



# HORIZON

## China Tax Updates for Non-Resident Companies

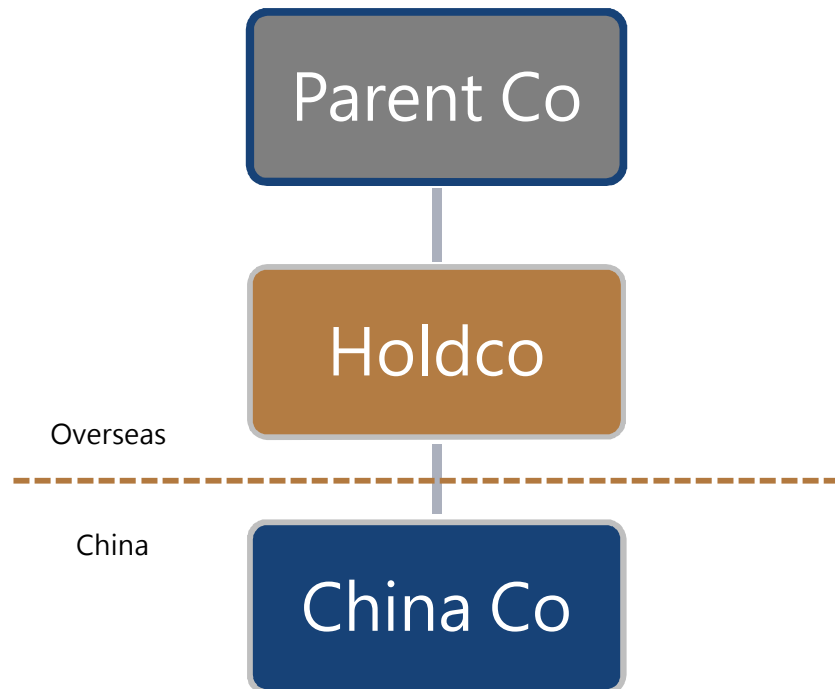
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# Common investment structure in China

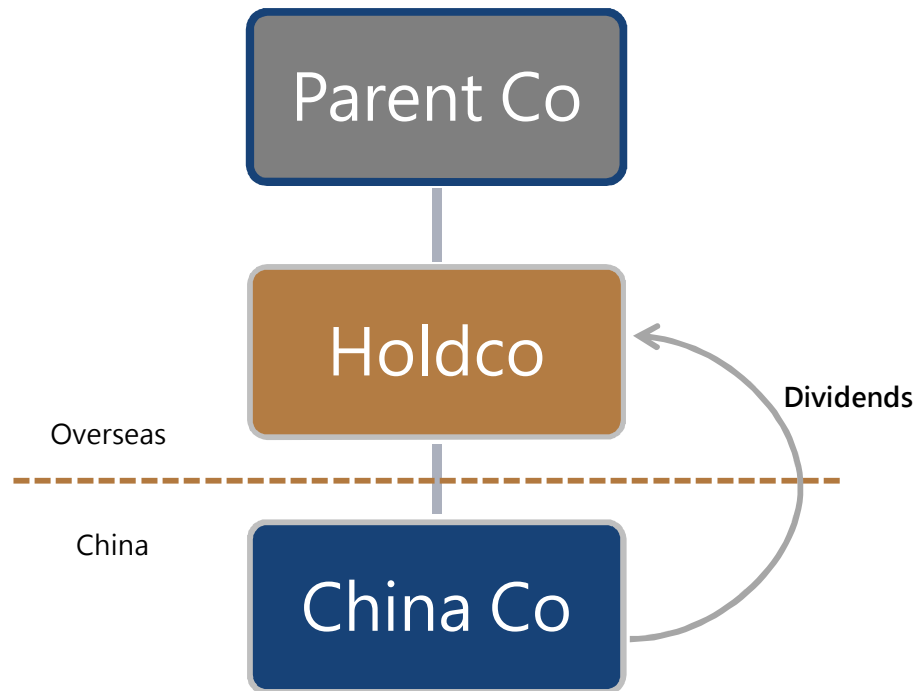


“ Use of offshore holding company(s) for tax saving purpose

“ Examples of popular holding jurisdictions

“ Tax treaty benefits for cash repatriation

# Reduced rate of dividend withholding tax



” Residency requirement

” Beneficial ownership ( “BO” ) requirement

” Holding period requirement (e.g. 12 months)

” Shareholding requirement (e.g. 25%)

# Residency requirement

“ Any jurisdictions other than Hong Kong: a certificate of tax resident ( “CTR” ) would be required to satisfy the residency requirement

✘ “ Hong Kong (in the past): CTR would be required

✓ “ **New** Announcement 53, effective from 1 November 2013

✓ “ **Hong Kong only:**  
Copy of certificate of incorporation OR  
Copy of business registration certificate

# BO Requirement

- “ Circular 601 issued in 2009: First guideline for determination of BO status
- ✓ “ New Circular 165 issued on 12 April 2013
- ✓ “ For Hong Kong Holdco only
- “ For dividend only
- ✗ “ 7 unfavorable factors to deny the BO status (5 out of 7 factors are applied to dividend
- ✗ “ Uncertainties in applying Circular 601

# New Circular 165

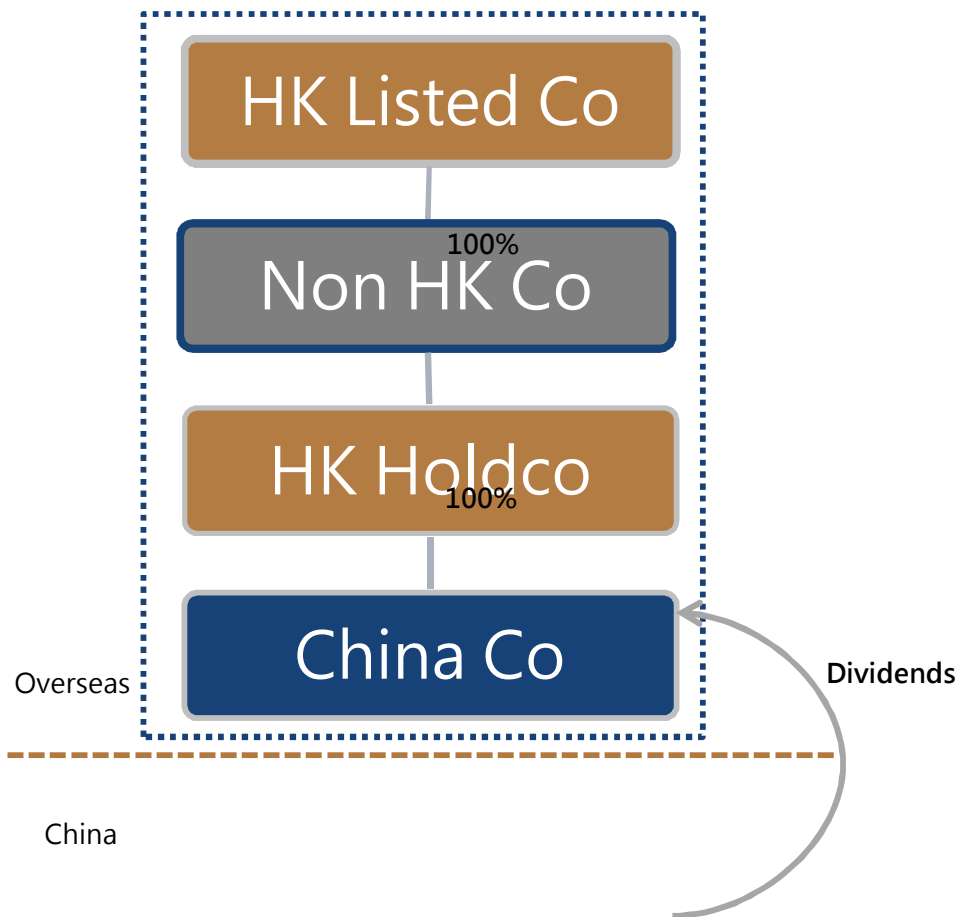
Circular 601 Unfavorable Factors	New Circular 165 Clarifications
<p>1. Holdco is obligated to pay or distribute <b>all or substantially all</b> of its dividend income to a resident in a third jurisdiction <b>within a stipulated time frame</b></p>	<ul style="list-style-type: none"> <li>“ Not an unfavorable factor if Hong Kong Holdco <b>does not distribute any profits to a non-Hong Kong tax resident</b></li> <li>“ Documentary evidence</li> </ul>
<p>2. Holdco is <b>not or is barely engaged in any business activities</b> apart from holding the investment generating the dividend income</p>	<ul style="list-style-type: none"> <li>“ Business activities of Hong Kong Holdco <b>include investment</b></li> <li>“ Hong Kong Holdco should not be denied its BO status <b>merely</b> because it holds one investment</li> <li>“ Comprehensive consideration of all factors</li> </ul>
<p>3. Assets, scale and staff allocation of Holdco are <b>incongruent</b> with its dividend income</p>	<ul style="list-style-type: none"> <li>“ <b>Assets ≠ Registered Capital</b></li> <li>“ <b>Staff Allocation ≠ Employees No. / Expenses</b></li> <li>“ Comprehensive consideration of factors such as sources of finance, risks assumed, employees' responsibilities</li> </ul>

# New Circular 165 (Cont'd)

Circular 601 Unfavorable Factors	New Circular 165 Clarifications
<p>4. Holdco has <b>no or very little right</b> to control or dispose of the dividend income or its investment, and Holdco <b>assumes low or even no risk</b></p>	<p>“ 3 aspects to consider:</p> <ul style="list-style-type: none"><li>✓ Whether Hong Kong Holdco <b>has such right</b> according to legal documents</li><li>✓ Whether Hong Kong Holdco <b>has exercised such rights</b></li><li>✓ Whether the disposals that occurred were <b>based on the own discretion of Hong Kong Holdco</b></li></ul> <p>“ Hong Kong Holdco should not be denied its right <b>merely</b> because the equity of Hong Kong Holdco is controlled by another company</p>
<p>5. The jurisdiction <b>exempts or does not impose tax on dividend income</b>, or taxes dividend income but at a very low effective tax rate</p>	<p>“ The fact that Hong Kong adopts the <b>territorial source principle</b> should <b>not</b> be regarded as an unfavorable factors</p>



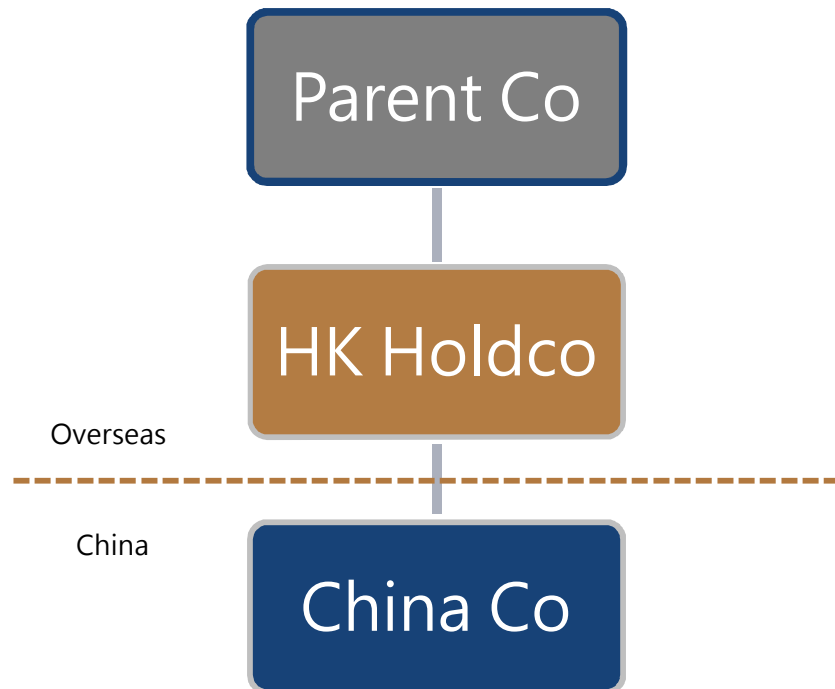
# New Circular 165 (Cont'd)



“ Relaxed application of the safe-harbor rule under Announcement 30

“ BO status would not be denied merely because Hong Kong Holdco is wholly directly or indirectly owned by a non-listed Hong Kong resident enterprise

# Hong Kong as a holding jurisdiction



## New pro from China tax perspective

“ Less uncertainties in satisfying the residency and BO requirements

## Traditional pros

“ Simple tax system and low tax rate

“ Tax treaty benefits

“ No tax on dividend / capital gains

# Speaker Bio



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**William Wong** is the Principal of Horizon Group. He specializes in China / Hong Kong cross-border taxation and mergers and acquisitions ( "M&A" ) transactions.

Prior to joining Horizon Group, William was the International and M&A Services Tax Manager at a Big Four accounting firm. He has extensive experience in providing international tax advisory services, supply chain tax planning services, corporate restructuring services, tax structuring services pre-acquisition and post-acquisition and tax due diligence services.

William graduated from The Chinese University of Hong Kong with a Juris Doctor Degree and a BBA Degree in Professional Accountancy.

He is a member of the Hong Kong Institute of Certified Public Accountants and the Taxation Institute of Hong Kong. He is also a Hong Kong Certified Tax Advisor ( "HKCTA" ). He won the Highest Score Award (China Tax Paper) for his HKCTA exam result. He is 1 of the 19 HKCTA eligible to practise in Qianhai, Shenzhen, China.

Currently, William serves as a committee member of the China Tax Committee and the CTA Promotion Committee of the Taxation Institute of Hong Kong. He is also a regular guest speaker on China Tax at Hang Seng Management College, and an advisor and mentor of its Accounting Society.

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