Revising the statutory framework for tax filing to pave way for e-filing of tax returns

April 12, 2021
Issue 3

In brief

The Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021\(^1\) (the Bill) was gazetted on March 19, 2021. The Bill seeks to amend the Inland Revenue Ordinance (IRO) to, among other things, revise the statutory framework for furnishing of tax returns. The proposed revised framework is necessary for implementing wide-reaching electronic filing of tax returns in Hong Kong.

This News Flash discusses the Inland Revenue Department’s (IRD) plan on facilitating e-filing of profits tax returns and summarises the key features of the proposed revised framework for furnishing tax returns in Hong Kong. For the other matters addressed in the Bill, please refer to our other Hong Kong Tax News Flashes\(^2\).

In detail

Background

Currently, only a small number of profits tax returns can be furnished electronically through the eTax Portal while most of the profits tax returns are submitted in paper form due to the limitations of the IRD’s existing information technology (IT) infrastructure.

In a 2019 peer review report on exchange of information upon request issued by the Organisation for Economic Co-operation and Development (OECD)\(^3\), the OECD recommended that Hong Kong should take measures to ensure that accounting records of all relevant businesses are available. Taking forward the OECD’s recommendation will involve collection and processing of voluminous electronic accounting and financial data, which has necessitated the full adoption of e-filing of profits tax returns.

Against this background and as part of the IRD’s plan to enhance taxpayer services and operational efficiency through upgrading its IT infrastructure at the new Inland Revenue Tower in Kowloon, the IRD is undertaking a project to enable more businesses to file their profits tax returns electronically.

The IRD’s plan and timeline on e-filing of profits tax returns

The IRD’s plan and timeline on e-filing of profits tax return are as follows:

- the first phase is to enhance the existing eTax Portal by around 2023 to enable more businesses to voluntarily e-file profits tax returns together with the financial statements and tax computations;
- the second phase is to develop a new Business Tax Portal by 2025 for e-filing of profits tax returns;
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- e-filing of profits tax returns will first be rolled out on a voluntary basis and for large businesses, with the ultimate goal of implementing mandatory e-filing by phases (with large businesses first followed by small to medium sized enterprises); and

- it has yet to see whether certain classes of small businesses can be exempt from the mandatory e-filing requirement.

In particular, the IRD plans to require electronic submission of financial statements and tax computations in inline eXtensible Business Reporting Language (iXBRL) format\(^4\). The financial statements and tax computations would need to be tagged based on a taxonomy for generating iXBRL data files. In this regard, the IRD launched a consultation with stakeholders in January this year on the taxonomy package developed by the IRD, which is a classification system used to identify and structure information in financial statements and tax computations so that the information can be tagged and exchanged in a structured electronic format\(^5\).

**Key features of the proposed revised statutory framework**

The key features of the revised statutory framework for furnishing of tax returns proposed by the Bill are as follows:

- catering for filing of profits tax returns by e-filing, mixed filing (i.e. a mixed mode of paper and electronic records) or paper filing;

- empowering the Commissioner of Inland Revenue (CIR) to require particular classes or descriptions of persons to furnish a return electronically by a notice published in the Gazette;

- allowing taxpayers to engage a service provider to furnish a return for or on their behalf in a case specified by the CIR;

- defining “service provider” as a person engaged to carry out a taxpayer’s obligation under section 51(1) of the IRO. “Service provider” is therefore restricted to a person furnishing return on behalf of a taxpayer and hence it is more restrictive than “authorised representative” as defined in section 2 of the IRO, the latter refers to a person authorised in writing by the taxpayer to act on his behalf on the tax matters;

- introducing various new requirements for service providers when they are furnishing tax returns on behalf of taxpayers, including (1) obtaining a written confirmation from the taxpayer stating that the information contained in the return is correct and complete to the best of the taxpayer’s knowledge and belief and (2) retaining such written confirmation for a period of not less than 7 years beginning on the date on which the return is furnished; and

- introducing new penal provisions against service providers for committing certain offences without reasonable excuse in relation to furnishing of returns on behalf of taxpayers.

It is also worthy to note that the Bill specifies that (1) a taxpayer engaging a service provider is not relieved from its primary obligation of furnishing a complete and correct return on time and (2) engaging a service provider does not in itself constitute a reasonable excuse for failing to fulfill the obligation.

**The takeaway**

We welcome the IRD’s initiative of revamping its existing IT infrastructure to facilitate e-filing of profits tax return and enhance efficiency in tax administration. However, a flexible and user-friendly portal and a simple and seamless process for e-filing is critical to the successful implementation of e-filing in Hong Kong.

We recommend that the IRD actively engage users, service providers and other stakeholders during the process of designing and developing the e-filing system. The IRD should also provide adequate support to and allow sufficient time for taxpayers to transit to the new mode of tax return filing. Further, we believe e-filing of profits tax return should not be mandatory for all taxpayers. Certain types of taxpayers (e.g. small businesses with annual turnover below certain threshold amount, inactive and dormant companies) should be exempt from but allowed to opt in e-filing at their discretion.

**Endnotes**


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