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

By email (sfst@fstb.gov.hk)

20 November 2025

Our Ref.: C/TXG, M141715

Mr Christopher Hui, GBS, JP
Secretary for Financial Services and the Treasury
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Mr. Hui,

Request for a review of the stamp duty group exemption relief under section 45 of the Stamp Duty Ordinance

The Hong Kong Institute of Certified Public Accountants ("the Institute")'s Taxation Faculty Executive Committee is writing to you to make certain proposals to revamp the stamp duty group exemption relief under section 45 of the Stamp Duty Ordinance (Cap. 117) ("SDO") in view of the recent Court of Final Appeal ("CFA") judgment in *John Wiley & Sons UK2 LLP and another v. The Collector of Stamp Revenue* ("*John Wiley* case").

Section 45 of the SDO establishes a framework for stamp duty exemption relief on the transfer of Hong Kong stock or immovable property between associated bodies corporate (known as "section 45 relief"). The CFA handed down its judgment in the *John Wiley* case in June 2025, which affirms that the section 45 relief is available only to companies with issued share capital and cannot be extended to limited liability partnerships ("LLPs") given that they are not "bodies corporate" and do not have "issued share capital", within the meaning of section 45. The CFA also indicated that the question of whether the section 45 relief should be extended to LLPs was a matter for the legislature.

This judgment highlights a significant limitation of the current regime, which has not been adequately updated to accommodate the diverse range of companies and structures present in today's market. Given these developments, we consider that it is essential to review and revamp the section 45 relief, to ensure its effectiveness and Hong Kong's competitiveness as a leading global business and financial hub. We set out below some detailed recommendations for the government's consideration.

Background

Section 45 relief

Section 45 of the SDO provides a stamp duty relief for transfer of Hong Kong stock or immovable property between associated bodies corporate when certain conditions are met. Under section 45, two bodies corporate are considered "associated" if one entity is the beneficial owner of at least 90% of the issued share capital of the other, or if a third-party body corporate is the beneficial owner of at least 90% of the issued share capital of each of the two bodies corporate.

The John Wiley case

The key issues in the *John Wiley* case are summarized below:

- Types of "**body corporate**" qualifying for the section 45 relief

  - The CFA traced the legislative history of the provision, noting that the original exemption specifically referred to "companies with limited liability" and was later amended, as part of a revamped ordinance, to use the term "body corporate", in 1981. This change was part of a general legislative update and was not intended to expand the scope to all possible foreign entities.

  - At the time of the amendment, the only bodies corporate with share capital in Hong Kong were: (i) companies limited by shares, (ii) companies limited by guarantee, and (iii) unlimited companies.

  - It is reasonable to infer that the legislative intent behind the use of "body corporate" was to extend the relief to all bodies corporate having a share capital, rather than to create an open-ended category.

  - An LLP, on the other hand, is a form of business entity introduced after the enactment of section 45.

  - To conclude, the term "body corporate" in section 45 of the SDO does not constitute an open class of foreign business entities and refers only to a few types of companies with share capital, which could be formed under the Hong Kong company law when the provision was amended in the early 1980s.

- Meaning of "**issued share capital**"

  - In the absence of any context or language in section 45 indicating that the term "issued share capital" was intended to be used in any different sense, the term should be interpreted to bear the same natural and ordinary meaning as it is employed in the company law context and other Hong Kong legislation, including the SDO.

  - It is undisputed that an LLP does not issue and allot share capital. Therefore, LLPs cannot not satisfy the "association requirement" under the section 45 relief. The attempt to equate LLP membership interests with share capital was rejected by the CFA as vague, uncertain and unsupported by the legislative history.

  - The CFA noted that the term "issued share capital" must be applied consistently, regardless of whether the body corporate is foreign or local. The current legislative framework does not accommodate LLPs, as noted above, and any change to include them would be a matter for the legislature.

Implications on Hong Kong's competitiveness

As the highest judicial authority in Hong Kong, the CFA's decision implies that the section 45 relief will not be available if the 90% association requirement must be traced through bodies corporate without "issued share capital". However, this exclusion does not stem from concerns over tax avoidance or abuse, but rather from the fact that such entities were neither in existence nor contemplated at the time the legislation was revamped over 40 years ago. The decision reflects that the legislation has not been updated to align with the modern and evolving business structures used by multinational groups for bona fide commercial reasons, e.g., LLPs and United States-style limited liability companies ("LLCs"), as well as other forms of establishments prevalent in different jurisdictions. This restrictive interpretation is likely to be perceived as excessively limiting by multinational groups with LLPs in their structures, potentially discouraging them from establishing their operations and investments in Hong Kong. It may also discourage fund managers from setting up limited partnership funds in Hong Kong, as private equity entities are typically set up in the form of LLPs. This, in turn, could affect Hong Kong's attractiveness as a hub for multinational groups and, potentially, as a fund management centre.

In addition to the above, the CFA acknowledged that a significant number of similar applications are currently pending, indicating that this judgement will have a wide-reaching and immediate impact on corporate structuring in Hong Kong. This highlights the urgent need for legislative reform.

The limited scope of the section 45 relief, as interpreted by the CFA, puts Hong Kong at a disadvantage compared with some competing jurisdictions that have taken steps to update their stamp duty group relief regimes to accommodate different forms of business entity. For example, Singapore has amended its legislation [1] to extend stamp duty group relief to LLPs and registered business trusts under specified conditions.

With the recent enactment of the company re-domiciliation regime in Hong Kong, it is important for the government to build on this facility to further strengthen Hong Kong's position as a leading global business and financial hub. To this end, we recommend conducting a review of the section 45 relief, with a view to expanding the scope of the relief to cover most, if not all, bona fide intra-group transfers, irrespective of the legal form of the entities involved, provided that there is no change in ultimate beneficial ownership. Such an enhancement would increase certainty, streamline intra-group restructuring, and reduce transaction costs, thereby fostering a more business-friendly environment in Hong Kong.

Recommendations

(1) Expand the definition of "body corporate" under the section 45 relief

As proposed above, the scope of the section 45 relief should be expanded to cover diversified forms of legal entities, rather than be confined solely to bodies

[1] https://www.iras.gov.sg/taxes/stamp-duty/for-shares/claiming-refunds-reliefs-and-remissions/common-stamp-duty-remissions-and-reliefs-for-shares/transfer-of-assets-between-associated-entities

corporate. Therefore, we would propose replacing the term "body corporate" with a broader term, such as "an entity with a separate legal personality", under the law of Hong Kong or the foreign jurisdiction in which the entity was formed, or, possibly even, "a person", which could also enable individuals to transfer their shareholdings into their corporate group (or family office). The legislation should explicitly clarify that such entities are covered, whether or not they have share capital. This change would ensure that a wider variety of foreign business entities possessing separate legal personality, or persons, could qualify for the relief, provided other specified conditions are satisfied.

If the scope of the section 45 relief is extended to business entities without share capital, the current method of determining whether a relevant relationship of association exists, which is based on beneficial ownership of issued share capital, would no longer be applicable. Therefore, the test of "association" should be updated accordingly. The government could consider drawing reference from the intra-group transfer relief for foreign-sourced asset disposal gains under the foreign-sourced income exemption ("FSIE") regime [2]. Under this approach, whether or not entities should be treated as associates for this purpose could be measured based on direct or indirect beneficial interest or voting rights, rather than only through issued share capital. It should made clear that this "associating interest" accommodates not only issued share capital, but also partnership, trust and other types of ownership interest. This adjustment would provide a practical framework for assessing relationships across a broader range of entity types.

(2) Lower the association threshold

In addition to the above, to align with international practices and further enhance Hong Kong's competitiveness, we also suggest lowering the current threshold for "association" between entities to qualify for the section 45 relief, from 90% to 75% ownership/ control. Jurisdictions including the United Kingdom and Singapore, in some situations, have adopted a 75% threshold for their stamp duty group relief regimes. Aligning Hong Kong's threshold with benchmarks applicable in other relevant jurisdictions would bolster Hong Kong's position as a global business hub.

In fact, a 75% threshold has already been recognized within Hong Kong's legal framework. The 75% threshold is utilized to establish sufficient association for intra-group transfer relief under the FSIE regime. It is also noted that, under the Companies Ordinance (Cap 622), significant corporate decisions, such as passing special resolutions to amend articles of association or reduce share capital, require a 75% majority vote. Adopting the same threshold for the section 45 relief would provide consistency across policies and promote a more business-friendly environment.

(3) Refine the calculation method of the test of "association"

We note that the CFA agreed with the Court of Appeal ("CA")'s interpretation that *"'issued share capital' in section 45 may usefully be understood to mean the total*

[2] https://www.ird.gov.hk/eng/tax/bus_fsie.htm (Exception 4: Intra-group Transfer Relief for Disposal Gain)

monetary value of the consideration paid (or given) or agreed to be paid (or given) by the shareholders in return for shares of a company as have been issued."

However, adopting this interpretation could raise a problem in that the 90% threshold, if calculated using the monetary value of consideration given, would not reflect the proportionate ownership rights or right to share in the profits of the body corporate of each shareholder. For example, if shareholder A paid $100 for 100 shares when the company was incorporated and shareholder B subsequently paid $10,000 for another newly allotted 100 shares, due to an increase in the value of the company, then shareholder B would be considered to have 99% of the issued share capital of the company ($10,000 / $10,100) while, in reality, shareholder B would have an ownership interest in only 50% of the company or, potentially, its profits, as a shareholder holding 100 shares of the total issued share capital of 200 shares.

The CA judgment cited a passage from *South Shore Mutual Insurance Co Ltd v Blair (Inspector of Taxes) [1999] STC (SCD)* where it was concluded that the narrower interpretation was preferred. This narrower interpretation is *"that the phrase [issued share capital] means such authorised share capital of a company as has been issued, whether or not it is called ordinary share capital,* ***so long as it gives a right to share in the profits."*** (emphasis added). This indicates that the right of a shareholder to share in the profits of a company should be more determinative of a shareholder's percentage of shareholding in a company.

In the old companies' regime where shares had a par value, this was the nominal value used to determine the 90% threshold and any additional share capital that was contributed over and above the par value was not included in the calculation. The abolition of par value in the new Companies Ordinance should not change the basis upon which the relevant percentage of shareholding held by a shareholder is calculated; and this should be, e.g., by reference to the percentage of voting rights attached to the shares held by each shareholder that entitle the shareholder to a share in the profits of the company. The monetary value of consideration paid simply reflects the market value of a share at any particular point in time, which fluctuates with the value of the company.

Therefore, where the test of “association” still refers to the issued share capital, we would urge the government to consider putting forward a definition for the test of “association”, based on, e.g., the percentage of voting rights attached to the number of shares that entitle a shareholder or member to a share of profits in the body corporate, rather than the monetary value of the consideration, which the CA simply ventured to suggest in its judgment.

(4) Modernize the language of section 45

If amendments are put forward, as proposed above, we would suggest that the government take the opportunity to modernize the language of section 45, which is currently difficult to read and understand. Reviewing and streamlining the language could help to ensure that the provisions are more user-friendly and easier to comprehend, thus assisting with effective implementation of the section.

(5) Issue guidance as transitional measures

While the outcome of any review and revamp of the section 45 relief may be applied prospectively, upon the enactment of the relevant legislation, we would urge the government to consider initiating the process as early as possible. Therefore, we suggest that consideration be given to issuing a public announcement, e.g., in the Budget Speech, that such a review will be undertaken, so as to reinforce confidence in Hong Kong's competitiveness and commitment to a maintaining a business-friendly environment. Following that, the IRD could consider granting relief on an administrative basis, in cases involving LLPs, pending a change in the law.

In the meantime, we hope that the Stamp Office could issue guidance on which types of commonly-used foreign corporations are currently regarded as bodies corporate for the purpose of section 45, and how the existing test of "association" (i.e., 90% of the issued share capital) should be determined, given that shares of a company no longer have a nominal or par value under the Companies Ordinance.

Although the CFA concluded that the legislative intent of section 45 of the SDO was to provide stamp duty relief only to bodies corporate having share capital, the Collector of Stamp Revenue has previously commented, as noted in the District Court judgment in the *John Wiley* case, that an LLP can serve as a parent of a group, but cannot qualify as a subsidiary of another body corporate for the purposes of the section 45 relief, which appears to be similar to the position in the United Kingdom. This interpretation allows a degree of flexibility, meaning that an LLP that acts as a parent of a group and holds "issued share capital" in another body corporate may still qualify for the relief, provided that the test of "association" is satisfied. To provide greater clarity and certainty, it would also be beneficial if the Stamp Office could issue further guidance regarding its stance on this matter.

Should you have any questions about this submission, or require any further clarification, we should be happy to provide more information.

Yours faithfully,

Peter Tisman
Director
Advocacy & Practice Development

PMT/SC/pk

c.c. Commissioner of Inland Revenue