

# Hong Kong Tax Reporting Obligations for Expatriates and Share-based Compensation



With the end of the Year of Assessment 2021/22 (i.e. 31 March 2022) fast approaching, we have pleasure in providing you with this article to remind you about some important tax reporting obligations that employers in Hong Kong should observe in respect of remuneration paid to expatriates working in Hong Kong. Besides, we will briefly discuss the tax implications in respect of employment income received by expatriates in the form of share-based benefits (e.g. share options, share awards, etc.).

## 1. Employer's Return

The Hong Kong Inland Revenue Department ("IRD") will issue the Employer's Return of Remuneration and Pensions (Form B.I.R. 56A) for the year ended 31 March 2022 (i.e. the Year of Assessment 2021/22) to most employers in Hong Kong on the first working day of April 2022. When filing a Form B.I.R. 56A, a separate form (Form I.R. 56B) containing the remuneration paid to each employee is required to be completed and submitted together with the Form B.I.R. 56A for each of the following individuals:-

- an employee whose annual income amounts to HK\$132,000 or more (single person);
- an employee who is married (irrespective of the amount paid and whether he/she resides in Hong Kong or not);
- a part-time employee (irrespective of the amount paid and whether he/she resides in Hong Kong or not);
- a director (irrespective of the amount paid and whether he/she resides in Hong Kong or not); and;
- an employee of any overseas company who is assigned or seconded to the Hong Kong company for duties in and outside Hong Kong.

Apart from filing Forms B.I.R. 56A and I.R. 56B, an employer in Hong Kong is obliged to report the remuneration details of its employees under various employment conditions by filing the following Employer's Return Forms (i.e. Forms I.R. 56E, I.R. 56F and I.R. 56G):-

Employment condition	Form to be completed	Statutory deadline for filing the form
Commencement of employment	I.R. 56E	Within 3 months of the date of commencement of employment
Cessation of employment	I.R. 56F	Not later than 1 month before the date of cessation of employment
Departure from Hong Kong	I.R. 56G	Not later than 1 month before departure (and required to withhold money before tax clearance)

## 2. Employee seconded or assigned to work in Hong Kong

Very often expatriates who work for multinational groups are relocated or transferred to Hong Kong by way of secondment or assignment. By secondment, it means that an expatriate will continue to be employed by his/her overseas employer while he or she is physically working in Hong Kong. By assignment, it often means the expatriate working in Hong Kong will be employed outright by an employer within Hong Kong. Either approach will render the expatriate liable to Hong Kong salaries tax, unless otherwise exempted by relevant Hong Kong tax laws or by a double tax treaty that Hong Kong has entered into with another jurisdiction.

For tax reporting purposes, a Hong Kong company to which an expatriate is seconded or assigned is obligated to report the taxable remuneration received by the expatriate by filing the relevant Employer's Returns, including the I.R. 56E upon commencement of such secondment or assignment.

For those expatriates who have been granted share options or share awards by their employers under an Employee Stock Ownership Plan (“ESOP”) (note that there are other plans such as Employee Share Award Plan (“ESAP”) or Employee Share Purchase Plan (“ESPP”) to describe different types of share-based benefits but such plans are merely variants constructed around the value or interest in the equities), their Hong Kong employers will need to report or disclose the share options or share awards granted to them on the relevant Employer’s Returns at some point of time depending on the situations. This is also true if the employer buys back the share options or if the share options remain unexercised upon departure of the assignee, or if the assignee exercises the share options after departure.

### 3. Individual Tax Return

Same as local Hong Kong employees, expatriates working in Hong Kong, unless otherwise exempted, also need to complete and file Individual Tax Returns. While the IRD will issue Individual Tax Returns for the Year of Assessment 2021/22 to individual taxpayers on 1 June 2022, sometimes it may also issue Provisional Individual Tax Returns to certain expatriates after their employers have notified the IRD of the commencement of their secondment or assignment. The table below shows the general due dates for filing the 2021/22 Individuals Tax Returns:-

Status	Normal due date for filing Individuals Tax Return*	Extended due date for represented cases*
Not involving sole-proprietorship	2 July 2022	2 August 2022
Involving sole-proprietorship	1 September 2022	1 November 2022

\* The filing due date maybe further extended depending on the latest development of the COVID-19 pandemic situation in Hong Kong.

### 4. Hong Kong and non-Hong Kong sourced employment

Salaries tax is imposed on income arising in or derived from Hong Kong from any office or employment, and any pension. Income arises in, or is derived from Hong Kong, if the fundamental source of the employment is in Hong Kong.

If the source of an expatriate’s employment is in Hong Kong, the remuneration received by the expatriate for services rendered by him/her in and outside Hong Kong is taxable. However, if the expatriate spends most or all of his/her time rendering services outside Hong Kong, he/she may apply to the IRD for a full exemption from salaries tax on his/her remuneration, provided that certain criteria are fulfilled.

If the source of the expatriate’s employment is outside Hong Kong, only the portion of remuneration received by the expatriate for services rendered in Hong Kong is subject to salaries tax. The IRD will usually quantify the amount of taxable income by reference to the number of days the expatriate spends in Hong Kong in a year of assessment which runs from 1 April to 31 March. This is known as the “time apportionment” basis. Provided that certain criteria are met, an expatriate may also be entitled to claim for full exemption from salaries tax on his/her employment income.

There are many factors that the IRD will examine to determine the source of an employment based on a totality of facts approach. All surrounding fact patterns and relevant supporting documents will be examined.

Both employers and employees (including expatriates) have obligations to complete correct Returns and file them with the IRD within specified time limits. In certain scenarios, even if the employees have not yet received their Individual Tax Returns, they are still obligated to notify the IRD in writing within 4 months after the year of assessment in which they have derived chargeable income. Professional assistance should be sought to avoid penalties being imposed by the IRD for failure to comply with the relevant requirements.

## 5. Stock Awards and Share Options

ESOP generally refers to a benefit plan that gives employees a certain level of ownership or interests in the employer or its related enterprises. Employers may grant share options or share awards (e.g. restricted stock units (“RSUs”)) to their employees under an ESOP to motivate them to achieve performance targets and to align their interests with those of the shareholders. ESOP can also be used to reduce turnover rates by including a vesting period and reduce cashflow burden of the employers. There are also other types of employee benefit plans such as phantom shares, stock appreciate rights, etc.

Broadly speaking, if an employee is granted the right to acquire shares within a period of time in the future (i.e. a share option), the employee will be assessed at the time when he/she exercises, assigns or releases the share option. As regards the shares awarded to an employee not in the form of options, such shares may also give rise to a benefit assessable as a perquisite. The employee shall be assessed at the time when he/ she is fully entitled to the benefits of the shares.

## 6. Share Awards or Share Options after Departure of expatriates

As mentioned in the preceding paragraphs, even after an expatriate has departed from Hong Kong, the expatriate and his/her employer should meet their respective reporting obligations in respect of the share options or share awards granted by the employer before the expatriate’s departure from Hong Kong.

In reality, there are different types of tools to be used under an ESOP, different kinds of interests and obligations attached to an ESOP, and various vesting/exercising/buy back rules that may affect the tax reporting timeline and the tax treatments of the corresponding share-based benefits. Listed below are some common questions concerning employers regarding the timing of taxation and the calculation of employees’ salaries tax liabilities:-

- What if the granting of the share options or awards happens before the secondment or assignment of the expatriate to Hong Kong but the exercise or vesting event occurs after the assignee commences work in Hong Kong?
- How should the salaries tax be calculated for the gains arising from the exercise or vesting event if the expatriate usually pays tax on his/her salaries on a time apportionment basis?
- What if the RSUs become vested over different stages?
- What if there is a change from non-Hong Kong employment to Hong Kong employment during the vesting period or vice versa?
- What if the assignee is granted share-based compensation with a vesting period during which services are rendered both in and outside Hong Kong?
- Is there any way for an assignee to complete tax clearance and finalize his/her tax liabilities if, upon departure from Hong Kong, he/she is holding share options pending for exercise?
- Can the Hong Kong employer or the overseas head office can get a corporate tax deduction for the share-based compensation?

Before implementing a share-based compensation scheme, both the employer and the employee should be well informed of the timing of taxation, the tax reporting obligations, how to determine the value of the benefits, whether any deductions are available, whether there are any measures to reduce tax risks, etc. They are recommended to seek professional tax advice to plan ahead when designing or implementing their share-based compensation schemes.

## **How we can help your company regarding salaries tax and share-based benefits?**

We are experienced in designing and structuring share-based benefit schemes that can meet your needs, providing tax advice to mitigate the potential tax risks associated with such schemes, explaining and communicating the relevant tax implications to employees, handling the relevant tax compliance requirements, negotiating with the IRD for relevant tax treatments, etc. If you have any questions or enquiries, please feel free to contact our tax specialists.

## Contact Us

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