



Hong Kong Tax Newsflash: Bill proposes various changes:

- Interest paid to export credit agencies
- Refinement of CRS/AEOI rules
- Tax treatment of visiting teachers and researchers
- Dependent brother/sister allowance

The Inland Revenue Amendment (No. 7) Bill 2018 (Bill), introduced to the Legislative Council yesterday, includes various proposed amendments to the tax rules, including the deduction of interest paid to foreign export credit agencies, refinement of the automatic exchange of financial account information (AEOI), avoidance of the potential non-taxation of visiting teachers and researchers, and changes to the definition of a "sibling" relationship. In addition to the core theme of the Bill, i.e. the tax treatment of financial instruments which was covered in [Tax Newsflash Issue 81](#), this newsflash focuses on the other measures in the Bill.

Deduction of interest paid to overseas export credit agencies

Export credit agencies are institutions that provide financing support to international export operations and other activities of corporations.

In general, interest paid to an "overseas financial institution" is deductible under sections 16(1)(a) and 16(2)(d) of the Inland Revenue Ordinance (IRO). However, under existing legislation, an overseas financial institution does not include an overseas

export credit agency because it does not carry on the business of banking or deposit-taking. As a result, a person carrying on business in Hong Kong cannot claim a tax deduction for interest paid to an overseas export credit agency.

To encourage export activities and international trade between Hong Kong and other jurisdictions, the Bill proposes a deduction for interest paid to an overseas export credit agency that is owned, established and operated by an overseas government entity for providing financial support to exporters or investors for export or overseas investment activities. The measure would apply to interest accrued on or after the date the legislation is enacted.

Update on legislative framework for AEOI / CRS

Hong Kong implemented the Common Reporting Standard (CRS), the standard for the automatic exchange of information (AEOI) developed by the OECD, as from 1 January 2017. The Bill would make some clarifications to the rules based on recent recommendations from the OECD. These clarifications, including the definition of a controlling person in relation to a trust, the definition of an investment entity and residence rules for financial institutions, are proposed to better align the IRO with the OECD CRS requirements.

The Bill also proposes to remove Mandatory Provident Fund Schemes (MPF schemes), Occupational Retirement Schemes registered under the Occupational Retirement Schemes Ordinance (Cap. 426) (ORSO registered schemes), pooling agreements, approved pooled investment funds and credit unions from the list of non-reporting FIs. This change is in response to the recent review by the OECD that these entities potentially may fail to meet the criteria as non-reporting FIs under the OECD CRS requirements. As a result of the proposed amendment to Hong Kong law, it is anticipated that a number of entities, especially MPF schemes and ORSO-registered schemes, may fail to be regarded as non-reporting FIs and, therefore, may be subject to Hong Kong CRS obligations starting from 1 January 2020. Potentially affected entities should review and update their CRS classification to determine whether they would be able to meet other exemptions as stipulated in the relevant CRS regulations under the IRO. Otherwise, they may be treated as reporting FIs and would be required to develop policies and procedures to implement CRS starting from 1 January 2020.

Further, subsequent to the enactment of Inland Revenue (Amendment) (No. 2) Ordinance 2017, which expanded the number of reportable jurisdictions to 75, and as a result of the application of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in Hong Kong earlier this year, the Bill includes provisions that add another 51 jurisdictions to the list of reportable jurisdictions. The expanded list would take effect from 1 January 2020 and Hong Kong FIs would be required to report the account holders that are tax residents in any of these 51 jurisdictions starting from 2021.

It is possible that the Hong Kong government may issue further guidance on the changes, so Hong Kong FIs should closely monitor Hong Kong CRS/AEOI developments.

Avoidance of potential double non-taxation for visiting teachers and researchers

To foster exchanges in teaching or research between Hong Kong and Mainland China, the Hong Kong government has indicated that it intends to introduce a teachers and researchers article in Hong Kong's double taxation arrangement (DTA) with the Mainland. (Currently, only the Hong Kong-Saudi Arabia DTA contains such an article.) The new article in the DTA will provide tax exemption on income earned by visiting teachers and researchers in the jurisdiction visited for a prescribed period of time.

The inclusion of this article in the DTA could result in double non-taxation if a visiting teacher's income is exempt from overseas tax pursuant to the DTA, and also exempt from Hong Kong Salaries Tax because the services provided by a Hong Kong resident teacher or researcher are rendered outside Hong Kong pursuant to section 8(1A)(b) of the IRO. To address potential double non-taxation issues, the Bill contains a provision that the exemption from Salaries Tax would not apply if the income of the Hong Kong resident teacher or researcher is exempt from overseas personal income tax pursuant to the teachers and researchers article. The proposed amendment would not affect individuals who are not teachers or researchers. Subject to the enactment of the legislation, this amendment would apply starting from the year of assessment 2019/20.

Revising the definition of "sibling" relationship for dependent brother / sister allowance

The Bill also would expand the scope of the dependent brother/sister allowance by revising the definition of a "sibling" relationship. The allowance is available to a taxpayer with respect to natural, adopted and step brothers/sisters if certain conditions are fulfilled. However, under current legislation, the allowance does not cover the natural children of a taxpayer's adoptive parents where the taxpayer is an adopted child. This restriction is proposed to be removed by including full/half blood brother or sister relationships to the definition of siblings. Subject to the enactment of the legislation, this amendment would apply starting from the year of assessment 2019/20.

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