

M E M O

<i>From</i>	Secretary for Development	<i>To</i>	Distribution
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**WBTC No. 23/2000 -
Computer Facilities in Consultancy Agreements;**

**WBTC No. 17/2001 -
Electronic Dissemination of Invitation Documents for Consultancies;**

**WBTC No. 31/2001 -
Electronic Submission of Consultancy Proposals on Removable Media;**

**ETWB TC(W) No. 26/2003 -
Post-completion Review on Major Consultancy Agreements
and Major Works Contracts under Public Works Programme;**

**ETWB TC(W) No. 30/2004 -
Consultancy Agreements – Retention of Documents and Inspection;**

**ETWB TC(W) No. 34/2004 -
Retention of Money Payable to Non-resident Consultants
for Settlement of Profits Tax in Consultancy Agreements; and**

**ETWB TC(W) No. 3/2005 -
Novation of Consultancy Agreements**

Subsumption under AACSB and EACSB Handbooks

_____ We enclose the summary of minor updates for subsumption of the subject technical circulars under AACSB and EACSB Handbooks for your information please.

2. Part of ETWB TC(W) No. 42/2002 “Feedback and Debriefing to Unsuccessful Bidders for Consultancy Agreements and Works Contracts” related to consultant selection exercises have also been subsumed under AACSB and EACSB Handbooks.

3. This memo takes effect on AACSB/EACSB consultancy agreements with Technical and Fee Proposals to be invited on or after 11 February 2019.
4. Secretaries of AACSB and EACSB are requested to update the AACSB and EACSB Handbooks accordingly.
5. Please bring this memo to the attention of all project officers who are responsible for management of consultancy agreements.
6. If you have any enquiry on the subject issue, please contact our Mr. Benjamin K. H. CHAN (Tel: 3509 8381 or email: benjaminkhchan@devb.gov.hk).

(Hortensia CHAN)
for Secretary for Development

Distribution

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DArchS	2810 7341
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c.c.	Secretary, AACSB	3542 5400
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Review of Technical Circulars (Works) (TCWs) in relation to Consultancy Services
Summary of Minor Updates and Subsumption of Existing TCWs into AACSB/EACSB Handbook(s)

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
1	23/2000	Computer Facilities in Consultancy Agreements	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	(i) Procurement of Agreement Computing Services (ACS) via consultancy agreements is not common and other practical ways to procure relevant computing services, e.g. through OGCIO standing order agreement, are available. Therefore, procurement of ACS via consultancy agreements is no longer required. (ii) General computer items covered by lump sum in consultancy agreements should be updated.	Paragraph 18 to be amended as follow:- “Except to the extent otherwise provided for in consultancy agreements, consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under consultancy agreements. These facilities shall include : (a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions; (b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographical information systems, or other professional systems (such as, but not limited to, Electronic Document Management System, Building Information Modelling, Project Management System) as the case may be; and (c) IT training for staff employed by consultants.”	AACSB Handbook Update: (i) Section 5.9 (a)(iv); (ii) Appendix 5.2; (iii) Appendix 9 Clause 20.1 (iv) Appendix 10 Clause 4 (A)(iv); and (v) Appendix 34 Annex 3 Attachment XIII Part II item 2. EACSB Handbook Update: (i) Section 4.12.; (ii) Appendix 4.3 amended and new Annex D to Appendix 4.3; and (iii) Non-staff charges items including computer facility removed in Appendix 3.13 Item D2.
2	17/2001	Electronic Dissemination of Invitation Documents for Consultancies	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	(i) Update latest compatible file formats for electronic dissemination;	Paragraph 9 of Annex 1:- Amend table under paragraph 9 as follows: (i) Replace “Adobe Acrobat” by “Portable Documents Format (PDF)”; (ii) Delete “Rick Text Format”; (iii) Replace “Word 97” by “Word”; (iv) Replace “Excel 97” by “Excel”; (v) Add “Building Information Modeling (BIM)”; (vi) Replace editable file type of drawings to “Procurement Department to define and insert”; (vii) Add the following paragraph under the table: - “The data formats and associated versions of documents/files to be adopted in the EIP’s should adhere to the latest OGCIO Interoperability Framework which	AACSB Handbook Update: (i) Annex E of Appendix 8.3. EACSB Handbook Update: (i) Section 4.18; (ii) New Appendix to Section 4.18

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
						can be downloaded from the OGCIO website: https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html	
					(ii) Add DVD-ROM as a mean for dispatch of documents; and	Paragraphs 10, 12and 16(b) of Annex 1:- Add “/DVD-ROM” after “CD-ROM” and add “/DVD” after “CD”.	
					(iii) Rename ITSD to OGCIO.	Paragraphs 13(b) and 14 of Annex 1:- Replace “ITSD” by “OGCIO”.	
					(iv) Add reference for recognized digital signature certificate	Add new paragraph 15A as follows: “The list of recognized certificates is available at OGCIO’s website: www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs ”	
3	31/2001	Electronic Submission of Consultancy Proposals on Removable Media	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	(i) Update latest compatible file formats for electronic submission;	Paragraph 8(a) of Appendix 1:- Amend table under paragraph 8(a) as follows: (i) Replace “Adobe Acrobat” by “Portable Documents Format (PDF)”; (ii) Delete “Rick Text Format”; (iii) Replace “Word 97” by “Word”; (iv) Replace “Excel 97” by “Excel”; (v) Add “Building Information Modeling (BIM)”; (vi) Replace editable file type of drawings to “(Procurement Department to define and insert)” (vii) Add the following paragraph under the table: - “The data formats and associated versions of documents/files to be adopted in the EPP should adhere to the latest OGCIO Interoperability Framework which can be downloaded from the OGCIO website: https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html	AACSB Handbook Update (i) Annex F of Appendix 8.3. EACSB Handbook Update: (i) Section 4.19; (ii) New Appendix to Section 4.19

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					(ii) Add DVD-ROM as a mean for submission of documents;	<p>(i) Paragraph 18 of main text; paragraphs 2 to 6 of Appendix 1:- Add “/DVD-ROM” after “CD-ROM” and add “/DVD” after “CD”.</p> <p>(ii) Paragraph 2 of Appendix 1:- First sentence is replaced by “EPP shall be submitted on CD-ROM media complying with ISO 9660:1988 or DVD-ROM media to ISO 13346:1995 standards.”</p>	
					(iii) Delete the requirement for EACSB to release the ORIGINAL set of EPP on technical proposal or EOI to the Managing Department (as the ORIGINAL set of the document is to be submitted to the Managing Department direct in common practice).	<p>Paragraph 16 of main text:- Delete first sentence: “The AACSB and EACSB will release the ORIGINAL set of EPP on technical proposal or EOI to the Managing Department for evaluation.”</p>	
					(iv) Add reference for recognized digital signature certificate and organizational e-cert	<p>Add new paragraph 7A in Appendix 1 as follows: “The list of recognized certificates is available at OGCIO’s website: www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs”</p>	
					(v) README file of EPP submission change to doc format	Amend README.rtf to README.doc in paragraphs 2 and 13 of Appendix 1, and replace “Rich Text Format” to “Word Format” in sentence 3 of paragraph 2 in Appendix 1.	
4	42/2002	Feedback and Debriefing to Unsuccessful Bidders for	N	- Core parts of TCW have already been subsumed in AACSB and EACSB Handbooks.	N/A	N/A	N/A

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
		Consultancy Agreements & Works Contracts		- Remove TCW from active list after clearance of relevant implication on administration of works contracts.			
5	26/2003	Post-completion Review on Major Consultancy Agreements and Major Works Contracts under Public Works Programme	N	- Core parts of TCW have already been subsumed in EACSB Handbook. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks.	N/A	N/A	AACSB Handbook Update (i) Section 11.5
6	30/2004	Consultancy Agreements - Retention of Documents and Inspection	N	- Core parts of TCW have already been subsumed in AACSB and EACSB Handbooks. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks.	N/A	N/A	N/A
7	34/2004	Retention of Money Payable to Non-resident Consultants for Settlement of Profits Tax in Consultancy Agreements	Y	- Core parts of TCW have already been subsumed in EACSB Handbook. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	Update the text in accordance with the latest tier of Profit Tax.	(i) Item (3) of Appendix A is replaced as follow: (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) for the details of latest profit tax rates. (ii) The first sentence of the first paragraph of Appendix B is replaced as follow:	AACSB Handbook Update: (i) Section 5.17 (ii) Annex K of Appendix 5.1 (iii) SCE 18 in Appendix 29 (iv) Annex 3 to Appendix 34 EACSB Handbook Update: (i) Appendix 4.15

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						<p>“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, please refer to the website of the Inland Revenue Department 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. ...”</p>	
8	3/2005	Novation of Consultancy Agreement	Yes	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with general update).	Revise signature format for execution of agreement in accordance with the latest Company Ordinance	Revise signature formats of Novation Agreement in Appendices A, B and C .	<p>AACSB Handbook update:</p> <p>(i) Revise Section 9.5</p> <p>(ii) New appendix 21.3</p> <p>EACSB Handbook update:</p> <p>(i) Revise Section 9.5</p> <p>(ii) New appendix to Section 9.5</p>

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局

香港花園道美利大廈



Environment, Transport
and Works Bureau
Government Secretariat

Murray Building, Garden Road,
Hong Kong

Ref : ETWB(PS)106/11

Group : 6

28 October 2004

Environment, Transport and Works Bureau
Technical Circular (Works) No. 34/2004

Retention of Money Payable to Non-resident Consultants
for Settlement of Profits Tax in Consultancy Agreements

Scope

This Circular sets out tax withholding provisions for consultancy agreements under the purview of the Architectural and Associated Consultants Selection Board (AACSB) and the Engineering and Associated Consultants Selection Board (EACSB).

Effective Date

2. The Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular has no effect on other circulars.
4. This Circular should be read in conjunction with the Handbook on Selection, Appointment and Administration of Architectural and Associated Consultants (the AACSB Handbook) and the Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants (the EACSB Handbook). In case of discrepancies or inconsistencies between this Circular and the Handbooks referred to, the provisions of this Circular shall prevail.

Background

5. 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.

6. 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

7. 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.

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

9. 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 **Appendix A** shall be followed.

10. 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.

11. 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

12. 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 **Appendix B** shall be included in invitation letters for consultancy proposals.

13. The Special Conditions of Employment set out in **Appendix C** shall be incorporated in consultancy agreements.

(C S Wai)
Deputy Secretary for the Environment,
Transport and Works (Works) 2

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 Appendix 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)

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 Annex may be used. Similar format or summary statement containing the above particulars of the non-resident consultants is also acceptable.

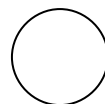
In addition, in the case that the consultancy agreement spans over more than one year and there are progress payments made at different stages of completion of the consultancy agreement, departments should, within one month after the end of the fiscal year, give IRD notification together with a transfer 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, Unit 2 at 2594 2061 or 2594 2276.



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*From**To**Ref.*

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*in**(Attn:*

)

*Tel. No.**Your Ref.**in**Fax No.**Dated**Fax No.**Date**Total Pages*

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 -

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 _____ .

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for
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Subsumed

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 (the current rates being [16%]¹ for unincorporated business and [17.5%]² for incorporated business for the year of assessment of [2004/2005]³) 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 place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

¹ Insert the current rate at the time the invitation is issued.

² Ditto.

³ Insert the relevant year.

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].

Note: Where these additional clauses are used in AACSB consultancies, "Consultant" should be used instead of "Consultants".

Subsumed

Sample Declaration Letter

Consultancy for the provision of Services for Project

[xxxxxxxxxxxxxxxxxxxx]

To: The Government of the HKSAR

⁴We 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

⁵We 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

⁶We 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

⁷ 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:

⁴ For use where the Consultants are an incorporated company.

⁵ For use where the Consultants are sole proprietorship.

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

⁷ For use where the Consultants are an unincorporated joint venture or partnership and some but not all 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: _____

Subsumed

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 (the current rates being [16%] for unincorporated business and [17.5%] for incorporated business for the year of assessment of [2004/2005]) 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.

Note: Where the SCE clause is used in AACSB consultancies, "Consultant" should be used instead of "Consultants".

Subsumed