

Press release

LCQ4: Avoidance of double taxation

Wednesday, February 8, 2012

Following is a question by the Hon Miriam Lau and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (February 8):

Question:

Since the signing 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" (the Arrangement) by the Mainland and Hong Kong on August 21, 2006, quite a number of Hong Kong residents who work and stay on the Mainland for more than 183 days during a year of assessment, though having paid their income tax on the Mainland, have to pay taxes in Hong Kong as they also stay for more than 60 days and exercise employment in Hong Kong, thereby suffer under double taxation. In this connection, will the Government inform this Council:

- (a) whether it knows the respective numbers of Hong Kong residents on the Mainland working inside and outside the Pearl River Delta region each year since the Arrangement was signed in 2006, and their average number of working days on the Mainland each year;
- (b) whether it has compiled statistics on the current number of Hong Kong people who have to pay taxes both on the Mainland and in Hong Kong for the same year of assessment and the industries to which they belong; if it has, of the details; if not, whether it will conduct relevant surveys; and
- (c) since the signing of the Arrangement, whether the SAR Government and the mainland authorities have discussed simplifying the method of calculating the 183 days for improvement (eg excluding non-working days, weekends and public holidays of the Mainland from the length of stay); if they have, of the outcome of such discussion; if not, the reasons for that; whether the SAR Government will take the initiative to put forward any proposal for simplification?

Reply:

President,

My reply to the three parts of the question is set out below.

(a) The Census and Statistics Department (C&SD) conducts surveys on the topic of "Hong Kong residents working in the mainland of China" from time to time. Since the signing 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 in 2006, according to the surveys conducted by C&SD during the period of July to September in 2008, 2009 and 2010 respectively, some 218,200, 196,500 and 175,100 Hong Kong residents had worked in the Mainland during the 12 months before enumeration in the three years respectively. Almost 90% of them (ie 191,600 in 2008, 170,500 in 2009 and 155,700 in 2010) usually worked in the Guangdong Province while working in the Mainland. Shenzhen and Dongguan were the most commonly cited usual places of work within the Guangdong Province.

Taking the survey conducted in July to September in 2010 as an example, most of the above persons were engaged in the manufacturing sector and import/export trade and wholesale sector. Overall, for these persons, the median frequency of travel to work in the Mainland during the 12 months before enumeration was 48 times, and the median of their average duration of each stay in the Mainland was five days.

(b) The Inland Revenue Department (IRD) has started to collect information since 2009 on the number of claims made by taxpayers who rendered services outside Hong Kong (including the Mainland) and have paid tax there which is similar to the Hong Kong Salaries Tax for exemption of income from Hong Kong Salaries Tax under section 8(1A)(c) of the Inland Revenue Ordinance. The numbers of claims for 2009-10 and 2010-11 are 6,243 and 10,731 respectively. There is no further breakdown into the industries and locations involved.

(c) The 183-day threshold is used to determine a person's tax liabilities in the other contracting party. For the purpose of computing the 183-day period, both IRD and the State Administration of Taxation (SAT) follow the international norm by adopting the "days of physical presence" method. This method is not complicated. A day during any part of which, however brief, the taxpayer is present in a tax jurisdiction will count as a day of presence in that jurisdiction.

The above interpretation is the international standard commonly adopted by other tax jurisdictions. It is also consistent with the standard used by the Hong Kong Board of Review in determining the tax liabilities of a person.

In response to views expressed by members of the trade, IRD has raised with SAT the suggestion of relaxing the 183-day threshold. After discussions, both parties consider that the 183-day threshold should not be changed as it is an international standard which has been effectively applied. It has also taken into account and balanced the tax interests of the resident and the source jurisdictions.

Ends