Hong Kong Tax Review 2022

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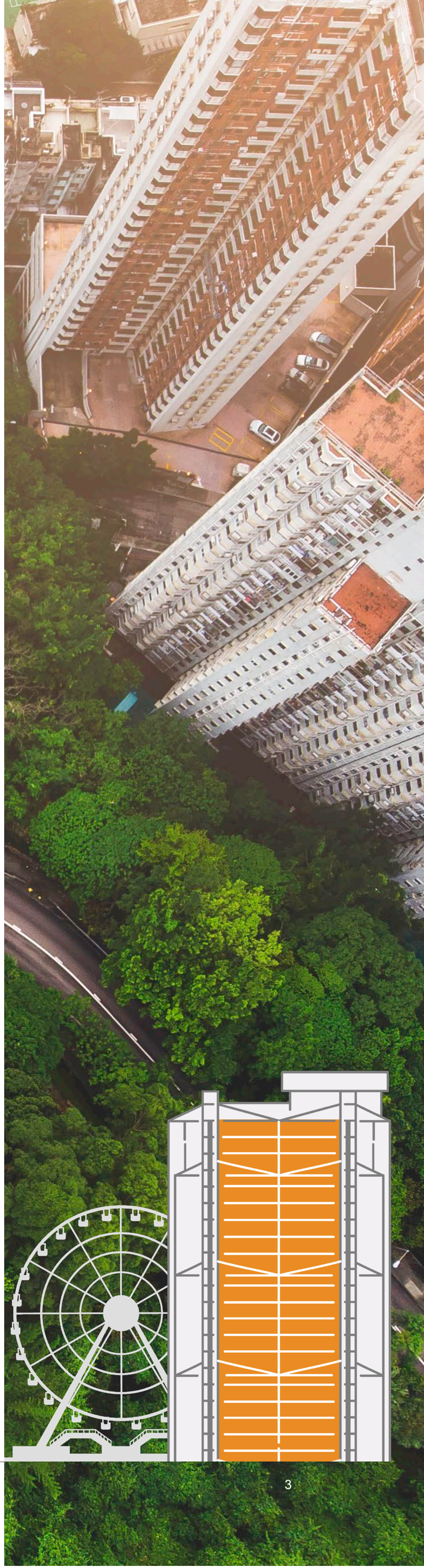
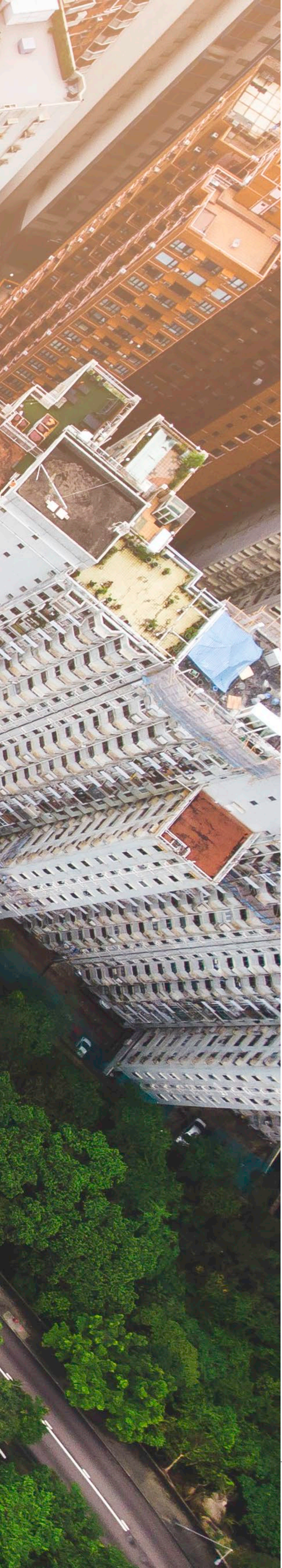
Hong Kong:
2022 year in review

The world has continued to navigate through rough waters in 2022. While faint light has been spotted at the end of the COVID-19 tunnel, signs of resilience and growth have been clouded by the Russo-Ukrainian conflict, increasing geopolitical tensions, skyrocketing energy prices and persistently high inflation.

Despite these challenges, the international tax community is more than ever committed to enhancing international tax cooperation and combating tax evasion. In particular, the Organisation for Economic Co-operation and Development (OECD) is pressing ahead with the finalisation of the two-pillar solution under Base Erosion and Profit Shifting (BEPS) 2.0 to address the tax challenges arising from the digitalisation of the economy. As one of the leading international financial centres, Hong Kong is committed to actively implementing the BEPS 2.0 proposals while preserving the competitiveness of Hong Kong's tax regime in terms of its simplicity, transparency and certainty.

To demonstrate its determination to combat cross-border tax evasion and prevent double non-taxation, Hong Kong has brought about revolutionary changes to its foreign-sourced income exemption (FSIE) regime, while upholding its longstanding territorial source principle of taxation. Hong Kong has also introduced various tax measures in 2022 to enhance the competitiveness of its business environment, such as (i) the profits tax concessions for maritime services and family offices, (ii) salaries tax deduction for domestic rent, and (iii) the implementation of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) to modify tax treaties.





Refinements to Hong Kong's foreign-sourced income exemption regime

In *Hong Kong Tax Review 2021*[1], we reported that in October 2021, the European Union (EU) added Hong Kong to *Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes*, commonly known as the 'greylist' or 'watchlist', in view of the possible risks of double non-taxation arising from the exclusion of offshore passive income from tax under the then Hong Kong tax system in the absence of any requirement for recipient entities to have a substantial economic presence in Hong Kong.

Having regard to the overarching objective of ensuring that Hong Kong is on a level-playing field with other jurisdictions with reference to the relevant standard as well as avoiding the blacklisting of Hong Kong by the EU, the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 was gazetted on 23 December 2022, which introduces certain refinements to Hong Kong's FSIE regime with effect from 1 January 2023.

Under the refined FSIE regime, four types of offshore income, namely (1) interest, (2) dividends, (3) disposal gains from the sale of equity interests (disposal gains), and (4) income from intellectual property (IP), are deemed to be sourced from Hong Kong and chargeable to profits tax if the income is received in Hong Kong by an MNE entity carrying on a trade, profession or business in Hong Kong (irrespective of its revenue or asset size) and the recipient entity fails to meet a relevant exception from the deeming provision. The exceptions are:

- For interest: Economic substance requirement
- For dividends and disposal gains: Economic substance requirement or participation requirement
- For IP income: Nexus requirement

With the refined FSIE regime, the Hong Kong SAR Government (the HKSAR Government) will continue to engage with the EU with a view to having Hong Kong removed from the 'watchlist' as soon as possible.

Please refer to our following Hong Kong Tax News Flashes for details of the refined FSIE regime:

- June 2022, Issue 8
- September 2022, Issue 11
- October 2022, Issue 12
- October 2022, Issue 15
- December 2022, Issue 18

[1]: *Hong Kong Tax Review 2021* can be accessed via this link: https://www.pwchk.com/en/tax/hk-tax-review-2021.pdf

Tax concession for maritime services

The Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Ordinance 2022 was gazetted on 22 July 2022, which introduces a profits tax exemption or a concessionary profits tax rate of 0% or 8.25% for a qualifying shipping commercial principal carrying out qualifying ship agency, ship management or ship broking activities. The concessionary tax treatments apply to sums received or accrued on or after 1 April 2022.

This tax concession is an important policy initiative to enhance the competitiveness of Hong Kong's maritime industry and should help foster the development of the high value-added maritime services sector in Hong Kong.

Please refer to our Hong Kong Tax News Flash, June 2022, Issue 7, for details of the tax concession for maritime services.

Proposed tax concession for family offices

As announced in the 2022-23 Budget in February 2022, a tax concession for eligible family investment entities managed by single family offices would be introduced. The Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 was gazetted on 9 December 2022, which provides a profits tax concession for an eligible family-owned investment holding vehicle (FIHV) managed by an eligible single family office (ESF Office) in Hong Kong.

Under the proposed tax concession, the FIHV's assessable profits earned from qualifying transactions and incidental transactions (the latter being subject to a 5% threshold) would be subject to a 0% profits tax rate, with retrospective effect from the year of assessment 2022/23. The proposed tax concession should attract more family offices to set up and run their operations in Hong Kong, which would enrich Hong Kong's asset and wealth management ecosystem.

The bill is subject to enactment in 2023.

Please refer to our Hong Kong Tax News Flashes, March 2022, Issue 1 and December 2022, Issue 17, for details of the proposed tax concession for family offices.

The Inland Revenue Department's eTax journey

The Inland Revenue Department (IRD) has been making continuous effort on the electronic filing (e-Filing) of profits tax returns. Following a series of consultation with various parties and stakeholders in late 2021, the IRD announced the latest update on 31 March 2022, publishing the IRD Taxonomies Illustrated rendered in Excel spreadsheets for content illustration, which is part of the draft IRD Taxonomy Package. The draft IRD Taxonomy Package provides an overview to businesses for tagging financial statements and tax computations, as well as for generating Inline Extensible Business Reporting Language (iXBRL) data files to be filed electronically through the IRD's eTax Portal going forward.

The information contained in the draft IRD Taxonomy Package is for reference only. The final version will vary from the existing draft version and will be released by the IRD prior to the voluntary e-Filing period commencing from 1 April 2023. The IRD will keep updating and refining the draft IRD Taxonomy Package to reflect changes in tax legislation and the Hong Kong Financial Reporting Standards.

For details of the latest development of the IRD Taxonomy Package, please refer to our Hong Kong Tax News Flash, April 2022, Issue 2.

Implementation of the OECD Multilateral Instrument to modify tax treaties

The MLI was developed by the OECD with a view to enabling jurisdictions to effectively implement the tax treaty-related minimum standards of its BEPS Project without the need to amend tax treaties bilaterally. As of 31 December 2022, 100 jurisdictions have signed the MLI, including Hong Kong.

The Inland Revenue (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order gazetted on 30 September 2022 gave effect to the MLI in Hong Kong on 9 December 2022. Hong Kong has so far concluded comprehensive double taxation agreements (CDTAs) with 46 jurisdictions (CDTA Partners), among which 39 CDTAs have been listed by Hong Kong as treaties covered by the MLI (Covered Tax Agreements). The extent to which a Covered Tax Agreement is modified depends on the matching of the MLI positions of Hong Kong and the CDTA Partner.

The remaining 7 CDTAs (including CDTAs with Mainland China, Macau, Estonia, Finland, Georgia, Mauritius [pending ratification] and Serbia) are excluded as they have already incorporated the relevant BEPS-compliant provisions.

Subject to the completion of the legislative and other relevant procedures of the MLI by the parties, the provisions of the MLI will have effect in Hong Kong with respect to a Covered Tax Agreement on 1 April 2023 (for taxes withheld at source) or 1 April 2024 (for other taxes) at the earliest.

Please refer to our Hong Kong Tax News Flash, October 2022, Issue 14 for a discussion of the impact of the MLI on Hong Kong's CDTAs.

Hong Kong's responses to BEPS

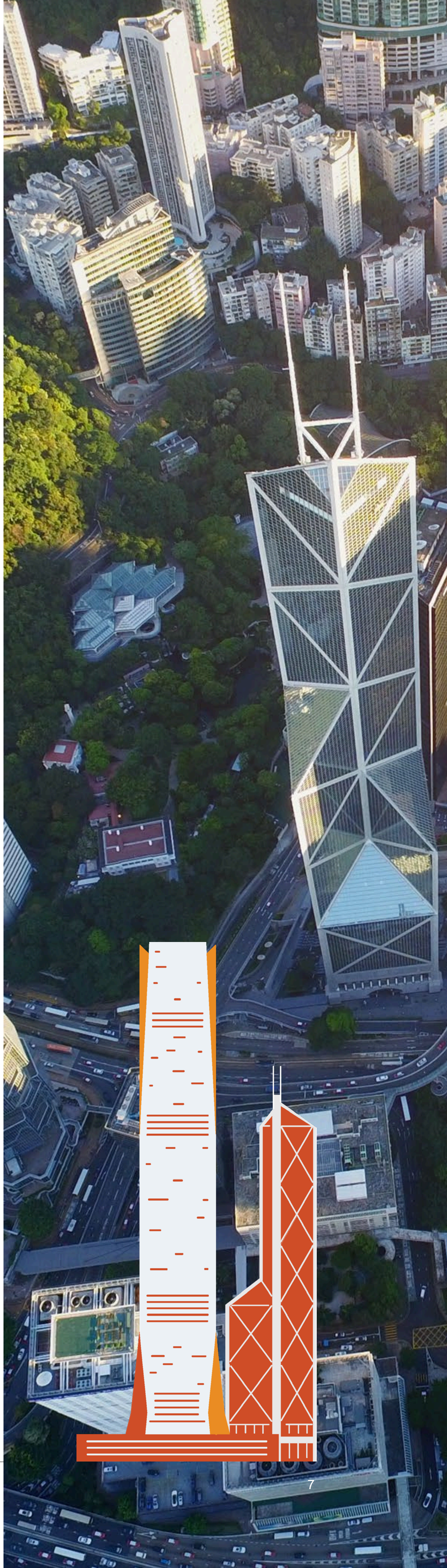
As mentioned in *Hong Kong Tax Review* 2021[2], over 130 jurisdictions (including Hong Kong) have agreed on a new international corporate tax framework comprising a two-pillar solution under BEPS 2.0 to address the tax challenges of the digital economy.

The HKSAR Government has been exchanging views with the affected multinational enterprises (MNEs) on the implementation of the global minimum effective tax rate under Pillar Two. The Government has reaffirmed that Hong Kong would (1) preserve the advantages of its tax regime in terms of the simplicity, certainty and transparency, (2) maintain the territorial source principle of taxation, and (3) minimise the compliance burden on the affected MNEs.

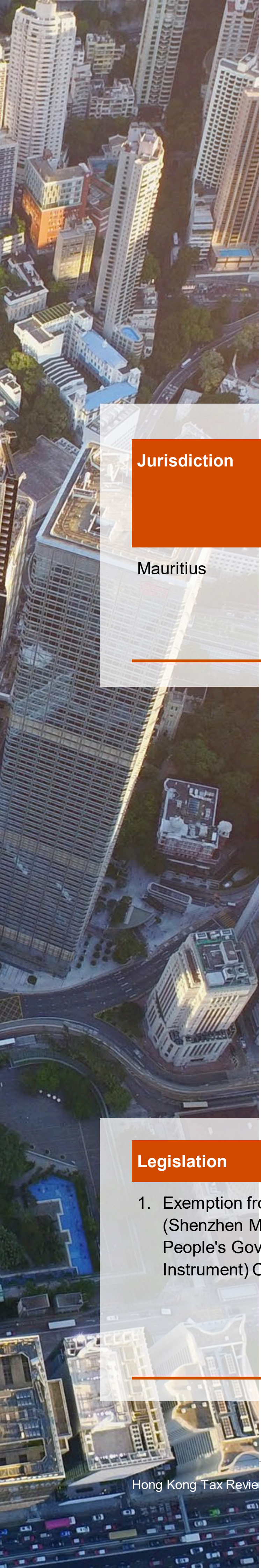
The HKSAR Government originally planned to submit a legislative proposal to the Legislative Council in the second half of 2022 to implement Pillar Two, and to consider introducing a domestic minimum top-up tax (DMT) starting from the year of assessment 2024/25. However, in light of the views collected from stakeholders and the latest progress of other jurisdictions in implementing Pillar Two, Hong Kong has deferred the implementation of Pillar Two as follows:

- Income Inclusion Rule (IIR) – To be implemented in 2024 at the earliest, with the necessary legislative proposal to be introduced to the Legislative Council in 2023
- Undertaxed Payment / Profits Rule (UTPR) and DMT – To be announced later, with reference to the implementation plans of other jurisdictions

As the technical work on Pillar Two is nearing completion at the OECD level, we expect the Government to launch a consultation and provide more details on the implementation plan of Pillar Two soon.



2: See note 1



Latest status of Hong Kong tax treaty network

In 2022, Hong Kong signed a CDTA with Mauritius. This brought the total number of Hong Kong CDTAs to 46 as of 31 December 2022. The CDTA with Mauritius will come into force after the completion of the ratification procedures by both jurisdictions.

Jurisdiction	Date of signing	Date of entry into force	Effective date in Hong Kong (year of assessment)	Effective date in the other contracting jurisdiction
Mauritius	• 14 September 2022 (in Mauritius) • 7 November 2022 (in Hong Kong)	Not yet ratified	Not yet ratified	Not yet ratified

Hong Kong is expected to continue expanding its treaty network in 2023. Potential treaty partners include Bangladesh, Cyprus, Kyrgyz Republic, Lithuania, Maldives, Nigeria, Norway and Ukraine. The first round of negotiation of Hong Kong with Kyrgyz Republic was completed on 21 January 2022, while the third round of negotiation with Bangladesh was completed on 1 September 2022.

Key tax and related legislative developments in 2022

The table below summarises the key tax and related legislations enacted in 2022.

Legislation	Gazettal date	Key subject matter	Effective date
1. Exemption from Profits Tax (Shenzhen Municipal People's Government Debt Instrument) Order	21 January 2022	• Providing tax exemption on Shenzhen Municipal People's Government debt instruments in respect of (a) interest received or receivable, (b) profits on sale or disposal, and (c) profits on redemption on maturity or presentment	Year of assessment commencing on or after 1 April 2021

Legislation	Gazettal date	Key subject matter	Effective date
2. Business Registration Ordinance (Amendment of Schedule 2) Order 2022	10 June 2022	• Reducing the levy rate in relation to business and branch registration from HK$250 per annum to HK$150 per annum	For business or branch registration certificates with a commencement date of 17 June 2022 or after
3. Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022	17 June 2022	• Abolishing the use of the accrued benefits of employers' mandatory contributions under the Mandatory Provident Fund System to offset severance payments (SP) and long service payments (LSP) • Codifying the practice that SP and LSP paid in accordance with the Employment Ordinance are not chargeable to salaries tax	Expected to be in 2025
4. Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) Ordinance 2022	30 June 2022	• Providing a deduction for domestic rents paid by a person chargeable to salaries tax and tax charged under personal assessment as a tenant under a qualifying tenancy of domestic premises, subject to a ceiling of HK$100,000 for each year of assessment **Please refer to our Hong Kong People and Organisation Tax News Flash, May 2022, Issue 1.**	Year of assessment 2022/23
5. Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Ordinance 2022	22 July 2022	• Introducing a profits tax exemption or a concessionary profits tax rate of 0% or 8.25% for a qualifying shipping commercial principal carrying out qualifying ship agency, ship management or ship broking activities **Please refer to our Hong Kong Tax News Flash, June 2022, Issue 7.**	Applies to sums received or accrued on or after 1 April 2022
6. Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022	23 December 2022	• Introducing refinements to Hong Kong's FSIE regime for four types of offshore income, namely (1) interest, (2) dividends, (3) disposal gains, and (4) IP income **Please refer to our Hong Kong Tax News Flash, December 2022, Issue 18 and other Hong Kong Tax News Flashes issued during 2022.**	1 January 2023

Legislation	Gazettal date	Key subject matter	Effective date
7. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2022	2 June 2022	• Increasing the annual interest rate of Tax Reserve Certificates (TRCs) to 0.1333% from the prior rate of 0.05%	For TRCs purchased on or after 6 June 2022 and before 3 October 2022
8. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 2) Notice 2022	30 September 2022	• Increasing the annual interest rate of TRCs to 0.1750% from the prior rate of 0.1333%	For TRCs purchased on or after 3 October 2022 and before 7 November 2022
9. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 3) Notice 2022	4 November 2022	• Increasing the annual interest rate of TRCs to 0.3167% from the prior rate of 0.1750%	For TRCs purchased on or after 7 November 2022 and before 5 December 2022
10. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 4) Notice 2022	2 December 2022	• Increasing the annual interest rate of TRCs to 0.4% from the prior rate of 0.3167%	For TRCs purchased on or after 5 December 2022 and before 3 January 2023
11. Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 5) Notice 2022	30 December 2022	• Increasing the annual interest rate of TRCs to 0.5833% from the prior rate of 0.4%	For TRCs purchased on or after 3 January 2023

The table below summarises the key tax and related bills gazetted in 2022 pending enactment.

Bill	Gazettal date	Key subject matter	Expected effective date
1. Stamp Duty (Amendment) Bill 2022[3]	18 November 2022	• Proposing to waive the stamp duty payable on certain transactions relating to dual-counter stock made by market makers	27 January 2023
2. Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022	9 December 2022	• Proposing to provide a profits tax concession for eligible FIHVs managed by ESF Office in Hong Kong, such that the FIHV's assessable profits earned from qualifying transactions and incidental transactions would be subject to a 0% profits tax rate **Please refer to our Hong Kong Tax News Flash, December 2022, Issue 17.**	Year of assessment commencing on or after 1 April 2022

[3] The bill was gazetted as the Stamp Duty (Amendment) Ordinance 2023 on 27 January 2023.

Other tax proposal in the pipeline

In addition to the above, the HKSAR Government is expected to launch a consultation and undertake the domestic legislative exercise to implement the tax measures under BEPS 2.0 based on the OECD's BEPS 2.0 model rules in 2023.

Guidance revised / issued by the IRD

The table below summarises the guidance issued / revised by the IRD during 2022.

Guidance	Key subject matter	Date of issuance
1. Tax Deduction for Domestic Rent	• Providing explanations on the details of tax deduction for domestic rent pursuant to the Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) Ordinance 2022, including the detailed deduction rules, as well as providing some frequently asked questions and illustrative examples	4 May 2022 (last revised on 31 October 2022)
2. Foreign-sourced Income Exemption	• Setting out the IRD's administrative guidance on the refined FSIE regime, in particular the following topics: - Specified Foreign-sourced Income - Covered Income - Exclusion Relating to Regulated Financial Entities - Covered Taxpayers - Treatment of Specified Foreign-sourced Income - Income Received in Hong Kong - Exceptions from the Deeming Provision - Loss Sustained from Sale of Equity Interests - Calculation of Assessable Profits Derived from Specified Foreign-sourced Income - Double Taxation Relief - Taxpayer's Obligations - Advance Ruling on Compliance with Economic Substance Requirement - Frequently Asked Questions and Illustrative Examples	28 October 2022 (last revised on 1 January 2023)

Update on Hong Kong profits tax cases

Newfair Holdings Limited v. Commissioner of Inland Revenue

This case is an application by the taxpayer for leave to appeal against the Board of Review's (Board) decision in case D14/20 and concerns whether the trading profits derived by the taxpayer were chargeable to Hong Kong profits tax despite only limited activities performed by the taxpayer in Hong Kong.

The Court of First Instance (CFI) handed down its judgment on 20 April 2022 ruling that the Board erred in law in concluding that the trading profits were chargeable to Hong Kong profits tax, and thus overturned the Board's decision. The CFI held that the taxpayer did not carry on a business in Hong Kong and that the trading profits derived by the taxpayer were offshore sourced.

Please refer to our Hong Kong Tax News Flashes, April 2022, Issue 4 and April 2022, Issue 5, for detailed discussions of the Board's decision and the CFI's judgment.

Commissioner of Inland Revenue v. Koo Ming Kown and Murakami Tadao

This case concerns whether additional (penalty) tax assessments can be issued by the IRD to the directors of a company who sign the company's profits tax returns filed with the IRD, when such returns are regarded by the IRD as incorrect.

In *Hong Kong Tax Review 2021*[4], we reported that the Court of Appeal (COA) dismissed the Commissioner of Inland Revenue's (CIR) appeal and granted leave to the CIR to appeal to the Court of Final Appeal (CFA).

The CFA unanimously dismissed the CIR's appeal on 5 August 2022. The CFA upheld the decisions of the lower courts that the company's profits tax returns were required to be made, and were made, by the company itself and not by the directors on behalf of the company, and hence the directors could not be made liable to the additional (penalty) tax imposed for filing incorrect returns of the company.

Please refer to our Hong Kong Tax News Flash, August 2022, Issue 10, for a detailed discussion of the CFA's judgment.

[4]: See note 1

Besins Healthcare (Hong Kong) Limited v. Commissioner of Inland Revenue

The case concerns an application for judicial review by the taxpayer against the CIR's refusal to refund the excess amount of TRCs purchased, as confirmed in the CIR's determination, together with the accrued interest.

The CFI handed down its judgment on 28 September 2022. The CFI held that the CIR's refusal was not illegal but irrational and/or Wednesbury unreasonable in the circumstances of this case. Accordingly, the CFI ordered the CIR to refund the principal sum of the excess amount of TRCs and the interest on that sum to the taxpayer.

Please refer to our Hong Kong Tax News Flash, October 2022, Issue 13, for a detailed discussion of the CFI's judgment.

China Mobile Hong Kong Company Limited v. Commissioner of Inland Revenue

As previously mentioned in our *Hong Kong Tax Review 2020*[5], the CFI dismissed the taxpayer's appeal and upheld the Board's decision that the upfront lump sum spectrum utilisation fees (Upfront SUFs) paid by the taxpayer to the Telecommunications Authority were capital in nature and not deductible. The taxpayer then lodged an appeal against the CFI's judgment to the COA.

In addition to the same eight grounds argued before the CFI, the taxpayer advanced a new primary argument that the CFI had failed to take proper account of its manner of earning profits in this appeal. However, such primary argument was rejected by the COA as it was raised for the first time only in the COA and was not previously argued before the Board.

For the other arguments, the COA generally agreed with the CFI's analyses and upheld the CFI's decision that the Upfront SUFs paid by the taxpayer were capital in nature and thus non-deductible. Accordingly, the COA handed down its judgment on 3 November 2022 dismissing the taxpayer's appeal.

Please refer to our Hong Kong Tax News Flash, December 2022, Issue 16, for a detailed discussion of the COA's judgment, including our comments on the industry-wide "black hole expenditures" issue.

[5]: Hong Kong Tax Review 2020 can be accessed via this link: https://www.pwchk.com/en/tax/hk-tax-review-2020.pdf

Ubiquiti Networks International Limited v. Commissioner of Inland Revenue

In this case, the applicant filed its profits tax return with an offshore claim but the claim was disagreed by the IRD. The applicant lodged an objection against the relevant tax assessment, requesting the CIR to unconditionally hold over the tax in dispute. The CIR refused to grant an unconditional holdover but granted a holdover on condition that a TRC be purchased. The applicant submitted further information for the CIR's reconsideration but the CIR maintained his original decision.

The applicant then filed an application seeking leave to apply for judicial review to challenge the CIR's decisions.

The CFI handed down its judgment on 25 January 2022 and ruled that although the applicant's objection had some merit, on the facts already known the balance of probability did not weigh definitely in favour of the applicant. Therefore, the application for leave to apply for judicial review was dismissed.

Update on Hong Kong stamp duty cases

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

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

The District Court (DC) allowed the appellant's appeal on 15 July 2022. The DC held that the membership interest in a UK LLP is 'issued share capital' within the meaning of section 45 of the SDO, and the appellants were therefore 'associated bodies corporate' within the meaning thereof and entitled to the stamp duty relief.

Please refer to our Hong Kong Tax News Flash, July 2022, Issue 9, for a detailed discussion of the DC's judgment.

On 30 September 2022, the DC dismissed the Collector of Stamp Revenue's (Collector) application for leave to appeal to the COA. The Collector further applied to the COA for leave to appeal on 14 October 2022.

Hong Kong salaries tax developments

Changes to concessionary deductions

The 2022-23 Budget delivered on 23 February 2022 brought no changes to the standard tax rate, progressive tax rates, marginal tax bands, personal allowances or other deductions for individuals, except for the introduction of deduction for domestic rents (see 'Deduction for domestic rents' below for details). The current tax rates and tax bands for salaries tax and personal assessment are as follows:

- five tax bands with tax rates of 2%, 6%, 10%, 14% and 17%;
- each band is HK$50,000; and
- the standard tax rate is 15%.

For details, please refer to our publication '2022/23 Hong Kong Tax Facts and Figures'.

Deduction for domestic rents

The Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) Ordinance 2022 was gazetted on 30 June 2022, which introduces a tax deduction for domestic rents paid by a person chargeable to salaries tax or tax charged under personal assessment as a tenant under a qualifying tenancy of domestic premises. The maximum deductible amount for each year of assessment is HK$100,000 starting from the year of assessment 2022/23.

Please refer to our Hong Kong People and Organisation Tax News Flash, May 2022, Issue 1, for a detailed discussion of the deduction for domestic rents.

Amendments to the Inland Revenue Ordinance on the taxability of long service payments and severance payments

The Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 was gazetted on 17 June 2022, which abolishes the use of the accrued benefits of employers' mandatory contributions under the Mandatory Provident Fund System to offset severance payments (SP) and long service payments (LSP). The abolition of the offsetting arrangement is expected to be implemented in 2025 without retrospective effect. Sections 8 and 9 of the Inland Revenue Ordinance (IRO) are amended to make it clear that SP and LSP paid in accordance with the Employment Ordinance are not chargeable to salaries tax.

Update on Hong Kong salaries tax cases

Heath Brian Zarin v. Commissioner of Inland Revenue

This case concerns the taxability of payments received by an employee after termination of employment.

As mentioned in *Hong Kong Tax Review 2021*[6], the CIR appealed to the COA against the CFI’s judgment.

The COA dismissed the CIR’s appeal on 16 March 2022. The COA ruled that the payments were caused by a fresh bargain made in the termination agreement by which the taxpayer and his employer assumed new obligations after the termination of employment, and hence the payments were not income from employment and should not be chargeable to salaries tax.

6: See note 1

Commissioner of Inland Revenue v. Lo Wa Ming Patrick

This case primarily concerns the apportionment of employment income to be excluded under section 8(1A)(c) of the IRO, which excludes income derived from services rendered outside Hong Kong where such income is chargeable to foreign tax of substantially the same nature as Hong Kong salaries tax (Income Exemption).

As mentioned in *Hong Kong Tax Review 2021*[7], the CIR filed an appeal to the COA against the judgment of the CFI.

The COA allowed the CIR's appeal and overturned the CFI's decision on 17 May 2022. The COA ruled that the Board erred in law by also excluding employment income derived from non-working days outside Hong Kong for the purpose of the Income Exemption. However, the COA also pointed out that simply adopting the 'day-in-day-out' basis to apportion the income might lead to arbitrary or unjust results, and remitted the matter of apportionment back to the Board for decision.

Please refer to our Hong Kong People and Organisation Tax News Flash, June 2022, Issue 2, for a detailed discussion of the COA's judgment.

Richard Paul Mark Aidan Forlee v. Commissioner of Inland Revenue

This case concerns whether the following income received by the taxpayer is assessable to salaries tax:

1. Forfeitable shares awarded to the taxpayer during his overseas employment but ceased to be forfeitable during his subsequent Hong Kong employment within the same group, and
2. Dividends on those shares.

The COA dismissed the CIR's appeal on 22 July 2022. The COA ruled that it was the Board's error to focus on when the shares ceased to be forfeitable, instead of when the taxpayer became entitled to claim payment of the shares. The COA held that the shares were accrued to the taxpayer when awarded under his overseas employment, and were not income from his subsequent Hong Kong employment. Similarly, the dividends received by the taxpayer on these shares are not taxable.

Please refer to our Hong Kong People and Organisation Tax News Flash, September 2022, Issue 3, for a discussion of the COA's judgment.

[7]: See note 1

List of Hong Kong Tax News Flashes issued in 2022

Issue no.	Issue date	Title
1	22 March 2022	Hong Kong's proposed tax concession for family-owned investment holding vehicles https://www.pwchk.com/en/hk-tax-news/2022q1/hongkongtax-news-mar2022-1.pdf
2	1 April 2022	The Inland Revenue Department's Taxonomy Package https://www.pwchk.com/en/hk-tax-news/2022q2/hongkongtax-news-apr2022-2.pdf
3	8 April 2022	Impact of BEPS 2.0 Pillar Two on international shipping business https://www.pwchk.com/en/hk-tax-news/2022q2/hongkongtax-news-apr2022-3.pdf
4	12 April 2022	The limited activities in Hong Kong are considered crucial in determining the source of trading profits https://www.pwchk.com/en/hk-tax-news/2022q2/hongkongtax-news-apr2022-4.pdf
5	26 April 2022	Court overturned the Board's decision and allowed an offshore claim on trading profits with limited onshore activities https://www.pwchk.com/en/hk-tax-news/2022q2/hongkongtax-news-apr2022-5.pdf
6	13 June 2022	The IRD's views on various tax issues expressed in the 2021 annual meeting with the HKICPA https://www.pwchk.com/en/hk-tax-news/2022q2/hongkongtax-news-jun2022-6.pdf
7	21 June 2022	The proposed tax concessions for maritime services in Hong Kong https://www.pwchk.com/en/hk-tax-news/2022q2/hongkongtax-news-jun2022-7.pdf
8	27 June 2022	Proposed refinements to Hong Kong's foreign source income exemption regime for passive income https://www.pwchk.com/en/hk-tax-news/2022q2/hongkongtax-news-jun2022-8.pdf
9	22 July 2022	Court held UK LLP has issued share capital for the purpose of intragroup stamp duty relief https://www.pwchk.com/en/hk-tax-news/2022q3/hongkongtax-news-jul2022-9.pdf

List of Hong Kong Tax News Flashes issued in 2022

Issue no.	Issue date	Title
10	23 August 2022	Highest court upheld company directors not personally liable to penalty tax for incorrect profits tax returns filed https://www.pwchk.com/en/hk-tax-news/2022q3/hongkongtax-news-aug2022-10.pdf
11	15 September 2022	Proposed refinements to foreign source income exemption regime: Hong Kong as an effective investment holding platform https://www.pwchk.com/en/hk-tax-news/2022q3/hongkongtax-news-sep2022-11.pdf
12	17 October 2022	Commissioner's Opinion as an interim measure to obtain certainty on economic substance requirements under refined FSIE regime https://www.pwchk.com/en/hk-tax-news/2022q4/hongkongtax-news-oct2022-12.pdf
13	24 October 2022	Court ruled IRD's refusal to refund excess amount of tax reserve certificates together with accrued interest was not illegal but irrational https://www.pwchk.com/en/hk-tax-news/2022q4/hongkongtax-news-oct2022-13.pdf
14	24 October 2022	Hong Kong SAR will soon implement the OECD Multilateral Instrument to modify tax treaties https://www.pwchk.com/en/hk-tax-news/2022q4/hongkongtax-news-oct2022-14.pdf
15	31 October 2022	Bill on refined FSIE regime gazetted https://www.pwchk.com/en/hk-tax-news/2022q4/hongkongtax-news-oct2022-15.pdf
16	5 December 2022	Court of Appeal upheld upfront lump sum spectrum utilisation fees as capital in nature and not deductible https://www.pwchk.com/en/hk-tax-news/2022q4/hongkongtax-news-dec2022-16.pdf
17	12 December 2022	Bill on profits tax concession for family-owned investment holding vehicles https://www.pwchk.com/en/hk-tax-news/2022q4/hongkongtax-news-dec2022-17.pdf
18	19 December 2022	Bill on refined FSIE regime passed https://www.pwchk.com/en/hk-tax-news/2022q4/hongkongtax-news-dec2022-18.pdf

List of International Tax News Flashes issued in 2022

Issue no.	Issue date	Title
1	7 January 2022	BEPS 2.0 Pillar Two Global Anti-Base Erosion Model Rules and other international tax developments https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-jan2022-1.pdf
2	15 February 2022	OECD released Pillar One draft Model Rules on revenue sourcing and nexus of Amount A https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-feb2022-2.pdf
3	4 March 2022	OECD released Pillar One draft Model Rules on tax base determinations of Amount A https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-mar2022-4.pdf
4	4 April 2022	Pillar Two Commentary and public consultation on the Implementation Framework https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-apr2022-4.pdf
5	8 June 2022	Pillar One draft Model Rules on scope of Amount A and exclusions for Extractives and Regulated Financial Services https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-jun2022-5.pdf
6	11 October 2022	OECD issues new Crypto-Asset Reporting Framework https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-oct2022-6.pdf
7	9 December 2022	Making headway in the journey of international tax cooperation and transparency https://www.pwccn.com/en/tax/publications/intl-tax-newsflash-dec2022-7.pdf

List of Hong Kong Financial Services Tax News Flashes issued in 2022

Issue date	Title
13 May 2022	OECD public consultation on Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard https://www.pwchk.com/en/financial-services/publications/oecd-public-consultation-on-crypto-asset-reporting-framework-may2022.pdf

List of Hong Kong People and Organisation Tax News Flashes issued in 2022

Issue no.	Issue date	Title
1	25 May 2022	Hong Kong Salaries Tax Deductions for Domestic Rents starting from Year of Assessment 2022/23 https://www.pwchk.com/en/tax/publications/po-tax-news-may2022-1.pdf
2	29 June 2022	Hong Kong Salaries Tax: Court allows IRD's appeal on section 8(1A)(c) income exemption claim https://www.pwchk.com/en/tax/publications/po-tax-news-jun2022-2.pdf
3	14 September 2022	Hong Kong Salaries Tax: The Court of Appeal held forfeitable share award taxable when awarded https://www.pwchk.com/en/tax/publications/po-tax-news-sep2022-3.pdf

List of dedicated webpages

Title
BEPS 2.0 developments: Pillar One and Pillar Two https://www.pwccn.com/en/services/tax/international-tax/oecd-beps.html
The refined foreign-sourced income exemption (FSIE) regime https://www.pwccn.com/en/services/tax/fsie.html

Other publications

Issue date	Title
February 2022	2022/23 Hong Kong Tax Facts and Figures https://www.pwchk.com/en/tax/hong-kong-budget-2022-2023/tax-facts-and-figures-en.pdf
July 2022	Proposed family office tax concession regime in Hong Kong – key regulatory, tax and legal considerations https://www.pwchk.com/en/entrepreneurial-and-private-business/proposed-family-office-tax-concession-regime-in-hk-jul2022.pdf

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