

TAX UPDATES – JUNE 2021

1. Tax Deduction now available on Withholding tax paid in Non-DTA jurisdictions (Effective from 2021/22)

Hong Kong Legislative Council passed the Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 [1] on 2 June 2021. Deduction of foreign tax is covered in the Bill and shall apply starting from the year of assessment 2021/22.

In the past, under DIPN No. 28 (Revised), the Inland Revenue Department (“the IRD”) does not allow tax deduction on foreign tax paid on most type of income (except for interest income). As such, taxpayers who paid tax in Hong Kong as well as Non-DTA jurisdictions (e.g., the US, Australia, Taiwan) would not have tax relief in Hong Kong.

Effective from 2021/22, a new provision, Section 16(1)(ca) of the Inland Revenue Ordinance (“the IRO”), is added to provide deduction on foreign taxes paid by a Hong Kong resident person on its income provided that the following conditions are fulfilled:-

- Sufficient documentary evidence are available to prove that specified taxes are paid in an overseas jurisdiction; and
- The same income is chargeable under Hong Kong Profits Tax.

Section 16(1)(ca) of the IRO is not available for foreign taxes paid in DTA jurisdictions. Instead, these taxpayers should pursue **Tax Credit** claim under Section 50A of the IRO.

Below is the summary:-

Double taxation relief	Paid in DTA jurisdiction	Paid in Non-DTA jurisdiction
Tax Credit	Available	Not available
Tax Deduction (before 2021/22)	Not available	Available for interest income only
Tax Deduction (after 2021/22)	Not available	Available for interest, royalty / licensing fee and services fee

Note: The above table gives a high-level summary on the double taxation relief available. Certain restrictions might be imposed before tax credit / tax deduction is available to taxpayers. It is advised to discuss the details with your tax advisor before implementation of relevant tax plan.

[1] Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021

<https://www.legco.gov.hk/yr20-21/english/bills/b202103195.pdf>

Points to note

Based on our experience, most corporations are unaware that they are paying double tax on the same income. Professional Accountants in Business (PAIB) should examine carefully the supporting documents of transactions with PRC and overseas parties (both external clients and group companies). Typical documents include agreements, invoices and subsequent settlement.

The next step would be calculating your tax savings in your Profits Tax computation. Tax Credit Claim calculation is not straightforward but could effectively reduce the tax liabilities of Hong Kong corporations.

Our team would be pleased to guide you through the process and answer any enquiries you may have in your mind on double taxation.

2. Hong Kong-Georgia tax treaty in force in July 2021 and IRD's view towards COR application

The Hong Kong-Georgia Double Taxation Agreement (DTA), which was signed in October 2020, will come into force from 1 July 2021. The DTA will have effect in respect of Hong Kong tax for any year of assessment beginning on or after 1 April 2022, i.e., 2022/23. This brings the number of DTAs entered into by Hong Kong to 45, with 43 DTAs being signed and ratified. Please refer to <https://henrykwongtax.com/home/hong-kong-tax-treaty-network/> for the summary of Hong Kong's DTA network.

Below is the summary of Withholding Tax rate for payments from Georgia to Hong Kong:-

Payments	Withholding tax rate	
	Normal rate	DTA rate
Dividend	5%	0%
Interest	5%	0%
Royalty	5%	5%
Capital gain on disposal of shares	15%	0%

Note: Particular conditions might have to be fulfilled in order to enjoy the above preferential tax rates. We are open for further discussion for any investment planning in Georgia.

By clearer clarification of taxing rights between Hong Kong and Georgia, the enforcement of Hong Kong-Georgia DTA shall enhance cross-border business activities and transactions as business could better assess their potential tax liabilities. Georgia is one of the key members in the Belt and Road initiative.



Points to note

Same as other DTAs, the requirements for being a “Hong Kong tax resident” has never changed to enjoy the preferential tax rates stipulated in the DTAs. The enforcement of such requirements will get stricter across global tax authorities.

A separate application has to be lodged by companies to the Hong Kong Inland Revenue Department (IRD) to obtain the Certificate of Tax Resident Status to prove its Hong Kong tax residency status. In most DTA countries, such Certificate is one of the necessary documents to be presented to the overseas tax authorities for claiming the preferential tax rates under corresponding DTA.

We observe an increasingly stringent approach implemented by the IRD in granting the Certificate of Tax Resident Status to applicants in recent years. In case of insufficient documents provided or weak grounds proposed by applicants to prove that the management and control are exercised in Hong Kong, follow-up challenges from the IRD should be expected. To enhance the chance of successful application, pre-application tax planning is necessary and sufficient time should be retained for implementation of plan before application.

You are welcome to connect with us to evaluate your chance of successful application.

3. Change in interest on Tax Reserve Certificates

Starting from June 2021, the new annual interest rate on Tax Reserve Certificates (TRC) to taxpayers will be revised downward to 0.05% from previous rate of 0.0833%, i.e. monthly interest income of \$0.0042 per \$100 purchase amount. TRC bears simple interest, with interest calculated monthly (including part of a month) from the date of purchase to the date of payment of tax.

Usually, this occurs when estimated / additional assessments for prior years are issued to taxpayers due to outstanding tax issues with the IRD, or when the IRD is conducting field audit on taxpayers. When the taxpayer objects against such assessment, the IRD may order the tax in dispute to be held over conditionally by purchasing a TRC, which will create cash flow burden to taxpayers. The TRC will only be refunded to the taxpayers when the taxpayers successfully win the case.

Tax representative could, on behalf of the taxpayer, negotiate with the IRD on the amount of TRC to be issued so as to relieve the cash flow burden of the taxpayer. The IRD may not accept the taxpayer's proposal and may request for additional case analysis, but taking the initiatives to start the negotiation is an essential step of the whole progress.

Points to Note

Tax Administration appears to be a simple and boring topic, but tactics and strategies to handle tax dispute cases with the IRD are of paramount importance. Interest on TRC is low and would create significant cash burden on taxpayers. As such, expediting the tax dispute review and negotiation process to reach compromised settlement could be the way out.

We are also observing an increasing number of cases being investigated by Field Audit unit (Unit 4) of the IRD in Year 2021. If taxpayers are being investigated under field audit, huge burden would be created for taxpayers from the perspective of provision of detailed explanation and complete documentation, as well as the IRD's request on payment of "protective" tax based on its estimation of taxpayers' understated profits.

We have a separate tax team focusing on Tax Investigation and Field Audit cases. You are welcome to contact us for details of relevant risk of particular cases in this regard.



稅務資訊

— 2021年6月號

1. 在沒有全面性避免雙重課稅協定之稅務管轄區所繳付之預提稅將予以扣除 (從2021/22課稅年度起開始生效)

立法會已在6月2日通過《2021年稅務(修訂)(雜項條文)條例草案》(《條例草案》)[1]，內容包括外地已繳稅款予以扣除的安排。相關條文由2021/22課稅年度起生效。

於《條例草案》未訂立前，根據香港稅務局的釋義及執行指引第28號(修訂版)，香港公司就大多數類型的收入(利息收入除外)而支付的外地稅款，並不被允許進行稅前扣除。因此，如納稅人同時在香港以及未有與香港訂立避免雙重課稅協定的稅務管轄區(例如美國、澳洲、台灣)就同一項收入繳稅，納稅人在香港不會享有任何稅務減免。

由2021/22課稅年度起，《稅務條例》新增了第16(1)(ca)條，在滿足以下條件的前提下，香港稅務居民可以扣除其於其他稅務管轄區已繳付之特定稅項：

- 納稅人能夠提供足夠的文件，證明其已經於其他稅務管轄區繳納特定稅項；及
- 相關收入列為香港應課稅收入。

請注意，第16(1)(ca)條並不適用於香港稅務居民在已經與香港簽訂避免雙重課稅協定之稅務管轄區下所繳付之稅項的扣除。香港稅務居民在這些稅務管轄區所繳付之稅項，則可引用第50A條，申請稅收抵免。

下表概括了香港稅務居民可享受的課稅寬免：

雙重課稅寬免	在與香港簽訂避免雙重課稅協定之稅務管轄區所繳付的外地預提稅	在沒有與香港簽訂避免雙重課稅協定之稅務管轄區所繳付的外地預提稅
稅收抵免	適用	不適用
作為開支扣除 (2021/21課稅年度前)	不適用	只適用於利息
作為開支扣除 (2021/21課稅年度起)	不適用	適用於利息、特許權使用費及服務費

注意事項：上表只提供了雙重課稅寬免的摘要，所述抵免/扣除受到其他條例限制及約束。我們建議納稅人先與稅務顧問討論詳細情況後，才進行相關抵免/扣除申請。

[1] 《2021年稅務(修訂)(雜項條文)條例草案》

<https://www.legco.gov.hk/yr20-21/chinese/bc/b202103195/general/b202103195.htm>

值得留意的事項

根據我們的經驗，大多數公司未必清楚他們已就同一項收入於香港及其他地區繳納稅款，即雙重課稅的情況。專業會計師應仔細審查公司與中國或海外方（包括非關聯客戶和集團關聯公司）的交易文件，而典型的證明文件包括協議、發票和結算證明，以核實香港公司是否已經在其他地區繳納稅款。

下一步則是於利得稅計算中量化公司因為稅收抵免而節省的稅額。稅收抵免計算可能較為繁複，但能有效減少香港公司的稅務負擔。

我們的團隊很樂意協助你完成稅收抵免的計算和申請，並解答你對雙重課稅的任何疑問。

2. 香港與格魯吉亞的稅務協定將於2021年7月生效及 香港稅務局對申請居民身份證明書之觀點

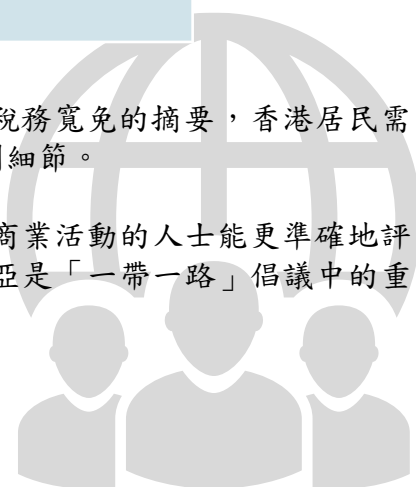
香港與格魯吉亞於去年10月簽訂的全面性避免雙重課稅協定（「該全面性協定」）將於2021年7月1日生效，並對2022年4月1日或之後開始的任何課稅年度（即2022/23課稅年度）的香港稅項具有效力。這是香港簽訂的第45份全面性協定，其中共有43份已完成有關批准程序。請瀏覽<https://henrykwongtax.com/home/hong-kong-tax-treaty-network/>以參閱香港已簽訂的全面性避免雙重課稅協定 / 安排的列表。

下表概括了在該全面性協定下一些由格魯吉亞付予香港居民之款項的預提稅稅率：

款項	預提稅稅率	
	一般情況	該全面性協定下
股息	5%	0%
利息	5%	0%
特許權使用費	5%	5%
來自轉讓股份的資本收益	15%	0%

注意事項：上表只提供了該全面性協定中有關預提稅稅率之稅務寬免的摘要，香港居民需要符合特定條件才可以享受相關待遇。歡迎聯絡我們詳談相關細節。

該全面性協定說明了香港與格魯吉亞的徵稅權，使從事跨境商業活動的人士能更準確地評估其潛在稅務負擔，從而促進雙邊貿易和投資活動。格魯吉亞是「一帶一路」倡議中的重要成員國。



值得留意的事項

與其他全面性協定一樣，針對「香港稅務居民」身份的要求以享受相關稅務優惠從來不會改變。相反，大多數稅務管轄區將以愈趨嚴謹的態度，檢查這些香港企業是否香港稅務居民。

因此，企業需要額外向香港稅務局申請居民身分證明書，以用作證明其香港稅務居民身份。納稅人於大多數稅務管轄區申請享受相關優惠稅率時，居民身份證明書為必需遞交予當地稅務機關的文件之一。

我們察覺到稅務局近年在審理香港居民身份證明書之申請採取愈來愈嚴格的態度。如在申請時未有提供充分資料或未能說服稅務局申請人的管理及控制於香港進行，稅務局便會要求該申請人提供進一步資料。為了增加成功申請的機會，企業很可能要在申請前進行稅務籌劃，並預留足夠時間以實施相關計劃。

歡迎您與我們聯繫，讓我們協助評估企業成功申請香港居民身份證明書的機會。

3. 調整儲稅券利率

由2021年6月開始，儲稅券年利率將從現時的0.0833%更改至0.05%，即每月每100元可賺得利息0.0042元。儲稅券的利息由購買日起至贖回儲稅券繳稅當日以單息按月計算，不足1個月亦可按比例賺取利息。

一般來說，當納稅人與稅務局之間存在稅務爭議，或稅務局正對納稅人進行實地審核及調查的情況下，稅務局會向納稅人發出以往年度之補加評稅/估計評稅。當收到納稅人就評稅作出反對或上訴後，稅務局可能要求納稅人購買儲稅券。當收到稅務局的相關要求後，納稅人需在限期前購買指定金額之儲稅券，因此可能會為其資金周轉帶來負擔。只有當納稅人與稅務局的爭議結束，而其購買的儲稅券金額足以繳納應繳稅款後，餘下的儲稅券金額才會退還予納稅人。

稅務代表可代表納稅人與稅務局協商購買儲稅券之金額，以減輕其在資金上的負擔。協商過程中，稅務局很大機會不會立即接受納稅人提出的方案及要求準備更多的分析文件，但主動開始與稅務局談判購買儲稅券的金額絕對是過程中重要的一步。

值得注意的事項

稅務行政管理似乎是一個簡單而瑣碎的話題，但與稅務局處理稅務糾紛案件所採取的策略與案件的結果有著重要的關係。儲稅券利率偏低及為案中的納稅人帶來資金負擔。因此，加快稅務爭議審查和談判進程，以達成妥協的解決方案，是為納稅人解決核心問題的出路。

2021年以來，我們觀察到稅務局進行實地審核及調查的案件數目有所增加。如果被稅務局實地審核科進行調查，納稅人不但要向稅務局提供完整的文件及詳盡的解釋，同時，稅務局亦會基於評估之短報利潤向納稅人征收保障性稅款，這定必會給納稅人帶來沉重的負擔。

我們擁有一隊專門處理實地審核及調查案件的團隊。歡迎您與我們聯繫，以了解個別情況下之相關風險。



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。

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