

Weekly Alert

2018 ISSUE 6

RSM TAX ADVISORY (HONG KONG) LIMITED

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Welcome to 2018 issue 6 of Weekly Alert covering technical development in taxation around the globe.

TAX – Hong Kong

1. Inland Revenue (Amendment) Ordinance 2018 Gazetted

On 2 February 2018, the Inland Revenue (Amendment) Ordinance 2018 was gazetted. The technical amendments on automatic exchange of financial account information in tax matters (“AEOI”) (i.e. Clauses 5 to 11 of the Ordinance) will come into operation on 1 January 2019, while other provisions took effect from 2 February 2018.

The Ordinance provides the legal framework for Hong Kong to implement multilateral tax arrangements. After the passage of the Ordinance by the Legislative Council, the Government has sought the assistance of the Central People’s Government in depositing the declaration for territorial extension to the Organisation for Economic Co-operation and Development (“OECD”) so that the application of the Multilateral Convention on Mutual Administrative Assistance in Tax Initiatives (“Multilateral Convention”) shall be extended to Hong Kong. The Chief Executive-in-Council will be recommended to make an order to declare that the Multilateral Convention shall have effect in Hong Kong. This order will be subject to the scrutiny of Legislative Council by negative vetting.

The Ordinance also makes technical amendments to certain provisions on AEOI in order to align them with the Common Reporting Standards promulgated by the OECD. These amendments (made under Clauses 5 to 11 of the Ordinance) do not make substantial changes to the due diligence requirements for financial institutions. However, as financial institutions may take time to fine-tune their systems and mode of operation in order to implement the refinements, the Government has specified that Clauses 5 to 11 of the Ordinance will only become effective on 1 January 2019.

Press Release

<https://www.ird.gov.hk/eng/ppr/archives/18020201.htm>

2. List of Qualifying Debt Instruments

On 2 February 2018, the Inland Revenue Department released the updated list of the following qualifying debt instruments as at 31 December 2017:

a) Debt Instruments Eligible for Profits Tax Concession

According to Section 14A of the Inland Revenue Ordinance (“IRO”), qualifying debt instruments are eligible for profits tax concession and chargeable at 50% of the normal profits tax rate.

b) Long Term Debt Instruments Eligible for Profits Tax Exemption

According to Section 26A of the IRO, qualifying long term debt instruments are eligible for profits tax exemption.

List of Qualifying Debt Instruments

https://www.ird.gov.hk/eng/tax/bus_qdi.htm

TAX – PRC

1. Notice on Matters Concerning the Determination of Beneficial Owners under Tax Treaties (关于税收协定中“受益所有人”有关问题的公告)

On 3 February 2018, the State Administration of Taxation ("SAT") issued the *Notice on Matters Concerning the Determination of Beneficial Owners under Tax Treaties* which applies to matters relating to the entitlement of tax treaty treatment from 1 April 2018.

The Notice lists out the adverse factors which will take into account when determining the beneficial ownership and the scope of non-tax residents who are eligible for the safe harbour rule for dividends.

国家税务总局公告 2018 年第 9 号

<http://www.chinatax.gov.cn/n810341/n810755/c3279059/content.html>

2. Notice on Matters Concerning Taxpaying Credit Ratings (关于纳税信用评级有关事项的公告)

On 1 February 2018, the SAT released the *Notice on Matters Concerning Taxpaying Credit Ratings*, which will take effect from 1 April 2018.

The Notice states that three more categories of enterprises, including new enterprises or enterprises that have no operation income within the credit rating year, will be involved in the taxpaying credit ratings system. A new grade "M" will be added to the existing grading (A, B, C and D) and applicable to newly established enterprises or enterprise which have no operation income during the credit rating year but earn over 70 points in annual credit rating and have no dishonest behaviour as listed in the Article 20 of the Measures for Taxpaying Credit Administration (for Trial Implementation). No authentication of special value-added tax invoice will be required for Grade M enterprises.

国家税务总局公告 2018 年第 8 号

<http://www.chinatax.gov.cn/n810341/n810755/c3274438/content.html>

3. Notice on the Format of the Legal Instruments Mentioned in the Administrative Measures of the Customs for the Levying of Duties on Imported and Exported Goods (关于公布《中华人民共和国海关进出口货物征税管理办法》涉及法律文书格式的公告)

On 31 January 2018, the General Administration of Customs released the *Notice on the Format of the Legal Instruments Mentioned in the Administrative Measures of the Customs of the People's Republic of China for the Levying of Duties on Imported and Exported Goods*.

The Notice introduces the new Customs Duty Payments Form, Refund Application Form (Format I), Refund Application Form (Format II), Income Refund Certificate and Customs Notification for Duty Recovery. The Notice took effect from 1 February 2018.

海关总署公告 2018 年第 15 号

<http://www.customs.gov.cn/customs/302249/302266/302269/1454435/index.html>

1. OECD Announces Further Developments in BEPS Implementation

On 8 February 2018, the Inclusive Framework on Base Erosion and Profit Shifting (“BEPS”) released additional guidance to give certainty to tax administrations and multinational enterprises on the implementation of Country-by-Country reporting.

The additional guidance addresses the definition of total consolidated group revenue and whether non-compliance with the confidentiality, appropriate use and consistency conditions constitutes systemic failure.

The Inclusive Framework on BEPS also approved updates to the results for preferential regime reviews conducted by the Forum on Harmful Tax Practices. Two Barbados’ regimes, the international financial services and the credit for foreign currency earnings/credit for overseas projects or services, were concluded as “potential harmful” by the Inclusive Framework.

OECD Announces Further Development in BEPS Implementation

<http://www.oecd.org/tax/oecd-announces-further-developments-in-beps-implementation-february-2018.htm>

RSM Tax Advisory (Hong Kong) Limited

RSM Hong Kong's dedicated and experienced tax specialists can:

- Advise on tax efficient holding and operational structures for new cross-border investment, including the formation of Hong Kong and Chinese business entities.
- Review existing cross-border investment structures, advise on identified deficiencies, quantify any potential exposure from such deficiencies, and further advise on restructuring approach and procedures.
- Assist clients to discuss and clarify matters with tax officials, including transfer pricing and advance rulings.
- Act as client representative in tax audits and tax investigations.
- Provide transaction support services on mergers and acquisitions, including tax due diligence, deal structure advice, tax health checks, related human resources arrangements and other tax compliance and consultation services.
- Advise on human resources and structuring employment arrangements in a tax-efficient manner.
- Advise on tax equalization schemes.
- Provide tax compliance services for individual and corporate clients in Hong Kong and China.

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