



Inland Revenue Department
Hong Kong

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 29

**TAX RELATIONS BETWEEN
THE HONG KONG SPECIAL ADMINISTRATIVE REGION AND
THE PEOPLE'S REPUBLIC OF CHINA**

These notes contain reference materials on the tax relations between the Hong Kong Special Administrative Region and the People's Republic of China.

WONG Ho-sang
Commissioner of Inland Revenue

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INTRODUCTION

With the reversion of the sovereignty of Hong Kong to the People's Republic of China (PRC) it is opportune to outline how this will impact on tax relations between the Hong Kong Special Administrative Region (HKSAR) and the PRC. The following paragraphs reproduce, for general reference, extracts of the relevant provisions in the Basic Law and of a speech made by Deputy Commissioner Xiang Huaicheng, State Administration of Taxation, PRC in April 1997.

THE BASIC LAW

2. Administrative arrangements for the government of the HKSAR, under the principle of "one country, two systems", are set out in the Basic Law:

Article 5: "The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years."

Article 8: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

Article 73: "The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

(3) To approve taxation ..."

Article 106: "The Hong Kong Special Administrative Region shall have independent finances."

The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's Government.

The Central People's Government shall not levy taxes in the Hong Kong Special Administrative Region."

Article 107: *"The Hong Kong Special Administrative Region shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product."*

Article 108: *"The Hong Kong Special Administrative Region shall practise an independent taxation system.*

The Hong Kong Special Administrative Region shall, taking the low tax policy previously pursued in Hong Kong as a reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation."

Article 151: *"The Hong Kong Special Administrative Region may on its own, using the name 'Hong Kong, China', maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields."*

Article 153: *"The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.*

International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements."

SPEECH BY DEPUTY COMMISSIONER XIANG HUAICHENG

3. In the course of a speech made in Singapore in April 1997 Deputy Commissioner Xiang Huaicheng elaborated on the question of tax relations between the HKSAR and the mainland of the PRC. The following is an extract from his speech:

"In accordance with the Basic Law, after the reunification, Hong Kong will be a special administrative region of the People's republic of China. According to the plan of 'one country, two systems', capitalism will be retained in Hong Kong. As a highly autonomous administrative region, Hong Kong will practice, independently, its own laws and tax system. It will have its own power of tax legislation, design its own taxes, items and rates; confer tax concessions on its own and make its own decisions of other tax affairs as well. After the reunification, tax laws and regulations made in the mainland will not be applicable to Hong Kong.

1. The relationship between Hong Kong and the mainland with regard to concluding and implementing tax treaties. According to Article 153 of the Basic Law, 'The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.' In addition, consultation and agreement with the other signatory party is indispensable from the final decision of whether or not to apply the treaties to Hong Kong.

Viewing the practical operation of the 54 tax treaties China signed with foreign countries, none of them is applicable to Hong Kong because the taxes mentioned in all the treaties refer to those of the mainland only.

Since the concluding of tax treaties is based upon the result of the negotiation between two signatory parties on their own tax systems, requiring one signatory party with two different tax systems to negotiate with another signatory party having a unitary tax system will encounter unexpected technical barriers when coming to specific articles, not to say the implementation.

Besides, Article 151 of the Basic Law stipulates that ‘The Hong Kong Special Administrative Region may on its own, using the name ‘Hong Kong, China’, maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.’ In agreement with the essence, the Hong Kong Special Administrative Region may conclude and implement tax treaties and maintain or develop tax relations with other countries, areas and international organizations using the name ‘Hong Kong, China’.

2. Tax issues related to investment in and income obtained from the mainland by Hong Kong residents. *After the reunification, policies applicable to foreign companies, enterprises, economic organizations and foreign nationals will still be applicable to investment in and income obtained from the mainland China by Hong Kong people. The Central People’s Government will continue encouraging Hong Kong people to invest in the mainland. Those who voluntarily fulfill their tax obligations in accordance with the related laws and regulations can continue to claim for the tax privileges applicable to foreign investors.*

Pursuant to Article 116 of the Basic Law, ‘The Hong Kong Special Administrative Region shall be a separate customs territory’. After the

reunification, trade (purchase and sales of goods, excluding service) between Hong Kong and the mainland will still be regarded as transaction between the People's Republic of China and foreign companies, enterprises, or other economic organizations and individuals. That is to say imports from Hong Kong to the mainland will still be levied (or reduced in or exempted from) custom duties, value added tax and consumption tax in accordance with the tax laws concerned. Exportations from the mainland to Hong Kong may be entitled to refunds (or exemption) in agreement with the related regulations.

3. *Avoidance of double taxation by Hong Kong and the mainland after 1997.* *This is an issue that attracts most widespread attention from Hong Kong industrial and commercial field. In late 1980s, Hong Kong and the mainland tax authorities used to talk over the issue. Summarizing the tax practice of both Hong Kong and the mainland, we can see that the matter of double taxation avoidance does not prove to be a problem because Hong Kong practices tax jurisdiction policy (i.e. no levy of tax upon the income obtained outside Hong Kong) and the mainland has the stipulation that tax paid overseas may be credited. After reunification, if double taxation occurs between the Hong Kong Special Administrative Region and the mainland, solutions shall be sought out through consultations between the tax authorities of the Central People's Government of the P.R.C. and the government of the Hong Kong Special Administrative Region."*