

Dedicated to finding the best possible tax solutions for your business



www.rsmindia.in

Newsflash: DTAA with Hong Kong Soon - Union Cabinet gives its approval

- Press release dated 10 November 2017

Background

- Hong Kong is a significant economic partner of India, both in terms of trade and investment. India is Hong Kong's 4th largest export market destination and Hong Kong is India's 3rd largest export market. India is 7th largest trading partner of Hong Kong. Hong Kong occupies the 16th position in FDI equity inflows into India¹.
- India is currently a party to around 92 comprehensive Double Taxation Avoidance Agreements (DTAAs) and its existing DTAA between India and China does not extend to cover Hong Kong.
- Unlike most other jurisdictions which impose tax on the worldwide income of their tax residents, Hong Kong follows the territorial basis of taxation (source based taxation). Although, Hong Kong law deems certain income streams derived offshore to be sourced from Hong Kong. As a corollary to this, while Hong Kong residents deriving income from India only face double taxation in limited circumstances, Indian residents deriving income from Hong Kong still face double taxation in both jurisdictions². That said, investors from Hong Kong suffer Indian withholding tax in the range of 20%-40% which otherwise could have been restricted to 10 to 15% in the presence of a DTAA, making their investments into India uncompetitive.
- Against this backdrop, the Central Government had notified the "Hong Kong Special Administrative Region of the People's Republic of China" as 'specified territory' for the purpose of Explanation 2 to Section 90 of the Income Tax Act 1961 ('the Act') vide Notification No. 25 of 2010. The notification enables the Central Government to enter into a DTAA with Hong Kong.

Union Cabinet approves DTAA with Hong Kong

- A Press release was issued dated 10 November 2017 stating that the Union Cabinet chaired by the Prime Minister Shri Narendra Modi has given its approval for entering into DTAA with Hong Kong.
- It is expected that this agreement will stimulate flow of investment, technology and personnel from India to Hong Kong & vice versa, prevent double taxation and provide for exchange of information between two jurisdictions. It will improve transparency in tax matters and will help curb tax evasion and tax avoidance.
- Further, it has been indicated through a press release that DTAA with Hong Kong shall be on similar lines as entered into by India with other countries.

Our Comments

- This is a welcome development as DTAA would help bolster the economic and trade ties between the two jurisdictions. The conclusion of DTAA with Hong Kong would reduce the withholding tax rates that can be applied to interest or royalties or FTS (which can be as high as 40% in certain cases in the absence of DTAA). It will also provide a fair and certain tax environment for business activities by way of an Article on Permanent Establishment (currently the broad concept of 'Business Connection' under the Act is being applied) and Article on Dependent Personal Service.
- This will allow Hong Kong investors to make investment decisions with greater certainty and reduces compliance costs for businesses.
- Hong Kong is a significant international finance centre, and Hong Kong also has a territorial-based tax system. These features coupled with the presence of a DTAA with India are expected to make Hong Kong a favoured location for Indian investor to establish companies. Notably, Hong Kong has a tax treaty network of 38 tax treaties which include China, the UK, France, Switzerland, Japan, Belgium, UAE and Luxembourg.
- While the text of DTAA is currently unavailable in the public domain, it is likely that some of the BEPS-inspired anti-abuse measures will find place in the DTAA with Hong Kong since both the jurisdictions are signatories to the Multilateral Instrument under BEPS.

1. http://www.mea.gov.in/Portal/ForeignRelation/Hong_Kong_03_09_2017.pdf

2. Presently, Section 91 of the Act grants unilateral Tax Credit to Indian residents in case where no DTAA exist (e.g. between India and Hong Kong)

For further information please contact:

RSM Astute Consulting Pvt. Ltd.

13th Floor, Bakhtawar, 229, Nariman Point, Mumbai - 400021.

T: (91-22) 6108 5555 / 6121 4444

F: (91-22) 2287 5771

E: emails@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham and Jaipur.



facebook.com/RSMInIndia



twitter.com/RSM_India



linkedin.com/company/rsm-india

RSM Astute Consulting Pvt. Ltd. (Including its affiliates) is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ .

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

This newsflash is general in nature. In this newsflash, we have summarized the Government of India Press release dated 10 November 2017. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said ruling and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

14 November 2017