

Tax Updates

October 2021



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Hong Kong is committed to amending its tax regime targeting offshore companies

Hong Kong announced on 5 October 2021 its commitments to the European Union (EU) to amend the Inland Revenue Ordinance (i.e., Hong Kong Tax Legislation) by the end of Year 2022 in response to the inclusion of Hong Kong to "Watchlist" of EU. The announcement states that the amended legislation would be implemented from 1 January 2023, while no grandfathering arrangements are expected.

Concerns expressed by the EU on Hong Kong Tax Regime focuses on the non-taxation of foreign sourced passive income in Hong Kong that might lead to situations of "double non-taxation". Such practice is identified as having "harmful features" in the local tax regime and not consistent with the international tax standards.

The Hong Kong Government is going to propose legislative amendments in year 2022 which would merely target corporations, particularly those with no substantial economic activity in Hong Kong while make use of offshore claim on passive income to evade tax across border. Thus, it is expected that Hong Kong companies receiving passive income (e.g., royalty and interest income) while claiming offshore under the territorial concept would be the first slot of targets of the local Tax Legislation.

Points to note

Hong Kong has long been adopting the territorial source principle of taxation. Such feature is regarded as a symbol of the local tax regime. Although outlines of the

proposed amendments are not available yet; it is expected that lodging offshore claim on passive income would be extremely difficult under the situation of "double non-taxation" even when the requirements of offshore claim stated in the legislation have been largely satisfied.

Despite the fact that the new legislation is not expected to be enacted yet by the end of Year 2022, taxpayers with such tax arrangements should implement the changes now as very often the Hong Kong Inland Revenue Department would take a long time to review and approve the offshore claim and thus it is highly possible that its decision will be made after the enactment of new legislation. Operating group with such tax structure should be aware of such changes of the local Tax Legislation and sufficient provision should be provided for such tax liability. You are most welcome to contact your tax advisors for any enquiries in this regard.

It is also highlighted that the EU has also included Singapore into its "Watchlist" due to similar locality concept application in its tax regime. Observations on potential change in Singapore tax regime should be maintained.

See the Press Release by the Hong Kong Government at:

<https://www.ird.gov.hk/eng/ppr/archives/21100501.htm>



OECD releases Statement to finalize parameters used in the implementation of BEPS

OECD released a Statement in October 2021 to confirm certain parameters to be used in the implementation of Two-Pillar solution under the BEPS 2.0 project.

See our previous Newsletters on highlights of BEPS 2.0 and summary on Two-Pillar at:

- ✓ <https://henrykwongtax.com/newsletter/international-tax/global-tax-environment-beps-2-0-development-on-digital-economy/>
- ✓ <https://henrykwongtax.com/newsletter/international-tax/the-government-agrees-to-support-the-global-minimum-tax-rate-under-beps-2-0/>

- Pillar One: For multinational enterprises with global revenue of over EUR 20 billion (around HKD 181 billion) and profit margin exceeding 10%, they would be required to allocate **25%** of the “residual profits” to market jurisdictions using a revenue-based allocation key. No actual percentage is stated in previous Statement.
- Pillar Two: The minimum tax rate is stated to be at 15%, which targets those multinational enterprises with global revenue of over EUR 750 million (around HKD 6.8 billion). The threshold of “at least 15%” is stated in previous Statement.

Also, given that Pillar One under Multilateral Convention is implemented, all Digital Services Taxes and other relevant similar measures currently maintained by certain countries (e.g., Italy, France) will be removed. No newly enacted Digital Services Taxes will be imposed on taxpayers from now on until the end of Year 2023 in general due to the agreement by countries on Implementation of Pillar One.

Points to note

The newly issued Statement in October demonstrates the decisive implementation of BEPS 2.0 measures by the OECD while involving countries are giving positive responses towards the evolution.

We could not ignore the global trend of tax transparency and global measures on “minimum tax rate” to be adopted on corporations. For Hong Kong and Mainland China enterprises, the implementation of BEPS 2.0 will cause an impact to the following taxpayers:

- Taxpayers who apply for offshore tax exemption in Hong Kong (while no tax has been paid in another jurisdiction);
- Taxpayers who pay considerable sums to companies located in jurisdictions where corporate tax rate is lower than 15% (i.e., the BVI, Cayman Islands, etc.); and
- Multinational groups exercise their management activities outside Macau, but retain significant amount of profits in Macau (please note that the current corporate tax rate in Macau is 12%, which is lower than the proposed minimum tax rate of 15%).

Taxpayers should consider whether they should revise their tax planning strategies in order to keep abreast with the global tax development in the near future.

Tax Relief Conditions proposed by the Hong Kong Tax Authority due to COVID-19 circumstances

The IRD has expressed its view on the approach in relation to the tax issues arising from the COVID-19 Pandemic, which generally is in line with the Updated COVID-19 Tax Treaty Guidance and the COVID-19 Transfer Pricing Guidance released by the OECD.

| Tax Issues | Views of the Hong Kong Inland Revenue Department ("the IRD") |
|---|---|
| Tax Residence (Corporate / Individual) | <ul style="list-style-type: none"> • Temporary stay due to restrictions on international travel will not itself alter the tax residence status of a corporation or an individual, i.e., corporation or individual would not be regarded as the tax resident of the host jurisdiction merely because of the additional days spent (by the staff of the corporation / individual) under COVID-19 situation. • Tie-breaker rules under relevant article of Double Tax Agreements would be held, i.e., all relevant facts and circumstances will be taken into account. |
| Permanent Establishment (PE) of non-resident | <ul style="list-style-type: none"> • [Fixed place PE and Services PE] Exceptional and temporary change of the location where employees exercise their employment shall not create PE in Hong Kong for non-Hong Kong enterprises. • [Agency PE] Temporary conclusion of contracts in the home of employees or agents because of the pandemic should not constitute PE for non-Hong Kong enterprises. |
| Income from Employment | <ul style="list-style-type: none"> • The IRD does not intend to exclude the days of physical presence in Hong Kong for the purposes of counting days under 60-day rule. • Additional days spent by foreign employees in Hong Kong under COVID-19 circumstances may not be counted for the purposes of the 183-day test under the application of DTA to give higher protection on potential individual tax liability. |
| Transfer Pricing | <ul style="list-style-type: none"> • Flexible approach would be accepted for performing benchmarking study for controlled transactions; two examples given by the IRD are as follows: • May be appropriate to have separate testing periods for the duration of the pandemic or to include loss-making comparable when performing a comparability analysis. • A limited-risk entity could be accepted to have incurred losses if the losses are found to be incurred at arm's length. |

Please be reminded that the above captures general views of the IRD. The IRD will look into the facts of specific cases to determine if the above approaches apply.

See full version of the IRD's announcement at:

https://www.ird.gov.hk/eng/tax/tia_covid19.htm#companies

Points to note

It is welcomed that the IRD has explicitly expressed its view on following the overall approach of the guidance issued by the OECD to ease potential problems of corporations and individuals under COVID-19 situation. In general, the approaches adopted by the IRD could provide more tax relief to underlying parties merely because of additional days of presence in Hong Kong. However, given that taxpayers have to fulfill certain conditions before applying the above measures, we encourage taxpayers to obtain advices from tax professionals for further communications with the IRD on specific case background to ensure the application of the said approaches.

On the other hand, the IRD is yet to express its view on whether relief would be implemented in respect of application of tax residency certificate in Hong Kong. It is expected that the mode of operation of companies / individuals would have been affected due to restrictions of international travel. Whether the IRD provides relief on examining the location of activities carried on by the applicants would be a practical issue which the applicants should take into account when they submit the application. We may have to wait for further guidance of the IRD in this essential area of tax relief.

See our previous Newsletter on Singapore's guidance to "relieve" the conditions for application of Tax Resident:

<https://henrykwongtax.com/newsletter/international-tax/determination-of-pe-in-singapore-during-covid-19/>



香港正致力於修訂針對離岸公司的稅收制度

香港於2021年10月5日宣佈已向歐盟承諾，於2022年底前完成修訂香港《稅務條例》，以回應歐盟將其列入“稅務合作事宜觀察名單”。該公告指出，修訂的條例將於2023年1月1日起實施，並預計不會給予豁免安排。

歐盟對香港稅制的擔憂在於，香港不對來源於境外的被動收入徵稅，從而可能導致“雙重不徵稅”的情況。這種情況被認定為稅收制度的“有害稅收實踐”，且與國際稅法下打擊跨境避稅的大原則相違背。

香港政府將在2022年提出修訂稅務條例，該修正案暫只針對公司納稅人，特別是於香港未有實體經濟活動，而僅利用香港對境外利潤豁免之制度，以逃避就被動收入納稅的公司。因此，於香港收取被動收入（如：特許權使用費、利息收入），且依靠香港稅制下的地域概念申請境外利潤免稅的香港公司，將成為香港是次修訂稅務條例的首要目標。

■ 注意事項

香港長期以來一直採用地域來源徵稅原則，此特點亦被視為本地稅收制度的象徵。儘管擬議的修正案大綱還未出台，但我們預計，在“雙重不徵稅”的情況下，即使納稅人能夠提供文件，證明其運作於很大程度上滿足境外利潤豁免申請的要求，能成功提出被動收入免稅也將非常困難。

儘管新法例預計不會於2022年結束之前頒布，但由於香港稅務局往往需要很長時間審批境外利潤豁免，即使納稅人已於最近提出申請，稅務局的最終審批決定極有可能在新法規頒布之後才作出，而成功申請免稅機會將不會很高。有此類稅收安排的集團應特別留意本地稅收立法的變化，並對相關稅務風險和可能引致的稅負做好充分準備。如需了解更多，請在這方面聯繫您的稅務顧問。

另外值得注意的是，歐盟亦因新加坡的稅制與香港有類似的地域性稅收制度，將新加坡列入“稅務合作事宜觀察名單”。於打擊跨境避稅的大原則持續底下，對於新加坡稅收制度的潛在變化值得繼續留意。

請參閱香港政府的新聞稿：
<https://www.ird.gov.hk/chi/ppr/archives/21100501.htm>

經濟合作暨發展組織 (“OECD”) 發表聲明以確定實施稅基侵蝕與利潤移轉 (“BEPS”) 的參數

OECD於2021年10月發佈了一份聲明，確認了在BEPS 2.0項目下的雙支柱解決方案中使用的特定參數。

請參閱我們以往關於BEPS 2.0的資訊更新和兩支柱的摘要：

- ✓ [國際稅收新規則：針對數碼經濟而推行的BEPS 2.0](#)
- ✓ [香港政府發文支持推行BEPS 2.0的「全球最低稅率原則」](#)
- 支柱1：針對全球收入超過200億歐元（約1,810億港元）和盈利率超過10%的跨國集團，其25%的“剩餘利潤”的徵稅權將分配予其市場所在的稅務管轄區。過往聲明中未有明確說明具體百分比。
- 支柱2：針對全球營業額超過7.5億歐元（約68億港元）的大型跨國企業集團，其最低稅率為15%。以往聲明中列明稅率為“至少15%”。

此外，鑒於《多邊公約》下的支柱1已經實施，所有數碼服務稅及目前由某些地區（如：意大利、法國）維持的其他類似數碼稅收將被移除。由於各國實施支柱1的協議，直至2023年結束以前，各參與國將不會對納稅人徵收新設的數碼服務稅。

■ 注意事項

從此新發布的聲明可見，OECD正果斷實施 BEPS 2.0項目下所提出的措施，而各國也對國際稅務的演變做出積極回應。

我們顯然需要重視全球稅收透明度增強的國際趨勢以及全球稅務機構對公司實行“最低稅率”的實際措施。對香港及內地的企業來說，BEPS 2.0的實施將會對以下納稅人產生影響：

- 於香港申請離岸免稅的納稅人（而未有在其他相關地區繳納稅款）；
- 支付大額費用給處於低於15%稅率地區公司（如英屬處女島、開曼群島等）的香港納稅人；及
- 集團管理層在澳門以外地區，但利潤集中在澳門的跨國集團（請注意，澳門現行的稅率為12%，低於最低稅率的15%）

納稅人應盡快檢討是否轉變其稅務籌劃策略，以迎接即將轉變的稅務常規。



香港稅務局針對疫情期間提出的稅收減免條件

香港稅務局就疫情期間引起的稅務問題之可能的解決方法表達了其觀點，方向與OECD公佈的《COVID-19 稅收條約指南》和《COVID-19 轉讓定價指南》一致。

稅務問題

香港稅務局的觀點

稅務居民 (公司 / 個人)

- 由於國際旅遊限制而導致臨時逗留於當地，此逗留不會改變公司或個人的稅務居民身份。即是說，在疫情期間，公司或個人不會僅僅因為旅遊限制而額外逗留的天數（公司員工 / 個人）而被視為本地的稅務居民。
- 雙重徵稅協定相關條款下的加比規則 (Tie-Breaker Rule) 將被實施，所有相關事實和情況將都會被考慮，以判定稅收居民身份。

非稅務居民的常設機構 (PE)

- [固定場所型及服務型常設機構] 非香港企業的員工受僱工作地點的特殊和臨時變更，不會使非香港企業在香港形成常設機構。
- [代理型常設機構] 因疫情在員工或代理人所在地臨時簽訂合同，不會使非香港企業在香港形成常設機構。

就業收入

- 稅務局不打算在計算“60天規則”(60-Day Rule) 下的天數時排除在香港實際停留的天數。
- 在《避免雙重徵稅協定》的183天測試中，外國僱員在疫情期間在香港逗留的額外天數可能不會被計算在內，以對潛在的個人納稅義務提供更高的保護。

轉讓定價

- 將接受靈活的方法進行受控交易的基準研究，以下是香港稅務局提出的兩個例子：
- 稅務局將按情況接受為疫情期間的營運表現設立單獨的測試期、或納入連續虧損的公司作為可比公司以作分析
- 如果納稅人發生虧損，但能證明其仍符合市場公平原則，則稅務局可能接受風險有限的實體發生虧損。

請注意，以上內容僅代表稅務局的一般觀點。稅務局會研究具體案件的事實，以確定上述方法是否適用。

請參閱香港稅務局公告的完整版本：

https://www.ird.gov.hk/eng/tax/tia_covid19.htm#companies

■ 注意事項

我們歡迎香港稅務局明確表達了其對遵循OECD發布的指導方針的整體方法的觀點，以緩解疫情期間對公司和個人所產生的潛在稅務問題。一般而言，僅因為旅遊限制而在香港的停留天數增加的納稅人，香港稅務局所採用的方法可以為其提供更高的稅收保護，減少其跌入稅網的風險。然而，鑑於納稅人必須滿足某些條件，以使稅務局同意納稅人的情況僅因特殊原因而發生，我們鼓勵納稅人尋求稅務專業人士的意見，就具體案件背景與稅務局進一步溝通，以評估上述方法的適用性。

另一方面，香港稅務局尚未就其是否將會於審批香港稅務居民證明書申請時，實施某些寬免發表意見。由於國際旅遊的限制，我們預計公司的運營方式/個人於香港的逗留時間將受到影響。稅務局是否會就審查申請人所從事活動的地點提供某些寬免，是申請人在提交申請時應考慮的實際問題。我們可能需要等待稅務局在此方面的進一步指引。

請參閱我們之前關於[新加坡“放寬”稅務居民申請條件指南](#)的資訊




Contact Us.

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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