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Global Employer Services (GES)

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GES NewsFlash

Hong Kong — Another taxpayer jailed for incorrect tax return

June 3, 2014

Overview

On May 28, 2014, a taxpayer was convicted for making false claims for dependent parent allowances in her tax returns and sentenced to four weeks' immediate imprisonment. It was not long after an earlier case where a nurse was sentenced to a two months' imprisonment on April 16, 2014 for making false statements in connection with claims for deduction of expenses of self-education in her tax returns. In the first incidence, the taxpayer claimed the Dependent Parent Allowance (DPA) in respect of her father who was found by the Inland Revenue Department (IRD) to have passed away before the years of assessment concerned. The total tax involved was $22,440.

In the second incidence, the defendant failed to produce any details or evidence in support of her claims for deduction of expenses of self-education. The total tax involved was $45,994.

Points to note

Tax evasion is a criminal offence. Upon conviction, the maximum penalty for each charge is **three years' imprisonment** and a fine of $50,000 plus a further fine of three times the amount of tax evaded. Hence, it is imperative that correct information is given in the tax return and any other documents provided to the IRD. The IRD has published in its website the prosecution cases convicted of offences (**http://www.ird.gov.hk/eng/ppr/pca.htm**).

Depending on the nature and/or the degree of culpability of the offence, The Commissioner of the IRD may institute prosecution, compound or assess additional tax (which is a form of penalty) in respect of the offence. Factors which may affect the course of action to be taken include the strength of evidence, the amount of tax undercharged and the period of time over which the offence was committed.

Our observations

Looking at the prosecution cases against employees in the last decade, one may note that many cases involved false claims of allowances/deductions such as DPA (deceased parents like the aforesaid case) and elderly residential care expenses.

One of the requisite criteria for claiming DPA was that the parent must be **ordinarily resident** in Hong Kong in the assessment year concerned. In 2009, there was a case where two sisters were both sentenced to two months imprisonment for claiming DPA where their parents had migrated to the USA and had not visited Hong Kong during the relevant assessment years.

Under the current compliance requirements, the taxpayers are not required to submit documentary evidence in support of their deduction or allowances claim together with the tax returns filed to the IRD. However, they are required to retain this supporting documentary evidence for **6 years** after the expiration of the relevant assessment years. If the case is selected for review, the IRD will request the selected taxpayers to provide the evidence. From experience, the IRD may likely request evidence to support claims for the following deductions which reach or exceed the statutory limits:

Deductions	**Maximum Limits**
Expenses for Self-Education	HK$80,000
Elderly Residential Care Expenses	HK$80,000
Approved Charitable Donations	35% of Income

In addition to deductions claims, it is also very likely that the IRD would request taxpayers to furnish evidence to support claims for full or partial tax exemption of income because of services rendered outside Hong Kong, and/or taxes similar to Salaries Taxes are paid elsewhere.

Deloitte's view

While Hong Kong's tax system and tax rates are known to be simple and low as compared to other jurisdictions, there have been reported prosecution cases because of incorrect tax returns time after time. Hence, individuals filing tax returns are advised to exercise due and reasonable care, or seek professional advice where needed. For individuals claiming full or partial tax exemption of income, it is particularly advisable that they have consulted professional advice to ensure their tax exemption claims are supported by valid technical grounds and documentary prove.

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