

## **Press Release**

### **LCQ9: Taxation issues**

Thursday, November 20, 2014

Following is a question by the Hon Sin Chung-kai and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (November 20):

Question:

The incumbent Chief Executive (CE) announced his resignation from DTZ in November 2011. It has recently been reported by some Australian media that in December of the same year, CE signed an agreement with UGL Limited (UGL), which was then planning to acquire DTZ, undertaking not to poach employees from or compete with DTZ as well as to act as a referee and adviser to UGL, within two years after the acquisition was completed. Under the aforesaid agreement, CE received a remuneration of £4 million in total in 2012 and 2013. In addition, according to that agreement, CE may sell at any time his shares in DTZ Japan (the Japanese branch of DTZ) to UGL fetching at least £200,000. At the meeting of this Council held on the 6th of this month, the Acting Chief Secretary for Administration cited the professional advice of a certified public accountant (practising) that according to relevant requirements under the Inland Revenue Ordinance (Cap. 112), salaries tax was applicable to income arising in or derived from Hong Kong from an office, employment and any pension only, and CE was therefore not required to pay salaries tax for the payments he received from UGL. Nevertheless, some members of the public have pointed out that the aforesaid agreement involves the provision of services and has to be carried out in Hong Kong. As such, they have queried why CE was not required to pay tax for the payments concerned. In this connection, will the Government inform this Council if it has assessed:

(1) whether the remunerations receivable by a Hong Kong resident under an agreement entered with an overseas company, under which he undertakes to act as a referee and adviser to that company, shall be deemed "income arising in or derived from Hong Kong" from an "employment of profit", and hence shall be subject to salaries tax assessment; if the assessment outcome is in the negative, of the justifications for that; if the assessment outcome is in the affirmative, whether the full amount or just part of the remunerations concerned shall be

deemed assessable income; and

(2) whether, in accordance with Cap. 112, a Hong Kong resident is required to pay tax for the profits earned from the sale of the shares of an overseas company; if the assessment outcome is in the negative, of the reasons for that?

Reply:

President,

My consolidated reply to the Hon Sin Chung-kai's question is as follows:

In accordance with the requirements under section 8 of the Inland Revenue Ordinance (Cap. 112) (IRO), salaries tax is chargeable on every person in respect of his income from any office or employment or any pension arising in or derived from Hong Kong. In assessing whether an income is chargeable to tax, the assessor has to consider all details of each individual case including the territorial source of the employment and the nature of the income concerned. Generally speaking, salaries, wages and director's fees, commissions, bonuses and leave pay are chargeable income. As regards other types of income, their chargeability to tax can only be assessed on the basis of the facts involved. The assessor has to examine all details of the case before making the assessment.

As to whether profits earned from the sale of the shares of an overseas company are chargeable to tax, all relevant facts of each individual case, including the locality and nature of the profits concerned, have to be examined before an assessment can be made. Since Hong Kong adopts a territorial source principle of taxation and does not charge capital gains tax, generally speaking, if the profits concerned are sourced from Hong Kong and are of revenue nature, such profits are chargeable to tax. However, if the profits concerned are not sourced from Hong Kong or if the profits are of capital nature, they are not subject to tax. The assessor has to ascertain the locality and nature of the profits on the basis of relevant facts in deciding whether tax should be charged on the individuals concerned.

Given the official secrecy provision under section 4 of the IRO, the Inland Revenue Department will not comment or disclose any further

information on individual cases.

Ends