Hong Kong (SAR) Tax Alert

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The Hong Kong SAR completed the procedures for bringing the provisions of the OECD's BEPS Multilateral Instrument into effect

Summary

The People's Republic of China (China) recently deposited a notification with the OECD on behalf of the Hong Kong SAR (Hong Kong), confirming that Hong Kong has completed its internal procedures for bringing into effect the applicable provisions of the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS (Multilateral Instrument or MLI) with respect to 31 out of 39 covered Double Tax Agreements (DTAs) of Hong Kong.

This means that the principal purpose test (PPT) for anti-treaty abuse and other MLI provisions that Hong Kong has chosen to apply will become effective in respect of some of the Hong Kong DTAs from 1 April 2023 (for withholding taxes (WHT)) and year of assessment 2024/25 (for other taxes) in Hong Kong.

On 21 February 2023, China deposited the notification for completion of internal procedures for bringing into effect the selected provisions of the MLI with the OECD on behalf of Hong Kong[1]. The notification serves as a confirmation that Hong Kong has completed all the necessary internal procedures for bringing the selected MLI provisions into effect with respect to the covered DTAs of Hong Kong[2].

When the provisions of the MLI enter into effect in Hong Kong and the relevant tax treaty jurisdictions, the covered DTAs of Hong Kong will be modified to incorporate the tax treaty-related BEPS measures (e.g. the principal purpose test) recommended by the OECD. For more details on the changes brought by the MLI, the effective dates of those changes and the potential impacts on Hong Kong businesses, please refer to our *Hong Kong Tax Alert – Issue 14, August 2022* in this link.

One point to note is while the final MLI positions of Hong Kong (deposited with the OECD on 25 May 2022) indicated that 39 out of 46 existing Hong Kong DTAs will be covered by the MLI, the notification deposited on 21 February 2023 only applies to 31 of the 39 covered Hong Kong DTAs.

Jurisdictions that have a DTA with Hong Kong as of 28/2/2023	Hong Kong DTAs not covered by the MLI	Hong Kong DTAs not covered by the MLI notification instrument
Austria, Belarus, Belgium, Brunei, Cambodia, Canada, Czech, Estonia, Finland, France, Georgia, Guernsey, Hungary, India, Indonesia, Ireland, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Luxembourg,	DTAs with: Estonia, Finland, Georgia, Macao SAR, Mainland of China, Mauritius and Serbia (Total: 7) (Note 1)	DTAs with: Belarus, Brunei, Cambodia, Italy, Kuwait, Mexico, Switzerland and Vietnam (Total: 8) (Note 2)

1 The notification can be accessed via this link: https://www.oecd.org/tax/treaties/beps-mli-notification-article-35-7-b-hong-kong.pdf
2 The Inland Revenue (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order, which implemented the MLI in Hong Kong by incorporating it as part of Hong Kong's domestic tax law, came into operation on 9 December 2022. For details, please refer to our Hong Kong Tax Alert – Issue 18, October 2022 in this link.

Jurisdictions that have a DTA with Hong Kong as of 28/2/2023	Hong Kong DTAs not covered by the MLI	Hong Kong DTAs not covered by the MLI notification instrument
Macao SAR, Mainland of China, Malaysia, Malta, Mauritius, Mexico, Netherlands, New Zealand, Pakistan, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, South Africa, Spain, Switzerland, Thailand, United Arab Emirates, United Kingdom and Vietnam (Total: 46)		

Notes:

1. These DTAs are either (i) not signed with a separate sovereign state (i.e. the DTAs with Mainland of China and the Macao SAR) or (ii) signed recently (in 2018 or after) and have already contained all the MLI provisions that Hong Kong has chosen to adopt.

2. Of these eight jurisdictions, Switzerland has not included the tax treaty with Hong Kong as a Covered Tax Agreement in its MLI position deposited with the OECD in 2019 and the remaining jurisdictions are either not a current signatory of the MLI or have not yet deposited the MLI ratification instrument with the OECD.

Taking the HK/Japan DTA as an example, the table below set out the effective dates of the MLI changes in Japan and Hong Kong respectively:

Jurisdiction	Effective dates of the MLI changes
Hong Kong	• For WHT – on or after 1 April 2023 • For other taxes – with respect to year of assessment beginning on or after 1 April 2024 (i.e. from year of assessment 2024/25)
Japan	• For WHT – on or after 1 January 2024 • For other taxes – with respect to taxable periods beginning on or after 23 September 2023 (i.e. for taxable periods beginning on or after 1 April 2024).

KPMG observations

The impact of the MLI and the specific dates/periods from which the changes brought by the MLI will take effect can vary depending on the individual DTAs of Hong Kong. Hong Kong resident business groups wishing to apply for a treaty benefit (e.g. a reduced WHT rate on dividends, interest or royalties or a tax exemption for capital gains) from a treaty jurisdiction and foreign resident entities wishing to obtain a treaty benefit (e.g. a reduced WHT rate on royalties) from Hong Kong should (1) understand how the MLI provisions will be applied to change the relevant DTAs, (2) assess the potential impact on their treaty benefit applications and (3) determine whether any modifications to their current holding or investment structure are required.

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