

Tax Updates

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In our August 2022 Issue of Newsletter, we will study three points for attention in the latest development of Hong Kong Transfer Pricing Documentation Requirements.

在2022年8月的稅務通訊中，我們將研究香港轉讓定價文件的三個最新要求。

Form IR1475 – A Summary of Transfer Pricing Master File and Local File

Taxpayers are requested to submit Form IR1475 within one month from the IRD's request

In the Annual Meeting between Hong Kong Institute of Certified Public Accountants ("HKICPA") and the Inland Revenue Department ("IRD"), HKICPA representatives commented that it may be difficult for the Hong Kong taxpayers to gather some of the information requested in the Form IR1475 if the Master File is prepared by overseas ultimate parent company. They also consider that some of the information requested in the Form IR1475 is more than the requirements of the Master File. Lastly, they would like to clarify the selection criteria for the 5 most important financing and service transactions.

The IRD replied that the Form IR1475 is designed to determine whether a proper Master File and Local File has been maintained by the taxpayer and to assess the level of the transfer pricing risk.

For the 5 Most important financing and service agreements between constituent entities of the group, the IRD clarified that it is determined based on Monetary Value, irrespective of the place of tax residency of the entity and service nature.

Points to note

Based on our experience, it would generally involve significant amount of effort for the Hong Kong office to liaise with overseas headquarters to complete the Form IR1475. The information requested in the Form are substantial and often involved information not related to the Hong Kong entity of the Group.

On the other hand, the IRD is rather hesitated to grant extension to file Form IR1475. As such, it is recommended that taxpayers with significant amount of related party transactions with various overseas group companies to prepare the Form IR1475 together with the Transfer Pricing Master File, Local File and Form IR1475 before the preparation deadline (i.e., 9 months after the accounting year-end of the taxpayer).

Revised Transfer Pricing Form IR1475 issued in November 2021

The IRD is committed to revising Form IR1475 to align with OECD Guideline and taxpayers' burden remain heavy

Despite the fact that Form IR1475 is supposed to be a summary of the Transfer Pricing Master File and Local File, we are aware that certain disclosures requested in Form IR1475 are not found in the Master File and Local File and thus additional effort and time is required to complete the Form IR1475.

In view of the above, in November 2021 edition of Form IR1475, the IRD relaxed certain disclosure requirements from the original edition:-

- Declare whether the Master File and Local File are prepared within 9 months after the accounting year-end date instead of providing the specific date of preparation;
- Declare whether the amount of the controlled transactions exceed the respective transfer pricing threshold instead of providing the specific amount;
- Disclosure on dividend income is no longer required.

Having said the above, the Taxpayers are still required to disclose the details of the 5 largest products / services and important intra-group service arrangements as well as 5 most important financing arrangements, in which the fact-finding process would be long.

Points to note

Despite the relaxation of Form IR1475, taxpayers are still required to declare that they have completed the preparation of Master File and Local File by the prescribed deadline (i.e., 9 months after the Accounting Year-end Date).

As such, taxpayers are reminded to prepare their Master File and Local File on an annual basis instead of preparing it only upon submission request by the IRD.

On the other hand, the IRD strictly requires the taxpayers to submit the Form IR1475 within 1 month from the request by the IRD. As many of you will know, it would be particularly difficult to prepare multiple years of Master File and Local File within 1 month of time. If the IRD finds out that the Transfer Pricing Documentation are prepared after the preparation deadline (e.g., some of the disclosed facts seem to appear only after the preparation deadline), it may impose penalty to the Taxpayers.

Timing Differences in Country-by-Country (CbC) Notification

Additional procedures are still requested when the UPE / SPE submit its CbC Notification after the Hong Kong Constituent Entity

In Hong Kong, Taxpayers exceeding the threshold are generally required to submit the Country-by-Country (CbC) Notification in the online portal of the IRD within 3 months from the Accounting Year-End date. Very often the CbC Notification deadline of the overseas Ultimate Parent Entity (UPE) / Surrogate Parent Entity (SPE) is 6 / 12 months after the Accounting Year-End date, and thus the UPE / SPE has not yet filed the CbC Notification by the time when the Hong Kong entity filed that to the IRD.

Given the above situation, in Part 2.4 of the CbC Notification in Hong Kong, the Hong Kong entity has to fill in "No" if the UPE / SPE has not yet filed their CbC Notification by that time. In such case, the IRD will then issue CbC return to the Hong Kong entity.

In such case, after the UPE / SPE files the CbC Notification in its own tax jurisdiction, the Hong Kong entity can apply for a request for not filing the CbC return, but the HKICPA representatives still consider that this represents additional financial and administrative burden to the Taxpayers. Nevertheless, the IRD insisted that such practice is necessary to ensure the Taxpayer has complied with its CbC obligation.

Points to note

As a general reminder, the threshold for CbC Reporting in Hong Kong is that consolidated revenue of the Group for the preceding year exceeds HK\$6.8 Billion (or EUR 750 million).

The following circumstances could not evade obligation to file CbC notifications in Hong Kong:

- The Hong Kong entity does not enter into related party transactions during the year; and
- The Group has filed CbC return in other tax jurisdictions.

The maximum penalty for failure to file CbC notification is HK\$50,000 and an additional HK\$500 per day during which the offence continues (i.e., before the completion of CbC Obligation) after conviction.

IR1475表格 –主體文檔和本地文檔概要

**納稅人必需在稅務局提出要求後的一個
月內提交IR1475表格**

在香港會計師公會（“HKICPA”）與稅務局（“IRD”）的2021年年度會議上，HKICPA代表表示，如果主體文檔由海外母公司準備，則香港納稅人可能很難收集IR1475表格中要求的部分信息。他們還認為，IR1475表格中要求的某些信息超出了主體文檔的要求。最後，他們想明確5項最重要的融資和服務交易的選擇標準。

IRD回覆表明IR1475表格旨在確立納稅人保存了合規的主體文檔和本地文檔，並用於評估轉讓定價風險的水平。

IRD澄清，針對集團組織實體之間的5項最重要的融資和服務協議，是根據貨幣價值確定的，與實體的稅收居住地和服務性質無關。

■ 注意事項

根據我們的經驗，香港公司的人員通常需要花費大量時間與其海外總部聯絡以完成IR1475表格。同時，表格要求的信息量是大的，且通常涉及與集團的香港實體無關的資料信息。

另一方面，IRD對是否批准延期提交IR1475表格感到猶豫。因此，我們建議與海外集團公司有大額關聯交易的納稅人在截止日期前準備好轉讓定價主體文檔、本地文檔以子IR1475表格（即納稅人會計年結日期後的9個月內）。



2021年11月發佈的IR1475轉讓定價表格的修訂版

IRD致力於修訂IR1475表格以更符合OECD指引，但納稅人的負擔依然沉重

儘管IR1475表格應當是轉讓定價主體文檔和本地文檔的摘要，但我們注意到IR1475表格要求披露的某些不能在主體文檔和本地文檔中找到的資料，因此需要付出額外的功夫和時間填寫IR1475表格。

有鑑於此，在2021年11月版本的IR1475表格中，IRD相較原版本放寬了一些披露要求：-

- 對納稅人是否在會計年度結束後的9個月內已妥善準備主體文檔和本地文檔作出聲明，而非提供具體的完成日期；
- 對關聯交易金額是否超過相應的轉讓定價門檻做聲明，而非提供具體的金額；
- 不再要求披露股息收入。

綜上所述，納稅人仍需對5項最大的產品和服務、集團內部重要的服務安排，以及5個最重要的融資安排細節進行披露，而搜尋數據的過程將仍然會非常耗時。

■ 注意事項

儘管IR1475表格的要求有所放寬，但納稅人仍需在規定期限（即會計年終日期後的9個月內）申報已完成主體文檔和本地文檔的準備工作。

因此納稅人每年應按時準備主體文檔和本地文檔，而非稅務局要求提交時才進行準備。

另一方面，IRD嚴格要求納稅人在收到要求後的1個月內提交IR1475表格。正如您所知道的，在1個月內同時準備多年的主體文檔和本地文檔是非常困難的。如果IRD發現轉讓定價文件是在截止日期後準備的（例如一些披露的事實似乎只在截止日期後才會出現），則稅務局可能會對納稅人處以罰款。



國別報告 (CbC) 通知的時間差異

若 UPE/SPE 在由香港實體之後才提交國別報告通知，在香港會產生額外申報程序

在香港，超過轉讓定價門檻要求的納稅人一般需要在會計年度結束日期起計3個月內，通過IRD門戶網站提交國別報告通知。而海外最終母公司(UPE)或代理母公司(SPE)提交國別報告通知的截止日期經常地是會計年度結束日期後的6或12個月。因此，當香港實體向IRD提交國別報告通知時，UPE或SPE尚未提交相關通知。

鑒於上述情況，在香港的國別報告第2.4部分中，如UPE或SPE屆時尚未提交國別報告，香港實體必須填寫「否」。這種情況下，IRD會向香港實體發出國別報告申報表。

當UPE或SPE其後在其稅務管轄區提交國別報告通知，香港實體可申請不提交國別報告申報表，但HKICPA代表仍認為這會對納稅人構成額外的成本確和行政負擔。儘管如此，為確保納稅人已履行其國別報告義務，IRD堅持認為這種做法是必要的。

■ 注意事項

香港國別報告的門檻是集團上一年度的合併收入是否超過68億港元(或7.5億歐元)。

出現以下情況不能逃避在香港提交國別報告通知的義務：

- 香港實體本年度未進行任何關聯交易；和
- 集團已在其他稅務管轄區提交國別報告申請表。

未有按時提交國別報告通知的最高罰款為50,000元港幣，且在稅務局開展調查後直至完成國別報告期間每天額外罰款500元港幣。



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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