

FSIE update: expanding the scope of foreign-sourced disposal gains



On 13 October 2023, the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Bill 2023 ("the Amendment Bill") was gazetted. The Amendment Bill modifies Hong Kong's Foreign-sourced Income Exemption ("FSIE") regime by extending the scope of foreign-sourced disposal gains to cover all types of property, except for disposal gains derived by traders. The existing exception requirements, which include the economic substance requirement, participation requirement and nexus requirement, will remain unchanged and shall equally apply to the different types of disposal gains. Furthermore, a new intra-group relief will be introduced to defer the imposition of tax for the transfer of property between associated entities, subject to specific anti-abuse rules. The expanded FSIE regime is expected to take effect on 1 January 2024.

Main Amendments

Covered Income

Currently, disposal gains are only subject to the FSIE regime if they result from the sale of equity interests in an entity. The Amendment Bill will expand the scope of disposal gains to include that of any immovable or movable property. In this context, "immovable property" refers to land and buildings, whereas "movable property" refers to all other types of property, including equity interests and intellectual property ("IP").

Exclusion Relating to Traders

As the FSIE regime was intended specifically for foreign-sourced passive income, the Amendment Bill will provide an exemption for any non-IP disposal gains on assets that are derived from, or are incidental to, the carrying on of business as a trader. In this context, a "trader" will refer to any entity that sells or offers to sell property in its ordinary course of business.

Intra-group Transfer Relief for Disposal Gains

The Amendment Bill introduces an intra-group transfer relief for foreign-sourced disposal gains if the property is transferred between associated entities (i.e. where one entity has at least 75% of direct or indirect beneficial interest or voting rights in the other entity, or if a third entity is associated with both entities) and if both entities are subject to Hong Kong profits tax at the time of the sale.

To prevent abuse of the relief, the relief will cease to apply if:-

- the selling entity or the acquiring entity ceases to be chargeable to Hong Kong profits tax within 2 years after the subject sale; or
- the selling entity or the acquiring entity ceases to be associated with each other within 2 years after the subject sale.

Commissioner's Opinion ("CO") / Advance Ruling

To obtain tax certainty, affected taxpayers may apply for a CO on their compliance with the economic substance requirement in relation to non-IP disposal gains. If a favourable CO had already been obtained regarding the economic substance requirement for foreign-sourced interest, dividend and/or equity interest disposal gain, an application to expand the scope of the CO may be obtained to additionally cover relevant disposal gains under the expanded FSIE regime.

Upon the passage of the Amendment Bill and the coming into operation of the amendment ordinance, only applications for advance ruling can be applied in respect of the compliance with the economic substance requirement.

How we can help

With the expansion of the FSIE regime to cover all types of property disposal gains, affected taxpayers should proactively assess the impacts by seeking tax advice where necessary, including the applicability of the new relief measures. For taxpayers seeking tax certainty in the face of the expanded FSIE regime, we would recommend applying for a CO or advance ruling.

If you have any questions or wish to seek assistance on any of the above, please feel free to contact your usual PKF Tax executives.

Contact Us

PKF consists of over 400 offices, operating in 150 countries across five regions. We specialise in providing high quality audit, accounting, tax, and business advisory solutions to international and domestic organisations in all our markets.

PKF Tax and Business Advisory provides a wide range of comprehensive tax advisory services in respect of the International, Hong Kong and China matters.

If you require assistance in any compliance or advisory matters, please feel free to contact our teams.

<p>Henry Fung Tax Partner henryfung@pkf-hk.com</p>	<p>Jonathan Lau Tax Manager jonathanlau@pkf-hk.com</p>	<p>Tommy Wong Tax Manager tommywong@pkf-hk.com</p>	<p>David Li Tax Manager davidli@pkf-hk.com</p>	<p>Dickson Leung Tax Manager dicksonleung@pkf-hk.com</p>
--	--	--	--	--

PKF Hong Kong

26/F, Citicorp Centre, 18 Whitfield Road, Causeway Bay, Hong Kong

Tel: +852 2806 3822

Email: enquiry@pkf-hk.com

Website: www.pkf-hk.com

 [linkedin.com/company/pkf-hong-kong/](https://www.linkedin.com/company/pkf-hong-kong/)

 <https://www.facebook.com/PKFhk>



Follow us on WeChat

Scan the QR code and get the latest PKF Hong Kong news

IMPORTANT NOTE: The information contained in this document is only for general information and is not intended to address the circumstances of any particular entities or individuals. Accordingly, this document does not constitute accounting, tax, legal, investment, consulting, or other professional advice or services. No action should be taken solely on the basis of the contents of this document which only contain a brief outline of the relevant laws. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PKF tax partners or other tax advisers or liaise with the relevant tax authorities. We accept no responsibility or liability to any persons choosing to take action or implement business plans or activities solely or partially based on this document.

© 2023 PKF Hong Kong Limited | All Rights Reserved

PKF Hong Kong Limited is a member of PKF Global, the network of member firms of PKF International Limited and does not accept any responsibility or liability for the actions or inactions of any individual member or correspondent firm(s).