Hong Kong Tax Alert

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Hong Kong concludes comprehensive double taxation arrangement with Mauritius

On 7 November 2022, Hong Kong signed a comprehensive avoidance of double taxation agreement (CDTA) with Mauritius. This brings the number of CDTAs Hong Kong has concluded with other jurisdictions to 46. Appendix to this alert summarizes the status of Hong Kong's current CDTA network and CDTAs currently under negotiation or pending ratification.

This alert summarizes the salient points of the provisions of the CDTA with Mauritius as applicable to Hong Kong residents.

Promoting trade and investment

The CDTA sets out clearly the allocation of taxing rights between Hong Kong and Mauritius helping investors to better assess their potential tax liabilities from cross-border transactions. In addition, with the aim of facilitating trade and investment, the CDTA also contains provisions which reduce or eliminate applicable taxes in respect of certain income streams between the two jurisdictions.

The below table summarizes the applicable withholding rates for the captioned income flows received from Mauritius by a Hong Kong resident as beneficial owner.

Income streams / Tax rate	Dividends	Interest	Royalties	Capital gains on disposal of shares
Normal withholding rate	0%	15%[2]	15%[4]	0%
Reduced rate under the CDTA	0/5%[1]	0/5%[3]	5%	0%[5]

Notes

1. If Mauritius imposes a dividend withholding tax in future, a 0% rate applies if the dividends are paid to (i) the HKSAR Government, Hong Kong Monetary Authority, the Exchange Fund or any entity wholly or mainly owned by the HKSAR Government as may be agreed from time to time between the competent authorities of the Contracting Parties; or (ii) a company which holds directly at least 10% of the capital of the company paying the dividends throughout a 365 day period that includes the day of payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividends). A 5% rate applies in all other cases.

2. Exempt if the non-resident does not carry on any business in Mauritius and such interest is paid by either an entity that holds a Global Business Licence (GBL) under the Financial Services Act (FSA) out of its foreign source income or a bank holding a banking licence under the Banking Act insofar as the interest is paid out of its gross income from banking transactions with non-residents and entities holding a GBL under the FSA.

3. A 0% rate applies if the interest is paid to the HKSAR Government, Hong Kong Monetary Authority, the Exchange Fund or any entity wholly or mainly owned by the HKSAR Government as may be agreed from time to time between the competent authorities of the Contracting Parties.

4. Exempt under the Mauritian tax laws if it is paid out of the foreign source income of a company.

5. If Mauritius imposes a capital gains tax in future, gains derived from the disposal of shares in a Mauritius company derived by a Hong Kong resident investor will generally be exempt from tax in Mauritius under the CDTA, except where more than 50% of the asset value of the company concerned is derived from immovable property situated in Mauritius. This exception will however not apply to gains derived from the alienation of shares (a) quoted on such stock exchange as may be agreed between the competent authorities of the Contracting Parties; or (b) alienated or exchanged in the framework of a reorganization of a company, a merger, a scission or a similar operation; or (c) in a company deriving more than 50% of its asset value from immovable property situated in Mauritius in which it carries on its business.

Avoidance of double taxation

Where the income of a Hong Kong resident is subject to tax in both Hong Kong and Mauritius, the Hong Kong resident can credit the tax paid in Mauritius on the relevant income against the Hong Kong tax liability arising on the same income. The available tax credit is, however, limited to the Hong Kong tax charged on the same income.

Prevention of treaty abuse

The CDTA contains the following specific provisions against treaty abuse:

I. an introductory statement or preamble specifying that the CDTA is intended to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance; and

II. the principal purpose test (PPT) provisions whereby the granting of tax benefits under the CDTA would be denied if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining the benefits was one of the principal purposes of any arrangement or transaction. The PPT would not however apply where it is established that granting the tax benefits in the circumstances would be in accordance with the object and purpose of the relevant provisions of the CDTA.

Effective date of the CDTA

The CDTA will only come into force in the tax year following the calendar year in which the relevant ratification procedures are completed. If the ratification procedures can be completed in 2022, the CDTA shall then have effect as follows:

I. For Hong Kong: for any year of assessment beginning on or after 1 April 2023

II. For Mauritius: for any income year beginning on or after 1 July 2023

Appendix I – Latest status of the Hong Kong's CDTA network

45 CDTAs signed and ratified

	Country / jurisdiction	Effective in Hong Kong from the year of assessment	Effective in the other contracting party from the year of assessment
1.	Austria	2012/13	1 January 2012
2.	Belarus	2018/19	1 January 2018
3.	Belgium	2004/05	1 January 2004
4.	Brunei	2011/12	1 January 2011
5.	Cambodia	2020/21	1 January 2020
6.	Canada	2014/15	1 January 2014
7.	Czech Republic	2013/14	1 January 2013
8.	Estonia	2020/21	1 January 2020
9.	Finland	2019/20	1 January 2019
10.	France	2012/13	1 January 2012
11.	Georgia	2022/23	1 January 2022
12.	Guernsey	2014/15	1 January 2014
13.	Hungary	2012/13	1 January 2012
14.	India	2019/20	1 April 2019
15.	Indonesia	2013/14	1 January 2013
16.	Ireland	2012/13	1 January 2012
17.	Italy	2016/17	1 January 2016
18.	Japan	2012/13	1 January 2012
19.	Jersey	2014/15	1 January 2014
20.	Korea	2017/18	1 January 2017
21.	Kuwait	2014/15	1 January 2014
22.	Latvia	2018/19	1 January 2018
23.	Liechtenstein	2012/13	1 January 2012
24.	Luxembourg	2008/09	1 January 2008
25.	Macau SAR	2021/22	1 January 2021
26.	Mainland China	2007/08	1 January 2007
27.	Malaysia	2013/14	1 January 2013
28.	Malta	2013/14	1 January 2013
29.	Mexico	2014/15	1 January 2014
30.	Netherlands	2012/13	1 January 2012
31.	New Zealand	2012/13	1 April 2012
32.	Pakistan	2018/19	1 July 2018
33.	Portugal	2013/14	1 January 2013
34.	Qatar	2014/15	1 January 2014
35.	Romania	2017/18	1 January 2017
36.	Russian Federation	2017/18	1 January 2017
37.	Saudi Arabia	2019/20	1 January 2019
38.	Serbia	2021/22	1 January 2021
39.	South Africa	2016/17	1 January 2016
40.	Spain	2013/14	1 April 2013
41.	Switzerland	2013/14	1 January 2013
42.	Thailand	2006/07	1 January 2006
43.	United Kingdom	2011/12	1 or 6 April 2011
44.	United Arab Emirates	2016/17	1 January 2016
45.	Vietnam	2010/11	1 January 2010

1 CDTAs signed but pending ratification

- Mauritius

13 CDTAs under negotiation

- Bahrain, Bangladesh, Cyprus, Germany, Israel, Kyrgyz Republic, Lithuania, Maldives, Nigeria, North Macedonia, Norway, Turkey and Ukraine

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