

Hong Kong disallows deductions for certain foreign withholding taxes

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The Hong Kong Internal Revenue Department (IRD) issued a revised Departmental Interpretation and Practice Note 28 (DIPN 28).¹ In the revised DIPN 28, the IRD states that a foreign withholding tax (FWHT) on foreign source income, other than certain interest income deemed taxable in Hong Kong, is not deductible for tax purposes irrespective of whether the foreign source income is subject to tax in Hong Kong.

Consequently, taxpayers can no longer claim a tax deduction for FWHT on non-interest type income, such as royalties, licensing fees, service fees and management fees, if the tax is assessed on gross income regardless of whether such income results in net taxable income. If FWHT is imposed by a non-treaty jurisdiction, taxpayers can claim neither a tax credit nor a tax deduction in Hong Kong.

Interest income

Prior to the change, foreign taxes paid on certain foreign source interest income deemed taxable in Hong Kong were tax deductible in Hong Kong, regardless of whether the foreign taxes were paid in a treaty or non-treaty jurisdiction.

However, beginning for taxable years ending on or after 1 April 2018, FWHT on any deemed taxable interest income is deductible only if the FWHT is imposed by a non-treaty jurisdiction.

If a treaty jurisdiction imposes FWHT, taxpayers can only claim a credit pursuant to the treaty; whereas prior to the change, taxpayers could choose to claim either a tax credit or a deduction.

Endnote

1. In August 2019.

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