



Hong Kong Tax News

Application of Section 15(1)(ba) in dispute

After the IRD's failure in the Court of Final Appeal in *Commissioner of Inland Revenue v Emerson Radio Corp*, Section 15(1)(ba) was enacted in 2004 in order to capture the royalties paid to non-residents for the "use" or "right to use" of intellectual properties outside Hong Kong, but a corresponding tax deduction has been obtained in Hong Kong.

Turner Entertainment Networks Asia, Inc, a company carrying on entertainment business in Hong Kong, paid (i) license fees and (ii) technical costs to Muse Communication Co. Limited, a non-resident. For (i) license fees, they were paid for the right to exhibit certain television programs in Taiwan. For (ii) technical costs, they were paid for providing dubbed and subtitled tracks for the television programs.

The taxpayer put the case to the court arguing that both payments should fall outside S15(1)(ba), but was only successful with respect to (ii) technical costs as they were not payments for the "use" or "right to use" of intellectual properties, i.e. not royalties. The taxpayer has lodged an appeal to further pursue the non-taxability claim on (i) license fee.

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