Hong Kong Tax Review 2024

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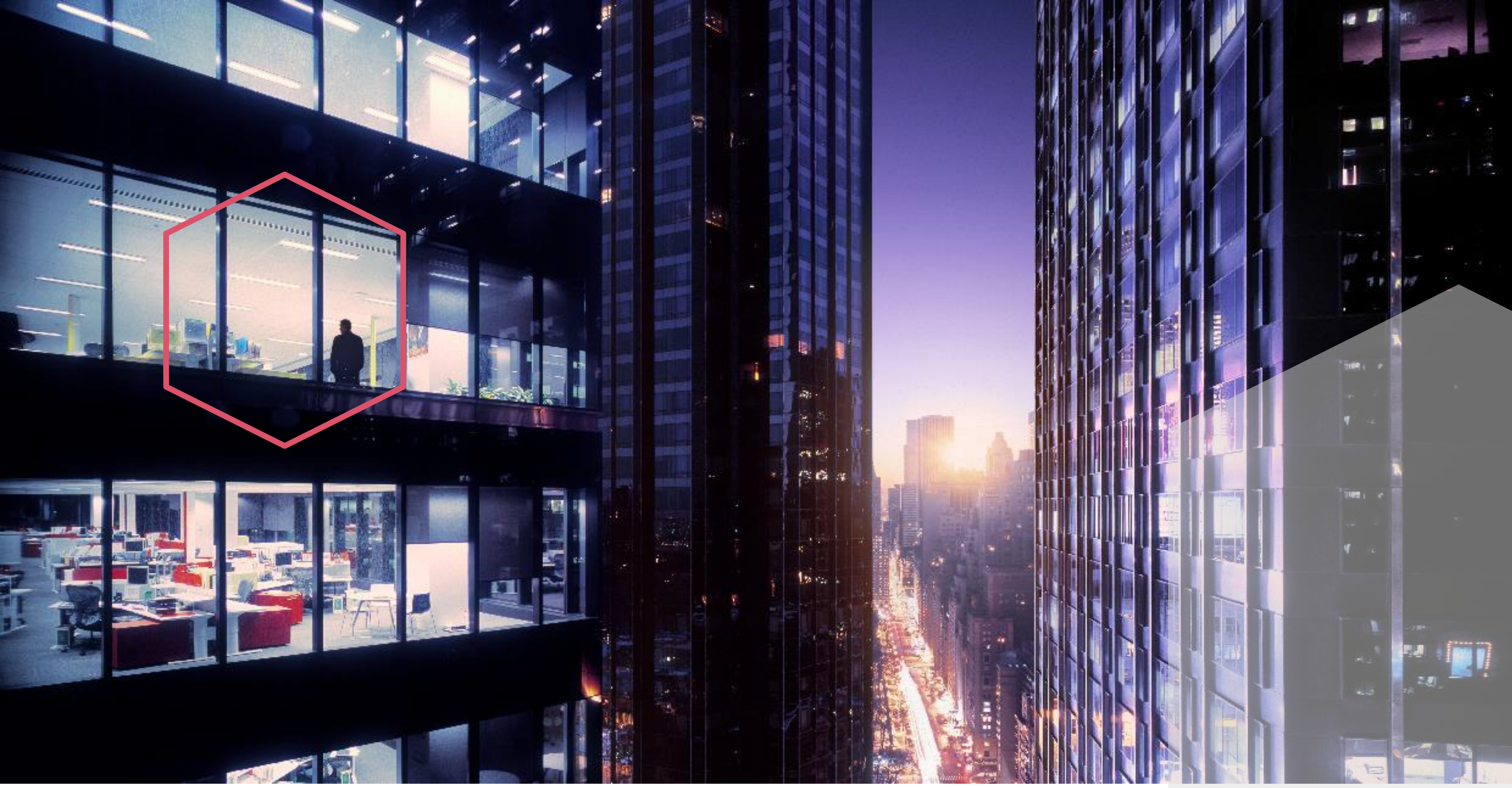


Hong Kong: 2024 year in review

Although the path to recovery after the COVID-19 pandemic has not been smooth, Hong Kong has been pressing ahead with its reforms to bolster economic growth and improve people's livelihoods. Amidst global challenges and geopolitical uncertainties, Hong Kong is determined to leverage its strengths to actively seek new development opportunities and enhance its competitive edge.

Hong Kong remains committed to international tax co-operation and combating cross-border tax avoidance. In February 2024, Hong Kong was removed from the EU watchlist regarding international tax co-operation in recognition of Hong Kong's efforts to align its FSIE regime with the latest international tax standards. Meanwhile, as a member of the OECD/G20 Inclusive Framework on BEPS, Hong Kong is working at full steam to bring in the global minimum tax rules under Pillar Two of BEPS 2.0.

It remains a key objective of the Government to attract more businesses and investments to Hong Kong. During the year, Hong Kong continued to actively expand its tax treaty network, leading to the conclusion of four new CDTAs with jurisdictions participating in the Belt and Road Initiative. Hong Kong has also introduced the patent box tax incentive to encourage R&D activities and IP development. Furthermore, Hong Kong has various tax and related initiatives in the pipeline, including (i) introducing a company re-domiciliation regime; (ii) enhancing the tax concessions for carried interest, funds and single family offices; and (iii) enhancing the tax concessions for maritime services.

Hong Kong removed from EU's tax watchlist

In our Hong Kong Tax Review 2023, we reported that in response to the EU's inclusion of Hong Kong in its tax watchlist in 2021, the Government enacted amendments to refine Hong Kong's FSIE regime with respect to four types of foreign-sourced income, namely (1) dividend, (2) interest, (3) IP income and (4) disposal gain from the sale of equity interests. The FSIE regime has come into operation from 1 January 2023.

To align with the latest EU guidance, the Government further refined its FSIE regime to include disposal gain on other types of assets (in addition to equity interests) with effect from 1 January 2024.

In February 2024, Hong Kong was removed from the EU's tax watchlist. Such removal was a testament to the Government's commitment to compliance with international tax standards and demonstrated the Government's dedication to maintain Hong Kong's status as an attractive and reputable place for business and investment.

Please refer to our Hong Kong Tax News Flash, February 2024, Issue 4 for details of the removal of Hong Kong from the EU's tax watchlist.

Proposed enhancements to tax concessions for carried interest, funds and single family offices

The Government prioritises consolidating Hong Kong's status as a leading asset and wealth management hub. In the 2024/25 Budget speech, the Financial Secretary announced plans to enhance the preferential tax regimes for funds, single family offices and carried interest. The Chief Executive also reaffirmed that the Government would consult the industry on these enhancements in his 2024 Policy Address.

The long-awaited details of the proposed changes finally came in the form of a consultation paper issued on 25 November 2024. The consultation paper set out the proposed enhancements to the UFE regime, the family-owned investment holding vehicle tax concession regime and the carried interest tax concession regime. The consultation paper at the same time proposed introducing a tax reporting mechanism and a substantial activities requirement under the UFE regime.

The enhancements to the three regimes are expected to further solidify Hong Kong's status as a premier international asset management hub. Notably, the proposal to extend the carried interest tax concession regime to include carried interest arising from transactions in all types of qualifying assets, rather than limiting it to private equity transactions, will greatly enhance the regime's appeal and practicality. This extension is anticipated to have a significant positive impact, making Hong Kong a more attractive destination for fund managers to establish their presence.

Please refer to our Hong Kong Tax News Flashes, November 2024, Issue 19 and November 2024, Issue 20 for details of the proposed enhancements.

Patent box tax incentive

As mentioned in Hong Kong Tax Review 2023, the Government conducted a consultation in 2023 on a proposed patent box tax incentive to provide tax concessions for profits sourced in Hong Kong and derived from eligible IP assets generated through R&D activities.

The Inland Revenue (Amendment) (Tax Concessions for Intellectual Property Income) Ordinance 2024 was gazetted on 5 July 2024 to introduce a patent box regime in Hong Kong, which provides a concessionary tax rate of 5% for eligible IP income that is sourced in Hong Kong and derived from an eligible IP developed through R&D activities with effect from the year of assessment 2023/24.

Please refer to our Hong Kong Tax News Flashes, April 2024, Issue 6 and June 2024, Issue 9 for details of the patent box tax incentive.

Proposed company re-domiciliation regime

As mentioned in our Hong Kong Tax Review 2023, the Government conducted a consultation in 2023 on a proposed company re-domiciliation regime to facilitate non-Hong Kong companies to re-domicile to Hong Kong.

On 3 July 2024, the Government released the consultation conclusion and latest legislative proposals for the regime. Specifically, the latest legislative proposals incorporated several favourable recommendations from PwC's submission, such as relaxing the requirement on financial statements as proof of solvency, simplifying the requirement on members' consent, and providing unilateral tax credits to re-domiciled companies that are subject to an exit tax in their original domicile if their actual similar profits are subsequently taxed in Hong Kong.

An amendment bill to introduce amendments to the Companies Ordinance and other related enactments, including the IRO, to establish the proposed regime was gazetted on 20 December 2024. It is anticipated that overseas companies will be able to apply for re-domiciliation once the bill is enacted.

Please refer to our Hong Kong Tax News Flashes, July 2024, Issue 11 and January 2025, Issue 1 for details of the proposed company re-domiciliation regime.

Lease reinstatement cost deduction and removal of time limits for CBA/IBA claims

In the 2024/25 Hong Kong Budget, the Financial Secretary announced two proposed enhancement measures: (i) a new profits tax deduction for reinstatement costs for leased premises; and (ii) removal of the time limit for claiming CBA/IBA.

Further to the paper submitted by the Financial Services and the Treasury Bureau to the LegCo in May 2024, the amendment bill seeking to implement the above measures was passed by the LegCo in December 2024. The two measures will take effect from the year of assessment 2024/25.

Please refer to our Hong Kong Tax News Flashes, July 2024, Issue 10 and October 2024, Issue 16**,** for details of the two enhancement measures.

Hong Kong's responses to BEPS

As mentioned in our Hong Kong Tax Review 2023, the Government conducted a consultation in 2023 on the implementation of the Pillar Two global minimum tax and the HKMTT.

On 30 October 2024, the Government released the consultation outcome, summarising stakeholders' feedback and the Government's follow-up. We are pleased that the Government has carefully considered the constructive comments provided by various stakeholders including PwC, and has thoroughly consulted the OECD.

An amendment bill to incorporate these changes into the IRO was gazetted on 27 December 2024. Different aspects of the amendment bill will take effect as follows:

Please refer to our Hong Kong Tax News Flashes, October 2024, Issue 18 and December 2024, Issue 21 for details of the consultation outcome and the latest legislative proposals.

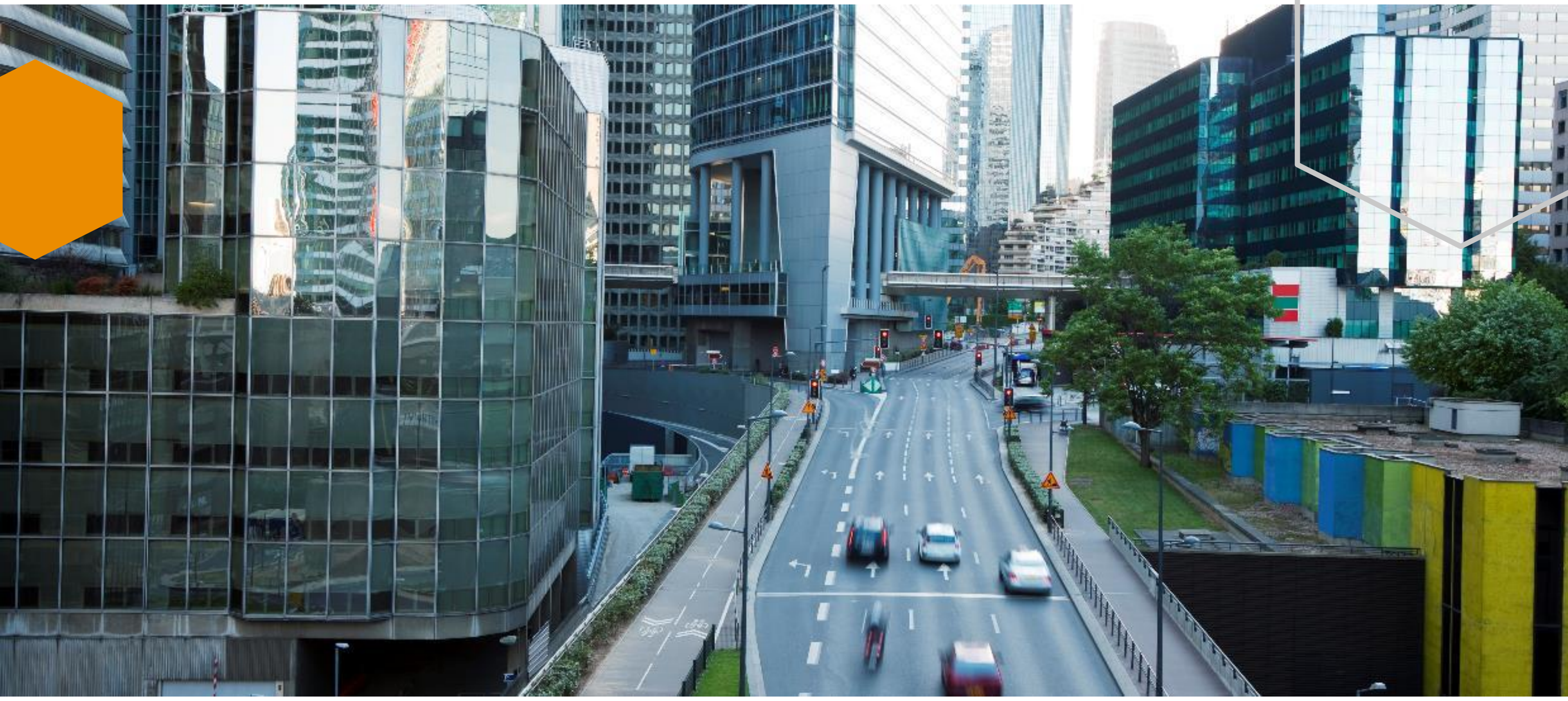
Aspect	Effective date
Definition of Hong Kong resident entity	Retrospectively from 1 January 2024
IIR and HKMTT	For a fiscal year beginning on or after 1 January 2025
UTPR	At a later stage to be decided

Latest status of Hong Kong tax treaty network

In 2024, Hong Kong signed CDTAs with Armenia, Bahrain, Croatia and Türkiye. This brought the total number of Hong Kong CDTAs to 51 as of 31 December 2024. The four new CDTAs will come into force after the completion of the ratification procedures by both Hong Kong and the respective contracting jurisdictions.

Hong Kong is expected to continue expanding its treaty network in 2025. Potential treaty partners include Azerbaijan, Cabo Verde, Cyprus, Jordan, Kyrgyzstan, Lithuania, Maldives, Mongolia, Nigeria, Norway, Rwanda, Turkmenistan, Ukraine and Venezuela. The first rounds of negotiation of Hong Kong with Cabo Verde, Mongolia, Venezuela and Rwanda were completed on 26 January, 15 March, 10 May and 22 November 2024 respectively.

Jurisdiction	Date of signing	Date of entry into force	Effective date in Hong Kong (year of assessment)	Effective date in the other contracting jurisdiction
Armenia	24 June 2024 (signed in duplicate in Armenia)	Not yet ratified	Not yet ratified	Not yet ratified
Bahrain	3 March 2024 (signed in duplicate in Bahrain)	Not yet ratified	Not yet ratified	Not yet ratified
Croatia	24 January 2024 (signed in duplicate in Hong Kong)	20 December 2024	2025/26	Taxable year beginning on or after 1 January 2025
Türkiye	24 September 2024 (signed in duplicate in Hong Kong)	Not yet ratified	Not yet ratified	Not yet ratified



Key tax and related legislative developments in 2024

The table below summarises the key tax and related legislations enacted in 2024.

Legislation	Gazettal date	Key subject matter	Effective date
1. Inland Revenue (Amendment) (Tax Deductions for Spectrum Utilization Fees) Ordinance 2024	19 January 2024	• Providing new profits tax deductions for spectrum utilisation fees in respect of the radio spectrum to be paid by assignees after the law is enacted	Apply to spectrum utilisation fees derived in auctions on or after 19 January 2024
2. Stamp Duty (Amendment) (Residential Properties) Ordinance 2024	9 February 2024	• Shortening the applicable period of the SSD from three years to two years • Reducing the respective rates of the BSD and the NRSD from 15% to 7.5% • Providing a mechanism for the suspension of payment of the BSD and the NRSD for incoming talents' acquisition of residential properties	11 a.m on 25 October 2023
3. Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Ordinance 2024	1 March 2024	• Enhancing the existing aircraft leasing preferential tax regime Please refer to our Hong Kong Tax News Flash, February 2024, Issue 3.	Apply retrospectively from the year of assessment 2023/24
4. Business Registration Ordinance (Amendment of Schedule 2) Order 2024 and Public Revenue Protection (Business Registration) Order 2024	8 March 2024	• Increasing the branch registration fee to HK$80 for a one-year certificate and HK$208 for a three-year certificate • Increasing the business registration fee to HK$2,200 for a one-year certificate and HK$5,720 for a three-year certificate • Waiving the business registration levy of HK$150 for a period of two years	1 April 2024
5. Notice under section 51AA(5) and (6) of the Inland Revenue Ordinance	22 March 2024	• Allowing 2022/23 to 2023/24 profits tax returns (BIR 51 and BIR 52), 2021/22 to 2023/24 individual tax returns (BIR 60) (subject to certain conditions) and property tax returns (BIR57) to be furnished electronically as an alternative to the paper form • Specifying that the supplementary forms and other forms that are required to be furnished with 2018/19 to 2024/25 tax returns (BIR 51, BIR 52 and BIR 54) must be furnished electronically	1 April 2024

Legislation	Gazettal date	Key subject matter	Effective date
6. Stamp Duty (Amendment) Ordinance 2024	19 April 2024	• Replacing the existing flat rate of ad valorem stamp duty payable on certain instruments dealing with residential properties with new rates that are same as those for non-residential properties • Lowering the rate of SSD, BSD and NRSD payable on certain instruments dealing with residential properties to 0%	11 a.m. on 28 February 2024
7. Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2024	3 May 2024	• Removing nine jurisdictions from, and adding 11 jurisdictions to, the list of participating jurisdictions that have already activated exchange relationships for AEOI with Hong Kong, bringing the total number to 102 • Adding three jurisdictions to the list of reportable jurisdictions for AEOI purposes	1 January 2025
8. Inland Revenue (Amendment) (Tax Concessions and Two-tiered Standard Rates) Ordinance 2024	31 May 2024	• Increasing the deduction ceiling for home loan interest and domestic rents to HK$120,000 for eligible taxpayers under salaries tax and personal assessment who are residing with children born on or after 25 October 2023	Year of assessment 2024/25
		• Providing 100% reduction of profits tax, salaries tax and tax under personal assessment for the year of assessment 2023/24, subject to a ceiling of HK$3,000	Year of assessment 2023/24
		• Implementing a two-tiered standard rates regime for salaries tax and personal assessment, where the first HK$5,000,000 of net income will be taxed at 15%, and the remainder will be taxed at 16%	Year of assessment 2024/25
9. Inland Revenue (Amendment) (Tax Concessions for Intellectual Property Income) Ordinance 2024	5 July 2024	• Providing a profits tax concession for the concessionary portion of assessable profits from eligible IP income Please refer to our Hong Kong Tax News Flash, June 2024, Issue 9.	Apply retrospectively from the year of assessment 2023/24
10. Five Orders on Comprehensive Avoidance of Double Taxation Agreements with Armenia, Bahrain, Bangladesh, Croatia and Türkiye	25 October 2024	• Giving effect to the five CDTAs signed between Hong Kong and Armenia, Bahrain, Bangladesh, Croatia and Türkiye	Upon the completion of ratification procedures in Hong Kong and the relevant tax jurisdictions

Legislation	Gazettal date	Key subject matter	Effective date
11. Rating (Amendment) Ordinance 2024	1 November 2024	• Implementing a progressive rating system for domestic tenements • Charging rates at 5% for the first HK$550,000, 8% for the next HK$250,000, and 12% for the value exceeding HK$800,000 of the rateable value	1 January 2025
12. Stamp Duty Legislation (Miscellaneous Amendments) Ordinance 2024	20 December 2024	• Waiving the stamp duty payable in respect of the transfer of REIT shares or units and jobbing business of options market makers	21 December 2024
		• Adjusting the stamp duty collection arrangement involving approved securities registrars under the uncertificated securities market regime	Upon the implementation of the uncertificated securities market regime, tentatively within 2025
13. Inland Revenue (Amendment) (Tax Deductions for Leased Premises Reinstatement and Allowances for Buildings and Structures) Ordinance 2024	27 December 2024	• Providing a new profits tax deduction for reinstatement costs for leased premises • Removing the time limit for claiming CBA/IBA Please refer to our Hong Kong Tax News Flash, October 2024, Issue 16.	Year of assessment 2024/25
14. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2024	31 May 2024	• Reducing the annual interest rate on TRCs to 0.8833% from the prior rate of 0.9250%	TRCs issued from 3 June 2024 to 6 October 2024
15. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 2) Notice 2024	4 October 2024	• Reducing the annual interest rate on TRCs to 0.8000%	TRCs issued from 7 October 2024 to 3 November 2024
16. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 3) Notice 2024	4 November 2024	• Reducing the annual interest rate on TRCs to 0.7167%	TRCs issued from 4 November 2024 to 1 December 2024

Legislation	Gazettal date	Key subject matter	Effective date
17. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 4) Notice 2024	29 November 2024	• Reducing the annual interest rate on TRCs to 0.5500%	TRCs issued on or after 2 December 2024
18. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 5) Notice 2024	27 December 2024	• Reducing the annual interest rate on TRCs to 0.4250%	TRCs issued on or after 6 January 2025

The table below summarises the key tax and related bills gazetted in 2024 pending enactment.

Bill	Gazettal date	Key subject matter	Expected effective date
1. Inland Revenue (Amendment) (Tax Deductions for Assisted Reproductive Service Expenses) Bill 2024	29 November 2024	• Providing a new concessionary deduction for assisted reproductive service expenses under salaries tax and tax under personal assessment, subject to a ceiling of HK$100,000 per year	Year of assessment 2024/25
2. Companies (Amendment) (No.2) Bill 2024	20 December 2024	• Introducing a company re-domiciliation regime enabling non-Hong Kong-incorporated companies to re-domicile to Hong Kong	Upon enactment of the bill
3. Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024	27 December 2024	• Implementing the IIR and HKMTT in Hong Kong	Apply to a fiscal year beginning on or after 1 January 2025
		• Implementing the UTPR	To be specified by notice published by the Government
		• Providing a definition of Hong Kong resident entity	Apply retrospectively from 1 January 2024

Other tax proposal in the pipeline

In addition to the above, the Government has launched a consultation on the proposed enhancements to the tax concessions for carried interest, funds and single family offices in November 2024.

Guidance revised/issued by the IRD in 2024

The table below summarises the key online guidance revised/issued by the IRD during 2024.

Online guidance	Date of last revision/issue
1. Tax Concessions for Family-owned Investment Holding Vehicles Please refer to our Hong Kong Tax News Flash, January 2024, Issue 2.	19 February 2024
2. Aircraft Leasing Tax Regime Please refer to our Hong Kong Tax News Flash, February 2024, Issue 3.	12 March 2024
3. Tax Deduction for Domestic Rent	31 May 2024
4. Increasing ceiling amount for concessionary deductions allowable for home loan interest and domestic rent	31 May 2024
5. Foreign-sourced Income Exemption Please refer to our Hong Kong Tax News Flash, July 2024, Issue 13.	5 July 2024
6. Tax Concessions for Intellectual Property Income – Patent Box Regime	29 August 2024
7. Tax Deduction for Assisted Reproductive Service Expenses	29 November 2024
8. Company Re-domiciliation Regime Please refer to our Hong Kong Tax News Flash, January 2025, Issue 1.	20 December 2024
9. Tax Deductions for Leased Premises Reinstatement and Allowances for Buildings and Structures Please refer to our Hong Kong Tax News Flash, October 2024, Issue 16.	27 December 2024
10. Global minimum tax and Hong Kong minimum top-up tax for multinational enterprise groups Please refer to our Hong Kong Tax News Flash, December 2024, Issue 21.	27 December 2024

Advance ruling cases issued by the IRD in 2024

The table below summarises the profits-tax related advance ruling cases issued by the IRD in 2024.

Case No.	Key subject matter	Provision of the IRO in respect of which ruling applies	Date of ruling issued
1. No. 73	Tax concessions for family-owned investment holding vehicles	Sections 9(2), 16(2), 22, 23, 26 and 27 of Schedule 16E and sections 15H(1), 15K, 61 and 61A	17 January 2024
2. No. 74	FSIE	Sections 15H, 15I, 15M and 15N	7 November 2023
3. No. 75	FSIE	Sections 15H and 15I	30 September 2024

Please refer to our Hong Kong Tax News Flash, January 2024, Issue 2 for a detailed discussion of the advance ruling case no. 73.

Update on Hong Kong profits tax cases

Foxconn (Far East) Limited v. CIR

This case involves an application by the taxpayer for leave to appeal against a Board decision in relation to its (i) offshore claim on trading profits and (ii) deduction claims on staff costs and certain operating expenses of a factory located in the Chinese mainland, which only arose if issue (i) is decided against the taxpayer.

The taxpayer claimed that it was engaged by its Taiwan parent company to provide manufacturing and assembly services under a subcontracting agreement, and the services were carried out through an unrelated factory located in the Chinese mainland. As such, the taxpayer contended that the profits in question, namely subcontracting fees from its Taiwan parent company, and gains from sale of residual materials belonging to its Taiwan parent company but not required within the manufacture of finished products, were offshore sourced and not chargeable to profits tax.

The Board ruled against the taxpayer, holding that the source of the taxpayer's profits was in Hong Kong and that two items of expenditure relating to the Chinese mainland factory were not deductible. It found, inter alia, that (i) there was no subcontracting agreement between the taxpayer and its Taiwan parent company; (ii) the taxpayer's profits could not be ascribed to the manufacturing or processing activities of the Chinese mainland factory which was a separate entity; (iii) the taxpayer was created specifically as an intermediary to circumvent the restrictions on direct trade between the Chinese mainland and Taiwan in the relevant years; (iv) the taxpayer employed a not insignificant number of staff in the Hong Kong office performing profit producing activities that were not antecedent or ancillary activities; and (v) the taxpayer failed to discharge the burden to prove that the disputed assessments were incorrect or excessive.

The taxpayer applied for leave to appeal against the Board's decision, raising three purported questions of law.

The CFI held that the first two questions were in substance appeals against the Board's findings of facts that did not have reasonable prospects of success.

Regarding the third question, the taxpayer contended that the Board should have exercised its powers to determine public law challenges to rule that the IRD officials had failed to determine the taxpayer's notice of objection within a reasonable time. The CFI noted that the Board had indeed considered the public law issues as if it had the jurisdiction to do so. Based on the facts found by the Board, the CFI concurred with the Board's conclusion that there was no unreasonable delay on the part of the CIR in dealing with the assessments. Even if there had been inordinate delay, the Board did not have the authority to annul the assessments. Accordingly, the CFI held that while the third question appears to constitute a question of law, it had no reasonable prospect of success.

For the above reasons, the CFI dismissed the taxpayer's application for leave to appeal in its judgement dated 5 January 2024. The taxpayer subsequently lodged an application for leave to appeal to the COA, but this was also rejected by the COA on 29 November 2024.

Wise Pearl Limited v. CIR

This is another case on the taxpayer's application for leave to appeal against a Board decision in relation to its claims for (i) 50:50 apportionment of profits derived and (ii) an IBA claim for factory buildings located in the Chinese mainland.

The taxpayer was engaged in the manufacturing of sports and leisure bags and military textile products. During the relevant years of assessment, the taxpayer entered into a processing agreement with terms very similar to those of a typical contract processing arrangement with a factory in the Chinese mainland. Additionally, it entered into an arrangement with its WFOE on terms different from those with the factory, with the issuance of purchase orders by the taxpayer being one of the key differences.

The taxpayer contended that it was entitled to the 50:50 concessionary practice stated in DIPN No. 21. While accepting the 50:50 apportionment claim in respect of the taxpayer's profits arising from the sale of goods manufactured by the factory, as its activities under the arrangement fully met the contract processing operation mode, the assessor maintained that all of the taxpayer's profits arising from the sale of goods manufactured by the WFOE should be chargeable to profits tax. By a majority decision, the Board determined that the taxpayer was a trader and that its profit-producing activities were the sale of finished products which occurred in Hong Kong.

Regarding the second issue in dispute, the taxpayer claimed that it was entitled to a 'relevant interest' in the factory buildings at an earlier time and had incurred the necessary expenditure on the construction of the buildings. The Board dismissed the taxpayer's claim, as it failed to adduce sufficient evidence to substantiate its claim.

The CFI determined that none of the grounds of appeal put forth by the taxpayer constituted proper questions of law, as they either attempted to challenge the Board's findings of fact or sought to re-weigh the evidence and persuade the court to come to a different conclusion from that of the Board. Consequently, in its judgment dated 8 February 2024, the CFI dismissed the taxpayer's application for leave to appeal.

嘉麗華有限公司及吉品實業有限公司 對 稅務局局長

This case involves another application for leave to appeal lodged by the taxpayers against a Board decision regarding the deduction of management fees paid to a factory in the Chinese mainland.

The taxpayers were private Hong Kong incorporated companies engaged in knitwear manufacturing and trading. They entered into service contracts with a factory in the Chinese mainland, which was owned and managed by relatives of their founder.

During the relevant years of assessment, the taxpayers paid management fees to the factory for various services including sample production, pre-processing and quality inspections, contending that these fees were tax deductible.

The IRD disallowed the taxpayers' claims for tax deductions of the management fees paid to the factory, which was upheld by the Board. Not satisfied with the Board's decision, the taxpayers sought leave to appeal from the CFI against the Board's decision.

In their application for leave to appeal, the taxpayers raised five grounds of appeal. The CFI determined that the various complaints made by the taxpayers were essentially veiled challenges to the Board's findings of facts posed as questions of law. The CFI held that in any case, the appeal had no reasonable prospect of success; nor was there any other reason in the interests of justice why the proposed appeal should be heard. As such, the CFI dismissed the taxpayers' application for leave to appeal in its judgment dated 20 February 2024.

Touax Container Investment Limited v. CIR

The case concerns an appeal by the taxpayer against the Board's decision in relation to (i) whether the taxpayer carried on a trade or business in Hong Kong, and (ii) the source of the taxpayer's container trading and leasing profits.

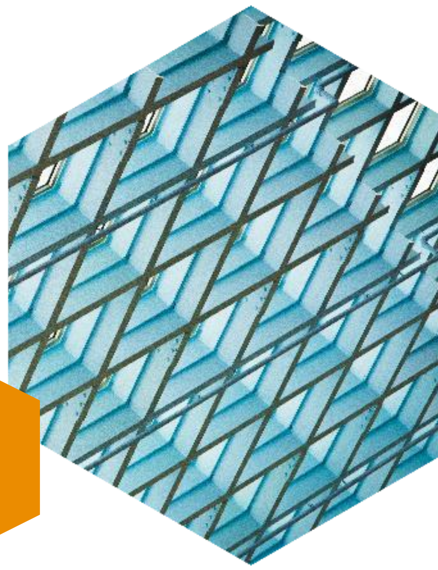
The taxpayer belonged to a group that was engaged in the operational leasing of shipping containers. The taxpayer was a Hong Kong incorporated company established to take up the group's shipping container trading business for the Asia market. Previously, the group's shipping container trading, leasing and financing business was operated by a Delaware incorporated company, which had a branch in Hong Kong (HK Branch) to provide liaison and administrative services.

As shipping containers would not have been tradeable if they were not being leased, the taxpayer had to first lease the shipping containers it purchased from third-party suppliers to its captive lessee, a fellow subsidiary in Singapore, which then sub-leased them to lessees outside Hong Kong. A substantial portion of the sub-leasing income was distributed by the Singapore company to the taxpayer under their lease agreement.

The taxpayer argued that it had done nothing in Hong Kong to earn the trading and leasing profits in question, as it had no employees, agents or business assets in Hong Kong. All its profit-producing activities were conducted outside Hong Kong by its directors and the group's staff located overseas during the relevant years. However, the CIR rejected the taxpayer's claims. Dissatisfied with the determination, the taxpayer appealed to the Board.

The Board upheld the CIR's determination and found that the taxpayer carried on a business in Hong Kong. The Board also rejected the taxpayer's claim that it did not conduct any profit-generating operations in Hong Kong, noting that the taxpayer had previously 'borrowed' employees from the HK Branch, then changed to employing them directly for nearly 19 months before reverting to the original arrangement. Additionally, the Board was not convinced that the taxpayer had sufficiently demonstrated that the lease agreement was not made in Hong Kong.

The taxpayer appealed on four grounds. In its judgment dated 30 August 2024, the CFI dismissed the first ground, agreeing with the Board that the taxpayer carried on a business in Hong Kong. However, it allowed the other three grounds, finding that the Board erred in its approach to determining the source of the disputed profits. The CFI also found the Board's conclusion that the taxpayer's leasing profits were sourced in Hong Kong to be erroneous. As a result, the CFI ordered that the matters be remitted to a newly constituted Board for rehearing to determine the source of the taxpayer's profits.



Chapman Development Limited v. CIR

This case concerns whether the management fees paid to the taxpayer's related BVI company were tax deductible.

In our Hong Kong Tax Review 2023, we reported that the taxpayer was granted leave to appeal against the Board's decision to the CFI. The CFI heard the substantive issues this year and handed down its judgement on 30 September 2024.

The taxpayer was engaged in the manufacturing and trading of fabric and yarn and the provision of trade-related services. By a management agreement, the Taxpayer appointed the BVI company as its management agent for various production management tasks and agreed on a service fee at a fixed rate or 'any other rate as may be mutually agreed upon by the parties hereto'. A key element of the case was that the amounts claimed for deduction were not fully calculated in accordance with the written provisions of the agreement between the taxpayer and the BVI company.

The taxpayer's deduction claim was challenged by the IRD under sections 16 and 17, as well as the general anti-avoidance provision under section 61A of the IRO.

The CFI upheld the Board's conclusion that the management fees not paid in accordance with the management agreement were not tax deductible, as the taxpayer failed to provide satisfactory evidence regarding the nature of these additional amounts and whether they were incurred in the production of assessable profits.

For the management fees paid in accordance with the management agreement, the Board and the CFI unanimously ruled that, while it was accepted that the amounts were incurred in the production of assessable profits, the deduction was denied under section 61A. The BVI company was considered to be interposed with the sole or dominant purpose of siphoning off profits from the taxpayer to avoid Hong Kong taxation.

Please refer to our Hong Kong Tax News Flash, October 2024, Issue 15 for a detailed discussion of the CFI's judgment.

Patrick Cox Asia Limited v. CIR

This case concerns whether an upfront licence fee and annual royalty income derived by the taxpayer under a sub-licensing arrangement of trademarks were chargeable to profits tax under section 14 of the IRO.

As featured in our Hong Kong Tax Review 2023, the taxpayer's appeal against the Board's decision was dismissed by the CFI. The taxpayer subsequently lodged an appeal to the COA against the CFI's judgment.

The COA delivered its judgment on 17 October 2024, ruling that the Board erred in determining the source of the annual royalty income by failing to consider the activities that directly produced the profits in question, leading to the incorrect conclusion that the annual royalty income was sourced in Hong Kong.

As the determination of the source of the annual royalty income is a question of facts beyond the jurisdiction of the court, the COA remitted the matter back to the Board for determination. This includes considering the possibility of apportionment in light of the COA's judgment.

The COA's decision is significant in several aspects. Firstly, it refined the general source rules for royalties from sub-licensing IP. When the amount of royalties received depends on the subsequent exploitation of the IP, the locality of the royalties is determined not only by the place of acquisition and granting of the licence, but also by the location of the marketing of the IP for sub-licensing, the negotiation and procurement of the sub-licence agreements, as well as the performance of the sub-licence agreements. The decision also reaffirmed that under appropriate circumstances, the activities of another person performed outside Hong Kong can be attributed to the taxpayer to determine the source of profits, including royalties. Additionally, the COA indicated the possibility of apportioning royalties, which has not previously been tested and was considered unwarranted under normal circumstances by the IRD.

As regards the upfront fee, the COA upheld the CFI's decision that it was sourced in Hong Kong and revenue in nature, thereby chargeable to profits tax under section 14 of the IRO.

Please refer to our Hong Kong Tax News Flash, October 2024, Issue 17 for a detailed discussion of the COA's judgment.

Update on Hong Kong stamp duty cases

John Wiley & Sons UK2 LLP and another v. The Collector of Stamp Revenue

This case concerns whether the appellants (being the transferor and transferee) were entitled to stamp duty relief under section 45 of the SDO in respect of an intra-group transfer of shares in a Hong Kong company. The only point in dispute is whether the membership interest in a UK LLP is 'issued share capital' for the purpose of section 45 of the SDO.

The DC held that the membership interest in a UK LLP is 'issued share capital' within the meaning of section 45 of the SDO. As such, the appellants were associated bodies corporate and were entitled to intra-group transfer relief thereof.

The Collector of Stamp Revenue filed an appeal to the COA against the DC's judgment.

The COA handed down its judgment on 5 July 2024, which overturned the DC's decision and held that the term 'issued share capital' should be interpreted to bear the same meaning as it is employed in the company law context. Consequently, the membership interest in a UK LLP is not 'issued share capital' within the meaning of section 45 of the SDO. Therefore, the appellants were not considered 'associated bodies corporate' under this section and were not entitled to the stamp duty relief.

On 25 September 2024, the COA granted leave for the duty payers to appeal to the CFA. The date of hearing before the CFA is scheduled for 12 May 2025.

Please refer to our Hong Kong Tax News Flash, July 2024, Issue 12 for a detailed discussion of the COA's judgment.

Hong Kong salaries tax developments

Changes to standard rate and concessionary deductions

The following measures proposed in the 2023 Policy Address and the 2024-25 Budget were implemented with effect from the year of assessment 2024/25:

- introducing a two-tiered standard rates regime; and
- increasing the deduction ceiling for home loan interest and domestic rents to HK$120,000 from the current HK$100,000 for eligible taxpayers under salaries tax and tax under personal assessment who reside with their child. The child must be born on or after 25 October 2023 and be under the age of 18 at any time during the year of assessment.

Apart from the above, there were no changes to the progressive tax rates, marginal tax bands, personal allowances or other deductions for individuals.

The current tax rates and tax bands for salaries tax and personal assessment are as follows:

- five tax bands with tax rates of 2%, 6%, 10%, 14% and 17%;
- each of the first four bands is HK$50,000;
- the remainder over HK$200,000 is taxed at 17%; and
- the standard tax rate is 15% on the first HK$5,000,000 of net income, and 16% on the remainder.

In addition, a tax deduction for assisted reproductive service expenses as proposed in the 2023 Policy Address will be provided. Subject to the passage of the relevant legislation, the proposed deduction ceiling is HK$100,000 for eligible taxpayers under salaries tax and tax under personal assessment who receive qualifying assisted reproductive services for medical reasons, starting from the year of assessment 2024/25.

List of Hong Kong tax publications issued in 2024

List of Hong Kong Tax News Flashes issued in 2024

Issue no.	Issue date	Title
1	3 January 2024	Consultation on implementation of global minimum tax and Hong Kong minimum top-up tax launched https://www.pwchk.com/en/hk-tax-news/2024q1/hongkongtax-news-jan2024-1.pdf
2	29 January 2024	IRD publishes first advance ruling and further guidance on family office tax concession https://www.pwchk.com/en/hk-tax-news/2024q1/hongkongtax-news-jan2024-2.pdf
3	21 February 2024	Legislative amendments to enhance Hong Kong's aircraft leasing preferential tax regime passed https://www.pwchk.com/en/hk-tax-news/2024q1/hongkongtax-news-feb2024-3.pdf
4	22 February 2024	Hong Kong removed from European Union's tax watchlist https://www.pwchk.com/en/hk-tax-news/2024q1/hongkongtax-news-feb2024-4.pdf
5	7 March 2024	IRD's latest approach to large business tax administration https://www.pwchk.com/en/hk-tax-news/2024q1/hongkongtax-news-mar2024-5.pdf
6	2 April 2024	Bill on patent box tax incentive introduced https://www.pwchk.com/en/hk-tax-news/2024q2/hongkongtax-news-apr2024-6.pdf
7	29 April 2024	IRD provides guidance on applying the FSIE regime at the 2023 annual meeting with the HKICPA https://www.pwchk.com/en/hk-tax-news/2024q2/hongkongtax-news-apr2024-7.pdf
8	29 April 2024	IRD's views on certain profits tax issues expressed in its 2023 annual meeting with HKICPA https://www.pwchk.com/en/hk-tax-news/2024q2/hongkongtax-news-apr2024-8.pdf
9	26 June 2024	Bill on patent box tax incentive passed into law https://www.pwchk.com/en/hk-tax-news/2024q2/hongkongtax-news-jun2024-9.pdf
10	8 July 2024	Legislative proposals: introducing lease reinstatement cost deduction and removing time limits for CBA/IBA claims https://www.pwchk.com/en/hk-tax-news/2024q3/hongkongtax-news-jul2024-10.pdf

Issue no.	Issue date	Title
11	12 July 2024	FSTB releases consultation conclusion and latest legislative proposals on company re-domiciliation regime https://www.pwchk.com/en/hk-tax-news/2024q3/hongkongtax-news-jul2024-11.pdf
12	16 July 2024	Court of Appeal overturns ruling that UK LLP has issued share capital for stamp duty relief purposes https://www.pwchk.com/en/hk-tax-news/2024q3/hongkongtax-news-jul2024-12.pdf
13	17 July 2024	IRD provides further guidance on the FSIE regime https://www.pwchk.com/en/hk-tax-news/2024q3/hongkongtax-news-jul2024-13.pdf
14	26 September 2024	IRD clarifies profits tax implications of abolition of MPF offsetting mechanism for employers https://www.pwchk.com/en/hk-tax-news/2024q3/hongkongtax-news-sep2024-14.pdf
15	10 October 2024	Court of First Instance denies tax deduction for management fees paid to overseas associate https://www.pwchk.com/en/hk-tax-news/2024q4/hongkongtax-news-oct2024-15.pdf
16	22 October 2024	Bill gazetted to introduce lease reinstatement cost deduction and remove time limit for CBA/IBA claims https://www.pwchk.com/en/hk-tax-news/2024q4/hongkongtax-news-oct2024-16.pdf
17	25 October 2024	Court of Appeal refines source rules and suggests possibility of apportionment of royalty income https://www.pwchk.com/en/hk-tax-news/2024q4/hongkongtax-news-oct2024-17.pdf
18	31 October 2024	Consultation on implementation of global minimum tax and Hong Kong minimum top-up tax launched https://www.pwchk.com/en/hk-tax-news/2024q4/hongkongtax-news-oct2024-18.pdf
19	26 November 2024	Hong Kong's game changing proposal on tax concessions for carried interest, funds and single family offices https://www.pwchk.com/en/hk-tax-news/2024q4/hongkongtax-news-nov2024-19.pdf
20	26 November 2024	Consultation underway for proposed enhancements to family office tax concession regime https://www.pwchk.com/en/hk-tax-news/2024q4/hongkongtax-news-nov2024-20.pdf
21	31 December 2024	Bill on implementation of global minimum tax and Hong Kong minimum top-up tax gazetted https://www.pwchk.com/en/hk-tax-news/2024q4/hongkongtax-news-dec2024-21.pdf

List of International Tax News Flashes issued in 2024

Issue no.	Issue date	Title
1	17 January 2024	OECD releases further Pillar Two administrative guidance and updated Pillar One timeline under BEPS 2.0 https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-jan2024-1.pdf
2	22 July 2024	OECD releases further Pillar Two guidance under BEPS 2.0 https://www.pwchk.com/en/tax/publications/intl-tax-newsflash-jul2024-2.pdf

List of Hong Kong Private and Workforce Tax News Flashes issued in 2024

Issue no.	Issue date	Title
1	January 2024	New Hong Kong Capital Investment Entrant Scheme – opportunities and challenges https://www.pwccn.com/en/tax/publications/new-hk-capital-investment-entrant-scheme-opportunities-challenges-jan2024.pdf

List of dedicated webpages

Title
BEPS 2.0 developments: Pillar One and Pillar Two https://www.pwccn.com/en/services/tax/international-tax/oecd-beps.html
Hong Kong's FSIE regime https://www.pwccn.com/en/services/tax/fsie.html
2024/25 Hong Kong Budget https://www.pwchk.com/en/services/tax/hong-kong-budget-2024-2025.html

List of other publications issued in 2024

Issue date	Title
6 March 2024	Hong Kong Transfer Pricing Update https://www.pwchk.com/en/tax/hongkong-transfer-pricing-update-mar2024.pdf
21 August 2024	IRD issues CRS Notices to licensed financial institutions https://www.pwchk.com/en/tax/hktax-crs-news-aug2024.pdf
29 October 2024	Recent amendments to corporate requirements in the BVI https://www.pwchk.com/en/tax/corporate-services/recent-amendments-to-corporate-requirements-in-bvi-oct2024.pdf
24 December 2024	Macau introduces transfer pricing and advance pricing arrangement regulations https://www.pwccn.com/en/tax/publications/intl-tax-macau-dec2024.pdf

Glossary of abbreviations

Abbreviation	Term
AEOI	Automatic exchange of financial information in tax matters
BEPS	Base Erosion and Profit Shifting
Board	Board of Review
BSD	Buyer's Stamp Duty
BVI	British Virgin Islands
CBA/IBA	Annual allowances in respect of a commercial/industrial building or structure
CDTA	Comprehensive avoidance of double taxation agreement/arrangement
CFA	Court of Final Appeal
CFI	Court of First Instance
COA	Court of Appeal
CIR	Commissioner of Inland Revenue
DC	District Court
DIPN	Departmental Interpretation and Practice Notes
EU	European Union
FSIE	Foreign-sourced income exemption
Government	Government of the Hong Kong Special Administrative Region
HKMTT	Hong Kong minimum top-up tax
IBA	Industrial building allowance
IIR	Income inclusion rule
IP	Intellectual property
IRD	Inland Revenue Department
IRO	Inland Revenue Ordinance
LegCo	Legislative Council
LLP	Limited liability partnership
NRSD	New Residential Stamp Duty
OECD	Organisation for Economic Co-operation and Development
REIT	Real Estate Investment Trust
R&D	Research and development
SDO	Stamp Duty Ordinance
SSD	Special Stamp Duty
TRC	Tax reserve certificate
UFE	Unified fund exemption
UTPR	Undertaxed profits rule
WFOE	Wholly foreign-owned enterprise

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The materials contained in this publication were assembled in January 2025 and were based on the law enforceable and information available at that time.

This publication is prepared by PwC National Tax Policy Services in Hong Kong SAR and Mainland China, which comprises a team of experienced professionals dedicated to monitoring, studying and analysing the existing and evolving policies in taxation and other business regulations in Mainland China, Hong Kong, Singapore and Taiwan. They support the PwC partners and staff in their provision of quality professional services to businesses and maintain thought-leadership by sharing knowledge with the relevant tax and other regulatory authorities, academies, business communities, professionals and other interested parties.