

TAX UPDATES – MARCH 2021

Dear Valuable Client,
尊貴的客戶：

1. IRD's Updated View - Supplementary Form S2 ("Form S2") - Hong Kong Profits Tax Return

Section 1 of Form S2 requires taxpayers to disclose their transactions with overseas related parties. This is not a new question in Hong Kong Profits Tax Return. Many corporations will interpret the requirements as income earned or expenses paid to non-Hong Kong group entities.

In the 2020 Annual Meeting between the Inland Revenue Department ("IRD") and the Hong Kong Institute of Certified Public Accountants ("HKICPA"), the IRD has broaden the definition of "transactions".

In simple terms, besides the income / expenses directly received from / paid to group companies, the IRD would request disclosure of related party location in the following scenarios:-

1. making payment(s) on behalf of an overseas group company.
2. maintaining current accounts with an overseas group company, even when the balance remained the same.

Points to Note

We consider the updated view of the IRD will bring up the tax risk of taxpayers with the below :-

1. Payments made on behalf of overseas group companies without proper recharge
2. Interest-free loan arrangements among Hong Kong and overseas group companies

Transfer pricing has been the focus of the IRD recently. A number of enquiry letters or even tax investigation have been basis of calculation of service and financing arrangements between Hong Kong and overseas group companies, particularly when the overseas group companies are located in low / no tax jurisdiction.

On the other hand, interest-free loans are less likely to be an arm's length arrangement. Significant amount of current accounts with overseas group companies will also trigger the need to prepare Transfer Pricing Master File and Local File in Hong Kong.

Corporations with significant related party transactions are suggested to consult with your tax advisor on your transfer pricing tax risk.



2. External Debt Quota in China

As part of the foreign exchange control policy, the amount of foreign debts borrowed by a wholly foreign-owned enterprise (“WFOE”) in Mainland China is limited by foreign debt quota (“the Quota”).

Traditional method of the Quota is the differences between the paid capital and registered capital (“Method 1”). Starting from the year 2017, the net asset method can also be selected (“Method 2”). The current multiplier is 2.

Usually, the amount of the Quota calculated by using Method 2 would be larger than the amount calculated by using Method 1. As such, a FIE may evaluate whether Method 2 can be used to increase the Quota.

Points to Note

Despite the relaxation, it is still more flexible for Chinese Enterprises to set up a Hong Kong company to borrow external loans in foreign currencies (e.g., the USD) as there are no foreign exchange controls in Hong Kong. Benefits of obtaining Hong Kong financing are as below:-

- The borrowing rate in Hong Kong is generally lower than that in the PRC; and
- USD is still the currencies commonly received by the Chinese Manufacturers and exporters from its overseas customers. Borrowings in USD would reduce the foreign exchange rate risk of Chinese Enterprises.

Having said that, your Hong Kong company must establish business track records in order to borrow from Hong Kong banks. It is easy for exporters and manufacturers to set up business records in Hong Kong when their customers or suppliers are from overseas.

To conclude, besides tax saving purposes, financing costs are also another reason for setting up your business in Hong Kong. Whether to set up office or employ staff in Hong Kong or not is another story.

2 全口径跨境融资宏观审慎管理政策解读
<https://www.safe.gov.cn/hebei/file/file/20180424/c17bffb6582428f8dfa9835e0ce1562.pdf>

中国人民银行 国家外汇管理局关于调整企业跨境融资宏观审慎调节参数的通知
銀發[2021]5號通知
http://www.gov.cn/zhengce/zhengceku/2021-01/07/content_5577846.htm



3. Court Case Study: Prohibited use of Share Capital of WFOE

Let me read a court case in Mainland China...

鈺基國際貿易(上海)有限公司 ("the Company") has acquired a rented property ("the Property") located in Shanghai. The purchase funds came from its share capital.

Before the acquisition, the Property had already been rented out. After the acquisition, the Company signed a tenancy agreement with the existing tenant and generated rental income.

*The court determined that the relevant foreign exchange settlements were illegal as the Property was not acquired for self-use and therefore the Company was liable on conviction to a fine of **RMB980,000**.*

Points to Note

WFOEs in Mainland China are now free to convert their share capitals denominated in foreign currencies into Renminbi to support their operations in Mainland China. Companies are free to exchange the currencies first, but the PRC Authorities would then impose fines if they find out that the Renminbi is subsequently used for prohibited purposes.

Examples of prohibited uses are as follows:-

- acquisition/development of any real estate not for self-use
- direct / indirect securities investment
- Loans to unrelated parties

In view of the above, a WFOE should ensure that it has complied with the requirements when using its funds in order to avoid penalty.



1. 香港稅務局對利得稅報稅表補充表格S2 (“表格S2”)之最新觀點

納稅人需在表格S2的第一部份填報有關與非居住於香港的相聯人士/非香港居民人士的其他部分進行交易的資料。這不是對填寫利得稅報稅表的新要求，而很多企業將“交易”視之為對/從非香港集團實體所支付的費用/賺取之收入。

在2020年稅務局與香港會計師公會舉行的周年會議中，稅務局擴大了“交易”之定義。

簡單來說，除了對/從非香港集團實體所支付的費用/賺取之收入外，稅務局亦要求納稅人在以下情況下必須披露關聯方之居住地:-

1. 代集團旗下之海外公司支付費用
2. 與集團旗下之海外公司維持往來賬戶

值得注意的事項

我們認為稅務局之最新觀點會在以下情況中為納稅人帶來稅務風險：

1. 代集團旗下之海外公司支付費用但沒有收取合理費用
2. 向集團旗下之香港及海外公司提供免息貸款安排

最近，轉讓定價是稅務局之關注重點。許多稅務局發出之詢問函甚至稅務調查都是基於香港與海外集團公司之間的服務和融資安排。當海外集團公司位於低/無稅管轄區時情況更為嚴重。

另一方面，無息貸款不太可能被視為公平交易安排。而與集團旗下之海外公司維持大量往來賬戶也可能引致需要香港擬備轉讓定價總體檔案和分部檔案。

我們建議具有顯著關聯交易的公司有需要就轉讓定價稅收風險向稅務顧問作出諮詢。



2. 中國外債額度

作為外匯管制政策的一部分，中國大陸的外商獨資企業在借入外債的數量會受限於外債額度（“額度”）。

額度之傳統計算方法為投資總額與註冊資本之差額（“投註差”）。從2017年起，可使用企業淨資產額（“全口徑”）方法計算額度，現時為企業淨資產額之2倍。

通常使用“全口徑”方式計算之額度會比使用“投註差”方式大。因此，外商獨資企業可評估是否可使用“全口徑”方式以增加額度。

值得注意的事項

儘管中國大陸的外匯管制政策有所放寬，但由於香港沒有外匯管制，中國企業仍可以組建一家香港公司，以便可更靈活地借取外幣（例如美元）貸款。在香港獲得融資的好處如下：

- 香港的貸利率普遍比中國較低；和
- 中國製造商和出口商與其海外客戶之交易仍普遍以美元計算和結算。美元借貸可降低中國企業的匯率風險。

儘管如此，香港公司必需擁有業務記錄才能成功從香港銀行獲取貸款。對有海外客戶或供應商的製造商和出口商而言，在香港建立業務記錄應該不成問題。

總括來說，在香港開展業務不僅可以節省稅款，還可以減低融資成本。至於是否在香港設立辦事處或僱用員工，那又是另一回事。

2 全口径跨境融资宏观审慎管理政策解读

<https://www.safe.gov.cn/hebei/file/file/20180424/c17bffbd6582428f8dfa9835e0ce1562.pdf>

中国人民银行 国家外汇管理局关于调整企业跨境融资宏观审慎调节参数的通知
銀發[2021]5號通知

http://www.gov.cn/zhengce/zhengceku/2021-01/07/content_5577846.htm



3. 個案研究: 禁止使用外商獨資企業的股本

以下為一個中國個案。

鈺基國際貿易(上海)有限公司(“鈺基”)使用源自股本的資金購買一間坐落於上海的房屋。

在購買前，相關房屋已被租出。鈺基在購買相關房屋後與原承租人簽訂房屋租賃合同及收取租金。

法院認為鈺基動用資本金結匯購買房屋用於出租而不是自用，裁定鈺基非法使用資本金結匯及罰款人民幣98萬元。

值得注意的事項

在中國的外商獨資企業現在可按其在中國之實際經營需要自由地把資本項目外匯收入進行結匯。尽管公司可先把外匯收入進行結匯，但如果中國當局發現有關資金隨後被用於禁止用途，則會將對其處以罰款。

禁止用途的例子如下：

- 購買或建設非自用房
- 直接或間接證券投資
- 向非關聯企業發放貸款

有見及此，外企應確保其結匯所得之人民幣資金的使用符合相關法律法規，以免被罰。



Contact Us 聯絡我們

For further information regarding the above, please feel free to contact us.

如有任何查詢，歡迎隨時與我們聯絡。

Henry Kwong	Tax Partner	(852) 3962 0114	henry.kwong@chengtax.com.hk
Elena Ng	Tax Manager	(852) 3962 0116	elena.ng@chengtax.com.hk
Keith Chung	Tax Manager	(852) 3962 0136	keith.chung@chengtax.com.hk
Matthew Cheung	Tax Manager	(852) 3962 0126	matthew.cheung@chengtax.com.hk

Cheng & Cheng Limited

鄭鄭會計師事務所有限公司

Level 35 & 36,
Tower 1, Enterprise Square Five,
38 Wang Chiu Road,
Kowloon Bay, Kowloon, Hong Kong
香港九龍九龍灣宏照道38號企業廣場5期1座35及36樓

Website/網址: <https://www.chengcpa.com.hk>

