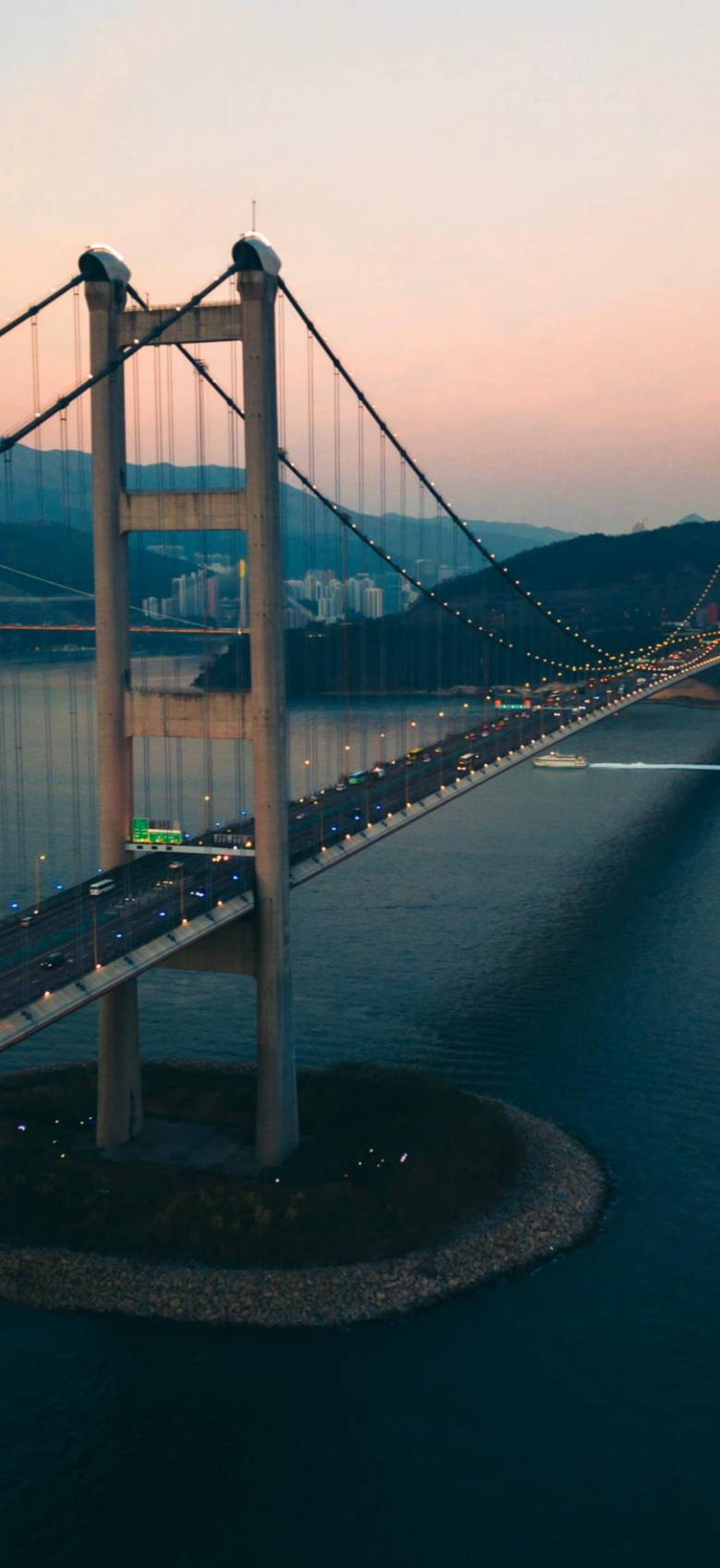


Tax Updates

April 2022



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In our April 2022 Issue of Newsletter, we will discuss certain important Hong Kong Tax Updates in First Quarter of Year 2022.

在這2022年4月的通訊中，我們將討論2022年第一季香港稅務的一些重要更新。

New Tax Deduction for Domestic Rent

Domestic Rent Tax deduction - a New Breakthrough in Hong Kong Salaries Tax available from the year of assessment 2022/23

The amendment bill for a new deduction for domestic rent had been gazetted on 6 May 2022, which will be effective from the year of assessment 2022/23. It applies to taxpayers who are liable to Salaries Tax and tax charged under Personal Assessment.

Taxpayer will be eligible to claim deduction on the rent paid for Hong Kong premises. The maximum amount of deduction would be HK\$100,000 for each year of assessment.

The rented property must be the taxpayer's *principal place of residence* in Hong Kong with a stamped tenancy agreement. It is worth to note that if the tenancy includes both domestic premise and car parking space (given that it is not sub-let), the whole amount of rental paid are eligible for tax deduction.

Below are some restrictions in pursuing domestic rent tax deduction:

- Taxpayer and spouse cannot be a legal and beneficial owner of any premises in Hong Kong;
- The landlord is not an associate of the taxpayer, spouse and their close relatives and corporation under their control; and
- The property is not provided by the employer (including rent refund from employer).

For details, please refer to the website of the Inland Revenue Department:

<https://www.ird.gov.hk/eng/tax/drd.htm>

住宅租金的新稅項扣除

住宅租金稅項扣除 - 2022/23課稅年度香港薪俸稅的新突破

《2022年稅務(修訂)(關於住宅租金的稅項扣除)條例草案》已於2022年5月6日刊憲，由2022/23課稅年度起生效。住宅租金的稅項扣除適用於須繳付薪俸稅及個人入息課稅的納稅人。

納稅人將有資格申請扣除為其香港居所所支付的租金，每個課稅年度的可扣除款額最高為港幣10萬元。

租用的物業必須是納稅人在香港的主要居所，並且有關租賃必須已加蓋印花。值得注意的是，如果租賃是關乎租用住宅處所連泊車處（而泊車處並沒有轉租的話），則支付的全額租金均可扣稅。

以下是住宅租金稅項扣除的一些限制：

- 納稅人及配偶不能是任何香港住宅處所的法定及實益擁有人；
- 業主不能是納稅人、其配偶、近親或其控制的法團；及
- 該物業不是由僱主提供的（包括僱主的租金返還）。

詳情請參閱稅務局網頁：

<https://www.ird.gov.hk/chi/tax/drd.htm>

Points to note 注意事項

The Domestic Rent Tax Deduction regime is going to offer a great relief to non-property owner in Hong Kong. Kindly note that no matter an individual holds a property on its own or via a company, he / she will be considered as a beneficial owner of property in Hong Kong.

On the other hand, taxpayers may also have to re-negotiate with their employers on their rental value arrangements (i.e., property rental reimbursement scheme) to maximise their savings on Hong Kong Salaries Tax since no domestic rent tax deduction on the amount already refunded by the employer.

住宅租金的稅項扣除制度將為香港的非物業擁有人提供極大的稅務寬減。請注意，無論納稅人直接持有或通過公司持有物業，他／她均將被視為香港物業的實益擁有人。

另一方面，納稅人亦可能需與僱主就返還租金安排重新商議，因為若納稅人已接受僱主的租金返還，便不能享有住宅租金的稅項扣除。



Court continues Hang Seng Bank case principle in determining source of profits

Newfair Holdings Limited (“Newfair”) won the offshore claim in the Court of First Instance (CFI) with the broad guiding principle

CFI over-ruled the decision by Board of Review in the case of *Newfair Holdings Limited and Commissioner of Inland Revenue*. Newfair is a typical Hong Kong trading company and procurement agent of a Multi-National Group. It purchased from 3rd-party suppliers in Hong Kong for onward sales to a group company in the Netherlands.

Board of Review Argument

1. A Hong Kong bank account has been used to receive revenues and pay purchases;
2. The Suppliers were Hong Kong incorporated companies and arranged shipment in Hong Kong;
3. Newfair never employed any staff. In other words, all the work has been performed by personnel of overseas group companies;
4. The internal mark-up mechanism kind of suggests that Newfair earns the profits because of its status of being a Hong Kong company and the whole arrangements were for tax avoidance purposes; and
5. No overseas tax has been paid in respect of the trading profits of Newfair.

法院延續恆生銀行個案中的利潤來源釐定原則

Newfair Holdings Limited (“Newfair”)以廣泛指引原則在原訟法庭贏得離岸申索

原訟法庭在 *Newfair Holdings Limited and Commissioner of Inland Revenue* 一案中，推翻了稅務上訴委員會的決定。Newfair是一家典型的香港貿易公司，擔任其跨國集團的採購代理。它從香港的第三方供應商購貨，再銷售至荷蘭的一家集團公司。

稅務上訴委員會的論據

1. 香港的銀行戶口用以收取收入及支付購貨成本；
2. 供應商為香港註冊公司，並在香港安排發貨；
3. Newfair從未僱用任何員工，所有活動均是由海外集團公司的人員完成；
4. 集團內部的交易定價機制表明了Newfair是因為其作為香港公司的地位而賺取利潤，並且整個安排目的是出於避稅；及
5. Newfair的貿易利潤從未繳納任何海外稅。



CFI Arguments

Basically the CFI followed the broad guiding principle. When determining the source of profits, it should focus on what the taxpayer has done to earn the profits in question and where he has done it. The focus is to establish the geographical location of the taxpayer's profit-generating activities, without being distracted by antecedent or incidental matters.

For trading profits, the profit-generating activities should be the initiation, negotiation and conclusion of sales and purchase contracts. In this case, as all of these activities were performed via email outside Hong Kong, the CFI considered that the trading profits should be offshore sourced and not subject to Hong Kong Profits Tax.

The judgement of [Newfair Holdings Limited and Commissioner of Inland Revenue \[HCIA 1/2021\]](#) for reference.

原訟法庭的論據

原訟法庭基本上遵循廣泛指引原則 (Broad Guiding Principle)。在釐定利潤來源時，應重點關注納稅人做了什麼活動來賺取相關利潤，以及在哪裡進行這些活動。重點是確定納稅人產生利潤的活動的地理位置，而不會因其他事前發生或附帶事項而分散注意。

就貿易利潤來說，產生利潤的活動應該是銷售和採購合同的籌組、商議和訂定。在本案中，由於這些活動均透過電郵在香港境外進行，原訟法庭認為貿易利潤應來自海外，而毋須繳納香港利得稅。

[Newfair Holdings Limited and Commissioner of Inland Revenue \[HCIA 1/2021\]](#)的判決以供參考。

Points to note 注意事項

The Broad of Review Arguments basically followed the prevailing practice of the Inland Revenue Department ("IRD"), while the CFI followed the broad guiding principle which is prevailing judgement of the court.

The latest court decision of Newfair suggested that Hong Kong still adopts the territorial-based taxation system. The fundamental source principle still applies. Taxpayers with significant amount of trading profits can still pursue offshore claim, despite the fact that the IRD is increasingly reluctant to grant the offshore claim.

Despite the CFI decision, in view of the current practice of the IRD, taxpayers are still strongly encouraged to implement tax planning to cater for the counter argument put forward by the IRD in the Newfair case in order to enhance the chance of success of offshore claim.

稅務上訴委員會的論據基本上沿用了稅務局的通行做法，而原訟法庭則遵循法院普遍判決的廣泛指引原則。

Newfair一案中最新的法院判決表明了香港仍然採用以地域為基礎的稅收制度，基本利潤來源原則依然適用。擁有大量海外貿易利潤的納稅人仍然可以申請豁免香港利得稅，儘管稅務局轉趨不願意批准離岸申索。

儘管原訟法庭已作出裁決，但鑒於稅務局現行的做法，本所仍強烈鼓勵納稅人及早實施稅務規劃，以應付稅務局在Newfair案中所提出的論點，增加申請豁免香港利得稅成功的機會。

Proposed profits tax exemption for family office business

Zero-tax rate for family office business will further reinforce Hong Kong's position as international financial centre and asset management hub

The Hong Kong Government has been promoting Hong Kong as an asset and wealth management hub in the region. After the Unified Fund Exemption ("UFE") in 2019, it has recently released a consultation paper on providing tax concession for eligible family-owned investment holding vehicles ("FIHVs") managed by *single family offices* ("SFOs") in Hong Kong with a view to further attracting family offices to establish a presence in Hong Kong.

Some of the key requirements on FIHVs and SFOs under the proposal:

- a) all the interests of the FIHV must be owned by individual(s) of the same family ("Single Family");
- b) the assets of the FIHV must be managed by an SFO in Hong Kong;
- c) the central management and control ("CMC") of the FIHV and SFO must be exercised in Hong Kong;
- d) the SFO must not provide investment management services to other FIHVs not owned by the Single Family;
- e) the aggregate average value of assets under management for the family-owned structure (either a single FIHV or multiple FIHVs) must be more than *HK\$240 million*; and
- f) each FIHV or the SFO should employ at least 2 full-time qualifying employees in Hong Kong and incur at least *HK\$2 million* of operating expenses in Hong Kong for carrying out the family office business.

香港正在建議豁免家族辦公室業務的利得稅

家族辦公室利得稅豁免將進一步鞏固香港作為國際金融中心和資產管理中心的地位

香港政府一直推動香港成為區內的資產及財富管理中心。繼2019年的統一基金利得稅豁免後，香港政府最近發佈了一份諮詢文件，為香港由單一家族辦公室 ("Single Family Offices - SFO") 管理的合資格家族投資控股公司 ("Family-owned investment holding vehicles - FIHV") 提供稅務優惠，以進一步吸引家族辦公室在香港設立業務。

該提案對FIHV和SFO的一些關鍵要求：

- a) FIHV的所有利益必須由單一家庭成員所擁有;
- b) FIHV的資產必須由香港的SFO管理;
- c) FIHV及SFO的中央管控必須在香港執行;
- d) SFO不得向由其他單一家族擁有的FIHV提供投資管理服務;
- e) 為單一家庭所管理的單一或多個FIHV的平均總資產值必須超過2.4億港元; 及
- f) 每個FIHV或SFO 應在香港僱用至少2名全職合資格僱員，並在香港產生至少200萬港元的運營費用，以開展其家族辦公室業務。

Points to note 注意事項

The family office business tax concession is most welcomed. This serves as a perfect complement of Fund Profits Tax exemption introduced in Year 2019. Remember that, in order to qualify for the fund tax exemption, the fund must have more than one investors. The Single Family requirement of family office tax exemption perfectly complement with this limitation.

More importantly, with proper tax planning, we consider that it is not difficult for family office to fulfill the above requirements. Family office practitioner should not miss the opportunity to enjoy the zero-rate tax concession.

Cheng & Cheng will keep abreast of the future development of the amendment bill and inform you if there is any important update.

You may refer to our previous issues of newsletter for other related topics:

- [Carried interest tax concessions](#)
- [Certificate of Residence \("CoR"\) for Special Purpose Entities \("SPE"\) under fund structure](#)

家族辦公室業務的利得稅豁免將會被受歡迎。這是對2019年推出的統一基金利得稅豁免的完美補充。要獲得統一基金利得稅豁免資格，基金必須擁有多於一個投資者，家族辦公室業務的利得稅豁免對單一家庭的要求完美地補充了這一限制。

更重要的是，只要進行合適的稅務籌劃，我司認為家族辦公室要滿足上述的要求並不困難。家族辦公室從業者不應錯過享受這零稅率優惠的機會。

鄭鄭會計師事務所將密切留意修訂法案的未來發展，我們將會通知您任何重要的更新。

您亦可以參考我們前幾期的稅務通訊，了解其他相關的主題：

- [附帶權益稅務優惠](#)
- [在基金結構下，特殊目的公司的香港居民身分證明書申請](#)

Contact Us

For further information regarding the above, please feel free to contact us.

如有任何查詢，歡迎隨時與我們聯絡。

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