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January 2018

ICEbreakers: Unlocking Hong Kong

Hot topics:

- **Two-tiered profits tax rates regime:** A bill to replace the current flat profits tax rate with a two-tier profits tax regime was gazetted on December 29, 2017. Under the proposed tax regime:
  - The profits tax rate for the first HKD 2 million of profits of corporations would be lowered to 8.25%. Profits above that amount would continue to be subject to the 16.5% tax rate.
  - The profits tax rate for the first HKD 2 million of profits of unincorporated businesses would be lowered to 7.5%. Profits above that amount would continue to be subject to the 15% tax rate.
  - To ensure that the tax benefits would target small and medium-sized enterprises, restrictions would limit the application of the lower rate to only one enterprise nominated from among those that are connected.

Other developments

- **Transfer pricing and BEPS:** A separate bill gazetted on December 29, 2017 includes the following proposed amendments to the Inland Revenue Ordinance:
  - To codify transfer pricing rules;
  - To provide for an advance pricing arrangement regime;
  - To require documentation relating to transactions;
  - To enable effect to be given to mutual agreements made with other jurisdictions under arrangements for relief from double taxation; and
  - To implement the minimum standards under the OECD BEPS project.
- **Exchange of information:** A bill to pave the way for Hong Kong's participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and to align the Inland Revenue Ordinance with the OECD common reporting standard was gazetted on October 6, 2017.
- **Country-by-country (CbC) reporting:** Hong Kong provided updated guidance on December 29, 2017 on the framework for implementing 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 under a voluntary filing arrangement.

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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Contact

Linda Ng
Managing Director
Tel: +1 212 436 2764
Email: ling@deloitte.com

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