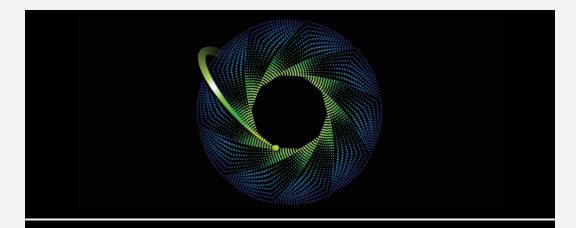
Deloitte.

Hong Kong | Tax & Business Advisory | 11 November 2022 | Issue 163



Hong Kong Tax Newsflash

Proposed amendments to the draft legislation for foreign-sourced income exemption (FSIE) regime

INspire HK 躍動香港

Shortly after the introduction of the Bill¹ regarding foreign-sourced income exemption (FSIE) regime in late October 2022, the European Union raised its concerns regarding certain exclusions of covered taxpayers in the Bill. In this regard, the Hong Kong SAR government proposed to make some amendments to the Bill.

In this article, we highlight the proposed amendments. For the features of the FSIE regime, please refer to our <u>Hong Kong *Tax Analysis Issue*</u> <u>H110/2022</u>.

Proposed amendments to the FSIE regime

Excluded entities modelled on the Global Anti-Base Erosion (GloBE) rules

In the original Bill, specified entities with reference to the definition of "excluded entity" (e.g. investment fund, insurance investment entity, pension fund etc.) are excluded from the FSIE regime. As the EU does not agree with such carve-out, the relevant provisions will be removed from the Bill.

Taxpayers benefitting from the preferential tax regimes

In the original Bill, taxpayers benefitting from the existing preferential tax regimes can be excluded from the FSIE regime. Such exclusion will be switched from an "entity approach" to an "income approach". Interest, dividend and disposal gain derived from or incidental to the carrying out of profit producing activities under a preferential tax regime² will be excluded from the FSIE regime.

The Inland Revenue Department (IRD) will issue further guidance in relation to the proposed amendments.

Our comments

The combined effect of the above proposed amendments is that no excluded entity will be specified in the Bill. Nevertheless, there will not be much impact to the affected taxpayers (except insurance investment entity) because they would still be exempted from tax under the other provisions of the Bill and the existing provisions of the Inland Revenue Ordinance. For example, the vast majority of investment funds are not required to prepare consolidated financial statements and hence are not MNE entities as defined under the FSIE regime that fall within the scope.

Since none of the existing preferential regimes in Hong Kong cover intellectual property income, there will be no material impact on switching to an "income approach" for taxpayers benefitting from the preferential regimes. Having said that, the proposed amendment may create an uncertainty on whether a foreign-sourced specified income would be considered incidental to the profit producing activities under a preferential tax regime in order to qualify for exclusion from the FSIE regime. We hope the IRD will provide clarification in its guidelines.

¹ Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Bill 2022

² Include aircraft lessors and aircraft leasing managers, ship lessors and ship leasing managers, ship operators, corporate treasury centres, captive insurers, professional reinsurers, specified insurers, licensed insurance broker companies, eligible taxpayers under carried interest regime and unified fund exemption regime.

Tax Newsflash is published for the clients and professionals of Deloitte Touche Tohmatsu. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter.

If you have any questions, please contact our professionals:

Authors

Doris Chik Tax Partner +852 2852 6608 dchik@deloitte.com.hk Carmen Cheung Tax Manager +852 2740 8660 carmcheung@deloitte.com.hk

Kiwi Fung

Tax Manager +852 2258 6162 <u>kifung@deloitte.com.hk</u>

Global Business Tax Services National Leader Andrew Zhu

Hong Kong Raymond Tang Tax Partner +86 10 8520 7508 andzhu@deloitte.com.cn

International and M&A Tax National Leader Vicky Wang Tax Partner +86 21 6141 1035

vicwang@deloitte.com.cn

Tax Partner +852 2852 6661 <u>raytang@deloitte.com.hk</u>

Hong Kong Anthony Lau Tax Partner +852 2852 1082 antlau@deloitte.com.hk

Get in touch



Deloitte China provides integrated professional services, with our long-term commitment to be a leading contributor to China's reform, opening-up and economic development. We are a globally connected and deeply locally-rooted firm, owned by its partners in China. With over 20,000 professionals across 30 Chinese cities, we provide our clients with a one-stop shop offering world-leading audit & assurance, consulting, financial advisory, risk advisory, business advisory and tax services.

We serve with integrity, uphold quality and strive to innovate. With our professional excellence, insight across industries, and intelligent technology solutions, we help clients and partners from many sectors seize opportunities, tackle challenges and attain world-class, high-quality development goals.

The Deloitte brand originated in 1845, and its name in Chinese (德勤) denotes integrity, diligence and excellence. Deloitte's professional network of member firms now spans more than 150 countries and territories. Through our mission to make an impact that matters, we help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region.

Please see www.deloitte.com/about to learn more.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms or their related entities (collectively, the "Deloitte organization") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2022 Deloitte Touche Tohmatsu in Hong Kong, Deloitte Touche Tohmatsu in Macau, and Deloitte Touche Tohmatsu Certified Public Accountants LLP in the Chinese Mainland. All rights reserved.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.