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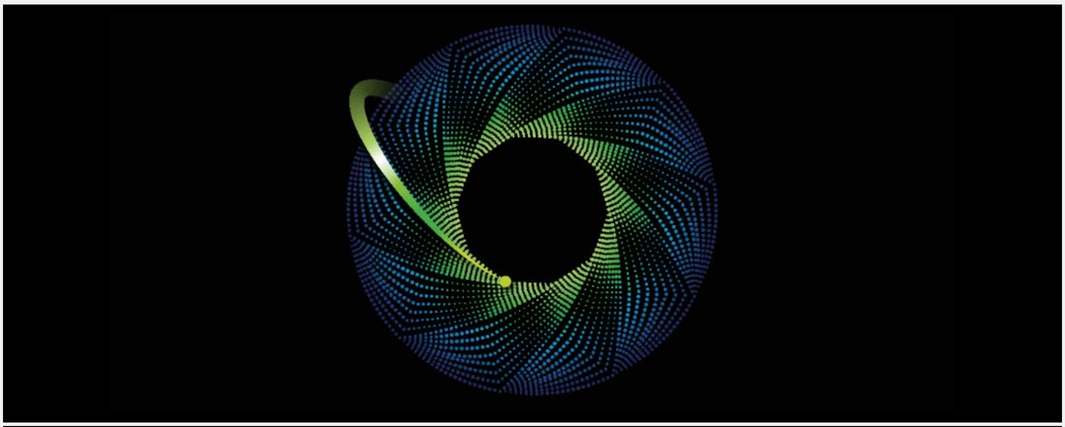

香港税务快讯
专利盒税务优惠获得通过

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香港立法会于 2024 年 6 月 26 日通过了关于专利盒税务优惠的条例草案[1]。该条例草案对通过研发活动而创造的具资格知识产权，为其源自香港的具资格利润提供 5%的特惠税率。专利盒税务优惠将追溯至 2023 年 4 月 1 日或之后开始的课税年度适用。

在条例草案通过之前，香港立法会成立了法案委员会审议有关条例草案。政府对适用三年滚动平均值计算研发分数的期限作出了一项小小的委员会审议阶段修正案。这项修订旨在迎合企业采用的不同会计年度结算日。

在本文中，我们将回顾专利盒税务优惠的主要特点，并重点介绍在法案委员会会议期间进行的讨论，其中政府澄清了与税务优惠相关的几项问题。有关税务优惠的背景和详情，请参阅我们的香港税务快讯第 194 期(仅英文版)和第 214 期。

主要特点和政府澄清

具资格知识产权

具资格知识产权指从研发活动所产生的知识产权，包括专利、植物品种权利[2]和受版权保护的软件。政府澄清：

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- 由于香港对专利注册的限制，具资格专利的涵盖范围排除了在专利盒税务优惠生效后的 24 个月过渡期后提交的转录标准专利申请及其批予。

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- 产品或服务的价格中包含可归因于具资格知识产权的款额（内含知识产权的价值）；及
- 就具资格知识产权所得的保险、损害赔偿或补偿。

政府表示，税务优惠仅适用于根据「营业标记」分析确定为营业性质的知识产权处置收益。资本收益（即作为资本资产的知识产权的处置收益）将继续免征香港利得税[3]。

研发分数 - 应评税利润的特惠部分

研发分数是用以厘定应评税利润中可享税务优惠待遇部分的比例。它是具资格研发开支和与知识产权相关的总开支之间的比例。

- 政府指出，只有与具资格知识产权直接相关的研发开支才会被视为具资格。例如，为进行研发活动而招致的物业租金开支可被视为具资格研发开支。

- 如能满足经合组织关联法规定的具资格开支的其他条件，纳税人根据成本分摊协议[4]进行部分或全部相关的研发活动，其按成本分摊协议所摊分的研发开支可获接纳为研发分数中的具资格研发开支。

- 如果纳税人通过合并或收购原拥有人所有股权权益的方式获取归属于某属香港居民人士[5]的公司（原拥有人）的知识产权或任何权利，原拥有人就该知识产权招致的开支将被视为具资格研发开支。政府澄清，当有关知识产权或任何权利正归属他时，原拥有人在当时必须是香港居民。

我们的观察

我们注意到政府就专利盒税务优惠的几个方面进行了澄清，特别是确认了按成本分摊协议所摊分的研发开支将被视为研发分数中的具资格研发开支。这些澄清对于纳税人理解政府的立法意图和香港税务局的实施实践至关重要。为协助税务合规，香港税务局会在其网站发布指引和示例。

专利盒税务优惠是政府为促进香港的研发活动和知识产权的创造而推出的重大举措。它适用于广泛的业务，而不仅限于高科技行业（如生命科

学和技术）。我们鼓励纳税人寻求专业意见，以评估受益于专利盒税务优惠的潜在机会。

[1] 《2024 年税务（修订）（知识产权收入的税务宽减）条例草案》

[2] 植物品种权利是授予植物品种拥有人的权利，藉以保障其培育或发现并发展的栽培植物品种。

[3] 除了源自外地的处置收益，这须遵从外地收入豁免征税机制的规定。

[4] 成本分摊协议是企业之间的一种契约，以分担共同开发、生产或取得无形资产、有形资产或服务所涉及的资金和风险，而该无形资产、有形资产或服务预计会为各参与者各自的业务创造效益。

[5] 在香港成立为法团的公司，或（如在香港境外成立为法团）通常在香港加以管理或控制的公司。

如有任何疑问，请联系我们的专业人员：

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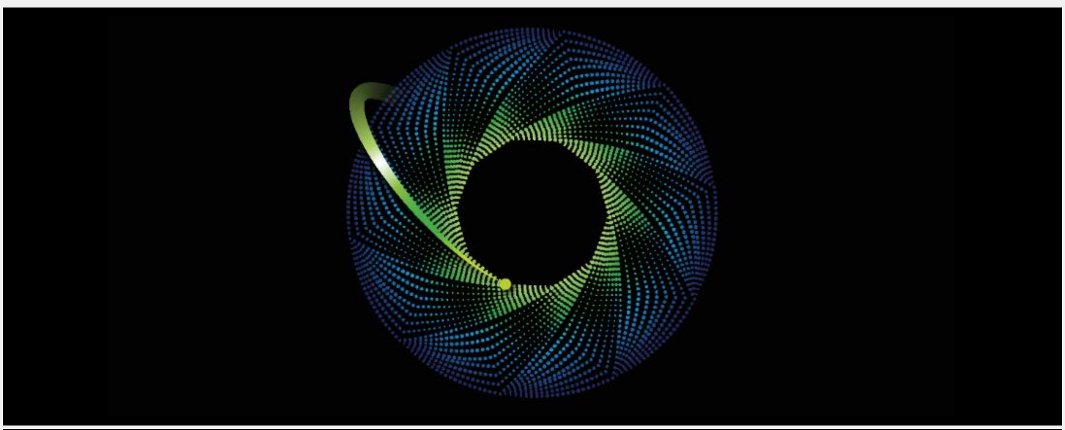

Hong Kong Tax Newsflash

Passage of patent box tax concession

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The draft legislation[1] on the patent box tax concession was passed by the Legislative Council today. It provides a concessionary tax rate of 5% for qualifying profits sourced in Hong Kong from eligible intellectual property (IP) created through research and development (R&D) activities. The patent box tax concession will apply retrospectively to the year of assessment beginning on or after 1 April 2023.

A bills committee was formed to scrutinize the bill prior to its passage. A minor committee stage amendment was made in relation to the period for applying the three-year average rolling basis for calculating the R&D fraction. This amendment is intended to cater for the different accounting year-end dates adopted by businesses.

In this article, we recap the key features of the patent box tax concession and highlight the discussions that took place during the bills committee meetings, where the government clarified several issues pertaining to the tax concession. For the background and details of the tax concession, please refer to our Hong Kong Tax Newsflash Issue 194 and Issue 214.

Key features and clarifications from the government

Eligible IP

Eligible IP means an IP that is generated from R&D activities, including patent, plant variety right[2] and copyrighted software. The government clarified that:

- Copyrighted software refers to a copyright subsisting in software under the Copyright Ordinance of Hong Kong or corresponding foreign laws. Although registration of copyrighted software is generally not required under the Copyright Ordinance or foreign law, it must fall within the scope of the relevant legal protection to be regarded as an eligible IP.

- Due to restrictions on patent registration in Hong Kong, standard patents (re-registration) and their applications will be excluded from the scope of eligible patents if the date of filing is after the expiry of the 24-month period following the commencement date of the Bill.

Eligible IP income

Eligible IP income includes:

- income derived from an eligible IP in respect of the exhibition or use of, or a right to exhibit or use (whether in or outside Hong Kong) the IP;
- income derived from the sale of an eligible IP;
- price of a product or service that includes an amount attributable to an eligible IP (embedded IP income); and

- insurance, damages or compensation derived in relation to an eligible IP.

The government indicated that the tax concession would only apply to IP disposal gains that are revenue in nature, as determined based on badges of trade analysis. Capital gains (i.e. disposal gains on IPs which are capital assets) would continue to be exempt from Hong Kong profits tax[3].

R&D fraction for concessionary portion of assessable profits

R&D fraction is a ratio for determining the portion of assessable profits that could benefit from the preferential tax treatment. It is a fraction of eligible R&D expenditures to overall expenditures related to the IP.

- The government pointed out that only R&D expenditures directly connected to the eligible IP would be considered eligible. For instance, property rental expenditures incurred for R&D activities might be regarded as eligible R&D expenditures.

- Where the taxpayer has undertaken part or all of the underlying R&D activity under a cost sharing arrangement[4] (CSA), the share of R&D expenditure borne by the taxpayer under the CSA can be accepted as eligible R&D expenditure in calculating the nexus ratio (i.e. R&D fraction), provided that other conditions of eligible expenditures prescribed under the OECD's nexus approach are satisfied.

- If the taxpayer obtained an IP or any right vested in a company that is a Hong Kong resident person[5] (original owner) through amalgamation or acquisition of all equity interests in the original owner, the expenditure incurred by the original owner in respect of the IP would be regarded as eligible R&D expenditures. The government clarified that the original owner must be a Hong Kong resident person at the time when the subject IP or any right is or was vested.

Our observations

We are pleased to note the government’s clarification on several aspects of the tax concession, especially the confirmation that the share of R&D expenditures under a CSA would be considered as eligible R&D expenditures for the purpose of determining the R&D fraction. These clarifications are crucial for taxpayers to understand the legislative intent of the government and the implementation practices of the Inland Revenue Department (IRD). To facilitate tax compliance, the IRD will issue guidance and illustrative examples on its website.

The patent box tax concession is a significant initiative introduced by the government to foster R&D activities and the creation of IP in Hong Kong. It could be applicable to a broad range of businesses, not just limited to high-tech sectors such as life science and technology. Taxpayers are encouraged to seek professional advice to assess any potential opportunities in benefitting from the patent box tax concession.

Deloitte China will hold a seminar on 9 July 2024 at 2:30pm (HKT) to provide the information of the new patent box tax concession and share practical tips and strategies on how you can leverage this concession to its full potential. Please click here for registration.

[1] *Inland Revenue (Amendment) (Tax Concessions for Intellectual Property Income) Bill 2024*

[2] Plant variety rights are rights granted to the owners of plant varieties over cultivated plant varieties they have bred or discovered or developed.

[3] except foreign-sourced disposal gains, which would be subject to the Foreign-Sourced Income Exemption regime.

[4] A cost sharing arrangement is a contractual arrangement among business enterprises to share contributions and risks involved in the joint development, production or obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangibles assets or services are expected to create benefits for the individual businesses of each of the participants.

[5] A company incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong.

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