

TAX UPDATES – FEBRUARY 2021

1. Hong Kong Transfer Pricing Update

The Hong Kong Inland Revenue Department (“IRD”) has formulated its procedures to review transfer pricing documentation. First round of compliance reviews is expected to commence in Year 2021.

Standard form of “Transfer Pricing Documentation – Master File and Local File” (“Form IR1475”) will be used to gather high-level information of taxpayers’ transfer pricing policies before requesting the submission of Master File and Local File. Form IR1475 is essentially a summary of Master File and Local File. Computerized Form IR1475 will serve as a tool for the IRD to quickly identify high risk taxpayers with “abnormal” transfer pricing policies as compared to industry peers.

The issue of Form IR1475 signifies the IRD’s determination to review taxpayers’ transfer pricing policy. The IRD may start to issue enquiry letter to obtain Master File and Local File within one year from the stipulated due date of preparing the documentation. The expected dates for the IRD to issue the enquiry letter are: -

Year-end date	Stipulated due date for preparation (upon request)	Expected date for IRD to request for documentation
31 March 2019	31 December 2019	Starting from 1 January 2021
31 December 2019	30 September 2020	Starting from 30 September 2021

Points to Note

1. This policy is going to impact taxpayers who do not adhere to the preparation due date and prepare Transfer Pricing Documentation ONLY upon request. As the IRD only requests for a summary of the Documentation which should have already been prepared, it is likely that the IRD will only allow one month to complete the Form IR1475 even when multiple years of Transfer Pricing Documentation data are required at the same time.

2. Failure to comply with the Court order to prepare and retain a Master and a Local File without reasonable excuse may be subject to a penalty up to HK\$100,000 and raise the attention of the IRD on the taxpayer’s related party transaction.

3. Last but not least, the maximum penalty arising from Transfer Pricing Adjustment would be ONE TIME of tax uncharged. No penalty will be imposed if reasonable effort has been exerted. Pursuant to DIPN 59, failure to maintain proper Transfer Pricing documentation is the first quoted example for failure to exert reasonable effort.

Reference

The threshold of preparation of Transfer Pricing Documentation are stated as follow; Hong Kong companies meeting both criteria (A) and (B) would be required by Law to prepare Master File and Local File: -

	Criteria (A): Based on size of business (any two out of three of the below)	Threshold per financial year
(i)	Total annual revenue	≥ HK\$400 million
(ii)	Total assets	≥ HK\$300 million
(iii)	Employees	≥ 100

	Criteria (B): Based on related party transactions (any one out of four of the below)	Threshold (HK\$) per financial year
(i)	Transfers of properties (excludes financial assets / intangibles)	≥ \$220 million
(ii)	Transactions in financial assets	≥ \$110 million
(iii)	Transfers of intangibles	≥ \$110 million
(iv)	Any other transactions (e.g., service income / royalty income)	≥ \$44 million

2. Abolishment of Macau Offshore Company Regime

In order to cooperate with the OECD's framework to combat cross-border tax evasion and promote tax transparency, the existing Macau offshore company ("MOCs") regime has already been abolished on 1 January 2021. The offshore business license shall have been expired and all tax benefits for MOCs were revoked on the same date.

It is expected that MOCs will register as ordinary local companies, and will be subject to Macau Income Tax. If MOCs intend to convert their business into one of the existing types of ordinary companies in Macau, they have 180 days from 1 January 2021 (i.e. the due date is 30 June 2021) to make such changes. The MOCs are temporally not required to pay any tax before the due date.

Points to Note

It is common for large multinational corporations ("MNC") to establish MOCs as the trading companies within the group. Upon the abolishment of MOC regime, they are required to report tax in Macau starting from the year 2021.

It is difficult for MNC to recruit sufficient qualified staff to support the trading operations; yet often the Macau company is actually managed by personnels in other tax jurisdictions (e.g., Hong Kong, the PRC). With the abolishment of offshore regime, MNC should consider whether it is still worthwhile to maintain such trading companies in Macau, considering the potential double taxation arising from permanent establish risk especially with non-DTA partners of Macau.

3. Expected credit loss provided for bad debts

In June 2020, the IRD issued a revised Departmental Interpretation Practice Notes No. 42 to clarify the tax deduction on an expected credit loss (“ECL”) provided for financial instruments under HKFRS 9.

Under 3-stage approach, the application of tax deduction on ECL is not subject to the deduction rule for bad debts under Section 16(1)(d) of the Inland Revenue Ordinance (“the IRO”). The ECL should be treated as deductible only if the financial instrument is credit-impaired (i.e. stage 3). For financial instrument not credit-impaired (i.e. stage 1 and 2), the ECL will unlikely to be deductible. The tax treatment of ECL of financial instruments is summarized as follows:-

Stage of ECL	Tax treatment on ECL	Subsequent reversal of ECL	Relevant Inland Revenue Ordinance
Stage 1 and 2	Non-deductible	Non-taxable	Section 18K(2)
Stage 3	Deductible	Taxable	Section 18K(3)

Points to Note

For cases using simplified approach, the deduction criteria is similar to that of Section 16(1)(d) of the IRO which requires taxpayer to prove to the IRD’s satisfaction that the debt has become bad and reasonable recovery actions have been taken to recover the debt. Please consult your auditor and tax advisor for details and implication on your company.



TAX UPDATES – FEBRUARY 2021

1. 香港轉讓定價相關更新

香港稅務局已製定程序來審查納稅人的轉讓定價文件，第一輪的合規審查預計於2021年開始。

稅務局在要求納稅人提交「主體文檔」和「本地文檔」之前，會先發出「轉讓定價文檔－主體文檔和本地文檔」表格（「IR1475 表格」）來收集納稅人轉讓定價政策的初步信息。IR1475 表格實質上為「主體文檔」和「本地文檔」的摘要。此表格將有助稅務局快速識別轉讓定價政策較同行業公司比較「異常」的高風險納稅人。

稅務局發出IR1475表格，引證了稅務局將嚴格及有系統地審查納稅人的轉讓定價政策。我們預計，稅務局將在法定預備文檔的截止日期的一年後開始向納稅人發出提問信函，要求納稅人提供「主體文檔」和「本地文檔」。相關的預計日期如下：－

納稅人年結日期	法定要求下， 預備文檔的截止日期	預計稅務局發出 提問信函的日期
2019年3月31日	2019年12月31日	由2021年1月1日開始
2019年12月31日	2020年9月30日	由2021年9月30日開始

值得留意的事項

1. 此政策將會影響未有遵守法例於截止日期前準備文檔、及打算在收到稅務局要求提交後才準備文檔的納稅人。由於IR1475表格僅要求納稅人提供本應準備好的文檔摘要，因此即使稅務局同時要求多年的轉讓定價文檔資料，我們預計其亦只允許一個月時間供納稅人完成表格。
2. 在沒有合理辯解的情況下，如果未能遵照法院的命令準備和保留「主體文檔」和「本地文檔」，則可能面臨最高10萬港幣的罰款，並引起稅務局對納稅人所進行之關聯交易的關注。
3. 若稅務局以轉讓定價法例調整納稅人的應得利潤，其最高罰款是少徵稅款的一倍。如果納稅人已作出合理努力記錄轉讓定價政策，稅務局較大機會不施加任何罰款。根據DIPN 59，未有準備或未能保留轉讓定價文檔是未有作出合理努力記錄的第一個指標例子。

參考資料

根據條例，準備轉讓定價文檔的門檻如下，如符合條件(一)及條件(二)，香港公司必須準備主體文檔和本地文檔：－

	條件(一)：有關公司規模（符合以下三項中的兩項條件）	該財政年度的門檻
(1)	全年總收入	≥4億港元
(2)	總資產	≥ 3億港元
(3)	員工總數目	≥ 一百名

	條件(二)：有關關聯公司交易（符合以下四項中的一項條件）	該財政年度的門檻
(1)	有形資產交易（不包括金融資產/無形資產）	≥2.2億港元
(2)	金融資產交易	≥1.1億港元
(3)	無形資產交易	≥1.1億港元
(4)	其他交易（例如：服務收入或支出/專利權費用收入或支出）	≥4,400萬港元

2. 廢除澳門離岸業務法律制度

為了與經濟合作暨發展組織合作打擊跨境逃稅和提高稅收透明度，澳門特別行政區從2021年1月1日起廢除了現行的澳門離岸業務法律制度。離岸營業執照應已屆滿，所有澳門離岸公司的稅收優惠也在同一天被撤銷。

我們預計澳門離岸公司將會註冊為當地普通公司，並需繳納澳門所得稅。如果澳門離岸公司打算將其業務轉換為澳門現有普通公司的其中一種，則需要在2021年1月1日起180天內（即到期日為2021年6月30日）進行相應變更。澳門離岸公司暫時不需要在到期日之前繳納任何稅款。

值得留意的事項

一般而言，跨國公司建立澳門離岸業務作為集團的貿易公司是十分普遍的商業架構。隨著澳門離岸業務法律制度的廢除，澳門離岸公司的離岸身分將無法維持，它們必須在澳門申報稅收。

跨國集團於聘請合資格、而又足夠的員工人數來支持澳門公司的貿易運營一般面對不少困難，實際上，澳門公司通常由其他稅務管轄區（例如香港、中國）的管理人員經營。隨著澳門離岸制度的廢除而可能產生雙重徵稅的風險（特別是未有與澳門簽訂避免雙重課稅協定的稅務管轄區），跨國公司應考慮仍然在澳門保留此類貿易公司的稅務成本和風險。



3. 呆壞帳的預期信貸虧損

香港稅務局於2020年6月發表了《釋義及執行指引第42號》(修訂本)，以解釋《香港會計財務報告準則第9號》有關預期信用損失的稅務扣除。

在預期信用損失所採用的三階段法中，對預期信用損失進行的稅務扣除並不受稅務條例第16第(1)(d)條規定的壞帳扣除規則約束。當金融工具已發生信用減值(即第3階段)時，預期信用損失才可以被視為可作稅務抵扣。對於尚未出現信用減值的金融工具(即第1階段和第2階段)，預期信用損失將不可作稅務抵扣。金融工具的預期信用損失的稅務處理概述如下：

預期信用損失階段	預期信用損失的稅務處理	預期信用損失隨後的沖銷	相關的稅務條例
階段1和2	不可作稅務抵扣	不會被徵稅	稅務條例第18K(2)條
階段3	可作稅務抵扣	會被徵稅	稅務條例第18K(3)條

值得留意的事項

對於使用簡易方法的情況，扣除準則類似於第16(1)(d)條的規定，該條例要求納稅人證明相關債務已經變成壞帳，而納稅人已採取合理的行動追討相關債務。我們建議納稅人與審計師和稅務師溝通，以了解相關條例對公司的影響。

