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EMPLOYMENT SPOTLIGHT : HONG KONG SALARIES TAX GENERAL OVERVIEW

The tax treatment of payments made to employees by employers is dependent on the nature and character of the payments made.

The primary legislation governing the taxation of employees' income is the Inland Revenue Ordinance ("IRO"). Broadly, salaries tax is charged for each year of assessment on every employee in respect of his income arising in or derived from Hong Kong from (a) any office or employment of profit and (b) any pension.

There is no exhaustive definition on what constitutes "income". However s9 of the IRO provides that "income" would include wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite & allowance and payments received by an employee before or after his employment ceases (such as a sign on bonus or termination payment or an end-of contract gratuity).

However, the Inland Revenue Department ("IRD") does allow concessions on certain payments which are not chargeable to tax including:

1. Severance payments made in accordance with the Employment Ordinance ("EO");
2. Long service payments made in accordance with the EO;
3. Payments from a recognized provident fund upon termination of employment would be tax exempted up to a certain pre-determined limit;
4. Disability pensions;
5. Jury fees;
6. Employee compensation arising from injury; and
7. Depending on the circumstances, income derived by crew members of a ship or aircraft.

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Most importantly, employers should ensure that they clearly communicate to their employees as to what is and isn't expected from them during the work arrangements for those affected.

Employees should be reminded that employers do have a right to request that the employee demonstrate that his or her commute is likely to be impacted by the disruptions before authorising any absences.

What if an employee is arrested for their role in the protests?

This will depend on the terms of the employee's employment contract. Increasingly, employment contracts contain a clause that if an employee is arrested, the employer has a right to summarily dismiss the employee. If however, the employment contract is silent on these issues, unless the employee's arrest causes damage to the employer's reputation and/or it affects the employee's ability to do his or her job (for e.g. if bail is denied or restrictions are placed on an employee's travel), it is difficult to see how the employer may lawfully take any disciplinary action against the employee.

Employers should be reminded that suspension pursuant to s.11 of the Employment Ordinance is unlikely to be justified in these circumstances. This is because the statutory power to suspend is confined only to criminal proceedings against the employee arising out of or connected with his employment.

Protesting at work

Employers should remind employees of their expectations on conduct and the consequences of any disruption at work. These expectations are usually found in the employee contract and/or handbook. In case of any misconduct by the employee, the employers should ensure that it carefully follows any contractual investigation and/or disciplinary procedure it has in place in order to mitigate against an allegation that it has acted in breach of conduct.

Where contracts and/or handbooks do not cover such conduct, it may be prudent for employers to issue a policy to cover such scenarios in the future, explaining what is and isn't acceptable conduct and what sanctions the employer may impose for breach of the policy. Employers should take care that the policy imposed is consistent to and/or complements any existing rights or protections that the employees currently enjoy. Whilst it would be impossible to exhaustively include all conduct which would be considered unacceptable, the employer should give some examples of conduct which it deems unacceptable in the workplace (for e.g. using foul or abusive language to describe a political party or politician or wearing clothes with political messages).

For further information in relation to legal advice on protests and other employment law related matters, please do not hesitate to contact Andrea Randall (andrearandall@gallhk.com / +852 3405 7688), or Joni Wong (joniwong@gallhk.com / +852 3405 7616).

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Awards and recognition for the employment practice:

- Recommended Firm and Recommended Lawyer, Andrea Randall
The Doyles Guide to Leading Hong Kong Employment law firm and Lawyer Rankings 2019
- Leading Firm, Employment and Recommended Individuals Andrea Randall, Nick Gall
Legal 500 Asia Pacific Guide 2019
- Leading Firm, Labour & Employment
Chambers Asia Pacific Guide 2019
- Outstanding Firm, Employment
Outstanding Firm, Employment – Asialaw Profiles 2019
- Winner, Best in Labour and Employment: Andrea Randall
Euromoney Legal Media Group Asia Women in Business Law Awards 2018
- Winner, Best in Labour and Employment: Andrea Randall
Asialaw & Benchmark Litigation Asia Pacific Dispute Resolution Awards 2018

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