



香港稅務學會

The Taxation Institute of Hong Kong

Newsletter – June 2007 Issue

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Lunch with Commissioner of Inland Revenue on 17 April 2007

Our President, Vice-Presidents and some Council Members had a lunch meeting with the Commissioner of Inland Revenue and her colleagues on 17 April 2007. During the meeting, we echoed the voices of the tax concerns from the taxpayers and tax practitioners, including the Avoidance of Double Taxation Agreement between the Mainland of China and Hong Kong.

We took this opportunity to foster the relationship between the Institute and the IRD and will keep a regular dialogue with the IRD.

From left to right: Mr. Peter Kung, Mr. Thomas Lee, Mr. Kenneth Leung, Mr. Y Y Chu, Mr. Li Man Fai, Mrs. Alice Lau, Mr. Richard Chow, Ms. Jennifer Chan, Mr. Bernard Wu, Mr. David Cho, Mr. Patrick Kwong, Mr. Brian Chiu, Mr. Marcellus Wong.



Committees News

Certified Tax Agent (“CTA”) Examination

For the first time in Hong Kong, the CTA examination was held from 22 to 24 June 2007. The attendance rate was about 50%. The examination result is expected to be released by the end of August 2007.

Continuing Professional Development Committee (“CPD Committee”)

On 30 April 2007, the CPD Committee had invited Dr. Jiehjou Joe Wu, International Tax Managing Director and Economist of PricewaterhouseCoopers LLP and Mr. Fong Chan-Chang, Tax Director of PricewaterhouseCoopers LLP to share their valuable experience on the professional practice in international transfer pricing arrangement.



A seminar on “Recent Development of Field Audit and Investigation in Hong Kong - A practical approach” was held on 2 June 2007. Mr. Philip Hung, Tax Director of PricewaterhouseCoopers Limited was invited as speaker to update members details of the extended scope and procedures adopted by the IRD when conducting audits and investigations. The seminar was successfully launched with the seminar hall fully occupied.



On 15 June 2007, the CPD Committee had invited Mr. Patrick Kwong, Principal of Ernst of Young to deliver a speech in the seminar on "Recent Court and Board of Review Decisions". The seminar was also fully booked and well attended.



Mainland China Committee

Meeting in Macau on 21 May 2007

Mr. Richard Chow, President, and Mr. Raymond Tang, Chairman of Mainland China Committee attended a meeting on that date with 廣東省稅務學會 represented by 曹鳳檀會長 and 趙偉秘書長 and the Taxation Research Centre of Macao represented by Ms. Kathy Wong held at The Taxation Research Centre of Macao's office. The participants exchanged the views on the appropriate topics and time table of a conference which would be held jointly by 廣東省稅務學會, The Taxation Institute of Hong Kong, The Taxation Research Centre of Macao and 中國租稅研究會 in Macau in the last quarter of 2007. Our members will be invited to participate in the conference. Further information on the conference will be circulated in due course.



Visitors from Shenzhen on 30 May 2007

A delegation of 4 persons from 深圳市稅務學會 headed by their president, 莫天松會長 visited our Institute on 30 May 2007. Our Institute, represented by 9 council members including our President, Mr. Richard Chow and Vice-President, Mr. Bernard Wu, welcomed the delegation and discussed with them on the revenue and tax administration systems of Shenzhen and Hong Kong and also shared the views of the delegation on the new Enterprise Income Tax Law 〈新企業所得稅法〉 which will be enforced from 1 January 2008.

First Shanghai visit on 1 June 2007

Our Institute had the first delegation visiting Shanghai at the beginning of June 2007. The delegation of 16 persons including Mr. Richard Chow, President, Mr. Bernard Wu, Vice-President, 8 council members and 5 members representing the Institute was welcomed by the representatives of the Shanghai Taxation Bureau, Shanghai Society of Taxation and Shanghai Certified Tax Agents Association at the joint meeting held on 1 June 2007 to promote mutual friendship, exchange views on various taxation topics, study the Shanghai tax administration system and the development of Certified Tax Agents in Shanghai.



Qualifying Exam Program Committee

Since 1999, the Institute has co-operated with the School of Continuing and Professional Education of the City University of Hong Kong in offering the Qualifying Program for people who wish to be admitted as members of the Institute. This year's intake will begin their class in September with registration deadline on 3 August 2007. For details, please refer to the website of the Institute at <http://www.cityu.edu.hk/ce/cec/72006/>.

Publicity Committee

Recently, Publicity Committee has held two luncheons on 18 April and 16 May 2007 respectively. We have more than 20 members attended each of the luncheon gatherings. On 18 April 2007, the speaker, Ms. Sylvia Siu, a Hong Kong lawyer, was kind enough to give a speech on "How mediation works in resolving disputes". The luncheon and the speech were both warmly enjoyed by the attendees.



For the gathering on 16 May 2007, Dr. Billy Mak, Associate Professor of Hong Kong Baptist University, who is also a well-know columnist in many economics journals and a celebrity in TV shows, shared his investment advice with the audience about "Investment in Red Wine for the past few years". Members were surprised with the high yield ratio by red wine investment over the last few years.

Taxation Review Committee

The Taxation Review Committee has prepared a detailed report on the Hong Kong's business taxation regime for the Asia-Oceania Tax Consultants' Association ("AOTCA"). The report, which will be published in AOTCA's Technical Reports Vol. 11 in June 2007, covers most of the fundamental topics on Hong Kong's profits tax regime. It would be a good guide to our business tax system. Interested members can request a copy of this report by sending an email to the Institute's secretariat. Patrick Kwong, Co-chairman of the Committee, and Godwin Ng, member of the Committee have made significant contributions to the preparation of this report.

Technical News Update

Hong Kong Tax Update

Departmental Interpretation and Practice Note No. 44 ("DIPN 44") revised in April 2007

The Inland Revenue Department ("IRD") revised DIPN 44 in April 2007 in order to incorporate the views of the Mainland State Administration of Taxation ("SAT") as regards SAT's interpretation of certain provisions of the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Comprehensive Arrangement"). The SAT's views were detailed in its tax circular Guoshuihan GSH [2007] 403 issued earlier in the same month.

The most important point covered by the revised DIPN 44 and GSH [2007] 403 concerns the interpretation of the concept of "6 months within any 12-month period" contained in the Comprehensive Arrangement. The significance of the concept and the different interpretations adopted by the IRD and SAT in that regard is explained below.

6 months within any 12-month period

The furnishing of services by an enterprise of One Side directly or through employees or other personnel in the Other Side for a period or periods aggregating more than 6 months within any 12-month period would render the enterprise as having established a permanent establishment in the Other Side, and thereby expose it to taxation in the Other Side. The IRD and SAT however hold different views with regard to how the 6 months should be counted.

The SAT's current position is that for a project lasting not longer than 12 months, an enterprise's presence in the Other Side is taken as including all the months starting from the day when the enterprise first has employees or other personnel rendering services in the Other Side in relation to the project to the last day of such services – subject to the exclusion of one month whenever such services are continuously absent for 30 days during any period of the project. For a project lasting longer than 12 months, the relevant period for applying the aforesaid test is any 12-month period rolling either forward or backward from the date of any arrival or departure of an employee or other personnel rendering services in relation to the project in the Other Side.

Conversely, the IRD is of the view that a month comprises 30 days and therefore the relevant days of presence should be counted separately and then added together to ascertain if the aggregate exceeds 180 days within any 12-month period.

Court and Board of Review's Decisions

Court of Final Appeal rules that interest on loans raised to fund dividend payments qualifies for a tax deduction

In the judgment of Zeta Estates Limited v Commissioner of Inland Revenue [FACV 15/2006] handed down in March 2007, the Court of Final Appeal held that interest charged on shareholders' loans raised to fund dividend payments was tax deductible.

Underpinning the decision was the judges' view that "whether or not a dividend should be declared out of accumulated net profits, were questions for the commercial judgment of the directors. They were no possible concern of the Commissioner, or the Board of Review, or the courts."

It was held on the evidence of the case that once dividends were declared, the taxpayer was obliged to discharge the liability to pay the dividends, either by way of raising new loans, or by selling certain of its income-earning assets. Therefore, the shareholders' loans raised to fund the dividend payments were regarded as having an underlying purpose of enabling the taxpayer to discharge the dividends declared without disposing of any of its income-earning assets. As such, interest on the loans was regarded as having been incurred for the purpose of producing chargeable profits within the terms of Section 16(1)(a) of the Inland Revenue Ordinance ("IRO") and thus tax deductible.

Kim Eng Securities (Hong Kong) Limited v CIR [FACV No. 11 of 2006]

The Court of Final Appeal handed down its decision in March 2007, upholding the decision of the Board of Review ("BOR") that the relevant income in question was sourced in Hong Kong, and therefore fully chargeable to tax under Section 14 of the IRO.

Stock brokerage commission and interest income on margin facilities granted to clients by the taxpayer as a Hong Kong broker were in dispute in the case. The relevant income was earned by the taxpayer in respect of its roles in facilitating the clients and its affiliated broker in Singapore to circumvent certain Singapore regulatory rules in respect of stock transactions executed in the Singapore Stock Exchange.

In the circumstances of the case, the BOR held that the relevant income earned was not for the underlying transactions executed or credit facilities granted outside of Hong Kong, but for the taxpayer's role for bringing together the complimentary needs of the clients and its affiliated broker in Singapore. Since the bringing together was done by the taxpayer in Hong Kong, the source of the relevant income was therefore onshore.

On appeal, the Court of Final Appeal upheld the BOR's decision.

D43/06 – a 50:50 apportioned of profits granted to a taxpayer's import processing arrangement

In a recent case D43/06 the BOR ruled, on the facts and evidence of the case, that profits derived by a Hong Kong taxpayer from the sale of goods manufactured or processed by its PRC subsidiary under an import processing arrangement should be apportioned on a 50:50 basis as a matter of law.

This ruling is in contrast to the assessing practice of the IRD under which, as a matter of concession, the 50:50 apportionment is granted only to contract processing arrangements. The IRD is being of the view that import processing arrangements do not qualify for the 50:50 apportionment. The Commissioner of Inland Revenue has asked the BOR to state a case for her appeal. .

PRC Tax Update

1、国税函[2007]236号：《国家税务总局关于调查承担单一生产功能外商投资企业和外国企业纳税情况的通知》

- 单一生产功能的企业：根据国外母公司的总体经营计划，按照产品订单从事产品加工制造，只承担单一生产功能，其他功能均由国外母公司或其他关联公司承担；
- 由于这些企业不承担决策、市场开发、营销等功能，相应也不应当承担由于企业集团决策失误、开工不足、产品滞销等原因带来的风险和损失；
- 按照转让定价的国际通行原则，只承担单一生产功能的企业通常应保持一定的利润率水平，原则上不应该出现亏损；
- 对于上述出现亏损或微利的企业，税局可选择适当的可比价格或可比企业，确定企业的利润水平。

公布日期：2007年3月7日

2、财税[2007]75号：《中部地区扩大增值税抵扣范围暂行办法》

- 本办法适用于中部六省老工业基地城市：从事装备制造业、石油化工业、冶金业、汽车制造业、农产品加工业、电力业、采掘业、高新技术产业为主的增值税一般纳税人。
- 中部六省老工业基地城市是指：山西省的太原、大同、阳泉、长治；安徽省的合肥、马鞍山、蚌埠、芜湖、淮南；江西省的南昌、萍乡、景德镇、九江；河南省的郑州、洛阳、焦作、平顶山、开封；湖北省的武汉、黄石、襄樊、十堰和湖南省的长沙、株州、湘潭、衡阳。上述城市以行政区划为界。
- 纳税人生产销售上述产业产品的年销售额占其同期全部销售额50%以上适用办法。
- 上述纳税人发生下列项目的进项税额，不超过当年新增增值税税额部分准予抵扣：
 - 1 购进（包括接受捐赠和实物投资，下同）固定资产；
 - 2 用于自制（含改扩建、安装，下同）固定资产的购进货物或增值税应税劳务；
 - 3 通过融资租赁方式取得的固定资产，凡出租方规定缴纳增值税的；
 - 4 为固定资产所支付的运输费用。

- 本条所称进项税额是指纳税人自2007年7月1日起（含）实际发生，并取得2007年7月1日（含）以后开具合法扣税凭证的进项税额。

生效日期：2007年7月1日

3、国税函[2007]408号：《国家税务总局关于外商投资企业和外国企业取得政府补助有关所得税处理问题的批复》

以各种方式从政府无偿取得政府补助，应分别以下情况进行税务处理：

- 企业对取得的政府补助按接受投资处理：该政府补助资产可以计算折旧或摊销；该政府补助不计入企业的应纳税所得额；
- 除以上处理外：政府补助额可不计入企业当期损益，但对以该政府补助所购置或形成的资产不得计算成本、折旧或摊销。
- 其他情况下的政府补助额：应计入企业当期损益计算缴纳企业所得税。

公布日期：2007年4月5日

4、国税函[2007]403号：《国家税务总局关于《内地和香港特别行政区关于对所得避免双重征税和防止偷漏税的安排》有关条文解释和执行问题的通知》

- 《安排》在内地于2007年1月1日起执行。适用于纳税人2007年1月1日以后取得的所得。对居民企业或个人按停留时间判定纳税义务时自2007年1月1日起开始计算；
- 常设机构：即香港企业为内地某项目提供服务（包括咨询服务），以该企业派其雇员为实施服务项目第一次抵达内地的月份起直到完成服务项目雇员最后离开内地的月份作为计算期间，在此期间如连续30天没有雇员在境内从事服务活动，可扣除一个月，按此在任何12个月中连续或累计超过6个月的，即为在内地构成常设机构。独立个人劳务活动按此标准判断。
- 来料加工：视该香港企业构成了内地的常设机构，并应对归属于该常设机构的利润征税。但此规定尚未改变目前内地对承揽“来料加工”的上述内地企业按其取得的加工费收入征收企业所得税的实际做法。
- 受雇所得：在有关个人每次申报纳税期限内或离境日时，往回推算12个月，并计算在此12个月中该个人停留连续或累计是否达到183天，对达到183天所涉及的一个或两个年度中在内地的工作月份均应确定负有纳税义务。
- 协商程序：各级税务机关在执行《安排》时发生异议，统一由税务总局与香港税务局协商解决。
- 信息交换：双方税务当局即可开展信息交换工作。信息可以是纳税人以前年度的信息。但该信息应适用于《安排》执行后纳税年度的税收。

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