Hong Kong:
Double taxation agreement signed with Liechtenstein

The Hong Kong Special Administrative Region of the People's Republic of China signed its 14th comprehensive agreement for the avoidance of double taxation (CDTA) with the Principality of Liechtenstein on 12 August 2010 (HK-LI CDTA). The agreement will enter into force upon the exchange of instruments of ratification.

Despite being a small, landlocked country nestled between its larger counterparts Austria and Switzerland, Liechtenstein boasts a prosperous, vibrant economy with a vital financial services sector, an economic profile that is shared by Hong Kong. It is thus anticipated that the HK-LI CDTA will boost closer economic cooperation and promote greater synergies between the financial service sectors in the two jurisdictions.

Liechtenstein investors will benefit from Hong Kong's expanding CDTA network, which includes a favorable double tax arrangement concluded with China.

Withholding tax (WHT) rates under the HK-LI CDTA

	Liechtenstein domestic WHT rate	Hong Kong domestic WHT rate	WHT rate under HK-LI CDTA
Dividends	4%[1]	0%	0%[2]
Interest	0%/4%[3]	0%	0%
Royalties	0%	4.95%[4]	3%[5]

[1] The Liechtenstein Tax Act is currently undergoing a comprehensive revision, with a new law expected to come into effect on 1 January 2011. The amended law will abolish the withholding tax on dividends.
[2] Unlike most of Hong Kong's other CDTAs, the HK-LI CDTA does not include a shareholding requirement for a beneficial owner of dividends to qualify for the withholding tax exemption under the HK-LI CDTA.
[3] Article 88b et seq. of the Liechtenstein Tax Act. The withholding tax on interest also will be abolished under the new law, expected to come into effect on 1 January 2011.
[4] The 4.95% rate applies provided the royalty is not paid to a related party or, if paid to a related party, the licensed intellectual property has never been owned in whole or in part by a person carrying on business in Hong Kong.
[5] There is currently no withholding tax levied on royalties. However, if Liechtenstein imposes a withholding tax on royalties in the future, the rate will be capped at 3% under the HK-LI CDTA.

Anti-abuse measures

Unlike what appears to be a general trend in Hong Kong's recent CDTAs, such as those signed with Indonesia, the Netherlands and the U.K., the HK-LI CDTA does not contain any anti-abuse measures that would deny benefits under the dividend, interest and royalty articles for a taxpayer whose "*main purpose or one of whose main purposes*" in structuring a particular transaction is to avail itself of benefits under the relevant article. As a result, there seem to be fewer restrictions to obtaining benefits under the HK-LI CDTA. That said, the dividend, interest and royalty articles all require claimants to be the beneficial owner of the relevant income, so it will be open to the tax authorities to challenge claims under the HK-LI CDTA where the claimant is not the true beneficial owner.

Another step closer to the "white list" for Hong Kong

Like all of Hong Kong's CDTAs signed in 2010, the HK-LI CDTA contains the updated 2004 version of the OECD standard Exchange Of Information (EOI) article, which provides that a jurisdiction cannot refuse a request for information solely because it has no domestic tax interest in the information or solely because the information is held by a bank or other financial institution.

In 2008, Liechtenstein was on the OECD's "grey list" of countries for not having implemented the OECD's internationally agreed tax standards. Following Liechtenstein's conclusion of 12 bilateral tax information exchange agreements, notably with Germany, the U.K. and the U.S., the Principality was considered to have substantially implemented the internationally agreed OECD tax standards and removed from the grey list in November 2009. (To date, Liechtenstein has concluded 16 tax information exchange agreements/CDTAs containing the updated OECD EOI standards and is continuing to try to expand its treaty network.) Similarly, Hong Kong needs 12 CDTAs that incorporate the updated OECD EOI standards to be considered as having adequately implemented the OECD's transparency and EOI standards. With the signature of the HK-LI CDTA, Hong Kong has now signed 10 CDTAs containing such standards (i.e. Austria, Brunei, Hungary, Indonesia, Ireland, Kuwait, the Netherlands, Mainland China, the U.K. and now, Liechtenstein). As such, Hong Kong can look forward to joining Liechtenstein on the OECD's "white list" in the near future, thereby affirming its position as a cooperative and responsible global player in the international arena.

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