



税务快讯

香港与澳门签署税务安排

香港特别行政区 ("香港") 与澳门特别行政区 ("澳门") 于 2019 年 11 月 25 日完成签署全面性避免双重课税安排 ("税务安排"), 文本可从此[链接](#)下载。

税务安排将在双方完成各自法律规定的批准程序后生效。

适用的税种

香港	澳门
利得税	所得补充税
薪俸税	职业税
物业税	市区房屋税

常设机构

在税务安排下, 香港税收居民在通过设在澳门的常设机构在澳门进行营业, 应就归属于该常设机构的利润在澳门征税。

税务安排采纳了经济合作与发展组织 ("经合组织") 在税基侵蚀和利润转移 ("BEPS") 项目第 7 项行动计划《防止人为规避构成常设机构》中对常设机构定义的建议。税务安排的常设机构定义如下:

- 固定营业场所, 但整体活动属于准备或辅助性质的场所除外;
- 建筑工程型常设机构 – 持续六个月以上的建筑工地、建筑或安装工程;
- 服务型常设机构 – 一方企业在任何 12 个月中连续或累计超过 183 天, 通过人员在另一方为同一项目或相关联项目提供服务;

- 代理人常设机构 – 非独立代理人在一方代表另一方的企业经常性地订立合同，或经常性地 在合同订立过程中发挥主要作用，而该企业不对相关按惯例订立的合同做实质性修改。

此有关常设机构的条文包括反避税条款，如反拆分规则及涵盖更广范围的非独立代理人常设机构。

预提税

目前，澳门和香港均未对股息或利息征收预提税。尽管如此，税务安排中仍包括了有关股息和利息的标准条款。至于特许权使用费，澳门并未就此征收预提税，而香港则对此征收预提税。

有关当地及税务安排下适用于股息、利息和特许权使用费的预提税率总结如下：

	股息	利息	特许权使用费
澳门当地税率	0%	0%	0%
香港当地税率	0%	0%	4.95%/16.5% ¹
税务安排税率	0%/5% ²	0%/5% ²	3%

¹ 一般适用税率为 4.95%。若向关联实体支付特许权使用费，而该项知识产权既往为在香港经营业务的人士所有，则适用上表较高税率 16.5%。若纳税人适用两级制利得税率，2.475% (或较高税率 8.25%) 适用于首 200 万港元应评税利润，其后的应评税利润则按 4.95% (或较高税率 16.5%) 征税。

² 若支付予澳门特别行政区政府、香港特别行政区政府、澳门金融管理局、香港金融管理局、澳门退休基金会、澳门社会保障基金、香港外汇基金，及任何经双方主管当局不时同意的、由澳门特别行政区政府或香港特别行政区政府全权或主要拥有的机构，适用税率为 0%；在其他情况下，适用税率则为 5%。

教师和研究人员

合资格的、受雇于香港雇主的教师或研究人员，当在澳门认可的教育或科研机构从事教学或研究，而其所取得的相关报酬已在香港征税的情况下，澳门应在三年内免于征税。同样地，在满足一定条件的前提下，受雇于澳门雇主的教师或研究人员在香港从事教学或研究所得，亦可在香港三年内免于征税。

税务安排为香港第三份签订包含上述条款的全面性避免双重课税协定／安排，另外两份则是与内地和沙特阿拉伯所签订的。

消除双重征税方法

香港居民在澳门所缴纳的税款，一般可用作抵免香港就同一收入而应纳的税项，但抵免额不应超过按照香港税法就该所得计算的应纳税项。

澳门居民则可按照以下方式消除双重征税：

- 按照税务安排在香港纳税的收入可在澳门豁免征税；或
- 按照税务安排在香港就股息、利息或特许权使用费所缴纳的税款，可用作抵免澳门就同一收入而应纳的税项，但抵免额不应超过澳门就该所得计算的应纳税项。

国际标准

这是澳门第一份采纳 BEPS 项目规定的标准，尤其是第 6 项行动计划《防止税收协定优惠的不当授予》而签署的全面性避免双重课税协定／安排。例如，在序言表明防止避税为税务安排的目标和宗旨之一；和纳入主要目的测试条款，以防止在不当情况下授予税收协定优惠。

德勤评论

这是中国两个特别行政区之间翘首以待的安排。在港澳频繁商贸往来中，税务安排有助清楚界定跨境活动的征税权，消除双重征税，从而促进双方更紧密的经济联系和人才交流。

在港澳经营业务，或计划在双方投资的纳税人，可寻求专业建议，以分析税务安排所带来的影响。

税务快讯专向德勤的客户及专业服务人员发布，其内容为一般性的最新税务信息。在根据此简讯内的任何信息行事之前，敬请咨询有关税务咨询师。

如有任何疑问，请联系我们的专业服务团队：

邓伟文

副主管合伙人

华南区

税务及商务咨询服务

+852 2852 6661

raytang@deloitte.com.hk

黄宝琪

总监

+852 2852 6954

ewong@deloitte.com.mo

林慧娥

经理

+853 8898 8966

steplam@deloitte.com.mo

联系我们



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Tax Newsflash

Hong Kong-Macao tax treaty signed

On 25 November 2019, the Hong Kong Special Administrative Region (HK) and the Macao Special Administrative Region (Macao) have signed a comprehensive double taxation arrangement (HK-Macao DTA). The HK-Macao DTA can be downloaded [here](#).

The HK-Macao DTA will come into force after completion of the ratification procedures by both sides.

Taxes Covered

HK	Macao
Profits Tax	Complementary Tax
Salaries Tax	Professional Tax
Property Tax	Property Tax

Permanent Establishment

Under the HK-Macao DTA, the profits of a HK tax resident shall be taxable in Macao only if it carries on business in Macao through a

permanent establishment (PE). Only the profits attributable to that PE may be taxed.

The HK-Macao DTA adopts the PE definition recommended by the OECD in the Base Erosion and Profit Shifting (BEPS) Action 7 "Preventing the Artificial Avoidance of a Permanent Establishment Status". PE is defined in the HK-Macao DTA as follows:

- A fixed place of business unless the overall activities carried out through that place are preparatory or auxiliary character;
- A building site, a construction, or installation project that lasts for more than 6 months;
- Service PE where enterprise of one side provides services for the same project or connected projects through personnel in the other side for a period or periods exceeding in the aggregate of 183 days in any 12-month period;
- A dependent agent that habitually concludes contracts or plays the principal role leading to the conclusion of contracts without material modification in one side for an enterprise of the other side.

The PE article includes anti-avoidance clauses, such as anti-fragmentation provisions and broadened scope of dependent agent PE.

Withholding Tax

Currently, neither Macao nor HK impose withholding tax (WHT) on dividend or interest. Nevertheless, the HK-Macao DTA includes the standard clauses for dividends and interest. For royalties, no WHT is imposed in Macao, but not HK.

The domestic and DTA withholding tax rates applicable to dividends, interest and royalties under the HK-Macao DTA are summarized as follows:

	Dividends	Interest	Royalties
Macao domestic rate	0%	0%	0%
HK domestic rate	0%	0%	4.95%/16.5% ¹
HK-Macao DTA rate	0%/5% ²	0%/5% ²	3%

¹ The 4.95% rate generally applies. If the royalty is paid to an associated entity and the intellectual property has been owned by a person carrying on business in HK, the higher rate of 16.5% applies. If the taxpayer is eligible for two-tiered tax rates, 2.475% (or 8.25% if higher rate) applies on the first HKD 2 million of assessable profits and 4.95% (or 16.5% if higher rate) on the remaining amount.

² 0% if it is paid to the Government of Macao / HK, the Monetary Authority of Macao / the Hong Kong Monetary Authority, the Pension Fund and Social Security Fund of Macao / the Exchange Fund of HK, and any institution wholly or mainly owned by the Government of Macao / HK as may be agreed from time to time between the competent authorities of both sides; otherwise, 5%.

Teachers and researchers

An eligible teacher or researcher who is employed in HK and engages in teaching and research activities at a recognised educational or scientific research institution in Macao shall be exempt from tax in Macao for a

period of three years, provided that the relevant income has been subject to tax in HK. Similarly, a teacher or researcher employed by Macao and work in HK shall be exempt from tax in HK for three years, provided that certain conditions are met.

This is the 3rd DTA signed by HK that includes such article. The other two DTAs with this article are with Mainland and Saudi Arabia.

Elimination of Double Taxation

For HK residents, the Macao tax paid can generally be allowed as credit against the HK tax payable on the same income. The amount of credit, however, shall not exceed the amount of HK tax payable in respect of the taxable income computed according to the HK tax law.

For Macao residents, double taxation shall be eliminated by:

- Exemption of the respective income taxed in HK pursuant to the HK-Macao DTA from the Macao tax; or
- Allowing the HK tax paid credit against the Macao tax payable in respect of the dividend / interest / royalties income derived pursuant to the HK-Macao DTA. The amount of credit, however, shall not exceed the amount of Macao tax payable in respect of the taxable income computed by Macao.

International standard

This is the first DTA signed by Macao that incorporates the standards set out under the BEPS project, in particular Action 6 "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances". For example, the preamble which states the prevention of tax evasion and avoidance as one of the objects and purposes of the HK-Macao DTA, and the principal purpose test (PPT) clause on preventing the granting of arrangement benefits in inappropriate circumstances are adopted in the HK-Macao DTA.

Our comments

This is the long-awaited arrangement between the two special administrative regions of China. There are lots of business activities between Hong Kong and Macao. The HK-Macao DTA can clarify the taxing rights for cross-border activities, eliminate double taxation and hence facilitate closer economic linkage between the two sides, as well as promoting the exchange of talents.

Taxpayers with businesses in HK and Macao or plan to invest in both sides may seek professional advice to analyze the implications brought by the HK-Macao DTA .

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If you have any questions, please contact our professionals:

Raymond Tang
Deputy Tax Managing Partner
Southern China
+852 2852 6661
raytang@deloitte.com.hk

Evy Wong
Tax Director
+852 2852 6594
ewong@deloitte.com.mo

Stephanie Lam
Tax Manager
+853 8898 8966
steplam@deloitte.com.mo

Get in touch



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