Executive summary

The Hong Kong Government introduced a legislative bill (the Bill)\(^1\) on 23 March 2018, proposing to extend the current tax deduction regime for acquiring intellectual property rights (IPRs) to cover three new types of IPRs, namely: (i) a performer’s economic right; (ii) a protected layout-design (topography) right; and (iii) a protected plant variety right.

However, royalties received by a nonresident for granting the use of, or the right to use, the three additional IPRs to a Hong Kong taxpayer will be deemed taxable in Hong Kong and a required tax will be withheld from the payment. Sums received by a nonresident from the sale or assignment of a performer’s economic right related to a performance given in Hong Kong on or after the law is enacted will also be deemed taxable in Hong Kong and a required tax will be withheld from the payment.

Detailed discussion

Extension of the tax deduction regime

The Bill proposes to extend the current tax deduction regime to cover three additional types of IPRs, namely: (i) a performer's economic right;\(^2\) (ii) a protected layout-design (topography) right;\(^3\) and (iii) a protected plant variety right.\(^4\) The key features of the regime include:
• Capital expenditure incurred on the purchase of the IPRs is amortizable generally over five years from the year of purchase.

• If the IPR is subsequently sold, the sales proceeds exceeding the adjusted tax base will be taxable, capped at the total amount previously claimed as deduction. Whereas, if the adjusted tax base exceeds the sale proceeds, the excess will be deductible.

• The tax deduction will be denied where a relevant IPR is (i) purchased from an affiliated person; (ii) licensed to another person for use wholly or principally outside Hong Kong; (iii) used in certain sales-lease-back arrangements; (iv) acquired by certain non-recourse debt arrangements; or (v) acquired in relation to certain early termination of a license.

• Expenses incurred on the registration or granting a plant variety right will be tax deductible.

New deeming provision

The Bill explicitly deems that royalties received by a nonresident for the use of, or the right to use, the three new IPRs to a Hong Kong taxpayer will generally be taxable in Hong Kong. Sums received by a nonresident from the sale or assignment of a performer’s economic right will also be taxable in Hong Kong if the performance is made in Hong Kong on or after the Bill is enacted into law.

The Hong Kong person making the above payments to the nonresident is required to withhold tax from its payment and remit it to the Hong Kong tax authority.

Effective dates

The proposed extended tax deduction regime will apply to expenses incurred or accrued for fiscal years ending on or after 1 April 2018.

The proposed new deeming provisions will only apply to amounts received or accrued on or after the date on which the Bill is enacted into law.

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Endnotes

1. The Bill referred to is Inland Revenue (Amendment) (No. 2) Bill 2018 and can be downloaded from: https://www.gld.gov.hk/egazette/pdf/20182212/es3201822127.pdf.

2. Performer’s economic right means: (a) a right mentioned in the Copyright Ordinance and conferred by that Ordinance on a performer; or (b) a right that corresponds to the right mentioned in (a) and subsists under the law of a place outside Hong Kong.

3. Protected layout-design (topography) right means: (a) a right in a layout-design (topography) that is protected under the Layout-design (Topography) of Integrated Circuits Ordinance; or (b) a right that corresponds to the right mentioned in (a) and subsists under the law of a place outside Hong Kong.

4. Protected plant variety right means: (a) a right granted under the Plant Varieties Protection Ordinance; or (b) a right that corresponds to the right mentioned in (a) and subsists under the law of a place outside Hong Kong.
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EGY no. 02262-181Gbl
1508-1600216 NY
ED None

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