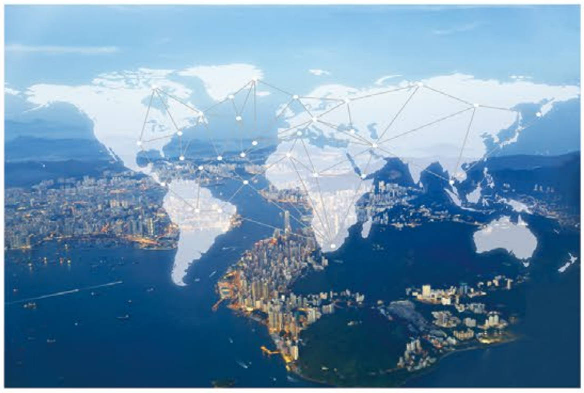
chapter 4

International Tax Collaboration

Tax Treaty Network



Double taxation arises where the same item of income or profit of a taxpayer is subject to tax in Hong Kong as well as in another tax jurisdiction. A wide tax treaty network can help minimise exposure of Hong Kong residents and residents of the tax treaty partners to double taxation. It will also facilitate the flows of trade, investment and talent between Hong Kong and the rest of the world, and enhance Hong Kong's competitiveness as an international financial, investment and commercial hub.

As at 31 March 2022, Hong Kong has signed comprehensive avoidance of double taxation agreements / arrangements (CDTAs) with 45 jurisdictions. They are Austria, Belarus, Belgium, Brunei, Cambodia, Canada, the Mainland of China, the Czech Republic, Estonia, Finland, France, Georgia, Guernsey, Hungary, India, Indonesia, Ireland, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Luxembourg, the Macao Special Administrative Region, Malaysia, Malta, Mexico, the Netherlands, New Zealand, Pakistan, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, South Africa, Spain, Switzerland, Thailand, the United Arab Emirates, the United Kingdom and Vietnam. The CDTAs set out the allocation of taxing rights over different types of income, and provides for dispute resolution and exchange of information between competent authorities.

Hong Kong also makes use of tax information exchange agreements (TIEAs) as instruments for exchange of information with appropriate partners. As at 31 March 2022, Hong Kong has signed TIEAs with 7 jurisdictions. They are Denmark, the Faroes, Greenland, Iceland, Norway, Sweden and the United States of America.

Hong Kong is committed to enhancing tax transparency and preventing tax evasion. The Central People's Government has deposited a declaration to the Organisation for Economic Cooperation and Development (OECD) for extending the application of the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) to Hong Kong. With the entry into force of the Convention in Hong Kong on 1 September 2018, Hong Kong can now ride on a multilateral platform under the Convention to implement various forms of administrative co-operation in the assessment and collection of taxes, including exchange of information on request, automatic exchange of financial account information and automatic exchange of country-by-country reports and spontaneous exchange of information on tax rulings under the base erosion and profit shifting package promulgated by the OECD.

Advance Pricing Arrangement

An Advance Pricing Arrangement (APA) is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for those transactions over a fixed period of time. It provides a tool for multinational enterprises to manage and mitigate the transfer pricing risk on a prospective basis.

A unilateral APA is an arrangement between the Commissioner and a person concerning the transfer pricing of controlled transactions. As the APA process does not involve the agreement with a CDTA partner, it does not guarantee the agreement of the CDTA partner to the arrangement made.

A bilateral APA is an arrangement between the Commissioner and the competent authority of a CDTA partner concerning the transfer pricing of controlled transactions. It provides certainty to a person that double taxation will not arise. The same also applies to a multilateral APA which is a similar arrangement involving the partners of two or more CDTAs.

The Department rolled out the APA programme in April 2012 and introduced a statutory APA regime in July 2018. Up to 31 March 2022, the Department has received quite a number of unilateral and bilateral APA applications which involve CDTA with different partners including the Mainland of China, Italy, Japan, Korea, Malaysia, the Netherlands, Thailand and the United Kingdom. These cases are currently under different stages of the APA programme and a few of them have already been completed.

Automatic Exchange of Financial Account Information

For the purposes of enhancing tax transparency and combating cross-border tax evasion, the OECD released in July 2014 a new international standard for automatic exchange of financial account information in tax matters (AEOI). In September 2014, Hong Kong indicated its support for implementing AEOI on a reciprocal basis with appropriate partners with a view to commencing the first exchanges in 2018. So far, over 120 jurisdictions have committed to implementing this international standard.

Hong Kong put in place a legislative framework for implementing AEOI in 2016 and developed the related information technology systems in 2017. Reporting financial institutions are required to identify financial accounts held by tax residents of reportable jurisdictions in accordance with the required due diligence procedures, collect the reportable information of these accounts and furnish their Financial Account Information Returns with the required information via the AEOI Portal. In 2021-22, compound penalty was imposed on or warning letters were issued to a few reporting financial institutions for their failure to submit Financial Account Information Returns on time.

Hong Kong will only conduct AEOI with a reportable jurisdiction when an arrangement is in place with the reportable jurisdiction concerned to provide the basis for exchange. Hong Kong first adopted a bilateral basis in implementing AEOI. Later, after the Convention came into force in Hong Kong on 1 September 2018, Hong Kong has been able to take a multilateral approach in implementing AEOI. Hong Kong's network for tax information exchange has been expanded accordingly.

Up to 2021, Hong Kong smoothly completed four rounds of AEOI with other jurisdictions through the OECD Common Transmission System.

Automatic Exchange of Country-by-Country Reports

Hong Kong put in place a legislative framework for implementing the country-by-country reporting in 2018. The requirements for filing a country-by-country return only apply to a multinational enterprise group whose annual consolidated group revenue reaches the specified threshold amount of HK$6.8 billion. The primary obligation of filing a country-by-country return is on the ultimate parent entity resident in Hong Kong. A Hong Kong entity of a reportable group whose ultimate parent entity is not resident in Hong Kong will be subject to a secondary obligation of filing if certain conditions are met. The mandatory filing of country-by-country return commenced for accounting period beginning on or after 1 January 2018.

To facilitate Hong Kong entities to comply with their reporting obligations and implementation of automatic exchange of country-by-country reports, the Department has launched the CbC Reporting Portal for submission of returns and data files. Hong Kong has smoothly completed the automatic exchange of country-by-country reports for 2018, 2019 and 2020 with exchange partners.