Mobility: tax alert

February 2020

Hong Kong

What you need to know before the Hong Kong tax year draws to a close on 31 March 2020

Executive summary
The global outbreak of COVID-19 continues to disrupt business operations, temporarily suspending what has traditionally been a high season for business travel, relocations in/out of Hong Kong and particularly, cross-border travel between Mainland China and Hong Kong.

In this alert, EY professionals provide some important guidance on Hong Kong salaries tax with the intention of assisting employers/employees to plan ahead before the Hong Kong tax year ends on 31 March 2020.

Visitors to Hong Kong - 60 days
A person carrying out employment duties in Hong Kong during visits of no more than 60 days during a particular tax year from 1 April to 31 March is eligible to claim a full exemption from Hong Kong salaries tax. For the purposes of the "60 days" limitation, any part of a day is counted as one day (for example, a person who arrives in Hong Kong today and departs tomorrow is counted as two days). Furthermore, it does not matter whether the day is spent on work or non-work or approved leave etc; all days in Hong Kong regardless of the person's reason for travel will be counted towards the 60 day threshold.

The Hong Kong Government recently imposed quarantine provisions alongside the international travel ban, which may force individuals to remain in Hong Kong for an aggregate period of more than 60 days. These individuals will be rendered liable for the Hong Kong salaries tax notwithstanding that they did not trigger a tax liability in prior years.

Employers seeking to pro actively manage their employees' exposure to the Hong Kong salaries tax should consider implementing the following practices:

- ► With approximately six weeks until tax year end, do a stocktake of the number of days spent in Hong Kong by your assignees. Please remember to count all days that the assignee is physically present in Hong Kong regardless of whether the purpose of the trip is work-related or private in nature.
- ► If the 60 days threshold is close to being breached, consider our further guidelines below.

International assignees
The outbreak of COVID-19 coincided with the Chinese New Year holidays. It is possible that many international assignees who returned to their home location to celebrate this holiday may have chosen to remain in their home location following the outbreak of the virus, or alternatively, family members may not have returned to Hong Kong with the assignee.

Similarly, new assignees may have delayed their Hong Kong assignment start date or have commenced their assignment date but not physically relocated to Hong Kong at this time.

In these cases, the following points are worth considering:

- ► An assignee who has extended their stay in the home location may trigger an unintended tax exposure in their home location. For example, if this situation impacts the establishment of a 'clean break' from the home location for tax residency purposes.
- ► As a result, Hong Kong salaries tax liability may or may not be impacted but home location tax liability may increase.
- ► For locations like the United States, State taxes may also be triggered in this case.

Building a better working world

Frequent travellers between Mainland China/Hong Kong

Both the Mainland China and Hong Kong Governments have adopted strict measures to restrict cross-border travel between Mainland China and Hong Kong. It is possible that China-based employees are not able to return to Mainland China to resume work and/or vice versa.

The following points are worth consideration:

- Employees falling under this category may not be familiar with the tax regime of Hong Kong;
- Individuals may unintentionally end up spending more days in Hong Kong, thereby creating an additional tax burden; and
- Due to the inconvenience caused and increased cost of living, employers may provide additional benefits and subsidies, which may also have tax consequences for the individuals.

Guidelines on planning ahead before Hong Kong tax year ends on 31 March 2020

Taking the above into consideration, we have the following guidelines and tips for employers and employees:

- Immediately review your assignees' travel calendars and assess how many days they have spent in Hong Kong and outside Hong Kong during the tax year in order to consider the tax impact.
- Be mindful of the Government and World Health Organisation's recommendations and wherever possible, try to keep within any de-minimus tax thresholds in Hong Kong (i.e. 60 days).
- Assess the tax impacts on the international movements and define the guidelines for determining which party (i.e. home/host cost center or the assignees) should bear the cost of any additional taxes.
- If assignees are under a tax equalisation arrangement, review whether your policy is sufficiently up to date in light of COVID-19.
- Even if assignees are not under a tax equalisation arrangement, consider whether or not a tax briefing or additional training should be provided to raise awareness of the respective tax obligations.
- Adjust the tax cost projections as necessary, for example any additional tax cost that may arise in the home location.
- Seek professional advice.

Other matters

Inland Revenue Department suspension of services

With the exception of departures from Hong Kong, the Inland Revenue Department has suspended their services to the public in respect of tax return and related tax services.

Recently, the Department announced that the deadlines for tax payments, lodgement of objections, holdover applications and submission of tax returns that fall between 29 January 2020 and 1 March 2020 will be automatically extended to 2 March 2020.

Tax instalment application

In December 2019, the Inland Revenue Department announced some relief measures allowing taxpayers to apply for payment of tax by instalments.

In order to do this, applicants are required to submit proof that they are experiencing financial difficulties and provide a proposed alternative payment plan. If the application is successful, taxpayers may pay their 2018/19 final taxes and 2019/20 provisional taxes by instalments without incurring the late tax payment surcharge.

Our tips for employers and employees here are:

- Once Inland Revenue Department services resume, look out for Notices of Assessment and ensure you respond to any payment notice or filing deadlines in a timely manner.
- Allow more time for the Inland Revenue Department to process applications for the payment of tax liabilities by instalments.

Next steps

We recommend you consider the application of the guidelines above in the context of your mobility program and based on your assignees' circumstances.

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