

Hong Kong (SAR) Tax Alert

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The HKSAR Government consults on the proposed company re-domiciliation regime in Hong Kong

Summary

The HKSAR Government has launched a consultation on a proposed regime for non-Hong Kong incorporated companies to re-domicile to the Hong Kong SAR (Hong Kong) (i.e. an inward company re-domiciliation regime).

Under the proposed regime, a company incorporated outside Hong Kong could apply to change its place of incorporation to Hong Kong while maintaining its legal identity as a corporate body, subject to certain conditions.

In this tax alert, we summarise the key features of the proposed company re-domiciliation regime and share our observations.

Currently, the HKSAR Government has put in place a re-domiciliation mechanism for foreign funds to re-domicile to Hong Kong as an Open-Ended Fund Company or a Limited Partnership Fund to attract existing foreign funds to establish and operate in Hong Kong.

As a next step to further strengthen Hong Kong as a global business and investment hub, the Financial Secretary announced in the 2023/24 Budget¹ that the HKSAR Government will introduce a mechanism facilitating foreign companies to re-domicile to Hong Kong. A consultation paper² was then issued by the government on 31 March 2023 to propose a full-fledged and more comprehensive legal regime to facilitate non-Hong Kong incorporated companies to re-domicile to Hong Kong.

1. The proposed company re-domiciliation regime

Key features of the proposed regime

- Only an inward re-domiciliation regime has been proposed - i.e. a regime for foreign companies to re-domicile to Hong Kong but not *vice versa*.
- The proposed regime will provide a means for non-Hong Kong incorporated companies to change their places of incorporation to Hong Kong from the date of re-domiciliation. It represents a more cost effective option with reduced administrative complexity and maximum business continuity.

¹ The 2023/24 Budget Speech can be accessed via this link: [The 2023-24 Budget – Home](#)

² The consultation paper can be accessed via this link: [Public consultation paper \(e\) for issue.pdf \(fstb.gov.hk\)](#)

- The proposed regime will cover all five types of companies³ that could be formed in Hong Kong under the Companies Ordinance or their comparable types in the company's original place of incorporation.
- Upon completion of the re-domiciliation, the re-domiciled company will retain its legal identity (i.e. no new legal entity is created) and the company's property, rights, obligations and liabilities should not be affected.
- The re-domiciled company would have the same rights and obligations as any other companies of its kind incorporated in Hong Kong (e.g. it should comply with the relevant requirements under the Companies Ordinance).
- There is no intention to impose an economic substance test⁴ for foreign companies to be eligible for the re-domiciliation mechanism.

The application process under the proposed regime

- The proposed regime (including processing and approval of applications) will be administered by the Registrar of Companies (R of C).
- To ensure companies re-domiciling to Hong Kong are of good standing, various factors such as (1) compliance with the legal requirements on transfer of incorporation in the original place of incorporation, (2) integrity, (3) member and creditor protection and (4) solvency will be considered when processing the applications. The R of C may also impose other conditions on the companies depending on the specific circumstances.
- A company making an application under the regime is required to (1) submit the required documents⁵ and (2) pay an application fee (amount to be determined).
- Upon successful application, the company will be registered in the Companies Register and the R of C will issue a certificate of re-domiciliation to it. The re-domiciled company would then be required to notify the R of C and provide evidence of de-registration in its original place of incorporation within 60 days⁶ in order to complete the re-domiciliation process.

2. The proposed consequential changes to the tax law in Hong Kong

Under the current tax law of Hong Kong, the profits tax exposure of a company is determined by whether it carries on any trade or business in Hong Kong and derives any Hong Kong sourced profits from such trade or business. As such, the place of incorporation of a company or re-domiciling to Hong Kong would not generally affect the company's Hong Kong profits tax exposure. A potential exception to the above is where (1) the profits tax liabilities of a company is dependent on its Hong Kong tax resident status and (2) the re-domiciliation would result in the redomiciled company becoming a Hong Kong tax resident.

The consultation paper mentions that the government will introduce consequential amendments to the IRO to (1) provide certainty to the redomiciled companies on their tax obligations and (2) deal with certain transitional tax matters, such as tax deduction for trading stock, bad debts, impairment losses on financial assets and depreciation of fixed assets, etc. However, the consultation paper does not mention about the Hong Kong tax residency issue upon re-domiciliation.

³ The five types of companies are (a) private companies limited by shares, (b) public companies limited by shares, (c) companies limited by guarantee without a share capital, (d) private unlimited companies with a share capital and (e) public unlimited companies with a share capital.

⁴ The inward re-domiciliation regime in Singapore requires foreign corporate entities applying to re-domicile to Singapore to meet 2 out of the 3 minimum requirements i.e. (i) the value of total assets, (ii) the annual revenue and (iii) the number of employees. For more details, please refer to this [link](#).

⁵ Examples of documents required to be submitted are listed in Appendix of the consultation document.

⁶ The R of C may on application extend the 60-day period, subject to imposition of any appropriate conditions.

KPMG Observations

Based on the consultation paper, we have the following observations on the proposed regime from the legal / regulatory and tax perspectives.

1. Observations from the legal / regulatory perspective

- For a non-Hong Kong incorporated company which does not currently carry on any trade or business in Hong Kong but is considering redomiciling to Hong Kong and relocating its existing overseas business to Hong Kong after re-domiciliation, the legal issues that may need to be considered may vary depending on a number of factors e.g. the nature of business, assets and liabilities involved, employee considerations, required third-party consents, as well as the laws and regulations of the originating jurisdiction.
- Some general considerations include:
 - how its assets and liabilities will be transferred to Hong Kong in compliance with the legal requirements in both jurisdictions;
 - employment, immigration and tax reporting issues associated with relocating its employees to Hong Kong in compliance with Hong Kong laws;
 - licenses which are required for carrying on the relevant business in Hong Kong;
 - protection and registration of intellectual property rights in Hong Kong;
 - compliance with data privacy laws in Hong Kong and cross-border data transfer requirements of the original jurisdiction;
 - whether any event of default may be triggered under the existing contracts, and whether there are any restrictions or requirements regarding the re-domiciliation under the existing contracts; and
 - the legal framework of Hong Kong and its ongoing compliance obligations and reporting requirements in Hong Kong after the re-domiciliation process is completed.
- Given the potential differences in the legal frameworks between Hong Kong and the original places of incorporation, re-domiciled companies may need to amend its articles of association on matters such as annual meeting formalities, creditors' protection, appropriation and distributions, etc.
- For the insurance businesses, as Hong Kong aims to implement a Risk-based Capital regime in 2024⁷, insurance companies that were incorporated outside Hong Kong (e.g. in Bermuda) for regulatory / licensing reasons in the past can consider whether it is desirable to change their places of incorporation to Hong Kong in the future if they have substantial business operations in Hong Kong.

2. Observations from the tax perspective

- For a non-Hong Kong incorporated company which has been carrying on a trade or business in Hong Kong, re-domiciling to Hong Kong should not give rise to any new profits tax issues.
- For a non-Hong Kong incorporated company which does not currently carry on any trade or business in Hong Kong but considers redomiciling to Hong Kong and relocating its existing overseas business to Hong Kong after re-domiciliation, the transitional tax issues that may need to be considered include: (1) the valuation of trading stocks for tax purposes, (2) the tax written down value of any existing machinery or plant for claim tax depreciation allowances, (3) determination of the amount of non-taxable profits derived before commencing business in Hong Kong and (4) whether it will be treated as a Hong Kong tax resident from the effective date of the re-domiciliation.
- While the proposed re-domiciliation regime could facilitate foreign business groups to establish and operate in Hong Kong (including moving their headquarters function to Hong Kong), we recommend that the government considers introducing a tax incentive for headquarters business in Hong Kong at the same time with implementing a company re-domiciliation regime to help further develop Hong Kong as a regional hub for headquarters.

⁷ For more details about the Risk-based Capital regime and the legal framework proposed by the government, please refer to this [link](#).

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- With the implementation of the economic substance regime in offshore jurisdictions such as Bermuda, the British Virgin Islands and the Cayman Islands since 2019 and the possibility for these jurisdictions to step up their enforcement actions on compliance with the substance requirement, business groups may consider making use of the proposed re-domiciliation regime to relocate their existing companies incorporated in these offshore jurisdictions to Hong Kong with minimal business disruption. However, the potential Hong Kong stamp duty implications of becoming a Hong Kong incorporated company would need to be considered.
- The proposed 60-day time limit for completing the de-registration process in the original place of incorporation is the same as the one set in Singapore's re-domiciliation regime. However, for those foreign incorporated companies with substantive business operations in their original places of incorporation, additional time may be required to deal with the tax clearance process (especially when a tax audit is involved) on exit. A pragmatic approach should be adopted by the R of C in considering applications for extension of time, taking into account the practical situation faced by the applicants. We also recommend that the applicants perform a review of any historical tax issues in the original place of incorporation and come up with a proper tax audit defence strategy.
- Although the application process is seemingly straight forward, it is important to seek professional support to plan ahead the implementation and to gauge the potential challenges.

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