

## **Press release**

### **LCQ6: Arrangement for avoidance of double taxation**

Wednesday, January 20, 2010

Following is a question by Dr Hon Lam Tai-fai and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (January 20):

Question:

According to 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 (Arrangement) signed by the authorities of the Mainland and Hong Kong on August 21, 2006, starting from January and April 2007 respectively, one of the conditions for Mainland and Hong Kong residents to be exempted from local taxes with respect to remuneration derived from cross-boundary employment is that they are present in the place concerned for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned. In this connection, will the Government inform this Council:

(a) whether it knows the respective numbers, since the implementation of the Arrangement, of mainland and Hong Kong residents required to pay local taxes because of their cross-boundary employment and presence exceeding 183 days in any 12-month period, and the respective total amounts of taxes involved;

(b) whether the Inland Revenue Department has recovered taxes from mainland residents who were employed and present in Hong Kong for more than 183 days in any 12-month period; if it has, of the number of cases and the total amount of taxes involved; if not, the reasons for that; and

(c) on what principle the authorities concerned have based in setting the upper limit of presence at 183 days with respect to the aforesaid condition for tax exemption; whether it will negotiate with the mainland authorities concerned to raise the upper limit, so as to dovetail with the "one-hour quality living sphere" programme, as well as to strengthen and enhance economic integration between Hong Kong and Guangdong; if it will, of the details; if not, the justifications for that?

Reply:

President,

(a) & (b) For parts (a) and (b) of the question, Hong Kong adopts the territorial taxation principle under which whether a taxpayer is a Hong Kong resident or not would not affect his chargeability to tax in Hong Kong. Therefore, the Inland Revenue Department does not have any record on the number of Mainland residents who have paid tax in Hong Kong for working in Hong Kong for more than 183 days in a 12-month period and the total amount of tax involved. Besides, as the Mainland is not within our tax jurisdiction, we do not have any information on the number of Hong Kong residents who have paid tax in the Mainland for working in the Mainland for more than 183 days in a 12-month period and the total amount of tax involved.

(c) For part (c) of the question, the main purpose of an avoidance of double taxation agreement (CDTA) is to clarify the taxing rights of the treaty partners. For the allocation of taxing rights on income of cross-boundary employees, the practice among tax jurisdictions is to adopt the "183 days in a 12-month period" threshold. Both the model tax conventions of the Organisation for Economic Co-operation and Development and the United Nations adopt this threshold. This 183-day standard is also adopted in the CDTAs between some places and countries having close economic relationship with each other (e.g. the Mainland and the Macao Special Administrative Region, Singapore and Malaysia, and the United States and Canada) for allocation of taxing rights.

We have conveyed to the Mainland the views of some members of the trade that the existing 183-day threshold should be relaxed. The relevant Mainland authority was of the view that this standard has worked well all along and complies with different model agreements for avoidance of double taxation. They see no sufficient justifications for changing the standard at this stage.

Thank you, President.

Ends