

HONG KONG TAX

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PROPOSED TAX CONCESSIONS FOR SHIPPING-RELATED ACTIVITIES



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Highlight

The Hong Kong Government introduced the Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-Related Activities) Bill 2022 (Bill) into the Legislative Council on 15 June 2022. The Bill proposed to amend the tax legislation to provide for tax concessions to attract shipping commercial principals (namely ship managers, ship agents and ship brokers) to set up presence in Hong Kong.

Anti-abuse features are incorporated to safeguard the integrity of the Hong Kong tax system and comply with international tax rules. Subject to the enactment of the legislation, the tax concessions will apply to sums received or accrued on or after 1 April 2022.

Overview of the proposed tax concessions

Tax concessions will be available to a qualifying shipping commercial principal (ie a qualifying ship agent, qualifying ship manager or qualifying ship broker) from carrying out a qualifying activity (ie a qualifying ship agency activity, qualifying ship management activity or qualifying ship broking activity) in Hong Kong:-

- (a) the profits derived by a qualifying shipping commercial principal from carrying out a qualifying activity in Hong Kong will be subject to a profits tax rate at 8.25% (ie half of the profits tax rate for corporations at 16.5%); and

(b) the profits derived by a qualifying shipping commercial principal from carrying out a qualifying activity for an associated shipping enterprise¹, which is entitled to a concessionary tax rate or income exemption under the

Inland Revenue Ordinance (IRO), will be subject to the same concessionary tax rate or income exemption as that applicable to the associated shipping enterprise.

Conditions to be met in order for the tax concessions to apply

Qualifying requirements	Particulars
(1) Qualifying shipping commercial principal	<p>A qualifying shipping commercial principal must be a standalone corporate entity predominantly engaging in the qualifying shipping-related activities that are carried out by itself or arranged to be carried out in Hong Kong.</p> <p>If the shipping commercial principal carries out other non-qualifying shipping-related activities that generate income, it must satisfy the safe-harbour rule (ie the percentage of profits and assets related to those activities should be not more than 25% of its aggregate profits and assets).</p> <p>A shipping commercial principal that fails to satisfy the safe harbour rule may apply to the Commissioner of Inland Revenue (CIR) for determination.</p>
(2) Qualifying activity	<p>A ship agency, ship management or ship broking activity carried out by a qualifying shipping commercial principal is a qualifying activity if the activity is carried out in the ordinary course of the principal's business carried on in Hong Kong. Ship agency activity, ship management activity and ship broking activity are defined.</p>
(3) Minimum number of qualifying shipping-related activity	<p>The minimum numbers of qualifying shipping-related activities that need to be carried out for a year of assessment are as follows:-</p> <p>Ship agents – at least one qualifying ship agency activity</p> <p>Ship managers – at least two qualifying ship management activities</p> <p>Ship brokers – at least one qualifying ship broking activity</p> <p>A shipping commercial principal that fails to satisfy the minimum number of qualifying shipping-related activity may apply to the CIR for determination.</p>
(4) Central management and control requirements	<p>The central management and control of the qualifying shipping commercial principal must be exercised in Hong Kong.</p>
(5) Substantial activity requirements	<p>A qualifying shipping-related activity would be considered to be carried out in Hong Kong or arranged to be carried out in Hong Kong if the average number of qualified full-time employees in Hong Kong and the total amount of operating expenditure incurred in Hong Kong in a year of assessment are, in the CIR's opinion, adequate. In any event, the following threshold must be met:</p> <ul style="list-style-type: none"> - at least one full time qualified employee; and - operating expenditure must be no less than HK\$1,000,000.
(6) Election in writing	<p>A shipping commercial principal must make an election in writing that the tax concession applies to it. The election, once made, is irrevocable.</p>

¹ An associated shipping enterprise refers to a person who is a ship lessor, ship leasing manager, ship operator or ship owner entitled to tax concessions or exemption under section 14P(1), 14T(1) or 23B of the IRO and (a) over which the qualifying entity has control, (b) which has control over the qualifying entity, or (c) which is under the control of the same person as the qualifying entity

Anti-avoidance provisions

- Transactions entered into with associates that are not in accordance with the arm's length principle would be subject to transfer pricing adjustments.
- The tax concessions would be denied if the main purpose, or one of the main purposes, of the arrangement entered into is to obtain a tax benefit for profits tax under the IRO or under a tax treaty.
- Tax deduction for service fees paid by a payer subject to the full profits tax rate (16.5%) to a connected qualifying shipping commercial principal subject to tax at half rate (8.25%) would be reduced by reference to the amount of tax savings obtained by the qualifying shipping commercial principal.

Comments

The proposed tax concessions effectively extends the tax concessions currently available to Hong Kong based ship lessors, ship leasing managers and ship operators to shipping commercial principals with the ordinary course of business conducted in Hong Kong. We welcome the Government's move to facilitate the development of the maritime industry in Hong Kong.

In anticipation of a potential domestic minimum tax under the BEPS 2.0 initiative, shipping commercial principals in a large multinational group may not be benefited by the profits tax concession. We trust the Government will continue to actively explore other non-tax incentives in order to consolidate the overall capabilities of Hong Kong as a leading international maritime centre.

Taxpayers are encouraged to consult with their tax advisors in cases of doubt.

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