

Preferential Tax Regimes. Offshore Corporate Profits in the Asia-Pacific Region¹

Regimen tributario preferencial. Ganancias corporativas de empresas de comercio exterior en la región Asia-Pacífico

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Abstract: The enquiry aims at contributing to international trade and foreign investment in the Asia-Pacific region through using preferential tax treatments on offshore trading companies' corporate profits. The methodology compares tax jurisdictions from Asia and OECD countries applicable to case studies. Firstly, it addresses incorporation of limited liability corporations, investment and foreign currency frameworks as well as taxation on corporate profits in Hong Kong. Secondly, it delves into offshore companies incorporated in Delaware, its documentation of company rights ownership and identity of shareholders' confidentiality rules. Finally, it examines two cases studies involving companies with limited liability and the turnaround of imported products destined for sale in mainland China's market. The paper advances the incorporation of offshore limited liability companies as part of a tax planning aimed at furthering export businesses earning corporate profits in the Chinese market and/or acquiring capital goods not intended for offshore jurisdictions.

Keywords: Tax haven, Hong Kong, Asia-Pacific, Corporate Profits, Offshore Companies, China.

Resumen: *El objetivo de la investigación es contribuir al comercio internacional y la inversión extranjera en la región Asia-Pacífico mediante el uso de regímenes fiscales preferenciales a las ganancias corporativas de empresas de comercio exterior. La metodología compara jurisdicciones fiscales de Asia y de países OCDE aplicados a casos de estudio. Aborda, en primer lugar, la constitución de sociedades de responsabilidad limitada, los marcos de inversión y moneda extranjera y los impuestos sobre ganancias corporativas en Hong Kong. En segundo término, profundiza en compañías offshore constituidas en Delaware, la documentación de propiedad de derechos en la compañía y en las reglas de confidencialidad de identidad de sus accionistas. Por último, examina dos casos de estudio que involucran a compañías con responsabilidad limitada y la entrega de productos importados destinados a la venta en el mercado de China continental. La investigación concluye la constitución de sociedades de responsabilidad limitada en el*

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extranjero como parte de una planificación fiscal destinada a promover empresas que obtienen ganancias corporativas en exportación al mercado chino y/o que adquieren bienes de capital no destinados a jurisdicciones offshore.

Palabras clave: *Paraíso fiscal, Hong Kong, Asia-Pacífico, ganancias corporativas, sociedades offshore, China.*

1. Introduction

Hong Kong-based companies are used as relatively safe trade channels to mainland China due both to its distinctive legal system and preferential tax regime. China fits in this scenario as a huge market for third countries' exports, but sadly one whose domestic legal system still seems obscure and intricate for foreign entrepreneurs.

This enquiry delves on tax treatment on profits of offshore trading companies carrying on businesses under the preferential tax regime of Hong Kong (hereinafter, HK) *vis-à-vis* a comparable jurisdiction in the United States as a way to highlight favourable features of incorporating businesses in Asian jurisdictions.

The main contribution of the enquiry relies on examining current Hong Kong's rules on businesses incorporation, registration, and documentation of company rights ownership as well as on confidentiality on the identity of shareholders as part of a tax planning strategy on offshore corporate profits.

The paper has relevant practical implications as to corporate tax planning and the possibility to keep using current offshore corporate structures in line with furthering export businesses interests yielding high profits in the expected recovery of Chinese markets particularly after COVID-19 pandemic and/or in acquiring capital goods not intended to offshore jurisdictions.

2. Theoretical framework

The theoretical framework of the enquiry deals with offshore businesses incorporation, foreign investment, and the taxation on profits of limited liability companies in Asian jurisdiction and OECD countries. As to Asia, the selected jurisdiction is that of Hong Kong which general legal framework consists of the Basic Law of the HK Special Administrative Region of the People's

Republic of China and the HK Companies Act whilst the precise regulatory framework for the paper's topic is the HK Internal Revenue Act.

As to OECD countries, the standard employed for a comparative analysis is the corporate and tax regime of the state of Delaware, in the United States.

3. Research methodology. Compared case studies.

The comparative analysis of preferential tax treatment on trading companies' profits begins with the People's Republic of China's and –particularly- with the appurtenant regulatory framework of Hong Kong; followed by a similar study of Delaware's, in the United States. The election of this jurisdictions is based upon the fact that most Chileans export businesses are channelled or organised through US-based companies taking advantages of State preferential tax regimes, being Delaware one of the most representative. However, due to Chilean Internal Revenue Service's regulations enacted in 2019 this preference for USA jurisdictions is being questioned.

The paper then analyses two case studies on trading companies dealing with profits of offshore corporations and products destined for sale at the internal market of the People's Republic of China whilst comparing Hong Kong and Delaware legal frameworks, both having the general advantage of being based on the Common Law system, whilst that of mainland China bases upon Civil Law.

The first case refers to a local company, incorporated in HK, which wants to import consumer goods (e.g. fruit produce). Such goods are to be stored in a third-party logistics center managed by an agent (or managed by the company, as proprietor); and then to be sold to customers of HK or the Chinese domestic market.

The second case deals with a similar company, but now it also wants to acquire capital goods (machinery) abroad (e.g.in Germany) and forward them immediately to a third country (Brasil, for instance) avoiding passing through HK.

Therefore, to determine the tax liability of corporate profits of an offshore company and make both case studies comparable, we must firstly address the taxation of profits of businesses incorporated in HK according to its Internal Revenue Act.

4. Presentation

4.1. Hong Kong

Hong Kong is a long-standing and important world financial hub. Notwithstanding, it is just a special administrative region of the People's Republic of China.² Although a territory of China, it boasts a high degree of autonomy and there survives a jurisdictional system based on the Common Law. This feature has enabled HK to be praised for its freedom to incorporate businesses in its territory and for respecting private property, thus, favoring flows of financial capital not subjected to the strict currency control in force in the rest of the PRC. Further, the taxation in HK is also fundamentally based on the principle of territoriality.

Furthermore, HK enjoys having a free trade agreement entered into with China: the Closer Economic Partnership Arrangement (CEPA), which has strengthened economic integration and trade between both territories and whose scope covers goods and merchandise, investment, economic and technical cooperation.³ Under article 5 of CEPA, mainland China (hereinafter and indistinctly, the continent or simply China) is committed to grant full national treatment to investors and foreign investments of HK in sectors not related to services (except 26 measures in Annex 2: "most favored"). Moreover, article 6 of CEPA provides for the "most favorable treatment" clause, which involves that any treatment granted by mainland China to investments of third-countries, if it is more advantageous than that granted under CEPA, such treatment shall be extended also to investors of HK.

Even more, on November 12th, 2017, HK entered into a Free Trade and Investment Agreement with the Association of Southeast Asian Nations (ASEAN), involving important economic and trade implications.

² Basic Law of the HK Special Administrative Region of the People's Republic of China (中华人民共和国香港特别行政区基本法) or "BLSAR", adopted at the 3rd Session of VII National People's Congress on April 4th, 1990, promulgated by Order No. 26 of the President of the People's Republic of China on April 4th, 1990; in force since July 1st, 1997.

³ The services sector is covered by the Agreement on Trade in Services, implemented in June 2016.

4.1.1. *Incorporation of commercial businesses in Hong Kong*

In connection with the already introduced case studies, this inquiry focuses on goods-importing trade companies with limited liability by shares,⁴ whose products are destined for sale in the Chinese domestic market.

Concerning profit-seeking organizations, limited liability companies are the general rule⁵ and their regulation is contained in the HK Companies Act (HKCA), subsidiary legislation and later amendments.⁶

In HK, limited companies by shares can be of two types: (1) private ones, if its bylaws restrict the right of shareholders to transfer their shares, limits the number of shareholders to 50, and prohibits calls to the public to subscribe shares or the company's debt, and it is not a company limited by guarantee (company limited by guarantee); or (2) public company, if it is not a private company or a company limited by guarantee.

To incorporate a limited liability company by shares (Kingsley, 2017) - in accordance with the HK Companies Act - the following is required:

A.- Application for incorporation, fees & charges payment, and bylaws (HK Companies Registry, HKCR).⁷

Being a company limited by shares, the first requisite is met by submitting form NNC1 (HKCR), which embodies all the essential requirements.

As for fees and charges, they are provided for in ordinances and regulations.⁸ For example, the registration fee of a company limited by shares is HKD\$1,720 (HK dollars) (Companies Registry 2017).

Lastly, bylaws are the founding document of the company; and, as such, its provisions respond to particular needs of the shareholders.⁹ The bylaws are relevant in the incorporation process

⁴ There are other relevant forms of legal organization of international businesses linked to the jurisdiction of HK, such as trade agencies, foreign companies (registration of registered non-HK companies), local companies limited by guarantee, trust companies, and limited partnerships, among others.

⁵ In opposition to companies limited by guarantee, common amongst non-profit organizations.

⁶ The new Companies Act sanctioned by the Legislative Council of HK on July 12th, 2012. The Company Act and its subsidiary legislation are an integral part of HK's corporate and financial frameworks; entered into force on March 3rd, 2014.

⁷ This can be done physically, submitting documentation to the Companies Registry; or, digitally, using the e-Registry platform.

⁸ HK Companies Act (Cap.622), section 26. Vid. also, the Companies Fees Regulation and sections 5A and 5B of the Business Registration Ordinance, Chap.310.

⁹ The requirement of bylaws is in section 67 (1) (a) of the HK Companies Act (Chap. 622).

because, according to them, the public or private nature of the company will be ascertained. However, the HK law provides for given contents or essential clauses for the bylaws: name of the company, limitation of liability of the shareholders, the members' contribution regime, and capital and original distribution of shares. To mention the company's line of business is not mandatory, except in special cases.¹⁰

B.- A registrable name. The Hong Kong Companies Registry (HKCR)¹¹ has got general¹² and specific regulations (Hong Kong Trademark Registry, HKTR)¹³ for the registration of company names; and the failure to comply with them may result in the application being rejected.

C.- A local address. The company's head office must be located in HK; but no physical presence of shareholders and/or directors is necessary. There is also no nationality requirement to create the company.

D.- Have at least one shareholder and one director. Both may be foreigners. Directors must be over 18 years old and declare their consent to exercise the position, at the latest within 15 days following the date of incorporation of the company. Private companies must also have at least one director, who must be an individual.

E.- An administrator. The shareholder and the administrator of the company can be the same person. However, directors cannot be administrators.

F.- A company's secretary, who must be a national and resident in Hong Kong. Typically, the functions of this secretary are assisting (submission of forms and documents, most notably, Form NNC1 for companies limited by shares) and representing the board before governmental bodies. In compliance with the aforementioned requirements, the secretary can also be a registered company in HK (corporate secretary).

G.- Share capital requirements.

¹⁰ In general, section 103 of the Act refers to the discretion of the Registry to authorize registration as a limited liability company (section 103 (1)) when the company is formed to promote trade, the arts, the science, religion or charity or other beneficial object (103 (1) (a)), the society intends to apply its profits or other income to the promotion of such objects (103 (1) (b)) and if it intended to prohibit the distribution of dividends to members (1103 (1) (c)).

¹¹ The HK Companies Registry is responsible for the registration of local limited liability companies and companies incorporated outside of HK that have established a business location therein.

¹² A company can be registered with a name in English, a Chinese name, or an English name and a Chinese name. The combination of words / letters in English and Chinese characters are not allowed. The name in English of a company must end with the word "Limited" and that of a Chinese company with the characters "有限公司". Vid HK Companies Act, section 102.

¹³ As those related to the protection of intellectual property. The Intellectual Property Department is responsible for the registration of trademarks in HK and manages the Trademark Registry.

Although there is no legal minimum for this purpose, the usual capital for incorporation is HKD\$10,000.

According to the new Companies Act of HK, the mandatory regime for declaring share capital is no par value (i.e. shares have no nominal value). The details on the requirements for the declaration of capital and the initial shares are set out in section 85 of the Companies Act and in section 8 of Annex 2 thereof.

Both the Ordinance and the NNC1 form deal with the nature of shares in which the capital is divided (ordinary and/or preferred shares), the total number of shares to be issued and the prescribed currency, the total amount of capital that members are to subscribe through shares, the amount effectively paid or to be regarded as paid in connection with issued shares as well as any unpaid capital remaining.

Actually, in accordance with bylaws' provisions regarding the nature of the company (private or public) and when they include more than one kind of shares, the NNC1 form requires to detail the prerogatives or rights that each class of shares will entail (appurtenant voting rights, distribution of dividends and/or capital, reimbursement, resignation, withdrawal, etc).

H.- Business registration, payment of registration fee and administrative costs at the competent registry agency (Hong Kong Business Registration Act, hereinafter HKBRA).¹⁴

In practice, this requirement is met simultaneously (HKBRA),¹⁵ through Form IRBR1 (HKCA) being this the notice required by the Commissioner of Finance of HK for tax purposes (Hong Kong Inland Revenue Department, hereinafter HKIRD).¹⁶ If not done so, the application for registration shall be rejected by the Companies Registry.

Once all requirements met, the making of the company is ready when the competent Registries issue the “certificate of incorporation” and the “business registration certificate”.

¹⁴ The competent body is the Registry sets out in the Business Registration Act, Ch.310.

¹⁵ Vid. sections 5A (1) and 5D (2) of the HK Business Registration Act, Ch. 310.

¹⁶ As of April 1st, 2017, the registration fee amounts to HKD \$2,000 and the administrative fee of HKD \$250 for the one-year business registration certificate; for the three-year duration, the values are HKD \$5,200 and HKD \$750, respectively. Vid. 稅務局 Inland Revenue Department, 商業登記費及徵費收費表 Business Registration Fee and Levy Table.

Finally, once the company is fully incorporated, the specific requirements for keeping on legal operation are to submit an annual return,¹⁷ to keep accounting records,¹⁸ and to pay an annual registration fee.¹⁹

4.1.2. Statute of foreign investment and remittance of foreign currency

As to investments, the starting point is the BLSAR,²⁰ under which the ownership of companies and investments from outside the region enjoy legal protection.²¹

Investors in HK - whether individuals or legal persons - have the right to acquire, use, dispose of and transfer ownership, as well as to claim compensation for the illegitimate deprivation of their property. The BLSAR provides for such compensation amounts to the real value of the property at the time of the deprivation, freely convertible and payable immediately.²²

In HK, the principle of unrestricted flow of capital applies either within or both inward or outward its territory. Accordingly, foreign exchange control policies are not implemented, thus, the HK dollar (HKD), legal currency, is convertible without restrictions.²³ The same happens with gold exchange markets, values and futures. It is a legal obligation of the HK government to safeguard the free circulation of capital,²⁴ propose monetary policies²⁵ in accordance with providing an appropriate economic and legal environment to maintain the status of HK as an international financial center,²⁶ and promote investments.²⁷

Within the CEPA framework, however, particularly in the situations provided for by Article 9 (non-conforming measures) concerning Table 2 (negative list of rollback provisions) of Annex 2 Part 1 (on the continent) China's competent authorities retain powers of admission of investments from HK. For example, in connection with specific sectors, sub-sectors or activities, such authorities could maintain existing restrictive measures or adopt new ones even more

¹⁷ The relevant form is NAR1. The time to submit this annual declaration depends on the nature of the company.

¹⁸ However, small and medium-sized private companies can submit simplified financial reports under certain circumstances.

¹⁹ The Inland Revenue Department (February 2017) of the Companies Registry establishes that, for public companies limited by shares, the annual registration fee must be paid within 42 days of the date of the company's declaration.

²⁰ Ibid n.1. Basic Law of the HK Special Administrative Region of the People's Republic of China ("BLSAR").

²¹ BLSAR, Chapter 5, Section 1, art. 105.

²² BLSAR, Chapter 5, Section 1, art. 105.

²³ Notwithstanding the powers of the Exchange Fund, under control of the SAR government, mainly to regulate HKD exchange value.

²⁴ BLSAR, Chapter 5, Section 1, art. 112.

²⁵ BLSAR, Chapter 5, Section 1, art. 110.

²⁶ BLSAR, Chapter 5, Section 1, art. 109.

²⁷ BLSAR, Chapter 5, Section 1, art. 118, 119.

restrictive that do not comply with the obligations arising out of Article 5 (national treatment) or Article 6 (most favorable treatment), among others.²⁸ In this regard, HK investors may find their freedom to operate constrained, for example, using their own accounts or third-party accounts in foreign exchange markets, open markets or over-the-counter markets in mainland China. Clearly, however, these exceptional restrictive situations are extraneous to the authorities of HK and exclusive to the central government of China.

Similar to the flow of capital scenario, the BLSAR enshrines the principle of free trade of both goods and intangible assets,²⁹ for example, company rights. In this light, it protects not only the nature of HK as a free port by limiting the imposition of tariffs strictly by law,³⁰ but also establishes the special customs territory of HK, in which export quotas, preferential tariffs or other similar agreements - that the BLSAR has obtained or conferred and as long as they remain in force - are to be applied exclusively.³¹ In regard with this, both the HK Department of Industry and Commerce and the Department of Customs and Excise regulations are relevant.

From a practical point of view, said principles (territoriality and free trade) not only facilitate setting up a company in HK and making contacts with Chinese (and Asian, by extension) customers, but also facilitates the opening of bank accounts in HK³² and, therefore, the access to foreign currency exchange market, as well as simplify make payments. Although the bank opening rates have been increased by several factors, the average of HK's is still below the average for the region. Further, the minimum amount required to open an account varies considerably among different banks.

HK investments in mainland China must comply with a registration requirement before the competent authority.³³ Complying with the registration unables investors to access the foreign currency exchange market in accordance with the relevant regulations.³⁴ These latter, in addition, regulate the foreign currency management and the opening of bank accounts both in HK and mainland China, with capital remittances (repatriation, where applicable) and investment shares in cross-border securities, amongst other provisions.³⁵

²⁸ CEPA, art.5, 6. See also CEPA, Annex 2, Part 1 (Schedule of the Mainland), table 2 (negative list of rollback provisions), note 1.

²⁹ BLSAR, Chapter 5, Section 1, art. 115.

³⁰ BLSAR, Chapter 5, Section 1, art. 114.

³¹ BLSAR, Chapter 5, Section 1, art. 116.

³² In this regard, the website of the Hong Kong Monetary Authority (香港金融管理局, HKMA) has detailed information on the requirements and procedures for opening and maintaining bank accounts in the jurisdiction.

³³ China Securities Regulatory Commission.

³⁴ Under the supervision of the State Administration of Foreign Exchange.

³⁵ Given the tight foreign currency exchange control in mainland China, it is important for HK investors to use the Renminbi (RMB, better known as Yuan) in their investments in the continent to comply with RMB cross-border control regulations.

4.1.3. Tax regime of company profits

The analysis of our first case study involves a local company incorporated in HK, which wants to import consumer goods (e.g. fruit produce). The imported goods are stored in a third-party logistics center managed by an agent (or by itself); and then sold to customers of HK or the Chinese domestic market. No other activities are carried out in HK. All international commercial sales contracts are finalised out of HK. The relevant question is: what -if any- is the tax liability of such company in HK?

In turn, the second case study involves the same local company, but this time the company also wants to buy capital goods (i.e. machinery) abroad (from Germany, for instance) and direct them immediately to a third country (Brasil, for example), without going through HK. Here, the relevant problem is: what is the function and tax liability of the HK entity in the purchase of capital assets made and acquired abroad?

To answer those questions, we must address the tax regime of profits of businesses incorporated in HK, pursuant the HK Inland Revenue Ordinance (hereinafter IRO).³⁶ Firstly, it is worth noting that the tax regime of HK is special,³⁷ independent of the fiscal regime of the central government of the People's Republic of China.³⁸ Secondly, that HK's is based on the territoriality principle.³⁹

A first corollary derived from such principle is that it does not differentiate between residents and non-residents when it comes to tax on gains and profits.

A second implication of the principle of territoriality is that only the profits, proceeds or gains sourced within the territory of HK are taxed. On the contrary, those sourced outside HK are not levied.

Combining both implications above, the tax effects can be summarized as follows: on the one hand, a HK resident earning gains or receiving profits originated abroad has no obligation to pay taxes thereupon; on the other hand, contrarywise, the profits or gains of a subject not resident in HK may be levied upon if they arise from or originate in its territory.

The proceeds of lucrative activities of any entity⁴⁰ -including, naturally, companies or establishments- that carries out a business or trade might be taxed upon the profits or gains

³⁶ HK Inland Revenue Ordinance (稅務條例, IRO), Chap.112.

³⁷ Since it is a special administrative territory of PRC.

³⁸ BLSAR, Chapter 5, Section 106, 108. The Central Government of the People's Republic of China is prohibited from establishing taxes in the HK Special Administrative Region.

³⁹ Legislative expression of the principle is, for example, section 20AC of the IRO, by virtue of which tax is not levy upon certain profits of non-residents.

⁴⁰ Individuals, associations, trusts, communities, corporations, etc.

sourced in HK. *A priori*, the principle of tax territoriality in HK is clear. As a general rule, the profits or gains will be taxed in HK if the company has its facilities and personnel located in HK as long as: 1. its regular management is carried out partially or totally in the territory of HK, 2. its clients and/or its suppliers are located in HK,⁴¹ 3. it provides consulting services therein, 4. it buys and sells merchandise or goods under contracts negotiated and entered into in HK, or when the goods are stored and destined for sale in HK, or commercial activities are carried out by an agent in HK. Otherwise, as far as the HK jurisdiction is concerned, the earnings or profits of lucrative activities shall not be taxed and the corporation that receives or accrues them may qualify as an offshore corporation, upon request to the HK tax authority.

As seen, thus, it is the practical application and interpretation of the principle of territoriality to particular fact situations that can sometimes become controversial. To delimit such risk, next we will analyze the relevant taxable event: corporate gains.

The Inland Revenue Ordinance of HK establishes a tax on gains or profits of corporations, which is levied upon the corporation's "assessable" profits, at the rate specified in Annex 8 of the Ordinance.⁴²

Within "assessable" profits held by a person,⁴³ certain financial assets are worthy of a special reference: the so-called "qualified debt instruments", because pursuant to the Ordinance, they are taxed at a reduced rate. Indeed, assessable profits or gains of a corporation arisen out of sums received or accrued by (a) interest paid or payable on a medium or short-term debt instrument;⁴⁴ or (b) any gain or profit on the sale or other disposition at maturity or collection of a medium or short-term debt instrument, are taxed upon, but at half the rate specified in Annex 8.

Annex 8 of the Ordinance sets the tax rate of corporate income tax. On the one hand, thus, for the case study of interest: the tax rate of locally sourced gains of companies incorporated in HK is 16.5% upon the earnings generated during a financial year.⁴⁵ On the other hand, proceeds from qualified debt instruments are taxed upon at 8.25%.

At this point, it is necessary to add in the analysis the information on the structure and current tax situation of potential holding companies with branches involved in international trade, for instance, a holding company incorporated in a third country of the Asia Pacific region (like

⁴¹ However, the profits from the sale of capital goods are exempted.

⁴² HK Inland Revenue Ordinance (Chap.112, part 4, section 14 (2) (a)). It also imposes taxes on property (part 2) and remunerations (profits).

⁴³ The legal definition of "person" (人, 人士) "includes a corporation, partnership, fiduciary, whether constituted (legally) or not, or a body of persons". HK Inland Revenue Ordinance, Chap. 112, part 1, section 2 (amended 2, 1971, 2, 30, 1981, 2).

⁴⁴ The Ordinance defines "debt instrument", "medium-term debt instrument" and "short-term debt instrument". HK Inland Revenue Ordinance, Cap. 112, part 4, section 14A (1) (a) (b). Qualifying debt instruments.

⁴⁵ HK IRO, Cap. 112. Schedule 8. Rates of profitable tax in respect of a corporation.

Ecuador, Perú or Chile). It does not matter if they are companies of different legal character, but they must be -at least- formally operative, that is, actually registering accounting activity on its line of business, either by virtue of intraholding transactions or with third party companies. Further, within this latter group, at least some of them carrying out operations involving international factors like trading or carrying out businesses in HK.

In such holding business model, said international trade company would qualify as a "qualified corporate treasury center" (hereinafter and indistinctly, qualified center), that is, one that provides "corporate treasury services"⁴⁶ (e.g. by managing payments to suppliers of associated corporations,⁴⁷ or providing services in connection with the provision of guarantees, documentary letters of credit or other credit risk instruments on behalf of a corporation associated⁴⁸ with an "associate corporation outside Hong Kong"⁴⁹) or enters into "corporate treasury transactions"⁵⁰ (that is, transactions entered into by the corporation *per se*, on its own account, and related to the line of business of an associate corporation e.g. swap, forward, futures, currency exchange contracts, or options held for the purpose of hedging interest rate-associated risks, foreign currency exchange rate, liquidity, credit or any other financial risk of the associated corporation;⁵¹ or factoring⁵²) with "associate corporations outside Hong Kong" and for which it accrues "corporate treasury profits".⁵³

Most of other companies of such holding may qualify as "associate corporations outside Hong Kong",⁵⁴ in which the association with the company of international business is given mainly by the fact of being under the control of the same people.⁵⁵ The control standard for associate corporations is set out in section 14 C(2) as the power of a person to secure (a) through the holding of shares or voting rights, in the corporation or in relation to another; or (b) by means of powers conferred in the bylaws or other regulatory document of the company or in those of other corporation, that the affairs of the former are conducted in accordance with the wishes of such person.

To determine the "assessable" profits of a "qualified center" and, thus, the taxable base of the income tax, the Ordinance contains detailed requirements in subsections 14D(5) and (8) with respect to profits derived from qualified loan operations, treasury services and/or treasury

⁴⁶ HK IRO. Schedule 17B part 1.

⁴⁷ HK IRO. Schedule 17B part 1, 1 (b).

⁴⁸ HK IRO. Schedule 17B part 1, 1 (g) (i).

⁴⁹ HK IRO. chap. 112. Section 14C (3).

⁵⁰ HK IRO. Schedule 17B part 2.

⁵¹ HK IRO. Schedule 17B part 2, 2 (1) (c) (ii), (iii), (iv), (v).

⁵² HK IRO. Schedule 17B part 2, 2 (1) (d).

⁵³ Corporate treasury profits, a concept also legally defined as any corporate utility derived from a "corporate treasury activity". HK IRO, Cap 112. Section 14C.

⁵⁴ HK IRO, Cap. 112. Section 14C, non-HK associated corporation.

⁵⁵ HK IRO, Cap. 112. Section 14C (1) (c) associated corporation.

transactions (section 14D(1)). These requirements, if met, also lead to the reduction of the tax rate of Annex 8 to half.

In turn, section 14E in coordination with 14 D(2)(b), establishes a “safe harbour” standard to qualify a corporation as a "corporate center". It is particularly important to list "certain estimated amounts (or receipts) of negotiation" of section 15, of which three examples are worth mentioning: (1) the amounts received or accrued by a person through hiring, lease or similar charges for the use of movable property in HK or for the right to use movable property in HK;⁵⁶ (2) sums received or accrued by a corporation that carries out a trade, profession or business, in HK, through interests (received or accrued) from HK;⁵⁷ and (3) sums received or accrued by a corporation, by virtue of interest arising from the execution - in HK - of intra-group financial business (as defined in section 16(3)) of the corporation, even if the monies with respect to which the interest is received or accrued is made available outside HK, the latter standard introduced to the Ordinance only in 2016.⁵⁸

The process of assessing taxable profits of a HK company continues in section 16 of the IRO,⁵⁹ which deals with deductible expenses incurred in the base period and necessary for the earning of profits. Reciprocally, deductions not allowed (namely, rejected expenses) are detailed in section 17. Once the deduction-related operations have been taken into account, further adjustments have to be applied to the so determined tax base, all of which are dealt with in section 18 and particularly in subsection 18F.

Special mention requires the treatment of tax losses, regulated in section 19, as well as different rules on fiscal responsibility of certain non-residents of HK, amongst which stands out the exemption of certain profits received or accrued by non-residents. Indeed, section 20AC exempts from taxation the transactions contained in Part 1 of Schedule 16 in securities, futures, currency exchange, commodities (such as gold and silver) traded in the stock market, involving deposits other than loan transactions,⁶⁰ carried out or managed by an specific person,⁶¹ in the corresponding fiscal period; unless she is a non-resident person involved in trading, carries out a profession or businesses in the territory of HK.⁶²

⁵⁶ HK IRO. Cap.112, section 15 (1) (d).

⁵⁷ HK IRO. Cap.112, section 15 (1) (f).

⁵⁸ HK IRO. Cap.112, section 15 (1) (ia).

⁵⁹ HK IRO. chap. 112, section 16. Ascertainment of chargeable profits.

⁶⁰ HK IRO. chap. 112, Schedule 16, Part 1.

⁶¹ HK IRO. chap. 112, section 20 AC (2) (b) (i).

⁶² HK IRO. chap. 112, section 20 AC (2) (a) and (2) (b) (i).

4.2. United States

This part focuses on offshore companies in OECD jurisdictions of low taxation though enjoying high legal certainty, like Delaware in the United States of America. In a fashion similar with respect to HK, we will examine Delaware's legal framework on company incorporation and registration, ownership of company rights and its documentation as well as appurtenant rules on the protection of shareholders' identity.

4.2.1. Offshore companies and OECD references

Offshore companies or non-residents companies are companies normally incorporated or registered in a tax haven (a jurisdiction enjoying zero or very low taxation) or in countries with more favorable legal frameworks, in which they do not perform any economic or commercial activity. Since the most advantageous legal conditions sought by such companies are usually the fiscal ones, the analysis will focus on them.

Firstly, it is worth recalling that offshore companies are characterized by being controlled by foreign partners (either companies or individuals) that carry out their transactions (financial or commercial ones) elsewhere in the world and only resort to such tax jurisdictions as the legal domicile of the company.

Secondly, offshore companies are exempted not only from corporate tax, but also from other local taxes, such as the tax levied on profits from their economic activities of their line of business, taxes on inheritance and transfers, on equity, on the income of partners (individuals), of taxes on consumption such as the VAT, and on other special ones, like those levied upon the acquisition of vehicles and/or fuels.

In HK for instance, the offshore company status must be requested to the tax authority, proving that no lucrative activities are carried out within its territory. However, in an offshore tax planning involving the United States, a significant condition must be borne in mind: in 2017, the United States approved a tax reform that reduced, as of 2018, the corporate income tax from 35% to 21% (El Financiero 2018). The tax reform proposed a system of territorial inspiration, in which companies pay taxes based exclusively on the jurisdiction of their operations, so that the profits of branches abroad do not pay taxes in the United States. The initiative also modified the repatriation regime of past profits. If until 2017 the companies could defer the taxation of their profits abroad until repatriation to the US, the legal reform included differentiated tax rates of 15.5% and 8% depending on whether is it about remittances in cash or income invested in other less liquidable assets, respectively. In regard with individual taxation, the usual seven tax brackets (starting at 10%) of marginal rates of income tax remain; but it reduced by 2.6 percentage points the maximum rate of the upper section (from 39.6% to 37%). Further,

significant changes were also introduced to the depreciation regime of certain assets (acquired between September 27th, 2017 and January 1st, 2023), whose acquisition cost can be depreciated immediately and in full.

4.2.2. *Incorporation, registration, and company rights' ownership*

To a large extent, contractual freedom together with sole proprietorship⁶³ in Delaware are responsible for the existence of several types of corporate structures, amongst which are: (1) general partnerships (GP) of section 15 of Title 6 of the Code); (2) limited partnerships (LP) of section 17 of the same Title); (3) "C" corporations, of Title 8 of the Code; (4) public benefit corporations, of the same latter Title; (5) subchapter "S" corporations, same previous source; (6) limited liability companies (limited liability corporations, LLC, Title 6 of the Code, section 18-101); and (7) limited liability partnerships (limited liability partnerships, LLP, Title 6 of the Code, section 17-214).

The main differences between those corporate structures are property and control rules, the liability of the shareholders and their particular tax regime. Taking into account the case studies raised plus a tax consideration to be said shortly, it seems appropriate - for the purposes of offshore operation - to focus on limited liability companies and to outline its factors.

Firstly, ownership of a limited partnership rests upon its shareholders, which in Delaware may be one or more. Secondly, the control of the company rests upon its shareholders jointly or upon its administrators as stipulated in operating agreements. Thirdly, generally, the liability of the owners/shareholders is limited to the amount of capital contributed to the company, unless they have served as guarantors of the corporate debts. Here it comes the tax consideration announced: Delaware LLCs have an optional tax regime, either they may already be taxed under the general framework of partnerships (having each associate in his individual income statement included the adequate prorrata of the association's income and losses, being taxed already with the personal tax rate or with the corporate rate); or, be taxed under the corporate regime (in which they are taxed on the basis of the company line of business' income at corporate rates, while profits distributed to shareholders are taxed with personal tax rates).

In Delaware, company incorporation is regulated by Chapter I, Title 8 of the State Code (hereinafter, DC).⁶⁴ The process consists, basically, in submitting a "certificate of

⁶³ A single individual can incorporate a Delaware LLC and be the sole proprietor of that company, controlled by its owner, who personally responds to all the debts of the company, but in which the profits of the business are considered personal utilities and - as such, they are taxed at personal rates of income tax. Additionally, this structure is exempt from the annual franchise tax payment.

⁶⁴ Title 8 Corporations, Delaware Code, 1953. Chapter I General Corporation Law, Subchapter I. Formation.

incorporation"⁶⁵ of the company to the Division of Corporations of the Department of State,⁶⁶ taking due care of abiding by section 102 of the Code.

Similar to HK, in Delaware, the minimum contents and essential requirements of such "certificate" or instrument of incorporation are regulated in detail.⁶⁷ They are: (1) the name of the corporation;⁶⁸ (2) the address of the corporation's office, registered in the State; plus the name of an agent registered at the same address; (3) the line of business; (4) whether or not the company is authorized to issue more than one class of shares and the number of shares in each class, if applicable, along with a statement regarding the nominations, powers, privileges and rights, qualities, limitations or restrictions to them, with respect to each class of shares or series of any kind of shares; and, in the case of companies that are not share companies, the statement of not being authorized to issue them; (5) the name and mailing address of the constituents; and (6) same information about provisional directors, if the powers of the constituents expire at the presentation of the "certificate".

On the one hand, as a general rule, any person, society, association or corporation –either jointly or individually – and regardless of the residence or domicile of that person or the state of incorporation of that entity, may constitute or organize a corporation under the laws of the State. In other words, there are no residency or citizenship requirements for members of Delaware LLCs.

On the other hand, in Delaware, the line of business of corporations might be quite broad. They can be incorporated to carry out any business or purpose to the extent that they do not violate the Constitution nor any other laws of the State.⁶⁹

By incorporating an LLC in Delaware, the legal address of the company must be within the State; and, therefore, it must abide by the Delaware Limited Liability Company Act.

To acquire legal standing by the law, the instrument of incorporation or "certificate" must abide by section 103 of the Delaware Code,⁷⁰ by virtue of which it is processed and finally recognized and filed by the state competent authority who is also authorized to issue authenticated copies as per request.

The Code also establishes some other optional contents that may already be included in the instrument of incorporation; or, in separate instruments or bylaws.⁷¹ Thus, the corporate law of

⁶⁵ Defined in 8 Delaware Code, 1953, §104.

⁶⁶ 8 Delaware Code, 1953, §101, §103. Division of Corporations -John G. Townsend Building - 401 Federal Street - Suite 4 - Dover, DE 19901, USA.

⁶⁷ 8 Delaware Code, 1953, §102 (a) 1-6.

⁶⁸ The name of the corporation can be reserved, upon request, through the procedure established in §102 (e).

⁶⁹ 8 Delaware Code, 1953, §101 (b).

⁷⁰ 8 Delaware Code, 1953, §103 (a) - (j).

⁷¹ 8 Delaware Code, 1953, §102 (b) 1-7. See also §109.

Delaware gives great flexibility to the constituents to determine the organisation and management structure of a company. Under the principles of free will and contractual freedom, partners can enter into an "Operating Agreement or LLC Agreement" that best suits their interests, which is binding and valid before the courts of Delaware.⁷²

Once in operation, companies incorporated in Delaware must submit - as a general rule - an annual corporate report⁷³ and pay an Annual Franchise Tax.⁷⁴ However, LLCs are not obliged to present such a report,⁷⁵ but required to pay the annual franchise tax of USD\$300,⁷⁶ payable no later than June 1st and notified on December each year to all registered agents in Delaware.

Similar to HK's offshore framework, the State of Delaware does not levy any state tax upon income or gains of an LLC incorporated in Delaware that does not operate within the State. Thus, when using an LLC, non-resident foreigners in the United States can avoid federal taxes upon their business activities as long as they are not carried out in the United States.

Linked thereto, though different, is the case of foreign corporations of subchapter XVI, Chapter 1, Title. 8 of the Code, which are corporations organized under the laws of any jurisdiction other than that of Delaware, but that are authorized to carry out businesses in Delaware through branches, agents or representatives located in the State, once they have paid a USD \$80 tax and submitted for approval by the Secretary of State's office, a "certificate" containing what is

⁷² Fundamentally, before the Court of Chancery of Delaware. This is a jurisdictional body based on Common Law equity. Vid § 111.

⁷³ The rate to be paid for the presentation of the annual report by all other companies is USD\$50, together with the other taxes owed at the date of presentation. The maximum period of receipt and payment is March 1st of each year. The minimum tax is USD\$175; and the maximum USD\$180,000.

⁷⁴ Title 8 Corporations, Delaware Code, 1953. Chapter 5 Corporation Franchise Tax. §501 (a). For the determination of the tax, vid §503 (a). It is worth noting that section 501 was valid only until January 1st, 2018. Section 502 began to apply from that date on.

⁷⁵ Are neither limited partnerships (Limited Partnerships, LP) nor general associations (General Partnerships, GP) incorporated in Delaware.

⁷⁶ The amount of the tax will depend: (1) If it is a corporation not exempt under section 501(b) and not authorized to issue capital shares: USD\$175; if it is authorized to issue such shares, but does not exceed 5,000 shares: USD\$175; if the stock of authorized capital exceeds 5,000 shares, but not more than 10,000 shares: USD\$250; and, finally, the additional amount of USD\$85 for every 10,000 shares or part of it. 8 Delaware Code §503(a)(1); (2) If the capital with no par value does not exceed USD\$500,000: the tax is USD\$175; if said capital exceeds USD\$500,000 but not USD\$1,000,000, the tax is USD\$250; and, finally, the additional amount of USD\$85 for each USD\$1,000,000 or part of that additional capital without nominal value. 8 Delaware Code §503(a)(2). In no case shall the corporate tax of one year, for a full fiscal year, computed by paragraph (a)(1) be more than USD\$200,000 nor less than USD\$175; or calculated by paragraph (a)(2) will be more than USD\$200,000 or less than USD\$400. The amounts referred to here are those of the new section 503, and effective as of January 1st 2018.

provided by section 371.⁷⁷ Naturally, the profits of a foreign corporation authorized in this way to operate within the State will be subject to the U.S. general tax regime.⁷⁸

Finally, regarding the evidence of registration and the documentation of ownership of company rights, Title 8 of the Delaware Code provides for the issuance of various certificates. Certainly, the most relevant and already analyzed is the "certificate of incorporation". Authenticated copies of the certificate of incorporation, amendments thereof, or any other certificate that has been duly issued by the office of the Secretary of State have full legal value and as such they must be admitted by courts, public offices and official bodies. Its character and probatory value cover *prima facie*: (1) its due execution, recognition and filing by the competent authority; (2) the observance of all the acts and conditions required before the instrument enters into force; and (3) any other fact required or permitted by law to be declared on the instrument.⁷⁹

4.2.3. *Shareholder identity privacy*

It seems appropriate, on this matter, to make a comparison with the current regulation in HK.

4.2.3.1. Hong Kong

It should be kept in mind that all personal information of shareholders collected by the HK Companies Registry, in any of the 83 forms used for the incorporation of companies provided by in the respective Ordinance (HKCA),⁸⁰ might be used for the purposes established in the Personal Information Collection Statement (PICS).

In other words, the use of such personal information by the Registry is subject to compliance with one or more of the following objectives:

1. Administer and execute provisions of the Companies Ordinance.⁸¹
2. Facilitate the public inspection of the Registry of Companies -containing personal information- in order to allow any person from the public:⁸²

⁷⁷ 8 Delaware Code, 1953, Chapter 1, Subchapter XVI Foreign Corporations, §371 (a), (b) (1), (2). Cases of exception to the fulfillment of these requirements are contained in section §373.

⁷⁸ Vid B.1.

⁷⁹ 8 Delaware Code, 1953, §105; 56 Del. Laws c. fifty; 70 Del. Laws c. 587, § 7.

⁸⁰ Chap.622.

⁸¹ Personal Information Collection Statement (PICS), 1 (a) (b).

⁸² PICS, 1 (c).

2.1. determine if you are dealing with (a) a company subject to art. 45 (1) of the Ordinance, its directors or other officers in matters related to any act of the company;⁸³ (b) a director or other officers of said company in matters related to the administration or ownership of the company;⁸⁴ (c) a person against whom an injunction (disability order) has been judicially issued;⁸⁵ (d) someone who has taken ownership of the company as a mortgagee;⁸⁶ (e) a person appointed as provisional or final liquidator of the company;⁸⁷ and (f) someone appointed as receiver or administrator thereof.⁸⁸

2.2. Determine details of the company, its directors or other officers, or its former directors if they exist, or details of any person mentioned in paragraphs 2.1 (d) to (f) above.⁸⁹

3. Provide copies of any document containing such information to any person, subject to the payment of a fee.⁹⁰

4. Manage the functions of the Companies Registry in connection with simultaneous applications for business registration subject to the Business Registration Ordinance (Chapter 310).⁹¹

In HK, according to the Business Registration Ordinance, collected personal data available for public examination at the respective Registry (not at that of the companies) and naturally subject to any other restriction under the law. Thus, for example, part of these personal data is communicated by the Registry to the office of the Commissioner of the Treasury (Inland Revenue Department).

In the use of personal information obtained from public records kept by the Companies Registry, the provisions of the Personal Data Privacy Ordinance (PDPO) apply.⁹² Any person who uses this data for purposes other than those established in the PICS declaration; or in contravention of PDPO requirements is responsible for damage compensation and subject to be processed in accordance with the Ordinance.

⁸³ PICS, 1 (c) (i).

⁸⁴ PICS, 1 (c) (ii).

⁸⁵ PICS, 1 (c) (iii).

⁸⁶ PICS, 1 (c) (iv).

⁸⁷ PICS, 1 (c) (v).

⁸⁸ PICS, 1 (c) (vi).

⁸⁹ PICS, 2.

⁹⁰ PICS, 1 (d).

⁹¹ PICS, 1 (d). See also Business Registration Ordinance (Ch.310).

⁹² Personal Data (Privacy) Ordinance, Cap 486 (PDPO).

4.2.3.2. United States of America (Delaware)

The constituents of an LLC in Delaware may choose to submit the company's formation documents without expressing the founding members' names in the "certificate of incorporation", in order to maintain their identity private. Those who incorporate the company are those who are actually obliged to identify themselves with their name and postal address, as prescribed in subsection 102(a)(5) of the Code. Namely, the disclosure of the property of the company is not a requirement for incorporating a company in Delaware. In addition, nothing prevents to one or several constituents from being, in turn, other companies themselves. Nor does the law require the identification of the original directors in the "certificate of incorporation".

On the one hand, according to subsection 102(a)(2) what is required is full individualization of the registered agent in the local address that the company must have in the State, in accordance with section 131(c) of Title 8, Chapter I, Subchapter III on "Office and Registered Agents". Thus, a Delaware company can operate anonymously through the agent with whom the company was created.

On the other hand, the registration at the Delaware Corporation Division of the "operative agreement or LLC agreement" referred to above is not necessary. This, undoubtedly, contributes more effectively to avert the personal liability of the shareholders as well as to maintain a "corporate veil" over the identity of the partners and/or the ways in which they adopt their internal agreements, for example, against the actions of recognized creditors or tax authorities.

In Delaware, companies required to file an annual report can only include the name and address of one of the members of the board of directors and the identity of the directors; but the shareholders or owners' names do not appear in the annual report and do not need to be reported to the State.

5. Discussion of results

The aim of this enquiry is to contribute to the international trade in the Asia-Pacific region by taking advantage of preferential tax treatments on corporate profits applicable to offshore trading companies with limited liability. To that end, it analysed two case studies on trading companies dealing with profits of offshore corporations and products destined for sale at the internal market of the People's Republic of China. The target was to determine the tax liability of corporate profits of an offshore company and make both case studies comparable.

As to the question raised by the first case study: what is -if any- the tax liability of a commercial company incorporated in HK to import and distribute goods to the domestic Chinese market? After a comparative analysis of preferential tax treatment on trading companies' profits in HK, the answer is that the fact of incorporating a local company in HK, by itself, has no tax effects whatsoever, to the extent that no profits could be sourced within the territory of HK. If all contracts entered into by this company are negotiated and their profits generated outside HK, and the products entering HK are not the matter of business transactions performed therein - whether on their own account, by an agent or a third party - and, finally, they are sold outside HK (e.g. to the rest of China), such earnings would not be taxed upon in HK.

In turn, as to the question posed by the second case study: what is the tax liability of the HK entity in the purchase of capital assets (machinery) carried out abroad (Germany, for example) and without passing through HK? Applying the principle of territoriality, it has to be answered negatively: there is none.

The question of whether a business is carried out in Hong Kong or not and whether the resulting gains or profits are derived from Hong Kong are, to a large extent, matters of fact. However, the case studies involved the establishment of an offshore company in China aimed at channelling the operations of an export-oriented trading company incorporated in a third country in the Asia-Pacific region. To solve them and expose their legal implications, this paper analyzed investment and remittances rules as well as the tax regime of corporate profits sourced abroad. As double-check, its methodology run a similar test in an OECD environment, thus, delving into offshore companies in the United States and addressing its incorporation scheme, registration procedure, required documentation of company rights ownership as well as appurtenant rules on confidentiality of shareholders' identity.

After addressing the HK's Companies Act, this enquiry recommended the formation of a limited liability company and analyzed in detail the corresponding requirements. The reasons for it were varied, both general and specific. Amongst the former ones, of course, is that HK is not only China's largest financial center; but also, one of the most important ports in Asia both for global trade and suitable to serve as entry platform to mainland China's massive market.

In turn, amongst the specific grounds were: (1) the existence of CEPA and its national treatment clauses (which implies investors in HK enjoying the same treatment as inland Chinese investors, applying identical regulations within the scope of the agreement) and more favorable treatment (which implies the extension to investors of HK of commercial treatments more beneficial than CEPA); (2) the new commercial agreements concluded between HK and ASEAN; (3) in its own right, the social structure of limited liability (by shares); (4) the relative ease of businesses incorporation and registration and its low cost; (5) high reliability of documentation regarding the incorporation process and deeds of ownership of social rights; (6) low requirements for continued operation; (7) BLSAR guarantee of legal certainty in the protection regime for foreign

investment, free flow of capital and trade; (8) its offshore tax regime, by virtue of which the fact of constituting a local company in HK, *per se*, lacks tax effects (except for the payment of a fee) as long as no profits can be sourced to the territory of HK. Indeed, as to the extent that said company's agreements are entered into and its profits generated outside HK; and the products that may enter HK are not the subject of business transactions therein - whether on their own account, by an agent, or by a third party - and are finally marketed outside HK (e.g. in mainland China), profits would not be caught by HK's tax jurisdiction. On the contrary, to incorporate a company could end up in tax liability as long as its profits can be sourced to any part of HK's territory, such profits are levied upon with a general tax rate of 16.5%, or 8.25% if the proceeds come from qualified debt instruments specified by law, (9) the potential character of a "qualified corporate treasury center" in connection with other "associated corporations" of a holding company; and (10) there would be no tax liability whatsoever if the HK company purchases machinery abroad without importing them into HK.

The second part of this enquiry focused on offshore companies and their advantages. After analyzing relevant regimes in OECD countries. It delved with offshore tax planning in the United States of America highlighting not only its legal certainty, but also the 2018 tax reform that included a tax rate reduction from 35% to 21% upon locally sourced corporate income; but without affecting the profits of subsidiaries abroad.

Delaware is one of the favorite offshore jurisdictions for holdings (e.gr. BBVA, and Santander to name a few) basically due to a mixture between high flexibility in the incorporation process and administration of corporations, safeguard of the privacy of constituents' identity, and low (or null) tax burden.

Although the analysis of the regulatory framework for the incorporation of companies in Delaware is not affected by the federal tax reform, it is still true that its tax management at federal level might require reassessment. In regard to this it is worth recalling that, on average, the state income tax in the United States reaches 9%; hence the need to find more favorable state tax jurisdictions, like Delaware.

This enquiry examined the case of foreign corporations registered in Delaware authorized to operate within the State through branches, agents, or representatives and whose profits are taxed according to the internal general regime. Given an average tax burden, varied corporate structures, and comparative factors, limited liability companies (LLCs) constituted in the State of Delaware (under Chapter I Title 8 of the State Code) were selected for further analysis.

Indeed, regarding Delaware LLC's the following features are noteworthy: (1) expedite incorporation and low cost; (2) legal certainty in registration and social rights ownership documentation; (3) high confidentiality of shareholders' identity; (4) vast flexibility in managing corporate structure and organization rules through a "LLC agreement"; (5) the fact that

Delaware does not levy any state tax upon income or profits of an LLC incorporated in its territory as long as it does not carry out businesses within the State. On the contrary, profits sourced and levied upon within the State can benefit from an optional tax regime. Either, they can be taxed under the general regime for partnerships or, be levied upon the base of income arising out of its line of business at corporate rates.

Therefore, as final result, this enquiry advances the incorporation of offshore limited liability companies as part of a tax planning aimed at furthering export businesses earning corporate profits in the Chinese market and/or acquiring capital goods not intended for offshore jurisdictions

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