Weekly Alert

2019 ISSUE 38

RSM TAX ADVISORY (HONG KONG) LIMITED
羅 申 美 稅 務 諮 詢 有 限 公 司

Welcome to 2019 issue 38 of Weekly Alert covering technical development in taxation around the globe.

TAX – Hong Kong

1. Two Property Owners Convicted of Omitting Rental Income and Falsely Claiming Deduction of Home Loan Interest

On 26 September 2019, a couple were convicted at the Kwun Tong Magistrates' Courts for evading tax. Sentencing was adjourned to 15 October 2019 pending background reports.

Each of the two defendants owned four properties. They declared in their tax returns that they did not have any solely owned properties which were let. The wife claimed home loan interest for one of her own properties for 2008/09.

However, an investigation by the Inland Revenue Department ("IRD") revealed that the couple resided at one of the properties owned by the husband but the wife made a false claim for deduction of home loan interest in the amount of HK$12,210 for 2008/09. The amount of salaries tax evaded is HK$2,076.

The couple's remaining seven properties were let out and the wife omitted to report her rental income of HK$1,186,155 for the years of assessment 2008/09 to 2013/14 and the husband omitted to report his rental income of HK$564,046 for the years of assessment 2011/12 to 2014/15. The total amount of property tax evaded is HK$209,520.

The IRD reminded taxpayers that tax evasion is a criminal offence. Upon conviction, the maximum penalty for each charge is three years' imprisonment and a fine of HK$50,000 plus a further fine of three times the amount of tax evaded.

Two Property Owners Convicted of Omitting Rental Income and Falsely Claiming Deduction of Home Loan Interest
https://www.ird.gov.hk/eng/ppr/archives/19092602.htm

2. SFST Signs CDTA with Estonia in Tallinn

On 25 September 2019, the Secretary for Financial Services and the Treasury ("SFST"), Mr. James Lau, signed a comprehensive avoidance of double taxation agreement ("CDTA") with the Minister of Finance of Estonia in Tallinn, Estonia. This is the 42nd CDTA that Hong Kong has signed with its trading partners.

The CDTA sets out the allocation of taxing rights between the two jurisdictions, enabling investors to better assess their potential tax liabilities from cross-border economic activities. In particular, the CDTA provides the following tax relief arrangements:

- Estonia's withholding tax rate for Hong Kong residents on royalties will be capped at 5% while the current rate is at 10%;
- Hong Kong airlines operating flights to and from Estonia will be taxed at Hong Kong's profits tax rate, and will not be taxed in Estonia; and
- Profits from international shipping transport earned by Hong Kong residents arising in Estonia will not be taxed in Estonia.

The CDTA will come into force after the completion of ratification procedures by both sides.

SFST Signs CDTA with Estonia in Tallinn
https://www.ird.gov.hk/eng/ppr/archives/19092601.htm

TAX – International

1. Court Judgements on Two Tax State Aid Cases (Fiat in Luxembourg and Starbucks in the Netherlands)

On 24 September 2019, the General Court upheld the European Commission's 2015 decision finding that Luxembourg granted selective tax advantages to Fiat. In the meantime, the General Court annulled the Commission's 2015 decision finding that the tax ruling granted by the Netherlands to Starbucks were not in line with EU State aid rules.

The judgments confirm that while the Member States have exclusive competence in determining their laws concerning direct taxation, they must do so in respect of EU law, including State aid rules. In addition, the General Court confirmed the Commission's use of "arm's length principle" to assess whether a measure is selective and if transactions between group companies give rise to an advantage under EU State aid rules.

Each case has its specificities and involves complex legal questions. The Commission will study the judgements carefully before deciding on any possible next steps.

Statement by Commissioner Margrethe Vestager Following Today's Court Judgments on Two Tax State Aid Cases (Fiat in Luxembourg and Starbucks in the Netherlands)
https://europa.eu/rapid/press-release_STATEMENT-19-5831_en.htm

2. Use of Digital Technologies Set to Increase Tax Compliance

On 23 September 2019, the Organisation for Economic Co-operation and Development released the Tax Administration 2019 which shows that tax administrations are increasingly moving to e-administration and using a range of technology tools, data sources and analytics to increase tax compliance.

The Tax Administration 2019 provides wide-ranging comparative information on the performance of 58 advanced and emerging tax administrations. There has been a significant shift towards e-administration with increasing options for online tax filing and online tax payments. More than 40 tax administrations are using or planning to use artificial intelligence.

More than 10 tax administrations are employing behavioural researchers and over 35 administrations have data scientists to better understand how and why taxpayers act and to use these behavioural insights to design practical policies and interventions.

Use of Digital Technologies Set to Increase Tax Compliance
https://www.oecd.org/tax/administration/use-of-digital-technologies-set-to-increase-tax-compliance.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.

The aim of Weekly Alert is to alert readers to recent developments. The information is general in nature and it is not to be taken as a substitute for specific advice. Accordingly RSM Hong Kong accepts no responsibility for any loss that occurs to any party who acts on information contained herein without further consultation with us. If you have any comments or require further information please contact:

Mr. Eric Chen
T +852 2583 1259
E ericchen@rsmhk.com

Mr. Samuel Chan
T +852 2583 1242
E samuelchan@rsmhk.com

Ms. Lilian Poon
T +852 2583 1241
E lilianpoon@rsmhk.com

Mr. Patrick Ho
T +852 2583 1258
E patrickho@rsmhk.com

Mr. Caesar Wong
T +852 2508 2851
E caesarwong@rsmhk.com

Ms. Catherine Tsang
T +852 2583 1256
E catherinetsang@rsmhk.com

Mr. Chan Ka Ho
T +852 2583 1249
E khchan@rsmhk.com

Ms. Joanna Lee
T +852 2583 1317
E joannalee@rsmhk.com

Ms. Dorothy Ng
T +852 2583 1366
E dorothyng@rsmhk.com

Mr. Alan Chow
T +852 2583 1378
E alanchow@rsmhk.com

Ms. Catherine Wong
T +852 2583 1396
E catherinewong@rsmhk.com

RSM Tax Advisory (Hong Kong) Limited

29th Floor, Lee Garden Two
28 Yun Ping Road
Causeway Bay, Hong Kong

T: +852 2598 5123
F: +852 2598 7230
E: solutions@rsmhk.com

rsm.global/hongkong