

- (2) 60 days rule - Section 8(1B) of the IRO provides that for the purpose of determining whether or not all services are rendered outside Hong Kong for the purpose of section 8(1A)(b)(ii) of the IRO, no account shall be taken for services rendered in Hong Kong during visits not exceeding a total of 60 days.

IRD would interpret the word 'visits' to mean a person having his work base outside Hong Kong. Thus a Hong Kong based employee but habitually rendering service outside Hong Kong will not be considered as visiting Hong Kong when he finished his overseas assignment and returning to Hong Kong and therefore the exemption is not applicable.

Note that this 60-day exemption does not apply to a non-resident coming to Hong Kong to take up an employment on a permanent basis. For example, if a foreign engineer is asked by his foreign employer to come to Hong Kong on 1st April 2015 to work for a 3-year construction project in Hong Kong, he will not be regarded as a visitor for tax purposes and his income earned in Hong Kong is chargeable to salaries tax for the years of assessment 2015/16 to 2017/18. The engineer will be entitled to time apportionment if his employment is non-Hong Kong.

[Note that this provision is generally aimed at employees of an overseas company coming to work in Hong Kong for a short period of time. It does not apply to a Hong Kong based employee whose income is usually assessed to salaries tax. However, if a Hong Kong employee is working entirely outside Hong Kong, there is a provision in the IRO for exemption.]

For employee rendering service in Hong Kong under a non-Hong Kong employment (as characterized by the 3 factors mentioned above), only income attributable to service rendered in Hong Kong is chargeable to salaries tax, which means a time apportionment is required.

This means even though the employee is not a Hong Kong resident holding a Hong Kong employment, he may still liable to salaries tax in respect of his income earned from Hong Kong service computed on a time basis.

III. Taxation of income earned from Hong Kong employment

An employee with a Hong Kong employment is generally liable to salaries tax on full amount of his employment income; he cannot claim time apportionment of income on the grounds that he works partly outside Hong Kong.

Though he can claim exemption from tax if the exemption situations mentioned above are applicable to him.

As a kind of double taxation relief, section 8(1A)(c) of the IRO also provides for the exclusion (for assessment) of income (from Hong Kong employment) which has been subject to (actually paid) tax of a nature similar to Hong Kong salaries tax elsewhere (e.g. PRC individual income tax) due to service rendered in that overseas jurisdiction.

Summary of source rule – salaries tax - section 8(1) of the IRO

- (1) The source rule in respect of income from office is different from that for employment in that:
- The above 60-day rule does not apply [Section 8(1B) of the IRO exemption not applicable].
 - Even if the office holder does not render any service in Hong Kong,