

**(f) 183-day exemption from Hong Kong salaries tax**

It is mentioned in the recent Guoshuifa [2010] No. 75, ("Circular 75") concerning Mainland China/ Singapore CDTA that an individual would qualify as a tax resident of Mainland China for CDTA purpose if he spends one full year in the Mainland. Circular 75 is used to determine whether an individual is a tax resident of Mainland China in the context of other CDTA which has similar article.

The Institute would like to seek the IRD's view as to whether the IRD would accept the 183-day exemption claim lodged by an individual in his Hong Kong individual tax return (as a tax resident of Mainland China), where the individual is a Hong Kong permanent identity card holder who:

- (i) is employed by a company located in the Mainland;
- (ii) lives with his family in the Mainland;
- (iii) obtains a tax resident certificate from the Chinese local tax bureau by reason of staying one full year in the Mainland (but less than five consecutive full years and therefore is not subject to Mainland China individual income tax on his worldwide income); and
- (iv) fulfilled the three conditions under the 183-day exemption for employment income in Hong Kong.

Mr Chiu advised that whilst the IRD had taken note of Guoshuifa [2010] No. 75 concerning the CDTA between the Mainland and Singapore, it might not be appropriate for the IRD to make any comments on it.

Mr Chiu explained that in practice, the IRD would not readily accept the 183-day exemption claim lodged by an individual in his Hong Kong Individuals Tax Return and that the taxpayer was a tax resident of the Mainland. The IRD would examine other relevant factors to decide whether the individual could also be regarded as a Hong Kong resident, e.g. he was still ordinarily residing in Hong Kong. If the individual was a resident of both Hong Kong and the Mainland, the tie-breaker rule would be applied to decide ultimately whether the individual was a Hong Kong or Mainland resident.