

Hong Kong Tax Alert

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Hong Kong's company re-domiciliation regime in 2024

Hong Kong is set to implement a new company re-domiciliation regime (“New Regime”) in 2024, following a similar re-domiciliation mechanism for funds in 2021. This regime will allow foreign companies of different types and scales to change their place of incorporation to Hong Kong, providing a streamlined process for businesses. In this alert, we will provide you with a comprehensive overview of the upcoming re-domiciliation regime, including its key features, benefits, and the necessary considerations for companies looking to take advantage of this opportunity.

The Financial Services and the Treasury Bureau proposes that the New Regime be introduced by amending the Hong Kong Companies Ordinance (Cap. 622) (“CO”). The non-Hong Kong company (“Applicant”) that applies for re-domiciliation under the new regime will have to meet the following criteria and make an application to the Registrar of Companies along with an application fee:

General	<p>The Applicant’s type of company in its original place of incorporation is the same or substantially the same as one of the following types of companies that can be incorporated in Hong Kong:</p> <ul style="list-style-type: none"> ▶ private company limited by shares ▶ public company limited by shares ▶ company limited by guarantee ▶ private unlimited company with a share capital ▶ public unlimited company with a share capital <p>The Applicant has complied with the requirements (if any) of the law of its original jurisdiction in relation to the transfer of its incorporation.</p> <p>As at the date of application for re-domiciliation (“Application Date”), the Applicant’s first financial year end at its original jurisdiction has passed.</p>
Integrity	<p>The Applicant shall comply with all the requirements under the CO in respect of the incorporation of a local company.</p> <p>The Applicant will not be used for an unlawful purpose, contrary to the public interest or endangering national security.</p>
Member and creditor protection	<p>The application for re-domiciliation is made in good faith and not intended to defraud existing creditors of the Applicant.</p> <p>If the requirements of the Applicant’s original jurisdiction do not include consent to the re-domiciliation by the members of the Applicant, the members (i) have consented to the transfer by a resolution that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; and (ii) were given at least 21 days’ notice of the meeting and the proposed resolution.</p>
Solvency	<p>The Applicant can pay its debts as they fall due during the period of 12 months after the Application Date.</p> <p>The Applicant is not in liquidation or being wound up and no proceeding for liquidation or winding up against the Applicant is ongoing or pending.</p> <p>No receiver, or receiver and manager, is in possession of or has control over, any property of the Applicant and no relevant proceeding is ongoing or pending.</p> <p>No compromise or arrangement made between the Applicant and other persons is being administered and no relevant proceeding is ongoing or pending.</p>
Completion of deregistration	<p>The Applicant has to submit evidence of deregistration in its original place of incorporation within 60 days of its successful application</p>

Key features and considerations

1. Legislative amendments for inward re-domiciliation:

Legislative amendments are expected to be introduced in early 2024 to establish the inward re-domiciliation regime in Hong Kong. The regime aims to attract foreign companies to re-domicile to Hong Kong, offering several advantages over similar regimes, such as in Singapore which targets at more sizable companies. Notably, Hong Kong’s regime welcomes companies of all scales and will not require companies to undergo an economic substance test.

Since the introduction of the economic substance regime in offshore jurisdictions like Bermuda, the British Virgin Islands, and the Cayman Islands in 2019, there has been a possibility for these jurisdictions to step up their enforcement of the requirement for substantial economic activities. As a result, business groups might contemplate utilizing the proposed re-domiciliation regime to relocate their current companies incorporated in these offshore jurisdictions to Hong Kong with minimal disruption to their operations. Nevertheless, it is important to consider the potential implications of Hong Kong stamp duty of becoming a Hong Kong incorporated company, i.e., any subsequent transfer of the shares of the Applicant after re-domiciling to Hong Kong would potentially be subject to stamp duty in Hong Kong.

Key Features and Considerations (Continued)

2. Streamlined re-domiciliation process:

The proposed regime seeks to simplify the re-domiciliation process for businesses. Companies will be able to re-domicile without the need for court intervention, winding-up or re-incorporation processes. The regime will cover all five types of companies that could be formed in Hong Kong under the Companies Ordinance or their comparable types in the company's original place of incorporation.

3. Business continuity and legal identity:

Re-domiciled companies will retain maximum business continuity. They will maintain the same legal identity, including their rights, obligations, liabilities, property rights (such as intellectual property rights and existing contractual relationships) and corporate history. This ensures a seamless transition to the new jurisdiction.

4. Registrar of companies administration:

The Registrar of Companies will oversee and administer the proposed re-domiciliation regime. The approval of company re-domiciliation applications will depend on factors such as type of company, compliance requirements fulfillment in the original place of incorporation, integrity, member and creditor protection, and solvency.

The re-domiciled company would be required to de-register in its original place of incorporation within 60 days upon successful application, failing which its company registration in Hong Kong would be revoked. The proposed 60-day time limit for completing the de-registration process in the original place of incorporation aligns with Singapore's re-domiciliation regime. However, foreign incorporated companies with significant business operations in their original places of incorporation may require additional time to handle the tax clearance process, particularly if a tax audit is involved upon exit. It is advisable for the Registrar of Companies to take a practical approach when considering requests for an extension of time, taking into consideration the specific circumstances faced by the applicants. Furthermore, we recommend that applicants conduct a thorough review of any past tax matters in the original place of incorporation and develop an appropriate strategy for defending against potential tax audits.



Conclusion:

The upcoming company re-domiciliation regime in Hong Kong presents an exciting opportunity for businesses seeking to establish a presence in the region. With its streamlined process, business continuity, and favorable tax treatment, re-domiciling to Hong Kong can provide companies with increased flexibility and access to the vibrant market. As this regime takes effect, companies should carefully evaluate their options and consider seeking professional advice to ensure a smooth re-domiciliation process and maximize the numerous benefits offered by Hong Kong.

5. Compliance and amendments for re-domiciled companies

Following successful re-domiciliation and de-registration from its original place of incorporation, the re-domiciled company should observe statutory requirements of its kind as incorporated in Hong Kong.

Due to the potential variations in the legal systems between Hong Kong and the original jurisdictions of incorporation, re-domiciled companies may be required to amend its articles of association with regards to various matters. These include formalities related to annual meeting, protection of creditors' rights, appropriation and distributions.

Besides, there are several general considerations that need to be considered when a Hong Kong-redomiciled company is also relocating its business to Hong Kong. These include ensuring compliant transfer of assets and liabilities between jurisdictions, addressing employment, immigration, and tax reporting issues related to relocating employees to Hong Kong, obtaining necessary licenses for conducting business in Hong Kong, protecting and registering intellectual property rights, complying with data privacy laws and cross-border data transfer requirements, assessing any potential default events or contractual restrictions related to the re-domiciliation, and understanding the legal framework of Hong Kong along with ongoing compliance obligations and reporting requirements post-re-domiciliation.

6. Tax implications and transition issues:

The re-domiciliation process is not expected to affect the Hong Kong profits tax liabilities of a re-domiciled company. A company (regardless of its domicile) that carries on a business, trade or profession in Hong Kong is liable to pay Hong Kong profits tax on profits arising in or derived from Hong Kong from such business, trade, or profession. However, it is important to note that the re-domiciliation should not result in any change in the beneficial ownership of company assets or trigger any stamp duty implications. The Inland Revenue Ordinance is expected to be amended to address and deal with certain transitional tax matters, such as tax deduction for trading stock, bad debts, impairment losses on financial assets and depreciation of fixed assets, and provide greater certainty and guidance to re-domiciled companies.

In accordance with the definitions of "resident" found in most of the tax treaties concluded by Hong Kong, a company that is incorporated in Hong Kong would be considered a tax resident of Hong Kong. As a result, it seems that the re-domiciliation regime could potentially allow re-domiciled companies to be recognized as Hong Kong tax residents for the purpose of tax treaties. However, this would be subject to clarification by the Inland Revenue Department.

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