



Newsletter No 056 (EN)

**Hong Kong – Thailand
Double Taxation Agreement**

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1. History

A comprehensive Double Taxation Agreement (DTA) between the Hong Kong Special Administrative Region (the Hong Kong SAR) and Thailand was signed on 7 September 2005. The agreement was the third of its kind in Hong Kong which has now a total of 14 DTAs after entering into 9 DTAs in 2010 alone.

2. Scope of Application

This agreement applies to residents of Hong Kong and Thailand. Of particular interest is the case of residents of Hong Kong. The DTA includes, among others, the following groups of persons as Hong Kong residents:

- Any individual who stays in Hong Kong for a minimum of 180 days during the assessed year, or a minimum of 300 days in two consecutive years
- A company which is either incorporated in Hong Kong or normally controlled and managed in Hong Kong.

The DTA contains further provisions regulating “Permanent Establishments (PEs)”. Special provisions are made for the following cases:

- A building site, a construction, assembly or installation project or supervisory in connection therewith, which lasts for a minimum of 6 months;
- The provision of services that continues within the source country for a minimum of 6 months within a 12-month period.

3. Important Applications

Certain important aspects of the DTA are described below:

a) Taxation on business profits (Article 7)

In determining the profits of the PE:

- profit sharing arrangements are allowed. In addition, if an enterprise merely purchases goods in the source country, no profit will be allocated to the PE.
- deductions are allowed for expenses incurred for the purpose of the PE, including ‘executive and administrative expenses’.

Besides the abovementioned, remittance of profits by a branch office in Thailand to a Hong Kong head office is no longer subject to the 10% Thai withholding tax.

b) Taxation on dividends (Article 10)

Regarding dividends the DTA provides that the country of source can tax up to 10% of the gross amount. However, Hong

Kong does not tax dividends under the current domestic tax law.

c) Taxation on employment income

The rules relating to income differentiate between income derived from independent personal services and from dependent personal services.

According to Article 14, income derived from independent personal services (e.g. engineering fee, lecture remuneration, etc.) is taxable only in the resident country, unless:

- the person has a 'fixed base' in source country; or
- the person is present in the source country for at least 183 days within a 12-months period

According to Article 15, income derived from dependent personal services (e.g. salaries, wages, etc.) in the source country will be taxable only in resident country if:

- the person is present in the source country for less than 183 days for any 12-month period;
- and
- the remuneration is paid by or on behalf of employer who is non-resident of the source country;
- and

- the remuneration is not borne by a PE or a fixed base which the employer has in the source country. this however does not apply to directors' fees which may be taxed in the country of source.

4. Impacts on Trade

As abovementioned, residents of the Hong Kong SAR including companies incorporated outside its territory (particularly mainland China, the Cayman Islands and Bermuda) who are managed within the territory of the respective state.

While the PE will be treated for profit purposes as a separate enterprise and only the profits attributable to that enterprise will be taxed in the respective country it is also possible to deduct expenses incurred by it in the cause of business.

This should alleviate the problems with the Thai revenue authority, who has tended to impose a restrictive practice of cost allocation practice.

Considering that Hong Kong bases its taxation unlike most other countries strictly on a territorial basis, it is possible that certain employment income of Hong Kong residents be taxed by nei-

ther the source country nor the resident country.

Effective 1 January 2006 for Thailand and 1 April 2006 for the Hong Kong SAR, this DTA brought some profound impacts on international trade in Thailand, considering Hong Kong as one of its major trading and investment partners. The agreement provides investors with a further level of certainty in tax liability, and will facilitate increased business interactions between the two countries.

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