Thinking beyond borders: Management of extended business travelers - Hong Kong (SAR)

July 2024

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Key message

There is no general income tax in Hong Kong (SAR). For income to be subject to tax, it must fall under one of the specific taxation headings, namely: salaries tax, profits tax, or property tax. Hong Kong (SAR) adopts a territorial basis of taxation. A person's residence status is generally not determinative for tax purposes.

1 Key message

Visitors1 who do not exceed 60 days of presence in Hong Kong (SAR) in a year of assessment may be exempt from salaries tax. Extended business who exceed 60 days of presence in a year of assessment may be assessed on employment income derived from services rendered in Hong Kong (SAR) plus the attributable leave only, provided that they hold a non-Hong Kong-located employment.

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Income tax

2 Income Tax

2.1 Liability for income tax

Taxation in Hong Kong (SAR) is territorial. The residence status of an employee is generally not determinative when considering the individual's liability to salaries tax. Hong Kong (SAR) salaries tax is charged on income arising in, or derived from, Hong Kong (SAR) from any office or employment of profit. To determine the extent of salaries tax payable, it is first necessary to determine whether the income is derived from a Hong Kong-located employment or a non-Hong Kong-located employment.

If an individual's employment is fundamentally located in Hong Kong (SAR), all income from the employment will fall within the scope of salaries tax. If an individual's employment is fundamentally located outside Hong Kong (SAR), the liability to salaries tax will be limited to tax on income for services rendered in Hong Kong (SAR), plus the attributable leave. The above does not apply to income derived from the holding of an office (such as fees paid to company directors).

2.2 Definition of Source

The source of employment income is determined by the location of the employment. To determine the location of an employment, the Inland Revenue Department (IRD) will consider all the relevant facts, with particular emphasis on:

- where the contract was negotiated, entered into, and is enforceable, whether in Hong Kong (SAR) or outside Hong Kong (SAR)
- where the employer is resident, whether in Hong Kong (SAR) or outside Hong Kong (SAR)
- where the employee's remuneration is paid to the employee, whether in Hong Kong (SAR) or outside Hong Kong (SAR).

The IRD will look further than the external or superficial features of the employment to determine the location of the employment.

2.3 Tax trigger points for employment income

A full exemption from salaries tax can be claimed where an individual visits Hong Kong (SAR) for not more than 60 days during the year of assessment (1 April to 31 March). This 60-day exemption is available only for income from employment[2] and does not apply to directors' fees.

Hong Kong (SAR) continues extend its network of comprehensive double taxation agreements. If a double taxation agreement is in place, an employee may be able to claim full exemption from salaries tax or tax credit relief under the relevant agreement.

2.4 Types of taxable income

For salaries tax purposes, income from any office or employment includes any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance, whether derived from the employer or others. In addition, certain benefits (such as accommodation benefits, holiday journey benefits, and amounts paid in connection with the education of an employee's child) are specifically taxable under the legislation.

2.5 Tax rates

The highest standard rate of Salaries Tax is currently 16 percent.

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Social Security

3 Social Security

3.1 Liability for social security

Hong Kong (SAR) does not have a social security tax system. However, all employees and self-employed persons over the age of 18 but below 65, normally residing and working in Hong Kong (SAR), are required to join a Mandatory Provident Fund (MPF) scheme. Exemption from the MPF requirements can be claimed where an individual is entering Hong Kong (SAR) for the purpose of being employed or self-employed (i.e., on a valid employment visa) for a limited period (13 months or less) or is a member of an overseas retirement scheme.

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Compliance obligations

4 Compliance obligations

Tax returns are generally due within 1 month of the date of issue.

4.1 Employee compliance obligations

Every taxpayer is required to notify the Commissioner of Inland Revenue that the taxpayer is chargeable for tax no later than 4 months after the end of the year of assessment in which the taxpayer is chargeable unless the taxpayer has already been issued an individual tax return. In general, individual tax returns are issued on the first working day of May following the tax year-end, which is 31 March. Extensions to the filing deadline are at the discretion of the IRD.

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Immigration

5 Immigration

5.1 Work permit/visa requirements

Unless a person has the right of abode or right to land in the HKSAR, an individual requires a visa/entry permit to work, study, establish or join in any business, take up residence or to stay in Hong Kong (SAR) as a visitor longer than the allowed visa free period. The type of visa required will depend on the purpose of the individual's entry into Hong Kong (SAR) (i.e., employment, investment, study, dependent, visitor, training and study visas).

In general, foreign nationals coming to Hong Kong (SAR) for employment should obtain an employment visa. The individual should have a good educational background and proven professional qualifications. In addition, the sponsoring company must demonstrate that there is a genuine job vacancy in Hong Kong (SAR), the job cannot be readily taken up by the local workforce and it is a confirmed offer of employment with the applicant. Accompanying spouses and dependent children under the age of 18 can apply for a dependent visa.

In general, applications are processed by the Hong Kong Immigration Department within 4 to 6 weeks upon receipt of complete information and both the individual and sponsoring company in Hong Kong (SAR) are required to submit supporting documents to apply for an employment visa. Applications can be submitted in person or via mail to the Immigration Department in Hong Kong (SAR) or by visiting the nearest Chinese Diplomatic and Consular Mission in the individual's country/jurisdiction of residence.

5.2 Immigration compliance

Individuals residing in Hong Kong (SAR) on an employment visa are subject to limit of stay in Hong Kong (SAR). Individuals are required to apply for an extension of stay within 4 weeks of the expiration of their limit of stay in Hong Kong (SAR).

5.3 Other Immigration considerations

Under the "One Country Two Systems", Hong Kong (SAR) and Mainland China maintain their own legal systems (including immigration law and policy) independent of each other. As such, separate applications are required to be made directly with the relevant authorities of the mainland China should employees be relocated or be required to visit or work in Mainland China.

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Other issues

6 Other issues

6.1 Double taxation treaties

As of 31 January 2024, Hong Kong (SAR) has entered into double taxation arrangements with 49 countries/territories to mitigate double taxation and allow cooperation between Hong Kong (SAR) and overseas tax authorities in enforcing their respective tax laws.

6.2 Permanent establishment implications

The issue of whether a business is carried on in Hong Kong (SAR) or whether profits are considered to be sourced in Hong Kong (SAR) is a question of fact. Case law has established that very little actual activity needs to be performed in Hong Kong (SAR) for an offshore entity to be regarded as carrying on business in Hong Kong (SAR). Depending on the nature of the particular income concerned, the source of profits is usually ascertained by looking at the operations that produce the profits in question and where those operations take place.

6.3 Indirect taxes

There is currently no value-added tax (VAT), or goods and services tax (GST) levied in Hong Kong (SAR).

6.4 Transfer pricing

On 13 July 2018, the Hong Kong Legislative Council has enacted the transfer pricing ("TP") regulations i.e., Inland Revenue (Amendment) (No. 6) Ordinance 2018 ("TP Ordinance"), which introduces the mandatory TP regime in Hong Kong (SAR). The enactment of transfer pricing legislation in Hong Kong (SAR) mandates taxpayers to follow the arm's length principal and prepare the three-tiered approach to transfer pricing documentation, which consists of Country-by-Country Return ("CbCR"), Master File and Local File reports. The requirements and information to be included in these transfer pricing documentations are in line with the Organization for Economic Co-operation and Development Guidelines.

1. The Arm's Length Principle

The TP Ordinance mandates implementation of the arm's length principle as the fundamental transfer pricing rule in Hong Kong (SAR). This empowers the IRD to adjust profits or losses where a transaction between two related parties departs from the transaction that would have been entered into between independent persons, in cases in which this has created a tax advantage.

Domestic related party transactions can be exempted if certain conditions are met.

2. Documentation Requirements

Hong Kong (SAR) entities shall be required to prepare Master File and Local File for accounting periods beginning on or after 1 April 2018 when both tests below are met.

1. Business size test meeting any two of the following	2. RPT* size test meeting any one of the following
• Total annual revenue exceeding 400M Hong Kong dollars (HKD) • Total value of asset exceeding HKD300M • Average number of employees exceeding HKD100M	• Annual amount of buy-sell transactions of tangible goods exceeding HKD220M • Annual amount of transaction in respect of financial assets** / transfer of intangible assets exceeding HKD110M • Annual amount of other transactions exceeding HKD44M * Domestic transactions can be excluded if conditions are met ** For the case of intra-group borrowing, the related party transaction amount include the amount of drawdown of principal (i.e. the making of the loan) and the accrued interest amount during the year.

Groups whose annual consolidated revenue exceeds HKD6.8B will be required to file CbCR3 for accounting periods beginning on or after 1 January 2018.

3. Intangibles - Deeming Provision

Section 15F aims to impose tax on Hong Kong (SAR) taxpayers if they ever carried out value creation activities such as development, enhancement, maintenance, protection or exploitation (DEMPE) functions in Hong Kong (SAR) that contributed to any intellectual property (IP) held by an overseas related party.

6.5 Local data privacy requirements

Hong Kong (SAR) has data protection laws.

6.6 Exchange control

There are currently no foreign exchange controls on fund transfers.

6.7 Non-deductible costs for assignees

In general, a corporate deduction for expenses is allowed to the extent to which the expenses are incurred and related to profits assessable in Hong Kong (SAR). A deduction is only available for expenses that are related to revenue.

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Footnotes

[1] This exemption is applicable to employees only. It does not apply to individuals who hold an office in a Hong Kong (SAR)-resident company.

[2] For aircrews/shipping crews, the test is slightly modified to consider both the current year of assessment and 2 consecutive years of assessment (one of which is the current year of assessment).

[3] Exemption applies to file a CbCR when the ultimate parent of the reportable group is not a Hong Kong (SAR) tax resident and either the CbCR for the relevant period has been filed by another Hong Kong (SAR) entity of the group; or it is filed by the group's surrogate parent entity in another tax jurisdiction which has adequate information exchange mechanisms in place with Hong Kong (SAR).

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