Hong Kong (SAR) Tax Alert

April 2023 | Issue 5

A quick guide to the 2022/23 profits tax filing

Summary

The 2022/23 profits tax filing season has kicked off with the bulk issuance of the 2022/23 profits tax returns on 3 April 2023.

In this tax alert, we (1) set out various important due dates for 2022/23 profits tax filing and other tax reporting obligations, (2) summarise the major changes to the 2022/23 profits tax returns and filing requirements and (3) discuss the key Hong Kong profits tax developments that may impact the 2022/23 profits tax filing positions of business groups in the Hong Kong SAR (Hong Kong).

1. Due dates for filing the 2022/23 profits tax returns

The extended due dates for filing the 2022/23 profits tax returns under the Block Extension Scheme (i.e. for taxpayers with a tax representative) are as follows:

Accounting date code	Extended due date	Further extended due date for semi-electronic / electronic filing*
"N" code (1 April 2022 to 30 November 2022)	3 May 2023 *(No extension)*	3 June 2023
"D" code (1 December to 31 December 2022)	15 August 2023	15 September 2023
"M" code – profits cases (1 January 2023 to 31 March 2023)	15 November 2023	15 December 2023
"M" code – loss cases (1 January 2023 to 31 March 2023)	31 January 2024	31 January 2024

** A 1-month extension will be granted for filing the returns semi-electronically or electronically*

For more details, please refer to the Circular Letter on the Block Extension Scheme issued by the Inland Revenue Department (IRD).

2. The 2022/23 profits tax returns, new forms and new filing requirements

Key changes in the 2022/23 profits tax returns (i.e. BIR 51 and BIR 52)

We summarise in the table below the major changes in the 2022/23 profits tax return.

Items in the profits tax returns	Major changes
Notes on the first page of BIR 51 / BIR 52	Small corporations / businesses with gross income not exceeding HK$2,000,000 also need to submit the supporting documents (e.g. audited financial statements, certified management accounts and tax computation, etc.) together with the profits tax returns from 1 April 2023.
Item 3.4.2 in BIR 51	Updated to include the assessable profits derived by qualifying ship agents / managers / brokers that are chargeable at a concessionary tax rate.
Item 7.10 in BIR 51	New boxes for insurance corporations to (1) indicate whether they adopted the **risk-based capital** (RBC) regime during the basis period of year of assessment (YOA) 2022/23, (2) state the amount of **one-off adjustment** arising from adopting the RBC regime, and (3) indicate whether they will **elect to spread** the one-off adjustment as income/loss **equally over 5 YOAs** (i.e. YOA 2022/23 and the next succeeding 4 YOAs), subject to enactment and operation of the relevant legislation[1].
Item 7.11 in BIR 51 / Item 7.7 in BIR 52	New boxes for taxpayers to indicate whether (1) they are an eligible **family-owned investment holding vehicle** and (2) they elect to enjoy the family office concessionary tax regime. If yes to (1) above, taxpayers are required to complete **the new Form IR1479** .
Item 7.12 in BIR 51 / Item 7.8 in BIR 52	A new checkbox for taxpayers to indicate whether they are a **family-owned special purpose entity** under the family office concessionary tax regime[2].
Item 7.13 in BIR 51 / Item 7.9 in BIR 52	A new checkbox for taxpayers to indicate whether they derived and / or received any **specified foreign-sourced income** in Hong Kong under the foreign-sourced income exemption (FSIE) regime. If yes, taxpayers are required to complete the **new Form IR1478**.
Items 9.16 to 9.18 in BIR 51	New checkboxes on the **new supplementary forms S16 to S18** to be completed by taxpayers electing to enjoy the concessionary tax regime for **qualifying ship agents / managers / brokers**.

New forms to be filed with the profits tax returns

The following new forms have been introduced from YOA 2022/23 and are now available on the IRD's website[3]:

- Supplementary Forms S16 to S18 – to be filed by taxpayers electing to enjoy the concessionary tax regime for qualifying ship agents / managers / brokers; and
- Form IR1478 – to be filed by taxpayers deriving / receiving specified foreign sourced income in Hong Kong under the FSIE regime; and
- Form IR1479 – to be filed by taxpayers electing to enjoy the family office concessionary tax regime.

1 The draft legislation for implementing (1) the RBC regime for insurance industry in Hong Kong and (2) the tax treatment of spreading the one-off adjustment as income/loss equally over five YOAs has not yet been introduced into the Legislative Council. The HKSAR Government targets to implement the RBC regime in Hong Kong by the first half of 2024. Early adoption of the regime is possible. Please see this link for more details.
2 The tax bill on the family office concessionary tax regime has not yet been passed by the Legislative Council. Once enacted, the regime will apply retrospectively from YOA 2022/23.
3 The new forms can be accessed via this link: https://www.ird.gov.hk/eng/paf/for.htm#pf

Modes of profits tax filing

The IRD has implemented voluntary electronic filing (e-filing) of profits tax returns from 1 April 2023. There will be three different filing modes available: (1) electronic, (2) semi-electronic and (3) paper. The table below indicates the data formats of the filing documents under the three different filing modes:

Filing mode	Profits tax return (BIR 51 or BIR 52)	Supplementary forms / IR1478 / IR1479	Supporting documents
Paper	Paper	XML	Paper
Electronic	Electronic	XML	iXBRL
Semi-electronic	Paper*	XML	iXBRL

** A simplified profits tax return is required to be printed for signature and submission in paper form*

Taxpayers who prefer to continue to do paper filing should note that the supplementary forms and the two new forms (where applicable) will need to be completed and filed electronically. Once the forms are uploaded, the IRD will issue a confirmation (i.e. a "Control List" or Form IR1477) to the taxpayers. The Control List needs to be printed and signed by the same person signing the profits tax return and submitted in paper form with the profits tax return.

3. Key profits tax developments relevant to return filing

Implementation of the FSIE regime in Hong Kong

The FSIE regime became effective in Hong Kong on **1 January 2023**. For details and impacts of the regime, please refer to the various KPMG Hong Kong SAR tax alerts[4].

For taxpayers within the scope of the FSIE regime and with an accounting year-end date falling between 1 January 2023 and 31 March 2023 (i.e. M code entities), they should consider whether they derived/received in Hong Kong any foreign-sourced interest, dividends, equity disposal gains or royalties (i.e. specified foreign-sourced income) during the period from 1 January 2023 to 31 March 2023. Adjustment in the tax computation is required to exclude specified foreign sourced income accrued but not yet received in Hong Kong and tax exemption should be claimed for specified foreign sourced income accrued and received in Hong Kong if the applicable exemption conditions are met.

The new **Form IR1478** will also need to be completed and filed electronically. If the taxpayer has previously obtained a Commissioner's Opinion or an advance ruling on compliance with the economic substance requirement under the FSIE regime, it only needs to answer a few questions about the opinion/ruling and confirm that the circumstances and arrangements specified in the opinion/ruling remained valid during the basis period of YOA 2022/23. Otherwise, the taxpayer is required to provide details about the fulfilment of (1) the economic substance requirement in section 3.3 of the form or (2) the participation exemption conditions in section 5 of the form (where applicable).

The profits tax concession for maritime services

The concessionary tax regime for maritime services applies from **1 April 2022**. Under the regime, assessable profits derived by qualifying ship agents, ship managers and ship brokers in Hong Kong can enjoy a **profits tax exemption** or a **concessionary profits tax rate of 0% or 8.25%** if the specified conditions are met. Taxpayers electing for the tax concession are required to complete and file the **new supplementary forms S16 to S18** where applicable.

For more details of the regime, please refer to our Hong Kong (SAR) Tax Alert - Issue 8, June 2022.

The proposed family office concessionary tax regime in Hong Kong

Under the proposed concessionary regime, assessable profits derived by a family-owned investment holding vehicle or a family-owned special purpose entity from qualifying transactions and incidental transactions (subject to a 5% threshold) can enjoy a **0% profits tax rate** if the specified conditions are met. Subject to the enactment of the relevant tax legislation, the 0% tax rate will apply retrospectively from **YOA 2022/23**. Taxpayers electing for the tax concession are required to complete and file the new **Form IR1479**.

For more details of the proposed regime, please refer to our Hong Kong (SAR) Tax Alert - Issue 28, December 2022.

4 The Hong Kong SAR tax alerts on the FSIE regime can be accessed via this link: The Foreign-sourced Income Exemption Regime for Pas... - KPMG China

Profits tax exemption for debt instruments issued in Hong Kong by the Mainland Government

A profits tax exemption on interest and profits derived from the debt instruments issued in Hong Kong by any local people's government at any level in the Mainland is available from YOA 2022/23.

Foreign tax credit / deduction to be included for computing 2023/24 provisional tax payable

Foreign tax credit or foreign tax deduction allowed for YOA 2022/23 should be taken into account in computing the amount of 2023/24 provisional profits tax payable.

4. Hong Kong profits tax cases relevant to return filing

Newfair Holdings Limited v Commissioner of Inland Revenue

In the *Newfair* case, the Court ruled that a Hong Kong company (1) interposed between the suppliers and customer and (2) performed limited activities in Hong Kong (i.e. merely operated a bank account in Hong Kong) did not carry on a business in Hong Kong and its trading profits did not arise in Hong Kong. For a more detailed discussion of the case, please refer to our Hong Kong (SAR) Tax Alert - Issue 5, April 2022.

Taxpayers with similar arrangement or fact patterns as in the *Newfair* case can rely on the case to advance their offshore claims on trading profits for 2022/23 profits tax filing.

China Mobile Hong Kong Company Limited v Commissioner of Inland Revenue

In the *China Mobile* case, the Court ruled that the upfront lump-sum spectrum utilisation fees (SUFs) paid by a telecommunication service provider are capital in nature and non-deductible for profits tax purpose. For a more detailed discussion of the case, please refer to our Hong Kong (SAR) Tax Alert - Issue 29, December 2022.

It is expected that the IRD will regard the amortisation expenses on similar SUFs incurred by telecommunication companies for existing spectrum licenses as non-deductible. On the other hand, the HKSAR Government indicated in the 2023/24 Budget that it will provide tax deduction for the SUFs to be paid by telecommunications network operators for spectrum licenses obtained in the future.

5. Other tax reporting requirements

We summarise below the due dates of other tax reporting obligations that may be applicable to business groups in Hong Kong:

Tax reporting obligation	Due date
Notification of chargeability	Within **4 months** after the end of the basis period for the YOA
Filing of Country-by-Country reporting notification	Within **3 months** after the end of the ultimate parent entity's accounting period
Filing of Country-by-Country return	Within **12 months** from the end of the reporting group's accounting period

KPMG observations

As there are various developments which may impact the 2022/23 profits tax filing, namely (1) the changes to the profits tax returns, (2) the new return filing requirements (including electronic filing of the supplementary forms and Forms IR1478 / IR1479), (3) the new profits tax legislation and (4) the new profits tax cases, business groups should evaluate whether any of these changes will affect their 2022/23 profits tax filing positions and consult their tax adviser if necessary.

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