

Hong Kong (SAR) Tax Alert

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A welcomed modified approach to issuance of Certificate of Resident Status in the Hong Kong SAR

Summary

The Inland Revenue Department (IRD) has adjusted its approach to issuing Hong Kong Certificate of Resident Status (HK CoR) and revised the HK CoR application forms. These changes took effect from 12 June 2023.

This effectively means that under most double tax agreements (DTAs) of the Hong Kong SAR (Hong Kong), applicants that are incorporated / established in Hong Kong should be able to obtain a HK CoR without being assessed on the amount of economic substance (ES) they have in Hong Kong.

In this tax alert, we summarise the key changes to the IRD's approach and the HK CoR application forms and share our observations.



The change in approach to issuing HK CoR

On 8 June 2023, the IRD indicated on its website¹ that it has revisited its approach to issuing HK CoR. The process is now adjusted such that the IRD will base its decision of whether a HK CoR can be issued on **the plain definition of "Resident of Hong Kong" stipulated in the relevant Hong Kong DTA**.

For most of the Hong Kong DTAs, "resident of Hong Kong" is defined to include a company incorporated in Hong Kong and any other person constituted under the laws of Hong Kong. An exception being the **Hong Kong/Japan DTA**, under which "resident of Hong Kong" is defined as a company or any other person **having a primary place of management and control in Hong Kong**.

There is also a note on the IRD's website indicating that an applicant **incorporated or established in Hong Kong** is in general **not required** to provide full details of its establishment and business activities in the HK CoR application form.

Major changes to the HK CoR application forms

With effect from 12 June 2023, the HK CoR application forms for non-individual applicants (i.e. company, partnership, trust, body of persons) have been revised to:

- reflect the above change in the IRD's approach to issuing HK CoR; and
- formalise the existing administrative facilitation measures with respect to HK CoR applications under the DTA between Hong Kong and the Mainland (CN/HK DTA) and relating to the Circular of the State Taxation Administration on Matters Concerning "Beneficial Owners" in Tax Treaties (STA Circular 2018 No. 9).

¹ Please refer to the published news in this link for details: <https://www.ird.gov.hk/eng/ppr/archives/23060801.htm>

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Under the IRD's existing administrative facilitation measures, a bundled HK CoR application can be made to cover (i) the treaty benefit applicant (e.g. the Hong Kong SPV that is the immediate recipient of the dividends from the Mainland) and its ultimate / intermediate 100% shareholder(s) under the "safe harbor rule", (ii) the treaty benefit applicant and its ultimate 100% shareholder that qualifies as a beneficial owner of the dividends under the "same jurisdiction rule" or (iii) the treaty benefit applicant and its intermediate 100% shareholder(s) under the "same treaty benefit rule" under STA Circular 2018 No. 9.

The revised applications forms (i.e. Form IR1313A and Form IR1313B) can be accessed via this [link](#). The major changes to the forms are set out in the table below:

Form IR1313A – For use under the CN/HK DTA

| | |
|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. "Item 6 - Other Information" is newly added | To be completed by applicants (together with the Appendix to the form) if: <ul style="list-style-type: none">the applicant was incorporated / established outside Hong Kong; orthe treaty benefit claim is related to dividends and STA Circular 2018 No. 9. |
| 2. Appendix to Form IR1313A has been revised and now consists of two parts | <ul style="list-style-type: none">Part 1 is to be completed by applicants incorporated / established outside Hong Kong to provide detailed information about its ES in Hong Kong; andPart 2 is to be completed when a bundled application is made in relation to STA Circular 2018 No. 9. |
| 3. Note 3 to the form is newly added | The note indicates that an applicant needs to complete Part 2 of the Appendix if the application is related to (i) a treaty benefit claim on dividends and (ii) an application of the "safe harbour rule" or the "same treaty benefit / same jurisdiction rule" under STA Circular 2018 No. 9. |

Form IR1313B – For use under other Hong Kong DTAs

| | |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. "Item 5 - Other Information" is newly added | To be completed by applicants (together with the Appendix to the form) if: <ul style="list-style-type: none">the applicant was incorporated / established outside Hong Kong; orthe treaty benefit is claimed under the HK/Japan DTA |
| 2. Appendix to Form IR1313B has been revised | to provide detailed information about its ES in Hong Kong. |

KPMG observations

We welcome the modified approach to the issuance of HK CoR adopted by the IRD and the revised HK CoR application forms. These changes imply that effective from 12 June 2023, under most of Hong Kong's DTAs, a HK CoR applicant which is an entity incorporated or established in Hong Kong should be able to get a HK CoR on a straight-forward basis without being assessed on the amount of ES in Hong Kong or requested to provide detailed supporting information/documents regarding its establishment and/or business operations in Hong Kong.

However, business groups wishing to enjoy a treaty benefit under a Hong Kong DTA should note that obtaining a HK CoR does not necessarily mean the relevant DTA jurisdiction would agree to grant the treaty benefit to their Hong Kong resident entities. This is particularly true as the "principal purpose test" for preventing treaty abuse has either been included in an existing Hong Kong DTA during treaty negotiation or will be added to an existing Hong Kong DTA by means of the relevant provisions of the OECD's Multilateral Instrument (MLI). Hong Kong resident entities would still need to have sufficient ES in Hong Kong to withstand any potential challenges on treaty abuse from the DTA jurisdiction from which a treaty benefit is sought.

In addition, with the foreign-sourced income exemption (FSIE) regime that became effective in Hong Kong from 1 January 2023, an entity that is within the scope of the FSIE regime needs to meet the specified ES requirements in Hong Kong if they receive foreign-sourced dividends, interest, royalties or equity disposal gains in Hong Kong (or fulfil the participation exemption conditions in cases of foreign-sourced dividends and equity disposal gains). In particular, in the case where a foreign-sourced equity disposal gain derived by a Hong Kong resident entity is tax exempt in the foreign source jurisdiction as a result of a treaty benefit under a Hong Kong DTA, the "15% subject-to-tax condition" under the participation exemption of the FSIE regime would not be met and the entity has to have adequate ES in Hong Kong to fulfil the ES requirement under the FSIE regime to enjoy a tax exemption of the disposal gain in Hong Kong.

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