

Weekly Alert

2019 ISSUE 9

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Welcome to 2019 issue 9 of Weekly Alert covering technical development in taxation around the globe.

TAX – Hong Kong

1. Refinements to Legislative Framework of Automatic Exchange of Financial Account Information in Tax Matters to Come into Force

The Inland Revenue (Amendment) (No. 2) Ordinance 2019 (the “Amendment Ordinance”) was gazetted on 1 March 2019 in order to refine the legislative framework of automatic exchange of financial account information in tax matters (“AEOI”) under the Inland Revenue Ordinance (“IRO”) which will take effect from 1 January 2020.

The Amendment Ordinance requires Mandatory Provident Fund Schemes, Occupational Retirement Schemes registered under the Occupational Retirement Schemes Ordinance, pooling agreements, approved pooled investment funds and credit unions to comply with the due diligence and reporting obligations relating to AEOI starting from 2020. If members of the institutions concerned are tax residents of the reportable jurisdictions, such institutions will need to report in 2021 for the first time to the Inland Revenue Department the financial account information of the relevant members, covering the year 2020, for transmission to the relevant tax authorities.

The Amendment Ordinance also increases the number of reportable jurisdictions under the IRO from the current 75 to 126.

Refinements to Legislative Framework of Automatic Exchange of Financial Account Information in Tax Matters to Come into Force

<https://www.ird.gov.hk/eng/ppr/archives/19030101.htm>

2. Gazettal of Inland Revenue (Amendment) (Tax Concessions) Bill 2019

On 8 March 2019, the Inland Revenue (Amendment) (Tax Concessions) Bill 2019 was gazetted. The Bill seeks to implement the concessionary tax measures as proposed in the 2019/20 Budget. The Bill will be introduced into the Legislative Council on 20 March 2019.

Gazettal of Inland Revenue (Amendment) (Tax Concessions) Bill 2019

<https://www.ird.gov.hk/eng/ppr/archives/19030601.htm>

1. **Notice on the Revision of Administrative Measures on Registration of Enterprises, Registration of the Legal Representatives of Enterprises and Other Related Measures for Public Consultation** (关于就修订《公司登记管理条例》《企业法人登记管理条例》等行政法规公开征求意见的公告)

On 5 March 2019, the State Administration for Market Regulation has released the “*Notice on the Revision of Administrative Measures on Registration of Enterprises and Registration of the Legal Representatives of the Enterprises*” for public consultation.

Administrative Measures on Registration of Enterprises, Administrative Measures on the Registration of Legal Representatives of Enterprises and the Administrative Measures on the Registration of Partnership Enterprises will be amended. Public can provide their comments by 3 April 2019.

关于就修订《公司登记管理条例》《企业法人登记管理条例》等行政法规公开征求意见的公告
http://www.saic.gov.cn/hd/zjdc/201903/t20190305_291676.html

2. **Notice on Continuing the VAT Policies to Support the Development of Cultural Enterprises** (关于继续实施支持文化企业发展增值税政策的通知)

The Ministry of Finance and the State Administration of Taxation have jointly issued the “*Notice on Continuing the Value-added Tax (“VAT”) Policies to Support the Development of Cultural Enterprises*”.

According to the Notice, the income of film-related enterprises including film production and distribution would be exempted from VAT. The Notice will take effect from 1 January 2019 to 31 December 2023.

For the enterprises which have paid the VAT before the issuance of this Notice, the relevant enterprises can utilize the amount of such payment to offset their future VAT payable or request for a tax refund.

财税〔2019〕17号
http://www.gov.cn/xinwen/2019-03/02/content_5370103.htm

3. **The Release of Guiding Catalog of Green Industries (2019 Edition)** (关于印发《绿色产业指导目录（2019年版）》的通知)

Seven departments, including the National Development and Reform Commission, have jointly issued the 2019 Edition of Guiding Catalog of Green Industries.

The Catalog lists out six main categories of green industries such as "energy conservation and environmental protection industry", "ecological environment industry", "green service industry", etc.

发改环资〔2019〕293号
http://www.ndrc.gov.cn/gzdt/201903/t20190305_930083.html

1. European Commission Opens In-depth Investigation into Tax Treatment of Huhtamäki in Luxembourg

The European Commission has opened an in-depth investigation to examine whether tax rulings granted by Luxembourg to Finnish food and drink packaging company Huhtamäki may have given the company an unfair advantage over its competitors, in breach of EU State aid rules.

The European Commission's formal investigation concerns three tax rulings issued by Luxembourg to the Luxembourg-based company Huhtalux S.à.r.l. (“HS”) in 2009, 2012 and 2013. HS is part of the Huhtamäki Group, which is headquartered in Finland. Huhtamäki Group is active in consumer packaging, notably in food and food service packaging. It is a major converter of plastics and paperboard into rigid thin-walled food and beverage cups and containers in Europe, Asia and Australia.

HS carries out intra-group financing activities. It receives interest-free loans from another company of the Huhtamäki Group based in Ireland. These funds are then used by HS to finance other Huhtamäki group companies through interest-bearing loans. The three tax rulings issued by Luxembourg allow HS to unilaterally deduct fictitious interest payments for the interest-free loans it receives. According to Luxembourg, these fictitious expenses correspond to interest payments that an independent third party in the market would have demanded for the loans that HS receives. These deductions reduce HS' taxable base and therefore it is taxed on a substantially smaller profit.

The European Commission has doubts that this tax treatment, as endorsed in the Luxembourg tax rulings, can be justified. The European Commission is concerned that Luxembourg has accepted a unilateral downward adjustment of the taxable base of HS that may grant the company a selective advantage as it allows Huhtamäki Group to pay less tax than other stand-alone or group companies whose transactions are priced in accordance with market terms. If this is the case, it would breach the EU State aid rules.

State Aid: Commission Opens In-depth Investigation into Tax Treatment of Huhtamäki in Luxembourg

http://europa.eu/rapid/press-release_IP-19-1591_en.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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