

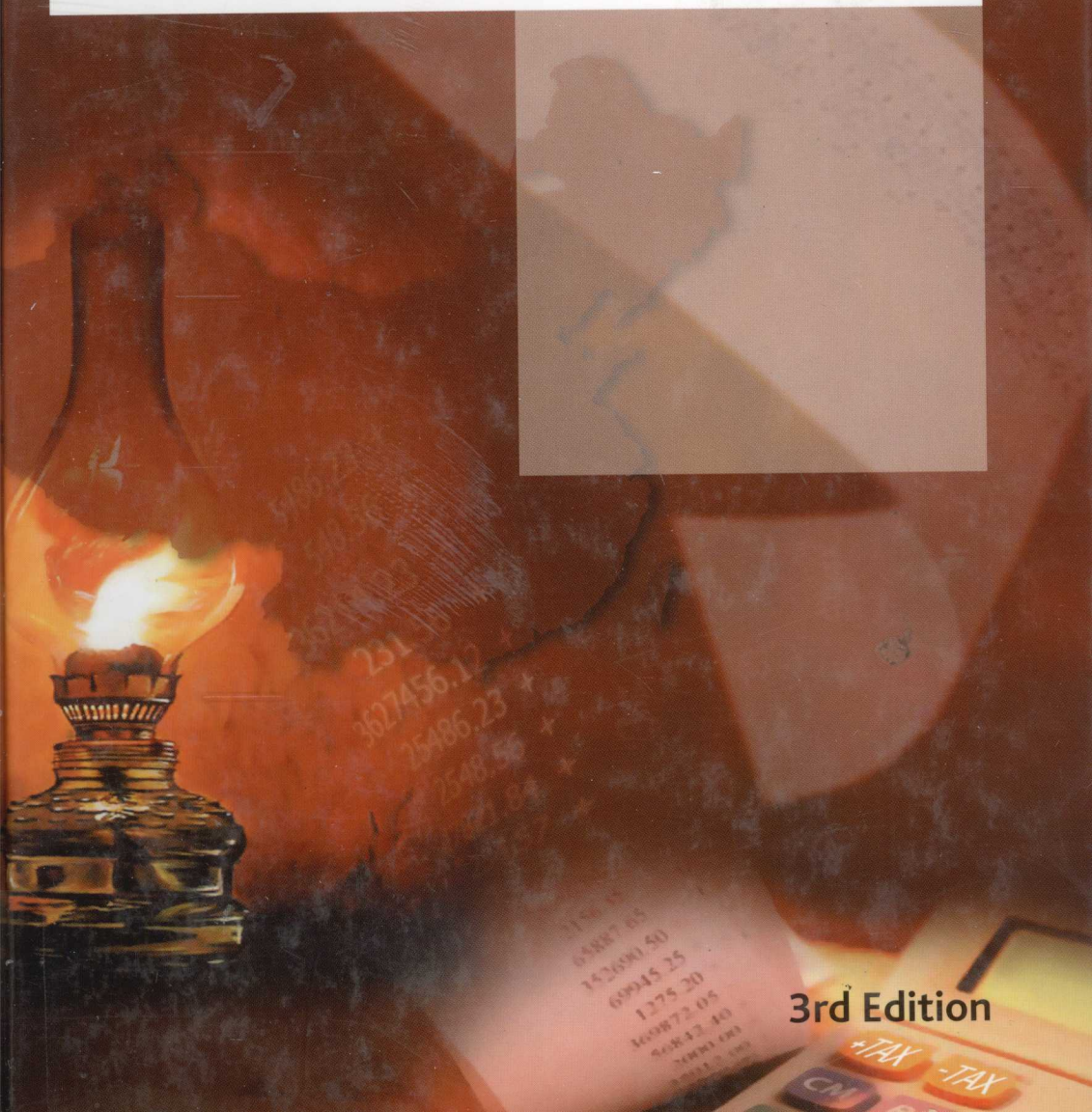
Tax Compliance in Greater China

China, Hong Kong and Taiwan



CCH

a Wolters Kluwer business



3rd Edition

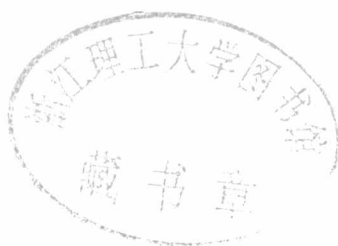


30807034

Tax Compliance in Greater China

China, Hong Kong and Taiwan

3rd Edition



© 2009 CCH Hong Kong Limited

Third edition.....2009

Second edition.....2008

First edition2007

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 978-988-17949-7-0

About CCH Hong Kong Limited 33857034

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>

CCH (Beijing) Publication Distribution Co Ltd

Suite 2503, Tower A, TYG Centre, C2 North Road, East 3rd Ring Road, Chaoyang District, Beijing, P.R China 100027
Telephone: (8610) 5863 7888 Customer Service Hotline: (8610) 5863 7887 Facsimile: (8610) 5863 7999
Email: support@cchchina.com.cn Website: <http://www.cchchina.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 compiled 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

June 2009

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 Olesnick is a partner in the Hong Kong office of Baker & McKenzie and the head of the firm's Asia Pacific Tax Group. Mr Olesnick 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 Olesnick 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.

TABLE OF CONTENTS

	Page
Expanded Table of Contents	ix
Chapter 1 INVESTMENT FRAMEWORK CHINA	3
Chapter 2 TAX COMPLIANCE CHINA	69
Chapter 3 INVESTMENT FRAMEWORK HONG KONG	473
Chapter 4 TAX COMPLIANCE HONG KONG	497
Chapter 5 INVESTMENT FRAMEWORK TAIWAN	603
Chapter 6 TAX COMPLIANCE TAIWAN	633
INDEX	681

EXPANDED TABLE OF CONTENTS

	Page
Chapter 1 INVESTMENT FRAMEWORK CHINA	
Introduction	4
Overview of the Foreign Investment Framework	4
Elements of the Foreign Investment Regime	5
Investment policies	5
Business entities	44
Regulatory/development agencies	52
Restrictions on foreign investment	54
2006 Restrictions on foreign investment in real property segment in China	59
July 2007 — Further forex restriction on foreign invested property developers	62
Investment incentives	63
Labour relations	65
Intellectual property	65
Dispute resolution	66
	
Chapter 2 TAX COMPLIANCE CHINA	
Tax Tables and Features	70
Due dates	70
Individual tax rates	74
Enterprise tax rates	76
Withholding tax rates	78
Dividends tax deduction rates	78
Value-added tax rates	79
Business tax rates	79
Consumption tax rates	80
Tax year	81
Overview of Corporate Income Tax	82
Introduction — Overview of the tax system	82
Corporate income tax	88
Checklists, forms & tables	177
Overview of Personal Income Tax	312
General introduction	312

	Page
Basis of liability to tax	314
Relevance of residence	315
What is employment income?	318
Tax rates	318
Deductions/reliefs	320
Basis of assessment	320
Exemptions	329
Tax collection and administration	331
Reporting requirements placed on employers	332
Departing employees	334
Individual Income Tax ("IIT") Self-Reporting — Guoshuifa [2006] No 162 and Guo Shui Han [2007] No 1087	335
Sample self-reporting	338
Other Taxes	343
Introduction	343
Value-added tax ("VAT")	344
Business tax ("BT")	372
Consumption tax ("CT")	381
Stamp duty ("SD")	388
Real property tax ("RPT")	389
Deed tax ("DT")	390
Land value added tax ("LVAT")	392
Resource tax ("RT")	395
Special levy on oil exploitation business	395
Farmland use tax	396
Tax Incentives	399
Introduction	399
Tax incentives under the corporate tax regime before 1 January 2008	401
Forms of incentives	402
Tax sparing considerations	439
Value-added tax ("VAT") incentives	440
Exemptions/refund on certain imports	440
Procedures for exemptions/refunds	442
Purchase of domestically manufactured equipment	443
High-technology industries	445
Business tax incentives	446
Amount exempt from business tax	446
Approving procedures	447

	Page
Disposal of financial assets	447
BT exemptions	448
Outbound payment on software fees	448
Financial services	448
World Trade Organisation implications	449
Dealing with tax laws in the jurisdiction	451
The Tax Compliance Environment	453
Introduction	453
Timing aspects of the compliance process	453
Self assessment system	459
Tax assessors	461
Imposition of penalties	463
Tax audits	464
Disputes	467
The Role of Rulings	468
Overview	468
Lines of inquiry	468

Chapter 3 INVESTMENT FRAMEWORK HONG KONG

Introduction	474
Investment framework	474
Judicial system	475
Regulatory controls	475
Business entities	476
Labour relations	476
Intellectual property	476
Tax legislation	477
Territorial taxation concept	477
Corporate income tax	477
Source	478
Deductions	479
Personal income tax	479
Property tax	480
Estate duty	480
Stamp duty	480
Use of Hong Kong in international tax planning	481
Tax planning for the inbound investor	482
Service and management fees	482
Tax planning for the outbound investor	482
Taxation of derivatives	483

	Page
Mergers and acquisitions	483
Tax compliance	484
Rulings	484
Anti-avoidance	484
Statute of limitation	485
Investment Framework	486
Introduction to investment framework	486
Overview of investment framework in Hong Kong	486
Elements of the foreign investment regime	486

Chapter 4 TAX COMPLIANCE HONG KONG

Tax Tables and Features	498
Due dates for tax returns	498
Due date for payment of tax	499
Time limits for objections and appeals	500
Individual tax rates	501
Company tax rates	501
Withholding tax rates	502
Treaty withholding tax rates	502
Dividend tax deduction rates	502
Tax year	502
Overview of Corporate Income Tax	503
Introduction — overview of the tax system	503
Corporate income tax	510
Overview of Personal Income Tax	524
Basis of liability to tax	524
Relevance of residence	524
Employment income	525
Taxation of certain types of income	525
Source of employment	530
Tax rates	531
Deductions/relief	533
Reporting requirements placed on employers	534
Penalty for non-compliance	535
Other Taxes	536
Introduction	536
Property tax	536
Estate duty	539
Stamp duty	539
Documents subject to stamp duty	541

Page

Tax Incentives	550
General overview	550
Specific industry "concessions"	551
Reinsurance of offshore risk	552
Financial institutions	552
Contract processing	554
General concessions	555
General comments	561
Dealing with Tax Laws in the Jurisdiction	562
The Tax Compliance Environment	568
The Role of Rulings	582
New Developments Hong Kong	590

Chapter 5 INVESTMENT FRAMEWORK TAIWAN

Investment Framework	604
Introduction	604
Overview of investment framework	605
Elements of the foreign in investment regime	608

Chapter 6 TAX COMPLIANCE TAIWAN

Tax Tables and Features	634
Due dates for income returns	634
Due date for payment of tax	635
Time limits for objections and appeals	636
Individual tax rates	636
Company tax rates	637
Withholding tax rates	638
Treaty withholding tax rates	639
Dividend tax deduction rates	639
Alternative minimum tax ("AMT")	639
Surtax on retained earnings	640
Business tax	640
Tax year	640
Overview of Corporate Income Tax	641
Introduction — overview of the tax system	641
Corporate income tax	643
Overview of Personal Income Tax	657
Introduction	657
Basis of liability to tax	657
Tax rates	658

	Page
Relevance of residency	659
Deductions/reliefs	659
Exemptions	660
Tax administration	661
Other Taxes	662
Value-added tax	662
Stamp duty	664
Customs duty	665
Commodity tax	666
Property and land taxes	666
Securities transaction tax	667
Tax Incentives	668
Dealing with Tax Laws in the Jurisdiction	672
The Tax Compliance Environment	673
Introduction	673
Business tax	673
PSE income tax	673
Lines of inquiry	674
The Role of Rulings	678
Lines of inquiry	678

INDEX

Index — China	683
Index — Hong Kong	691
Index — Taiwan	695

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.

