Tax Regime and Tax Planning Opportunities in Hong Kong

1 Hong Kong Company income tax and Individual income tax

Hong Kong boasts one of the lowest tax rates in the world. Only income or sales sourced in Hong Kong is taxable. Then, the corporate income is not taxable if the said income earning activities are performed wholly outside Hong Kong. The principal direct taxes are profits tax, salaries tax and property tax. Hong Kong's taxation is also as simple as it is an incentive for enterprises to invest here.

There is no capital gains tax. Both the interest income received from bank deposits and dividends received from corporations are exempt from profits tax.

Tax type	Rate (2016/2017)
Profits Tax for corporation(Company income tax):	16.5% (flat rate)
Salary Tax (Individual income tax):	15% (progressive rate with maximum of 15%)

Hong Kong Profit Tax (Company income tax)

Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong from such trade, profession or business. There is therefore no distinction made between residents and non-residents. A resident may therefore derive profits from abroad without suffering tax; conversely, a non-resident may suffer tax on profits arising in Hong Kong.

Hong Kong Salary Tax (Individual income tax)

The Hong Kong tax system is based on the territorial concept. Salaries tax is imposed on all income arising in or derived from Hong Kong from an office or employment or any pension irrespective of whether tax on that income has been paid in other jurisdictions.

In determining the source of employment, the following three factors are relevant:

- the place where the contract of employment was negotiated and entered into, and is enforceable;
- the employer’s place of residence; and
- the place of payment of the employee’s remuneration.

In general, if all three factors take place outside Hong Kong, the employment is regarded as located outside Hong Kong.

Most individual taxpayers in Hong Kong who receive income from an office, employment or pension from a Hong Kong company are charged salaries tax.

2 Hong Kong Company Income Tax Planning Opportunities

Hong Kong Offshore Profit Tax Exemption

Only profits which have a source in Hong Kong are taxable here. Profits sourced elsewhere are not subject to Hong Kong Profits Tax. The principle itself is very clear but its application in particular cases can be, at times, contentious. To clarify the operation of the principle, we have prepared this simple guide on the territorial source principle of taxation. It gives a brief explanation of how the principle operates and provides simple examples for illustrative purposes of the tests applied to different types of businesses. If you wish to explore the subject in greater depth, we recommend that you consult Global CPA.

Hong Kong Companies Income sourced outside Hong Kong are not taxable

The Courts have over the years considered the subject of the source of profits. The following principles have emerged from authoritative court decisions.

Matter of fact

The question of locality of profits is a hard, practical matter of fact. No universal rule can apply to every scenario. Whether profits arise in or are derived from Hong Kong depends on the nature of the profits and of the transactions which give rise to such profits.

The operations test

The broad guiding principle is that one looks to see what the taxpayer has done to earn the profits in question and where he has done it. In other words, the proper approach is to identify the operations which produced the relevant profits and ascertain where those operations took place. The source of profits must be attributed to the operations of the taxpayer which produce them and not to the operations of other members of the taxpayer's group.

Antecedent or incidental activities

The relevant operations do not comprise the whole of the taxpayer's activities. The focus is on establishing the geographical location of the taxpayer's profit-producing transactions as distinct from activities antecedent or incidental to those transactions.

Place where decision is made

The place where the day-to-day investment/business decisions take place is only one factor which has to be taken into account in determining the source of profits. It is not usually the deciding factor.

Gross profits from transactions

The distinction between Hong Kong profits and offshore profits is made by reference to the gross profits arising from individual transactions.

Business presence overseas

A business may maintain a presence overseas which earns profits outside Hong Kong but the absence of a business presence overseas does not, of itself, mean that all the profits of a Hong Kong business invariably arise in or are derived from Hong Kong. However, in the vast majority of cases where the principal place of business is located in Hong Kong and there is no business presence overseas, profits earned by that business are likely to be chargeable to Profits Tax in Hong Kong.

3 Hong Kong Individual Income Tax Planning Opportunities

Hong Kong Salary Tax Exemption

Whether or not individual taxpayers can apply for an exemption of some or all of your income from salaries tax depends on the source of your employment.

The charging of salaries tax in Hong Kong is based on the territorial concept. This means that all income arising in or derived from Hong Kong from an office, employment or any pension is assessable irrespective of whether tax on that income has been paid in other jurisdictions. The following sections describe how these conditions relate to most taxpayers.

Working physically outside Hong Kong - Tax Exemption

If the source of individual taxpayers employment is outside Hong Kong, e.g. individual taxpayers assigned to work in Hong Kong for a few years by your overseas employer and you have to perform part of your duties in other countries, the individual taxpayers is only assessed on the income attributable to the services you rendered in Hong Kong, including leave pay attributable to such services, and generally according to the number of days you were in Hong Kong (day-in-day-out basis) in a year of assessment.

Hong Kong Salary Tax full or Partial Exemption or Relief

The individual taxpayers can apply for full or partial exemption of income or relief from tax if you satisfy one of the following conditions:

1. Only Part of Your Employment Income were sourced in Hong Kong - This exemption only applies to individual taxpayers whose source of employment is outside Hong Kong. As salaries tax in this case is only levied on income derived from services rendered in Hong Kong, income attributable to services rendered outside Hong Kong is exempt from tax. The amount of income exempted is generally computed by time-basis apportionment with reference to the number of days spent outside Hong Kong.

2. All Services Were Rendered Outside Hong Kong During the Year-This exemption is generally available to individual taxpayers irrespective of the locality of their employment. Attending trainings, meetings, or reporting in Hong Kong is regarded as services rendered in Hong Kong for the purpose of the exemption. The individual taxpayers are exempt from salaries tax for a year of assessment only if individual taxpayers rendered all services outside Hong Kong in that year of assessment, unless individual taxpayers is a civil servant or a crew member of a ship or an aircraft. Income from services rendered in Hong Kong during visits not exceeding a total of 60 days in the year is also excluded from tax.

3. Part of Your Income Has Already Been Charged to Tax in Any Other Territory During the Year-This exemption is generally only applicable to employees whose source of employment is in Hong Kong. If individual taxpayers have paid tax of substantially the same nature as Hong Kong salaries tax to a territory outside Hong Kong for income relating to services you rendered in that territory, that part of the income will be exempt from salaries tax. Evidence of foreign tax payment is required.

4 Hong Kong Stamp duties, Property tax and Transfer pricing

Other Hong Kong taxes

Hong Kong Stamp duties

Stamp duties are chargeable on instruments that effect transactions in immovable property situated in Hong Kong, as well as stocks and shares of Hong Kong companies.

Hong Kong Property Tax

Property tax is a tax on the income of immovable properties , including houses, buildings and land. The tax payable is calculated based on the annual income (Rental income) of the property.

Hong Kong Transfer Pricing

The Courts The Inland Revenue department of Hong Kong assumed all related party transactions to be carried out at arm's length. It has issued guidance on how the arm's length principle is to be applied in practice and the documentation taxpayers need to maintain to comply with this principle.

Under the anti-avoidance ordnance, the Inland Revenue department is empowered to make pricing adjustments to transactions that are not in compliance with the arm's length standard.

The Inland Revenue department has also issued a interpretation note on transfer pricing consultation. The interpretation note outlines how the Inland Revenue department intends to review taxpayers' compliance with the arm's length standard for their related-party transactions.

Hong Kong Useful Links

Hong Kong Useful Links

The links below include websites of the Hong Kong SAR Government and external websites. We are not responsible for the contents of these websites.

Trade and Investment Links

- **Commerce & Economic Development Bureau** http://www.cedb.gov.hk/
- **Trade and Industry Department** http://www.tid.gov.hk/
- **InvestHK** http://www.investhk.gov.hk/index.html
- **Trade Development Council** http://www.hktdc.com/tc-buyer/
- **Other Economic and Trade Offices** http://www.gov.hk/en/about/govdirectory/oohk.htm
- **Hong Kong Monetary Authority** http://www.hkma.gov.hk/eng/index.shtml
- **HK Stock Exchanges & Clearing Ltd** http://www.hkex.com.hk/eng/index.htm
- **Tradelink** http://www.tradelink.com.hk/eng/index.html
- **CEPA** http://www.tid.gov.hk/english/cepa/

General Information on HK Government Department

- **HKSAR Government Information Centre** http://www.gov.hk/tc/residents/
- **Chief Executive's Office** http://www.ceo.gov.hk/
- **Legislative Council** http://www.legco.gov.hk/
- **Basic Law** http://www.basiclaw.gov.hk/tc/index/index.html
- **Laws of Hong Kong** http://www.legislation.gov.hk/index.htm

Discovering Hong Kong

- **Hong Kong Tourism Board** http://www.discoverhongkong.com/us/index.jsp

Global CPA Contact

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