

HONG KONG

# Master Tax Guide 2009/10



**18TH EDITION**

The Professional's First Choice

HONG KONG

# **Master Tax Guide**

# **2009/10**

**18TH EDITION**

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In the 18<sup>th</sup> edition, Deloitte reviewed the updated contents of 2009/10 *Hong Kong Master Tax Guide* written by CCH Tax Editors. While every effort is made to ensure that the information contained in the Guide is up to date, readers are advised to seek professional advice where special projects are being undertaken.

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## Foreword

The 2009/10 *Hong Kong Master Tax Guide* provides a comprehensive, practical and up-to-date explanation of Hong Kong revenue laws for taxpayers, practitioners and students alike.

The Guide explores the spectrum of taxation issues in Hong Kong using non-technical language and easy to follow examples and flowcharts. The taxes imposed under the *Inland Revenue Ordinance* (property tax, salaries tax and profits tax) and the *Stamp Duty Ordinance* are examined in detail with attention being paid to matters ranging from liability to tax, to assessment, payment, objection and appeal.

Features of the Guide include:

- All legislative changes introduced since the 2008/09 edition, as well as the revenue measures announced in the 2009/10 Budget;
- Deadlines, tax rates and checklists collated in a user-friendly format;
- New and revised Departmental Interpretation and Practice Notes;
- New tax treaties and double tax arrangements; and
- Latest decisions of the Board of Review, Court of First Instance, Court of Appeal and Court of Final Appeal.

To enable quick and easy access to information, a comprehensive subject Index, Case Table, Board of Review Decisions table and Section Finding List are provided.

The Ordinances covered in the Guide, namely, the *Inland Revenue Ordinance* and *Stamp Duty Ordinance* are all available in full-text in CCH's six-volume loose-leaf publication *Hong Kong Revenue Legislation*. Board of Review and Court cases are also reported in that service. Cases referred to throughout the Guide and cited as follows: (year of report) HKRC ¶ (paragraph), are reported in *Hong Kong Revenue Legislation*.

The 2009/10 *Hong Kong Master Tax Guide* covers changes in the revenue laws that have taken place up to March 2009.

The 2009/10 budget changes are subject to examination and approval by the Legislative Council.

CCH Tax Editors  
April 2009

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# HIGHLIGHTS OF 2008/09 REVENUE DEVELOPMENTS

## HIGHLIGHTS OF 2008/09 REVENUE DEVELOPMENTS

### ¶100 Highlights of 2008/09 Revenue Developments

The following are the highlights of the significant taxation developments which occurred during 2008/09 up to 31 March 2009. The summarised developments include legislated amendments, important Court decisions and new Interpretation and Practice Notes. Cross-references to the relevant paragraphs of the Guide are provided.

### ¶110 Profit tax cases

#### *Shui On Credit Company Limited v Commissioner of Inland Revenue* — Court of Appeal

The taxpayer appealed to the Court of Appeal against the Court of First Instance's decision. It was an anti-avoidance case under sec 61A on expense deduction involving the use of a debt defeasance scheme. The Court of Appeal considered the Court of First Instance's judgement to be correct in that the dominant purpose of entering into the debt defeasance scheme by the taxpayer and other participants was to enable the taxpayer to obtain a tax benefit. ....¶13-6400

#### *Ngai Lik Electronics Co Ltd v Commissioner of Inland Revenue* — Court of Appeal

This was another case concerning sec 61A of the *Inland Revenue Ordinance*. The Court of Appeal dismissed the taxpayer's appeal and upheld the Board's conclusion and the Court of First Instance's judgement in that the pricing mechanism employed was a means of obtaining a tax benefit for the taxpayer, namely, the transfer of otherwise assessable profits from the taxpayer to other group companies. ....¶13-5800

#### *Canton Industries Limited v Commissioner of Inland Revenue* — Court of First Instance

The issue in this appeal was whether expenditure for the acquisition of permanent quota was an expense of a revenue nature and deductible for profits tax purposes. The Court held that the expense was not of a revenue nature and was thus non-deductible. The taxpayer obtained an enduring benefit with the permanent quota acquired, being the ability to conduct

business continuously over the duration of the quota and the permanent quota became incorporated into the taxpayer's profit-making structure or fixed capital once acquired. ....¶6-6120

***Commissioner of Inland Revenue v Datatronic Limited — Court of First Instance***

The Court's judgement in this case was contrary to the Inland Revenue Department's position in relation to apportionment of manufacturing activities. The Court granted the taxpayer a 50:50 apportionment concession for import processing arrangements and this decision was premised on the conditions stated in Departmental Interpretation and Practice Notes No 21 for 50:50 apportionment. Despite the Inland Revenue Department's long established position that apportionment of manufacturing profits is only applicable to contract processing arrangements, the Court considered that the emphasis should be on substance rather than form and the real point which needed to be determined was the extent of the taxpayer's involvement. ....¶6-1940

***China Map Limited & Others v Commissioner of Inland Revenue — Court of Final Appeal***

The issue in this appeal was whether the gain derived from disposal of landed properties by the taxpayer was capital in nature. It was a question of fact whether the taxpayer's stated intention of acquiring the properties concerned with a view to redevelopment for long term investment was their actual intention. The taxpayers' appeal was dismissed by the Court of Final Appeal and it was upheld that the taxpayer failed to discharge its burden of proof as to the actual intention of acquiring the said properties. ....¶6-3520

**¶120 Salaries tax cases**

***Fuchs, Walter Alfred Heinz v Commissioner of Inland Revenue — Court of First Instance***

The issue in this appeal was the taxability of two payments, Sum B and Sum C, made to the taxpayer on termination of employment. The Court commented that the reason for two payments being provided for under the employment contract could possibly be that they were two separate payments which were arguably different in nature and attracted different legal consequences. The Court held Sum B to be non-taxable as its substance was in the nature of a payment the taxpayer would have received by virtue of his seniority in the circumstances that occurred. Sum C was held to be taxable as it acted as an inducement for the taxpayer to enter into the contract. ....¶2-1250

### ***Commissioner of Inland Revenue v Tsai Ge Wah* — Court of Appeal**

The Court of Appeal allowed the Commissioner's appeal by a majority. The Court held that the amount of gratuities which had already been paid to the taxpayer previously greatly exceeded the amount of long service pay to which the taxpayer would have been entitled. The effect of sec 31Y of the *Employment Ordinance* was that the taxpayer was not entitled to receive any amount of long service pay from the employer on the termination of his employment. .... ¶2-1250

### ***Ahn Sang-gyun v Commissioner of Inland Revenue* — Court of First Instance**

The issue in dispute was whether the taxpayer's employment was a non-Hong Kong employment and therefore the taxpayer would be entitled to a time-apportionment claim on his employment income. The taxpayer was employed by a company registered as an overseas company in Hong Kong. The employment agreement was signed by a representative of the company and bore the address of the company in Hong Kong. The agreement was posted to the taxpayer at his address in an overseas country. The taxpayer's remuneration was paid to him in Hong Kong while he remained a member of overseas retirement and medical schemes. The court upheld the decision of Board of Review that the source of the employment would be determined by the "totality of facts" test applied in the *Goepfert* decision and ruled that the taxpayer's employment was a Hong Kong employment. .... ¶2-3050

## **¶140 Legislation**

### **Revenue Ordinance 2008**

Gazetted on 27 June 2008, the purpose of this Ordinance was to amend the *Inland Revenue Ordinance* for the tax changes announced by the Financial Secretary during his 2008/09 Budget Speech, including the reduction in the standard rate and the corporate profits tax rate from 16% to 15% and from 17.5% to 16.5% respectively; the increase in basic allowance and the single parent allowance under salaries tax from \$100,000 to \$108,000 and married person's allowance from \$200,000 to \$216,000; the widening of each tax band from \$35,000 to \$40,000; the increase in the deduction ceiling for approved charitable donations under profits tax, salaries tax and tax under personal assessment from 25% to 35% of assessable profits/income; the 100% profits tax deduction for capital expenditure on environment-friendly machinery and equipment in the year of purchase; the shortening of the depreciation period for environment-friendly installations mainly ancillary to buildings from the usual 25 years to five years; and the reduction in salaries tax, tax under personal assessment, profits tax and property tax for 2007/08 by 75%, subject to a ceiling of \$25,000 for each case. .... ¶320; ¶330; ¶340; ¶2-6450; ¶6-5540; ¶6-5740

**Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (United Mexican States) Order** .....¶8-3500

**Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Finland) Order** .....¶8-3500

## ¶150 Clarifications from Practice Notes

### **Departmental Interpretation and Practice Notes No 44 (Revised): 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**

This revised Practice Note was issued in August 2008 as a result of the Specification of Arrangements (the Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Second Protocol) Order made by the Chief Executive in April 2008. The Practice Note sets out the further views of the Inland Revenue Department in relation to 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 entered into between China and Hong Kong on 21 August 2006.

## **PENDING MAJOR DEVELOPMENTS**

### ¶200 Pending major developments

Major developments pending at the time of publication (as at March 2009) are summarised below.

### ¶210 Land Titles Ordinance

This Ordinance was gazetted on 23 July 2004 and shall come into operation on a day to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette. At the time of publication, the consequential amendments to the *Inland Revenue Ordinance*, *Stamp Duty Ordinance* and *Estate Duty Ordinance* have not come into operation.

The Ordinance will provide for a system of registration of title to land and will consequentially amend sec 18 of the *Estate Duty Ordinance*, sec 56A(1) of the *Inland Revenue Ordinance*, and sec 2A, 15(3), 67 of the *Stamp Duty Ordinance*.



## TAX RATES AND PERSONAL ALLOWANCES AT A GLANCE

### ¶300 Tax Rates and Personal Allowances at a Glance

The tables below incorporate the changes announced in the 2009/10 Budget, which are subject to examination and approval by the Legislative Council.

#### ¶310 Standard tax rate

Property tax and provisional property tax are charged at the standard rate set out in the First Schedule of the *Inland Revenue Ordinance* (see ¶5-8500 and ¶9-8400). Individuals and unincorporated businesses are also charged to profits tax and provisional profits tax at the standard tax rate (see ¶6-9100 and ¶9-8400).

<i>Year of assessment</i>	<i>Standard tax rate</i>
2008/09 and 2009/10	15%
2004/05 to 2007/08	16%
2003/04	15.5%
1989/90 to 2002/03	15%
1988/89	15.5%
1987/88	16.5%
1984/85 to 1986/87	17%
1966/67 to 1983/84	15%

#### ¶320 Graduated salaries tax rates

Salaries tax and provisional salaries tax are charged at the graduated rates specified in the Second Schedule of the Ordinance as set out below (see ¶2-7700 and ¶9-8400). The tax charged must not exceed the amount that would be charged if the standard tax rate (above) was applied to the taxpayer's total income less chargeable deductions: see further ¶2-7700.

<i>Net chargeable income</i>	<i>Salaries tax rates</i>
2008/09 and 2009/10	
Upon the first \$40,000	2%
Upon the next \$40,000	7%
Upon the next \$40,000	12%
Upon the remainder	17%