

国际税法与各国税收介绍 香港税务学会

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2015年4月22日

International Taxation

Introduction

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2015-04-22

第五部分

公司法与税收管辖的互动

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Part 5

Interaction between company laws
and tax laws

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双重征税与双重不征税情况

	A 国	B 国
➤ 公司注册地	X	
➤ 管理机构所在地		X

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Double Taxation & Double Non-taxation

	Country A	Country B
➤ Place of incorporation	X	
➤ Place of management		X

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公司登记行政管辖

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Administration of Company Registration

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公司登记管理条例 第二章

第十二条 公司的住所是公司主要办事机构所在地。经公司登记机关登记的公司的住所只能有一个。公司的住所应当在其公司登记机关辖区内。

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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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离岸公司的公司法对住所与经营场所的规定

维尔京群岛公司：两者必须分离。

- 住所——维尔京群岛
- 经营场所——不允许在维尔京群岛从事任何业务，也不允许购买维尔京群岛的房产。

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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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香港公司法对住所与经营场所的规定

香港公司：可选择

- 住所——香港
- 经营场所——法律没有设置规定。

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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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公司法对住所与经营场所的规定

香港公司对以下情况不作限制：

- 1、股东的国籍、住所
- 2、董事的国籍、住所
- 3、主要经营场所及分支机构地点
- 4、银行帐号地点

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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. Principle place of business and branch offices;
4. The location of bank accounts

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内地税收征收管辖的规定

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The Jurisdiction of Tax Administration under the PRC Corporate Income Tax Law

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中华人民共和国企业所得税法

第二条 企业分为居民企业和非居民企业。
 本法所称居民企业，是指依法在中国境内成立，或者依照外国(地区)法律成立但实际管理机构在中国境内的企业。
 本法所称非居民企业，是指依照外国(地区)法律成立且实际管理机构不在中国境内，但在中国境内设立机构、场所的，或者在中国境内未设立机构、场所，但有来源于中国境内所得的企业。

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The PRC Corporate Income Tax Law

Article 2. Enterprises are divided into resident enterprises and non-resident enterprises.
 The resident enterprise under this law refers to one that is established inside China in accordance with the law, or established under the laws of foreign countries (regions) but having its place of actual management inside China.
 The non-resident enterprise under this law refers to one established under the laws of foreign countries (regions) and having no place of actual management inside China, but having establishments and offices inside China, or having no establishments and offices inside China but deriving China-source income.

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香港税收征收管辖规定

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Hong Kong Tax Rules

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五、税务条例管辖权与域内域外效力（一）

	境内所得	境外所得	税务条例
居民飞机拥有人	征税	征税	23C
非居民飞机拥有人	征税	不征税	23D
香港公司员工	征税	征税	8(1)
非香港公司员工	征税	不征税	8(1A)
从事贸易商业专业 *	征税	不征税	14
收取特许权费用	征税	不征税	15

* 限于应税活动。

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5. Jurisdiction under the IRO (1)

	Within HK	Outside HK	IRO
Resident aircraft owner	Taxable	Taxable	23C
Non-resident aircraft owner	Taxable	Not taxable	23D
HK employment	Taxable	Taxable	8(1)
Non-HK employment	Taxable	Not taxable	8(1A)
Carry on trade, biz & professional *	Taxable	Not taxable	14
Receiving licensing income	Taxable	Not taxable	15

* Limited to taxable activities

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税务条例管辖权与域内域外效力（二）

	来源于境内境外所得	来源于境内所得
工资薪金收入	8条(1)款	8条(1A)款
航空运输服务收入	23C条	23D条
江海运输服务收入	23B条(1)款	23B条(2)款
经营业务收入	法律真空*	14条
特许权使用收入	法律真空	15条

* <http://www.china-tax.net/pub/CommentaryHKTaxTreaties.pdf>

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Jurisdictions under the IRO (2)

	Having source from within & outside HK	Having source within HK
Salaries	S8(1)	S8(1A)
Air service income	S23C	S23D
Shipping service income	S23B(1)	S23B(2)
Income from trade, business & profession	Not provided*	S14
Licensing income	Not provided	S15

* <http://www.china-tax.net/pub/CommentaryHKTaxTreaties.pdf>

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属人、属地管辖——航空运输利润收入（所得）

- 第23C条(1)：凡任何人以飞机拥有人身分经营业务，而 (a) 该业务通常是在香港以内控制或管理的；或 (b) 该人是在香港成立为法团的公司，则该人须被当作是在香港经营该业务。[居民飞机拥有者]
- 第23D条(1)：凡第23C条对其不适用的人以飞机拥有人身分经营业务，而该人所拥有的任何飞机在香港以内任何机坪或飞机场降落，则该人须被当作是在香港经营该业务。[非居民飞机拥有者]

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Income from air services

S23C(1) Where a person carries on a business as an owner of aircraft and (a) the business is normally controlled or managed in Hong Kong; or (b) the person is a company incorporated in Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.

S23D(1) where a person to whom section 23C does not apply carries on a business as an owner of aircraft, and any aircraft owned by that person lands at any aerodrome or airport within Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.

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属人、属地管辖——经营利润（所得）

- 条例第14条（**利得税**）：任何人士，包括法团（人）、合伙业务、受托人或团体，在香港经营行业、专业或业务而从该行业、专业或业务经营过程中获得于香港产生或得自香港的应评税利润（售卖资本资产所得的利润除外），均须纳税。

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Profits from person carrying on trade, business and profession in Hong Kong

- S14 Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part.

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属人、属地管辖——薪金收入

- 条例第8条(1)段（薪俸税）：。。。每个人在每个课税年度从以下来源所得而于香港产生或得自香港的入息，均须予以征收薪俸税—(a) 任何有收益的职位或受雇工作；。。。[指与香港公司建立了劳动关系]
- 条例第8条(1A)段（薪俸税）：。。。从任何受雇工作所得而于香港产生或得自香港的入息。。。[指与任何公司存在劳动关系]

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Salaries income

- 8(1) Salaries tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong from the following sources-(a) any office or employment of profit; ...
- 8(1A) For the purposes of this Part, income arising in or derived from Hong Kong from any employment-
(a) includes, without in any way limiting the meaning of the expression and subject to paragraph (b), all income derived from services rendered in Hong Kong including leave pay attributable to such services; ...

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第六部分 国际双重不征税

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Part 6 International double non-taxation

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三、双重不征税实例

(1) 非独立劳务收入

英属处女岛（维京群岛）BVI公司派香港员工到大陆工作。工作了150天后被派回到香港。由于该员工在大陆工作不超过183天，根据“安排”规定，香港员工收入无须在大陆交税。按照香港规定，由于该员工与境外公司签订劳动合同，其境外工作的收入无须在香港交税。

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3. Double non-taxation case

(1) Depending services

A BVI company assigned a HK employee to work in China for 150 days. Later the employee was relocated back to HK.

As the employee stayed in China for a period less than 183 days in a 12-month period, the HK-China DTA exempts the employee from IIT liabilities.

As per HK tax rules, the same income is not subject to salaries tax as the employee, who had a non-HK employment, worked outside Hong Kong for that period.

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(2) 贸易利润

(a) 台湾居民甲在香港设立一间贸易公司，该公司向非洲供应商买货，然后将进口货物转售给内地一间国有企业。原因：合同的谈判与签订都在香港境外发生。

(b) 新加坡公民A在香港设立的香港贸易公司向非洲供应商买货，然后将进口货物转售给内地一间三资企业。不上税原因：同上。

台湾、新加坡税务居民境外所得在汇入境内才上税。

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2. Trading profits

(a) A Taiwan resident sets up a trading company in HK, buys goods from South Africa and resell the same to a state owned enterprise in China. No HK tax liabilities arise as the activities for the negotiation and conclusion of trading contract takes place outside HK.

(b) A Singapore resident does the same, and he will not be subject to HK tax for the same reason given above.

Q. What is the tax implication in TW or Singapore ?

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(3) 劳务收入

香港公司与内地三资企业订立机器安装合同，派员工到大陆提供安装服务，工作在4个月内完成。

根据“安排”规定，香港公司员工在内地的的工作不超过183天，不构成常驻机构，在大陆取得的收入无须缴纳所得税。根据香港税务条例规定，该香港公司的收入来源于香港公司在境外提供的安装服务，因此也无须在香港纳税。

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3. Service income

A HK Company entered into an installation agreement with a foreign investment enterprise, under which the HK company is to send employees to work in China, and the work will last for 4 months.

Under the HK-China DTA, the presence of HK employees in Mainland China will last for a period not exceeding 183 days. As that does not constitute a permanent establishment, the service income is exempt from income tax in China.

As per HK tax rules, the service income derived from activities performed outside HK. Therefore, the income is not subject to tax in Hong Kong.

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(4) 制造业务收入

2008年之前，来料加工的生产经营所得在大陆免税，在香港，由于工厂在境外其经营所得利润不征税（注意：香港公司必须是来料加工的合同的签约方）。

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4. Manufacturing income

Prior to 2008, the profits from export processing with supplied materials were exempt from PRC corporate income tax.

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(5) 税收管辖差异

新加坡居民在香港设立贸易公司，向内地工厂买入商品，转售与马来西亚公司。在香港，由于在境外洽谈及签订贸易合同，公司经营所得利润在香港不征税。

在数年后，香港公司申请减少资本，减少资本额汇入新加坡为收回资本，新加坡投资方不用纳税。

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5. Difference in tax rules

A Singapore resident sets up a trading company in HK, buys from China and resell the goods to Malaysia.

In Hong Kong, the trading profits arise from activities taking place outside HK. A few years later, the HK company accumulates a lot of profits. The Company reduces its capital and returns it to the shareholder. The return of capital is not taxable in Singapore.

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香港税务条例与新加坡所得税法比较

	香港税务条例第14条	新加坡所得税法第10条
来源于境内收入	征税	征税
来源于境外收入	不征税	征税（汇入境内时征税）

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Comparing HK IRO and Singapore ITA

	IRO, S14	SITA, S10
Income derived within HK (Singapore)	Taxable	Taxable
Income derived from outside HK (Singapore)	Not taxable	Taxable (upon receipt)

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国际双重不征税原因与结果

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Causes and Consequences of Double Non-taxation

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国际双重不征税原因与结果

- 税收管辖权不对称；具体表现为不同的税法、公司法、银行法、外汇管理
- 税基侵蚀与利润转移（跨国企业）

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Cause of Double Non-taxation

- Differences in national (domestic) tax laws;
- Differences in tax law, corporate law, banking law and foreign exchange control laws;
- Base erosion and profit shifting (BEPS)

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第七部分

国际税收征管协作

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Part 7

Mutual Administrative Assistance in Tax Matters at International Level

International Organization

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国际组织

税收透明度和情报交换全球论坛

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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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全球论坛 Global Forum

- 宗旨：为税收征管目的提升透明度及打造情报交换平台（EOI）；
- 为打击国际层次的税基侵蚀利润转移等逃税行为加强了EOI的力度；
- 拥有121成员国（2013年底）；
- 对成员国税收情报交换作出评估，包括情报法律环境评估（第一期）、以及执行情报交换力度的评估（第二期）。

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Global Forum

- **Objective: Enhancing transparency in tax administration and providing platform for EOI;**
- **Combatting BEPS at international level;**
- **It has 121 members as at end of 2013;**
- **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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国际税收征管协助

三个范畴：

情报交换、税款征收协助、税务文书送达

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Administrative assistance at international levels

3 major areas:

EOI, Collection, and Service of Notice

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国际税收情报交换

三种法律形式：

分别为两种双边协定与一个多边协定

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International Exchange of Tax Information

3 legal forms

Including 2 bilateral agreements and 1 multi-lateral agreement

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第八部分

国际税收

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双边税收协定中的情报交换条款

- 两国采用经济合作组织的防止偷漏税条款，或者订立双边税收交换情报协定。

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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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香港加拿大双边税收协定 第24条——情报交换

- 情报交换条文的法律结构

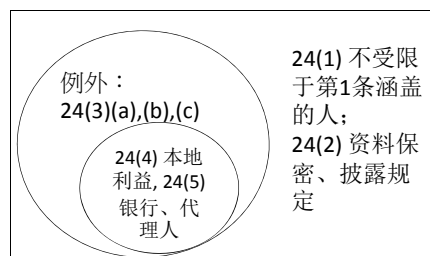
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Article 24 Exchange of Information HK-Canada DTA

- The legal structure of the EOI article

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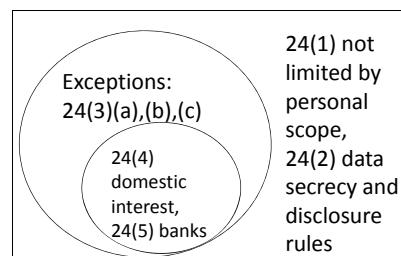
香港加拿大税收协定第24条——税收情报交换



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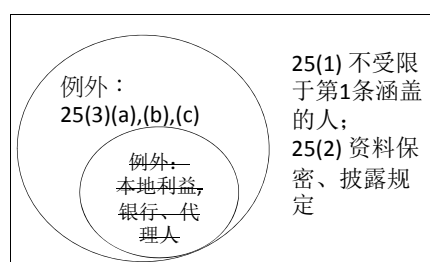
Article 24 under the HK-Canada DTA



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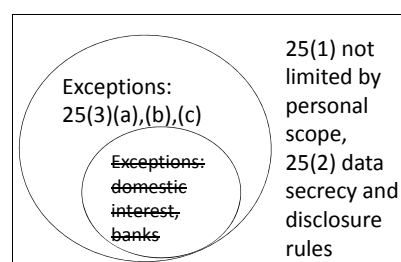
中国新加坡税收协定第25条——税收情报交换



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Article 25 under the China-Singapore DTA



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双边税收情报交换协定 (II) Tax Information Exchange Agreement

- 两国采用经济合作组织订立双边税收交换情报协定版本；或
- 《境外银行帐号税收合规法》（foreign account tax compliance act）框架下的政府间协议。也称为“肥咖条款”。

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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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内地：税收协定、情报交换协定

- 国税发[2006]70号《国际税收情报交换工作规程》；
- 国税办函[2007]57号《国家税务总局办公厅关于核查德国自发情报的函》；
- 国税办函[2008]85号《国家税务总局办公厅关于进一步规范国际税收情报交换英文写作的通知》。

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China: DTA, TIEA

- Guo shui fa [2006]70: Operating Procedure on International Exchange of Tax Information;
- Guo shui ban han[2007]57: Letter from the Office of the SAT Concerning the Verification of Spontaneous Exchange of Information with the German tax authority;
- Guo shui Ban Han [2008]85: Notice from the Office of the SAT on Further Standardizing English Correspondence Relating to Exchange of Tax Information.

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香港：税收协定、情报交换协定

- 于2010年及2013年，香港两次修订了税务条例；
- 在已经签订的以及新签订双边税收协定中，删除了本地利益条文，税务局的获取信息、调查、执行、处罚等行政权力涵盖到情报交换协定中请求国的税收征收范围（范本第2条《适用税种》不适用）；
- 税务局以上的权力适用于银行及中介（范本第1条《居民身分》不适用），以及获取资产所有权的信息。

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HK: DTA and TIEA

- On 2010 and 2013, 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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香港：税收协定、情报交换协定

倘若保留本地利益条文，以下信息由于不属于香港内部的税收征管范围，不能实施交换：

- 财产税；
- 遗产税或遗赠税（资产转移税）；
- 增值税（或货劳税、销售税）；
- 资本增值税。

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HK: DTA and TIEA

If the domestic interest article is retained, Hong Kong cannot 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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香港：税收协定、情报交换协定*

	新版本	旧版本	总数
双边全面税收协定 (DTA)	31	3	34
双边税收情报交换协定 (TIEA)		7	6
双边航空运输服务的税收协定 (Air Service)		28	28
双边海运服务收入协定 (Shipping service)		6	6
双边航空及海运服务收入协定 (Air and shipping service)		3	3
双边航运收入免税协定 (Shipping service)		3	3

* 至2015-04-15为止

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HK: DTA and TIEA*

	New Version	Old Version	Total
Comprehensive DTA	31	3	34
TIEA		7	6
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 2015-04-15

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香港：税收协定

签订时间	由2003至2010年	于2010年或之后	备注
国家 / (内地)	3	31	总数: 34
国家	比利时; 泰国; 越南		越南已经在2011加签了议定书
	情报交换条文受限于本地利益、银行与专业中介管有信息、以及资产所有权法律法规	情报交换条文(第26条)采用了经济合作发展组织(OECD)2012年版本	

大部分税收协定在2010年后签订, 这是因为香港在2010年修订了税务条例。

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HK : DTA

Period	2003 to 2010	2010 and after	Remarks
	3	31	Total: 34
Countries (Mainland)	Belgium, Thailand, Vietnam		Vietnam has signed Protocol on 2011
	EOI is restricted due to domestic Interest provision, 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.

香港：情报交换协定

签订时间	由2003至2013年	于2014年或之后	总数
国家	0	7	7
	无权对外签订税收情报交换协定	美国、瑞典、挪威、丹麦、冰岛、格陵兰、法罗群岛	
		情报交换条文采用了经济合作发展组织(OECD)2012年版本	

全部税收情报交换协定在2014年后签订, 这是由于香港在2013年修订了税务条例。

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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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第九部分
国际税收
多边税收征管互助公约

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Part 9
International taxation
(III) Multilateral Convention on Mutual Administrative Assistance in Tax Matters

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中国加入**多边税收征管互助公约**
积极参与国际税收合作
2013年08月28日 09:13:48 来源：人民日报
http://news.xinhuanet.com/fortune/2013-08/28/c_125262464.htm

8月27日，在位于法国巴黎的经济合作与发展组织（经合组织）总部，中国签署《多边税收征管互助公约》（简称《公约》），正式成为该公约第五十六个签约方。至此，二十国集团所有成员都加入了该公约。

这是中国签署的第一个多边税收协议，表明中国在参与国际多边税收合作机制的道路上又迈出了历史性的、坚实的一步。经合组织秘书长安赫尔·古里亚评价说，中国签署该公约不仅“时机非常好”，而且“意义重大”。中国的加入，反映出国际社会在共同面对税收问题上的一致决心。他高度赞赏中国在国际税收合作领域发挥的重要作用，他说，在这方面，中国一直同经合组织保持密切合作，积极推动这一领域的合作与发展。

国家税务总局局长王军代表中国政府签署了《多边税收征管互助公约》。

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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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多边税收征管互助公约

尽管中国政府签署了《多边税收征管互助公约》，但是尚未生效。

根据《宪法》第67条，多边公约有待人大常委会确认才能生效。

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Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Even though China has signed the Multilateral Convention, it has not become effective.

As per Article 67 of the Chinese Constitution, the multilateral convention shall not take effect until the Standing Committee rectifies it.

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参考信息推荐:

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- “国际税收”, 前身为《涉外税务》杂志;
- International Bureau of Fiscal Documentation (IBFD): Asia-pacific tax bulletin
- International Tax Review: TP Week
- OECD:EOI, Tax treaties, and Transfer pricing; <http://www.oecd.org/tax/>

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介绍完毕

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End of Presentation

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