

HONG KONG TAX NEWS

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Hong Kong signed the 3rd Protocol to the Comprehensive Double Taxation Arrangement with the Mainland China

On 27 May 2010, the governments of the Mainland China and the Hong Kong Special Administrative Region signed the 3rd Protocol to the Comprehensive Double Taxation Arrangement (“CDTA”).

Apart from soliciting CDTA with new partners, Hong Kong is also actively negotiating with our existing treaty partners to upgrade the Exchange of Information Article (“EoI”) to the 2004 version of the Organisation for Economic Cooperation and Development’s Model Tax Convention. The first amendment to EoI Article in our existing CDTAs was signed with the Mainland China.

The 3rd Protocol to the Hong Kong-China CDTA amends Article 24: EoI to require the contracting party (e.g. Hong Kong), upon receipt a request from the other contracting party (the Mainland China), to exchange tax information required or foreseeably relevant to secure the correct application of the CDTA or of the domestic tax law concerning the taxes covered by the CDTA. The contracting party is required to exchange the information even if the contracting party does not need such information for its own tax purposes. For your information, the former EoI Article in the CDTA only allow Hong Kong to exchange information that is related to the administration of taxes under the domestic tax law of Hong Kong.

Treaty Safeguards

Financial Services and Treasury Bureau indicated that Hong Kong will implement a 3-level safeguard (i.e. Treaty – Rules - Departmental Interpretation and Practice Notes) to protect the right to privacy and confidentiality of information. As the first level safeguard, the revised EoI Article in the CDTA places some restrictions on the information so obtained by the contracting parties.

EoI Article requires both parties to treat the information exchanged as confidential and can only be disclosed to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution of, the determination of the appeals in relation to the taxes covered by the CDTA. Furthermore, a contracting party is not obliged:

- (a) to carry out administrative measures at variance with the domestic laws and practice;
- (b) to supply information which is not obtainable under the laws and normal administrative procedures;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process.

It should be noted that a request or information cannot be refused on the grounds that the information is held by a bank, other financial institutions, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. However, any request from our treaty partners to give retrospective effect of the exchange of information arrangement will be declined.

The 3rd Protocol will come into force after the completion of ratification procedures and notification by both parties.

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