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HONG KONG TAX ALERT

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Comprehensive double taxation agreement between Hong Kong and Canada enters into force

The comprehensive double taxation agreement (DTA) between Hong Kong and Canada, which was signed on 11 November 2012, entered into force on 29 October 2013.

The DTA provides for reduced withholding tax rates and allocates taxing rights between Hong Kong and Canada, providing investors with greater certainty on their tax liabilities from cross-border trade between the two jurisdictions. The agreement should ultimately facilitate greater economic and investment opportunities between Hong Kong and Canada.

The withholding tax on dividends, interest and royalties will be reduced to:

	Canada Non-treaty Withholding Rate	Treaty Withholding Rate
Dividends	25%	5%[1]/15%
Interest	25%	0%[2] /10%
Royalties	25%	10%

[1] Withholding tax on dividends is reduced to 5 percent if the beneficial owner is a company (other than a partnership) that controls directly or indirectly at least 10 percent of the voting power in the company paying the dividends.

(2) Withholding tax on interest reduced to nil where the recipient is the Government of the Hong Kong Special Administrative Region (HKSAR) or a political subdivision or local authority thereof; the Hong Kong Monetary Authority; any wholly-owned agency or instrumentality, political subdivision or local authority in circumstances as may be agreed from time to time by the competent authorities of the Contracting Parties; and a resident of Hong Kong who is the beneficial owner of the interest who is dealing at arm's length with the Canadian payer of the interest.

The DTA includes a general limitation of benefits provision (Article 26) which seeks to limit treaty shopping by requiring that persons, other than individuals, claiming treaty benefits be 'true' residents of the respective treaty jurisdiction.

The DTA includes anti-treaty shopping provisions are included in the dividend, interest and royalty articles. These provisions deny the reduced withholding rates under the DTA when one of the main purposes of a transaction relating to a dividend, interest or royalty payment is to obtain treaty benefits. These provisions have the potential to deny treaty benefits on many common structures and need to be taken into account in structuring any cross-border transactions between Hong Kong and Canada.

Effective date

The DTA will have effect in Hong Kong for any year of assessment beginning on or after 1 April 2014.

In Canada, the DTA will have effect (i) in respect of tax withheld at source on amounts paid or credited, on or after the first day of January 2014, and (ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January 2014.

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