Hong Kong (SAR) Tax Alert

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Treatment of foreign-sourced in-kind dividends under the FSIE regime

Summary

In the recently published Advance Ruling Case No. 75[1], the Inland Revenue Department (IRD) clarified that foreign-sourced in-kind dividends (in form of shares of an overseas group company) received by a Hong Kong company as part of an internal group restructuring are not regarded as received in the Hong Kong SAR (Hong Kong) under the foreign-sourced income exemption (FSIE) regime.

Background of the case

The applicant is a company incorporated in Hong Kong and a member of a multinational group. The applicant is wholly owned by its immediate parent company which is a company incorporated and carrying on business in Hong Kong.

The applicant held a wholly owned foreign subsidiary (Company S1) which in turn held another wholly owned foreign subsidiary (Company S2). As part of the internal group restructuring, Company S1 distributed all the issued shares of Company S2 at their fair value to the applicant as in-kind dividends. The shares were distributed by the applicant to its immediate parent company on the same day as in-kind dividends. Company S2 does not have any establishments, operations or assets in Hong Kong.

The IRD's ruling

The IRD ruled that the in-kind dividends shall not be regarded as "received in Hong Kong" for the purposes of the FSIE regime.

KPMG Observations

While the IRD did not elaborate on the basis of regarding the in-kind dividends as being not received in Hong Kong in the published ruling, it would appear that the relevant factors being considered include: (1) Company S2 is an overseas company without any presence in Hong Kong and (2) the location where the share register of Company S2 is kept, which probably is outside Hong Kong.

The ruling also reconfirms that distribution of the foreign-sourced dividends received by a Hong Kong company outside Hong Kong to its shareholder in Hong Kong will not result in the dividends being regarded as "received in Hong Kong".

[1] The advance ruling case can be accessed via this link to the IRD website: https://www.ird.gov.hk/eng/ppr/advance75.htm

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