YUTLAND

Short Taxes
Hong Kong 2020

Investment basics:

Currency – Hong Kong Dollar (HKD)

Foreign exchange control – Hong Kong does not impose controls on foreign exchange.

Accounting principles/financial statements – Hong Kong Financial Reporting Standards apply. Hong Kong-incorporated companies must prepare annual audited financial statements. Public companies must file annual financial statements with the Companies Registry. Private companies are not required to file annual financial statements with the Companies Registry, but must maintain proper books of account.

Audited financial statements must be submitted to the Inland Revenue Department (IRD) with the annual profits tax return filing (except for small corporations).

Principal business entities – These are the public and private limited liability company, partnership, sole proprietorship and branch or representative office of a foreign corporation.

Corporate taxation:

Rates

Corporate income tax rate 8.25%/16.5%
Branch tax rate 8.25%/16.5%
Capital gains tax rate 0%

Residence – Hong Kong does not operate on a tax residency basis. In the context of double taxation agreements, a Hong Kong resident generally is a company incorporated in Hong Kong or a company incorporated outside Hong Kong that is centrally managed and controlled in Hong Kong.

Basis – Hong Kong operates a territorial system of taxation, with tax levied on income arising in or derived from Hong Kong. Only Hong Kong-source income is subject to profits tax. Branches are taxed in the same way as subsidiaries.

Taxable income – Corporations, partnerships, trustees and bodies of persons carrying on a trade, profession or business in Hong Kong are subject to tax on Hong Kong-source profits (excluding profits arising from the sale of capital assets). Foreign companies (including branches of foreign companies) carrying on business in Hong Kong and deriving Hong Kong-source income are treated in the same way as domestic companies. In determining the source of profits, Hong Kong generally applies the "operations test," which involves identifying the activities that are effective in generating the profits and the location where these activities are carried out.

Certain types of receipt that may not be caught by the general profits tax charging rules are specifically brought into the Hong Kong tax net via provisions in the Inland Revenue Ordinance (IRO) that deem the sums to be taxable; for example, royalties for the use of various types of intellectual property (IP) in Hong Kong (see "Royalties" under "Withholding tax").

Expenses generally are deductible to the extent they are incurred in the production of profits that are chargeable to tax. However, expenditure of a capital nature generally is not deductible.

Rate – A two-tier profits tax rate regime applies: 8.25% for corporations (7.5% for unincorporated businesses) on the first HKD 2 million of assessable profits, and 16.5% for corporations (15% for unincorporated businesses) on the remainder of assessable profits. Where a corporation is a partner in a partnership, the concessionary tax rate of 8.25% will apply to only the first HKD 2 million of assessable profits, prorated based on its share in the partnership. To avoid abuse of the two-tiered tax regime, each group of connected entities can nominate only one entity to apply the two-tier tax rates.

Surtax – No

Alternative minimum tax – No

Taxation of dividends – Dividends paid from profits that already have been subject to Hong Kong tax are not taxable in the hands of shareholders. Dividends received from foreign companies are not taxable because they are foreign-source income.

Capital gains – Hong Kong does not tax capital gains. However, gains on the disposal of assets may be subject to profits tax if the disposal constitutes a transaction in the nature of trade (a factual determination).

Losses – Tax losses may be carried forward indefinitely and offset against future taxable profits of the company. Specific anti-avoidance legislation prevents the purchase of a loss company for the sole or main purpose of obtaining a tax benefit. Losses cannot be carried back or transferred to other companies.

Foreign tax relief – Hong Kong operates a territorial tax system under which only income/profits sourced in Hong Kong are taxable. Double taxation, therefore, typically is not an issue in Hong Kong. Where a tax treaty applies, double taxation generally can be eliminated by tax credits.

Participation exemption – Hong Kong does not have a participation exemption. **Holding company regime** – Hong Kong does not have a holding company regime.

Incentives – There are a number of preferential tax regimes to encourage different industries or activities, including the following:

- An enhanced deduction for R&D expenditure;
- A tax exemption for onshore and offshore funds;
- Concessionary tax rates for corporate treasury centers, reinsurance and captive insurance businesses and aircraft leasing businesses; and
- A tax exemption for gains from qualified debt instruments.

Compliance for corporations:

Tax year – Tax is charged on the assessable profits for a year of assessment (YOA). The basis period of a YOA is the accounting period ending in the YOA.

Consolidated returns – Hong Kong does not allow the filing of consolidated returns and there are no provisions for relief of group losses. Companies in the same group must file tax returns and pay tax individually.

Filing and payment – The IRD issues profits tax returns annually, usually on the first business day of April, for companies to report the information required in the return for the accounting year ended in the previous YOA, supported by audited financial statements (where appropriate). The tax return must be filed within the prescribed time limit, usually within one month from the date of issue. If a tax representative is appointed, the tax return filing due date may be extended under the "block extension" scheme.

Assessments are issued by the IRD when the tax return is received. Companies (and unincorporated businesses) are required to pay a provisional profits tax, based generally on the preceding year's profits. This payment is used to offset against the final profits tax for that YOA. Any excess payment is applied against the provisional profits tax payable for the following year.

Penalties – A surcharge and penalties apply for failure to comply with the filing and payment obligations. **Rulings** – Taxpayers may request an advance ruling from the IRD on the application of provisions of the IRO. Advance pricing arrangements (APAs) also are possible.

Personal taxation:

Individual income tax rate	**Net chargeable income (after Rate allowances and deductions)**	**Rates**
	Up to HKD 50,000	2%
	HKD 50,001 – HKD 100,000	6%
	HKD 100,001 – HKD 150,000	10%
	HKD 150,001 – HKD 200,000	14%
	Over HKD 200,000	17%
Capital gains tax rate		0%

Residence – The IRO does not provide a definition of residence, but a specific reference is made to a residence requirement for the purpose of personal assessment for individual taxpayers. An individual is regarded as "ordinarily resident in Hong Kong" if he/she resides in Hong Kong with a sufficient degree of continuity, i.e. habitually and normally resides in Hong Kong with only temporary or occasional absences of long or short duration.

Basis – Individuals are subject to salaries tax on income from employment, an office or a pension derived from Hong Kong. Any person, including locally employed individuals and expatriates who derive Hong Kong-source employment income, is subject to salaries tax. An individual who visits Hong Kong for no more than 60 days in a tax year (from 1 April to 31 March of the following year) is not liable to salaries tax on employment income. However, a stay exceeding 60 days in a tax year may result in salaries tax being assessed on the employment income derived from services rendered in Hong Kong.

Hong Kong does not levy tax on dividends, interest or capital gains earned by individuals.

Taxable income – Individuals are taxed on their total Hong Kong income from employment, less deductible expenses (e.g. charitable donations, self-education expenses) and allowances. The source of employment income is determined by the place where the employment contract is negotiated, concluded and enforceable; the residence of the employer; and the place where the employee's remuneration is paid. Income from non-Hong Kong employment is deemed to be sourced in Hong Kong if it is attributable to services rendered in Hong Kong. Taxable income includes salaries, commissions, bonuses, awards, gratuities, allowances and other benefits derived from employment. The taxable value (or rateable value, if lower) of a rent-free residence provided by an employer or its associates is presumed to be 10% of the employee's income (4% or 8% for hotel and hostel accommodation, depending on the number of rooms). This treatment also applies to reimbursement of the rent paid for the employee's accommodation, subject to proper control exercised by the employer. Dividend income is not taxed, but gains from exercising share options are taxable. Benefits convertible to cash and education benefits for the children of employees are taxable. Certain pensions also are taxable. Directors' fees received by directors of a company, the control and management of which is exercised in Hong Kong, are chargeable to salaries tax irrespective of where the director resides.

Unemployment compensation is not taxable. Severance payments and long-term service payments that must be paid under the Employment Ordinance are not subject to salaries tax. Any payment exceeding the amount calculated under the Employment Ordinance may be subject to salaries tax.

Rates – Individuals are taxed at progressive rates on their net chargeable income (i.e. assessable income less deductions and allowances). The marginal tax rates range from 2% to 17% with a cap at the standard rate of 15% on assessable income (i.e. taxable income without the deduction of allowances).

Capital gains – Hong Kong does not levy tax on capital gains earned by individuals.

Deductions and allowances – Expenses are allowable if they are wholly, exclusively and necessarily incurred to produce income subject to salaries tax. Self-education expenses of up to HKD 100,000 may be deducted. Other deductions include home loan interest up to HKD 100,000 and elderly residential care expenses of up to HKD 100,000. Mandatory contributions to the Mandatory Provident Fund (MPF) or Recognized Occupational Retirement Scheme are deductible, up to HKD 18,000 per annum. Donations exceeding HKD 100 to approved charities may be deducted, up to a maximum of 35% of assessable income less other deductions.

For YOA 2019/20 (i.e. as from 1 April 2019), qualifying premiums of up to HKD 8,000 paid by taxpayers or their spouse as a policyholder of a voluntary health insurance scheme policy for an insured person may be deducted. Qualifying annuity premiums paid by taxpayers or their spouse as a policyholder of a qualifying annuity policy under which annuity payments are receivable by an annuitant and MPF voluntary contributions paid are deductible up to a maximum of HKD 60,000.

Income subject to salaries tax is reduced by allowances before the tax rates are applied. The following allowances are available: HKD 132,000 for a single person; HKD 264,000 for a married couple; HKD 132,000 for a single parent; HKD 120,000 for each child; HKD 50,000 for dependent parents or grandparents (aged 60 and above); and HKD 25,000 for dependent parents or grandparents (aged 55-59).

Foreign tax relief – To avoid double taxation where income is derived from a jurisdiction that has not concluded a tax treaty with Hong Kong, unilateral relief (i.e. an exemption of the income from salaries tax) may be available if an employee is subject to a tax similar to salaries tax in another country for services provided in that country and the foreign tax has been paid. To eliminate double taxation for income derived from a jurisdiction that has a tax treaty with Hong Kong, relief may be available in the form of a tax credit under the relevant treaty.

Compliance for individuals:

Tax year – The YOA is 1 April to 31 March.

Filing status – Tax returns are filed on an individual basis. For a married couple living together, where both spouses have employment income, they may choose to file a joint or separate assessment. An individual taxpayer can choose to be assessed under personal assessment where different types of taxable income may be aggregated for tax assessment purposes.

Filing and payment – The IRD issues tax returns to individual taxpayers on the first business day of May each year. The tax return for individuals must be filed within one month from the date of issuance. An extension of one month will be granted automatically if the tax return is filed electronically.
An employee and its employer must file separate returns reporting all remuneration accruing to the employee for the YOA, including taxable benefits. Assessments are issued upon the IRD receiving the tax returns.
Salaries tax generally is payable in two installments:
Final salaries tax for the YOA ended on the previous 31 March is payable in January or February, along with 75% of the provisional salaries tax due for the current YOA; and
The balance of the provisional salaries tax is payable in April, following the end of the YOA.

Penalties – A surcharge and penalties apply for failure to comply with the filing and payment obligations.

Rulings – Taxpayers may request an advance ruling from the IRD on the application of provisions of the IRO.

Withholding tax:

Type of payment	**Residents**		**Nonresidents**	
	Company	Individual	Company	Individual
Dividends	0%	0%	0%	0%
Interest	0%	0%	0%	0%
Royalties	0%	0%	4.95%/16.5%	4.95%/16.5%
Fees for technical services	0%	0%	0%	0%

Dividends – There is no withholding tax on dividend distributions from a Hong Kong entity to a resident or nonresident.

Interest – There is no withholding tax on interest payments from a Hong Kong entity to a resident or nonresident.

Royalties – Royalties for the use of, or the right to use, most types of IP in Hong Kong, or where the royalty payments are deductible for the payer, are deemed to be taxable in Hong Kong. The amount deemed taxable is 30% of the gross amount of the royalties paid, resulting in an effective rate of 4.95% (for a corporation) in general. If a royalty is paid to an affiliated nonresident and the IP previously was owned by a person carrying on business in Hong Kong, 100% of the royalty is deemed to be taxable, resulting in an effective rate of 16.5% (for a corporation). The two-tier tax rates regime also applies to a nonresident recipient.

The payer of royalties to a nonresident is required to withhold the tax and remit that amount to the IRD.
If a person contributes to any IP through development, enhancement, maintenance, protection or exploitation in Hong Kong and income is derived by an associated nonresident from the use of such IP, the part of the income that is attributable to the value creation contributions in Hong Kong will be regarded as taxable income of the person that contributed to the IP.

Fees for technical services – There is no withholding tax on fees for technical services paid from a Hong Kong entity to a resident or nonresident.

Branch remittance tax – No

Anti-avoidance rules:

Transfer pricing – The transfer pricing rules generally follow the OECD guidelines and require transactions with related parties to be on arm's length terms. The rules allow the IRD to adjust the profits or losses of an enterprise where the actual compensation made or imposed between two related persons differs from what would have been agreed between independent persons, and the difference results in a tax advantage. The transfer pricing rules apply to related party transactions, including the sale, transfer and use of assets and the provision of services. Domestic transactions that do not give rise to a Hong Kong tax difference may be exempt from the transfer pricing rules.
Hong Kong has adopted the OECD's recommended three-tiered documentation structure, comprising a master file, local files and country-by-country (CbC) reporting for constituent entities of certain multinational entity groups. The legislation provides for an advance pricing agreement (APA) regime with unilateral, bilateral and multilateral APAs.

Interest deduction limitations – Although there is no thin capitalization or similar rule in Hong Kong, there are specific rules governing the deduction of interest expense. For example, no deduction is allowed for interest paid to a nonfinancial institution if the recipient is not subject to tax in Hong Kong on the interest, except where the interest is paid to an overseas associate by a taxpayer that carries on an intragroup financing business. There also are some anti-avoidance measures, such as a "secured-loan test" and an "interest flow-back test."

Controlled foreign companies – Hong Kong does not have CFC rules. **Hybrids** – Hong Kong does not have anti-hybrid legislation.

Economic substance requirements – To qualify for certain preferential tax regimes (e.g. aircraft leasing, corporate treasury center, captive insurer, reinsurer etc.), there are threshold requirements for the level of activity in Hong Kong. These thresholds are based on various indicators such as the number of full- time employees in Hong Kong engaged in the activity and the amount of associated operating expenditure incurred in Hong Kong.

Disclosure requirements – Hong Kong is one of the jurisdictions that has committed to the adoption of the OECD common reporting standard between tax authorities. The relevant rules require Hong Kong financial entities to report to the IRD information on financial accounts held by nonresidents located in countries that have agreed to an exchange of information on tax matters in accordance with bilateral competent authority agreements or a multilateral competent authority agreement under the Convention on Mutual Administrative Assistance in Tax Matters.

Exit tax – Hong Kong does not tax capital gains. However, gains on the disposal of assets may be subject to profits tax if the disposal constitutes a transaction in the nature of trade (a factual determination).

General anti-avoidance rule – General anti-avoidance provisions in the IRO may be invoked for any deliberate attempt to implement tax avoidance schemes through the use of artificial and fictitious transactions; the implementation of transactions with the sole or dominant purpose of producing a tax benefit; or the use of tax loss companies.

Goods and services tax:

Hong Kong does not levy VAT or sales tax.

Other taxes on corporations and individuals:

Unless otherwise stated, the taxes in this section apply both to companies and individuals.

Social security contributions – Both the employer and the employee are required to make regular mandatory contributions of 5% of the employees' relevant income to the MPF scheme, subject to the relevant minimum and maximum income levels. For an employee paid monthly, the relevant minimum and maximum income levels are HKD 7,100 and HKD 30,000, respectively. For employees whose monthly income is less than HKD 7,100, the employer is required to pay 5% as a contribution to the MPF scheme and the employee is not required to contribute. For employees whose monthly income is HKD 7,100 or more, the employer is required to pay 5% as its own contribution and deduct 5% as the employee's contribution to the MPF scheme (i.e. the employee's portion).

Real property tax – Property owners are taxed on rental income from property in Hong Kong. Property tax is charged at a standard rate of 15% of the net assessable value of the property, as determined by the rent, service charges and fees paid to the owner, less a statutory allowance of 20% on the net assessable value for repairs and maintenance. If a company includes rental income from property in its income subject to profits tax, it may deduct the amount of property tax paid from the amount of profits tax due or apply for an exemption from property tax.

Stamp duty – Stamp duty is charged on documents connected with the lease, sale or transfer of immovable property in Hong Kong, and the sale or transfer of Hong Kong shares. If property or shares are transferred for less than market value, stamp duty may be imposed based on the market value on the date of transfer.
Stamp duty on the transfer of Hong Kong shares is 0.2% of the value of the shares transferred (i.e. 0.1% for each of the bought note and sold note). An exemption may be available for intragroup transactions if certain conditions are satisfied.

The rate on the lease of immovable property is 0.25% of the total rent payable for a lease with a one-year term (or less). The rates are 0.5% and 1% of the annual or average annual rent for a lease with a term exceeding one year but not exceeding three years, and exceeding three years, respectively.

The maximum ad valorem stamp duty (AVD) on the sale and conveyance of nonresidential property is 8.5% of the value of property transferred. The AVD on residential property is a flat rate of 15%, with exceptions under certain circumstances. In addition, a special stamp duty (SSD) ranging from 5% to 20% is levied if the residential property is sold within 36 months. In addition to AVD and SSD, a buyer's stamp duty at a flat rate of 15% applies to residential property if it is acquired by any person (including a limited company), except a Hong Kong permanent resident.

Other – Individual taxpayers are subject to other levies include betting duty (25%-75%) and the Air Passenger Departure Tax, levied on all air passengers (12 years and above) departing Hong Kong, at HKD 120 per person. Hong Kong does not impose a payroll tax, capital duty, transfer tax, net wealth/worth tax or inheritance/estate tax.

Tax treaties: Hong Kong has signed over 40 double tax arrangement/agreements. Hong Kong signed the OECD multilateral instrument (MLI) on 7 June 2017.

Tax authorities: Inland Revenue Department (IRD)

Contact Yutland:

yeahh@yutland.com