

# Hong Kong Tax Residency Certificate

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## The Issue

- Hong Kong tax law is based on the territorial concept of taxation
- Residency status of a Hong Kong company has not been an issue that arises in dealing with Hong Kong tax
- Signing of DTAA since 2003 brings the issue of tax residency to the forefront of tax in Hong Kong

## Basic Rules

Article 4 of DTAA establishes the requirement of a party to establish his residency status

For an individual

- Someone who resides ordinarily in Hong Kong
- Someone who spends more than 180 days in Hong Kong, or more than 300 days in Hong Kong over a 2 year period

For a company

- A company incorporated in Hong Kong
- A company incorporated outside of Hong Kong that is centrally managed and controlled in Hong Kong

## Hong Kong IRD's approach

- To facilitate Hong Kong taxpayers to take advantage of DTAA's
- To comply with treaty partners' expectations of Hong Kong' meeting its obligations

# Central Management and Control

Based on common law concept

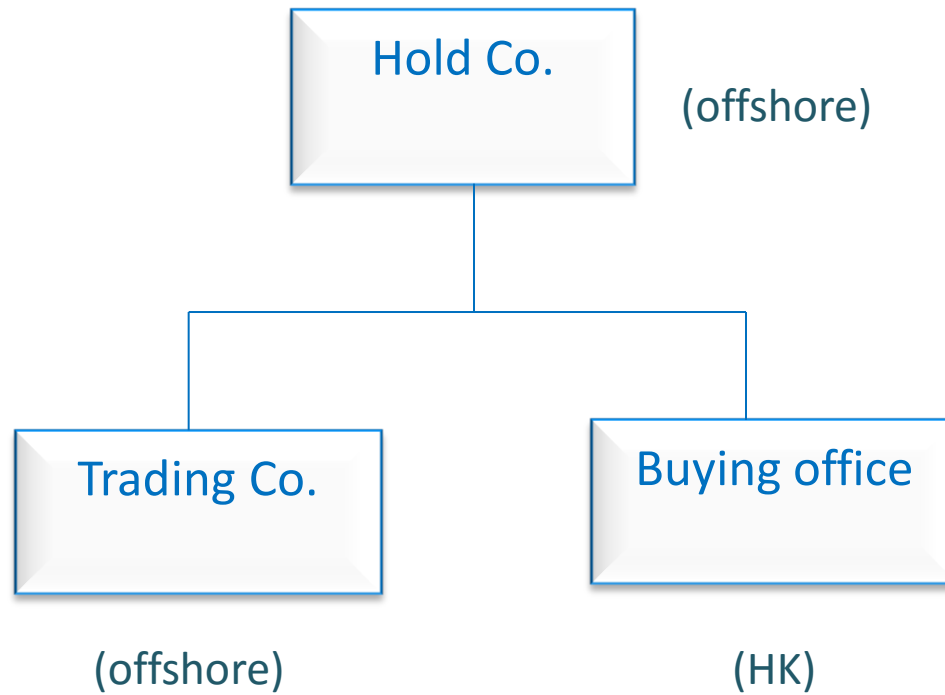
- Applies the dictum of “a company resides where its real business is carried on... and the real business is carried on where its central management and control abides” (quoted from the UK case, *De Beers Consolidated Mines Ltd. vs. Howe*)

Management

- Where the management of the day to day operation takes place;
- Where the implementation of top management decisions takes place

Control

- Where high level decisions take place
- By reference to *Bullock vs Unit Construction Co. Ltd*, the control exercised by the head office may determine the place of residence of its subsidiary



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## Practical matters to demonstrate higher management

- Where are directors' meetings held – provide evidence;
- Where do the directors ordinarily reside;
- Reporting chain for top management;
- Approval of budgets;
- Monitoring of performance;
- Making strategic decisions;
- Setting policies and corporate guidelines;
- Place of approval of annual accounts

## Administrative practice of the HK tax department

- IRD needs to think in terms of whether the applicant has a tax residency status in Hong Kong – not where the applicant's tax residency is
- Would a paper company that is incorporated in Hong Kong meet the tax residency rule
- Fairness – if an offshore company is willing to pay tax in Hong Kong, is it sufficient for the IRD to issue a tax residency certificate and allow the company to take advantage of the tax treaty
- May need to consider more than one place of residence for a company
- [http://www.ird.gov.hk/eng/pdf/ir1313b\\_e.pdf](http://www.ird.gov.hk/eng/pdf/ir1313b_e.pdf)