Asia-Pacific Tax and Business Fundamentals 2015

Including:

- Country Surveys
- Corporate Tax Rate Tables
- Withholding Tax Rate Tables
Why this book?
The Asia-Pacific region provides unique opportunities and challenges for businesses and individuals operating in its diverse economies.

Updated annually, this book provides an overview of direct and indirect taxes levied on corporate and individual income and on capital in 20 selected countries in the region, as well as information on various aspects of doing business in these countries. The book is a valuable reference tool for those businesses and individuals with an active interest in the Asia-Pacific region.

This handy and convenient guide provides descriptive overviews of direct and indirect taxes levied in selected countries in the region, as well as information on various aspects of doing business in these countries, all presented in a concise and standard layout that allows quick and easy comparisons between countries. It also contains tables that provide a simple tool to quickly determine and compare tax rates and domestic and treaty withholding tax rates on dividends, interest and royalties.

The 2015 edition now covers 20 countries with the addition of Mongolia.

The book is a valuable reference tool for those businesses and individuals with an active interest in the Asia-Pacific region.

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Sample Chapter
5.2.4. Customs duty

Hong Kong is a tax-free port that does not levy any import or export duties.

5.2.5. Excise duty

Excise duty is levied on liquor, tobacco and related products, hydrocarbon oil, methyl alcohol, etc. The collection of excise duties is administered by the Customs and Excise Department.

5.2.6. Other taxes

5.2.6.1. Betting duty

Betting duty is charged on:
- net stake receipts derived from the conduct of authorized betting on horse races, at rates between 72.5% and 75% (reduced by half for overseas bets);
- contributions or subscriptions to authorized cash sweeps, at 30%;
- proceeds on lotteries, at 25%; and
- authorized betting on football matches, at 50%.

5.2.6.2. Hotel accommodation tax

The hotel accommodation tax was waived from 1 July 2008. Previously, the tax was imposed on accommodation charges paid by guests in hotels and guest houses at a rate of 3%.

6. Business and Investment

6.1. Introduction

6.1.1. Business and investment environment

Pursuant to the Sino-British Joint Declaration signed by China and the United Kingdom on 19 December 1984, Hong Kong officially reverted to Chinese sovereignty on 1 July 1997 and became the Hong Kong Special Administrative Region (SAR) of the People’s Republic of China. Hong Kong is ruled under a “one country, two systems” formula, whereby China’s socialist economic system has not been imposed on the SAR and Hong Kong enjoys a high degree of autonomy in all matters except defence and foreign affairs for 50 years commencing from 1 July 1997.

Hong Kong had extensive trade and investment ties with China even before it reverted to Chinese administration on 1 July 1997. Hong Kong has since been further integrating its economy with China in light of increased competitive pressure from China on its service industries, and its re-export business from China is a major driver of growth.

The Shanghai-Hong Kong Stock Connect was launched in November 2014 as a securities trading and clearing links programme which aims to achieve mutual
market access between China and Hong Kong. Under the Shanghai-Hong Kong Stock Connect, the Stock Exchange of Hong Kong (SEHK) and Shanghai Stock Exchange (SSE) will establish a mutual order routing connectivity and related technical infrastructure to enable qualified Chinese investors to trade eligible listed securities on the SEHK and vice versa.

Hong Kong has a free market economy highly dependent on international trade. A policy of minimal government intervention has fostered a prosperous and attractive investment centre, and a reputation as the world’s freest economy. Except in the case of public utilities, there is no government participation in industry. However, the government’s intervention in the property, stock and foreign exchange markets during the Asian financial crisis at the end of the 1990s resulted in a large holding of Hong Kong stocks, and this continues to be the case.

In addition, Hong Kong has low rates of tax, extensive legal, tax, accounting, insurance and banking facilities, modern infrastructure and telecommunications, and trade and capital movements are generally free from controls and tariffs. These factors have made Hong Kong a major financial centre and an attractive base for numerous international and multinational corporations.

Services play an important part in the economy, especially financial services, tourism and shipping. Main imports are electrical machinery and appliances, textiles, foodstuffs, transport equipment, raw materials, semi-manufactures, petroleum and plastics, although a large portion is re-exported. Main exports are electrical machinery and appliances, textiles, apparel, footwear, watches and clocks, toys, plastics and precious stones. Its major trading partners are China, the United States and Japan.

Hong Kong is a member in its own right of the World Trade Organization (WTO) and the Asia-Pacific Economic Co-operation (APEC) forum.

6.1.2. Regulatory framework

The Basic Law acts as a separate constitution for the SAR. Under the Basic Law, the sources of Hong Kong law are:

- the Basic Law;
- the laws previously in force in Hong Kong as stipulated by article 8 of the Basic Law;
- laws enacted by the Hong Kong SAR; and
- laws enacted by the People’s Republic of China National People’s Congress or its Standing Committee that relate to defence or foreign affairs.

Within this framework, Hong Kong has its own legal and judicial system, which is distinct from and independent of the Chinese legal system, and the laws in force before the transfer of sovereignty remain basically unchanged. Historically, Hong Kong law is based primarily on English statute and common law principles.
The Basic Law also includes provisions that the capitalist system and lifestyle are to remain unchanged for 50 years, and that Hong Kong has a high degree of autonomy except in foreign policy and defence matters. The Basic Law states that Hong Kong retains the status of an international financial centre.

Corporate entities are governed by the provisions of the Hong Kong Companies Ordinance 1984, which is based on the company law of the United Kingdom. There is no statute or regulation governing investments in general.

The role of the Commerce and Economic Development Bureau, which comprises the Commerce, Industry and Tourism Branch, the Communications and Technology Branch and the Office of the Government Chief Information Officer, is to enhance Hong Kong’s position as an international trade and business centre, foster a business-friendly environment and attract investment to Hong Kong, position Hong Kong as a telecommunication hub and promote high value-added, creative and high technology activities. The Commerce, Industry and Tourism Branch is responsible for policy matters on Hong Kong’s external commercial relations, inward investment promotion, intellectual property protection, industry and business support, tourism, consumer protection and competition. The Communications and Technology Branch is responsible for policy matters on broadcasting, film-related issues, overall view of creative (including film) industry, development of telecommunications, innovation and technology. The Office of the Government Chief Information Officer is responsible for policy, strategy and execution of information technology programmes and initiatives.

The Bureau also oversees the operation of ten executive arms, including Invest Hong Kong, the Intellectual Property Department, the Trade and Industry Department and the overseas Hong Kong Economic and Trade Offices.

The Hong Kong Monetary Authority is the government authority responsible for maintaining monetary and banking stability.

6.2. Forms of business

Forms of business organization in Hong Kong include the following:
- limited liability company;
- general or limited partnership;
- sole proprietorship; and
- trust.

Unless specifically exempted, every person who carries on a business in Hong Kong must apply for business registration within 1 month of commencement of business (see section 6.7.1.).

6.2.1. Company

A private company is a company whose memorandum or articles: (i) restricts the right to transfer its shares; (ii) limits the number of members to not more than 50
(excluding present and past employees); and (iii) prohibits any invitation to the public to subscribe for shares or debentures.

In a public company, no such restrictions may be imposed. A private company may be converted into a public company and vice versa. A private company need not file a copy of its annual accounts with the Registrar of Companies and thus its accounts are not open for public inspection.

A limited company must have the word “limited” at the end of its name, unless a licence to dispense with the word has been granted.

There is no minimum capital requirement, other than for companies listed on the stock exchange. The amount of share capital with which the company proposes to be registered must be stated in the memorandum and may be expressed in any currency. Share capital may be increased or reduced, as long as it is authorized by the articles, and the necessary resolutions, notices and other procedures are made or followed. There is no requirement to maintain legal reserves.

A registered office must be opened in Hong Kong within 14 days of the company’s incorporation or when it commences to carry on business, whichever is earlier. The registered office must then be maintained in Hong Kong.

A company must have a minimum of two directors, but there is no nationality or residence requirement. Corporate directors are not allowed for a public company or a private company which is a member of a group of companies of which a listed company is a member. The directors’ meetings need not be held in Hong Kong, but it is necessary to maintain minutes of such meetings at the registered office, in Hong Kong. Tax-free payments to directors are prohibited.

The company must appoint a Hong Kong resident individual or a company having its registered office or a place of business in Hong Kong as company secretary.

6.2.2. Partnership

In general, partnerships are governed by the Partnership Ordinance, which is based on the British Partnership Act of 1890.

Limited partnerships are governed by the Limited Partnership Ordinance. In such a partnership, the liability of some of the partners may be limited. At least one partner, the general partner, must have unlimited liability. The limited partners are silent partners.

A partnership consisting of more than 20 members is prohibited. However, this limitation on the number of partners does not apply with respect to solicitors, professional accountants, stock exchange members and any other partnership of a kind prescribed by the Governor in council.
6.2.3. Sole proprietorship

Sole proprietorships must be registered and an annual business registration fee must be paid. The sole proprietor has unlimited liability for the debts of the business.

6.2.4. Trust

Trust law in Hong Kong is based on English common law and equity principles. The Trustee Ordinance is modelled on the English Trustee Act 1925.

Both fixed and discretionary trusts may be settled in Hong Kong. Documents do not have to be registered and there are no statutory requirements for a trust to make annual returns, submit audited financial statements, etc. unless it is carrying on business in Hong Kong.

6.3. Foreign investment

6.3.1. Regulation of foreign investment

There is no statute or regulation governing investments in general.

The Trade and Industry Department is responsible for conducting Hong Kong’s international trade relations, implementing trade policies and agreements, as well as providing general support services for industries and small and medium enterprises.

InvestHK is the government department which promotes the advantages of Hong Kong as a business location, and assists overseas enterprises in establishing and developing their presence in the city. It offers investment promotion and facilitation services to support companies in establishing or expanding operations in Hong Kong, including the provision of information on Hong Kong’s business environment and investment regime (economic sector profiles, business incorporation advice, information on the availability and cost of land, factories, offices and housing); the provision of information on funding and other support services for business as well as on taxation, import/export regulations, government projects, employment legislation and immigration requirements; business matching; arranging meetings, site visits and calls on government departments as well as trade and industrial support organizations; and assisting investors in dealing with government departments on matters such as visa applications, trademark registration and business incorporation.

A foreign investor needs no special approval, but any controls which apply to domestic investors will also apply to foreign investors.

6.3.2. Forms of business for foreign investment

The most common forms of business entity for foreign investors are:

– private limited companies;
– branch offices of overseas companies;
– representative offices;
partnerships/sole proprietorships; and
joint ventures.

All businesses must apply for a Business Registration Certificate, which is issued by the Inland Revenue Department (see section 6.7.1.).

Overseas companies starting businesses in Hong Kong can form a private company limited by shares (see section 6.2.1.) or establish a branch. A branch office is relatively easy to set up but is open to greater potential liability than a limited company since it is not treated as a separate legal entity.

Companies incorporated outside Hong Kong must, within 1 month from the establishment of a place of business in Hong Kong, deliver to the Registrar certain documents specified in the Companies Ordinance. “Place of business” includes a share transfer or share registration office. The documents that should be registered are:

1. a certified copy of the company’s charter, statute or memorandum and articles of association or other instrument constituting or defining the constitution of the company, as well as a certified translation if the instrument is not in English;
2. a list of the directors (including relevant particulars) and secretary of the company; and
3. the names and addresses of one or more persons resident in Hong Kong authorized to accept on behalf of the company service of process and any notices required to be served on the company, and a memorandum of appointment of the company authorizing such persons to accept service.

Copies of the company’s annual balance sheet, profit and loss account, group accounts, directors’ report and auditor’s report must be submitted to the Registrar, as well as a certified translation if the documents are not in English.

6.3.3. Repatriation of income and capital

There are no restrictions on the repatriation of capital, profits, dividends, interest, royalties, etc.

6.4. Investment restrictions

Foreign investment is not prohibited in any field, except in the case of public utilities operated by the government, such as waterworks, airport facilities, post and telecommunications, railways and radio broadcasting.

There is no local participation requirement.

6.5. Investment incentives

Hong Kong does not offer targeted incentives to foreign investors or foreign-owned companies. However, its free-port status, low tax rates, good infrastructure and freedom from government interference make it attractive to potential in-
vestors. The simplicity of procedures for investing, expanding and establishing a local company is also a major attraction for foreign investment in Hong Kong.

The following investment incentives are available:
– sale of land by tender or private treaty on special terms (see section 6.7.3.); and
– preferential interest rates on loans for existing and proposed machinery for the production of goods for export.

Tax incentives are available for the following (see further section 2.1.7.):
– plant and machinery specifically related to manufacturing, and on computer hardware and software;
– renovation or refurbishment of business premises;
– gains from qualified debt instruments;
– qualifying reinsurance companies;
– mutual funds and trusts;
– interest from deposits; and
– environmental protection facilities and environment-friendly vehicles.

6.6. Investment guarantee and protection

6.6.1. General

There is no legal guarantee against expropriation, but Hong Kong has traditionally adopted a policy of minimal government intervention in the economy.

No distinction is made between domestic and foreign investment.

6.6.2. Investment protection agreements

Hong Kong has concluded investment protection agreements with the following countries:

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<th>Country</th>
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<td>Belgo-Luxembourg Economic Union</td>
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<tr>
<td>Netherlands</td>
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It is understood that China accepts the continued application of all these agreements to Hong Kong; however, no specific statement to that effect has been issued.

6.7. Other business and investment considerations

6.7.1. Commercial registration and licensing requirements

The Business Registration Ordinance requires every person who carries on a business in Hong Kong to apply for business registration within 1 month from the date of commencement of business, and to display a valid business registration certificate at the place of business.

The following businesses are required to be registered:
- any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain;
- any club that provides facilities, services and exclusive club premises to its members for social intercourse or recreation;
- every company incorporated in Hong Kong in accordance with the Companies Ordinance or non-Hong Kong company that has established a place of business in Hong Kong, regardless of whether it is actually carrying on any business in Hong Kong; and
- every non-Hong Kong company that has a representative or liaison office in Hong Kong, or has let out its property situated in Hong Kong, regardless of whether it has established a place of business in Hong Kong.

However, a person who is only holding an office or employment is not regarded as carrying on any business and is not required to apply for business registration.

Business registration services are provided by the Inland Revenue Department (IRD), which also issues the business registration certificates (see section 4.3.3. for the registration fees and levy). If the registered particulars of the business have changed, the business operator has to notify the IRD in writing within 1 month of the change. The IRD will record the information provided in the application for registration and notifications of changes on the Business Register.

From 21 February 2011, the Companies Registry and the IRD jointly launched a one-stop company and business registration service. Any person who submits an application for the incorporation of a local company or for registration of a non-Hong Kong company at the Registry will be deemed to make a business registration application at the same time. Under this registration regime, companies are
only required to lodge one single application for both company and business registration. The Registry will process the simultaneous business registration applications and notify the IRD of changes to relevant company particulars.

The one-stop registration regime is not applicable to applications for business registration by other types of businesses such as sole proprietorships and partnership businesses, and branch registrations, etc. Applications for business or branch registrations in respect of businesses other than companies must be lodged directly with the Business Registration Office.

Businesses carried on by a sole proprietorship, partnership or unincorporated body of persons, a non-Hong Kong company or a branch must apply for registration within 1 month of commencing business. Companies are required to register within 1 month of incorporation or registration under the Companies Ordinance, regardless of whether they are actually carrying on a business. Newly incorporated limited companies must register with the Companies Registry before applying for a business registration certificate.

Business registration is not for the regulation of business activities, nor is it a licence to trade. Apart from business registration, some business sectors require licences or registration to conduct a specific activity, such as restaurants, travel agencies, employment agencies, banks, fund managers, insurance brokers and lawyers.

The manufacture of dutiable products (tobacco, alcoholic liquors and hydrocarbons) requires a licence. In the case of pharmaceuticals, their manufacture, import and sale are regulated under the Dangerous Drugs Ordinance, the Pharmacy and Poisons Ordinance and the Antibiotics Ordinance. Anti-pollution laws must be taken into account in manufacturing. Offensive trades (i.e. industries giving off noxious vapours or dust) may be carried on only in designated zones. To carry on such trades, factories in urban areas need approval by the Urban Council and those in the New Territories by the Directors of Urban Services.

All factories where power-driven machinery is used or where 20 or more people are employed for manufacturing purposes must be registered with the Commissioner of Labour. Factories where dangerous trades (including boiler chipping, glass working, chromium plating, manufacture of specified acids and certain other dangerous materials) are practised must be registered irrespective of whether or not they use power-driven machinery or employ more or less than 20 people.

6.7.2. Exchange control

There are no exchange control restrictions in Hong Kong.

No exchange control permission is required for capital transactions or for the repatriation of profits, dividends, interest, royalties, etc.

There are also no restrictions on travel and local borrowing. Export proceeds need not be repatriated or surrendered and may be collected at any time and in any currency. No distinction is made between resident and non-resident accounts.
All imports must be declared to the Department of Trade and Industry within 14 days of importation. Payments for imports may be made freely at any time and in any currency. There is a free market for gold.

The Hong Kong dollar has been pegged to the US dollar since 17 October 1983, at the rate of USD 1 = HKD 7.80, and is allowed to trade within a range. Previously, the Hong Kong dollar had been allowed to float since November 1974.

6.7.3. Foreign ownership of land and property

There is no restriction on the acquisition of land and buildings by foreigners, although land is scarce.

If an investor wants to purchase land leases in certain areas by tender or by private treaty on special terms, his application will be considered by the Executive Council on the basis of an initial assessment made by the Commerce and Economic Development Bureau. The authorities will consider if the project:

– would result in the import of industrial processes that are new to Hong Kong or that represent a significant technological upgrading of existing industrial processes;
– provides employment opportunities, particularly for male workers, at a generally higher level of skill than currently available in the local industry;
– requires the use of industrial processes which, by their nature, cannot be performed in standard multi-storey industrial buildings; and
– would not otherwise be established or developed in Hong Kong.

Preference may also be given to those projects that will provide essential raw materials or components for existing Hong Kong industries.

The premium for any lease sold is normally the assessed value of the site restricted to low-density industrial use. The premium may be paid in 10 annual installments at 10% interest per annum. The purpose of this incentive is to assist the development of heavier industries that are of a relatively high technological level.

6.7.4. Intellectual property protection

Intellectual property is regulated under the following legislation:

– Trade Marks Ordinance (effective 4 April 2003);
– Patents Ordinance 1997;
– Registered Designs Ordinance 1997; and
– Copyright Ordinance 1997.

The administrative agency is the Intellectual Property Department.

Hong Kong’s intellectual property protection system meets the standards set out in the WTO TRIPS Agreement. The main international intellectual property conventions which have been applied to the Hong Kong SAR by China are:

– the Paris Convention for the Protection of Industrial Property;
– the Berne Convention for the Protection of Literary and Artistic Works;
– the Universal Copyright Convention;
– the Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms;
– the Patent Cooperation Treaty; and

6.7.5. Employment of foreigners

There are no restrictions on the employment of foreigners, although local workers are given priority in filling job vacancies. Foreign workers are to be paid at least the median monthly salary of comparable local workers under standard contracts governed by the labour laws.

An employment visa is granted provided an applicant takes up employment only in the business or activity applied for. However, the applicant’s dependents are allowed to accept employment in Hong Kong and are entitled to receive education in Hong Kong.

In order to attract Chinese talent from the mainland, the Hong Kong government has implemented the Admission Scheme for PRC Talent and Professionals which is quota-free and sector-specific. Under the scheme, employers that are registered companies in Hong Kong may apply to bring in talents and professionals from China. The employing company must show that the purpose of the application is to meet the firm’s operational or research needs which cannot be readily met by the local workforce, and there must be a confirmed offer of employment with a reasonable remuneration package, including income, accommodation, medical and other fringe benefits broadly commensurate with the prevailing market level and relevant to the employee’s academic qualifications, professional abilities and working experience.

6.8. Economic and trade agreements

For many years, exports from Hong Kong have benefited from access to overseas markets at preferential rates of duty, typically under a country’s Generalized System of Preferences for developing countries. Several developed countries (including Japan and New Zealand) announced that from 1998 onwards they would start to phase out these preferences for higher income territories including Hong Kong.

Hong Kong signed a Closer Economic Partnership Agreement (CEPA) with China on 29 June 2003. The CEPA is a free trade agreement under which a zero tariff rate will apply to many products originating from Hong Kong and wide-ranging access to China’s market will be given to Hong Kong service suppliers and companies. The CEPA is subject to ongoing reciprocal consultations and amendments.

Hong Kong and Argentina signed an agreement on mutual administrative assistance in customs matters on 27 June 2013.
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