

Tax Treaties Branch  
Corporate and International Tax Division  
Treasury  
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20 December 2022

Dear Sir or Madam,

## Tax treaty network expansion

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 170,000 members in over 100 countries and regions. We make this submission on behalf of our members and in the broader public interest.

The Treasury's consultation on **Tax treaty network expansion** provides another opportunity to reiterate CPA Australia's ongoing support for expanding Australia's tax treaty network by considering a comprehensive Double Tax Agreement (DTA) between Australia and Hong Kong.

Hong Kong facilitates large volumes of economic and financial activity throughout Asia. It is an important trade and investment partner for Australia and a crucial business and investment gateway between Australia and China. Hong Kong has 46 DTAs in place with **jurisdictions** that include Australian tax treaty partners such as the United Kingdom, Singapore, New Zealand, Japan, Indonesia and Malaysia. As an example, Hong Kong and New Zealand signed a tax treaty in December 2010, which entered into force in November 2011. Hong Kong is also currently in DTA **negotiations** with 13 other jurisdictions, including Germany, Israel and Norway.

According to Nolan Sharkey and Kathrin Bain<sup>1</sup>, a DTA between Australia and Hong Kong would make a real difference in:

1. Tidying up the tax claims of both jurisdictions when engaging in cross border business.
2. Restricting tax claims in both jurisdictions for cross border business when there are no Permanent Establishments (branches).
3. Curtailing heavy Australian withholding taxes on royalties and unfranked dividends out of Australia.
4. Protecting Australian tax residents who are temporarily based in Hong Kong, from Australian tax on their foreign source income (assuming they are allocated to Hong Kong under the tie-breaker provisions).

In our 2017 **submission**<sup>2</sup> on the proposed Australia-Hong Kong Free Trade Agreement (FTA), which came into **force** on 17 January 2020, we highlighted the need for a DTA to fully realise the economic benefits of the FTA, to provide certainty and to facilitate information exchange between jurisdictions. These considerations remain true today. We also noted the unusual situation of the Australia-Hong Kong FTA having commenced without a DTA in place. However, we note that a tax information exchange agreement between Australia and Hong Kong commenced on 1 July 2021.

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<sup>1</sup> Sharkey, Nolan Cormac; Bain, Kathrin --- "An Australia-Hong Kong Double Tax Agreement: Assessing the Costs and Benefits" [2011] eJITaxR 16; (2011) 9(3) eJournal of Tax Research 268

<sup>2</sup> See Attachment for relevant excerpts from that submission.

We also understand that with the implementation of the OECD's Pillar 1 and 2, which includes rules to prevent treaty shopping and enhance co-operation between tax authorities, the OECD/G20 Base Erosion and Profit Shifting (BEPS) Inclusive Framework requires the establishment of multilateral instruments, including those related to the Two-Pillar Solution to which both Australia and Hong Kong are signatories. In our view, Pillar Two, which sets the rate for the minimum tax at the agreed rate of 15%, will bring some jurisdictions, such as Hong Kong, into sharper focus, thereby strengthening the need for a DTA between Australia and Hong Kong.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy on +61 3 9606 9666 or [elinor.kasapidis@cpaaustralia.com.au](mailto:elinor.kasapidis@cpaaustralia.com.au).

Yours sincerely,



Dr Gary Pflugrath  
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**Excerpt from submission to the Department of Foreign Affairs and Trade on the proposed Australia-Hong Kong Free Trade Agreement (CPA Australia, 2017)**

***A tax treaty between Australia and Hong Kong***

Australia and Hong Kong have not entered into a double tax agreement (DTA). We note that it would be highly unusual for Australia or Hong Kong to enter into a free trade agreement with another jurisdiction without a comprehensive DTA with that jurisdiction.

Further, we expect that the anticipated economic benefits of a free trade agreement may not fully materialise unless there is a DTA between Australia and Hong Kong. We therefore recommend that both parties seek to conclude a DTA consistent with the OECD model tax convention as soon as possible.

Such a DTA would help to encourage trade and investment and the movement of people between both markets by reducing or eliminating double taxation caused by overlapping tax jurisdictions. A DTA will also reduce tax impediments to cross-border trade and investment by providing taxpayers greater certainty on the tax rules that will apply to particular transactions between the two jurisdictions, and assist tax administration.

At an individual level, a DTA could reduce disincentives to the movement of people between both jurisdictions as a DTA would remove double taxation in for example, circumstances where a person from one jurisdiction is temporarily earning a salary in the other jurisdiction. For companies, it could encourage greater cross-border trade and investment by reducing foreign withholding tax on dividends, interest and/or royalties.

Other benefits that could flow from a DTA include:

- increasing certainty by prescribing how certain profits are to be calculated
- exempting certain short-term activities in the host jurisdiction from income tax
- providing certainty of treatment
- providing procedures that assist in resolving disputes, and
- enabling information to be exchanged between tax administrations.

We suggest that the withholding tax rates in the DTA should be the same, if not lower than the withholding rates under the Hong Kong-New Zealand Double Tax Agreement being:

- Dividends – 0 or 5 per cent for qualifying companies and 15 per cent for others
- Interest – 10 per cent
- Royalties – 5 per cent

