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劳资事务焦点动态：香港薪俸税概述

雇主向雇员支付薪酬的税务处理取决于所付款项的性质和特点。

指导雇员收入征税的主要法律是《税务条例》(英文简称为“IRO”)。总的来说,对一名雇员而言,其在香港产生或从香港取得的收入,都应就按照相应的课税年度缴纳薪俸税,课税基础为雇员 (a) 就职或雇佣产生的收益和 (b) 任何退休金。

关于具体哪些内容构成“收入”,并无详尽定义。但是,《税务条例》第9条规定,“收入”包括工资、薪金、休假工资、费用、佣金、奖金、退職金、临时津贴和补贴,以及雇员在劳资关系终止之前或之后收到的款项(例如,入职奖金、退職金或合同期满酬金)。

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.

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.

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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).

若存在劳动法相关问题, 欢迎随时联系尹安琦 (andrearandall@gallhk.com / +852 3405 7688) 进行咨询。

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僱傭事務荣获的奖项和认可：

- « “推荐律师行”，合伙人尹安琦获评“推荐律师”。 »
《Doyle 指南：2019年香港领先就业律师排行榜》
- « 占据领先地位的律师事务所，劳资 »
« 领先的劳资关系人士尹安琦 (Andrea Randall) 和 高嘉力 (Nick Gall) »
2018年亚太法律500强
- « 劳资争议解决领先律所 »
2019年《钱伯斯亚太》Chambers Asia Pacific
- « “杰出公司”，劳工和雇佣法务 »
2020年度《亚洲法律概况》
- « 获奖者，劳资争议解决最佳奖 »
2018年欧洲货币法律传媒集团亚洲商法女性大奖
- « 获奖者 —— 劳动和就业争议解决最佳律师行 »
2018年 Asialaw 亚太地区争议解决奖

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