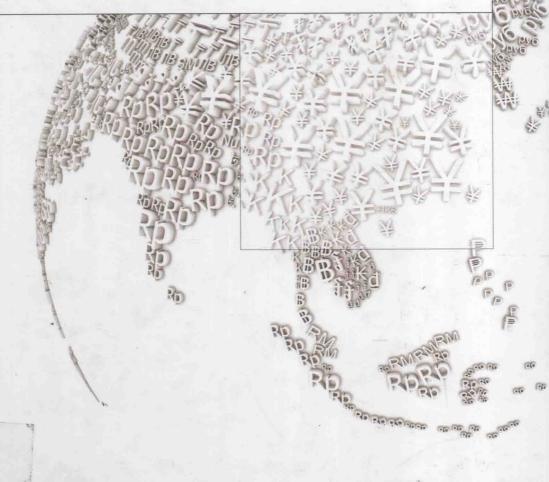
Tax Compliance in Greater China China, Hong Kong and Taiwan





4th Edition



Tax Compliance in Greater China

China, Hong Kong and Taiwan

4th Edition

© 2010 CCH Hong Kong Limited

 Fourth edition
 2010

 Third edition
 2009

 Second edition
 2008

 First edition
 2007

Disclaimer

This publication is sold with the understanding that (1) the authors and editors are not responsible for the results of any actions taken on the basis of information in this work, nor for any errors or omissions; and (2) the publisher is not engaged in rendering legal, accounting or other professional services. The publisher, and the authors and editors, expressly disclaim all and any liability to any person, whether a purchaser of this publication or not, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance, whether whole or partial, upon the whole or any part of the contents of this publication. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

All rights reserved. No part of this work covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying, recording, recording taping, or information retrieval systems) without the written permission of the publisher.

Published by CCH Hong Kong Limited Printed by Ocean Printing Co Ltd

ISBN 978-988-18842-8-2

About CCH Hong Kong Limited

CCH Hong Kong Limited is a member of the Wolters Kluwer group, the world's leading publisher for professionals. CCH Hong Kong Limited provides its subscribers with the highest standard of reporting for which the CCH group of companies has an established reputation worldwide.

CCH publications keep business managers, accountants, lawyers and other business professionals up-to-date with developments in a wide range of topics including taxation, company law, securities law, business law and employment law. The essence of CCH publications is accuracy, authority, practicability and ease of reference achieved by the presentation of information in a highly readable form and by the use of comprehensive indexes and other locators.

CCH Hong Kong Limited publishes a range of print and electronic reporting services and publications on taxation, company, business and employment law in China and Hong Kong. Our range of publications will continue to expand to serve the needs of subscribers in the region.

For enquiries contact your local CCH office.

CCH Hong Kong Limited

Room 1608, 16/F, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong Customer Service Hotline: 800 968 667 Facsimile: 800 933 814 Email: support@cch.com.hk Website: http://www.cch.com.hk

Beijing Wolters Kluwer Asia Pacific Information Technology Co. Ltd

Suite 2503, Tower A, TYG Centre, C2 North Road, East 3rd Ring Road, Chaoyang District, Beijing, P.R China 100027

Email: support@echchina.com.cn Website: http://www.echchina.com.cn

CCH Asia Pte Limited (Registration No: 199703606K)

8 Chang Charn Road, #03-00 Link (THM) Building, Singapore 159637
Telephone: (65) 6225 2555 Customer Service Hotline: 800 6162 161 Facsimile: 800 6162 176
Email: support@cch.com.sg Website: http://www.cch.com.sg

Commerce Clearing House (Malaysia) Sdn Bhd (Registration No: 216303-M)

Suite 9.3, 9th Floor Menara Weld, 76 Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia Telephone: (603) 2026 6003 Customer Service Hotline: 1800 181 151 Facsimile: 1800 181 173 Email: support@cch.com.my Website: http://www.cch.com.my

CCH Japan Limited Tokyo, Japan

CCH Australia Limited Sydney, Australia

CCH New Zealand Limited Auckland, New Zealand

CCH Incorporated Chicago, U.S.A.

CCH Canadian Limited Toronto, Canada

CCH Editions Limited Surrey, England

FOREWORD

For foreign companies and investors, doing business in Greater China opens up an array of tax compliance requirements. Being able to navigate through the tax minefield in Greater China is a crucial part of achieving business success in one of the world's fastest growing regions.

Written by some of the region's leading tax practitioners, *Tax Compliance in Greater China: China, Hong Kong and Taiwan* will provide the insightful commentary that your business demands. The book comes to you with the added authority of CCH — China publishers since 1981.

This book is complied from CCH's *Tax Planning and Compliance in Asia* product, which updates six times per year and includes coverage for the entire region. Please note that any cross-references to chapters not found in this book can be found in the said product.

CCH has a host of other business-friendly China and Asian products specifically designed to help your company succeed. Log on to www.cch.com.hk to find out more.

CCH Tax Editors March 2010

ABOUT THE AUTHORS

CHINA

King & Wood, headquartered in Beijing, was one of the first partnership law firms established in China. Established in 1993, the firm has now become one of the largest in China with over 800 fee earners and 15 offices. It is a leading full service firm comprised of acknowledged leaders in each specialization of corporate and commercial law.

King & Wood's Tax Practice distinguishes itself from those of accounting firms in its ability to provide tax advice in a proper legal context. This is particularly important in China, where foreign investment and foreign exchange regulatory considerations often significantly impact tax planning and structuring options.

The practice regularly advises on all aspects of PRC tax law, including general tax planning, reorganisations, taxation issues in the context of M & A, supply chain-related taxation, employment-related taxation, the taxation of real estate transactions, indirect taxation, transfer pricing and tax disputes.

Stephen Nelson

Prior to joining King & Wood as the head of its Tax Practice, **Stephen Nelson** was the head of the largest and most successful China Practice among foreign law firms. Mr Nelson has over 20 years of experience advising foreign companies investing in the PRC and has built an unparalleled reputation as the premier attorney advising on taxation in China. He also has recognised expertise in investment and mergers and acquisitions in China.

Recent examples of Mr Nelson's work include advising a significant recently listed information technology company on the tax and legal aspects of establishing operations in China, advising a major American telecommunications equipment company on restructuring its operations in order to address recent changes in China's tax system, advising many foreign companies on the tax and legal aspects of various product sales and distribution structures in the PRC, advising a major express delivery company on the tax aspects of the establishment of hub operations in China, advising on the tax issues arising in respect of a significant proposed acquisition of an interest in a Chinese listed company, and advising several major Chinese companies on their offshore operations from a tax standpoint.

Mr Nelson has published numerous articles on various aspects of Chinese taxation in various publications, including *International Tax Review*, *Tax Notes International*, *Asia-Pacific Tax Bulletin*, *Intertax* and others. He is a frequent participant in seminars and presentations focusing on PRC tax and investment.

Mr Nelson graduated from the University of Pennsylvania in 1980 and obtained his law degree from Columbia University in 1986. He is admitted to practice in California. His working languages are English, Mandarin and French.

Acknowledgements

Mr Nelson would like to thank Rhouna Li, Zachary Wang, Wu Libin and Alice Zhang for their hard work in assisting in this publication.

The authors for the updates from October 2005 to December 2008:

John Pan

Yo Zhang

Jia Liu

The authors from 2002 to September 2005:

Lehman, Lee & Xu

LehmanBrown

HONG KONG

The authors from September 2007:

Michael Olesnicky is a partner in the Hong Kong office of Baker & McKenzie and the head of the firm's Asia Pacific Tax Group. Mr Olesnicky is qualified as a solicitor in Hong Kong, England & Wales, South Australia and New South Wales. He graduated from the University of Adelaide with an LL.B. (1976) and B.A. (1977), as well as Columbia University with an LL.M. (1979). His practice focuses on Hong Kong and Asian regional tax advisory work, estate planning and tax litigation.

Mr Olesnicky has been the Chairman of the Joint Liaison Committee on Taxation, which is a quasi-governmental committee which interfaces between tax practitioners and the Hong Kong Inland Revenue Department (IRD), from 1986 to now. He has been a member (and former chairman) of the IRD's Users' Committee since its inception in 1994. He was a member of the Hong Kong Inland Revenue Board of Review between 1985 and 1994. He was a member of the government's Broad Based Taxes Committee. He is a member of the International Fiscal Association, International Bar Association, International Tax Planning Association, Taxation Institute of Australia and Society of Trusts & Estates Practitioners. He was the editor of the Hong Kong Law Journal for five years while he was a full-time lecturer at the University of Hong Kong. He is an Honorary Lecturer in the Department of Professional Legal Education at the University. He writes and speaks frequently on Hong Kong and regional tax matters.

Winnie Choy is an associate in the Hong Kong office of Baker & McKenzie. Ms Choy's practice focuses on Hong Kong tax compliance and advisory work. She has also been involved in tax dispute and litigation matters.

Ms. Choy graduated from the University of New South Wales and is a qualified accountant and a member of the Institute of Chartered Accountants in Australia, as well as a Fellow of the Financial Services Institute of Australasia. She is admitted as a solicitor in Hong Kong and New South Wales, Australia.

The authors from 2002 to August 2007:

Steven Sieker

TAIWAN

Michael Wong is an international partner at the Taipei office of Baker & McKenzie. Michael is a native of Taiwan and was educated in the U.S. He graduated from the University of California, Los Angeles (B.A) and the University of California, Hastings College of the Law (J.D). Michael attended a master of law program from 1991 to 1994 at the Soochow University (Taiwan). Prior to joining Baker & McKenzie in 1990, Michael was with the San Francisco office of Arthur Andersen & Co. and with the California based multinational, The Gap Inc., where he specialised in tax law. He is a member of the American Bar Association and the Asian American Bar Association. Michael concentrates on the area of cross-border tax advice to multinational clients, particularly in the area that involves entity structuring and merger and acquisition work. He has been a frequent contributor and lecturer in regional tax and commercial law at seminars.

Monchu Hsu is a tax consultant at the Taipei office of Baker & McKenzie. Monchu graduated from the National Taiwan University (BA in Finance) and the University of Illinois at Chicago (MS in Accounting). Monchu is a registered Certified Public Accountant in the state of Illinois, a member of the Illinois CPA Society, and a Certified Public Accountant in Taiwan, Republic of China. Prior to joining Baker & McKenzie, Monchu was with PricewaterhouseCoopers and KPMG. Monchu concentrates on the areas of cross-border and employee remuneration tax advice.

EXPANDED TABLE OF CONTENTS

Chapter 1 INVESTMENT FRAMEWORK CHINA	Page
•	
Introduction	
Overview of the Foreign Investment Framework	
Elements of the Foreign Investment Regime	
Investment policies	
Business entities	
Regulatory/development agencies	
Restrictions on foreign investment	78
2006 Restrictions on foreign investment in real	
property segment in China	84
July 2007 — Further forex restriction on foreign	Table 201
invested property developers	
Investment incentives	
Labour relations	
Intellectual property	
Dispute resolution	91
Chapter 2 TAX COMPLIANCE CHINA	
Tax Tables and Features	94
Due dates	94
Individual tax rates	99
Enterprise tax rates	101
Withholding tax rates	
Dividends tax deduction rates	103
Value-added tax rates	103
Business tax rates	
Consumption tax rates	
Tax year	
Overview of Corporate Income Tax	
Introduction — Overview of the tax system	107
Corporate income tax	
Checklists, forms & tables	
Overview of Personal Income Tax	
General introduction	
Basis of liability to tax	401

Page	2
Relevance of residence	
What is employment income?	5
Tax rates	
Deductions/reliefs407	
Basis of assessment408	3
Exemptions)
Tax collection and administration	
Reporting requirements placed on employers424	1
Departing employees425	5
Individual Income Tax ("IIT") Self-Reporting —	
Guoshuifa [2006] No 162 and Guo Shui Han	
[2007] No 1087426	
Sample self-reporting429	
Other Taxes	4
Introduction434	
Value-added tax ("VAT")435	
Business tax ("BT")465	
Consumption tax ("CT")	
Stamp duty ("SD")	
Real property tax ("RPT")488	
Deed tax ("DT")490	
Land value added tax ("LVAT")493	
Resource tax ("'RT")	Ó
Special levy on oil exploitation business	
Farmland use tax497	
Tax Incentives	
Introduction	J
Tax incentives under the corporate tax regime	
before 1 January 2008502	
Forms of incentives	
Tax sparing considerations	
Value-added tax ("VAT") incentives	
Exemptions/refund on certain imports	
Procedures for exemptions/refunds)
Purchase of domestically manufactured	
equipment	
High-technology industries	
Business tax incentives	
Amount exempt from business tax	
Approving procedures	
Disposal of financial assets550	J

	Page
BT exemptions	551
Outbound payment on software fees	551
Financial services	552
Dealing with tax laws in the jurisdiction	
The Tax Compliance Environment	555
Introduction	
Timing aspects of the compliance process	
Self assessment system	
Tax assessors	
Imposition of penalties	
Tax audits	
Disputes	
The Role of Rulings	
Overview	
Lines of inquiry	571
Chapter 3 INVESTMENT FRAMEWORK HONG KONG	
Introduction	
Investment framework	
Judicial system	
Regulatory controls	
Business entities	
Labour relations	
Intellectual property	
Tax legislation	
Territorial taxation concept	
Corporate income tax	
Source	
Deductions	
Personal income tax	
Property tax	
Estate duty	
Stamp duty	
Use of Hong Kong in international tax planning	
Tax planning for the inbound investor	
Service and management fees	
Tax planning for the outbound investor	
Taxation of derivatives Mergers and acquisitions	
Tax compliance	
Rulings	
Nullings	307

	Page
Anti-avoidance	.587
Statute of limitation	
Investment Framework	
Introduction to investment framework	
Overview of investment framework in Hong Kong	
Elements of the foreign investment regime	589
Chapter 4 TAX COMPLIANCE HONG KONG	
Tax Tables and Features	600
Due dates for tax returns	
Due date for payment of tax	
Time limits for objections and appeals	
Individual tax rates	
Company tax rates	
Withholding tax rates	
Treaty withholding tax rates	
Dividend tax deduction rates	
Tax year	
Overview of Corporate Income Tax	
Introduction — overview of the tax system	
Corporate income tax	
Overview of Personal Income Tax	
Basis of liability to tax	
Relevance of residence	
Employment income	
Taxation of certain types of income	
Source of employment	
Tax rates	
Deductions/relief	
Reporting requirements placed on employers	
Penalty for non-compliance	
Other Taxes	
Introduction	
Property tax	
Estate duty	
Stamp duty	
Documents subject to stamp duty Tax Incentives	
General overview	
Specific industry "concessions"	
Reinsurance of offshore risk	656

	Page
Financial institutions	656
Contract processing	658
General concessions	660
General comments	
Dealing with Tax Laws in the Jurisdiction	666
The Tax Compliance Environment	
The Role of Rulings	
Chapter 5 INVESTMENT FRAMEWORK TAIWAN	
Investment Framework	700
Introduction	
Overview of investment framework	
Elements of the foreign in investment regime	
Chapter 6 TAX COMPLIANCE TAIWAN	
Tax Tables and Features	730
Due dates for income returns	
Due date for payment of tax	
Time limits for objections and appeals	
Individual tax rates	
Company tax rates	
Withholding tax rates	
Treaty withholding tax rates	
Dividend tax deduction rates	
Alternative minimum tax ("AMT")	
Surtax on retained earnings	735
Business tax	
Tax year	735
Overview of Corporate Income Tax	
Introduction — overview of the tax system	736
Corporate income tax	738
Overview of Personal Income Tax	
Introduction	752
Basis of liability to tax	752
Tax rates	753
Relevance of residency	753
Deductions/reliefs	754
Exemptions	755
Tax administration	756

	Page		
Other Taxes	757		
Value-added tax			
Stamp duty	759		
Customs duty			
Commodity tax			
Property and land taxes	761		
Securities transaction tax	762		
Tax Incentives	763		
Dealing with Tax Laws in the Jurisdiction	767		
The Tax Compliance Environment	768		
Introduction	768		
Business tax	768		
PSE income tax	768		
Lines of inquiry	769		
The Role of Rulings	773		
Lines of inquiry	773		
FINDING AIDS			
Index — China	776		
Index — Hong Kong	783		
Index — Taiwan	786		

CHINA

Note:

This book is compiled from CCH's *Tax Planning & Compliance in Asia* product. Please note that any cross-references to chapters not found in this book can be found in the said product. Please contact your local CCH office for further information.

Chapter 1 INVESTMENT FRAMEWORK CHINA

		Para
Introduction	CHN	¶2-100
Overview of the foreign investment framework	CHN	¶2-110
Elements of the foreign investment regime	CHN	¶2-120