



## Hong Kong Tax Newsflash

### Views exchanged in the 2022 annual meeting between the Inland Revenue Department and HKICPA

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The minutes of the annual meeting between the Inland Revenue Department (IRD) and the Hong Kong Institute of Certified Public Accountants (HKICPA) held in 2022 were recently released. The discussions covered a wide range of tax topics. This article highlights the views exchanged on certain key issues.

#### Commercial building allowance (CBA) on old buildings

Under the current Inland Revenue Ordinance (IRO), CBA is allowed for a maximum period of 25 years starting from year of assessment (YoA) 1998/99 or YoA in which the commercial building or structure was first used, whichever is later (the 25-year period).

It is not uncommon that old commercial buildings constructed before 1998 are still in use and sold nowadays. As there is no provision under the IRO which allows CBA beyond the 25-year period, when a pre-1998/99 old commercial building is sold for a consideration, the buyer would not be entitled to any CBA while the seller would be subject to a balancing charge.

Nevertheless, the IRD is not prepared to grant any concession in such an asymmetric situation. In other words, for a commercial building or

structure that had been in use since YoA 1998/99, the last year that such building could enjoy CBA would be YoA 2023/24.

Practitioners have raised concerns on this matter and sent a submission requesting a legislative amendment to the government for consideration.

### Certificate of residence (CoR) for offshore companies

- **Management or control:** In deciding whether a CoR can be issued for a non-Hong Kong-incorporated company (NR company), the IRD would consider the location of the NR company's "management or control". The following factors would be considered by the IRD:
  - Nature of business
  - Mode of operation
  - Place of business
  - Place of board of directors' meeting
  - Place of implementation of top management's decision
- **Business registration (BR):** The IRD clarified that whether the NR company has obtained a BR certificate in Hong Kong is relevant, but not conclusive, in determining the location of the NR company's management or control. If a NR company did not apply for BR on the grounds that it did not establish a place of business in Hong Kong, the NR company would be required to provide other concrete evidence to establish that it had commercial substance and exercised its management or control in Hong Kong for the purposes of CoR application. Whether a NR company is required to obtain BR depends on whether it carries on a "business" according to the definition under the Business Registration Ordinance (e.g. carry on any form of activity for the purpose of gain, establish a place of business, or has a representative or liaison office in Hong Kong). The term "business" has different meanings under different ordinances.
- **Commercial substance of the group:** The IRD advised that in considering an application for CoR by a NR company, whether the NR company belongs to a Hong Kong listed group with commercial substance in Hong Kong is not relevant. In general, the IRD would consider the NR company's commercial substance in Hong Kong on an individual basis. Nevertheless, if a NR company holds a group of companies with operations in Hong Kong, it could more likely be accepted as having commercial substance in Hong Kong. A NR company could also have commercial substance in Hong Kong by sharing the business premises and manpower with its group companies in Hong Kong.

*Note: For Hong Kong incorporated companies, the IRD has now changed its approach to base its decision of whether a CoR can be issued on the plain definition of "resident of Hong Kong" in the relevant tax treaty. For details, please refer to our [Hong Kong Tax Newsflash Issue 185](#).*

### Permanent establishment (PE) of non-Hong Kong resident persons

- In considering whether a NR person of a jurisdiction without tax treaty with Hong Kong (non-DTA territory) has PE in Hong Kong, reference should be made to the PE definition under Schedule 17G of the IRO.

- The IRD explained that Schedule 17G is intended to cover tax residents of all non-DTA territories. The definition of “non-DTA territory resident person” is modelled on the OECD definition and generally refers to a person who is liable to tax by reason of its domicile, residence, place of management etc. in the non-DTA territory, even if the jurisdiction does not in fact impose tax on the person as certain requirements in the tax laws are satisfied.
- However, the IRD indicated that a person incorporated in a jurisdiction which does not implement any corporate income tax system would not fall under the above definition.
- The IRD considered that a person incorporated in such a jurisdiction, managed or controlled and subject to taxation in another jurisdiction should be a “resident for tax purposes” in that other jurisdiction.
- For instance, a company incorporated in BVI or Cayman Islands, managed or controlled and subject to tax in Hong Kong would be regarded as a Hong Kong resident person. Therefore, it would not be necessary to consider whether the company had a PE in Hong Kong. All the Hong Kong sourced profits derived from the business carried on in Hong Kong, whether attributable to any PE in Hong Kong, would be subject to profits tax.

#### Document requiring wet-ink signature

- The IRD generally accepts scanned copies of documents bearing a wet-ink signature (e.g., objection letters, written requests for extension of time, holdover applications, etc.) except tax returns and those specified documents listed on the [IRD's website](#).
- The IRD only accepts audited financial statements as supporting documents to the filing of profits tax returns in paper form if they bear the director’s and auditor’s hand-written signatures, regardless of the location of the directors.
- A wet-ink signing chop of a natural person is only acceptable where the taxpayer cannot write. The affixing of the wet-ink signing chop must be witnessed by an individual other than the taxpayer’s spouse or a minor. The witness should sign and date, and state his or her full name and identity card number beside his or her signature.

#### Electronic filing (e-filing)

##### Timing of issuing assessments

The IRD has no plan to issue notices of assessments and statements of loss to all (including inactive or dormant) taxpayers annually until full-scale mandatory e-filing is implemented (tentatively in 2030).

##### Designated eTax accounts

Currently authorized signers need to use their personal eTAX account to e-file tax returns (e.g. employer’s returns, profits tax returns) on behalf of companies. Users may be cautious to use personal eTAX accounts to manage businesses’ tax compliance matters. Therefore, the IRD plans to

provide dedicated tailor-made portal services for different groups of users, including Business Tax Portal (for corporate taxpayers), Individual Tax Portal (for individual users) and Tax Services Portal (for tax representatives) in 2025 tentatively. Upon implementation of the new tax portals, employers and service providers could submit returns through their own business portal instead of through the personal e-Tax accounts.

### E-filing of applications for CoR

E-filing of applications for CoR is currently available for users registered for “iAM Smart+”. In the future, portal users will also be able to submit applications for CoR online.

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If you have any questions, please contact our professionals:

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