive observes the system of declaration of interests for the Executive Council Members, including the requirement for regular declarations. The Chief Executive has declared his registrable interests annually for public inspection. He has also made declarations on his financial interests annually on a confidential basis deposited with the Clerk to the Executive Council. As with other Executive Council Members, the Chief Executive would notify the Clerk to the Executive Council of any changes to the interests declared in accordance with the system." [Page 13 of CY1.5];</p> <p>(c) "[T]he agreement and payments concerned arose from Mr LEUNG's resignation from DTZ, not any future service to be provided by him. Under the current system of declaration of interests by Members of the Executive Council, there is no requirement for Mr LEUNG to declare the said resignation agreement. Moreover, both Mr LEUNG's resignation from DTZ and conclusion of the agreement with UGL took place before he was elected as the Chief Executive, and at the material time, he had already resigned from the Executive Council." [Page 13 of CY1.5];</p> <p>(d) "[T]here is no requirement for Mr LEUNG to declare such payments under the current system of declaration of interests by the Executive Council Members." [Page 14 of CY1.5]; and</p> <p>(e) "Regarding DTZ shares held by the Chief Executive, the Chief Executive has transferred all his shares of DTZ Holdings Plc and its subsidiaries to a trust. The trustee is a practising accountant. The Chief Executive has declared such interests according to the system of declaration of interests by the Executive Council Members, and the relevant declaration has already been uploaded to the Executive Council website." [Page 14 of CY1.5] (see also EC1.2 and paragraph 1.8 below).</p> <p>1.6 <u>Reply dated 11 October 2017 from the Judiciary Administration [J1]</u></p> <p>The Judiciary Administration advised that having regard to the relevant circumstances, CJ did not consider it appropriate to provide the Select Committee with a copy of the record(s) of Mr LEUNG's declaration under BL 47.</p>

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		<p>1.7 <u>Reply dated 28 November 2017 from the Judiciary Administration [J2]</u></p> <p>In response to the Select Committee's request for information on the system of declaration under BL 47 in general, the Judiciary Administration advised that:</p> <p>"The requirements for the declaration are as set out in Article 47 of the Basic Law. In accordance with this Article, the Chief Executive is obliged to provide a declaration of his or her assets to the Chief Justice on assuming office. Such declaration is then kept by the Chief Justice."</p> <hr/> <p>1.8 <u>Reply dated 14 November 2017 from the ExCo Secretariat [EC1] together with two enclosures [EC1.1 and EC1.2]</u></p> <p>The ExCo Secretariat provided the following information:</p> <p>(a) a note issued in June 2012 by the CE's Office outlining the system of declaration of interests by ExCo Members [EC1.1]. The system was also applicable to CE who was the President of ExCo;</p> <p>(b) five sets of the Annual Declaration of Registrable Interests of Members of the Executive Council ("Annual Declaration") made by Mr LEUNG upon assumption of office and annually thereafter during his term of office of CE [EC1.2]:</p> <p>(i) in each set of Annual Declaration, Mr LEUNG had declared "Chief Executive, Hong Kong Special Administrative Region" as the sole item of registrable interest under "Remunerated Employments, Offices, Trades, Profession, etc.";</p> <p>(ii) in the Annual Declaration made in 2012, Mr LEUNG had made the following declaration of registrable interests (in extract) under "Name of Companies (both listed and unlisted ones) or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or children, a beneficial interest in shareholdings of a nominal value greater than 1% of the issued share capital.":</p> <p>"I am a shareholder of the following companies:-</p> <p>(1) DTZ Holdings Plc and its subsidiaries – Property Consultancy Company.</p> <p>(2) Wintrack Worldwide Ltd (BVI) and its subsidiaries – investment company.</p> <p>(3) ..."; and</p> <p>(iii) in each set of the Annual Declaration made between 2013 and 2016, Mr LEUNG had respectively made the following declaration of registrable interests (in extract) under "Name of Companies (both listed and unlisted ones) or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or children, a beneficial interest in shareholdings of a nominal value greater than 1% of the issued share capital.":</p> <p>"(1)...</p> <p>(2) I have transferred all my shares of Wintrack Worldwide (BVI) and its subsidiaries, and all my shares of DTZ Holdings Plc and its subsidiaries, to a trust. The trustee is a professional practicing accountant. The beneficiary of the trust is my wife."; and</p>

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		<p>(c) in response to the Select Committee's request for the record(s) of declaration of interests made by Mr LEUNG at ExCo meeting(s), the ExCo Secretariat advised that in line with the principle of confidentiality of ExCo and to preserve the integrity of the ExCo system, the Government did not disclose the content of ExCo discussions (whether in the form of ExCo memoranda, minutes or otherwise) or any declarations in respect of individual items discussed by ExCo. The ExCo Secretariat was thus unable to accede to the Select Committee's request for provision of those records. [Paragraph (c) of EC1].</p>
<p>2. Whether the UGL Agreement had given rise to any conflict of interests on the part of Mr LEUNG as CE</p>	<p>III. Conflict of interests</p> <p>(a) whether the terms of the UGL Agreement were still in force and the rights and obligations under the UGL Agreement were still capable of being enforced after Mr LEUNG had assumed the office of CE; and, if so, whether such fact had given rise to any conflict of interests on the part of Mr LEUNG;</p> <p>(b) whether Mr LEUNG's commitment pursuant to the Term, or the Term as modified, had given rise to any conflict of interests, whether actual or potential;</p> <p>(c) whether Mr LEUNG had provided any service or assistance to UGL pursuant to the UGL Agreement after he assumed the office of CE and if so, whether this had given rise to any actual or potential conflict of interests; and</p> <p>(d) whether there were other aspects of the UGL Agreement that had given rise to any actual or potential conflict of interests.</p>	<p>2.1 <u>Reply dated 15 September 2017 from Mr LEUNG (English version only) [CY1] together with 12 enclosures [CY1.1 to CY1.12]</u></p> <p>(a) The parts in CY1.1 to CY1.4 relevant to the issue of potential conflict of interests on the part of Mr LEUNG arising from the UGL Agreement are extracted as follows:</p> <p>(i) "If CY LEUNG returned to UGL's employment, the arrangement was invalidated, as there was then no issue with competition or poaching. At the time of the negotiations, media coverage suggested that other candidates were favoured to be elected, so the possibility of CY LEUNG securing office was not the focus of UGL's negotiations." [CY1.1];</p> <p>(ii) "It should be noted that at the time of entering in the agreement, Mr LEUNG was not an elected official of Hong Kong, and UGL had no reason to expect that his campaign for Chief Executive of Hong Kong would be successful. In any event the same commercial protections for UGL and DTZ were necessary." [CY1.2];</p> <p>(iii) "During the two year period between 2011 and 2013 and subsequent, UGL did not request Mr LEUNG to undertake any task whatsoever on our behalf, nor did Mr LEUNG offer to perform any tasks." [CY1.2];</p> <p>(iv) "The vendor, the Royal Bank of Scotland, and their advisors were fully aware of UGL's intention to enter into an arrangement with Mr LEUNG and DTZ Holdings plc played a significant role in initiating and negotiating those terms with Mr LEUNG. As part of these negotiations and with the full agreement of the vendor team, the amount to be paid by UGL to acquire the subsidiaries of DTZ Holdings plc was reduced to allow for the payments to Mr LEUNG. This had no impact on the other creditors and shareholders of DTZ Holdings plc, as the full benefit of the purchase price, both before and after the payment reduction, flowed to the Royal Bank of Scotland and no other party." [CY1.2]; and</p> <p>(v) "UGL reconfirms that the vendor of DTZ Holdings plc, the Royal Bank of Scotland, and their advisors played a significant role in initiating and negotiating terms with Mr LEUNG prior to the ultimate sale of DTZ Holdings plc to UGL Limited." [CY1.4]; and</p> <p>(b) The parts in CY1.5 to CY1.10 relevant to the issue of potential conflict of interests on the part of Mr LEUNG arising from the UGL Agreement are extracted as follows:</p> <p>(i) "As Mr LEUNG was elected as the Chief Executive in March 2012, he would not and should not provide the said assistance to UGL; and that is exactly the case. As confirmed by UGL in its statement, Mr LEUNG has not provided any service to UGL after signing the above agreement. Hence, given such circumstances, Mr LEUNG did not consider it necessary to rescind the agreement." [Page 15 of CY1.5];</p> <p>(ii) "Moreover, as the agreement had been signed before Mr LEUNG was elected Chief Executive, it should have nothing to do with Mr LEUNG's performance of his public duties." [Page 1235 of CY1.7]; and</p>

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		<p>(iii) "Another salient point in the motion is Mr LEUNG's shareholding of DTZ Japan. As pointed out by Members, as Mr LEUNG still held shares of DTZ Japan after he assumed the office as the Chief Executive, and a client of DTZ Japan had business in the local television industry and property industry on Lantau Island, they question if that constituted a conflict of interest in Mr LEUNG's performance of public duties...As I have said in my response earlier, Mr LEUNG had already transferred all his shares of DTZ Holdings plc and its subsidiaries to a trust. The trustee is a professional practising accountant. Mr LEUNG had declared the aforesaid interest according to the requirement of the system of declaration of interests for Executive Council Members and the declaration has been uploaded to the Executive Council website. It is worth mentioning that the trustee manages the trust independently in accordance with the trust provisions. As the consignor, Mr LEUNG does not have the power to make any trading decisions regarding the shares under the trust, including those of DTZ Holdings plc and its subsidiaries." [Pages 256-257 of CY1.9].</p> <p>2.2 <u>Reply dated 16 October 2017 from UGL (English version only) [U1]</u></p> <p>UGL stated that:</p> <p>"UGL's policy is to co-operate with any regulatory or other investigative body. To ensure that UGL's confidentiality and legal professional privilege is preserved in any investigation UGL will only co-operate in accordance with the relevant body's authority and powers and pursuant to specific legal requirements."</p> <p>2.3 <u>Reply dated 27 October 2017 from UGL (English version only) [U2]</u></p> <p>UGL stated that:</p> <p>"[I]t is UGL's policy to co-operate with any regulatory or other investigative body. At the same time, UGL considers it essential to be able to rely on its rights to confidentiality and legal professional privilege, amongst others, when co-operating with regulatory and investigative bodies.</p> <p>UGL respectfully declines to meet the terms of the Committee's requests set out in your letter dated 1 September 2017."</p> <p>2.4 <u>Reply dated 19 September 2017 from Ernst & Young LLP, Joint Administrators ("Joint Administrators") of DTZ Holdings plc ("DTZ") (English version only) [EY1] together with two enclosures [EY1.1 and EY1.2]</u></p> <p>(a) the Joint Administrators provided (i) a copy of a sale agreement dated 4 December 2011 relating to shares in certain companies and the trade marks owned by DTZ (in administration) [EY1.1] and (ii) a copy of the Joint Administrators' Statement of Proposals of DTZ (in administration) issued on 23 December 2011 ("the Statement of Proposals") [EY1.2];</p> <p>(b) in the Statement of Proposals, the Joint Administrators stated that on 4 December 2011, they completed a sale of the business and assets of DTZ to United Group Europe Limited (a subsidiary of UGL) for a total consideration of up to £96.5 million. Appendix A of the Statement of Proposals showed that Mr LEUNG resigned from the post of director of DTZ on 24 November 2011. His then shareholding in DTZ was 6 563 775 shares [Pages 3 and 15 of EY1.2]; and</p> <p>(c) regarding the UGL Agreement and related agreement(s), if any, the Joint Administrators advised that they were not aware, nor was DTZ party to any agreement(s) between Mr LEUNG and UGL. [Paragraph (a) of EY1]</p>

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<p>3. Whether the Payments were taxable under the laws of Hong Kong</p>	<p>IV. Taxation issues</p> <p>(a) whether the Payments or any part(s) of the Payments were taxable under the laws of Hong Kong; and</p> <p>(b) if the answer to IV(a) above is in the affirmative, whether Mr LEUNG had complied with the taxation laws in force.</p>	<p>3.1 <u>Reply dated 15 September 2017 from Mr LEUNG (English version only) [CY1] together with 12 enclosures [CY1.1 to CY1.12]</u></p> <p>In response to a question as to whether CE had paid tax for the payments paid to him by UGL in accordance with the requirements under the relevant legislation, the then Acting CS advised that:</p> <p>"Last year, Mr LEUNG sought advice from a practising accountant on the need or otherwise for him to pay salaries tax in respect of the aforesaid payments, and the accountant's professional advice was that under the relevant provision of Hong Kong's Inland Revenue Ordinance, salaries tax was applicable to income arising in or derived from Hong Kong from any employment, as well as the pension so derived. As such, Mr LEUNG did not have to pay salaries tax for the relevant payments. As regards the bonus concerned, he had to pay salaries tax in accordance with the aforesaid requirement. Mr LEUNG has already made the relevant tax payment accordingly." [Pages 1234-1235 of CY1.7]</p>
		<p>3.2 <u>Reply dated 12 October 2017 from the Inland Revenue Department ("IRD") (English version only) [A1]</u></p> <p>In response to the Select Committee's request for information on the requirements and relevant provisions under the taxation laws of Hong Kong which were relevant to the UGL Agreement and related agreement(s), IRD advised that the Commissioner of Inland Revenue ("Commissioner") and officers of IRD were subject to the official secrecy provision under section 4 of the Inland Revenue Ordinance (Cap.112) ("IRO"). Having considered that the Commissioner or officers of IRD would likely be disclosing information relating to the affairs of Mr LEUNG that came to their knowledge in the performance of their duties under IRO, and that they would be susceptible to breaching the official secrecy provision under section 4(1) of IRO, IRD could not accede to the Select Committee's request and neither the Commissioner nor any other officer of IRD would attend the hearings of the Select Committee.</p>
		<p>3.3 <u>Reply dated 4 December 2017 from IRD [A2]</u></p> <p>In response to the Select Committee's request for general information on the policy adopted and the applicable taxation principles on certain cases of payment received by a Hong Kong resident, IRD provided the following relevant taxation principles:</p> <p>(a) section 8(1) of IRO imposed the charge to salaries tax upon every person in respect of income arising in or derived from Hong Kong from any office or employment of profit and any pension. The charge made no distinction between a Hong Kong resident and a non-Hong Kong resident;</p> <p>(b) no general rules were given in IRO for determining whether income "arises in or is derived from Hong Kong". It had long been accepted that it was necessary to establish the place where the employment, the source of income, was located. IRD had accepted that in the great majority of the cases, the question of Hong Kong or non-Hong Kong employment could be resolved by considering three factors, namely, (a) where the contract of employment was negotiated and entered into, and was enforceable, (b) residence of the employer, and (c) place of payment of remuneration. Departmental Interpretation & Practice Notes No. 10 (Revised) "The Charge to Salaries Tax"² set out IRD's view and practice in determining source of employment;</p> <p>(c) section 9(1)(a) of IRO defined income from an office or employment to include wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance, whether derived from the employer or others. A sum received by a taxpayer from a person other than his employer could be taxable provided that it was an income from his employment;</p>

² The Departmental Interpretation & Practice Notes No.10 (Revised) "The Charge to Salaries Tax" is now available at <https://www.ird.gov.hk/eng/pdf/dipn10.pdf>.

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		<p>(d) for a payment to be chargeable to salaries tax, it was not sufficient to say that the employee would not have received the sum in question if he had not been an employee³;</p> <p>(e) chargeable income was not confined to income earned in the course of employment but also embraced payments made in return for acting as or being an employee, or as a reward for past services or as an inducement to enter into employment and provide future services⁴;</p> <p>(f) the applicable test was whether the payment in question was "from employment"⁵;</p> <p>(g) where the payment was not made pursuant to any entitlement under the employment contract but was made in consideration of the employee agreeing to surrender or forgo his pre-existing contractual rights, it might not be taxable⁶; and</p> <p>(h) in general, a payment made for post-employment restrictive covenants was not chargeable to salaries tax⁷. Where there were terms in the contract or arrangement other than the giving of the restrictive covenants, it was essentially a question of fact whether the payment was entirely attributable to the giving of the restrictive covenants or the payment was partly made for something else⁸. In the case of the latter, it was necessary to decide whether that part of the payment that was made for something else was "income from employment".</p> <p>IRD emphasized that the taxation principles set out above were general principles only and whether a payment was income from employment and thus taxable could only be determined upon consideration of all the relevant facts and circumstances.</p>

³ *Fuchs v CIR* (2011) 14 HKCFAR 74, paragraph 16, quoting *Hochstrasser (Inspector of Taxes) v Mayes* [1960] AC 376.

⁴ *Ibid*, paragraph 17.

⁵ *Ibid*, paragraph 18.

⁶ *Ibid*, paragraph 22 and headnote.

⁷ *Beak v Robson* [1943] 1 All ER 46, applied in *CIR v Yung Tse Kwong* [2004] 3 HKLRD 192.

⁸ *CIR v Yung Tse Kwong* [2004] 3 HKLRD 192, paragraphs 11-20.