



MANIVEST 宏傑

HONG KONG

Information Guide

Manivest Asia, Limited

宏傑亞洲有限公司

Unit 511, Tower 1, Silvercord, 30 Canton Road,
Tsimshashui, Kowloon, Hong Kong

Tel : (852) 2851 6752

Fax : (852) 2537 5218

Email : Enquiry@ManivestAsia.com

www.manivestasia.com

Hotline(Free of charge): 00800 3838 3800



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Chapter 1

HONG KONG

Introduction



Hong Kong is consistently described as the world's freest economy by highly reputable international institutions such as the Heritage Foundation and the Fraser Institute. Economic freedom has undoubtedly played a critical role in Hong Kong's success over the past few decades.

Hong Kong became a Special Administrative Region of the People's Republic of China on 1 July 1997. Hong Kong has inherited the best legal system from its previous colonizer – the United Kingdom. The Basic Law of Hong Kong, which is a mini-constitution governing the affairs of the city, guarantees that the system will remain unchanged for 50 years. Hong Kong has high autonomy in the running of its own affairs.

Hong Kong has a population of over 6.92million¹, with a GNP per capita of USD27,700². Economically, Hong Kong is known as a world-class financial and trade centre. It is a member of WTO since its establishment and is the most important gateway for investing into China.

A low tax system, an excellent regulatory framework, the rule of law upheld by an independent judiciary and strong anti-corruption enforcement are all important factors in drawing international business to Hong Kong. As of June 1, 2007 more than 1,246 international corporations had established regional headquarters in Hong Kong, while more than 2,644 had set up regional offices. The major advantages of using Hong Kong as a jurisdiction for business and asset planning are as follows:-

¹ Provisional figure at June 2007

² Data as of year June 2007



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Taxation

Hong Kong's tax system is one of the most business-friendly in the world. Companies pay only 17.5%³ Profits tax and there is unlimited carry-over of losses. The maximum tax rate for individuals is 16%⁴. There is no value added, sales or capital gains tax. Furthermore, there is no withholding tax on dividend and interest.

Another salient feature of the Hong Kong tax system is its reliance on the territorial concept of taxation. Only income sourced in Hong Kong is taxable. There is no global taxation and no restriction on capital flows into, or out of, Hong Kong.

Hong Kong has only one Double Taxation Treaty with Belgium and Thailand, which comes into effect on 1 April 2004. Moreover, Hong Kong has a Double Taxation Arrangement, which is in essence a double tax agreement on profits and personal income only.

Infrastructure and economy

Hong Kong has never been considered as a tax haven. It is not on the list of OECD or FATF. **In fact, Hong Kong was the chairman of the FATF for the year 2001-2.** Hong Kong is best known for its modern, efficient and low cost communications, and is in a prime geographical position for business expansion into China and other Asia economies. Hong Kong is located between the time zones of major markets in North America and Europe. It is also a regional transport hub providing easy access to North America, Europe, Asia and the Pacific.

Hong Kong is the world's 10th-largest exporter of services, only second to Japan in Asia. It is a prominent financial centre – the second largest stock market in Asia; the world's 12th largest banking centre and 6th largest foreign exchange market.

Law and legal system

Hong Kong law is based on the British common law. Foreign judges of common law origin are sitting in the courts of Hong Kong. The Final Court of Appeal is located in Hong Kong.

³ The Profit tax will be reducing to 16.5% on 1 April 2008.

⁴ Data as of year 2007, the maximum tax rate will be change to 15% on 1 April 2008.



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Workforce

Hong Kong has a group of over 3.64 million⁵ flexible, well-educated, resilient and industrious workforces. They have entrepreneurial flair, economic vibrancy, creativity and high productivity. Hong Kong offers nine years of compulsory and free education. 96% received education beyond the nine years of compulsory education and 30% of the population, aged between 17 and 20, receives tertiary education.

Professional support

Many leading international professional legal and accounting firms have offices in Hong Kong. Some of their Asia headquarters are also established in this metropolitan city. There are at present almost 1,363⁶ CPA firms, more than 705 solicitor firms and over a hundred barrister firms in Hong Kong.

Hong Kong and China

Hong Kong as a port for China trade can be traced back to more than 150 years ago. Nowhere in the world can be comparable to Hong Kong in the provision of expertise, information and facilities in accessing the huge market of China. Politically speaking, Hong Kong is part of China. Subject to the Basic Law, Hong Kong will continue to retain a high autonomy under the one country, two systems concept.

Hong Kong has always been Mainland China's biggest trading partner. About 50% of the external investments in the Mainland come from Hong Kong. In addition, Hong Kong is the major entreport for China's trade in the world - 90 per cent of Hong Kong's re-exports originate from, or are destined for the Mainland.

Up to 2006, there are more than 2,905 Mainland enterprises operating in Hong Kong. Hong Kong companies or Hong Kong/China joint ventures employ some 5,000,000 people in the adjacent Guangdong province of the Mainland. Hong Kong is a major source of funding for Mainland enterprises

⁵ Provisional figure June 2007

⁶ Provisional figure September 2007



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Following the accession of China to WTO, Hong Kong would be an ideal location for foreign companies to set up regional headquarters in monitoring the business in China. Hong Kong can supply them with the accounting and legal expertise for their entry into this lucrative market.

Closer Economic Partnership Arrangement

On 29 June 2003, a “Closer Economic Partnership Arrangement” (CEPA) was signed between Hong Kong and Mainland China. CEPA gives Hong Kong business a major competitive advantage over other countries in doing business in China in goods, services, or trade and investment.

1 Commodity Trading

All goods imported from China into Hong Kong will continue to enjoy zero-tariffs, while 374 categories of goods, including over 4,000 items imported from Hong Kong into China will enjoy zero-tariffs concessions under CEPA. Other goods import into China will be expected to have the same treatment from 1 January 2006.

2 Services

Under CEPA, 18 services industries are allowed to practise in the mainland provided that they meet certain criteria, including management consulting, exhibitions and conventions, advertising, legal services, accountancy, medical services, the real estate market, construction engineering, transport, wholesale distribution, logistics, tourism, audiovisual, banking, securities, telecommunication and insurance.

3 Trade and Investment Facilitation:

China and Hong Kong have agreed to promote cooperation in seven areas, including Customs Clearance Facilitation, Quarantine and Inspection of Commodities, Quality Assurance and Food Safety, Cooperation of Small and Medium-Sized Enterprises, Cooperation in Chinese Medicine and Medical Products, Electronic Commerce, Trade and Investment Promotion, and Transparency in Laws and Regulations.

Chapter 2

Formation and Management of Hong Kong Corporations

A Hong Kong corporation is a company registered under the Companies Ordinance which is either:-

- A company limited by shares
- A company limited by guarantee or
- An unlimited company

Over 99% of trading concerns are companies limited by shares.

Incorporation Procedures

The procedure for incorporation is simple: one or more persons of full age and capacity, of any nationality and domicile, may sign the Memorandum and Articles of Association. The Articles of Association so executed is then registered at the Companies Registry, whereupon the corporation acquires legal personality after the issuance of Certificate of Incorporation.

It is not necessary for the parties with an interest in the corporation to be in Hong Kong for the purpose of incorporation.

If the interested parties are not in Hong Kong or if they are not able to act as subscribers, a nominee will execute the Memorandum and Articles of Association on their behalf and immediately upon incorporation, the nominee will assign the parties all of their rights, titles and interests.

Shelf companies are available in Hong Kong.

Powers of the Corporation

The corporation may perform all lawful acts and exercise all powers provided for in its Memorandum of Association and in the Companies Ordinance of Hong Kong, subject only to the restrictions of its Articles of Association, if any.

Share Capital

There is no minimum capital requirement for most of the trading concerns, except the following:-

- Banks
- Insurance Companies
- Stock Brokers

The corporation must have an authorized capital. The authorized capital of the corporation is stated in terms of a certain sum of money of any currency divided into a stated number of shares with a given stated par value each (for instance HK\$10,000 divided into 10,000 shares with par value of \$1.00 each).

It is common for companies in Hong Kong to register HK\$10,000 as authorized capital and to increase the capital if necessary. There is also no requirement for the minimum capital to be issued and called.

Shareholders

Minimum **one** shareholder, who can either be individual or corporation, is required for a corporation. Shareholders need not be residents nor do they need to have visited Hong Kong before.

Shareholdings are evidenced by the issuance of share certificates and the "Return of Allotments" of the company filed with the Companies Registry. The Register of Shareholders is kept at the Registered Office of the company.

There is no requirement for a private company to register the details of the beneficial owner in the name of his nominee.



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Directors

There is no residency requirement for directors. At least **one** director who is either individual or corporation is to be appointed.

Directors are officers of the company whereas shareholders can also control the operation of the company by assigning nominee directors. Directors need not be shareholders.

Company Secretary

A company secretary **MUST BE** a Hong Kong resident or a corporation incorporated in Hong Kong. One company secretary is required. If there is only one director in the company, the sole director cannot also be the secretary.

It is a common practice for foreign investors to appoint a nominee secretary to act on their behalf. The company secretary is responsible for fulfilling all statutory requirements of the corporation, including filing of statutory documents with the Companies Registry and various government departments.

Registered Office

Hong Kong Corporations are required to keep a registered office in Hong Kong. It is also a common practice for foreign investors to use the address of a professional firm as the corporation's registered office address.

Business Registration

Hong Kong Corporations are required to apply for a business registration certificate from the Inland Revenue Department even if they do not carry on any business.



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Annual Shareholder Meeting and Return

Hong Kong Corporations are required to hold an annual shareholder meeting once a year. The function of this meeting is to consider and receive financial statements, declare dividends and to appoint auditors and directors. Meetings may be held anywhere unless restricted by the Articles of Association. Resolutions signed by 95% of the shareholders of the corporation will also be treated as duly passed at the meeting.

Written resolution in lieu of Annual General Meeting is permissible under the Companies Ordinance.

Annual return reporting the particulars of shareholdings and directors should be submitted within 48 days after the Annual General Meeting.

Accounting and Audit

The corporation is required by law to keep adequate books and to conduct audit once a year. Audit can only be conducted by Certified Public Accountants in Hong Kong. There is no provision for filing of accounts with the Companies Registry.

Summary of Features

Type of company	Private Company limited by shares
Governing corporate legislation	Companies Ordinance (Ch 32, Laws of Hong Kong)
Time-scale for incorporation	8 to 15 working days
Availability of ready-made companies	Available
Minimum and maximum number of shareholders	Minimum one. Maximum 50.
Statutory minimum paid-up capital requirements	None
Standard authorised capital	HK\$10,000
Residency requirement on shareholders or shareholders' meetings	None
Information published relating to shares and shareholders	Registered shareholders published.
Minimum and maximum number of directors	Minimum one. No maximum.
Are corporate directors permitted?	Permitted for private companies
Information published relating to directors	Directors' details published.
Nationality and residency requirements of directors	None
Must accounts be filed publicly?	No
Must accounts be audited, and if so by whom?	Yes, Auditors must be qualified under the Professional Accountant Ordinance.
Must the company have a registered presence in the territory of incorporation?	Yes, Registered Office.
Is there a public register of company charges?	Yes
Company seal	Metallic common seal required
Re-domiciliation provisions	Not permitted

Formation of Hong Kong Private Companies

Company Categories

According to the Hong Kong Companies Ordinance, there are three different types of company. Currently, most companies are limited by shares.

- Company Limited by Shares
- Company Limited by Guarantee
- Unlimited Liabilities Company

Introduction to Private Company Limited

- The company should have at least one shareholder of any nationality
- The number of shareholders should not be more than 50
- There is no upper limit of capital (Minimum HKD 0.01)
- The Memorandum & Articles of Association must prohibit the transfer the public issue of shares and debentures and has restrictions on the transfer of shares
- Shareholders need not to be resident of Hong Kong

There are two ways to set up a Hong Kong Private Company

1. Tailor made Company

- a) Company could be established by “subscribers”. In most of the cases, a professional accountant or lawyer in Hong Kong can help the subscribers to prepare for the setting up of the company. The accountant or lawyer can also act as the subscribers for the shareholder of the company
- b) After the company is formed, the accountant or lawyer can leave the company by transferring the shares to the shareholders. The shareholder can become a director and/or company secretary. The formation of a new company takes around two weeks.

2. Acquisition of Existing Shelf Company, (Change of Company’s name after Acquisition of Existing Shelf Company)

Some corporate services companies in Hong Kong maintain a list of “Shelf Company” for ready use. It will take about three working days for acquisition of a shelf company. In order to save time and cost, you can acquire a shelf company for immediate operations. The name of the shelf company can be changed afterwards. Change of company name takes around one week.

The Procedure of Establishing a New Company

- a) **Checking of a company name** – Before registration of a new company, the name of the proposed company (in English, Chinese or both English and Chinese) should be check against existing company names in the Companies Registry to avoid duplication.
- b) **Formation of Shareholders Meeting** –Shareholders can appoint one or more of them to be the subscriber. Alternatively, they can appoint professional accountants as their “nominee” subscriber. Subscriber should take at least one share in the company. After the formation of the company, all other shareholders can take up shares in accordance to their agreement.
- c) **Board of Directors** – one or more person or corporation, of any nationality, can be appointed as director of the company.
- d) **Registered Office** - all companies, for the purpose of company registration and business (tax) registration, should have a registered office in Hong Kong. You can consider using the “registered office” services of our firm.
- e) **Memorandum and Articles of Association.** Memorandum and Articles of Association of the company is the constitution of the company. It is not mandatory to have a shareholders agreement. We shall provide you with a standard Memorandum and Articles, in addition. In addition, the terms and conditions agreed among shareholders can also be detailed in the Memorandum and Articles of the Company, but note that this document is a public document and can be inspected by the public. To keep privacy, we recommend you to have a shareholder agreement in addition to the Memorandum and Articles.
- f) **Appointment of Company Secretary.** – A company secretary must be a Hong Kong resident or Hong Kong corporation. He acts as the bridge between the Hong Kong Government and the company. Our firm can act as nominee company secretary, and look after the statutory requirements of your company.
- g) **Approval from the Companies Registry.** – After all documents have been prepared; we shall submit these documents to the companies to the Companies Registry for approval.
- h) **Business Registration** – After approval, a certificate of incorporation will be issued by the Companies Registry. The company should apply to the Inland Revenue Department (tax department) for a Business Registration Certificate, after completion of all these procedures; the company can now be operated.

HONG KONG HOLDING COMPANIES

Using Hong Kong Corporate Structures in International Tax Planning – Holding Companies

Introduction

Choosing the location of holding company or regional holding company can be a daunting decision for many international structures. The minimization of tax, cost and risk are the main concerns. With the robust economy of China, coupled with the accession of China and Taiwan into WTO, much interest has been seen in investing in the Greater China or even the Asia Markets. Some investors may prefer to set up appropriate holding structures within Asia.

Criteria for Choosing a Suitable Jurisdiction for Holding Companies

Low Cost and Risk

Considering cost and risk, a favorable jurisdiction for setting up holding companies should have the following characteristics: (1) There is no minimum capital requirements; (2) Except in case of public companies, there is no requirement to file accounts with the company house, thus avoiding financial information being available to the public; (3) Ease of setting up, relocation and dissolution when the company is no longer needed; (4) Possess some forms of investor protection agreements with major trading nations.

Favorable Tax Rates

Considering tax, there should be (1) No tax on the income earned by its foreign subsidiaries, or the income of the holding company is exempted from any form of taxes; (2) No withholding tax on distribution (dividends) and non-resident shareholders can receive dividends without tax; (3) No or low Capital Gains tax on disposal of interest in the subsidiaries; (4) Possess a wide network of Double Taxation Treaties to reduce the tax on dividends, interest and royalty received from treaty countries.

Other Factors

Other factors include: (1) Stable government and definite government policies; (2) Free flow of capital and a stable currency; (3) Image of an international financial centre; (4) Ease of listing and raising of capital.

Not all jurisdictions provide all of the above features. Those which come close to the list are, in Europe: United Kingdom, Portugal, Netherlands, Denmark, Luxembourg, Belgium, Cyprus; in Asia: Singapore and most notably, Hong Kong.

The Advantages of Using Hong Kong Holding Company in Corporate Development

Hong Kong is a unique and sensible choice for those international groups wishing to establish a regional base in Asia, taking advantage of its financial infrastructure and strategic location—being in the heart of Asia and doorstep of China. The advantages of using Hong Kong as a jurisdiction for holding companies are as follows

Taxation System

Hong Kong adopts one of the most pro-commerce tax systems in the world. Corporations are required to pay only 17.5%⁷ profits tax on their profits. There is no restriction on the loss being carried forward. There is no value added tax, capital gains tax or sales tax. In addition, there is no withholding tax on dividend and interest. Hong Kong adopts a taxation system based on the territorial principle. Only profits which arise in or derived from Hong Kong are subject to tax in Hong Kong. Income from outside Hong Kong is not subject to any form of taxation. There is no restriction from capital inflow into or outflow from Hong Kong. Except for the double taxation “arrangement” signed with China⁸, and a double taxation agreement with Belgium and Thailand, there is no other double taxation agreement signed⁹. Hence the concepts of “resident” and “domicile”, although not alien, are only applicable and considered in very limited circumstances¹⁰.

Dividends from overseas subsidiaries are not taxed in Hong Kong since they are not sourced in Hong

⁷ The Profit tax will be reducing to 16.5% on 1 April 2008.

⁸ Based on the OECD model

⁹ The Belgium-Hong Kong DTA is unique in that the dividends and capital gains earned by Hong Kong Holding company of Belgian companies attract a 0% withholding tax rate.

¹⁰ One of such circumstances is the determination of residence in applying the relief under double taxation agreement with China.



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Kong. Dividends from Hong Kong subsidiaries are exempted from taxation in Hong Kong under the Inland Revenue Ordinance. Since Hong Kong does not have any Double Taxation Agreement with any country, dividends from other countries may be subject to withholding tax at full rate at the country where the subsidiaries are situated.

By using Hong Kong as the regional holding company, the major income of this Hong Kong Company, dividend and interest are tax-free if arranged properly. Distributions to shareholders are tax-free, which is a favorable factor in raising capital.

A properly structured group can avoid the withholding tax by using an intermediary holding company between Hong Kong and the subsidiaries. The Intermediary holding company should be located in a low tax jurisdiction with extensive network of tax treaties with other countries; one of the best choices is Mauritius (Global Business Company Category I). In Asia, we may also use Singapore or Malaysia Companies. In Europe or America, we may use United Kingdom Companies.

Disposal of Subsidiary

There is no capital gains tax on disposal of overseas subsidiaries. Disposal of a Hong Kong subsidiary is subject to 0.2% stamp duty on the value of the shares transferred.

Trading Structures

Hong Kong Company is frequently used in trading structures as trading company or Agency Company to minimize cross-border tax, in particular investments into China. Taxes will be reduced by 50% or totally tax-free, if properly structured. For details, please refer to other technical notes issued by Manivest.

In recent years, the Inland Revenue Department has adopted an “Advance Ruling” system. The taxpayer may apply to the Commissioner for a ruling on how any provision of the Inland Revenue Ordinance applies to him or the arrangement specified in the application. This added predictability to the Hong Kong tax regime.

Finance Company

Taking the advantage of the first class banking industry and infra-structure of Hong Kong, Hong Kong Company is frequently used as regional financial company facilitating transactions in trade financing, fund raising, leasing and intra-group loans.



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Enhancement of Corporate Image

Hong Kong is a well-developed commercial and financial centre. Using Hong Kong Company as regional holding company can create a better corporate image, improving the confidence of your customers and investors towards your group.

Modern Companies Law Regime

Companies laws in Hong Kong has adopted the most advance features, follow closely the development in United Kingdom and international. Pending legislation regarding minority shareholders protection and class action will become effective in 2005.

Other Advantages of Using Hong Kong Company as Holding Company

Other than the reduction of tax burden, there are other additional advantages: -

1. Ease of setting up and maintenance: Only 14 days are required to set up a Hong Kong Company. Shelf companies are available only 8 days. Capital can be denominated in any currency. The costs of setting up and maintenance of a Hong Kong Company are relatively lower than most of the frequently used vehicles in other offshore jurisdictions. The cost of setting up a simple agency structure, including the drafting of agency agreement and the first year annual fee and government charges is around USD2,800. The annual maintenance cost is about USD1,700, including registered office, business registration, corporate secretary and government charges.
2. Ease of disposal: From November 1998, a "deregistration procedure" has been introduced into the Companies Ordinance which is a relatively economical procedure to dispose of dormant companies. Cost can be as low as USD1000.
3. Hong Kong's currency has been pegged with USD at HKD7.8 to USD1 for over 20 years. It also allows the free flow of capital.
4. Hong Kong's legal system is based on the English Common Law system. Foreigners appointed as judges before 1997 of common law origin are still sitting in the courts of Hong Kong. Hong Kong Government is pro-commence and relatively efficient. Company procedures are based on the U.K. system and are very simple. Hong Kong has a stable government and definite government policies
5. Professional services and image: Hong Kong is a renowned international financial center. Professional supporting services, legal services, banking services and other shipping related services can be arranged efficiently and economically. Besides, Hong Kong is not listed as a tax haven or un-cooperative financial center by the OECD and FTAF. In fact, Hong Kong was the Chairman of FATF for the year 2002. Hong Kong ranks the first in 2005 amongst 161 places as



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the freest economy in the world by the Index of Economic Freedom published jointly by the Heritage Foundation and the Wall Street Journal.

6. China Connection: Hong Kong is used by international groups as a hub for trading with China or as a stepping stone into China.

The Advantages of Using Hong Kong Holding Company in Capital Raising

From the viewpoint of investors, the risk in investing in a Hong Kong Company is relatively low. This is because (1) The political risk factor of Hong Kong is low (2) Hong Kong has a high market transparency (3) The structuring of shares and investors relationship in a Hong Kong is highly flexible. The liquidity of shares of listed company is high. Traditional and strategic investors can acquire, dispose and adjust their portfolio in a swift way. Therefore, they are prepared to accept a lower rate of return, thus reducing the cost of capital for the company.

Chapter 3

Taxation Of Hong Kong Corporations

Resident and non-resident corporations are generally taxed on income derived from Hong Kong source only. Foreign source income is not taxed even if remitted into Hong Kong. It is the source of income that determines whether the corporation attracts Hong Kong tax and not the origin of that corporation.

Major Taxes on Corporation

	Profits Tax	Property Tax ¹¹	Interest Tax
<i>Corporation carrying on trade or business in Hong Kong²</i>			
Income has HK source	Yes	No	No
Income has Foreign source	No	No	No

	2007/08 Tax Rates	2008/09 Tax Rates
Profits Tax	17.5%	16.5%
Property Tax – Corporation	16.0%	16%
Interest Tax	Nil	Nil

Concessionary tax rates are available for gains derived from qualified debt instruments and for offshore business of re-insurance companies.

¹¹ Income from properties in Hong Kong will be taxed together with profit from business under the head of Profits Tax.

Taxable Income

Basis for Computation of Taxable income

When a corporation receives both local and foreign income, related expenses will be proportionally deducted. Except capital expenditure, all expenses wholly and exclusively incurred in the production of assessable profits are allowed for Profits Tax purposes.

Expenditure on scientific research and payments on technical education are 100% deductible. There is no upper limit for all kinds of expenditures, except that it should be reasonably incurred in the production of taxable income.

There is no thin capitalization rule in Hong Kong. All interests are deductible as long as they are borrowed from a recognized financial institution or from an entity whose income is also chargeable under profits tax.

Dividends

Dividends received by and paid from a corporation is not subject to any tax.

Capital Gains

There is no capital gains tax in Hong Kong, and capital revenue is not taxable. However, a transfer of right to receive income is taxable notwithstanding the revenue is of capital nature.

Depreciation

In computing assessable profits for Profits Tax purposes, the tax authority provides the following rules in connection with depreciation on capital expenditures:-

	Initial Allowance	Annual Allowance	
Industrial Buildings	20%	4%	On construction costs
Commercial Buildings	Nil	4%	On capital expenditure
Refurbishment Expenses	Nil	25%	incurred [1]
Plant & Equipment			
• Computer	100%	Nil	
• On scientific research	100%	Nil	
• Others	60%	10-30%	On the balance of capital expenditure incurred

* [1] Available to capital expenditure on commercial buildings only

Operating Loss

Operating loss for a corporation carrying on business in Hong Kong can be used to set-off taxable profits for all business of the corporation in future years, which are not necessary in the same line with the business incurring losses. Losses may not be carried backward or relieved against profits of associated companies but the government is considering the proposal for group relief

Non-resident and Agents

A non-resident will be chargeable to tax either directly or in the name of his agent in Hong Kong if he receives Hong Kong source of income.

Royalties from Film Patents and Trademarks

Royalties received by a non-Hong Kong entity relating to the use of film patents and trademarks are deemed to be sums derived from Hong Kong. Profit is taken to be 30% of the amount received. The effective tax rate is therefore 5.25% of the amount received.

Patent Rights Used in Hong Kong

Expenditure incurred for the purchase of patent rights for business with chargeable income in Hong Kong is 100% deductible as an expense, except when the seller is an associate of the taxpayer.

Double Tax Agreement

Hong Kong has Double Taxation Treaty with Belgium and Thailand. Moreover, Hong Kong has a Double Taxation Arrangement, which is in essence a double tax agreement on profits and personal income only.

	Dividend	Interest	Royalty
China	5% ¹² / 10%	0% / 7%	7%
Thailand	10%	10%	5% -10%
Belgium	0% / 5%	10%	5%

Advance Rulings

A taxpayer may apply to the Commissioner of Inland Revenue for a ruling on how any provision of the Inland Revenue Ordinance applies to him or the arrangement specified in the application. Full particulars will need to be provided before an advance ruling can be given.

¹² For shareholding more than 25%

Chapter 4

Consideration for Offshore Profits – Hong Kong Companies

Hong Kong adopts one of the most pro-commerce tax systems in the world. Corporations are required to pay only 17.5%¹³ profits tax on their profits. There is no restriction on the loss being carried forward. There is no value added tax, capital gains tax or sales tax. In addition, there is no withholding tax on dividend and interest. Hong Kong adopts a taxation system based on the territorial principle. Only profits which arise in or derived from Hong Kong are subject to tax in Hong Kong. Income from outside Hong Kong is not subject to any form of taxation.

However, there is actually no law or regulations which govern how the Inland Revenue Department will consider whether certain profits are 'offshore' in nature. We can only draw some observations from cases which the Court has decided.

Trading activity

If a company is principally engaged in trading activities in Hong Kong, Hong Kong Inland Revenue Department ("IRD") will initially presume that the profits are fully taxable. However, IRD will consider that no liability to profits tax arising, if the entity

- Issuing or accepting an invoice on the basis of a contract already concluded overseas
- Absence of permanent establishment in Hong Kong
- Suppliers and customers of the company are not located in Hong Kong
- Neither the purchase nor sale contract is effected in Hong Kong

The Practice Note consider that profits derived from re-invoicing company is not taxable to Hong Kong tax if the company carries on no real trading activities in Hong Kong, but nobody can guarantee it. All relevant factors will be examined to finally determine the issue.

¹³ The Profit tax will be reducing to 16.5% on 1 April 2008.

Service fees

The services are taxable if the services which give rise to the payment of the fees are performed in Hong Kong.

Exemption

According to Departmental Interpretation and Practice Note no. 21 issued by the Inland Revenue Department, there may be cases where the activities of a Hong Kong trading business are limited to the following -

- issuing or accepting an invoice (not order) to or from an ex-Hong Kong customer or supplier (whether related or not) on the basis of contracts of sale or purchase already effected by an ex-Hong Kong associate;
- arranging letters of credit;
- operating a bank account, making and receiving payments; and
- maintaining accounting records.

This situation commonly arises when a Hong Kong business, as a member of a group and pursuant to group directives, carries out the above activities and “books” the profits in Hong Kong. Provided the activities of the Hong Kong business do not include the acceptance or issue of sale or purchase orders in or from Hong Kong, the profits would not be taxable.

Under the current practice of Inland Revenue Department, the profit generated from the above operational mode is most likely not liable for Hong Kong Profits Tax. Please note that now IRD consider to revise the current practice.



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Chapter 5

How Maninvest Can Help You

The directors and management of Maninvest are professionals in the offshore industry having served the Asia markets for more than twenty years. Through our offices in Hong Kong, Shanghai and Macau as well as our associates in other Asia cities, we offer a full range of comprehensive value-added services to professional advisors and their clients.

Maninvest offers the following services:

- Incorporation of Hong Kong and other onshore/offshore companies and structures
- Full corporate management services
- Registered office, business office, mail redirection and business centre (available in selected locations only)
- Accounting services
- Re-invoicing services
- Asset protection and preservation advisory services
- Business establishment services
- Market exploration services

Maninvest Xing Zhong (Shanghai) Consulting Co Ltd

Room 2205, Block A, Universal Mansion,
172 Yu Yuan Road, Jingan District, Shanghai
Zip: 200040
Tel: (86 21) 6249 0383
Fax: (86 21) 6249 5516
MP: (86 21) 138170170241
Email :Shanghai@ManinvestAsia.com.cn

Maninvest Asia Limited

Unit 511, Tower 1, Silvercord, 31 Canton Road,
Tsimshatsui, Kowloon, Hong Kong
Tel : (852) 2851 6752
Fax (852) 2537 5218
Email :Hongkong@ManinvestAsia.com

Maninvest Macau Maninvest Asia Lda.

Rua do Campo N°202
Edf Associacao das Senhoras 7°, andar D, Macau
Tel : (853) 2870 3810
Fax : (853) 2870 1981
Email :Macao@ManinvestAsia.com

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