

# Vietnam News Brief\*

An update on Double Tax Agreement developments in Vietnam

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## Double Taxation Agreement between Hong Kong and Vietnam

A comprehensive avoidance of double taxation agreement between Hong Kong and Vietnam (“HK/Vietnam DTA”) was signed on 16 December 2008. The HK/Vietnam DTA will apply with effect, in Vietnam, from 1 January in the calendar year next following that in which the DTA enters into force and, in Hong Kong, from 1 April in the calendar year next following that in which the DTA enters into force. The HK/Vietnam DTA will enter into force after it has been ratified by both governments.

Some of the key features of the HK/Vietnam DTA are as follows:

- The DTA provides limited benefits in withholding tax rates. The following is a comparison of the withholding tax rates for dividends, royalties and interest with and without the treaty:

	Dividend	Royalty	Interest
Vietnam non-treaty rate	Nil	10%	10%
Hong Kong non-treaty rate	Nil	4.95%/4.5% <sup>(2)</sup>	Nil
Treaty rate	10% <sup>(1)</sup>	7%/10% <sup>(3)</sup>	0%/10% <sup>(4)</sup>

(1) Currently, there is no withholding tax on dividends in Vietnam after tax is paid on the profits out of which the dividends are declared. The 10% treaty rate represents the maximum rate applicable to dividends received by a Hong Kong resident should a withholding tax on dividends be levied in Vietnam in the future.

(2) The 4.95% rate applies to corporations whereas the 4.5% rate applies to unincorporated businesses/partnerships.

(3) The 7% rate applies to royalties for the use, or the right to use, any patent, design or model, plan, secret formula or process. The 10% rate applies in all other cases.

(4) The 0% rate applies to interest payments to the HKSAR Government and recognised institutions. The 10% rate applies in all other cases.

- Currently, foreign companies performing business in Vietnam or having contracts with Vietnamese customers without establishing a legal entity in Vietnam are subject to “Foreign Contractor Withholding Tax” (“FCWT”) at various rates depending on the business activities performed (e.g. 10% on service fees of which 5% represents corporate income tax and 5% represents value added tax). The corporate income tax component of such FCWT will be eliminated under the HK/Vietnam DTA provided that a Hong Kong company does not carry on business in Vietnam through a permanent establishment in Vietnam.

This publication is intended for general guidance only and should not form the basis of specific decisions. Please contact us for further information and details of our services. In Ho Chi Minh City: contact David Fitzgerald, Richard Irwin, Jean Loi, Sira Intarakumthornchai (Tax), Phan Thi Thuy Duong (Legal), Kenji Murayama (Japanese Business), Seong Ryong Cho (Korean Business) Ian Lydall (Assurance), Steve Gaskill (Advisory) at phone (84-8) 38230796, fax (84-8) 38251947. In Ha Noi: contact Dinh Thi Quynh Van (Tax), Le Anh Tuan (Legal), Eisuke Kofugata (Japanese Business), Nguyen Phi Lan (Audit) at phone (84-4) 39462246, fax (84-4) 39460705.

- The DTA does offer capital gain exemption in relation to gains derived by a Hong Kong resident from the alienation of less than 15% interest in a Vietnamese company that does not derive 50% or more of its asset value directly or indirectly from immovable property situated in Vietnam. Currently, a gain derived by a foreign investor on the transfer of interests in a foreign invested or Vietnamese company is generally subject to Vietnam tax.
- Under article 5 of the HK/Vietnam DTA, a PE is defined to include provision of services by an enterprise if the services continue (for the same or connected project) for a period or periods aggregating more than 180 days within any 12-month period.
- As far as employment income is concerned, Hong Kong employees will be exempt from Vietnamese personal income tax provided that: (1) they do not spend more than 183 days in Vietnam in any 12-month period commencing or ending in the fiscal year concerned; (2) their remuneration is not paid by, or on behalf of, an employer who is a resident of Vietnam; and (3) the remuneration is not borne by a PE in Vietnam.
- The DTA also contains “Associated Enterprises” and “Mutual Agreement Procedure” articles, as well as provisions to eliminate double taxation that include relief for tax spared as a result of tax incentives granted under Vietnam’s provisions for encouraging foreign investment for development purposes.