

A specimen of the Chinese version of this Notes and Instructions may be obtained through the Fax-A-Form service (Telephone No. 2598 6001) or downloaded from the Department's web site (www.ird.gov.hk).

NOTES AND INSTRUCTIONS — FORM BIR54

A. PERSONAL INFORMATION COLLECTION STATEMENT

It is obligatory for you to supply the personal data as required by the return and any required supplementary forms. Breach of the statutory requirement may render you liable to penalty or other actions as provided under the Ordinances administered by the Department. Moreover, if you fail to supply the required information, your application/request/notification will not be accepted for processing. The Department will use the information provided by you for the purposes of the Ordinances administered by it and may disclose/transfer any or all of such information to any other parties provided that the disclosure/transfer is authorized or permitted by law. Except where there is an exemption provided under the Personal Data (Privacy) Ordinance, you have the right to request access to and correction of your personal data. You should send such request in writing to the Assessor at GPO Box 132, Hong Kong and quote your file number in this Department.

B. KEEPING BUSINESS RECORDS

The Inland Revenue Ordinance requires each person carrying on a trade, profession or business in Hong Kong to keep sufficient records of his/her income and expenditure and assets and liabilities in relation to that trade, profession or business to enable his/her assessable profits to be readily ascertained. Such records should be retained for at least 7 years after the date of the transactions to which they relate. Failure to keep sufficient records may result in a fine of up to **\$100,000**.

C. OFFENCES AND PENALTIES

The Inland Revenue Ordinance provides heavy penalties for any person who:-

- (1) fails to comply with the requirements of a notice to make a return without reasonable excuse;
- (2) makes an incorrect return without reasonable excuse;
- (3) makes a false return wilfully with intent to evade tax;
- (4) fails to keep sufficient business records of income and expenditure and assets and liabilities without reasonable excuse; or
- (5) fails to notify a change of address without reasonable excuse.

EVASION OF TAX IS A CRIMINAL OFFENCE. MAXIMUM PENALTY is a fine of \$50,000 PLUS a further fine of 3 times the undercharged amount and imprisonment for 3 years.

A service provider engaged by a taxpayer to furnish a tax return for or on behalf of the taxpayer may commit an offence if the service provider, without reasonable excuse:-

- (1) fails to furnish the return;
- (2) fails to obtain and retain a confirmation from the taxpayer stating that the information contained in the return is correct and complete to the best of the taxpayer's knowledge and belief; or
- (3) furnishes the return not in accordance with the information provided, or instructions given, by the taxpayer to the service provider and the return so furnished is incorrect in a material particular.

The above offence is subject to a fine of **\$10,000**; and the court may order the service provider convicted to do within a specified time the act which the service provider has failed to do.

D. HOW TO COMPLETE THE RETURN

- (1) The return is for use in respect of persons (individuals, firms, companies, societies, etc.) who are not residents in Hong Kong and who have no branch offices of their own in Hong Kong.
- (2) The profits shown in the return will be used to determine the Profits Tax payable in the Final Assessment for the year of assessment stated in the heading of the return. It will also be used to determine the Provisional Profits Tax payable for the succeeding year. Any Provisional Profits Tax paid for a year of assessment will be allowed against the Profits Tax liability for that year.
For the years of assessment commencing on or after 1 April 2018, if an election is made on behalf of the non-resident person for two-tiered rates, you are required to state that for the year it had no connected entity carrying on a trade, profession or business in Hong Kong or no such connected entity elects to be so chargeable. To elect for two-tiered rates, tick "yes" in Item 2.3 and provide confirmations, country code* of the jurisdiction of tax residence and tax identification number of the non-resident person in Item 2.4 and a complete list of the connected entities carrying on a trade, profession or business in Hong Kong in supplementary form (S1). You should note that the Assessable Profits of the non-resident person chargeable at the lower rate for the year should not exceed \$2 million in total, including the Assessable Profits assessed in other agents' names. For details of the two-tiered profits tax rates regime, please refer to the Department's web site. (*Regarding the use of ISO country list, the use of the list of territories does not imply the expression by the Department of any opinion whatsoever concerning the legal status of the territories listed. Their contents are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.)
- (3) If you have obtained an Advance Ruling under section 88A of the Inland Revenue Ordinance, and in preparing the return you are required to take into account the way in which a provision of the Ordinance applies to the arrangement(s) identified in the Ruling, you must submit the following information on a separate sheet:-
 - the reference number of the Ruling;
 - whether or not you have relied on the Ruling in preparing and providing the return; and
 - details of any material changes to the arrangement(s) identified in the Ruling.

- (4) Section 15(1)(a), (b), (ba) and (bb) of the Inland Revenue Ordinance deem certain sums paid or accrued to a non-resident person to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong:—
- Section 15(1)(a) - for the exhibition or use in Hong Kong of cinematograph or television film or tape, sound recording or their connected advertising material;
- Section 15(1)(b) - for the use, or the right to the use, in Hong Kong of any patent, design, trade mark, copyright material, *layout-design (topography) of an integrated circuit, *performer's right, *plant variety right, secret process or formula;
- Section 15(1)(ba) - for the use, or the right to the use, outside Hong Kong when such sums are deductible in ascertaining your assessable profits, of any patent, design, trade mark, copyright material, *layout-design (topography) of an integrated circuit, *performer's right, *plant variety right, secret process or formula;
- *Section 15(1)(bb) - for an assignment of, or agreement to assign, a performer's right in relation to a performance given by the performer in Hong Kong on or after 29 June 2018 and the sums were paid or accrued to the performer or an organizer.
(*only applicable for sums paid or accrued on or after 29 June 2018)
- (5) Section 21A of the Inland Revenue Ordinance provides for the computation of Assessable Profits of a licensor in respect of sums received under section 15(1)(a), (b) and (ba) as follows:—
- Section 21A(1) states "the assessable profits of a person arising in or derived from Hong Kong in respect of a sum deemed by section 15(1)(a), (b) or (ba) to be a receipt arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong shall, for the purposes of this Ordinance and notwithstanding any other provisions of this Part (Part 4), be taken to be—
- (a) 100% of the sum in the case of a sum derived from an associate:
- Provided that this paragraph shall not apply in the case where the Commissioner is satisfied that no person carrying on a trade, profession or business in Hong Kong has at any time wholly or partly owned the property in respect of which the sum is paid; or
- (b) 30% of the sum in any other case, including any case of the description mentioned in the proviso to paragraph (a)";
- (6) Claim for lower tax rate for sums received under section 15(1)(a), (b) or (ba) of the Inland Revenue Ordinance is applicable only to a non-resident person who is a resident of the country/territory with which Hong Kong has arrangement for avoidance of double taxation. If the lower tax rate is claimed, provide details of the nature and amount of the sum received, and state the country/territory where the non-resident person is a resident together with documentary evidence in support of the resident status of the non-resident person.
- (7) Section 23B(4A) of the Inland Revenue Ordinance provides for reciprocal exemption to a non-resident shipowner with effect from the year of assessment 1998/99:—
- Section 23B(4A) states "where a person who is deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (2) (of section 23B) is resident in any territory outside Hong Kong, he shall be regarded as having a reciprocity status, if the Commissioner is satisfied that any profits earned by or accrued to a person to whom subsection (1) (of section 23B) applies from a business carried on in the territory as an owner of ships are, under the laws of that territory, exempt from a tax which is of substantially the same nature as the tax chargeable under this Part (Part 4)".
- For non-resident shipowner, you are required to download supplementary form (S5) for electronic completion and submission.
- (8) The representative's reference number must be any combination of a maximum of 10 alpha-numeric characters. Symbols and punctuation marks such as commas, hyphens, colons and the like cannot be used.
- (9) The return must be signed by **either** the taxpayer **or** the engaged service provider. If it is signed by the service provider, the service provider must obtain a confirmation from the taxpayer stating that the information contained in the tax return, any required supplementary forms and the supporting documents is correct and complete to the best of the taxpayer's knowledge and belief. Please download a "Confirmation for Engagement of Service Provider to Furnish Return" (IR1476) from the Department's web site for completion and submission together with the tax return.
- (10) Starting from 1 April 2023, all required supplementary forms must be submitted electronically. If you are required to file any supplementary form, you must download the relevant supplementary form and fill in the form electronically. After completion, you must export the filled form to XML file and upload the XML file via the eTAX services under GovHK for submission. After successful uploading of the XML file, you have to print and sign a paper Control List (containing details of XML files uploaded and QR code) generated by the eTAX services for submission together with the Profits Tax Return.
- (11) If you need further information or assistance, you may:—
- visit the Department's web site (www.ird.gov.hk); or
 - write to or telephone the Assessor, Profits Tax, quoting your file number.