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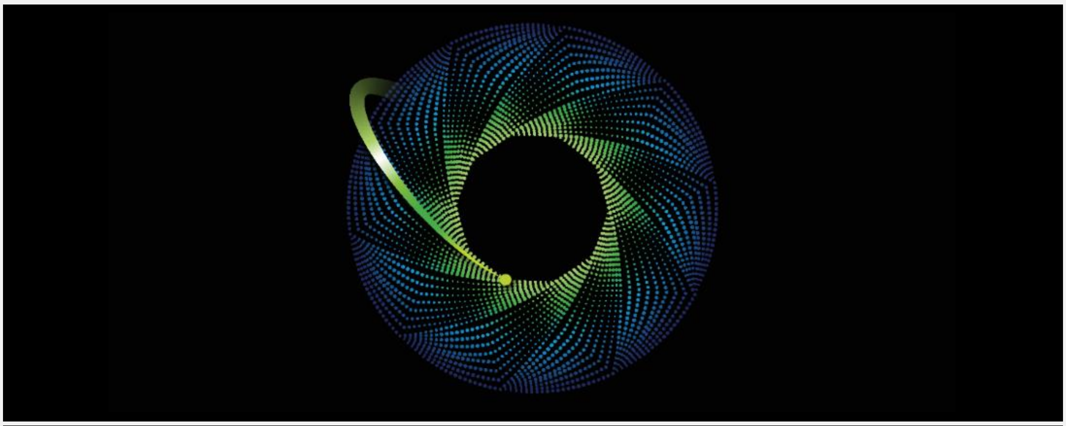

Hong Kong Tax Newsflash

Company re-domiciliation regime under consultation

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Hong Kong plans to introduce a legal regime to facilitate company re-domiciliation to in Hong Kong. The Hong Kong SAR Government recently released a consultation paper on the proposed company re-domiciliation regime which would allow a company incorporated outside Hong Kong to change its place of incorporation to Hong Kong.

Key features of the proposed regime

- The proposed regime would enable a company domiciled elsewhere to change its place of incorporation to Hong Kong under the Companies Ordinance.

- Applicable to the following 5 company types:
  - Private companies limited by shares
  - Public companies limited by shares
  - Companies limited by guarantee without a share capital
  - Private unlimited companies with a share capital
  - Public unlimited companies with a share capital

- No economic substance test would be imposed on the applying company.

- Under the proposed regime, the re-domiciled company would retain its identity, i.e. no new legal entity would be created throughout the process. The re-domiciled company would have the same rights and obligations as any other incorporated company in Hong Kong.

- Registrar of Companies would administer and approve the applications by considering various factors, such as company type, fulfilment of compliance requirements in the original place of incorporation, integrity, member and creditor protection, solvency etc.

- The re-domiciled company would be required to de-register in its original place of incorporation within 60 days upon successful application.

Tax implications

The proposed regime would not affect the re-domiciled company's chargeability to Hong Kong profits tax because a person would be chargeable to tax for its onshore sourced income derived from a business in Hong Kong regardless of its domicile or place of incorporation. On the other hand, the re-domiciliation also should not affect the companies' tax obligation to the originating jurisdiction.

Nevertheless, the Inland Revenue Ordinance would be amended to provide certainty to the re-domiciled companies on their tax obligations. In addition, certain transitional tax matters would be addressed, such as fair deduction for trading stock, bad debts, impairment losses on financial assets, depreciation, etc. The details of the proposed transitional measures have not been announced yet.

According to the definitions of resident in most of the tax treaties concluded by Hong Kong, a company incorporated in Hong Kong would be regarded as a Hong Kong tax resident. Therefore, it appears that the re-domiciliation regime may allow the re-domiciled companies being regarded as Hong Kong tax residents for tax treaty purpose. This is subject to clarification by the Inland Revenue Department.

What's next

The Hong Kong SAR Government is seeking comments from stakeholders on the proposed regime and will take into account views to be received and refine the proposal. The plan is to introduce the amendment bill to the Legislative Council in 2023/2024.

Our comments

We welcome the introduction of company re-domiciliation regime as it would facilitate overseas companies to re-domicile in Hong Kong and promote Hong Kong as a preferred base for multinationals.

Companies who are interested in re-domiciling to Hong Kong should watch out the development.

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