

Hong Kong clarifies certain issues regarding treaty benefits

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In its 2019 annual meeting, the Hong Kong Tax Authority (HKTA) clarified the following matters:

"Foreign tax minimization steps" must be taken if taxpayers are to maximize claims for tax credits in Hong Kong

The tax law provides that the amount of tax credit granted must not exceed the amount that would be granted had all foreign tax minimization steps been taken. For example, if a Hong Kong company did not apply for a Hong Kong certificate of residence (CoR) and accordingly could not claim a treaty benefit, the tax credit granted is limited to the reduced treaty rate.

A company is not entitled to a tax credit in Hong Kong if the HKTA rejected its CoR application

If the HKTA rejected the CoR application of a Hong Kong company, such Hong Kong company will not be regarded as a Hong Kong tax resident and thus will not be entitled to a tax credit in Hong Kong under the treaty, despite the income being subject to tax in Hong Kong.

Hong Kong applicants for the “same-treaty-benefit” rule under PN 9¹ are required to demonstrate sufficient economic nexus with Hong Kong

The HKTA’s position is that even if a Hong Kong applicant is deemed as a beneficial owner (BO) in respect of dividends received from mainland China under the “same treaty benefit” rule as prescribed in PN 9, such Hong Kong applicant is required to have sufficient business activities in Hong Kong before the HKTA issues a CoR for the purposes of PN 9.

Endnote

1. Under the “same-treaty-benefit” rule as prescribed in Public Notice [2018] No. 9 (PN 9) issued by the State Taxation Administration (STA) of China, if (i) the shareholder directly or indirectly holding 100% of the equity interests of the Hong Kong applicant qualifies as a BO; and (ii) such shareholder and all the intermediate shareholder(s) are a resident of a treaty jurisdiction which enjoys the same or a better treaty benefits with respect to dividends received from mainland China as compared to the treaty benefits of the Hong Kong applicant, the Hong Kong applicant will be deemed as the BO of the dividends received.

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