

Press release

Hong Kong signs tax treaty with Spain

Friday, April 1, 2011

The Chief Secretary for Administration, Mr Henry Tang, today (April 1) signed in Hong Kong an agreement with Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income on behalf of the Hong Kong Special Administrative Region Government. The Spanish Second Vice-President, Ms Elena Salgado, signed on behalf of her Government.

This is the 20th comprehensive agreement for the avoidance of double taxation (CDTA) concluded by Hong Kong with its trading partners, coming after those with Belgium, Thailand, the Mainland of China, Luxembourg, Vietnam, Brunei, the Netherlands, Indonesia, Hungary, Kuwait, Austria, the United Kingdom, Ireland, Liechtenstein, France, Japan, New Zealand, Switzerland and Portugal.

Mr Tang said as the CDTA sets out clearly the allocation of taxing rights between the two jurisdictions and the relief on tax rates on different types of passive income, it will help investors better assess their potential tax liabilities from cross-border economic activities.

"The agreement will boost closer economic and trade ties between the two places, and provide added incentives for companies in Spain to do business or invest in Hong Kong, and vice versa," he added.

In the absence of a CDTA, income earned by Spanish residents in Hong Kong are subject to both Hong Kong and Spanish income tax. Profits of Spanish companies doing business through a branch in Hong Kong are fully taxed in both places. Under the agreement, tax paid in Hong Kong will be allowed as a credit against Spanish tax payable.

In the absence of a CDTA, Hong Kong residents receiving dividends from Spain not attributable to a permanent establishment in Spain are subject to the Spanish withholding tax, which is currently at 20%. Under the agreement, such withholding tax rate will be capped at 10%. The dividends withholding tax will be further reduced to 0% if the beneficial owner of the dividends is a company (other than a partnership) holding directly at least 25% of the capital of the company paying the dividends. The Spanish withholding tax on interest, currently at 19%, on Hong Kong residents will be capped at 5%. The Spanish withholding tax on royalties, currently at 24%, will be capped at 5%. Moreover, the Branch Profits Tax on after-tax profits remitted by a Spanish permanent establishment to its foreign head office (the current withholding rate is 19%) will cease to apply to Hong Kong residents.

Under the CDTA, Hong Kong airlines operating flights to Spain will be taxed at Hong Kong's corporation tax rate (which is lower than that of Spain). Profits from international shipping transport earned by Hong Kong residents that arise in Spain, which are currently subject to tax there, will not be taxed in Spain under the agreement.

The Hong Kong/Spain CDTA incorporated the latest Organisation for Economic Co-operation and Development standard on exchange of information.

The Hong Kong/Spain CDTA will come into force after the completion of ratification procedures on both sides. In the case of Hong Kong, an order is required to be made by the Chief Executive in Council under the Inland Revenue Ordinance. The order is subject to negative vetting by the Legislative Council.

Hong Kong is actively seeking to establish a network of CDTAs with major trading and investment partners. Where CDTA discussions with some jurisdictions cannot be started for the time being, Hong Kong will seek to conclude limited double taxation avoidance arrangements for airline and shipping income with relevant partners. So far, 27 avoidance of double taxation agreements on airline income, six agreements on shipping income and two agreements on airline and shipping income have been reached.

Details of the Hong Kong/Spain CDTA can be found on the Inland Revenue Department's website (www.ird.gov.hk/eng/pdf/Agreement_Spain_HongKong.pdf).

Ends