



China Tax Alert

Issue 4, January 2020

The double taxation arrangement between Mainland China and Hong Kong Special Administrative Region incorporates provisions for teachers and researchers

Regulations discussed in this issue:

- *State Taxation Administration Announcement on the enforcement of Protocol V of the Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Announcement 51 of 2019)*

Protocol V of the “Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income” (hereinafter referred to as “Protocol V”) was formally signed in Beijing on 19 July 2019. On 31 December 2019, the State Taxation Administration (“STA”) issued the “Announcement on the Enforcement of Protocol V” (Announcement 51 of 2019). In Mainland China, relevant provisions under Protocol V will apply for income earned in the tax years beginning on or after 1 January 2020.

Salient points

In order to promote exchanges of education and scientific research between Mainland China and Hong Kong and the development of the Greater Bay Area, Protocol V incorporates provisions for teachers and researchers, whereby eligible individuals will be entitled to tax exemption for up to three years.

- Eligible individuals
 - Employed by a university, college, school or government-accredited educational or research institution in Hong Kong (hereinafter referred to as “Academic Institutions”); and
 - Residents of Hong Kong who are primarily engaged in teaching or researching at Academic Institutions based in Mainland China, or individuals who were Hong Kong residents immediately before relocating to Mainland China.
- Tax-exempt income

Income earned from teaching or research for the benefit of public interest rather than for personal gain paid by (or on behalf of) a Hong Kong employer, and the income is subject to tax in Hong Kong.

- Tax exemption period

For a period of three years beginning 1 January 2020 or the date of arrival in Mainland China (after 1 January 2020) for purpose of teaching or research¹.

KPMG Observation

The provisions set out under Protocol V reflects the determination to actively promote educational and scientific exchanges between the Mainland and Hong Kong, and to vigorously develop the science and culture of the Greater Bay Area of Guangdong, Hong Kong and Macao.

It is worth noting that China has Double Taxation Agreements (“DTA”) in place with over 100 countries and regions, among which the DTAs with more than 80 countries and regions include provisions for teachers and researchers, and the relevant tax exemption conditions and periods vary. For example, the U.S.-China DTA grants eligible individuals a cumulative tax exemption period of up to three years. The tax exemption period will be suspended if the eligible individual leaves China before the end of the three-year period, and the period will resume if the eligible individual returns to China for teaching or research activities. The German-China DTA grants the eligible individual a tax-exempt period of two years on income earned outside China in respect of teaching or research activities; it further provides that where the individual stays in China for more than two years, the relevant income shall be taxed from the date of arrival in China.

Therefore, employers and academic staff intending to enjoy the tax-exempt treatment shall assess whether they would meet the eligibility criteria, including but not limited to:

- Whether the employer is a recognised educational or research institution by the government
- Tax residency status of the individual
- Whether the activities performed by the individual meet the tax exemption conditions
- Whether the relevant income is paid in accordance with the tax exemption conditions

In addition, in October 2019, the STA issued the “Treatment of Non-Resident Taxpayers Benefiting from Double Taxation Agreements” (Announcement 35 of 2019), which stated that the relevant documentation related to DTA applications should be retained by the taxpayers (instead of submission to the tax authorities). This Announcement simplified the reporting requirements for taxpayers or withholding agents. It is worth mentioning that after the Announcement, KPMG has consulted and discussed the requirements with various local tax authorities and learned that the tax authorities in some regions still have certain information reporting requirements in order to provide guidance to local taxpayers in respect of the understanding and application of DTAs. Therefore, it is recommended that withholding agents and individuals who wish to apply the tax exemption treatments under DTAs to clarify the documentation and reporting requirements with the local tax authorities. If required, professional agents can be engaged to provide necessary support.

¹ For example: If a Hong Kong resident employed by a university in Hong Kong is engaged in teaching at a Mainland Academic Institutions from 1 July 2019, and the eligibility conditions are met, the income paid by the Hong Kong university and taxed in Hong Kong are entitled to the tax exemption in Mainland China for three years from 1 January 2020.

KPMG will pay close attention to policies relating DTA applications for non-resident teachers and researchers, and actively discuss policy trends and practical cases with local tax authorities. We also welcome organisations and individuals to contact us for the latest developments.

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