



The Society of Chinese Accountants & Auditors

香港華人會計師公會

創於1913年 Founded in 1913

NEWSLETTER VOLUME 2

JULY 2019



編者的話

“各位會友大家好！”

抱歉由於技術問題，本期會刊較遲出版，希望大家見諒。

在我們繁忙的日程，工作與生活平衡是非常重要的，有見及此，本會將與香港會計師公會及英國特許公認會計師公會(ACCA)，在本年11月3日早上，舉辦一跑步活動，「會計繽紛跑」，希望大家預留時間到時出席。”

監管資訊 / 準備更新綠色/環境、社會和管治基金披露標準 加強投資者的信心

2019年6月號

資產管理者在投資過程中考慮氣候變化、綠色、環境、社會和管治(「ESG」)或可持續發展因素以及提供綠色或環境，社會和管治相關投資要求的全球趨勢日益增長。鑑於綠色或環境，社會和管治相關投資產品的發展受到關注，全球各監管當局已採取舉措，通過要求加強相關投資產品可持續發展特性的披露，有助於投資者了解和評估綠色或ESG相關產品能否滿足其投資需求。

在香港，證券及期貨事務監察委員會(「證監會」)已授權多項投資重點範疇為氣候、綠色、環保或可持續發展的基金。根據證監會對獲認可的基金披露進行的初步審視結果，基金披露質素差異很大，而這些基金大部分並沒有具體披露基金管理公司如何在其投資選擇過程中納入所述的綠色或ESG因素。

為加強相近類型獲證監會認可的綠色或ESG基金之間的披露可比性，以及收窄基金之間的披露差距，證監會就有關提升證監會認可的綠色或ESG基金的披露質素，於2019年4月11日發出了一通函——「致證監會認可單位信託及互惠基金的管理公司的通函-綠色基金或環境、社會及管治基金」(「通函」)。此通函乃是制定綠色指引以作為支持香港綠色金融市場的增長的第一步，有助提升市場信譽和透明度。

誰需要遵守通函要求？

通函所規定的要求適用於將一項或多項全球認可的綠色或ESG標準或原則(見圖1)作為其主要投資重點，並在其名稱和投資目標或策略(「綠色或ESG基金」)中反映出來的證監會認可的基金。有關綠色或ESG基金的管理公司則

需要履行以下方面的要求。

計劃名稱

根據「單位信託及互惠基金守則」(「UT守則」)中規定的現有要求，綠色或ESG基金應主要投資於投資，以反映基金所代表的特定綠色或ESG投資重點。

圖一：

全球認可的綠色或ESG標準或原則

- 《聯合國全球盟約原則》(United Nations Global Compact Principles)
- 《聯合國的全球永續發展目標》(United Nations Sustainable Development Goals)
- 氣候減緩財務追蹤普遍原則(Common Principles for Climate Mitigation Finance Tracking)
- 國際資本市場協會的《綠色債券原則》(Green Bond Principles of the International Capital Market Association)；或
- 氣候債券倡議組織的《氣候債券分類標準》(Climate Bonds Taxonomy of the Climate Bonds Initiative)

* 以上並非詳盡列表。其他全球或國家綠色或ESG標準或原則、參考基準或指數會視情況而考慮。

■ 簡介

香港華人會計師公會成立於1913年，至今已有一百年歷史。當初成立的目的，主要是聯繫當時通過學徒制度，經本會考試合格，才能從事審核中文帳目的政府認可中文帳目核數師。

本會會員，必須是領有在香港執業會計師之資格，會員多數自行在本港設事務所公開執業，亦有跨國會計師事務所之股東或受僱於有規模的會計師行的會計師，對本港工商業提供各項有關會計、審計、財務管理、稅務、上市及收購合併等服務。

■ 宗旨

本會成立的宗旨是促進執業會計師的專業造詣，致力培育優秀會計人才，作為會員與政府及其他專業機構的溝通橋樑，積極推動會員及會計行業的持續發展，服務社會，並為香港和內地的經濟繁榮作出貢獻，發揚華人會計師精萃。

■ 聯絡我們

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披露要求

證監會預期證監會認可的綠色或ESG基金的發售文件（包括產品資料概要）應至少披露以下說明，供投資者作出明智的投資分析及判斷：

1. 綠色或ESG基金的主要投資重點和目標客戶，以及如何將主要投資重點考慮為綠色或ESG相關(如適用)
2. 綠色或ESG基金採用的投資策略，包括但不限於：
 - i. 考慮的相關綠色或ESG標準或原則；
 - ii. 反映所述綠色或ESG投資重點的證券或其他投資的預期風險；及
 - iii. 綠色或ESG基金採用的投資選擇過程和標準（例如相關投資的評估標準，ESG分析和評估方法以及所採用基準的特徵和一般構成等）
3. 綠色或ESG基金採用的排除政策和排除類型
4. 涉及綠色或ESG基金投資主題相關的風險
5. 其他管理公司認為必要提供的其他信息

持續監察

綠色或ESG基金的管理公司需要定期監察和評估相關投資，以確保綠色或ESG基金繼續符合通函中規定的既定投資目標和要求。

採取所需行動

1. 合規性的初步確認
對於現有的證監會認可的基金和尋求證監會認可的新基金，要求遵守通函的要求，管理公司應提供其中一項確認書，不論是由管理公司自行提出確認合規性、或由獨立第三方認證或基金標籤所支持的有關合規性確

認，向證監會證明綠色或ESG基金的主要投資重點、投資選擇和持續監控流程遵守全球公認的綠色或ESG標準或原則。

2. 現有的證監會認可的基金
 - a) 管理公司需根據通函所載的披露要求審閱其現有的基金發售文件，並在任何不遲於2019年12月31日的情況下進行必要的更新和修訂。
 - b) 如基金的發售文件需要更新或修訂，管理公司應評估是否需要根據UT守則章節11.1的規定，事先獲得證監會的批准，以及適用的認可後申請要求。
3. 尋求證監會認可的新基金
 - a) 除了證監會有關單位信託及互惠基金、與投資有關的人壽保險計劃及非上市結構性投資產品的手冊（包括UT守則）之外，管理公司應遵守通函所載的規定及證監會不定期發出的指引及其他規定。
 - b) 證監會的任何要求均屬於證監會在處理新基金申請時所採用的授權程序。一旦基金申請的認可生效，綠色或ESG基金將在證監會的專用綠色或ESG基金網頁上公佈，該網頁將於2019年底推出。

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Latest Hong Kong and International tax developments

(Developments as of 22 August 2019)

We have pleasure in sharing with you the latest Hong Kong and international tax developments impacting Hong Kong businesses.

1. Departmental Interpretation and Practice Notes (DIPNs)

The Inland Revenue Department (IRD) issued the following seven DIPNs in April to July 2019:

- DIPN No. 55 – Deduction for Research and Development Expenditure
- DIPN No. 56 – Concessionary Deductions: Sections 26H to 26M, Health Insurance Premiums
- DIPN No. 57 – Concessionary Deductions: Sections 26N to 26U, Annuity Premiums and MPF Voluntary Contributions
- DIPN No. 58 – Transfer Pricing Documentation and Country-by-Country Reports
- DIPN No. 59 – Transfer Pricing between Associated Persons
- DIPN No. 60 – Attribution of Profits to Permanent Establishments in Hong Kong
- DIPN No. 28 (Revised) – Profits Tax: Deduction of Foreign Taxes

(a) DIPN No. 55

<https://www.ird.gov.hk/eng/pdf/2019/dipn55.pdf>

The DIPN sets out the IRD's views on various issues regarding the interpretation and application of the new research and development (R&D) deduction regime introduced under the Inland Revenue (Amendment) (No. 7) Ordinance 2018, with numerous illustrative examples and three appendices. The DIPN not only provides guidance on the implementation of the revamped legislation but also adopts a liberal approach in granting a tax deduction for R&D expenditure in areas where there is flexibility. These areas include: (1) staff costs of seconded R&D staff, (2) fees paid to an overseas associate for subcontracted R&D (provided that such fees are not more than 20% of the total costs of the R&D project and are not more than HK\$2 million), (3) use of a special purpose vehicle to hold an intellectual property generated from the R&D activities, and (4) R&D expenditure borne by an enterprise under cost contribution arrangement (CCA) for R&D activities.

(b) DIPN No. 56

<https://www.ird.gov.hk/eng/pdf/2019/dipn56.pdf>

(c) DIPN No. 57

<https://www.ird.gov.hk/eng/pdf/2019/dipn57.pdf>

DIPN Nos. 56 and 57 explain the conditions and the IRD's interpretation and practices on the provisions relating to new concessionary deductions for qualifying premiums paid in respect of health insurance policies in compliance with the HKSAR Government's Voluntary Health Insurance Scheme, and qualifying premiums paid in respect of qualifying deferred annuity policies (i.e. policies certified to be in compliance with the criteria specified by the Insurance Authority) and MPF voluntary contributions made to a MPF Tax Deductible Voluntary Contribution (TVC) account, respectively.

(d) DIPN No. 58

<https://www.ird.gov.hk/eng/pdf/dipn58.pdf>

(e) DIPN No. 59

<https://www.ird.gov.hk/eng/pdf/dipn59.pdf>

(f) DIPN No. 60

<https://www.ird.gov.hk/eng/pdf/dipn60.pdf>

DIPN Nos. 58 and 60 were issued following the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (No. 6 Ordinance) that implements Base Erosion and Profit Shifting (BEPS) and Transfer Pricing (TP) measures in Hong Kong.

DIPN No. 58 specifies the IRD's views and practices on the three-tiered TP documentation in Hong Kong such as examples on the applicability of exemption thresholds, administrative procedures and required content.

DIPN No. 59 sets out the IRD's views on the application and interpretation of TP Rule 1 in Hong Kong, i.e. the rule empowering the IRD to impose TP adjustments on either income or expense arising from non-arm's length transactions between associated persons that give rise to a potential Hong Kong tax advantage. Certain domestic transactions that do not give rise to any actual Hong Kong tax difference are specifically exempted provided that certain prescribed conditions are met.

DIPN No. 60 sets out the IRD's views on the application of TP Rule 2 in Hong Kong, i.e. the rule that codifies the adoption of the Organisation for Economic Co-operation and Development's (OECD) authorised approach for attributing profits to a Hong Kong permanent establishment of a non-resident person.

(g) DIPN No. 28 (Revised)

<https://www.ird.gov.hk/eng/pdf/dipn28.pdf>

DIPN No. 28 was revised by the IRD, following the enactment of the No. 6 Ordinance, to explain the positions taken by the IRD on the implementation of the revised section 16(1)(c) and the rationale for the positions taken. The amendment to section 16(1)(c) restricted the application of the unilateral relief in the form of deduction under the section to foreign taxes paid in territories that do not have comprehensive double taxation agreements with Hong Kong. The revised DIPN also includes a change in the IRD's long established practice of allowing a section 16(1) deduction for foreign taxes on gross receipts / income.

2. Signing of the Fifth Protocol to the double tax arrangement between China and Hong Kong (China/HK DTA)

https://www.ird.gov.hk/chi/pdf/Fifth_Protocol_Mainland_HongKong.pdf
(Chinese version only)

China and Hong Kong signed the Fifth Protocol to the China/HK DTA in Beijing on 19 July 2019. The Fifth Protocol adds a "Teachers and researchers" article to the DTA to grant tax exemption to teachers or researchers who are tax residents of one side for eligible remuneration received for their services performed in the other side for a period of three years, subject to certain conditions. The Fifth Protocol also incorporates various treaty-related recommendations in the BEPS final reports released by the OECD, including amendments to the Preamble as well as the articles on Resident, Permanent establishment and Capital gains, and adds a new "Entitlement to benefits" article under which the "principal purposes test" is adopted and applied to all articles in the DTA for prevention of treaty abuse.

3. Application for Hong Kong Certificate of Resident Status (HK CoR) under the China/HK DTA

In order to facilitate applications for HK CoR where the claim for tax benefits in the Mainland falls within the provisions of Article 3 (i.e. the same jurisdiction rule or same treaty benefit rule) or Article 4 (i.e. the safe harbour rule) of China State Taxation Administration's Public Notice [2018] No. 9, the IRD is in the process of revising the relevant application form. The IRD posted on its website the interim arrangement for a bundle application before the revised form is available.

https://www.ird.gov.hk/eng/tax/dta_cor_sta9.htm

4. Economic substance requirement in no or only nominal tax jurisdictions

Further to the enactment of economic substance legislation by various no or only nominal tax jurisdictions, certain of these jurisdictions have issued guidance to assist affected entities in understanding the legislation. In particular, the Cayman Islands issued Economic Substance For Geographically Mobile Activities Guidance Version 2.0 on 30 April 2019, and the BVI released the draft Economic Substance Code on 24 April 2019 which is subject to revision and finalisation.

In essence, the legislation enacted by the Cayman Islands and the BVI requires a relevant entity / legal entity that conducts a relevant activity and derives relevant income to be directed and managed in the Islands in relation to that relevant activity, perform the core income generating activities locally, have an adequate number of qualified employees and adequate premises, and incur an adequate amount of expenditure. Pure equity holding companies are subject to a reduced economic substance test.

There are certain exclusions from the definition of relevant entity / legal entity. For example, an entity that is tax resident in a jurisdiction outside the Cayman Islands / BVI (and which is not on the European Union (EU) "blacklist" of non-cooperative jurisdictions for tax purposes in the case of BVI) is not required to meet the economic substance requirements.

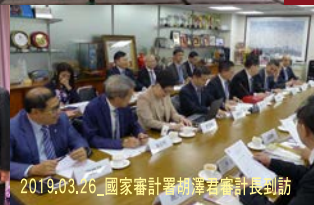
Bermuda also enacted legislation with similar requirements, but the original version did not include any carve-out for entities that are tax resident in another jurisdiction. The Economic Substance Amendment Act 2019 (the Amended Act) was enacted and became effective in Bermuda on 28 June 2019. The Amended Act provides an exemption from the economic substance requirements for entities that are registered in Bermuda and resident for tax purposes in another jurisdiction provided that the jurisdiction is not on the EU "blacklist" of non-cooperative jurisdictions for tax purposes.

Please note that while existing entities are generally required to comply with the relevant economic substance legislation enacted by the no or only nominal tax jurisdictions by 30 June or 1 July 2019 (as the case may be), amendments may still be made by the relevant jurisdictions to their legislation and/or guidance following the review by the EU and OECD.

Gwenda Ho

PricewaterhouseCoopers Limited, Partner – Corporate Tax

活動花絮 Gallery





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新加入會員 New Members

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CHAN YIN LUN
HO TING HONG
HO WING CHUNG

陳智宗
陳應麟
何庭康
何穎聰

KWOK CHEE WAI
LAI WAN FUNG
LAU CHUNG WAI
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POON HON YIN
YIU CHIN LUNG

吳紹欣
潘漢彥
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CHAN KI HONG
CHAN KIT YI
CHAN MAN YI
CHEUNG SHUK WAN GLORIA
CHIU TAK SHUN
KAM SHUE FUNG
KONG WING SHEUNG
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