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Update on Hong Kong's refined foreign-sourced passive income taxation regime



As discussed in our previous briefing note on [the reform of the FSIE regime](#), the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 was enacted on 23 December 2022 to reform the city's foreign-sourced passive income tax regime ("**FSIE**"). Such amendment came into operation on 1 January 2023. On 8 December 2023, the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 was gazetted to refine the FSIE regime to match the updated FSIE Guidance promulgated by the European Union ("**Refined FSIE Regime**"). The Refined FSIE Regime came into operation on 1 January 2024.

We will highlight below the main changes introduced under the Refined FSIE Regime.

What are the proposed refinements?

The Refined FSIE Regime expands the scope of foreign-sourced disposal gains to cover all types of property (instead of only covering disposal gain from sale of equity interests in an entity). The existing exception requirements, i.e. economic substance requirement, participation requirement and nexus requirement remain unchanged and equally applicable to different types of disposal gains.

There are also a few new exclusions introduced under the Refined FSIE Regime in relation to disposal gains. To facilitate corporate restructurings, a new intra-group relief is available if the property concerned is transferred between associated entities, subject to specific anti-abuse rules. Another new exclusion is related to traders. Where non-IP disposal gain that accrues to a trader and is derived from or is incidental to its business as a trader, such income would fall out of the scope of the Refined FSIE Regime. The existing

exclusion to regulated financial entities has also been expanded to cover non-IP disposal gains which accrue to a regulated financial entity and are derived by or are incidental to its business as a regulated financial entity.

How does the reform affect you?

If your company is (i) within a group of companies which is not located or established in the jurisdiction of the ultimate parent entity of the group, (ii) carrying on a trade, profession or business in Hong Kong and (iii) receiving any foreign-sourced income in Hong Kong, you may need to consult your adviser on how Hong Kong's recently widened foreign-sourced passive income tax regime may affect your company.

Stephenson Harwood is a leading law firm featuring corporate, commercial, tax, business law and regulatory practices in Hong Kong. If you would like to know more of how the Refined FSIE Regime may affect your company, please get in touch with us.

Please note that this material is not intended to be tax, legal or other professional advice. Please reach out to us for formal engagement for specific advice.

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