

Hong Kong Tax Authority indicates a server in Hong Kong may constitute a permanent establishment

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Hong Kong's Inland Revenue Department (IRD) recently issued a revised practice note (Revised DIPN 39) which indicates that a non-Hong Kong resident enterprise which maintains only a server in Hong Kong, without the involvement of human activities in Hong Kong, is now exposed to tax in Hong Kong. This change in position appears to be a result of the recent change to the definition of "permanent establishment" (PE) in the Inland Revenue Ordinance and to a change in the IRD's application of the source principles to this situation.

Revised DIPN 39 outlines that a non-Hong Kong resident corporation, which has no employees or office in Hong Kong and only has a datacenter or server "at its disposal" in Hong Kong, would be subject to tax in Hong Kong. The IRD's position is that certain profits must be apportioned and attributed to such a server PE.

However, a website of a non-Hong Kong resident enterprise which is hosted on a server located in Hong Kong that is owned by a third-party internet service provider may not give rise to a tax exposure. This is because, under such a hosting arrangement, the server may not be regarded as being "at the disposal" of the enterprise.

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