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INTERNATIONAL WEALTH MANAGEMENT

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Private Enterprise

Wealth Planning Considerations in Hong Kong (SAR), China (HKSAR)

A GUIDE FOR CLIENTS OF MORGAN STANLEY INTERNATIONAL WEALTH MANAGEMENT

Hong Kong (SAR), China (HKSAR)

Morgan Stanley International Wealth Management offers highly personalised wealth management solutions for global entrepreneurs, high net worth families, executives and professionals. Leveraging the global resources and intellectual capital of our firm, International Client Advisors help clients pursue their personal, family and community goals. This report is part of the Asian Series produced in partnership with KPMG for the educational purposes of Morgan Stanley International Wealth Management clients.

Description of Hong Kong Special Administrative Region As a Jurisdiction

Hong Kong (SAR) became the Hong Kong Special Administrative Region (SAR) of the People's Republic of China (PRC) on 1 July 1997, and has operated since that date under the terms of the Basic Law. The Basic Law provides that the laws previously in force in Hong Kong (SAR), that is, common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, subject to amendment by Hong Kong (SAR).

a. Legal Considerations

MARRIAGE

Under the HKSAR law, the minimum age for getting married is 16 years old. There are no residential requirements for marrying parties, and the parties may be of any nationality. Parties are free to marry whomever they choose, provided that both are of the opposite sex and are single at the time of the marriage. A person may divorce their spouse and then marry another single opposite-sex party, or remarry their previous spouse.

CIVIL UNION/COMMUNITY PROPERTY

Civil partnerships and same-sex unions are not recognised in HKSAR. Under section 4 of the Marriage Reform Ordinance, marriage is defined as "the voluntary union for life of one man with one woman to the exclusion of all others...".

There is no matrimonial property regime in HKSAR. Each spouse owns and administers the property they acquired, whether before or during the marriage, and they can freely transfer their property without the consent of the other spouse during their marriage.

In the unfortunate event of a divorce, division of matrimonial assets will be made by the court in accordance to the Matrimonial Proceedings and Property Ordinance where the court must take into account a range of factors such as the conduct of the parties and all the circumstances of the case to arrive at what the court deems fair for the division of matrimonial assets. What constitutes a matrimonial asset, or when such assets fall into the matrimonial pot, would also depend on the unique situation of each case.

LEGAL CAPACITY

Under the HKSAR law, legal capacity is acquired at the age of 18.

PROBATE PROCESS

If the deceased died testate (i.e., there is a valid will appointing an executor), the executor is the only person who is entitled to apply for a grant of probate of the will. If no will is found or if the will has been revoked, the deceased would be considered to have died intestate and administrators are appointed by the court, in the form of a grant of letters of administration, to deal with the estate. These administrators are usually persons entitled to the estate under a set of rules laid down by law that take the place of a will (i.e., the Rules of Intestacy). If the appointed executor has died or is unwilling or unable to act, then administrators are appointed to carry out the terms of the will in their place.

Before the application for a grant of representation (the collective term for a "grant of probate" or "grant of letters of administration"), the executors or intended administrators need to prepare a detailed list of all assets and liabilities. Once the grant of representation has been issued, it has to be registered with the holders of the assets (e.g., banks and/or company registrars). Once the assets have been released, the liabilities of the estate (e.g., payment or make provisions for the payment of the deceased's debts, taxes, funeral and other expenses in relation to the estate) can be paid. Distribution of the estate can be made thereafter.

INHERITANCE—SUCCESSION PLAN

A spouse's inheritance may constitute a matrimonial asset of both spouses, which would be shared between parties in the event of a divorce. With careful planning and structuring, the likelihood of an inheritance being considered a matrimonial asset could be greatly reduced.

There is no specific legislation concerning nuptial agreements. While such agreements would not be held by HKSAR courts to be legally binding, consideration would be given to nuptial agreements entered into by parties under free will without pressure or undue influence with a full understanding of its implications, unless there are compelling circumstances or it would not be fair to hold the parties to their agreement.

ESTATE PLANNING/WILL

A valid will is important for an individual to avoid the application of the Rules of Intestacy on the distribution of their estate. It is advisable for a lawyer to be instructed to draw up the will. The lawyer would expect to meet the person making the will at some point when taking instructions, but it is not necessary for it to be executed in the lawyer's presence. Further, HKSAR recognises both local and offshore trusts as instruments used in estate planning.

The execution of a will must observe certain formalities. It must be signed by the testator in the presence of two independent witnesses (i.e., persons who do not stand to benefit under the will), who must then sign the will as witnesses in the presence of the testator and of each other. The will can be executed out of HKSAR.

A valid will made under the laws of another country will be treated as valid in HKSAR under certain conditions. Either when the will was executed or at time of their death, the individual must have been domiciled, habitually resident or a national of the other country.

Marriage automatically revokes all previous wills made, unless the will is made in contemplation of such marriage. Therefore one should make a will after marriage if one does not wish for their estate distribution to follow the Rules of Intestacy in HKSAR.

FORCED HEIRSHIP

There is no forced heirship regime in HKSAR, apart from certain land in the New Territories that may be affected by Chinese customary law. A testator may therefore leave their property to whomever they wish by way of executing a valid will.

b. Tax Updates

TAX REGIME AND GENERAL TAX FRAMEWORK

There is no general income tax in HKSAR. For income to be subject to tax, it must fall within one of the following three specific heads of taxation:

- Salaries tax—applicable on income from an office, employment and any pension;
- Profits tax—applicable on income from a trade, profession or business; or
- Property tax—applicable on income from land and buildings located in HKSAR.

Any income that is not within any of these specific heads of taxation is generally not subject to tax in HKSAR.

Taxation in HKSAR is imposed on a territorial basis. This means that the residence status of an individual or a company is generally not determinative when considering their liability to HKSAR tax. However, the concept of residency does have some importance in the application of some other tax provisions—such as double-taxation agreements.

Generally, an individual is regarded as tax resident of HKSAR if they ordinarily reside in HKSAR (i.e., have a permanent home in HKSAR) or stay in HKSAR for more than 180 days during a year of assessment. A company is regarded as a tax resident in HKSAR when it has been incorporated in HKSAR or, having been incorporated outside HKSAR, it is normally managed or controlled in HKSAR.

The HKSAR tax year, or year of assessment, runs from 1 April of a year to 31 March of the following year. The basis of assessment is the income accrued in the tax year for salaries tax and property tax. For profits tax, the basis of assessment is the accounting profits of the financial year ending within the year of assessment, with appropriate adjustments for tax purposes.

INDIVIDUAL TAX RATES

Individuals are generally subject to salaries tax on HKSAR-sourced employment income, with marginal tax rates ranging from 7% to 17%, with a cap at the standard rate of 15% on assessable income.

In addition, a person who carries on a trade, profession or a business in HKSAR will be subject to profits tax on the profits from that trade, profession or business that arise in or are derived from HKSAR, at a maximum tax rate of 15% for unincorporated bodies. Whether and where a person is carrying on a trade, profession or business are questions of fact (for further comments, refer to "Income Tax System for Investments" section).

Further, individuals will be subject to property tax on income derived from land and buildings located in HKSAR (refer to "Asset Tax" section).

CORPORATE TAX RATES

Where a company (e.g., a private investment holding company) carries on a trade, profession or a business in HKSAR and derives HKSAR-sourced profits, profits tax will generally be chargeable at the maximum rate of 16.5% on assessable profits.

Hong Kong has a two-tiered profits tax rate regime where the first HKD2 million of assessable profits of a corporation is taxed at 8.25% and for an unincorporated business is 7.5%. Any assessable profits exceeding this threshold will be taxed at the standard tax rates. For corporate groups, only one member of the group can apply the reduced rate.

INCOME TAX SYSTEM FOR INVESTMENTS

Investment income should be subject to HKSAR profits tax where all of the following conditions are met: (i) the investor carries on a trade, profession or business in HKSAR; (ii) the investor generates profits from such trade, profession or business; (iii) those profits or income arise in or are derived from HKSAR, excluding those arising from the sales of capital assets; and (iv) the income is not otherwise exempt from tax.

Whether a person is carrying on a trade, profession or business in HKSAR, as elsewhere, is a question of fact. Many investors take the position that the nature and scale of their activities do not rise to such a level. However, we caution that the threshold for being regarded as carrying on a trade, profession or business is very low.

In practice, where an individual is making investment decisions in HKSAR, their business is likely to be regarded as being carried on in HKSAR. Where a company is incorporated in HKSAR, has an office or place of business in HKSAR, central management and control of the company is exercised in HKSAR, or a significant portion of its business activities are undertaken in HKSAR, the person will likely be regarded as carrying on a business in HKSAR.

The broad general rule to determine whether profits arise in, or are derived from, HKSAR is that one must focus on the transactions that give rise to such profits and where the key activities in connection with those transactions are performed.

The same principles should be relevant to all types of taxpayers, including companies, trustees, and partnerships and individuals, all of whom are included in the definition of "person" for HKSAR-profits tax purposes.

Notwithstanding a prima facie liability to HKSAR profits tax, certain types of investment income are specifically exempt from tax. This includes income and gains from deposits with financial institutions, certain fixed income products as well as dividend income from companies subject to HKSAR profits tax.

As suggested above, HKSAR does not generally impose tax on income or gains that are offshore (i.e., non-HKSAR) sourced. This would include interest, dividends or gains from investments in foreign fixed income and equity products, as well as rent from real property located outside of HKSAR.

For completeness, it is noted that HKSAR has various exemptions from tax for different types of funds subject to the satisfaction of certain qualifying criteria. For clarity, these typically only apply to the fund itself (or in certain cases, to an investment holding company established by the fund) and not to investors in the fund.

It is also noted that property tax generally applies to income from property (land and buildings) held by an individual and located in HKSAR (refer to "Asset Tax" section). Salaries tax also applies to any gain realised by the exercise, assignment, or release of the right to acquire shares or stock in a corporation obtained by a person as the holder of an office or an employment of that or any other corporation.

Investors Versus iInvestees

HKSAR does not generally distinguish between investors or investees from a tax perspective. Additionally, no specific tax obligations should be imposed on investees for or on behalf of investors.

CAPITAL GAIN OR DIVIDEND WITHHOLDING TAX

There are no withholding taxes on capital gains, dividends, interest or any other income, whether paid to HKSAR residents or nonresidents.

TERRITORIAL TAX (NOT WORLDWIDE)

As Hong Kong operates a territorial source regime, only Hong Kong sourced profits derived by a person carrying on a business in Hong Kong is subject to Hong Kong profits tax.

ASSET TAX

A person (including individuals or companies) is subject to property tax at a standard rate of 15% on income derived from ownership of land and buildings situated in HKSAR. The charge is levied for a year of assessment on the rental income (net of any irrecoverable rent) in the year of assessment. The only deductions permitted are rates (where these are paid by the owner) and an allowance for repairs and outgoings equal to 20% of the rental income, after deducting rates paid. That said, a company can elect to only be subject to profits tax on this income.

Stamp Duty is imposed on the sale or lease of immovable property in HKSAR.

HKSAR STAMP DUTY

HKSAR stamp duty is imposed on certain types of instruments evidencing transactions, such as:

1. Assignments (i.e., sales) of commercial immovable property situated in HKSAR at a maximum rate of 4.25%;
2. Assignments of residential immovable property at a flat rate of 15% of the consideration or market value of the property (whichever is higher);
3. Lease of immovable property with rates ranging between 0.25% and 1%, depending on the lease term;
4. Sales and purchase of HKSAR stocks at a rate of 0.26%;
5. HKSAR bearer instruments at a rate of 3%; and
6. Duplicates and counterparts in relation to the relevant instruments at a fixed amount of HK$5 per instrument.

Additionally, Special Stamp Duty (SSD) applies to residential properties sold within three years, in addition to the ad valorem rates of stamp duty mentioned above, at a rate that ranges between 10% and 20% on the full sales proceeds.

CONTROLLED FOREIGN CORPORATION RULES

HKSAR does not have a Controlled Foreign Corporations (CFC) regime.

GIFT TAX AND ESTATE DUTY

There is no estate duty or gift duty in HKSAR.

GOODS AND SERVICES TAX

HKSAR does not have a value-added tax or a goods-and-services tax regime.

TRUSTS

Income derived by a trust will generally be taxable, where applicable, in the name of the trustee. In accordance with HKSAR-profits tax system, capital gains and offshore income derived by, for or on behalf of a trust (HKSAR based or not) should not be taxable, nor should trust distributions to beneficiaries in HKSAR.

IMMIGRATION OPTIONS

In general, unless a person has the right of abode or right to land in HKSAR, a visa or entry permit to work in HKSAR would be required. Foreign nationals may enter HKSAR with a visa or entry permit for a “visit”, employment as a professional, training, investment, study and/or residence as dependents.

Individuals permitted to enter HKSAR as a “visitor” may only engage in very limited business-related activities and must not take up employment. Visitors may also attend an event to deliver speeches/presentations without an employment visa or work permit if certain conditions are met.

The applicant for a visa or entry permit for employment as a professional should have a good educational background and proven professional qualifications. Both the applicant and sponsoring company in HKSAR are required to submit completed forms and supporting documents to apply for an employment visa, and it generally takes four weeks for the HKSAR Immigration Department to process an application.

Additionally, there are existing inward expatriate programs, such as Quality Migrant Admission Scheme and Admission Schemes for Talent, Professionals and Entrepreneurs. These programs grant a residency status to an individual but without any favorable tax benefits.

c. Tax Reporting and Obligations

Taxpayers are generally required to notify the Commissioner of the HKSAR Inland Revenue Department (IRD) that they are subject to tax in HKSAR no later than four months after the end of the relevant year of assessment. Notification is not required where a taxpayer has already been issued with a tax return for the relevant year of assessment.

Profits tax or salaries tax for a year of assessment is typically collected through the payment of provisional tax by taxpayers before the relevant tax return for that year is filed and the relevant final assessment is received. The provisional tax payable is calculated with reference to the final tax assessed for the preceding year. Property tax is collected through provisional property-tax demand notes, which may be issued to the owner when the property is first rented.

INCOME TAX AGREEMENTS

As of March 2022, HKSAR has concluded over 45 comprehensive double taxation agreements with various jurisdictions to eliminate double taxation of income. Several new tax agreements are expected to be finalised in the near future.

EXCHANGE OF INFORMATION

HKSAR has enabled the implementation of the latest international standard for the automatic exchange of financial account information from 1 January 2017, with the first exchanges of information taking place in 2018. Most income tax agreements signed by HKSAR include information exchange clauses. HKSAR has also concluded Tax Information Exchange Agreements (TIEAs) with the Faroes, Denmark, Greenland, Iceland, Norway, Sweden and the United States.

FATCA

HKSAR and the United States have been collaborating to improve international tax compliance and prevent tax evasion. Specifically, HKSAR has entered into an agreement with the United States to establish a framework under which HKSAR financial institutions are required to conduct established due-diligence procedures. The goal is to identify U.S. taxpayers with accounts with a relevant financial institution in HKSAR, and obtain consent from the relevant U.S. taxpayer for disclosing and reporting their aggregate financial information to the United States Internal Revenue Service (IRS).

CRS

Tax legislation regarding the implementation of the Common Reporting Standard (CRS) became effective on 30 June 2016. Currently HKSAR financial institutions are to collate information and report it to the IRD, reporting in over 70 jurisdictions. The IRD is already receiving information on HKSAR residents' financial investments in these jurisdictions.

About KPMG

KPMG member firms and its affiliates operating in mainland China, Hong Kong and Macau are collectively referred to as “KPMG China”. KPMG China is based in 25 offices, with around 12,000 partners and staff in Beijing, Changsha, Chengdu, Chongqing, Foshan, Fuzhou, Guangzhou, Haikou, Hangzhou, Nanjing, Qingdao, Shanghai, Shenyang, Shenzhen, Tianjin, Wuhan, Xiamen, Xi’an, Zhengzhou, Hong Kong SAR and Macau SAR. Working collaboratively across all these offices, KPMG China can deploy experienced professionals efficiently, wherever our client is located.

KPMG is a global network of professional services firms providing audit, tax and advisory services. We operate in 147 countries and territories and have more than 219,000 people working in member firms around the world. The independent member firms of the KPMG network are affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. Each KPMG firm is a legally distinct and separate entity and describes itself as such. In 1992, KPMG became the first international accounting network to be granted a joint venture licence in mainland China. KPMG was also the first among the Big Four in mainland China to convert from a joint venture to a special general partnership, as of 1 August 2012. Additionally, the Hong Kong firm can trace its origins to 1945. This early commitment to this market, together with an unwavering focus on quality, has been the foundation for accumulated industry experience and is reflected in KPMG’s appointment for multidisciplinary services (including audit, tax and advisory) by some of China’s most prestigious companies.

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