



HONG KONG TAX ALERT

ISSUE 12 | December 2019

Hong Kong and Macau signed a comprehensive double taxation arrangement

Summary

Hong Kong and Macau have recently signed a comprehensive avoidance of double taxation arrangement (“the Arrangement”), signifying enhanced tax co-operation between Hong Kong and Macau.

The Arrangement provides residents in Hong Kong and Macau more flexibility and greater tax certainty.

On 25 November 2019, Hong Kong signed a comprehensive double taxation arrangement (“Arrangement”) with Macau (click [here](#)). The Arrangement will come into force upon completed of the formal ratification procedures by both sides.

Permanent establishment (“PE”) article

Prior to the Arrangement, a Hong Kong resident is subject to tax in Macau if it carries out business activities in Macau, even though the relevant activities may be limited (e.g., Hong Kong employees travelling to Macau to perform certain services for a short period of time). With the arrangement in place, a Hong Kong tax resident will not be subject to tax in Macau if its activities in Macau do not constitute a PE as defined in the Arrangement.

In addition to the standard definition of PE, the Arrangement also adopts the definition of dependent agent PE under the OECD BEPS Action 7. In simple terms, notwithstanding the absence of a fixed place of business, a Hong Kong enterprise could be regarded as having a PE in Macau if a Macau resident habitually concludes contracts in the name of the Hong Kong enterprise, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the Hong Kong enterprise. The Arrangement follows the latest standard of international tax rules to prevent the artificial avoidance of a PE.

Business income article

Prior to the Arrangement, income earned by Macau residents in Hong Kong is subject to both Hong Kong and Macau income tax. Under the Arrangement, double taxation could be avoided by way of exempting the income taxed in Hong Kong from Macau tax, or by crediting the Hong Kong tax paid against the Macau tax payable in respect of the same income. The Arrangement also provides for a credit against the Hong Kong tax payable for any Macau tax paid.

Capital gains article

Under the Arrangement, gains derived from the alienation of shares in a company, or comparable interest in other entities such as partnership and trusts, in which more than 50% of the assets comprised immovable property situated in one side at any time within the 365 days before the alienation of shares may be taxed in that side.

Under the current local tax laws of Hong Kong and Macau, both jurisdictions generally do not tax gains on disposal of shares in a company incorporated in their respective jurisdictions or companies holding immovable property situated in their respective jurisdictions, provided that the relevant shareholder does not carry out any business activities in their respective jurisdictions. This article may therefore have limited application.

Employment income article

Short-term secondees and business travelers can now visit Macau for up to 183 days in any 12-month period, provided their costs are not borne by the employer's PE or fixed base in Macau. Further, a qualified teacher or researcher,

- i. who is employed by the qualified education or research institution in one side; and
- ii. engages in teaching or research activities for qualified education or research institution on the other side;

is exempt from tax on that other side in respect of the remuneration derived from the above activities for a period of three years. This is subject to the proviso that the relevant remuneration has been subjected to tax on the side where the person concerned is employed.

Passive income withholding tax

The Hong Kong withholding tax on royalties is, under the Arrangement, reduced from the normal 4.95% in most cases to 3%.

Under the Arrangement, withholding tax on dividend and interest is reduced to 5%. However, given that Hong Kong and Macau currently do not levy withholding tax on dividend and interest, the reduced withholding tax rate should not be generally relevant.

KPMG observations

The Arrangement offers additional incentives for the business sector of both sides to do business, invest, encourage exchange of talent and promote economic growth of the Guangdong-Hong Kong-Macau Greater Bay Area.

For more information and assistance, please contact your usual tax advisor or one of our tax advisors below.

Contact us:



Lewis Y. Lu
National Head of Tax
Tel: +86 21 2212 3421
lewis.lu@kpmg.com



Curtis Ng
Head of Tax, Hong Kong
Tel: +852 2143 8709
curtis.ng@kpmg.com

Corporate Tax Advisory



Matthew Fenwick
Partner
Tel: +852 2143 8761
matthew.fenwick@kpmg.com



Stanley Ho
Partner
Tel: +852 2826 7296
stanley.ho@kpmg.com



Alice Leung
Partner
Tel: +852 2143 8711
alice.leung@kpmg.com



Ivor Morris
Partner
Tel: +852 2847 5092
ivor.morris@kpmg.com



John Timpany
Partner
Tel: +852 2143 8790
john.timpany@kpmg.com



Eva Chow
Director
Tel: +852 2685 7454
eva.chow@kpmg.com



Elizabeth de la Cruz
Director
Tel: +852 2826 8071
elizabeth.delacruz@kpmg.com



William Ngai
Director
Tel: +852 2685 7553
william.ngai@kpmg.com



Johnson Tee
Director
Tel: +852 2143 8827
johnson.tee@kpmg.com



Natalie To
Director
Tel: +852 2143 8509
natalie.to@kpmg.com



Eugene Yeung
Director
Tel: +852 2143 8575
eugene.yeung@kpmg.com

Deal Advisory, M&A



Darren Bowdern
Head of Financial Services Tax,
Hong Kong
Tel: +852 2826 7166
darren.bowdern@kpmg.com



Sandy Fung
Partner
Tel: +852 2143 8821
sandy.fung@kpmg.com



Nigel Hobler
Partner
Tel: +852 2978 8266
nr.hobler@kpmg.com



Benjamin Pong
Partner
Tel: +852 2143 8525
benjamin.pong@kpmg.com



Kasheen Grewal
Director
Tel: +852 3927 4661
kasheen.grewal@kpmg.com



Anthony Pak
Director
Tel: +852 2847 5088
anthony.pak@kpmg.com

China Tax



Daniel Hui
Partner
Tel: +852 2685 7154
daniel.hui@kpmg.com



Adam Zhong
Partner
Tel: +852 2685 7559
adam.zhong@kpmg.com



Travis Lee
Director
Tel: +852 2143 8524
travis.lee@kpmg.com



Anlio Shi
Director
Tel: +852 2685 7583
anlio.shi@kpmg.com



Wade Wagatsuma
Head of US Corporate Tax,
Hong Kong
Tel: +852 2685 7806
wade.wagatsuma@kpmg.com



Vivian Tu
Director
Tel: +852 2913 2578
vivian.tu@kpmg.com



Becky Wong
Director
Tel: +852 2978 8271
becky.wong@kpmg.com

US Tax

Global Transfer Pricing Services



Patrick Cheung
Partner
Tel: +852 3927 4602
patrick.p.cheung@kpmg.com



Irene Lee
Partner
Tel: +852 2685 7372
irene.lee@kpmg.com



Michelle Sun
Partner
Tel: +852 3927 5625
michelle.sun@kpmg.com

People Services



Murray Sarelius
National Head of People Services
Tel: +852 3927 5671
murray.sarelius@kpmg.com



David Siew
Partner
Tel: +852 2143 8785
david.siew@kpmg.com



Gabriel Ho
Director
Tel: +852 3927 5570
Gabriel.ho@kpmg.com



Kate Lai
Director
Tel: +852 2978 8942
kate.lai@kpmg.com



Lachlan Wolfers
Global Head of Indirect Taxes
Tel: +852 2685 7791
lachlan.wolfers@kpmg.com



Patrick Turner
Partner
ASPA Head of Tax &
Legal Technology
Tel: +852 2978 8251
patrick.turner@kpmg.com

Indirect Tax & Tax Technology

kpmg.com/cn

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG Huazhen LLP — a People's Republic of China partnership, KPMG Advisory (China) Limited — a wholly foreign owned enterprise in China, and KPMG — a Hong Kong partnership, are member firms of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

© 2019 KPMG, a Macau partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

@ 2019 KPMG Tax Services Limited, a Hong Kong limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.