



cutting through complexity

Hong Kong SAR Tax Profile

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1 Corporate Income Tax

Profits tax

Profits tax

Hong Kong SAR was a former British Crown Colony whose sovereignty was returned to the People's Republic of China ("PRC") on 1 July 1997. The relationship between the PRC and Hong Kong SAR is governed by two pieces of legislation: the Sino-British Joint Declaration on the Question of Hong Kong and the Basic Law of the Hong Kong Special Administrative Region.

Tax rate

16.5 percent (15 percent for unincorporated bodies).

Residence

As Hong Kong SAR's tax system is territorially based, tax is not levied on the basis of a company's residence and therefore, there is no need for a statutory definition of the term. However, the concept of residency does have some importance in the application of some other provisions – such as transfer pricing, off-shore fund exemptions and tax treaties. The common law concept of residency applies in the absence of specific provisions to the contrary.

Compliance requirements

The tax authority takes an "assess first, audit later" approach to the assessment of tax returns.

A tax return is normally due within one month of its date of issue. When a company lodges its returns through a tax representative, tax returns are due on the following dates):

- 30 April the following year, for accounting year-ends between 1 April and 30 November
- 15 August the following year, for accounting year-ends between 1 December and 31 December
- 15 November the same year, for accounting year-ends between 1 January and 31 March

International withholding tax

There are no withholding taxes on dividends, interest or any other income, whether paid to residents or non-residents.



rates

However, there is an effective withholding tax for certain royalty payments made to persons not carrying on a business in Hong Kong SAR for the use in Hong Kong SAR of intellectual property, or for the use of intellectual property outside Hong Kong SAR, and where a deduction for the payment is claimed in Hong Kong SAR. Where the recipient is not subject to Hong Kong SAR profits tax, a deemed profit of 30 percent of the royalty is subject to profits tax. With the current profits tax rate at 16.5 percent, this results in an effective withholding tax rate of 4.95 percent. If the royalty is paid to an overseas associate, the whole amount of the royalty will be subject to tax, unless no person carrying on a business in Hong Kong SAR has at any time wholly or partly owned the intellectual property giving rise to the payment.

Holding rules

There is no capital gains tax in Hong Kong SAR. Profits on certain speculative transactions which are considered to be an adventure in the nature of a trade, profession or business may be liable for profits tax if the gain is considered to be sourced in Hong Kong SAR.

Under the territorial basis of taxation, foreign sourced income is exempt from Hong Kong SAR profits tax. Dividend distributions are not subject to withholding tax whether paid to residents or non-residents.

Tax losses

Tax losses can be carried forward indefinitely but cannot be carried back to prior years.

There is an anti-avoidance provision that limits the use of losses brought forward against subsequent profits. The provision applies if there is a change in shareholding in the loss company and, as a direct or indirect result, profits have arisen to the company and that change in shareholding was made for the sole or dominant purpose of utilizing the company's tax losses against those profits.

Tax consolidation / group relief

There are no group relief provisions for losses or transfers of assets under Hong Kong SAR tax legislation. Each company within a corporate group is taxed as a separate entity.

Transfer of shares

Stamp duty applies to the transfer of Hong Kong SAR stock at a rate of 0.2 percent on the higher of the consideration paid or the market value plus HKD 5 on the instrument of transfer.

Transfer of assets

Stamp duty applies to the assignment of immovable property situated in Hong Kong SAR. The rates depend on the amount or value of consideration, but the maximum rate is 4.25 percent. Special Stamp Duty (SSD) is payable on transactions in residential property purchased on or after 20 November 2010 and resold within 24 months. SSD is in addition to the ad valorem rates of Stamp Duty. Legislation has also been introduced to impose a Buyer's Stamp Duty (BSD) for residential properties acquired by any person (including companies) except a Hong Kong permanent resident. The SSD is to be enhanced by extending its coverage period and adjusting the rates of SSD.



CFC rules

There is no CFC regime in Hong Kong SAR.

Transfer pricing

Hong Kong SAR tax law does not contain comprehensive transfer pricing provisions. The tax authority has set out its views and practice on transfer pricing in Departmental Interpretation and Practice Note No. 46.

There is a specific inter-company pricing provision that is designed to counteract the diversion of profits from Hong Kong SAR to a closely connected non-resident person. In addition, the tax treaty between the PRC and Hong Kong SAR allows the tax authorities to make transfer pricing adjustments for transactions between associated enterprises.

Hong Kong SAR introduced an advance pricing arrangement (APA) programme in April 2012 and details are contained in Departmental Interpretation and Practice Note No. 48.

Hong Kong SAR tax treaties provide for mutual agreement procedures to be initiated where the actions of the competent authorities of one or both jurisdictions result or will result in taxation not in accordance with the provisions of the tax treaty.

Thin capitalisation

There are no thin capitalisation rules in Hong Kong SAR. However, for interest to be deductible, it must meet at least one of six specified criteria, in addition to satisfying the general test of being incurred in the production of assessable profits. The general purpose of the specified criteria is to ensure that an interest deduction is denied where the corresponding income is not subject to Hong Kong SAR tax.

General anti-avoidance

Hong Kong SAR has two general anti-avoidance provisions which allow the tax authority to disregard:

- A transaction that reduces or would reduce the amount of tax payable by any person if it is of the opinion that the transaction is artificial or fictitious
- A disposition that is not in fact given effect

Anti-treaty shopping

The dividend and the interest articles of the tax treaties concluded by Hong Kong SAR often contain anti-treaty-shopping provisions.



Other specific anti-avoidance rules

Anti-avoidance measures are in place to counter the perceived abuse of the tax system by the use of service companies. Two types of arrangements have been identified:

- Type I: Referred to as “disguised employment” arrangements, which involve individuals providing services to their employers, through companies which the employees own and control, and with which they have entered into tax efficient employment contracts.
- Type II: Service companies are companies incorporated by the proprietors of unincorporated business (e.g. partnerships). These companies then provide the personal services of the proprietors to the unincorporated businesses in exchange for the payment of management fees.

Rulings

A taxpayer may apply to the tax authority, for a ruling on how any provision of the Hong Kong Inland Revenue Ordinance applies to an arrangement. A ruling will only be given for a seriously contemplated transaction with full particulars set out. The ruling is binding on the Commissioner and can be relied upon for the subsequent tax assessment. The tax authority publishes selected rulings of general interest for general reference only.

Intellectual property incentives

There are no specific intellectual property incentives.

R&D incentives

There are no specific R&D incentives (refer to below comments).

Other incentives

While there are no specific tax incentives in Hong Kong SAR tax law, quasi-incentives grant outright deductions for certain expenditure that may otherwise have not been deductible – such as, scientific research, expenditure on certain fixed assets, technical education and the purchase of patent rights or rights to know-how. Capital expenditure on copyrights, registered designs and registered trademarks is deductible in equal instalments over five years.

In addition, the concessions available for offshore reinsurance companies and in respect of qualifying debt instruments are often seen as incentives. There are also generous depreciation and write-off provisions, which are also seen as an incentive to invest in buildings or plant and machinery.

Hybrid instruments

There are no special rules applicable to hybrid instruments. In analysing a financial instrument, the tax authority takes the view that the starting point is to decide its nature according to its legal form rather than the accounting treatment or the underlying economic characteristics.

Hybrid entities

There are no special rules applicable to hybrid entities and no restrictions on what hybrid entities are established



Special tax regimes for specific industries or sectors

There are no specific incentives in the tax law. Quasi- incentives grant outright deductions for certain expenditure that may otherwise have been non-deductible, such as scientific research and expenditure on certain fixed assets. Capital expenditure on copyrights, registered designs and registered trademarks is deductible in equal instalments over five years commencing from the year of purchase.

Concessions are available for offshore reinsurance companies and for qualifying debt instruments. Provided certain conditions are met, offshore funds which can be non-resident individuals, partnerships, trustees of trust estates or corporations administering a fund, are exempt from dealings in certain securities, futures contracts and leveraged foreign exchange trading in Hong Kong.

Common types of Islamic bonds have also been placed on a level playing field with conventional bonds, removing a perceived impediment to the development of a sukuk market in Hong Kong. Prior to the introduction of the relevant legislation, the prohibition on payment of interest and the transfer of assets involved in Islamic finance resulted in Islamic finance products being exposed to additional tax when compared with economically equivalent debt arrangements.

The legislation ensures that financial instruments of similar economic substance are afforded similar tax treatment. The legislation adopts a religion-neutral approach using the term 'alternative bond scheme' (ABS), rather than Sukuk, to denote the arrangements to which the tax treatment applies.



2 Income Tax Treaties for the Avoidance of Double Taxation

In Force	Austria	Hungary	Luxembourg	Spain
	Belgium	Indonesia	Malaysia	Switzerland
	Brunei	Ireland	Malta	Thailand
	Canada	Japan	Mexico	United Kingdom
	China	Jersey	Netherlands	Vietnam
	Czech Republic	Kuwait	New Zealand	
	France	Liechtenstein	Portugal	

Negotiated, not yet in force at time of publication New treaties or amendment protocols have been negotiated with Guernsey, Italy and Qatar but at the time of writing are not yet in force.

Source: *Hong Kong Inland Revenue Department*



3 Indirect Tax (e.g. VAT/GST)

Indirect tax	There is currently no sales tax/VAT/GST in Hong Kong SAR.
Standard rate	N/A



4 Personal Taxation

Income tax	Salaries tax Hong Kong SAR does not operate a pay as you earn (PAYE) system. Tax is paid by the taxpayer to the tax authority.
Top rate	17 percent, however, the maximum effective rate is 15 percent.
Social security	There are no social security taxes in Hong Kong SAR.
Further information	Link to KPMG's Thinking Beyond Borders



5 Other Taxes

Customs duty	Hong Kong SAR does not levy any import or export duties
Excise duty	Excise duty is levied on hydrocarbon oils, spirits, tobacco, cigarettes and methyl alcohol.
Property tax	<p>Property tax is levied on the owner of land and buildings situated in Hong Kong SAR. The charge is levied for a year of assessment on the rental income (net of any irrecoverable rent) in the year of assessment and the only deductions permitted are, rates (where these are paid by the owner) and an allowance for repairs and outgoings equal to 20 percent of the rental income, after deducting rates paid by the owner.</p> <p>Property tax is charged at 15 percent.</p>
Estate duty	Estate duty was abolished in Hong Kong SAR in 2006.
Gift duty	There is no gift tax in Hong Kong SAR.
Betting duty	Betting duty is imposed on the net stake receipts from betting on horse races and football matches and on the proceeds of Mark Six lotteries all of which are administered by the Hong Kong Jockey Club. The rate of duty varies between 25 percent and 75 percent.
Business registration tax	Every person carrying on a business in Hong Kong SAR must be registered under the Business Registration Ordinance and must pay an annual fee and levy. The applicable annual registration fee and levy is HKD 2,600 (or HKD 7,000 for a three year certificate). Business Registration Fees were waived for the years of assessment 2012/13.



Stamp duty

Stamp duty is a duty on instruments evidencing transactions (i.e. documents) and is levied at both a fixed and ad valorem rates on documents evidencing the following transactions:

- Assignments of immovable property situated in Hong Kong SAR (rates depend on amount or value of consideration but the maximum rate is 4.25 percent)
- Leases of immovable property situated in Hong Kong SAR (rates depend on the lease term and whether the lease comprises of a premium and/or rent)
- Sales and purchase of Hong Kong SAR stock (total rate of 0.2 percent plus HKD 5 on the instrument of transfer)
- Hong Kong SAR bearer instruments (rate of 3 percent)
- Duplicates and counterparts in relation to the above instruments (HKD 5)

There are certain exemptions in respect of transfers of stock and immovable property within a group of companies. An exemption is also available in respect of stock borrowing and lending transactions that are undertaken for certain specified purposes and where specified conditions are satisfied.

Special stamp duty (SSD) applies on transactions in residential property, purchased on or after 20 November 2010 and resold within 24 months. SSD is in addition to the ad valorem rates of stamp duty already imposed and is levied on the full value of sales proceeds at rates of 5 percent-15 percent (depending on the length of time the property was held). Legislation has been introduced to enhance SSD by extending its coverage period to 36 months and adjusting the rates of SSD from 10 to 20 percent.

Legislation has also been introduced to impose a Buyer's Stamp Duty (BSD) for residential properties acquired by any person (including companies) except a Hong Kong permanent resident. BSD will be imposed at a flat rate of 15 percent. Legislation has also been introduced to double the rates of *ad valorem* stamp duty.

Capital duty

Capital duty was abolished with effect from 1 June 2012.



6 Free Trade Agreements

In force Members States of the European Free Trade Association, namely Iceland, Liechtenstein, Norway and Switzerland.

**Concluded / signed
(pending domestic
ratification)** Chile



7 Tax Authority

Tax authority

Inland Revenue Department

[Link to Inland Revenue Department](#)

Tax audit activity

The tax authority adopts an “assess first, audit later” (“AFAL”) approach under which assessments or statements of loss are issued to taxpayers based on the return submitted.

The tax authority predominantly adopts a risk based approach to the selection of returns for audit. A tax audit may be opened into any tax return filed. In our experience, the majority of companies can expect to be audited by the tax authority every 5-6 years.

Under the AFAL system, the tax authority employs a computer-assisted case selection program. Depending on the facts of each case, cases selected will be allotted to assessing officers to conduct a “desk audit”, to field auditors to conduct a “field audit” or to the investigators to conduct an in-depth “investigation”. A typical tax audit commences with a site visit / questionnaire / letter requesting provision of supplementary analysis or information. Taxpayers are advised to contact their tax advisor immediately when a tax audit commences or any correspondence is received from the tax authority. Audits into any given return generally last from 3 to 12 months but can take longer to reach a resolution in more complex cases.

Key focus areas for the tax authority in tax audits conducted in recent years have included:

- Transfer pricing
- Interest deductions
- Source of profits

The activities of field audit and investigation are largely targeted at areas where non-compliance is apparent and rigid case selection criteria are not generally applied. To a certain extent, field auditors and investigators are guided by their experience and knowledge in selecting cases. Cases may also be selected on a random basis as a means of promoting voluntary compliance. A field audit or investigation is normally initiated where characteristics or indications of non-compliance are present. The tax authority’s approach to tax audits and investigations is largely a manual approach involving the issue of detailed queries and scrutiny of invoices and key documents.



Appeals

A taxpayer who is dissatisfied with an assessment may lodge a notice of objection within one month after the date of the notice of assessment. Failing agreement, an objection is determined unilaterally by the tax authority. A taxpayer dissatisfied with the determination, can lodge an appeal. Appeals, in the first instance, are to the Board of Review, an informal hearing by an independent panel. Either the taxpayer or the tax authority may appeal on a point of law from the Board of Review's decision to the Court of First Instance or, with leave, to the Court of Appeal and then to the Court of Final Appeal.

Tax governance

The tax authority seeks to encourage voluntary compliance by educating taxpayers on their obligations. Taxpayers should implement appropriate tax strategies which can be supported to manage their tax risk.



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