

# GMS Flash Alert

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## Hong Kong - Recognising Same-Sex Marriage: Tax and Immigration Implications

The Hong Kong Inland Revenue Department ("IRD") recently released six revised Departmental Interpretation and Practice Notes ("DIPNs") to recognise "same sex marriage" in its assessing practice,<sup>1</sup> as a result of the judgement of the Court of Final Appeal ("CFA") in *Leung Chun Kwong v Secretary for the Civil Service (2019) 22 HKCFAR 127* ("Leung case"), dated 6 June 2019.

### WHY THIS MATTERS

The update in assessing practice affords same-sex marriages the same tax benefits as traditional marriages. Taxpayers in same-sex marriages now may be able to reduce their tax liabilities by:

- electing joint assessment;
- electing personal assessment with his or her spouse;
- claiming a married person's allowance;
- claiming or nominating a spouse to claim certain concessionary deductions.

## Background: Before and After the Leung Case

Before the Leung case, a “same-sex marriage” was not regarded as a valid marriage for the purpose of the Inland Revenue Ordinance (“IRO” or “Ordinance”).

The CFA’s decision in the Leung case relies on another CFA judgement in *QT v Director of Immigration (FACV No. 1 of 2018)* (“QT case”). The QT case involved a judicial review lodged by the appellant against the prevailing dependant immigration policy in respect of dependant under “same sex marriage.”<sup>2</sup> In the Leung case, the CFA considered that a remedial interpretation of the Ordinance was appropriate and ordered the following:

- (a) A “Marriage” shall include any marriage, whether or not recognised by the laws of Hong Kong, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so, provided where the persons are of the same sex and such a marriage between them would have been a marriage under this Ordinance but for the fact only that they are persons of the same sex, they shall be deemed for the purposes of such a marriage to have the capacity to do so, and
- (b) for the purpose of the IRO, references to:
  - (i) “husband and wife” shall be read as “a married person and his or her spouse”;
  - (ii) “not being a wife living apart from her husband” shall be read as “not being a spouse living apart from the married person”; and
  - (iii) “either the husband or wife” shall be read as “either the married person or his or her spouse”.

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### KPMG NOTE

Following the two landmark discrimination cases, “same-sex marriage” entered into in accordance with laws outside Hong Kong which are legally and officially recognised in the places of celebration, would be considered as a valid marriage. Any married person – regardless if he or she is in a heterosexual marriage or same-sex marriage – is now entitled to elect joint assessment or personal assessment jointly with the person’s spouse, as well as to claim allowances or deductions in respect of his or her spouse, under the IRO.

In addition, such a married person is also eligible to sponsor his or her spouse for a dependant visa / entry permit for entry into Hong Kong. (For related coverage, see GMS [Flash Alert 2018-137](#), 22 October 2018.)

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### FOOTNOTES:

1 For example, see: <https://www.ird.gov.hk/eng/pdf/dipn37.pdf> .

2 As a result of the QT case, the Hong Kong government announced in September 2018 that the immigration policy on applications for entry of non-local dependants has been revised in line with the QT judgement. With effect from 19 September 2018, the scope of the eligibility criteria of dependant visas/entry permits is expanded to include a person who has entered into a same-sex civil partnership, same-sex civil union, “same-sex marriage,” opposite-sex civil partnership, or opposite-sex civil union outside Hong Kong with an eligible sponsor in accordance with the local law in force of the place of celebration and with such status being legally and officially recognised by the local authorities of the place of celebration.

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**The information contained in this newsletter was submitted by the KPMG International member firm in Hong Kong.**

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