



DOING BUSINESS IN HONG KONG 2018

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DOING BUSINESS IN HONG KONG

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INTRODUCTION

This publication has been prepared by the International Bureau of Fiscal Documentation (IBFD) on behalf of BDO, its clients and prospective clients. Its aim is to provide the essential background information on the taxation aspects of setting up and running a business in this country. It is of use to anyone who is thinking of establishing a business in this country as a separate entity, as a branch of a foreign company or as a subsidiary of an existing foreign company. It also covers the essential background tax information for individuals considering coming to work or live permanently in this country.

This publication covers the most common forms of business entity and the taxation aspects of running or working for such a business. For individual taxpayers, the important taxes to which individuals are likely to be subject are dealt with in some detail. We have endeavoured to include the most important issues, but it is not feasible to discuss every subject in comprehensive detail within this format. If you would like to know more, please contact the BDO firm(s) with which you normally deal. Your adviser will be able to provide you with information on any further issues and on the impact of any legislation and developments subsequent to the date mentioned at the heading of each chapter.

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HONG KONG

This chapter is based on information available up to 20 January 2018.

Introduction

Hong Kong is a Special Administrative Region of the People's Republic of China and the territory is comprised of Hong Kong island, the Kowloon peninsula on the mainland, the area of the mainland to the north of Kowloon up to the Shenzhen river, which is the largest part of the New Territories, and over 200 islands (the largest of which is Lantau, which is also part of the New Territories).

Companies are subject to profits tax on profits arising from a trade, profession or business. Income from immovable property is subject to property tax. There is no tax on capital gains, and no value added tax.

The law governing the imposition of income tax is the Inland Revenue Ordinance (IRO). The tax administration authority is the Inland Revenue Department (IRD).

Contributions to the Mandatory Provident Fund are required from employers in respect of their employees.

The currency is the Hong Kong dollar (HKD).

1. Corporate Income Tax

1.1. Type of tax system

Hong Kong operates a territorial system, whereby tax is imposed only on assessable income or profits arising in or derived from Hong Kong sources, or deemed as such.

Dividends are exempt from all taxes.

1.2. Taxable persons

Profits tax is levied on corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong. Corporation means any company which is either incorporated or registered under any enactment or charter in force in the territory or elsewhere, but does not include a cooperative society or trade union.

The following persons or bodies are exempt or excluded from tax:

- charitable institutions or trusts of a public character, provided profits derived are applied solely for charitable purposes and are not expended substantially outside Hong Kong; and
- clubs, trade associations and similar institutions which receive from members at least half of gross receipts on revenue account, including entrance fees and subscriptions.

This survey is restricted to Hong Kong-incorporated public companies and limited liability companies, as well as foreign-incorporated entities of a similar description, whether resident or non-resident. These entities will be referred to as companies.

Partnerships are separate taxable persons.

1.2.1. Residence

A company is resident in Hong Kong if central management and control is exercised in Hong Kong in the relevant year of assessment.

However, since Hong Kong applies a territorial basis of assessment, liability to tax is determined not on residence status, but on the source of income. The residence status may be relevant in the application of tax arrangements with other countries or jurisdictions.

1.3. Taxable income

1.3.1. General

Companies carrying on a trade, profession or business in Hong Kong are subject to profits tax on income arising in or derived from Hong Kong from that trade, profession or business. Since only profits arising in or derived from Hong Kong are taxable, the source of profits is an extremely important concept in tax law.

The question of whether a particular income has a source in Hong Kong is largely one of fact, and has been considered in many cases judicially, including *Commissioner of Inland Revenue v. Hang Seng Bank Limited* (1991) 1 AC 306, *Commissioner of Inland Revenue v. HK-TVB International Limited* (1992) 2 AC 397, *Kwong Mile Services Limited v. CIR* (2004) 3 HKLRD 168, *Kim Eng Securities (Hong Kong) Limited v. CIR* (2007) 2 HKLRD 117, *ING Baring Securities (Hong Kong) Limited v. CIR* (2008) 1 HKLRD 412 and *CIR v. Datatronic Limited* (2009) 4 HKLRD 675.

No guidance is provided in the legislation, although certain profits, which may otherwise be characterized as having a capital nature or having a source other than Hong Kong, are deemed to be receipts arising in or derived from Hong Kong and thus subject to profits tax. The main items include:

- sums received from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording or any advertising material connected with such film, tape or recording;
- royalties received from the use or right to use in Hong Kong of a patent, design, trademark, copyright material, secret process or formula or other property of a similar nature;
- royalties for the use of, or for the right to use, most intellectual property outside Hong Kong if they are deductible in determining the taxable income of a person for Hong Kong profits tax purposes;
- grants, subsidies or similar financial assistance related to a trade, profession or business carried on in Hong Kong (other than sums in connection with capital expenditure to be made);
- sums received by way of hire, rental or similar charges for the use of or the right to use movable property in Hong Kong;
- interest from sources outside Hong Kong received by or accrued to a financial institution from carrying on a business in Hong Kong, and profits made by a financial institution from the sale or redemption on maturity of any certificate of deposit or bill of exchange;
- Hong Kong-source profits from the sale or redemption on maturity or presentation of a certificate of deposit or bill of exchange, except for individuals in a non-business capacity; and
- sums received by a person in consideration for the transfer of a right to receive income from property.

The IRD issued Departmental Interpretation and Practice Note 21 on Locality of Profits (DIPN 21) to further clarify the issue concerning the source of profits. The purpose of DIPN 21, last revised in December 2009, is to state what the IRD considers to be the general principles laid down by the Privy Council and the Court of Final Appeal in various cases, and provide specific examples applying those principles.

The taxable income for a year of assessment is determined by subtracting allowable deductions from profits.

1.3.2. *Exempt income*

The following are the main items of income that are excluded from profits tax:

- income arising or derived from outside Hong Kong;
- dividends;
- interest on Tax Reserve Certificates issued by the Commissioner of Inland Revenue;
- interest on a bond issued under the Loans Ordinance or the Loans (Government Bonds) Ordinance, and any profit on the sale or redemption of such bonds;
- income derived by a mutual fund, unit trust or similar investment scheme from a specified investment scheme;
- any profits of a trade, profession or business already charged in the name of another person. For example, a partner is not taxed on the share of partnership profits which have already been subject to tax;
- interest and trading profits derived from long-term debt instruments; and
- any profits from the sale of capital assets.

1.3.3. *Deductions*

As a general rule, deductions are allowed for outgoings and expenses to the extent to which they are incurred in the production of profits chargeable to tax for any period. Unless otherwise provided, expenditure must be of a revenue nature and not specifically non-allowable.

Deductible items include business expenditure, interest on funds borrowed (subject to certain conditions), rental of buildings or land, repairs, bad debts, replacement of relatively inexpensive articles, expenditure on the registration of a trademark, design or patent, employers' mandatory contributions to MPF schemes or recognized occupational retirement schemes, expenditure on research and development, payments for technical education, purchase and sale of patent rights, rights to know-how, capital expenditure on hotel/building refurbishment, expenditure on the provision of a prescribed fixed asset and expenditure on the provision of environmental protection facilities (*see section 4.2.*).

Specifically prohibited deductions include domestic or private expenses, capital expenditure (except where tax depreciation is allowed), sums recoverable under an insurance or contract of indemnity, rent of or expenses relating to premises not occupied or used for the purposes of producing profits, and taxes payable (except salaries tax paid for employees).

A transfer of certain allowable head office administrative expenses to a local branch or subsidiary is allowed to the extent to which the expenses were incurred in the production of profits chargeable to tax. Expenditure not wholly and exclusively incurred in the production of profits should be apportioned on such a basis as is reasonable and appropriate in the circumstances of the case.

Generally, dividends are not deductible. Royalties incurred in earning assessable income are deductible.

Interest is only deductible if it is incurred for the purposes of producing assessable profits and meets a number of specified conditions. A deduction is not allowed for interest paid to a non-financial institution if the recipient is not subject to tax in Hong Kong on the interest, nor for interest that arises from a loan secured by another loan or bank deposit of the borrower or its associates unless the interest from the other bank loan or deposit is subject to tax in Hong Kong. A deduction is also not allowed where there is an arrangement under which the interest will be paid, directly or indirectly, back to the borrower or its associates, unless the recipient is subject to tax in Hong Kong on the interest.

According to the Inland Revenue (Amendment) (No. 2) Ordinance 2016, under specified conditions, the interest payable on money borrowed by a corporation carrying on an intra-group financing business in Hong Kong is deductible in determining profits liable for profits tax on or after 1 April 2016. Departmental Interpretation and Practice Notes 52 sets out the relevant provisions which enables the government to implement a new interest deduction rule for the intra-group financing business of corporations.

1.3.4. Depreciation and amortization

Industrial buildings and structures used in certain trades such as transport, dock, water and electricity undertakings, the manufacture, processing or storage of goods and trades carried on in mills, factories and in farming are granted an initial allowance of 20% of the capital expenditure in the year it is incurred. An annual allowance of 4% of the original capital expenditure is granted until the total expenditure is written off.

A commercial building which is not an industrial building but used for the purposes of a trade, profession or business qualifies for an annual allowance of 4% of the capital expenditure incurred on the construction of the building or structure. No initial allowance is available.

Plant and machinery are granted an initial allowance of 60% of the capital expenditure, and annual allowances of 10%, 20% or 30% depending on the type of plant and machinery.

An immediate 100% write-off is allowable for “prescribed fixed assets”, i.e. certain machinery or plant used specifically and directly for any manufacturing process, computer hardware and software and computer systems. This write-off does not apply to a fixed asset in which any person holds rights as a lessee under a lease.

Capital expenditure on the renovation or refurbishment of business premises is deductible over a 5-year period in equal instalments, commencing in the year in which the expenditure is made.

Intangible assets (trademarks and designs) are not depreciable.

Anti-avoidance rules exist which deny depreciation allowances in the case of a sale and leaseback or of leveraged leasing arrangements.

Valuation of inventory

Inventory may be valued at the lower of cost or market value. The IRO does not specify methods of valuation, except for the valuation of trading stock upon the cessation of a business.

However, the IRD has indicated via interpretation and practice notes that the acceptable methods of valuation for tax purposes include adjusted selling price, current selling price less normal gross profit, net realizable value and replacement cost.

1.3.5. Reserves and provisions

Generally, deductions are allowed when the underlying expenses are incurred. Accordingly, if the liability to make a payment is contingent at the closing of a year of assessment, the reserves and provisions for that liability usually cannot be taken into account for tax purposes.

1.4. Capital gains

Capital gains are generally not taxable. However, profits tax may be charged on the profits of a speculative transaction if it is shown to be an adventure in the nature of trade.

Property trading is the most litigated issue in Hong Kong. Matters which will be considered when discerning the taxpayer's intention are: his declared intention, his financial ability to hold the asset long term, the length of ownership, any work carried out on the property to improve its value, where the property has been kept vacant the steps taken to lease out the property or the reasons for not letting out the property, the rate of return obtained by leasing out as opposed to the return obtained from selling, whether the transaction was isolated or part of a series of transactions (although an isolated property transaction can also amount to an adventure in the nature of trade), and whether the reason for sale was because of an unexpected event which could not have been foreseen. The list is not exhaustive.

On 16 December 2016, IRD issued guidance on profits tax consequences of court-free company amalgamations. The guidance covers amalgamation with or without sale of assets of the amalgamating company, tax losses and profits tax return. Moreover, the guidance provides examples that illustrate the rules.

1.5. Losses

1.5.1. Ordinary losses

A loss is an excess of deductible expenditure over chargeable profits.

Subject to anti-avoidance rules, business losses can be carried forward indefinitely and without any restriction, and set off against future profits. Only losses arising in Hong Kong from the carrying on of a trade, profession or business in Hong Kong can be set off against chargeable profits.

Losses may not be carried back.

Specific rules apply to partnership losses.

1.5.2. Capital losses

Capital losses are not deductible.

1.6. Rates

1.6.1. Income and capital gains

Profits tax is levied at 16.5% on companies.

There is a one-off reduction of 75% of the profits tax for the year of assessment 2016/17, subject to a maximum of HKD 20,000 per case.

There is no tax on capital gains derived from the disposal of shares. However, profits tax may be chargeable on the gains derived from the disposal of immovable properties, if the disposal is a speculative transaction that is shown to be an adventure in the nature of trade (see section 1.4.).

A two-tiered profits tax rates regime has been proposed by the government. Under the proposed regime, the profits tax rate for the first HKD 2 million of corporate profits will be reduced to 8.25%, while the standard profits tax rate of 16.5% will remain for profits exceeding HKD 2 million. For unincorporated businesses, which mostly consist of partnerships and sole proprietorships, the two-tiered tax rates will be set at 7.5% and 15%, respectively.

1.6.2. Withholding taxes on domestic payments

Generally, payments to other resident companies do not attract withholding tax.

See section 6.3. for withholding rates on payments to non-residents.

1.7. Incentives

There are generally no tax incentives, with the exception of the following:

- as an incentive for investment in high-value manufacturing businesses, 100% write-off for new expenditure on plant and machinery specifically related to manufacturing, and on computer hardware and software, which are owned by the end-users;
- a 5-year write-off period for capital expenditure on the renovation or refurbishment of business premises;
- tax concessions for gains derived from qualified debt instruments;
- concessionary tax rates for qualifying reinsurance companies;
- tax concessions for mutual funds and trusts;
- tax exemption for interest derived from any deposit accrued on or after 22 June 1998, placed in Hong Kong with an authorized institution (not applicable to interest received by or accrued to a financial institution);
- with effect from 1 April 2008, accelerated tax deduction for qualifying environmental protection facilities, i.e. a 100% deduction of capital expenditure on environment protection machinery, and a 20% deduction per annum over 5 consecutive years for environmental protection installations;
- a 100% profits tax deduction for capital expenditure on environment-friendly vehicles in the year of purchase, with effect from the year of assessment 2010/11;
- a tax concession for captive insurers, in the form of a 50% reduction of the profits tax on offshore risk insurance business, with effect from the year of assessment 2013/14;
- Shanghai-Hong Kong Stock Connect was launched in November 2014 as a securities trading and clearing links programme, which aims to achieve a mutual market access between the Mainland and Hong Kong. Under Shanghai-Hong Kong Stock Connect, the Stock Exchange of Hong Kong Ltd (SEHK) and Shanghai Stock Exchange (SSE) established a mutual order routing connectivity and related technical infrastructure to enable qualified Mainland investors to trade eligible listed securities on the SEHK and vice versa;
- a profits tax exemption for offshore funds; qualified offshore private equity funds have been included in the exemption scope since 17 July 2015;

- the concessionary profits tax rate at 8.25% for qualifying corporate treasury centres applies to relevant profits accrued on or after 1 April 2016; and
- with effect from 1 April 2017, a qualifying aircraft lessor/manager is entitled to have its qualifying profits taxed at half of the corporate profits tax rate. In addition, a qualifying aircraft lessor is eligible for a tax base concession under which only 20% of the net lease rentals are assessed to compensate for their non-entitlement to depreciation allowances on the aircraft.

The Director of Transportation and Housing proposed to introduce a favourable tax treatment of aircraft leasing at a meeting of the Legislative Committee. The Director is planning to submit an official proposal in April 2017 to the Legislative Committee introducing a special tax regime for offshore aircraft leasing which will contain provisions with regard to a special tax rate, depreciation and anti-abuse measures.

1.8. Administration

1.8.1. Taxable period

The year of assessment normally starts on 1 April, but where the accounting year of a trade, profession or business does not end on 31 March, the IRD may allow profits to be assessed based on the accounting year ending during a year of assessment.

1.8.2. Tax returns and assessment

Tax authorities typically issue profits tax returns in early April and the completed returns should be submitted within the period stated in the notice (generally, one month from the date of the notice). An assessment will then be issued based on details disclosed in the return.

The IRD revised the Profits Tax Return 2014/15 on 1 April 2015. Item 3.7 of BIR 51 (applicable to corporations) and Item 2.7 of BIR 52 (applicable to persons other than corporations) are introduced for taxpayers to confirm whether they claim debt treatment for an arrangement for the year of assessment 2014-2015 as “an originator” or “a bond issuer”, respectively, of a specified alternative bond scheme. Additionally, Item 7.7 is added to BIR 51 requiring corporations to confirm whether they are parties to a merger under the Companies Ordinance during the assessment year. Additionally, item 7.7 is added to BIR 51 requiring corporations to confirm whether they are parties to a merger under the Companies Ordinance during the basis period.

As an interim administrative measure, it is announced by the IRD on 28 January 2016 that it will accept 2015/16 profits tax returns in which the assessable profits are computed on a fair value basis.

Departmental Interpretation and Practice Notes 6 (revised on 28 November 2016) covers the provisions of the Inland Revenue Ordinance in relation to objections to the Commissioner, appeals to the Board of Review and appeals to the courts. These notes are issued for the information of taxpayers and their tax representatives to safeguard their right of objection against the assessment and the right to appeal to the tax authorities or the court.

1.8.3. Payment of tax

While assessments are made on a current year basis, liability for profits tax is provisionally determined on the basis of chargeable profits for the year preceding the year of assessment less allowable losses brought forward.

Provisional profits tax is payable in two instalments: 75% of the amount is payable on a normal due date specified on the notice of provisional assessment or the notice of assessment, and the remaining 25% approximately 3 months later.

An adjustment by way of a charge is made where provisional tax paid is less than the profits tax liability. Excess provisional tax paid may be applied to the provisional profits tax liability for the next year or refunded.

Provisional profits tax may be fully or partly held over in the following circumstances:

- the assessable profits for a year of assessment assessed to provisional profits tax are, or are likely to be, less than 90% of the assessable profits for the preceding year or of the estimated amount liable to provisional profits tax;
- a loss brought forward has not been taken into account or is incorrect;
- the taxpayer has ceased, or will cease before the end of the year of assessment, his trade, profession or business and the assessable profits for the year of assessment to be assessed to provisional profits tax are, or are likely to be, less than the assessable profits for the preceding year or of the estimated amount liable to provisional profits tax;
- the taxpayer has elected for personal assessment and this is likely to reduce his tax liability for the year of assessment; or
- the final assessment for the preceding year is under objection.

An application to hold over payment of the provisional tax must be made in writing at least 28 days before the due date for payment of provisional tax, or 14 days after the date of the notice for payment, whichever is later. If the due date for the first instalment is missed, all or part of the second instalment may be held over.

The tax may be held over until the taxpayer is required to pay profits tax for the year of assessment.

1.8.4. Rulings

As of 1 April 1998, a taxpayer may apply to the Commissioner for an advance ruling on how a provision of the IRO would apply to him or to a particular business or arrangement. The details of the application procedure are set out in DIPN 37.

Taxpayers may apply for an advance ruling on the application of any provision in the IRO on the arrangement specified in the application. The matters that may be raised include:

- the source of profits;
- the source of the remuneration as deemed employment income;
- certainty of tax issues; and
- consistency in the application of the IRO.

Further, in the case of a court-free company amalgamation, if the tax losses available for setting off against profits of the merged company are large, the merging and merged company may consider applying for an advance ruling under section 88A of the IRO.

For the purpose of obtaining an advance ruling from the IRD, taxpayers are required to submit to the IRD a specified application form together with supporting documents and information. A ruling will only be given for a seriously contemplated arrangement, and not those that are hypothetical or merely in a planning stage. The applicant is respon-

sible for ensuring that the information provided is accurate and complete. The IRD has 6 weeks to respond. In case additional information is required, the 6-week response period will commence on the date when complete information has been received by the IRD. The applicant is allowed to withdraw the ruling request in writing at any time before the ruling is made.

The IRD levies a fee of at least HKD 10,000 in respect of an application for a ruling.

A ruling made by the Commissioner, whether advantageous to the taxpayer or not, is final and will not be subject to objection or appeal.

In addition, the IRD regularly issues interpretation and practice notes and information pamphlets. Such notes and pamphlets are solely for the guidance of taxpayers and do not form a part of the law; they are not binding on the IRD.

2. Transactions between Resident Companies

2.1. Group treatment

There are no provisions for group assessment.

2.2. Intercompany dividends

Dividends are exempt from all taxes.

3. Other Taxes on Income

3.1. Property tax

Property tax is charged on the owners of land and/or buildings in Hong Kong, in respect of income derived from the property. The standard rate is 15% from the year of assessment 2008/09 onwards (previously, 16%).

The assessable value is computed by reference to the actual consideration payable to the owner in respect of the right to use the property. Considerations included as part of the assessable value are rent, payments for the right to use the premises, lump-sum premiums, service charges, management fees paid to the owner, and the owner's other expenditures borne by a tenant.

The following deductions are available for property tax purposes:

- irrecoverable consideration, i.e. bad debts;
- rates paid by the owner; and
- a general allowance for repairs and outgoings equal to 20% of the assessable value of the property after deduction of any land rates paid.

Property tax is not charged on government and consular properties. A company subject to profits tax may apply for an exemption from property tax in respect of any property used by the company for producing the profits chargeable to profits tax.

Property tax is creditable against profits tax.

3.2. Consignment tax

Any person making sales on behalf of a non-resident is required to furnish to the Commissioner a quarterly return showing the gross proceeds of such sales and is required to remit 1% of the gross sale proceeds. The non-resident may produce accounts showing that profits tax liability is less than that levied for consignment tax, in which case the lesser amount is payable.

4. Taxes on Payroll

4.1. Payroll tax

There is no payroll tax.

4.2. Social security contributions

Employers are required to contribute 5% of employees' salaries to the Mandatory Provident Fund (MPF). Contributions from employers are required in respect of employees earning monthly income of up to HKD 30,000, i.e. the maximum contribution is HKD 1,500 per month or HKD 18,000 per year (from 1 June 2014).

The taxable income base includes wages, salaries, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, but excludes housing allowance or housing benefits. It also does not include severance payments and long service payments.

Contributions are not required for limited categories of persons, including foreigners working in Hong Kong for a period of less than 13 months, or who are covered by over-seas retirement schemes.

The employer's mandatory and voluntary contributions to MPF schemes or MPF-exempted recognized occupational retirement schemes are deductible for tax purposes, subject to a limit of 15% of the employee's total annual remuneration.

Employers are also required to take out an insurance policy to cover employees under the Employee Compensation Insurance scheme, against injuries or death from accidents in the course of employment. The coverage of this insurance includes medical treatment and legal proceedings. The cost of this insurance is approximately HKD 500 a year and is fully borne by the employer.

5. Taxes on Capital

5.1. Net worth tax

There is no net worth tax.

5.2. Real estate tax

Property rates are levied as a tax on the occupation of property. Rates are based on the estimated annual letting value. The rateable value of all property in Hong Kong can be obtained from the Commissioner of Rating and Valuation. Rates are usually payable by the tenant of the property on a quarterly basis.

See section 3.1. for property tax on income from immovable property.

5.3. Other taxes

Unless specifically exempted, every person who carries on a business in Hong Kong must apply for business registration within 1 month from the date of commencement of business, and display a valid business registration certificate at the place of business. If the registered items of the business have changed, the business operator has to notify the IRD in writing within 1 month of the change. The business registration certificate (or branch registration certificate) is issued by the IRD, and a business registration fee and levy is charged for the certificate to finance the Protection of Wages and Insolvency Fund. From 21 February 2011, the Companies Registry and the IRD jointly launched a one-stop company and business registration service, under which companies are only required to lodge one single application with the Registry for both

company and business registration. The Registry will process the simultaneous business registration applications and notify IRD of changes to relevant company particulars. The one-stop service applies only to companies.

There are two types of certificates: a 1-year certificate and a 3-year certificate. The fees and levy payable in respect of a certificate depend on the commencement date of the registration certificate. Except for the first registration certificate of local companies falling within the one-stop registration regime, the amount payable under a certificate depends on the commencement date of the registration certificate. For a new business, the commencement date of its first registration certificate is its date of commencement of business, and for a company incorporated in Hong Kong, the commencement date of its first business registration certificate is its date of incorporation (regardless of whether or not a business is carried on).

For local companies falling within the one-stop registration regime, the amount payable for the first registration certificate depends on the date of submission of the related incorporation application to the Companies Registry, and the commencement date of the registration certificate is the date of incorporation. For renewal of certificates, the amount payable is determined by reference to the commencement date of the relevant renewal certificate.

5.3.1. Business registration fee and levy of business registration certificate

The fees and levies for certificates commencing on or after 1 April 2017 are as follows:

	<i>Fee (HKD)</i>	<i>Levy (HKD)</i>
Business registration certificate:		
- 1-year certificate	2,000	250
- 3-year certificate	5,200	750
Branch registration certificate:		
- 1-year certificate	73	250
- 3-year certificate	189	750

5.3.2. Major service fees charged by the Companies Registry

The major service fees charged by the Companies Registry are as follows:

<i>Company type</i>	<i>Incorporation (HKD)</i>	<i>Business registration fee and levy (HKD)</i>	<i>Change of company name (HKD)</i>	<i>Registration of annual returns (HKD)</i>
Local private companies having a share capital	1,720	See section 5.3.1.	295	See section 5.3.3.
Local public companies having a share capital	1,720	See section 5.3.1.	295	See section 5.3.3.

<i>Company type</i>	<i>Incorporation (HKD)</i>	<i>Business registration fee and levy (HKD)</i>	<i>Change of company name (HKD)</i>	<i>Registration of annual returns (HKD)</i>
Local companies limited by guarantee	170 if number of members does not exceed 25; 340 if number of members exceeds 25 but does not exceed 100; 20 for every additional 50 members or less after the first 100 (subject to a maximum fee of HKD 1,025)	See section 5.3.1.	295	See section 5.3.3.
Registered non-Hong Kong companies	1,720	See section 5.3.1.	1,425	See section 5.3.3.

The amount of fee payable is calculated according to the date of re-delivery of the document.

Higher registration fees will be payable for late filing of annual returns.

5.3.3. Annual registration fees

Annual registration fees, to be paid with the filing of the annual return, are as follows:

	<i>Local private companies having a share capital (HKD)</i>	<i>Local public companies having a share capital (HKD)</i>	<i>Local companies limited by guarantee (HKD)</i>	<i>Registered non-SAR companies (HKD)</i>
Where annual return is delivered within 42 days after the anniversary of incorporation	105	140	105	180
Where delivery is more than 42 days but within 3 months after the anniversary of incorporation	870	1,200	870	1,200
More than 3 months but less than 6 months after the anniversary of incorporation	1,740	2,400	1,740	2,400
More than 6 months but less than 9 months after the anniversary of incorporation	2,610	3,600	2,610	3,600
More than 9 months after the anniversary of incorporation	3,480	4,800	3,480	4,800

6. International Aspects

6.1. Resident companies

A company is resident in Hong Kong if central management and control is exercised in Hong Kong in the relevant year of assessment.

However, since Hong Kong applies a territorial basis of assessment, liability to tax is determined not on residence status, but on the source of income.

6.1.1. Foreign income and capital gains

Companies are generally not subject to tax on foreign income even if remitted into Hong Kong, except where such income is deemed to have a Hong Kong source (see section 1.3.1.). Foreign capital gains are also not subject to tax.

6.1.2. Foreign losses

See section 1.5.

6.1.3. Foreign capital

There is no net worth tax. Property located abroad is not subject to property tax in Hong Kong.

6.1.4. Double taxation relief

Hong Kong's territorial basis of assessment serves to a large extent as a measure of unilateral relief from double taxation, since most persons are not taxed on non-Hong Kong-source income.

A deduction is available for foreign tax paid in respect of interest or profits from the disposal or redemption of certificates of deposit and bills of exchange which are deemed to be derived from a Hong Kong business. The deduction is limited to financial institutions, since most persons are not taxed on foreign income.

In April 2009, The IRD issued DIPN 45 on Relief from Double Taxation due to Transfer Pricing or Profit Reallocation Adjustments.

DIPN 45 provides greater certainty and clarity on procedural matters for those seeking relief under a tax treaty, especially with regard to double taxation arising from transfer pricing or profit reallocation adjustments. DIPN 45 specifically covers the mechanisms for granting relief from double taxation by the IRD for adjustments made by the tax administration of a treaty partner state, especially with regard to time limits. See section 7.2. for transfer pricing guidelines.

See section 6.3.5. for a list of tax treaties in force.

6.2. Non-resident companies

A non-resident company is a company that is not a resident of Hong Kong (see section 6.1.).

6.2.1. Taxes on income and capital gains

A non-resident company carrying on a trade, profession or business in Hong Kong is assessed only on income arising in or derived from Hong Kong. The income is generally subject to tax under the normal rules for residents (see sections 1.3. to 1.7.).

The question of whether a particular income has a source in Hong Kong is largely one of fact, and has been considered in many cases judicially.

Business income derived through a permanent establishment in Hong Kong is subject to tax. The domestic definition of a permanent establishment covers certain agents. Where a company operates through an agent in Hong Kong, the company is assessable, either directly or in the name of the agent, on all profits arising in Hong Kong.

Non-residents are exempt from tax on profits from the following specified transactions which have been carried out through or arranged by an authorized financial institution or licensed companies, as well as transactions incidental to the carrying out of such transactions:

- transactions in securities;
- transactions in futures contracts;
- transactions in foreign exchange contracts;
- transactions consisting in the making of a deposit other than by way of a money-lending business;
- transactions in foreign currencies; and
- transactions in exchange-traded commodities.

See section 6.3. for withholding taxes.

6.2.2. *Taxes on capital*

There is no net worth tax. Non-resident companies are subject to property tax (see section 3.1.) on their property located in Hong Kong.

6.2.3. *Administration*

The requirements for non-residents to file tax returns in respect of Hong Kong-source income are the same as for residents.

Where a non-resident company is chargeable to profits tax in the name of an agent in Hong Kong, the agent may retain, from any assets of his principal which come into his possession, enough money to pay the tax.

See section 1.8. for tax compliance and administration.

6.3. *Withholding taxes on payments to non-resident companies*

Withholding taxes are generally not levied, except on royalties.

6.3.1. *Dividends*

There is no withholding tax on dividends.

6.3.2. *Interest*

There is no withholding tax on interest.

6.3.3. *Royalties*

The following types of income are subject to a final withholding tax:

- sums derived from the exhibition or use of cinematograph or television films or tapes, sound recording or advertising material connected with such film, tape or recording which are deemed to arise in Hong Kong because of their exhibition or use in Hong Kong; and
- sums derived from the use of or right to use a patent, design, trademark, copyright material, secret process or formula or other property of a similar nature which are deemed to arise in Hong Kong because of the use or right to use such property in Hong Kong.

The deemed taxable profit is 30%, subject to tax at the normal corporate rate, resulting in a withholding tax of 4.95% on the gross payment.

6.3.4. *Other*

Payments of management fees, fees for technical services and rental income are not subject to withholding tax. There is no branch profits/remittance tax.

6.3.5. Withholding tax rates chart

The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by Hong Kong companies to non-residents under the tax treaties in force as at the date of review. However, Hong Kong does not impose any withholding tax on dividend or interest payments under domestic law. The rates provided below are the maximum withholding rates should Hong Kong impose a withholding tax on such payments in the future.

Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. If the treaty provides for a rate lower than the domestic rate, the reduced treaty rate may be applied at source.

	<i>Dividends</i>		<i>Interest¹</i>	<i>Royalties</i>
	<i>Individuals, companies</i>	<i>Qualifying companies</i>		
	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>
Domestic Rates				
<i>Companies:</i>	0	0	0	4.95
<i>Individuals:</i>	0	n/a	0	4.95
Treaty Rates				
<i>Treaty With:</i>				
Austria	10	0 ²	0	3
Belarus	0/5 ³	0/5 ³	5	3/5 ⁴
Belgium	15	0/5 ⁵	10	5
Brunei	0	0	5/10 ⁶	5
Canada	15	5 ²	0/10 ⁷	10
China (People's Rep.)	10	5 ⁸	7	5/7 ⁴
Czech Republic	5	5	0	10
France	10	10	10	10
Guernsey	0	0	0	4
Hungary	10	5 ²	5	5
Indonesia	10	5 ⁸	10	5
Ireland	0	0	0/10 ⁶	3
Italy	10	10	0/12.5	15
Japan	10	5 ⁹	10	5
Jersey	0	0	0	4
Korea (Rep.)	15	10 ⁸	10	10
Kuwait	0/5 ³	0/5 ³	5	5
Latvia	0/10 ¹⁰	0/10 ¹⁰	0/10 ¹⁰	0/3 ¹¹
Liechtenstein	0	0	0	3
Luxembourg	10	0 ¹²	0	3
Malaysia	10	5 ²	10	8
Malta	0	0	0	3
Mexico	0	0	4.9/10 ⁶	10
Netherlands	0/10 ¹³	0 ¹³	0	3
New Zealand	15	0/5 ¹⁴	0/10 ¹⁵	5
Pakistan	10	10	10	10

	<i>Dividends</i>		<i>Interest¹</i>	<i>Royalties</i>
	<i>Individuals, companies</i>	<i>Qualifying companies</i>		
	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>
Portugal	10	5 ²	10	5
Qatar	0	0	0	5
Romania	5	3 ¹⁶	0/3 ¹⁷	3
Russia	10	5	0	3
South Africa	10	5	10	5
Spain	10	0 ⁸	0/5 ¹⁸	5
Switzerland	0/10 ¹⁹	0 ¹⁹	0	3
Thailand	10	10	10/15 ²⁰	5/10/15 ²¹
United Arab Emirates	0/5	0	5	5
United Kingdom	0/15 ²²	0/15 ²²	-/0 ²³	3
Vietnam	10	10	10	7/10 ²⁴

1. The treaties provide for an exemption for certain types of interest, e.g. interest paid to public bodies and institutions or on loans guaranteed or financed by such entities, or in relation to sales on credit. Such exemptions are not considered in this column.
2. The rate applies to generally with respect to participations of at least 10% of the payer's capital or voting power as the case may be.
3. A rate of 0% applies to dividends beneficially owned by the government or any of its institutions or other entities wholly-owned directly by the government receiving the dividends.
4. The lower rate applies to royalties for the use of, or the right to use aircraft (treaty with Belarus) or royalties arising from the leasing of aircraft and ships (treaty with China).
5. 5% for dividends paid to a company that holds directly at least 10% of the payer's capital; 0% for dividends paid to a company that holds directly at least 25% of the payer's capital for an uninterrupted period of at least 12 months.
6. The lower rate applies to interest received by a bank or financial institution, as the case may be. In the case of the treaty with Ireland, the lower rate also applies if the recipient is established in its resident country to provide benefits under pension arrangements recognized for tax purposes in that country.
7. There is no withholding tax where the beneficial owner of the interest is resident in the other country and dealing at arm's length with the payer.
8. The rate applies to dividends paid to a company that holds directly at least 25% of the payer's capital.
9. The rate applies to dividends paid to a company that holds directly or indirectly at least 10% of the voting shares of the dividend-paying company for a period of 6 months ending on the date on which entitlement to the dividends is determined. However, the rate does not apply in the case of dividends paid by a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan.
10. A rate of 0% applies to dividends or interest paid to a company (excluding a partnership). Dividends or interest paid to the government or specified public institutions, or to a pension fund or scheme, are also exempt. 10% applies in all other cases.
11. A rate of 0% applies to royalties for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience; and 3% applies in all other cases.
12. This rate applies if the beneficial owner is a company which holds directly at least 10% of the capital or a participation with an acquisition cost of at least EUR 1.2 million in the company paying the dividends.

13. A rate of 0% applies if the dividends are paid to: (a) a company owning directly at least 10% of the capital of the dividend-paying company, provided that it fulfils various criteria (its shares are regularly traded on a recognized stock exchange; at least 50% of its shares are owned by a listed company that is a resident in a contracting state or in an eligible Member State of the European Union; it is a bank or insurance company; or it is a headquarters company (as defined) for a multinational group which provides a substantial portion of the overall supervision and administration of the group and which has, and exercises, independent discretionary authority to carry out these functions); (b) the government or its institutions as specified; (c) a pension fund or scheme as specified or (d) other companies where it is determined that the establishment, acquisition or maintenance of which is not mainly to secure the benefits of the dividend article.
14. A rate of 5% applies to dividends paid to a company owning directly at least 10% of the voting power of the dividend-paying company; 0% applies to dividends paid to a company owning directly or indirectly at least 50% of the voting power of the dividend-paying company, and which meets specified requirements (listing, eligibility for treaty benefits etc.).
15. Interest is exempt if paid to a financial institution that is unrelated to and dealing wholly independently with the payer, unless it is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.
16. This rate applies to dividends paid to a company that holds directly at least 15% of the payer's capital. There is no withholding tax on dividends paid to the government or other public institutions (as specified).
17. The treaty rate of 3% is reduced to 0% as long as Hong Kong does not levy withholding tax on interest.
18. Interest is exempt if paid to a financial institution, or a pension fund that is approved for tax purposes by the authority of the recipient state and the income of that fund is generally exempt from tax in the recipient state.
19. A rate of 0% applies if the dividends are paid to: (a) a company (other than a partnership) owning directly at least 10% of the capital of the dividend-paying company; (b) a pension fund or pension scheme as specified; or (c) the Hong Kong Monetary Authority or the Swiss National Bank.
20. The lower rate applies to interest beneficially owned by a financial institution or insurance company or if the interest arose as a result of a sale on credit of any equipment, merchandise or services (except with persons not dealing at arm's length).
21. 5% applies to payments for the use of, or the right to use, any copyright of literary, artistic or scientific work; 10% applies to payments for the use of, or the right to use any patent, trademark, design or model, plan, secret formula or process; 15% applies in all other cases.
22. The higher rate applies, other than where the beneficial owner of the dividends is a pension scheme, to dividends paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax; otherwise there is no withholding tax.
23. The domestic rate generally applies. However, there is no withholding tax where the interest is (a) received by (i) an individual; (ii) a listed company; (iii) a pension scheme; (iv) a financial institution which is unrelated to and dealing wholly independently with the payer; or (v) any other company not set up primarily to secure benefits under the interest article; or (b) the interest is paid: (i) by a bank in the ordinary course of its banking business; or (ii) on a quoted Eurobond.
24. The lower rate applies to royalties for the use of, or the right to use, any patent, design or model, plan, secret formula or process.

7. Anti-Avoidance

7.1. General

General anti-avoidance rules exist whereby transactions which reduce the amount of tax payable, and which appear to be artificial or fictitious, may be disregarded by the tax assessor in determining a person's liability to taxation.

Taxpayers are generally not prevented from pursuing tax benefits available in the framework of the tax laws. Only deliberately contrived tax avoidance schemes are targeted by the anti-avoidance provisions.

There is no specific legislation that aims at counteracting transactions in or with residents in tax havens. However, practice notes issued by the IRD indicate that general anti-avoidance provisions will be applied where taxpayers attempt to book profits offshore in order to avoid Hong Kong tax. The IRD pays close attention to cases where taxpayers attempt to create an artificial offshore source of profits. Upon a request by the IRD, taxpayers are obliged to provide information required to verify claims that profits are not sourced in Hong Kong.

If a right to receive income from property is transferred from one person to another and consideration is payable in respect of the transfer, the consideration is deemed to be a trading receipt arising in or derived from Hong Kong. This rule applies despite the general exclusion of profits from the sale of capital assets from profits tax.

There are also anti-avoidance provisions in relation to the use of service companies as a means for individuals to avoid salaries tax (*see* Individual Taxation section 1.3.1.), and the attribution of personal service income received via a service company to the individual shareholder (*see* Individual Taxation section 1.4.).

Anti-avoidance rules also exist to deny depreciation allowances in the case of leveraged leasing arrangements.

On 12 April 2013, the IRD issued the Inland Revenue (Amendment) Bill 2013, which enables Hong Kong to enter into tax information exchange agreements with jurisdictions with which a comprehensive tax treaty has not been concluded and to enhance existing exchange of information arrangements under tax treaties.

On 13 November 2014, the Foreign Account Tax Compliance Act (FATCA) agreement between Hong Kong and the United States was signed. Accordingly, financial institutions in Hong Kong are required to report directly to the US Internal Revenue Service (IRS). This requirement is supplemented by the government-to-government exchange of information pursuant to the Hong Kong-US tax information exchange agreement.

On 30 June 2016, Hong Kong started implementing the new international standard for automatic exchange of financial account information in tax matters.

On 6 October 2017, the IRD issued the Inland Revenue (Amendment) (No.5) Bill 2017, which seeks to pave the way for Hong Kong's participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and align the IRO with the Common Reporting Standard (CRS) promulgated by the OECD.

7.2. Transfer pricing

Transfer pricing provisions in the domestic law are brief and address transactions between a resident and a closely connected non-resident. Where a non-resident conducts business in close connection with a resident person who derives no assessable profits or less than what might be expected in normal circumstances, the non-resident will be deemed to be carrying on business in Hong Kong and its profits may be subject to tax in Hong Kong. Parties are generally regarded to be closely connected if they are substantially identical or their controlling interests are owned by the same person.

The IRD issued DIPN 46 in December 2009, setting out guidelines on transfer pricing. DIPN 46 makes it clear that the IRD will generally seek to apply the principles in the OECD Transfer Pricing Guidelines, except where they are incompatible with the provisions of the IRO. DIPN 46 specifically refers to schemes that are established with eva-

sion/avoidance as the primary motive, or that take advantage of financial secrecy laws, and in such cases transfer pricing adjustments can be expected to be made under the anti-avoidance provisions of the IRO.

In defining associated enterprises, DIPN 46 refers to the “Associated Enterprises” article of tax treaties (or OECD Model Tax Convention), which permits the upward adjustment of profits of an enterprise subject to certain conditions, although the existence of a tax treaty is not a prerequisite for making transfer pricing adjustments. No threshold (e.g. percentage ownership criterion) has been prescribed to define an associated enterprise.

DIPN 46 also refers to statutory provisions and case law which are relevant to transfer pricing.

The OECD’s standard is used in determining arm’s length prices, and the following transfer pricing methods as specified in the OECD Transfer Pricing Guidelines may be used:

- the comparable uncontrolled price (CUP) method;
- the resale price method;
- the cost-plus method;
- the profit split method; and
- the transactional net margin method (TNMM).

The traditional transaction methods (i.e. CUP, resale price and cost-plus) are preferred to the transactional profit methods (i.e. profit split and TNMM) when both can be applied in an equally reliable manner.

The IRO does not expressly require taxpayers to prepare contemporaneous transfer pricing documentation, although it does require taxpayers to create documents showing compliance with the arm’s length principle. DIPN 46 lists the type of information that would be required during a transfer pricing inquiry/audit or investigation, which includes details of:

- any relevant commercial or financial relations falling within the scope of the IRO;
- the nature, terms, prices, and quantum of relevant transactions, as well as the method(s) by which this information was achieved, including any comparability study undertaken;
- the manner in which the selected transfer pricing method resulted in an arm’s length price, and where it did not result in an arm’s length price, the computational adjustment required and how it was computed; and
- the terms of commercial arrangements with third party and related party customers.

DIPN 46 refers to the documentation requirements provided in the OECD Transfer Pricing Guidelines as guidance on the type of information that would be useful.

The IRD also issued DIPN 45 which deals with double taxation relief in respect of transfer pricing adjustments (*see* section 6.1.4.).

On 29 March 2012, the IRD released DIPN 48 setting out the guidelines for taxpayers seeking an advance pricing agreement (APA).

Country-by-Country Reporting

Hong Kong participates in the inclusive framework of the OECD BEPS project and has proposed to implement the Country-by-Country (CbC) reporting. Subject to necessary legislative amendments, Multinational Groups will be required to file CbC reports in Hong Kong for the accounting periods commencing on or after 1 January 2018. To facilitate MNE Groups of which the ultimate parent entities are tax residents in Hong Kong (Hong Kong MNE Groups) to fulfil their CbC reporting obligations in other jurisdictions, the Department is prepared to accommodate parent surrogate filing as a transitional arrangement. Under this transitional arrangement, a Hong Kong MNE Group will be allowed to file its CbC reports for the accounting periods commencing between 1 January 2016 and 31 December 2017 to the Department for exchange with other tax jurisdictions. Parent surrogate filing is entirely voluntary and may relieve the group's constituent entities from local filing obligation in certain circumstances. The Department is now formulating the procedures for the arrangement which will be rolled out in the first quarter of 2017. Meanwhile, the ultimate parent entity of Hong Kong MNE Group seeking parent surrogate filing in Hong Kong should submit a notification, duly signed by its director, secretary or responsible officer, to the Department containing the information such as the name of the ultimate parent entity, its Hong Kong business registration number, the accounting period(s) for which the group's CbC Report will be filed to the Department, information on the constituent entities to be included in the CbC Report etc.

7.3. Thin capitalization

There are no thin capitalization rules in Hong Kong. See section 1.3.3. for deductibility of interest expense, which may also be affected by anti-avoidance provisions.

7.4. Controlled foreign company

There are no controlled foreign company rules.

8. Value Added Tax

8.1. General

There is no value added tax.

8.2. Taxable persons

Not applicable.

8.3. Taxable events

Not applicable.

8.4. Taxable amount

Not applicable.

8.5. Rates

Not applicable.

8.6. Exemptions

Not applicable.

8.7. Non-residents

Not applicable.

9. Miscellaneous Taxes

9.1. Capital duty

Since 1 June 2012, the capital duty levied on Hong Kong companies is abolished.

9.2. Transfer tax

9.2.1. Immovable property

Transfer of immovable property may be subject to stamp duty (see section 9.3.).

9.2.2. Transfer of shares

Transfer of shares may be subject to stamp duty (see section 9.3.).

9.3. Stamp duty

Stamp duty is levied on documents evidencing transactions in respect of immovable property, stocks and bearer instruments at fixed and ad valorem rates. Fixed duties vary from HKD 5 to 1,500,000, whereas ad valorem duties range from 0.1% to 20%.

9.3.1. Lease of immovable property

For leases of immovable property in Hong Kong, stamp duty is calculated as follows:

<i>Term of the lease</i>	<i>Rate</i>
Not defined or uncertain	0.25% of the yearly or average yearly rent
Up to 1 year	0.25% of the total rent payable over the term of the lease
1 - 3 years	0.5% of the yearly or average yearly rent
Over 3 years	1% of the yearly or average yearly rent
Key money, construction fee, etc. mentioned in the lease (excl. deposit)	4.25% of the consideration if rent is also payable under the lease. Otherwise, stamp duty is chargeable in the same manner as for a sale of immovable property.

9.3.2. Sale or transfer of immovable property

With effect from 31 January 1992, ad valorem stamp duty (AVD) is chargeable on agreements for sale and purchase of residential property.

With effect from 23 February 2013, AVD is also chargeable on agreements for sale and purchase of non-residential property. AVD on non-residential property transactions is payable upon the execution of the agreement for sale on or after 23 February 2013 (and not upon the conveyance).

The Collector of Stamp Revenue is empowered to impose AVD based on the market value of the property conveyed, or the shares transferred, if the consideration is deemed to be below the market value.

Unless specifically exempted or otherwise provided, AVD is payable at Scale 1 on an agreement for sale of any residential property or non-residential property, if the agreement is executed on or after 23 February 2013.

AVD (Scale 1) rates are as follows:

<i>Property Consideration (HKD)</i>	<i>Rates at Scale 1</i>
Up to 2,000,000	1.50%
2,000,001 - 2,176,470	HKD 30,000 + 20% of the excess over HKD 2,000,000
2,176,471 - 3,000,000	3%
3,000,001 - 3,290,330	HKD 90,000 + 20% of the excess over HKD 3,000,000

<i>Property Consideration (HKD)</i>			<i>Rates at Scale 1</i>
3,290,331	-	4,000,000	4.50%
4,000,001	-	4,428,580	HKD 180,000 + 20% of the excess over HKD 4,000,000
4,428,581	-	6,000,000	6%
6,000,001	-	6,720,000	HKD 360,000 + 20% of the excess over HKD 6,000,000
6,720,001	-	20,000,000	7.50%
20,000,001	-	21,739,130	HKD 1,500,000 + 20% of the excess over HKD 20,000,000
Over		21,739,131	8.50%

On 27 January 2017, the amendment to the Stamp Duty Bill 2017 (the Bill) was gazetted. The Bill, announced on 4 November 2016, introduces a new flat rate of 15% for the AVD chargeable on residential property transactions concluded after 5 November 2016, in lieu of the existing AVD rates at Scale 1 (i.e. the “doubled ad valorem stamp duty” (DSD) rates). Except for specified exemptions, the new rate of 15% would apply to all transactions for residential property acquired by individuals or companies. The existing arrangement of applying DSD rates to non-residential property transactions is not affected. A Hong Kong permanent resident (HKPR) buyer who does not own any other residential property in Hong Kong at the time of acquiring residential property will continue to pay AVD under the lower rates at Scale 2. To cater for the situation where a HKPR acquires a new residential property before disposing of his single residential property, the Bill proposes to maintain the existing refund mechanism under the DSD regime for a HKPR-buyer who replaces his single residential property. The Bill will be introduced into the Legislative Council on 8 February 2017.

On 12 April 2017, the exemption arrangement for HKPRs under the New Residential Stamp Duty (NRSD) measure was tightened. According to the tightened arrangement, the acquisition of a single residential property under a single instrument by an HKPR who is acting on his own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of the acquisition will continue to be exempt from the NRSD rate of 15%, and will only be subject to lower AVD rates at Scale 2. However, if an HKPR buyer acquires more than one residential property under a single instrument, the transaction concerned will no longer be exempt, but will be subject to the NRSD rate of 15%.

9.3.2.1. Special stamp duty

On 30 June 2011, a special stamp duty (SSD) was enacted under the Stamp Duty (Amendment) Ordinance 2011. The SSD is levied on residential properties of all values acquired on or after 20 November 2010 and resold within 24 months after acquisition, in addition to the current ad valorem stamp duty.

The SSD payable is calculated based on the stated consideration for the transaction or the market value of the property as assessed by the Commissioner of Inland Revenue, whichever is higher, at the following rates:

<i>Holding period of property</i>	<i>SSD payable (%)</i>
Up to 6 months	15
6 - 12 months	10
12 - 24 months	5

Subject to the enactment of legislative amendments, any residential property acquired on or after 27 October 2012, either by an individual or an enterprise (regardless of where it is incorporated), and resold within 36 months, will be subject to new (higher) SSD rates as follows:

<i>Holding period of property</i>	<i>SSD payable (%)</i>
Up to 6 months	20
6 - 12 months	15
12 - 36 months	10

In addition, Stamp Office Interpretation and Practice Note 5 (SOIP 5) was issued in July 2011 (revised in October 2011) to set out how the Collector will apply the SSD provisions and provide the HKIRD's practice in implementing them. SOIP 5 also sets out exemptions from SSD in the following cases:

- nomination of the spouse, parents, children, brothers or sisters to take up the assignment of the residential property, and sale or transfer of the residential property to the spouse, parents, children, brothers or sisters;
- addition/deletion of a name to/from a chargeable agreement for sale or a conveyance on sale in respect of the residential property if the person is the spouse, parents, children, brothers or sisters of the original purchaser;
- sale or transfer of residential properties by a court order or pursuant to a court order;
- transfer of the estate of a deceased person by the personal representative, and sale or transfer of a residential property by a person whose property is inherited from a deceased person's estate or is passed to that person under the right of survivorship;
- the residential property sold relates solely to a bankrupt's estate or the property of a company which is being wound up by the court by reason of its inability to pay debts;
- sale of mortgaged residential properties in various forms by a mortgagee which is a financial institution within the meaning of Section 2 of the IRO, or by a receiver appointed by such a mortgagee;
- sale or transfer of residential properties to the government; and
- sale or transfer of residential properties between associated bodies corporate.

9.3.2.2. Buyer's stamp duty

Subject to the enactment of legislative amendments to the Stamp Duty Ordinance, a buyer's stamp duty (BSD) will be levied on all residential properties acquired on or after 27 October 2012 by any person (including enterprises) except Hong Kong permanent resident (HKPR). The BSD is to be charged at a flat rate of 15% in addition to the existing stamp duty and the SSD if applicable. All residential property buyers are required to pay stamp duty within 30 days from the date of signing the sale and purchase agreement.

Various exemptions are available, including:

- acquisition or obtaining of transferred residential property in accordance with a court order;
- acquisition or transfer of mortgaged residential property in various ways by a mortgagee of a financial institution, or by its appointed receiver;

- a corporate body's acquisition of residential property from its associated corporate body, or the transfer of residential property between associated corporate bodies;
- acquisition of residential property (including vacant land) for the construction of a prescribed number of residential property, after demolishing the existing residential property if applicable, provided the residential property is completed and put up for sale and reconstruction within a specified period after acquisition of the first residential property;
- acquisition of a residential property substitute due to the sale of the original residential property to the Urban Renewal Authority or where the original residential property is taken back by the government;
- resale or transfer of residential property to the government; and
- donation of residential property to charitable organizations.

9.3.3. *Transfer of Hong Kong stock*

Transfer of Hong Kong stock is subject to the stamp duty as follows:

<i>Nature of document</i>	<i>Rate</i>
Contract note for sale or purchase of Hong Kong stock	0.1% of the amount of the consideration or of its value on each sold note and bought note
Transfer operating as a voluntary disposition inter vivos	HKD 5 + 0.2% of the value of the stock to be transferred
Transfer of any other kind of Hong Kong stock	HKD 5

From 13 February 2015, contract notes and instruments of transfer (i.e. transaction documents) for transactions of shares or units of exchange traded funds (ETFs) are not subject to stamp duty.

9.3.4. *Exemptions*

Subject to the conditions set out in the Stamp Duty Ordinance, stamp duty relief is available as follows:

- transfer of immovable property or shares between associated parties;
- transfer of shares under stock borrowing and lending transaction; and
- transfer of bonds and certain instruments, in the case of conventional bonds, issued or executed under Islamic bond schemes solely to comply with *Sharia* principles (but which transfer is not otherwise required).

9.4. *Customs duty*

Hong Kong is a tax-free port that does not levy any import or export duties.

9.5. *Excise duty*

Excise duty is levied on liquor, tobacco and related products, hydrocarbon oil, methyl alcohol, etc. The collection of excise duties is administered by the Customs and Excise Department.

9.6. *Other taxes*

9.6.1. *Betting duty*

Betting duty is charged on:

- net stake receipts derived from the conduct of authorized betting on horse races, at rates between 72.5% and 75% (reduced by half for overseas bets);

- contributions or subscriptions to authorized cash sweeps, at 30%;
- proceeds on lotteries, at 25%; and
- authorized betting on football matches, at 50%.

9.6.2. *Hotel accommodation tax*

The hotel accommodation tax was waived from 1 July 2008. Previously, the tax was imposed on accommodation charges paid by guests in hotels and guest houses at a rate of 3%.

HONG KONG

This chapter is based on information available up to 20 January 2018.

Introduction

Hong Kong is a Special Administrative Region of the People's Republic of China and the territory is comprised of Hong Kong island, the Kowloon peninsula on the mainland, the area of the mainland to the north of Kowloon up to the Shenzhen river, which is the largest part of the New Territories, and over 200 islands (the largest of which is Lantau, which is also administratively part of the New Territories).

Individuals are subject to salaries tax on income arising in or derived from Hong Kong from any office or employment of profit, and pension. Business and professional income is subject to profits tax, and income from immovable property subject to property tax. There is no tax on capital gains and no value added tax.

The law governing the imposition of income tax is the Inland Revenue Ordinance (IRO). The tax administration authority is the Inland Revenue Department (IRD).

Employees and self-employed individuals are required to make contributions to the Mandatory Provident Fund.

The currency is the Hong Kong dollar (HKD).

1. Individual Income Tax

1.1. Taxable persons

A resident is a person who ordinarily resides in Hong Kong (permanent resident), or stays in Hong Kong for a total period(s) of at least 180 days during a year of assessment and not less than 300 days in a year of assessment and the year immediately before or after (temporary resident).

Since Hong Kong applies a territorial basis of assessment, liability to tax is determined not on residence status, but on the source of income. The terms "permanent resident" and "temporary resident" have no general application except in determining the eligibility of an individual to elect for personal assessment and to claim dependent parent allowance (see section 1.7.2.), and to avoid double taxation.

Married couples are assessed to tax individually unless they opt for joint assessment (see section 1.10.2.).

Partnerships are separate taxable persons.

1.2. Taxable income

1.2.1. General

Individuals are subject to salaries tax on all income arising in or derived from Hong Kong from any office or employment of profit, and pension.

An individual's gross income subject to salaries tax is aggregated as assessable income. Expenses, depreciation allowances and losses are deducted from assessable income to arrive at net assessable income. Finally, personal allowances and approved charitable donations are deducted from net assessable income to arrive at net chargeable income, to which the applicable tax rates are applied.

Persons carrying on a trade, profession or business in Hong Kong are subject to profits tax on income arising in or derived from Hong Kong from that trade, profession or business. The question of whether a particular income has a source in Hong Kong is largely one of fact, and has been considered in many cases judicially.

For an employee who does not have a Hong Kong employment, income derived from services rendered in Hong Kong is subject to salaries tax.

In addition, certain profits, which may otherwise be characterized as having a capital nature or having a source other than Hong Kong, are deemed to be receipts arising in or derived from Hong Kong and thus subject to profits tax. The main items include:

- sums received from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording or any advertising material connected with such film, tape or recording;
- royalties received from the use or right to use in Hong Kong of a patent, design, trademark, copyright material, secret process or formula or other property of a similar nature;
- royalties for the use of, or for the right to use, most intellectual property outside Hong Kong if they are deductible in determining the taxable income of a person for Hong Kong profits tax purposes;
- grants, subsidies or similar financial assistance related to a trade, profession or business carried on in Hong Kong (other than sums in connection with capital expenditure to be made);
- sums received by way of hire, rental or similar charges for the use of or the right to use movable property in Hong Kong;
- Hong Kong-source profits from the sale or redemption on maturity or presentation of a certificate of deposit or bill of exchange, except for individuals in a non-business capacity; and
- sums received by a person in consideration for the transfer of a right to receive income from property.

The taxable income for a year of assessment is determined by subtracting allowable deductions from profits.

1.2.2. Exempt income

Exempt income includes employment income derived from services provided outside Hong Kong, pensions from a recognized occupational retirement scheme, other amounts withdrawn from a recognized occupational retirement scheme on retirement, death, incapacity or termination of service (restrictions apply), disability pensions and war memorial pensions, scholarships, alimony payments and redundancy or severance payments.

Special provisions apply to the crew of ships and aircraft who are present in Hong Kong for short periods of time.

The following are the main items of income that are excluded from profits tax:

- income arising or derived from outside Hong Kong;
- dividends;
- interest on Tax Reserve Certificates issued by the Commissioner of Inland Revenue;
- interest on a bond issued under the Loans Ordinance or the Loans (Government Bonds) Ordinance, and any profit on the sale or redemption of such bonds;

- interest and trading profits derived from long-term debt instruments;
- any profits of a trade, profession or business already charged in the name of another person. For example, a partner is not taxed on the share of partnership profits which have already been subject to tax; and
- any profits from the sale of capital assets.

1.3. Employment income

1.3.1. Salary

Income from employment includes all income derived from services rendered in Hong Kong and leave pay attributable to such services. Income is taxable when it accrues to the employee or office holder, i.e. when that person becomes entitled to claim payment.

In determining the source of employment, the following factors are relevant:

- where the contract of employment was negotiated and entered into, and is enforceable;
- the place of residence of the employer; and
- the place of payment of the employee's remuneration.

In general, a deduction is allowed for expenses wholly, exclusively and necessarily incurred in the production of assessable income. The following expenses are specifically deductible in determining net assessable income:

- one professional subscription which is a prerequisite of employment;
- travelling expenses incurred in the performance of the duties of the office;
- commission payments in order to obtain contracts or to make sales (sufficient detail should exist to justify the claim);
- entertainment expenses (it must be shown that it would not have been possible to have produced the income from the employment without incurring such expenditure);
- payments to assistants under certain circumstances;
- use of residential premises if the nature of an office or employment is such that it is necessary for a distinct and separate part of the employee's private residence to be used solely for the purpose of the employment;
- depreciation allowances if under the terms and conditions of the employment, an individual incurs expenditure of a capital nature on plant or machinery necessary for the performance of duties; and
- replacement of special clothes required by the nature of the employment.

Expenditure not incurred in the performance of duties or expenses having a private purpose are not deductible, e.g. commuting to and from work, expenditure to acquire an employment or appointment, cost of further education or the cost of membership in a social or sports club.

Specific anti-avoidance legislation aims at ending the use of service companies as a means for individuals to avoid salaries tax. The legislation provides that where remuneration is paid to a service company for the services of an individual who controls the company, the income is deemed to be employment income of the individual who controls the company, and subject to salaries tax as such.

1.3.2. *Benefits in kind*

Benefits in kind that can be converted into money by the recipient are included in employment income, including the rental value of a place of residence provided by the employer. Payments made by an employer in respect of education expenses of an employee's child, and holiday passages provided by the employer are also taxable.

If an employer makes a payment to a third party which discharges an employee's debt, the payment must be included in the taxable income of the employee.

The following benefits in kind are not taxable: use of the employer's car, boat or recreational facilities, payments for household expenses such as utilities, low-interest or interest-free loans and club benefits (only corporate club memberships).

1.3.3. *Pension income*

Pension income arising in or derived from Hong Kong is generally subject to salaries tax. However, sums paid in commutation of pensions under a recognized occupational retirement scheme are exempt. Pension payments are also exempt if made upon retirement, termination of employment after 10 years, incapacity or death. If termination of employment occurs before 10 years, the amount exempted is computed by reference to the completed years of service.

An annual deduction of up to HKD 18,000 from the years of assessment 2015/16 onwards per individual is allowed for contributions to the MPF (*see section 3.*). Contributions to a recognized occupational retirement scheme are deductible, up to the amount that would have been required under the MPF.

1.3.4. *Directors' remuneration*

Generally, directors' fees are taxed as employment income.

1.4. *Business and professional income*

Business and professional income of individuals is subject to profits tax, and generally accorded the same tax treatment as for companies. As a general rule, deductions are allowed for outgoings and expenses to the extent to which they are incurred in the production of profits chargeable to tax for any period (*see further section 1.7.1.*).

Generally, interest is deductible if it is incurred for the purposes of producing assessable profits and meets a number of specified conditions. Royalties incurred in earning assessable income are deductible.

Depreciation is available for industrial buildings and structures used in certain trades, commercial buildings used in business, plant and machinery, and renovation and refurbishment of business premises. Intangible assets are not depreciable.

A practice note has been issued to combat the abuse of service companies where inflated fees are paid by an unincorporated business to a service company which is controlled by the proprietor of the unincorporated business. In such cases, personal service income received via the service companies may be attributed to the individual shareholder.

1.5. *Investment income*

Dividends are exempt from all taxes. Interest and royalties received by individuals are subject to profits tax, and generally accorded the same treatment as for companies.

See further section 1.2.1. for income deemed to be receipts arising in or derived from Hong Kong and thus subject to profits tax, and section 1.2.2. for exempt investment income.

Profits tax may be chargeable on the gains from disposal of immovable properties in adventure in the nature of trade in Hong Kong.

1.6. Capital gains

Capital gains are generally not taxable. However, profits tax may be charged on the profits of a speculative transaction if it can be shown to be an adventure in the nature of trade.

Property trading is the most litigated issue in Hong Kong. Matters which will be considered when discerning the taxpayer's intention are: his declared intention, his financial ability to hold the asset long term, the length of ownership, any work carried out on the property to improve its value, where the property has been kept vacant the steps taken to lease out the property or the reasons for not letting out the property, the rate of return obtained by leasing out as opposed to the return obtained from selling, whether the transaction was isolated or part of a series of transactions (although an isolated property transaction can also amount to an adventure in the nature of trade), and whether the reason for sale was because of an unexpected event which could not have been foreseen. The list is not exhaustive.

1.7. Personal deductions, allowances and credits

1.7.1. Deductions

In general, expenses are deductible if they are wholly, exclusively and necessarily incurred in the production of assessable income. Unless otherwise provided, expenditure must be of a revenue nature and not specifically non-allowable.

The following expenses are specifically deductible from income subject to salaries tax in determining net assessable income:

- donations in cash to approved charities above HKD 100 but not exceeding 35% of income after allowable expenses;
- expenses incurred on self-education including tuition and examination fees, up to HKD 100,000 per year from the year of assessment 2017/18 (previously HKD 80,000);
- elderly residential care expenses paid to a residential care home in respect of a parent or grandparent is increased to HKD 92,000 effective from the year of assessment 2016/17 (previously, HKD 80,000) per year;
- home loan interest, provided the taxpayer uses the place of residence during the year of assessment, for any 20 years of assessment (continuous or otherwise), subject to a limit of HKD 100,000 per year; and
- mandatory contributions to the MPF (see section 3.) or contributions to a recognized occupational retirement scheme, subject to a combined limit of HKD 18,000 for the years of assessment 2015/16 onwards.

1.7.2. Allowances

Individuals subject to salaries tax, or who have elected for personal assessment (see section 1.9.1.), are entitled to the following personal allowances for the 2017/18 year of assessment:

	<i>Amount (HKD)</i>
Basic allowance	132,000
Married person's allowance	264,000
Child allowances (each of maximum 9 children)	100,000
One-off child allowance (year of birth)	200,000
Single parent allowance	132,000
Dependent sibling allowance (per dependent)	37,500
Dependent parent/grandparent allowance (per dependant aged 60 and above):	
- not residing with taxpayer	46,000
- residing with taxpayer	92,000
Dependent parent/grandparent allowance (per dependant aged 55-59):	
- not residing with taxpayer	23,000
- residing with taxpayer	46,000
Disabled dependent allowance	75,000

1.7.3. Credits

There are no specific credits.

1.8. Losses

A loss is an excess of deductible expenses over assessable income or chargeable profits.

Losses for the purposes of salaries tax may be carried forward against income subject to salaries tax indefinitely. Losses are carried forward to be set off against assessable income in determining net assessable income in succeeding years of assessment and must be set off as soon as possible.

If a married couple has in any year of assessment elected for joint assessment to salaries tax, losses are deducted in that year first from the assessable income of the spouse who incurred the loss and then from the assessable income of the other spouse.

For profits tax purposes, business losses can be carried forward indefinitely and without any restriction, and set off against future profits. Only losses arising in Hong Kong from the carrying on of a trade, profession or business in Hong Kong can be set off against chargeable profits.

Specific rules apply to partnership losses. Capital losses are not deductible.

Losses may not be carried back.

1.9. Rates

1.9.1. Income and capital gains

The salaries tax rates for individuals are as follows:

Taxable income (HKD)		Rate (%)
Up to	45,000	2
45,000 -	90,000	7
90,000 -	135,000	12
Over	135,000	17

There is a one-off reduction of 75% of the salaries tax and tax under personal assessment for the year of assessment 2016/17, subject to a maximum of HKD 20,000 per case.

Sole proprietors or partners of a business and property owners who receive rental income are assessed to profits tax and property tax respectively at the standard rate of 15% with effect from 1 April 2008 (previously, 16%).

However, any permanent or temporary resident of Hong Kong may obtain relief from the standard rate of profits and property tax by electing to be assessed under personal assessment. Under personal assessment, all sources of income chargeable to salaries tax, profits tax and property tax are aggregated, and the following may be deducted from the total:

- interest payable on money borrowed for the acquisition of the property (the amount deductible for each property cannot exceed the assessed income from that property);
- approved charitable donations (*see* section 1.7.1.);
- elderly residential care expenses (*see* section 1.7.1.);
- home loan interest (*see* section 1.7.1.);
- mandatory contributions paid to the MPF (*see* section 3.) as an employee;
- contributions paid to a recognized occupational retirement scheme;
- business losses incurred in the year of assessment;
- losses brought forward from previous years under personal assessment; and
- personal allowances.

The balance, if any, is taxed at the same rates as for salaries tax. The amount of tax liability under personal assessment may not exceed 15% of the total income, or the joint total income of a married couple, after the deduction of business losses and charitable donations but before personal allowances.

There is no tax on capital gains derived from the disposal of shares. However, profits tax may be chargeable on the gains derived from the disposal of immovable properties, if the disposal is a speculative transaction that is shown to be an adventure in the nature of trade.

1.9.2. Withholding taxes

Generally, payments to resident individuals do not attract withholding tax, although salaries tax is paid on a provisional basis (*see* section 1.10.3.).

See section 6.3.1. for withholding rates on payments to non-residents.

1.10. Administration

1.10.1. Taxable period

The year of assessment starts on 1 April.

1.10.2. Tax returns and assessment

Individuals are required to complete composite tax returns which contain details of all their income from property, salaries and from carrying on unincorporated businesses. The IRD normally sends out the returns in early May each year and taxpayers are required to complete and submit the return within 1 month from the date of issue.

Married couples may elect for joint assessment if both have net chargeable income and the amount of tax payable would be less in a joint assessment than in individual assessments. Their net assessable incomes are aggregated and approved charitable donations and personal allowances are deducted to arrive at the joint net chargeable income, to which salaries tax is applied.

1.10.3. Payment of tax

Provisional salaries tax is payable, calculated based on the assessable income in the year preceding the year of assessment. The provisional tax is payable in two instalments: 75% of the amount is payable on a normal due date specified on the notice of provisional assessment, and the remaining 25% approximately 3 months later.

If the provisional tax paid is less than the final tax liability, the notice of assessment will specify the payment deadline. Excess provisional tax paid is refunded.

Provisional profits tax may be fully or partly held over in the following circumstances:

- the assessable profits for a year of assessment assessed to provisional profits tax are, or are likely to be, less than 90% of the assessable profits for the preceding year or of the estimated amount liable to provisional profits tax;
- a loss brought forward has not been taken into account or is incorrect;
- the taxpayer has ceased, or will cease before the end of the year of assessment, his trade, profession or business and the assessable profits for the year of assessment to be assessed to provisional profits tax are, or are likely to be, less than the assessable profits for the preceding year or of the estimated amount liable to provisional profits tax;
- the taxpayer has elected for personal assessment and this is likely to reduce his tax liability for the year of assessment; or
- the final assessment for the preceding year is under objection.

An application to hold over payment of the provisional tax must be made in writing at least 28 days before the due date for payment of provisional tax, or 14 days after the date of the notice for payment, whichever is later. If the due date for the first instalment is missed, all or part of the second instalment may be held over.

The tax may be held over until the taxpayer is required to pay profits tax for the year of assessment.

1.10.4. Rulings

As from 1 April 1998, a taxpayer may apply to the Commissioner for an advance ruling on how a provision of the IRO would apply to him or to a particular business or an arrangement. The details of the application procedure are set out in DIPN Note 37.

Taxpayers may apply for an advance ruling on the application of any provision in the IRO on the arrangement specified in the application. The matters that may be raised include:

- the source of profits;
- the source of the remuneration as deemed employment income;
- certainty of tax issues; and
- consistency in the application of the IRO.

For the purpose of obtaining an advance ruling from the IRD, taxpayers are required to submit to the IRD a specified application form together with supporting documents and information. A ruling will only be given for a seriously contemplated arrangement, and not those that are hypothetical or merely in a planning stage. The applicant is responsible for ensuring that the information provided is accurate and complete. The IRD has 6 weeks to respond. In case additional information is required, the 6-week response period will commence on the date when complete information is received by the IRD. The applicant is allowed to withdraw the ruling request in writing at any time before the ruling is made.

The IRD levies a fee of at least HKD 10,000 in respect of an application for a ruling.

A ruling made by the Commissioner, whether advantageous to the taxpayer or not, is final and will not be subject to objection or appeal.

In addition, the IRD regularly issues interpretation and practice notes and information pamphlets. Such notes and pamphlets are solely for the guidance of taxpayers and do not form a part of the law; they are not binding on the IRD.

2. Other Taxes on Income

2.1. Property tax

Property tax is charged on the owners of land and/or buildings in Hong Kong, in respect of income derived from the property. The standard rate is 15% from the year of assessment 2008/09 onwards (previously, 16%).

The assessable value is computed by reference to the actual consideration payable to the owner in respect of the right to use the property. Considerations included as part of the assessable value are rent, payments for the right to use the premises, lump-sum premiums, service charges, management fees paid to the owner, and the owner's other expenditures borne by a tenant.

The following deductions are available for property tax purposes:

- irrecoverable consideration, i.e. bad debts;
- rates paid by the owner; and
- a general allowance for repairs and outgoings equal to 20% of the assessable value of the property after deduction of any land rates paid.

Property tax is creditable against profits tax.

3. Social Security Contributions

Employees who are covered by the Mandatory Provident Fund (MPF) System are required to make regular mandatory contributions, calculated at 5% of the employee's relevant income, to an MPF scheme.

For an employee who is paid on a monthly basis, the minimum and maximum relevant income levels are HKD 7,100 (previously HKD 6,500) and HKD 30,000 (previously HKD 25,000), respectively. An employee earning less than the minimum level of relevant income (HKD 7,100 per month or HKD 85,200 per year) is not required to contribute but may elect to do so by way of making voluntary contributions.

The taxable income base includes wages, salaries, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, but excludes housing allowance or housing benefits. It also does not include severance payments and long-service payments.

Limited categories of persons are also not required to join the scheme, including foreigners working in Hong Kong for a period of less than 13 months, or who are covered by overseas retirement schemes.

Self-employed persons are required to contribute 5% of income, subject to the same maximum and minimum levels of income as employees. Self-employed persons can opt to make contributions on a monthly or yearly basis.

Mandatory contributions are fully deductible for tax purposes by employees and self-employed persons (see section 1.7.1.). Additional voluntary contributions in excess of the mandatory contributions may be made, but are not deductible for tax purposes.

4. Taxes on Capital

4.1. Net wealth tax

There is no net wealth tax.

4.2. Real estate tax

Property rates are levied as a tax on the occupation of property. Rates are based on the estimated annual letting value. The rateable value of all property in Hong Kong can be obtained from the Commissioner of Rating and Valuation. Rates are usually payable by the tenant of the property on a quarterly basis.

See section 2.1. for property tax on income from immovable property.

4.3. Other taxes

4.3.1. Stamp duty

Stamp duty is levied on documents evidencing transactions in respect of immovable property, stocks and bearer instruments at fixed and ad valorem rates. Fixed duties vary from HKD 5 to HKD 1,500,000, whereas ad valorem duties range from 0.1% to 20%.

Lease of immovable property

For leases of immovable property in Hong Kong, stamp duty is calculated as follows:

<i>Term of the lease</i>	<i>Rate</i>
Not defined or uncertain	0.25% of the yearly or average yearly rent
Up to 1 year	0.25% of the total rent payable over the term of the lease
1 - 3 years	0.5% of the yearly or average yearly rent
Over 3 years	1% of the yearly or average yearly rent
Key money, construction fee, etc. mentioned in the lease (excl. deposit)	4.25% of the consideration if rent is also payable under the lease. Otherwise, stamp duty is chargeable in the same manner as for a sale of immovable property.

Sale or transfer of immovable property

With effect from 31 January 1992, ad valorem stamp duty (AVD) is chargeable on agreements for the sale and purchase of residential property.

With effect from 23 February 2013, AVD is also chargeable on agreements for the sale and purchase of non-residential property. AVD on non-residential property transactions is payable upon the execution of the agreement for sale on or after 23 February 2013 (and not upon the conveyance).

After the agreement has been stamped, the related conveyance is subject to a fixed stamp duty of HKD 100.

The Collector of Stamp Revenue is empowered to impose AVD based on the market value of the property conveyed, or the shares transferred, if the consideration is deemed to be below the market value.

Unless specifically exempted or otherwise provided, AVD is payable at Scale 1 on an agreement for sale of any residential property or non-residential property, if the agreement is executed on or after 23 February 2013.

AVD (Scale 1) rates are as follows:

<i>Property consideration (HKD)</i>	<i>Rates at Scale 1</i>
Up to 2,000,000	1.50%
2,000,001 - 2,176,470	HKD 30,000 + 20% of the excess over HKD 2,000,000
2,176,471 - 3,000,000	3%
3,000,001 - 3,290,330	HKD 90,000 + 20% of the excess over HKD 3,000,000
3,290,331 - 4,000,000	4.50%
4,000,001 - 4,428,580	HKD 180,000 + 20% of the excess over HKD 4,000,000
4,428,581 - 6,000,000	6%
6,000,001 - 6,720,000	HKD 360,000 + 20% of the excess over HKD 6,000,000
6,720,001 - 20,000,000	7.50%
20,000,001 - 21,739,130	HKD 1,500,000 + 20% of the excess over HKD 20,000,000
Over 21,739,131	8.50%

The amendment to the Stamp Duty Bill 2017 (the Bill) was gazetted. The Bill, announced on 4 November 2016, introduces a new flat rate of 15% for the AVD chargeable on residential property transactions concluded after 5 November 2016, in lieu of the existing AVD rates at Scale 1 (i.e. the “doubled ad valorem stamp duty” (DSD) rates). Except for specified exemptions, the new rate of 15% would apply to all transactions for residential property acquired by individuals or companies. The existing arrangement of applying DSD rates to non-residential property transactions is not affected. A Hong Kong permanent resident (HKPR) buyer who does not own any other residential property in Hong Kong at the time of acquiring residential property will continue to pay AVD under the lower rates at Scale 2. To cater for the situation where a HKPR acquires a new residential property before disposing of his single residential property, the Bill proposes to maintain the existing refund mechanism under the DSD regime for a HKPR-buyer who replaces his single residential property. The Bill will be introduced into the Legislative Council on 8 February 2017.

On 12 April 2017, the exemption arrangement for HKPRs under the New Residential Stamp Duty (NRSD) measure was tightened. According to the tightened arrangement, the acquisition of a single residential property under a single instrument by an HKPR

who is acting on his own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of the acquisition, will continue to be exempt from the NRSD rate of 15%, and will only be subject to lower AVD rates at Scale 2. However, if an HKPR buyer acquires more than one residential property under a single instrument, the transaction concerned will no longer be exempt, but will be subject to the NRSD rate of 15%.

Special stamp duty

On 30 June 2011, a special stamp duty (SSD) was enacted under the Stamp Duty (Amendment) Ordinance 2011. The SSD is levied on residential properties of all values acquired on or after 20 November 2010 and which were resold within 24 months after acquisition, in addition to the current ad valorem stamp duty.

The SSD payable is calculated based on the stated consideration for the transaction or the market value of the property as assessed by the Commissioner of Inland Revenue, whichever is higher, at the following rates:

<i>Holding period of property</i>	<i>SSD payable (%)</i>
Up to 6 months	15
6 - 12 months	10
12 - 24 months	5

Subject to the enactment of legislative amendments, any residential property acquired on or after 27 October 2012, either by an individual or an enterprise (regardless of where it is incorporated), and resold within 36 months, will be subject to new (higher) SSD rates as follows:

<i>Holding period of property</i>	<i>SSD payable (%)</i>
Up to 6 months	20
6 - 12 months	15
12 - 36 months	10

In addition, Stamp Office Interpretation and Practice Note 5 (SOIP 5) was issued in July 2011 (revised in October 2011) to set out how the Collector will apply the SSD provisions and provide the HKIRD's practice in implementing them. SOIP 5 also sets out exemptions from SSD in the following cases:

- nomination of the spouse, parents, children, brothers or sisters to take up the assignment of the residential property, and sale or transfer of the residential property to the spouse, parents, children, brothers or sisters;
- addition/deletion of a name to/from a chargeable agreement for sale or a conveyance on sale in respect of the residential property if the person is the spouse, parent, child, brother or sister of the original purchaser;
- sale or transfer of residential properties by a court order or pursuant to a court order;
- transfer of the estate of a deceased person by the personal representative, and sale or transfer of a residential property by a person whose property was inherited from a deceased person's estate or was passed to that person under the right of survivorship;
- the residential property sold relates solely to a bankrupt estate or the property of a company which is being wound up by the court by reason of its inability to pay debts;

- sale of mortgaged residential properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of the IRO, or by a receiver appointed by such a mortgagee;
- sale or transfer of residential properties to the government; and
- sale or transfer of residential properties between associated bodies corporate.

Buyer's stamp duty

Subject to the enactment of legislative amendments to the Stamp Duty Ordinance, a buyer's stamp duty (BSD) will be levied on all residential properties acquired on or after 27 October 2012 by any person (including enterprises) except a Hong Kong permanent resident (HKPR). The BSD is to be charged at a flat rate of 15% in addition to the existing stamp duty and the SSD if applicable. All residential property buyers are required to pay stamp duty within 30 days from the date of signing the sale and purchase agreement.

Various exemptions are available, including:

- acquisition or obtention of transferred residential property in accordance with a court order;
- acquisition or transfer of mortgaged residential property in various ways by a mortgagee of a financial institution, or by its appointed receiver;
- a corporate body's acquisition of residential property from its associated corporate body, or the transfer of residential property between associated corporate bodies;
- acquisition of residential property (including vacant land) for the construction of a prescribed number of residential property, after demolishing the existing residential property if applicable, provided the residential property is completed and put up for sale and reconstruction within a specified period after acquisition of the first residential property;
- acquisition of a residential property substitute due to the sale of the original residential property to the Urban Renewal Authority or where the original residential property is taken back by the government;
- resale or transfer of residential property to the government; and
- donation of residential property to charitable organizations.

Transfer of Hong Kong stock

Transfer of Hong Kong stock is subject to the stamp duty as follows:

<i>Nature of document</i>	<i>Rate</i>
Contract note for sale or purchase of Hong Kong stock	0.1% of the amount of the consideration or of its value on each sold note and bought note
Transfer operating as a voluntary disposition inter vivos	HKD 5 + 0.2% of the value of the stock to be transferred
Transfer of any other kind of Hong Kong stock	HKD 5

From 13 February 2015, contract notes and instruments of transfer (i.e. transaction documents) for transactions of shares or units of exchange traded funds (ETFs) are not subject to stamp duty.

Exemptions

Subject to the conditions set out in the Stamp Duty Ordinance, stamp duty relief is available as follows:

- transfer of immovable property or shares between associated parties;
- transfer of shares under stock borrowing and lending transactions; and
- transfer of bonds and certain instruments, in the case of conventional bonds, issued or executed under Islamic bond schemes solely to comply with *Sharia* principles (but which transfer is not otherwise required).

5. Inheritance and Gift Taxes

Estate duty (inheritance tax) was abolished as of 11 February 2006. A deceased's estate will no longer be subject to estate duty if the death occurred on or after 11 February 2006. Transitional measures were introduced for the period 15 July 2005 to 11 February 2006 which provided for a reduced amount of HKD 100 for estates having a value exceeding HKD 7.5 million.

5.1. Taxable persons

Not applicable.

5.2. Taxable base

Not applicable.

5.3. Personal allowances

Not applicable.

5.4. Rates

Not applicable.

5.5. Double taxation relief

Not applicable.

6. International Aspects

6.1. Resident individuals

See section 1.1. for residence rules.

6.1.1. Foreign income and capital gains

Individuals are generally not subject to tax on foreign income even if remitted into Hong Kong, except where such income is deemed to have a Hong Kong source (see Corporate Taxation section 1.3.1.). Foreign capital gains are also not subject to tax.

Employment income which arises from services rendered by an individual outside Hong Kong is not taxable.

6.1.2. Foreign capital

There is no net wealth tax. Property located abroad is not subject to property tax in Hong Kong.

6.1.3. Double taxation relief

Hong Kong's territorial basis of assessment serves to a large extent as a measure of unilateral relief from double taxation, since most persons are not taxed on non-Hong Kong-source income.

See Corporate Taxation section 6.3.5. for a list of tax treaties in force.

6.2. Expatriate individuals

6.2.1. Inward expatriates

Expatriates deriving Hong Kong-sourced employment income are subject to salaries tax, and are generally subject to the same taxation rules as for residents (see section 1.3.).

Where an employee derives income from a Hong Kong employment, but renders all his services outside Hong Kong in a year of assessment, salary or wages arising from that employment are not subject to salaries tax. Visits to Hong Kong not exceeding 60 days during the basis period will not affect the exemption. However, if the visits to Hong Kong exceed 60 days and some services are rendered in Hong Kong, the entire income derived in that year is taxable.

An employee deriving income from a non-Hong Kong employment will not be liable to salaries tax if visits to Hong Kong do not exceed 60 days. If his visits exceed 60 days, he will be liable on that part of his income which is derived from services rendered in Hong Kong. The apportionment may be made on the basis of days spent in Hong Kong or an appropriate alternative basis.

6.2.2. Outward expatriates

Due to the territorial basis of assessment, an individual continues to have a tax obligation as long as he has Hong Kong-sourced income, such as property in Hong Kong, business income from a Hong Kong source, or income arising after departure but in respect of services rendered in Hong Kong prior to departure.

6.3. Non-resident individuals

Non-resident individuals are individuals who are not resident in Hong Kong for tax purposes (see section 1.1. for residence rules).

6.3.1. Taxes on income and capital gains

A non-resident individual is assessed on income arising in or derived from Hong Kong. The income is generally subject to the normal taxation rules described in sections 1. and 2., including the rates. There is no tax on capital gains.

Non-residents are exempt from tax on profits from the following specified transactions which have been carried out through or arranged by an authorized financial institution or licensed companies, as well as transactions incidental to the carrying out of such transactions:

- transactions in securities;
- transactions in futures contracts;
- transactions in foreign exchange contracts;
- transactions consisting in the making of a deposit other than by way of a money-lending business;
- transactions in foreign currencies; and
- transactions in exchange-traded commodities.

Withholding taxes are generally not levied, except on royalties and sums received by non-resident entertainers or sportsmen.

The following types of royalty income are subject to a final withholding tax:

- sums derived from the exhibition or use of cinematograph or television films or tapes, sound recording or advertising material connected with such film, tape or recording which are deemed to arise in Hong Kong because of their exhibition or use in Hong Kong; and
- sums derived from the use of or right to use a patent, design, trademark, copyright material, secret process or formula or other property of a similar nature which are deemed to arise in Hong Kong because of the use or right to use such property in Hong Kong.

The deemed taxable profit is 30%, subject to tax at the normal corporate rate, resulting in a withholding tax of 4.95% on the gross payment.

Sums derived by a non-resident entertainer or sportsman from a performance in Hong Kong or in connection with a commercial event, and sums derived by any other non-resident from such a performance or event are subject to a final withholding tax at the same rates as for employment income (see section 1.9.1.).

6.3.2. Taxes on capital

There is no net wealth tax. Non-residents are subject to property tax (see section 2.1.) on their property located in Hong Kong.

6.3.3. Inheritance and gift taxes

There is no inheritance or gift tax (see section 5. for abolished estate duty).

6.3.4. Administration

The requirements for non-residents to file tax returns in respect of Hong Kong-source income are the same as for residents.

Where a non-resident is chargeable to profits tax in the name of an agent in Hong Kong, the agent may retain, from any assets of his principal which come into his possession, enough money to pay the tax.

See section 1.10. for tax compliance and administration.

KEY FEATURES

Last reviewed: 20 January 2018

A. General information	
Sources of tax law	Inland Revenue Ordinance Stamp Duty Ordinance Tax Reserve Certificates Ordinance Business Registration Ordinance
Main types of business entities	Private limited company, branch, subsidiary or representative office Sole proprietorship, partnership
Accounting principles	Hong Kong Financial Reporting Standards
Currency	Hong Kong dollar (HKD)
Foreign exchange control	No
Official websites	Hong Kong Inland Revenue Department http://www.ird.gov.hk/eng/welcome.htm
B. Direct taxation: Companies	
1. Resident companies	
Residence	Hong Kong operates a territorial tax system and the concept of residence is irrelevant for the determination of tax liability. However, for the purpose of a tax arrangement (treaty), a company is a resident if it is incorporated in Hong Kong or it is incorporated outside Hong Kong but normally managed or controlled in Hong Kong
Tax base	Territorial
Corporate tax rates	16.5%
Alternative minimum tax	No
Capital gains	No
Loss carry-forward	Yes, indefinitely
Loss carry-back	No
Unilateral double taxation relief	Yes
2. Non-resident companies	
Corporate tax rates	16.5%
Capital gains on sale of shares in resident companies	No
Capital gains on sale of immovable property	Profits tax is charged on gains from disposal of immovable properties in the nature of trading adventure
Withholding tax rates	
Branch profits	No
Dividends	No
Interest	No
Royalties	4.95% (16.5% on 30% of profits)
Fees (technical)	No
Fees (management)	No

3. Specific issues	
Participation relief	Dividends are exempt from taxation
Group treatment	No
Incentives	High value manufacturing Qualifying debt instruments Qualifying reinsurance business Offshore mutual funds Offshore private equity funds
Anti-avoidance	
Transfer pricing legislation	Yes
Thin capitalization legislation	No
Controlled foreign company legislation	No
General anti-avoidance rule (GAAR)	Yes
Other anti-avoidance legislation	No
C. Direct taxation: Individuals	
1. Resident individuals	
Residence	A resident is a person who ordinarily resides in Hong Kong (permanent resident), or stays in Hong Kong for a total period(s) of at least 180 days during a year of assessment and not less than 300 days in a year of assessment and the year immediately before or after (temporary resident)
Taxable income	Individuals are subject to salaries tax on all income arising in or derived from Hong Kong from any office or employment and pension
Income tax rates	Progressive Top rate 17% (income over HKD 120,000) Sole proprietors or partners of a business and property owners who receive rental income: 15%
Alternative minimum tax	No
Capital gains	No
Unilateral double taxation relief	Yes
Social security contributions	Employees who are covered by the Mandatory Provident Fund (MPF) System are required to make regular mandatory contributions, calculated at 5% of the employee's relevant income. Self-employed persons are required to contribute 5% of income
2. Non-resident individuals	
Income tax rates	Progressive Top rate 17% (income over HKD 120,000)
Capital gains on sale of shares in resident companies	No
Capital gains on sale of immovable property	Profits tax is charged on the gains from disposal of immovable properties in the nature of trading adventure

Withholding tax rates	
Employment income	Salaries tax is levied on a provisional basis
Dividends	No
Interest	No
Royalties	4.95% (16.5% on 30% of profits)
Fees (technical)	No
Fees (directors)	No
D. Indirect taxation: Value added tax (VAT)/Goods and services tax (GST)	
Taxable events	No
VAT/GST (standard)	No
VAT/GST (reduced)	No
VAT/GST (increased)	No
Registration/deregistration threshold	No
VAT group	No
E. Other taxes	
Inheritance and gift taxes	No
Net wealth tax (individual)	No
Net wealth tax (corporate)	No
Real estate taxes	15% (charged on income derived from the property)
Capital duty	No
Transfer tax	No
Stamp duty	<p>Yes, on documents evidencing transactions in respect of stocks and bearer instruments: fixed duties vary from HKD 5 to HKD 1,500,000, whereas ad valorem duties range from 0.1% to 20%</p> <p>A flat rate of 15% applies to residential property transactions since 4 November 2016 unless the transactions are exempt</p> <p>Which an ad valorem stamp duty (AVD) at a flat rate of 15% chargeable on residential property transactions has been introduced</p> <p>Special stamp duty (SSD) is levied on residential properties of all values acquired on or after 20 November 2010 and resold within 24 months after acquisition, in addition to the current ad valorem stamp duty</p> <p>Buyer's stamp duty (BSD) is levied on all residential properties acquired on or after 27 October 2012 by any person (including enterprises) except a Hong Kong permanent resident (HKPR) (15%, in addition to the existing stamp duty and the SSD if applicable)</p>
Excise duties	Excise duties levied on liquor, tobacco and related products, hydrocarbon oil, methyl alcohol, etc
Other main taxes	Betting duty

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