

Refined foreign source income exemption (FSIE) regime

23 February 2023



Speakers



Sharon To

Member, Taxation Faculty Member
Services Panel

Director, International Tax and
Transaction Services, Ernst &
Young Tax Services Limited

Email : sharon.to@hk.ey.com



Jerry Lau

Senior Manager, International Tax and
Transaction Services, Ernst & Young Tax
Services Limited

Email : jerry.lau@hk.ey.com

Background and overview of the refined FSIE regime



Background

- In October 2021, the European Union (EU) placed Hong Kong (HK) on its watchlist of non-cooperative jurisdictions for tax purposes.

The EU was concerned about:

Possible risks of **double non-taxation**

Lack of **substantial economic presence** in HK

Possible exploitation of the tax regime by **shell companies**

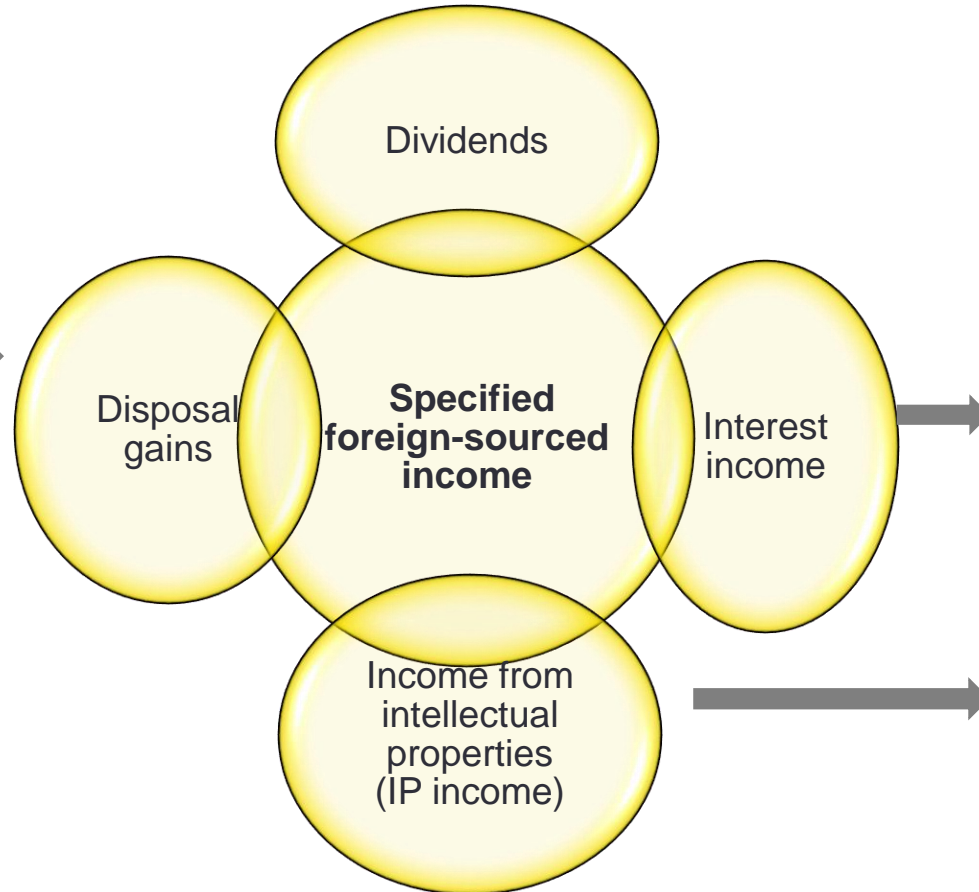
- Under the premise of supporting the combating of cross-border tax evasion, the government agrees to amend HK's FSIE regime by the end of 2022 with a view to bringing the amended regime into force from 1 January 2023.
- The Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Bill 2022 was passed into law on 14 December 2022. The new ordinance was gazetted on 23 December 2022 and is effective since 1 January 2023.

Overview of the refined FSIE regime

An **MNE entity** that carries on a trade, profession or business in Hong Kong, irrespective of its revenue or asset size



Received in Hong Kong



Exceptions from the deeming provisions

Economic substance requirement
(for interest income, dividends and disposal gains)

OR

Participation requirement
(for dividends and disposal gains)

Nexus requirement
(for IP income)

Exclusions

- ✗ Interest, dividend and disposal gain derived from or incidental to:
 - The business of a regulated financial entity; or
 - The profit producing activities of the taxpayer as required under the relevant preferential regime

► **Unilateral tax credit is available to relief double taxation**

Specified foreign-sourced income

Specified foreign-sourced income means any of the following income arising in or derived from a territory outside Hong Kong:



Interest
income



IP income – is defined only income from the use of, or a right to use, an IP asset (i.e., royalties and license fees).



Dividend
income



Disposal gains derived from the sale of equity interests (other than partnership interests) in an entity (disposal gains)

- However, any interest, dividend or disposal gain derived from or incidental to the business of a regulated financial entity, or the profit producing activities of the taxpayer as required under the relevant preferential regime will be excluded.
- Section 15I also deems a specified foreign-sourced income as not arising from the sale of capital assets even it is so arises if the section applies.
- Whether an income is earned passively or actively is not relevant.

In-scope taxpayers / covered taxpayers

- ▶ The charging or deeming provision under section 15I provides that only “an MNE entity carrying on a trade, profession or business in Hong Kong” will be subject to the proposed refined FSIE regime.
- ▶ There is a specific provision to provide that where an MNE entity is a Hong Kong resident person, its overseas permanent establishment (PE) outside Hong Kong would be regarded as a separate MNE entity carrying on a trade or business in the territory in which the PE is established.

▶ MNE entity

A person that is, or acts for, an MNE group or an entity included in an MNE group

▶ Entity

A legal person (other than a natural person); or an arrangement that prepares separate financial accounts, such as a partnership and a trust

▶ MNE group

A group that includes at least one entity or permanent establishment that is not located or established in the jurisdiction of the ultimate parent entity of the group

▶ Group

A collection of entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of those entities are required under applicable accounting principles to be included in the consolidated financial statements of the ultimate parent entity of the collection; or are excluded from the consolidated financial statements of the ultimate parent entity solely on size or materiality grounds or on the grounds that the entities are held for sale; or

An entity that is located in one jurisdiction and has one or more permanent establishments in other jurisdictions

Received in Hong Kong

A specified foreign-sourced income is regarded as received in Hong Kong when:

- (a) remitted to, or is transmitted or brought into, Hong Kong;
- (b) used to satisfy any debt incurred in respect of a trade, profession or business carried on in Hong Kong; or
- (c) used to buy movable property, and the property is brought into Hong Kong.



Received in Hong Kong - interpretation

Inland Revenue Department (IRD)'s illustrative examples 6 - 10

Company-HK was an MNE entity carrying on a business in Hong Kong. Its wholly-owned subsidiary in Jurisdiction-F, Subsidiary-F, declared dividends of F\$2 million. It maintained a bank account in Jurisdiction F to receive the dividends. The funds in the bank account were not remitted to Hong Kong. They were wholly used to acquire an immovable property in Jurisdiction F.

The dividends were received in Jurisdiction F and **never remitted back** to Hong Kong. They would not be regarded as received in Hong Kong and thus not be chargeable to profits tax under the new FSIE regime.

Company-HK was an MNE entity carrying on a business in Hong Kong. Its wholly-owned subsidiary in Jurisdiction-F, Subsidiary-F, declared dividends of F\$2 million. It received the dividends through a bank account in Hong Kong.

Since the dividends were received in Hong Kong, the new FSIE regime would apply to the dividends.

Company-HK was an MNE entity carrying on a business in Hong Kong. It kept its foreign-sourced dividend in its offshore bank account and later used the income for payment of dividend directly into an offshore bank account of its shareholder.

Since the foreign-sourced dividend was kept outside Hong Kong and used to pay dividend into the shareholder's offshore bank account without being remitted to Hong Kong, the dividend would not be regarded as received in Hong Kong under the new FSIE regime. The dividend would not be treated as used to satisfy a debt incurred in respect of a trade or business carried on in Hong Kong.

Received in Hong Kong - interpretation

Company-HK was an MNE entity carrying on a business in Hong Kong. It purchased raw materials from an overseas supplier for its business carried on in Hong Kong. Company-HK used its foreign-sourced interest income kept outside Hong Kong to settle the amount payable to the supplier through an overseas bank account of the supplier.

Since the foreign-sourced interest income was used to satisfy a trade debt incurred in respect of Company-HK's business carried on in Hong Kong, the income should be regarded as received in Hong Kong under the new FSIE regime, notwithstanding that the supplier was located outside Hong Kong and the debt was settled outside Hong Kong.

Company-HK was an MNE entity carrying on a business in Hong Kong. It acquired a movable property at HK\$5 million in Jurisdiction A. Company-HK used its foreign-sourced dividend kept in Jurisdiction A for settlement of the acquisition cost of the movable property. One year later, Company-HK brought the movable property into Hong Kong. At that time, the value of the movable property was HK\$7 million.

The foreign-sourced dividend was regarded as received in Hong Kong when the movable property was bought into Hong Kong. The taxable amount of the dividend was that applied to acquire the movable property (i.e., HK\$5 million), not the value at the time when the property was brought into Hong Kong (i.e., HK\$7 million).

Exceptions from the deeming provision

Specified foreign-sourced income received in Hong Kong will not be brought into charge if the MNE entity meets the exception requirements specifically for the particular types of incomes. The exception requirements are as follows:

Exceptions	Specified foreign-sourced income			
	Interest	Dividend	Disposal gain	IP income
Economic substance requirement	✓	✓	✓	
Nexus requirement				✓
Participation requirement		✓	✓	

Exception 1: Economic substance requirements (ESR)

Pure equity-holding entity

Meaning	An MNE entity which only: <ul style="list-style-type: none">▶ holds equity interests in other entities; and▶ earns dividends, disposal gains; and income incidental to the acquisition, holding or sale of such equity interests
Economic substance requirement	The MNE entity is required to: <ul style="list-style-type: none">▶ satisfy every applicable registration and filing requirement under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Limited Partnerships Ordinance (Cap. 37), the Business Registration Ordinance (Cap. 310); and the Companies Ordinance (Cap. 622); and▶ have adequate human resources and premises for carrying out the specified economic activities in Hong Kong
Specified economic activities	Holding and managing its equity participations in other entities

- ▶ The receipt of incidental interest income from a bank account used for the purpose of receiving the dividends and paying the company's expenses, and holding of an inter-company receivable balance incidental to the acquisition, holding or sale of equity investment, would not affect the company's status as a pure equity-holding entity (IRD's illustrative examples 15 and 17 refer)
- ▶ Existence of shareholder's loan made to investee entity, whether interest-free or not, will taint the taxpayer's status as a "pure equity-holding entity". (IRD's FAQ 17 refers)

Pure equity-holding entity

IRD's illustrative examples 19 & 20

Company-HK was a pure equity-holding entity incorporated in Hong Kong and held equity interests in one investee entity outside Hong Kong. While Company-HK engaged a service provider to handle the registration and filing matters under the BRO and the CO, it only had one nominee director and a bank account for receiving dividends in Hong Kong. The holding and management of equity investments were undertaken by the company's shareholders and directors outside Hong Kong.

Since Company-HK did not carry out the specified economic activities in Hong Kong, it could not meet the economic substance requirement.

Company-HK was a pure equity-holding entity incorporated in Hong Kong and held equity interests in one investee entity outside Hong Kong. Company-HK only had one nominee director and a bank account for receiving dividends in Hong Kong. It engaged a service provider to handle the registration and filing matters under the BRO and the CO, and to hold and manage, in Hong Kong, its equity participations in its overseas investee entity. Company-HK adequately monitored the outsourced activities in Hong Kong.

Since Company-HK's specified economic activities were outsourced to the service provider who carried out such activities in Hong Kong and that the outsourced activities were adequately monitored, it could meet the economic substance requirement.

Exception 1: Economic substance requirements (ESR)

Non-pure equity-holding entity

Meaning	An MNE entity that is not a pure equity-holding entity
Economic substance requirement	<p>The MNE entity is required to:</p> <ul style="list-style-type: none">▶ employ adequate number of employees with necessary qualifications to carry out the specified economic activities in Hong Kong; and▶ incur adequate amount of operating expenditure for carrying out the specified economic activities in Hong Kong <p>Each case will be considered on its own facts and circumstances. Factors that will be taken into account include:</p> <ul style="list-style-type: none">▶ the average number of employees having regard to the nature of the relevant activities▶ whether the employees are employed on a full-time or part-time basis;▶ whether the qualifications of the employees are related to the nature of the relevant activities;▶ the quantitative and qualitative aspects of the management and the administration of the taxpayer; and▶ whether adequate office premises have been used for undertaking the relevant activities
Specified economic activities	<p>Making necessary strategic decisions in respect of any assets the entity acquires, holds or disposes of; and managing and bearing principal risks in respect of such assets.</p> <p>IRD's FAQ 14: For interest income from loans, specified economic activities can be carried out through the holding of board meetings, strategic planning made by the finance department, etc.</p>



A certificate of resident status (COR) **cannot** serve as a proof of economic substance. (IRD's FAQ 13 refers)

Exception 1: Economic substance requirements (ESR)

Outsourcing of specified economic activities is permitted provided that:

- ▶ the specified economic activities are carried out by the outsourced entity in Hong Kong;
- ▶ the MNE entity has exercised adequate monitoring to ensure that the specified economic activities are carried out by the outsourced entity in Hong Kong;
- ▶ the outsourced entity is generally expected to charge the MNE entity a fee for the specified economic activities performed subject to the application of transfer pricing rules;
- ▶ the number of qualified employees employed and the amount of operating expenditure incurred by the outsourced entity in Hong Kong are commensurate with the level of specified economic activities carried out by the outsourced entity; and
- ▶ there must be no double counting if the outsourced entity provides services to more than one MNE entity.

Exception 1: Economic substance requirements (ESR)

Adequate monitoring on outsourcing

In monitoring the outsourcing of specified economic activities, an MNE entity must ensure that the outsourced entity has the capacity to perform the activities concerned in Hong Kong. Factors that will be taken into account include:

- ▶ nature and level of specified economic activities performed by the outsourced entity for an MNE entity;
- ▶ whether the outsourced entity has employed an adequate number of employees to perform the outsourced activities in Hong Kong;
- ▶ whether the outsourced entity has incurred an adequate amount of operating expenditure to perform the outsourced activities in Hong Kong;
- ▶ whether the outsourced entity has premises for carrying out the outsourced activities in Hong Kong;
- ▶ the number of MNE entities to which the outsourced entity provides services.

Documentation requirement

To prove that the outsourcing and a taxpayer's monitoring have taken place, it would be sufficient for a taxpayer to have an internal master service agreement or other proper documentation provided that the relevant details of the outsourcing arrangement (e.g., identities of the outsourcing entity and outsourced entity, nature of specified economic activities outsourced, fees charged and monitoring mechanism) are set out in the document. - IRD's FAQ 19 refers

Exception 2: Nexus requirement

- ▶ Nexus approach (adopted by Organisation for Economic Co-operation and Development (OECD) as a minimum standard) will apply in determining the extent of foreign-sourced IP income to be tax-exempt.
- ▶ Only income from a qualifying IP asset can qualify for preferential tax treatment based on a nexus ratio which is defined as the qualifying expenditures as a proportion of the overall expenditures that have been incurred by the taxpayer to develop the IP asset.

Qualifying IP

- a patent granted under the Patents Ordinance (Cap. 514)
- a patent application made under Cap. 514
- a copyright subsisting in software under the Copyright Ordinance (Cap. 528)
- any of the above intellectual properties granted, made or subsisted under the law of any place outside Hong Kong

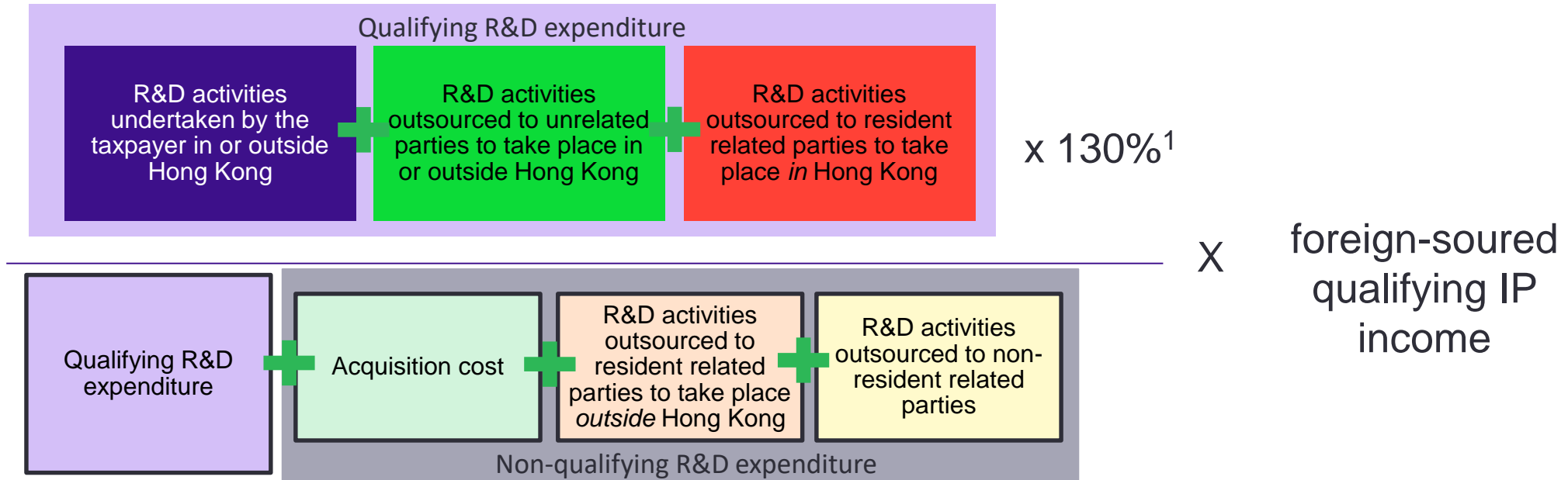
Marketing-related IP

- Trademark
- Copyright
- Brand name

Implications: Foreign-sourced IP income in respect of non-qualifying IP will be taxed when “received in Hong Kong”

Exception 2: Nexus requirement

The below formula would apply to determine the amount of income qualifying for profits tax exemption under the proposed refined FSIE regime:



Note:

1. Subject to a cap equal to the taxpayer's overall expenditures.
2. The ordinance contains specific definition of R&D expenditure for the purposes of nexus approach, which is much broader for the purposes of tax deduction under section 16B. In general, R&D expenditure includes any expenditure (including capital expenditure) incurred for an R&D activity that is connected to the qualifying IP asset. However, interest payments, payment for any land or building, and acquisition costs, are not included.
3. "R&D activity" for the purpose of the nexus requirement is defined in the same way as for the tax deduction of R&D expenditure in Hong Kong.

Exception 3: Participation exemption for dividend and disposal gain

The participation requirement provides an alternative to the ESR to facilitate an MNE entity which receives foreign-sourced dividend or disposal gain in Hong Kong to claim tax exemption.

Conditions for the participation requirement

- ▶ the MNE entity is a Hong Kong resident person, or where it is a non-Hong Kong resident person, it has a permanent establishment in Hong Kong to which the foreign-sourced dividend or disposal gain is attributable; and
- ▶ the MNE entity has continuously held not less than 5% of equity interests in the investee entity concerned for a period of not less than 12 months immediately before the foreign-sourced dividend or disposal gain accrues.

The participation exemption regime is also subject to specific anti-abuse rules:

- ▶ Switch-over rule
- ▶ Main purpose rule
- ▶ Anti-hybrid mismatch rule

Switch-over rule (subject to tax condition)

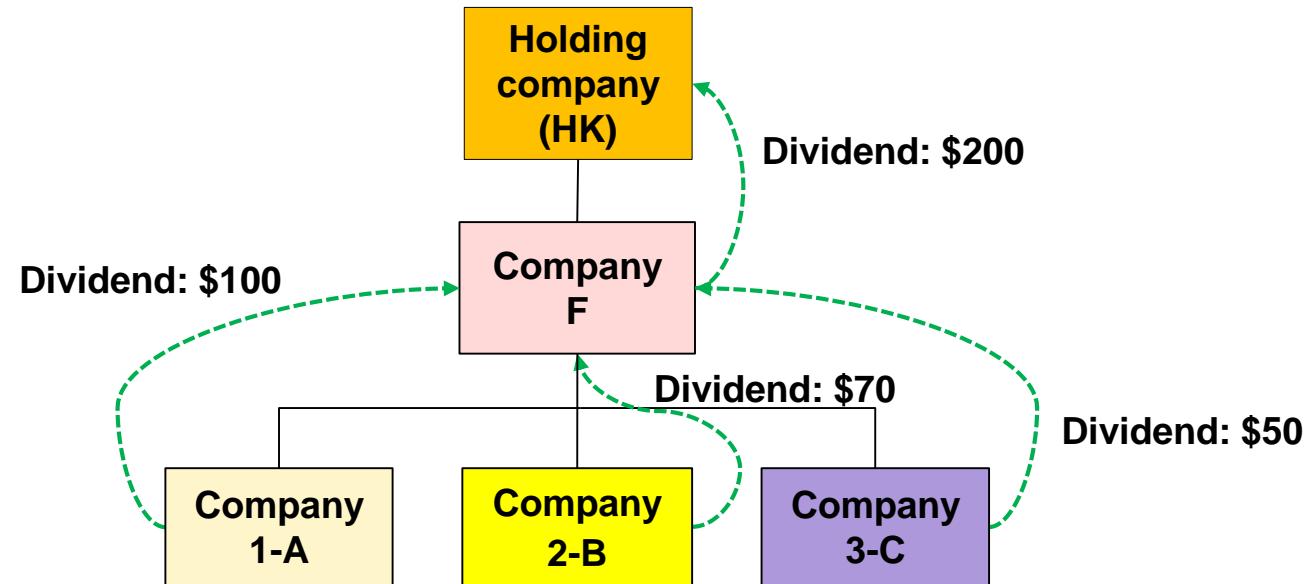
- ▶ If the specified foreign-sourced income is a disposal gain, the participation exemption only applies if the disposal gain is subject to a qualifying similar tax in a foreign jurisdiction.
- ▶ If the specified foreign-sourced income is dividend, the participation exemption only applies if:
 - ▶ the dividend is subject to a qualifying similar tax in a foreign jurisdiction; or
 - ▶ the underlying profits out of which the dividend is paid is subject to a qualifying similar tax in a foreign jurisdiction and the amount of the profits is equal to or larger than that of the dividend income
- ▶ A sum is subject to a qualifying similar tax in a foreign jurisdiction if:
 - ▶ the sum is subject to a tax that is of substantially the same nature as profits tax in the foreign jurisdiction (**foreign tax**); and
 - ▶ the tax rate applicable to the sum (**applicable rate**) is at least 15%.
- ▶ The applicable rate refers to the corporate tax rate of the foreign jurisdiction at which the foreign tax applies to the sum as business income.
- ▶ Generally, the applicable rate refers to the headline rate (i.e., the highest corporate tax rate) of the jurisdiction in which the specified foreign-sourced income, underlying profits or related downstream income is taxed. This headline rate need not be the actual tax rate imposed on the income or profits concerned. If an income or profits are taxable under a special tax legislation at a lower rate than in the main legislation of the jurisdiction, and the lower rate is not a tax incentive for carrying out substantive activities, the headline tax rate should be the highest stipulated tax rate in the special legislation. If an income or profits are subject to the foreign tax at more than one rate (e.g., progressive corporate tax rates), the applicable rate will be the highest corporate tax rate applied to that income.

Switch-over rule (subject to tax condition)

Situation	Is the income subject to a qualifying similar tax in Jurisdiction A?
A foreign-sourced dividend is charged to corporate income tax in Jurisdiction A at the headline rate of 20%.	Yes, because the income is actually charged to a tax similar to profits tax in Jurisdiction A and the applicable rate is above 15%.
A foreign-sourced dividend is exempt from tax in Jurisdiction A. The headline corporate tax rate of Jurisdiction A is 20%.	No, because no tax is charged on the income in Jurisdiction A.
A foreign-sourced dividend is charged to withholding tax in Jurisdiction A at 10%. The headline corporate tax rate of Jurisdiction A is 20%.	Yes, because the headline rate of corporate income tax in Jurisdiction A is above 15%. This is notwithstanding the dividend was taxed at only 10 % in Jurisdiction A.
A foreign-sourced disposal gain is charged to corporate income tax in Jurisdiction A at 10% under a preferential tax regime of Jurisdiction A. The regime is a special tax incentive for income derived from carrying out substantive activities in a special economic zone of Jurisdiction A. The headline rate of corporate income tax in Jurisdiction A is 20%.	Yes, because the preferential tax regime is a tax incentive for carrying out substantive activities in Jurisdiction A and the applicable tax rate (i.e., the headline rate of corporate income tax) in Jurisdiction A is above 15%.
A foreign-sourced disposal gain of HK\$5 million is charged to corporate income tax in Jurisdiction A under a progressive rates regime. Under the regime, income of the first HK\$2 million is taxed at 10% whilst the remainder is taxed at 20%.	Yes, because the highest corporate income tax rate applicable to the income is above 15%.

Switch-over rule (subject to tax condition)

IRD's illustrative example 29 - Whether the subject to tax condition is met



	Jurisdiction F	Jurisdiction A	Jurisdiction B	Jurisdiction C
Headline tax rate	0%	17%	20%	5%

IRD: Holding Company-HK failed to satisfy the “subject to tax” condition as the aggregate amount of the related downstream income which was subject to tax in Jurisdiction-A and Jurisdiction-B at headline tax rates equal to or higher than 15% ($\$100 + \$70 = \$170$) was smaller than that of the subject income.

Anti-hybrid mismatch rule

- ▶ Where the specified foreign-sourced income is a dividend, and tax is charged on the underlying profits of the dividend in a territory outside Hong Kong, the participation exemption will not apply to the extent that the dividend is allowable for deduction when computing the amount of tax of the investee entity.

Main purpose rule

- ▶ If the Commissioner is of the opinion that the main purpose, or one of the main purposes, of entering into an arrangement is to obtain a tax benefit in relation to a liability to pay profits tax, the participation exemption will not apply.
- ▶ An arrangement or a series of arrangements will be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect the economic reality.
- ▶ The reference to “one of the main purposes” means that obtaining a tax benefit does not need to be the sole or dominant purpose of a particular arrangement. An arrangement may have more than one main purpose and it is sufficient that at least one of which was to obtain a tax benefit, even if that was not the dominant purpose. All relevant facts and circumstances have to be considered, including:
 - ▶ the manner in which the arrangement was structured;
 - ▶ the terms of the arrangement;
 - ▶ the ways of implementing the arrangement;
 - ▶ the result which the arrangement intended to achieve or had achieved;
 - ▶ the non-tax purposes of the arrangement and any alternative way that the non-tax purposes could be achieved;
 - ▶ the form (i.e., contractual rights and obligations created) and substance (i.e., practical or commercial end result) of the arrangement;
 - ▶ the functions, assets and risks of each entity in the arrangement; and
 - ▶ the contractual rights and obligations normally created, and the commercial and financial relationships normally entered into, between independent persons under an arrangement of the kind in question.

Loss sustained from sale of equity interests

- ▶ A loss sustained by an MNE entity from a sale in a territory outside Hong Kong of its equity interests in another entity may be set off against its assessable profits for the year of assessment in which the proceeds of the sale are received in Hong Kong. However, this rule is subject to the condition that had a gain been derived from the sale and received in Hong Kong, the gain would have been chargeable to profits tax under the new FSIE regime.
- ▶ Any amount of the loss not so set off may be carried forward and set off, in accordance with section 19C of the IRO, against the assessable profits of the MNE entity in subsequent years of assessment.
- ▶ The loss may only be set off to the extent that the assessable profits concerned are derived from specified foreign-sourced income that is chargeable to profits tax under the new FSIE regime.

Calculation of assessable profits derived from specified foreign-sourced income

- ▶ If a specified foreign-sourced income is chargeable to tax in the year of assessment in which the income is received in Hong Kong, outgoings or expenses incurred in the production of the income, to the extent that they have not been deducted for any year of assessment, may be deducted as if they were incurred in the year of receipt.
- ▶ Any allowance or balancing charge relating to the production of a specified foreign-sourced income will also be taken into account when calculating the assessable profits of an MNE entity for the year of assessment in which the income is received in Hong Kong.

Unilateral tax credit (UTC)

- ▶ In addition to existing bilateral tax credit under the comprehensive avoidance of double taxation arrangements (CDTA), unilateral tax credits are allowed for any similar tax payable in a non-CDTA territory in respect of specified foreign-sourced income if the MNE entity is a Hong Kong resident person.
- ▶ If the specified foreign-sourced income is a dividend, a “look-through” approach could be applied whereby the tax payable on dividends and the underlying profits by a chain of a maximum of **five tiers** of entities with at least 10% shareholding directly or indirectly held by the dividend receiving company will be allowed as credit.
- ▶ To align the treatment on foreign tax paid in a CDTA territory and a non-CDTA territory, similar tax payable in respect of the underlying profits out of which a foreign-sourced dividend was paid in a CDTA territory but is not allowable as bilateral tax credit under the CDTA may be allowed as a unilateral tax credit against profits tax charged on the foreign-sourced dividend.

Facilitating measures for ease of compliance

To minimize the compliance burden and enhance tax certainty, a business-friendly four-pronged approach will be taken:

Minimize compliance burden

- ▶ To claim exemption for covered income, taxpayers only need to report income in tax return as well as high-level information/declarations that are essential to IRD's determination for the year of accrual. Further information may be requested upon review of taxpayer's return.
- ▶ Taxpayers need to report receipt of covered income in the year of receipt only if no tax exemption is applicable in the year of accrual of the income.
- ▶ Taxpayers need to notify the Commissioner in writing that it is chargeable to profits tax **within four months after the end of the basis period** of the year of assessment during which the income is received in Hong Kong in case no profits tax return has been issued to it for the year of assessment concerned.

Facilitating measures for ease of compliance

To minimize the compliance burden and enhance tax certainty, a business-friendly four-pronged approach will be taken:

Enhance tax certainty

- ▶ Taxpayers may apply for advance ruling on compliance with ESR which is valid for up to **five years**. Where an advance ruling has been obtained, the taxpayer will be subject to streamlined reporting requirements by only disclosing the existence of the ruling and confirming its compliance with the conditions specified therein.

Ensure tax transparency

- ▶ IRD has published and from time to time updated its administrative guidance with sector-specific illustrative examples to help taxpayers ascertain their tax liabilities.

Facilitate compliance

- ▶ A dedicated unit within IRD will provide technical support and respond to enquiries.

An MNE entity deriving chargeable specified foreign-sourced income under the FSIE regime must retain transaction and business records relating to the specified foreign-sourced income at least until the later of the expiry of (1) seven years after the completion of those transactions or (2) seven years after the income is received, or deemed to be received, in Hong Kong.



Advance Ruling on compliance with the ESR

- ▶ The application may cover a maximum of **five years** of assessment commencing from the year of assessment 2022/23.
- ▶ It normally takes **one month to process** an application. Where the information available is not sufficient to issue a ruling, taxpayer will be requested to supply further particulars.

An application can be made—

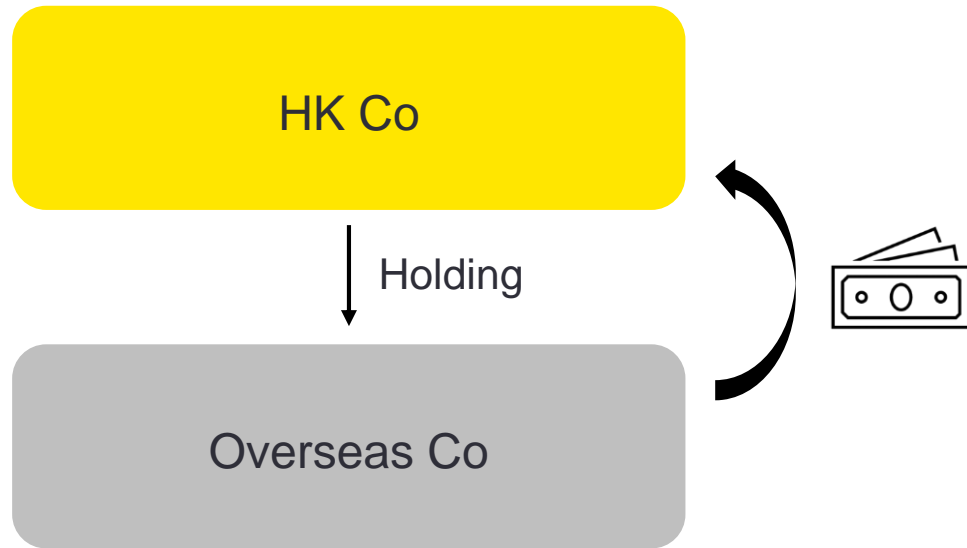
- ▶ on an individual application basis; or
- ▶ on a group application basis, provided that the following conditions are met:
 - ▶ the specified economic activities of the applicant and the other MNE entities are outsourced to one outsourced entity under a single service agreement (the Service Agreement);
 - ▶ the applicant or its representative must have the written consents of the other MNE entities for the group application;
 - ▶ a copy of the Service Agreement should be submitted together with the application form (IR 1297A); and
 - ▶ the written consents must be supplied on request to the Commissioner on request.

Impact on businesses



Impact on businesses

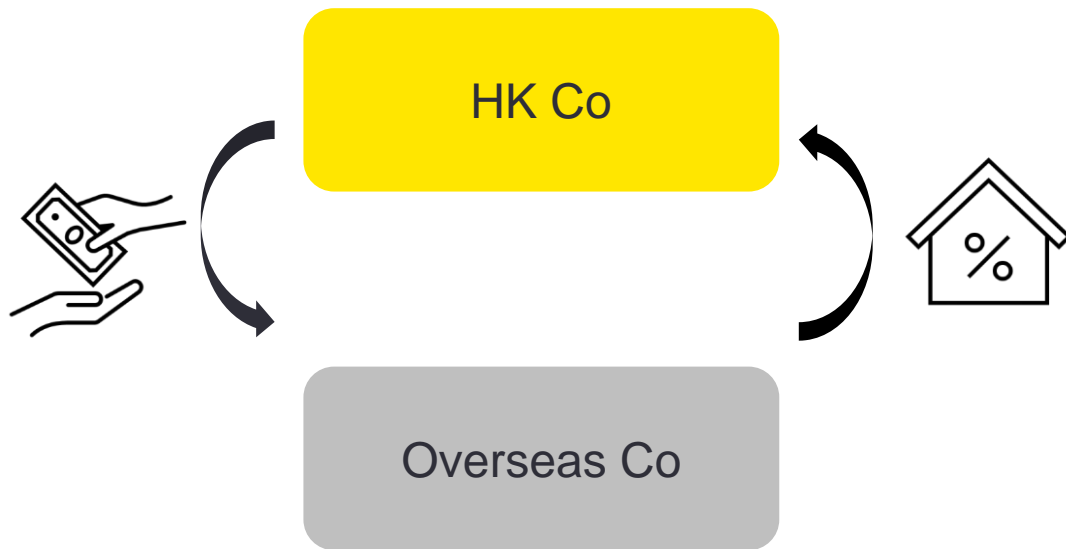
Scenario 1: Dividend and disposal gain



- Considerations:
 - How to meet the “adequate test”?
 - Outsourcing arrangement and monitoring of the same
 - Participation exemption for portfolio companies?
 - Subject to tax condition
 - Foreign sourced disposal gain deemed taxable under FSIE regime not able to argue capital in nature

Impact on businesses

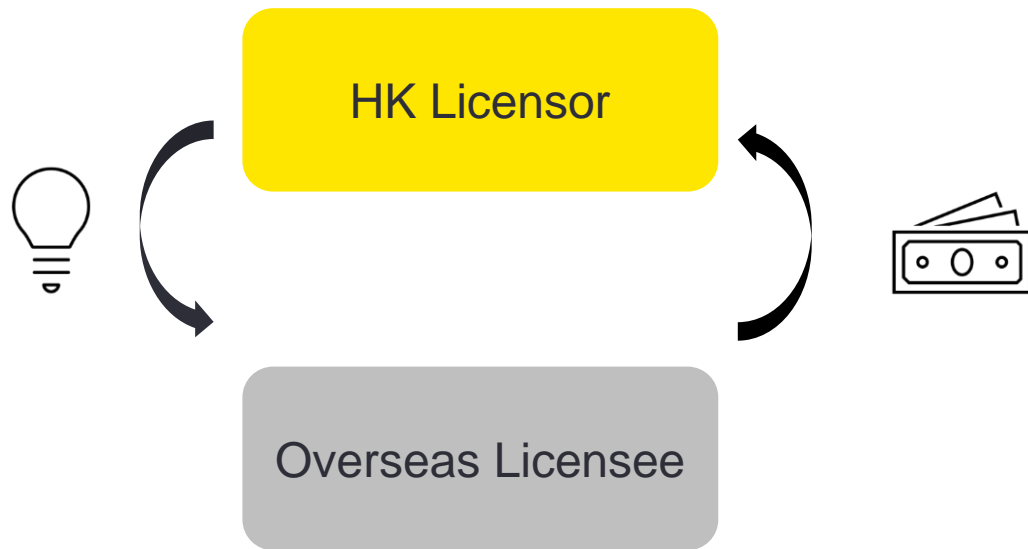
Scenario 2: Interest income



- Considerations:
 - How to meet the “adequate test”?
 - Interaction with source of interest income: Provision of credit test vs. operations test?

Impact on businesses

Scenario 3: IP income



- Considerations:
 - Scope of qualifying IP
 - Scope of qualifying R&D expenditure
 - Interaction of source rules and nexus requirement

Impact on businesses

Considerations and next steps

- Enhance substance in Hong Kong?
- Feasibility of not receiving in Hong Kong?
- Keep or exit structure?
- Foreign tax credits (bilateral and / or unilateral)?
- Adequate resources on additional disclosure and documentation requirements?

Questions and answers



EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

Follow us on WeChat

Scan the QR code and stay up-to-date with the latest EY news.



EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients, nor does it own or control any member firm or act as the headquarters of any member firm. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

© 2023 Ernst & Young, China.
All Rights Reserved.

APAC no. 03016653
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com/china

Disclaimer

- *The opinions expressed by external guest speakers are, by their nature, those of the speakers. They are not necessarily endorsed by the Institute nor do they necessarily reflect the official policies and views of the Institute, its staff or members.*
- *The Institute takes no responsibility for any loss associated to any person acting or refraining from acting as a result of participation in the event.*
- *The Institute does not endorse or recommend any products or services that may be mentioned in the event and is not responsible for any loss or damage arising from the use of such products or services. Participants are reminded that there may be a wide range of related products or services available in the market and that they should carry out their own research and obtain independent advice before subscribing to any products or services.*



Disclaimer

- *The materials of this event are intended to provide general information only. Examples and other materials used in this event are only for illustrative purposes and should not be relied upon for technical answers or as advice. The Institute, the speaker(s) and the firm(s) that the speaker(s) is representing take no responsibility for any errors or omissions in, or for the loss incurred by individuals or companies due to the use of, the materials of this event.*
- *No claims, action or legal proceedings in connection with this event brought by any individuals or companies having reference to the materials on this event will be entertained by the Institute, the speaker(s) and the firm(s) that the speaker(s) is representing.*
- *All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted, in any form of by any means, electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the Institute.*

