

International Taxation

Automatic exchange of information

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Part 4

Interaction between company laws and EOI Rules

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Administration of Company Registration

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PRC Regulation for the Administration of Companies Registration Chapter Two

Article 12 The legal address of a company is where the principle place of business is located. There is only one legal address that is registered at the Company Registry. The legal address of the company shall be located at the place over which the Company Registry has jurisdiction.

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The provision of International Business Acts relating to the legal address and place of business

BVI companies: the two must be separate.

- Legal address——BVI
- Place of business——It is prohibited to carry on business within the BVI, or acquire landed property in BVI.

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HK Companies Ordinance – provision for legal address and place of business

HK Companies: optional

- Legal (registered) address——HK
- Place of business——No specific provision under the law

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The provision of Companies Ordinance

➤ **HK companies are not subject to any restrictions in the following:**

- 1. The nationality and residence of shareholders;**
- 2. The nationality and residence of directors;**
- 3. Principal place of business and branch offices;**
- 4. The location of bank accounts**

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Part 5

Information about company's members and directors

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Registers of members and directors

- **Where they are kept;**
- **To whom the information should file;**
- **When to update the change (and particulars)**

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Information about beneficial owner of shares

- **What is the disclosure requirement?**
- **To whom the information should file?**
- **When to update the change (and particulars)?**

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Case III: beneficial owner

- **Same employee as in case II. The annuity is paid into the bank account maintained in HK under the name of his spouse (or the account of a HK Co. controlled by his spouse).**
- **What is the reporting requirement in compliance with CRS?**

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Part 6

Mutual Administrative Assistance in Tax Matters at International Level

International Organization

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International Organization

Global Forum on Transparency and Exchange of Information for Tax Purposes under the auspices of the OECD and G20

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Global Forum

- **Objective: Enhancing transparency in tax administration and providing platform for EOI;**
- **Combatting BEPS at international level;**
- **It has 139 members as at end of 2016;**
- **It performs appraisal on EOI practices among member states, including the review of EOI rules (phase 1) and the actual implementation of EOI rules (phase 2).**

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Part 7

International tax corporation

Scope and legal arrangements

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Administrative assistance at international levels

3 major scope of areas:

EOI, Collection, and Service of Notice

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International Exchange of Tax Information

3 legal forms / arrangements

Including 2 bilateral agreements and 1 multi-lateral agreement

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Legal arrangement

(I) Double Tax Treaty Under Framework of OECD Model Tax Convention

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EOI Article under the DTA

- **The contracting states may adopt the EOI article under the DTA under framework of the OECD Model Tax Convention, or enter into a tax information exchange agreement (TIEA)**

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(II) TIEA

- **The contracting states adopt the OECD Agreement on Exchange of Information on Tax Matters; or**
- **Inter-governmental Agreement under the framework of “foreign account tax compliance act”**

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Legal arrangement for international taxation co-operation

(III) Multilateral Convention on Mutual Administrative Assistance in Tax Matters

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China has joined the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (The Convention)

People's Daily

28th August 2013

http://news.xinhuanet.com/fortune/2013-08/28/c_125262464.htm

On 27 August 2013, China signed the Convention at the head quarter of Organization of Economic and Cooperative Development (OECD) located at Paris. She officially became the 56th signing parties to the Convention. Until now, all the members of the G20 have joined the Convention.

The director of State Administration of Taxation signed the Convention for and on behalf of the Chinese Government.

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Convention or Double tax agreement

Multilateral Convention or DTA are pre-requisite for EOI

CRS is the standard for due diligence procedures and reporting of financial account information

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Part 8

Update on EOI for Hong Kong

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HK: DTA and TIEA

- On 2010, 2013 and 2016, the IRO was amended.
- Most of the DTA concluded have removed the article of “**domestic interest**”. The IRD’s jurisdiction has extended to cover the scope of taxes of the requesting parties in respect of the request for information, investigation, execution, and imposing penalties.
- The legal power of the IRD also extends to financial institutions and intermediaries, as well as the access to the information of asset ownership.

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HK: DTA and TIEA

If the domestic interest in the IRO is retained, Hong Kong cannot collect and exchange the following tax information with the requesting party under the DTA:

- **Wealth tax;**
- **Estate tax or gift tax (transfer tax);**
- **VAT (or GST, Sales tax);**
- **Capital gain tax**

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HK: DTA and TIEA*

	New Version	Old Version	Total
Comprehensive DTA	34	3	37
TIEA		7	7
Air Service DTA		28	28
Shipping service DTA		6	6
Air and shipping service DTA		3	3
Shipping service DTA (tax exemption)		3	3

* Up to 2017-03-31

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HK : DTA

Period	2003 to 2010	2010 and after	Remarks
	3	34	Total: 37
Countries (Mainland)	Belgium, Thailand, Vietnam		Vietnam has signed Protocol on 2011
	EOI is restricted due to domestic Interest provision, no access to ownership information for assets.	Adopt OECD (2012) version for EOI article.	

Since the amendment of IRO on 2010, HK has entered into 31 additional DTA.

HK : TIEA

Period	2003 to 2013	2014 and after	Total
Countries	0	7	7
Countries	HK has no power to enter into TIEA	US, Sweden, Norway, Denmark, Iceland, Greenland, Faroes EOI article modeling the OECD 2012 version	

All TIEA signed after 2013, following the amendment of the Inland Revenue Ordinance.

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To be continued

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