

HONG KONG TAX NEWS

Issue No. 3 – May 2010



Prepared by Alexandra Hui of Mazars Tax Services Limited

Hong Kong has just signed Comprehensive Taxation Agreements with Hungary and Kuwait

Hong Kong is actively seeking to establish a network of Comprehensive double taxation agreements (“CDTAs”). Following the enactment of new law in January 2010 to enable it to adopt the latest Organization for Economic Co-operation and Development (“OECD”) standard on Exchange of Information, Hong Kong has in recent months made a breakthrough in international tax treaties. In late March, Hong Kong has signed CTDAs with 3 countries, namely, Brunei, the Netherlands and Indonesia. Please refer to our Hong Kong Tax News, March 2010 for details of these 3 CDTAs. On 12 May (Hungary time) and 13 May 2010, Hong Kong signed 2 additional CDTAs with Hungary and Kuwait respectively.

Being a tax-free country, Kuwait does not impose any tax on individuals and on companies incorporated either in Kuwait or in other Gulf Co-operation Council (“GCC”) countries which are wholly owned by nationals of Kuwait or other GCC countries. However, foreign corporations derive dividends, royalties or interest etc. from or other income which is connected with or related to operations in Kuwait will be subject to tax in Kuwait. On the other hand, Hungarian-residents are subject to tax on their worldwide income whereas non-residents are taxable on income sourced in Hungary. Although the corporate income tax rate of 19% in Hungary is among the lowest in Europe, following its change in tax rules in 2010, Hungary imposes heavy withholding tax on certain Hungarian sourced income of foreign corporations and individuals.

In the absence of CDTAs, Hong Kong residents derive income from Hungary and Kuwait will be exposed to double taxation. HK-Hungary CDTA and HK-Kuwait CDTA will eliminate double taxation encountered by Hong Kong, Hungarian and Kuwait investors, grant reduction in withholding taxes on a reciprocal basis and provide tax certainties in connection with cross-border economic activities between Hong Kong and the two countries.

Reduction on Withholding Tax

Hong Kong's CDTAs with Hungary and Kuwait offer very favourable withholding tax rates in Hungary and Kuwait. The following is a summary of the withholding rates for dividends, royalties and interest under the 2 CDTAs from a Hong Kong recipient perspective:

	<u>Dividend</u>	<u>Royalties</u>	<u>Interest</u>
<i>HK non treaty rate</i>	0%	4.5% / 4.95% (1)	0%
<i>HK-Hungary CDTA</i>			
Hungary non-treaty rate	0% (2) / 10 % or 25% (3)	30% / 17-32% (5)	30% / 20% (6)
Treaty rate	0% (2) / 10% (4)	5%	0% (7) / 5%
<i>HK-Kuwait CDTA</i>			
Kuwait non-treaty rate (8)	15%	15%	15%
Treaty rate	0% (9) / 5%	5%	0% (10) / 5%

- (1) 4.5% if received by an unincorporated business; 4.95% if received by a corporation.
- (2) Hungary does not impose withholding tax on payment of dividends to foreign corporations. HK-Hungary CDTA provides that withholding tax is restricted to 5% on dividends derived by a company holding at least 10% of the share capital of the paying company. However, as Hungary does not impose withholding tax on dividend paid to foreign corporations currently, this provision is redundant for the time being.
- (3) Dividend income received by individuals from unlisted shares and securities listed on stock exchanges in the European Economic Area is subject to withholding tax rate of 25% and 10% respectively.
- (4) 10% on dividends paid to individuals.
- (5) 30% on royalties received by corporations. The withholding tax rates on royalties paid to individuals is determined based on the progressive personal income tax rates of 17% to 32%.
- (6) Interest received by corporations and individuals is subject to withholding tax rates of 30% and 20% respectively.
- (7) Exempt if interest is paid to the Government of the HKSAR, Hong Kong Monetary Authority ("HKMA") or a financial establishment appointed by the Government of the HKSAR and mutually agreed upon by the competent authorities of the contracting parties.
- (8) No withholding tax is imposed on payments of dividends, interest and royalties to individuals. The 15% applies to corporations only.
- (9) Exempt if the beneficial owner of the dividends is the Government of the HKSAR or any of its institutions or other entity wholly-owned directly by the Government of the HKSAR.
- (10) Exempt if interest is paid to the Government of the HKSAR, HKMA or any institution set up by the Government of the HKSAR and any entity established in the HKSAR all the capital of which has been provided by the Government of the HKSAR.

The 2 CDTAs will come into force after the completion of ratification procedures in Hong Kong, Hungary and Kuwait.

Conclusion

HK-Hungary and HK-Kuwait CDTAs are the 9th and the 10th CDTA signed by Hong Kong. Including the 3 CDTAs signed in March, Hong Kong has already signed 5 CDTAs which adopt the latest version of OECD Exchange of Information (“EOI”) Article. In addition, Hong Kong has concluded the negotiation with 6 other countries pending the formal signing of CDTAs (i.e. Austria, France, Ireland, Japan, Switzerland and Liechtenstein).

Apart from new partners, Hong Kong is also actively negotiating with our 5 existing treaty partners to upgrade the Exchange of Information Article to the latest version. The Commissioner of Inland Revenue in his press conference held on 3 May 2010 announced that Hong Kong has so far come to agreement with 2 of them. That is to say, Hong Kong has signed, initialed, or agreed to upgrade CDTAs with 13 jurisdictions adopting the latest version of the Exchange of Information Article.

In order to be considered as having adequately implemented the OECD's transparency and EOI standards, Hong Kong needs to have 12 CDTAs that adopt the latest OECD EOI standards. After Hong Kong has signed the new CDTAs with the 6 countries and upgraded the two existing CDTAs with its partners as mentioned in the above, Hong Kong should be regarded as having substantially implemented the OECD standard for transparency and effective exchange of information for international tax purposes.

Contacts

Hong Kong

42/F., Central Plaza,
18 Harbour Road,
Wanchai
Hong Kong

Alexandra Hui

Executive Director

Tel: (852) 2909 5503

Email: alexandra.hui@mazars.com.hk

Alexander Mak

Managing Director

Tel: (+852) 2909 5660

Email: alexander.mak@mazars.com.hk

This Newsletter is issued in summary form exclusively for the information of clients of Mazars and others interested in our services and should not be used or relied upon as a substitute for detailed advice or as a basis for formulating business decisions.