



HONG KONG TAX ALERT

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US' Executive Order on Shipping Tax

Summary

On 19 August 2020, the US government gave notice of its decision to suspend or terminate its reciprocal tax exemption agreement with Hong Kong. As such, US and Hong Kong ship operators may no longer enjoy an exemption from the taxes of the other jurisdiction when sailing into or out of the relevant territory. Affected operators should seek advice on how their tax profile may be impacted and whether they may be eligible for any domestic exemptions.

The US government notified Hong Kong on 19 August 2020 of its decision to suspend or terminate the agreement for double taxation relief in respect of income from the international operation of ships. The agreement had been in effect since 1989. While it is not immediately clear from the statement issued whether the agreement has been terminated or suspended, the terms of the agreement only provide for termination. No notice period is set out in the terms of the agreement, which may mean that it ceases to have effect immediately.

As a result of this, US and Hong Kong ship operators no longer enjoy an exemption from the taxes of the other jurisdiction when sailing into or out of the relevant territory. In the case of Hong Kong ship operators visiting the US, this may mean that they become subject to a 4% tax on their United States gross transportation income (USGTI). In many cases, USGTI is 50% of the non-US corporation's shipping income pertaining to its voyages to, or from, the US. Interestingly, this puts Hong Kong ship operators in a comparatively worse position than ship operators from Mainland China, which has a double taxation agreement with the US. This would seem to be inconsistent with the broader policy intent expressed by the US administration to treat Hong Kong as a part of the mainland for a range of purposes. Furthermore, the scope of the Mainland treaty does not extend to Hong Kong.

Exemptions under US domestic law may continue to apply to exempt certain ship operators, depending on where they are organised and who their owners are. One of the conditions for the US exemption is whether the "country" where the operator is organised grants an equivalent exemption from tax to US companies. The US has historically treated Hong Kong as a separate country for the purposes of the US Internal Revenue Code (see Notice 97-40). It may therefore be possible if the Hong Kong government were to grant a unilateral exemption to US shipping that the termination or suspension of the shipping agreement would have little practical effect on Hong Kong ship operators coming into or out of the US, although US policy in respect of Hong Kong remains in a state of flux and it is possible there may be further changes. Affected operators should speak to their KPMG tax contacts to determine whether they are eligible.

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