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The International Comparative Legal Guide to:

Corporate Tax 2019

15th Edition

A practical cross-border insight into corporate tax work

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EDITORIAL

Welcome to the fifteenth edition of *The International Comparative Legal Guide to: Corporate Tax*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate tax

It is divided into two main sections:

Two general chapters, offering an insight into tax and state aid, and tax in relation to the digital economy.

Country question and answer chapters. These provide a broad overview of common issues in corporate tax laws and regulations in 34 jurisdictions.

All chapters are written by leading corporate tax lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor William Watson of Slaughter and May for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

Hong Kong has a relatively small yet quickly expanding double tax agreements ("DTA") network. As at September 2018, it has concluded 40 DTAs, 38 of which are effective at the moment. Currently, seven tax information exchange agreements ("TIEAs") have been concluded. The Government aims to expand Hong Kong's DTA network, especially with respect to countries along the so-called "Belt and Road" business initiative, with a view to bringing the total number of DTAs to at least 50 over the next few years.

1.2 Do they generally follow the OECD Model Convention or another model?

In principle, Hong Kong generally follows the Organisation for Economic Co-operation and Development ("OECD") Model Convention in negotiating and concluding DTAs and TIEAs.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

Typically, DTAs concluded with other jurisdictions are subject to ratification. More specifically, a bill would have to be passed by the Legislative Council before it is enacted into law.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

In accordance with the current OECD Model Convention, Hong Kong does not incorporate limitation of benefits ("LOB") clauses in the DTAs that have been concluded so far.

Nonetheless, most of the existing DTAs concluded by Hong Kong already contain specific provisions to prevent treaty abuse under specific articles (e.g. those on dividends, interest and royalties), based on whether one of the main purposes of the arrangement or transaction is to obtain treaty benefits. Furthermore, Hong Kong's domestic tax law also contains general anti-avoidance provisions to deny a tax benefit if a transaction is entered into for the sole or dominant purpose of enabling the taxpayer to obtain tax benefit. Moreover, in practice, both Hong Kong incorporated entities and foreign-incorporated entities must have an appropriate level of business substance in Hong Kong in order to obtain a Certificate of Resident Status from the Inland Revenue Department (the "IRD").

As such, for the aforementioned reasons, Hong Kong has opted to adopt a principal purpose test ("PPT") only in respect of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"), under which a person will not be granted benefits under a DTA if obtaining such benefits is one of the principal purposes of the transactions or arrangements involved.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

Where a DTA has been concluded, the domestic law position may be overridden by the DTA if the pertinent conditions are satisfied.

1.6 What is the test in domestic law for determining the residence of a company?

A company is resident in Hong Kong if its central management and control is exercised in Hong Kong in the relevant year of assessment. However, under Hong Kong's territorial basis of taxation, the chargeability to tax is generally determined on the source of income rather than on residence status. Having said that, the residence status can be relevant in the application of DTA provisions with other jurisdictions.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

The transfer of Hong Kong stock is subject to the imposition of Hong Kong stamp duty on the instrument of transfer. The rate of stamp duty on the transfer of Hong Kong stock is currently 0.2% of the higher of the consideration or the market value of the stock transferred. The stamp duty is payable by the seller and purchaser equally (i.e. 0.1% each), while the Stamp Duty Ordinance ("SDO") stipulates that any person who purchases Hong Kong stock, as either principal or agent, is required to execute a contract note that is liable to stamp duty at the rate of 0.1% on the consideration or value of the shares bought and sold.

Under the SDO, stamp duty relief may be applied on a conveyance of an interest in stock between group companies with at least a 90% common shareholding subject to satisfying certain conditions.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Hong Kong does not have a VAT or GST regime at present.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

This is not applicable.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

This is not applicable.

2.5 Does your jurisdiction permit VAT grouping and, if so, is it "establishment only" VAT grouping, such as that applied by Sweden in the *Skandia* case?

This is not applicable.

2.6 Are there any other transaction taxes payable by companies?

This is not applicable.

2.7 Are there any other indirect taxes of which we should be aware?

This is not applicable.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Hong Kong does not impose withholding tax on dividend payments made by a resident company to residents or non-residents.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

In brief, the following types of payments are effectively subject to a withholding tax*:

- sums derived from the exhibition or use of cinematograph or television films or tapes, sound recording or advertising material connected with such film, tape or recording which are deemed to arise in Hong Kong because of their exhibition or use in Hong Kong; and
- sums derived from the use of or the right to use a patent, design, trademark, copyright material, secret process or formula or other property of a similar nature which are deemed to arise in Hong Kong because of the use of or the right to use such property in Hong Kong.

A new deeming provision on income from intellectual property ("IP") has been introduced, but the Government has deferred the effective date of this section to the year of assessment 2019/2020 to allow the business community to analyse the implications in this regard. More specifically, where a person has contributed in Hong Kong to the development, enhancement, maintenance, protection or exploitation ("DEMPE") of an IP and income is derived by a non-Hong Kong resident that is an associate of that person from the use of or a right to use such IP outside Hong Kong, the part of the income which is attributable to the value creation contributions in Hong Kong will be regarded as a taxable trading receipt arising in or derived from a trade or business carried on in Hong Kong.

*In this regard, the deemed assessable profit in principle is 30%, subject to tax at the ordinary profits tax rate of 16.5%, resulting in a withholding tax of 4.95% on the gross payment.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Hong Kong does not impose withholding tax on interest payments made by a resident company to residents or non-residents.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Hong Kong does not have thin capitalisation rules at present.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

This is not applicable.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

This is not applicable.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

No, as Hong Kong does not impose withholding tax on interest. Withholding taxes are generally not levied, except on (deemed) royalties.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Payments of fees for rental or management services are not subject to withholding tax in Hong Kong.

3.9 Does your jurisdiction have transfer pricing rules?

Until recently, Hong Kong had no statutory transfer pricing rules addressing non-arm's length transactions between "closely connected persons" and the IRD relied on the general provisions in the IRO, case law, and (since 2009) practice notes to deal with transfer pricing issues. On 4 July 2018, the Legislative Council enacted Hong Kong's new transfer pricing regime which has codified and reaffirmed the taxpayers' and IRD's common understanding that transactions between related parties (which are typically determined on the basis of participation in the management, control and capital of another or of common participation by/through a third party) should follow the arm's length principle, consistent with the OECD's transfer pricing guidelines. In connection with the codification of the OECD's "Rule 1", the IRD is empowered to adjust profits or losses where a transaction between related parties departs from the transaction that would have been entered into between independent persons, in cases where this has created a Hong Kong tax advantage. There may be the upward adjustment of profits with an assessment or additional assessment of Hong Kong tax, or a computation of loss or smaller amount of computed loss may be issued. Based on the transfer pricing "Rule 2", i.e. the separate enterprises principle, the arm's length principle will also apply to dealings between different parts of an enterprise such as between the head office and a permanent establishment. The attribution of profits to permanent establishments is also introduced and covered in detail.

The said Rule 1 applies to transactions for year of assessment 2018/19, i.e. the period commencing 1 April 2018 onwards. Rule 2 is expected to apply as of the year of assessment 2019/20, i.e. as of 1 April 2019.

As an aside, it is worth noting that a formal regime for advance pricing arrangements ("APA") has also been established, which should facilitate taxpayers entering into unilateral APAs or bilateral APAs involving other jurisdictions.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

On 29 March 2018, the Inland Revenue (Amendment) (No. 3) Ordinance 2018 (the Ordinance) was gazetted to implement a "two-tiered" profits tax rates regime (instead of the previous flat rate of 16.5%).

The two-tiered profits tax rates regime will be applicable to any year of assessment commencing on or after 1 April 2018. The profits tax rate for the first $2 million of profits of corporations will be lowered to 8.25%. Assessable profits exceeding that amount will continue to be subject to the tax rate of 16.5%. For unincorporated businesses (i.e. partnerships and sole proprietorships), the two-tiered tax rates will be set at 7.5% and 15%, respectively. As a result, a tax-paying corporation or unincorporated business may save up to $165,000 and $150,000 each year, respectively.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

For Hong Kong profits tax purposes, the tax base is determined on the (audited) accounting profit subject to tax adjustments. Hong Kong applies a territorial basis of taxation, whereby tax is imposed on assessable income or profits arising in or derived from Hong Kong sources, or deemed as such.

It is also worth noting that there is a proposal to introduce legislative amendments to allow taxpayers to elect fair value accounting for tax reporting purposes. This would provide the legal basis for a practice that has been endorsed by the IRD and remove unnecessary uncertainty for taxpayers who would like to adopt this tax-reporting basis.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

Income of a capital nature (i.e. dividends and capital gains) falls outside the scope of chargeability to profits tax. Expenses, where revenue in nature and incurred in the production of (Hong Kong) assessable profits, are in principle tax deductible. Typical adjustments in this regard include depreciation and amortisation in respect of capital expenditure, intangible assets and interest.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

At present, Hong Kong does not have any tax grouping rules.

4.5 Do tax losses survive a change of ownership?

Losses of a revenue nature can generally be carried forward indefinitely and set off against chargeable profits in the future. However, losses may not be carried back.

In principle, a transfer of shares in a Hong Kong company does not affect the availability of the tax losses to be carried forward by that company, unless the change in the company's shareholders is effected for the sole or dominant purpose of using the tax losses of the Hong Kong company.

Any unused tax losses incurred by the transferor cannot be transferred to the transferee on the sale of the business or the assets of the transferor.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

Both the retention and distribution of profits made by Hong Kong companies are not chargeable to tax.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Property rates, based on the estimated annual letting value, are levied as a tax on the occupation of property on a quarterly basis.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Gains of a capital nature are specifically exempt from the charge of profits tax. Whether a gain is regarded as capital or revenue in nature is a question of facts and depends on the particular circumstances of each case. Generally speaking, and considering the frequency of a fund's normal course of business of buying and selling of investments, gains and losses derived from the purchase and sale of investments would in practice usually be regarded from a profits tax perspective as in the nature of revenue. Conversely, capital losses are not deductible for profits tax purposes.

5.2 Is there a participation exemption for capital gains?

As both capital gains and dividends are not chargeable to profits tax, there is no such need for a participation exemption in Hong Kong.

5.3 Is there any special relief for reinvestment?

In accordance with profits of a capital nature not being taxed, there are no special reliefs for reinvestments in this regard.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

There is no (withholding) tax on acquisitions that take the form of a purchase of shares of a company as opposed to a purchase of its business and assets. Persons are only subject to profits tax on their profits arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong, except for any profits realised from sales of capital assets, which are not within the chargeable scope of profits tax. As such, sellers are able to dispose of equity investments free of profits tax. By contrast, sales of certain assets may trigger a recapture of capital allowances claimed and possibly higher transfer duties (depending on the assets involved). However, asset purchases do have benefits, e.g. the potential to obtain deductions for the financing costs incurred on funds borrowed to finance the acquisition of business assets.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

The capital duty levied on Hong Kong companies has been abolished since 1 June 2012. A relatively small business registration fee and levy are charged for the business registration certificate which, in principle, every person who carries on a trade or business in Hong Kong must have applied for within one month from the date of commencement of business.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

As branches and subsidiaries are taxed on the same basis and at the same rates, there are theoretically no noteworthy differences (though practical differences could arise in respect of, amongst others, the attribution of profits and expenses between the head office and the branch, which are less likely to be an issue with a subsidiary).

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

As explained above, since Hong Kong applies a territorial basis of taxation, the chargeability to tax is actually determined on the source of income as opposed to the residence status. As such, a non-resident can also be held liable for tax in Hong Kong in respect of assessable profits which are attributable to a trade or business carried on in Hong Kong and which have a Hong Kong source.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

Hong Kong's territorial basis of taxation serves, to a large extent, as a measure of unilateral relief from double taxation, since most persons are not taxed on non-Hong Kong-sourced income.

A deduction would (only) be available for foreign tax paid in connection with interest or profits from the disposal or redemption of certificates of deposit and bills of exchange which are deemed to be derived from a trade or business carried on in Hong Kong. As most persons are not taxed on foreign income, the deduction is actually limited to financial institutions.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

Hong Kong does not have a branch profits/remittance tax.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

As explained above, the only items of income which have a source in Hong Kong are subject to profits tax. Moreover, Hong Kong does not have branch profits/remittance tax.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Dividend income received by a local company from a non-resident company is generally not subject to profits tax in Hong Kong, not being Hong Kong-sourced.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Hong Kong does not have controlled foreign company rules.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Non-residents investing in real estate are subject to the general taxation principles of the IRO where the source of rental income and profits derived from the sale of real estate are determined on the basis of the location of the property in question. Only income in connection with properties situated within Hong Kong is, in principle, subject to profits tax in Hong Kong.

To determine the nature of the gain in relation to the sale of Hong Kong situated real estate, the IRD will generally consider various factors to distinguish capital from revenue including, but not limited to, the taxpayer's intention, the length of the ownership of the property, the financial ability to hold the asset for long-term purposes, whether any work had been carried out to improve the property's value, the steps undertaken to lease out the property or the reasons for not letting out the property, the rate of return obtained by leasing out as opposed to the return obtained from selling, whether the sale was incidental or part of a series of transactions, etc. Only revenue income will be assessable for Hong Kong profits tax purposes.

Apart from profits tax, the transfer of Hong Kong real estate is subject to stamp duty, whereby the rate depends on the value of the immovable property based on the *ad valorem* rates prescribed in the SDO. An exemption may apply for the conveyance of an interest in immovable property between companies with at least a 90% common shareholding if certain conditions are satisfied under the SDO. On the basis that the residential property in question has been held for more than 36 months, no special stamp duty ("SSD") will be triggered upon the transfer.

The transfer of real estate may also trigger buyer's stamp duty ("BSD") consequences, but these are generally the responsibility of the purchaser (in practice, usually both the BSD and the AVD are contractually shifted to the purchaser).

In addition to profits tax and stamp duty, property tax is in principle charged on the owners of land and/or buildings in Hong Kong in respect of the income derived in this connection (the standard rate is currently 15%). Notwithstanding this, a company subject to profits tax may apply for an exemption from property tax where the property is used by the company for the production of profits chargeable to profits tax. Property tax is, in principle, creditable against profits tax.

Last but not least, property rates are levied on the occupation of properties. The rateable values are generally based on the estimated (annual) letting value, which can be obtained from the Commissioner of Rating and Valuation.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

Both transfers of immovable property and Hong Kong shares are generally subject to stamp duty (including transfers of shares in a Hong Kong company which owns Hong Kong real estate).

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Hong Kong does not have a *specific* tax regime for REITs or equivalents. However, in Hong Kong, REITs are regulated by the Securities and Futures Commission ("SFC") which is given the power, under the Securities and Futures Ordinance ("SFO"), to authorise collective investment schemes (which include mutual funds and unit trusts) to be offered to the retail public. In order to be authorised as a REIT, the structure and investment restrictions of the scheme have to comply with the SFC Code on REITs and the scheme would also apply to be listed on the Hong Kong Stock Exchange. Profits tax exemption applicable to SFC authorised funds shall also apply to REITs that are authorised funds.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

Hong Kong has general anti-avoidance rules ("GAAR") in the IRO, in respect of which transactions which reduce the amount of tax payable and which appear to be artificial or fictitious may be disregarded by the tax authorities in determining the taxpayer's assessable profits, particularly to dissuade the shifting of assessable income from a Hong Kong resident to a closely connected non-resident person. Further, there are various specific anti-avoidance rules in the IRO.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

There is no specific legislation which aims at making special disclosures of avoidance schemes. However, the IRD has expressed its view in practice notes that GAAR will be invoked where taxpayers book profits offshore with a view to avoiding Hong Kong tax. In particular, the IRD pays close attention to transactions where taxpayers have entered into transactions with a closely connected non-resident person, which would have to be reported in the profits tax return at hand. Upon request by the IRD, taxpayers are obliged to provide information to substantiate claims that the profits in question are not sourced in Hong Kong.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

There is no specific legislation that aims at promoting, enabling or facilitating tax avoidance. However, there are rules on tax evasion under the IRO, which apply to both taxpayers and any other persons who assist taxpayers in evading tax.

Under the Hong Kong Anti-Money Laundering and Counter-Terrorist Financing Ordinance ("AMLO"), "money laundering" is defined as "*an act intended to have the effect of making any property:*

(a) that is the proceeds obtained from the commission of an <u>indictable offence</u> under the laws of Hong Kong, or of any conduct which if it had occurred in Hong Kong would constitute an indictable offence under the laws of Hong Kong; or

(b) that in whole or in part, directly or indirectly, represents such proceeds,

not to appear to be or so represent such proceeds."

"Tax evasion" under the Inland Revenue Ordinance is an indictable tax offence fulfilling the above "money laundering" definition, which constitutes a predicate offence for money laundering in Hong Kong:

(1) "Any person who wilfully with intent to evade or to assist any other person to evade tax—

(a) omits from a return made under this Ordinance any sum which should be included; or

(b) makes any false statement or entry in any return made under this Ordinance; or

(c) makes any false statement in connection with a claim for any deduction or allowance under this Ordinance; or

(d) signs any statement or return furnished under this Ordinance without reasonable grounds for believing the same to be true; or

(e) gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Ordinance; or

(f) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or

(g) makes use of any fraud, art, or contrivance, whatsoever or authorizes the use of any such fraud, art, or contrivance,

commits an offence."

9.4 Does your jurisdiction encourage "co-operative compliance" and, if so, does this provide procedural benefits only or result in a reduction of tax?

Hong Kong has shown consistency in encouraging "cooperative compliance", particularly to provide procedural benefit. Amongst others, as of 12 April 2013, Hong Kong is able to enter into TIEAs with jurisdictions with which a DTA has not (yet) been concluded or to enhance existing exchange of information arrangements under DTAs. On 13 November 2014, the Foreign Account Tax Compliance Act ("FATCA") agreement with the United States was signed. On 30 June 2016, Hong Kong adopted the new international standard for automatic exchange of financial account information in tax matters, i.e. the common reporting standard ("CRS") promulgated by the OECD. On 6 October 2017, Hong Kong enabled its participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the alignment of the IRO with CRS. Furthermore, Hong Kong has expressed its commitment to the OECD's BEPS framework, and has already put in place the necessary legislative framework for transfer pricing rules which cover the latest guidance from the OECD, spontaneous exchange of information with regard to tax rulings, country-by-country ("CbC") reporting requirements, and the cross-border dispute resolution mechanism and the Multilateral Instrument.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD's project targeting Base Erosion and Profit Shifting (BEPS)?

In June 2016, Hong Kong accepted the invitation of the OECD to join the inclusive framework for global implementation of the Base Erosion and Profit Shifting ("BEPS") measures. In June 2017, China signed the MLI on behalf of Hong Kong (although with rights reserved with respect to most articles of the MLI).

Nonetheless, Hong Kong has expressed its commitment to the implementation of the four minimum standards of OECD's BEPS Action Plan, namely: (i) countering harmful tax practices (Action 5); (ii) preventing treaty abuse (Action 6); (iii) imposing CbC reporting (Action 13); and (iv) improving the cross-border dispute resolution regime (Action 14). On 29 December 2017, the Inland Revenue (Amendment) (No. 6) Bill 2017 ("the Amendment Bill") was published in the Gazette and subsequently enacted as Inland Revenue (Amendment) (No. 6) Ordinance 2018 to implement aforesaid BEPS Actions.

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD's BEPS reports?

As explained above, Hong Kong has committed to the implementation of the four minimum standards at present.

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

Hong Kong resident ultimate parent companies of multinational enterprises with consolidated revenue of over HK$ 6.8 billion (i.e. approximately EUR 750 million) in the previous year of assessment, or Hong Kong entities that are nominated as surrogate filing entities, will be required to prepare and submit a CbC report to the IRD. A CbC report must be prepared for accounting periods beginning on or after 1 January 2018, in principle, within 12 months after the end of the accounting period to which the report relates.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

Although Hong Kong does not have a patent box regime, it does have various other preferential tax regimes and concessions, such as (but not limited to) profits tax exemption for offshore funds which has extended to private equity funds, open-ended fund companies which have their central management and control exercised in Hong Kong and meet certain conditions (of not being "closely held"), a notional tax regime for profits in connection with qualifying aircraft leasing and/or management activities, qualifying corporate treasury centres, tax concessions for gains derived from qualifying debt instruments, concessions for captive insurers reinsurance companies, and outright or accelerated tax deductions for qualifying environmentally-friendly investments, etc.

11 Taxing the Digital Economy

11.1 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

Currently, the IRO does not contain any provisions that deal specifically with e-commerce. As such, to determine if income in connection with digital activities are assessable profits, the general taxation principles (and relevant case law) and the (above-explained) "deeming provisions" with respect to sums which are chargeable to profits tax as royalties or licence fees for IP under the IRO apply in this regard. Nonetheless, to provide clarity on the IRD's opinion on the taxation of e-commerce businesses, a specific practice note on the taxation of e-commerce was issued in July 2001. Broadly speaking, the IRD has been taking a neutral approach as regards the tax treatment of e-commerce businesses. The IRD has expressed its view that e-commerce is treated on the same basis as "conventional" forms of business and no particular business form should have either an advantage or a disadvantage for profits tax purposes in Hong Kong.

11.2 Does your jurisdiction support the European Commission's interim proposal for a digital services tax?

At present, Hong Kong has not expressed any formal opinion on the EC's interim proposal for a digital services tax. Nevertheless, it is worth noting that ever since the EU had once named Hong Kong as one of the jurisdictions that were not cooperating in efforts to fight tax avoidance in the European Commission's Corporate Tax Reform Action Plan (announced on 17 June 2015), Hong Kong has been spending utmost efforts in keeping up to comply with evolving international tax standards. Such positive attitude has also been recognised by the EU Council, demonstrated by the fact that Hong Kong was not being listed as a non-cooperative jurisdiction on the EU blacklist released on 5 December 2017. As such and to avoid any potential reputational damage, it is expected that the Government will continue its positive approach in taking necessary measures, amongst others, addressing any preferential tax regimes with a ring-fencing feature that are identified in the future.

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Vivien Teu is the founding and managing partner of Vivien Teu & Co LLP. She has extensive and in-depth experience as a corporate and commercial lawyer specialising in the financial services sector, funds and wealth management. Vivien carries diverse legal practice with top-tier and magic circle firms in the areas of tax, trusts, banking and financial services, investment funds, securities regulatory and financial institutions set-up, as well as mergers & acquisitions. Along with significant in-house counsel experience at a global investment firm, Vivien brings unique insights and practical commercial approaches in her practice, and with a particular China focus.

Vivien's experience in the areas of asset management covers diverse forms of investment funds include Hong Kong SFC authorisation of retail funds (including UCITS funds and domestic HK fund series), Mainland-Hong Kong Mutual Recognition of Funds, China-theme investment funds including QFII and RQFII China A Share Funds, RMB Fixed Income Funds, Stock Connect, accessing the China-Interbank Bond Market, and advising in relation to ETFs and REITs. Vivien also regularly advises on: China outbound investments; structured finance and securitisation; SFC licensing and regulatory matters; Hong Kong securities compliance advice; assisting clients of diverse backgrounds with establishing private investment funds including hedge funds, private equity funds, real estate funds, institutional segregated account mandates and other investment arrangements; and advising on fund distribution matters, custody structure, investment and trading matters. Vivien's experience also includes joint ventures or mergers & acquisitions of financial institutions or asset management firms, advising on shareholders agreements, corporate governance, general corporate and commercial advice, private and corporate trusts, tax issues and tax structuring.

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Kenneth Yim is a tax consultant, specialising in the tax-efficient restructuring of cross-border corporate and commercial transactions for asset managers, investors and family offices in or involving Asia.

His international tax planning experience includes tax considerations in respect of start-ups, mergers & acquisitions, joint-ventures, finance, intellectual property, real estate, insurance, estate planning, employment, and supply-chain management in a cross-border context. He also supports taxpayers in disputes with tax authorities and negotiations on advance tax rulings.

Prior to joining Vivien Teu & Co LLP, Kenneth worked for the Hong Kong office of a global professional services firm where his last position was head of tax, respectively, a "Big Four" accountancy firm where he provided and coordinated tax advice for financial institutions with business across Asia-Pacific. Before relocating to Hong Kong in 2011, he worked as a tax lawyer in the Netherlands where he developed a particular interest and experience in tax structuring with respect to Western and Asian inbound and outbound transactions.

Kenneth is the author of IBFD's Hong Kong chapter of "*Investment Funds and Private Equity*", and is a regulator contributor to their publications on international tax matters.

He graduated from Tilburg University with LL.M. degrees in tax law and civil law in 2005 and 2006, respectively. He later qualified with the Netherlands Association of Tax Advisors ("*Nederlandse Orde van Belastingadviseurs*").

Vivien Teu & Co LLP is a Hong Kong solicitors firm established in early 2015.

At Vivien Teu & Co, we are dedicated to providing legal services for clients at the highest standards to meet their needs in today's complex and dynamic business and regulatory environment. Established with the philosophy of a boutique law firm focusing on the areas of corporate, securities, asset management and financial services, our lawyers are experienced in advising international and local corporations, including large global institutions, listed entities, industry conglomerates, as well as international, Hong Kong and China financial institutions such as commercial and private banks, securities companies, asset management and private equity firms.

As a Hong Kong law firm founded with people closely connected and dedicated to Hong Kong, we understand the unique culture and position of Hong Kong as a Special Administrative Region of the People's Republic of China and *versus* the rest of the world. Our lawyers carry in-depth Hong Kong and international legal practice experience, combined with deep and broad knowledge of China and regional markets.

Besides corporate and commercial practice, Vivien Teu & Co LLP has a particular focus on asset management and financial services practice areas, regularly advising local and international clients who are establishing or operating asset management platforms in Hong Kong, or otherwise accessing investors or investment opportunities in the Greater China region and beyond. The firm also boasts dedicated trusts and succession advisory expertise, increasingly serving high-net-worth private clients and entrepreneurs, in its wider financial services and wealth management practice. The firm's tax advisory capability is an integral part of its corporate and commercial practice and a value-add where required, and augments its asset management and financial services practice.

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