

HONG KONG TAX ALERT

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Legislative Council passes Bill to allow Hong Kong to enter into tax information exchange agreements (TIEAs)

The Inland Revenue (Amendment) (No. 2) Bill 2013 was passed by the Legislative Council on 10 July 2013. The Bill allows Hong Kong to enter into TIEAs, which are stand alone agreements on tax information. The Bill also enhances the existing exchange of information (Eol) arrangements under a comprehensive double taxation agreement (DTA). This will allow information exchanged to be used for other non-tax related purposes provided such use is permitted under the laws of both jurisdictions and the competent authority of the supplying party authorises such use.

Tax information exchange agreements

The enactment of the new legislation enables Hong Kong to enter into stand-alone tax information exchange agreements with other jurisdictions. Up until the passing of this legislation, Hong Kong could only agree to exchange tax information as part of a broader DTA.

Hong Kong introduced the Bill to the LegCo following a recommendation of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes ('The Global Forum'). A Phase 1 review of Hong Kong was conducted by the Global Forum in 2011, and it strongly recommended the introduction of legislation to allow Hong Kong to enter into stand-alone tax information exchange agreements.

If Hong Kong did not introduce a legal framework for TIEAs, there was a risk that Hong Kong would be labeled an uncooperative jurisdiction. Such an outcome would have been detrimental to Hong Kong's international reputation and potentially would have undermined Hong Kong's position and competitiveness as an international business and financial centre.

Under a TIEA, Hong Kong can exchange information in relation to any tax imposed by the laws of Hong Kong and the other jurisdiction. This expands the coverage of the types of taxes that are covered by the Eol agreement from the current direct taxes or similar types of taxes, to taxes of any type. In the case of Hong Kong, direct taxes are limited to Profits Tax, Salaries tax and Property Tax whereas other jurisdictions may have a broader range of taxes. The Government has indicated that it will seek to list out in the relevant DTA/TIEA information on the types of taxes that will be subject to Eol.

The Commissioner of Inland Revenue's powers have also been expanded to include tax information in a person's control. Currently, the DTAs concluded by Hong Kong only provide for information to be exchanged where that information is in a person's possession. Going forward, however, the Commissioner will be able to obtain information, which is in the control of a person, notwithstanding that the information may be in another jurisdiction. It remains to be seen how 'control' in this context is to be interpreted.

In addition, the limitation on disclosure of information relating to a period before the relevant agreement has taken effect has been relaxed. In future, the Commissioner will be allowed to disclose tax information generated prior to the effective date of the relevant DTA or TIEA where he is satisfied that the information relates to the carrying out of the provisions of the relevant arrangements. The Government has also indicated that it will continue to adopt a policy of imposing a limitation on information to be exchanged. Information to be exchanged must relate to the carrying out of the provisions of the relevant agreement or the administration or enforcement of the tax laws of the DTA/TIEA partner concerning taxes imposed in the periods after the agreement came into effect. Examples of the type of information that may be exchanged under this provision, relate to the identity of individual taxpayers or information concerning transactions, which occur after the DTA/TIEA comes into operation. For instance, details of the original purchase price of an asset purchased before, but subsequently sold after the effective date of the arrangement.

Notwithstanding these amendments Hong Kong will still only meet the minimum requirements of the 2012 version of the Eol article of the OECD's Model Tax Convention. For instance, it will neither entertain requests for tax examinations abroad nor will it provide assistance in the collection of taxes.

Comment

The enactment of the Bill demonstrates Hong Kong's commitment to implementing the internationally agreed standards of transparency and exchange of tax information, further demonstrating that it is a co-operative jurisdiction. Going forward, the tax information to be exchanged under a DTA/TIEA will have much coverage and the Commissioner will have wider powers to collect and disclose tax information.

As noted in our [Hong Kong Tax Alert – Issue 10, April 2013](#), the enactment of the legislation raises the concern that there may now be little incentive for jurisdictions to enter into a DTA with Hong Kong when they can obtain information under a TIEA. If Hong Kong concludes a TIEA with a jurisdiction, the risk is that the other jurisdiction may have no further interest in concluding a broader DTA with Hong Kong.

It is important that Hong Kong retains the right to choose whether it enters into a DTA or a TIEA with a particular jurisdiction. There may be benefits for Hong Kong to conclude TIEAs with jurisdictions such as the Cayman Islands and the British Virgin Islands. However, Hong Kong should continue to negotiate DTAs with our major trading partners.

It should also be noted that the international tax landscape continues to evolve. In June 2013, an OECD report, prepared at the request of the G8, outlined a number of steps needed to put in place a model of automatic Eol. This followed the G20 Finance Minister's endorsement in April 2013 of automatic Eol of taxes as the expected new standard. In future Hong Kong may come under pressure to comply with this new standard.



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