

## Bangladesh and Hong Kong Sign Income Tax Agreement

SEPTEMBER 5, 2023

On August 30, 2023, representatives of the governments of Bangladesh and the Hong Kong Special Administrative Region (SAR) signed a comprehensive avoidance of double taxation agreement (CDTA). The CDTA is the 47th of its kind that Hong Kong has concluded and generally serves to allocate the rights of taxation between the two jurisdictions. Notably for Hong Kong's sizable logistics sector, the taxes imposed by Bangladesh on a Hong Kong resident's profits from the operation of ships in international traffic will be reduced by 50%.

This CDTA follows [similar agreements](#) with Mauritius, Serbia, and Georgia that Hong Kong has entered into since 2020 (and [negotiations](#) with a number of other jurisdictions), as the SAR seeks to defend its position as a global financial hub against competitors. The United States does not have such an agreement with Hong Kong and previously withdrew from an agreement for the reciprocal exemption with respect to taxes on income from the international operation of ships in 2020, stating that Hong Kong is "no longer sufficiently autonomous to justify differential treatment in relation to the People's Republic of China."<sup>[1]</sup> See Executive Order 13936.

In most respects, the CDTA hews closely to the UN Model Double Taxation Convention between Developed and Developing Countries (UN Model Treaty), with some distinctions reflecting preferences and negotiations between the parties. As examples, the agreement:

- Includes an article addressing exemptions for visiting teachers and researchers (not part of the UN or OECD models, but nevertheless preferred by many jurisdictions). See UN Model Treaty (2021) Commentary on Article 20, paragraphs 11-13.
- Includes an Entitlement to Benefits article consisting only of a principal purpose test rather than detailed rules defining qualified persons.
- Specifically identifies certain profits to include as profits from the operation of ships or aircraft in international traffic.
- Lacks an article addressing assistance in the collection of taxes.

Notably, the CDTA includes a "Fees for Technical Services" article, based on UN Model Treaty Article 12A, permitting source country taxation not to exceed 10% on the gross amount of fees paid for certain managerial, technical, or consultancy services. While jurisdictions such as India, Vietnam, and Malaysia have long negotiated for similar

articles in tax treaties, this appears to be the first time that Bangladesh has successfully negotiated for this concession (the 2004 Bangladesh-Vietnam Income Tax Treaty, which predates the UN Model Treaty Article 12A, does include a Technical Fees article with language similar to other Vietnam treaties). Article 12A was added to the UN Model Treaty's 2017 revision due to concerns that such fees would otherwise escape source country taxation, erode the tax base of developing countries, and give nonresident service providers, in certain circumstances, a tax advantage over domestic service providers. See UN Model Treaty (2017) Commentary on Article 12A. The inclusion of the model's language to the CDTA demonstrates that similar provisions are likely to become an increasingly common feature of double taxation agreements with developing countries.

The CDTA will come into force after the completion of ratification procedures by both jurisdictions. We will continue to monitor these developments. For more information or to discuss further, please contact the authors or your Winston relationship attorney.

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[1] Note, however, that the Internal Revenue Service continues to treat Hong Kong as a separate jurisdiction from the People's Republic of China. As such, the US-China income tax treaty and agreement with respect to mutual exemption from taxation of transportation income of shipping and air transport enterprises do not apply to Hong Kong. See, Notice 97-40; Rev. Rul. 2008-17, n. 22.

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