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Taxation of Electronic Commerce

The Hong Kong Inland Revenue Department ('IRD') recently issued an Interpretation & Practice Notes No. 39 ('DIPN') regarding the taxation of electronic commerce ('EC') transactions. The view of the IRD can be summarized as follows:-

Every person who carries on a business in Hong Kong is chargeable to profits tax on the profits arising in or derived from Hong Kong.

Business is carried on in Hong Kong

In determining whether a business is carried on in Hong Kong, the IRD would look beyond the server is owned, leased or provided by an Internet Service Provider ('ISP'). It is view of the IRD that a company is not carrying on business in Hong Kong if the company only has a server in Hong Kong (even an intelligent one – i.e. capable of concluding contracts, processing payments or delivering digital goods) without the involvement of human activities in Hong Kong.

Locality of the source of profits

The view of the IRD is that EC transactions may be conducted using an automated server located outside Hong Kong. However, human control remains important in carrying on the overall business operations.

The IRD therefore consider that the location of the physical business operations, rather than the location of the server alone, should determines the locality of the profits. It will give greater weight against the physical operations conducted by the taxpayer to earn the profits than on the location of the processing of the EC transactions.

Further information

For further information regarding the tax implications of electronic commerce transactions in Hong Kong and overseas, please contact us at (852) 2351 4806 or send mail to info@ajmcs.com.hk with questions.

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