



# HONG KONG TAX ALERT

ISSUE 8 | July 2016



## Transfer pricing and the offshore tax regime in Hong Kong

*Base Erosion Profit Shifting or “BEPS” initiated by the G20 economies and endorsed internationally aims to close tax loop holes and achieve reporting transparency. Hong Kong based companies with offshore claims need to anticipate the impact of greater reporting. Conflicts with transfer pricing (“TP”) and possible permanent establishment (“PE”) challenges must, more than ever, be carefully managed.*

### Summary

- *How well does your offshore claim arrangement coincide with your TP policies?*
- *While there is a legitimate basis to make an offshore claim in Hong Kong, is your company ready to defend potential challenges from other tax authorities?*
- *Can your company sustain a challenge to the offshore claim from the HK IRD?*

Does your company have any offshore sourced profits and claim part or all of its profits as offshore for Hong Kong tax purposes? If so, how does this coincide with your transfer pricing policies in light of BEPS?

The territorial source principle of taxation has been fundamental in the Hong Kong tax system. However, the practice of making offshore claims may increasingly come into conflict with transfer pricing. For companies which are making or intend to make offshore claims, have the following been thought about?

- Any people activities or substance in Hong Kong?
- Will this become a red flag when filing a country by country report (CbCR)?
- Is the profit concerned subject to tax in another jurisdiction?
- Does it create a PE exposure in a jurisdiction outside Hong Kong?

The BEPS initiatives are designed to mitigate double non-taxation with an increase in transparency of tax information. While there may be a legitimate basis for companies in Hong Kong to make an offshore claim, tax authorities overseas may start questioning whether those profits that are not subject to tax in Hong Kong should be subject to tax in their jurisdiction instead.

To mitigate and manage potential exposures, it is all the more important to get the transfer pricing right. Having established and implemented an appropriate TP policy, one may still apply the offshore framework. However, PE exposures

will also need to be considered bearing in mind that under the new PE definition under BEPS, PE risk may increase in a number of jurisdictions.

One must therefore carefully consider all the potential ramifications. Companies in Hong Kong need to consider the possible consequences from a wider group perspective and ensure robust supporting documentation is in place to support such arrangement.

In case of any questions or need assistance, please contact us:

**John Kondos** – Partner, Global Transfer Pricing Services  
Tel: +852 2685 7457

**Lu Chen** – Principal, Global Transfer Pricing Services  
Tel: +852 2143 8777

**Irene Lee** – Senior Manager, Global Transfer Pricing Services  
Tel: +852 2685 7372

**Chloe Li** – Senior Manager, Global Transfer Pricing Services  
Tel: +852 2143 8710

**William Wong** – Senior Manager, Global Transfer Pricing Services  
Tel: +852 2685 7599

## Contact us:

**Khoon Ming Ho**  
Head of Tax, KPMG China  
Tel: +86 10 8508 7082  
khoonming.ho@kpmg.com

**Ayesha M. Lau**  
Head of Local Market  
Head of Tax, Hong Kong  
Tel: +852 2826 7165  
ayasha.lau@kpmg.com

### Corporate Tax

**Charles Kinsley**  
Partner  
Tel: +852 2826 8070  
charles.kinsley@kpmg.com

**Chris Abbiss**  
Head of Real Estate Tax,  
KPMG China  
Tel: +852 2826 7226  
chris.abbiss@kpmg.com

**Stanley Ho**  
Partner  
Tel: +852 2826 7296  
stanley.ho@kpmg.com

**Alice Leung**  
Partner  
Tel: +852 2143 8711  
alice.leung@kpmg.com

**Curtis Ng**  
Partner  
Tel: +852 2143 8709  
curtis.ng@kpmg.com

**John Timpany**  
Partner  
Tel: +852 2143 8790  
john.timpany@kpmg.com

**Jocelyn Lam**  
Partner  
Tel: +852 2685 7605  
jocelyn.lam@kpmg.com

**Matthew Fenwick**  
Director  
Tel: +852 2143 8761  
matthew.fenwick@kpmg.com

**Ivor Morris**  
Director  
Tel: +852 2847 5092  
ivor.morris@kpmg.com

**Sandy Fung**  
Director  
Tel: +852 2143 8821  
sandy.fung@kpmg.com

**Nicholas Rykers**  
Director  
Tel: +852 2143 8595  
Nicholas.rykers@kpmg.com

**Michael Olesnick**  
Special Advisor  
Tel: +852 2913 2980  
michael.olesnick@kpmg.com

**Justin Pearce**  
Senior Tax Advisor  
Tel: +852 2143 8756  
justin.pearce@kpmg.com

### M & A Tax

**Darren Bowdern**  
Head of Financial Services Tax,  
KPMG China  
Tel: +852 2826 7166  
darren.bowdern@kpmg.com

**Benjamin Pong**  
Partner  
Tel: +852 2143 8525  
benjamin.pong@kpmg.com

**Christopher Xing**  
Partner  
Tel: +852 2978 8965  
christopher.xing@kpmg.com

**Yvette Chan**  
Principal  
Tel: +852 2847 5108  
yvette.chan@kpmg.com

**Malcolm Prebble**  
Principal  
Tel: +852 2685 7472  
malcolm.j.prebble@kpmg.com

### China Tax

**Daniel Hui**  
Principal  
Tel: +852 2685 7815  
daniel.hui@kpmg.com

**Karmen Yeung**  
Partner  
Tel: +852 2143 8753  
karmen.yeung@kpmg.com

**Adam Zhong**  
Principal  
Tel: +852 2685 7559  
adam.zhong@kpmg.com

**Steve Man**  
Director  
Tel: +852 2978 8976  
steve.man@kpmg.com

### Transfer Pricing

**John Kondos**  
Partner  
Tel: +852 2685 7457  
john.kondos@kpmg.com

**Lu Chen**  
Principal  
Tel: +852 2143 8777  
lu.l.chen@kpmg.com

### Global Mobility Services

**Barbara Forrest**  
Principal  
Tel: +852 2978 8941  
barbara.forrest@kpmg.com

**Murray Sarelius**  
Principal  
Tel: +852 3927 5671  
murray.sarelius@kpmg.com

**David Siew**  
Principal  
Tel: +852 2143 8785  
david.siew@kpmg.com

**Kate Lai**  
Director  
Tel: +852 2978 8942  
kate.lai@kpmg.com

### US Tax

**Wade Wagatsuma**  
Head of US Corporate Tax,  
KPMG China  
Tel: +852 2685 7806  
wade.wagatsuma@kpmg.com

### Indirect Tax

**Lachlan Wolfers**  
Head of Indirect Tax,  
KPMG China Regional Leader,  
Asia Pacific Indirect Tax  
Tel: +852 2685 7791  
lachlan.wolfers@kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG Huazhen LLP — a People's Republic of China partnership, KPMG Advisory (China) Limited — a wholly foreign owned enterprise in China, and KPMG — a Hong Kong partnership, are member firms of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

© 2016 KPMG, a Macau partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.