

Inland Revenue (Amendment) (No. 6) Ordinance 2018 gazetted

The Inland Revenue (Amendment) (No. 6) Ordinance 2018, which primarily implements the minimum standards of the Base Erosion and Profit Shifting (BEPS) package promulgated by the Organisation for Economic Co-operation and Development (OECD) and codifies the transfer pricing principles into the Inland Revenue Ordinance (Cap. 112) (IRO), was gazetted today (July 13).

"The Amendment Ordinance aligns the IRO with the latest guidance promulgated by the OECD. In meeting the international requirements, we also seek to minimise the compliance burden for the business sector," a government spokesman said.

"The codification of the transfer pricing rules provides greater clarity and certainty for taxpayers. Our long-established territorial source principle of taxation will continue to apply to determine the chargeability of income or profits to Hong Kong tax," the spokesman added.

Under the Amendment Ordinance, the ultimate parent entity of a multinational enterprise (MNE) group which is Hong Kong tax resident is required to file country-by-country (CbC) reports to the Inland Revenue Department (IRD) for exchange with other relevant jurisdictions if the annual consolidated group revenue is not less than HK\$6.8 billion.

The Amendment Ordinance also requires taxpayers to prepare master files and local files as part of the transfer pricing documentation, subject to certain exemptions. In addition, the Amendment Ordinance gives a statutory basis to the cross-border dispute resolution mechanism (i.e. mutual agreement procedure and arbitration) and advance pricing arrangement, which were previously implemented based on IRD's administrative rules.

In general, the provisions relating to transfer pricing (except for sections 15F and 50AAK), relief consequential on transfer pricing adjustment, advance pricing arrangement, tax credit and profits tax concessions will apply in relation to tax payable for a year of assessment beginning on or after April 1, 2018. The provisions relating to CbC reporting will apply in relation to an accounting period beginning on or after January 1, 2018, whilst those relating to master file and local file will apply in relation to an accounting period beginning on or after April 1, 2018. Sections 15F (taxation of income derived from intellectual property by non-resident associates) and 50AAK (attribution of income or loss to non-resident persons' permanent establishments in Hong Kong) will apply in relation to a year of assessment beginning on or after April 1, 2019 so as to give taxpayers a longer lead time to make preparation.

IRD will provide further implementation guidance to facilitate enterprises' compliance with the new requirements through its Departmental Interpretation and Practice Notes.

The OECD released a package of 15 action plans in October 2015 to counter BEPS. In June 2016, Hong Kong indicated its commitment to implementing the BEPS package.

Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order gazetted and commences operation

The Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order (the Order) was gazetted and came into operation today (July 13). The Convention on Mutual Administrative Assistance in Tax Matters (the Convention) will enter into force in Hong Kong on September 1, 2018 to allow Hong Kong to effectively implement the automatic exchange of financial account information in tax matters (AEOI) and the Base Erosion and Profit Shifting (BEPS) package promulgated by the Organisation for Economic Co-operation and Development (OECD).

"The Convention provides a multi-party platform for participating jurisdictions to mutually agree with each other on various forms of administrative co-operation in the assessment and collection of taxes, including exchange of information. As at July 2, 2018, 124 jurisdictions had joined the Convention," a government spokesman said.

The declaration made by the Central People's Government (CPG) on extending the application of the Convention to Hong Kong was registered at the OECD on May 29, 2018. The declaration includes a list of reservations and declarations in respect of Hong Kong under the Convention. On June 25, 2018, the CPG deposited with the OECD a unilateral declaration on the effective date for exchanges of information with respect to AEOI in Hong Kong. "We are grateful for the assistance of the CPG in extending the application of the Convention to Hong Kong," the spokesman added.

For Hong Kong to conduct the first round of AEOI on schedule, the Order needs to commence operation on the gazettal date (i.e. today). The Government will table the Order at the Legislative Council on October 10, 2018, for negative vetting.

Hong Kong will also ride on the Convention to take forward the automatic exchange of country-by-country reports and spontaneous exchange of information on tax rulings under the BEPS package. Pursuant to the reservations made under the Convention, Hong Kong will not render assistance to other tax authorities in terms of recovery of tax claims or fines, service of documents, and so forth.

Appointment of Chairmen of Market Misconduct Tribunal and Securities and Futures Appeals Tribunal

The Chief Executive has re-appointed former Deputy Judge of the Court of First Instance of the High Court, Mr Garry Tallentire, and former Recorder of the Court of First Instance of the High Court, Mr Kenneth Kwok Hing-wai, as Chairmen of the Market Misconduct Tribunal (MMT) and the Securities and Futures Appeals Tribunal (SFAT), both for a three-year term, from August 14, 2018 to August 13, 2021 for Mr Tallentire, and from April 1, 2019 to March 31, 2022 for Mr Kwok. The Chief Executive has also appointed former Vice President of the Court of Appeal of the High Court, the Honourable Mr Justice Michael Victor Lunn, as the Chairman of the MMT and the SFAT for a term of three years, from January 1, 2019 to December 31, 2021.

Announcing the appointment today (July 13), the Financial Secretary, Mr Paul Chan, said, "Mr Tallentire and Mr Kwok have made invaluable contributions to the effective operation of both tribunals over the years.

"Mr Justice Lunn has over 40 years of legal experience. He joined the Judiciary in 2003 and retired from the Court of Appeal in April 2018. We are confident that the experience of Mr Justice Lunn in adjudication and legal matters will contribute to the smooth running of the tribunals."

Both the MMT and the SFAT are established under the Securities and Futures Ordinance (Cap. 571) (SFO).

The MMT deals with six types of market misconduct, namely insider dealing, false trading, price rigging, disclosure of information about prohibited transactions, disclosure of false or misleading information inducing transactions, and stock market manipulation. In addition to these, the MMT is empowered to deal with breaches of disclosure requirements on price sensitive information of listed corporations.

The SFAT has jurisdiction to review specified decisions made under the SFO by the Securities and Futures Commission (SFC), the Hong Kong Monetary Authority and an investor compensation company recognised by the SFC. It serves as an effective safeguard to ensure that the relevant regulatory decisions are reasonable and fair.

Mr Michael John Hartmann, former Non-Permanent Judge of the Court of Final Appeal, is the other serving Chairman of the MMT and SFAT. The Chairman of each tribunal conducts hearings with the assistance of two members appointed by the Financial Secretary.

Red flags hoisted at some beaches

Attention TV/radio announcers:

Please broadcast the following as soon as possible:

Here is an item of interest to swimmers.

The Leisure and Cultural Services Department announced today (July 13) that due to big waves, red flags have been hoisted at Stanley Main Beach, Shek O Beach and Big Wave Bay Beach in Southern District, Hong Kong Island; Clear Water Bay First Beach and Clear Water Bay Second Beach in Sai Kung District. Beach-goers are advised not to swim at these beaches.

Flag-raising ceremony cancelled

Owing to the thunderstorm warning, the flag-raising ceremony to be conducted at Golden Bauhinia Square, Wan Chai at 8am today (July 13) will be cancelled.