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Tax Consequences of investing in Hong Kong and China

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Overview

- Hong Kong SAR – a separate tax system
- China joins WTO
- Hong Kong's economic downturn
- China's economic boom

Hong Kong

- Commonwealth style system
- Form over substance
- Territorial basis of taxation
- No withholding taxes
- No capital gains taxes
- But no DTAs

“Other Taxes”

- Estate Duty
 - Individual assets
 - Invest through a company or trust
- Stamp Duty
 - Instruments and deemed instruments
 - Rates can sting at up to 2.75%
 - Hold companies offshore
 - Reorganisation techniques
- Property Tax

Employees – Salaries Tax

- Temporary stays
- Relief from tax elsewhere
- Benefits in kind – essential component of a package
- Directors beware

Profits Tax

- Rates – 16% Corporations/15% others
- What happens at home if I invest in Hong Kong?
- When am I liable to Profits Tax?
- Branches
 - What is a branch?
 - Electronic commerce
- No tax on capital gains or dividends
- Royalties and anti-avoidance

Tax Planning

The famous general, Sun Tzu, said aptly, “If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle”.

Tax Planning

- Use the territorial system to advantage
- Limit Hong Kong tax
- Take care in characterising profits
- Beware anti-avoidance provisions

China

- Changing systems
- A wide range of taxes
- Structuring the investment
- Residence based taxation
- Strong State Administration of Taxation
- Local government fees

Individual Income Tax

- Temporary stays
- Employment relationship
- Benefits in kind – essential component of a package
- Directors beware

Foreign Enterprise Income Tax

- Types of investment
 - Foreign investment enterprises
 - Foreign companies with establishments
 - No establishment but China sourced income

Special Rules

- Transfer pricing
- Dividends
- Interest
- Royalties

Tax Incentives

- Purpose
- Types
- Structure
 - Incentives
 - Tax holidays
 - Reinvestment refund
 - Repatriation of profits

Tax Incentives – The Future

- Phasing out
- Shift in focus
- Spread of incentives
- National treatment

Tax Planning

- Tax law an instrument of policy
- No separation of powers
- Take care of the Chinese partner
- Beware foreign exchange control
- Rely on tax treaties
- Discussions with the SAT

Moral:

Sun Tzu said, "Now the general who wins a battle makes many calculations in his temple ere the battle is fought. The general who loses a battle makes but few calculations beforehand. Thus do many calculations lead to victory, and few calculations to defeat: How much more no calculations at all! It is by attention to this point that I can see who is likely to win or lose."