

CHINA TAX ALERT

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Simplification of tax residency certificate requirements for Hong Kong companies and individuals

Regulations discussed in this issue:

- *Announcement on Determining Tax Residency Status when applying the Double Tax Arrangement between the PRC and Hong Kong (PRC-HK DTA), SAT Announcement [2013] No. 53 (Announcement 53), issued by the State Administration of Taxation (SAT) on 13 September 2013*
- *Announcement on Determining Beneficial Ownership in the context of Qualifying for PRC DTA Benefits, SAT Announcement [2012] No. 30 (Announcement 30), issued by the SAT on 29 June 2012*
- *Administrative Measures for Enjoyment of Tax Treaty Treatments by Non-residents in China, Guoshuifa [2009] No. 124 (Circular 124), issued by the SAT on 24 August 2009*
- *Circular on how to understand and recognise the "Beneficial Owner" in DTAs, Guoshuihan [2009] No. 601 (Circular 601), issued by the SAT on 27 October 2009*

The State Administration of Taxation (SAT), after consultation and agreement with the Hong Kong Inland Revenue Department (IRD), issued Announcement 53 to simplify the procedures used when Hong Kong tax resident companies and individuals apply for tax treaty relief under the Double Tax Arrangement between the PRC and Hong Kong (PRC-HK DTA). Announcement 53, which will become effective on 1 November 2013, is a welcome development as it alleviates the need for a tax residency certificate (TRC) to be produced by Hong Kong residents at the outset of the DTA application — although, ultimately, a TRC may still be needed if the tax authorities have any doubts regarding the applicant's residency status. This places Hong Kong companies and individuals at a comparative advantage over applicants from other jurisdictions, who are required to produce a TRC as matter of course, in complying with DTA applications procedures under Circular 124.

Key points of Announcement 53

Documents required for the determination of tax residency status

Specifically, Announcement 53 clarifies that Hong Kong resident companies or individuals would initially provide the following documents to the tax authorities when applying for tax treaty relief under the PRC-HK DTA:

- **For corporate applicants:** a copy of the Certificate of Incorporation or a certified true copy of the Business Registration Certificate issued by the Registrar of Companies of Hong Kong
- **For individual applicants:** Hong Kong Identity Card, Mainland Travel Permit for Hong Kong Residents, and Hong Kong tax return for the prior year of assessment.

It therefore appears that a Hong Kong TRC issued by the Hong Kong IRD would generally not be required for companies that are incorporated and/or registered in Hong Kong for the purposes of treaty relief claims under the PRC-HK DTA, unless under certain specific circumstances as outlined below.

Circumstances where a tax resident certificate is still required by the tax authorities

Notwithstanding the above, Announcement 53 states that a TRC would nevertheless be required for corporate applicants in the following situations:

- When the PRC tax authorities are suspicious of the treaty applicant's residency status, and the information submitted is deemed insufficient, including when non-Hong Kong incorporated applicants claim to be managed and controlled in Hong Kong
- When a listed company and its intermediary holding company are making an application under the 'safe harbour' provision with respect to beneficial ownership assessment (Article 3 of Announcement 30 — please refer to our [2012 China Tax Alert, Issue 15](#) for details).

Application procedures for Hong Kong TRC, if required

Announcement 53 further clarifies that when a TRC is required to be produced by the applicant, the PRC tax authorities would issue a referral letter (in standardised format) for the treaty applicant to submit to the IRD, together with a completed application form for the Hong Kong TRC.

In this regard, it is notable that the IRD requires different application forms and applies different levels of enquiry depending on the place of incorporation of the applicant, specifically:

- **Form 1313A(L):** a simplified form for companies incorporated in Hong Kong containing 'basic particulars' for completion
- **Form 1313A(F):** applicable for non Hong Kong incorporated companies, which requires much more comprehensive information to demonstrate that the company's central management and control is exercised from Hong Kong, such as particulars of directors and senior management, location of headquarters, bank accounts, fixed assets, and details of the applicant's business activities in Hong Kong.

In our experience, a non-Hong Kong incorporated company would face more rigorous and extensive enquiries from the IRD before obtaining a Hong Kong TRC.

Further reviews of the applicant's residency status may be required

Once a TRC is issued by the Hong Kong IRD, the PRC tax authorities should generally accept it as proof of the residency status of the treaty applicant, although the PRC tax authorities would be empowered to perform further reviews and, if necessary, request that further information be provided, and/or submit the case to the SAT and the IRD for further confirmation.

Applicability of Announcement 53

It should be noted that Announcement 53 is only applicable to tax treaty relief claims under the PRC-HK DTA by Hong Kong residents, including Hong Kong incorporated companies, overseas incorporated companies that are managed and controlled in Hong Kong, and Hong Kong resident individuals.

KPMG observations

The removal under Announcement 53 of the general need for a TRC to be initially produced by a Hong Kong resident during a DTA application and the clarification of DTA application procedures, including the formalisation of the referral letter to IRD, when necessary, are all welcome developments, particularly for Hong Kong incorporated (holding) companies.

Nevertheless, Hong Kong DTA applicants, particularly those incorporated outside Hong Kong, should be mindful that they would still need to ensure that they are in a position to substantiate their commercial substance in Hong Kong and satisfy the 'beneficial ownership' requirements under Circular 601 and other tax regulations in order to be able to successfully claim tax treaty relief under the PRC-HK DTA. Please refer to our [China Tax Alerts – Issue 86 \(2009\)](#), [Issue 15 \(2012\)](#) and [Issue 10 \(2013\)](#) for further discussion in this regard.

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