

International Tax Conference

Hong Kong's Experience with its International Tax Treaty Network

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Introduction

- **Purpose of signing a tax treaty**
- **Fairness**
- **Avoidance of double taxation**
- **Prevention of tax evasion or double non-taxation**
- **Exchange of information (“EoI”)**

Hong Kong's Tax Treaty Network

History

- o Legal framework - relevant provisions were included when the Inland Revenue Ordinance was first enacted in 1947
- o Limited double taxation agreement ("limited DTA")
- o 6 limited DTAs on shipping income
- o 28 limited DTAs on air services income
- o 2 on both shipping and air services income

Hong Kong's Tax Treaty Network

Limited Double Taxation Agreements

○ **Air Services Income Agreements**

- ~ Bangladesh, Canada, Croatia, Denmark, Estonia, Ethiopia, Fiji, Finland, Germany, Iceland, Israel, Jordan, Kenya, Korea, Kuwait, Laos, Macao SAR, Maldives, Mauritius, Mexico, Netherlands, New Zealand, Norway, Russian Federation, Seychelles, Sweden, Switzerland and United Kingdom

○ **Shipping Income Agreements**

- ~ Denmark, Germany, Netherlands, Norway, United Kingdom and USA

○ **Airline and Shipping Income Agreements**

- ~ Singapore and Sri Lanka



Hong Kong's Tax Treaty Network

History

- **Comprehensive double taxation agreement (“CDTA”)**
- **HKSAR Government announced in the 1998/99 Budget its intention to negotiate CDTA with major trading partners**
- **First limited arrangement with Mainland China was signed in 1998 with limited scope and no EoI**
- **First CDTA signed with Belgium in 2003**

Hong Kong's Tax Treaty Network

2003 2005 2006 2007 2008 2010 2011 2012 2013 In Progress



Hong Kong's Tax Treaty Network

Important Milestones

- o **Major hurdle relating to EoI article**
- o **Old EoI regime**
 - ~ Domestic interest
 - ~ 1995 version of OECD Model Tax Convention
- o **London summit of the G20 leaders - Apr 2009**
- o **5th meeting of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes - Sep 2009**
- o **Hong Kong's phase I and phase II peer review reports were adopted by the Global Forum - overall rating of "Largely Compliant"**

Hong Kong's Tax Treaty Network

Important Milestones

- **Hong Kong has all along been very supportive of international efforts to promote tax transparency**
- **Openly endorsed OECD's principles of tax transparency in 2005**
- **Conducted domestic consultations in 2005 and 2008**

Hong Kong's Tax Treaty Network

Important Milestones

- **Introduced the legislative amendment bill in Jun 2009**
- **The Inland Revenue (Amendment) Ordinance 2010 was enacted on 6 Jan 2010**
- **The Inland Revenue (Disclosure of Information) Rules were passed on 3 Mar 2010**
- **Both took effect on 12 Mar 2010**

Inland Revenue (Amendment) Ordinance 2010

Main provisions

- **Permit disclosure of information under CDTAs**
- **Permit gathering of information without domestic tax interest**
- **Power to apply for search warrants**
- **Impose penalties for non-compliance**
- **Enable IRD to collect information notwithstanding data collection principles under Personal Data (Privacy) Ordinance**



Inland Revenue (Disclosure of Information) Rules

Major safeguards

- Approval of disclosure request
- No retrospective effect on disclosure of information
- Notification of the disclosure request to the subject person (unless exception applies)
- Correction and review mechanism
- If not previously notified due to tight time constraint, must notify subject person upon disclosure of information

Hong Kong's Tax Treaty Network

Important Milestones

- **Since Mar 2010 - new EoI regime - 2004 version of OECD Model Tax Convention**
- **Signed 24 new CDTAs**
- **Upgraded EoI article of 3 existing CDTAs**
- **27 CDTAs with EoI article up to OECD standard**
- **As at May 2014, Hong Kong signed a total of 29 CDTAs and 17 are with OECD countries**



Hong Kong's Tax Treaty Network

Important Milestones

- **Pre-2013 - policy of pursuing effective EoI within the ambit of CDTA only**
- **Legal constraints - Hong Kong was not in a position to conclude Tax Information Exchange Agreement ("TIEA") which did not provide for double taxation relief**
- **International standard - both CDTA and TIEA are regarded as equally valid instrument for implementing effective EoI**
- **International standard - preference for CDTA or TIEA cannot be a reason for refusal to enter into an EoI agreement**



Hong Kong's Tax Treaty Network

Important Milestones

- **Conducted domestic consultations in mid-2012 and early 2013**
- **Introduced the legislative amendment bill in Apr 2013**
- **Enabling Hong Kong to enter into TIEAs**
- **Relaxation of tax types covered by EoI**
- **The Inland Revenue (Amendment) (No.2) Ordinance 2013 was enacted and took effect on 19 Jul 2013**
- **First TIEA was signed in Mar 2014 with the USA**

Benefits of Extending Hong Kong's Tax Treaty Network

- **Foster closer economic and trading links**
- **Provide certainty to foreign investors**
- **Improve Hong Kong's business environment for MNEs**
- **Facilitate movement of capital, technology and talents**

Benefits of Extending Hong Kong's Tax Treaty Network

Relevant statistics

2013 vs 2009

- **Number of companies registered in Hong Kong increased by 50%**
- **Host to 7,449 overseas and Mainland China companies as compared to 6,397**
- **Issue 28,380 employment and investment visas to overseas persons as compared to 20,988**



Benefits of Extending Hong Kong's Tax Treaty Network

Relevant statistics

- **In 2011, total tax treaty relief Renminbi \$5.5billion was granted in Mainland China**
- **Renminbi \$3.1billion was attributable to the Hong Kong/Mainland CDTA, i.e. 56%**

Implementation of Tax Treaties

- **All 29 CDTAs have become effective except one**
- **Over 150 incoming EoI requests since 2007**
- **Mutual agreement procedure**
- **Bilateral advance pricing arrangement**
- **Tight resources**

Challenges Ahead

- **Continue to expand tax treaty network**
- **Upgrade the “Old” EoI articles in two existing CDTAs**
- **Automatic EoI**
- **Action plan on base erosion and profit shifting (“BEPS”)**



THANK YOU