

財經事務及庫務局
(庫務科)
香港下亞厘畢道
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薛女士：

《2011年稅務(修訂)(第2號)條例草案》

關於議員於二零一一年四月二十一日舉行的《2011年稅務(修訂)(第2號)條例草案》(《條例草案》)法案委員會會議上提出的要求，我們現於下文提供有關的資料。

提供經濟合作與發展組織(經合組織)的避免雙重課稅協定範本下有關知識產權交易的稅務寬免安排，以及政府當局為香港企業就其與其他稅務管轄區的企業進行的知識產權交易爭取稅務寬免的工作情況

2. 與其他大部分稅務管轄區一樣，香港在商討《全面性避免雙重課稅協定》(《全面性協定》)時，會採用經合組織的《稅收協定範本》。在經合組織的《稅收協定範本》下，特許權使用費的徵稅權是根據第12條(特許權使用費)¹處理，所以，因使用知識產權而產生的特許權使用費可根據該條文處理。根據香港與其他稅務管轄區簽訂的《全面性協定》第12條，香港居民於收入來源國從該國企業收取的特許權使用費，一般可獲得收入來源國以較低的預扣稅稅率徵稅。

¹ 該條條文中的“特許權使用費”一詞，指為使用或有權使用文學作品、藝術作品或科學作品(包括電影影片)的版權、專利、商標、設計或模型、圖則、秘密程式或程序的代價；或作為取得有關工業、商業或科學實驗的資料的代價，因而收取的各種付款。

3. 知識產權交易所得的利潤，則按經合組織的《稅收協定範本》第7條(營業利潤)的規定處理。該條訂明，只有某稅務管轄區的企業在另一稅務管轄區以常設機構營業的情況下，才須就其營業利潤在另一稅務管轄區課稅。換言之，在《全面性協定》下，若企業在收入來源國沒有常設機構，便無須就其跨境營業利潤(包括進行知識產權交易所得的利潤)在收入來源國課稅。

4. 企業如被雙重徵稅(包括就特許權使用費及營業利潤課稅)，則可在其居住地申請稅收抵免，以消除雙重課稅，惟數額不得超過該企業按照該居住地稅法就該入息須繳付的稅款。因此，香港企業與另一跟香港已簽訂《全面性協定》的稅務管轄區的企業進行知識產權交易時，不會出現雙重課稅的情況。如企業已按有關的《全面性協定》以較低的預扣稅稅率就有關的特許權使用費繳交稅款，仍可享有上述的雙重課稅寬免安排。

5. 根據我們的經驗，我們的締約伙伴在其《全面性協定》中也採用上述經合組織《稅收協定範本》的條文，以處理因使用知識產權而產生的特許權使用費及因知識產權交易而產生的利潤的徵稅安排。我們的締約伙伴的《全面性協定》範本中，並沒有其他有關處理知識產權稅務安排的特定條文。

就《條例草案》建議的稅務安排，提供與相類稅務管轄區（包括內地（如適用））的稅務安排的比較

6. 政府當局已根據所得的資料，就《條例草案》建議的稅務安排與相類稅務管轄區(包括澳洲、加拿大、新加坡及英國)的稅務安排作出比較，詳見附件(只有英文本)。因應議員的要求，我們亦把內地的有關安排臚列於列表內。

7. 就扣稅範圍而言，除了澳洲不就商標提供扣稅外，其他稅務管轄區同樣就《條例草案》所涵蓋的三種知識產權(即版權、註冊外觀設計及註冊商標)提供扣稅。我們建議連續五年按年以直線法計算扣稅的方案與新加坡的扣稅方法看齊，並較其他稅務管轄區優勝。

8. 至於扣稅條件方面，與其他稅務管轄區一樣，如要取得有關購買知識產權的建議扣稅優惠，該等知識產權須用以產生應課稅利潤，並按適用的註冊制度註冊。

9. 我們也建議，納稅人必須擁有知識產權的所有權權益才可以獲得建議的扣稅優惠。新加坡亦規定納稅人須擁有知識產權的法律和經濟所有權才可申領扣稅。雖然有些稅務管轄區(例如澳洲、加拿大和英國)並沒有對納稅人實施類似規定，不過，我們想指出，這些稅務管轄區會徵收資本增值稅，因此，縱使它們把特許權持有人一次過支付的特許權使用費視作爲可扣稅的資本開支，由於它們會視同一筆被特許權提供者收取的特許權使用費爲應課稅的資本收入，因而仍然可以維持“稅務對稱”。

10. 由於香港沒有資本增值稅，所以情況不同。若我們把《條例草案》建議的扣稅優惠擴大至包括屬資本性質的一次性特許權使用費支出，爲了要維持“稅務對稱”以避免稅收流失，我們須相應地對特許權提供者收取的同一筆特許權使用費收入徵稅。這將會根本地偏離我們不就資本增值徵稅這既定並奉行已久的原則。就此，我們沒有計劃就屬資本性質的一次性特許權使用費支出提供扣稅。然而，在現行《稅務條例》下，屬營運開支的特許權使用費支出可獲得扣稅，而其相應的屬營業收入的特許權使用費收入亦須課稅。

11. 總括而言，所有稅務管轄區均會根據“稅務對稱”的原則考慮如何就特定項目提供扣稅，以避免稅收流失和防止濫用。這也解釋了爲何與香港一樣不徵收資本增值稅的新加坡沒有就屬資本性質的特許權使用費支出提供扣稅。

12. 有關已獲得扣稅的知識產權的售賣得益徵稅安排方面，我們的建議方案與新加坡的安排大致相同，並較其他稅務管轄區優勝，這是由於就資本增值徵稅的稅務管轄區會把售賣的得益全數徵稅，而我們的建議則是以先前已獲得的扣稅款額作爲須課稅售賣得益金額的上限。

書面臚列議員提及的多種情況，並解釋建議的扣稅安排是否適用於每種情況

13. 政府當局將於稍後就團體意見作出的書面回覆中，一併就議員提出的情況解釋建議的稅務安排是否適用。我們亦會於稍後提供的書面回覆中，提供我們建議的反避稅條文與其他稅務管轄區的反避稅條文的比較。

提供在《內地與香港關於建立更緊密經貿關係的安排》(《安排》)下的相關徵稅安排的資料及內地機關對轉讓定價的意見

14. 《安排》涵蓋三大範疇，分別為貨物貿易、服務貿易及貿易投資便利化。在貨物貿易方面，符合香港與內地已商定的《安排》原產地規則的香港產品，可以零關稅優惠進口內地。在服務貿易方面，香港服務提供者現可在44個服務領域以優惠待遇在內地開設業務。在貿易投資便利化方面，兩地同意在10個領域加強合作²。《安排》並沒有專門處理稅務事宜的條文。

15. 至於轉讓定價的問題，國家稅務總局確認，如香港企業免費讓其內地關聯企業使用其擁有的知識產權，以生產製成品，而這些製成品會以低於正常價格的價格售予該香港企業，則有關安排可構成內地《特別納稅調整實施辦法(試行)》(國稅發[2009]2號文)所指的“抵消交易”。內地稅務機關在進行轉讓定價調查時，會調整轉讓定價，以還原抵消交易。

財經事務及庫務局局長

(周雪梅  代行)

副本送：稅務局局長(經辦人：黃權輝先生)
律政司(經辦人：張月華女士)

二零一一年五月三十一日

² 有關的合作領域包括貿易投資促進；通關便利化；商品檢驗檢疫、食品安全、質量標準；電子商務；法律法規透明度；中小企業合作；產業合作；知識產權保護；品牌合作和教育合作。

Tax Deduction for Capital Expenditure Incurred on the Purchase of Intellectual Property Rights (IPRs)

		Hong Kong's proposal	Australia	Canada	Mainland China	Singapore	United Kingdom
(a)	Whether tax deduction is provided for capital expenditure incurred on the purchase of patent, know-how, copyright, registered design and registered trade mark	<p>The Inland Revenue (Amendment) (No. 2) Bill 2011 ("the Bill") has proposed to grant tax deduction for capital expenditure incurred on the purchase of copyright, registered design and registered trade mark.</p> <p><i>(Note: Under the existing Inland Revenue Ordinance, tax deduction has already been provided for capital expenditure incurred on the purchase of patent and know-how.)</i></p>	Capital allowance deduction is provided for patent, copyright and registered design.	Tax deduction is provided for capital cost or capital expenditure incurred on the five IPRs.	Tax deduction is provided for capital cost or capital expenditure incurred on patent, know-how, copyright and registered trade mark.	Writing-down allowance ("WDA") is provided for capital expenditure incurred in acquiring the five IPRs from 1 November 2003 to 31 October 2013.	Amortization deduction is provided with respect to capital expenditure incurred on the five IPRs.

		Hong Kong's proposal	Australia	Canada	Mainland China	Singapore	United Kingdom
(b)	Tax deduction period	As proposed in the Bill, tax deduction will spread over 5 succeeding years on a straight-line basis for copyright, registered design and registered trade mark. <i>(Note: At present, one-off tax deduction is provided for patent and know-how.)</i>	Tax deduction is provided for the decline in value of the IPRs. The decline in value of an IPR is calculated on the basis of the statutory effective life and using the straight-line basis (i.e. 6 to 20 years for patent; 15 years for registered design and at most 25 years for copyright).	For IPRs with limited life, tax deduction spreads over the life of the IPRs on a straight-line basis. For IPRs with unlimited life, tax deduction is provided for three-quarters of the cost and amortised at 7% per annum on a declining balance basis.	Tax deduction spreads over a period of not less than 10 years or, if applicable, equivalent to the period specified in the contracts. Deduction is made on a straight-line basis.	WDA is provided over 5 years on a straight-line basis.	Tax deduction is provided over a period equivalent to the amortization charged to the accounts.
(c)	Conditions for tax deduction for capital expenditure incurred on IPRs						
	(i) Whether registration of the IPRs is required for tax deduction purpose	For design and trade mark where registration systems are available, registration is a pre-requisite for claiming tax deduction. Either local or overseas registration is acceptable.	For claiming tax deduction for IPRs, a person should be under Commonwealth law or equivalent rights under foreign law the patentee, or the owner of a registered design or a copyright, or	For tax deduction purpose, the IPRs must be registered if registration is required for the existence of the IPRs.	For tax deduction purpose, the IPRs must be registered if registration is required for the existence of the IPRs.	For tax deduction purpose, the IPRs must be registered if the IPRs are registrable. Either the local or overseas registration is acceptable.	For tax deduction purpose, the IPRs must be registered if registration is required for the existence of the IPRs.

		Hong Kong's proposal	Australia	Canada	Mainland China	Singapore	United Kingdom
		The registration requirement is not applicable to copyrights as there is no official registry in Hong Kong for registration of copyright works.	the licensee of any of those items.				
	(ii) Whether the taxpayer must possess the proprietary interest of the IPRs	Yes, the taxpayer must possess the proprietary interest of the IPRs.	No, there is no requirement that a taxpayer has to be the owner or quasi owner of an IPR in order to qualify for the capital allowance deduction in respect of that IPR. Instead, a taxpayer is entitled to the capital allowance deduction for IPRs that they "held" for any time during the income year.	No, expenses incurred in obtaining licences of IPRs are also eligible for tax deduction.	No, expenses incurred in acquiring the right of use of IPRs are also eligible for tax deduction.	Yes, a taxpayer must possess the legal and economic rights of the acquired IPRs.	No, expenses incurred in obtaining licences of IPRs are also eligible for tax deduction.

		Hong Kong's proposal	Australia	Canada	Mainland China	Singapore	United Kingdom
			In general, the owner, or the legal owner if there is both a legal and equitable owner of an IPR is the holder of the IPR.				
	(iii) Whether the IPRs must be used for production of chargeable profits	The IPRs must be used to produce profits chargeable to tax in Hong Kong.	The IPRs must be used to generate taxable income.	The IPRs must be acquired for the purpose of gaining or producing income that is not exempt from tax in Canada.	The IPRs must be used in a company's trade or business.	Where a company is carrying on a trade or business, the IPRs must be acquired for use in the trade or business for the purpose of income tax assessment.	The IPRs must be used by a company on a continuing basis in the course of its activities, and that the company must be within the charge of corporate tax of the United Kingdom.
(d)	Claw-back rules	Only sales proceeds capped at the deductions previously allowed would be brought to tax.	Full sales proceeds will be brought to tax.	Full sales proceeds will be brought to tax.	Full sales proceeds will be brought to tax.	Only sales proceeds capped at the WDA previously allowed would be brought to tax.	Full sales proceeds will be brought to tax.

Important Note:

The above information is for reference only. While every effort is made to ensure the accuracy of the above information, the Government of the Hong Kong Special Administrative Region cannot guarantee this to be so and will not be held liable for any reliance placed on the same.

Financial Services and the Treasury Bureau
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