

New Tax Concessions for Shipping-Related Businesses with Operations in Hong Kong



Overview

In July 2022, the Hong Kong Legislative Council passed the Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Ordinance 2022 (the “New Law”), which takes retrospective effect and applies to sums received by or accrued to qualifying shipping commercial principals on or after 1 April 2022.

The New Law aims to attract overseas shipping commercial principals to set up their business presence in Hong Kong, with a view to stimulating local demand for shipping-related services and promoting the development of these shipping activities in Hong Kong, thereby making the tax regime in Hong Kong competitive vis-à-vis major competitors in the Asia-Pacific region.

Notably, subject to certain anti-avoidance provisions, the New Law provides a dedicated tax concession regime that offers tax incentives to qualifying shipping commercial principals (i.e. ship agents, ship managers and ship brokers) in Hong Kong as follows: -

- Qualifying profits derived by a qualifying shipping commercial principal from carrying out a qualifying activity in Hong Kong will be charged at a concessionary tax rate of 8.25%.
- Qualifying profits derived by a qualifying shipping commercial principal from carrying out a qualifying activity for an associated shipping enterprise, which is entitled to a concessionary tax rate or income exemption, will also be eligible for the same tax concession as the associated shipping enterprise.

Under section 14P(1), 14T(1) or 23B of the Inland Revenue Ordinance, an associated shipping enterprise refers to a person who is a ship lessor, ship leasing manager, ship operator or ship owner entitled to tax concessions or exemption and (a) over which the qualifying shipping commercial principal has control, (b) which has control over the qualifying shipping commercial principal, or (c) which is under the control of the same person as the qualifying shipping commercial principal.

Eligibility criteria

In order to be an eligible qualifying shipping commercial principal, there are a few requirements that taxpayers need to observe:

Qualifying Requirements	Details
Qualifying shipping commercial principals	<p>A qualifying shipping commercial principal must exercise its central management and control in Hong Kong. It has to be a standalone corporation predominantly carrying out the qualifying shipping-related activities in Hong Kong, subject to the safe harbour rules to be discussed below.</p> <p>To obtain the benefit of the regime, taxpayers will also have to meet a minimum threshold of relevant qualifying activity during a year of assessment: -</p> <ul style="list-style-type: none"> • Ship agents are required to carry out not less than 1 relevant qualifying ship agency activity. • Ship managers are required to carry out not less than 2 qualifying ship management activities. • Ship brokers concerned are required to carry out not less than 1 relevant qualifying ship broking activity. <p>Under the safe harbour rules, a shipping commercial principal is allowed to engage in non-qualifying activities provided that (1) the amount of profits derived from the qualifying shipping-related activities is at least 75% of the total profits accrued to the corporation during the basis period; and (2) the value of the assets used to carry out the qualifying shipping-related activities is at least 75% of the total value of all assets of the corporation as at the end of the basis period.</p> <p>In case where a corporation fails to qualify as a qualifying shipping commercial principal, it can obtain a determination from the Commissioner of Inland Revenue who may, on application by a corporation, determine whether it is a qualifying ship agent, qualifying ship manager or qualifying ship broker.</p>
Qualifying activities	<p>A qualifying activity is one which is “carried out in the ordinary course of the corporation’s business carried on in Hong Kong”. The qualifying activities that produce the qualifying profits for a year of assessment must be carried out in Hong Kong by the corporation or arranged by the corporation to be carried out in Hong Kong, and must not be carried out by a permanent establishment of the corporation outside Hong Kong.</p> <p>Further examples defining qualifying activities are set out in the Appendix.</p>

Qualifying Requirements	Details
Substantial activities requirement	<p>A ship agent, ship manager or ship broker must meet the following substantial activities requirements: -</p> <ol style="list-style-type: none"> (1) employ not less than 1 full-time qualified employee; (2) incur not less than HK\$1 million of annual operating expenditure for carrying out the core income generating activities (CIGAs) in Hong Kong; and (3) the number of full-time qualified employee and the operating expenditure for carrying out the CIGAs are deemed adequate by the Commissioner of Inland Revenue. <p>The CIGAs can be outsourced to a group company. In that case, the employees of and the operating expenditure incurred by a group company will be taken into account if certain conditions are met (e.g. whether an arm’s length service fee is charged by the group company and the shipping commercial principal has exercised adequate monitoring of the CIGAs performed by the group company).</p>
Opting into the regime	A taxpayer has the choice, and the onus to opt into the regime, once the choice has been made it is irrevocable.

The tax concessions are only applicable for qualifying profits of qualifying shipping commercial principals in sums accrued on or after 1 April 2022.

Anti-avoidance principles

If a qualifying shipping commercial principal decides to apply the new regime, it should take into consideration the following specific anti-avoidance policies:-

- Transactions between the qualifying shipping commercial principal and its associates in relation to any qualifying activities which are not charged on an arm’s length basis could be subject to transfer pricing adjustments.
- If the CIR deems that the main purpose, or one of the main purposes, of an arrangement entered into by the qualifying shipping commercial principal is to obtain a tax benefit under the Inland Revenue Ordinance or a tax treaty, the tax concessions would not apply.
- The tax deduction for service fees paid by a party that is subject to profits tax at the normal tax rate of 16.5% to its connected qualifying shipping commercial principal that is subject to the concessionary tax rate of 8.25% would be reduced by reference to the amount of tax saving obtained by the service fee recipient.

PKF's comment:

Remaining competitive in the maritime business landscape, Hong Kong continues its lenient shipping tax regime. The newly introduced tax concessions under the New Law, which are primarily in line with the tax concessions and exemptions already provided to ship lessors and ship leasing managers in 2020, will provide a more comprehensive concessionary tax regime for shipping commercial principals (e.g. qualifying ship agents, ship managers and ship brokers) to operate in Hong Kong. We believe that the New Law will strengthen Hong Kong's competitiveness in attracting more maritime enterprises to set up their business operations in Hong Kong, thereby fostering Hong Kong's position as a leading international maritime centre.

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- **“Shipping agency activity”** in relation to a person, means an activity carried out by the person on behalf of a ship lessor, ship leasing manager, ship operator or ship owner (collectively principal) in respect of the principal’s ships, masters and crews, cargoes or customers.
- **“Ship management activity”** in relation to a person, means any of the following activities carried out by the person for a ship lessor, ship leasing manager, ship operator or ship owner:
 - a) arranging for or supervising the dry-docking, repair, overhaul, alteration, upkeep, maintenance or lay-up of a ship;
 - b) arranging for the operation, crewing, voyage monitoring, certification, storage or scrapping of a ship;
 - c) ensuring through procurement contracts the adequacy of supplies, provisions, spares, stores and lubricating oil for a ship;
 - d) liaising with relevant authorities or other bodies on safety or manning requirements, or other similar requirements, for a ship;
 - e) appointing a surveyor or any other technical consultant for a ship;
 - f) appointing another person as a ship manager or ship agent, or engaging a stevedore, for a ship;
 - g) supervising the sale (including the physical delivery on sale) of a ship;
 - h) arranging for the provision of bunkers for a ship arranging for the sampling and testing of bunkers for a ship;
 - i) arranging for the sampling and testing of bunkers for a ship;
 - j) ensuring that organizational, flag state, local port state and international requirements applicable to a ship are complied with (including auditing such requirements); supervising the general efficiency of a ship;
 - k) supervising the general efficiency of a ship;
 - l) handling crew-related matters such as the provision of a qualified crew, the appointment of a crew manager, the provision of crew training, or the arrangement of crew insurance or payroll, for a ship;
 - m) arranging for the transportation of the crew of a ship (including such transportation for their repatriation) or related logistics;
 - n) supervising crew efficiency for a ship;
 - o) ensuring that requirements concerning medical examinations and the possession of medical certificates applicable to the crew of a ship are complied with;
 - p) awarding contracts, entering into alliances, or deciding on pooling, in respect of a ship;
 - q) securing the engagement of a ship by a ship operator for the carriage of cargoes;
 - r) planning a ship’s route and freight tonnage, including the issuance of voyage instructions;

- s) collecting or arranging for the collection of—
 - i. the freight of a ship; or
 - ii. the charter hire for a ship, or any other payment in exchange for a ship's use;
- t) arranging for or providing post-fixture services for a ship, including—
 - i. voyage estimating; and
 - ii. accounting in respect of, or calculating—
 - (A) hire;
 - (B) freight;
 - (C) demurrage; or
 - (D) dispatch moneys, due from or to charterers;
- u) arranging for surveys of a ship;
- v) making a purchase or sale of a ship, or a decision regarding its ownership;
- w) deciding on a ship's flag and registry;
- x) sourcing for or deciding on financing for the acquisition of a ship;
- y) arranging for the insurance for a ship or handling relevant insurance claims;
- z) advising on or supervising the construction, conversion or registration of a ship, including the approval of plans for a ship, based on a ship owner's requirements;
- za) arranging for, advising on or undertaking any work requiring technical expertise (including basic design and front end engineering work) for a ship;
- zb) arranging for or providing marine-related consultancy or technology services for a ship (including ones concerning the environmental, technological and vessel performance aspects);
- zc) arranging for port agency services or security services for a ship;
- zd) managing any risks ancillary or incidental to any activity mentioned in any other paragraph of this definition.
- **“Ship broking activity”** in relation to a corporation, means any of the following activities carried out by the corporation for a ship lessor, ship leasing manager, ship operator or ship owner—
 - a) the broking of sale and purchase of ships;
 - b) the matching of ship owners (who intend to build new ships) to shipyards based on the ship owners' requirements;
 - c) the matching of ships to—
 - i. cargoes; or
 - ii. ship owners or ship charterers;

- d) the valuation of ships;
- e) providing any research, consultancy or advisory service for, or in connection with, an activity mentioned in paragraph (a), (b), (c) or (d) (specified activity) that is carried out by the corporation.
- f) For the purposes of paragraph (e) of the definition of ship broking activity above, any research, consultancy or advisory service provided by a corporation for, or in connection with, a specified activity that is carried out by the corporation during the basis period for the year of assessment concerned is taken to be not so provided if the below specified condition is met.
- g) The specified condition is that the total fees and commissions derived by the corporation from the provision of the service exceed 20% of the aggregate fees and commissions derived by the corporation from the carrying out of all specified activities that are carried out during that basis period.

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