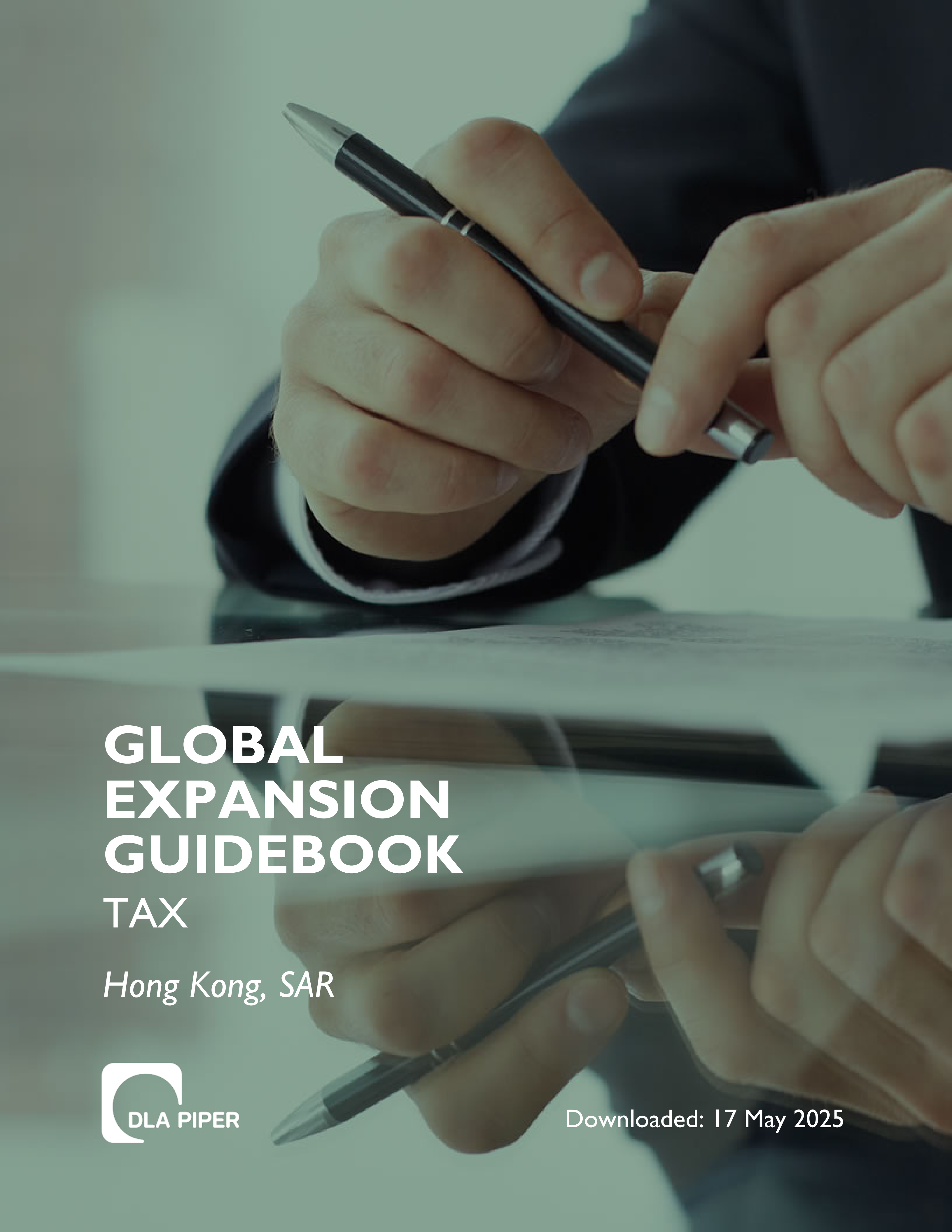

GLOBAL EXPANSION GUIDEBOOK

TAX

Hong Kong, SAR

DLA PIPER

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax.*

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that tax law is dynamic, and the legal regime in the countries surveyed could change.

HONG KONG, SAR

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RESIDENCE AND BASIS FOR TAXATION

Residence is generally not relevant for Hong Kong tax purposes. Rather, the basis for taxation is whether or not a person carries on a trade, profession or business in Hong Kong. Nevertheless, the concept of residence can be relevant for the purposes of Hong Kong tax treaties as well as certain exemptions (such as the offshore fund profits tax exemption). In such case, Hong Kong would follow the common law tests of residential ties for individuals and management or control for other entities.

Domestic

Hong Kong has a territorial system of taxation without a general definition of income. Generally, only:

- Profits arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong (including certain specified foreign-sourced income – see "Income" section below)
- Employment remuneration for services rendered in Hong Kong
- Income from real properties situated in Hong Kong can be subject to tax

Any other item of income is exempt from tax.

Foreign

There is no special regime for nonresidents. A Hong Kong branch of a foreign corporation is treated the same way as a locally incorporated company and is subject to similar corporate and tax obligations as a resident company.

TAXABLE INCOME

Domestic

For profits tax purposes, a person is taxed on its assessable profits calculated as its income minus applicable deductions. Usually the starting point of the calculation will be the financial statements of the taxpayer adjusted in accordance with the tax legislation. Adjustments can be made for items of income – for example, excluding offshore profits – or items of deductions – for example, adjusting amortization claims.

Income

Generally, assessable profits include only profits arising in or derived from Hong Kong (*ie*, profits sourced in Hong Kong) from a trade, profession or business carried on in Hong Kong. Source is a practical, hard matter of fact.

Specific rules may apply to certain types of receipts. For instance, a person in receipt of an amount for the use or right to use certain intellectual properties or movable property is deemed to carry on business in Hong Kong and in receipt of income arising in or derived from Hong Kong. There are also specific rules for income from an intra-group financing business.

With effect from January 1, 2023, the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 introduced a refined Foreign Source Income Exemption (FSIE) regime, under which certain foreign-sourced income, including interest, dividend, disposal gain and intellectual property income of a multinational enterprise (MNE) entity may be chargeable to profits tax when it is received in Hong Kong, subject to certain exception requirements such as an economic substance requirement, participation requirement or nexus requirement.

With effect from January 1, 2024, the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 further refined the FSIE regime, specifically tax treatments of foreign-sourced disposal gains, in light of the updated FSIE guidance promulgated in the EU. The scope of assets in relation to foreign-sourced disposal gains is expanded to cover all types of property. The exception requirements remain unchanged and are equally applicable to different types of disposal gains. A new intra-group transfer relief is introduced to defer charging of tax if the property concerned is transferred between associated entities, subject to specific anti-abuse rules.

Deductions

Expenses are generally deductible to the extent that they are incurred for the production of assessable profits and are not capital in nature, unless specifically prohibited. There are also specific rules for deductions of an intra-group financing business.

Foreign

There is no special regime for nonresidents. A Hong Kong branch of a foreign corporation is treated the same way as a locally incorporated company and is subject to similar corporate and tax obligations as a resident company.

TAX RATES

Under the 2-tiered profits tax rate regime (effective from April 1, 2018), the profits tax rate for the first HKD2 million of profits of corporations will be lowered to 8.25 percent; profits above that amount will continue to be subject to the normal tax rate of 16.5 percent. The said rates apply on all assessable income with only a few exceptions. The most significant one is the offshore fund profits tax exemption, which exempts most profit of offshore funds carrying on business in Hong Kong. Partial rate exemption (*ie*, 8.25 percent) applies to items of income such as income from qualifying debt instruments issued in Hong Kong or the onshore business income of professional reinsurance companies. In addition, qualifying corporate treasury centers may enjoy a 50 percent concession (*ie*, 8.25 percent) on the prevailing rate of normal Hong Kong profits tax (*ie*, 16.5 percent) on the qualifying profits.

TAX COMPLIANCE

The year of assessment runs from April 1 to March 31. For profits tax purposes, the basis period is the accounting year of the taxpayer ended in the year of assessment.

Hong Kong taxpayers are prompted to file tax returns. The Inland Revenue Department (IRD) usually issues profits tax returns to taxpayers from the first working day of April each year. In general, a corporate taxpayer is required to complete and file its profits tax return with the IRD within 1 month from the date of issuance, but a taxpayer with a tax representative usually has an automatic extension, with reference to the accounting date. If a taxpayer has assessable profits for a tax year, it is required to inform the IRD accordingly if it has not received a tax return.

A newly incorporated business in Hong Kong usually receives its first profits tax return around 18 months from the date of commencement of business or the date of incorporation.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

Advance rulings are available to taxpayers as a paid service and are subject to certain formalities.

A taxpayer can voluntarily request for a ruling in specified areas, such as the application of the locality of profits rules or the general anti-avoidance provision, royalty payments, stock borrowing or lending and interest income exemption.

The normal processing time is 6 weeks, but a complex application can take significantly more time. A ruling is final, but it does not affect the taxpayer's right of objection against a subsequent tax assessment issued in accordance with an unfavorable ruling.

Tax incentives

See Tax rates. The Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2023 was gazetted and came into operation on May 19, 2023. As an incentive for developing family office businesses in Hong Kong, this Ordinance provides tax concessions for (a) eligible family-owned investment holding vehicles managed by eligible single-family offices in Hong Kong and (b) family-owned special purpose entities. Only the assessable profits of family-owned investment holding vehicles and family-owned special purpose entities arising from qualifying transactions and incidental transactions would be eligible for profits tax concessions, which would apply retrospectively to any year of assessment commencing on or after April 1, 2022.

The Inland Revenue (Amendment) Ordinance 2023 was gazetted on 28 April 2023 to give effect to a one-off reduction of the final tax in respect of profits tax, salaries tax and tax under personal assessment for the year of assessment 2022-23 by 100 percent, subject to a ceiling of HKD 6,000 per case.

With effect from April 1, 2019, profits tax exemption is extended to all privately offered offshore funds (provided that certain conditions are satisfied) in Hong Kong.

The Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Ordinance 2022 was gazetted on July 22, 2022 and introduces half-rate profits tax concessions (*ie*, 8.25 percent) to qualifying shipping commercial principals, including ship agents, ship managers and ship brokers. Tax concessions will apply to sums received by or accrued to shipping commercial principals on or after April 1, 2022.

Tax incentives are also available to certain specified areas subject to qualifying conditions, such as interest on and any profit made in respect of Renminbi sovereign bonds, capital expenditure on specified environmental protection facilities, capital expenditure on plant and machinery specifically related to manufacturing, expenditure on computer hardware and software, and expenditure incurred on certain research and development activities.

CONSOLIDATION

Although group companies in Hong Kong are, subject to certain exceptions, required to prepare consolidated financials for accounting purposes, Hong Kong does not allow groups of companies to file consolidated profits tax returns. There is no group loss relief (*eg*, loss consolidation, loss transfer) for taxpayers in group companies.

PARTICIPATION EXEMPTION

Under the current FSIE regime. the participation requirement provides an alternative to the economic substance requirement to determine whether a MNE entity could obtain tax exemption on foreign-sourced dividend or equity interest disposal gain received in Hong Kong with effect from January 1, 2023.

CAPITAL GAIN

Hong Kong does not generally tax capital gains, except where foreign-sourced disposal gains of a MNE entity are deemed to be sourced from Hong Kong and are chargeable to profits tax when received in Hong Kong under the refined FSIE regime. In addition, the net gains on transactions deemed speculative may be taxable as a taxpayer's trading income.

DISTRIBUTIONS

Dividends distributed by a Hong Kong company to its shareholders are tax exempt. No withholding tax is levied on the distributing Hong Kong company.

LOSS UTILIZATION

Losses attributable to the operation of the trade, profession or business carried on in Hong Kong can be carried forward indefinitely to offset against future assessable profits until fully utilized. Where a taxpayer carries on multiple trades, profession or businesses in Hong Kong, the losses in one can be utilized against the profits of the other.

However, losses cannot be carried back to offset against assessable profits in prior basis periods.

TAX-FREE REORGANIZATIONS

Ad valorem stamp duty is payable for the transfers or sales of shares or immovable property in a reorganization (see Stamp duty). Stamp duty relief for intra-group reorganization is available subject to certain conditions.

ANTI-DEFERRAL RULES

There is no controlled foreign corporation (CFC) regime in Hong Kong.

FOREIGN TAX CREDITS

If foreign taxes are payable/paid on income derived from a jurisdiction where Hong Kong has a double taxation arrangement with and the same income is subject to tax in Hong Kong, a full credit for tax paid may be available in Hong Kong.

In addition, if foreign taxes are payable/paid on specified foreign-sourced income deemed taxable under the refined FSIE regime, foreign tax credits are available regardless of whether the jurisdiction has a double taxation arrangement with Hong Kong or not.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Income derived from renting out real properties by owners in Hong Kong is subject to property tax, which is charged at a standard rate of 15 percent of the property's net assessable value for the relevant year of assessment. Depending on individuals' actual income positions, it may be more beneficial for individuals subject to both profits tax and property tax to elect personal assessment, which allows certain deductions and computation of tax liabilities at progressive rates applicable. A corporation may also seek exemption if the relevant rental income has already been included for profit tax assessment. Save for specific exemptions, ad valorem stamp duty is levied on sale or transfer of real properties in Hong Kong at applicable rates depending on the type of immovable property being transferred.

In addition, residential property transactions in Hong Kong can attract ad valorem stamp duty, Buyer's Stamp Duty and Special Stamp Duty.

TRANSFER PRICING

The Hong Kong government amended the Inland Revenue Ordinance in July 2018 in order to meet the international standards of transfer pricing developed under the OECD. The main objectives of the amendments are to codify the transfer pricing principles (such as the arm's length principle), implement certain measures under the Base Erosion and Profit Shifting (BEPS) package and align the existing provisions with international tax requirements. The amendments also cover requirements and exemptions for transfer pricing documentation, including master file, local file and country-by-country report.

The Hong Kong government launched a consultation exercise in December 2023 to gather views on the implementation details of the global minimum tax under Pillar Two of the international tax reform proposals drawn up by OECD to address base erosion and profit shifting risks arising from the digitalization of the economy (BEPS 2.0). As announced by the Financial Secretary in the 2023-24 Budget, Hong Kong will apply the global minimum effective tax rate of 15 percent on in-scope MNE groups starting from 2025 onwards.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc.

Hong Kong does not impose withholding tax on dividends, interests or rents. The only withholding tax is on any payment made to a nonresident for the use of, or the right to use, certain intellectual property in Hong Kong, or outside Hong Kong where payments are deductible for a Hong Kong taxpayer. The general tax rate is 16.5 percent on the assessable profits, of which the first HKD2 million of profits of corporations will be lowered to 8.25 percent. When the payment is derived from an associate and the relevant intellectual property has once been owned by any Hong Kong taxpayer, the assessable profits are deemed to be 100 percent of the payment; in other circumstances, the assessable profits are generally deemed to be 30 percent of the payment. A double taxation arrangement may provide for a lower rate.

Service fees

Not applicable for this jurisdiction.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

Hong Kong does not have capital duty.

For shares transfer or sales of shares, ad valorem stamp duty is payable in respect of contract notes at the rate of 0.2 percent of the consideration or the fair market value of the shares, whichever is higher, and a fixed duty of HKD5 each is payable in respect of the instrument of transfer.

For sale or transfer of immovable property in Hong Kong, ad valorem stamp duty at applicable rates is payable depending on the type of immovable property being transferred. In addition, residential property transactions in Hong Kong may also attract Buyer's Stamp Duty and Special Stamp Duty.

For rental of immovable property in Hong Kong, stamp duty is payable at up to 1 percent of the average yearly rent.

In case of an intra-group transfer, a stamp duty exemption may apply.

EMPLOYMENT TAXES

Employment taxes

Regardless of whether the employees are residents in Hong Kong, employers are not required to withhold tax for employees. The only exception is in the case of a termination and if the employee intends to leave Hong Kong for over 1 month following the cessation of employment; in this case, the employer is required to give the IRD a notification in writing of such impending departure at least 1 month prior to the departure and must temporarily withhold all payment due to the employee for a period of 1 month from the date of filing the notification or until the IRD issues a "letter of release," whichever is earlier.

Pension contributions

Employers are required to:

- Withhold and pay 5 percent of their employees' relevant income (capped) as the employees' contributions and
- Pay an additional 5 percent as their own employer's contributions (capped) to the Mandatory Provident Fund (MPF) scheme or a MPF-exempted Occupational Retirement (MPF Exempted) scheme.

Currently, the maximum mandatory contributions of each of the employers' shares and employees' shares for such MPF scheme or MPF Exempted scheme is HKD1,500 (approximately USD200) for employees with a monthly relevant income exceeding HKD30,000 (approximately USD3,870). If the employee's monthly relevant income falls under HKD7,100 (approximately USD915), their monthly contributions to MPF scheme or MPF Exempted scheme are not required, but the employer's contribution obligation remains the same.

OTHER TAX CONSIDERATIONS

Imports into Hong Kong are generally duty-free with few exceptions. No customs or excise duty is levied on exports from Hong Kong.

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