

Tax Updates

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In our September 2022 Issue of Newsletter, we will discuss Hong Kong Tax Update on COVID-19 and two recent prosecuted tax evasion cases published by the Inland Revenue Department (“IRD”).

在 2022 年 9 月的時事通訊中，我們將討論關於 COVID-19 期間的香港稅務最新消息和稅務局近期公佈的兩宗逃稅案件。



Certificate of Resident Status (CoR) for Individuals and Special Arrangement under COVID-19

Individuals who are temporarily living abroad during COVID-19 is not likely to lose its Hong Kong Tax Residency Status

In general, an individual is regarded as a Hong Kong Tax Resident and eligible for the Hong Kong CoR status if he / she:

- is ordinarily resided in Hong Kong (“Ordinary Resident Test”); OR
- stayed in Hong Kong for more than 180 days during the relevant year of assessment or for more than 300 days in two consecutive years of assessment (one of which was the relevant year of assessment) (“Number of Day Test”).

In practice, the IRD takes a strict approach in applying the “Ordinary Resident Test”. As such, it is important to fulfill the “Number of Day Test”.

However, with the outbreak of Covid-19, individuals who are used to stay most of the time in Hong Kong may not fulfill the Number of Day Requirement (i.e. 180 / 300-day rule) due to travel restrictions. In this regard, the OECD has issued updated guidance regarding the impacts of the COVID-19 on tax treaties application in January 2021. The IRD has already expressed its agreement to follow OECD Guidance in principle.

Applying the OECD Guidance, provided that the Hong Kong individuals stayed most of their days in Hong Kong before the pandemic, the fact that they could not fulfill the 180/300-day rule should not by itself impact his status as a resident of Hong Kong. The IRD may also consider the duration and reasons of absence from Hong Kong, the location of family members as well as social and economic ties in determining whether a CoR could be granted to the individual for Year 2020 and possibly Years 2021 and 2022.

Reference:

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

Points to note

- Many foreigners consider that when they qualify for the above requirements of Hong Kong Tax Residents, they can escape from their foreign tax liabilities. However, in reality it is not the case and more has to be done.
- An individual can be a tax resident of more than one tax jurisdictions at the same time. Under the Double Taxation Agreement, when an individual qualifies as tax residents in both tax jurisdictions, Tie-Breaker rule will be applied to determine the “real” tax residency of the individual. Below is the general guidance of Tie-Breaker Rule.
- Physical presence number of days is only one of the factors in determining the Tax Residency.
- Other relevant factors and circumstances to be considered include, but not limited to, the jurisdiction where:
 - permanent home available;
 - personal and economic relations closer (the so-called Center of Vital Interest);
 - habitually abode; and
 - nationality.

[Fictitious Expense Claim] 9-month Jail Sentence for Insurance Agent Convicted for Tax Evasion of less than HK\$100K

Despite the small amount involved, taxpayer should not undermine the consequences of fictitious expenses claims

An insurance agent (the Taxpayer) was charged with 11 counts of willfully with intent evading tax by signing her tax returns, her business's profit and loss accounts and employer's returns of remuneration and pensions (employer's returns) without reasonable grounds for believing the same to be true, contrary to section 82(1)(d) of the Inland Revenue Ordinance (IRO) (Cap. 112). She pleaded not guilty to the relevant charges. After trial, she was convicted on all of the 11 tax evasion charges and sentenced to immediate imprisonment for 9 months.

In particular, the Taxpayer over-claimed the following expense deduction / allowance:-

- Claimed deduction on "office assistants" expenses paid to 2 "Employees" for 3 consecutive years. The annual salary remuneration to each of them was HK\$96,000; and
- Made a false statement that she had been residing with her father continuously for the full year in those 5 years of assessment and claimed additional dependent parent allowance. The total allowance claims amounted to HK\$194,000.

The total amount of false claims of expenses and allowances made by the Taxpayer for the 8 years of assessment was HK\$770,000 and the total tax evaded was HK\$86,849.

Small amount of tax evasion is sufficient to result in catastrophe. Taxpayers should not undermine the efforts of the Inland Revenue Department to combat tax evasion.

Reference:

<https://www.ird.gov.hk/eng/ppr/archives/22072901.htm>

Points to note

- Tax evasion is a criminal offence under the IRO. Upon conviction, the maximum penalty for each charge is 3 years' imprisonment and a fine of \$50,000 plus a further fine of 3 times the amount of tax evaded.
- Regardless of the amount of tax involved, the nature of false transactions and false declarations made in various tax returns are with willful intention to default and evade tax, the consequence could be serious.
- Tax returns are statutory declarations that taxpayers should carefully handle with. Should the taxpayers reveal any errors or omission after submission, taxpayers are encouraged to make full voluntary disclosure of any omission/under-reporting of income, over-claiming of deduction/expenses and submit proposals for the IRD's consideration as early as possible.
- Full and speedy voluntary disclosure could usually mitigate the amount of penalty to be imposed.
- In the event of Field Audit and Investigation launched by the IRD, taxpayers are encouraged to show sincere and cooperative attitude to avoid criminal offences consequences.



[Income Omission] 14-month Jail Sentence and Fine for a Businessman Convicted of Omitting Company Turnover and Property Rental Income of less than HK\$1 Million

Property Rental Income omission is a common offence of Hong Kong Taxpayer

A businessman (the Taxpayer) was charged with 15 counts of willfully with intent evading tax by omitting turnover of his sole-proprietorship business from his tax returns for over 10 years of assessment from 2002/03 to 2013/14 and rental income of his parking space from his tax returns for 3 years of assessment from 2011/12 to 2013/14, contrary to section 82(1)(a) of the Inland Revenue Ordinance (IRO) (Cap. 112). He pleaded not guilty to the relevant charges. And after trial, he was convicted on all of the 15 tax evasion charges, sentenced to 14 months' imprisonment plus a further fine of HK\$822,781, which is equivalent to the amount of the tax evaded.

Under-statement of Business Turnover

The Taxpayer was the proprietor of a company which collaborated with a publisher and carried on its business on the publication of a watch magazine. The Company was responsible for soliciting customers for advertisements and was entitled to 40% of the total advertising revenue.

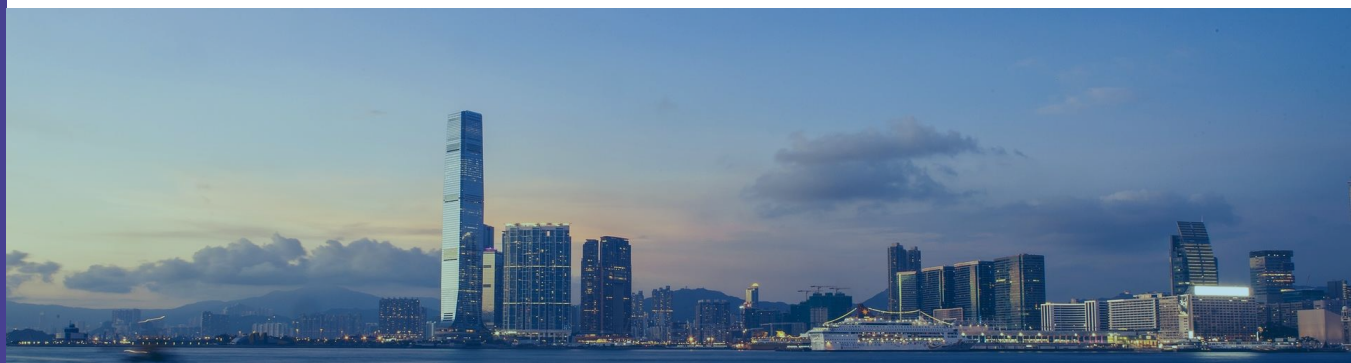
Tax was evaded for over 10 years. A total of 53 issues of the watch magazine were published from which the Company was entitled to advertising income of HK\$11 million. However, the Taxpayer reported income of HK\$5 million only. The total amount of tax evaded was HK\$819,437.

Non-reporting of Property Rental Income

The Taxpayer declared that he did not lease out any solely owned properties during the concerned years. In reality, a small amount of rental income has been derived from the self-owned car parking space. The tax evaded was \$3,344.

Reference:

<https://www.ird.gov.hk/eng/ppr/archives/22110202.htm>



Points to note

- This is the second case within 3-month time being prosecuted by IRD under criminal offence, tax evasion with willful intent. The previous one is in July 2022, in respect of over-claiming of deductible expenses and allowances by an insurance agent, as mentioned in Issue 2 of October 2022 Newsletter and the recent one is in October 2022, in respect of under-reporting of taxable income by a businessman mentioned herein.

It is worth to note that both cases are similar that the tax involved was not of a huge amount but the degree of seriousness is substantial to be sentenced imprisonment due to continuous deliberate false declaration in various tax return revealed by IRD under investigation.

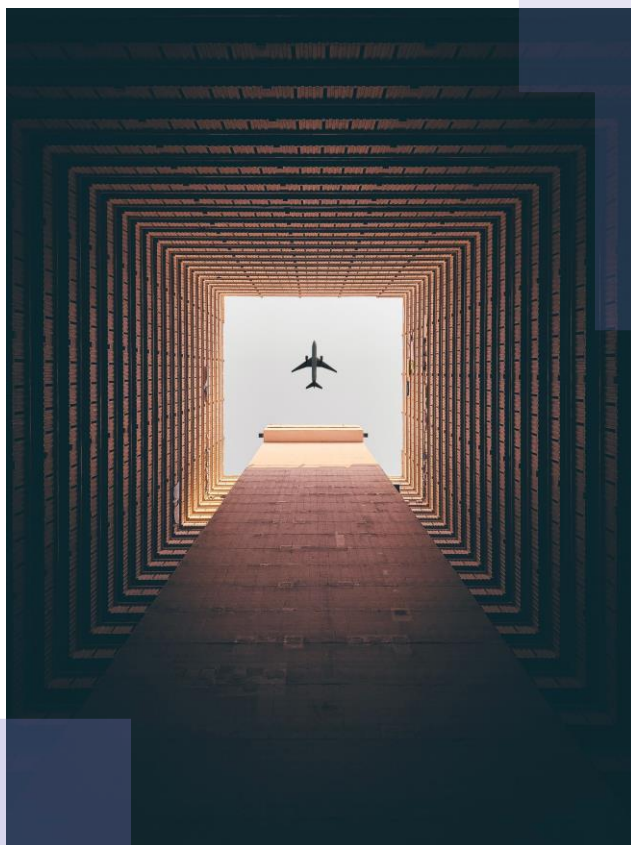
- The 6-year time limit does not apply in the case of fraud and willful evasion. In this case, we reasonably believe that the IRD has extended the period of investigation to 10 years (the maximum allowable period in the case of fraud and willful evasion). As such, it is important to cooperate with the IRD's assessor in the case of investigation to minimize the chance of being considered as fraud or willful evasion.

Bank Statement:

The amount of bank-in in both personal / business bank accounts far exceed the amount of reported taxable income. This is a common catalyst for tax investigation as the Field Audit and Investigation Unit (Unit 4) of the IRD has the right to obtain the Bank Statements of suspected taxpayers.

Cross-Checking with your Customers / Suppliers and External Documents:

Tax returns submitted would be verified and crossly matched with various information and/or documents available to the IRD (e.g., tenancy agreement for stamp duty purpose). Meanwhile, the IRD will also check with the tax reporting information of customers and suppliers to confirm the sales and purchase amounts of taxpayers under investigation. Such possible inconsistency and/or misstatement could be identified for further examination, such as desk audit, field audit and tax investigation, to be conducted by IRD.



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個人居民身份證明書 (CoR) 及 2019冠狀病毒下的特別稅務安排

*在2019冠狀病毒期間暫時居住在海外的
個人不太可能失去其香港稅務居民身份*

一般而言，個人如果符合以下條件，將被視為香港稅務居民並有資格獲得香港 CoR 身份：

- 通常居住在香港（「普通居民測試」）；或
- 於相關課稅年度在香港逗留超過180日，或連續兩個課稅年度（其中一個為相關評稅年度）在香港逗留超過300日（「天數測試」）。

在實踐中，稅務局會在應用「普通居民測試」時採取嚴格措施。因此，達到「天數測試」要求至關重要。

然而，隨著2019冠狀病毒的爆發，過去長時間留在香港的個人可能因旅遊限制而無法滿足天數要求（即180/300天規則）。針對這點，OECD已於2021年1月發布了有關 COVID-19對稅收協定申請影響的最新指南。稅務局已表示同意原則上遵循OECD指南。

應用OECD指南，只要香港個人在疫情前大部分時間都留在香港，雖然無法符合180/300日的規則，但這並不應影響其作為香港居民的身份。稅務局還可能考慮不在香港的時間和原因、家庭成員的所在地以及社會和經濟關係，以確定是否可以向個人授予2020年、2021年和2022年的稅務居民證明書。

參考資料：

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



■ 注意事項

- 許多外國人認為，當他們符合上述香港稅務居民的要求時，就可以免除他們的國外稅務責任。然而，實際上並非如此，他們還需要做更多。
- 個人可以同時是多個稅收管轄區的稅務居民。根據避免雙重徵稅協定，當個人在兩個稅務管轄區都符合稅務居民資格時，歸屬認定規則將適用於確定該個人的“真實”稅務居民身份。以下是歸屬認定規則的一般指引。
- 實際停留天數只是決定稅務居民身份的因素之一。
- 其他需要考慮的相關因素和情況包括，但不限於，提供以下功能的司法管轄區：
 - 提供永久居所；
 - 個人和經濟關係更緊密（所謂的切身利益中心）；
 - 經常居住；及
 - 國籍。

[虛報費用] 保險代理人逃稅不足 港幣10萬元即被判入獄9個月

儘管涉及金額較小，納稅人不應挑戰虛報開支的後果

一名保險代理人（納稅人）被控11項蓄意逃稅罪名，即她在納稅申報表、業務損益表以及僱主填報的薪酬及退休金報稅表上簽名，但無合理理由相信內容屬實，違反《稅務條例》（第112章）第82(1)(d)條。她對相關指控否認控罪。經審訊，她被判全部11項逃稅控罪罪名成立，並被判處即時監禁9個月。

案情透露，納稅人過度索取了以下費用扣除/津貼：-

- 連續3年為2名“僱員”支付“辦公室助理”費用並申報應稅所得減免。他們每人的年薪酬金為港幣96,000元；及
- 作出虛假陳述，表示她連續5年整與父親同住，並申索額外供養父母免稅額。免稅申索總額為港幣194,000元。

納稅人在8個課稅年度內作出的虛報開支及津貼總額為港幣770,000元，逃稅總額為港幣86,849元。

小額逃稅就足以導致嚴重後果。納稅人不應低估稅務局打擊逃稅的努力。

參考資料：

<https://www.ird.gov.hk/chi/ppr/archives/22072901.htm>

注意事項

- 根據《稅務條例》，逃稅屬於刑事犯罪。一經定罪，每項指控的最高刑罰為3年監禁和港幣50,000元罰款，外加逃稅額3倍的罰款。
- 無論涉稅金額多少，在各類納稅申報中，提出屬於虛假交易和虛假性質的申報，都是蓄意逃稅，後果很嚴重。
- 納稅申報表是納稅人應謹慎處理的法定申報，如果納稅人在提交後發現任何錯誤或遺漏，我司鼓勵納稅人自願地充分披露所有遺漏、少申報的收入、多申報的應稅所得減免和費用，並儘早提交稅務局以供考慮。
- 全面和及時的自願披露通常可以成為減輕處罰的求情因素。
- 在稅務局發起實地審查的情況下，我司鼓勵納稅人表現出真誠合作的態度，避免招致刑事犯罪的惡果。



[遺漏收入] 一名商人因漏報不足港幣100萬元的營業額及物業租金收入被判監禁14個月並罰款

遺漏物業租金收入是香港納稅人的常見罪行

一名商人（納稅人）被控15項蓄意逃稅罪名，從2002/03年至2013/14年超過10年的課稅年度，在報稅表上漏報其獨資業務的營業額、從2011/12至2013/14的3個課稅年度的報稅表中，漏報他的停車位租金收入，違反了《稅務條例》（第112章）第82(1)(a)條。他對相關指控否認控罪。經審訊，被裁定15項逃稅罪名全部成立，判處入獄14個月，另加罰款港幣822,781元，相當於所逃稅款。

少報營業額

納稅人是一家公司的經營者，該公司與一家出版商合作，經營業務是出版鐘錶雜誌。該公司負責招攬廣告客戶，並有權獲得總廣告收入的40%。

該公司逃稅超過10年，鐘錶雜誌共出版53期，而該公司可從中獲得廣告收入1,100萬港元。然而，納稅人申報的收入只有500萬港元。逃稅總額為819,437港元。

漏報物業租金收入

納稅人聲稱其在有關年度內沒有出租任何獨資物業。事實上，納稅人擁有的車位有作出租用途，並為其賺取少量租金收入。逃稅額為港幣3,344元。

參考資料：

<https://www.ird.gov.hk/chi/ppr/archives/22110202.htm>

注意事項

- 這是稅務局在3個月內第二宗以故意逃稅罪名作出刑事起訴的案件。上一宗是在2022年7月，如2022年10月時事通訊第2篇所述，關於保險代理人多申領可扣除費用和津貼，最近一宗則是在2022年10月，即此處提到的商人少報了其納稅營業額一案。

值得注意的是，兩宗案件的相似之處在於，所涉稅款數額不大，但因在調查中稅務局揭露了他們在多項納稅申報表中，連續並故意作出虛假申報，嚴重程度足以判處有期徒刑。

- 在欺詐、故意逃避的案件中，6年期限並不適用。在本案中，我們有理由認為稅務局已將調查期限延長至10年（欺詐和故意逃稅案件中允許的最長期限）。因此，在調查案件中與稅務局的評稅主任合作是很重要的，以盡量減少被視為欺詐或故意逃稅的機會。
- 銀行月結單：個人/公司銀行賬戶中的收入金額遠遠超過申報的應納稅營業額。這是稅務調查的常見原因，因為稅務局的實地審核及調查科（第4科）有權獲得可疑納稅人的銀行月結單。
- 與您的客戶/供應商和外部文件進行交叉核對：提交的納稅申報表將經過核實，並與稅務局可用的各種信息和/或文件進行交叉匹配（例如，用於印花稅目的的租賃協議）。同時，稅務局亦會核對客戶及供應商的報稅資料，以確認被調查納稅人的買賣交易金額。不一致和/或錯誤陳述可以被識別出來，以供稅務局進行進一步檢查，例如案頭審計、實地審核和稅務調查。

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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