

HONG KONG TAX

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TAX DEDUCTION FOR DOMESTIC RENT



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Highlight

In the 2022/23 Budget Speech¹, the Financial Secretary proposed a new tax deduction for domestic rental expenses with a view to easing taxpayers' burden on the rocketed rent of private properties. The Inland Revenue (Amendment)(Tax Deductions for Domestic Rents) Bill 2022 ("the Bill") was gazetted on 6 May 2022 by the Government to implement the proposal. Subject to the passage of the Bill, it is expected to be effective for the year of assessment 2022/23.

Details

The current legislation allows deduction under salaries tax and personal assessment for mortgage loan interest incurred on financing the acquisition of a place of residence, while rental expenses incurred by a taxpayer who rent instead of acquire the accommodation are not deductible. It was therefore proposed to allow tax deduction under salaries tax and personal assessment for eligible domestic rental expenses from the year of assessment 2022/23 (ie year ending 31 March 2023) onwards.

Taxpayer or his/her spouse (not living apart from the taxpayer) who is a legal and beneficial owner of any domestic property is not eligible for this new rental deduction. To claim a deduction for rental expenses, the rented domestic premises² must be the taxpayer's principal place of residence in Hong Kong and with a stamped tenancy (or sub-tenancy) agreement. Rent paid on public rental housing flat, non-domestic property or domestic property rented under a lease purchase agreement will not be allowed.

While deduction will be allowed to a taxpayer in respect of a tenancy agreement entered into by his/her co-habiting spouse³, deduction will not be available where landlord of the rented property (or the principal tenant in the case of sub-tenancy) is an associate of the taxpayer or the taxpayer's spouse (eg landlord is a spouse, parent, child, sibling or partner of the taxpayer or the taxpayer's spouse, or a corporation controlled by the taxpayer or the taxpayer's spouse). In addition, the deduction will not be available where taxpayer or co-habiting spouse is provided with a place of residence by his/her employer, including those who receive a refund for any rent paid.

It was proposed that the maximum deduction per year is HK\$100,000 which is the same as deduction for home loan interest payment, but there will not be limit on the number of years of entitlement. Modelling on the rules of home loan interest deduction in cases of joint ownership, if there is more than one tenant under the tenancy agreement, the deduction ceiling will be reduced in proportion to the number of co-tenants of the tenancy agreement. If the tenancy period falling within a year of assessment is less than 12 months, the deduction ceiling will be reduced in proportion to the relevant period within the year of assessment. If the domestic premises is used by a taxpayer partly as a place of residence and partly for other purposes (eg for business use as home office or front-shop back-home), the amount of deductible rent is such part of the amount that is reasonable

in the circumstances of the case. No deduction would be allowed if the rents are allowable as a deduction under any other provisions of the Inland Revenue Ordinance.

Commentary

Although the tax deduction for domestic rent will only be effective from the year of assessment 2022/23 onwards, the Inland Revenue Department (IRD) mentioned in its website that eligible taxpayers can provide information about their expected domestic rent paid in relation to the year of assessment 2022/23 when filing their tax returns for year of assessment 2021/22 to be issued on 1 June 2022. Upon passage of the Bill, the IRD will take into account the deduction when assessing the provisional salaries tax for the year of assessment 2022/23. Taxpayers should maintain all relevant documents (eg duly stamped tenancy agreement and rental payment receipts) in order to support the tax deduction.

For taxpayers who benefit from an existing rental reimbursement scheme with their employers, they should consider the potential impact of a rental deduction as compared with the tax saving under the existing scheme. For overseas employers and assignees, there may be a need to revisit the assignees' compensation packages taking into account this new tax deduction. Taxpayers are encouraged to consult with their tax advisors in cases of doubt.

¹ Our 2022/23 Hong Kong Budget Highlight can be found at (<https://www.bdo.com.hk/en-gb/insights/publications/hong-kong-budget-highlights/2022-23-hong-kong-budget-highlights>).

² Domestic premises are a building or any part of such a building that is not prohibited by or pursuant to any law or any specified instrument (eg Government lease, occupation permit, etc) from being used for residential purposes.

³ If the taxpayer is married and not living apart from his/her spouse, the total amount of deduction allowable to the taxpayer or the taxpayer's spouse (or both of them) is the amount of rents paid under the tenancy for the year of assessment, or the deduction ceiling for the tenancy for the year of assessment, whichever is less.

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