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Non-Permanent Workers

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Non-Permanent Workers

Introduction

1. Movement of natural persons between Hong Kong and other economic territories is very massive. Compared with Hong Kong's population size of 6.8 million at end 2002, Hong Kong resident departures and visitor arrivals during the year were much larger, amounting to 64.5 million and 16.6 million respectively (or 9.5 times and 2.4 times of the mid year population respectively).

2. Reflecting the close social and economic relationship between the mainland of China (the Mainland) and Hong Kong, a significant proportion of Hong Kong resident departures were destined for the Mainland. In 2002, Hong Kong residents made a total of 55.6 million outbound trips to the Mainland, accounting for over 85% of all outbound trips made by Hong Kong residents during the year. Of all the trips to the Mainland, business travel accounted for over 30% (or 17.2 million person-trips).

3. As a major business and trading centre, Hong Kong also attracted a significant number of business visitors from all over the world, including the Mainland. It was estimated that business visitors accounted for around 30% of all visitor arrivals of Hong Kong in 2002.

4. This paper describes the Hong Kong situation on movement of natural persons to work on a non-permanent basis. Issues on determining residence status of natural persons and the related flows of compensation of employees or workers' remittances will also be discussed.

5. Given Hong Kong's close economic linkage with the Mainland, this paper will focus on Hong Kong residents working in the Mainland on a non-permanent basis. On the other hand, since the residence status of overseas business visitors who stay in Hong Kong for limited periods of time will not be changed, this paper will concentrate the discussion on overseas residents working in Hong Kong under the several admission schemes (or temporary workers schemes) being implemented in Hong Kong.

Hong Kong Residents Working in the Mainland

6. With the increasing economic integration between the Mainland and Hong Kong, more and more Hong Kong people are now working in the Mainland. They may be employed by companies in Hong Kong to work in the Mainland, or employed directly by companies in the Mainland to work there.

7. Based on a special enquiry on Hong Kong residents working in the Mainland conducted during April to June 2002, it was estimated that some 198 100 residents (or 6.1% of the total number of employed persons in Hong Kong) had worked in the Mainland during the 12 months before enumeration. They were mainly engaged in the manufacturing sector and wholesale, retail and import/export trades, restaurants and hotels while working in the Mainland. Most of them were managers, administrators, professionals and associate professionals.

8. Based on the workers' travel pattern and length of stay in the Mainland, the following four types of workers are identified:

- (a) people who travel to the Mainland to work frequently and regularly (e.g. several times a week) and come back to Hong Kong within a short period of time (e.g. same day or overnight);
- (b) people who work five to six days each week in the Mainland and come back to Hong Kong during the weekends;
- (c) people who work in the Mainland for less than one year and return to Hong Kong from time to time; and
- (d) people who work in the Mainland for one year or more and return to Hong Kong from time to time.

9. Type (a) workers are clearly residents of Hong Kong because they only work in the Mainland on a very short-term basis and they treat Hong Kong as their principal residence. Furthermore, since most of them are employed by companies in Hong Kong, there will be no effect on Hong Kong's external flows of compensation of employees or workers' remittance.

10. For types (b) and (c) workers, a significant proportion of them should be residents of Hong Kong because they only work in the Mainland on a non-permanent basis and they treat Hong Kong as their principal residence. Nevertheless, there were workers who also maintain dwellings and households in the Mainland for various reasons (e.g. having spouses or children there). For these cases, difficulties will arise in determining their residence since they seem to have centre of economic interest in both territories. The principle of "predominant centre of economic interest" will be useful in determining their residence, but may not be able to tackle those cases where there is no clear predominant centre of economic interest.

11. There will be no effect on Hong Kong's external flows of compensation of employees or workers' remittance if the types (b) and (c) workers mentioned above are Hong Kong residents and employed by companies in Hong Kong. For those workers who are Hong Kong residents and employed by companies in the Mainland, there will be inflow of compensation of employees to Hong Kong.

12. According to the one-year guideline in determining residence, Hong Kong people who work in the Mainland for one year or more and return to Hong Kong from time to time (i.e. type (d) workers mentioned above) should be considered as residents of the Mainland. Nevertheless, some of them still maintain strong connection with Hong Kong, as indicated in their upholding of dwellings and households in Hong Kong in addition to those in the Mainland. For these cases, difficulties will arise in determining their residence status since the workers seem to have centre of economic interest in both territories. The application of the principle of “predominant centre of economic interest” will be useful in determining their residence, but may not be able to tackle those cases where predominant centre of economic interest is not clear.

13. For those Hong Kong citizens who clearly have changed their residence to the Mainland and who remit money to their family members living in Hong Kong, inflow of workers’ remittance will be recorded in Hong Kong’s BoP account.

Foreign and Mainland Professionals Working in Hong Kong

14. Hong Kong maintains an open and liberal policy towards entry for employment. Foreigners who possess special skills, knowledge or experience of value to, and not readily available in Hong Kong, or who are in a position to make substantial contributions to Hong Kong economy are welcome to come to work in Hong Kong. These people may bring with them their dependants, and after seven years of residence, may apply to become Hong Kong permanent residents. In 2002, some 17 000 foreign professionals and persons with technical, administrative or managerial skills from more than 100 countries / territories were admitted for employment in Hong Kong.

15. For Mainland talents and professionals, a new Admission Scheme for Mainland Talents and Professionals has been implemented since mid July 2003. The objective of the new Scheme is to attract more Mainland talents and professionals who possess professional skills or knowledge not readily available or in shortage locally to work in Hong Kong. There are no sectoral restrictions or quota for the new Scheme. Therefore, apart from professionals in the commercial and financial fields, talents and professionals in the arts, culture and sports sectors as well as those in the culinary profession may also apply to work in Hong Kong. The number of talents and professionals to be admitted under the Scheme will be governed by the demand in the local human resources market.

16. The persons admitted under the Scheme will normally be granted an initial stay of 12 months upon entry into Hong Kong. Extension of stay will be given if they continue to meet the eligibility criteria. Furthermore, they may bring in their dependants and apply for right of abode after having resided in Hong Kong for seven years. Since the Scheme is only recently incepted, there is limited information on its implementation details such as the number and skill levels of the successful applicants.

17. Based on the one-year guideline in determining residence, most of the talents and professionals (from the Mainland and other economies) working in Hong Kong are considered as residents of Hong Kong. Some of them may however also maintain strong ties to their home economies (e.g. having spouses or children in their home economies, hence maintaining dwellings and traveling frequently to there), thus creating the question as to whether their work in Hong Kong has constituted a change of their centre of economic interest to Hong Kong. This concern is particularly relevant to the Mainland talents and professionals because their initial stay granted is only 12 months (i.e. just meet the one-year guideline of residence). Whether they will continue to work in Hong Kong after the one-year period or whether they will treat Hong Kong as their principal residence are uncertain at the stage when they initially come to Hong Kong.

18. For those overseas talents and professionals considered to be residents of Hong Kong, outflow of workers' remittance will be recorded in Hong Kong's BoP account if they remit money to their family members abroad.

Low-skilled Labours Working in Hong Kong

19. Besides talents and professionals, Hong Kong also has a significant number of imported low-skilled labours. They are employed predominantly as domestic helpers, with a total number of around 237 000 in Hong Kong as at end 2002.

20. Foreign domestic helpers are considered as residents of Hong Kong based on the one-year guideline, because their employment contracts usually last for two years, subject to renewal upon satisfactory completion of the contracts. Nevertheless, since they have no right of abode in Hong Kong irrespective of their length of stay in Hong Kong, it is doubtful whether their centre of economic interest has rested with Hong Kong. On the other hand, many foreign domestic helpers have maintained strong link to their home economies, as evidenced in their remittance of a significant portion of their wages back to their home economies and their ownership of dwellings there.

Issues for Deliberations

21. The use of the one-year guideline to determine residence status of individuals will have the merits of enhancing international consistency and reducing operational ambiguity. Nevertheless, there are some practical cases in Hong Kong where individuals working abroad for a period longer than a year but still maintaining strong ties to their home economies. In such cases, the residence status determined based on the one-year guideline appears to be inconsistent with that using the general principle of centre of economic interest or principal residence.

22. Therefore, the following special situations and issues related to the movement of natural persons warrant detailed deliberations during the course of developing relevant recommendations to compilers:

- ◆ How to determine the residence status of an individual who maintains dwellings and households in two economic territories and in neither territory does he work continuously for one year or more during a definite period (e.g. a Hong Kong individual who maintains households in both the Mainland and Hong Kong travels to work regularly and frequently between the two territories)?
- ◆ Whether there is a case for developing other rules to determine residence status of an individual to complement the one-year guideline where the application of the one-year guideline does not provide a definite residence status or appears to contradict the general principle of centre of economic interest or principal residence? Some specific situations relevant to Hong Kong are given below:
 - Mainland talents and professionals admitted into Hong Kong through the Admission Scheme for Mainland Talents and Professionals will be granted an initial stay of 12 months. At present, they will be classified as residents of Hong Kong using the one-year guideline. Nevertheless, whether they will continue to work in Hong Kong at the end of the one-year period or whether they will treat Hong Kong as their principal residence are unknown or uncertain when they initially come to Hong Kong.
 - Foreign domestic helpers working in Hong Kong are currently classified as Hong Kong residents based on the one-year guideline of residence. Nevertheless, given their strong ties to their home economies, it is not certain that they really have their centre of economic interest in Hong Kong.

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