

Press release

LCQ14: Arrangement for avoidance of double taxation

Wednesday, February 3, 2010

Following is a question by Dr Hon Lam Tai-fai and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (February 3):

Question:

At the meeting of this Council on January 20 of this year, I raised an oral question regarding 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. In connection with the reply given by the Secretary for Financial Services and the Treasury, will the Government inform this Council:

- (a) whether it will request the Inland Revenue Department (IRD) to record the annual number of Hong Kong residents who have to pay tax on the Mainland because they have worked on the Mainland for more than 183 days in any 12-month period and have applied to IRD for tax exemption in Hong Kong; if it will, when it will commence the work; if not, the reasons for that;
- (b) of the number of times the authorities have conveyed to the mainland authorities concerned since the implementation of the Arrangement the views of members of the trade in Hong Kong that the 183-day threshold should be relaxed, as well as the contents of the views, the name of the mainland authorities and the dates of meetings between the two parties;
- (c) given that the mainland authorities concerned are of the view that the 183-day threshold has worked well all along and they see no sufficient justifications for changing it at present, whether it knows the details of "sufficient justifications"; if not, whether it will request the mainland authorities concerned to give further explanation;

(d) whether it knows if the 183-day threshold is also adopted in the agreements on avoidance of double taxation signed among the member states of the European Union for allocation of taxing rights; if it does, of the titles of such agreements; if not, the reasons for that;

(e) since the implementation of the Arrangement:

(i) whether any mainland resident employed in Hong Kong and was present in Hong Kong for more than 183 days in any 12-month period has informed IRD of his inability to pay tax or the need to apply for deferring tax payment; if so, of the respective numbers of cases involved, reasons for their inability to pay tax, total amount of taxes involved in each case and the amount of taxes in default; and

(ii) whether any Hong Kong resident employed on the Mainland and was present on the Mainland for more than 183 days in any 12-month period has informed IRD or the offices of the HKSAR Government on the Mainland of his inability to pay tax on the Mainland; if so, of the respective numbers of cases involved, reasons for their inability to pay tax, total amount of taxes involved in each case and the amount of taxes in default;

(f) whether there is any measure or mechanism in place to assist the Hong Kong residents in (e)(ii) to apply to the mainland authorities concerned for deferring tax payment and to appeal to the mainland authorities concerned against the assessed amount of tax;

(g) whether it has assessed the respective numbers of Hong Kong residents who will be present on the Mainland for more than 183 days each year after the implementation/commissioning of the "one-hour quality living sphere" programme, Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link and Hong Kong-Zhuhai-Macao Bridge; if it has, of the details; if not, the reasons for that;

(h) how the authorities at present establish through the immigration records that the presence of Hong Kong residents on the Mainland is for work, so as to determine whether such persons are working on the Mainland for more than 183 days;

(i) whether it has assessed if the 183-day threshold will hamper the aspirations of Hong Kong residents to conduct business, work or reside on the Mainland, and whether it is contradictory to the original intention of the Hong Kong-Guangdong economic integration policy; if it has, of the details; if not, the reasons for that;

(j) of the total number of submissions requesting for the relaxation of the 183-day threshold received by the authorities since the implementation of the Arrangement, and of the number of days for the relaxed threshold suggested in most of these submissions;

(k) whether it will conduct a territory-wide survey of members of the various trades on the implementation of the Arrangement, so that it can obtain and put forward sufficient justifications to request the mainland authorities concerned to relax the existing 183-day threshold; if it will, when such a survey will be conducted; if not, the reasons for that;

(l) whether it has assessed the impact of relaxing the existing 183-day threshold to at least 260 days, or even removing such a threshold, on the tax revenue and economic development of the Mainland and Hong Kong; if it has, of the details; if not, whether it will consider making such an assessment; and

(m) whether it has assessed if the 183-day threshold has been enforced effectively since the implementation of the Arrangement; if the assessment result is in the affirmative, of the details; if the assessment result is in the negative, the reasons for that, and whether it will propose to the mainland authorities concerned removing the 183-day threshold?

Reply:

President,

(a) In implementing agreements for avoidance of double taxation, it is most important for the Inland Revenue Department (IRD) to ensure that taxpayers enjoy the tax treatment they are entitled to in accordance with the relevant arrangement. It is not necessary for the IRD to keep specific statistics or records of various types of tax matters of different taxpayers, if such information does not affect tax collection.

(b) Noting the proposal from the business sector to relax the 183-day threshold, the IRD reflected this view to the State Administration of Taxation (SAT) in October 2009.

(c) Hong Kong residents working in the Mainland would have to pay Mainland tax, as would Mainland residents or residents of other countries or places. Hong Kong residents are not subject to any unfair treatment on this aspect. The 183-day threshold was adopted in all tax agreements the Mainland has entered into and also in those tax agreements signed by other tax jurisdictions between each other. The Mainland authority therefore considers that there are no sufficient justifications to change this threshold.

(d) As far as we understand, all comprehensive avoidance of double taxation agreements signed by European Union countries between each other (such as the agreements signed by Belgium, France, Germany, Netherlands, Spain and the United Kingdom between each other) adopt the 183-day threshold.

(e)

(i) IRD does not keep separate records of default cases or holdover applications involving Mainland residents.

(ii) Since the implementation of the Arrangement, neither the IRD nor any of the Mainland offices of the HKSAR Government has received any request for help from Hong Kong residents concerning inability to pay tax in the Mainland.

(f) If a Hong Kong resident considers that the Mainland tax authority has not been taxing him in accordance with the Arrangement, he may present his case to the IRD. If necessary, the IRD may invoke the mutual agreement procedures to resolve the double taxation issue. For Mainland tax issues other than double taxation, taxpayers would have to discuss with the relevant Mainland authority directly. The IRD cannot interfere with Mainland tax matters.

(g) and (l) The purpose of the 183-day threshold under the Arrangement is to provide a fair and certain basis for allocating taxing rights between the Mainland and Hong Kong. As far as this purpose is concerned, we do not consider it necessary to carry out the assessments mentioned in the questions.

(h) A Hong Kong resident departing from Hong Kong does not need to declare to the Immigration Department the purpose of his departure, his destination or the period of stay. Whether a person is present in the Mainland for more than 183 days and thus is required to pay Mainland tax should be determined by the Mainland authority rather than the HKSAR Government.

(i) Before the Arrangement was in place, a Hong Kong resident might be taxed by the Mainland authority as long as he worked in the Mainland for over 90 days. The 183-day threshold under the current Arrangement is already a major relaxation of the time limit, and should no doubt be conducive to the further integration and economic development of the two economies.

(j) We have so far received two suggestions proposing to relax the threshold to 260 and 270 days respectively. Individual business associations have raised similar proposals on various occasions, but we have not kept specific records of them.

(k) The IRD and the SAT meet annually to discuss the implementation details of the Arrangement. Before the meeting, the IRD will collect views from stakeholders, (including accounting and tax professionals and representatives of business associations). The current mechanism is working well, and we do not see the need for a territory-wide survey.

(m) The 183-day threshold is a simple and clear rule widely and effectively implemented internationally. There has not been any implementation problem. We have raised with the Mainland authority the proposal of the business sector to relax this threshold. However, a total removal of the 183-day threshold (i.e. Hong Kong residents would not have to pay Mainland tax no matter how long they have worked there) is not reasonable.

Ends