A Guide to Tax Regulation in Hong Kong

2019-2020

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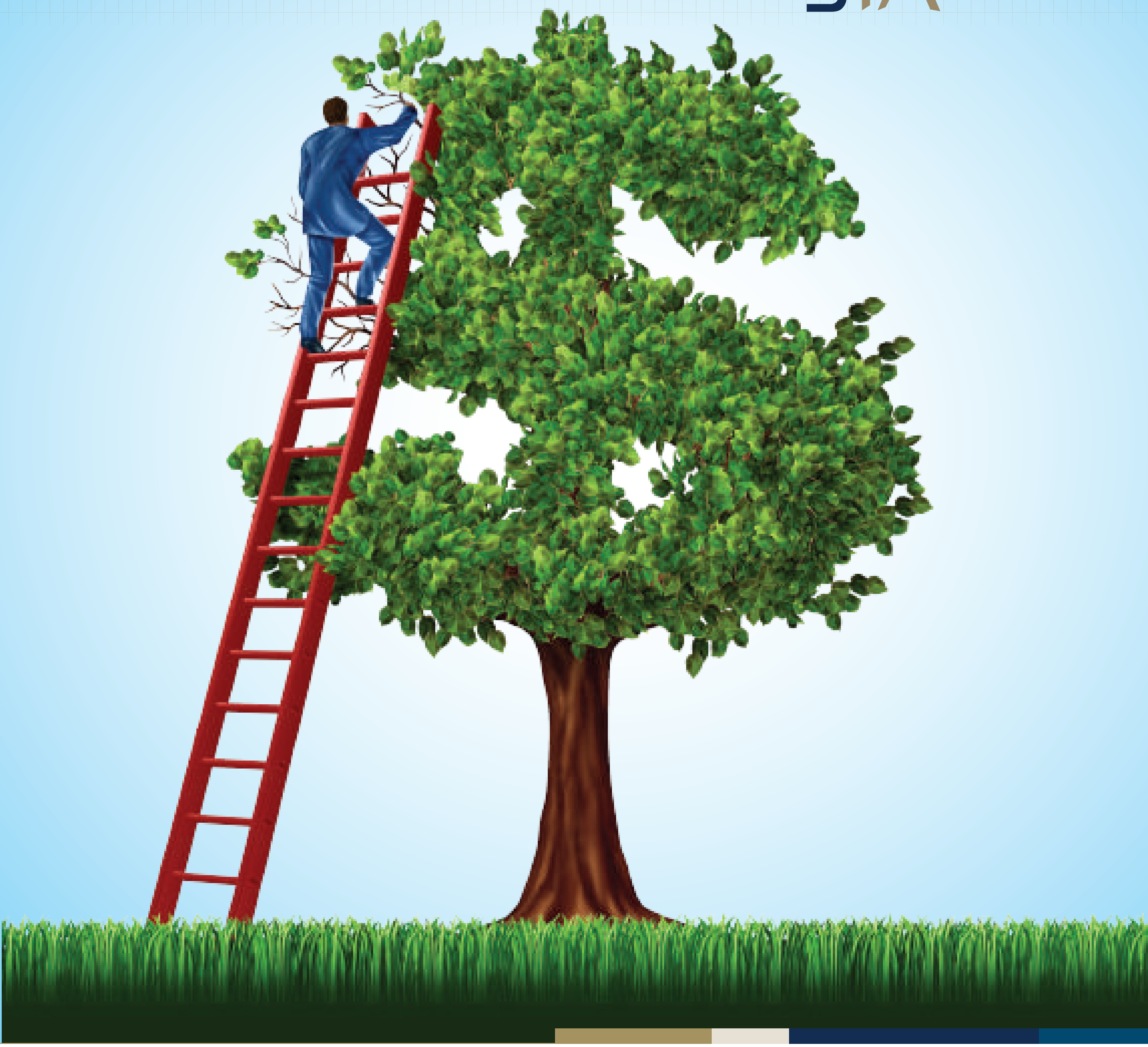

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A GUIDE TO TAX REGULATIONS IN HONG KONG

Introduction

While considering moving a business into a new market, one of the key consideration is that country's tax regime. What are the incentives that would attract foreign investment? Are there any double tax treaties in place? What is the rate for corporate tax?

Hong Kong is a Special Administrative Region of China. The language spoken most popularly is Cantonese (Chinese), and the monetary unit is the Hong Kong Dollar (HKD).

This guide aims at providing the structure for tax regulations in Hong Kong-based on current practices and taxation laws.

II. Income Tax

In Hong Kong, the Inland Revenue Ordinance charges the income from an office, a pension to salaries tax, employment, and profits from business or trade to profits tax and income from the real estate to tax on property. Indubitably, any income which does not come within the ambit of any of the abovementioned categories is not subject to tax. At present, some of the categories which are not yet taxable in Hong Kong are:

i. Value Added Tax

ii. Gift

iii. Capital Gains Tax

iv. Sales

v. Turnover

vi. Estate Duty

vii. Payroll

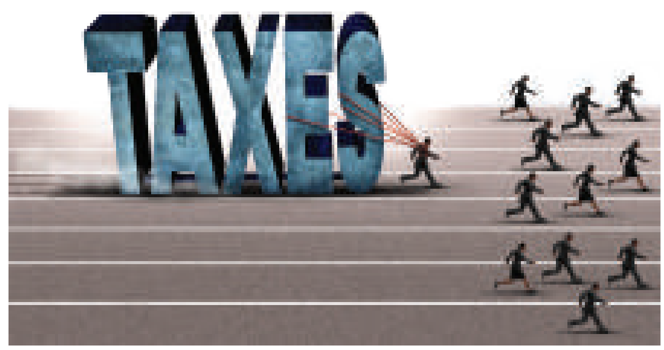
The list is not exhaustive, but a gist of the categories on which tax is not levied.

What is the Basis of Taxation?

The basis for imposing taxes in Hong Kong is territorial. Generally, the income is tax in Hong Kong on a condition that the same is derived or arises from Hong Kong. However, there are a limited number of separate business receipts which may be taxable in Hong Kong.

What is the Assessment Year?

The year of assessment or the tax year is from the 1st of April to the 31st of March of the following year. The assessment is based on the income that is accrued in that particular tax year for property and salaries tax. However, while considering profits tax, the assessment is based on the accounting profits of that financial year that ends within the assessment year whilst maintaining appropriate adjustment for the purpose of tax.

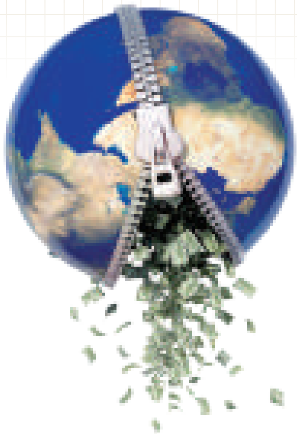


Are there any Double Tax Arrangements or Agreements with other countries?

As seen below, Hong Kong has entered into comprehensive tax treaties or arrangements with numerous countries.

Following is the list of countries for the same:

Austria	Korea
Italy	Romania
Pakistan	Canada
Belgium	Kuwait
Japan	Russia
Portugal	Czech Republic
Belarus	Latvia
Jersey	Saudi Arabia
Brunei	Finland



Liechtenstein	Thailand
France	India
Mainland China	Mexico
South Africa	United Arab Emirates
Spain	Indonesia
Malaysia	Netherlands
Guernsey	New Zealand
Switzerland	United Kingdom
Hungary	Vietnam
Malta	Ireland

What is a Personal Assessment?

An individual who is a resident of Hong Kong has an option to elect for a personal assessment, where the income chargeable to property tax, profits tax and salaries tax are aggregated in one assessment, meaning a single assessment. This personal type of assessment enables a person to offset a loss in business against income subject to property and salaries tax, and also to claim a deduction of the interest on the loan for rental properties, and the same is not available as under the property tax. It was until the assessment year 2017-18 that a married individual had to elect for personal assessment jointly with the spouse on a condition that both of them earn income, which is taxable in Hong Kong. It was in the assessment year 2018-19 where the husband and wife could individually opt for personal assessment, and not jointly.

The losses which have brought forward from the previous year(s) under the above assessment may be used to offset income in the coming/current year or the subsequent years.

The way salaries tax is calculated is the same method used to assess and calculate the tax that is payable under personal assessment.

"One thing is clear: The Founding Fathers never intended a nation where citizens would pay nearly half of everything they earn to the government."

– Ron Paul

III. Salaries Tax

What is the Rates of Tax?

An individual's income from his or her employment, minus the allowable deductions, personal allowances and charitable donations is chargeable under salaries tax, and the rate for the same for 2019/20 is as follows:

i. First $50,000 is at 2 per cent

ii. Next $50,000 is at 6 per cent

iii. Next $50,000 is at 10 per cent

iv. Next $50,000 is at 14 per cent

v. The remainder at 17 per cent

The maximum which is payable is limited to a tax at the flat rate of 15 per cent on the individual's income from employment minus the deductions allowable and the charitable donations, but not the deduction for personal allowances.

Personal Allowances

There are various categories of personal allowances which include, but are not limited to, basic allowance, child allowances, married person's allowance, grandparent allowance/dependent parent allowances, aged 55 to 50, dependent sister/brother allowance, single parent allowance, personal disability allowance, disabled dependent allowance, etc.

Deductions

To qualify for an allowable deduction, the expense must exclusively, wholly and necessarily incurred in the production of such accessible income. Further, there are certain other concessionary deductions that are available:

i. Home loan interest

ii. Self-education expenses

iii. Approved charitable donations

iv. Mandatory contributions to MPF scheme or similar contributions to other recognized retirement schemes

"I like to pay taxes. With them, I buy civilization."
- Oliver Wendell Holmes Jr.

v. Qualifying premiums paid under the Health Insurance Scheme (Voluntary)

vi. Elderly residential care expenses

Tax Thresholds

There are different levels of thresholds based on the level of income of different categories of people. For example, no tax is payable for a single person with no eligible children if the income is up to $132,000. Similarly, there are other categories where no tax is payable.

However, there is a tax at a standard rate when the income is above the threshold. For example, if a single person without any eligible children with the income over $2,022,000, there is a standard rate of tax payable.

Married Persons

A married person is generally taxed separately if both of them earn taxable income. However, they may choose to be taxed jointly as it is in their best advantage and interest.

There are only certain circumstances where a married person's allowance is available. Some of them are:

i. Where either the wife or the husband has no income that is taxable;

ii. Where the married couple has decided for the joint assessment for their salaries tax;

iii. Where the married couple has together opted for joint personal assessment.

It is essential that the married couple make it clear as to who will claim child allowances.

Taxation Basis

An individual domicile, citizenship or residence is irrelevant to their liability to salaries tax excluding situations where the person happens to be a tax resident from another jurisdiction to which Hong Kong has signed a double tax arrangement or agreement. Therefore, an individual is subject to salaries tax on their sourced employment income in Hong Kong, any income from the office held in Hong Kong or any pension in Hong Kong.

While speaking about Hong Kong sourced income from employment, services rendered both outside and in Hong Kong is considered. For cases where non Hong Kong employment is considered, only the income from services rendered inside of Hong Kong is taxable.

While considering the source of a Director's fees, the same is determined based on the location in which the company that is paying the fees is controlled and managed. Generally, pensions are taxable in Hong Kong if such funds being paid are controlled and managed in Hong Kong. Other than the government pension, the pension is related to the services which are rendered in Hong Kong.

Exemptions and Perquisites

It is pertinent to note that allowances and perquisites are generally taxable, including any amount that is paid by an employer related with the education of the child or a holiday as well as any benefit which is capable of being converted into money by such recipient. In case the employer has the primary and sole liability for payments of any other benefits (like utilities), then generally, the employee is not taxed on those benefits. Any gains from any employee share are taxable when such option has been assigned, exercised or released.

If the accommodation is provided or even subsidized by an employer, then the same is taxable.

Retirement Benefits

Mandatory Provident Fund (MPF) is a system under which the employees are required to pay 5 per cent of their income per month, while the employers need to match this amount. At present, $1,500 is the maximum mandatory contribution for the each, the employee and the employer. Further, an individual whose monthly income is below $7,100 is not required to make these mandatory contributions.

"You can't tax business. Business doesn't pay taxes. It collects taxes."

– Ronald Reagan

Other Schemes

Contributions made by the employees to a *Recognized Occupational Retirement Scheme (RORS)* are eligible for a salaries tax deduction for an amount up to $18,000 each year. The amount that is received by way of such commutation of pension or different sums that were withdrawn from the above scheme upon death, the retirement of employment, termination of services, terminal illness or incapacity is exempt. However, there are certain exceptions to the same, for example, in situations where the termination of services of a term less than years with employment.

Obligations under Inland Revenue Ordinance

There are certain obligations which have been imposed on the employers by the Inland Revenue Ordinance, and they are as follows:

i. to report within three months the commencement of an employee;

ii. to make an annual return of the remuneration that is paid to the employees;

iii. reporting the cessation of employment of an employee a minimum of one month before such cessation;

iv. reporting the expected departure of any employee at least one before such departure if such departure period exceeds one month; and

v. Withhold any payment towards an employee within a month of having given the notice as mentioned in point immediately above.

IV. Property Tax

Rate

There is a flat rate for property tax and the same is charged at the rate of 15 per cent.

Taxation Basis

This tax is charged on the owners of buildings or any land in Hong Kong, and the same is charged on the net assessable value of such building or the land owned.

Reliefs and Exemptions

There is no tax charged on the consular or government properties.

If a company derives rental income from a property in Hong Kong, the same is subject to profits tax. However, such a company has an option of applying for exemption by applying in writing with regards to such property in Hong Kong. In a situation where such an exemption is not applied for, the property tax paid therein may be used to offset profits tax which is payable by the company.

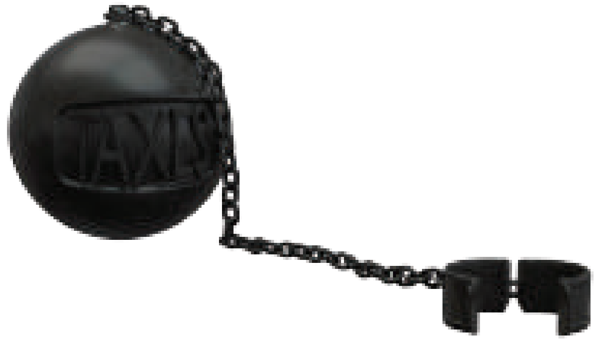
What is a Net Assessable Value?

A property's assessable value is the consideration, in money's worth or money, payable in that particular year to the owner for granting rights to use the buildings or the land, minus any consideration which becomes irrecoverable in the same year.

Therefore, the net assessable value is such assessable value minus the rates that are paid by the owner, and additionally, a 20 per cent notional allowance of such net figure for outgoings and repairs. The actual outgoings an expenses are not deductible.

V. Stamp Duty

The Stamp Duty Ordinance (SDO) makes an imposition of duty on various types of legal documents including the sale of immovable property conveyance in Hong Kong. Further, it includes the sale and lease agreement of immovable property, etc. Stamp Duty that is payable for the replacements of such documents is HKD five. It is to be noted that in the event, the property is transferred at a rate less than the market value of the property, the rate of stamp duty shall be based on the market value on the transfer date.



"Income tax returns are the most imaginative fiction being written today."
- Herman Wouk

Stamp Duty on Sale of Immovable Property Conveyance:

Consideration of the Property	Rates for transfer of Non-Residential Property (%)	Rates of Residential Property (%)
Under HKD 2,000,000	1.5	1.5
HKD 2,000,001 – HKD 3,000,000	3	2.25
HKD 3,000,001 – HKD 4,000,000	6	3
HKD 4,000,001 – HKD 6,000,000	7.5	3.75
HKD 4,000,001 – HKD 6,000,000	8.5	4.25

If the conveyance is executed in consonance with the agreement that is chargeable on the sale of the property, the sale agreement shall be stamped duly. The documents must be submitted within a period of thirty (30) days for stamping.

The agreements for the sale of residential property and non-residential property are under an obligation to be stamped as per the *ad valorem stamp duty*. The rates are similar to those mentioned for conveyance.

The Special Stamp Duty (SSD) for the reselling the property is imposed over the stamp duty to be paid for conveyance or the sale agreement. The SSD which is payable is to be calculated on the basis of the consideration or rather the market value (the higher one).

The Buyer Stamp Duty (BSD) shall stand payable for acquiring the residential properties by any entity including the domestic and foreign companies but not the permanent residents. The rate is charges at 15 per cent and is imposed over and above the SSD and ad valorem stamp duty.

Exemptions:

The exemption for stamp duty on conveyance for beneficial interest on the immovable property or any kind of share transfer is associated with companies where the owner is beneficiary of 90 per cent issued share capital or the third party is of 90 per cent issued share capital.

The SDO exempts the following:

i. Stock that is lent via agreements for stock lending

ii. Transactions for stick market for the purposes of hedging options

iii. Domestic derivative options and convertible bonds

iv. Redemption or allotment of unit trust funds

v. Transactions related to Islamic Bonds (i.e. sukuk)

vi. Units or share transfer of the listed traded funds.

Particulars	For the year 2019-20 in HKD/%
Fees for registering business is waived	
For one year	250
For three year	3950
Departure Tax for air transport	
Passengers below 12 years	NA
Passengers from 12 years and above	120
Construction fees for airport	70-180
Duty on Betting	Kuwait
Horse racing	72.5-75
Lotteries	25
Football	50

"The power to tax is the power to destroy."
– John Marshall

The above table is not exhaustive and includes other items as well like the hydrocarbons, aircraft spirit, diesel oil, leaded petrol, cigars, Chinese prepared tobacco, liquor with alcoholic content, methyl alcohol.

VII. Value Added Tax in Hong Kong

Most developed countries in the world have imposed Value Added Tax (VAT) or the Goods Services Tax (GST).

At present, Hong Kong does not have application of VAT. VAT is a consumption tax which is paid by the customer of the goods or services to be determined as the percentage on the final price. This tax is related to variety of commercial activities which consists of distribution and production.

Certain benefits of imposition of VAT:

i. VAT provides for stability and solid income for financing development projects

ii. It reduces consumption and encourages investments

iii. It encourages larger business set up

VIII Corporate Tax

There is no difference in residents or non-residents with regards to imposition of corporate tax. The companies are obliged to pay the profit tax which is the rate of 16.5 per cent on their assessable profits. The corporate tax is comparatively low when it comes to economic entities. Further to this, trading organisation do not have to give VAT or sales tax. Along with corporate tax, even the withholding tax is exempted where there is no collection on several benefits related to social security. Subsequently, if the dividends from international companies are offshore, then they are not subjected.

"A tax-supported, compulsory educational system is the complete model of the totalitarian state."

- Isabel Paterson

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