



# Greater Bay Area – Cross Border Employment and Tax Guide

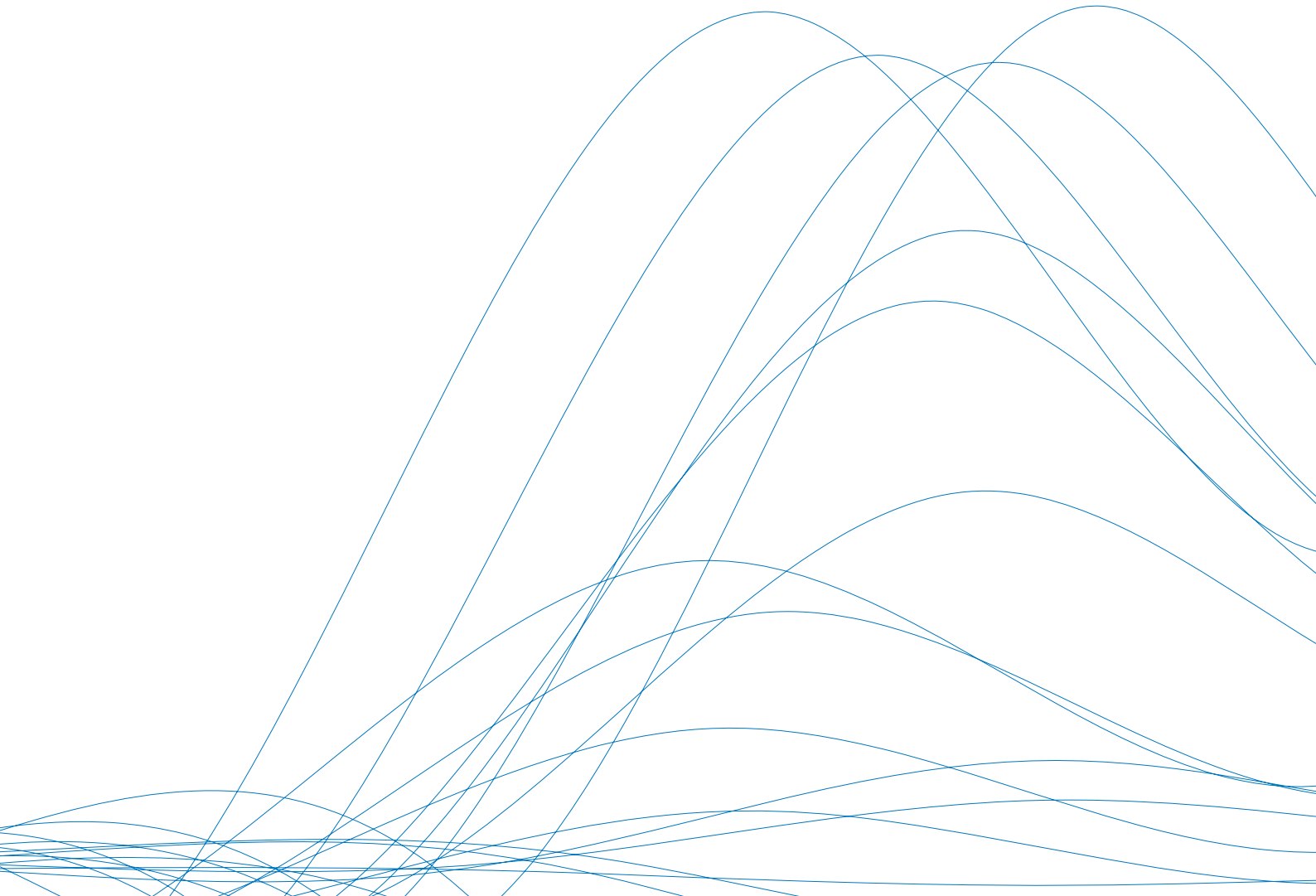






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## Overview

The Guangdong-Hong Kong-Macao Greater Bay Area (**GBA**) has been a strategic spotlight in China's development planning since 2017, with numerous policies facilitating cooperation within the GBA and transforming the region into a megacity cluster. As a result, recent years have seen growing cross-border flows of talent in the GBA. This guide aims to provide an overview of the recent regulations and preferential policies in Guangdong province and the Hong Kong Special Administrative Region (**HKSAR**) that facilitates the flow of business and talent. In addition, we discuss a number of critical aspects that employers should take into account when recruiting and moving employees across borders in this area, through a comparison of the different employment and tax laws in Guangdong province and HKSAR.



# Facilitation of cross-border flows of talent in the GBA

## Labour Mobility

### IMMIGRATION AND RESIDENCE FACILITATIONS INITIATED BY DIFFERENT GOVERNMENTS

#### Visa Requirements

##### Working in Guangdong

Rather than needing any visas, Hong Kong residents may enter the Mainland using travel permits, or more commonly known as Hui Xiang Zheng in Hong Kong. Since 2018, Hong Kong residents with Mainland travel cards can work in the Mainland without applying for separate work permits. In addition, Hong Kong residents who reside for more than 6 months and have a stable job in Mainland China can apply for residence permits in Mainland China ("**Residence Permits**").

##### Working in Hong Kong

Any person who does not have a right of abode in Hong Kong is not legally permitted to perform any work, whether paid or unpaid, within Hong Kong, unless such person is holding a valid Hong Kong employment visa (or holding a valid dependent visa or the relevant business activity falls within one of the limited business visitor exemptions). PRC nationals from Mainland China can apply for employment visa under the Admission Scheme for Mainland Talent and Professionals.

An applicant must be sponsored by a Hong Kong company (i.e. sponsor), who is usually the employing entity. Persons admitted as professionals will normally be granted an initial stay of 24 months on employment condition, or in accordance with the duration of the employment contract (whichever is shorter), upon entry. At around one month's time before the expiry of the visa, an application for extension of visa is required to be submitted to the Immigration Department.

#### Social Benefits

##### Working in Guangdong

Since 2020, Hong Kong residents legally employed by Mainland enterprises should participate in all five categories of social insurance, including basic pension insurance for employees, basic medical insurance for employees, work-related injury insurance, unemployment insurance, and maternity insurance, which are consistent with those available for Mainland residents. To avoid double payment of premiums, Hong Kong residents who have participated in social

insurance schemes in Hong Kong, and who have retained aforesaid social insurance may choose not to participate in Mainland scheme by presenting certification materials issued by an authorised agency.

However, local authorities' stance with regard to the employer's obligation of making housing fund contributions for Hong Kong residents varies in the Guangdong province. In Guangzhou, employers are obliged to pay the housing fund contributions for holders of Residence Permits but can refuse the payment request from employees without Residence Permits. In Shenzhen, however, the employers are not obligated to pay the housing fund contributions for employees who are Hong Kong residents, regardless of having Residence Permits or not.

##### Working in Hong Kong

There are no statutory social benefits specifically for employees in Hong Kong, save in relation to an employment-based pension requirement, under which employers and employees are required to make mandatory contributions to a privately funded retirement scheme (either through Mandatory Provident Fund or Occupational Retirement Scheme) when the relevant criteria are met.

### RECOGNITION OF PROFESSIONAL LICENSES IN DIFFERENT SECTORS

The Closer Economic Partnership Arrangement, CEPA, agreed between Mainland China and Hong Kong, has set up a positive list of open cross-border services, allowing professional personnel in the fields of law, accounting, engineering, medical care, and insurance actuarial that meet specific conditions to carry out related services in Mainland China. Here are some examples based on recent relevant policies:

Solicitors or barristers registered in Hong Kong who meet certain criteria may apply for GBA Practicing Certificate after passing an Exam and receiving a centralised training and passing the assessment conducted by the Guangdong Lawyers Association. Individuals with a GBA Practicing Certificate may practice in areas of certain civil and commercial law affairs (including litigation and non-litigation services) to which Mainland laws are applicable in the Nine Mainland Cities.

Tax-related professionals from Hong Kong who satisfy certain practicing conditions can practice in the Qianhai Shekou Area upon completion of registration with Shenzhen Tax Bureau. After registration, those professionals should join tax-related professional service agencies or tax firms in Shenzhen, or open their own offices in Shenzhen.

Hong Kong citizens with valid qualification certificates of Hong Kong Registered Professional Planners can apply to the Department of Natural Resources of Guangdong Province for record filing. After filing, those Hong Kong Registered professional planners are allowed to provide professional service in Guangdong province.

## Tax treatment

### PREFERENTIAL POLICIES IN GUANGDONG

For the period from 2019 to 2023, subsidies will be granted to “Overseas High-end Talent and “Urgently-needed Talent” in the 9 cities of GBA’s Pearl River Delta (i.e. Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing, each city referred hereinafter as the “City”, and collectively as “Cities”), to compensate the difference between the Individual Income Tax (“IIT”) levied by the Mainland China and by HKSAR. These subsidiaries are intended to reduce the IIT burden of recognised overseas talent, to the effect that their actual IIT burden in Guangdong will be reduced to a level similar to HKSAR.

Public announcements and application guides have been subsequently published by the Cities to provide clearer implementation rules on (1) identification of qualified applicants, (2) calculation of subsidies, and (3) the application procedure. While there are some differences in each City’s application rules, their key features are generally consistent.

#### Who are qualified for enjoying the subsidies?

Overseas High-end Talent and Urgently-needed Talent, working in one of the Cities and free from any criminal records in Mainland China, would be able to enjoy the subsidies. More specifically:

- The qualified individuals should be (i) permanent residents from Hong Kong, Macao or Taiwan, (ii) foreign nationals, (iii) Hong Kong residents listed in Hong Kong’s Quality Migrant Admission Scheme, (iv) Chinese students returned from abroad, or (v) overseas Chinese with foreign permanent residency.

- The qualified individuals should be employed by, or be engaged to provide independent services to, entities or institutions that are incorporated in one of the Cities. Some Cities, such as Guangzhou, also require the qualified individuals to stay and work in the City for at least accumulatively 90 days in a tax year.
- The qualified individuals should meet the criteria of High-end Talent and Urgently-needed Talent, which are separately determined by the Science and Technology Innovation Committee (“STIC”), and Human Resources and Social Security Bureau (“HRSS”) of each City.

#### How would the subsidies be calculated?

The amount of subsidy granted generally will equal to the difference between (i) the IIT paid in Mainland China on the prescribed taxable income of the qualified individuals, and (ii) the tax payable in HKSAR on such prescribed taxable income on the assumption that such income is paid in HKSAR.

- The prescribed taxable income include salary, personal service income, writer’s contribution income, royalties, operation income and the subsidies granted for the Talent Projects. Dividends, capital gain, rental income and incidental income on the other hand would not count for calculation of subsidies.
- The tax payable in HKSAR will be calculated based on the prescribed taxable income and a flat tax rate of 15%.

#### Application procedure

Some of the Cities have published Application Guides, and the application procedure generally look like the following.

- Applicants file online application with required information, documents and a commitment letter before 30 September.
- Local authorities review the qualification of the applicants and calculate the subsidies.
- Local authorities publish the names of the qualified applicants for public comments.
- Local treasury release the subsidies directly to the individuals’ bank account (or via the employer’s bank account).



It should be noted that the applications are required to be submitted by the employer (as the IIT withholding agent of the applicants) unless the applicant is working as an individual service provider. At the same time, both the applicant and the employer are required to submit a letter of commitment to confirm meeting some prescribed qualification conditions.

#### PREFERENTIAL POLICIES IN HONG KONG

Hong Kong has not yet introduced any preferential policies in this regard.

Where an individual from GBA's Pearl River Delta provides services both in China and in Hong Kong, the income derived from the individual's Hong Kong

employment will be wholly assessable unless he/she has paid China's individual income tax in respect of the income attributable to services rendered by him/her in China. If so, he/she may apply for a tax exemption for that part of income under the Inland Revenue Ordinance or for a tax credit under the China-Hong Kong double taxation agreement.

On the China side, non-China sourced income may be claimed as a credit on the China tax return to the extent of the individual income tax payable on the same category of income derived from the same country.









# Comparison of employment and tax laws

## Employment

	GUANGDONG	HONG KONG
<b>Employment contracts and policies</b>	<p><b>Employment contract</b> Employment contract in writing is mandatory, and certain information shall be involved (term of the contract, working time, wages, work scope and place of work, etc.). Mutual agreement in writing is required when changing contractual employment terms and conditions, except in very limited cases.</p> <p>Bilingual version is recommended. Local regulations may vary. In Shenzhen, providing Chinese version of employment contract to employees is a must.</p> <p><b>Policy</b> Formulation of policies is required by law. Employers must go through a consultation process with relevant representatives or all employees to implement and vary employment policies.</p> <p>If the policies/other documents need to be submitted to the labor arbitration commission or court in China, it must be in Chinese.</p>	<p><b>Employment contract</b> A prospective employee must be provided with certain information (wages and wage period, any end-of-year payment, and length of notice) prior to commencing employment. There is no requirement to have an employment contract in writing, but it is common practice to have a written contract signed by both parties.</p> <p>No statutory obligation to translate employment contracts.</p> <p><b>Policy</b> No mandatory policies, although it is common for employers to implement company policies for its employees (such as anti-discrimination policy).</p> <p>No statutory obligation to translate policies/ other documents.</p>
<b>Working time, time off work and minimum wage</b>	<p><b>Restrictions on working hours</b> The standard working hour is 8 hours a day and 40 hours a week.</p> <p>The employer can implement a flexible working hour system and comprehensive calculation working hour system in respect of applicable positions after approval is granted by the authorities. However, the average working hours under a comprehensive calculation working hour system should be equivalent to the standard working hour system.</p>	<p><b>Restrictions on working hours</b> There are currently no limits on working hours (except for young employees who are aged 15 and above but under 18 and employed in an industrial undertaking).</p>

<p><b>Overtime</b> Overtime should not exceed 3 hours a day and 36 hours a month. Overtime, under a standard working hour system, must be paid according to the following rules:</p> <p>150% of the employee's standard salary if the overtime is arranged on working days;</p> <p>If the overtime is arranged on a rest day (weekends normally), a compensatory day-off shall be provided; if such compensatory day-off cannot be provided, 200% of the employee's standard salary should be paid instead; and</p> <p>300% of the employee's standard salary if the overtime is arranged on public holidays.</p> <p><b>Statutory leave entitlements</b> Employees are entitled to 11 statutory holidays per year.</p> <p>If an employee works on the statutory holidays, generally the company shall pay the employee 300% of the employee's normal daily salary as overtime payment. For the employees under flexible working hour system, whether they are entitled to overtime payment on statutory holidays depends on various local regulations. A local regulation in Guangdong provides that employees under approved flexible working hour system are not entitled to overtime payment if they are approved to work under the flexible working hour system. However, in Shenzhen, overtime payment to employees under flexible working hour system is required. In practice, employees should refer to the agreements set out in the application materials for flexible working hour system with regard to the overtime.</p> <p><b>Minimum wage</b> There is no single national statutory minimum wage. Statutory minimum wages are set by the local governments of individual provinces, autonomous regions and certain municipalities (those directly administered by central Government), subject to the approval of the national Ministry of Human Resources and Social Security. Within each province or region, varying minimum wage rates may be set for different cities/districts.</p> <p>Currently, the minimum monthly wage in Shenzhen is RMB 2,200 and that in Guangzhou is RMB 2,100.</p>	<p><b>Overtime</b> There is no statutory obligation to provide pay for overtime hours worked.</p> <p>Provided that overall wages do not fall below the statutory minimum wage rate (currently HKD 37.50 per hour) after accounting for all of the hours worked (including overtime) by the employee, it is open for an employer to implement its own overtime arrangements including determining whether overtime work is guaranteed or not, obligatory or not and whether it is paid or unpaid.</p> <p><b>Statutory leave entitlements</b> Employees in Hong Kong are all entitled to 12 statutory holidays per year.<sup>1</sup></p> <p>Every Sunday and the 12 statutory holidays plus 5 additional days are declared as general holidays. General holidays are generally observed by banks, educational institutions and government departments, although in practice many private employers also observe the general holidays, except Sundays (but there is no statutory obligation to do so).</p> <p>Although all employees are entitled to a day off on statutory holidays, only employees who have been continuously employed for a period of 3 months immediately preceding the statutory holiday are entitled to a paid holiday. Payment is based on the employee's average daily wages over the previous 12 months immediately before the statutory holiday (or if the employee has been employed for less than 12 months, the shorter period).</p> <p><b>Minimum wage</b> The current statutory minimum wage rate is HKD37.50 per hour.</p>
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<sup>1</sup> Starting from 2022, one statutory holiday will be added every 2 years until the total number of statutory holiday reaches 17 days in 2030.



<b>Employee data privacy rules</b>	<p>The Personal Information Protection Law (PIPL) includes additional legal grounds for processing personal information in addition to the general “consent-based” approach. Employers may process employee data where processing is necessary for conducting human resources management according to an employment policy or a collective contract that is established or concluded in accordance with the applicable laws and regulations.</p>	<p>The Personal Data (Privacy) Ordinance should be observed when dealing with personal data. Generally speaking, personal data is only collected for a lawful purpose and only personal data which is necessary and not excessive for that purpose may be collected and that individuals are informed of certain things before data is collected or used.</p>
<b>Termination of employment</b>	<p>There is no “at-will” employment in Mainland China and an employer must have lawful grounds to terminate employment unilaterally. Unilateral termination in China is very difficult and carries substantial risks. In the event that the termination is deemed as unlawful, the employee will have right to claim for reinstatement or double severance.</p> <p>Statutory severance is calculated as: average monthly pay during the 12 months preceding the termination (including base salary, bonus and allowances but excluding overtime payment) multiplied by length of service (rounded up the nearest half or full year) with the employer. If the employee’s average monthly salary in the 12 months preceding the termination exceeds three times the average social salary, the base for the calculation of severance pay shall be capped by three times the average social salary (currently RMB 33,786 in Guangzhou and RMB 34,860 in Shenzhen), and the number of serving years shall be capped by 12. Such cap only applies to the service years after January 1, 2008.</p> <p>30 days’ prior notice is required for individual termination. Not required for gross misconduct case or termination due to failure to meet the conditions of employment during the probation period or some other circumstances stipulated by law.</p>	<p>Termination with notice or payment in lieu of notice is permissible. However, there are certain prohibited or restricted terminations that the breach of which may constitute “unlawful dismissal”. Unlawful dismissal is an offence with a fine up to HKD100,000 upon conviction.</p> <p>Employees with continuous employment of 2 years or more are also protected against “unreasonable dismissal” i.e. there must be a statutory recognised valid reason for termination. Unreasonable dismissal is not a criminal offence but employees will be entitled to certain statutory remedies.</p> <p>Minimum 7 days’ notice after the 1st month of the probationary period and during subsequent employment is required for individual termination. If the notice is specified in the employment agreement, the notice will be the agreed period. If no notice period is specified, it is presumed to be 1 month. Not required for termination for serious misconduct (i.e., gross misconduct or cause) but it requires a high threshold.</p>

<p><b>Restrictive covenants</b></p>	<p>The employer can enter into written agreement regarding restrictive covenant with certain classes of employee. A post-employment non-compete restriction is enforceable provided: the employee is in senior management, is a senior technician, or has access to the employer's trade secrets; the employer pays monthly compensation to the individual throughout the restraint period; and the term of the non-competition restriction does not exceed 2 years. The amount of compensation can be agreed by both parties in the written agreement, as national legislation does not set minimum standards. However, in Shenzhen, a local regulation provides that the amount of compensation should be no less than 50% of the monthly average compensation paid by the company to the employee during the twelve (12) months immediately preceding the termination of the employment with the company.</p>	<p>In Hong Kong, post-employment restrictive covenants are potentially enforceable if certain criteria are satisfied.</p> <p>There is no requirement at common law for an employer to pay any specific amount as consideration for compliance with a restrictive covenant. Compensation will not render an otherwise unenforceable restraint, enforceable. However, in some cases, whether or not compensation is paid to the employee is taken into account when assessing enforceability of restraints (particularly in borderline cases).</p>
<p><b>Jurisdiction</b></p>	<p><b>Dual employment</b> Under a dual employment, theoretically the employee can select against which employer he/she wants to pursue remedies, either the Guangdong entity or the Hong Kong entity.</p> <p><b>Secondment arrangement</b> If employees are seconded from Hong Kong to the Mainland, normally it is the Hong Kong employer that should bear employer obligations. Nevertheless, if an employment relationship is deemed as being materially established between the host entity and the employee, the Guangdong entity could be liable as well.</p>	<p><b>Dual employment</b> For employees relocating from Mainland to Hong Kong, if their employment relationship with their Mainland employing entity is retained or not properly terminated, employees may be able to claim that they have dual employment i.e. they might claim both employee rights and benefits in Hong Kong and in the Mainland. This could in turn lead to them “cherry picking” the entitlements that are more favourable to them. Consideration needs to be given to minimise (to the extent feasible) the likelihood of the employee forum shopping in the event of any dispute.</p> <p><b>Secondment arrangement</b> If employees are seconded to the Hong Kong entity, technically speaking they are not employees of the Hong Kong entity (but are secondees only). In some instances, particularly in longer-term secondments, there will nevertheless be a risk that the employee will argue they have accrued statutory rights in Hong Kong.</p>



## Tax differentials

	GUANGDONG	HONG KONG
<b>Individual income tax</b>	<ul style="list-style-type: none"> <li>The tax rate for individual composite income above the tax free threshold of RMB5,000 range from 3-45%. The top rate starts to apply with an income of RMB 960,000 per year.</li> <li>The effective rate on salary income, writers' contribution fee, royalties, operation income and the subsidies granted for the Talent Projects in China, could be reduced to 15%.</li> <li>Employers are required to submit the application for the subsidies on behalf of the applicants.</li> </ul>	<ul style="list-style-type: none"> <li>Individuals' income from employment, less allowable deductions and personal allowances, is chargeable to salaries tax at progressive rates ranging from 2% to 17%, with total tax payable being capped at 15%.</li> </ul>
<b>Corporate income tax</b>	<ul style="list-style-type: none"> <li>Basic tax rate of 25%.</li> <li>15% preferential tax rate will continuously apply to the modern service enterprises in Qianhai till 31 December 2025.</li> </ul>	<ul style="list-style-type: none"> <li>Profits tax is payable by any person carrying on a trade, profession or business in Hong Kong on profits arising in or derived from Hong Kong from that trade, profession or business.</li> <li>Assessable profits of corporation are taxed at two-tier corporate tax rates of 8.25% for the first HKD2,000,000 and thereafter at 16.5%.</li> </ul>
<b>Value-added Tax ("VAT")</b>	<ul style="list-style-type: none"> <li>Up to 13%.</li> <li>From 1 October 2020 to 31 December 2023, the income derived from provision of international shipping insurance services by insurance enterprises registered in Guangzhou for enterprises registered in the Nansha Free Trade Zone shall be exempt from VAT.</li> <li>Export VAT Rebate Policy for Ports of Shipment apply to 37 ports of shipment in GBA</li> </ul>	<ul style="list-style-type: none"> <li>Hong Kong does not have VAT.</li> </ul>

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