

Dear Clients & Friends

Revised Singapore-China Avoidance of Double Taxation Agreement

The current avoidance of double taxation agreement (“**DTA**”) between the Government of the Republic of Singapore (“**Singapore**”) and the Government of the People’s Republic of China (“**China**”) has been in force since 12 December 1986. To further facilitate the flow of investment and trade between both countries, Singapore and China have signed a revised DTA on 11 July 2007. The revised DTA has not come into force.

The main changes under the revised DTA are:

1. The revised DTA provides for a reduction of the dividend withholding tax rate from 7% to 5% if the beneficial owner of the dividends is a company which holds directly at least 25% of the capital of the company paying the dividends. The 5% dividend withholding tax rate is comparable to the most favourable rate found in other bilateral China DTAs. This is significant in view of the potential that China may impose dividend withholding tax under the new Enterprise Income Tax Law.
2. The revised DTA provides for a royalty tax rate of 6% on the payments for the use of or the right to use any industrial, commercial and scientific equipment. This favourable rate is comparable to the tax rates in bilateral China DTAs with other jurisdictions such as Ireland. This may lead to an increase in the leasing of assets such as airplanes into China and further enhances Singapore as a base for the leasing of such assets.
3. The revised DTA has anti-avoidance provisions in the dividend, interest and royalty articles which expressly state that such articles shall not be applicable if the main purpose of the person in creating or assigning of the:
 - (a) shares or other rights in respect of which the dividend is paid; or
 - (b) debt claim in respect of which interest is paid; or
 - (c) rights in respect of which royalty is paid;is to take advantage of such articles. A person who seeks to utilise the dividend, interest or royalties should be mindful not to breach the anti-avoidance provisions.
4. The head office of the Development Bank of Singapore will no longer be viewed as part of the Government of Singapore under the interest article in the revised DTA. Similarly, the head office of the Bank of China will no longer be part of the Government of China under the revised DTA.* Following this, the full tax exemption on the interest arising from loans from the Development Bank of Singapore and Bank of China will cease to apply under the revised DTA.

5. Various other changes have also been made under the revised DTA. These include:
- (a) The term “body of persons” will include a trust established in a State if the domestic law of the State regards a trust as a tax resident of that State. Business trusts will therefore be recognised as residents under the revised DTA.
 - (b) An additional third step in determining the residence of an individual. Under the revised DTA, an individual shall be deemed to be a resident of a State (in the following order) if he:
 - (i) has a permanent home;
 - (ii) has a habitual abode;
 - (iii) is a national of that State.

The revised DTA also states that a company shall be deemed to be a resident only of the State in which its effective management is situated.

- (c) An enterprise of a State shall not be deemed to have a permanent establishment in the other State if it carries on business in that other State through an independent agent.** Under the revised DTA, it is unclear how the changes will affect an agent who is economically dependent on the enterprise and carries on business on behalf of such enterprise and is remunerated on arm’s length terms.
- (d) The revised DTA clarifies that profits from the operation of ships or aircraft in international traffic shall include profits from the rental on a bareboat basis of ships or aircraft and profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, provided such use, maintenance or rental is incidental to the operation of ships or aircraft in international traffic.
- (e) The remuneration of teachers and researchers (who have been invited by educational institutions and approved by a competent authority for the purposes of teaching and research) will no longer be exempted from tax under the revised DTA.
- (f) The tax sparing provision has also been revised into a more general provision. For the purposes of credit against the Singapore tax payable on the income of the Singapore resident, the Chinese tax payable on that income shall be deemed to include the amount of Chinese tax which would have been paid if the Chinese tax had not been exempted in accordance with the domestic Chinese tax laws. This differs from the previous approach of granting tax sparing for a specified list of Chinese tax incentives and deeming the amount of Chinese tax imposed on dividends, interest and royalties to have been paid at:
 - (i) 10% of the gross amount of dividends paid by a joint venture with Chinese and foreign investment;
 - (ii) 20% of the gross amount of other dividends;
 - (iii) 20% of the gross amount of interest;
 - (iv) 20% of the gross amount of royalties.

* The China Development Bank, the Agricultural Development Bank of China, the Export-Import Bank of China, the National Council for Social Security Fund and the China Export & Credit Insurance Corporation will now be included as part of the Government of China under the revised DTA.

** The revised DTA states that an agent of an enterprise will not be viewed as an independent agent if the conditions that are made or imposed between the enterprise and the agent in their commercial and financial relations are different from those that would have been made between independent enterprises.

Should you have any further queries as to how this may affect your business, please do not hesitate to contact any member of our Tax Group:

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