Hong Kong signs DTA with U.K.

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On June 21, Hong Kong signed its first comprehensive Double Taxation Agreement (DTA) with the UK. It will enter into force once both parties have completed the necessary legislative procedures, which is expected in 2011.

The agreement covers all taxes imposed on total income or elements of income. In Hong Kong, this extends to Profits Tax, Salaries Tax and Property Tax. In the UK, this applies to Income Tax, Corporation Tax and Capital Gains Tax.

Highlights

- Withholding Tax Rates on Passive Income

	Dividend	Interest	Royalties
UK non-treaty rate	0%/20% [note 1]	20%	20%
HK / UK treaty rate	0%/15% [note 1]	0% [note 2]	3% [note 3]

1. There generally is no withholding tax on dividends paid by a UK resident company, a 20% withholding tax applies to dividends paid to non-UK residents by UK Real Estate Investment Trusts (REIT). This rate is reduced to 15% under the HK-UK DTA.
2. The 0% rate applies except where the anti-treaty shopping provisions in the HK/UK DTA apply e.g. where a non-listed Hong Kong company is established, acquired or maintained for the main purpose or one of the main purposes to secure the treaty benefits.
3. The withholding tax rate for royalties will be capped at 3%.

- Shipping and Air Transport

For shipping and air transport currently enjoying benefits under the existing limited DTAs for airline income and shipping income, the HK-UK DTA will supersede the limited DTAs but maintain the same level of benefits.

- Income from Employment

Income from U.K. employment derived by a Hong Kong resident will be exempt from tax in the U.K. provided the following conditions are satisfied.

1. The recipient is present in the U.K. for a period or periods not exceeding 183 days in any 12-month period commencing or ending in the taxable period concerned;
2. The remuneration is paid by, or on behalf of, an employer who is not a resident of the UK;
3. The remuneration is not borne by a permanent establishment (PE) which the employer has in the UK; and
4. The remuneration is taxable in Hong Kong.

- Exchange of Information (EoI)

The HK-UK DTA adopts the 2004 OECD model EoI article, with the following modifications to provide additional safeguards against possible abuse of the article:

1. The scope of information exchanged is restricted to “taxes covered” by the DTA;
2. Information exchanged shall not be disclosed to any third jurisdiction;
3. The UK competent authority may disclose information to the Information Commissioner, the Adjudicator and the Parliamentary Ombudsman and their staff in the investigation of complaints against the administrative actions of Her Majesty’s Revenue and Customs.

LehmanBrown’s Observation

Hong Kong continues to expend its treaty network, which will bring about tax savings and greater certainty regarding tax liabilities arising from cross-border economic activities and should encourage closer economic and trade links between Hong Kong and the treaty countries.

With DTA in place, the resident company in UK will have an additional incentive to utilize Hong Kong as a gateway for investment into Mainland China, with the potential to enjoy the unique benefits under Closer Economic Partnership Arrangement (CEPA) signed between Hong Kong and Mainland China. Similarly, companies in Hong Kong with ambitions to expend in Europe will be able to invest in UK and utilize their extensive tax treaties networks for other investments in Europe.