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HONG KONG TAXATION
INTRODUCTION ON TAXATION OF HONG KONG COMPANIES OPERATING OFFSHORE

Hong Kong is an international metropolis in Asia and an important port for international trade. Hong Kong has an excellent legal foundation, a strict rule of law, and a strict judicial justice that is trusted by the world.

In addition to the above-mentioned main reasons, Hong Kong's sea, land and air transportation facilities are perfect, the international information circulation network is developed, and the financial and banking services are diversified and excellent. All these reasons made Hong Kong become an international commercial, trade and financial hub. Besides, the cost of operating a business and setting up a company in Hong Kong is low, and the procedures are simple and convenient. People from all over the world (including natural persons and corporate legal persons) can register in Hong Kong to develop and operate international businesses in Hong Kong.

1. Hong Kong's Tax System

Hong Kong's tax system is simple and the tax rate is low. In addition, Hong Kong adopts a territorial basis for taxing profits derived from a trade, profession, or business carried on in Hong Kong. Profits Tax is only charged on profits which arise in or are derived from Hong Kong. In simple terms, this means that a Hong Kong registered company derives profits from another place outside Hong Kong is not required to pay tax in Hong Kong on those profits.

The Hong Kong tax system facilitates the entry of any international person (natural person or corporate legal person) into Hong Kong and conducts all legal international trade and commercial activities in an offshore manner. The income from offshore operations is not subject to Hong Kong profits tax.

The Hong Kong tax law has always allowed Hong Kong companies to operate on offshore operation business model. However, the Hong Kong Inland Revenue Department will carefully and rigorously review offshore tax exemption applications to prevent tax evasion.

2. Conditions for Applying for Offshore Profits Tax Exemption

Based on the inductive analysis of the Hong Kong tax laws, the Departmental Interpretation and Practice Notes issued by the Hong Kong Inland Revenue Department and the historical cases of the courts, Hong Kong companies applying for offshore profits tax exemption must meet the following operating conditions:-

(1) The company does not have any office, business premises or business establishment in Hong Kong (excluding registered address);

(2) The company's central management and control, including the board of directors, are based outside Hong Kong;

(3) All commercial activities of the company are conducted outside Hong Kong, including all sales and purchase documents are prepared outside Hong Kong;

(4) No business negotiation and no business contracts are executed and effected in Hong Kong;

(5) The company does not operate a warehouse in Hong Kong to store the company's products; and,

(6) The company does not employ any staff or engage any agent to carry out any business activities or conduct business in Hong Kong.

If the company's mode of operation fully meets the above conditions, then the company can consider applying for offshore profits tax exemption. Under this offshore mode of operation, even if the company has business dealings or transactions with Hong Kong suppliers and Hong Kong customers, as long as the transactions are not negotiated and the relevant transactional documents are not prepared or signed in Hong Kong and the transactions will be concluded only through letter or email overseas, then the income from these transactions will not affect the company's plan for offshore tax exemption claim.

3. Hong Kong and Other Tax Jurisdictions with Double Taxation Agreements

In recent years, Hong Kong has entered into Comprehensive Double Taxation Agreements / Arrangement (DTAs) with a number of tax jurisdictions. DTAs can reduce or eliminate double taxation arising from overlapping taxation rights on natural persons or corporate legal persons from different tax jurisdictions.

Currently, countries that have signed DTA with Hong Kong include Mainland China, Belgium, Luxembourg, Thailand and Vietnam. Hong Kong is also currently negotiating agreements with a number of countries, including Cambodia, Cyprus, Germany and Norway.

3. Hong Kong and Other Tax Jurisdictions with Double Taxation Agreements—Cont'd

Companies must pay special attention to two Articles of the DTA: [Permanent Establishment] and [Exchange of Information]. First, companies need to be aware of the definition of a permanent establishment in the relevant Article, because if an enterprise of a contracting party carries on business in the other contracting party through a permanent establishment situated therein, its profits may be taxed in the other contracting party, but only so much of them as is attributable to that permanent establishment. The term of the [Exchange of Information] indicates that the competent authorities of both contracting parties shall exchange such information as is necessary for carrying out the provisions of the DTA or of the domestic laws of both contracting parties concerning taxes covered by the DTA insofar as the taxation thereunder is not contrary to the DTA and, in particular, information for the prevention of fiscal evasion.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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