German Industry and Commerce Ltd
German Chamber of Commerce, Hong Kong

德國工商會有限公司
德國商會

Submission to the LegCo Bills Committee
Amendment Bill on the legal framework on tax information exchange

Germany is Hong Kong's largest trading partner in Europe and ranked 8th among Hong Kong's trading partners in the world. Bilateral trade amounted to some EUR 13.3 billion in 2012. Hong Kong also played a significant role in the trade between the mainland of China and Germany, with about 7.5% of the trade routed through Hong Kong, amounting to some EUR 9.5 billion.

An estimated 1,000 companies owned by or under management of Germans reside in Hong Kong, about 300 of which are regional headquarters of German parent companies. An estimated 3,000 German nationals live in Hong Kong. The main activities are trading and services with sourcing being an important segment.

Germany is also one of the biggest investors in Hong Kong and 2010 the first German company was listed on the Hong Kong Stock Exchange.

Based on this, the German community has a very high interest in the tax developments in Hong Kong and we therefore appreciate the opportunity to provide our views.

For the German investors it is crucial, to continuously do business in Hong Kong or via Hong Kong. Hong Kong has established itself as an efficient hub for the region of North East Asia. However, due to the missing Agreements on the avoidance of double taxation (DTA) and thus a lack of Exchange of Information (EoI), German corporates are presently suffering high scrutiny by German tax authorities in Germany. Due to the combination of a low tax rate or even the creation of completely untaxed income based on the territorial taxation combined with the lack of EoI, a perception prevails within German tax authorities that taxes may be avoided in structures that involve Hong Kong. The structures set up by German companies are usually fully in compliance with all laws, but as we have just seen in the cases of Starbucks and Apple, it may not be sufficient to use fully legal structures. The respective companies in Germany often have to bear high additional taxes as a consequence of German tax audits.

As we live in a highly globalised and interconnected environment, it is not sufficient to focus on the past or only on local laws as they exist. Rather, it is indispensable for Hong Kong to decide where it wants to be in the future.

The recent global developments with regard to taxation give exactly one signal: transparency will increase drastically and tax avoidance will no longer be tolerated by governments or even consumers.

The German Federal Finance Ministry takes the following approach: it is accepted that corporate taxpayers apply existing laws to minimise tax cost. It is understood that international tax laws are not (sufficiently) harmonised and therefore gaps exist. Efforts need to be targeted at reducing or even abolish these gaps and to better synchronise international taxation. In the meanwhile, Germany will ensure that existing tax laws are applied strictly. It can already be recognised that previous lenience in certain areas is no longer applied and that the tax authorities are getting very serious about the correct taxation.

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It is becoming generally unaccepted to avoid taxes. It will therefore become inacceptable to support tax avoidance in any way. Not providing for exchange of information would internationally be regarded as supporting tax avoidance. Foreign governments are already applying very detrimental measures where they regard a country as incompliant, e.g. blacklisting that Italy is applying. Such sanctions have to be avoided, as in the longer run they will create an image for the countries which are blacklisted.

The German tax authorities have just in April 2013 published a new draft DTA which is precisely an "Agreement on the avoidance of double taxation and on the avoidance of double non-taxation". This is just another example that new ways to ensure taxation will be developed permanently.

In our view Hong Kong has been acting swiftly establishing a large number of DTAs within a short time frame. But Hong Kong needs to stay tuned in to global developments in order to not fall behind. Exchange of Information is such an area.

Just this month the Singapore authorities announced their laws will be changed in order to significantly strengthen the framework for international tax cooperation. Singapore went so far to announce, that even without any changes in the existing EoI Agreements, they will apply the extended standard for EoI. Accordingly Singapore will be able to exchange information with 83 countries, up from 41. And even the requirement of a Court order for requesting information from banks is being withdrawn. Singapore exactly confirmed the above, i.e. that it is necessary to keep up with international developments in order to help avoid regulatory arbitrage between jurisdictions.

We therefore appreciate and welcome the suggested changes in the Hong Kong legislation with regard to Exchange of Information.

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Hong Kong, 24 May 2013

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