



Hong Kong Tax Newsflash: IRD's announcement on application for Certificate of Resident

The Inland Revenue Department (IRD) recently announced an update in respect of [application for Certificate of Resident Status \(CoR\) relating to the Circular of the State Taxation Administration \(STA\) on matters concerning "Beneficial Owners" in tax treaties](#) (Bulletin No. 9).

Background

In general, a Hong Kong company is required to present a CoR to the Mainland tax authority to prove its tax resident status for the purpose of claiming the treaty benefits (e.g. reduced dividend withholding tax rate) under the Double Taxation Arrangement between Mainland China and Hong Kong (HK-PRC DTA). Generally if the IRD is of the view that a person is not entitled to benefits under a DTA, it may refuse to issue a CoR. Therefore, the IRD will take into consideration whether the applicant is a Beneficial Owner (BO) of the relevant income, which is a pre-requisite for enjoying treaty benefits, when issuing a CoR. A BO, in simple terms, is a person who has the right of ownership and control over the income or the usage right or ownership of the source of the income.

Since 2009, the STA has issued several sets of guidance, including the Guo Shui Han [2009] No. 601 (Circular 601) and Bulletin of the STA [2012] No. 30 (Bulletin No.30), to lay out the framework of BO determination. On 3 February 2018, STA published Bulletin No. 9 which provides clearer guidance for BO determination and repeals Circular 601 and Bulletin No. 30. Major changes introduced through Bulletin No. 9 include the look-through rule for a multi-tier holding structure and the extended scope of non-tax residents eligible for the safe harbour rule with respect to dividends. Bulletin No. 9 applies to tax payments or withholding obligations that arise on or after 1 April 2018. For details, please refer to our [Tax Analysis \(Issue P270/2018\)](#) published on 8 February 2018.

Application for CoR in bundle

In order to facilitate the application for CoR where the claim for tax benefits in the Mainland falls within the look-through rule (Article 3 of Bulletin No. 9) and the safe harbour rule (Article 4 of Bulletin No. 9) with respect to dividends, the IRD is revising the CoR application form for the purpose of HK-PRC DTA. Once the revised form is ready, the IRD will upload the same to its website. In the interim, an application in bundle could be made.

The relevant persons in the multi-level holding structure who require CoR would be regarded as co-applicants. Among the co-applicants, a lead applicant should be designated to serve as the primary point of contact on behalf of all the applicants. For example, the immediate recipient of dividends can be designated as the lead applicant. The applications of the co-applicants should be submitted together with that of the lead applicant. According to our understanding, each of the lead applicant and co-applicants should complete an individual application form (IR1313A).

A covering letter should be submitted for the bundle application in the name of the lead applicant and it should provide the following information:

- applicable article under Bulletin No. 9 (i.e. Article 3(1), Article 3(2) or Article 4);
- the identity of the lead applicant and each co-applicant;
- a chart of the relevant multi-level holding structure;
- a confirmation of any change in the equity interest of any relevant entity/person during the 12 consecutive months before the dividends were/are to be received;
- certain particulars of each relevant entity/person in the group chart even though that entity/person does not require a CoR, etc.

Please refer to the [IRD's announcement](#) for details.

Where the information submitted in the application is not sufficient to determine the resident status, the IRD may request the applicant(s) to supply further information.

Comments

We are glad to see that the IRD takes one step further and provides clearer guidance in addressing the CoR applications under certain provisions of Bulletin No. 9 despite that it has been effective for more than a year. Nevertheless, we are yet to know whether the IRD will assess the BO status of each of the lead applicant and co-applicants on the same basis and what format of CoRs will be issued to them. If the IRD will not be issuing CoR to each of the lead applicant and co-applicants, it may be subject to challenge by the Mainland tax authority when the application for the reduced withholding tax rate is submitted. We should keep in view of further development.

Applying for CoR from the IRD is not straightforward, particularly when the case falls under the provisions of Bulletin No. 9 where stringent review by the Mainland tax authority is anticipated. Professional advice should be obtained when handling the Bulletin No. 9 and CoR application.

advised to consult their tax advisors before acting on any information contained in this newsletter.

If you have any questions, please contact one of the following professionals:

Sarah Chan

Tax Partner

+852 2852 1628

sarahchan@deloitte.com.hk

Doris Chik

Tax Senior Manager

+852 2852 6608

dchik@deloitte.com.hk



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [About Deloitte](#) for a more detailed description of DTTL and its member firms.

Privacy

Thank you for your interest in Deloitte China services. Deloitte China would like to continue to use your personal information (in particular name and contact details) for the purpose of sending you marketing and regulatory updates, invitations to seminars and other events organized, sponsored or promoted by Deloitte China. If you do not wish to receive further communications from Deloitte China, please send a return email to the sender with the word "Unsubscribe" in the subject line.

If you would like to update your personal information, please click [here](#).

Deloitte China refers to Deloitte Touche Tohmatsu in Hong Kong, Deloitte Touche Tohmatsu in Macau, Deloitte Touche Tohmatsu Certified Public Accountants LLP in the Chinese Mainland and their respective affiliates practising in Hong Kong, Macau and the Chinese Mainland.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the "Deloitte Network") is by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2019 Deloitte Touche Tohmatsu in Hong Kong, Deloitte Touche Tohmatsu in Macau, and Deloitte Touche Tohmatsu Certified Public Accountants LLP in the Chinese Mainland. All rights reserved.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.