



財經事務及庫務局
(庫務科)
香港下亞厘畢道
中區政府合署

**FINANCIAL SERVICES AND
THE TREASURY BUREAU**
(The Treasury Branch)
Central Government Offices,
Lower Albert Road,
Hong Kong

傳真號碼 Fax No. : 2234 9757
電話號碼 Tel. No. : 2810 2400
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19 July 2011

Ms YUE Tin-po
Clerk to Panel on Commerce and Industry
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms Yue,

**Legislative Council Panel on Commerce and Industry (C&I Panel)
Follow-up to Meeting on 21 June 2011**

In response to the request of the C&I Panel at the meeting held on 21 June 2011 for information on the avoidance of double taxation arrangement (in particular with regard to employment) between the Mainland and Hong Kong, the Administration's reply is set out below.

2. The Mainland and Hong Kong signed 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 Arrangement) on 21 August 2006, and the Second and the Third Protocols to the Arrangement on 30 January 2008 and 27 May 2010 respectively. The Arrangement aims to allocate the taxing rights between the two jurisdictions so as to avoid the same income being doubly taxed in both places.

Hong Kong Residents with Mainland Employment

3. Under the Arrangement, the remuneration received by Hong Kong residents working in the Mainland may be exempted from relevant taxation in the Mainland if the following three conditions are satisfied:

- (a) they stay in the Mainland for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned;
- (b) the remuneration is paid by, or on behalf of, their employers who are not Mainland residents; and
- (c) the remuneration is not borne by permanent establishments set up by their employers in the Mainland.

4. In paragraph 3(a) above, “any 12-month period commencing or ending in the taxable period concerned” denotes two concepts, namely, that the number of days of presence may straddle over two years, i.e. the days of presence can be calculated continuously or in the aggregate irrespective of the year; and that a floating calculation method may be adopted. The 12-month period can commence or end at any day within the taxable period concerned. The taxable period in the Mainland is the calendar year, whereas the taxable period (i.e. the year of assessment) in Hong Kong is the period from 1 April to 31 March of the next year. When determining whether the stay has exceeded 183 days, both the Mainland and the Hong Kong tax authorities adopt the rule of “days of presence”. The day when one is in the Mainland (or in Hong Kong as appropriate) and the day of arrival or departure, irrespective of the time and the purpose of the stay, will be counted as one day.

5. In view of the frequent economic exchanges between the Mainland and Hong Kong and that there are quite some Hong Kong residents working across the boundary, some Legislative Council Members and the trade have requested to relax the 183-day requirement under the Arrangement. We have conveyed to the relevant Mainland authorities that some members of the trade request that the existing 183-day threshold be relaxed. However, the Mainland side considers that this standard has worked well and complies with different model agreements for avoidance of double taxation¹. They see no sufficient justifications for

¹ Regarding the distribution of taxing right on the income of the people who perform cross-boundary work, other tax jurisdictions have all along adopted the rule of whether the cross-boundary work has exceeded 183 days within 12 months. The model tax conventions on avoidance of double taxation of both the Organisation for Economic Cooperation and Development and the United Nations have included this rule. Even for some jurisdictions or countries which have frequent economic activities with each other, for example between the Mainland and the Macao Special Administrative Region, between Singapore and Malaysia, and between the United States of America and Canada, the CDTAs they signed have also adopted this 183-day rule in distributing their taxing rights.

changing the standard at this stage. We will continue to keep in view the development and to explore the matter with the Mainland authorities as appropriate.

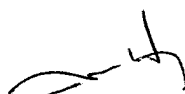
Methods for Elimination of Double Taxation

6. Both the Mainland and Hong Kong eliminate double taxation under the Arrangement by the allowance of tax credit. In the case of a Hong Kong resident deriving income that is subject to tax in Hong Kong, any tax paid in the Mainland in respect of that income shall be allowed as a credit (in accordance with the provisions of the Arrangement) against the Hong Kong tax payable on that income. However, the amount of tax credit cannot exceed the amount of tax payable in respect of that income computed in accordance with the provisions of the Inland Revenue Ordinance.

Conclusion

7. Further explanations on and implementation details of individual provisions of the Arrangement can be found in the Inland Revenue Department's (IRD's) "Departmental Interpretation and Practice Notes No. 44 (Revised)" uploaded on IRD's website for taxpayers' reference.

Yours sincerely,



(Ms Joan Hung)

for Secretary for Financial Services
and the Treasury

c.c. Secretary for Commerce and Economic Development Fax : 2521 8786
(Attn: Miss Winnie Au)
Commissioner of Inland Revenue (Attn: Ms Mabel Mei) Fax: 2511 7414