

# Hong Kong (SAR) Tax Alert

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## Hong Kong unveils details of its company re-domiciliation regime in the draft legislation

### Summary



The draft legislation to implement an inward company re-domiciliation regime in the Hong Kong SAR (Hong Kong) was gazetted on 20 December 2024. Under the regime, a company incorporated outside Hong Kong can apply to re-domicile to Hong Kong while maintaining its legal identity and business continuity, subject to certain conditions.

In this tax alert, we summarise the main features of the company re-domiciliation regime in Hong Kong, discuss the key legal, corporate law and tax implications of re-domiciling to Hong Kong and share our observations on the regime.

Currently, there is a mechanism for foreign funds to redomicile to Hong Kong<sup>1</sup> to encourage them to establish and operate in Hong Kong. As a further step to attract more companies and investment to Hong Kong, the Financial Secretary announced in the 2023/24 Budget<sup>2</sup> that the government will introduce a similar mechanism for foreign companies to re-domicile to Hong Kong. Subsequently, the government launched a public consultation in March 2023 (the March consultation)<sup>3</sup> on the proposed inward re-domiciliation regime in Hong Kong. The government then published the consultation conclusion and the revised legislative proposals in July 2024<sup>4</sup>.

On 20 December 2024, **the Companies (Amendment) (No.2) Bill 2024** (the Bill)<sup>5</sup> was gazetted to unveil further details of the company re-domiciliation regime in Hong Kong. The Bill will be introduced into the Legislative Council on 8 January 2025. The regime will apply prospectively upon enactment of the Bill into law.

### Overview of the re-domiciliation regime

#### 1. Scope of the re-domiciliation regime

- The regime offers an inward re-domiciliation mechanism for non-Hong Kong incorporated companies to re-domicile to Hong Kong and become a “re-domiciled company” (i.e. a new type of companies in the revised definition of “company” in the Companies Ordinance (CO)).
- The following four out of the five types of companies currently specified in the CO (or their comparable types in the original domicile) are allowed to re-domicile to Hong Kong<sup>6</sup>:
  - private companies limited by shares,
  - public companies limited by shares,
  - private unlimited companies with a share capital, and
  - public unlimited companies with a share capital.

<sup>1</sup> Currently, foreign investment funds in form of a corporate entity or a limited partnership can re-domicile to Hong Kong as an Open-Ended Fund Company or a Limited Partnership Fund respectively.

<sup>2</sup> The 2023/24 Budget can be accessed via this link: <https://www.budget.gov.hk/2023/eng/index.html>

<sup>3</sup> The public consultation document can be accessed via this link: [https://www.fstb.gov.hk/fstb/en/publication/consult/doc/Public\\_consultation\\_paper\\_\(e\)\\_for\\_issue.pdf](https://www.fstb.gov.hk/fstb/en/publication/consult/doc/Public_consultation_paper_(e)_for_issue.pdf); and our Hong Kong tax news alert on the document can be accessed via this [link](#).

<sup>4</sup> The consultation conclusion and the revised legislative proposals can be accessed via this link: <https://www.fstb.gov.hk/en/blog/blog030724.htm>

<sup>5</sup> The Bill can be accessed via this link: <https://www.gld.gov.hk/egazette/english/gazette/file.php?year=2024&vol=28&no=51&extra=0&type=3&number=32>; and the Legislative Council brief can be accessed via this link: [https://www.legco.gov.hk/yr2024/english/brief/co23c\\_20241219-e.pdf](https://www.legco.gov.hk/yr2024/english/brief/co23c_20241219-e.pdf)

<sup>6</sup> Companies limited by guarantee without a share capital and other company types not specified by the CO are not covered by the regime.

- Companies are not allowed to change their company types during the re-domiciliation process.
- The regime does not allow outward re-domiciliation (i.e. re-domiciling from Hong Kong to other jurisdictions).

### 2. The eligibility criteria and related supporting documents/information

- The table below set out the eligibility criteria for a non-Hong Kong incorporated company (i.e. the applicant) to apply to re-domicile to Hong Kong and the key supporting documentation to be submitted with the re-domiciliation application:

Eligibility criteria	Key requirements	Key supporting documents / information
<b>1. General</b>	<ul style="list-style-type: none"> <li>i. The law of the original domicile permits outward re-domiciliation.</li> <li>ii. The applicant has complied with the requirements regarding outward re-domiciliation under the law in (i) above.</li> <li>iii. The company type of the applicant under the law of the original domicile is the same or substantially the same as that of the intended company type under the CO.</li> <li>iv. The applicant's first financial year end since incorporation has passed as at the date of application.</li> </ul>	<ul style="list-style-type: none"> <li>• Legal opinion of a legal practitioner who practises the law of the place of incorporation of the applicant (Legal Opinion) on (i) to (iii).</li> <li>• Statements confirming (i) to (iv) to be included in the re-domiciliation form.</li> <li>• Certificate signed by a director and issued by the board of directors of the applicant (Director's Certificate) confirming (i) and (iv).</li> </ul>
<b>2. Integrity</b>	<ul style="list-style-type: none"> <li>i. The applicant has complied with all the requirements under the CO for applying for a registration as a local company.</li> <li>ii. The re-domiciled company is not likely to be used for unlawful purposes or purposes contrary to public interest in the opinion of the Registrar of Companies.</li> </ul>	<ul style="list-style-type: none"> <li>• Statement confirming (i) in the re-domiciliation form.</li> </ul>
<b>3. Member and creditor protection</b>	<ul style="list-style-type: none"> <li>i. The re-domiciliation application is made in good faith and not intended to defraud its existing creditor(s).</li> <li>ii. Members' consent to the re-domiciliation has been obtained either (a) as required under the law of the original domicile or the applicant's constitutional document or (b) by a resolution duly passed by <b>at least 75%</b> of the eligible members (either in a meeting or by a written resolution)<sup>7</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>• Director's Certificate on (i)</li> <li>• Certified copies of the certificate of incorporation, constitutional documents and the resolution duly passed (where applicable).</li> <li>• Legal Opinion and Director's Certificate on members' consent or resolution passed.</li> </ul>
<b>4. Solvency &amp; in good standing</b>	<ul style="list-style-type: none"> <li>i. The applicant will be able to pay its debts in full within the period of 12 months beginning on the application date.</li> <li>ii. The applicant is not in liquidation or being wound up and no such proceedings against the applicant is ongoing or pending.</li> </ul>	<ul style="list-style-type: none"> <li>• Audited / non-audited financial statements<sup>8</sup> as at a date <b>no earlier than 12 months</b> prior to the application date.</li> <li>• Legal Opinion and Director's Certificate proving that the company is duly registered and validly subsisting in the original domicile.</li> <li>• Legal Opinion on (ii) and Director's Certificate on (i) &amp; (ii).</li> </ul>

- There are no economic substance requirements (e.g. in terms of the total value of assets, amount of revenue or number of employees) under the regime. Companies with any sizes may apply to redomicile to Hong Kong.

<sup>7</sup> The passed resolution is only required where neither the law of the original domicile nor the constitutional document of the applicant requires members' consent to the proposed re-domiciliation.

<sup>8</sup> The financial statements are required to be audited only if it is so required under the law of its original domicile or the rules of relevant stock exchange or similar regulatory bodies.

### 3. The application process and other documents required

- The Registrar of Companies (the Registrar) will be responsible for administering and approving applications for re-domiciling to Hong Kong. The arrangement of simultaneous company and business registrations will also apply to company re-domiciliation applications.
- In addition to the key supporting documents mentioned in the above table, an applicant is required to (1) submit a completed and signed re-domiciliation form in prescribed form with other relevant documents<sup>9</sup> and (2) pay an application fee of **HK\$6,050** (for applications in electronic form) or **HK\$6,725** (for applications in paper form).
- The government has indicated that after receiving all required information and documents, the Registrar will generally approve the application **within two weeks**.
- Upon successful application, the applicant will be registered in the Companies Register (CR) and available for public inspection. The Registrar will issue a certificate of re-domiciliation to the applicant. The re-domiciliation will take effect on the date on which the certificate of re-domiciliation is issued (i.e. the re-domiciliation date).
- The re-domiciled company would then be required (1) to be de-registered in its original place of incorporation and (2) to provide evidence of such de-registration to the Registrar within **120 days**<sup>10</sup> in order to complete the re-domiciliation process. Failing to do so will result in the registration in Hong Kong being revoked.

### 4. Applicants in the regulated financial services sector

- Under the insurance and banking regulatory regimes in Hong Kong, there are some differences in terms of regulatory requirements in respect of entities incorporated in and outside Hong Kong.
- The Bill includes amendments to the Insurance Ordinance and Banking Ordinance to the effect that an authorised insurer or an authorised financial institution incorporated outside Hong Kong that has been registered in the CR as a re-domiciled company **and has fulfilled its obligations of deregistration from its original domicile** will be treated as if it were incorporated in Hong Kong and regulated as such.
- Insurers and authorised financial institutions planning to re-domicile to Hong Kong are required to approach their respective regulators (i.e. the Insurance Authority and the Hong Kong Monetary Authority respectively) in Hong Kong before making a re-domiciliation application for the purposes of conducting an advance assessment on their capability to fulfil the applicable regulatory requirements in Hong Kong.

## Legal effect of re-domiciliation

- No new legal entity will be created (i.e. the re-domiciled company will retain its original legal identity as a body corporate and thereby its continuity as a legal entity).
- The re-domiciliation will not affect the property, rights, obligations and liabilities, as well as the relevant contractual and legal processes (including any legal proceedings by or against the foreign company) of the re-domiciled company.

## Effect of re-domiciliation from the corporate law perspective

- The redomiciled company is regarded as registered under the CO with effect from the re-domiciliation date and the certificate of re-domiciliation issued by the Registrar serves as an evidence that the re-domiciled company is duly registered.
- The re-domiciliation mechanism would operate to the effect that a re-domiciled company will have its domicile transferred to Hong Kong, while the place in which the company is formed or incorporated will not change. A **general deeming provision** will be added to the CO to effect that for the purposes of the laws of Hong Kong, a re-domiciled company **will be regarded as a company incorporated in Hong Kong with effect from its re-domiciliation date**, subject to certain exceptions (e.g. a re-domiciled company that is an airline).

<sup>9</sup> Other information and documents required include particulars of the applicant, a certified copy of certificate of incorporation issued by the original domicile, information about the re-domiciled company's directors and company secretary, copy of the proposed articles of association of the re-domiciled company, etc. Please refer to the newly added Schedules 6A to 6C of the CO for more details.

<sup>10</sup> The Registrar may on application extend the 120-day period, subject to imposition of any appropriate conditions.

## Hong Kong (SAR) Tax Alert

- In general, a re-domiciled company would have the same rights and obligations as any other Hong Kong incorporated companies of its kind in Hong Kong. It would be required to comply with the relevant requirements under the CO. The relevant requirements would include but not limited to:
  - submitting a return to the Registrar stating the details of its share capital within 15 days after the registration under the CO;
  - having at least one or two director(s) (depending on the company type) and a company secretary – the persons named as director(s) and company secretary in the re-domiciliation form submitted to the Registrar will become the redomiciled company's director(s) and company secretary with effect from the re-domiciliation date;
  - maintaining a registered office in Hong Kong;
  - delivering an annual return to the Registrar within the specified period (different types of companies have different return delivery dates);
  - appointing an independent auditor before holding the annual general meeting (AGM);
  - preparing annual financial statements which has to be audited by an independent auditor (except for dormant companies) by 6 or 9 months (depending on company type) after the end of the 12-month accounting reference period<sup>11</sup>;
  - holding a AGM in respect of each financial year within 6 or 9 months (depending on company type) after the end of the accounting reference period; and
  - designating at least one person as a Designated Representative responsible for reporting in relation to the significant controllers register (in cases of companies not listed in Hong Kong).
- For a re-domiciled company that was previously registered as a non-Hong Kong company under Part 16 of the CO (e.g. a Hong Kong branch of a non-Hong Kong company), its registration under Part 16 will cease to have effect on the re-domiciliation date. The original company name and business registration number can be retained after re-domiciliation.

### Hong Kong profits tax treatments of re-domiciled companies

- A general interpretation provision will be introduced to the Inland Revenue Ordinance (IRO) to the effect that a reference therein to **a company "incorporated in Hong Kong" (or an entity established in Hong Kong) includes a "re-domiciled company"**.
- Consequential amendments will be made to the IRO to provide for the taxation of different types of insurance business carried on in Hong Kong by redomiciled insurers.
- 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, merely re-domiciling to Hong Kong would not affect the company's Hong Kong profits tax exposure in general.
- Having said that, the Bill contains provisions to amend the IRO to clarify / specify the following Hong Kong profits tax treatments of re-domiciled companies:
  - Re-domiciliation **does not** have the effect of transferring any assets of a re-domiciled company or changing the beneficial ownership of those assets.
  - Expenses incurred by a re-domiciled company before the re-domiciliation date and for producing profits chargeable to Hong Kong profits tax are **deductible** if (i) no deduction or relief would otherwise be allowable in respect of such expenses for Hong Kong profits tax purposes and (ii) no deduction or relief in respect of such expenses has been allowed for a tax similar to Hong Kong profits tax under the law of a jurisdiction outside Hong Kong.

<sup>11</sup> For a re-domiciled company with the first accounting reference period longer than 12 months, the annual financial statements will need to be ready by (1) 6 or 9 months after the first anniversary of the re-domiciliation date (depending on the company type) or (2) 3 months after the end of the accounting reference period, whichever is the later.

## Hong Kong (SAR) Tax Alert

- Capital expenditure incurred by a re-domiciled company before the re-domiciliation date for acquiring a tangible or an intangible asset may be **eligible for tax deduction or depreciation allowance** after re-domiciliation, subject to certain conditions<sup>12</sup>. We summarise the tax bases adopted for trading stock, plant and machinery, prescribed fixed assets and intellectual property (IP) rights for the purposes of claiming such tax deduction or depreciation allowance in the table below.

Types of assets	Tax bases of the assets for profits tax purposes	
1. Trading stock	<i>The lower of the below:</i> <ul style="list-style-type: none"> <li>➤ the <b>cost</b>; or</li> <li>➤ the <b>net realisable value</b> on the re-domiciliation date.</li> </ul>	
2. Plant and machinery (not acquired under a hire-purchase arrangement)	<i>The lower of the below:</i> <ul style="list-style-type: none"> <li>➤ the <b>actual cost incurred minus the notional annual allowance</b><sup>13</sup>; or</li> <li>➤ the <b>market value</b> as at the re-domiciliation date.</li> </ul>	
3. Plant and machinery (acquired under a hire-purchase arrangement)	The amount determined in the same way as (2) above ×	$\frac{\text{Capital portion of all instalments paid up to the end of the basis period for the re-domiciliation year}}{\text{Capital portion of all instalments required to be made under the hire purchase agreement}}$
4. Intellectual property rights	<i>The lower of the below:</i> <ul style="list-style-type: none"> <li>➤ the actual amount of <b>specified capital expenditure incurred minus the accumulated amortisation and impairment losses</b> up to the re-domiciliation date; or</li> <li>➤ the <b>market value</b> as at the re-domiciliation date.</li> </ul>	
5. Prescribed fixed assets		

- Expenditure incurred by a re-domiciled company on registration of IP rights (e.g. design, patents and trademarks), research and development activity or building refurbishment before the re-domiciliation date may be regarded as expenditure that have been incurred by the re-domiciled company in the re-domiciliation year or the year of assessment in which it begins to use the assets or rights for a trade or business carried on by it in Hong Kong and **deductible**, subject to certain conditions.
- *Unilateral tax credits* - To provide relief for double taxation, if a re-domiciled company has been charged in its place of incorporation a tax of substantially the same nature of Hong Kong profits tax (i.e. specified tax) in respect of any income derived or taken to have been derived by it upon exit / de-registration (i.e. specified income), it may claim a unilateral tax credit against its Hong Kong profits tax payable on such income (the relevant income) after re-domiciliation. The unilateral tax credit is subject to a cap of the lower of the specified tax paid and claimed by the re-domiciled company and the amount of Hong Kong profits tax payable in the year of claim in respect of the relevant income. In addition, the amount of the relevant income in respect of which credit may be allowed cannot exceed the amount of specified income to which the claim is related.

### Hong Kong stamp duty treatments of re-domiciled companies

- As there will not be any transfer of assets or change in the beneficial ownership of assets throughout the re-domiciliation process, no stamp duty implication will arise from a re-domiciliation.
- Given the share register of a re-domiciled company will need to be maintained in Hong Kong upon re-domiciliation, any subsequent transfer of shares in a re-domiciled company will be subject to Hong Kong stamp duty<sup>14</sup>.

<sup>12</sup> In general, the conditions are (i) the asset has been acquired before the re-domiciliation date for a trade or business carried on outside Hong Kong, (ii) the asset has not been used for any trade or business carried on in Hong Kong before the re-domiciliation date and (iii) the asset is used for a trade or business in Hong Kong on or after the re-domiciliation date.

<sup>13</sup> Notional annual allowance means the annual allowance that would have been granted if the assets had been used for producing profits chargeable to Hong Kong profits tax after its acquisition.

<sup>14</sup> The stamp duty rate for transfer of Hong Kong stock is 0.2% (in total) of the higher of (1) the market value of the stock transferred or (2) the consideration for the transfer of the stock.



### KPMG observations

- We are pleased to see that the Bill contains a number of refinements to the proposed re-domiciliation regime based on the comments received during the March consultation. This shows the government's efforts in making the regime more flexible and competitive. In particular, the re-domiciliation regime in Hong Kong is more flexible than the one in Singapore<sup>15</sup> as it (1) does not impose an economic substance test for foreign companies to be eligible for the regime and (2) is not limited to companies limited by shares.
- The Bill introduces a deeming provision in both the CO and the IRO to reflect the policy intent that a re-domiciled company will generally be regarded as a company incorporated in Hong Kong for Hong Kong law purposes with effect from the re-domiciliation date. This provides clarity that when Hong Kong applies its tax treaties or the BEPS Pillar 2 legislation, it would regard a re-domiciled company as a Hong Kong incorporated company (and therefore a Hong Kong tax resident for both tax treaty and BEPS Pillar 2 purposes<sup>16</sup>). Hopefully, Hong Kong's tax treaty partners and other foreign jurisdictions implementing Pillar 2 would take the same view.
- The re-domiciliation regime will be particularly relevant to business groups with the following corporate entities:
  - insurance companies incorporated outside Hong Kong (e.g. Bermuda) for regulatory reasons in the past but with businesses in Hong Kong – these companies may wish to re-domicile to Hong Kong to adopt the newly implemented risk-based capital regime in Hong Kong and the reduced compliance burden (i.e. not being required to comply with the regulatory and reporting requirements in both Bermuda and Hong Kong);
  - investment or IP holding companies incorporated in offshore jurisdictions (e.g. the BVI and the Cayman Islands) – these companies may wish to re-domicile to Hong Kong in view of the challenges brought about by the economic substance regime, increasing reporting requirements, increasing challenges relating to tax / beneficial ownership transparency, and the possibility of introducing a global/domestic minimum tax under BEPS Pillar 2 in these offshore jurisdictions.
  - Corporate entities wishing to become a Hong Kong tax resident (other than by means of being normally managed or controlled in Hong Kong) for having access to the Hong Kong tax treaty network or for being regarded as located in Hong Kong for BEPS Pillar 2 purposes.

In particular, for business groups wishing to transfer an IP from a non-Hong Kong group company to a Hong Kong group company, a key benefit of doing so by way of re-domiciling the non-Hong Kong company to Hong Kong as compared to transferring the IP from the non-Hong Kong company to the Hong Kong company will be that the capital expenditure incurred on the IP may be deductible for Hong Kong profits tax purposes upon re-domiciliation.

Business groups looking to re-domicile a non-Hong Kong incorporated company to Hong Kong should plan ahead and seek professional support to fully understand the legal and tax implications to the company, the business and its directors and employees, and for a seamless transition with minimal disruption to the business operations.

- For large MNE groups within the scope of BEPS Pillar 2, if they are contemplating to re-domicile a foreign constituent entity (CE) within the groups to Hong Kong, consideration should be given to the implications of such re-domiciliation under the GloBE Rules of Pillar 2, including the application of Article 6.3.4. Under Article 6.3.4, a CE can elect to align the carrying value of an asset for Pillar 2 purposes (i.e. the GloBE carrying value) with the tax carrying value of the asset when it is required to adjust the asset basis to fair value for domestic tax purposes (e.g. upon re-domiciliation to Hong Kong).

<sup>15</sup> For more details about the re-domiciliation regime implemented in Singapore, please refer to this link: <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/inward-re-domiciliation-regime-in-singapore#:~:text=The%20Companies%20Act%20Amendment%29%20Act%202017%20has%20introduced%20an, and%20still%20retain%20their%20corporate%20history%20and%20branding%29.>

<sup>16</sup> The HKSAR Government has proposed to introduce a definition of "Hong Kong tax resident" (which includes a company incorporated in Hong Kong) for the general purposes of the IRO in the paper on the BEPS Pillar 2 consultation outcome. For more details, please refer to our previous Hong Kong tax news alert in this [link](#).

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