

Hong Kong Tax Alert

3 June 2021
2021 Issue No. 6

Hong Kong passes legislation addressing the tax treatment of court-free amalgamations, the transfer or succession of assets without sale and deduction of foreign tax paid; and a framework in preparation for the e-filing of tax returns

Yesterday, the Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 (the Bill) passed its third reading in the Legislative Council. The Bill, as passed, is expected to be gazetted and formally become law (the new law) next Friday (i.e., 11 June 2021).

The new law is the same as the Bill in its original form. Clients may refer to our Hong Kong Tax alert – 24 March 2021 (2021 Issue No. 2) and Hong Kong Tax alert – 1 April 2021 (2012 Issue No. 4)¹ for a detailed discussion of the Bill in its original form.

The new law makes the following changes to the Inland Revenue Ordinance (IRO) by:

- ▶ Adopting a succession approach to a qualifying amalgamation (i.e., that undertaken under the Companies Ordinance of Hong Kong (Cap. 622)). Under such an approach, upon election by the taxpayer, the transfer of assets from an amalgamating company to the amalgamated company (i.e., the surviving entity) will generally be treated as being made at book value and therefore be tax neutral. The amalgamated company will be entitled to continue to claim tax deductions or allowances in respect of the unrelieved tax costs of the assets so transferred or succeeded from the amalgamating company.

In addition, the new law also specifies the restrictive conditions under which pre-amalgamation tax losses sustained by the amalgamating and amalgamated companies can be utilized post amalgamation.

The above special tax treatment, however, does not apply to a merger of the Hong Kong branches of two or more foreign companies under a foreign law. Any transfer of assets under such foreign mergers, not being a qualifying amalgamation under the new law, will be deemed for tax purposes to be made at open market value (subject to a cap) under the newly introduced provisions for the “transfer or succession of assets without sale”. Hence, such transfer of assets would not be tax neutral, possibly resulting in significant tax charges upon merger.

1. These alerts can be downloaded from this link:
https://www.ey.com/en_cn/hong-kong-tax-alerts

- ▶ Introducing a legal framework to enable more businesses to furnish tax returns electronically. The first phase of this wider adoption of e-filing of returns on a voluntary basis will tentatively be launched in 2023. The Government also intends to require certain taxpayers e.g., large-scale taxpayers to e-file their returns mandatorily at a later date. In addition, taxpayers may in future engage service providers to sign and furnish tax returns to the Inland Revenue Department on their behalf.
- ▶ Specifying that the following types of foreign taxes paid will be tax deductible:
 - a) for both Hong Kong and non-Hong Kong resident persons – foreign taxes that were charged on a gross income basis in respect of non-interest types of income (e.g., royalties and technical service fees) and paid in a jurisdiction that does not have a comprehensive avoidance of double taxation arrangement with Hong Kong (i.e., paid in a “non-Hong Kong CDTA jurisdiction”);
 - b) for non-Hong Kong resident persons – foreign taxes in respect of (i) interest-type of income² paid in both Hong Kong and non-Hong Kong CDTA jurisdictions; and (ii) non-interest types of income that were charged on a gross income basis and paid in a jurisdiction that has concluded a comprehensive avoidance of double taxation arrangement with Hong Kong (i.e., paid in a “Hong Kong CDTA jurisdiction”) that are not covered in (a) above.
 - c) for non-Hong Kong resident persons – the tax deduction that can be claimed under (a) and (b) above will however be limited to the amount of the foreign taxes paid that is unrelieved from double taxation in the residence jurisdiction of the non-Hong Kong resident persons.

The Government has made the following clarifications in its replies to the Bills Committee formed to scrutinize the Bill:

- ▶ foreign taxes paid by a non-Hong Kong resident person would be regarded as unrelieved from double taxation where the foreign taxes paid are not eligible to be utilized (whether by tax credit or deduction) in their residence jurisdiction. As such, where the Hong Kong sourced income of the non-Hong Kong resident person, in respect of which foreign taxes were paid, is tax exempt in the residence jurisdiction; or the non-Hong Kong resident person is not liable to tax in the residence jurisdiction because of a loss situation, the foreign taxes paid would be fully deductible in Hong Kong; and
- ▶ whether foreign taxes charged on a deemed profit basis are deductible (i.e., also regarded as being charged on a gross income basis) under the new law would depend on the basis of computation.

It should also be noted that foreign taxes paid in respect of interest-type of income by Hong Kong resident persons are unaffected by the new law. As such, where the foreign taxes were paid in a Hong Kong CDTA jurisdiction, tax relief can only be claimed by way of a tax credit under the relevant CDTA. Where the foreign taxes were paid in a non-Hong Kong CDTA jurisdiction, only a tax deduction can be claimed under the existing provision of section 16(1)(c) of the IRO.

Effective dates

The effective dates of the various provisions of the new law are as follows:

| Amendments under the new law | Effective date |
|---|---|
| Special tax treatment for a qualifying amalgamation | On or after the new law is gazetted (i.e., expected to be 11 June 2021) |
| Transfer or succession of assets without sale | On or after the new law is gazetted (i.e., expected to be 11 June 2021) |
| Wider adoption of electronic filing of tax returns | To be specified in a gazette at a later date |
| Deduction of foreign taxes paid | Year of assessment 2021/22 and thereafter |

Clients who wish to explore how they can benefit from the new law should contact their tax executives.

2. Those types of income that are deemed to be chargeable to tax in Hong Kong under sections 15(1)(f), (g), (i), (ia), (ib), (j), (k), (l), (la) or (lb) of the IRO.

Hong Kong office
Agnes Chan, Managing Partner, Hong Kong & Macau
27/F One Taikoo Place, 970 King's Road, Quarry Bay, Hong Kong
Tel: +852 2846 9888 / Fax: +852 2868 4432

| Non-financial Services | | | Financial Services | |
|--|--|---|--|--|
| David Chan Tax Leader for Hong Kong and Macau +852 2629 3228 david.chan@hk.ey.com | | | Paul Ho Tax Leader for Hong Kong +852 2849 9564 paul.ho@hk.ey.com | |
| Business Tax Services / Global Compliance and Reporting | | | Business Tax Services / Global Compliance and Reporting | |
| Hong Kong Tax Services | | | Hong Kong Tax Services | |
| Wilson Cheng +852 2846 9066 wilson.cheng@hk.ey.com | Tracy Ho +852 2846 9065 tracy.ho@hk.ey.com | May Leung +852 2629 3089 may.leung@hk.ey.com | Paul Ho +852 2849 9564 paul.ho@hk.ey.com | Sunny Liu +852 2846 9883 sunny.liu@hk.ey.com |
| Ada Ma +852 2849 9391 ada.ma@hk.ey.com | Grace Tang +852 2846 9889 grace.tang@hk.ey.com | Karina Wong +852 2849 9175 karina.wong@hk.ey.com | Customer Tax Operations and Reporting Services | |
| China Tax Services | | | Anish Benara +852 2629 3293 anish.benara@hk.ey.com | |
| Ivan Chan +852 2629 3828 ivan.chan@hk.ey.com | Lorraine Cheung +852 2849 9356 lorraine.cheung@hk.ey.com | Sam Fan +852 2849 9278 sam.fan@hk.ey.com | China Tax Services | US Tax Services |
| Becky Lai +852 2629 3188 becky.lai@hk.ey.com | Carol Liu +852 2629 3788 carol.liu@hk.ey.com | | Cindy Li +852 2629 3608 cindy.jy.li@hk.ey.com | Michael Stenske +852 2629 3058 michael.stenske@hk.ey.com |
| International Tax and Transaction Services | | | International Tax and Transaction Services | |
| International Tax Services | | Transfer Pricing Services | International Tax Services | |
| Jo An Yee +852 2846 9710 jo-an.yee@hk.ey.com | Martin Richter +852 2629 3938 martin.richter@hk.ey.com | Kenny Wei +852 2629 3941 kenny.wei@hk.ey.com | James Badenach +852 2629 3988 james.badenach@hk.ey.com | |
| Transaction Tax Services | | | Adam Williams +852 2849 9589 adam-b.williams@hk.ey.com | |
| David Chan +852 2629 3228 david.chan@hk.ey.com | Jane Hui +852 2629 3836 jane.hui@hk.ey.com | Eric Lam +852 2846 9946 eric-yh.lam@hk.ey.com | Qiannan Lu +852 2675 2922 qiannan.lu@hk.ey.com | Transfer Pricing Services |
| People Advisory Services | | | Justin Kyte +852 2629 3880 justin.kyte@hk.ey.com | |
| Ami Cheung +852 2629 3286 ami-km.cheung@hk.ey.com | Robin Choi +852 2629 3813 robin.choi@hk.ey.com | Jeff Tang +852 2515 4168 jeff.tk.tang@hk.ey.com | Transaction Tax Services | |
| Asia-Pacific Tax Centre | | | Rohit Narula +852 2629 3549 rohit.narula@hk.ey.com | |
| Tax Technology and Transformation Services | International Tax and Transaction Services | Indirect tax | Global Compliance and Reporting | |
| Albert Lee +852 2629 3318 albert.lee@hk.ey.com | US Tax Desk | Tracey Kuuskoski +852 26752842 tracey.kuuskoski@hk.ey.com | Cherry Lam +852 2849 9563 cherry-lw.lam@hk.ey.com | |
| Robert Hardesty +852 2629 3291 robert.hardesty@hk.ey.com | Jeremy Litton +852 3471 2783 jeremy.litton@hk.ey.com | | | |
| | Operating Model Effectiveness | | | |
| | Edvard Rinck +852 2675 2834 edvard.rinck@hk.ey.com | | | |

EY | Building a better working world
EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets. Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate. Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

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.

© 2021 Ernst & Young Tax Services Limited. All Rights Reserved.
APAC no. 03012504 ED None.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com/china



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