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ICEbreakers: Unlocking Hong Kong

Hot topics:

- **2017/2018 Budget:** The budget announced on February 22, 2017 includes the following proposed measures:
  - A **tax policy unit** would be set up in the Financial Services and the Treasury Bureau to comprehensively examine the international competitiveness of the Hong Kong tax regime from a macro perspective and to explore broadening Hong Kong's narrow tax base;
  - A 75% **reduction of profits** tax, salaries tax and tax under personal assessment for the year of assessment 2016/2017, subject to a ceiling of HKD 20,000 per case (a bill to implement the proposal was passed by the Legislative Council on May 25, 2017);
  - An extension the existing profits tax exemption to **onshore privately offered open-ended fund companies** (see below); and
  - A tax concession for **aircraft financing business**.
- **Country-by-country (CbC) reporting:** Hong Kong will implement CbC reporting for accounting periods commencing on or after January 1, 2018, subject to necessary legislative amendments. A multinational enterprise group will be required to file a CbC report in relation to an accounting period where: (i) the consolidated group revenue for the preceding accounting period is at least EUR 750 million (or HKD 6.8 billion); and (ii) the group has constituent entities or operations in two or more jurisdictions. As a transitional arrangement, parent surrogate filing will be made available for accounting periods commencing between January 1, 2016 and December 31, 2017.

Other developments

- **Onshore privately-offered open-ended funds:** A bill that would extend an exemption from Hong Kong profits tax to onshore privately offered open-ended fund companies (OFCs) was gazetted on June 23, 2017.
  - The bill provides that an onshore privately offered OFC would be exempt from profits tax on profits from qualifying transactions and transactions incidental to the carrying out of qualifying transactions (up to 5% of total trading receipts), provided that certain conditions are satisfied.
  - The bill contains anti-abuse measures, including deeming provisions that target "round-tripping" by a resident person disguised as an onshore privately-offered OFC through a direct or an indirect beneficial interest in the onshore privately offered OFC to take advantage of the profits tax exemption.
- **BEPS consultation report**: The government released a report on July 31, 2017 summarizing the outcome of its consultation exercise on measures to counter base erosion and profit shifting (BEPS), including the following:
  - The transfer pricing regime will be based on the OECD's transfer pricing guidelines and relevant commentary, with the applicable version of OECD rules specified in the legislation.
  - Domestic transactions will not be excluded from the transfer pricing regime.
  - While thin capitalization rules will not be introduced, there will be a specific arm's length requirement on intra-group borrowing transactions and persons carrying on the functions of development, enhancement, maintenance, protection and exploitation of intellectual property.
  - No safe harbor rule for an arm's length return will be available.

Treaty update

- **OECD Multilateral Instrument (MLI):** with the endorsement of the Chinese government to apply the MLI to Hong Kong by way of territorial extension, China signed the MLI on behalf of Hong Kong on June 7, 2017.
  - Covered tax agreements include 36 comprehensive double tax agreements (DTAs), but not Hong Kong's double taxation arrangement with Mainland China.
  - Hong Kong intends to implement the mandatory provisions of the MLI, including the provisions addressing two minimum standards of the BEPS package (action 6 (preventing treaty abuse) and action 14 (improving cross-border dispute resolution mechanisms)), while opting out of the remaining articles to minimize the unintended impact to Hong Kong.
  - The Hong Kong government plans to introduce the relevant amendment bill into the Legislative Council before mid 2018. On the other hand, it plans to incorporate the relevant provisions of the MLI in CDTAs to be signed in the future, to ensure that they are BEPS-compliant.

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