

Hong Kong Tax Alert

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The bill for inward re-domiciliation of non-Hong Kong incorporated or domiciled companies to re-domicile to Hong Kong has been enacted into law

On 23 May 2025, the Companies (Amendment)(No. 2) Ordinance 2024¹ (the Ordinance) was gazetted to provide an inward re-domiciliation regime in Hong Kong.

The regime will enable non-Hong Kong incorporated or domiciled companies to transfer their domicile (essentially their place of incorporation) to Hong Kong, while preserving their legal identity and maintaining their business continuity.

This alert focuses on the committee stage amendments (CSAs) to the bill and the Government's clarifications on the tax-related issues during the legislative process.

Please refer to our previous tax alert² for the detailed provisions of the transitional tax rules and the application procedures in relation to the regime.

Clients who wish to explore the pros and cons of re-domiciling their non-Hong Kong incorporated or domiciled companies to Hong Kong or to understand more about the issues discussed in this alert can contact their tax executive.

¹ The Companies (Amendment) Ordinance (No. 2) 2024 can be retrieved from the link below:
<https://www.legco.gov.hk/yr2025/english/ord/2025ord014-e.pdf>

² The Hong Kong Tax Alert (2025 Issue No.1) can be retrieved from the link below:
<https://www.ey.com/content/dam/ey-unified-site/ey-com/en-cn/technical/hong-kong-tax-alerts/documents/ey-hk-tax-alert-7-jan-issue-01.pdf>

Overview of the re-domiciliation regime in Hong Kong

The Ordinance sets out the framework for an inward re-domiciliation regime for certain types of companies³ incorporated or domiciled outside Hong Kong to transfer their domicile to Hong Kong.

The process of re-domiciliation will involve (i) a foreign-incorporated or domiciled company applying to the Companies Registry (CR) of Hong Kong to redomicile to Hong Kong and (ii) de-registering itself in its place of incorporation or domicile that permits an outward re-domiciliation.

Thus, the process will not involve any separate new company being created and, as such, the legal identity of the re-domiciled company will be preserved. As a result, the existing property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of a re-domiciled company will not be affected, thereby ensuring its business continuity.

Upon the issuance of a certificate of re-domiciliation in Hong Kong, the re-domiciled company will generally have the same rights as any locally incorporated companies and be required to comply with the relevant requirements under the amended Companies Ordinance (Chapter 622) (CO) of Hong Kong.

CSAs to the Bill

There were various CSAs to the bill, all of them have been adopted in the Ordinance, including:

Members' consent requirement

Where the place of incorporation or domicile of an applicant for re-domiciliation or its constitutional document does not impose a members' consent requirement for re-domiciliation, a CSA adopted has amended the 75% threshold of "eligible members" for approval as stipulated in the original bill to the effect as stated below.

If a resolution is passed at a meeting, the resolution is passed by a majority of either (i) at least 75% of the number of eligible members, including their proxies, who vote at the meeting; or (ii) members representing at least 75% of the total voting rights of all the eligible members, including their proxies, who vote at the meeting.

If a resolution is passed in writing, the resolution is passed by a majority of either (i) at least 75% of all eligible members who have signed in writing their agreement; or (ii) members representing at least 75% of the total voting rights of all eligible members who have signed in writing their agreement to the resolution.

This amendment is desirable as the stipulation in the original bill would mean that the 75% threshold would have to be ascertained by reference to all members of the applicant that are entitled to vote, instead of those who have actually voted on the resolution either at a meeting or in writing. Thus, the original stipulation may not be practical if the members of an applicant comprise a diverse and dispersed group of persons, e.g., a listed company, many of whom may not turn out to vote.

Legal opinion requirement

A CSA adopted has now specified that the legal opinion issued by a practicing lawyer of the applicant's place of incorporation in relation to its fulfilment of various criteria eligible for the re-domiciliation in Hong Kong must be issued within 35 days before the application date (the original bill containing no such specification).

Solvency requirement

Instead of requiring the board of directors of an applicant to form an opinion that it will be able to "pay its debts in full" within the period of 12 months on the application date, a CSA adopted has now amended the requirement to being able "to pay its debts which fall due" within the 12-month period concerned.

Clarifications made by the Government during the legislative process

Issue of a certificate of resident status (CoR) to a re-domiciled company

Legal basis

An applicant that has been issued a certificate of re-domiciliation will essentially be treated in the same way as a company incorporated in Hong Kong under the CO for all purposes.

³ Including (i) private companies limited by shares, (ii) public companies limited by shares, (iii) private unlimited companies with a share capital, and (iv) public unlimited companies with a share capital.

This will include for (i) court-free amalgamations under the CO; and (ii) a re-domiciled company being regarded as a “resident of Hong Kong” for the purpose of a comprehensive avoidance for double taxation agreement or arrangement (CDTA), by virtue of it being regarded as “incorporated in Hong Kong”. A “resident of Hong Kong” in relation to a company is defined in most Hong Kong’s CDAs as including a company which is incorporated in Hong Kong.

To enable such a treatment for CDTA purposes, the bill has introduced a provision to be added to the Inland Revenue Ordinance (IRO) that a reference to a company “incorporated in Hong Kong” will include a “re-domiciled company”.

The Government explained that this provision contained in the bill which has been passed into law would be sufficient for a re-domiciled company to be accepted by Hong Kong’s CDTA partners as a “resident of Hong Kong”.

This would be the case because the term “incorporated in Hong Kong” is not defined in Hong Kong’s CDAs. As such, such an undefined term in a CDTA would be determined based on how the term is defined under the tax laws of Hong Kong.

There may however be some lingering concern that the word “incorporated”, even undefined in a CDTA, is literal and plain enough to mean the process of a company being incorporated under the CO. As such, it may not include a re-domiciled company.

In any case, the Government has indicated that any disagreement on the issue could be resolved through the mutual agreement procedures specified in most Hong Kong’s CDAs.

In this regard, it is also of note that a re-domiciled company can alternatively claim it is a tax resident of Hong Kong under most Hong Kong’s CDTA, if it is actually “normally managed or controlled” in Hong Kong before or after the re-domiciliation.

The term “normally managed or controlled” is defined wide enough to cover various situations including (i) the management of daily business operations, or implementation of the decisions made by top management, etc., in Hong Kong; or (ii) the control of the whole business at the top level, including formulating the central policy of the business, making strategic policies of the company, choosing business financing, evaluating business performance, etc., such as through meetings of the board of directors held in Hong Kong.

The practice

The Ordinance provides that a re-domiciled company must complete its de-registration in its place of incorporation or domicile within 120 days after the issue of the certificate of re-domiciliation in Hong Kong.

The Government has indicated that, for a re-domiciled company, a CoR, by virtue of it being regarded as “incorporated in Hong Kong”, would only be issued by the Inland Revenue Department after the re-domiciled company has de-registered in its place of incorporation or domicile. The CoR would, however, specify that its effective date is from the date of re-domiciliation.

Guidance issued by the CR

The CR generally estimates that the applicant may be registered as a re-domiciled company in two weeks’ time if documents and particulars required for the re-domiciliation application are in order. A certificate of re-domiciliation and a business registration certificate will be issued by the Registrar to the applicant. A registration begins to have effect on the date of issue of the certificate of re-domiciliation.

The CR issued the following external circulars on 23 May 2025 in relation to the re-domiciliation regime:-

- No. 4 / 2025: Introduction of Company Re-domiciliation Regime
- No. 5 / 2025: Company Re-domiciliation Regime - Updates on Requirements relating to Non-Hong Kong Companies

The CR has also published a "Guide on Company Re-domiciliation" to provide comprehensive information relating to the application for re-domiciliation and other post-registration requirements and filing obligations specifically for a re-domiciled company.

Among all the changes brought by the re-domiciliation regime, the following salient points are worthwhile to be noted:-

- **Whether a company name could be registered:** A company must not be registered by a name that is the same as a name appearing in the Index of Company Names, except if (i) the registration by the name is for the purposes of Part 17A of the CO (i.e. Re-domiciled Companies); (ii) the applicant was a registered non-Hong Kong company under Part 16 of the CO immediately before the registration; and (iii) the name concerned was the corporate name or approved name of the registered non-Hong Kong company immediately before the registration. Applicants are therefore reminded to conduct a company search and see if the name of the re-domiciled company could be registered in Hong Kong before applying for re-domiciliation, unless the re-domiciled company is one which has already been registered under Part 16 of the CO.

- **Registration of charges:** A re-domiciled company must deliver a statement of the particulars of a charge in a new Form NM10 (Statement of Particulars of Charge (For Re-domiciled Company - Charges before Re-domiciliation Date)) or Form NM8 (Statement of Particulars of Charge (For Debenture Forming Part of a Series)) to the Registrar for registration within one month after the re-domiciliation date if: (i) the company, being a company incorporated outside Hong Kong, has created a charge before it becomes a re-domiciled company; (ii) the charge subsists on the re-domiciliation date; and (iii) the charge is of a kind that a statement of its particulars would have been required by section 335 of the CO to be delivered for registration had the charge been created by the re-domiciled company on or after that date. If the re-domiciled company is one which has been registered under Part 16 of the CO, it should be aware of the above registration obligation, which is different from the requirement under section 336 of the CO. Specifically, section 336 requires a registered non-Hong Kong company to register a charge created on property in Hong Kong only.
- **New filing and disclosure obligations for registered non-Hong Kong companies:** Subsequent to introduction of the re-domiciliation regime, the CR has requested a new filing obligation for a registered non-Hong Kong company to deliver a new Form NN16 (Return of Change of Place of Incorporation of Registered Non-Hong Kong Company) within one month if there is a change of the place of incorporation of the company. Additionally, the registered non-Hong Kong company must display its place of incorporation and the place of its latest domicile at every business venue and in every communication document and transaction instrument of the company in Hong Kong.

The CR has set up a new thematic section on its website to provide details and relevant information such as application forms required. The Integrated Companies Registry Information System will also be enhanced to process applications for re-domiciliation.

Commentary

We welcome the enactment of the Ordinance, which addresses the demand of companies incorporated elsewhere with major businesses in Hong Kong for re-domiciliation, particularly certain insurance companies incorporated in Bermuda.

The new law will also be conducive to Hong Kong's effort in proactively attracting enterprises and investment, thereby generating business for local professional services sectors as well as increasing investment and job opportunities.

In addition, upon its de-registration overseas, a re-redomiciled company would be relieved from having to comply with the regulatory requirements such as the economic substance requirement of its place of incorporation or domicile, e.g., in the British Virgin Islands, Cayman Islands or Bermuda.

The fact that under the global minimum tax initiative, large multinational enterprise (MNE) groups will be required to pay tax of at least 15% in every jurisdiction in which they operate may also make re-domiciling some of their constituent entities (CEs) to Hong Kong a worth-exploring option. This would particularly be the case if Hong Kong, as an international business hub, is also close to their business operations in the region.

However, in-scope MNE groups would need to consider the tax implications of re-domiciling their constituent entities from one jurisdiction to another, given that the top-up taxes under the initiative would be charged on a jurisdiction-by-jurisdiction basis.

From a Hong Kong's tax perspective, certain expenditures such as those incurred for research and development (R&D), plant and machinery and intellectual properties before re-domiciliation would be eligible for tax deduction, if after re-domiciliation these items of expenditures are used in the business carried on in Hong Kong by a re-domiciled company.

However, except for expenditures on R&D, other items of expenditures that would be deductible or eligible for tax depreciation allowances in Hong Kong would be based on the lower of the amortized costs or market value of the items concerned. As such, valuation of such items may be required for the deduction claims in Hong Kong.

Clients who wish to explore the pros and cons of re-domiciling their non-Hong Kong incorporated or domiciled companies to Hong Kong or to understand more about any issues discussed above can contact their tax executive.

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