

DOUBLE TAXATION AGREEMENT BETWEEN HONG KONG AND THAILAND

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Further to the signing of the Hong Kong's first comprehensive double taxation agreement ("DTA") with Belgium on 10th December 2003, the Hong Kong government signed a DTA with the Thai government ("the HTDTA") on 7th September 2005. This is the second DTA that the Hong Kong government signed with an overseas tax regime. It is also the first comprehensive DTA made between Hong Kong and an Asian country. This agreement took effect in Hong Kong from 1st April 2006 (i.e. the year of assessment 2006/07) and in Thailand from 1st January 2006.

The signing of HTDTA has positive impact on both the Hong Kong and Thai investors doing businesses in each other's country. It can promote trade and closer economic relationship between the two jurisdictions through provision of tax relief in the case of double taxation.

Similar to the DTA signed with Belgium, the HTDTA defines the taxing right of various items including dividends, interest, royalties, employment income, business profits and income from immovable property etc. It also includes provision governing the exchange of information between Hong Kong and Thai tax authorities. Some main provisions laid down in the HTDTA are summarized in the Appendix.

Opportunities

The HTDTA creates tax-saving opportunities to both the Thai and Hong Kong investors:

A. For Hong Kong Investors

The HTDTA provides a more tax effective way for them to structure their Thai investments. Before the signing of HTDTA, any profits remitted from the Thai branch of a Hong Kong company will be liable to a 10% withholding tax in Thailand. After the signing of the HTDTA, the withholding tax will be exempted by the Thai government.

In addition, a Hong Kong investor who receives interest income from Thailand, but not attributable to a permanent establishment there, Thai withholding tax is reduced from the current 15% to 10% in two situations:


- i. if the interest is beneficially owned by a financial institution or insurance company in Hong Kong; or
- ii. if the interest is beneficially owned by the Hong Kong investor and is paid with respect to indebtedness arising from the sale on credit of equipment, merchandise or services.



B. For Thai Investors

Although there is no withholding tax in Hong Kong regarding payment of interest and dividend to foreign residents, the Thai companies may be able to enjoy a lower effective tax rates in the country on royalties income derived from Hong Kong. For example, a Thai resident receiving royalty (assume that no person carrying on a trade, profession or business in Hong Kong has at any time wholly or partly-owned the relevant property that produce the royalty) from a Hong Kong company for the use of, or the right to use, any copyright of literary, artistic or scientific work is currently subject to an effective tax rate of 5.25% (i.e. $17.5\% \times 30\%$) on the gross payment. Under the HTDTA, a Thai company receiving royalty from the Hong Kong company for the above payments will be subject to a reduced withholding tax rate of 5% only.

Conclusion

The HTDTA is the second comprehensive double taxation treaty signed by the Hong Kong government with foreign countries and is the first one signed with a country in Asia-Pacific region. We expect that the Hong Kong government will conclude more DTAs with other countries so as to promote foreign trades and investments in Hong Kong. Both the Hong Kong and foreign investors should keep an eye on the government' s announcement. 

APPENDIX – A SUMMARY OF THE MAIN PROVISIONS LAID DOWN IN THE HTDTA

Major Issues	Description
Definition of “Resident”	Under the HTDTA, the residency of a person is determined by reference to his/her domicile and residence. For person other than an individual, its residence will be determined by its place of management or incorporation or any other criterion of a similar nature.
Permanent Establishment	For the purpose of determining whether a person is subject to tax in either Hong Kong or Thailand, it is crucial to ascertain if a permanent establishment (“PE”) is established and business has been carried on through such PE. The terms “PE” means a fixed place of business through which the business of an enterprise is wholly or partly carried on. Although the merely maintenance of storage place and performance of buying activities does not constitute a PE, an enterprise will be deemed as having a PE in a territory if : <ul style="list-style-type: none"> i. it carries on supervisory activities in a territory for more than 6 months in any 12-months period in connection with a building site, or a construction, assembly, installation or dredging project which is being undertaken in that territory; or ii. it furnishes services, including consultancy services, through employees or other personnel engaged by it for such purpose, but only where activities of that nature continue within that territory for a period or periods aggregating more than 6 months within any 12-months period.
Income From Immovable Property	The income will be subject to tax where the property is situated.
Business Profits	The profits of an enterprise of a territory will be subject to tax in that territory unless the enterprise carries on business in the other territory through a PE situated therein.
Dividend Income	The withholding tax rates applied to dividend payment shall not exceed 10% of the gross amount of dividends.
Interest Income	The withholding tax rates applied to interest payment are as follows:- <ul style="list-style-type: none"> i. 10% of the gross amount of the interest if the interest is beneficially owned by any financial institution or insurance company; ii. 10% of the gross amount of the interest if the interest is beneficially owned by a resident of the other contracting party and is paid with respect to indebtedness arising as a consequence of a sale on credit by a resident of that other contracting party of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm’s length; and iii. 15% of the gross amount of the interest in all other cases .
Royalties	The withholding tax rates applied to royalties are as follows:- <ul style="list-style-type: none"> i. 5% of the gross amount of the royalties if they are made as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work; ii. 10% of the gross amount of the royalties if they are made as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process; and iii. 15% of the gross amount of the royalties in all other cases.
Employment Income	A Hong Kong resident will generally be exempted from Thai income tax (vice versa) if: <ul style="list-style-type: none"> i. he or she is present in Thailand for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned; and ii. the remuneration is paid by, or on behalf of, an employer who is not a resident in Thailand; and iii. the remuneration is not borne by a PE which the employer has in Thailand; and
Methods for Elimination of Double Taxation	Tax Credit is available for setting off the tax already paid in the other side.

Note: The preferential tax treatments are subject to various conditions laid down in the HTDTA. Investors should therefore refer to the terms of the agreement for details to make sure that the relevant provisions are applicable to them.