



# Hong Kong Tax News

## Update on DIPN 49 re Intellectual Property Rights

## Hong Kong-Kuwait Tax Treaty In Force

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### Update on DIPN 49 re Intellectual Property Rights (IPR)

The Inland Revenue Department (IRD) has updated Departmental Interpretation and Practice Notes No. 49 (DIPN 49) by making some minor textual amendments with a view to achieving better clarification. The amendments include the following:

#### Relevant Rights which are self-created

Paragraph 27: *If a taxpayer develops its own IPRs in the ordinary course of its business ... Nevertheless, insofar as the IPR is a Relevant Right, no deduction is allowable for such expenditure under section 16E or 16EA because the owner and creator has not ~~incurred expenditure to purchase~~ the Relevant Right.*

#### Deduction not allowed under certain circumstances

The heading on Page 21: *Purchase of the Specified IPRs by ~~licensors~~ licensees with early termination of licence – a transitional provision*

#### Purchase of the Relevant Rights from associates

Paragraph 58: *In the case of a trust, the purchase or sale of a Relevant Right by the trustee of the trust ~~estate~~ or a corporation controlled by the trustee would be regarded as the purchase or sale, as the case may be, by each trustee, the corporation and the beneficiary*

under the trust (section 16EC(3)).

### Sale and license back arrangement

Paragraph 61: *(b) the Relevant Right was purchased by the ~~taxpayer~~ end-user on or after the Commencement Date (section 16EC(5)(b)); and*

Example 11 on the sale and license back arrangement has been modified accordingly by swapping the identities of the licensor (from manufacturing company to leasing company) and licensee (from leasing company to manufacturing company) because the manufacturing company is the end-user of the IPR.

Example 11 (New)	Example 11 (Old)
<p><i>Company HK-L is a leasing company whereas Company HK-M is a manufacturing company. Both companies are carrying on business in Hong Kong. Before the Commencement Date, <b>Company HK-M purchased a registered trade mark and sold it to Company HK-L after the Commencement Date. Company HK-L in turn licensed the registered trade mark back to Company HK-M for royalties. Company HK-L would be denied deduction in respect of the purchase of the registered trade mark under section 16EC(4)(a) because the registered trade mark was owned and used by Company HK-M prior to acquisition. The exception in section 16EC(5) did not apply because Company HK-M purchased the registered trade mark before the Commencement Date and the conditions under section 16EC(5)(b) are not fulfilled.</b></i></p>	<p><i>Company HK-L is a leasing company whereas Company HK-M is a manufacturing company. Both companies are carrying on business in Hong Kong. <b>Company HK-L owned a registered trade mark. Before the Commencement Date, Company HK-L after revaluing its registered trade mark sold it to Company HK-M. Company HK-M in turn licensed the registered trade mark back to Company HK-L for royalties. Company HK-M would be denied deduction in respect of the purchase of the registered trade mark under section 16EC(4)(a) because the registered trade mark was owned and used by Company HK-L prior to acquisition. The exception in section 16EC(5) did not apply because Company HK-M purchased the registered trade mark before the Commencement Date and the conditions under section 16EC(5)(b) are not fulfilled.</b></i></p>

### Application of the "Source" Principle

Paragraph 72: *Whether royalties derived from licensing activities are chargeable to tax in Hong Kong depends on the facts of each case. No single **legal** test is decisive.*

The updated DIPN 49 is attached for your easy reference.

## Hong Kong – Kuwait tax treaty in force

The Hong Kong-Kuwait double taxation agreement has entered into force on 24 July 2013, after completion of ratification procedures on both sides. The agreement was signed in May 2010. It will become effective in Hong Kong from the year of assessment 2014/15.

The attached CDTA Quick Reference Sheet is updated accordingly.

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