

Hong Kong Signs Tax Information Exchange Agreement (TIEA) with the United States – its Implications

Hong Kong signed an agreement with the United States (U.S.) on March 25th for exchange of information (EOI) relating to taxes. This is the first tax information exchange agreement (TIEA) signed by Hong Kong, after the legal framework for entering into TIEAs with other jurisdictions was put in place last year, in July 2013.

Under the TIEA, Hong Kong will provide information to the U.S. upon their request, in cases of assessment or enforcement of tax matters. Vice versa, Hong Kong can also request information from the U.S. , since a TIEA is a two way street. The U.S. will be able to request information from Hong Kong as long as it is used in enforcing U.S. taxes, regardless of whether such information is relevant for purposes of enforcing HK taxes.

The TIEA with the U.S. will also provide the necessary basis for Hong Kong to provide information upon requests made by the U.S. under FATCA (Foreign Account Tax Compliance Act), regarding information reported by financial institutions in Hong Kong, when it is implemented on July 1st 2014. FATCA requires U.S. persons, including those living outside the U.S., to report to the U.S. tax authorities their financial accounts held in other jurisdictions, and requires foreign financial institutions, including those in Hong Kong, to report financial information with respect to their U.S. customers.

Hong Kong is not obligated to provide information which is not held by its authorities or if is not in the possession or control of persons within Hong Kong. However, Hong Kong is required to use relevant information gathering measures to provide the information, and if requested by the U.S., Hong Kong may even need to get depositions from witnesses to provide the information. Under the TIEA, there is no mechanism providing for the notification of taxpayer(s) who are affected by the information request, and to object to such request or correct any information being supplied.

Signing of the TIEA is therefore a prelude to Hong Kong's entering into an Intergovernmental Agreement ("IGA") with the U.S. , subject to the successful completion of negotiations, although there is no guarantee that an IGA will be concluded. With an IGA in place, the Hong Kong government can then put in place arrangements to facilitate compliance by its financial institutions under FATCA. There are several types of IGA models which the U.S. can enter into with a country: Model 1A (Reciprocal), Model 1B (Nonreciprocal), Model 2 (with preexisting TIEA).

A copy of the Hong Kong/U.S. TIEA can be found at www.ird.gov.hk/eng/pdf/Agreement_US_HongKong.pdf

As of March 17th 2014, a total of twenty three (23) countries have finalized and signed IGAs with the U.S. Four (4) countries have “initialed” but not yet signed off on the IGAs. Sixteen (16) countries are “in dialogue” , that is, in the middle of negotiations, with another nine (9) “exploring options” of entering into IGAs with the U.S. Out of these countries, the Asian countries are: Australia (“initialed”), Japan (“signed” Model 2 IGA), Malaysia (“in dialogue”), New Zealand (“in dialogue”), and Singapore (“in dialogue”).

While China has announced last summer (July 2013) that it will conduct “best efforts” negotiations with the U.S. to reach a FATCA IGA, there has been no indication of the status of such negotiations and whether an IGA will be entered into between China and the U.S. before the July 1st 2014 implementation date.

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