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Hong Kong Tax Alert

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IRD clarifies its view on stamp duty intra-group transfer relief after John Wiley case

The recent decision in John Wiley of the Court of Final Appeal (CFA) held that the transfer of a Hong Kong stock from a UK limited liability partnership (UK LLP), as a 100% indirect owned subsidiary of a US limited liability company (US LLC), to the US LLC did not qualify for the stamp duty intra-group transfer relief under section 45 of the Stamp Duty Ordinance (SDO).

The decision was primarily based on the fact that the UK LLP did not have "issued share capital" and therefore the US LLC and the UK LLP could not satisfy the "90% association" via "issued share capital" requirement of section 45 of the SDO.

Upon enquiry, the Inland Revenue Department (IRD) has indicated that an LLP or a company that does not have issued share capital can however be the parent entity that holds a company with "issued share capital" for the stamp duty intra-group transfer relief.

Clients who are contemplating a transaction involving the issues discussed in this alert should contact their tax executive.

The CFA decision in John Wiley

Section 45 of the SDO provides that the transfer of Hong Kong stock or immovable property between two "bodies corporate" that are associated by virtue of at least 90% of the "issued share capital" of (i) one is beneficially owned by the other; or (ii) both are beneficially owned by a third body corporate would be exempt from stamp duty.

In essence, the CFA decision held that:

- "bodies corporate" as envisaged by section 45 are only those companies that have issued share capital governed by the Companies Ordinance of Hong Kong in 1981 when section 45 was enacted, albeit that could be extended to cover foreign companies with issued share capital. As such, an LLP, a type of entity that has emerged after the enactment of section 45 and is not governed by the company laws of Hong Kong or overseas, would not be a "body corporate" within the terms of section 45 of the SDO; and
- the term "issued share capital" in section 45 is to be given its ordinary and natural meaning within the context of company laws. As such, it does not cover "capital" issued by an LLP, even though such capital may be analogous to "issued share capital" of a company in many respects.

Please refer to our Hong Kong tax alert (2025 Issue No. 14)[1] for detailed discussion on the CFA decision.

However, similar to the UK practice, the IRD has previously indicated that (i) an LLP is a body corporate that can be a parent entity that holds a company with issued share capital; and (ii) a transfer of Hong Kong stock or immovable property between them would qualify for the stamp duty intra-group transfer relief.

Given that an LLP is not a "body corporate" envisaged by section 45 as held by the CFA, there was some doubt whether the IRD would still hold the above position.

Upon enquiry, the IRD has indicated that its view on the matter has not changed. The reason apparently being that its case in the CFA in John Wiley focused on the "issued share capital" argument, i.e., an LLP cannot have issued share capital. Thus, the CFA's statement that an LLP would not be a "body corporate" as envisaged by section 45 of the SDO could in a sense be regarded as a non-binding obiter.

Clients who are contemplating a transaction involving the issues discussed in this alert should contact their tax executives.

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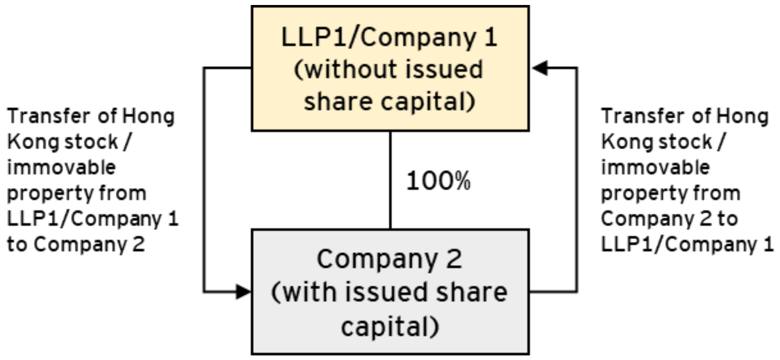
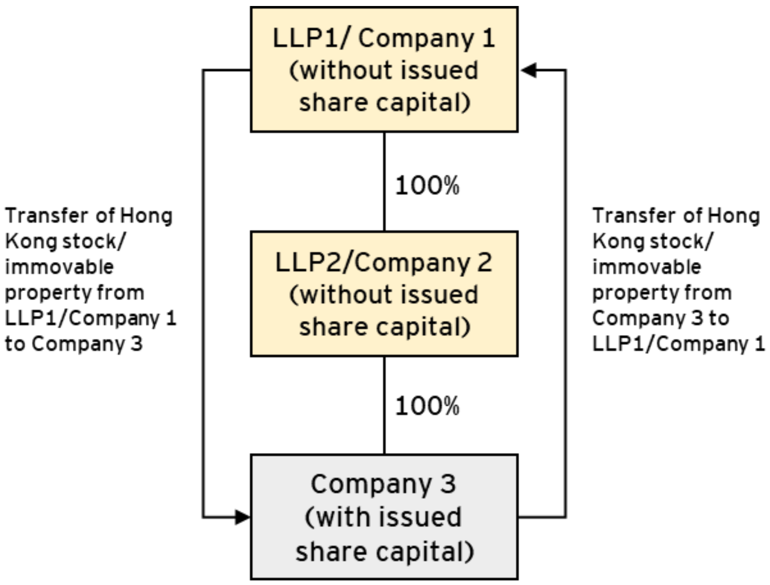
[1] The Hong Kong tax alert (2025 Issue No. 14) can be accessed via the link: https://www.ey.com/en_cn/technical/hong-kong-tax-alerts/top-court-rules-an-llp-is-not-a-body-corporate-having-a-share-capital-did-not-qualify-for-the-stamp-duty-group-exemption-relief

The following diagrams illustrate what qualifies or not qualifies for the stamp duty intra-group transfer relief where an LLP or a company that does not have issued share capital as a parent entity is involved.

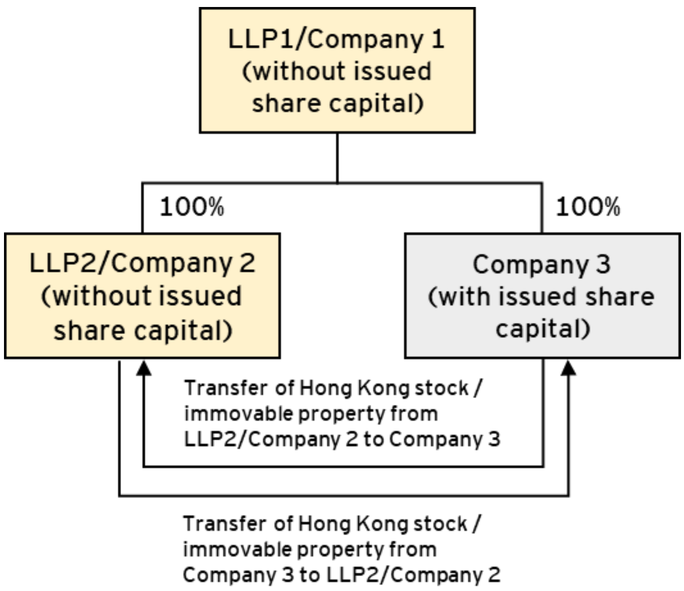
<table>
<tr><th>Diagrams</th><th>Explanation</th></tr>
<tr><td>



</td><td>The transfer of Hong Kong stock/ immovable property from LLP1/Company 1 to Company 2 (and vice versa) would qualify for the stamp duty intra-group transfer relief as the LLP1/Company 1 would be regarded as associated with Company 2, given that LLP1/Company 1 holds more than 90% of the issued share capital of Company 2.</td></tr>
<tr><td>



</td><td>The transfer of Hong Kong stock/ immovable property from LLP1/Company 1 to Company 3 (and vice versa) would not qualify for the stamp duty intra-group transfer relief as LLP1/Company 1 could not be regarded as associated with Company 3, given that LLP2/Company 2 does not have “issued share capital”.</td></tr>
<tr><td>



</td><td>The transfer of Hong Kong stock/ immovable property from LLP2/Company 2 to Company 3 (and vice versa) would not qualify for the stamp duty intra-group transfer relief as LLP2/Company 2 could not be regarded as associated with Company 3, given that LLP2/Company 2 does not have “issued share capital”. As such, it could not be said that LLP1/Company 1 owns at least 90% of the issued share capital of both LLP2/Company 2 and Company 3.</td></tr>
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