

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

Certification of Resident Status

This leaflet is applicable to 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” (“the Comprehensive Arrangement”) signed between Hong Kong and the Mainland of China on 21 August 2006 and provides information on how to verify the resident status of Hong Kong and Mainland residents.

The explanations concerning Mainland taxation treatment mentioned in this leaflet (in the Chinese version) have been vetted by the International Taxation Department of the State Administration of Taxation. This would contribute to the effective implementation of the Comprehensive Arrangement.

General

Persons covered by the Comprehensive Arrangement

1. The Comprehensive Arrangement is only applicable to an individual, a company, a partnership, a trust or any other body of persons that qualifies as a resident of Hong Kong or a resident of the Mainland.

For Hong Kong residents

Definition of a resident of Hong Kong

2. A resident of Hong Kong means
- (i) an individual who ordinarily resides in Hong Kong;
 - (ii) an individual who stays in Hong Kong for more than 180 days during the relevant year of assessment or for more than 300 days in 2 consecutive years of assessment one of which is the relevant year of assessment;
 - (iii) a company incorporated in Hong Kong, or if incorporated outside Hong Kong, being normally managed or controlled in Hong Kong;

- (iv) any other person constituted under the laws of Hong Kong, or if constituted outside Hong Kong, being normally managed or controlled in Hong Kong.

Certification of resident status of an individual

3. In determining whether an individual is a resident of Hong Kong, the Mainland tax authorities will make reference to information reported by that individual concerning his place of residence, employment exercised or services provided or investment made in the Mainland, tax liabilities in Hong Kong; and they will also examine his Identity Card, Re-entry Permit etc.

4. It is only where the Mainland tax authorities cannot ascertain that a person is a resident of Hong Kong from the above reporting and verification process, or where an individual of a third State or Region applies for treatment under the Comprehensive Arrangement, would the Mainland tax authorities request the person concerned to furnish a “Certificate of Hong Kong Resident Status” issued by the Hong Kong Inland Revenue Department.

5. If an individual who is considered as a resident of Hong Kong by satisfying the number of days of stay under paragraph 2(ii) above and who is also a permanent resident of a third State and makes investment or carries on business in the Mainland, it is known that the Mainland will apply any treaty signed between China and the State of which that individual is a permanent resident. If there is no such treaty, the Mainland would consider to apply its relevant domestic laws.

Certification of resident status of a company, a partnership, a trust or any other body of persons

6. For a company that is incorporated in Hong Kong, the production of a copy of the Certificate of Incorporation of the company or a Certified Extract of Information on the Business Register to the Mainland tax authorities should be sufficient for ascertaining its Hong Kong resident status. An application for a Certified Extract of Information on the Business Register may be made online via the Inland Revenue Department Homepage (www.ird.gov.hk) or in person by visiting the Business Registration Office at 4/F, Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong. Normally, it would take 1 to 2 working days to process the application.



7. For a company incorporated outside Hong Kong, or a partnership, a trust or any other body of persons constituted in or outside Hong Kong, the Mainland tax authorities may request it to furnish a “Certificate of Hong Kong Resident Status” issued by the Hong Kong Inland Revenue Department in addition to information reported in its tax return.

“An individual who ordinarily resides in Hong Kong”

8. It is generally considered that an individual “ordinarily resides” in Hong Kong if he has a permanent home in Hong Kong where he or his family lives.

9. Other relevant factors include the duration of his stay in Hong Kong, whether he has a permanent place of residence in Hong Kong, whether he owns any property overseas for residential purpose, and whether he is primarily resident in Hong Kong or overseas.

10. Besides, if an individual who ordinarily resides in Hong Kong is sent by his Hong Kong employer to work in the Mainland for a long period before returning to Hong Kong, he will still be considered as an individual who ordinarily resides in Hong Kong.

A company, a partnership, a trust or any other body of persons “normally managed or controlled in Hong Kong”

11. “Management”, in this context, refers to management of daily business operations, or implementation of the decisions made by top management, etc. “Control”, on the other hand, refers to control of the whole business at the top level, including formulating the central policy of the business, making strategic policies of the company, choosing business financing, evaluating business performance, etc. The board of directors usually exercises “control”. In other words, if the business of the company, the partnership, the trust or the body of persons is normally managed or controlled in Hong Kong, including the management of its daily business operations, or the implementation of the decisions made by top management, or the making of top-level policies, in Hong Kong, the

company, the partnership, the trust or the body of persons will be considered to be a resident of Hong Kong.

12. Regard will be had to factors such as the nature of business operated by the company, the partnership, the trust or the body of persons, mode of operation, whether it has a permanent office or employs staff in Hong Kong, and whether Hong Kong is the place where its board of directors meets to formulate policy.

Verification of Hong Kong resident status by the Mainland tax authorities

13. A resident of Hong Kong can apply for relief under the Comprehensive Arrangement directly in the Mainland by producing documentary evidence such as Identity Card, Re-entry Permit, Certificate of Incorporation, Certified Extract of Information on the Business Register etc. Where the Mainland tax authorities cannot ascertain that the person is a resident of Hong Kong from available information, the Mainland tax authorities will issue a referral letter entitled 《關於請香港特別行政區稅務主管當局出具居民證明的函》 to the person concerned for applying a “Certificate of Hong Kong Resident Status” from the Hong Kong Inland Revenue Department.

14. The referral letter is to be submitted to this Department together with the completed application form for certification of resident status. A resident individual should complete form I.R.1314A. A company, a partnership, a trust or any other body of persons should complete form I.R.1313A. The application forms can be downloaded from the Inland Revenue Department Homepage (www.ird.gov.hk) or obtained from this Department.

15. Upon receipt of an application, the Inland Revenue Department will examine the information supplied by the person, and if it is sufficient, issue a Certificate of Hong Kong Resident Status. Where the evidence available is insufficient, the Department will request the applicant to supply the additional information required.

16. The Inland Revenue Department will only issue a “Certificate of Hong Kong Resident Status” to a person who qualifies as a resident of Hong Kong upon request by the Mainland tax authorities.

For Mainland residents

Definition of a resident of the Mainland

17. A resident of the Mainland means any person who, under the laws of the Mainland of China, is liable to tax therein by reason of his residence, place of effective management etc, but does not include any person who is liable to tax in the Mainland of China in respect only of income from sources in the Mainland of China.

Verification of Mainland resident status by the Inland Revenue Department

18. Where a resident of the Mainland claims for relief under the Comprehensive Arrangement, the Inland Revenue Department will ascertain his resident status with reference to information provided by him for tax reporting purposes, including copy of passport or copy of certificate of incorporation in the Mainland.

19. Where the Inland Revenue Department is unable to ascertain that a person is a resident of the Mainland from the available information, it will issue a letter (I.R.1338A) referring the person to the Mainland tax authorities to issue a certificate of resident status for him. If the person is unable to produce proof of his status, he will not be entitled to the benefits of the Comprehensive Arrangement.