

EMPLOYMENT LAW GUIDE: EMPLOYER'S TAX CONSIDERATIONS

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(a) Taxable income

All gains and profits derived by an employee in respect to his employment are taxable, unless they are specifically exempt from income tax or are covered by an existing administrative concession. The gains or profits include all benefits, whether in money or otherwise, paid or granted to an employee in respect of employment. Where employers also extend the benefits to the employee's family members, relatives and friends, the benefits would be taxable in the hands of the employee as a benefit from employment. As for retrenchment benefits given to an employee, these are generally not taxable if made to compensate for the loss of employment. However, other payments typically included for other purposes (e.g. gratuity for past services) would be taxable to the extent that they are payment for services and constitute gains or profits from employment. Whether payments are compensation for loss of employment or not is largely a question of fact and depends on all facts and circumstances giving rise to the payments.

(b) Required filings

Pursuant to section 68(2) of the Income Tax Act, the employers are required to file with the Inland Revenue Authority of Singapore (“IRAS”) the following returns:-

- Form IR8A (Return of Employee's Remuneration);
- Form IR8S (Details of Employer's/Employee's Contributions to CPF);
- Appendix 8A (Value of Benefits in Kind); and/or
- Appendix 8B (Value of Gains and Profits from Stock Options).

for all employees (who are employed in Singapore) by the 1st of March of each year.

IRAS encourages all employers to join the Auto-Inclusion Scheme (“AIS”) for employment income, where employers submit their employees' income information to IRAS electronically. The employment income information will then be shown on the employees' electronic tax return and automatically included in their income tax assessments.

AIS is compulsory for all employers which have 7 or more employees for the entire year ending the relevant preceding year or have received the “Notice to File Employment Income of Employees Electronically”.

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(c) Flexible benefits

Under the flexible benefits scheme, employees are given a flexible benefits budget and can choose their own benefits from a range of benefits.

Offering benefits under the flexible benefits scheme does not change the tax treatment of the benefits. That is, if an employee seeks reimbursement for an item that has been granted concession or exempt from tax, the reimbursement is not taxable. However, reimbursement for an item that has not been granted concession or exempt from tax is taxable. For example, reimbursement to an employee for expenses incurred for medical treatment sought by the employee remains not taxable even if the reimbursement is claimed under the flexible benefits scheme. On the other hand, holiday reimbursement remains taxable even if it is one of the items which an employee can claim under the scheme.

Hence, an employer offering the flexible benefits scheme would have to make a distinction between taxable and non-taxable benefits. The employer has to keep track of the taxable items so that the taxable benefits are reported in the Form IR8A.

(d) Withholding tax

A non-resident is liable to pay income tax on Singapore-sourced income. Under the law, when a person makes payment of a specified nature to a non-resident, he has to withhold a percentage of the payment and pay the amount withheld to IRAS.

(e) Tax clearance

Tax clearance is a process of ensuring that your non-citizen foreign employee pays all his taxes when he ceases employment with you in Singapore or plans to leave Singapore for more than three months. It is the responsibility of the employer to notify IRAS via Form IR21 and seek tax clearance for the affected foreign employees. An employer must seek tax clearance at least one month before the non-citizen employee:-

- ceases to work for the employer in Singapore; or
- is on overseas posting; or
- leaves Singapore for any period exceeding three months.

An employer unable to give 1 month's notice must state its reasons when seeking tax clearance.

Depending on the length of notice required under the employment contract, the timeframe required for notifying IRAS may require the employer to discuss the termination with the employee before notice is given to him. In any discussion, the employer should make it clear to the employee that the employer will be required to obtain tax clearance and to withhold amounts owing to him pending tax clearance.

IRAS generally takes around 7 days to process an electronically filed Form IR21 (21 days for a paper form).

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IRAS will then send a Clearance Directive to the employer once the employee's tax liability is determined and a tax bill to the employee.

Tax clearance is not required for Singapore permanent residents who are not leaving Singapore permanently after ceasing employment with the employer, if the employer obtains a letter of undertaking at the point of cessation if the employee has no intention to leave Singapore permanently. If there is to be a termination agreement, then as a practical matter it would be useful to have the undertaking and the termination agreement signed at the same time.

(f) Penalties

Contravention of any of the provisions of the Income Tax Act is an offence and in the case of a breach of the provisions referred to above (for which no penalty is expressly specified) a fine not exceeding S\$1,000 is payable and in default of payment the offence is punishable by imprisonment for a term not exceeding six months.

Please note that this section of the Employment Law Guide is a summary provided for general information purposes, aimed at aiding understanding of Singapore's employment law as at the date of writing. It is not exhaustive or comprehensive and reading this memorandum is not a substitute for reading the text of the various statutes to fully understand the extent of the obligations owed. This guide should also not be relied upon as legal advice.

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