



Hong Kong Tax Newsflash: IRD made further changes to the published guidance on deduction of foreign taxes

In July 2019, the Inland Revenue Department (IRD) released an updated Department Interpretation and Practice Notes (DIPN) No. 28 (revised) on the deduction of foreign taxes. Our [Tax Newsflash Issue 98](#) has addressed the key updates in this respect. Subsequently, the IRD made further adjustments to the DIPN No.28 (revised), which potentially may have significant impact on taxpayers. The latest version of DIPN No.28 (revised) can be found [here](#).

We summarize the adjustments below, as compared to the version that we analysed in July 2019:

- **Tax on profits "or income" is not deductible.** In the latest version, "or income" is added.
- **Withholding taxes are generally not deductible.** In the latest version, the IRD added "... foreign taxes on profits or income (e.g. withholding tax on royalties, licensing fees, service fees and management fees), subject to the provisions in section 16(1)(c), are not deductible".
- **Taxes and duties not levied by reference to profits "or income" will be considered for deduction.** In the latest version, "or income" is added.
- **Goods and services tax (GST) and value added tax (VAT) are deductible if certain conditions are satisfied.** In addition to the examples listed out in the old version (e.g. rates levied on properties, vehicle licence fee, duties on commodities etc.), the IRD added a paragraph to highlight that GST and VAT paid in foreign

jurisdictions are not in the nature of profits tax or income tax and will be deductible under section 16(1) if they are incurred in the production of chargeable profits.

The above adjustments imply that the IRD has changed its view and no longer allows deduction of tax on gross income, such as withholding tax on royalties, under Section 16(1) as stated in the old DIPN 28 issued in July 1997. In other words, if withholding tax is paid in a jurisdiction without a tax treaty with Hong Kong, neither tax credit nor tax deduction will be available to eliminate double taxation. There could be significant implications to many taxpayers.

On the other hand, no adjustment is made regarding the restriction on deduction of foreign tax on specified interest and gains. Please refer to [Tax Newsflash Issue 98](#) for details.

Although DIPN is not legally binding, it provides an indication of the IRD's position. Taxpayers should review their situations to determine whether they are aligned with the IRD's practice and seek professional advice where necessary.

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