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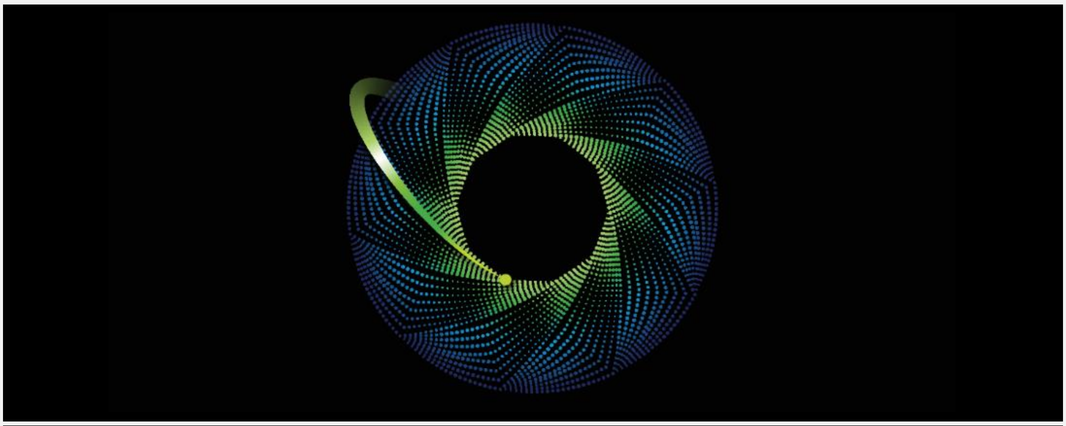

Hong Kong Tax Newsflash

Latest legislative proposal on company re-domiciliation regime

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The government has recently published the public consultation conclusion and latest legislative proposals for the company re-domiciliation regime, following the consultation[1] launched in March 2023. The introduction of the company re-domiciliation regime aims to facilitate companies domiciled overseas to re-domicile to Hong Kong, thereby enhancing Hong Kong 's competitiveness through attracting enterprises and investment, as well as strengthening Hong Kong's position as a global business and financial hub.

Framework

Legal identity: The proposed regime allows companies re-domiciling to Hong Kong to preserve their legal identities without the need to create a new legal entity.

Business continuity: It ensures that the companies' property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of the companies remain unaffected. A registered non-Hong Kong company[2] will be allowed to retain its company name and business registration number after re-domiciliation.

Rights and obligations: Upon re-domiciliation, the company would have the same rights and obligations as a locally incorporated company under Companies Ordinance (CO), such as requirements of a company secretary, record-keeping (applicable from the date of re-domiciliation), annual audited financial statements, etc.

Eligibility criteria & application

- **Types of companies:** The proposed regime would be applicable to the four types of companies[3] . The company type of the applicant under the law of its original domicile should be the same or substantially the same as that under the CO.

- **Permitted outward re-domiciliation:** The proposed re-domiciliation is permitted under the law of the applicant's original domicile.

- **Application timing:** As at the date of application for re-domiciliation, the applicant's first financial year end since its incorporation must have passed.

- **Member's consent:** The applicant should obtain members' consent under the law of its original domicile. If the law of the original domicile does not require members' consent, a certified copy of a resolution duly passed by at least 75% of the eligible members will be accepted.

- **Proof of solvency by financial statements:** The applicant must prove its solvency by providing the financial statements[4] and a legal opinion[5]. The financial statements are required to be audited only if it is so required under the law of its original domicile[6].

- **Proof of compliance by legal opinion:** To ensure an applicant's compliance with the requirements of the laws of its original domicile, a legal opinion of a legal practitioner who practises the law of the original domicile that the proposed re-domiciliation is allowed under that law is required.

- **Regulation of financial institutions:** Insurers and Authorized Institutions (AIs) should be capable of fulfilling the regulatory requirements applicable to locally incorporated insurers and AIs, as assessed by the respective regulators in Hong Kong.

- **Approval time:** Upon receipt of all required documents, an application will generally be approved by the Companies Registry (CR) within 2 weeks.

- **Certificate of re-domiciliation**: Upon successful application, the CR will issue a certificate of re-domiciliation to the company.

- **Deregistration within 120 days:** The company should deregister from its original domicile within 120 days. Extension will be allowed where necessary.

- **No economic substance test:** In order to make the proposed regime as inclusive as possible, no economic substance test would be imposed.

Tax implications

- **Profits tax:** The proposed regime would not affect the re-domiciled company's chargeability to Hong Kong profits tax or its tax obligations in its original domicile.

- **Transitional matters:** The Inland Revenue Ordinance (IRO) would be amended to address the transitional tax matters that arise post-re-domiciliation, including fair deduction for trading stock, specified types of expenditures and depreciation allowances, etc.

- **Unilateral tax credit for exit tax:** Unilateral tax credits would be provided in respect of tax payable on actual profits derived in Hong Kong after re-domiciliation where similar profits have been taxed in an unrealized form by the original domicile upon exit.

- **Tax residency:** The government considers that clarification of tax residency of a re-domiciled company for the general purposes of the IRO would not be necessary, as a company is chargeable to profits tax regardless of its domicile or residency.

- **Stamp duty:** Since the re-domiciliation process would not entail any transfer or change in the beneficial ownership of assets, no stamp duty liabilities would arise from the process.

Legislative timeline

The government is in the process of drafting the amendment Bill but no specific timeline is provided at this stage.

Our observations

We are pleased to note that the government has taken into account stakeholders' views and incorporated their comments in formulating the proposal. Meanwhile, we observe a couple of uncertain areas which require clarification from the Inland Revenue Department (IRD).

- There is ambiguity surrounding the tax residency of a re-domiciled company for the tax treaty purposes. In particular, it is not clear whether a re-domiciled company would be regarded as a Hong Kong tax resident for tax treaty purposes as if it is a Hong Kong incorporated company, thereby exempting it from the need to substantiate normal management or control in Hong Kong (e.g. when obtaining the Certificate of Resident Status) – a matter that is controversial.

- Although it is not mentioned in the paper, given that the shares of a re-domiciled company will be registered in Hong Kong, stamp duty may arise for subsequent transfers of the shares.

We look forward to the Bill and the IRD's guidance to clarify these matters in the future. Companies interested in re-domiciling to Hong Kong should monitor developments closely.

[1] Please refer to our Hong Kong Tax Newsflash Issue 184 for details.

[2] a non-Hong Kong company with a place of business in Hong Kong and registered under Part 16 of the Companies Ordinance prior to its re-domiciliation

[3] (1) Private companies limited by shares (2) Public companies limited by shares (3) Private unlimited companies with a share capital (4) Public unlimited companies with a share capital

[4] as at a date no more than 12 months prior to the application date

[5] of a legal practitioner who practises the law of the original domicile of the applicant that the company is duly registered and validly subsisting in the original domicile and that the company is not in liquidation

[6] or the rules of relevant stock exchange or similar regulatory bodies

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If you have any questions, please contact our professionals:

Authors

Doris Chik
Tax Partner
+852 2852 6608
dchik@deloitte.com.hk

Carmen Cheung
Senior Tax Manager
+852 2740 8660
carmcheung@deloitte.com.hk

Kiwi Fung
Tax Manager
+852 2258 6162
kifung@deloitte.com.hk

Global Business Tax Services

National Leader

Andrew Zhu
Tax Partner
+86 10 8520 7508
andzhu@deloitte.com.cn

Hong Kong

Raymond Tang
Tax Partner
+852 2852 6661
raytang@deloitte.com.hk

Get in touch