



2. 2010 Annual Meeting with the Inland Revenue Department

The annual meeting between representatives of the Institute's Taxation Committee and the Inland Revenue Department ("IRD") took place on 5 February 2010. Among the items discussed at the meeting, the Institute would like to highlight the following items for immediate attention:

➤ Filing deadlines for 2009/10

At the meeting, the IRD confirmed the following due dates for lodging profits tax returns for the year of assessment 2009/10:

- (i) "N" Code – 3 May 2010 (no extension)
- (ii) "D" Code – 16 August 2010 (no change)
- (iii) "M" Code – 15 November 2010 (no change)
- (iv) "M" Code (current year loss cases) – 31 January 2011 (no change)

➤ Electronic filing of profits tax returns

The IRD will expand the tax filing service under eTAX with effect from April 2010 for a corporation or partnership which satisfies certain conditions. Please click for more [details](#). For those filing electronically, there will be a two-week extension for lodging profits tax returns for the year of assessment 2009/10. The extended due dates are as follows:

- (i) "N" Code – 17 May 2010
- (ii) "D" Code – 30 August 2010
- (iii) "M" Code – 29 November 2010
- (iv) "M" Code (current year loss cases) – 31 January 2011 (same as paper returns)

➤ Discussions with the State Administration of Taxation ("SAT")

The Institute asked the IRD for an update of its discussions with the SAT on cross border issues, including matters relating to the Mainland - Hong Kong Double Taxation Arrangement ("DTA"). The following is a summary of the issues raised by the Institute and discussed between the IRD and SAT:

- (i) Certificate of resident status – It has been clarified with SAT that the existing administrative procedures adopted between the Mainland and Hong Kong would continue to apply even after the issue of Guoshuifa [2009] No.124 ("Circular No. 124"), which was clearly stated in Article 44 of Circular No. 124. The SAT agreed to reinforce the dissemination of the current administrative procedures to local tax authorities. Nevertheless, Circular No.124 also included other procedures not covered by the current administrative procedures, such as prior approval for treaty benefits and prior registration requirements etc., and these procedures would then be applicable to the DTA between the Mainland and Hong Kong. One point to note regarding the completion of the forms for record or for approval of "Non-resident's claim for treatment under Double Taxation Agreement" (i.e. Annex 1 & 2 to Circular No. 124): SAT has agreed to accept a resident certificate in lieu of the chop or stamp by the IRD on the forms.

It is also noted that some companies incorporated in Hong Kong are requested by the Mainland local tax authorities to provide the certificate of resident status even after submission of their certification of incorporation. The SAT advised that local tax authorities would only make the request in case of doubt.



Hong Kong raised the point that sometimes local tax authorities do not provide referral letters to the taxpayers despite repeated requests. Hong Kong will therefore consider to issue the resident certificates in the absence of referral letters in exceptional justifiable cases.

- (ii) Beneficial ownership – In October 2009, the SAT issued Guoshuihan [2009] No. 601 (“Circular No. 601”) on the interpretation of beneficial ownership in the implementation of DTA provisions. The SAT may, in the light of experience on the implementation of the circular, consider to amend and fine-tune the circular at a later stage.
- (iii) Anti-avoidance rules – The recent tax cases on capital gains happened in Chongqing and Xinjiang were discussed. The SAT understood Hong Kong’s concern and confirmed that currently local tax authorities have to seek approval before applying the anti-avoidance rules under Article 47 of the Corporate Income Tax (“CIT”) Law. The approval procedures have been centralised under the scrutiny of the SAT.
- (iv) Treaty withholding rate on dividends – According to Article 3 of Guoshuihan [2009] No. 81 (“Circular No. 81”), a non-resident investor has to hold the shares of a Mainland company for a continuous period of 12 months before the outbound dividends could be eligible for treaty benefits. This requirement, however, is not stipulated in the DTA between the Mainland and Hong Kong. The SAT said that as the circular applies to all treaty partners, it would not be appropriate to change it for time being. The SAT might consider IRD’s request for exemption of the 12-month look back period some time later.

Other issues discussed by IRD with SAT include:

- (v) Joint seminar on transfer pricing – the IRD and the SAT would jointly host a seminar in the first half of 2010 on the issue of transfer pricing and reference would also be made to Guoshuifa [2009] No. 2 on transfer pricing guidelines.
- (vi) 183 days rule regarding employment income – The SAT considered that the 183 days rule is an international standard and there is no strong reason for any amendment.
- (vii) Source of rental income – According to Article 7 of the Implementation Regulations of the CIT Law, the source of any rental income is located at the place where the payer is situated. The SAT confirmed that the provisions on source of rental income provided in Article 6 of the DTA override the domestic law.
- (viii) Business Tax – Under the current Business Tax regulation, a non-resident service provider providing services to a Mainland company has to pay Business Tax in the Mainland. The SAT confirmed that the exemption provisions stated in Articles 3 and 4 of Caishui [2009] No. 111 are applicable to Hong Kong residents.

The minutes of past annual meetings are contained in [Tax Bulletins](#) on the Institute’s website and full minutes of the 2010 annual meeting will be published in due course.