

Transaction Advisory: Noncompetition Agreement

BY CURTIS H. L. WONG CPA, LLB, PCLL

Noncompetition agreements are a customary part of a business sale. Its purpose is to prohibit the seller from working in or starting a related or competing business that might cause hurt to the customers, the employees, or the know-how of the business just bought by the buyer.

It can be a separate agreement or as a clause in the sales contract. The restricted scope and duration are mutually agreed upon between both sides.

A noncompetition agreement will only be enforced by the courts if it is properly and narrowly drafted and defines the particular interest want to be protected, and does not go beyond limit, namely, prevent the normal business competition. A broadly drafted noncompetition agreement may easily be found unenforceable.

Sensitive or confidential information such as customer lists, pricing information, manufacturing process or know-how are usually the key matters subject to protection. The agreement should provide details on the scope of the prohibited activity, and limit the specified period and the geographic area to which the agreement applies. If you are

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the buyer, you may also want to consider entering into noncompetition agreements with the seller's key employees.

A noncompetition agreement may be more likely to be enforceable if there is a separate payment for the specific purpose for not competing. If you are the seller, try to use a noncompetition agreement to secure a future income stream over a period of time specifically for the purpose of not competing.

Laws regulate the enforceability of noncompetition agreements are varied in different jurisdictions. They may be enforceable in one jurisdiction but not do so in others. One should be very careful in adopting a standard form of noncompetition agreement for cross-border transactions.

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Curtis has extensive accounting and business management experience in multinational and listed corporations. He had been in legal practice for about 10 years and used to deliver lectures in tertiary education institutions and training courses to HKSAR Government Departments and various professions. He also got publications on law and accounting topics.

Life/Balance

Bingham Canyon Coppermine - The largest man-made hole on the earth

(by Mr. Eric CK Yeung)

Copper was the first mineral that man extracted from the earth. It plays a significant role in our daily life and industrial use for its high electrical and thermal conductivity. Its price increased 3 times per ton from 2003.

The Bingham Canyon mine, located near Salt Lake City, Utah, is the world's largest opencast coppermine. The site is not common to tourists but is opened for visit. The site is just 30 minutes drive (40 km southwest) from downtown Salt Lake City to the township of Copperton. This is an open pit mine.

Even if you are not interested in industrial mining, you will be attracted by its magnificent outlook view. The mine is the largest man-made hole on the earth's surface. In June 2003, the Canyon celebrated its 100th anniversary.

The Bingham Canyon pit is now 4 km across and its depth is about 1.2 km. From the top of the site, visitors could clearly have a bird-view of the location and the pit appears reach up to the crust of the Earth. The pattern of coppermine landscape

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expressed only half of its history on how much mining has happened over the last 100 years. This is because the mine was first built at a hill and now there is a hole $\frac{3}{4}$ of a mile deep.

Visitors may arrive the Kennecott's Bingham Canyon Mine Visitors Center which is open to the public. There are informative displays and video shows on copper-mining. You may take a panorama view on the terraced interior of the mine. From the overlook, you may watch 200-300s ton capacity haulage trucks deliver copper ore to the in-pit crusher where the materials are crushed and then loaded onto a five-mile conveyor.

The Center and overlook are OPEN from April to October but is CLOSED for the rest of the period. Entrance fees (US\$5 per car) are all donated to the local charities.

Tax Compliance: Advance Ruling

BY ANNIE K.Y. CHEUNG FCPA(practicing), ACA, MA

Advance Ruling under section 88A of the Inland Revenue Ordinance is for one who wishes to ascertain the tax position of a contemplated transaction or arrangement make an application for a ruling from the Commissioner.

Such ruling will only be given for a seriously contemplated transaction but not for hypothetical situation or for a matter where the profits tax is due and payable.

The Commissioner will decline to make such ruling in some circumstances, such as the applicant has not provided sufficient information; or the Commissioner considers that it would be unreasonable to make a ruling in view of the resources available to him.

The ruling, if made, will state the identity of the taxpayer; the applicable statutory provision and arrangement; the covered period; and any material assumptions made. It will be legally binding on the Commissioner provided that the taxpayer precisely adheres to the facts stated in the application. The IRD may also publish selected rulings with the confidentiality of the taxpayer preserved. The taxpayer who has obtained a ruling should state the existence of the ruling, the reliance on the ruling and any material changes in the tax return.



Author: Annie is a practicing CPA and experienced in handling accounting, assurance and tax engagements and in working with a wide variety of business enterprises and organizations including listed companies, SME businesses, non-profit entities and charitable organizations. She held a Master of Arts in International Accounting and is a fellow member of the Hong Kong Institute of Certified Public Accountants and a member of the Institute of Chartered Accountants of England and Wales.

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UPDATE**China**

The State Council issued "About the Implementation of Transitional Policy on Enterprise Preferential Income Tax Notice" which clarified the transitional arrangement of preferential treatment of income tax on 30 categories of enterprises. The Notice is effective from 1 January 2008.

The preferential tax rates currently enjoyed by the enterprises will gradually be increased to the statutory tax rate in the coming 5 years :

- For those enterprises currently subject to a income tax rate of 15% will be adjusted to 18% in 2008; 20% in 2009; 22% in 2010; 24% in 2011 and 25% in 2012. For those enterprises currently subject to a income tax rate of 24% will be adjusted to 25% in 2008.
- Those currently subject to "Two Years Exemptions and Three Years Halved", and "Five Years Exemptions and Five Years Halved" on regular tax concession will, after the new tax law effected, continue enjoying the original tax relief according to the previous tax laws, administrative regulations and the relevant provisions of the preferences policies granted at the time until the expiry date. For those not yet enjoyed the tax concession by reason of not making profits, the concession period will begin from 2008.

The above-mentioned policy applies to those enterprises registered with the relevant business administration authorities before 16 March 2007 and the application and scope of the transitional and preferential policy is provided in "The Implementation of Transitional Policy on Enterprise Preferential Income Tax Table."

REMINDER

31 January 2008 : Final extended due date for "M" code current year loss cases.

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