How Far Has Hong Kong Tax Boosted The Art Market in Hong Kong?*

Alexander Mak**

Contents

Ⅰ. Background

It is an undeniable fact that the Hong Kong Special Administrative Region ("Hong Kong") has emerged as one of the world's largest markets for works of art. Hong Kong is also the third largest auction centre for two of the major auction houses in the world, Christie's and Sotheby's. Both auction houses have their businesses in Hong Kong and have done extremely well. Christie's Hong Kong has recorded tremendous boost in their sales either through auction or private sale in Hong Kong. Christie's sales in Hong Kong solely for art-related transaction amounted to HK$5.5 billion (equivalent to

* The content of this paper was presented at the International Symposium of Art Law at the Konkuk University, Seoul in September 2011.

** Faculty of Law, The University of Hong Kong.

approximately US$700 million)[1] in 2010, which was more than double the sales figure in 2009.[2] Their direct competitor, Sotheby's had recorded auction sales doubled in the first half of the year of 2011 to more than HK$4 billion from the same period in the year of 2010. The latest figure, according to Sotheby's Hong Kong, their spring series in 2011 was best ever for sales in Hong Kong, which amounted to around HK$450 million.[3]

Hong Kong is geographically located close to the Mainland China ("China") and is inevitably viewed as the door gate to the booming market in China. China joined the World Trade Organization in the year of 2000 and its art market had been developing at an astonishing pace. Between 2004 and 2009, the turnover rose by more than 200 per cent to some HK$26 billion (US$3.3 billion) per year.[4] The demand of works of art, especially Chinese contemporary art, by Chinese collectors has been exceptionally strong. It is claimed that Chinese contemporary art is the single fastest growing tangible investment sector in the world.[5] According to the China Contemporary Art Market Report 2011 prepared by ART HK, Asia's leading international art fair and ArtTactic, an independent art market research firm, the Chinese contemporary art market has become the fastest-growing contemporary art market in the world. The report reveals that the Chinese contemporary art market has moved into first place in terms of market confidence.[6] Prices for the high-ended works of art from famous artists

1) Exchange rate: US$1=HK$7.8(approximately).
2) US$342 million in the year of 2009.
3) http://artmarketmonitor.com/2011/08/03/sothebys-3-4b-for-h1-2011/(visited 15 September 2011).
4) http://artmarketmonitor.com/2010/05/26/the-importance-of-hong-kong(visited 15 September 2011).
5) http://www.lifestyleasia.com/en/features/entertainment/5-things-you-need-to-know-about-art-investment-9013(visited 18 September 2011).

have been escalating at an unbelievable rate. For example, late Zhang Daqian's work was sold for a combined total of HK$132 million in recent auctions conducted by Sotheby's and Christie's separately.[7)]

Tax is an expenditure item. It is always true that if less tax is paid for the art market, market competitiveness will be bolstered. This paper will consider the extent of success of Hong Kong as a significant art market and auction centre attributable to the tax system of Hong Kong. This paper will begin with an introduction of the legal framework of Hong Kong tax system. Relevant legislation and regulation will be discussed, followed by an evaluation of tax treatments for various market participants in the art market. A short comparison of the different tax treatments in respect of works of art of China and Hong Kong will be discussed. The author is of the views that, while Hong Kong has been adopting a low and simple tax structure, there are insufficient tax incentive or benefit directed to the art market as a whole. The boom in the art market in Hong Kong is largely attributable to the robust demands from the Chinese collectors and investors and the unfavourable tax treatment of art-related transactions in China.

The headings for this paper that follow are thus:

1. The legal framework of Hong Kong tax system
2. Tax system of Hong Kong
3. Hong Kong's tax treatment for various participants in the art market
4. Tax treatment of art-related transactions in China

---

6) http://artradarjournal.com/2011/05/25/hong-kong-art-fair-art-hk-11-chinese-contemporary-art-market-to-outgrow-us-and-european-press-release/ (visited 18 September 2011).

7) http://artmarketmonitor.com/2011/05/31/zhang-daqians-big-day-132m/(visited 10 September 2011).

Ⅱ. The Legal Framework of Hong Kong Tax System

1. Legal Development in Hong Kong

Hong Kong was once a colony of the British. After the year of 1997, China resumed sovereignty of Hong Kong as a result of the Sino-British Joint Declaration executed by the two countries which was accorded the status of an international treaty binding between the Chinese Government and the Government of the United Kingdom. The Basic Law was enacted pursuant to the signed Sino-British Joint Declaration and now forms the constitution of Hong Kong after the year of 1997 when the sovereignty was resumed by China. Although the Basic Law is China's national law, China guarantees Hong Kong that the principle of "One Country, Two Systems" will be adhered to. "One Country" means China and "Two Systems" means, on the one hand, the capitalist system which has long been practising in Hong Kong since it became a British colony in the year of 1841, and, on the other hand, the socialist system which has been practising in China. The Basic Law expressly guarantees that the socialist system of China shall not be practised in Hong Kong and the capitalist system and Hong Kong's way of life shall survive for 50 years[8] (at least). The previous laws in force

8) The Basic Law of Hong Kong, article 5.

in Hong Kong, essentially the Common Law, shall be maintained subject to certain exceptions.[9] This effectively means that the tax system in force in Hong Kong before 1997 will survive after 1997 subject only to amendments by the legislature in Hong Kong.

2. Hong Kong's Low Tax policy

The relevant legislative provision in the constitutional document dealing with tax is article 108 of the Basic Law. It guaranteed that Hong Kong had an independent taxation system of its counterpart in China. More importantly, it expressly approves the low tax policy which had previously been followed in Hong Kong before 1997[10] to be continued after 1997. This represents a constitutional guarantee that Hong Kong shall remain to enjoy a "low tax" environment. Thus, any attempt of tax reform in Hong Kong to effectively raise tax burden to an unreasonably high rate is arguably an unconstitutional act which is likely to be struck down by constitutional or judicial review in Hong Kong for being inconsistent with the provision in the Basic Law. One reason for enactment of this article, as propounded by a legal academic, was to protect Hong Kong's wealthy class from the possibility that democracy might one day lead to a steep progressive income tax.[11]

---

9) The Basic Law of Hong Kong, article 8.

10) The Basic Law of Hong Kong, article 108 reads:

"The Hong Kong Special Administrative Region shall practise an independent taxation system.

The Hong Kong Special Administrative Region shall, taking the low tax policy previously pursued in Hong Kong as a reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation."

It should be noted at this stage that tax legislation and subsidiary legislation made in China will not be applicable to Hong Kong due to the principle of "One Country, Two Systems". Therefore, there is a tax differential between Hong Kong and China where a heavier tax burden is imposed on the participants in the art market such as the art auctioneers, galleries and collectors. This represents one of the factors which makes it more attractive to buy, sell or otherwise deal with works of art in Hong Kong. Before China's tax system is discussed, it is useful to understand the Hong Kong's tax system.

Ⅲ. Tax System in Hong Kong

The tax system of Hong Kong has been characterized by its simplicity and generosity. The tax base has been narrow and the tax rates have been low compared to the developed countries. However, Hong Kong is not a tax haven as such because it is currently charging profit tax at the rate of 16.5% for limited companies and 15% for unlimited companies.

Hong Kong has adopted the territorial source principle of taxation. Only income derived from the jurisdiction of Hong Kong will be subject to tax. Overseas' incomes will be exempted from payment of tax in Hong Kong. The relevant legislation is the Inland Revenue Ordinance("IRO").[12] There are three types of taxes levied under IRO, namely the profits tax, salaries tax and property tax.

11) Michael Littlewood, "The Hong Kong Tax System: its history, its future and the lessons it holds for the rest of the world", *HKLJ* (2010), p. 77.

12) Chapter 112 of the Laws of Hong Kong.

1. Profit Tax

Profit tax is the most important tax imposed by the IRO in terms of the level of revenue generated under this head.[13] All business entities will be subject to tax under this head if the profits are arisen in or derived from Hong Kong,[14] and IRO makes no distinction between Hong Kong residents and non-residents. It is merely a question of fact (not law) as to whether a business entity is carried on in Hong Kong and whether profits are sourced from Hong Kong. This presumably allows overseas company to base themselves in Hong Kong without being liable to local tax on offshore operations.[15] This is particularly relevant to the multinational auction houses who make profits worldwide.

2. Salaries Tax

This head of tax is charged on all income arising in or derived from Hong Kong from employment. The same territorial source principle as the profit tax is adopted for assessment under this head. Net chargeable income (i.e. income after tax deductions and allowances)[16] is charged on a

---

13) Raymond Wacks, *The New Legal Order in Hong Kong* (Hong Kong University Press: 1999), p. 375.

14) Section 14(1) of the IRO: "Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business(excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part."

15) See n 14 above.

16) Examples of deductions for salaries tax are expenditures incurred to produce

progressive tax rate, initially from 2 per cent increasing to a top marginal rate of 17 per cent, but the tax charged shall not exceed the standard rate of tax(currently, 15 per cent)[17] applied to net income without allowances (i.e. income less deductions only).

3. Property Tax

Essentially, this head of tax is levied on gross rent received or receivable in respect of properties located in Hong Kong and is paid by the owners of landed properties in Hong Kong. The standard rate of tax is currently 15%. If the landed property is not leased, no property tax is liable to be paid.

Ⅳ. Hong Kong's Tax Treatment for Various Participants in the Artmarket

In this section, the author will discuss the tax treatment of a few types of market participants in the art market, namely the art auctioneers, art galleries and art collectors.

the income, donations to approved charities, self-education expenses, elderly care expenses, etc.. Examples of allowances for salaries tax are married person's allowance, child allowance, dependents' allowance, etc..

17) A brief guide to taxes administered by the Inland Revenue Department, Inland Revenue Department, the Government of the Hong Kong Special Administrative Region(August 2010), p. 11.

1. Art Auctioneers

Art auctioneers provide a forum or platform for art vendors and art collectors to transact in order to negotiate and conclude the sale of works of arts at certain agreed prices. Christie's and Sotheby's are two of the largest multinational auction houses in the world in terms of annual turnover. Auctions held in Hong Kong certainly have tax implications. All receipts from art collectors and sellers by the auctioneers are treated as receipts sourced in Hong Kong and will be subject to profits tax. Foreign income from these auction house will be exempt from tax in Hong Kong. The current tax rate for incorporated auctioneers is a modest 16%, which is considered to be relatively low. Moreover, there is no valued added tax("VAT"), goods and service tax("GST") or sales tax imposed on any transaction. This favourable tax scene contributed in part to the reason that Sotheby's had decided to consolidate all sales of contemporary asian art in Hong Kong since 2009.[18]

Besides low profit tax, Hong Kong's policy on import and export of works of art works in its favour. Hong Kong is basically a free port and economy, thus works of art can be imported or exported without constraint of any kind. There is also no import and export duties to be imposed upon any work of arts. All works of art being imported in Hong Kong are merely required to be declared to the Customs and Excise Department in Hong Kong. Where work of art is exported from Hong Kong to other countries, no tax or duty is payable. What is needed is simply an export declaration to be submitted to the Customs and Excise Department.[19]

18) http://www.hktrader.net/200809/trade/products-Sotheby200809.htm(visited 17 September 2011).

2. Art Galleries

Art galleries in the course of selling works of art are in fact engaging in an income-producing business in Hong Kong. If the galleries are incorporated as limited companies, they are liable to pay profits tax at the rate of 16.5% in Hong Kong. However, if they are incorporated as unlimited companies, such as sole proprietors or partnerships, they are liable to pay profits tax at the rate of 15%.

3. Art Collectors

3.1 No Sale Tax or GST

There is no tax levied on the sale of work of art in Hong Kong. Besides, art collectors do not incur any GST in the purchase of works of art. However, Chinese buyers who buy works of art in Hong Kong have to pay tax if they bring them back to China.[20]

3.2 No Estate Duty

Works of art are generally invaluable assets. Under some circumstances, they will form parts of the estates of the deceased. Some countries may impose estate duties on the estates. However, Hong Kong had abolished the imposition of estate duty effective from 11 February 2006.[21] Thus, estate

19) Vlaentin, Pl, et.al., "How to set up in Hong Kong", *Art Newspaper*, v.20 No.224 part supp(May 2011), p. 20.

20) Adam, G, "Eastern promise", *Art Newspaper*, v.20 No.224 part supp(May 2011), pp. 19-20.

duty is not a matter for concern by art collectors in Hong Kong nowadays.

3.3 Tax deduction for expenses related to art

Although tax is generally not payable on the purchase of work of art, art collectors cannot claim tax deductions for the cost of the work of art. In a 2004 decision by the Hong Kong Inland Revenue Board of Review,[22] the Board was asked to adjudicate on an issue whether the works of art being paintings were "plants" for the purposes of producing profits in the practice of a barrister's chamber in Hong Kong. The main argument put forward by the concerned barrister was that the works were purchased to provide an atmosphere or ambience for the purposes of generating profit or income or promotion of the barrister's practice.[23] However, the Board did not find this submission convincing. While the Board agreed that the works of art were decoratory items which embellished the interior the barrister's chambers, the barrister had nevertheless failed to prove that ambience did make a difference in terms of attracting clients or promoting his practice as a barrister. The appeal was subsequently dismissed. There has not been other relevant Board of Review's decision on this issue since then.

3.4 Tax deduction for charitable donations

Under certain circumstances, tax deduction is allowed for donation to

21) See the Revenue(Abolition of Estate Duty) Ordinance 2005.

22) The Inland Revenue Board of Review is an independent statutory body constituted since 1947 under Section 65 of the Inland Revenue Ordinance, Chapter 112 of the Laws of Hong Kong to determine tax appeals.

23) Case No.D52/04 of the Inland Revenue Board of Review Decisions.

approved charitable donations in Hong Kong.[24] Whether tax deductions are available to the donor or not depends on two crucial criteria, namely (1) whether the donation is by way of money or not, and (2) whether the charitable organizations are accepted by the Inland Revenue Department[25] as a "charitable institutions" or "trust of a public character" under the relevant legislation[26] and whether the donation is for charitable objectives.

First, a donation is a gift. A gift must be something transferred voluntarily and not as a result of contract to transfer it. Also, the donor cannot receive any benefit in return.[27] However, the donation must be made by way of money.[28] The Departmental Interpretation and Practice Notes issued by the Inland Revenue Department clarified that deductions under section 26C of

---

24) See section 26C of the IRO.

25) It is the governmental department responsible for dealing with and administering all the tax matters in Hong Kong.

26) Section 88 of the IRO reads, "Not with standing anything to the contrary in this Ordinance contained there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution or trust of a public character:
Provided that where a trade or business is carried on by any such institution or trust the profits derived from such trade or business shall be exempt and shall be deemed to have been exempt from tax only if such profits are applied solely for charitable purposes and are not expended substantially outside Hong Kong and either-
(a) the trade or business is exercised in the course of the actual carrying out of the expressed objects of such institution or trust; or
(b) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established.

27) Sanford Yung-tao Yung v. the Commissioner of Inland Revenue 1 HKTC 1081.

28) See section 2 of the IRO. It reads "Approved charitable donation" means a donation of money to any charitable institution or trust of a public character, which is exempt from tax under section 88 of the Inland Revenue Ordinance, or to the Government, for charitable purposes.

the IRO[29] cannot be allowed for the monetary value of any property (such as works of art) gifted to a charitable institution or trust of a public character.[30] Therefore, generous art collectors who donate works of art are unable to claim any tax deduction for the donation made by them. This is a form of tax disincentive.

Secondly, the recipient must be a charitable organizations or trust of a public character and the donation is for charitable objectives. What these encapsulate are that the purposes for which the organizations are established must be "exclusively charitable". Thus, mixed objectives are not permitted. In order to be classified as charitable purposes, the objectives must fall under

29) Section 26C(1) & 26C(2)(a) of IRO read, "Subject to the other provisions of this section, where a person or his or her spouse, not being a spouse living apart from the person, makes any approved charitable donations during any year of assessment, a deduction in respect of the aggregate amount of the approved charitable donations shall be allowable to the person for that year of assessment, if in any case such aggregate amount is not less than $100.
(2) (a) Subject to paragraph (b), where a person is chargeable to tax under Part III, no deduction shall be allowable to the person under subsection (1) for any year of assessment in respect of-
(i) any sum which is allowable as a deduction under Part IV;
(ii) any sum by which the aggregate amount of the approved charitable donations within the meaning of subsection (1) is in excess of the percentage specified in subsection (2A) of-
(A) subject to sub-subparagraph (B), the assessable income of the person for that year of assessment as reduced by the deductions provided for under section 12(1)(a) and (b) for that year of assessment; or
(B) where the person and his or her spouse have made an election under section 10(2) for that year of assessment, the aggregate of their assessable incomes for that year of assessment as reduced in each case by the deductions provided for under section 12(1)(a) and (b) for that year of assessment."

30) The Departmental Interpretation and Practice Notes No.37(Revised) on concessionary deductions: Section 26C-approved charitable donations issued by the Inland Revenue Department(September 2006).

one of the following heads:

(1) Poverty relief,

(2) Advancement of education,

(3) Advancement of religion,

(4) Other purposes of a charitable nature beneficial to the society.[31)]

Subsequent court decisions had expanded the scope of fourth head above.[32)] However, the advancement of arts, including promoting arts, providing arts facilities and encouraging higher standards of art is not included as one of the charitable objectives. Therefore, under present Hong Kong tax law, there is no real and direct incentive whatsoever from tax perspectives for any donation of works of art to charitable organizations.

Notwithstanding the aforesaid, the Law Reform Commission of Hong Kong[33)] had commissioned a study of charities law and regulatory framework in Hong Kong.[34)] A consultation paper had been prepared.[35)] The Charities

---

31) Income Tax Special Commissioners v Pemsel 3 TC 95.

32) See n 31 above.

Purposes held to be charitable purposes

- Relief of poor people
- Relief of victims of a particular disaster
- Relief of sickness
- Relief of physically and mentally disabled
- Establishment or maintenance of non-profit-making schools
- Provision of scholarships
- Diffusion of knowledge of particular academic subjects
- Establishment or maintenance of a church
- Establishment of religious institutions of a public character
- Prevention of cruelty to animals
- Protection and safeguarding of the environment or countryside

33) http://www.hkreform.gov.hk/en/index/index.htmfor information on the background of the Law Reform Commission of Hong Kong.

34) http://www.hkreform.gov.hk/en/projects/charities.htm(visited 10 September

Sub-committee of the Law Reform Commission made recommendation, *inter alia*, that the advancement of the arts, heritage, culture or science should be treated as one of the heads of charitable purposes.[36] If this recommendation is accepted by the Hong Kong legislature, the scope of tax incentive for donation in the art world will be expanded in the future.

Ⅴ. Tax Treatment of Art-related Transactions in China

It is not the purpose of this paper to look at the China's tax system in details, but it is useful to have a brief mention of the relevant taxes and duties which are relevant to art-related transactions. In short, China has a completely different taxation system compared with Hong Kong. The category of taxes is complicated which encompasses a number of different heads of taxes. For art-related transactions, VAT, business tax and consumption tax will be imposed. Standard VAT rate (which applies to sale of goods) is 17%. Moreover, import of works of art is not duty-free. Customs duty can be chargeable at a steep rate of 34%[37] in respect of imported works to China. These taxes and customs duty are ultimately borne by the potential art collectors or vendors, if the sale takes place within the boundary of China. Therefore, Hong Kong, being part of China and closest to it, is

2011).

35) http://www.hkreform.gov.hk/en/publications/charities.htm(visited 10 September 2011). The consultation period will end on 31 October 2011.

36) The Law Reform Commission of Hong Kong Consultation Paper: Charities, the Law Commission of Hong Kong(June 2011).

37) http://www.martindale.com/business-law/article_Sheppard-Mullin-Richter-Hampton-LLP_1331480.htm(visited 19 September 2011).

thus perceived as the best hub for art-related transactions to take place, given that taxes such as VAT, GST, business tax and customs duties (import/export duties) are wholly nonexistent in Hong Kong.

Ⅵ. Hong Kong's Double Tax Treaties

International double taxation arises when the same income/profits are taxed in more than one place in respect of the same entity.[38] Since Hong Kong adopts the territorial basis of taxation, whereby only income arising in or is derived from Hong Kong is taxable and that derived from a foreign source by Hong Kong resident are exempt from tax in Hong Kong. Thus, double tax is not an issue for Hong Kong residents.[39] For foreigners, it shall be noted many states which tax their residents on a global basis will provide tax credit relief for any Hong Kong tax paid on income/profits derived from Hong Kong. In addition, Hong Kong Government entered into double taxation agreements with a number of countries clarifying the taxing rights of each place. This helps all the market participants to better assess their tax liabilities and provides added incentives for them to engage in transactions relating to the sale, purchase and auction of works of art in Hong Kong.[40]

38) Roy Saunders, "Understanding Double Tax Treaties", Vol. 9 No.1 *Journal of International Trust and Corporate Planning* 31(2002).

39) Ibid. 32.

40) http://www.ird.gov.hk/eng/pol/dta.htm(visited 10 September 2011).

Ⅶ. Tax Incentive/Benefit for The Art Market in Hong Kong

From the discussion aforesaid, while it could be said that the constitutionally guaranteed low tax policy adopted by Hong Kong works in favour of the art market, it shall be emphasized that Hong Kong's tax laws do not encourage any private funding to promote art in Hong Kong. There has been no specific tax incentive or benefit for the art market. There are no tax deductions available to business or individual for expenses relating to art donation.

Fortunately, Hong Kong has recently planned to spend HK$2.8 billion to develop a cultural district at 40 hectares of wasteland at West Kowloon, Hong Kong. There were plans to build museum, exhibition space and performing arts venues[41)] to promote art-related activities.

Ⅷ. Chinese's Demands for Works of Art

China, being the world's number two economic giant nowadays, would inevitably see to a spontaneous growth of wealthy classes in the country. The Chinese billionaires or millionaires have newfound interest in art investments, bolstered by the growing wealth. Evidence of this observation came from Sotheby's 2010 annual report which read "among new collectors competing at the highest levels of our global sales, those from greater China

41) http://artmarketmonitor.com/2009/05/11/hong-kong-future-of-the-art-market/(visited 15 September 2011).

dramatically outnumbered those from North America or the United Kingdom by 50%".[42] The Chinese generally have a preference for "blue-chip" Chinese artists or international brand names.[43] It has been reported that some Chinese financial institutions had even established hedge funds to invest in Chinese arts.[44] However, the real incentive for a robust demand for works of art in Hong Kong is not originated from the tax law but the actual works of art themselves. Art collectors and investors generally thought that they could have better deals in Hong Kong.[45]

Ⅸ. Conclusion

Hong Kong upholds the rule of law and the Common Law system. Hong Kong's legal system is largely independent of its sovereign power, China. Its tax system is characterized by low tax and simple structure. The "low tax" policy is constitutionally guaranteed. Income and profit tax rates are relatively low compared to other neighbouring countries. There is no VAT, GST, capital gain tax, sales tax, custom duties for art-related transactions as Hong Kong is essentially a tax-free port. Given these characteristics, it is beneficial for the market participants of art to conduct the business in

42) Sotheby's 2010 annual report: http://files.shareholder.com/downloads/BID/1402871795x0x454129/82FB464E-1E33-4E18-93BC-BEC63378538C/2010_annual_report.pdf(visited 18 September 2011).

43) http://www.ft.com/intl/cms/s/2/266b1d62-24e3-11e0-895d-00144feab49a.html (visited 17 September 2011).

44) See n 38 above.

45) "Corporate investing still a dream in a city bereft of arts patrons", *South China Morning Post*, 5.

Hong Kong in this low tax environment to some extent. However, it must be stressed that Hong Kong tax law does not offer any direct incentive, such as deduction for expenses incurred by the art collectors and deduction for donation of works of art to charities. The most likely factors attributable to the growth in art market in Hong Kong (as evidenced by the auction houses' figures) are the continuing demands from collectors and investors from China for precious works of art. Certainly, the unfavourable tax treatment in China for transactions relating to the works of art partially explained why the art market and auction centres flourish in Hong Kong recently.

(투고일 2012년 4월 30일, 심사(의뢰)일 2012년 5월 10일, 게재확정일 2012년 5월 31일)

Key Words: Hong Kong Special Administrative Region, Mainland China, tax, tax system, art law, art market, the Basic Law, contemporary art, tax incentive, tax benefit, tax policy, profit tax, salaries tax, property tax, art auctioneers, art galleries, sale tax, capital gain tax, estate duty, tax deduction, charitable donation, Hong Kong double tax treaties

References

1. Books

Inland Revenue Department, the Government of the Hong Kong Special Administrative Region, *A brief guide to taxes administered by the Inland Revenue Department*, August 2010.

Raymond Wacks, *The New Legal Order in Hong Kong*, Hong Kong University Press, 1999.

The Law Commission of Hong Kong, *The Law Reform Commission of Hong Kong Consultation Paper: Charities*, June 2011.

2. Articles

Adam, G, "Eastern promise", *Art Newspaper*, v.20 No.224 part supp, May 2011.

Michael Littlewood, "The Hong Kong Tax System: its history, its future and the lessons it holds for the rest of the world", *HKLJ*, 77, 2010.

Roy Saunders, "Understanding Double Tax Treaties", Vol. 9 No.1 *Journal of International Trust and Corporate Planning* 31, 2002.

Vlaentin, Pl, et.al., "How to set up in Hong Kong", *Art Newspaper*, v.20 No.224 part supp, May 2011.

3. Others

http://artmarketmonitor.com/2011/08/03/sothebys-3-4b-for-h1-2011/

http://artmarketmonitor.com/2010/05/26/the-importance-of-hong-kong

http://www.lifestyleasia.com/en/features/entertainment/5-things-you-need-to-know-a bout-art-investment-9013

http://artradarjournal.com/2011/05/25/hong-kong-art-fair-art-hk-11-chinese-contem porary-art-market-to-outgrow-us-and-european-press-release/

http://artmarketmonitor.com/2011/05/31/zhang-daqians-big-day-132m/

http://www.hktrader.net/200809/trade/products-Sotheby200809.htm

http://www.hkreform.gov.hk/en/index/index.htm for information on the background of the Law Reform Commission of Hong Kong

http://www.hkreform.gov.hk/en/projects/charities.htm

http://www.hkreform.gov.hk/en/publications/charities.htm

http://www.martindale.com/business-law/article_Sheppard-Mullin-Richter-Hampton-LL P_1331480.htm

Sotheby's 2010 annual report: http://files.shareholder.com/downloads/BID/1402871795x0x454129/82FB464E-1E33-4 E18-93BC-BEC63378538C/2010_annual_report.pdf

http://www.ft.com/intl/cms/s/2/266b1d62-24e3-11e0-895d-00144feab49a.html

[국문초록]

홍콩의 조세제도는 홍콩의 미술시장을 얼마나 신장시켰나?

Alexander Mak*

본 논문은 현재 홍콩의 과세체계와 홍콩 예술시장에서 세법과 관련되어 충돌되는 사안들을 논점의 대상으로 삼았다. 또한 본고를 통하여 홍콩의 과세체계의 법적 체계에 대한 논의를 시작하게 될 수 있을 것이라는 것에 그 의의가 있을 것이라고 생각한다. 따라서 이와 관련된 입법과 규제가 논의될 것이며, 이후 미술 시장에서의 다양한 시장 참여자에 대한 조세 처분을 평가할 것이다. 그리고 짧게나마 중국과 홍콩의 미술작품에 대한 서로 다른 조세 처분의 비교를 통해 이 문제에 대해 살펴볼 것이다.

이와 관련하여 본 필자는 홍콩은 낮은 세율의 간단한 조세 제도를 도입하고 있지만, 전반적으로 미술 시장에 대한 감세 조치와 혜택이 부족하다는 견지에 서 있다. 홍콩의 미술 시장에서의 붐은 대부분 중국 수집가들과 투자자들의 활발한 수요와 중국의 미술 관련 거래에 대한 불리한 조세 처분으로부터 기인한다.

주제어 : 홍콩특별행정구, 중국 본토, 세금, 과세체계, 미술법, 미술시장, 기본법, 현대미술, 조세감면, 세금혜택, 세금정책, 세율, 근로소득세, 재산세, 미술경매인, 갤러리, 판매세, 자본 취득세, 관세, 세금공제, 자선기부, 홍콩의 이중과세 조약들

* 홍콩대학교 법학부 교수.