

New Hong Kong - Netherlands tax treaty

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The Hong Kong SAR and the Netherlands recently signed a new double taxation treaty (“**DTT**”). This DTT is expected to strengthen the economic relations between these jurisdictions and will offer new tax-efficient structuring opportunities for companies in the Netherlands, Hong Kong and Mainland China.

When does the DTA enter into force?

The DTT will enter into force once the countries have completed their internal ratification procedures. It is expected that the DTT will become effective in the Netherlands on 1 January 2011 and in Hong Kong on 1 April 2011.

What are its key features?

The DTT generally follows the OECD Model Convention and has the following special features:

No withholding on dividends to qualifying shareholders

Dividends paid by a Dutch resident company to a Hong Kong shareholder are fully exempt from Dutch dividend withholding tax (instead of the 15% Dutch domestic rate) if:

- the company holds directly at least 10% of the capital of the Dutch company, provided that:
 - (i) its shares are regularly traded on a recognised stock exchange; *or*
 - (ii) at least 50% of its shares are held by a Hong Kong or EU resident company that is regularly traded on a recognised stock exchange; *or*
 - (iii) it is a bank or insurance company established and regulated in Hong Kong; *or*
 - (iv) it is a headquarters company of a multinational corporate group;

- the shareholder is a government body or institution created by a government body or a pension fund; or
- the Dutch authorities determine that the main purpose of establishing, acquiring or maintaining the Hong Kong company was not the securing of this exemption under the DTT.

In other cases, the Dutch withholding tax rate is reduced to 10%.

No withholding on interest

Under the DTT, no withholding tax on interest payments is allowed. Currently, there is no such withholding tax in either jurisdiction.

3% withholding on royalties

For royalty payments, Hong Kong has agreed to reduce its withholding tax to 3%. The Hong Kong domestic rate is 4.95%. There is no withholding tax on royalty payments in the Netherlands.

Capital gains

The right to tax capital gains is generally allocated to the jurisdiction of the company realising the gain, but the other jurisdiction may – subject to certain limited exceptions - tax capital gains on the shares in a company deriving more than 50% of its asset value directly or indirectly from real estate situated in that other jurisdiction.

Exchange of information

This DTT is Hong Kong's first agreement adopting international standard exchange of information provisions. These provisions require the tax authorities in both jurisdictions to provide information that is foreseeably relevant for taxation purposes in the other jurisdiction. Exchange of information will only occur upon request of the authorities in the other jurisdiction and no automatic or spontaneous exchange of information will be required.

To avoid “fishing expeditions”, the requesting authorities (typically, the Netherlands) must identify the target person, the specific information requested and specify why that information is foreseeably relevant. Also, the DTT does not provide for mutual assistance in the collection of taxes.

No liable-to-tax requirement for Hong Kong companies

Any company incorporated or normally managed and controlled in the Hong Kong SAR is considered a resident of Hong Kong for the DTT and is entitled to the benefits of the DTT. It is not required that such company is actually liable to tax in Hong Kong.

Arbitration

A taxpayer in either jurisdiction may submit its double taxation matters to arbitration if the competent authorities have been unable to resolve double taxation, e.g. resulting from deviating interpretations of the DTT, by mutual agreement.

Tax planning opportunities

This DTT will further improve the economic ties between the Netherlands, Hong Kong and Mainland China and offers tax planning opportunities in all three jurisdictions.

The combination of this DTT with the Dutch participation exemption regime and an extensive tax treaty network makes the Netherlands a tax-efficient gateway into Europe and, indeed, the rest of the world for companies and individuals from Hong Kong and Mainland China.

Likewise, the DTT provides a favourable basis for Dutch companies to enter the growing Hong Kong and other Asian markets.

Contact information

If you have any questions on the DTT or the tax planning opportunities it may offer, please get in touch with your contact person at De Brauw Blackstone Westbroek or with any of the following individuals.

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