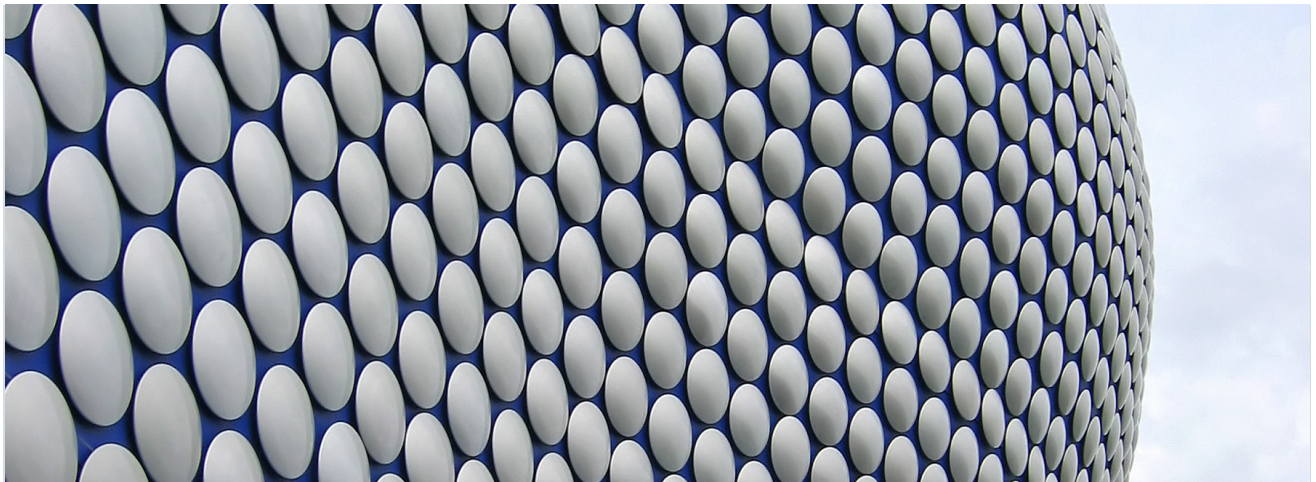


COMPREHENSIVE TAXATION AGREEMENT WITH KOREA

Hong Kong tax news - July 2014



ABOUT MAZARS

Mazars is an international, integrated and independent organisation, specialising in audit, accounting, tax and advisory services. We rely on the skills of more than 13,800 professionals in the 72 countries which make up our integrated partnership.

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BACKGROUND

Hong Kong concluded its 30th comprehensive double taxation agreement ("CDTA") by signing with Korea on 8 July 2014.

Korea is one of Hong Kong's major trading partners. From 2008 to 2012, the average annual growth rate in bilateral trade between Hong Kong and Korea was 6% and the average annual growth rate for re-export trade between the Mainland China and Korea through Hong Kong was 9%. During 2013, Korea was the 6th largest trading partner of Hong Kong with a total trade amount of HK\$222,838 million and the 7th largest re-exports market of Hong Kong with a re-exports value of HK\$63,070 million.

The CDTA will help to further stimulate the economic and trade relationships between Hong Kong and Korea, and provide additional incentives for Korean company to do business or invest in Hong Kong, and vice versa. The CDTA will also provide investors with greater certainty on their potential tax liabilities from cross-border economic activities.

KEY FEATURES

The key features of the CDTA signed by Hong Kong and Korea are set forth as follows from the perspective of Hong Kong tax residents:

PERSON COVERED

Individuals

Under the CDTA, an individual qualifies as a Hong Kong resident if:

- He is a permanent resident, i.e. he ordinarily resides in Hong Kong (e.g. he has a permanent home in Hong Kong)
- He is a temporary resident, i.e. he stays in Hong Kong for more than 180 days during a tax year, or for more than 300 days in 2 consecutive tax years, one of which is the relevant tax year.

Corporations

Companies incorporated in Hong Kong and companies incorporated outside Hong Kong but centrally managed and controlled in Hong Kong would be regarded as a Hong Kong resident under the CDTA.

SALARIES INCOME

Income from employment

A Hong Kong individual is exempted from tax in Korea if he satisfies the following conditions:

- He is present in Korea for not more than 183 days in any 12-month period commencing or ending in the tax year;
- His remuneration is paid by, or on behalf of, an employer who is not a resident of Korea; and
- His remuneration is not borne by a permanent establishment maintained by his employer in Korea.

Directors' fees

Directors' fees derived by a Hong Kong resident in the capacity of a member of the board of directors of a Korean company may be taxed in Korea.

BUSINESS INCOME

Active business profits

Under the business profits article, only profits attributable to the permanent establishment maintained by a Hong Kong enterprise in Korea will be taxable in Korea.

Associated enterprises (Transfer pricing)

The CDTA contains an associated enterprises article which allows Hong Kong or Korea to make transfer pricing adjustments for transactions between associated enterprises. Such adjustments may give rise to potential double taxation. In such case, the article also provides that the tax authority is obliged to make an appropriate adjustment in order to relieve the double taxation.

CAPITAL GAINS

In general, under the CDTA, Hong Kong has a taxing right on gains derived from disposal of capital assets by a Hong Kong company except if:

- The properties are immovable properties situated in Korea;
- The properties are movable properties of a permanent establishment maintained by the Hong Kong enterprise in Korea;
- The properties are shares of a Korean company, of which more than 50% of its asset value (either directly or indirectly) are derived from immovable properties situated in Korea.

WITHHOLDING TAX ON PASSIVE INCOME

Hong Kong's CDTA with Korea offers favourable withholding tax rates on passive income. The following is a summary of the treaty withholding tax rates for dividends, royalties and interests under the CDTA:

	Dividends	Royalties	Interests
HK non-treaty rate	0%	4.5% / 4.95% (Note 1)	0%
Korea non-treaty rate	20%	20%	14%-20%
HK-Korea CDTA -treaty rate	10% / 15% (Note 2)	10%	10%

- (1) 4.5% if received by an unincorporated business; 4.95% if received by a corporation.
- (2) 10% if received by a company (other than a partnership) holding directly at least 25% of the capital of the paying company; 15% in all other cases.

BENEFICIAL OWNER TEST AND LIMITATION ON BENEFITS

It should be noted that when claiming preferential withholding tax rates under the Hong Kong-Korea CDTA, the recipient has to satisfy the beneficial owner test, i.e. the recipient must be the beneficial owner of the passive income.

The CDTA also contains provisions to counteract treaty shopping activities. If the main purpose or one of the main purposes of any person involved in the arrangement is to take advantages of the treaty benefits applicable to passive income, capital gains or other income, the treaty benefits will be denied.

EXCHANGE OF INFORMATION ("EOI")

The EOI Article provides that information preceeding the date on which the CDTA is in force can be exchanged if the information is foreseeably relevant for a taxable period or event after that date. Moreover, the type of information that could be exchanged may be extended to other types of taxes not covered by the CDTA if the two contracting states agree to the arrangement by means of exchange of letters.

The CDTA will come into force after the completion of ratification procedures in Hong Kong and Korea.



The content of this newsletter is only for general guidance on matters of interest and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. Readers are advised to consult their tax advisors before making any business decisions.

Mazars is present on 5 continents.

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