# A+

Driving business success

Issue 4 / Volume 15 / April 2019

Members of the Global Accounting Alliance Tax Directors Group discuss the critical issues in today's tax environment

# TAXING MATTERS

**Plus:**

**Weighted voting rights**
A year on since the launch of HKEX's new listing regime

**Profile**
Hong Kong Trade Development Council's Raymond Yip

**Success**
AECOM's Malaysia Country Director Patrick Wong

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CPA
Hong Kong Institute of Certified Public Accountants
香港會計師公會

**"The Mentorship Programme demonstrates how we can all learn from one another – no matter how far into our careers we are."**

Dear members,

Meeting young members of our community keeps me informed about their needs and concerns, and I feel excited for the profession's future when I meet with energetic accounting students and young accountants. This month, I had the opportunity to meet a great number of them.

I began the month as the guest of honour for the inauguration of the Accounting Students' Society at the Hong Kong University of Science and Technology. Speaking to the young students about the accounting profession, and the opportunities available in it, showed me that much has changed since I began my career regarding the training of accountants and the roles they play in business or practice. Now truly is the age of Accounting Plus.

I also took the annual trip presidents of the Institute make to see our friends and colleagues in Zhuhai at United International College (UIC). As a project between two universities from the Mainland and Hong Kong, UIC represents a beacon of collaboration for the Greater Bay Area to follow. On the trip, I oversaw the renewal of the agreement between the Institute and UIC for the operation of the Qualification Programme Resource Centre. In the evening, I gave a presentation to the students and guests about the Greater Bay Area and the important role Accountants Plus have to play in the success of the initiative.

I had the pleasure of attending the Institute's Mentorship Programme 2019-20 Ceremony on 13 April. The ceremony brought together mentors and mentees finishing their cycle with those just about to begin a new one to share their experiences and expectations with one another. The mentorship programme is a brilliant way for members to connect with one another and to truly grow into Accountants Plus.

At the event, some mentors together with their mentees spoke of the excitement, insights and different experiences they had interacting with their energetic mentees, and how the programme helped them as mentors to develop. It's important to remember that the concept of Accounting Plus is about continuous growth and development. The Mentorship Programme demonstrates how we can all learn from one another – no matter how far into our careers we are.

Turning to more formal occasions. At the Institute we welcomed a delegation from the Ministry of Finance on 17 April for our annual meeting. We discussed the latest development of the profession in Hong Kong and the Institute's major initiatives, including the new Qualification Programme. After our update, we shared views on the proposed revision of the PRC Accounting Law on a range of subjects including different modes of operation, the professional services provided by CPA firms, quality assurance, and professional liability. It is good to be able to meet with and share our experiences with our colleagues in the Mainland, and discuss the mutual development of the profession with them. International collaboration is an important facet of our continuing success.

This month ended with me joining the Chief Executive of Hong Kong's delegation to the Second Belt and Road Forum for International Cooperation in Beijing. At the event I met representatives from a number of different countries and industries keen on involvement in the initiative. I believe that the Belt and Road initiative represents an opportunity for the Hong Kong accounting profession to apply our professional knowledge and leverage our international connections to help countries across the world to develop.

**Patrick Law**
President

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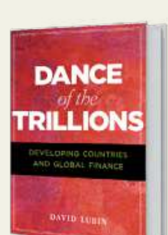
## Weighting for success

Experts weigh in on how weighted voting rights make Hong Kong the place to list






Book review


**Driving business success**

About our name
**A Plus** stands for excellence, a reference to our top-notch accountant members who are success ingredients in business and in society. It is also the quality that we strive for in this magazine — going an extra mile to reach beyond Grade A.

Hong Kong Institute of Certified Public Accountants
香港會計師公會

**President** Patrick Law

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**Acting Registrar** Jonathan Ng

**Head of Corporate Communications and Member Services** Rachel So

**Editorial Manager** Paul Smith

**Editorial Coordinator** Maggie Tam

Office Address
37/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong
Tel: (852) 2287-7228 Fax: (852) 2865-6603

Member and Student Services Counter
27/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong
Website: www.hkicpa.org.hk
Email: hkicpa@hkicpa.org.hk

**M&L**

**Editor** Gerry Ho
Email: gerry.ho@mandl.asia

**Copy Editor** Jemelyn Yadao

**Editorial Assistant** Jeremy Chan

**Contributors** Nicky Burridge, George W. Russell, Kate Whitehead

Editorial Office
G/F, Bangkok Bank Building, 18 Bonham Strand West, Sheung Wan, Hong Kong

ADVERTISING ENQUIRIES
**Advertising Director** Derek Tsang
Email: derektsang@mandl.asia
Tel: (852) 2164-8901





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## Institute news

# Institute welcomes GAA tax leaders

This month, the Institute welcomed members of the Global Accounting Alliance Tax Directors Group to Hong Kong for two days of meetings with representatives from the city's accounting profession and government before the group headed to Beijing.

The group included Takae Akatsuka, Technical Director of International Tax Committee, at the Japanese Institute of Certified Public Accountants; Bruce Ball, Vice-President, Taxation, at CPA Canada; John Cuthbertson, Tax Leader, New Zealand, at Chartered Accountants Australia and New Zealand; Pieter Faber, Senior Executive, Tax Legislation and Practitioners at the South African Institute of Chartered Accountants; Edward Karl, Vice-President, Taxation, at the American Institute of CPAs; Brian Keegan, Director of Public Policy and Taxation at Chartered Accountants Ireland; Peter Tisman, Director of Advocacy & Practice Development at the Hong Kong Institute of CPAs; and Ian Young, Technical Manager at the Institute of Chartered Accountants in England and Wales.

They discussed topics such as local tax policy and administration, including transfer pricing, the development of the Belt and Road and the Greater Bay Area initiatives, and the new Mainland individual income tax regime. They also met with the Legislative Council Functional Constituency – Accountancy member, Kenneth Leung. They also sat down with *A Plus* and discussed global taxation issues. Read the roundtable article on page 10.

### Institute strengthens ties with the Beijing Institute of CPAs

On 27 March, Institute President Patrick Law and the Institute's senior leadership welcomed a 10-person delegation from the Beijing Institute of CPAs to Hong Kong to develop a strategic alliance with them. The parties signed a memorandum of understanding on closer collaboration for joint talent development, technical exchange and member support in Hong Kong and the Mainland, witnessed by representatives from the membership of both bodies.

### Annual meeting with the MoF

President Patrick Law hosted a delegation from the Central government's Ministry of Finance led by Dr. Li Yu Huan, Director General, Accounting Regulatory Department on 17 April. The Institute shared the current landscape of the accounting profession in Hong Kong including news about audit regulatory reform and the roll out of the new Qualification Programme. After this, participants exchanged views on the amendments to the Mainland CPA law as well as the implementation of Hong Kong Financial Reporting Standard 16 *Leases*.

### Work placements sought for Yuen Long District secondary school students

The Hong Kong Coalition of Professional Services (HKCPS), of which the Institute is a member body, is looking for potential partners who are interested in offering two-week work placement opportunities for secondary school students from Yuen Long for its internship programme in July. The programme, now in its 11th year, aims to provide 200 to 300 placements to Form 5 students to help them broaden their horizons through learning about different professions in Hong Kong, and build their self-confidence. If you are interested in being a role model to teenage students, please complete and return the reply slip (available on the Institute's website) to HKCPS by 15 May.

### Institute expands e-learning courses

A range of new courses have been added to the Institute's list of e-learning courses. These include e-Manager – 41 courses on topics including business analysis, risk management, project management, derivatives, as well as information technology; e-Seminar – five Inland Revenue Department seminars on transfer pricing, completion of the 2018/19 profits tax return, and proposed enhanced tax deductions for certain expenditures incurred in research and development activities; and e-Series – three courses on corporate finance, corporate governance and taxation. More details on the Institute's website.

### Seminar on securing jobs against AI

A seminar in May will explore how to develop new leadership and management capabilities in a digital era, and how to achieve a strategic partnership with artificial intelligence for career success. Members who are interested should enrol by 9 May on the Institute's website.

### Financial Controllership Programme returns

The Financial Controllership Programme, the Institute's tailor-made practical training programme on the work involved as a financial controller and the skills a successful financial controller needs, will run from June to December. Over 16 days, participants will learn from experienced course directors and facilitators how to become effective financial controllers who add value as Accountants Plus in business. Find out more details on the Institute's website.

### Corporate finance series

The workshops of the corporate finance series take place from May to June. Participants will gain knowledge about the key financial decisions faced by organizations, the applications and practical issues in corporate financial management and their implications for accountants. Find out more details on the Institute's website.

### Council minutes

Minutes from the February Council meeting are now available for members to read. They can be found in the "Members' area" of the Institute's website.

## Resolution by Agreement

**Li Wing Yin, CPA (practising), Au Yiu Kwan, CPA (practising) and BDO Limited**

**Complaint:** Failure or neglect by Li and BDO to observe, maintain or otherwise apply Hong Kong Standard on Auditing (HKSA) 230 *Audit Documentation*, and failure or neglect by Au to observe, maintain or otherwise apply HKSA 220 *Quality Control for an Audit of Financial Statements*.

BDO audited the consolidated financial statements of Rosan Resources Holdings Limited, a Hong Kong listed company, and its subsidiaries (collectively, group) for the year ended 31 December 2012 and expressed an unmodified auditor's opinion. Li was the engagement director and Au was the engagement quality control reviewer.

The carrying amounts of goodwill, mining rights and other related assets pertaining to the group's acquired coal mines were allocated to relevant cash generating units (CGUs) for impairment testing. Based on management's estimates and assumptions, the group recognized impairment losses because the recoverable amounts of certain CGUs were lower than their carrying values. The respondents did not prepare sufficient audit documentation to record the audit procedures performed and evaluation made to support their agreement with management's estimates and assumptions adopted in the valuations of the CGUs.

**Regulatory action:** In lieu of further proceedings, the Council concluded the following action should resolve the complaint:

1. The respondents acknowledge the facts of the case and their non-compliance with the relevant professional standards;
2. They be reprimanded; and
3. They jointly pay an administrative penalty of HK$50,000 and costs of the Institute and the Financial Reporting Council (FRC) totalling HK$105,564.50.

## Disciplinary finding

**Wong Wang Hei, CPA (practising), Tsang Yiu Chung, CPA (practising), Lui Chi Wang, CPA (practising) and Deloitte Touche Tohmatsu**

**Complaint:** Failure or neglect to observe, maintain or otherwise apply HKSA 450 *Evaluation of Misstatements Identified during the Audit* and the fundamental principle of Professional Competence and Due Care in sections 100.5 (c) and 130 of the Code of Ethics for Professional Accountants.

Deloitte audited the financial statements of a Hong Kong listed company, China Vision Media Group Limited (now known as Alibaba Pictures Group Limited) and its subsidiaries for the four years ended 31 December 2010 to 2013 and issued an unqualified opinion on each of those financial statements. Wong and Tsang were respectively the engagement partners of the 2010 and 2011 audits, and Lui was the engagement partner of the 2012 and 2013 audits.

The Institute received a referral from the FRC about irregularities in the audits of the above financial statements. Convertible bonds issued by the company in an acquisition exercise in 2010 were wrongly valued due to the use of incorrect currency exchange rates. This led to misstatements in goodwill, gain from disposal of subsidiaries, effective interest expenses and exchange differences in the financial statements for the four years. During the audits, Deloitte identified the misstatements which were clearly not trivial. However, Deloitte did not accumulate the misstatements and communicate them to the company's management, nor did they request management to correct the misstatements or request written representation from management.

**Decisions and reasons:** All the respondents were reprimanded. The Disciplinary Committee further ordered Wong and Tsang to pay penalties of HK$60,000 each, Lui to pay a penalty of HK$80,000 and Deloitte to pay a penalty of HK$150,000. The respondents were ordered to jointly pay costs of the disciplinary proceedings and of the FRC totalling HK$121,867.70. When making its decision, the committee took into account the particulars of the breaches committed in this case, the parties' submissions and the respondents' conduct throughout the proceedings.

Details of the disciplinary findings and guidelines for the Resolutions by Agreement are available at the Institute's website: *www.hkicpa.org.hk.*

# HLB Hong Kong rolls out new branding

HLB Hodgson Impey Cheng Limited, the Hong Kong member firm of HLB International, will roll out new HLB branding by the end of June. The new brand, which HLB International launched in October 2018, includes a new logo, website and tagline "Together we make it happen." The firm says the new brand supports HLB's transformation into a modern, full service advisory and accounting mid-tier network. "What remain the same are our commitments to our clients and the quality of our work," says Raymond Cheng, Chairman of HLB Hodgson Impey Cheng Limited.


Illustration by Harry Harrison

### Hong Kong IPO market sees strong first quarter


Hong Kong's initial public offering (IPO) market has been generating the biggest first-quarter returns in years, *South China Morning Post* reported this month. According to data compiled by Bloomberg, 11 companies selling IPO shares worth at least US$100 million saw increases by an average of 11 percent a month after the first day of trading. It was the largest gain ever recorded in four years. Chinese biotechnology company CStone Pharmaceuticals was the city's biggest IPO, raising US$327.8 million and rising 31 percent a month since trading. "The improved performance of Hong Kong's IPO shares are mostly due to the good momentum on the stock market and investors are inclined to give new shares higher valuations when sentiment on the secondary market is good," Ken Chen Hao, Strategist at KGI Securities Shanghai, said.

### IASB will not add to sustainability rules

The International Accounting Standards Board's (IASB) Chairman Hans Hoogervorst this month signaled little appetite for setting standards on sustainability reporting. "I do not think the IASB is equipped to enter the field of sustainability reporting directly. Setting sustainability reporting standards requires expertise that we simply do not have. Moreover, there are already more than enough standard-setters active in this field," Hoogervorst told a Climate-Related Financial Reporting Conference at Cambridge University. With so many standards in the sustainability reporting space, he highlighted the enormous potential for "disclosure overload" and the need for consolidation. "To give one example, Tesla is ranked highest in terms of the sustainability index of MSCI, while FTSE ranks it as the worst carmaker globally on environmental, social and governance issues. Yet another agency puts it somewhere in the middle," he said. The best way to make companies change is by having standards that focus on the impact of sustainability issues on future returns, he added.

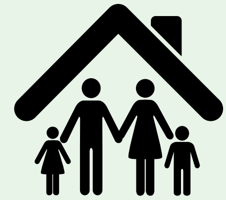

### BDO plans to split U.K. audit and consulting units

BDO, the United Kingdom's fifth-largest accounting firm, said plans to split its U.K. audit and non-audit businesses had "swung into motion" this month, following calls by British members of parliament to break up the Big Four. BDO said the move would create an audit subsidiary of 2,000 staff and a non-audit subsidiary of 3,000 staff, both operating under a single U.K. parent company, though plans are still in the early stages. A BDO spokesman said: "At the moment we are scenario planning for a variety of potential outcomes, one of which includes moving our audit practice to a separate subsidiary within the BDO LLP Group, so we can demonstrate it is sufficiently profitable and operates within a controlled environment focused on quality."

### U.K. watchdog opens full review of KPMG

Britain's accounting watchdog, the Financial Reporting Council (FRC), has launched an independent review of the governance, controls and culture at Big Four firm KPMG, following its role in the collapse of construction company Carillion. The review, which will take place at the end of the year, will look at the firm's risk management, and assess whether it is capable of delivering high quality audits in the U.K. It follows a 2018 quality assessment by the FRC, which found that around 50 percent of audits done by KPMG were below standard. "We are cooperating fully with the various inquiries currently under way, engaging actively with the reviews of the audit sector, and, where we can, we are moving ahead and taking action ourselves," said a KPMG spokesman.

## A world of numbers



**40%**

The percentage of middle-class earners who say they would need at least HK$5 million to cover retirement expenses, according a survey by China Construction Bank (Asia). The bank surveyed 2,500 Hongkongers on their wealth management habits, and found that 22 percent were saving to buy their children property, and 12 percent were saving for their children's weddings.

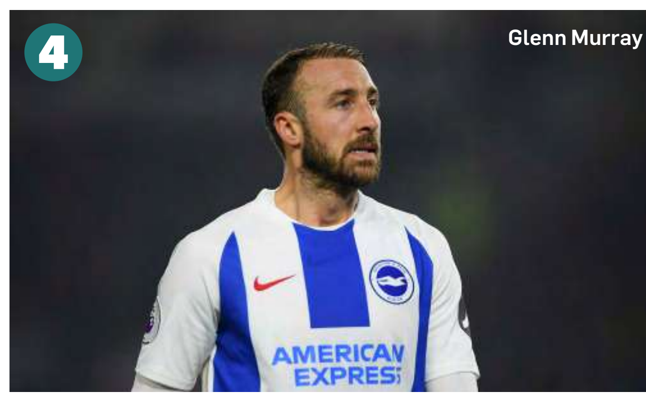
**US$4.5 million**

The amount to bail out former Nissan Motor chairman Carlos Ghosn, who was arrested last year on financial misconduct charges. Ghosn was previously released on bail in March after 108 days in custody but re-arrested earlier this month over similar charges. He denies all charges and will be put on trial later this year.

**US$1.25 billion**

The amount China's oldest brokerage company Shenwan Hongyuan is seeking to raise from its Hong Kong IPO listing this year. The company plans to set 2.5 billion shares priced between HK$3.63 and HK$3.93 apiece, and is set to become the 12th Chinese brokerage firm with dual listings in Hong Kong and Mainland markets.



Glenn Murray

## 1 Standard Chartered fined over AML controls

The United Kingdom's Financial Conduct Authority (FCA) has fined Standard Chartered Bank £102.2 million for failures in its anti-money laundering (AML) controls. It is the second-highest fine the FCA have given for such an offense. It comes after an investigation into Standard Chartered's Wholesale Bank Correspondent Banking business in the U.K. between 2010 and 2013 and the bank's branches in the United Arab Emirates between 2009 and 2014. The regulator said Standard Chartered had "failed to establish and maintain risk-sensitive policies and procedures, and failed to ensure its U.A.E. branches applied U.K. equivalent AML and counter-terrorist financing controls."

## 2 IPO brewing for Chinese Starbucks rival

Chinese coffee chain Luckin Coffee is planning to file an initial public offering (IPO) in the United States in a bid to dislodge Starbucks as the dominant coffee network in Mainland China. The Beijing-based coffee start-up, which is valued at US$2.9 billion, plans to raise US$300 million from the IPO, and will be listed on Nasdaq under the ticker symbol LK. Starbucks currently owns more than half of Mainland China's market share, according to Euromonitor. Luckin, which focuses on cashless payment and fast delivery, plans to use the proceeds for store expansions. Since its inception in June 2017, Luckin has opened 2,370 stores in 28 cities.

## 3 KPMG Botswana appoints first female partner

KPMG in Botswana has named Gosego Motsamai as its new Managing Partner. Motsamai is the first female partner at the firm and one of two female Batswana partners in the Big Four across the country. "I look forward to working with the team and lead KPMG through these challenging times as we look to rebuild trust and become the clear choice," said Motsamai. Executive Chairman of KPMG Southern Africa, Professor Wiseman Nkuhlu, made the announcement this month, saying: "I am certain that under Gosego's leadership, we will see KPMG Botswana continue to be a leading professional services firm in the country." Motsamai, who is also President of the Botswana Institute of Chartered Accountants, started her career at Deloitte before moving to KPMG in 1998.

## 4 Footballer cleared of tax evasion

Brighton Striker Glenn Murray and his wife have both been cleared of tax evasion charges, following an arrest last year January. The pair were investigated by Her Majesty's Revenue and Customs (HMRC) for evading income tax totalling £1.1 million and cheating public revenue, while Murray was further investigated for avoiding value added tax. The couple's Brighton home was raided and items such as personal and business documents and computer equipment were seized by HMRC officers. The pair were interrogated for several hours over the allegations, before being released on bail. Following an investigation, the HMRC has refused to rule out further action. In a statement, a spokesman said: "The criminal investigation relating to a couple arrested in January 2018 has concluded and neither have been charged with any criminal offense."

# TAX TODAY: A GLOBAL VIEW

From the tax challenges of the digital revolution to international anti-avoidance tax measures. Tax leaders from global accounting bodies talk about critical tax issues currently on the minds of businesses, citizens and CPAs during a roundtable discussion hosted by *A Plus*

Photography by Calvin Sit

Back, from left: Pieter Faber, Brian Keegan, John Cuthbertson, Bruce Ball and Peter Tisman. Front, from left: Eric Chiang, Edward Karl, Takae Akatsuka and Ian Young.

Business models and people's lives are increasingly being transformed by digitalization – yet tax policies around the world are struggling to keep pace. The push to reach an international consensus on how to tax multinational companies in a digital world could turn into a "David vs. Goliath struggle" between large economies and smaller ones, global tax experts have warned.

The Organization for Economic Cooperation and Development (OECD) is working with 129 jurisdictions – members of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) – to create new rules on how the profits of highly digitalized businesses should be allocated and taxed. On 13 February, the OECD released a detailed consultation document on proposals to address the tax challenges of the digitalization of the economy.

There are currently three main proposals on the table, but tax experts from member bodies of the Global Accounting Alliance (GAA), in Hong Kong for a meeting of the GAA's Tax Directors Group, pointed out at a roundtable event, organized by the Hong Kong Institute of CPAs, that there were significant challenges to implementing rules in this area.

"BEPS is a response to the behaviour of large corporations, and represents a movement towards realigning taxation rights between jurisdictions," Ian Young, Technical Manager at the Institute of

Chartered Accountants in England and Wales, says.

Brian Keegan, Director of Public Policy and Taxation at Chartered Accountants Ireland, sees these changes as necessary. "The rise of digital businesses has changed the world. Tax systems need to be updated to match this," he says.

One of the options under consideration, dubbed the "user participation" proposal, focuses on the value created by highly digitalized businesses through developing an active and engaged user base, such as through the provision of search engines, social media platforms or online marketplaces. This approach would see profit allocation rules revised to give the jurisdiction in which users are based the right to tax digital companies, irrespective of whether the company has a physical base there or not.

The second approach, known as the "marketing intangibles" proposal, would address situations where multinational companies have access to a jurisdiction, either remotely or through a limited local presence, allowing the development of a customer base and other marketing intangibles. Under this proposal marketing intangibles would be allocated to the market jurisdiction, which would then be entitled to tax some or all of the non-routine income associated with them, even if the company did not have a taxable presence there.

**"I don't think any developed value-added producing country is going to want to surrender corporate taxation yield just purely by virtue of the population size."**

Under the third option, known as the "significant economic presence" proposal, non-resident companies would be considered to have a taxable presence in a jurisdiction if they had a purposeful and sustained interaction with the jurisdiction through digital technology and other automated means. Tax would be levied on the apportioned revenue deemed to be generated from within a particular jurisdiction.

## Technical challenges

The proposals raise a range of challenges, with different countries likely to favour different approaches. Keegan points out that economies which benefit under the current arrangements are unlikely to want to surrender corporation tax to countries that have a larger user-base, which would be the case under the "user participation" proposal. "I don't think any developed value-added producing country is going to want to surrender corporate taxation yield just purely by virtue of the population size," he says.

Pieter Faber, Senior Executive, Tax Legislation and Practitioners at the South African Institute of Chartered Accountants, adds that while developing countries would be likely to support this approach, it would be unsophisticated simply to base the tax on the size of the market. But, he points out, it may be difficult for developing countries to monitor flows required under the other models, as they would not necessarily have the advanced banking systems and exchange controls needed to do so. "The complexity of systems that you require to enforce this is not that easy and these countries will be at the mercy of a big corporate with the backing of a big government that wants the profits to go back to it. It becomes a David vs. Goliath type of a fight," he says.

John Cuthbertson, Tax Leader, New Zealand, at Chartered Accountants Australia and New Zealand, points out that there is also a big difference between the size of a market and the quality of a market. "Just because you have got massive size doesn't mean you are adding much to the product. It comes down to the sophistication of the market."

But Takae Akatsuka, Technical Director of the International Tax Committee, at the Japanese Institute of Certified Public Accountants,

also sees issues with the marketing intangibles approach. "I am concerned that this approach would apply to a wider range of businesses with marketing intangibles, instead of being limited to a certain subset of highly digitalized businesses," she says. "This approach seeks to allocate a greater share of the profits earned by multinational corporate groups – which are not limited to highly digitalized businesses – to market jurisdictions on an aggregate, not transactional, basis. That might lead to solutions that go beyond the arm's-length principle, the basis for internationally accepted transfer pricing rules."

She notes that these established transfer pricing rules attempt to prevent the systematic shifting of profits by requiring transactions among affiliates be priced according to the arm's-length principle on a transactional basis as if they were conducted between independent, unrelated entities. "However, the marketing intangible approach may result in excessive allocations of taxation rights to certain jurisdictions, which is not consistent with the basic principles of 'alignment of taxation with the location of economic activity' and 'alignment of transfer pricing outcomes with value creation,' confirmed in the BEPS Final Reports."

**"If you have a dispute between two countries in deciding taxing rights on an ongoing basis, how do you, as the third party, the taxpayer, get dispute resolution?"**

Whichever option is selected, Cuthbertson warns: "We have to be very careful about what that final carve out of taxing rights is and how complicated it is. Paying tax should be a relatively easy process. You also have probably 95 percent of taxpayers willing to comply and the beauty of a good tax system is that they should be able to comply easily."

Bruce Ball, Vice-President, Taxation, at CPA Canada, believes the rules must be able to adapt in the future, as markets that may be unsophisticated now may not be so in years to come. "If you are urging that the size of the market doesn't matter because you are adding very little value in that market, this may change in time, so you have to take that into account in the proposals."

Faber adds that there are also issues around how dispute resolution will be handled. "If you have a dispute between two countries in deciding taxing rights on an ongoing basis, how do you, as the third party, the taxpayer, get dispute resolution?"

The new rules could also have wider implications than simply how to tax digital profits. "This is actually bringing forward the debate about future international taxing rights, including what the tax pie is going to be like and how it will be shared out," Cuthbertson says. As such, he stresses that it is important that exporting countries and smaller nations make sure they get their voice heard early on in the process.

## Consensus needed

While the OECD is trying to reach a consensus on the issue, Faber warns that achieving it may not be easy due to the self-interest of the various different countries. "Everyone had an interest in information sharing and they reached a consensus, but in the implementation phase things started unwinding as everyone saw that they might have to give up something," he says. "That is when the narrative can change quite quickly."

Keegan also thinks there is already a high-level of cooperation in the process. "Ten years ago nobody would have thought that 100-plus countries would actually, more or less, march to the same OECD tune – there has been progress," he says.

Young agrees, pointing out: "If

the United States, China, United Kingdom and Japan are behind this, I think, with all due respect, some countries will have quite a lot of difficulty pursuing their own self-interest if they are at odds with everybody else. I think there will be enormous pressure to actually get something sorted."

He adds that the OECD is also moving significantly quicker than it did a decade ago. "In those days OECD projects took 10 years. Now we do it all in two years, 18 months. It is very quick."

Peter Tisman, Director, Advocacy and Practice Development, at the Hong Kong Institute of CPAs, agrees: "When they started the BEPS project they never thought everyone would agree to it. My guess would be that something will be signed off at the end of next year."

But even if a consensus is reached, Ball points out that there could still be issues in how consistently different jurisdictions administrations actually apply the new rules. "While the OECD framework is thorough, it did not include any dispute resolution mechanisms, which are necessary for international agreements," he says.

Eric Chiang, Deputy Director, Advocacy and Practice Development, at the Hong Kong Institute of CPAs, is also concerned about implementation. "While there has been significant international movement towards greater transparency and consensus-building, there are still concerns about the practical implementation across jurisdictions. A framework is only as good as the implementation," he says.

## A shift in focus

On the impact of various international anti-avoidance tax measures, such as the OECD's BEPS rules, on multinationals, Chiang says one of the major impacts for Hong Kong companies has been the OECD's guidelines on the substance requirements for special purpose vehicles (SPV) established in low tax jurisdictions.

Tisman agrees: "The issue is that some of these entities may have their central management and control in Hong Kong and typically, they do not have business substances in these countries. Moreover, they may not have done any form of business registration in Hong Kong."

"Some of these jurisdictions have already passed laws in response to the OECD's guidelines on the substance requirements. Under the new legislation, these SPVs are, in general, required to demonstrate local business substances." He adds that companies are still looking for the guidance from these jurisdictions to see what level of substance is required. "We are in a state of flux and it is causing a lot of uncertainty."

Young points out that recent initiatives are also impacting the ability of countries to manipulate the global tax system for their own advantage. "With 129 countries joining the Inclusive Framework, there will be a lot of pressure on countries that have done quite well under the existing regime not to continue as they have done in the past."

But he warned that the current situation was creating a lot of uncertainty. "Any transition from an environment where you are confident and clear what the outcomes are, to one where you have new rules and new ways of looking at the world is inevitably going to cause a lot of uncertainty."

"Some traditional structures, which made sense under the old regime, are less acceptable now and companies are required to make some changes to ensure group structures fit the present international and local tax regimes," Young says.

Chiang expects to see further measures to cut down on tax avoidance. "We are seeing more and more initiatives being introduced at an international level which would

enable tax authorities to be better informed about the operation details of multinational corporations. These initiatives are being codified in local legislation. We expect to see more of that."

According to Faber, there has also been a shift in the approach to tax avoidance from whether it is acceptable under the law to whether it is morally acceptable. "That has created even more confusion within a field where certainty and the literal meaning of the word has always been the centre of it," he says.

He adds that the U.K.'s parliament recently accused Google, not of acting illegally to avoid paying tax, but rather of acting immorally. "I think that has created a new dimension in the avoidance space. It is now a question of morality, but what exactly does that mean?"

**U.S. uncertainty**

While international discussions about the future international tax regime continue, companies in the United States are facing considerable uncertainty following the introduction of the Federal Tax Cuts and Jobs Act (TCJA) and the impact of the South Dakota vs. Wayfair Supreme Court case which obliged out of state vendors (including foreign companies) to collect state and local sales taxes based on the locations of their customers.

The consequences of the TCJA is uncertain says Edward Karl, Vice-President, Taxation, at the American Institute of CPAs. "As tax is developed in the U.S., they look at a 10-year window of the impact of a particular provision and how much it will cost. So for a law that passed at the end of December 2017, you are dealing with one-and-a-half years of implementation and it is too soon to understand the direct impact," he explains.

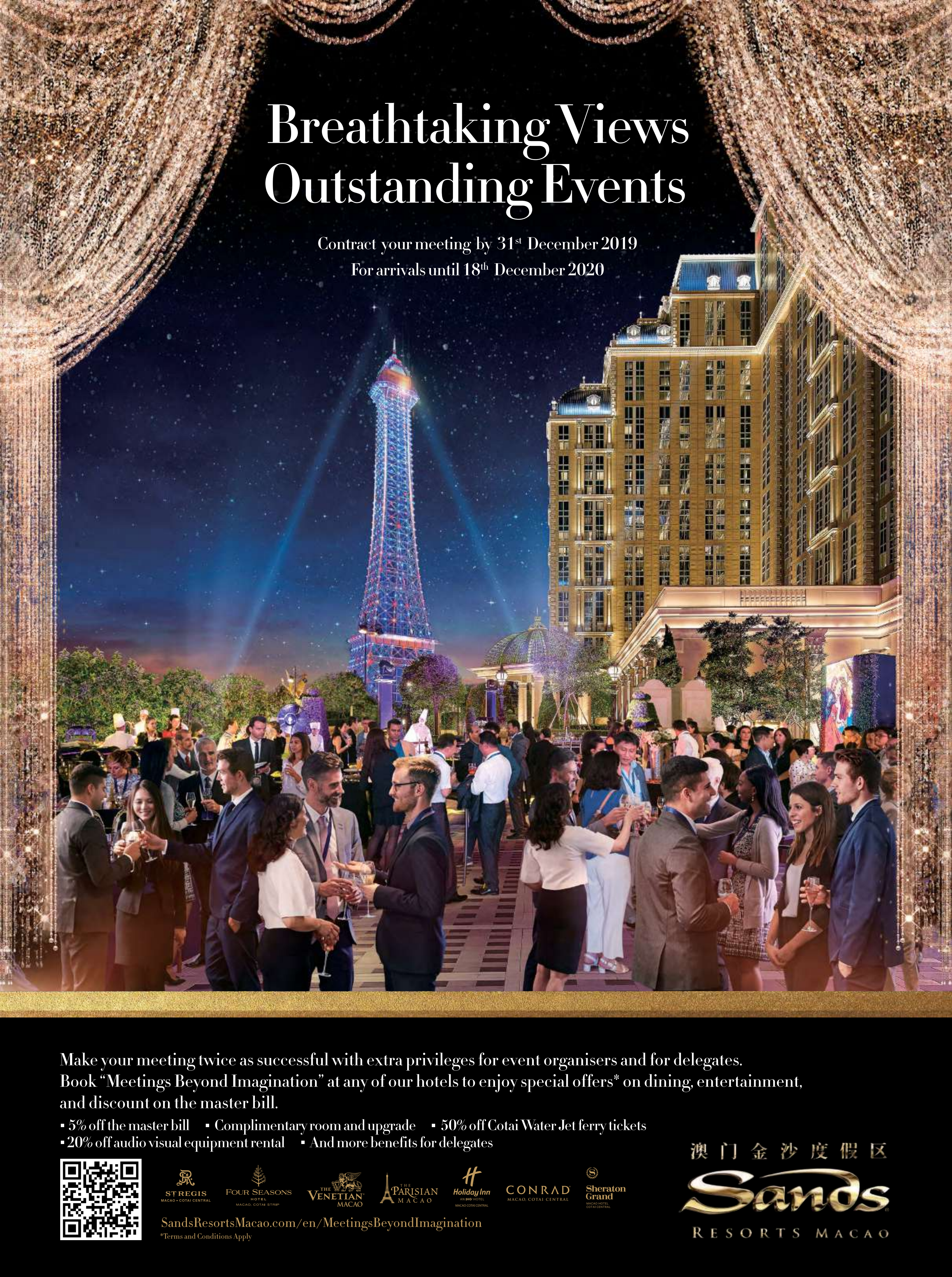
He adds that it is also unclear how the Global Intangible Low-Taxed Income (GILTI) and the Foreign-Derived Intangible Income (FDII) will operate together. GILTI seeks to tax overseas profits of U.S. corporations at an appropriate, minimum, rate while FDII is somewhat of a mirror image and sets up a special tax regime for earnings of U.S. corporations that have been generated overseas.

Brian Keegan, Director of Public Policy and Taxation at Chartered Accountants Ireland, says that while some start-ups are modifying behaviour because of TCJA, he has seen no evidence of a change in global investment decisions. "Although much has been made of the reported increase in profits because of the change, this is primarily due to the accounting treatment change of overseas profits," he says.

Karl says it is estimated that there are 300 revisions that need new guidance as a result of the TCJA. "The U.S. is quite different to the rest of the world in that tax legislation needs a significant amount of guidance from the tax authority to deploy it. Many of the provisions are not understandable without that guidance. To date, the guidance from the Internal Revenue Service is not completely finished so there is so much up in the air."

But he says there have already been several controversies with the guidance issued, while in other areas there has been no guidance issued at all. "It is a very difficult situation, not just for companies but also for CPAs. I asked a lot of CPAs about this busy season, and they said it had been the worst filing season they have had."

Companies, including digital retailers which sell to consumers across the states, are also working through the impact of the Wayfair ruling, removing the physical nexus requirement for collecting local taxes. With state tax authorities now able to impose sales and use tax collection onto out-of-state companies, many (including non-domestic) digital businesses will find themselves liable for taxes in states far from their locations. Amid the wider discussion about digital taxation, it's possible that states will also begin clamouring for their perceived share of the tax pie.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**Thought leadership**

by Richard Howitt

As the International Integrated Reporting Council publishes answers to the most frequently asked questions on integrated reporting, its Chief Executive Officer, Richard Howitt, discusses why the time is right to adopt integrated reporting

# How integrated reporting is helping find the answers to business challenges in the new era

Would it worry you to know that you might only be looking at 20 percent of the likely value of your organization?

Yet, that is the reality – up to 80 percent of the value of the company is not on the balance sheet.

Over the past 30 years there has been a growing willingness by companies and standard-setters to recognize relationships in the market and in society, the skills of the company's own workforce and the knowledge and ideas contained within the company as "intangible assets" alongside their tangible assets like property and capital machinery.

Now, these intangibles are increasingly the true value drivers of a successful company in the 21st century, particularly so for modern economy sectors like technology.

The increasing importance of these intangible assets is at the heart of why integrated reporting is winning fast-growing acceptance among companies around the world. In the new era of "multi-capitals" in which the success of a business relies upon its intangible assets, these social and relationship, human, natural and intellectual capital assets are just as important to the company as their traditional "hard assets."

It is also why the role of the accountant is changing.

## The future is integrated

The International Federation of Accountants has spoken for the global profession with their position paper, saying "integrated reporting is the future of reporting."

Those at the forefront of the profession recognize the need to understand and advise on more than just the health of an organization's finances – and should detail all of the resources and relationships the organization uses, and how their use is harnessed to create long-term value.

Advances in globalization, technology, the rise of social media and the ever-increasing risks surrounding climate change are just some of the emerging drivers that have led to this new recognition that the health of a company is synonymous with interconnected financial, manufactured, social and relationship, intellectual, human and natural capitals.

Accountants play a key role in helping to embed this concept of "multi-capitalism" through the adoption of integrated reporting. In over 70 countries, including Hong Kong, accountants are supporting their organizations pursuing this new way of thinking, acting and communicating.

To support them, they are turning to the International Integrated Reporting Framework (<IR> Framework), developed by the International Integrated Reporting Council (IIRC) with the help of businesses and investors around the world and first published in 2013.

A worldwide consultation in 2017 – our *Framework Feedback Exercise* – reviewed the effectiveness of the <IR> Framework, and found strong evidence demonstrating that it is a robust and successful tool for supporting this new approach.

The consultation helped form the basis for the launch of a new global strategic phase for the IIRC – the "Momentum Phase" – with the world moving rapidly towards integrated financial and non-financial reporting becoming the global norm.

But whether you are an accountant new to integrated reporting or a practitioner helping companies to implement it, already well-informed about these developments, we recognize there are still many questions about how to approach its principles of integrated reporting.

## Our way forward

Indeed, that 2017 consultation helped us highlight some of the key questions that are being asked by practitioners around the world.

That is why the IIRC recently published a set of answers to some of the most "frequently asked questions" about integrated thinking and reporting – available on our website at *www.integratedreporting.org/faqs*, where users can provide direct feedback to the IIRC about which answers were helpful – and which were not. The IIRC will use this feedback to develop the webpage over time.

This is part of a two-year programme of technical guidance about integrated reporting following our consultation, which we are developing and publishing through to the end of 2019.

Over the following months, we will release a "Getting Started" guide, as well as practice notes on the capitals and on the concept of value creation. Please use these free resources and share them with your colleagues and your clients.

Integrated reporting has been forged and is gaining momentum, led by global businesses and investors who recognize that it is key to future success.

The global accounting profession has a key role in our coalition in helping to deliver our mission – and as individual accountants, you have a great opportunity to forge this in your work for your clients or employers.

I encourage you to reflect on how much your organization truly understands the interconnected risks and opportunities within your business model.

I hope our new frequently asked questions will help you and them find the answers.

# ON TOP OF THE WORLD

As the Greater Bay Area and Belt and Road initiatives develop this year, the Hong Kong Trade Development Council is focused on telling the world how the city is the hub of world-class professional services needed to deliver projects. Deputy Executive Director Raymond Yip talks to Nicky Burridge about what gives Hong Kong – and him – a distinctive edge

Photography by Calvin Sit

Show Raymond Yip a stamp from anywhere in the world and he will not only be able to identify where it is from, but also give a brief history of the country in question.

Yip, Deputy Executive Director at the Hong Kong Trade Development Council (HKTDC), began collecting stamps, coins and paper notes from different countries more than 40 years ago, and he has since fulfilled his ambition to have at least one from every country in the world, including now-defunct territories.

But, his interest in philately and numismatics is not something he does to unwind from his job. It is a spillover of his passion for the work he does with the HKTDC. "It is how I learn about the world and enrich my knowledge of different countries. I can recall the brief history of every country, including very small islands," he says. "Whoever I meet, from whichever country, I can instantly converse with him or her about his or her country. It has helped me tremendously with my job and to build instant trust and rapport," he explains.

Yip more recently expanded his collecting hobby to include financial documents, such as old bonds, share and stock certificates. "Financial documents are very interesting. There are a lot of details in terms of the design and the history behind why the government, or whoever, needed to issue a bond, and what the story behind it is," he says.

His collection includes a bond certificate which was used by the then imperial Chinese government to raise funds in 1907 to build the China section of the Kowloon-Canton Railway.

He is fortunate in being able to combine his passion for travel with his work with the HKTDC.


李錦記

In February, the HKTDC has signed agreements with the 10 other Greater Bay Area (GBA) cities to organize overseas missions and explore investment opportunities in both mature and emerging markets, including countries along the Belt and Road. It will also feature the GBA in its flagship events including "Think Asia, Think Hong Kong" in Los Angeles in September.

"I have been to no less than 120 countries, including some very exotic ones, such as the Democratic Republic of Congo and East Timor. It is still on my agenda to visit the remaining 80-plus countries I have not been to."

## Outward-facing organization

The HKTDC is a statutory organization set up in 1966 to promote, assist and develop Hong Kong's trade. It promotes Hong Kong as a two-way global investment and business hub, and provides companies, particularly small- and medium-sized enterprises (SMEs), with business opportunities in the Mainland and international markets.

As part of its work to promote Hong Kong companies, the HKTDC organizes more than 30 fairs for products and services, as well as hosting over 600 networking and outreach events annually to help SMEs connect with new business partners and clients, and inbound missions to enable overseas businesses to understand what Hong Kong can offer them.

Yip has worked for the organization for 40 years, having joined as an executive trainee. With the exception of a short stint with Hong Kong-based conglomerate Swire when he first graduated, he has spent his entire career there. "I wanted to work for the HKTDC even in my university days after doing a research project on it. It was my dream job," he says.

Yip was particularly attracted by HKTDC's international nature and its role in helping companies explore new markets globally. "I think we are the Hong Kong public organization that is the most international and has the most offices around the world," he says.

In the past 18 months alone, the council has opened new offices in Manila, Almaty in Kazakhstan, Nairobi in Kenya and Riyadh in Saudi Arabia, bringing the total

**"A key part of our work is to promote Hong Kong as a two-way platform for Mainland and overseas companies to take advantage of relevant Belt and Road investment and trading opportunities."**

number of HKTDC offices around the globe to 50.

During Yip's time at HKTDC, the council has had six different executive directors and seven different chairmen, while Yip himself has worked at eight different ranks. "I have been through all of the positions from assistant manager to deputy executive director. It has given me a very broad understanding of the requirements, challenges and difficulties each level faces," he says.

In his current role, he is responsible for the HKTDC's marketing and external relations, as well as the organization's network of 50 offices worldwide. He also oversees the promotion of the product and service sectors, alongside corporate marketing and communication.

He says the main challenge he faces is encouraging Hong Kong companies, particularly SMEs, to embrace new and unheard-of opportunities. "One of our core values is 'opening new frontiers.' We need to learn fast enough to stay ahead of the curve."

## Eyeing opportunities across the border

Yip enjoys the planning and strategizing that goes into creating the HKTDC's business trade promotion programme. "We help to articulate Hong Kong's strength as a commercial hub that, in turn, facilitates companies in capturing opportunities around the world," he says.

The organization's remit has evolved over time, expanding from only promoting merchandise trade when it was first launched to also promoting trade in services after the government expanded its mandate in 1996. At the time, services accounted for 85 percent of Hong Kong's gross domestic product, compared with around 92 percent today.

For the past few years, it has had a particular focus on Mainland China, looking at how the services sector, including professional services and financial services, can benefit from policy developments outlined in the 13th Five-Year Plan, as well as the Greater Bay Area (GBA) and Belt and Road initiatives.

Yip thinks Hong Kong has a key role to play in these initiatives, acting as an international financial, transportation, trading, aviation, asset management and risk management centre, as well as a global offshore renminbi hub. With these key strengths, Hong Kong serves as the commercial hub for the Belt and Road while providing an international link between the GBA and the rest of the world.

"A key part of our work is to promote Hong Kong as a two-way platform for Mainland and overseas companies to take advantage of relevant Belt and Road investment and trading opportunities, positioning Hong Kong as the ideal location for regional set-ups to conduct such activities," Yip explains.

This year, the HKTDC will expand the Belt and Road Summit, co-organized with the Hong Kong government, into a two-day event, which will act as the anchor for a new Belt and Road Week to promote Hong Kong as the premier Belt and Road hub. "Hong Kong can serve as an international centre for financing, investment, logistics services, trading and professional services

**"I wanted to work for the HKTDC even in my university days after doing a research project on it. It was my dream job."**

Raymond Yip has worked at the Hong Kong Trade Development Council for 40 years. He began as an executive trainee and climbed through eight ranks to become Deputy Executive Director.

Yip still has the original bond certificate used by the imperial Chinese government to raise funds in 1907 to build the China section of the Kowloon-Canton Railway.

including dispute resolution, risk management and more," he says.

It also runs outbound missions to Belt and Road-related countries, as well as hosting the Belt and Road Global Forum, an alliance of chambers of commerce, industrial associations, investment promotion agencies and think tanks from around the world to encourage business collaboration among members. The forum has 106 members from over 30 countries, covering a total of 5 million member companies.

Meanwhile, the HKTDC helps GBA enterprises to expand globally using the HKTDC's marketing platforms, while assisting overseas investors to tap GBA opportunities through Hong Kong. As part of this work, it organizes the Business of IP Asia Forum every December, which attracts around 2,500 people from across the region to promote intellectual property trading in Asia. "This is an area where accountants can come in because a lot of intellectual property assets need to be valued and reported on," Yip says.

## Preparing for challenges

Yip concedes the current United States-China trade tensions could cause issues in the short term, with the uncertainty it creates possibly leading to slower global growth.

The HKTDC is offering information and training to help companies navigate the issue, including running a series of seminars offering advice and insights to SMEs, and creating a "U.S. Trade" webpage of resources and intelligence on the latest developments.

"Despite the current challenges, the HKTDC is cautiously optimistic about the prospects for Hong Kong, expecting the city's exports to increase 5 percent in value and 3 percent in volume in 2019," Yip says.

A potential issue, he adds, is that Hong Kong companies may not be as adventurous as they used to be. "When I first joined the council, I took delegations to very exotic countries, but today very few people want to go there. In general, people are not as inclined to venture out of their comfort zone as the last generation."

He points out that it is important for companies to diversify their markets. "This is something that we try to educate our companies about. We will be beefing up our programme of visiting different emerging markets," he says.

Yip also says that Hong Kong companies face the challenge of disruption brought about by innovation, technology and new business models. "This is why the HKTDC is working closely with SMEs to embrace new technologies to ensure companies retain their competitive edge in what is an ever-more challenging environment," he says.

The council is also working to support start-ups, and to promote Hong Kong as a centre for digital innovation and connectivity, in line with the government's vision for a smart city. "I think nurturing start-ups is an important area. Hong Kong had over 2,600 start-ups last year, which was about 18 percent up from the year before. It is one of the fastest growing start-up hubs in the world," Yip says.

The HKTDC hosts a range of events to help start-ups grow and expand globally, including the HKTDC SmartBiz Expo, which provides a platform for start-ups to meet potential investors, partners and suppliers. "We match projects with investors. We work with the private equity and venture capital profession to look at our projects," he says.

The council has similar initiatives for FinTech companies at the HKTDC-organized Asian Financial Forum. "We hope to entice more FinTech players to come to Hong Kong to build up the community and attract potential investors."

In 2007, Yip helped to launch the Asian Financial Forum, also co-organized with the Hong Kong government, which was looking for ways to celebrate the 10th anniversary of Hong Kong's reunification with Mainland China.

He explains that they came up with the idea after identifying a gap in the financial services sector, as at the time, there was no single event that embraced all the different facets of the sector, such as banking, insurance and investments, and was open to everybody. "We believed that with Hong Kong being the third-largest financial centre in the world, we needed our own major financial event every year for the region," he says. "We have grown very steadily over the years. The last event in January attracted 3,300 participants. It is now very firmly established as the key event for the financial sector in the region."

As part of its work to help Hong Kong businesses, the HKTDC connects CPAs with potential clients, both in Hong Kong and overseas, and hosts events and roadshows to promote the city's professional service providers.

Yip says there is particular demand from Mainland companies that are making overseas acquisitions to be put in touch with Hong Kong CPAs. "It has proven to be a very successful model and I think both sides appreciate the facilitation. We have helped 1,700 Hong Kong professional services companies of various disciplines to be engaged in these outbound investments."

**"We hope to entice more FinTech players to come to Hong Kong to build up the community and attract potential investors."**

He adds that inbound promotion is particularly helpful for small accounting firms that may not have the resources to go out of Hong Kong themselves.

The HKTDC has also invited the Hong Kong Institute of CPAs to be a Hong Kong partner in its "Think Asia, Think Hong Kong" promotions, and in 2017, it co-organized the Hong Kong Accounting Mission to Shanghai with the Institute, taking delegates to meet Shanghai's Free-Trade Zone authority. "Accountants have a very important job," Yip says. "Ultimately, companies will need to look at the bottom line and take heed of the advice of the accountant when making every strategic decision. Our job is to promote the export and cross-border business of that profession."

## Lessons in history

Yip graduated from the Chinese University of Hong Kong with an honours degree in Business Administration. He studied at Chung Chi College, a college within CUHK, and is grateful that the college required all students to do liberal studies as part of their undergraduate studies.

"I think liberal studies prepared me to embrace diversity and to appreciate differences and also to be open to different cultures, languages, backgrounds and religions," he says. "The HKTDC is an outward-facing organization, and we deal with different markets all over the world. We have 50 offices and consultants worldwide and people of over 30 different nationalities working for us."

He adds that liberal studies also gave him an appreciation for the importance of history. "Knowing other countries' history is important in understanding their peoples' mindset and why decisions are made," he says. "Whenever my colleagues ask me how they should prepare for their next posting abroad, I always say they should read the history of the country."

When he is not working, Yip, who is married and has three children, likes to go hiking in Hong Kong's many country parks. He is also a keen runner and has completed the Hong Kong half marathon every year for the past six years. "Apart from the physical training, it is really good perseverance training for the mind. It makes me focused and determined to single-mindedly finish everything with purpose, however daunting it may be."

by Adam Johnston



The Managing Director of Robert Half Hong Kong on the best way to prepare for and give a performance review that drives success for everyone involved

# How to conduct an effective performance review

A performance review is probably one of the most unnerving conversations an employee will engage in throughout the working year. After all, it's hard for anyone to feel overjoyed at the prospect of having their job performance and professional conduct being dissected and analysed. But it can be equally uncomfortable for managers too, as they stand in judgement of an otherwise trusted colleague and team member.

Done right, there's no doubt that performance reviews have their place in driving greater productivity and preparing talented employees for career growth. For many companies, appraisals are also an efficient method of improving employee performance. Effective reviews can be undertaken by keeping these considerations in mind.

## Prepare for the review

Avoid scheduling formal performance reviews during busy periods, as this will give employees adequate time to prepare, and result in more detailed and constructive discussions. To ensure formal appraisals are delivered meaningfully, managers should also take an active approach to reviewing performance throughout the year by taking notes and holding regular discussions which address issues and recognize achievements as they arise.

By keeping communication lines open, nothing discussed in a formal review will come as a surprise.

## Clearly establish expectations

To understand the key performance objectives they will be evaluated against, it's important team members are clear about their responsibilities and how they contribute to company goals. When expectations between managers and team members are aligned, team members are better prepared to hone their efforts while performance reviews are perceived as more meaningful and constructive.

## Be prepared and authentic

Aim to have a two-sided conversation with your team member, rather than simply delivering your thoughts in one long-winded spiel. To prepare for a dynamic and free-flowing discussion that engages your team member, review notes from previous performance reviews, be clear about the objectives set, collect comments from other managers and bring together relevant examples that demonstrate how goals have or have not been met.

## Put feedback in context

Whether you're praising a team member for the quality of their customer interactions or criticizing the way they communicate with other team members, always explain the consequential effect the performance had on the business and its priorities. When people understand the real effect of their actions, they're likely to feel more highly valued or motivated to improve.

## Remain objective

If there is a problem with performance, it's crucial to be specific and detailed in your conversations to address the issues. However, be aware that too much negativity could drive a team member to feel deflated and despondent. Always ensure there is adequate focus on their strengths and successes, so they feel motivated to bring their shortfalls in line with the rest of their performance.

Similarly, don't devote your entire review to singing the praises of star performers. While credit should always be given wherever due, it's equally important to address the negative aspects of an employee's performance to avoid encouraging a sense of complacency.

## Offer solutions to issues

It's not constructive to simply address performance issues and then leave your team member hanging. Often, performance issues are a sign that an otherwise talented and capable employee just needs a little extra support and guidance. So be prepared to suggest and offer solutions for how your team member can improve on negative feedback before their next review – for example, by organizing training sessions or setting up a mentoring relationship with a co-worker.

## Schedule frequent follow-ups

To instil confidence that your performance reviews are more than an annual "tick-box" exercise, take steps to ensure discussions stay alive and front-of-mind throughout the year. Schedule follow-up meetings at appropriate intervals to revisit issues and track progress where interim solutions and targets have been set. Checking in from time to time means ineffective improvement strategies can be amended, and the employee's priorities can be continuously evaluated against changing business needs and their career goals.

By taking the right approach to performance reviews, managers can instil confidence in team members to help support long and successful careers. Consequently, this will stimulate the sense of motivation and appreciation necessary to build top performing teams all-year-round.

# WEIGHTING FOR SUCCESS

A year on since the introduction of weighted voting rights in Hong Kong, experts debate whether the stock structure really makes the city a more attractive listing hub, Nicky Burridge reports.

Illustrations by Gianfranco Bonadies

Smartphone maker Xiaomi Corporation raised HK$42.6 billion through an initial public offering (IPO) on the Hong Kong Stock Exchange (HKEX) in July last year. It was not only the size of the listing that made it headline news, with Beijing-headquartered Xiaomi raising more than double the amount of the largest IPO in 2017, but also the fact that it was the first company to take advantage of a new listing regime allowing weighted voting rights shares to be issued in Hong Kong.

Unlike conventional share structures, where each share counts for one vote, under weighted voting rights – also known as dual-class shares – different classes of shares have different voting rights. The structure is not new, but is now often favoured by technology companies as it enables the companies to raise funds without the founder losing overall control.

The new listing rules, which came to effect in Hong Kong on 30 April 2018 also included measures to allow pre-revenue biotechnology companies to list and a new concessionary listing route for Mainland and international companies. The aim is to encourage more new economy companies to list in the city, after a spate of Mainland technology companies had chosen to list in New York, where dual-class shares have long been allowed. The change was billed as the biggest shake up to listing rules since 1993 when Mainland companies were allowed to raise capital in Hong Kong through H shares.

HKEX Chief Executive Charles Li previously predicted the new regime would lead to dozens of companies listing in the city, and would "make the Hong Kong market more relevant and even more competitive as we make Hong Kong a welcoming home for innovative companies." But while the change has been welcomed by some as ushering in a new era for Hong Kong, others have warned it weakens corporate governance standards.

## Paving the way for innovation

The new rules are limited to what the exchange terms "innovative" companies. These companies must also have a market capitalization of at least HK$10 billion at the time of listing and revenue of HK$1 billion in the most recent financial year, unless the market capitalization exceeds HK$40 billion.

So far, only two companies have listed under the new regime, Xiaomi and Mainland food delivery and retail platform company Meituan-Dianping, which raised HK$33.1 billion in September last year.

Edward Au, Co-Leader of Deloitte China's National Public Offering Group, Council member of the Hong Kong Institute of CPAs, and Deputy Chairman of the Institute's Corporate Finance Advisory Panel, welcomes the revised listing rules as marking "a new milestone" for Hong Kong.

Paul Lau, Partner and Head of Capital Markets at KPMG China


As part of the reforms to Hong Kong's listing regime, the Hong Kong Stock Exchange added three new chapters in the Main Board Listing Rules and made consequential changes to the rules to:
(a) permit listings of biotech issuers that do not meet any of the Main Board financial eligibility tests;
(b) permit listings of companies with weighted voting right structures;
and (c) establish a new concessionary secondary listing route for Greater China and international companies that wish to secondary list in Hong Kong.

and an Institute member, also views them as a positive development, saying: "The rule changes signify the HKEX's willingness to improve and adapt to an ever-changing market." He adds that although last year should be viewed as a transition period, two of the top 10 global IPOs by funds raised in 2018 were weighted voting rights companies listed in Hong Kong.

The new listing regime also signals a shift in focus in Hong Kong towards being a global hub for new economy companies. It is also in line with the government's objective of assisting the development of innovation and technology companies, with a particular focus on the areas of fintech, artificial intelligence, biotechnology and smart city. Wilson Chow, Global Technology, Media and Telecommunications Leader at PwC, points out that in the past Hong Kong did not have an ecosystem for technology, media and telecom companies, but the new listing regime is helping to create one. "Previously, these companies might not be able to generate enough interest from potential investors and would not be able to attract good valuations for IPOs," he says.

But others are less enthusiastic. Mary Leung, Head of Advocacy, APAC at the CFA Institute, warns that if every stock exchange in the world starts to offer dual-class shares it will simply become a race to the bottom. "Offering something like dual-class shares is not a silver bullet to competitiveness," she says.

Jamie Allen, Founding Secretary General of the Asian Corporate Governance Association, also questions whether dual-class shares are actually necessary in Hong Kong. "The primary reason for dual-class shares is to protect the founder against hostile takeovers. That argument makes some sense in the United States, where there is a strong market for corporate control. But we don't have a strong market for corporate control in Asia and very few hostile takeovers."

**"Offering something like dual-class shares is not a silver bullet to competitiveness."**

A number of investor safeguards have been introduced for weighted voting rights shares, including a process to determine the suitability of companies wanting to issue them, higher market capitalization requirements and enhanced disclosure requirements. Au points out that the rules also stipulate that the company must create a corporate governance committee, composed entirely of independent non-executive directors (INEDs). He says that while New York does not have all these additional requirements, they are necessary in Hong Kong due to the higher level of retail investors, which account for nearly 25 percent of the market, compared with only about 5 percent in the U.S. "This is a balanced set of safeguards at this point and these safeguards are already more stringent than those in the U.S.," he says.

Chow does not consider the new listing rules to have weakened corporate governance, pointing out that Hong Kong has well established regulatory systems governing listing applications and ongoing monitoring of listed companies.

## Increased risks

But not everyone thinks the new rules have successfully balanced the need for innovation with the need for strong corporate governance. "From our standpoint, we have always been one share, one vote champions. We think it is best if shareholders of companies are treated equally. The notion of dual-class shares is inherently unfair, and we do not think it is conducive to good corporate governance," Leung says.

Allen puts it more strongly, saying: "We have had long-standing concerns about dual-class shares. They introduce a new element of governance risk into the system which we think compounds existing problems and raises investment risk. We are concerned that over time this will damage the Hong Kong market."

He explains that from a governance point of view, dual-class shares are deeply unfair because they allow someone who has limited ownership rights in a company to have outright voting rights. "The basic tenant of good corporate governance is fair treatment of all shareholders. Fundamentally, dual-class shares do not meet this test."

A second issue, he says, is that investors tend to discount companies they do not trust. "If dual-class shares become the norm in Hong Kong and you have not just IPOs, but a lot of listed companies starting to use them, such as through new spin-off listings, then that could have quite a negative impact on the valuation of the Hong Kong market."

Leung says the CFA Institute's main concerns focus on the entrenchment risk and the lack of accountability that arises when there are weighted voting rights. She points out that under "one share, one vote" structures, if management is underperforming, shareholders can potentially come together and get rid of them, but if you have weighted voting rights, there is no avenue to do this.

Hong Kong has capped the number of votes allowed per share at 10, which is a significant difference

to the U.S., where there is no limit, with some founders having 500 or even 1,000 votes for every share they hold.

"It looks like a great win for investor protection, but in order to have 51 percent of control under the rules, founders only need 9.1 percent of the equity," Leung says. She adds that another issue with weighted voting rights is that if the founding shareholder makes a bad decision, they do not get punished in the same way as other shareholders because their equity stake is so small. "With this 9.1 percent stake you have control and can direct the company to do whatever you want, and if you mess up, the 91 percent of others will be picking up the bill," she says.

## Improving shareholder protection

In order to improve safeguards for shareholders, Leung would like to see the introduction of a time-based sunset provision, under which the "super voting rights" of the founding shareholder of a company with dual-class shares would lapse after a certain period.

Hong Kong has implemented event-based sunset provisions, so if the founding shareholder sells their shares, dies or leaves the company their higher voting rights will lapse.

But Leung points out it is difficult to know how the policy will be enforced, as it may not be clear if the founding shareholder is no longer actively involved in the company. "In our view, you should have an agreed time after which these super voting rights will collapse back into one share, one vote," she says.

Stephen Law, Managing Director at ANS Capital and an Institute member, thinks shareholder protection could be enhanced by having more INEDs appointed to the boards of companies with weighted voting rights shares. He points out that the U.S. requires companies with dual-class shares to have a majority of INEDs on the board, but Hong Kong only requires a third of directors to be INEDs, so they are in a minority. "If you increase the number of INEDs at board level, there would be more protection in terms of corporate governance and protecting minority shareholders," he says.

He adds that although Hong Kong requires there to be a corporate governance committee comprised of INEDs that reports to the board, the board does not have to follow its recommendations.

Au agrees, adding that INEDs could also be required to have minimum qualifications. He would also like to see weighted voting rights companies have to report on the work of the corporate governance committee on a quarterly basis to enhance the effectiveness of corporate governance and increase transparency for investors.

## Defining innovation

Another issue with the new regime is that the term "innovative" has only been loosely defined as a company whose success is attributable to the application of new technology or an innovative business model, or one where research and development, intellectual property or intangible assets make a significant contribution to its success or value. "The criteria could be clearer," says Law. "Xiaomi makes the majority of its revenue through selling mobile phones, but does that make it a new economy company?"

He also questions why only innovative companies can benefit from weighted voting rights, pointing out that many types of companies rely on their founders to lead them and generate growth. "If you allow weighted voting rights for one group why not allow it for another group?"

Allen also questions what is meant by an innovative company: "We were always sceptical, and we are still sceptical about the way in which the concept of innovative is linked to new economy companies. The idea that you can draw a clear distinction between an innovative and a non-innovative company is unrealistic. Many old economy companies are highly innovative, while some new economy companies are merely copying existing business models."

Au points out that the definition of what constitutes an innovative company will also need to evolve over time, as what is considered to be innovative now may not be in two years' time. "I think the market will expect there to be more published guidance from time-to-time, so that people can formulate a judgment on whether a potential candidate can really fulfil the criteria of being an innovative company," he says.

However, others think the current criteria are appropriate. Chow believes that if the criteria were too strict, it may prohibit companies from gaining access to the capital market. He adds that the IPO vetting process imposed by the HKEX and the Securities and Futures Commission is robust enough to assess the suitability of companies during the application process, with the Listing Committee, which is made up of professionals from banking, legal, accounting and other relevant fields, making an independent final assessment.

> **"The guidance letters issued alongside the new listing rules have helped improve clarity on the criteria for determining the suitability of companies, though leaving room for interpretation."**

"The guidance letters issued alongside the new listing rules have helped improve clarity on the criteria for determining the suitability of companies, though leaving room for interpretation," Lau adds. "The criteria of being an 'innovative' company are based on a non-exhaustive list of characteristics relevant for consideration, whose interpretation may evolve over time to catch up with market trends and developments."

## Improving Hong Kong as a listing venue

Chow views the changes favourably. "It allows the Hong Kong stock market to embrace a wider diversity of companies in the new economy, believed to be the growth engine of our future economy," he says.

Accountants will benefit from the change, notes Law, pointing out that the new regime will generate more work for accountants if a higher number of companies list in Hong Kong. "All listings require auditors and financial reporting. Companies also employ chief financial officers and financial controllers. The more companies that list, the more opportunities there are for accountants," he says.

But Leung points out that despite the new rules, a number of Mainland technology companies still opted to do IPOs in the U.S. last year, including Tencent Music, even though Tencent itself is listed in Hong Kong. Au also points out that to make Hong Kong an attractive place for listing, there needs to be other changes made alongside the new listing rules to build up its ecosystem for innovative companies.

Allen is unconvinced by the changes. "This was sold to Hong Kong as a necessity to compete with the U.S. We were told there would be dozens of dual-class listings."

But Anthony Leung, EY's Assurance Leader for Hong Kong and Macau, and an Institute member, points out that the launch of the new listing regime, while being a big step forward, was not meant to open a floodgate of innovative companies listing in Hong Kong.

"It is important to build the infrastructure to facilitate innovation. It is equally important to uphold corporate governance standards. The art of balance is not easy to achieve, and we are still on the tightrope, but so far so good," he says.

Lau is also upbeat: "We consider the changes to have been widely positive and expect the new listing regime to help create a vibrant and diversified financial market with sustainable growth for the future."


VOTE
VOTE
VOTE


# LAND OF OPPORTUNITIES

From Taiwan to Kuala Lumpur, Patrick Wong, engineering giant AECOM's Malaysia Country Director and APAC Leader for Global Key Accounts, has used his skills as a CPA to take up roles around Asia. He tells Kate Whitehead about how he realized his long-held ambition to be in operations

Photography by Iz Mady

Patrick Wong insists he's been lucky in his career, but you can't help wondering how much of that is luck, and how much can be attributed to his positive outlook, seeing opportunities where others may have groaned at the prospect of too much work. However, he certainly seems to have had a lucky star overhead when he made the jump from the consumer products sector to engineering company AECOM in 2007, just ahead of the global financial crisis.

"The timing couldn't be better. When the Lehman crisis came in 2008, all the governments pushed infrastructure projects, so it was the busiest time for us. Very lucky," says Wong.

AECOM grew fast. When he joined the company in 2007 as its chief financial officer, it had a staff headcount of about 3,500 in Asia. Ten years later that number had more than tripled, some through acquisition but most through organic business growth. Wong helped build up the finance team in Asia Pacific to match the rapid growth of the company.

"When I joined, we didn't have any financial planning team or a tax team, we only had an accounting team, it was very basic because until then that's all that had been needed," says Wong.

Today he is AECOM's Malaysia Country Director and APAC Leader for Global Key Accounts. He is effectively the programme manager in Asia Pacific, he says. His responsibilities include ensuring all the bids for the global accounts are coordinated and prepared consistently with clients requirements, with specific inputs from the global account managers; being the point person for all inquiries from the global accounts for potential projects in the region; and helping organize delivery teams for each key account. He says that an account may require architecture, engineering, quantity surveying, master planning and/or environmental review services.

With Malaysia among the Southeast Asian nations that have pledged to spend billions on infrastructure developments, Wong says he is very bullish on the country's infrastructure prospects. "[This is] partly due to its strategic location in line with the Belt and

**"Although there was a setback after the election in May 2018, the opportunities are coming back gradually, namely the revival of ECRL and the green light of the Bandar Malaysia project, both announced this month."**

Road Initiative (e.g. the East Coast Rail Link (ECRL) and Kuala Lumpur-Singapore High Speed Rail (HSR)), and partly due to the urgent need for domestic transportation (e.g. metro/light rail lines in Greater Kuala Lumpur area) and aviation infrastructure.

"Although there was a setback after the election in May 2018, the opportunities are coming back gradually, namely the revival of ECRL and the green light of the Bandar Malaysia project (a mixed-use, transit-oriented development in Kuala Lumpur) both announced this month. I'm confident that the high cost issues of HSR and other projects can be resolved within a reasonable time."

## Handover advantage

As a fresh graduate in his early 20s, Wong began his career as an auditor with Deloitte. After three years he quit because he realized a career with a professional CPA firm wasn't ticking all the boxes. He wanted to be in a commercial company.

"I wasn't interested in going deep into the accounting standards and the rules, but I did enjoy talking to people when I was doing an audit. You don't just talk to the accounts department – you need to talk to the IT department, the warehouse department and human resources. I enjoyed understanding the operation and thinking about where there might be a disconnect," says Wong.

The decision wasn't unusual at the time. He graduated in 1988 and says about half his cohort at the time decided to work somewhere other than a CPA firm. What he didn't realize until much later was how fortunate he was to graduate in the era of Hong Kong's great "brain drain," when many middle and senior management professionals emigrated to Canada, Australia and the United Kingdom ahead of the 1997 Handover. It was a social phenomenon that would enable him to quickly rise up the ranks.

"People who graduated at that time, we enjoyed a certain advantage. The downside is that some people are now coming back, so there's even more competition for young people," says Wong.

He spotted a newspaper advertisement for an assistant regional controller at Club Med, a holiday company he'd never even heard of. It was a big jump from an auditor with three years' experience to assistant regional controller, but he got the job in 1991 and quickly settled into the French company. He enjoyed the family-like atmosphere and the after-work socializing, but it was a rather mundane aspect of this new corporate culture that was to have a big impact.

"I was asked to do some inputting. You'd never think you'd want to do this as an assistant regional controller, but my boss explained that if you're running a team and they're all doing this work and you don't know how to do it, how can you manage them?" recalls Wong.

## Wide experience

He punched in the data and also learned the then new reporting software, MicroControl (now Hyperion). Club Med had many resorts across Southeast Asia and there were plenty of tax disputes, so he was also called in to support with tax issues. Talking to European tax lawyers and seeing how they analysed a case and which arguments they put forward was a whole new world. In his second year with Club Med, he travelled to Tokyo with the finance director to talk about a second listing on the Tokyo Stock Exchange.

"We met with the bankers and talked about the initial public offering. Eventually it didn't come off, but it was good experience interacting with all these people," says Wong. "It was a good expo-

Patrick Wong previously worked at Club Med as assistant regional controller, and Bausch & Lomb as Asia Pacific manager - accounting and reporting.

sure to listen to the investment bankers, CPAs and lawyers to discuss share valuation."

It was largely because of his experience with the reporting software that in 1994 he was approached by Bausch & Lomb, one of the world's largest suppliers of contact lenses, to be its Asia Pacific manager - accounting and reporting. Again, it was an opportunity to make a big leap and Wong buckled down into the role. He'd been chosen for his skill with the reporting software and for a year he focused on that, condensing what had previously been the work of three people into one. But he didn't want to be pigeonholed in that role – he still had his sights set on commercial operation and said so.

"You have to speak up, you can't expect your boss to know what you're thinking. If they see you doing well, from a selfish perspective they want you to keep doing it. I always tell young people: Don't count on anyone to plan your career, if you do that's a big mistake. You've got to tell your boss what you want to do," says Wong.

**"Don't count on anyone to plan your career, if you do that's a big mistake. You've got to tell your boss what you want to do."**

It was almost two years before a position came up in Taipei, as director of finance and IT, and he took it. From there he moved to Tokyo as the company's executive director - finance and IT. The roles involved frequent travel and the conditions weren't always ideal, but he says it's important to be flexible. "I enjoy the adventure. After Taipei, I went to Tokyo, then KL. To me, every opportunity is a new story to explore."

## Storytelling

When Wong was CFO at AECOM, he understood that you can be a solid, technical professional, but if you don't know how to communicate clearly and efficiently to your boss then you might not be heard or understood.

Before becoming AECOM's Malaysia Country Director and APAC Leader for Global Key Accounts, Wong was the engineering company's chief financial officer for Asia Pacific

"I see many accountants – and engineers, indeed any profession – if they are so confident in their professional skill, they may not fully appreciate the importance of the soft skills, like storytelling, communication. Internally it's a problem and externally, with clients, it's an even bigger problem," says Wong.

In 2017, Wong realized a long-held ambition to be in operations and took on his current position as AECOM's Malaysia Country Director. "While I was the Asia CFO, I was involved in quarterly business review meetings of all business units and specific operational matters within the region. I have known the management team for the last 10-plus years or through the acquisition exercise. Such a background and knowledge helped me tremendously in transitioning into the role as country director for Malaysia," he explains. "I did need to pick up the general business details, for example, key clients, their key persons and the regions or sectors that they are in. It started with learning the go/no-go and risk assessment process, then about partners teaming for mega-projects, and the bidding strategy discussion. These are all new operational experiences to me."

Not being an engineer in this role has its advantages – he can think more strategically and leverage his accounting knowledge. The drawback is that in an industry that is based heavily on relationships, he doesn't have those networks and connections, particularly not in Malaysia. Wong has to rely on tendering for business.

"That's not very effective, but maybe that's the best way to build our business in Malaysia. Relationships can be a double-edged sword – in the good times it helps you to get a job, but when the political situation changes those people who helped you get a job could be the ones to make you suffer," he says.

**"I knew at the beginning I didn't want to be in a professional firm, that wasn't my interest, so I needed to go commercial."**

Having a good relationship with his boss, and sharing his professional ambitions, likely goes some way to explaining the thoughtful position his boss carved out for him in his new role. In addition to being Malaysia Country Director, he has his APAC Leader role.

As the former CFO for Asia Pacific, he has the necessary perceived professional clout for the job. "I appreciate my boss – he thought about this and put me in this role. I can run Malaysia to enjoy my aspirations, but at the same time stay in the network and not waste the network I built up in the last 10 years," says Wong.

## Wise words

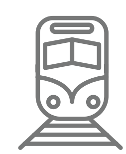
Wong's top piece of advice for young accountants is to be curious – without curiosity, you'll just be doing a job without any heart in it.

This leads on to his second suggestion – not to ask for or set specifications for your job. To do so is to draw a boundary around yourself and limit your opportunities to grow. In the early days of his career, if Wong saw something that wasn't working well in another department, he'd speak to that department. And if he saw no change, he'd talk to his boss.

"That's quite aggressive, but for the sake of the company I don't care too much about boundaries. Don't care too much about stepping on someone's toes, step on it until someone pushes you back and then push back a little, but don't stop. Otherwise you won't have the exposure to really understand working with the other functions," says Wong.

And thirdly, he underlines the need for young people to be prepared to put in the hours to do something that might not be relevant now but could help them reach the next stage in their career. "You need to make up your mind whether you see accounting as your life's job, or you see it as only a tool to allow you to do something else. I knew at the beginning I didn't want to be in a professional firm, that wasn't my interest, so I needed to go commercial."

One thing Wong stays curious about is food, and his adopted home lets him explore that curiosity. "KL is a city of diversity and inclusion, with multiple racial and religious groups living harmoniously. Cantonese is a popular language and there is so much great Chinese food from Penang, Ipoh and Johor. Together with local Malay cuisine and other countries food, one of my hobbies is to explore food over the weekend, from *Bak Kut Teh, Nasi Lemak*, to durian. KL also has a lot of good hiking spots to burn the calories."



This month, Malaysia and China agreed to resume two projects – construction of the East Coast Rail Link, and a property development linked to China – both part of the Belt and Road Initiative.

# Striking for perfection

With the Institute's 2018 Bowling Winter League completed last month, Jeremy Chan speaks to four passionate CPA bowlers about their experience and highlights of the tournament

Photography by Anthony Tung


(From left to right) Ken Ng, Kan Miu Yee and Lydia Chau

"At the very beginning, none of us really knew how to bowl," recalls Ken Ng, speaking about his six-person bowling team, Kuma. "We only knew how to hold a bowling ball." Fast forward a few years, and Ng has managed to score 290 points during a game – still his all-time record.

Ng started bowling after joining the Institute's Bowling Interest Group in 2010, where he met some like-minded players. They formed a team and practice at the 40-lane bowling centre at the South China Athletic Association every other week, donning their CPA jerseys, and bringing their own bowling balls.

The Institute's Bowling Interest Group hosts two leagues a year, one in the summer and the other in winter. They take place every Friday evening over 12 weeks and see up to 10 teams of six compete with each other playing three games per event. Three of those six players take part in each game.

The winter league saw eight CPA teams battle it out – Turkey, JJ6016, Kuma, Flash, Superbowl, Cyclone, Team H and Team B. Turkey finished in first place, JJ6016 in second place, and Kuma in third.

## Mind over matter

Coming in third place wasn't easy for Ng's bowling team, which finished the league with 149 points. Though the team came in second place in the first week, the team struggled to keep up with the other teams from week three to 11, coming in fourth, fifth and sixth places, with the exception of week seven where they climbed back to third place.

Ng, Managing Director of KTO CPA, looks back at the game against JJ6016, the second place finishers. "Their members are quite strong, and they usually finish the league with a high average of above 200," he says. Ng says his teammates gave it their best during


CPA
CPA
Lydia

the final game, which led them to finish the competition in third place, four points below JJ6016, but seven points above the fourth place team, Flash. "I was a little bit nervous bowling with JJ6016 at the beginning – they're quite a challenge," he adds.

Ng now has almost a decade of bowling experience. He admits, however, that it can be nerve-wracking competing alongside more experienced teams, and knows how that might affect a player. "Bowling is a very mental sport," he says. "If you don't relax, you won't bowl well. You might exert an extra force on the ball, which can influence the result." He manages this by keeping calm during each game and remembering to enjoy himself. He enjoys how the sport helps him de-stress, each and every game.

One of his teammates, Kan Miu Yee, agrees. She got into bowling shortly after graduation, and would bowl with her friends at least once a week. After finding about the Bowling Interest Group in 2010, she joined and began taking bowling lessons to improve her technique.

Like Ng, she says nerves can throw a bowler off course. "One challenge is maintaining calm and confidence during each game – especially when it comes to clearing a split or getting a turkey," she says, referring to clearing two pins to make a "split," or getting three strikes in a row for a "turkey." The most satisfying thing, she says, is clearing tricky pairs such as the 7-10 split, which involves clearing the leftmost and the rightmost pin in the back row. "There are so many

**"If you don't relax, you won't bowl well. You might exert an extra force on the ball, which can influence the result."**

split combinations, so when I finally clear one, it feels really good, as it often requires more skill than getting a strike."

Despite the pressure of every tournament, Kan is grateful to be part of the Institute's Bowling Interest Group, and says there are lessons to learn from each throw. "Every game is a new game – I never let a previous game burden the next one," she says. "I found that the more I relaxed and enjoyed each one, the better my result. I also apply this theory to my work and life, and that's why I love bowling so much – it reminds me to relax and enjoy every moment."

## Uphill battle

It was team Turkey's first time finishing at the top, something team member Lydia Chau is both proud and surprised about. Chau joined the league in 2012 and is Finance Manager at watch company Bovet 1822 APAC. Though they finished first, she says the first half of the league was a struggle. The team started in fifth place after the first week, and then dropped down to seventh place in the following week. They managed to rise up to fourth place during week five – and by week six, reached the top spot. "We gave it our best to maintain that lead up until the end."

Chau says maintaining their lead during the final six weeks was not easy. "I got stressed every time I couldn't seem to finish a spare, reach my average, or when I focused too much on our score," she says. Her happiest moment in the league was when she steered clear of the gutter and netted only strikes and spares. "I was so happy, I took a photo of the scoreboard," she laughs. "And during the last game, we enjoyed ourselves and did our best." The team finished with a final score of 168.5.

Chau has been an eager bowler since she was a secondary school student. Though she is still busy these days, she uses every opportunity to practice and bowl alone or with other passionate CPAs. This, she says, is the secret to keeping her skill at a certain level. "Bowling is something you can do with people, or alone," she says. "And practice helps to develop your muscle memory, helping you to be more consistent. It is a lifelong hobby – you can never get too good at it without practice."

## A big community

Florence Tang, Manager, Performance Improvement Advisory at EY, and member of Turkey, also began bowling in her secondary school years. She joined the interest group in 2017 after being introduced by a CPA friend.

She remembers how the help of a scoring system, known as a handicap, kept her in the league after week five. In most bowling leagues, bowlers of all levels stand a chance at winning with a handicap, which is calculated by subtracting a player's average score from a number slightly larger than the highest average bowling score, known as a basis score, and is intended to be more than any individual bowler's average. This new number is added to players' score, increasing their total. Players with a lower score receive a larger handicap, and vice versa. With her score at 444 and a fellow competitor's at 557, a handicap of 150 brought her final score up to match her competitor's, at 594. Towards the final week, they maintained their lead and finished strong.

Tang says it is a challenge getting members to bowl on certain tournament nights due to busy schedules, so any three available players – out of the six players in the team – can represent the team any game. "Sometimes, you are not really sure who you're playing against – we could be up against very competitive players one week, or less competitive ones the next." The team often try to guess who their competitors will be, based on their availability throughout the tournament. Her team is also made up of players who are only available on game nights. "I could be playing with any of our six members, so there's some luck involved," Tang says.

Like her peers, Tang cherishes the camaraderie within the Bowling Interest Group. "I love bowling for a CPA team – all my teammates are so friendly," she says. "The atmosphere is great and you often see people from different teams hanging out with each other during games. It's a social gathering too."

Tang and the four bowlers hope to maintain their lead in this year's summer league, and welcome new players of all levels to the interest group. "We never put pressure on our teammates and tell them we need a higher score," says Ng. "We only offer words of encouragement, so just remember to have a good time!"

The Institute welcomes members to join its Bowling Interest Group. For more details, visit *www.hkicpa.org.hk*

# Review of annual financial reports of non-governmental organizations

Have you identified all potential threats associated with your engagements for non-governmental organizations (NGOs)?

The Charities Aid Foundation's *World Giving Index 2018* reported Hong Kong 18th out of 144 countries studied in terms of the proportion of people who donated money to charities – ahead of some advanced economies such as Finland, Belgium and Japan. According to the report *Government's Support and Monitoring of Charities* issued by the Hong Kong's Audit Commission in April 2017, HK$11.84 billion in tax-deductible donations were made to charities in the 2014/15 assessment year. In other words, people in Hong Kong are generous.

However, there is no overall statutory scheme for the registration and regulation of charities in Hong Kong. The Inland Revenue Department has the power to grant tax-exempt status, and maintains a list of charitable institutions with such status on its website. Many of these institutions are also recipients of recurrent funding from the Social Welfare Department (SWD), which is estimated to be HK$16.8 billion in 2018/19. NGOs which operate under the SWD's Lump Sum Grant (LSG) Subvention System are required to file annual financial reports (AFRs) with the SWD which are published on the department's website for the public.

Not to be confused with the organization's annual financial statements which cover its entire operations, the AFR only covers the NGO's activities which are funded by the LSG subvention. Pursuant to the requirements of the LSG Manual, an NGO is required to submit the AFR, together with the organization's audited financial statements to the SWD on an annual basis. The AFR, prepared by the NGO, must be an integral part of the organization's annual report, and reviewed by an external auditor in accordance with Practice Note 851 *Review of the Annual Financial Reports of NGOs* (PN 851) issued by the Institute and prepared in consultation with the SWD.

## Practising requirements

PN 851 requires that the scope of work and reporting by auditors of NGOs meet the relevant requirements under the LSG Manual. The guidance covers the following areas to enable an auditor to properly discharge their responsibility in conducting a review of AFR:

- Terms of engagement
- Planning
- Documentation
- Procedures and evidence
- Management representations
- Conclusions and reporting

The review engagement on the AFR, which primarily comprises inquiries and analytical procedures, might be mistakenly perceived as a rather straightforward, low-risk engagement. Yet, one must not undermine its significance as the publication of AFRs on the SWD's website serves a public accountability function. The published AFRs are subject to high public scrutiny as the government and the public rely on them to ensure proper and transparent financial reporting by the NGOs concerning government subventions.

## Even minor errors can impact reputations

The Institute has received a number of complaints upon discovery of errors in published AFRs. The allegations in these complaints mainly concerned the auditor's failure to detect typographical errors, casting errors, misclassification of line items, or disclosure errors in the AFR. The nature and seriousness of these deficiencies might not reach the extent to raise concern on the appropriateness of the conclusion issued by the auditor on the AFR. However, the errors could certainly cause somebody to raise an eyebrow when it comes to the public perception of a CPA's professionalism. In resolving these complaints, the Institute typically issues advisory letters to the auditors in question cautioning auditors to exercise due care in conducting future engagements.

Members need to be reminded that, in addition to familiarizing themselves with the requirements of the LSG Manual and PN 851, they are also required to comply with the fundamental principles as stipulated in the *Code of Ethics for Professional Accountants*. As highlighted below, compliance with the principle of professional competence and due care might come into question in instances such as communications with clients outside the scope of the review engagement.

## Exercising due care

Most, if not all, charitable organizations run on a budget that is tightly monitored by funders. It is therefore generally understood that many of them do not enjoy the benefit of having a sizeable or sophisticated in-house accounting team. As a result, CPAs who serve as external auditors may often be approached by their NGO clients for advice and support. Practitioners should be mindful of potential pitfalls when it comes to communications with clients and avoid any perception of a lack of independence or objectivity.

For example, the Institute has received a complaint from the chairman of an NGO who challenged the propriety of "advice" sent to him by the auditor via WhatsApp. The complaint was eventually dismissed by the Institute as it was found the communication could contain a wider meaning than that understood by the chairman. Nevertheless, members are reminded to be sensitive to the circumstances of their clients and exercise due care when communicating with them.

Members are advised to consult the following Institute resources:

- Sections 100 and 130 of the *Code of Ethics for Professional Accountants* (Volume I of Members' Handbook)
- PN 851 *Review of the Annual Financial Reports of NGOs* (Volume III of Members' Handbook)

This article is contributed by the Institute's Compliance Department

# The enactment of economic substance legislation in no or only nominal tax jurisdictions

**Gwenda Ho** and **Ricky Chow** examine the economic substance legislation in the Cayman Islands and the British Virgin Islands and share their insights and other related observations

International efforts targeting tax neutral jurisdictions are nothing new. Indeed, the work leading to the latest enactment of the economic substance legislation by various jurisdictions dates back to 1996, when the Committee on Fiscal Affairs of the Organization for Economic Cooperation and Development (OECD) launched a project on harmful tax competition. The results of the project were published in a 1998 report on *Harmful Tax Competition: An Emerging Global Issue* which addressed harmful tax practices in the form of "tax havens" (as they were then called) and harmful preferential tax regimes.

This work was revamped as part of the work under Base Erosion and Profit Shifting (BEPS) Action 5 on countering harmful tax practices by the Forum on Harmful Tax Practices (FHTP) with a priority on preferential regimes (including requiring substantial activity for such regimes). Since the release of BEPS Action 5 Final Report in 2015, the FHTP has resumed the substantial activities factor for no or only nominal tax jurisdictions, in order to level the playing field and prevent such jurisdictions from attracting profits from certain mobile activities without any corresponding economic activity, that is, to require entities to demonstrate local economic substance.

The outcome of the work was published in *Resumption of Application of Substantial Activities Factor to No or only Nominal Tax Jurisdictions* (the OECD document) in November 2018. The OECD document is similar to the guidance for determining substance put forward by the European Union's (EU) inter-governmental Code of Conduct Group (Business Taxation) in mid-2018 (the CoCG guidance).

Following the release of the CoCG guidance and the OECD document, a number of no or nominal tax jurisdictions including the Cayman Islands, the British Virgin Islands (BVI), Bermuda, Barbados, the Isle of Man, Guernsey and Jersey, responded swiftly by introducing their own domestic economic substance legislation to avoid being blacklisted by the EU.

This article considers the cases of the two jurisdictions that Hong Kong businesses are most familiar with – the Cayman Islands and the BVI –which passed *The International Tax Cooperation (Economic Substance) Law, 2018* and the *Economic Substance (Companies and Limited Partnerships) Act, 2018* respectively in December 2018, both effective from 1 January 2019. While these laws broadly followed the recommendations set out in the OECD document, they are still being reviewed by the EU and are subject to amendment.

The Cayman Islands Tax Information Authority (the Cayman authority) further issued the *Economic Substance For Geographically Mobile Activities Guidance (Version 1.0)* (the guidance) on 22 February 2019 to provide support for understanding the law enacted. Given that the laws introduced in the Cayman Islands and the BVI are broadly similar, this article sets out the key features of the economic substance legislation in the Cayman Islands and highlights the major differences in comparison to the legislation in the BVI.

## Cayman Islands

"Relevant entities" engaged in "relevant activities" are required to fulfil the economic substance requirements in the Cayman Islands.

### Definition of relevant entity

- A "relevant entity" means (1) a company (other than a domestic company) that is incorporated under the Companies Law or a limited liability company registered under the Limited Liability Companies Law; (2) a limited liability partnership registered in accordance with the Limited Liability Partnership Law; and (3) a company incorporated outside of the Cayman Islands but registered under the Companies Law. However, a relevant entity does not include an investment fund or an entity that is tax resident outside the Cayman Islands.
- An investment fund is defined as an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments, including any entity through which an investment fund directly or indirectly invests or operates, but does not include a person licenced under various Cayman Islands laws.
- The guidance elaborates on "tax resident outside the Cayman Islands", and states that the Cayman authority would regard an entity as tax resident

outside the Cayman Islands if that entity is subject to tax in another jurisdiction by reason of domicile, residence or any other criteria of a similar nature. The Cayman authority will request any such entity to produce satisfactory evidence to substantiate their tax resident status outside the Cayman Islands, such as a Tax Identification Number, tax residence certificate and assessment or payment of a tax liability. The entity must also provide details of its parent company, ultimate parent company and ultimate beneficial owners including their respective jurisdictions of tax residence.

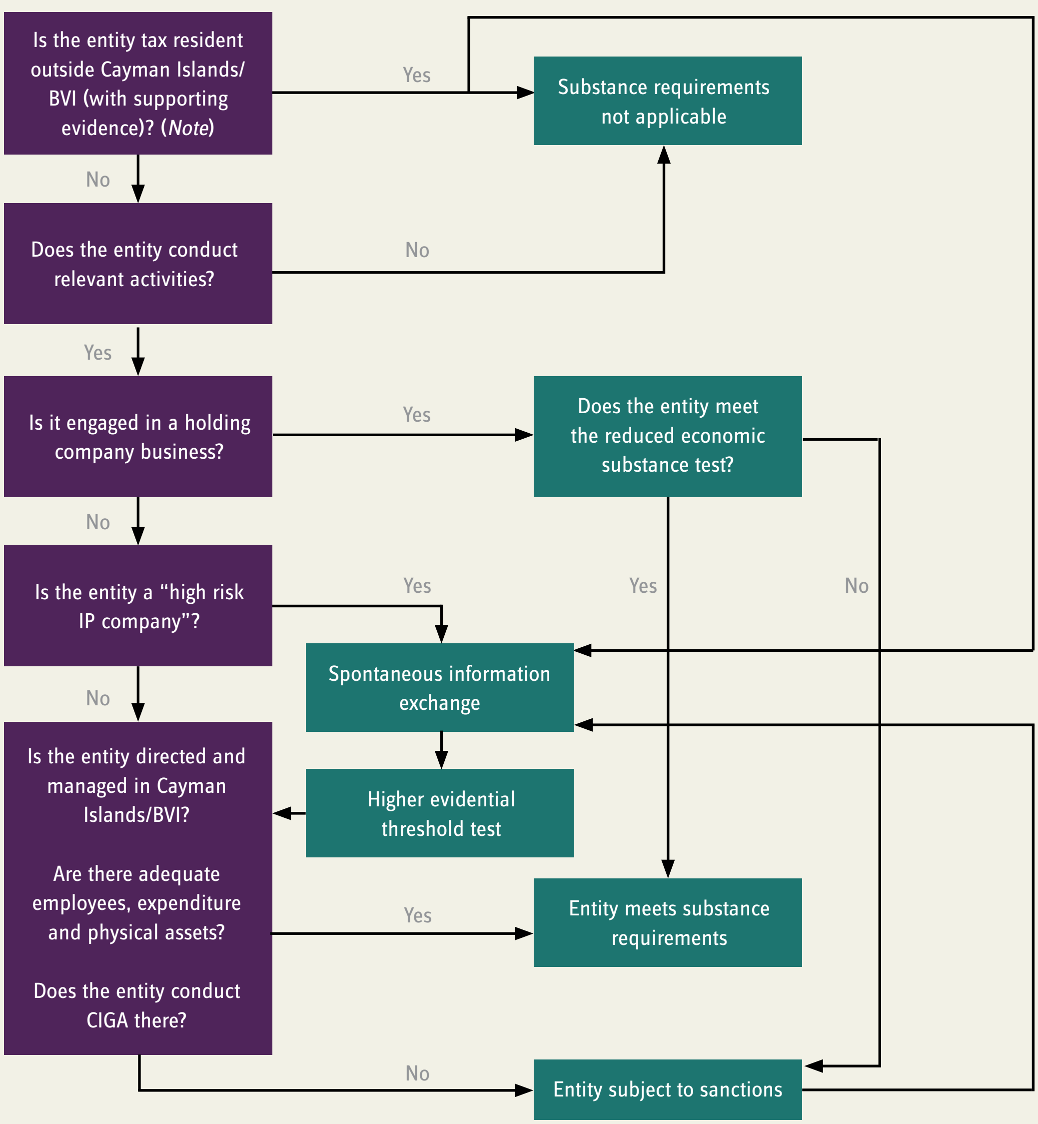
**Definition of relevant entity**

A relevant activity means business of the following:
1. Banking;
2. Distribution and service centre;
3. Financing and leasing;
4. Fund management;
5. Headquarters;
6. Holding company;
7. Insurance;
8. Intellectual property (IP); or
9. Shipping;

but does not include investment fund business.

The legislation further defines each of the above relevant activities, and the Cayman

Decision tree - Conditions for having to meet the economic substance requirements in the Cayman Islands and the BVI




*Note: The economic substance legislation in some other jurisdictions may not include similar carve-out for a tax resident of another jurisdiction, though this is still subject to review by the EU. It is therefore important to look at each jurisdiction's legislation carefully.*
*Source: Modified from version issued by BVI Finance.*

Islands core income generating activities (CIGA), i.e. those activities that are of central importance to a relevant entity in terms of generating income and that are being carried out in the Cayman Islands.

**Fulfilling the economic substance test**

A relevant entity conducting any of the above relevant activities is considered as satisfying the economic substance test in relation to a relevant activity if the relevant entity:

(a) Conducts CIGA in relation to that relevant activity;

(b) Is directed and managed in an appropriate manner in the Cayman Islands in relation to that relevant activity (e.g. board of directors' meetings are held at adequate frequencies in the Cayman Islands and minutes of all meetings and appropriate records are kept domestically); and

(c) Having regard to the nature and the level of relevant income derived from the relevant activity, has (i) an adequate amount of local operating expenditure incurred; (ii) an adequate local physical presence; and (iii) an adequate number of full-time and qualified employees physically present in the Cayman Islands.

The economic substance required to pass the test varies for different types of relevant activities.

The minimum requirements apply to pure equity holding companies (i.e. one that only holds equity participations in other entities and only earns dividends and capital gains). For these, the guidance states that a company may engage its registered office service provider to satisfy the reduced economic substance test (i.e. confirming that it has complied with all applicable filing requirements under the Companies Law and that it has adequate human resources and adequate premises in the Cayman Islands for holding and managing equity participations in other entities).

At the other extreme, more stringent requirements apply to a relevant entity engaging in high risk IP business (e.g. where the IP asset was acquired from a related party or through funding the research and development by another person located outside the Cayman Islands, and is then licensed to related parties or exploited by related parties outside the Cayman Islands). For example, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the IP should be exercised by an adequate number of full-time employees with necessary qualifications that permanently reside and perform activities in the Cayman Islands.

The legislation of the Cayman Islands indicates that outsourcing CIGA to third parties or group entities within the jurisdiction is permissible provided that the relevant entity is able to prove its ability to monitor and control the CIGA which are being conducted by the service provider locally. Also, there must be no double counting if the service provider serves more than one relevant entity. Note that this is subject to the EU's endorsement.

**Notification and reporting obligations**

All relevant entities that exist prior to 1 January 2019 must comply with the economic substance requirements by 1 July 2019 while Relevant Entities newly set up in the Cayman Islands on or after 1 January 2019 are subject to the requirements from the date they commence the relevant activities.

Starting from 2020, a relevant entity is required to notify the Cayman authority on an annual basis via the Economic Substance Portal (ES Portal) within nine months after the last day of the end of its financial year. The notification should include (1) whether the relevant entity is carrying out a relevant activity and if so, whether any part of its gross income in relation to the relevant activity is subject to tax outside the Cayman Islands (with appropriate supporting evidence), and (2) the date of the end of its financial year. In addition, a relevant entity which is required to satisfy the economic substance test must prepare and submit a separate report to the Cayman authority via the ES Portal within 12 months after the last day of the end of each financial year.

**Consequences of non-compliance**

If a relevant entity is determined to have failed to fulfil the economic substance requirements, the Cayman authority shall issue a notice to the relevant entity imposing a penalty and demanding rectification. The penalty is KY$10,000 (US$12,000), rising to KY$100,000 (US$120,000) for repeated failure in the subsequent financial year. The Cayman authority shall also notify the registrar of any such failure after two consecutive years, and the registrar can apply to the Grand Court for an order requiring the relevant entity to take rectification action, or to strike them off the register.

There are also penalties (including imprisonment) for failure to provide information or knowingly providing false or misleading information.

**Spontaneous exchange of information**

The Cayman authority will exchange information with other competent authorities (1) where a relevant entity fails to satisfy the economic substance requirements, (2) where a relevant entity engages in high risk IP business, and (3) where an entity claims to be tax resident in a jurisdiction outside the Cayman Islands, in a systematic and spontaneous manner. These competent authorities will include the jurisdiction of tax residence of the relevant entity's parent company, ultimate parent company, and ultimate beneficial owner, and the jurisdiction where the entity claims to be tax resident, as applicable.

## British Virgin Islands

At the time of writing, the BVI detailed guidance has not yet been released. The following highlights the key differences of the BVI legislation from the Cayman Islands legislation.

- A legal entity which carries on a relevant activity during any financial period must comply with the economic substance requirements in relation to that activity. A legal entity is defined as a company or limited partnership registered in the BVI under the Business Companies Act, 2004 or defined as such by the Limited Partnership Act, 2017 (including foreign companies and foreign limited partnerships that are captured by such legislation but excluding limited partnerships that do not have legal personality).
- A legal entity in this context does not include a non-resident company or a non-resident partnership. A non-resident company means a company which is resident for tax purposes in a jurisdiction outside the BVI which is not included on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes (the latest list was released on 12 March 2019). The legislation does not specify the evidence needed to support such tax residence, or whether the entity is required to be subject to tax in its jurisdiction of tax residence. Investment funds are not explicitly excluded from the legal entity definition.
- A similar reduced substance test is applicable to a pure equity holding entity. The ability to use a service provider to meet the test is implied and not explicit.
- For a legal entity that was formed before 1 January 2019, the latest first financial period to which the substance test applies will be for the period from 30 June 2019 to 29 June 2020.
- All legal entities will be required to provide information to enable the BVI International Tax Authority to monitor whether they are carrying out relevant activities and, if so, whether they are complying with the economic substance requirements. The information will be uploaded by the entity's registered agent and integrated into the existing Beneficial Ownership Secure Search system in the BVI on an annual basis. However, the timing of the first notification and substance reporting is not specified in the legislation.
- Penalties are imposed for operating a legal entity in breach of the economic substance requirements, including fines (up to US$400,000 for a second offence by a high risk IP legal entity) and strike-off. Besides, failure to provide information without reasonable excuse, or intentionally providing false information, can result in imprisonment.

The decision tree on page 45 illustrates the conditions for having to meet the economic substance requirements in the Cayman Islands and the BVI.

## A right time to revisit business structures

Historically, many business owners and corporate groups use entities in tax neutral jurisdictions for various purposes including listing vehicles, investment holding (equity or real estate), and IP holding. Oftentimes the benefits are non-tax related, such as capital structural flexibility and compliance cost considerations. However, with the new economic substance requirements, pending further guidance from the relevant jurisdictions and the EU's review result, businesses may need to revisit their existing holding and operating structures and consider the action needed for these entities, which may include seeking to fulfil the substance requirements, relocating their tax residency to Hong Kong or elsewhere, replacing them with companies in other locations or disposing of unnecessary entities. Thorough evaluation of all tax and non-tax implications (including both historical and prospective positions) should be conducted prior to implementing any actions.

Since the enforcement of the Common Reporting Standard and Country-by-Country Reporting obligations, determining the location of tax residence of companies and individuals has been one of the main concerns of taxpayers. The implementation of the economic substance requirements in tax neutral jurisdictions (particularly those that include carve-out provisions for overseas tax residents) could further complicate the discussion and present an additional challenge to taxpayers around the world. Hopefully, detailed guidance and further clarifications on the ambiguity in the legislation by government officials of the relevant jurisdictions can provide taxpayers with more clarity over the application of the new economic substance rules.

**Gwenda Ho** is Tax Partner and **Ricky Chow** is Tax Senior Manager of PwC Hong Kong.

# Claiming tax benefits under the tax arrangement between Mainland China and Hong Kong

**Polly Wan** and **Angela Chan** share the latest regulations and tips for Hong Kong companies that plan to apply for double taxation agreements benefits in Mainland China

Many tax jurisdictions including Hong Kong have entered into Comprehensive Double Taxation Agreements/ Arrangements (DTAs) with one another. These DTAs protect taxpayers from paying double taxation in different jurisdictions and provide certain tax benefits to the taxpayer. However, the application of such DTA benefits is often not that straightforward.

## Hong Kong Certificate of Resident Status

Currently, Hong Kong has entered into DTAs with 40 jurisdictions (including the Mainland) under which a Hong Kong tax resident is potentially entitled to tax benefits, such as preferential withholding tax rates in respect of payments on dividends, interest and royalties charged by Hong Kong's DTA partners. Under the arrangement with the Mainland, Hong Kong companies might be able to enjoy preferential DTA rates on various China sources of income if they are Hong Kong tax residents. A Certificate of Resident Status (CoR) issued by the Inland Revenue Department (IRD) serves as a proof of the Hong Kong tax resident status under DTAs.

In general, the following parties can apply for a CoR from the IRD:

- An individual who ordinarily resides in Hong Kong;
- An individual who stays in Hong Kong for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment, one of which is the relevant year of assessment;
- A company, partnership, trust or body of persons incorporated or constituted outside Hong Kong but managed or controlled in Hong Kong.

It is interesting to note that although companies incorporated in Hong Kong are eligible to apply for a CoR, their applications are not always successful. This is because the IRD will assess, on a high-level basis, whether the applicant should be entitled to treaty benefits. From our experience, IRD assessments tend to focus on the following factors:

1. Whether the directors and senior management of the company principally reside in Hong Kong,
2. Whether the applicant has employees in Hong Kong and whether remuneration is reported in the Employer's Returns to the IRD;
3. Whether there is active business income derived from and taxable in Hong Kong; and
4. Whether the applicant has a physical office or fixed place of business in Hong Kong.

If the IRD believes a person would not be entitled to the treaty benefits, it may request further information or exchange information with the other treaty partner before deciding whether a CoR can be issued. The IRD would reject a CoR application if it is clear that the applicant should not be entitled to those benefits.

At present, there are no clear guidelines in relation to these factors, e.g. number of senior management based in Hong Kong and the number of days they spend here, or the amount of Hong Kong sourced income, etc. However, even if the CoR applicant is relatively "light" in certain areas (such as having no active business income derived from Hong Kong), the applicant can still present their case to the IRD to demonstrate their substance and economic activities in Hong Kong.

While there is no formal objection or appeal mechanism available for applicant to escalate cases when the IRD refuses to issue a CoR, according to the 2018 annual meeting between the IRD and the Hong Kong Institute of CPAs, the IRD advised that the rejected applicant can contact the IRD case officer. The applicant should submit further information and documents for the IRD's reconsideration. If the case officer maintains their decision, the applicant can request the case be reviewed by the Chief Assessor of the Tax Treaty Section. However, this time, with no guarantee of success, means that applicants should ensure they present all relevant facts to support their application.

A CoR serves as proof of the applicant's Hong Kong tax resident status for the calendar year covered by the CoR and two succeeding calendar years under the DTA with the Mainland – unless there are changes in the circumstances of the Hong Kong resident such that their conditions for enjoying the tax benefits are no longer met.

## Next step – beneficial ownership

To enjoy treaty benefits under the DTA, Hong Kong companies are required to present a CoR and be the beneficial owner (BO) of the related income. In simple terms, a BO is a person who has the right of ownership and control over income or the usage right or ownership of the source of the income.

Determination of a BO may require some detailed analysis of the operational structure and how they map with the requirements under the relevant tax regulations. Since 2009, the Mainland State Administration of Taxation (SAT) has issued several sets of guidance, including the *Guo Shui Han [2009] No. 601* (Circular 601) and *Bulletin of the SAT [2012]*

*No. 30* (Bulletin 30), to lay the framework for BO determination, e.g., detailing the qualification requirements for beneficial ownership status and introduction of the safe harbour rule for listed companies.

On 3 February 2018, SAT published *Bulletin [2018] No. 9* (Bulletin 9) to repeal Circular 601 and Bulletin 30, and provide clearer guidance for BO determination. Bulletin 9 applies to tax payments or withholding obligations that arise on or after 1 April 2018.

**Assessment based on negative factors**

Bulletin 9 sets out a list of negative factors to assist Mainland tax officials in assessing whether an applicant can be regarded as the BO of income. Existence of any one of the five negative factors below would see the applicant not qualify as the BO of the income:

1. The recipient is obligated to pay or has actually paid more than 50 percent of the income to a resident(s) of a third jurisdiction within 12 months of receiving it.
2. The business activities carried out by the recipient of the income do not qualify as substantive business activities (i.e. substantive manufacturing, trading and management activities, investment management, etc.).
3. The relevant income is exempt from tax or not taxable in the jurisdiction of residence, or if the income is taxable, the effective tax rate is extremely low.
4. In addition to a loan agreement under which interest arises and is paid, the creditor has concluded another loan agreement or deposit agreement on similar terms with a third party.
5. A license or transfer agreement exists between the non-resident and a third party relating to the right to use, or the transfer of the ownership of, the copyright, patent or technology covered by a license agreement, based on which a royalty is derived and paid.

It is worth noting that there is uncertainty concerning beneficial ownership status as certain judgment is still required, particularly regarding what constitutes "substantive business activities," and thus the entitlement to DTA benefits.

**Safe harbour rules**

Companies that can apply the "safe harbour rules" will automatically be considered by Mainland tax officials as BOs of income without undertaking the comprehensive assessment of negative factors above. The "safe harbour rules" provide a high degree of certainty for applicants. However, they only apply to a very specific group (such as government, individuals or companies listed in another jurisdiction) on their Mainland China-sourced dividend income. There must also be shareholding continuity in the 12 months before receiving the dividends. Due to these stringent qualifying conditions, application of the "safe harbour rules" is rather limited in practice.

**Look-through rules**

Bulletin 9 introduced the "look-through rules" for recipients with multi-tier holding structures. In essence, as long as there is a BO in a multi-tier holding structure, Mainland tax authorities will "look through" the structure and treat the intermediate companies as the BOs if certain qualifying conditions are met. "Look-through rules" recognize companies that are receiving Mainland-sourced dividends as the BOs of such dividends even if they could not qualify as BOs on their own and the "safe harbour rules" do not apply.

The following example is a good illustration of the application of the complicated "look-through rules":

A Mainland China company is held by a Hong Kong tax resident (Co. A, which is a Hong Kong CoR holder), which in turn is held by another Hong Kong or BVI company (Co. B, without a Hong Kong CoR), itself held by a listed company in Hong Kong (Listco, with a Hong Kong CoR). Both Co. A and Co. B are investment holding companies without any substantive operations. Co. A would like to apply for treaty benefits on their Mainland China sourced dividend income.

In this example, which is very common in Hong Kong, the Mainland company is held by a Listco via intermediate investment holding companies with minimal business activities. Prima facie, Chinese tax authorities will not accept Co. A as the BO of the dividend income.

However, under this structure, Listco would be regarded as the BO of the dividend income automatically under the "safe harbour rules," provided that Co. A is 100 percent held by the Listco (directly or indirectly) in the 12 months before it received the dividends. "Look-through rules" apply and Co. A would be regarded as the BO and enjoy DTA benefits even though it could not satisfy the BO qualifying conditions on its own.

The "look through rules" significantly broaden the population eligible to the treaty benefits. As the application of "look through rules" also eliminates the uncertainty of BO assessments, taxpayers should determine if they can apply these rules when claiming their treaty benefit or consider restructuring the holding structure such that these rules would then apply.

**Key takeaways**

It is worth noting that the issuance of a CoR does not guarantee treaty benefit entitlements under the Mainland-Hong Kong DTA. It is the decision of the Mainland tax authorities whether the applicants can enjoy treaty benefits.

For instance, the applicant is still subject to the BO test in the Mainland under Bulletin 9 and has to follow the administrative procedures set out by the tax authorities. Even if the recipient of the Mainland-sourced income is considered as the BO of the income, tax authorities can still invoke the main purpose test under the tax treaty or the general anti-avoidance rule in the domestic tax law to deny treaty benefits.

Entities should conduct a thorough review and assessment of their BO status with reference to the latest requirements under the safe harbour or look-through rules and consider modification of their holding structures to help secure treaty benefit entitlements.

**Polly Wan** is Tax Partner and **Angela Chan** is Tax Manager at Deloitte China

# TechWatch 198

**The latest standards and technical developments**

## Local updates

**Circular on reporting under Section 20 of the Product Eco-responsibility (Regulated Electrical Equipment) Regulation (Cap. 603B)**
Suppliers registered with the Environmental Protection Department (EPD) to distribute regulated electrical equipment (REE) are required to submit periodic returns to the EPD on the quantities of REE distributed and used for the first time, and the quantities of recycling labels within the reporting periods covered by the returns. Suppliers are also required to submit an audit report to the EPD every year in respect of the returns submitted. The audit report must be prepared by a CPA holding a practising certificate under the Professional Accountants Ordinance (Cap. 50).

The EPD has released a circular providing general guidance to practising members of the Institute for the reporting as mentioned above.

**Invitations to comment**
The Institute is seeking comments on:

- The International Auditing and Assurance Standards Board's (IAASB) consultation paper on Proposed Strategy for 2020-2023 and Work Plan for 2020-2021 by 4 May
- The IAASB's consultation paper on Extended External Reporting by 21 May
- The IAASB's exposure drafts on Quality Management for Firms and Engagements by 24 May
- The International Ethics Standards Board for Accountants' exposure draft on Proposed Revisions to Part 4B of the Code to Reflect Terms and Concepts Used in International Standard on Assurance Engagements 3000 (Revised) by 27 May

**Invitation to observe meetings of the HKIISG**
Register to observe meetings of the Hong Kong Insurance Implementation Support Group (HKIISG) which discusses hot topics on HKFRS 17 *Insurance Contracts*. Meeting schedule, papers and summaries can be found on the Institute's website.

**Minutes**
Minutes of the 373rd meeting of the Auditing and Assurance Standards Committee.

**Institute submission**
The Institute commented on the IAASB's exposure draft, Proposed International Standard on Related Services 4400 (Revised), Agreed-Upon Procedures Engagements.

## Professional accountants in business

**IMA enhanced management accounting competency framework**
With technology redefining the role of a management accountant and significantly changing the business landscape and the management accounting profession at an unprecedented speed, the Institute of Management Accountants (IMA) has released an enhanced Management Accounting Competency Framework. The enhanced framework reflects the skills management accountants need to remain relevant and be future-ready, and serves as a guide for skills assessment, career development and talent management.

The enhanced framework identifies six domains of core knowledge, skills, and abilities that finance and accounting professionals need to remain relevant in the digital age and perform their current and future roles effectively:

- Strategy, planning and performance – lead strategic planning performance, assess current state of the business and plan for the future
- Reporting and control – measure and report business/organization's performance in compliance with relevant standards and obligations
- Technology and analytics – manage data to enhance a company's analytics and embrace technology to move the organization forward
- Business acumen and operations – work cross-functionally across the business to transform operations throughout the organization
- Leadership – inspire teams to achieve personal and organizational goals
- Professional ethics and values – demonstrate professional values, ethical behaviours and legal compliance essential to an ethical and sustainable career/business

## Corporate finance

**HKEX's guidance on reasons for rejected listing applications in 2018**
On 22 March, the Hong Kong Exchanges and Clearing (HKEX) published guidance on reasons for rejected listing applications in 2018, highlighting the following:

- The HKEX's tightened scrutiny of commercial rationale for listing leads to a significant increase in rejected listing applications
- Rejections were not sector specific. The focus, in fact, was on whether the rationale for listing was supported by the applicant's expected growth and hence the need for funding
- Results have helped maintain market quality and the HKEX will continue exercising discretion to assess suitability

The HKEX advised that the applicant's commercial rationale for listing is a primary focus of assessing its suitability.

In order to maintain market quality, more consideration is also given to whether the proposed use of proceeds and funding needs are consistent with its business strategies and future plans.

Refer to the press release for details.

**SFC's reprimand and fines totalling almost HK$800 million on financial institutions**

On 14 March, the Securities and Futures Commission (SFC) reprimanded and fined the following financial institutions for sponsor failures, with fines totalling almost HK$800 million:

- UBS AG and UBS Securities Hong Kong Limited – HK$375 million
- Standard Chartered Securities (Hong Kong) Limited – HK$59.7 million
- Morgan Stanley Asia Limited – HK$224 million
- Merrill Lynch Far East Limited – HK$128 million

The SFC advised that these enforcement actions for sponsor failures show that it places very high standards on sponsors' conduct to protect investors and maintain the integrity and reputation of Hong Kong financial markets. It believes these sanctions deliver a strong and clear message to the market that the SFC will take action on sponsors for any misconduct seriously. Refer to the SFC's webpage for further details.

## Taxation

**Announcements by the Inland Revenue Department**

Members may wish to be aware of the following matters:

- Gazettal of:
  - Inland Revenue (Amendment) (No. 2) Ordinance 2019 (Amendment Ordinance)
  - Inland Revenue (Amendment) (Tax Concessions) Bill 2019
- European Union's removal of Hong Kong from watchlist on tax co-operation
- Passage of Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018
- Stamp Duty statistics (February 2019)
- Country-by-Country (CbC) Reporting – Notification Deadline:
  The deadline for making CbC reporting notification to the Inland Revenue Department via the CbC reporting portal for companies with accounting period beginning on 1 January 2018 is now extended to 15 May 2019.
- Block extension scheme for lodgement of 2018-19 tax returns
- Legislative Council questions on defaults on payments owed to the government and public organizations, and non-liability for payment, remission and refund of stamp duty

**Liaison meeting with the Guangdong Provincial Tax Service and the Shenzhen Tax Service**

The meeting notes from the Taxation Faculty's China Tax Subcommittee 2018 annual liaison meetings on cross-border tax issues with the Guangdong Provincial Tax Service and the Shenzhen Tax Service, State Taxation Administration are now available on the Institute's website in Chinese (simplified and traditional versions).

## Legislation and other initiatives

**Anti-money laundering notices**

For the current lists of terrorists, terrorist associates and relevant persons/entities under United Nations (UN) sanctions, members should refer to the Institute's AML webpage which is updated regularly. The UN sanctions webpage of the Commerce and Economic Development Bureau contains consolidated lists of UN sanctions currently in force in Hong Kong.

**AML/CFT guidance**

For mandatory guidance and information on the AML/CFT requirements for members, see the Institute's *Guidelines on Anti-Money Laundering and Counter-Terrorist Financing for Professional Accountants*.

Members who are licensed trust or company service providers should also see the *Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers*, by Companies Registry.

Members should be aware of the *Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report* (in particular Chapter 6, covering designated non-financial businesses and professions), which indicates ML/TF risks and vulnerabilities in the Hong Kong market.

Please refer to the full version of TechWatch 198, available as a PDF on the Institute's website: *www.hkicpa.org.hk*

# After hours



## Book review

A sugarcane farmer in Cuba. Cuban sugar experienced a boom in the 1920s until the United States raised interest rates, drawing U.S. back home.

# DANCING INTO DEBT

Title: **Dance of the Trillions: Developing Countries and Global Finance**
Author: **David Lubin** Publisher: **Brookings Press**

With this book, David Lubin, a high-profile Citigroup strategist in New York, clearly and evocatively sets out the story of what makes money flow from big, high-income countries in to lower-income countries, and what makes it flow out again.

History is important when it comes to fund flows, as Lubin illustrates, and he quickly invokes John Kenneth Galbraith's line about how a "kind of sophisticated stupidity" means lenders and borrowers fail to understand that the "future might not be as rosy as the present."

Lubin admits bankers are still searching for an answer as to how developing countries can access global capital markets "in a way that generates stability and growth rather than volatility and crisis."

While Lubin briefly traces the first modern era of globalization beginning in the 1850s, he focuses on the post-1970 era. The book's title, however, refers to the *danza de los millones*, coined by the Venezuelan writer Rafael Antonio Cisneros to describe a 1920 episode in which Wall Street poured money into Cuban sugarcane production. Within a year, interest rates had risen in the United States and the North American beet crop had recovered, drawing U.S. money back home. Cuba's sugar industry never recovered.

Lubin's first chapter looks at the 1970s, which saw developing countries gain access, for the first time since the 1930s, to measurable inflows of capital from international financial markets. He explains how capital allocation worked and the importance of inflation in understanding capital flows, including how the U.S. Federal Reserve's effort to defeat inflation in the early 1980s turned a boom into a bust. That was the beginning of an important phase of emerging markets' development – "the overwhelming influence of U.S. monetary policy in their economic life."

That influence led to the British economist John Williamson coining the expression "Washington Consensus" to describe the U.S.-dominated policies of the day: "keep budget deficits small, spend public money wisely, keep tax rates low and the tax base high, allow the market to determine interest rates, let the exchange rate be competitive, reduce barriers to trade, let in foreign direct investment, privatize state enterprises, abolish regulations that restrict competition and provide secure property rights.

Succeeding chapters examine Latin America's "lost decade" of the 1980s and the later emerging markets crises of the 1990s and 2000s. Those events, Lubin argues, created much distrust of the international financial system among developing-nation governments, prompting many to strengthen their balance sheets to "protect themselves against the volatility of capital flows."

The fourth chapter examines Mainland China's development since the early 2000s and how Beijing has increased its influence on the economic life of developing countries. Lubin argues the current phase of globalization has been a gift to developing countries and the Mainland has played a key role in spreading wealth. "In the late 19th and early 20th centuries," he writes, "industrialization visited only the developed world; India, China, and the rest of the developing world stayed poor. By contrast, the modern era of globally-integrated markets has seen developing countries benefit above all."

Lubin's book includes rapid pen-portraits of a host of key but often unfamiliar figures in international monetary history, such as Edwin Kemmerer, a professor at Princeton University in the U.S. who was a financial advisor to the Chinese government in the 1920s; Emílio Garrastazu Médici, a general who kickstarted the Brazilian economy from 1968; and David Mulford, a then 37-year-old American banker who joined the Saudi Arabian Monetary Authority in 1974 to oversee its early stages of cautious investment.

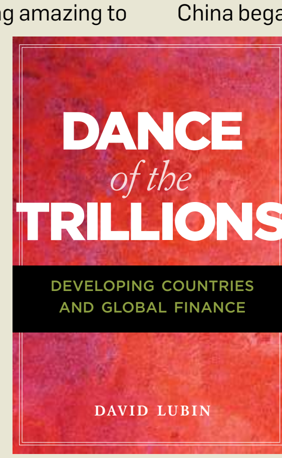
Few characters are as colourful as Justin Yifu Lin, a Chinese economist, who in 1979 as a Taiwanese army captain defected to Mainland China by swimming from the island of Quemoy, where he was stationed. A former World Bank chief economist, Lin has advocated against Mainland China fully liberalizing its capital account, a frequent demand of its trading partners. He argues that short-term capital inflows in particular do little to support any increase in productivity and that the "volatility of these flows is inconsistent with a developing country's economic stability."

Lubin notes Lin's support of former People's Bank of China governor Zhou Xiaochuan's idea to adopt a concept of "managed convertibility" with a focus on the managed build-up of external debt and the flow of short-term speculative capital. Lubin concludes: "Just as U.S. economic dominance created a U.S.-shaped era of globalization, an emerging China will increasingly take part in a process that will make the international financial system more shaped by China: less Washington Consensus and more Beijing Consensus."

# Author interview: David Lubin

As Managing Director and Head of Emerging Markets Economics at Citigroup, the American banking giant, Mainland China looms a lot larger in David Lubin's mind than when he joined the bank in 2006.

"China's last round of stimulus, which lasted from late 2015 until late 2017, did something amazing to the global economy," he says. But he is less optimistic about the future of the renminbi. "China's ambitions for the renminbi are actually incompatible with the current structure of the international monetary system."




Lubin argues that if Beijing wants the renminbi to be a global reserve currency, it has to be a fully convertible currency. "That's an important constraint because China, in my view, has no desire whatsoever for the renminbi to become fully convertible."

Opening up the Mainland's securities markets won't do much to change things, he adds. "Even if the inclusion of Chinese bonds in global indices brings in a few hundred billion dollars of portfolio inflows over the next couple of years, this doesn't have any real bearing on the renminbi's future as a global reserve currency," Lubin argues. "After all, foreigners own some 40 percent of the Indonesian government's rupiah-denominated debt, and no one would claim that the rupiah is on course for any global significance.

Lubin's interest in Mainland China began in 1989, when he joined HSBC in London. His career started in the field of sovereign debt restructuring negotiations with governments in Latin America and Eastern Europe, but in 1993 his focus shifted to emerging markets research. As capital shifted to Asia, so did Lubin's interest.

The Belt and Road Initiative (BRI) is another project that attracts Lubin's attention. He sees the BRI becoming more international. "A BRI that is characterized by co-financing will be a more even-handed, a more transparent and less exclusively Chinese."

While he expects that the Mainland will have looser control in the future over BRI, it will be tougher for other powers to accuse Beijing of neo-colonialism or creating "debt traps" in the developing world.

## Theatre

*The Lion King cast performing in Mexico City*

### THE LION KING LIVE

Disney Theatrical Productions is bringing Disney's The Lion King to Hong Kong for the first time. It is part of an international world tour celebrating the 20th anniversary year of the musical. The spectacle tells the classic story of Simba, the lion king, and features music and lyrics by Elton John and Tim Rice. An international cast of over 19 nationalities will put together an unforgettable show, fun for the whole family. Tickets to go on sale in May.

Date: 18 December
Venue: Arena, AsiaWorld-Expo
Price: From HK$399
Website: *www.lionkinginternational.com*

## Festival

### THE BIG CLIMB

The annual Cheung Chau Bun Festival is back in town. The iconic 60-feet bun-covered bamboo towers will be scaled by climbers, who will race to the top to collect as many buns as possible. The festival has been celebrated for hundreds of years and is dedicated to the god Pak Tai to drive away evil spirits. In addition to the great climb, there will also be parades, lion dances and lively drumming throughout the day.

Date: 9-13 May
Time: From 10:30 a.m. (Parade from 2:00 p.m. - 4:00 p.m. and bun scrambling at 11:30 p.m. - 12:30 a.m. on 12 May)
Venue: Cheung Chau, Hong Kong
Price: Free

## Eat

### SWEET TOOTH

Serving sweet, soulful Cantonese cuisine with a modern twist is Eat, Darling, Eat. The unique menu breathes new air into age-old recipes, with classic local desserts such as pineapple buns stuffed with pineapple sorbet and custard, and sweet potato soup paired with chocolate cake and taro. The eatery offers delicious savoury options such as chicken neck rice and sweet and sour pork nachos with wonton chips. Patrons can also enjoy the restaurant's signature drinks such as its milk coffee and chestnut cappuccino.

*Pineapple bun stuffed with sorbet and custard*

Address: Shop 17, G/F, Fashion Walk, 11-19 Great George Street and 27-47 Paterson Street, Causeway Bay
Opening hours: 12:00 p.m. - 12:00 a.m.
Phone: 3188-8949

*Big Wave Bay*

Date and starting time: 18 May, 8:00 a.m. for 15k solo and pairs, 8:15 a.m. for 6.5k solo, 10:00 a.m. for 6.5k family challenge
Venue: 110 Shek O Road, Pottinger Gap, Shek O
Price: From HK$375
Registration deadline: 11 May
Website: *www.thegreenrace.hk*

## Race

### MOUNTAIN RUN

The fourth annual Pottinger GreenRace is back in Hong Kong to test the wits of runners. Participants can opt for the 6.5 kilometre or 15 kilometre race and run it alone, with a friend, or in a group. The event hopes to spread environmental awareness by bringing runners through the city's scenic trails. The race will begin at Pottinger Peak and bring runners through Pat Sin Leng Nature Trail and down to Big Wave Bay. All runners will be given a Sustainable Finishers Award, GreenRace singlet, as well as ice cold beer and food at the finish line.

# Accountants aren't workers, they're professionals

Hong Kong's humorist on what it takes to be called a professional in today's world

A long time ago, this reporter was at a London dinner party where the subject of "the professions" was being discussed. Most people are workers – but accountants, lawyers, doctors, and architects, are "professionals."

"The difference is that they are accredited by their peers who strike them off if they misbehave," said a rather grand young accountant. He looked at me: "What happens to a reporter who misbehaves?"

"He gets promoted," I said.

It was true. I was working for the popular London newspapers at the time, and the quickest way up the ladder was to libel and slander celebrities, causing as much trouble as possible.

The accountant was delighted with my answer. "I rest my case," he said.

That was then. This is now.

Today, accountants have to share the title of "professional" with a huge number of people – including people who cut fingernails for a living. I'm not kidding. A Hong Kong friend's daughter who works in a "nail bar" wanted to move to the United States but discovered that "nail technicians" in that country needed professional accreditation, presumably by people who have spent years doing Harvard doctorates in fingernail-cutting techniques.

I told her that if she was going to get accredited for anything, it might as well be for a real profession such as accounting.

"Too boring," she said.

Shame. Her blue hair, nose ring and miniskirt would have added much-needed drama to the accounting scene. But of course I didn't say that – these days, even thinking about making a personal comment is an arrestable offence punishable by two million #MeToo tweets on Twitter, right?

Yet she did admit that "accountant" as a job title was much classier than "nail technician."

Having a decent job title matters. I once met a 30-something guy who worked with old folk for the Hong Kong government's Social Welfare Department: his job title, and I'm not making this up, was "Elderly Officer."

In the private sector, I used to know a Dongguan garment factory foreman whose name card said: "Manager of Bottoms."

At that long-ago dinner party, a teacher said she considered herself a professional. "And my dad is a taxi driver," she added – in a tone of voice that showed that she believed that getting a London taxi license was much harder than merely gaining accounting qualifications.

That conversation was in my mind because the night before writing this, your columnist was master of ceremonies at one of the professional awards ceremonies that are ubiquitous now.

It was a classy steak-and-lobster event in the ballroom of the luxurious Island Shangri-La, reminding me that accredited professionals, on average, earn far more than other people. I texted this thought to Miss Bluehair Nose-Ring.

"I know," she replied. "The average U.S. nail technician earns US$10.46 an hour. Pretty good, huh?"

I pointed out that amounts in U.S. dollars always sound good, but that sum is only HK$82 – the same as parking for two hours in Central.

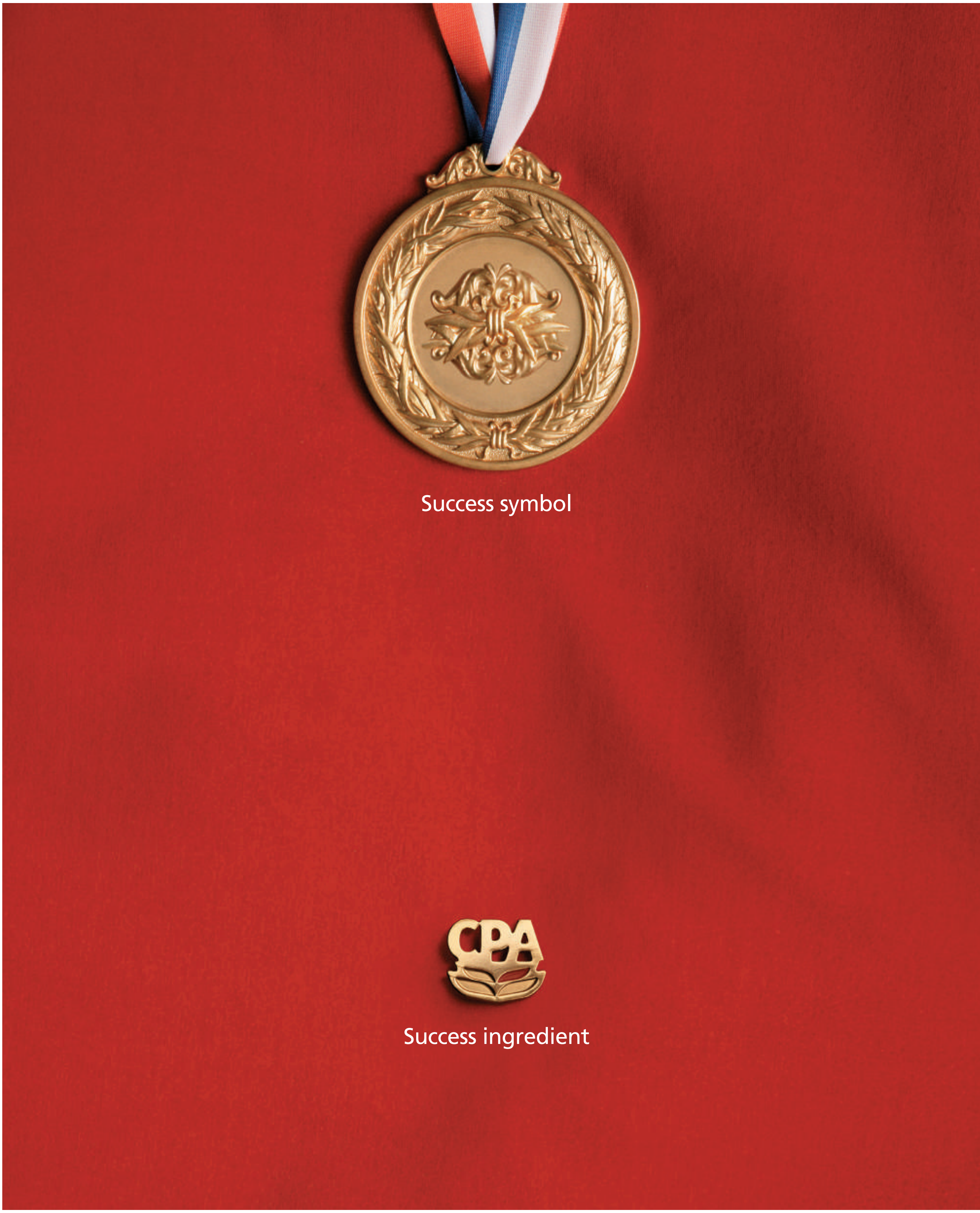
I asked a U.S. friend whether the definition of which jobs count as being among "the professions" in his country had broadened, as it has in other places.

"Oh, yes," he said. "For example, no one in the U.S. calls their secretaries 'secretaries' anymore. The official title now is 'Administrative Professional.'"

So it's really true – everyone is a professional these days. Possibly even reporters, or perhaps I should say Troublemaking Professionals.

Life is strange. There's really nothing quite like it.

**Nury Vittachi** is a bestselling author, columnist, lecturer and TV host. He wrote three storybooks for the Institute, *May Moon and the Secrets of the CPAs*, *May Moon Rescues the World Economy* and *May Moon's Book of Choices*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