



Arrangement between the Mainland of China and the HKSAR for Avoidance of Double Taxation

**A GUIDE FOR HONG KONG RESIDENTS
WORKING ACROSS THE MAINLAND BORDER**

Introduction

1. This booklet discusses tax issues that may concern a Hong Kong resident exercising employment both in Hong Kong and in the Mainland of China. The explanations concerning Mainland tax treatment mentioned in the Guide have been endorsed by the International Taxation Department of the State Administration of Taxation of China.



Inland Revenue Department
Hong Kong Special Administrative Region
of the People's Republic of China

Allocation of the Right to Tax

- On 11 February 1998, Hong Kong and the Mainland signed "The Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income" ("the Arrangement") to allocate the right to tax between the two jurisdictions on a reasonable basis to avoid double taxation of income.
- Details of the Arrangement are contained in Departmental Interpretation and Practice Notes No. 32, which may be viewed on the website of the Inland Revenue Department (IRD) (www.info.gov.hk/ird). The Practice Note includes the full text of the Arrangement and details of how IRD interprets its provisions. You may also refer to another booklet "Arrangement between the Mainland of China and the HKSAR for Avoidance of Double Taxation: Guide for Personal Services" on the website. For further enquiries, please call the IRD on 2594 5400.

Hong Kong Resident

- An individual is generally considered to be a Hong Kong resident if he is liable to tax in Hong Kong and is:
 - of or above the age of 18 years, or under that age if both his parents are deceased; and
 - a permanent or temporary resident.
- In this regard, a "permanent resident" means an individual who ordinarily resides in Hong Kong. A "temporary resident" means an individual who stays in Hong Kong for a period or periods amounting to more than 180 days in the year of assessment or for a period or periods amounting to more than 300 days in 2 consecutive years of assessment (one of which is the year of assessment in respect of which the claim is made). Generally an individual "ordinarily resides" in Hong Kong if he has a permanent home in Hong Kong where he or his family lives.

Individual regarded as a Resident of both the Mainland and Hong Kong

- Where an individual is regarded as a resident of both sides (i.e. of the Mainland and Hong Kong), his resident status for tax purposes is determined in accordance with the rules set out in the Arrangement:

- he shall be regarded as a resident of the Side on which he has a permanent home available to him; if he has a permanent home available to him on both Sides, he shall be regarded as a resident of the Side with which his personal and economic relations are closer ('centre of vital interests');
 - if it is not possible to determine his centre of vital interests, or if he does not have a permanent home available on either Side, he shall be regarded as a resident of the Side on which he has an habitual abode;
 - if he has an habitual abode on both Sides or on neither of them, the competent authorities of the two Sides shall settle the question by consultation.
- A Hong Kong resident who is regarded as a Mainland resident under the Mainland laws, but at the same time qualifies as a Hong Kong resident by virtue of the above rules, may enjoy the benefits of the Arrangement in the Mainland.

Hong Kong Salaries Tax

- If a Hong Kong resident working across the Mainland border has a Hong Kong employment, all his income derived from the employment will be chargeable to Salaries Tax, even though part of his duties are performed in the Mainland. However, if his duties are performed in the Mainland only (i.e. no services are rendered in Hong Kong), his income will be wholly exempt from Hong Kong Salaries Tax (unless the individual is a civil servant, or a crew member of a ship or an aircraft).
- If a Hong Kong resident working across the Mainland border has a Mainland employment or an overseas employment, only the income attributable to his services rendered in Hong Kong will be chargeable to Hong Kong Salaries Tax.
- If a Hong Kong resident working across the Mainland border renders services in Hong Kong, but his trips to Hong Kong only constitute "visits" not exceeding a total of 60 days during the year of assessment, he is not chargeable to Salaries Tax in Hong Kong. The nature of a trip made by a Hong Kong resident is "visit" or not depends on the circumstances of each case. In general, if a person has a work base in the Mainland and is required to render services there as a permanent

employee, the person's occasional return to Hong Kong will be recognized as a "visit".

11. If a Hong Kong resident returns to Hong Kong for over 60 days in a year of assessment, e.g. 160 days, and renders services whilst in Hong Kong, such as attending conferences and reporting work progress, he will be subject to Salaries Tax in Hong Kong according to either paragraph 8 or 9 above.

Mainland Individual Income Tax

12. The income attributable to services rendered by a Hong Kong resident in the Mainland is chargeable to Individual Income Tax in the Mainland. However, it will be exempt from the Mainland Tax if the following three conditions are satisfied.
- (i) the Hong Kong resident stays in the Mainland for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
 - (ii) the income is paid by, or on behalf of, an employer who is not a resident of the Mainland; and
 - (iii) the income is not borne by a permanent establishment or a fixed base which the employer has in the Mainland.

Directors' Fees

13. The above tax treatment for income from employment does not apply to directors' fees. Under the Arrangement, the duty to pay tax on directors' fees derived by a Hong Kong resident in his capacity as a member of the board of directors of a company depends on whether the company is a resident of the Mainland or Hong Kong. If the directors' fees are received from a company resident in Hong Kong, they are wholly chargeable to Hong Kong Salaries Tax. Likewise, directors' fees received from a company resident in the Mainland are wholly chargeable to Mainland Individual Income Tax.

Computation of Tax

Tax liabilities in Hong Kong

14. If a Hong Kong resident provides services both in the Mainland and in Hong Kong,
- the income derived from his Hong Kong employment will be wholly assessable irrespective of whether it has

been paid by the Hong Kong employer or a Mainland enterprise. However, if the Hong Kong resident has paid Individual Income Tax in respect of the income attributable to services rendered by him in the Mainland, he may apply for tax exemption for that part of income under the Inland Revenue Ordinance or for a tax credit under the Arrangement. Application may be made on his tax return and supported with evidence of the Mainland tax payment. In general, tax exemption provides greater tax relief than would be provided by tax credit;

- the income derived from his non-Hong Kong employment will be assessed according to the number of days in Hong Kong irrespective of whether it has been paid by the overseas employer or a Mainland enterprise, provided that his visits to Hong Kong exceed 60 days and during which he renders services.

Tax liabilities in the Mainland

15. If a Hong Kong resident under his employment renders services in the Mainland only and services are not rendered whilst in Hong Kong, all his income from that employment will be regarded as attributable to services rendered in the Mainland. Such income is wholly chargeable to Mainland tax, irrespective of whether it is paid by a Mainland enterprise or an overseas employer (including Hong Kong employer) unless he satisfies the three conditions mentioned in paragraph 12.
16. If a Hong Kong resident under his employment renders services both in the Mainland and in Hong Kong, his Mainland tax liabilities will be determined as follows:

Aggregated periods of stay not exceeding 183 days

- Income paid or borne by the Mainland entity will be chargeable to Individual Income Tax. Tax will be calculated on the chargeable income and then apportioned on time basis. Income paid by an overseas employer (including Hong Kong employer) is not chargeable.

Aggregated periods of stay exceeding 183 days

- The total income received from the Mainland entity and the overseas employer (including Hong Kong employer) will be chargeable to Individual Income Tax. Tax will be calculated on the total income and then apportioned on time basis.

The principle for counting the period of stay

The period of stay in determining the taxing right

17. Both the Mainland and Hong Kong tax authorities calculate the period of stay on a calendar year basis, i.e., the number of days of stay from 1 January to 31 December each year.
18. In deciding whether the aggregated periods of stay exceeds 183 days, the "days of presence" are counted. In this regard a "day" includes any day on which a Hong Kong resident is physically present in the Mainland, (i.e. including the day of arrival and the day of departure and days on weekends and public holidays).

The period of stay in calculating tax liabilities

19. For tax computation purposes, the aggregated periods of stay in a year of assessment is the aggregate of the days in each period of stay where the number of days is counted under the rule of the "days of presence" minus one day.
20. The Mainland and Hong Kong are geographically so close to each other that a taxpayer can provide service on both Sides on the same day. As such, it is not appropriate to apply the rule of the "days of presence" minus one day. However, serious double taxation problems could arise if both Sides apply the rule of the "days of presence". To address such cases, the practice of the IRD is to count any day where services are rendered both in the Mainland and in Hong Kong as only half a day ("half-day rule"). Taxpayers are required to provide sufficient information and evidence to establish that services were rendered in the manner described. If a Hong Kong resident is not accorded similar treatment in the Mainland, he may raise the issue with the Mainland tax authority and subsequently may ask the IRD in Hong Kong to deal with the problem through mutual consultation, if necessary.

Tax System and the Filing of Tax Return

The Hong Kong System

21. Salaries Tax is directly levied on a taxpayer.

22. Employers do not deduct tax from their employees' salaries upon payment, but they are required to file with the IRD payroll information within the timeframes specified in the Inland Revenue Ordinance.
23. A salaries taxpayer has to report his assessable incomes in his annual tax return. Any application for tax exemption on all or part of the income or a claim for tax credit should be made in his tax return and accompanied by supporting documents. For example, if a taxpayer who has paid Mainland Individual Income Tax intends to apply for tax exemption on the income, he has to submit, together with his Hong Kong tax return, evidence of tax payment, such as his Mainland Individual Income Tax Return and tax receipts.
24. A person chargeable to Salaries Tax is required to notify the Commissioner of Inland Revenue, Hong Kong, in writing of the fact, unless a tax return has already been issued to the person, not later than 4 months after the end of the year of assessment concerned.

The Mainland System

25. Generally, Mainland Individual Income Tax is collected by means of withholding. An individual is required to file a personal return if his income is not subject to withholding.
26. The following persons (tax withholding agents) are required to deduct Individual Income Tax when payments, which are taxable in the hands of the recipients, are made:
- (i) Mainland companies or individuals in respect of salaries paid in the Mainland;
 - (ii) Related Mainland companies in respect of salaries paid outside Mainland;
 - (iii) Foreign companies with permanent establishment or fixed base in the Mainland in respect of salaries paid to their employees by them or by their related companies.

The tax withholding agents are required to pay the tax deducted and file the Individual Income Tax Returns on behalf of the individual recipients within statutory time limits.

27. If a taxpayer receives income chargeable to Mainland Individual Income Tax on a gross basis, that is, without the tax having been deducted, he should report his income and pay the tax to the Mainland tax authority.

Disputes in Tax

28. A Hong Kong resident who wishes to dispute an assessment in Hong Kong may, by notice in writing to the Commissioner of Inland Revenue, Hong Kong, object to the assessment within one month after the date of the notice of assessment.
29. Where a Hong Kong resident considers that the Mainland tax imposed is not in line with the Arrangement, he should raise the issue with the relevant Mainland tax authority within the specified period. If the matter could not be resolved, he may seek assistance from the IRD, Hong Kong by submitting relevant information for examination. The IRD will consult the Mainland tax authority concerned, with a view to resolving the problem.

Certification of Resident Status

30. When applying for benefits under the Arrangement, an applicant may be required to substantiate his resident status. In such a situation he may apply for a certificate of resident status from the competent authority of the side where he is resident. If he is unable to produce such a certificate he will be denied the benefits of the Arrangement.
31. In the case of a Hong Kong resident who is required to substantiate his resident status, the Mainland tax authority will first issue a referral letter to the applicant for forwarding to the IRD, Hong Kong. He should then submit the letter together with a properly completed "Application for Certification of Resident Status" form to the IRD. The form can be obtained from the IRD.
32. The IRD will examine the information supplied and if it is sufficient, issue a "Certificate of Hong Kong Resident Status". If the application is rejected, the applicant will be notified accordingly.

Penalty

33. Under the laws of the Mainland and Hong Kong, a taxpayer who files an incorrect return or fails to file any return for his taxable income commits an offence. He is liable to a penalty in addition to the tax undercharged.

Example 1

Mr. Chan, a Hong Kong resident employed by a Hong Kong company, was assigned to his employer's Mainland factory to do quality control work. His monthly salary was \$30,000. He did not render any services in Hong Kong. He only returned to Hong Kong to spend his leave and on Sundays and public holidays. He stayed in the Mainland for an aggregate of 250 days.

Hong Kong: As he did not provide any service in Hong Kong, all his income was exempt from Salaries Tax in Hong Kong.

Mainland: As he was required to perform duties in the Mainland only and stayed in the Mainland over 183 days, his salary of \$30,000 a month was all chargeable to Mainland tax.

Example 2

Mr. Lee, a Hong Kong resident employed by a Hong Kong company, was assigned to be the manager of the company invested by his employer in the Mainland. His monthly salary was \$30,000, of which \$10,000 was paid or borne by the Mainland entity. Apart from returning to Hong Kong on holidays, he was required to render service in Hong Kong. He stayed in the Mainland for an aggregate of 250 days.

Hong Kong: As he had a Hong Kong employment and rendered services in Hong Kong, his salary, \$30,000 a month, was fully assessable. However, as he had to pay Mainland Individual Income Tax on the income attributable to services rendered in the Mainland, he could apply for exemption from Hong Kong Salaries Tax on that part of income or claim tax credit. Such an application would be made on his Hong Kong tax return, by completing the relevant section and submitting the evidence of the payment of the Mainland tax.

Mainland: As he was required to provide services both in the Mainland and in Hong Kong under his employment and he stayed in the Mainland for over 183 days, his entire salary was chargeable to Individual Income Tax, but subject to adjustment to reflect the services rendered outside the Mainland. In order to compute his Mainland tax liability he should first

add up his salary payments on both Sides as his total taxable salary, calculate the tax thereon, and apportion the tax by time basis to arrive at the tax payable.

Example 3

Mr. Cheung, a Hong Kong resident employed by a Hong Kong company as Marketing Manager (China-Hong Kong Trade). He was required to provide services both in the Mainland and in Hong Kong. His monthly salary was \$30,000, of which \$10,000 was paid or borne by a Mainland entity. He stayed in the Mainland for an aggregate of 100 days.

Hong Kong: Same as Example 2

Mainland: As he was required to provide services both in the Mainland and in Hong Kong but stayed in the Mainland for less than 183 days, only that part of his salary paid or borne by the Mainland entity were chargeable to Individual Income Tax. Tax would be calculated on the chargeable income and then apportioned on time basis. That part of salary paid by the Hong Kong employer was not chargeable to Individual Income Tax.

Example 4

Mr. Wong, a Hong Kong resident employed by a Hong Kong company, was responsible to manage the company in Hong Kong and the factory in the Mainland. Every day, he had to travel between the Mainland and Hong Kong and provide services on both Sides. His monthly salary was \$30,000, of which \$10,000 was paid or borne by the Mainland entity.

Hong Kong: Same as Example 2

Mainland: As he was required to provide services both in the Mainland and in Hong Kong and he stayed in the Mainland for over 183 days, both the Mainland and Hong Kong salaries were chargeable to Individual Income Tax. He should first add up his salary payments on both sides as his total taxable income, calculate the tax thereon, and apportion the tax by time basis to arrive at the tax payable (generally the Mainland tax authority will adopt a "half-day rule" for any date where services are rendered both in the Mainland and in Hong Kong).

(This leaflet is for reference only.)