

For information

Legislative Council Panel on Financial Affairs

Comprehensive Avoidance of Double Taxation Agreements

Purpose

This paper updates Members on the Administration's progress in pursuing initiatives related to comprehensive avoidance of double taxation agreements ("CDTAs") of Hong Kong.

Expansion of Hong Kong's CDTA Network

2. The Administration is committed to expanding Hong Kong's CDTA network which could enhance Hong Kong's position as an international business and financial centre while providing relief for double taxation. All these are conducive to the flows of trade, investment and talent between Hong Kong and the rest of the world.

3. After the legislative amendments to align Hong Kong's exchange of information ("EoI") arrangements with the international standard came into effect in March 2010, up till end June 2012, we signed 20 new CDTAs (in addition to the five signed before 2010) and upgraded two existing CDTAs to the new EoI standard. We have also concluded a few more CDTAs, including India and United Arab Emirates, and negotiations with a handful of other jurisdictions are in the pipeline. Among the top 20 trading partners of Hong Kong, we have already signed/concluded CDTAs with 12 of them and started CDTA negotiations with two of the remaining eight, namely South Korea and Italy. A list of jurisdictions with which we have signed CDTAs is at **Annex A**.

4. In the years ahead, we will continue with our efforts in striving to further expand our CDTA network with our trading and investment partners. We have also been consulting the business community and public organizations involved in the promotion of trade and investment, so as to tap their views on potential treaty partners. To keep the business community and the public informed, we will continue to post on the website of the Inland Revenue Department ("IRD") updates on various negotiations and send out CDTA-related news to interested parties.

Implementation of CDTAs

5. As for those CDTAs that have been implemented, IRD will monitor the actual operation to see if there is room for enhancement in the provisions of the relevant CDTAs. Where necessary, IRD will raise implementation issues of mutual concerns for discussion with the competent authorities of our treaty partners.

6. A case in point is the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (“the Arrangement”) signed in 2006. After the Arrangement took effect, IRD maintains regular dialogues with the State Administration of Taxation (“SAT”) on matters concerning the implementation of the Arrangement. In particular, during one of the earlier annual meetings between the two sides, IRD raised for discussion with SAT the local business sector’s concern about double taxation of individual income tax in respect of cross-boundary workers. Taking into consideration the views of various parties and suggestions from the business and accounting sectors, the two sides finally agreed after rounds of discussions to adopt the “number of days of physical presence” as the basis of allocation of taxable income. In this regard, SAT released the Public Notice [2012] No. 16 (see **Annex B**)(Chinese version only) on 26 April 2012 introducing new rules with effect from 1 June 2012 to adopt the said basis in calculating the salary and bonus accountable within and out of the Mainland. This helps reduce the incidence of double taxation of individual income tax in respect of cross-boundary employment cases.

Benefits and Costs of CDTAs

7. During the relevant Subcommittee’s scrutiny of three earlier Orders implementing our CDTAs with Spain, Portugal and the Czech Republic in December 2011, Members sought information on the benefits and costs of CDTAs.

8. As CDTAs set out clearly the allocation of taxing rights between the contracting parties, they will provide enhanced certainty and predictability over tax liabilities arising from cross-border activities. They also serve to minimize the incidence of double taxation, thus reducing tax burdens on individuals and enterprises. A network of CDTAs can therefore help enhance the attractiveness of Hong Kong as a place for work as well as for business and investment.

9. While it is well recognized internationally that CDTAs could induce

foreign direct investment (“FDI”), it is difficult to quantify the magnitude of FDI and the associated economic impact brought about by the CDTAs that have been implemented in Hong Kong as FDI may be affected by a host of other factors, such as cyclical changes in the domestic and global economies, business opportunities, cost of business, political stability, etc.

10. In practice, CDTAs provide tax benefits to taxpayers in Hong Kong on various fronts. Under the relevant CDTAs, if Hong Kong resident enterprises have derived profits from our treaty partners where they have no permanent establishment, they are not subject to income tax there. The income received by a Hong Kong resident from local employment exercised abroad is also exempted from overseas income tax, provided that his aggregate stay in that overseas jurisdiction in any relevant 12-month period does not exceed 183 days.

11. CDTAs usually bring about lower withholding tax rates on passive income, including dividends, interest and royalties. For example, under the CDTA with the Czech Republic (“Czech”), the withholding tax rates on Hong Kong residents receiving dividends and royalties from the Czech are capped at 5% and 10% respectively as compared to the withholding tax of 15% there. The Czech interest withholding tax on Hong Kong residents is exempted as compared to the withholding tax of 15% in the absence of the CDTA.

12. Hong Kong airlines operating flights to and from our CDTA partners are taxed in Hong Kong only at Hong Kong’s corporation tax rate (which is lower than that of most of our CDTA partners). Profits from international shipping transport earned by Hong Kong residents that arise in our CDTA partners, which are subject to tax there in the absence of CDTAs, could enjoy tax exemption under the relevant CDTAs.

13. Under a CDTA, any overseas tax paid by a Hong Kong company or a Hong Kong resident shall be allowed as a deduction from the tax payable in respect of the same income in Hong Kong. In 2011-12, there were 537 tax credit claims from taxpayers in Hong Kong in respect of overseas tax they paid. The total tax credit allowed amounted to about \$210 million. During the same period, there were a total of 1 904 applications for certificate of resident status from Hong Kong residents for the purpose of claiming tax benefits in jurisdictions with which Hong Kong have entered into CDTAs. Nevertheless, IRD has no complete information with regard to the tax benefits in quantitative terms granted by our CDTA partners and enjoyed by Hong Kong residents as Hong Kong residents are not obliged to report such information to IRD. As far as the Arrangement is concerned, the information revealed by SAT at a tax seminar hosted by IRD in June 2012 for the local business and accounting sectors could provide an illustration in this regard. According to SAT, the reduction in

withholding tax on dividends that Hong Kong residents benefited amounted to RMB 3,100 million in 2011.

14. Given the tax benefits granted for taxpayers, CDTAs would inevitably result in tax revenue loss to the governments of the contracting parties to a varying extent. Nevertheless, the Administration reckons that it would serve the wider interests of Hong Kong and our taxpayers to further pursue the expansion of Hong Kong's CDTA network. Indeed, anecdotal feedback we have gauged from liaison with local and foreign chambers of commerce in Hong Kong shows that they find CDTAs useful in facilitating trade and investment between Hong Kong and other jurisdictions. While our endeavour and progress in recent years has been widely recognized by the business community, they have been looking upon the Administration to sustain efforts in this regard.

Peer Review by the Global Forum on Transparency and Exchange of Information for Tax Purposes

15. On the international front, the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") formed under the auspices of the Organization for Economic Co-operation and Development ("OECD"), of which Hong Kong is a member, has launched a two-phase peer review exercise to evaluate jurisdictions' compliance with the international EoI standard. Phase 1 of the review examines the legal and regulatory framework in each jurisdiction whereas Phase 2 evaluates the implementation of the standard in practice.

16. In October 2011, the Global Forum endorsed the Phase 1 peer review report on Hong Kong. The review has affirmed the efforts of Hong Kong in enhancing tax transparency. It concludes that Hong Kong has adequate legal and regulatory framework to facilitate effective EoI and that Hong Kong can enter into Phase 2 peer review.

17. As regards recommendations for improvement, the Administration is following up as appropriate. One of the recommendations is that Hong Kong should have in place a legal framework for entering into Tax Information Exchange Agreements¹ ("TIEAs") so as to be on par with the international trend that jurisdictions should be able to sign both CDTAs and TIEAs with a view to enhancing tax transparency.

¹ Unlike CDTAs, TIEAs provide for EoI mechanism only without double taxation relief. The existing tax laws in Hong Kong only allow us to enter into tax agreements with other jurisdictions when there is double taxation relief.

18. Same as all other jurisdictions under assessment, Hong Kong is required to submit to the Global Forum a progress report on our follow-up actions one year after the formal endorsement of the Phase 1 report (i.e. October 2012). Besides, Phase 2 peer review on Hong Kong is scheduled to commence towards the end of 2012.

19. On the recommendation relating to TIEAs, we reckon the international trend that jurisdictions should be able to sign both CDTAs and TIEAs with a view to enhancing tax transparency. We have also made it clear to the international community during the peer review process that we consider it imperative to consult our local stakeholders before deciding whether legal framework for TIEA should be put in place in Hong Kong. In taking the matter forward, we aim to preserve Hong Kong's international reputation as a co-operative jurisdiction while ensuring that the interests of relevant stakeholders are well taken care of. To this end, we completed in end June 2012 a two-month consultation exercise with relevant stakeholders in the business and professional sectors. We are now analyzing the views and suggestions solicited and will report the consultation outcome to the Panel upon inception of the new term of the Legislative Council.

Financial Services and the Treasury Bureau
July 2012

CDTAs that Hong Kong has Signed with Other Jurisdictions
(as at 30.6.2012)**CDTAs signed before March 2010**

	Jurisdictions	Date of Signing
1	Belgium*	10.12.2003
2	Thailand*	7.9.2005
3	Mainland China*	21.8.2006
4	Luxembourg	2.11.2007
5	Vietnam*	16.12.2008

New CDTAs signed since March 2010

	Jurisdictions	Date of Signing
1	Brunei	20.3.2010
2	Netherlands*	22.3.2010
3	Indonesia	23.3.2010
4	Hungary	12.5.2010
5	Kuwait	13.5.2010
6	Austria	25.5.2010
7	United Kingdom*	21.6.2010
8	Ireland	22.6.2010
9	Liechtenstein	12.8.2010
10	France*	21.10.2010
11	Japan*	9.11.2010
12	New Zealand	1.12.2010
13	Portugal	22.3.2011
14	Spain	1.4.2011
15	Czech Republic	6.6.2011
16	Switzerland*	4.10.2011
17	Malta	8.11.2011
18	Jersey	22.2.2012
19	Malaysia*	25.4.2012
20	Mexico	18.6.2012

* Among the top 20 trading partners of Hong Kong

(Chinese version only)

**關於執行內地與港澳間稅收安排
涉及個人受僱所得有關問題的公告**

國家稅務總局公告 2012 年第 16 號

為了解決往來內地與港、澳間跨境工作個人雙重徵稅問題，根據內地與香港、澳門簽署的關於對所得避免雙重徵稅和防止偷漏稅安排（以下簡稱《安排》）受僱所得條款（與澳門間安排為非獨立個人勞務條款，以下統稱受僱所得條款）的有關規定，經與相關稅務主管當局協商，現就在港、澳受僱或在內地與港、澳間雙重受僱的港澳稅收居民執行《安排》受僱所得條款涉及的居民個人所得稅問題公告如下：

一、執行《安排》受僱所得條款相關規定及計稅方法

（一）港澳稅收居民在內地從事相關活動取得所得，根據《安排》受僱所得條款第一款的規定，應僅就歸屬於內地工作期間的所得，在內地繳納個人所得稅。計算公式為：

應納稅額=（當期境內外工資薪金應納稅所得額×適用稅率-速算扣除數）×當期境內實際停留天數÷當期西曆天數

（二）港澳稅收居民在內地從事相關活動取得所得，根據《安排》受僱所得條款第二款的規定，可就符合條件部分在內地免予徵稅；內地徵稅部分的計算公式為：

應納稅額=（當期境內外工資薪金應納稅所得額×適用稅率-速算扣除數）×（當期境內實際停留天數÷當期西曆天數）×（當期境內支付工資÷當期境內外支付工資總額）

二、有關公式專案或用語的解釋

（一）“當期”：指按國內稅收規定計算工資薪金所得應納稅所得額的當個所屬期間。

(二) “當期境內外工資薪金應納稅所得額”：指應當計入當期的工資薪金收入按照國內稅收規定計算的應納稅所得額。

(三) “適用稅率”和“速算扣除數”均按照國內稅收規定確定。

(四) “當期境內支付工資”：指當期境內外支付工資總額中由境內居民或常設機構支付或負擔的部分。

(五) “當期境內外支付工資總額”：指應當計入當期的工資薪金收入總額，包括未做任何費用減除計算的各種境內外來源數額。

(六) “當期境內實際停留天數”指港澳稅收居民當期在內地的實際停留天數，但對其入境、離境、往返或多次往返境內外的當日，按半天計算為當期境內實際停留天數。

(七) “當期西曆天數”指當期包含的全部西曆天數，不因當日實際停留地是否在境內而做任何扣減。

三、一次取得跨多個計稅期間收入

港澳稅收居民一次取得跨多個計稅期間的各種形式的獎金、加薪、勞動分紅等（以下統稱獎金，不包括應按每個計稅期間支付的獎金），仍應以按照國內稅收規定確定的計稅期間作為執行“安排”規定的所屬期間，並分別情況適用本公告第一條第（一）項或第（二）項公式計算個人所得稅應納稅額。在適用本公告上述公式時，公式中“當期境內實際停留天數”指在據以獲取該獎金的期間中屬於在境內實際停留的天數；“當期西曆天數”指據以獲取該獎金的期間所包含的全部西曆天數。

四、備案報告

港澳稅收居民在每次按本公告規定享受《安排》相關待遇時，應該按照《非居民享受稅收協定待遇管理辦法（試行）》（國稅發[2009]124號）的有關規定，向主管稅務機關備案，並按照《國家稅務總局關於在中國境內無住所的個人計算繳納個人所得稅若干

具體問題的通知》（國稅函發[1995]125 號）第五條規定提供有關資料。

五、執行日期

本公告適用於自 2012 年 6 月 1 日起取得的工資薪金所得。

港澳稅收居民執行上述規定在計算繳納個人所得稅時不再執行下列檔條款規定，但在處理與《安排》受僱所得條款規定無關稅務問題時，下列檔條款規定的效力不受本公告影響：

（一）《國家稅務總局關於在中國境內無住所的個人取得工資薪金所得納稅義務問題的通知》（國稅發[1994]148 號）第二條、第三條和第六條；

（二）《國家稅務總局關於在中國境內無住所的個人計算繳納個人所得稅若干具體問題的通知》（國稅函發[1995]125 號）第一條和第二條；

（三）《國家稅務總局關於三井物產（株）大連事務所外籍僱員取得數月獎金確定納稅義務問題的批復》（國稅函發[1997]546 號）第一條；

（四）國家稅務總局關於在中國境內無住所的個人執行稅收協定和個人所得稅法若干問題的通知》（國稅發[2004]97 號）第二條以及第三條第一款第（一）項和第（二）項。

國家稅務總局
二零一二年四月二十六日