



Hong Kong Tax Update

Reported by Patrick Kwong

1. Advance ruling no. 67 - taxability of a loan waiver

The IRD published an advance ruling case no. 67 on 8 December 2021.

In this case, the Applicant is a wholly owned subsidiary of Company A, which belongs to a conglomerate group. In a restructuring exercise, the group decided to inject a business unit into Company A. The Applicant was set up to hold the equity interest in the business unit.

The Applicant obtained funding from Company A on divers dates (the Financings) to finance its acquisition of the equity interest in the business unit and subsequent capital injections. The Applicant's only business activity is the holding of equity interests as a long-term investment.

During the annual audit for the year 2018, Company A made a provision for impairment loss on the amounts due from the Applicant, which were mainly composed of the Financings.

Having considered the Applicant's business nature and the absence of operating revenue, Company A concluded that the amounts due from the Applicant would be unlikely to be recovered. To clear non-performing loans or receivables, Company A contemplated to waive part of the amounts due from the Applicant. Company A may also waive the remainder (or lesser) subsequently. Upon the enforcement of the waiver(s), the Applicant would recognise the amounts waived as a capital reserve.

The Applicant lodged an advance ruling application and asked the Commissioner to rule on whether:

- (i) it will be chargeable to profits tax under sections 14(1), 15(1)(c) or 15(2) of the Inland Revenue Ordinance (IRO) in respect of the recognition of the capital reserve upon the enforcement of the proposed waiver(s) of the amounts due to Company A; and



- (ii) the general anti-avoidance provisions contained in sections 61 and 61A of the IRO will have no application to the aforesaid transaction.

The Commissioner gave a favourable ruling and considered that the relevant provisions of the IRO will have no applications to the aforesaid arrangement:

- Section 14(1) has no application as the Applicant is an investment holding company. The waived amounts will not constitute profits derived by the Applicant in the ordinary course of its business.
- Section 15(1)(c) has no application either as the waived amounts are mainly in connection with capital expenditures made by the Applicant in acquiring the equity interest in the business unit for long term investment.
- Section 15(2) is also not applicable as no deduction has been allowed in respect of the Financings.
- The waiver is not considered to be a tax avoidance transaction and sections 61 and 61A do not apply.

2. Electronic filing (e-filing) of profits tax returns is coming

The journey of the IRD's e-Filing Project

A consultancy study commissioned by the IRD in 2018-2019 suggested that the IRD's existing information technology (IT) infrastructure needed to be upgraded if the IRD were to move into the digital age.

Furthermore, in the Peer Report on the Exchange of Information on Request of Hong Kong published by the Organisation for Economic Co-operation and Development (OECD) in 2019, Hong Kong was recommended to take measures to ensure that accounting records of all relevant businesses should be readily available. However, as certain taxpayers are currently not required to file their tax returns annually, taking forward the OECD's recommendation will involve the annual issuance of a much larger number of profits tax returns and processing of voluminous accounting and financial data. The IRD can only efficiently handle such a move by



way of a full adoption of e-filing of profits tax returns for businesses, thereby also necessitating the need to enhance the limited data uploading capacity of its existing IT infrastructure (the e-Filing Project).

The IRD has now committed to implement the e-Filing Project by two phases. The first phase will involve enhancing the IRD's existing eTax Portal to enable more businesses to voluntarily e-file profits tax returns together with their financial statements and tax computations in inline eXtensible Business Reporting Language (iXBRL) format in April 2023.

In the second phase, a new Business Tax Portal will be rolled-out by 2025 to replace the existing eTax Portal. Currently, the IRD intends to require certain large-scale taxpayers, such as multinational enterprises (MNEs), to e-file their profits tax returns mandatorily from 2025. The goal of the IRD is to achieve full-scale implementation of mandatory e-filing by 2030. Nonetheless, the IRD has indicated that it will consider the actual situation to allow micro enterprises to continue filing profits tax returns in paper form.

In early 2021, the IRD conducted a consultation to gather views on the proposed IRD Taxonomy Package for the purposes of iXBRL tax filing requirement.

In June 2021, amendments to the Inland Revenue Ordinance were made which include provisions that: (i) empower the Commissioner of Inland Revenue to require any class or descriptions of persons to furnish a return in the form of an electronic record; and (ii) allow service providers, e.g., tax representatives to sign returns on behalf of taxpayers and then furnish the same to the IRD, i.e., without requiring taxpayers themselves to also sign the returns.

On 4 November 2021, building on the views obtained from the previous consultation conducted in early 2021, the IRD issued a further consultation paper setting out proposals for taking forward the e-Filing Project. Subsequently, the IRD also held a webinar on 17 November 2021 to further explain the proposals. Taxpayers and other stakeholders are invited to express any views they may have on the proposals to the IRD by 31 January 2022.



Support to be provided by the IRD to businesses for the journey

Recognizing that the proposed adoption of the iXBRL format for e-filing of financial statements and tax computations may drastically change the way taxpayers file their returns and may impact the design of accounting software, the IRD has indicated that it will provide the following support services to businesses:

- upload a preliminary edition of the IRD Taxonomy Package and the specifications in iXBRL schemas onto the IRD's website in early 2022 with a view to facilitating businesses or interested parties (e.g., software suppliers) to early develop iXBRL conversion or integrated software. In addition, the IRD will also set up an IT support service hotline to help answer enquiries from businesses or interested parties.
- provide a user-friendly free conversion tools, namely iXBRL Preparation Tools, for businesses to convert their financial statements and tax computations into iXBRL data files, which would conform to the specifications in the IRD Taxonomy Package and iXBRL schemas. The iXBRL Preparation Tools will consist of two tools: a Specified iXBRL Templates Input Tool and an iXBRL Comprehensive Tagging Tool, coupled with some useful links like Frequently Asked Questions, User Guide and basic validation functions to facilitate the use of the tools by businesses.

The Specified iXBRL Templates Input Tool is designed for small businesses to allow them to input the figures and text which need to be mandatorily tagged in pre-defined templates for generating iXBRL data files. Each item in the templates has already matched with a default tag. Businesses can simply fill in the generated templates based on the data shown in their own financial statements and tax computations without the necessity of matching the data with relevant tags.

Businesses other than small businesses or businesses not eligible to use the Specified iXBRL Templates Input Tool can use the iXBRL Comprehensive Tagging Tool. It will incorporate certain key features which can save time in inputting data. With auto-tagging/recommended tagging as well as roll-over



function, taxpayers need not spend excessive effort on accurately selecting, tagging and applying XBRL tags.

The IRD's plan is to roll out the IRD Taxonomy alongside with the iXBRL Preparation Tools by April 2023.

- offer one-on-one direct assistance to businesses via an online booking system, namely E-Concierge. Businesses can access E-Concierge to be hosted on the IRD's website to book-in-advance a specified timeslot for making general enquiries in relation to the use of the iXBRL Preparation Tools via phone call.
- invite businesses and interested parties to participate in trial runs, test runs and pilot runs of using the IRD's iXBRL Preparation Tools for the purposes of collecting feedback and suggestions.

Simplified tagging requirement also to be allowed

To encourage more businesses to e-file tax returns upon the initial launch of the IRD Taxonomy Package, instead of requiring them to perform full tagging, the IRD has indicated that it will allow businesses to opt for a simplified tagging requirement. Under the simplified tagging requirement, taxpayers will only need to tag the following:

- (a) Financial statements – Statement of comprehensive income, profit or loss
- (b) Financial statements – Statement of financial position
- (c) Notes to financial statements – Related party transactions
- (d) Notes to financial statements – Property, plant and equipment
- (e) All the elements within the Tax Computational Taxonomy



TIHK's submission to the IRD

In response to the consultation paper issued by the IRD on 4 November 2021, the Institute expressed the following views in its submission.

Full-cycle trial runs be extended to all interested parties as widely and equitably as possible

As far as the proposed trial runs are concerned, both taxpayers and service providers including tax practitioners and software developers of varying business scales would all likely be interested. As such, we consider that the IRD's invitations to the trial runs should be extended to these interested parties as widely and equitably as possible.

In addition to familiarizing these interested parties with the use of the iXBRL Tools, the proposed trial runs should also allow them to e-file tax computations and financial accounts prepared via the iXBRL Preparation Tools onto the eTax portal of the IRD, i.e., to conduct a complete mock e-filing process if this is not already envisaged.

Other aspects of the e-filing project

Although not specifically related to the proposals set out in the consultation paper, the Institute also made the following comments on various other aspects of the e-filing project:

1. To encourage more e-filing, particularly during the voluntary filing period in year 2023 and 2024, the IRD may consider offering additional incentives to attract taxpayers / practitioners to adopting the e-filing as early users, e.g., an extended tax filing deadline can be granted to taxpayers / practitioners for the e-filing.
2. In relation the proposal that certain large-scale taxpayers such as "MNEs" would be mandatorily required to e-file their tax returns in year 2025, the IRD would need to provide more guidance on the precise definition of such large-scale taxpayers, e.g., whether this would be based on certain business size thresholds or with reference to a certain amount of turnover at entity level.



3. The IRD may need to clarify in the future whether any incorrect tagging of the iXBRL files would render the tax filing incorrect, thereby potentially subjecting taxpayers / practitioners to penal actions. A more lenient and practical approach should be adopted when reviewing unintentional errors made by taxpayers / practitioners during the transitional years of e-filing and tagging.
4. The IRD's willingness to provide accreditation service to a third-party vendor platform that provides valid iXBRL tax filing is to be welcome. This approach is in line with the international practice and will encourage the natural development of the e-filing ecosystem in Hong Kong.
5. In the long run, the IRD should consider whether the IRD's electronic submission platform (e.g., an enhanced version of e-TAX) would be able to synchronise with any recognised accounting or tax platform for a more direct e-filing in Hong Kong.