

Press release

LCQ11: Arrangement for avoidance of double taxation

Wednesday, February 24, 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 24):

Question:

At the meeting of this Council on February 3 of this year, I raised a written 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) given that the Inland Revenue Department (IRD) relayed to the State Administration of Taxation (SAT) the proposal of the trade to relax the 183-day threshold only in October 2009, whether the authorities will relay the proposal of the trade to the SAT again within this year; if they will, of the specific arrangement; if not, the reasons for that;

(b) given that quite a number of members of the trade have relayed to me that, with the Hong Kong Special Administrative Region coming directly under the Central People's Government and the close connection between the two places, the Mainland's relation with Hong Kong in areas of politics, economy and geographical location, etc. is different from that with other tax jurisdictions, and therefore it is not necessary to adopt across the board the 183-day threshold, whether the Hong Kong SAR Government will relay the view of the trade to the mainland authorities; if it will, of the details; if not, the reasons for that;

(c) why the authorities allow IRD not to record the numbers of default cases or holdover applications involving mainland residents; whether Hong Kong's revenue from salaries tax will decrease because IRD does not record the number of such cases; if it will not, of the reasons for that;

(d) whether the Government has assessed the amount of salaries tax forgone each year as a result of the 183-day threshold, and whether this will have an impact on the operation of the existing Mandatory Provident Fund;

(e) given that the Government said in its reply that Hong Kong residents may present their cases to IRD if they consider that the way the mainland tax authority has taxed them is not in accordance with the Arrangement and, if necessary, IRD may invoke the mutual agreement procedures, of the details of the mutual agreement procedures; whether the Government has conducted any publicity to enable the public to know the details of such procedures; whether Hong Kong residents have requested IRD to invoke the mutual agreement procedures to resolve the double taxation issue since the implementation of the Arrangement; if they have, of the details; if not, the reasons for that;

(f) how the authorities at present ascertain if mainland residents are staying in Hong Kong for work, so as to determine whether such persons have worked in Hong Kong for more than 183 days and therefore are subject to salaries tax;

(g) whether it has collected data in the past three years to reflect how the 183-day threshold under the Arrangement is conducive to the integration and economic development between the two places; if it has, of the details; if not, the reasons for that;

(h) whether it has assessed if the relaxation of the threshold concerned under the Arrangement to 183 days is already sufficient to facilitate integration and economic development between the two places; if it has, of the details; if not, the reasons for that;

(i) whether it has assessed how the 183-day threshold will affect the income and patronage of the Guangzhou-Shenzhen-Hong Kong Express Rail Link upon its commissioning;

(j) given that the Government said in its reply that it had received two suggestions proposing to relax the threshold to 260 and 270 days respectively, of the name of the persons or organisations who made these two proposals; why the Government did not keep records of similar proposals made by individual business associations, and when it will start keeping records; and

(k) of the detailed justifications for the Government's view that a total removal of the 183-day threshold is not reasonable?

Reply:

President,

(a) and (b) The Inland Revenue Department (IRD) of Hong Kong and the State Administration of Taxation (SAT) meet annually to discuss the implementation of the Arrangement. The IRD will relay to the SAT specific suggestions from the trade concerning the relaxation of the 183-day threshold or other issues relating to the implementation of the Arrangement.

(c) The IRD deals with default cases or holdover applications impartially, regardless of taxpayers' nationalities. As such, there is no need to keep separate records by reference to the different nationalities of taxpayers.

(d) 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. Therefore, there is no tax foregone for Hong Kong as a result of this threshold. Moreover, the length of stay of Hong Kong employees in places outside Hong Kong and whether they pay taxes in Hong Kong will not affect the operation of the Mandatory Provident Fund.

(e) If a Hong Kong taxpayer wants to invoke the mutual agreement procedure under the Arrangement, he may present his case to the IRD. Details of the mutual agreement procedure can be found in the Departmental Interpretation and Practice Notes No. 44 (Revised) issued by the IRD in August 2008, which could be downloaded from the IRD website. The IRD has not received any such application since the implementation of the Arrangement.

(f) In determining whether a Mainland resident is exercising employment in Hong Kong, the IRD will take into account all relevant facts, including the person's actual activities in Hong Kong, his employment contract and information from his employer or related enterprise. If it is confirmed that the person has stayed in Hong Kong for more than 183 days for work, the IRD may tax him regardless whether he has actually spent every day working during the period.

(g), (h) and (i) As mentioned in my reply on February 3 this year to Dr the Hon Lam Tai-fai's written question, the purpose of the 183-day threshold 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.

(j) According to our record, apart from Dr Hon Lam Tai-fai, the Hon Andrew Leung also suggested to the Government at a Legislative Council meeting the relaxation of the 183-day threshold. Individual members of business associations have made similar suggestions during discussions with the Administration on various occasions. As a wide range of suggestions are received through these channels, we are unable to compile statistics on different proposals. The Administration pays close attention to all public views regarding tax policy, and will consider these views carefully.

(k) Hong Kong adopts a territorial principle of taxation, and thus does not impose taxes according to residency. If the 183-day threshold were lifted, those Hong Kong residents working in the Mainland on a long-term basis would not have to pay tax in either jurisdiction. Such double non-taxation is unreasonable.

Ends