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GES NewsFlash

Hong Kong — Immigration Department steps up enforcement during Chinese New Year: Nonresident performers reminded to comply with Hong Kong immigration and tax rules



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Summary

On 4th February, the Hong Kong Immigration Department's Task Force officers conducted a raid on a lion dance performance in the city center. Failing to provide proper immigration documentation and authorization, several mainland lion dance performers were arrested on the spot and charged with suspected breach of conditions of stay in Hong Kong. The lion dance group leader was also charged with suspected employment of persons not lawfully employable in Hong Kong. The case is still under investigation by the authorities.

Immigration rules for nonresident performers

Under Hong Kong immigration rules, visitors to Hong Kong are not permitted to take up employment in Hong Kong, whether paid or unpaid, or to establish or join any business in Hong Kong without the permission of the Director of Immigration. Regardless of the duration of the performance and whether the performer is paid or unpaid, a nonresident performer is required to obtain an employment visa before he/she is allowed to come to Hong Kong to perform (e.g., music performances, dances, drama, traditional operas).

Offenders are liable to prosecution and upon conviction may be sentenced up to a maximum fine of HKD 50,000 and imprisonment for two years. Furthermore, anyone employing or engaging persons not lawfully employable in Hong Kong is liable to a maximum fine of HKD 350,000 and three years' imprisonment.

The latest trend

The Hong Kong authorities remain vigilant against illegal workers, and in recent years, the Immigration Department has continued to take tough and effective enforcement actions against unlawful employment in order to protect the local labor market. Measures taken include publishing related government policies and regulations,

encouraging the public to blow the whistle on offenders (through a 24-hour hotline or the Immigration Department website), as well as increasing the number of surprise checks. In calendar years 2012 and 2013, the Immigration Department has prosecuted nearly 7,000 cases, and among them, many were whistleblowing cases, similar to the case above.

Tax implications of sum paid to nonresident performer

From a tax perspective, whether a nonresident performer (or entertainer/sportsman) is an employee requires careful review of the documentation (e.g., copy of employment contract, if any, or copy of employment visa application submitted to the Immigration Department) and specifics of the arrangement.

Under current Hong Kong tax law, any sums received with respect to a performance by a non-Hong Kong resident performer (or entertainer/sportsman) in Hong Kong who is not an employee are chargeable to profits tax in the name of the person in Hong Kong who pays or credits the sums to the entertainer/sportsman (the "Hong Kong payer"). Profits tax is charged on the gross amount received less deductible expenses. The Hong Kong payer is also required to report the payment by completing the nonresident tax return if required by the Inland Revenue Department and subsequently settle the tax amount due.

If the relationship between the Hong Kong payer and the performer (or entertainer/sportsman) is that of an employer and employee, regular Hong Kong salaries tax reporting and filing obligations apply.

Failure to comply may affect the reputation of both the Hong Kong payer (or employer) and the individual. Any person who without reasonable excuse fails to furnish a return in time or fails to inform chargeability to tax is subject to a fine of HKD 10,000 and three times the tax undercharged. As such, companies (or employers) should carefully plan and ensure proper documentation is in place to comply with the Hong Kong tax rules.

Deloitte's view

While Hong Kong has a relatively simple tax and immigration system, the authorities remain very focused on ensuring compliance. Where companies and individuals are noncompliant, there can be not only monetary penalties but also criminal charges and reputational considerations. This case emphasizes the increased focus on compliance in the Asian market and the need for companies to actively manage and monitor their compliance requirements.

Deloitte Hong Kong has experienced Global Mobility professionals who can provide advice in both immigration and tax aspects. Please contact one of our professional team members if you would like to learn more.

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