

Update**China****Deemed Profit Tax Rates Cut**

The State Administration of Taxation (SAT) announced adjustments on Deemed Profit Tax Rate in eight industry sectors. It is a misconception to read such adjustments as reduction of corporate tax rate.

The Deemed Profit Tax Rate is applied on those firms without keeping proper accounting books and records. Corporate enterprises are still subject to an average 33% tax rate on their profits.

The adjustments may still lessen the burden of most SMEs in confronting the tax compliance of various provinces. The Deemed Profit Tax Rate for manufacturing is 5% to 15%; and for wholesale and retailing is 4% to 15%. Detailed rules can be obtained at the SAT Website: <http://www.chinatax.gov.cn>

Law on the Protection of Women's Rights in Guangdong Province effective on 1 October 2007

Employers and operators of public places is required to establish a suitable environment and introduce necessary investigating measures and complaint system to prevent and prohibit any sexual harassment of women. Further can be obtained at Legislative Affairs Office, the People's Government of Guangdong Province Website: <http://www.fzb.gd.gov.cn>

Hong Kong

The Hong Kong Chief Executive's Policy Address announced tax rates cut for 2008-2009: the standard rate of salary tax will be reduced to 15%. Company profits tax rate will be lower down 1% to 16.5%.

Court of Appeal upheld a 12-month jail sentence of tax evasion convictions against a 75-aged taxpayer on 25 Sept 2007 .

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We will manage to address your concern in future issues.

HR Matters : Caution on Staff Secondment

Overseas and Hong Kong employees hired or seconded to work for PRC companies used to elect entering employment contracts with their overseas/HK employer of the same group of companies instead of the PRC employer.

Besides tax and administration reasons, most believe that this arrangement offers them better protection if any accident happened. A recent



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HK court case might cause concern.

Where an employee was recruited by a PRC company and had entered his employment contract with his HK employer of the same group of companies, he met an accident in China when sitting a company car. Even though the employment contract required the HK employer providing a car and driver to the employee, the court could not fix any liability on the HK employer. The employee could receive employees' compensation from his HK employer but had no further claim in common law against the HK employer. (Reference: *Jerry Chen v. Whirlpool (Hong Kong) Limited*, HCPI No. 787 of 2001, 14 July 2006)

From quantification point of view, damages awarded from common law claim against an employer are usually greater than the amount recovered in employee's compensation claim. But, common law claim is usually premised on an employer's absolute obligation to see the safety of his employee. This depends on the degree and extent of control and supervision over the employee.

The PRC company with which the seconded employee worked for is usually a separate legal entity (despite under the same group of companies) in China. An employee under secondment is subject to the control and supervision of its management. On the other hand, if the degree and extent of control and supervision of the HK employer over the employee is limited or even nil, it would be difficult to fix for the employee to establish the HK employer's liability in common law claim regarding accident happened in the course of his employment in China.

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Tax Briefing

Artificial Tax Avoidance Scheme

A transaction between related parties or is intended for tax planning purpose is not the primary factor for being disregarded by IRD, but it used to arouse suspicion.

In a recent tax case, a referral fee for property investment paid to a related company was considered as "artificial or fictitious" transaction by the tax authority and was subject to assessment accordingly.

In short, Company H entered into a written agreement with Company

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X to provide capital to invest Hong Kong property. Both agreed to share the gain or loss. Company H then invested property through its subsidiaries, S1 and S2 and got profits. S1 and S2 paid referral fees to Company X. The shareholders and directors of all companies were closed relatives. The referral fees were considered as artificial or fictitious by IRD. The taxpayer appealed.

The Board of Review found that S1 and S2 had made no payment of interest on delay payment of referral fee as stipulated in the contract. Most company records were not true. The written agreement had not defined who got the right on buying or selling decision. The referral fees paid were artificial or fictitious transactions.

Taxpayers should note that IRO Section 68(4) provides the onus of proving that the assessment appealed against is excessive or incorrect is on the appellant. To avoid potential tax problems, transaction documents and business records should be properly kept and good transaction agreements should set the precise terms as well as the mechanism and process of performance. Any waiver for non-compliance should also be justified. (Reference: DIPN No. 15 and Board of Review Case D38/06, D77/99)

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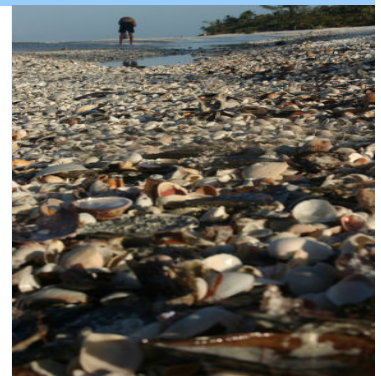
Life/Balance

Shelling in Florida Barrier Island - Sanibel

(by Mr. Eric CK Yeung, a traveler who is very keen on exploring scenic places)

Sanibel & Captiva Islands, Florida could be a perfect choice for your vacation. It offers on miles of beautiful Florida beaches, shelling opportunities and a number of other places for bird watching. The places are barrier islands connected to the mainland by a three-mile-long causeway from the southern reaches of Fort Myers, Florida.

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The Islands are part of a large plateau that extends out into the Gulf of Mexico for miles. Because of the tides and winds, the Islands act like a scoop for the disrupted seashells. Yearly, thousands of visitors come to enjoy Sanibel's beaches and hunt for special seashells.

For shelling, check with the tides, moon phase and the weather first. More of the beach will be exposed on a new or full moon.

Make sure to carry a bucket or bag for shelling. Taking of live seashells on Sanibel Island is prohibited but a seashell with a hermit crab is not considered as live seashells. There is no limit on the taking of dead seashells.

Go to Sanibel, you just need to take 2.5 hours driving from Miami and Tampa and 3.5 hours from Orlando. Besides, you may visit the old town Sanibel, take a family adventure by attending sailing schools in Captiva, Fort Myers or join a cruise for searching dolphins. You can easily get around the Islands' attractions and then enjoy the seafood in Fort Myers.

Sanibel & Captiva is good for refreshing or family funs after visiting Mickey in Orlando and before taking a long departure flight. Further details can be obtained at:

<http://www.fortmyers-sanibel.com> and
<http://www.sanibel-captiva.org>

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Reminder

- 31 Oct 2007 - Deadline for submitting further extension for company's profit tax return (year ended 31 March 2007) that has current year loss.
- 15 Nov 2007 - Extended due date for submitting company's profit tax return for year ended 31 March 2007.

Tax Holdover : Consider an application for holding over of payment of provisional profits tax if the assessable profits for the year of assessment are likely to be less than 90% of that of the preceding year of assessment.

Interim review for 2007/ Budget for 2008 : October is the right time for most companies to carry out interim review on performance or to plan and budget for next year.

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