

Hong Kong (SAR) Tax Alert

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Key Hong Kong individual and employment tax issues discussed in the 2022 annual meeting between the IRD and the HKICPA

Summary

The minutes of the 2022 annual meeting between the Hong Kong Institute of Certified Public Accountants (HKICPA) and the Inland Revenue Department (IRD) were recently published. The minutes summarise the IRD's views on various issues related to profits tax, salaries tax, stamp duty, double tax agreements, the OECD's BEPS 2.0 initiative and electronic tax filing (e-filing) that were discussed during the meeting.

This tax alert highlights some of the more important Hong Kong employment and individual tax issues discussed in the meeting. We previously issued a separate [alert](#) on the profits tax and international tax issues discussed in the meeting. Employers and individuals should consider the feedback from the IRD and review their tax filing position, although such views are not legally binding.

Discretionary bonus – tax treatment and reporting obligations

This is a continuation of topic discussed in the 2020 and 2021 annual meetings between the IRD and the HKICPA. This year, the HKICPA's follow-up questions focused on the tax treatment and employer tax obligations for post-departure bonuses, i.e., a discretionary bonus paid after the employee has departed Hong Kong and relocated to work in another jurisdiction for the employer or an affiliate.

In summary, the IRD considers that

- a bonus is taxable in the year that it accrues (or the year the employee ceased employment if cessation took place);
- regardless of the year of accrual, the bonus should be sourced with reference to the service period or performance period of the bonus; and
- the bonus should be reported by the employer in the year it accrues (which may differ from the year of departure) and observe withholding obligations.

For example, an employee under a non-Hong Kong employment who worked in Hong Kong from 1 January 2019 to 31 October 2019 who subsequently relocates outside Hong Kong on 1 November 2019 becomes entitled to a discretionary bonus in May 2020 for his performance for the calendar year 2019. Assuming no cessation of employment took place, the bonus should be reported and assessed in the year of assessment 2020/21 but sourced over the 2019 calendar year. Full exemption of the bonus under the 60-day rule would only apply where the employee qualifies for the 60-day exemption in both years 2018/19 and 2019/20.

The IRD also confirmed that if a bonus accrues after an employee relocates to Hong Kong and the employee rendered services outside Hong Kong for the entire performance period, the bonus should be fully sourced outside Hong Kong and should not be taxable in Hong Kong.

KPMG observations: In light of the latest commentary, employers should review the tax reporting positions adopted for bonuses and other payments to mobile employees. Specific consideration should be given to the application of withholding obligations. In the 2021 annual meeting the IRD had noted that they will revisit the position for share awards and may update Departmental Interpretation and Practice Notes No. 38 (Revised) (DIPN 38) regarding employee share-based benefits adopting a similar position for share awards. As of the date of this alert, no changes have been made to DIPN 38. KPMG continues to monitor this.

Tax credit relief under the Hong Kong – Mainland Comprehensive Double Taxation Arrangement (CDTA)

There was discussion on the extent foreign tax credit relief would be available in Hong Kong for a Hong Kong resident individual who is employed by a Hong Kong employer and seconded to work for a Mainland subsidiary. In practice, it is observed that such an arrangement could lead to double taxation where the individual's full income is assessed to Individual Income Tax ("IIT") in the Mainland, as a result of their secondment, but tax credit relief in Hong Kong is limited to days of presence in the Mainland.

Observing that a Hong Kong tax resident, under the Article 14 of the CDTA, should only be taxable in the Mainland to the extent physically present and exercising employment in the Mainland, the IRD confirmed that tax credit relief in Hong Kong would only be afforded in respect of Individual Income Tax (IIT) payable on remuneration derived from the exercise of employment in the Mainland. Tax credit relief would not be afforded in respect of IIT on remuneration derived from the exercise of employment in Hong Kong.

The IRD suggests Hong Kong resident individuals to consult the Mainland tax authority if their IIT position in the Mainland deviates from the above or present their case to the IRD for mutual agreement procedure.

KPMG observations: In practice, individuals may be fully subject to IIT in the Mainland on their employment income, particularly where they are on secondment in the Mainland or their costs are borne by a Mainland entity. Such individuals will require support from their employer or tax advisers to mitigate double taxation and seek the IRD's assistance for mutual agreement procedure.

Reimbursement of quarantine hotel costs

Where an employer reimburses the cost of quarantine hotel in Hong Kong for a new employee from overseas relocating to Hong Kong, the IRD considers the expense to be a private or domestic expense and its reimbursement to be taxable income to the employee. If instead, the employer provides hotel accommodation and paid the hotel directly, this may be considered a place of residence provided by the employer to the employee and the employee may be taxed on the "rental value". The facts of each case would need to be considered.

Where an employee is required to travel abroad for business and the employer reimburses the cost of quarantine hotels abroad and in Hong Kong, provided reasonable, the amounts reimbursed would not be subject to salaries tax.

KPMG observations: Employers should consider the tax treatment of expense reimbursements and benefits provided to employees. The IRD's views above highlight how tax treatment may differ depending on how the "benefit" is provided.

Hong Kong certificate of resident status for individuals

The IRD will continue its current practice to issue Hong Kong certificates of resident status (HK CoR) to individuals on a calendar year basis. If individuals encounter difficulties in claiming tax treaty benefits because the HK CoR is not issued on a Hong Kong year of assessment basis, they should notify the IRD. The IRD may assist and consider writing to the relevant tax treaty partner to confirm the period of residence

Deduction of home loan interest – loan taken out by spouse

The HKICPA asked the IRD to confirm its practice on allowing a deduction of home loan interest in the situation where the taxpayer and spouse own their residence as joint tenants, a home loan is taken out by the spouse, and the taxpayer paid a portion of the home loan interest.

The IRD confirmed that its current practice is in line with the Board of Review decision in D9/13 28 IRBRD 288. A deduction should be afforded provided that the taxpayer can prove he/she paid his/her share of the home loan interest. The loan does not need to be taken out by the taxpayer. It is a question of fact whether the taxpayer actually paid home loan interest. The taxpayer bears the burden of proof.

KPMG observations: Taxpayers should maintain records to support the deduction in case of enquiries, e.g., be prepared to explain the amount contributed by the taxpayer and spouse and provide evidence (such as bank transfer / account statements).

E-filing of employer's returns

The HKICPA asked whether the IRD would update the FAQ on their website on concerns about data privacy and information disclosure for employer tax filings submitted under the "Online Mode" where an individual authorized by the employer, would use their own eTAX account to submit the relevant data for employer tax filing. The IRD has since updated the FAQ in this respect, e.g., that there should be no one except the authorised individual privy to the information when filing their personal or employer tax filings, and the individual would not be able to subsequently retrieve employer's returns and data records via their eTAX account.

The IRD also mentioned their plans to provide portal services for different groups of users tentatively in 2025, including Business Tax Portal which would allow the employer or tax representatives to file employer's returns online via their accounts directly.

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