

法・律・叢・書

香港稅務

法例與實施說明

2005-06

DAVID G. SMITH • 麥嘉軒 合著



KPMG

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***Hong Kong Taxation: Law and Practice 2005-06* (in Chinese)**

By David G. Smith and Ayesha Macpherson

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致意

本書初版於一九八一年問世，原作者為畢馬威會計師事務所前任首席稅務合夥人范大衛 (David Flux) 先生。范大衛先生一直負責本書每年的修訂工作，直至他在一九九二年榮休為止。雖然在往後這些年間，本書作出了相當大的改動，亦新增了不少內容，但如果沒有范大衛先生早年奠下的框架和構思，今天本書也不可以順利出版。為此，現作者謹借此機會向范大衛先生致意。

前言

(二〇〇五至〇六年版)

在本書二〇〇四至〇五年版出版後的十二個月內，香港的稅務政策在多個方面均出現了顯著的變化。隨著政府完成遺產稅的檢討工作，財政司司長於二〇〇五/〇六年度財政預算案中宣佈取消的建議，目的是鼓勵對香港資產的投資，同時進一步發展香港的資產管理行業。

此外，為了落實早於兩年前首次提出的推動資產管理行業發展的建議，特區政府已向立法會提交條例草案，給予非居民在指定項目的投資廣泛的利得稅豁免。雖然這些修訂建議主要是對準管理基金業，但也同時適用於所有非居民（須受若干反避稅條文規限），因而很大程度上偏離了居民與非居民在利得稅方面一視同仁的大原則。這情況似乎意味著政府政策正由認為以簡單和低稅率稅制足以吸引投資的前提，轉化為認同稅制可以合理地利用來影響外國投資者決定的做法。由於調低直接稅稅率已是大勢所趨（雖然香港在這方面仍然落後於其他國家），香港這項政策變動可說是在所難免，兼且因時制宜。

財政司司長亦在二〇〇五/〇六年度財政預算案中重申，特區政府仍在認真地考慮以商品及服務稅形式開徵稅基廣闊的消費稅，並會在來年開展有關引入此稅項的公眾諮詢工作。由此可見，即使實際開徵商品及服務稅的時間相信要在數年後，政府一直還在進行相關的工作。

過去十二個月內，特區政府亦繼續推行訂立全面雙重徵稅協議的政策。截至執筆時為止，雖然政府未有進一步落實這類協議，但已跟另外六個司法管轄區進行或安排了洽商。就這方面來說，政府其中一項首要任務應該是與中國內地訂立全面協議，以取代目前的有限度協議。一般相信，跟目前與比利時訂立的全面雙重徵稅協議比較，日後的協議應會加入更為全面的資料互換條文，而這很可能會引發相關人士和團體不同的意見。

年內另一項重要發展是立法會就有關全面檢討《稅務條例》並同時成立法定諮詢組織負責政策研究的動議進行辯論。這項動議看來是為了回應社會人士指《稅務條例》未能配合香港的經濟和商業發展步伐，以及條文在實際詮釋方面出現嚴重的不能確定和不一致情況的意見。雖然原來內容廣泛的建議已被否決，但經修訂的動議則獲通過，以促請政府檢討業界特別關注的多個問題，目的是提高香港的競爭力和對外國投資者的吸引力，同時秉承維持簡單和低稅率稅制的政策宗旨。

除上述有關政策方面的發展外，過去一年亦有多項具參考價值的稅務上訴委員會和法院裁決。雖然這些裁決覆蓋範圍廣泛，但值得注意的是，利潤來源地仍是較難處理的問題，單看法院最近在裁決 *Baring Securities (Hong Kong) Limited* 案例時的取態，與較早時裁決的同類案例 (*Indosuez WI Carr Securities Limited*) 截然不同便略知一二。其他重要裁決主要關乎《稅務條例》第61A條、*Ramsay*原則、支付股息的利息支出是否可以扣除，以及在決定重新評稅的時限方面，虧損陳述書是否一項「評稅」等。有關這些裁決和年內審結的多宗其他案例，本書各個相關章節會作出討論。

最後，我希望借此機會感謝麥嘉軒女士協助本書的修訂工作；但如有任何錯漏，則請讓我一力承擔。

邵德偉 (David G. Smith)

二〇〇五年八月寫於澳洲昆士蘭

英文縮略語對照表

本書所使用的縮略語如下：

AC	Appeal Cases (UK)	上訴案例 (英國)
AITR	Australian Income Tax Reports	澳洲所得稅報告
All E.R.	All England Law Reports	全英法津報告
ATC	Australian Tax Cases (CCH)	澳洲稅務案例 (CCH)
ATD	Australian Tax Decisions	澳洲稅務判決
CH	Court of Chancery	大法官法庭 (英國)
CIR	Commissioner of Inland Revenue	稅務局局長
CLR	Commonwealth Law Reports	英聯邦法律報告
FCA	Federal Court of Australia	澳洲聯邦法院
FC of T	Federal Commissioner of Taxation (Australia)	聯邦稅務局局長 (澳洲)
HKLR	Hong Kong Law Reports	香港法律報告
HKLRD	Hong Kong Law Reports Digest	香港法律報告摘要
HKRC	Hong Kong Revenue Cases (CCH)	香港稅收案例 (CCH)
HKTC	Hong Kong Tax Cases	香港稅務案例
IRD	Inland Revenue Department	稅務局
KB	King's Bench Division (UK)	英國高等法院後座法庭所屬分庭
MSTC	Malaysian and Singapore Tax Cases	馬來西亞及新加坡稅務案例
NZ	New Zealand	新西蘭
QBD	Queen's Bench Division (UK)	英國高等法院後座法庭所屬分庭
SATC	South African Tax Cases	南非稅務案例
STC	Simon's Tax Cases (UK)	英國Simon稅務案例
TC	UK Tax Cases	英國稅務案例
UKHL	UK House of Lords	英國上議院
WDV	Written Down Value	折餘價值
WLR	Weekly Law Reports (UK)	每周法律報告 (英國)

拉丁文詞彙

<i>ab initio</i>	由最初開始；一開始；從一開始
<i>ad valorem</i>	從價
<i>bona fide</i>	真誠地；真正的；真誠
<i>ex gratia</i>	特惠的；特惠金
<i>in specie</i>	實物
<i>inter alia</i>	除卻其他事宜外
<i>inter vivos</i>	生者之間；在世時
<i>obiter dictum</i> (眾數： <i>dicta</i>)	與法庭裁決有關，指與裁決並無重大關係的法律觀點的理解
<i>pari passu</i>	平等地；同時及同等地
<i>prima facie</i>	表面；表面看來是
<i>quid pro quo</i>	以物易物 (即：代價)
<i>supra</i>	同上
<i>ultra vires</i>	越權 (即：未經授權)

案例一覽表

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