



GES NewsFlash

Hong Kong –Tax Evasion Cases

December 30, 2010

Recently, there were two court cases in Hong Kong where the defendants were convicted of tax evasion.

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Summary

Case 1

A defendant was convicted of evading tax with willful intent and sentenced to six months' imprisonment plus a fine of two times the amount of tax evaded.

During the years of assessment 2002/03 to 2005/06 the defendant attributed a portion of his own income earned on a commission basis together with rebate income to newly recruited junior account executives. The amounts were therefore not reported in his Hong Kong Individual Tax Returns for the period in question.

Case 2

Another defendant was convicted of evading tax with willful intent to evade tax by making false statements in connection with claims for deduction of approved charitable donations in his tax returns for the years of assessment 2003/04 to 2007/08.

Obligations

The effective operation of Hong Kong's simple tax system with low tax rates requires a high degree of compliance by taxpayers. It is also the primary duty of every taxpayer under law to file timely and accurate returns to the Inland Revenue Department ("IRD").

Taxpayers are required to file the Annual Individual Tax Return (Form BIR60) on or before the due date, which is one month after the date of issue.

Consequences

Tax evasion is a criminal offence in Hong Kong, with the exclusion of taxable income from being reported in a tax return an offence under the Inland Revenue

Ordinance (IRO).

The maximum penalty for each convicted offence (under the IRO) being:

- Three years imprisonment, plus
- A fine of HK\$ 50,000, plus
- A further fine of up to three times the amount of tax evaded

Deloitte's View

Case 1

The individual in question was a former team leader of a marketing department of a financial group. In receipt of salaries, commission, and rebate income, he led a team of over 100 account executives providing services to clients in trading of foreign currency and gold.

No mention was made in the case of whether the individual's employer filed the relevant employer's returns correctly and consequently whether or not any penal provisions under the IRO were applied.

While an example of severe and premeditated tax evasion, this case highlights that the Hong Kong IRD remain focused on tackling criminal instances of non-payment of tax, in particular in high-income sectors such as the Financial Services Industry.

Case 2

In Hong Kong, taxpayers are allowed to claim deductions of donations, self education expenses, professional subscriptions and home loan interest. The IRD carries out occasional investigation on deduction claims of taxpayers, in relation to which taxpayers are required to file tax returns correctly and keep receipts of the deductions claimed for a period of seven years.

This case serves to highlight that IRD processes are in place to identify instances of tax evasion.

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