

**APPENDIX 4.15      STANDARD SPECIAL CONDITIONS OF EMPLOYMENT :  
RETENTION OF MONEY PAYABLE TO NON-RESIDENT  
CONSULTANTS FOR SETTLEMENT OF PROFITS TAX IN  
CONSULTANCY AGREEMENTS**

1.            This Appendix describes the requirements and procedures promulgated originally in ETWB TCW No. 34/2004 to set out tax withholding provisions for consultancy agreements. The relevant paragraphs from the original circular are basically subsumed hereunder.

Background

2.            The need for inclusion of Special Conditions of Employment in consultancy agreements to enable the Government to withhold sufficient amount of money from fees payable to non-resident consultants for settlement of profits tax chargeable to them stems from a value-for-money audit conducted by the Audit Commission.

3.            In paragraph 4.13 of its Report No. 39, October 2002, the Audit Commission considers that, in the absence of statutory power for deducting money from payments other than those made to non-resident entertainers or sportsmen, Government departments need to include special terms in the contracts entered into with non-residents to enable departments to withhold a sufficient amount of money for payment of the tax due by the non-residents.

Policy

4.            It shall be included in consultancy agreements for engaging non-resident consultants (unincorporated or incorporated businesses), a provision for withholding money out of payments made to them, for the settlement of profits tax chargeable on the fee.

5.            The procuring departments shall withhold a percentage of the fees payable to the consultants according to the SCE set out in Annex C for settlement of any profits tax that may be chargeable on the fees due to the non-resident consultants.

6.            The procuring departments shall make timely reports to the Inland Revenue Department (IRD) on all payments made to non-resident consultants. The procedures set out in Annex A shall be followed.

7. IRD will issue notices of assessment to the non-resident consultants direct. As there are secrecy provisions in the Inland Revenue Ordinance, unless the procuring department is appointed as the authorized representative of the non-resident consultants, IRD cannot disclose information on the tax affairs of the non-resident consultants to the procuring department.

8. For the avoidance of ambiguity, the tax withholding requirement applies to non-resident main consultants only, but not non-resident sub-consultants who do not have direct contractual relationships with the Government.

#### Implementation

9. Consultants bidding for consultancy agreements shall be asked to declare in their bids whether they are Hong Kong residents or not. The standard clauses set out in Annex B shall be included in invitation letters for consultancy proposals.

10. The Special Conditions of Employment set out in Annex C shall be incorporated in consultancy agreements.

**Procedures to be Followed in the Retention of Money  
Payable to Non-resident Consultants for Settlement of Profits Tax**

**(1) Retention provision to be included in consultancy agreements**

Departments should include in the consultancy agreements a provision (i.e. SCE clause set out in Annex C) for withholding money out of payments made to non-resident consultants (unincorporated or incorporated businesses) in respect of services rendered in Hong Kong.

**(2) Timing for withholding money**

The procuring department should withhold money in accordance with the provision stipulated in the above paragraph upon each payment to the non-resident consultants.

**(3) Calculation of the amount to be withheld for tax payment**

The amount of tax withheld should be calculated on the **gross fee** payable (exclusive of any reimbursement of expenses, if any)). Please refer to the website of the Inland Revenue Department ([www.ird.gov.hk](http://www.ird.gov.hk)) for the details of latest profits tax rates.

**Example:**

~~Department A engaged non-resident consultants (unincorporated) to conduct a study in Hong Kong during the period 25-30 July 2004 with consultancy fee of HK\$1,400,000.~~

~~The tax withheld is HK\$224,000 [i.e. 16% x HK\$1,400,000]~~

**(4) Notification to IRD**

A written notification should be given to IRD under the employer's return reference of the procuring department **within one month** from the end of the consultancy agreement together with a transfer voucher or cheque for the money withheld. The following particulars in relation to the non-resident consultants should be given in the notification:

(a) Full name of the non-resident consultants;

- (b) Correspondence address and contact telephone number in Hong Kong;
- (c) Overseas correspondence address;
- (d) Type of services rendered;
- (e) Consultancy fee and consultancy period;
- (f) Total payments (net of money withheld for tax payment purposes) made in the fiscal year ended 31 March;
- (g) Amount of money withheld for settlement of profits tax liability of the non-resident consultants.

To facilitate reporting of the above information to IRD, the standard memo form set out in the Attachment may be used. Similar format or summary statement containing the above particulars of the non-resident consultants is also acceptable.

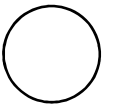
In addition, in the case that the consultancy agreement spans over more than one year and there are progress payments made at different stages of completion of the consultancy agreement, departments should, within one month after the end of the fiscal year, give IRD notification together with a transfer voucher or cheque for the money withheld for that year. Notification of final payment upon completion of the consultancy agreement should be made as advised at the beginning of this section.

#### **(5) Notification by IRD to the Non-residents**

The money retained and sent to IRD by the departments will be applied in settlement of the profits tax liability of the non-resident consultants. Notice(s) of assessment and notification(s) of the settlement of tax liabilities will be sent by IRD to the non-residents direct.

#### **(6) Further enquiry**

Enquiries should be made to the Assessors of Group A, Inland Revenue Department, Unit 2 at 2594 2061 or 2594 2276.



**MEMO**

<p><i>From</i> _____</p> <p><i>Ref.</i>     ( ) <i>in</i> _____</p> <p><i>Tel. No.</i> _____</p> <p><i>Fax No.</i> _____</p> <p><i>Date</i> _____</p>	<p><i>To</i> _____</p> <p><i>(Attn:</i> _____ <i>)</i></p> <p><i>Your Ref.</i> _____ <i>in</i> _____</p> <p><i>Dated</i> _____ <i>Fax No.</i> _____</p> <p><i>Total Pages</i> _____</p>
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**Money Withheld for Payment of Profits Tax**  
**Non-resident Consultants**

Please be informed that the following non-resident consultants received payments from our department in respect of services provided in Hong Kong. Details are as follows:

(a) Full name of the non-resident consultants	
(b) Correspondence address and contact telephone number in Hong Kong	
(c) Overseas correspondence address	
(d) Type of services rendered	
(e) Consultancy fee and consultancy period	
(f) Total payments (net of money withheld for tax payment purposes) made in the fiscal year ended 31 March	

(g) Amount of money withheld for payment of profits tax liability of the non-resident consultants	
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2. Transfer voucher/cheque \* No. \_\_\_\_\_ in the amount of HK\$ \_\_\_\_\_, being money withheld for settlement of profits tax liability of the non-resident consultants, is attached for your action.

3. For further enquiry, please contact the responsible officer \_\_\_\_\_ at telephone number \_\_\_\_\_.

( )  
for

**Additional Clauses to be Included in  
Invitation Letters for Consultancy Proposals**

Please note that where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, the Government shall withhold a percentage equivalent to the prevailing Hong Kong Special Administrative Region (hereinafter referred to as Hong Kong) profits tax rate applicable to unincorporated and incorporated business at the time the services are rendered (~~For the details of the current profits tax rates being [16%]<sup>1</sup> for unincorporated business and [17.5%]<sup>2</sup> for incorporated business for the year of assessment, please refer to the website of [2004/2005]<sup>3</sup> the Inland Revenue Department [www.ird.gov.hk](http://www.ird.gov.hk)) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.~~

Where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, should they be awarded the consultancy, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.

“Non-resident” means in the case of an individual, one who maintains a

~~<sup>1</sup> Insert the current rate at the time the invitation is issued.~~

~~<sup>2</sup> Ditto.~~

~~<sup>3</sup> Insert the relevant year.~~

place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

Consultants shall declare their resident status or the sole proprietor's resident status in their consultancy proposals. If the Consultants are unincorporated joint venture or partnership, the Consultants must declare the resident status of each and every participant or partner thereof. A sample declaration letter is at [Annex xxx].



Sample Declaration Letter

~~Consultancy for the provision of Services for Project~~

~~xxxxxxxxxxxxxxxxxxxx~~ Agreement No. [XX]

[Agreement Title]

To: The Government of the HKSAR

<sup>4</sup>We declare that we are Hong Kong Resident / Non-resident [please delete where inappropriate] having regard to the definition of “Non-resident” in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

<sup>5</sup>We declare that our sole proprietor is a Hong Kong Resident / Non-resident [please delete where inappropriate] having regard to the definition of “Non-resident” in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

<sup>6</sup>We declare that the participants/partners of the Consultants’ unincorporated joint venture/partnership are all Hong Kong Residents having regard to the definition of “Non-resident” in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

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<sup>4</sup> For use where the Consultants are an incorporated company.

<sup>5</sup> For use where the Consultants are sole proprietorship.

<sup>6</sup> For use where the Consultants are an unincorporated joint venture or partnership and all the participants/partners are Hong Kong Residents.

<sup>7</sup>We declare that the following participants/partners in the Consultants' unincorporated joint venture/partnership are Non-resident(s) having regard to the definition of "Non-resident" in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project, and the rest of the participants/partners are Hong Kong Residents:

1.

2.

3.

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Name of Consultants: \_\_\_\_\_

Signature of Person authorised to sign the Proposal: \_\_\_\_\_

Name in block letters \_\_\_\_\_

Telephone number: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>7</sup> For use where the Consultants are an unincorporated joint venture or partnership and some but not all the participants/partners are Hong Kong Residents.

**Standard Special Conditions of Employment**

**SCE ( ) - Tax Withholding**

- (1) Where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident (whether as declared in the consultancy proposals or as subsequently notified to or found out by the Government), the Government shall withhold a percentage equivalent to the prevailing Hong Kong profits tax rate applicable to unincorporated and incorporated business at the time the Services are rendered (For the details of the current profits tax rates being [16%] for unincorporated business and [17.5%] for incorporated business for the year of assessment, please refer to the website of [2004/2005] the Inland Revenue Department [www.ird.gov.hk](http://www.ird.gov.hk)) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.
- (2) The Consultants acknowledge and consent that in the event that the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.
- (3) The Consultants shall notify the Director's Representative immediately whenever there is any change during the currency of the Agreement in their resident status or the sole proprietor's resident status or, where the Consultants are unincorporated joint venture or partnership, in any one of the participants' or partners' resident status, from that declared in the consultancy proposals.
- (4) "Non-resident" means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in

Hong Kong.