

## Tax Newsflash



### Hong Kong Tax News

## IRD's Latest View on Certificate of Resident Status

The Inland Revenue Department (IRD)'s approach in issuing Certificate of Resident Status (CoR) has been a hot topic since the 2014 Annual Meeting between the IRD and the Hong Kong Institute of Certified Public Accounts (HKICPA).

In the recently released Minutes of the 2015 Annual Meeting between the IRD and the HKICPA, the IRD reiterated its stance as discussed in last year's meeting. If a company was only a conduit or paper company, it would not be regarded as the beneficial owner of passive income (e.g. dividends, interest and royalties) according to the double taxation agreements (DTAs). In addition, a company without commercial substance in Hong Kong (HK) should not be entitled to any treaty benefits under DTAs. Accordingly, the IRD may not grant CoRs to applicants who are clearly not entitled to the benefits under DTAs.

The HKICPA sought the IRD's view on what constituted commercial substance in HK. For example, would a holding company which held a group of companies with operations in HK, but did not employ any staff in HK, be considered as having commercial substance in HK? The IRD confirmed that the group as a whole would be looked at and the holding company would probably be considered as a HK tax resident, even though the holding company did not have any staff in HK but the whole group had operations in HK. While this view is encouraging, the IRD supplemented that some treaty partners may not adopt the same approach and only look at the holding company itself.

In determining the place of management or control for a non-HK incorporated company, the IRD indicated that there was no exhaustive list of the factors. The factors taken into consideration included:

- nature of business operated by the company;
- the mode of operation;
- whether the company had a permanent office in HK;
- whether the company employed staff in HK;
- whether HK was the place where its board of directors met to formulate the central policy of its business, make its strategic policies, choose business financing and evaluate business performance;
- whether HK was the place where decisions by top management were implemented, etc.

On the other hand, the State Administration of Taxation (SAT) issued Public Notice [2015] No.60 in August 2015 which sets out the new rules on claiming treaty benefits for non-resident taxpayers. These new rules have impact on HK tax residents. In the past, a HK incorporated company may present the certificate of incorporation to the SAT for applying the HK-China tax treaty benefits. However, under the new rules, all treaty benefit applicants, no matter it is a company incorporated in or outside HK, must provide a CoR as one of the supporting documents.

In other words, HK incorporated companies have to obtain a CoR from the HK IRD and provide it to the SAT for applying the HK-China tax treaty benefits. At the same time, the IRD's position in issuing CoR remains stringent. Nevertheless, the IRD's view on a holding company with a group of companies with operations in HK may provide some comfort to certain companies.

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