

# Hong Kong Salaries Tax

## Rental reimbursement

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# Tax notes

Hong Kong's Salaries Tax legislation provides for the advantageous tax treatment of properly controlled housing benefits received by employees from their employer. However if such benefits are not properly controlled they will be treated as housing allowances which will be fully taxable.



### Charge to tax

Salaries Tax is charged on an individual in respect of his or her income arising in or derived from Hong Kong from any office or employment.

The definition of income for Salaries Tax purposes includes wages, salaries, bonuses, gratuities, perquisites or allowances if these are received as a reward for services. **The legislation provides for the advantageous tax treatment of certain perquisites or benefits-in-kind.** A summary of the tax treatment of the major benefits is set out in our Tax Notes Issue 1.2.

In order for a benefit to be provided in a tax efficient manner the benefit must be properly controlled and administered by the employer.

**This is particularly the case where an employer provides rent free or subsidised accommodation to an employee. If the benefit is not properly controlled the employee may be treated**

**as receiving a housing allowance which is fully subject to Salaries Tax.**

### Rental value

Where an employee receives a housing benefit or rental reimbursement the cost to the employer of providing that benefit is ignored for the purpose of calculating the employee's Salaries Tax liability. Instead the employee is deemed to receive a taxable benefit calculated by reference to the **rental value** of the property.

The **rental value** is usually calculated as a percentage of the other assessable income of the employee. The percentage for hotel accommodation is 4% for one room, 8% for two rooms and 10% for more than two rooms. The percentage for a house or flat is 10%.

Where an individual makes a contribution to the cost of the accommodation provided by the employer or does not receive a full reimbursement of his rental costs from

his employer, the amount of the rental value is reduced by the amount borne by the employee to arrive at the assessable benefit.

### Implementation

In view of the importance of housing benefits in tax effective remuneration packages it is important that employers implement and exercise effective control over those benefits.

Where an employee resides in accommodation which is either owned or leased by the employer in its own name, the employer will exercise control over the property and payments made. Such arrangements are rarely challenged by the Inland Revenue Department (IRD) and are accepted as the provision of a housing benefit.

Where an employee leases accommodation in his or her own name and receives reimbursement of all or part of his or her rental from the employer, it is important that the employer properly controls the benefit otherwise the IRD may challenge the arrangement and treat the payments as a housing allowance which is taxable in full.

The position in such cases can be summarised as follows:

- Housing allowances where no control is exercised by the employer over how the amount is spent are subject to Salaries Tax in the hands of the employee in the full amount paid by the employer
- Where an employer pays a regular monthly amount for housing to the

employee and exercises control over the manner in which that amount is spent, that payment will be treated as a rental reimbursement.

### Control

Sufficient control is considered to be exercised by the employer where

- the employer has a formal policy on the provision of housing which has been conveyed to the employee in writing
- the employment contract identifies the housing contribution to be made by the employer. This may either be a specific amount identified in the employment contract or may be mentioned in general terms with a subsequent agreement as to the amount by way of a written memo at the time that the employee takes up employment
- the employee provides the employer with a copy of his lease agreement
- the employee provides his employer with the receipts in respect of the rental paid by the employee and the employer maintains a record of these payments
- the amount paid by the employer does not exceed the rental paid by the employee
- an annual reconciliation of the housing benefit is undertaken at the time of preparing the annual employer's return form IR56B (or at the time of preparing the relevant cessation forms IR56F or IR56G)

### Responsibility

If sufficient control is not exercised by the employer then the IRD will consider that the so called housing benefits are in fact housing allowances and tax the employee on the full amount of the payments made by the employer.

The responsibility for ensuring that housing benefits and rental reimbursements are properly controlled rests with the employer.

**Employers should therefore ensure that their existing arrangements for housing benefits are in line with the above procedures or take the appropriate measures to rectify the position. All employers who are considering introducing housing benefits should ensure that their arrangements comply with the above guidelines.**



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### Contact information:

**Paul Chow**  
T +852 2218 3188  
E paul.chow@gthk.com.hk

**Gary James**  
T +852 2218 3137  
E gary.james@gthk.com.hk

**David Southwood**  
T +852 2218 3103  
E david.southwood@gthk.com.hk

**Brenda Cheung**  
T +852 2218 3136  
E brenda.cheung@gthk.com.hk

**Mary Ho**  
T +852 2218 3040  
E mary.ho@gthk.com.hk

**Daisy Ip**  
T +852 2218 3168  
E daisy.ip@gthk.com.hk

**Winnie Tsui**  
T +852 2218 3280  
E winnie.wy.tsui@gthk.com.hk

[www.gthk.com.hk](http://www.gthk.com.hk)

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