

Europe-Hong Kong Tax Treaties (Articles 1 – 13)

Oliver-Christoph Günther/ Na LI

June 19, 2014

- Overview and structure
- Personal scope (Arts 1 and 4 OECD/UN MC)
- Substantive scope (Art 2 OECD/UN MC)
- Allocation rules
 - Business profits (Arts 5 and 7 OECD/UN MC)
 - Associated enterprises (Art 9 OECD/UN MC)
 - Immovable property (Art 6 OECD/UN MC)
 - Shipping and transport (Art 8 OECD/UN MC)
 - Passive income (Arts 10, 11 and 12 OECD/UN MC)
 - Capital gains (Art 13 OECD/UN MC)

Overview and Structure (I)

Hong Kong's Tax Treaty Network

Austria	Ireland	New Zealand
Belgium	Italy	Portugal
Brunai	Japan	Qatar
Canada	Jersey	Spain
China	Kuwait	Switzerland
Czech Republic	Liechtenstein	The Netherlands
France	Luxembourg	Thailand
Guernsey	Malaysia	Vietnam
Hungary	Malta	United Kingdom
Indonesia	Mexico	

Overview and Structure (II)

- DTTs with 17 European countries
 - First: DTT Belgium (2003)
 - Latest: DTT Italy (2013)
- Structure
 - In general: OECD MC (2010/2012 version)
 - Three exceptions: UN MC (2011 version)
 - DTT Italy
 - DTT Switzerland
 - DTT Portugal

Personal Scope (Arts 1 and 4 OECD/UN MC)

- Definition of person: Partly broader than OECD/UN MC (estate, partnership, trust)
- Art 4(1) OECD/UN MC
 - Hong Kong: Own definition
 - Individual residing in Hong Kong
 - Individual >180 days/year or >300days/2 years staying in Hong Kong
 - Company: Place of incorporation
 - Any other person: Being normally managed or controlled
 - DTT Hungary: Pension/Investment funds; DTT The Netherlands: Pension funds
 - Government, partly political subdivisions and local authorities
- Art 4(1) 2nd sentence: Only DTTs Belgium, France
- Dual resident individuals: ≈ OECD/UN MC (some DTTs without Art 4 (2)(c))
- Dual resident companies: ≈ OECD/UN MC (some DTTs by mutual agreement)

Substantive Scope (Art 2 OECD/UN MC)

- Taxes on income (and on capital)
- Hong Kong: Profits tax, salaries tax, property tax
- Exhaustive list of taxes
- Art 2(4) OECD/UN MC extended to “new” taxes
 - “...as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future”

Business Profits: Art 7 OECD/UN MC

- Mostly patterned after OECD MC before 2010
- AOA: DTT Italy
- Influences of Art 7(3) UN MC: DTTs Belgium, France
- Hong Kong Model in Art 7(4) OECD/UN MC:
 - Fractional apportionment or other method
 - "... or on the basis of such other method as may be prescribed by the laws of that Party"
- No force of attraction principle

Business Profits: Art 5 OECD/UN MC

- Most DTTs follow Art 5(3) UN MC
 - Inclusion of supervisory and assembly projects
 - Inclusion of services (only DTT The Netherlands follows OECD MC Commentary)
 - Minor deviations, especially on duration requirements
- Three DTTs adopt Art 5(5)(b) UN MC: Dependent agent if person maintains a stock of goods or merchandise
- No additional provision on insurance companies (Art 5(6) UN MC)

Associated enterprises (Art 9 OECD/UN MC)

- Mostly patterned after OECD MC
 - Minor deviations, e.g. reduced scope under DTT The Netherlands
- Appropriate adjustment in some DTTs subject to conditions (in principle and/or regards amount?)
 - "...if that other party considers the adjustment justified"
 - "...if it agrees with the adjustment made"
 - "...as it considers appropriate"
- Documentation

Immovable Property (Art 6 OECD/UN MC)

- Scope of immovable property: Art 6(2) OECD MC
- Allocation of taxing rights
 - In general: Art 6(1) OECD MC – MAY be taxed in the state, where the property is situated
 - Exception: DTT Liechtenstein – Exclusive taxing right with the state where the property is situated

Shipping and Transport (Art 8 OECD/UN MC)

- Definition of “international traffic”: Art 3(1)(h) OECD MC
 - Not covered: “Boats engaged in inland waterways transports”
- Allocation of taxing rights
 - Exclusive taxing right at the residence state
 - Different from the OECD MC or the UN MC’s “effective management place of the enterprise”

Passive income (Arts 10, 11 and 12 OECD/UN MC)

- Allocation of taxing rights
 - Art 10 (Dividends) and Art 11 (Interest): Exclusive taxing right with the residence state in some tax treaties
 - Art 12 (Royalties): UN MC – sharing taxing rights between the residence state and the source state in all treaties
- Multiple anti-avoidance rules

Capital Gains (Art 13 OECD/UN MC)

- Definition of capital gains
- Allocation of taxing rights
 - Immovable property
 - Movable property forming part of the business property of a PE or fixed base
 - Ships, aircraft and movable property pertaining to the international transport business
 - Shares
 - Other properties

Thank You For Your Attention!



VIENNA UNIVERSITY OF
ECONOMICS AND BUSINESS

**INSTITUTE FOR AUSTRIAN AND
INTERNATIONAL TAX LAW**

Welthandelsplatz 1, 1020 Vienna, Austria

MMag. Oliver-Christoph Günther, LL.M. (WU)

T +43-1-313 36-4280

F +43-1-313 36-730

oliver-christoph.guenther@wu.ac.at

www.wu.ac.at/taxlaw

Thank You For Your Attention!



VIENNA UNIVERSITY OF
ECONOMICS AND BUSINESS

INSTITUTE FOR AUSTRIAN AND INTERNATIONAL TAX LAW

Welthandelsplatz 1, 1020 Vienna, Austria

Na LI

T +43-1-313 36-5570

F +43-1-313 36-730

Na.li@wu.ac.at

www.wu.ac.at/taxlaw