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客戶通訊 Newsletter
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Proposed changes to the offshore regime for passive income in Hong Kong

1. Covered taxpayers and covered income

Only a constituent entity (CE) of a multinational enterprise (MNE) group will be in-scope. An MNE Group means any Group that includes at least one Entity or Permanent Establishment that is not located in the jurisdiction of the Ultimate Parent Entity whereas a CE effectively means an entity whose financial results are consolidated on a line-by-line basis in the group's consolidated financial statements.

2. Covered passive income

Dividends, gains from the disposal of shares or equity interest (equity disposal gains), interest and income from intellectual properties (IP income) with an offshore source will be in-scope offshore passive income. In-scope offshore passive income that is "received in Hong Kong" by a CE of an MNE group will be deemed to be sourced from Hong Kong and taxable unless the economic substance requirement (for non-IP income), the nexus approach requirement (for IP income) or the participation exemption conditions (for dividends and equity disposal gains) are met.

3. The economic substance requirement for non-IP income

- Offshore dividends, equity disposal gains and interest will be tax-exempt if substantial economic activities relevant to the income are conducted in Hong Kong.
- Covered taxpayers will need to employ an adequate number of qualified employees and incur an adequate amount of operating expenditures in Hong Kong for carrying out the relevant activities. Instead of setting the minimum threshold requirements, the totality of facts of each case will be considered in determining whether the adequacy test is met.
- A reduced substantial activities test will be applied to a "pure equity holding company" under which the relevant activities will only include (1) holding and managing its equity participation and (2) complying with the corporate law filing requirements in Hong Kong.
- Outsourcing of the relevant activities will be permitted provided that they are conducted in Hong Kong and being adequately monitored by the covered taxpayer.

4. The nexus approach for IP income

- Only income derived from a patent or an IP asset similar to a patent (qualifying IP income) can be entitled to a tax exemption under the nexus approach. Income derived from other IP assets (e.g. trademarks and copyright) are excluded from the tax exemption.

- The portion of the qualifying IP income that is exempt from tax will be computed based on the nexus ratio, which is the qualifying expenditure as a proportion of the overall expenditure that have been incurred by the covered taxpayer to develop the IP asset.

- Qualifying expenditure is expenditure on R&D activities that are directly connected to the IP asset and (1) undertaken by the taxpayer in Hong Kong, (2) outsourced to resident related parties and take place in Hong Kong and (3) outsourced to unrelated parties to take place in or outside Hong Kong. Acquisition costs of IP assets are not qualifying expenditure. The 30% uplift on the qualifying expenditure under the OECD's nexus approach can be applied in computing the nexus ratio if the covered taxpayer has incurred non-qualifying expenditure.

5. Introduction of unilateral tax credit in Hong Kong

To provide double tax relief for in-scope offshore passive income that is subject to tax in both Hong Kong and a foreign jurisdiction that does not have a Double Taxation Agreement with Hong Kong, a unilateral tax credit will be provided. Unilateral tax credit is only applicable to in-scope passive income.

Business funding schemes enhanced

The Trade & Industry Department today announced enhancements to the Dedicated Fund on Branding, Upgrading & Domestic Sales (Bud Fund) and the SME Export Marketing Fund (EMF).

The improvements launched will further support local enterprises in enhancing their competitiveness and developing diversified markets, the department explained.

For the Bud Fund, the cumulative funding ceiling per enterprise has been raised from $6 million to $7 million, and the maximum number of approved projects per enterprise has been increased from 60 to 70.

As for the EMF, the cumulative funding ceiling per enterprise has been raised from $0.8 million to $1 million.

Moreover, the special measure to expand the funding scope has been extended to June 30, 2026, to continue to cover exhibitions and online exhibitions targeting the local market.

The department added that it has also relaxed the eligibility criteria to include non-small and medium-sized enterprises.

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