

Press release

LCQ6: Assistance provided to Hong Kong businessmen engaged in business on the Mainland

Wednesday, October 21, 2009

Following is a question by the Hon Andrew Leung and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (October 21):

Question:

Regarding the assistance provided to Hong Kong businessmen engaged in business on the Mainland, will the Government inform this Council:

- (a) whether it has collected statistics on the number of cases of Hong Kong businessmen on the Mainland seeking assistance from the offices of the Hong Kong Special Administrative Region on the Mainland, the Financial Services and the Treasury Bureau and the Commerce and Economic Development Bureau in the past three years; if it has, of a breakdown of such cases by the issues (including the "avoidance of double taxation") involved;
- (b) what support services were given by the Government to the Hong Kong businessmen on the Mainland in the cases in (a) which involved "Arrangement for the Avoidance of Double Taxation"; and
- (c) given that, in accordance with a document entitled "Letter related to investigating the charging of Enterprises Income Tax on the provision of service by foreign institutions to domestic enterprises through deployment of the former's personnel" issued by the State Administration of Taxation on July 2 this year, a foreign enterprise, in deploying non-Mainland residents, including Hong Kong permanent residents, to the Mainland to provide service or take up management positions in its mainland subsidiaries, may be regarded as a "permanent establishment" and will thus be subject to Business Tax and Enterprises Income Tax, whether the Government has come across relevant cases of Hong Kong businessmen seeking assistance or making enquiries, and taken the initiative to understand from the mainland authorities the contents of the document and details of enforcement, as well as assessed the impact of the relevant arrangement on Hong Kong enterprises?

Reply:

President,

(a) & (b) In 2007, 2008 and the first nine months of 2009, the Financial Services and the Treasury Bureau did not receive any case of Hong Kong businessmen on the Mainland seeking assistance. During the same period, the Economic and Trade Offices of the Hong Kong Special Administrative Region in the Mainland and the Commerce and Economic Development Bureau received a total of 907 cases of Hong Kong citizens/businessmen requesting assistance. None of the cases was related to avoidance of double taxation. Statistics with a breakdown by the nature of the cases are at Annex.

(c) We are aware that the State Administration of Taxation issued the said document in July this year. The Administration has so far not received any case of Hong Kong businessmen seeking assistance or making enquiries in relation to the document. The Hong Kong Economic and Trade Office in Guangdong has written to the Guangdong Provincial Office of the State Administration of Taxation to better understand the latest position of the relevant policy.

According to the arrangement for avoidance of double taxation between the Mainland and Hong Kong, a Hong Kong enterprise may be regarded as having a "permanent establishment" if it has a fixed place of business in the Mainland, or deploys its employees to the Mainland to provide service or take up management positions in its Mainland subsidiaries for longer than 183 days in any 12 months on a consecutive or accumulative basis. If Hong Kong businessmen consider that the Mainland tax authorities have not handled their cases in accordance with our arrangement for avoidance of double taxation with the Mainland, they may lodge their cases with the Inland Revenue Department.

Ends