

- *China Master Tax Guide* — an annual publication on the various taxes imposed in China. The full spectrum of taxation issues is explored, including procedural matters such as assessment and payment, legislation, case law, Tax Bureau Interpretation and Circulars.
- *Tax Planning for Expatriates in China* — a book which focuses on the complicated tax planning and compliance issue for expatriates working in China, with useful summary tables and sample forms included for easy reference.

About the Technical Reviewer

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In the 19th edition, Deloitte reviewed the updated contents of 2010/11 *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.

Deloitte would like to express its appreciation to the following professionals of its Hong Kong office for their contributions to the review of this publication:

Alfred Chan, Finsen Chan, Sharon Chan, Agnes Cheung, Eliza Chik, Karen Chow, Esti Chui, Gary Fung, Eric Ho, Kaiser Kwan, Cherry Lam, CK Lam, Anthony Lau, Yvonne Law, Mona Mak, Becky Ng, Christine Sung, Anthony Tam, Raymond Tang, Carreace Wong, Philip Wong and Davy Yun

Foreword

The 2010/11 *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 2009/10 edition, as well as the revenue measures announced in the 2010/11 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 2010/11 *Hong Kong Master Tax Guide* covers changes in the revenue laws that have taken place up to March 2010.

The 2010/11 budget changes are subject to examination and approval by the Legislative Council.

CCH Tax Editors
April 2010

When a company is made liable for additional tax...

...the company had to pay tax against the profits...

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...the company had to pay tax against the profits...

In the case of...

Under section 209...

The provisions of...

However, it is...

The Commission...

The Commission...

The Commission...

See also...

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The amount of provisional tax payable is calculated by reference to the taxpayer's net chargeable income, assessable profits or, in the case of provisional property tax, the assessable value of his or her property, for the previous year (see ¶9-8400). Any provisional tax paid by a taxpayer is applied in the payment of his or her actual tax liability for the relevant year of assessment (see ¶9-8700).

Persons liable

¶9-8200 Liability for provisional tax

Every taxpayer who is chargeable to salaries tax (see Chapter 2 at ¶2-0050ff) profits tax (see Chapter 6 at ¶6-0030ff) or property tax (see Chapter 5 at ¶5-0100ff) for a year of assessment is liable to pay provisional tax for that year (sec 63B(1), 63G, 63L). An exception to this is when personal assessment has been elected. No provisional tax liability arises when the personal assessment scheme applies.

For more on personal assessment, see Chapter 4 at ¶4-0200ff.

In the case of a husband and wife who have elected joint assessment for salaries tax purposes (see ¶2-7100ff), the spouse who was assessed to tax in the preceding year of assessment is solely liable to pay the provisional salaries tax.

Calculation, assessment and notification of liability

¶9-8400 Calculation of provisional tax liability

Provisional salaries tax

Provisional salaries tax for an assessment year is calculated on the taxpayer's net chargeable income for the preceding year, adjusted as follows:

- the amount of any loss which was set off in the calculation of the net assessable income (see ¶2-6150), on which the net chargeable income was based, must be added; and
- the amount of any loss which may be set off in the year of assessment for which the provisional tax is payable must be deducted (sec 63C(1)).

Provisional salaries tax is calculated at the tax rates specified in the Second Schedule of the Ordinance. The amount of provisional tax imposed, however, must not exceed the amount which would have been chargeable if the standard tax rate (set down in the First Schedule) had been applied to the whole of:

- the net assessable income for the preceding year of assessment as reduced by concessionary deductions allowed under Pt IVA; or

- in the case of spouses who have elected personal assessment, the aggregate of their net assessable incomes for the preceding year of assessment reduced by concessionary deductions allowed under Pt IVA (see ¶2-6400ff).

Concessionary deductions allowed under Pt IVA are: approved charitable donations; elderly residential care expenses; home loan interest and contributions to recognised retirement schemes.

For more on Pt IVA, refer to ¶2-6400ff in the Chapter 2.

For current tax rates, see ¶2-7700. For tax rates applicable to past assessment years, see ¶320.

When a taxpayer has commenced or ceased to derive income during a year of assessment (ie for a period less than 12 months), the taxpayer's assessable income for provisional salaries tax purposes may be estimated by the Assessor (sec 63C(2) and (3)). This is usually done on a pro rata basis, that is, by extrapolating an estimate of 12 months assessable income based on the actual income of the taxpayer for the lesser period.

Provisional profits tax

Provisional profits tax for a year of assessment is calculated on the taxpayer's assessable profits for the preceding year reduced by any loss which is available for set off (sec 63H(1), (2)). For individuals, the tax is calculated at the standard tax rate set down in the First Schedule. For corporations, provisional profits tax is payable at the rate prescribed in Sch 8 (sec 63H(1A)).

See ¶6-9100 for current tax rates, and ¶330 for tax rates applicable to past assessment years.

An assessor may estimate the taxpayer's provisional profits tax liability if the assessable profits for the preceding year were calculated for a period of more or less than one year, or if the taxpayer commenced a trade and became chargeable during the year of assessment (sec 63H(3) and (4)). Estimates are usually made on a pro rata basis.

Provisional property tax

Provisional property tax is calculated on the net assessable value of the taxpayer's land and/or buildings for the preceding year of assessment. The provisional tax is calculated at the standard tax rate set down in the First Schedule (sec 63M(1)).

For the current rate, see ¶5-8500. For the rates applicable to past years, see ¶310.

An assessor may estimate a taxpayer's provisional property tax liability if the assessable value of the taxpayer's property for the preceding year was calculated for a period of less than one year, or if the taxpayer became chargeable to tax during that year of assessment (sec 63M(2) and (3)). Estimates are usually made on a pro rata basis.

¶9-8500 Assessment and notification of liability

When a taxpayer is liable to pay provisional tax, an assessor will normally assess or estimate the amount payable as soon as possible after the lodgment of the taxpayer's annual tax return (see ¶9-0500) (sec 63C(4), 63H(5), 63M(4)). An assessment to provisional tax may also be made at any other time if the assessor believes that the taxpayer is about to leave Hong Kong or if it is expedient to make an assessment for any other reason (sec 63C(5), 63H(6), 63M(5)).

When provisional tax is payable, the Commissioner must give a notice to the taxpayer indicating the amount payable and the due date for payment (sec 63C(6), 63H(7), 63M(6)). A notice for payment may be included in a normal notice of assessment, or issued separately (sec 63D, 63I, 63N).

Application against tax liability

¶9-8700 Application of provisional tax against final tax liability

When a taxpayer who has paid provisional tax for an assessment year is assessed to salaries tax, profits tax and/or property tax for that year, the provisional tax payment is applied in the payment of the tax liability (sec 63F, 63K, 63P). Any excess is carried forward and applied in the payment of the taxpayer's provisional tax liability for the following year. Any further excess is refunded.

Example

Mr X owns property which, in 2009/10, had a net assessable value of \$500,000. In 2010/11 the net assessable value of property owned by Mr X is \$600,000. Mr X's tax liability for 2010/11 is calculated as follows:

	\$
<i>Year of Assessment 2009/10</i>	
Provisional property tax paid for 2010/11 (15% × \$500,000)	75,000
<i>Year of Assessment 2010/11</i>	
Property tax liability (15% × \$600,000)	90,000

LESS	
Provisional property tax paid for 2010/11 (15% × \$500,000)	- 75,000
EQUALS	
Balance of tax payable	15,000
PLUS	
Provisional property tax payable for 2011/12 (15% × \$600,000)	+ 90,000
EQUALS	
Total tax payable	= 105,000

If the net assessable value of Mr X's property was \$400,000 in 2010/11 instead of \$600,000, the calculation would be as follows:

	\$
<i>Year of Assessment 2009/10</i>	
Provisional property tax paid for 2010/11 (15% × \$500,000)	75,000
<i>Year of Assessment 2010/11</i>	
Provisional property tax paid for 2010/11 (15% × \$500,000)	75,000
LESS	
Property tax liability (15% × \$400,000)	- 60,000
EQUALS	
Excess of paid provisional tax	= 15,000
Provisional property tax payable for 2011/12 (15% × \$400,000)	60,000
LESS	
Excess of paid provisional tax	- 15,000
EQUALS	
Total tax payable	= 45,000

If the excess provisional tax had been greater than \$60,000, the excess above \$60,000 would have been refunded to Mr X.

Transitional provision for composite tax return system

The composite tax return system was introduced with effect from the 1993/94 year of assessment. Property owners who wholly own more than one property are required to report all of their property income in the composite tax return (sec ¶9-0300). Previously, separate returns were required for each property owned by a taxpayer. As a transitional provision, for the 1993/94 year of assessment, where a person charged with tax owns more than one property, any provisional property tax paid for that year under separate assessments for each of the properties will be aggregated into a single sum before being applied in the payment of the taxpayer's property tax liability under sec 63P.

Application for holding-over payment

¶9-8900 Holding over payment of provisional tax

A taxpayer may apply to have the payment of provisional tax held over until he is required to pay the final tax for that year of assessment, or if the application is made on the ground that an objection has been made to his assessment for the preceding year of assessment (see grounds of holding over below), the date on which the objection is determined or settled, or the date on which the tax owing for the relevant year of assessment is required to be paid, whichever is earlier (sec 63E(1), 63J(1), 63O(1)).

For more on the holdover of tax generally, see further at ¶10-3100ff.

Grounds for holding over provisional salaries tax

For provisional salaries tax, the holdover application must be lodged with the Commissioner 28 days before the provisional salaries tax is required to be paid, or 14 days after the date of the notice for payment of provisional salaries tax, whichever is later (see ¶9-8500) (sec 63E(1)).

The grounds on which the taxpayer may make the application are:

- that he or she has become entitled to a personal allowance during the year of assessment which was not taken into account in determining the provisional tax liability (sec 63E(2)(a));
- that his or her net chargeable income for the year of assessment is (or is likely to be) less than 90% of the net chargeable income or estimated net chargeable income of the preceding year (sec 63E(2)(b));
- that he or she has ceased (or will cease before the end of the year of assessment) to derive assessable income (sec 63E(2)(c)); or
- that he or she has objected to his or her salaries tax assessment for the preceding year of assessment (sec 63E(2)(d)).

Grounds for holding over provisional profits tax

For provisional profits tax, the holdover application must be lodged with the Commissioner 28 days before the provisional profits tax is required to be paid, or 14 days after the date of the notice for payment of provisional profits tax, whichever is later (see ¶9-8500) (sec 63J(1)).

The grounds on which the taxpayer may apply for holdover are:

- that his or her assessable profits for the year of assessment are (or are likely to be) less than 90% of the assessable profits (or estimated assessable profits) of the preceding year (sec 63J(2)(a));

- that the amount of a loss brought forward for set off has been omitted or is incorrect (sec 63J(2)(b));
- that he or she has ceased (or will cease before the end of the year of assessment) to carry on his or her trade, profession or business and so the assessable profits for the year of assessment are likely to be less than those for the preceding year (sec 63J(2)(c));
- that he or she has elected to be personally assessed for the year of assessment and personal assessment is likely to reduce his or her tax liability (sec 63J(2)(d)); or
- that he or she has objected to his or her assessment to profits tax for the preceding year of assessment (sec 63J(2)(e)).

Grounds for holding over provisional property tax

For provisional property tax, the holdover application must be in writing and lodged with the Commissioner 28 days before the provisional property tax is required to be paid, or 14 days after the date of the notice for payment of provisional property tax, whichever is later (see ¶9-8500) (sec 63O(1)).

A taxpayer may apply for the holdover of provisional property tax on the following grounds:

- that the assessable value of his or her property for the relevant year of assessment is (or is likely to be) less than 90% of its assessable value, or estimated assessable value for the preceding year (sec 63O(2)(a));
- that he or she has ceased (or will cease before the end of the year of assessment) to be an owner of land and/or buildings so that their assessable value for the relevant year of assessment is likely to be less than for the preceding year (sec 63O(2)(b));
- that he or she has elected to be personally assessed for that year of assessment, and that personal assessment is likely to reduce his or her tax liability (sec 63O(2)(c)); or
- that he or she has objected to the assessment to property tax for the preceding year of assessment (sec 63O(2)(d)).

PAYMENT AND RECOVERY OF TAX

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¶10-0200 Overview

Provision is made in Pt XII of the *Inland Revenue Ordinance* for the payment and recovery of the taxes assessed under the Ordinance. The method of payment, the consequences of non-payment, and the means available for recovering outstanding tax in various circumstances are set out in this Part (see ¶10-0700ff).

The procedure to be followed when excess tax has been paid by a taxpayer, and a repayment is due, is set out in Pt XIII of the Ordinance.

See further ¶10-8700.

PAYMENT OF TAX

¶10-0700 Method and timing of payment

Tax charged under the *Inland Revenue Ordinance* must be paid in the manner directed in the notice of assessment issued to the taxpayer no later than the date specified in that notice (see ¶9-6800). Tax which is not paid in accordance with a notice of assessment is deemed to be in default (sec 71(1); see ¶10-1300).

The date on which the payment of tax is required is at the Commissioner's discretion. In certain circumstances, the Commissioner may agree to tax assessed being paid by instalments (sec 71(6); see ¶10-1900).

Revenue reserve certificates also may be purchased and applied towards the payment of tax, and a voluntary "save as you earn" (SAYE) system is available for civil servants (see ¶10-2500).

A taxpayer must pay the tax to which he or she is assessed, even when an objection or appeal has been lodged, unless the Commissioner orders that payment of the tax, or any part of it, be held over pending the result of the objection or appeal.

For more on the holding-over of payment, see ¶10-3100ff.

¶10-1300 Default of payment

When tax is not paid in the manner set out in the notice of assessment by the specified time, it is deemed to be in default and the taxpayer is deemed to be a defaulter (sec 71(1)). When the tax is payable by more than one person or by a partnership, each person or partner is regarded as a defaulter.

When tax is in default, the Commissioner may order that a surcharge be added to the amount owing (sec 71(5)). The surcharge imposed cannot exceed 5% of the amount in default and is recoverable in the same way as the original tax liability.

See ¶10-6200ff for methods of recovery.

If the tax owed by a taxpayer remains unpaid six months after the date it was deemed to be in default, the Commissioner may order that a further surcharge be added to the outstanding amount (sec 71(5A)). The additional surcharge cannot exceed 10% of the amount originally in default plus the original surcharge.

When tax is paid in instalments (see ¶10-1900) and the first instalment is in default, the Commissioner will normally bring forward the due date of the second instalment and add the surcharge to both.

When an objection or appeal has been lodged against a tax assessment and the tax in question has not been held over (see ¶10-3100), the default surcharges apply, regardless of whether the taxpayer's objection to the assessment is successful (*CIR v Sam Kwong Weaving Factory (1952) Ltd* (1987) 2 HKTC 313).

¶10-1900 Payment by instalments

The Commissioner has a discretion to accept the payment of tax by instalments in certain circumstances (sec 71(6)). When a taxpayer can prove that there is a good reason why he or she cannot pay the taxes owed in the normal way (eg due to genuine financial hardship), payment by instalments is normally permitted. To compensate for the delay in payment, it is usual for a surcharge of 5% to be added to the tax.

Provisional tax can also be paid by instalments.

For more on provisional tax, see Chapter 9 at ¶9-8400ff.

A taxpayer is normally required to pay off his or her tax liability in two instalments. If the taxpayer defaults on the first instalment, the second instalment may become due immediately.

¶10-2500 Tax reserve certificates

Tax reserve certificates are interest-bearing certificates which may be purchased from the Commissioner and subsequently applied towards the payment of tax assessed on the purchaser. The certificates are issued in multiples of \$50. The minimum amount of each purchase of the certificates is \$300.

When they are used to pay tax, the Commissioner accepts the certificates at their face value, together with the interest accrued on them, as the equivalent of cash for the payment of profits tax, salaries tax or property tax. (Note that interest is not paid on any certificate for more than 36 months.)

If the holder of a certificate redeems the certificate rather than applying it towards the payment of tax, the principal value of the certificate is repaid without interest. An exception to this is where certificates have been purchased as a condition for the holding-over of tax upon an objection or appeal being lodged against a tax assessment (see ¶10-4100). If the objection or appeal is successful and all or part of the value of the certificates is refunded to the taxpayer, interest is paid on the amount refunded.

Under rule 7(1A) of the *Tax Reserve Certificates (Fourth Series) Rules*, interest payable on such certificates issued pursuant to an objection or appeal for the holding period is calculated at rates of interest that are in force from time to time during the holding period.

Under sec 3(1A) of the *Tax Reserve Certificates Ordinance*, the Commissioner shall issue a tax reserve certificate in paper form to a person who applies for the purchase of the same pursuant to the proviso to sec 71(2) of the *Inland Revenue Ordinance*. In all other cases, instead of a certificate being physically issued, an entry made in the applicant's account is deemed to be a tax reserve certificate. The tax reserve certificate system is governed by the *Tax Reserve Certificates Ordinance* and the *Tax Reserve Certificates (Fourth Series) Rules*.

"Save as you earn" (SAYE) system

The tax reserve certificate scheme was modified in 1995 to implement a voluntary "save as you earn" (SAYE) system for the payment of tax. The system applies only to:

- civil servants employed by the Hong Kong Government;
- civil service pensioners; and
- persons entitled to pensions or pension benefits under the *Pensions Ordinance*, the *Pensions Benefits Ordinance* or the *Pension Benefits (Judicial Officers) Ordinance*.

Under the SAYE system, taxpayers may elect for payments to be credited into an account maintained by the Commissioner of Inland Revenue in lieu of being issued with tax reserve certificates. An entry into the account is treated