



税务研究之粤港澳大湾区系列 聚焦粤港澳大湾区的科技创新及研发活动的机会和挑战（下） - 不同商业模式下的税务分析与建议



粤港澳大湾区包括中国广东省的9个城市（广州、深圳、珠海、佛山、中山、东莞、肇庆、江门、惠州）以及香港和澳门2个特别行政区。2017年，粤港澳大湾区在面积、人口、机场旅客量等指标上已经位列全球湾区前茅，未来大湾区可能是世界上最大体量的湾区和大都市圈。

请点击以下链接获取早前系列文章

[第一期 - 从税务和商务角度聚焦在粤港澳大湾区投资和营商所面临的挑战和机会](#)

[第二期 - 香港科技人才入境计划在粤港澳大湾区人才流动的协同效应](#)

[第三期 - 从海关角度解读中国（广东）自由贸易试验区制度创新的机遇与挑战](#)

[第四期 - 聚焦深圳前海：粤港澳大湾区内的深港合作发展核心引擎和制度创新高地](#)

[第五期 - 聚焦珠海横琴休闲旅游产业最新优惠政策](#)

[第六期 - 助力粤港澳大湾区建设—从香港视角的观察和初步探索](#)

[第七期 - 聚焦粤港澳大湾区的科技创新及研发活动的机会和挑战（上）](#)

第七期文章概括介绍了粤港澳大湾区（“大湾区”）科技创新及研发活动的当前形势及未来发展，并总结了中国内地、香港与澳门提供的一些关于科技创新及研发活动的税收优惠政策。

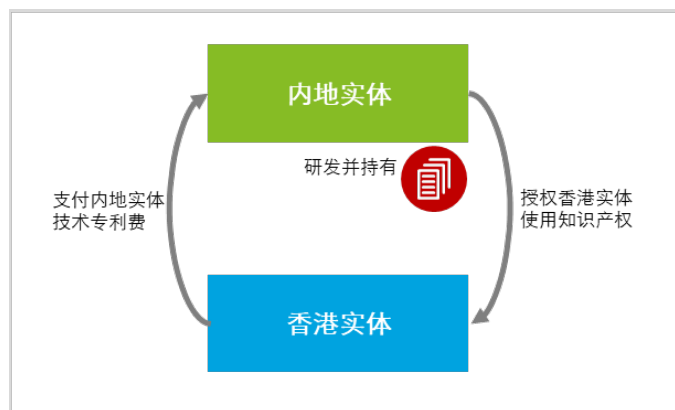
本文将介绍涉及中国内地、香港与澳门实体之跨境知识产权安排的商业模式情景，分析其中国内地、香港与澳门的税务影响，并提出德勤的专业看法和建议。

不同研发商业模式和知识产权安排

在中国内地、香港特区与澳门特区现行的税收制度中，均包含多项鼓励企业在当地以及跨境开展创新及研发活动的优惠政策。大湾区企业在开展相关研发活动以及安排知识产权归属时，一方面应立足于集团的商业战略和产业链布局的需要，另一方面也应重点关注关键环节的涉税影响，主要包括研发中心和知识产权持有公司的选择、知识产权的取得和持有方式、研发活动的安排和特许权使用费的收取等。

为此，我们总结了几种常见的跨境研发模式及相关税务考量，供大湾区企业在研发中心选择及知识产权安排决策时做一般性参考（持有知识产权是指作为知识产权拥有者，并在当地按有关法规注册登记知识产权）：

模式一：内地实体在内地开展研发活动并持有知识产权，授权香港实体使用

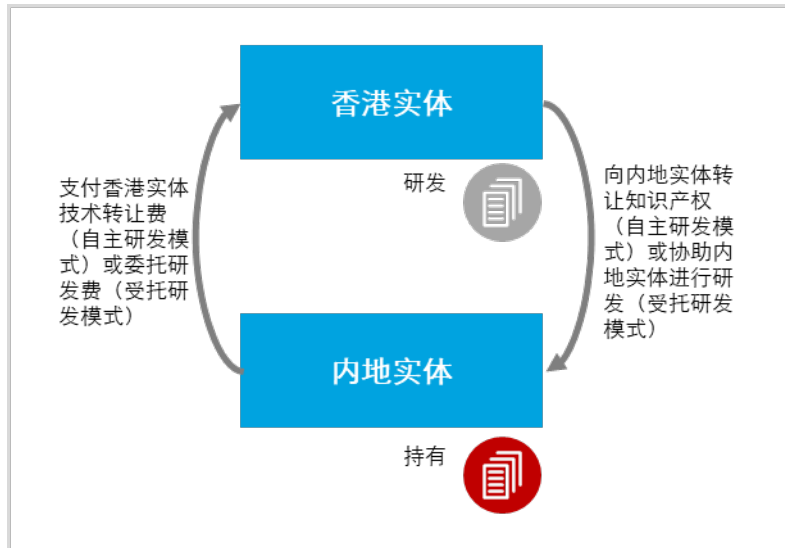


模式说明	<ul style="list-style-type: none">内地实体在内地开展研发活动并在内地登记拥有知识产权的所有权。内地实体授权香港实体使用知识产权，收取技术专利费。
香港税务影响	<ul style="list-style-type: none">若有关知识产权是用于赚取香港应评税利润的业务，香港实体支付的技术专利费有机会可以税前扣除。香港实体跨境支付技术专利费可能需要代扣代缴香港预提利得税，若符合条件，实际税率为 4.95%。

内地 税务 影响

- 内地实体拥有研发知识产权的所有权且在符合其他特定条件的情况下，将有机会享受高新技术企业、软件企业和集成电路企业等相关的企业所得税优惠政策。
- 内地实体发生的研发支出有机会享受研发费用加计扣除优惠。
- 内地实体收取的技术专利费需缴纳企业所得税、增值税及其附加税费等；符合条件的，可享受有关优惠政策。
- 在香港缴纳的预提所得税可以享受境外税收抵免的政策。

模式二：香港实体在香港开展研发活动（但不持有知识产权），内地实体持有知识产权



模式 说明

- 香港实体在香港开展研发活动，向内地实体收取技术转让费（自主研发模式）或委托研发费（受托研发模式）。
- 最终由内地实体持有和使用知识产权。

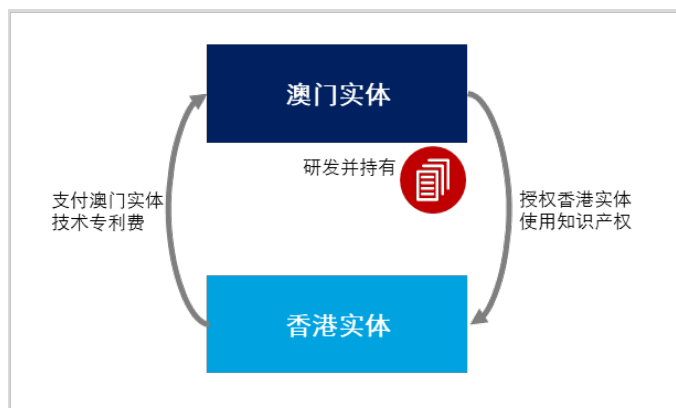
香港 税务 影响

- 在受托研发模式下，委托研发费主要由香港实体在香港开展的研发活动而产生，因此一般会被视为源于香港的收入而须在香港课税。
- 在自主研发模式下，香港实体转让知识产权的所有权时，若有关的研发开支曾按照上述的税收优惠获得税前扣除，收取的技术转让费（相当于以前获得的研发开支扣除金额的部分）须在香港征税。至于其余的技术转让费，若香港税务机关认为有关知识产权在于香港实体而言是营业性质（而非资本性质），也须在香港征税。
- 另外，在受托研发模式下（或自主研发模式下属营业性质的知识产权转让），香港实体的有关研发开支、融资支出（如：银行利息费用）及日常开支有机会可以享受税前扣除。
- 香港税务机关也可能从多角度分析无形资产交易，评估属于关联方的内地实体支付香港实体技术转让费或委托研发费的交易是否符合独立交易原则。
- 根据最新通过的香港税法规定，如果香港实体对持有知识产权的关联内地实体进行了知识产权的发展、改良、维持、保护或利用（“DEMPE”）等活动或提供了 DEMPE 相关资产，内地实体日後即使在香港境外使用该知识产权而赚取的部分或全部技术专利费收入有机会被认定为香港实体的在港收入，而须在香港征税。
- 在内地缴纳的预提所得税可以享受境外税收抵免的政策。

内地 税务 影响

- 内地实体拥有知识产权的所有权且在符合其他特定条件（包括但不限于技术产品或服务收入指标、研发费用指标、科技人员指标等条件）的情况下，将有机会享受高新技术企业、软件企业和集成电路企业等相关企业所得税优惠政策。此外，跨境技术转让通常还需考虑可能涉及的所得税、增值税及附加税费等影响。其中，经省级科技主管部门认定的技术转让合同有机会享受免征增值税优惠。
- 委托研发模式下，内地实体支付的委托研发费有机会享受研发费用加计扣除优惠。此外，跨境支付委托研发费通常还需考虑可能涉及的所得税、增值税及附加税费等影响。

模式三：澳门实体在澳门开展研发活动并持有知识产权，授权香港实体使用



模式 说明

- 澳门实体在澳门开展研发活动并在澳门登记拥有知识产权的所有权。
- 澳门实体授权香港实体在香港使用知识产权，收取技术专利费。

香港 税务 影响

- 若有关知识产权是用于赚取香港应评税利润的业务，香港实体支付的技术专利费有机会可以税前扣除。
- 香港实体跨境支付技术专利费可能需要代扣代缴香港预提利得税，若符合条件，实际税率为 4.95%。

澳门 税务 影响

- 该知识产权的技术专利费收入需缴纳澳门所得补充税。
- 澳门实体的合格的研发开支，有机会可以享受一般甚至加计税前扣除。有关合格的研发开支加计税前扣除的详细要求指引，有代进一步公布。
- 澳门实体的融资支出（如：银行利息费用）及日常开支一般可以享受税前扣除。
- 在香港缴纳的预提所得税可以享受境外税收抵免的政策（待香港与澳门之间的税收安排生效后）。

以上仅仅是为了方便参考而简化后的模式举例。在实际商业安排中，由于不同地区法规的差异，涉及跨境研发的知识产权安排可能非常复杂，相关投资者应小心考虑其中商业运作、法律、税务等方面涉及的风险及效益。

跨国企业的研发活动和知识产权安排需要综合考虑市场需求、业务成本、法律保护、税收政策等多方面因素，特别是需考虑运营实体是否具备重要研发功能和开发、增强、维护、保护和推广能力。与此同时，跨境开展研发活动务必重视企业的整体价值链和研发安排，提前将研发定价政策、基准测试分析纳入考量范围中，以降低潜在的转让定价风险。

税收优惠风险管控

值得注意的是，大湾区企业享受与科技创新及研发相关的税收优惠并非一劳永逸。

以中国内地为例，随着税务机关将工作重心逐渐转向事后监管，大湾区企业与税务机关在优惠政策适用性上的分歧有可能在企业已经享受优惠政策一段时间后才出现。根据我们过往的实践经验，企业在适用与科技创新及研发税收优惠政策时常见的问题和困扰主要包括：

- 如何看待研发活动、知识产权与产品之间的联系？
- 哪些项目属于符合条件的研发项目？
- 研发项目的颗粒度如何把握？
- 如何准确地核算与归集研发费用？
- 内外部部门间的认知冲突如何协调与解决？
- 税收优惠后续管理的注意事项？
- 如何与税务机关进行有效的沟通？

至于香港方面，根据“先评后审”的原则，香港税务机关也可能在日后向企业发信查问过去申请扣除的研发支出的详情及要求提交相关证明文件，审阅扣除是否合理。涉及的问题主要包括：

- 研发项目的目的是什么？
- 研发项目的内容是怎样？
- 如何连结研发结果及其对企业商业前景的影响？
- 研发项目开支的明细及？
- 相关研发人员的详细资料？
- 如委托认可研究机构进行研究，是否有书面协议及委托费支付记录？
- 研发活动产生了什么知识产权？
- DEMPE 活动在香港潜在征税的问题

而在澳门方面，跟香港一样采纳“先评后审”的原则，澳门税务机关也可能在有关年度起五年内向企业发信查问过去申请扣除的研发支出的详情及要求提交相关证明文件，审阅扣除是否合理。涉及的问题主要包括：

- 研发项目的目的是什么？
- 研发项目的内容是怎样？
- 研发项目开支的明细？
- 相关研发人员的详细资料？
- 如委托认可研究机构进行研究，是否有书面协议及委托费支付记录？
- 如委托非澳門研究机构进行研究，收受者是否有澳门税务编号？

有鉴于此，对于拟申请相关资质或优惠政策的大湾区企业，应将上述问题和困扰事先纳入企业的成本考量，以便做出合理的应对。同时，企业也应考虑建立定期复核和预警机制，确保备查资料准确、完整并及时更新，以减少日后在后续管理过程中被税务机关质疑的可能性以及因不符合认定条件而导致被追缴税款及滞纳金的风险。

总结

无论是在中国内地、香港还是澳门，大湾区企业开展科技创新及研发活动可获得的税收优惠和政府激励相当具有吸引力，且符合国家及地方的改革发展方向，可谓机遇当前。然而，囿于人力、时间、资源和经验等方面的限制，企业要及时、准确、有效地利用相关政策却并非易事，特别在政策解读、费用归集、资料准备及与有关部门沟通等环节均需要慎重考量，否则极易错失成功申请税收优惠和政府激励的良机。此外，合理的研发布局与规划更是企业降低整体税负、获取竞争优势所面临的一大挑战。

德勤中国专注于帮助各行业企业充分了解政策导向，辨别并协助企业尽可能享受适用于其研发和科技创新活动的税收优惠和政府激励政策。在充分考虑公司架构、供应链、转让定价等综合因素影响的情况下，助力企业合理规划全球范围内的研发安排，以提高集团的税务效率，并获取更稳健的市场竞争优势。

德勤中国充分关注粤港澳大湾区的整体区域规划以及相关地区的支持政策，我们将保持与粤港澳大湾区的政府、商会以及各类企业密切沟通，也欢迎相关政府部门和投资者以及企业与我们进行富有针对性的沟通和讨论；德勤中国会积极提供与粤港澳大湾区相关的一揽子的全方面专业服务和工具支持，助力各地政府提高营商环境和各行业投资者实现更多的粤港澳大湾区的投资、合作机会及创新的商业模式。

德勤中国也将积极针对粤港澳大湾区举办相关市场活动和发布专业看法，敬请关注德勤中国的微信、Facebook 以及官网的最新信息。

本文由德勤中国为本行中国大陆及香港之客户及员工编制，内容只供一般参考之用。我们建议读者就有关资料作出行动前咨询税务顾问的专业意见。

作者：

杨力

合伙人

德勤中国

+852 2852 1626

leoyang@deloitte.com.hk

李枫

合伙人

德勤中国

+86 755 3353 8572

lisali@deloitte.com.cn

邓伟文

合伙人

德勤中国

+852 2852 6661

raytang@deloitte.com.hk

黄宝琪

总监

德勤中国

+852 2852 6594

ewong@deloitte.com.mo

杨天伟

经理

德勤中国

+852 2238 7191

syeung@deloitte.com.hk

周甜甜

经理

德勤中国

+86 755 3353 8379

chzhou@deloitte.com.cn

联系德勤:

李旭升

主管合伙人
华南区
税务及商务咨询服务
德勤中国
+86 755 3353 8133
vicli@deloitte.com.cn

邓伟文

(副)主管合伙人
华南区
税务及商务咨询服务
德勤中国
+852 2852 6661
raytang@deloitte.com.hk

杨力

合伙人
税务及商务咨询服务
德勤中国
+852 2852 1626
leoyang@deloitte.com.hk

陈嘉华

合伙人
税务及商务咨询服务
德勤中国
+852 2852 1628
sarahchan@deloitte.com.hk

联系我们



Deloitte (“德勤”)泛指一家或多家德勤有限公司,以及其全球成员所网络和它们的关联机构(统称为“德勤组织”)。德勤有限公司(又称“德勤全球”)及其每一家成员所和它们的关联机构均为具有独立法律地位的法律实体,相互之间不因第三方而承担任何责任或约束对方。德勤有限公司及其每一家成员所和它们的关联机构仅对自身行为及遗漏承担责任,而对相互的行为及遗漏不承担任何法律责任。德勤有限公司并不向客户提供服务。请参阅 www.deloitte.com/cn/about 了解更多信息。

德勤是全球领先的专业服务机构,为客户提供审计及鉴证、管理咨询、财务咨询、风险咨询、税务及相关服务。德勤透过遍及全球逾 150 个国家与地区的成员所网络及关联机构(统称为“德勤组织”)为财富全球 500 强企业约 80% 的企业提供专业服务。敬请访问 www.deloitte.com/cn/about, 了解德勤全球约 312,000 名专业人员致力成就不凡的更多信息。

德勤亚太有限公司(即一家担保有限公司)是德勤有限公司的成员所。德勤亚太有限公司的每一家成员及其关联机构均为具有独立法律地位的法律实体,在亚太地区超过 100 座城市提供专业服务,包括奥克兰、曼谷、北京、河内、香港、雅加达、吉隆坡、马尼拉、墨尔本、大阪、首尔、上海、新加坡、悉尼、台北和东京。

德勤于 1917 年在上海设立办事处,德勤品牌由此进入中国。如今,德勤中国为中国本地和在华的跨国及高增长企业客户提供全面的审计及鉴证、管理咨询、财务咨询、风险咨询和税务服务。德勤中国持续致力于中国会计准则、税务制度及专业人才培养作出重要贡献。德勤中国是一家中国本土成立的专业服务机构,由德勤中国的合伙人所拥有。敬请访问 www2.deloitte.com/cn/zh/social-media, 通过我们的社交媒体平台,了解德勤在中国市场成就不凡的更多信息。

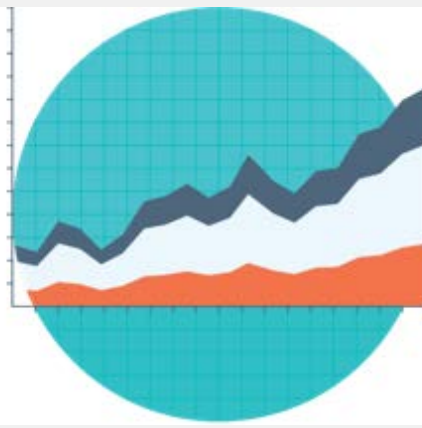
本通讯中所含内容乃一般性信息,任何德勤有限公司、其全球成员所网络或它们的关联机构(统称为“德勤组织”)并不因此构成提供任何专业建议或服务。在作出任何可能影响您的财务或业务的决策或采取任何相关行动前,您应咨询合格的专业顾问。

我们并未对本通讯所含信息的准确性或完整性作出任何(明示或暗示)陈述、保证或承诺。任何德勤有限公司、其成员所、关联机构、员工或代理方均不对任何方因使用本通讯而直接或间接导致的任何损失或损害承担责任。德勤有限公司及其每一家成员所和它们的关联机构均为具有独立法律地位的法律实体。

© 2020 德勤·关黄陈方会计师事务所(香港)、德勤·关黄陈方会计师事务所(澳门)、德勤华永会计师事务所(特殊普通合伙)(中国大陆)版权所有 保留一切权利。

如您日后不希望收到关于该话题的信息,请回复电邮并在邮件主题栏中填上“取消订阅”。

Deloitte.



Tax Research on Guangdong-Hong Kong-Macau Greater Bay Area

Opportunities and challenges of technological innovation and R&D activities in the Greater Bay Area of Guangdong, Hong Kong and Macau from a tax perspective (Part 2)



The Guangdong-Hong Kong-Macau Greater Bay Area (GBA) aims to facilitate trade between the Guangdong Province of Mainland China, the Hong Kong Special Administrative Region (HKSAR) and the Macau Special Administrative Region (MCSAR), and with this aim the relevant governments have made numerous institutional innovations to customs administration in the China (Guangdong) Pilot Free Trade Zone ("Guangdong FTZ"). This article summarizes relevant guidance that has been issued, innovations that have been made and additional reform measures that have been introduced, along with some related challenges and opportunities for businesses.

Please find below previous issues of GBA series

[Issue 1 - Challenges and opportunities in investing and doing businesses in Greater Bay Area from tax and business perspective](#)

[Issue 2 - New Immigration Scheme for Technology Talent Admission in the Hong Kong Special Administrative Region Brings New Opportunities and Synergies](#)

[Issue 3 - Overview of customs opportunities and challenges arising from innovations in China \(Guangdong\) Pilot Free Trade Zone](#)

Issue 4 - Today's focus: Qianhai, Shenzhen – the core engine and institutional innovation highland of Shenzhen-Hong Kong cooperation

Issue 5 - Preferential regimes of tourism industries in Zhuhai Hengqin [Chinese only]

Issue 6 - Exploration of in the Greater Bay Area from Hong Kong perspective [Chinese only]

Issue 7 - Opportunities and challenges of technological innovation and R&D activities in the Greater Bay Area from a tax perspective (Part 1) [Chinese only]

Issue 8 - Property investment in the Greater Bay Area - Stage 1: Purchase [Chinese only]

Part 1 of this newsflash briefly introduced the current situation and future development of technological innovation and R&D activities in the Greater Bay Area (GBA), and summarizes the various GBA incentives provided in Mainland China and Hong Kong.

Part 2 describe the tax implications in China and Hong Kong involving cross-border intellectual property rights (IPRs) arrangements between Mainland and Hong Kong entities.

R&D business models and IPR arrangements

In addition to having a business strategy and understanding supply chain requirements, companies in the GBA should consider the tax impacts of conducting R&D activities, including the choice of R&D center and IPR holding company locations, the method of acquiring and holding IPRs, service fees for R&D activities, royalties for IPRs, etc., to improve the overall tax efficiency of the arrangement.

The following scenarios summarize various common cross-border R&D business models and their related tax consequences, and are intended to provide a general reference for conducting R&D and entering into IPR arrangements in the GBA. For purposes of these scenarios, “owning” an IPR means being the owner of and having registered the IPR in accordance with relevant local regulations.

Scenario A: Hong Kong entity owns IPRs and grants certain rights to Mainland entity

Facts <ul style="list-style-type: none"> The Hong Kong entity owns the IPRs and conducts R&D activities in Hong Kong. The Hong Kong entity grants the right to use the IPRs in Mainland China to the Mainland entity in return for royalties. 	
Tax consequences in:	
Hong Kong	<ul style="list-style-type: none"> The royalties paid by the Mainland entity for the right to use the IPRs developed in Hong Kong generally are considered income from Hong Kong sources and are taxable in Hong Kong. Qualifying R&D expenditure of the Hong Kong entity (e.g. research fees paid to partner universities) are deductible and may qualify for an enhanced deduction. Financing expenses (such as bank interest) and daily operating expenses also are deductible. Under the current Mainland China-Hong Kong double tax arrangement, royalties paid by a resident of Mainland China to a resident of Hong Kong are subject to a 7% withholding tax in China. The tax withheld is creditable by the Hong Kong entity against the tax it pays on the royalty income in Hong Kong. For the arrangement to apply, the Hong Kong entity must obtain a Certificate of Resident Status from the Hong Kong tax authorities.
Mainland China	<ul style="list-style-type: none"> The Mainland entity will not be able to enjoy the Enterprise Income Tax benefits offered to qualified HNTE, software enterprise or integrated circuit enterprise because it does not own the IPRs. The cross-border patent fee paid by the Mainland entity may be subject to withholding tax, VAT and surcharges in Mainland China.

Scenario B: Hong Kong entity to conduct R&D activities and Mainland entity subsequently owns IPRs

Facts <ul style="list-style-type: none"> The Mainland entity owns and maintains the right to use the IPRs. The Hong Kong entity conducts R&D activities in Hong Kong and receives either payments for the transfer of technology or for R&D outsourcing services from the Mainland entity. 	
Tax consequences in:	
Hong Kong	<ul style="list-style-type: none"> The R&D outsourcing fees received by the Hong Kong entity generally are considered income from Hong Kong sources and taxable in Hong Kong.

	<ul style="list-style-type: none"> • Where the Hong Kong entity conducted the R&D activities and is considered to transfer ownership of technology (i.e. IPRs) to the Mainland entity subsequently, the payments it receives are taxable in Hong Kong up to the amount of its deductions allowed for relevant R&D expenditure. In addition, if the Hong Kong tax authorities consider the IPRs to be trading assets (instead of capital assets) of the Hong Kong entity, the remaining proceeds are taxable in Hong Kong. • The Hong Kong entity can deduct R&D expenditure, financing expenses (such as bank interest) and operating expenses. • The Hong Kong tax authorities may examine the intangible asset arrangement and assess whether the transaction is in line with the arm's length principle. • According to Hong Kong's transfer pricing regime enacted in July 2018, if the Hong Kong entity conducts activities such as development, enhancement, maintenance, protection, and exploitation (DEMPE) in respect of the IPRs owned by an associated Mainland entity, the Hong Kong tax authorities are empowered to attribute part or all of the royalty income earned by the Mainland entity to the Hong Kong entity.
Mainland China	<ul style="list-style-type: none"> • The Mainland entity that owns the IPRs and meets other specific requirements (including but not limited to revenue from high and new technological products/services, R&D expenses, R&D personnel etc.) is eligible to enjoy the Enterprise Income Tax benefits offered to qualified HNTE, software enterprise or integrated circuit enterprise status. • Technology transfer fees paid by the Mainland entity may be eligible for the R&D expense super deduction. Withholding tax, VAT and surcharges apply to payments for the transfer of technology out of Mainland China. If the transfer contract is recognized by the provincial science and technology department, the payment may be exempt from VAT. • The R&D outsourcing payments incurred by the Mainland entity may be eligible for the super deduction. In addition, the withholding tax, VAT and surcharges should be taken into consideration under the R&D outsourcing arrangement.

Scenario C: Mainland entity owns IPRs and grants certain rights to Hong Kong entity

Facts	<ul style="list-style-type: none"> • The Mainland entity owns the IPRs and conducts R&D activities in Mainland China. • The Mainland entity grants the right to use the IPRs to the Hong Kong entity in return for royalties.
Tax consequences in:	
Hong Kong	<ul style="list-style-type: none"> • The royalties paid by the Hong Kong entity are deductible in Hong Kong provided the IPRs are used in the generation of assessable profits in Hong Kong.

	<ul style="list-style-type: none"> The royalties are subject to withholding tax in Hong Kong. If certain conditions are fulfilled, the effective tax rate is 4.95% (otherwise the rate is 16.5%).
Mainland China	<ul style="list-style-type: none"> The Mainland entity that owns the IPRs and meets other requirements is eligible to enjoy the Enterprise Income Tax benefits offered to qualified HNTE, software enterprise or integrated circuit enterprise status and, if granted, claim the related EIT tax incentives. R&D expenses incurred by the Mainland entity may qualify for the super deduction. The royalties earned by the Mainland entity are subject to EIT, VAT and surcharges (charged by local tax authorities, which are calculated on top of VAT).

Scenario D: Hong Kong entity owns IPRs and engages Mainland entity to conduct R&D activities

Facts	<ul style="list-style-type: none"> The Hong Kong entity owns and maintains the right to use the IPRs. The Mainland entity conducts R&D activities in Mainland China and receives payments for the transfer of technology or for R&D outsourcing services from the Hong Kong entity.
Tax consequences in:	
Hong Kong	<ul style="list-style-type: none"> If the Mainland entity is not an approved research institution, the R&D outsourcing expenses incurred by the Hong Kong entity are not deductible. If the Mainland entity and the Hong Kong entity are associated, the technology transfer payment made by the Hong Kong entity is not deductible (if the payment is made to an unrelated party, the payment is deductible provided certain requirements are met).
Mainland China	<ul style="list-style-type: none"> If the Mainland entity does not own IPRs that provide core support to its main products (or services), it will not be able to enjoy the Enterprise Income Tax benefits offered to qualified HNTE, software company or integrated circuit enterprise. However, if the R&D services undertaken by the Mainland entity meet the criteria for a TASE business and other requirements, the entity may be eligible for EIT incentives. Under the transfer of technology arrangement, the R&D expenses incurred by the Mainland entity are eligible for the super deduction. In certain cases, the income received for the technology transfer could be eligible for EIT and VAT reductions.

IPR arrangements involving cross-border R&D activities can be more complicated than the above simplified examples due to differences in the laws in different jurisdictions. Potential business risks and benefits, relevant laws and tax consequences should be considered. For example, will the tax consequences be different if an IPR is developed by a Hong Kong entity in Hong Kong but is registered in both Hong Kong and Mainland China (rather than only in Hong Kong)?

When undertaking R&D activities and IPR arrangements, multinational corporations should consider factors, such as market demand, costs, legal protection, taxation policy, etc., as well as whether the operating entities have the capacity to perform and the ability to enhance, maintain, protect and promote the R&D. In addition, the enterprise's overall value chain and R&D arrangements should be taken into account when considering R&D pricing policies, to reduce any potential transfer pricing risks.

Risk management of GBA incentives

It is worth noting that post-recognition scrutiny and audits will be enhanced as long as companies in the GBA are qualified for tax incentives. For example, differences may arise in the interpretation of the relevant rules between GBA companies and the tax authorities. Based on our experience, below are some common questions and issues companies should consider when applying the technological innovation and R&D incentives:

- What is the connection between the R&D activities, the IPRs and the company's products?
- Which projects are eligible R&D projects?
- What are the specific details of the R&D projects?
- Which costs outside the R&D department also may be eligible for the R&D super deduction?
- How should the company account for and attribute R&D expenses?
- How should the company coordinate and resolve any conflicts arising from the need to collect additional supporting information from both R&D and non-R&D departments?
- What follow-up actions can be taken for a post-event tax audit?
- How can the company communicate effectively with the tax authorities?

Under Hong Kong's "assess first, audit later" practice, the tax authorities may request details of the R&D expenditure and other relevant information and supporting documents, such as the following:

- The purpose of the R&D project;
- The nature of the R&D activities;
- The connection between the results of the R&D project and the company's business;
- The relevant R&D personnel;
- If the R&D is outsourced to an approved research institution, the outsourcing agreement and related payments;
- The IPRs generated from the R&D activities; and
- The taxation of the related DEMPE activities in Hong Kong.

Companies in the GBA that intend to apply for incentives should consider these questions and their responses in advance. Companies also should consider conducting regular reviews to ensure that the relevant information is available for inspection and is accurate, complete and up-to-date, to mitigate the risk of being assessed tax and surcharges due to noncompliance.

Tax incentives and other government support are available for enterprises in the GBA that carry out technological innovation and R&D activities. However, due to certain constraints such as manpower, time, financial resources and experience, enterprises may not be able to claim relevant incentives in a timely, accurate or effective manner. Extra efforts are necessary to interpret policies, estimate costs, prepare data and communicate with relevant departments. In addition, well-structured R&D blueprints and planning are major challenges for enterprises trying to claim GBA incentives.

Tax Newsflash is published for the clients and professionals of Deloitte Touche Tohmatsu. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter.

Authors:

Leo Yang

Partner

Deloitte China

+852 2852 1626

leoyang@deloitte.com.hk

Lisa Li

Partner

Deloitte China

+86 755 3353 8572

lisali@deloitte.com.cn

Sam Yeung

Manager

Deloitte China

+852 2238 7191

syeung@deloitte.com.hk

Lynch Gan

Manager

Deloitte China

+86 755 3353 8791

lygan@deloitte.com.cn

Contacts:

Victor Li

Tax & Business Advisory Managing
Partner

Southern Region

Deloitte China

+86 755 3353 8113

vicli@deloitte.com.cn

Raymond Tang

Tax & Business Advisory Deputy
Managing Partner

Southern Region

Deloitte China

+852 2852 6661

raytang@deloitte.com.hk

Leo Yang

Partner

Tax and Business Advisory

Deloitte China

+852 2852 1626

leoyang@deloitte.com.hk

Sarah Chan

Partner

Tax and Business Advisory

Deloitte China

+852 2852 1628

sarahchan@deloitte.com.hk

Get in touch



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the “Deloitte organization”) serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 312,000 people make an impact that matters at www.deloitte.com.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

The Deloitte brand entered the China market in 1917 with the opening of an office in Shanghai. Today, Deloitte China delivers a comprehensive range of audit & assurance, consulting, financial advisory, risk advisory and tax services to local, multinational and growth enterprise clients in China. Deloitte China has also made—and continues to make—substantial contributions to the development of China’s accounting standards, taxation system and professional expertise. Deloitte China is a locally incorporated professional services organization, owned by its partners in China. To learn more about how Deloitte makes an Impact that Matters in China, please connect with our social media platforms at www2.deloitte.com/cn/en/social-media.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) 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 representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2020 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.