Hong Kong Tax Alert

17 June 2025
2025 Issue No. 14

Top court rules an LLP is not a body corporate having a share capital and therefore did not qualify for the stamp duty group exemption relief

In the recent decision John Wiley & Sons UK2 LLP and Another v The Collector of Stamp Revenue[1]*, the Court of Final Appeal (CFA) upheld the decision of the Court of Appeal (CoA) that a limited liability partnership (LLP) is not a body corporate having a share capital.*

As such, an LLP cannot satisfy the "association" relationship for the exemption relief under section 45 of the Stamp Duty Ordinance (SDO) by virtue of having its "issued share capital" being at least 90 percent beneficially owned by another "body corporate".

This CFA decision could mean that, in addition to LLPs, some foreign limited liability corporations (LLCs) that do not have a share capital as envisaged by the old Companies Ordinance (Cap 32) of Hong Kong may also not qualify as a "body corporate" for the purposes of section 45 of the SDO.

Clients who have any questions on the implications of this CFA decision can contact their tax executive.

---

[1] The full CFA judgement could be accessed in the link below: https://legalref.judiciary.hk/lrs/common/ju/loadPdf.jsp?url=https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2024/FACV000011_2024.docx&mobile=N

Facts

John Wiley & Sons (HK) Limited (HK Co) was a limited company incorporated in Hong Kong under the old Companies Ordinance.

The entire issued share capital of HK Co was owned by John Wiley & Sons UK2 LLP (LLP 2).

LLP 2 was 100% beneficially owned by its only member, namely John Wiley & Sons UK LLP (LLP 1).

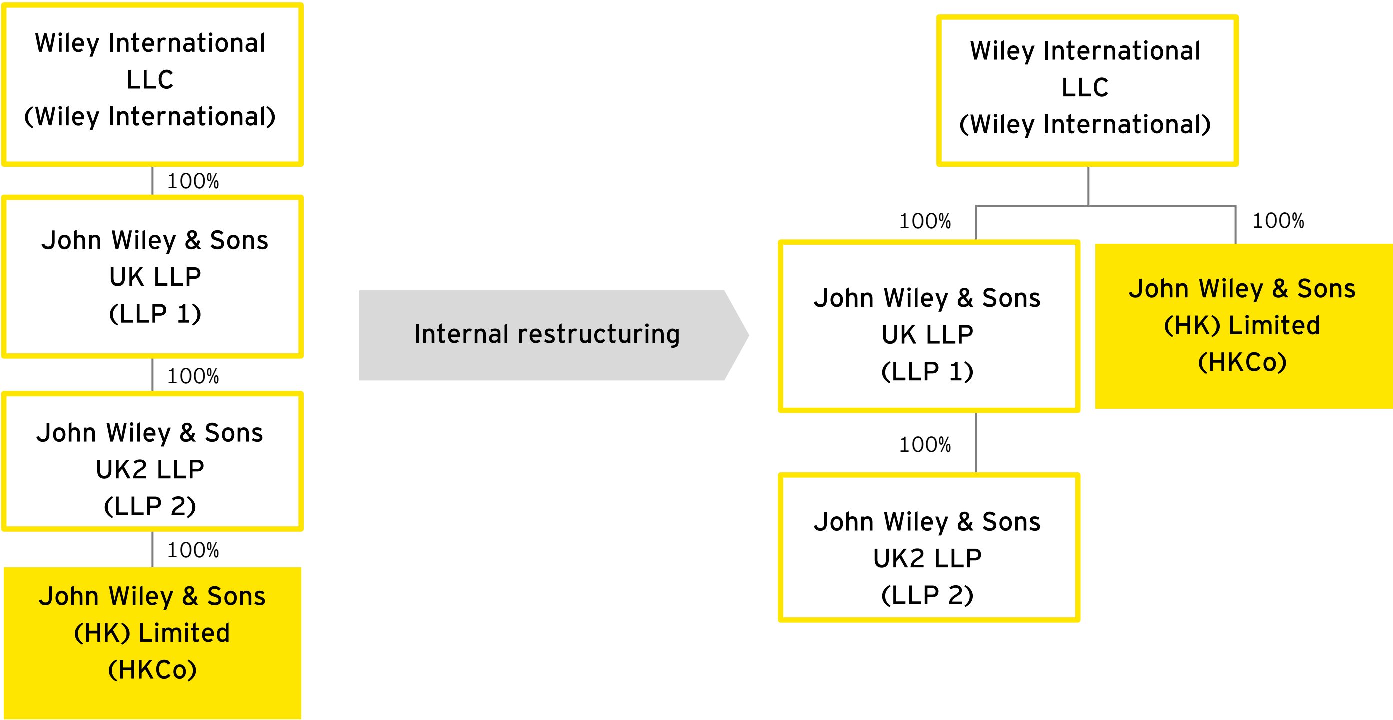
Both LLP 1 and LLP 2 were limited liability partnerships registered under the Limited Liability Partnerships Act 2000 of the UK.

LLP 1 was 100% beneficially owned by its only member, Wiley International LLC (Wiley International), a limited liability company established in the State of Delaware in the USA.

On 30 April 2019, LLP 2 (as transferor) transferred the entire share capital of HK Co to Wiley International (as transferee) for the consideration of GBP313,240,835 (the Share Transfer).

The Share Transfer was apparently made as part of an internal group restructuring of the global John Wiley & Sons group of companies and entities.

The diagram below illustrates the intra-group transfer of HK Co:



Issue in dispute

The Collector of Stamp Revenue (Collector) issued to LLP 2 and Wiley International an assessment to *ad valorem* stamp duty in the aggregate amount of HK$6,361,204 in respect of the Share Transfer dated 30 April 2019 of the entire share capital of the HK Co from LLP 2 to Wiley International. LLP 2 and Wiley International are collectively referred to below as the “Appellants”.

The Appellants contended that the assessment was unwarranted because the Share Transfer was exempt from stamp duty under section 45 of the SDO.

Decisions of the lower courts

The District Court found in favor of the Appellants, but an appeal by the Collector to the CoA was successful. The CoA allowed the Collector’s appeal on grounds including that LLP 2 did not have “share capital” within the meaning of section 45 of the SDO.

Please refer to our previous tax alert dated 23 July 2024[2] for the reasoning of the District Court and the CoA decisions on this case.

The Appellants appealed to the CFA against the decision of the CoA.

[2] The Hong Kong Tax Alert (2024 Issue No. 10) can be accessed in the link below:
https://www.ey.com/en_cn/technical/hong-kong-tax-alerts/court-of-appeal-ruled-bodies-corporate-that-do-not-have-issued-share-capital-would-not-qualify-for-stamp-duty-intra-group-transfer-relief

Decision of the CFA

Legislative history and background

Section 45 of the SDO provides that a transfer of Hong Kong immovable property or Hong Kong stock between two "bodies corporate" that are "associated" by virtue of either (i) one is the beneficial owner of at least 90 percent of the "issued share capital" of the other; or (ii) a third body corporate is the beneficial owner of at least 90 percent of the "issued share capital" of both the transferor and transferee will be exempt from stamp duty.

The term "body corporate" adopted in 1981 to replace "company"

The term "body corporate" did not however appear in the exemption provision in its original form. The original exemption provision was contained in section 5A of the SDO enacted in 1968.

Subsequently, following the change in the corresponding exemption provision in the UK by section 27 of the Finance Act 1967 (UK), the SDO was amended in 1981. The amendments included (i) renumbering section 5A as section 45; and (ii) adopting the term "body corporate" to replace the previous term "company".

Finally, in 1991, section 45 was further amended to take the exemption beyond transactions in "Hong Kong immovable property" to transfers of "Hong Kong stock".

CFA's consideration of the arguments by both parties

Appellants' arguments

The Appellants submitted that (a) the expression "body corporate" in section 45 constitutes an open-ended class of foreign corporations, which does not expressly exclude LLPs; and (b) the expression "issued share capital" in section 45 denotes a "taxonomic class" which includes features of an LLP which are "materially analogous" to "share capital".

Collector's arguments

With respect to the use of the term "body corporate" in section 45, the Collector argued that "… apart from limited liability companies, body corporate with a share capital in existence in Hong Kong were companies limited by guarantee and unlimited companies: ss10 and 14 of Cap 32. It is reasonable to infer that the legislature in 1981 intended to expand the scope of section 45 on transfers of property from just between limited liability companies to all bodies corporate having a share capital. There is no basis for the Appellants' suggestion that "body corporate" was used to enable the s45 relief to apply to cases where the entities were 'incorporated abroad or were otherwise divergent from a company incorporated in Hong Kong'…"

CFA's analysis

"Bodies corporate" only those envisaged by the old Companies Ordinance

The CFA noted that as at both 1968 and 1981 the old Companies Ordinance provided in section 4(2)(a)-(c) for three species of company: "a company limited by shares", "a company limited by guarantee" and "an unlimited company". The latter two species of company could either have or not have a share capital. Section 3 of the old Companies Ordinance allowed an "existing company" to register as one of the three species of company.

Given the above legislative history, the CFA accepted the Collector's above arguments and rejected the Appellants' "open-ended" argument contained in (a) above.

"Issued share capital"

Giving the term "issued share capital" its natural and ordinary meaning, the CFA endorsed the CoA's observation quoted below in its earlier decision on this case, thereby also rejecting the Appellants' "analogous" argument contained in (b) above.

"… The expression 'issued share capital' is a well understood concept under company law. When used in a tax statute, it should, prima facie, be interpreted to bear the same meaning as it is employed in the company law context, in the absence of any specific or different definition for that expression, or any special context which suggests a different meaning is intended. There is nothing in the context or language of Section 45 to indicate that the legislature intends to use the expression "issued share capital" in any different sense."

Thus, the CFA held that (i) the term "issued share capital" is to be read in the same way whether or not foreign corporations are involved; and (ii) as an LLP cannot issue or allot share capital, the Appellants cannot satisfy the "association" criterion of section 45 of the SDO.

The appeal of the Appellants was thereby unanimously dismissed.

Commentary

The CFA decision in this case would mean that many of the pending cases for exemption relief based on grounds similar to the Appellants would also be denied.

In addition to LLPs, it appears that some foreign limited liability corporations (LLCs) that do not have a share capital as envisaged by the old Companies Ordinance may also not qualify for the exemption relief under section 45 of the SDO.

In Singapore, the Stamp Duties (Amendment) Act 2008 (Act 36 of 2008) extended the *ad valorem* relief to cover LLPs, regardless of their place of incorporation or constitution.

To maintain the tax competitiveness of Hong Kong, the Government may need to consider amending the SDO to extend the scope of section 45 to cover more types of body corporate that would qualify for the exemption relief.

In the meantime, it is hoped that the Collector would soon (i) issue guidance on which types of commonly used foreign corporations are bodies corporate or not bodies corporate for the purposes of section 45; and (ii) how the 90 percent of the "issued share capital" is now to be counted given that under the new Companies Ordinance (Cap 622), shares of a company will no longer have a nominal or par value.

Clients who have any questions on the implications of this CFA decision can contact their tax executive.

Hong Kong office

Jasmine Lee, Managing Partner, Hong Kong & Macau
27/F One Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong
Tel: +852 2846 9888 Fax: +852 2868 4432

Non-financial Services

Wilson Cheng
Tax Leader for Hong Kong and Macau
+852 2846 9066
wilson.cheng@hk.ey.com

Business Tax Services/Global Compliance and Reporting

Hong Kong Tax Services

Wilson Cheng +852 2846 9066 wilson.cheng@hk.ey.com	**Jacqueline Chow** +852 2629 3122 jacqueline.chow@hk.ey.com	**Ryan Dhillon** +852 3752 4703 ryan.dhillon@hk.ey.com
Tracy Ho +852 2846 9065 tracy.ho@hk.ey.com	**Ada Ma** +852 2849 9391 ada.ma@hk.ey.com	**Jennifer Kam** +852 2846 9755 jennifer.kam@hk.ey.com
May Leung +852 2629 3089 may.leung@hk.ey.com	**Karina Wong** +852 2849 9175 karina.wong@hk.ey.com	**Leo Wong** +852 2849 9165 leo.wong@hk.ey.com
Ricky Tam +852 2629 3752 ricky.tam@hk.ey.com	**Susan Kwong** +852 2629 3117 susan.tm.kwong@hk.ey.com	

China Tax Services

Ivan Chan
+852 2629 3828
ivan.chan@hk.ey.com

Payroll Operate

Vincent Hu
+852 3752 4885
vincent-wh.hu@hk.ey.com

Accounting Compliance and Reporting

Linda Liu +86 21 2228 2801 linda-sy.liu@cn.ey.com	**Cecilia Feng** +852 2846 9735 cecilia.feng@hk.ey.com

International Tax and Transaction Services

International Tax Services

Winnie Kwan
+852 2629 3211
winnie.yw.kwan@ey.com

Transfer Pricing Services

Sangeeth Aiyappa +852 2629 3989 sangeeth.aiyappa@hk.ey.com	**Martin Richter** +852 2629 3938 martin.richter@hk.ey.com
Kenny Wei +852 2629 3941 kenny.wei@hk.ey.com	

Transaction Tax Services

Jane Hui +852 2629 3836 jane.hui@hk.ey.com	**Jasmine Tian** +852 2629 3738 jasmine.tian@hk.ey.com	**Emma Campbell** +852 2629 1714 emma.ef.campbell@hk.ey.com

People Advisory Services

William Cheung +852 2629 3025 william.cheung@hk.ey.com	**Christina Li** +852 2629 3664 christina.li@hk.ey.com	**Emily Chan** +852 2629 3250 emily-my.chan@hk.ey.com
Winnie Walker +852 2629 3693 winnie.walker@hk.ey.com	**Paul Wen** +852 2629 3876 paul.wen@hk.ey.com	

Financial Services

Paul Ho
Tax Leader for Hong Kong
+852 2849 9564
paul.ho@hk.ey.com

Business Tax Services/Global Compliance and Reporting

Hong Kong Tax Services

Paul Ho +852 2849 9564 paul.ho@hk.ey.com	**Ming Lam** +852 2849 9265 ming.lam@hk.ey.com
Sunny Liu +852 2846 9883 sunny.liu@hk.ey.com	**Helen Mok** +852 2849 9279 helen.mok@hk.ey.com

Customer Tax Operations and Reporting Services

Paul Ho +852 2849 9564 paul.ho@hk.ey.com	**Francis Tang** +852 2629 3618 francis-ks.tang@hk.ey.com

US Tax Services

Camelia Ho
+852 2849 9150
camelia.ho@hk.ey.com

International Tax and Transaction Services

International Tax Services

Sophie Lindsay +852 3189 4589 sophie.lindsay@hk.ey.com	**Maggie Mang** +852 3471 2759 maggie.mang@hk.ey.com
Karen Lui +852 2232 6455 karen.sy.lui@hk.ey.com	**Steve Strathdee** +852 2629 3378 steve.strathdee@hk.ey.com

Transfer Pricing Services

Ka Lok Chu +852 2629 3044 kalok.chu@hk.ey.com	**Justin Kyte** +852 2629 3880 justin.kyte@hk.ey.com

Transaction Tax Services

Sunny Liu
+852 2846 9883
sunny.liu@hk.ey.com

Tax Technology and Transformation Services

Robert Hardesty
+852 2629 3291
robert.hardesty@hk.ey.com

Asia-Pacific Tax Center

Tax Technology and Transformation Services

Albert Lee
+852 2629 3318
albert.lee@hk.ey.com

International Tax and Transaction Services

US Tax Desk

Jeremy Litton
+852 3471 2783
jeremy.litton@hk.ey.com

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multidisciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients, nor does it own or control any member firm or act as the headquarters of any member firm. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

About EY's Tax services

Your business will only succeed if you build it on a strong foundation and grow it in a sustainable way. At EY, we believe that managing your tax obligations responsibly and proactively can make a critical difference. Our 50,000 talented tax professionals, in more than 150 countries, give you technical knowledge, business experience, consistency and an unwavering commitment to quality service — wherever you are and whatever tax services you need.

APAC no. 03023138
ED None

ey.com/china

Follow us on WeChat
Scan the QR code and stay up to date with the latest EY news.