

**You or your employee
is going to leave Hong Kong**

**What are you required to do
under the tax law?**

Foreword

The Inland Revenue Ordinance (IRO) provides that any person chargeable to tax and intending to leave Hong Kong shall notify the Inland Revenue Department (IRD) not later than 1 month before the expected date of departure. Upon receipt of the notification, the IRD will decide whether the person leaving is required to settle all tax liabilities prior to departure.

The employer of the individual is also required to give notification to the IRD of the impending departure of the employee at least 1 month before the expected departure date. At the same time, the employer must also temporarily withhold payments of salaries and all other moneys to that employee until the IRD issues a “letter of release”.

Failure to comply with such requirements by the individual or the employer may result in penal actions.

However, the law also provides that employees who travel frequently in the course of their employments do not have to notify their departure. They will file returns and pay taxes annually.

This leaflet explains in detail:

1. the legal obligations of a taxpayer who is about to leave Hong Kong for over one month,
2. the legal obligation of the employer if the taxpayer is an employee, and
3. describes the procedures for tax clearance by way of an illustration.

Read this leaflet carefully and follow the procedures stated, and you will be able to expedite the tax clearance process and avoid committing an offence under the tax law.

When tax clearance is required for an individual

The IRO provides that where an individual, who is chargeable to tax, intends to leave Hong Kong for any period exceeding 1 month, he/she has to notify the IRD. Hence, when a taxpayer intends to migrate to other countries, to study or to work overseas, he/she must notify the IRD and settle all taxes before departure.

Circumstances under which an individual is required to clear tax before departing from Hong Kong

Source of income	Whether tax clearance and notification to the IRD required
Employment	If there is/will be Salaries Tax payable, notify the IRD of impending departure at least one month prior to the expected departure date. Otherwise, notification is not required.
Rental income from property owned	If the property has been sold before departure and personal assessment is elected, notify the IRD at least one month before departure. Otherwise, notification is not required, but it is necessary to inform the IRD of new correspondence address if applicable and file annual tax return for rental income from the property as usual.
Profit from business owned	If business has ceased prior to departure, notify the IRD at least one month before departure. Otherwise, notification is not required, but it is necessary to inform the IRD of new correspondence address if applicable and file annual tax return for profit/loss from the business as usual.

What an employer should do?

The IRO requires the employer of an employee who is chargeable to Salaries Tax and is about to leave Hong Kong for a period exceeding one month to notify the IRD in writing of the expected date of departure of the employee at least one month prior to the departure. The employer is also required to withhold any payments of money to the employee for a period of one month from the date on which the notification was given, or until a “letter of release” is received from the IRD, whichever is earlier.

However, the requirements for notification of impending departure and withholding of payments do not apply to an employee who is required in the course of employment to leave Hong Kong at frequent intervals.

What an employer should do upon termination of employment of an employee

In order to comply with the above obligations, the employer should ascertain whether the employee leaving his employment intends to leave Hong Kong and if so the expected date of departure.

Leaving Hong Kong - Remind the employee of the need for tax clearance. File Form I.R.56G not later than 1 month before the expected date of departure. Withhold all moneys payable to that employee until the IRD issues a “letter of release”.

Not leaving Hong Kong - File Form I.R.56F not later than one month before termination of employment.

Penalty

Taxpayers and relevant employers must fulfill their legal obligations to notify the IRD for impending departure cases and follow the tax clearance procedures as described above. Failure to comply with the requirements may result in penalty - a fine at level 3.

An example to illustrate the procedures

Mr. Chan's employment will end on 1 July 2008 and he intends to leave Hong Kong on 4 July 2008.

What the employer should do

Before Mr. Chan's departure from Hong Kong

- (1) Notify the IRD by filing a clearly and properly completed I.R.56G on or before 4 June 2008 (i.e., not later than 1 month before the expected date of departure). Give a copy of I.R.56G to Mr. Chan.
- (2) From the date of filing I.R.56G, withhold all moneys (inclusive of salaries and any other amounts due) payable to Mr. Chan for 1 month.
- (3) The IRD will issue a "letter of release" after Mr. Chan has settled his tax liability. Upon sight of the release letter, the amounts withheld by the employer should be released to Mr. Chan.
- (4) If Mr. Chan fails to pay up his taxes, the IRD will issue a garnishee notice (I.R.113) to the employer requiring the employer to pay the money withheld to the Commissioner of Inland Revenue. The employer's compliance with IRD's garnishee notice will constitute sufficient defence at court against any claim for non-payment of salaries to Mr. Chan.
- (5) Retain all documents relevant to the termination of Mr. Chan's employment, for inspection by the IRD when required. These may include letter of resignation, letter of dismissal, notice of final payment of remuneration, employment visa issued by the Immigration Department and employer's notification of cancellation of employment visa (for overseas employees).

After Mr. Chan's departure from Hong Kong

- (6) Inform the IRD of any gains realized by Mr. Chan through exercise of the right to acquire shares after his departure.
- (7) Report, by way of **additional** Form I.R.56G, any other remuneration paid to Mr. Chan after his departure. Withhold all moneys payable to Mr. Chan for a period of 1 month from the date of filing the relevant **additional** I.R.56G.
- (8) Do not report Mr. Chan's remuneration again on annual employer's return (I.R.56B) for 2008/09 to be submitted in April 2009.

What the employee should do

- (1) Mr. Chan should notify the IRD of his intended date of departure on or before 4 June 2008.
- (2) For expedient tax clearance, he should call in person at IRD's Central Enquiry Counter (1/F, Revenue Tower) and bring along a copy of I.R.56G (as prepared by the employer), notice of termination of employment, notice of final payment of remuneration and any other documents to support any claim for deductions and allowances.
- (3) Report all income in the tax return to ensure proper and accurate computation of tax liabilities.
- (4) If a representative will collect the tax return and notice of assessment on behalf of Mr. Chan, a letter of authorization will be required.
- (5) Supply a correspondence address in Hong Kong, a telephone number for contact and an overseas address for future correspondence.

- (6) Assessment notice(s) and tax demand note(s) will normally be issued to Mr. Chan before his departure. If he disagrees with the assessment(s), he should raise objection (s) but he may be required to make full tax payment immediately or to purchase tax reserve certificate(s) for the amount of tax in dispute.
- (7) If tax is settled by cheque, a letter of release will normally be sent by post 10 days after receipt of cheque. In order that the IRD may issue the letter of release immediately after payment, Mr. Chan should pay in cash, by EPS or cashier order.
- (8) Even if Mr. Chan is exempt from tax, the IRD will still issue a letter of release upon completion of the tax clearance procedures.

Further Information and Assistance

If you need any further information or assistance, please:

- (a) visit the IRD Web site at www.ird.gov.hk,
- (b) write to the assessor, by post or by fax (2877 1232), quoting your file reference and daytime contact telephone number,
- (c) call 187 8022,
- (d) visit the Central Enquiry Counter at 1/F, Revenue Tower, 5 Gloucester Road, Hong Kong.