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Differences between a Hong Kong branch and a Hong Kong subsidiary

The differences between a Hong Kong branch (registered as a non-HK company) and a Hong Kong subsidiary (incorporated locally) of a foreign company stem from the fact that, unlike a branch, a subsidiary is an entity which, under Hong Kong law, is entirely separate from its parent company. Both subsidiary and branch can perform any business activities of their parent company, and there are only slight differences in profit computation. The rates of tax levied on profits are the same for local and foreign companies and distributing dividends is non-taxable in Hong Kong.

Reasons for preferring setting up a subsidiary than a branch

The usual reasons for preferring setting up a subsidiary than a branch include the followings:

- (1) the parent company will not be liable for the debts of its subsidiary; its legal liability will be limited to the amount of any unpaid or issued share capital and its potential loss will therefore be limited (in the absence of a guarantee or other security) to the value of any assets it contributed by the way of capital to the company;
- (2) only if that information is related to the subsidiary must be filed with the Registrar and kept up to date;
- (3) a subsidiary does not need to file its accounts on the public record whereas in some cases a branch will need to;
- (4) the presence of a branch in Hong Kong makes it more likely that the "parent" company would be sued in Hong Kong even in connection with matters unrelated to its business operations there;
- (5) it is usually simpler and more cost effective to set up a Hong Kong subsidiary company than a Hong Kong branch;
- (6) even the registration documents in relation to the "parent" company is not in English or Chinese, translation is not required if a Hong Kong subsidiary company is incorporated, whereas in the case of a branch translation is required; and
- (7) it is not necessary to arrange for certified copies of any documents related to its parent company to incorporate a Hong Kong subsidiary company whereas in the case of a branch it is so necessary;

Reasons for preferring setting up a branch than a subsidiary

On the other hand, the usual reasons for preferring setting up a branch than a subsidiary include the followings:

- (1) The losses occurred in the Hong Kong operations in the first few years may help its parent company having tax advantage under the tax laws of the place it incorporated;
- (2) a branch can often rely on the credit of the "parent" company;
- (3) if business operations are terminated in Hong Kong, the lengthy liquidation process required for a Hong Kong subsidiary company can be avoided and any capital can simply be remitted out of Hong Kong;
- (4) a Hong Kong subsidiary company can only reduce its issued capital with a complex procedure;
- (5) share repurchases by Hong Kong subsidiary company in some cases will require the consent of the Court;
- (6) no stamp duty (except in relation to any land or any shares in Hong Kong companies owned by the foreign company) will be payable on change of beneficiary of branch on any transfer of shares, whereas stamp duty will generally be payable in the case of a Hong Kong subsidiary company;
- (7) as Hong Kong law does not require the separate audit of a branch, the ongoing maintenance expenses involved with a branch can be lower than those involved with a subsidiary.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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