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## Hong Kong signs its first Tax Information Exchange Agreement

### Highlights

- » Hong Kong signed its first Tax Information Exchange Agreement with the United States of America. The Exchange of Information however, comes on a stand-alone basis and does not provide the benefits of a comprehensive Double Tax Agreement
- » Hong Kong may soon consider to enter into further Tax Information Exchange Agreements - is Germany next?

### Background

On 25 March 2014, the Secretary for Financial Services and the Treasury signed a Tax Information Exchange Agreement ('TIEA') with the United States of America ('US'). The agreement permits the Exchange of Information ('Eol') between the Hong Kong Special Administrative Region and the US. It is the first of its kind in the History of Hong Kong.

As previously mentioned in our [Tax Letter 2013/2](#) Hong Kong has been very busy since 2009 to sign numerous Double Tax Agreements ('DTA') in order to avoid a grey listing by the Global Forum of Transparency and Exchange of Information for Tax Purpose ('The Global Forum'). After a peer review undertaken by the Global Forum in 2011, Hong Kong has been advised to improve their Eol with other countries. By this time, Hong Kong however, could not sign TIEA due to their local legal framework. The legal framework changed in April 2013 when a bill was gazetted, allowing Hong Kong to accept TIEAs. With the signing of the US TIEA this has been put into action.

### Who is affected by the new TIEA

Due to the TIEA US citizens in Hong Kong or Hong Kong citizens in the USA face the following changes:

- » Information with regard to any taxes may be requested and exchanged between the two tax authorities;
- » Such Information can relate to a time even before the effectiveness of the TIEA;
- » The group of the persons entitled to deliver such information has been extended;

### Potential implications for German companies and individuals

There is no immediate impact for German companies or citizens unless they have relevant transactions and relations between the US and Hong Kong, e.g. a German being a US Greencard holder.

However, indirectly it has to be considered, that there have been discussions between the German and Hong Kong authorities with regard to a TIEA or DTAs. Whereas a DTA provides certainty in cases of double taxation and Eol, a TIEA would only regulate the Eol. From a taxpayers perspective a DTA is therefore preferred. Communication between the authorities has not developed much beyond an exploratory stage yet but due to the new TIEA signed with the US, further developments can be expected soon.

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As alternative to a TIEA the German tax authorities may also suggest to enter into an agreement related to the 'Avoidance of Double Taxation and Double Non-Taxation'. A draft has been issued by the German Federal Finance Ministry in 2013. In particular, Article 22 which references the methods of avoidance of Double Taxation includes several pre-conditions, which have to be fulfilled in order to achieve a tax exemption in Germany. Usually, the exemption method is standard policy in all DTA signed by Germany.

Based on this draft, certain income will not be exempt in Germany if the underlying income can be taxed in the other places (e.g. Hong Kong) but has effectively not been taxed. In such case, the 'switch-over' to a tax credit will apply.

In addition, the EoI Article in the draft agreement is wider than the 2010 OECD draft in that the information may be used for other purposes if according to the laws of both contracting countries the information may be used for such purposes and the transmitting authorities agree to the use for such other purpose. However, the use for other purposes may still be permitted even without the agreement of the transmitting authority:

- » where there is a life at risk or
- » where major wealth is at stake and there are exigent circumstances.

In the following we provide a very simplified overview of the agreements that could be signed between Germany and Hong Kong and their implications for taxpayers:

Implications in terms of	Double Tax Agreement (DTA)	Draft Agreement Avoidance of Double Taxation and Double Non-Taxation	Tax Information Exchange Agreement (TIEA)	Current situation
Exchange of Information (EoI) possible	✓	✓	✓	✗
Double Taxation risk can be minimized	✓	✓	✗	✗
Withholding tax in Germany is reduced	✓	✓	✗	✗

### Our point of view

Hong Kong is following the global trend towards transparency. The signed TIEA with the US is a significant step for Hong Kong, considering that only one year ago there was not even a legal basis to exchange information outside of a DTA. But Hong Kong was under pressure to keep up with the requirements of the Global Forum for transparency.

For Germany the likelihood increases drastically that Hong Kong would sign either a TIEA with Germany or its draft agreement. However, the chances of Germany signing a DTA with Hong Kong is becoming a remote hope. If this is the case, then Singapore remains very well positioned as an investment hub having secured a DTA with Germany long ago

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