

Malaysia – Hong Kong Special Administrative Region of the People’s Republic of China (Hong Kong)

Double Taxation Agreement

The Malaysia – Hong Kong double taxation agreement (DTA) which was signed on 25 April, 2012 has recently been gazetted in both jurisdictions. The signing of the DTA is welcomed as this creates greater clarity on the taxation rights of the two jurisdictions and offers treaty protection for taxpayers operating in these two jurisdictions.

The following sets out some of the salient features of the DTA:

- ❖ There are reduced rates of withholding (WHT) tax on interest, royalties and fees for technical services as compared with Malaysian domestic WHT rates. The rates are summarised in the table below:

	WHT rates	
	Under the treaty	Non-treaty
❖ Dividends	5% or 10%	0%
❖ Interest	10%	15%
❖ Royalties	8%	10%
❖ Fees for technical services	5%	10%

- ❖ Unlike the amended DTA that Malaysia has recently signed with India, the Hong Kong DTA does **not** exclude Labuan from the scope of the DTA. Accordingly, there would be potential avenues for structuring investments into either country via Labuan entities for tax efficiency, subject of course to substance considerations.
- ❖ On the issue of permanent establishments (PEs), the normal PE provisions seen in most DTAs will also apply in the context of the Malaysia – Hong Kong DTA. It should be noted that the provision of services, including consultancy services for more than an aggregate of 183 days within any 12 month period will give rise to a PE.

The DTA has not been ratified and hence is not effective as yet. Once both jurisdictions have completed the necessary ratification procedures, both parties will notify each other in writing, after which the DTA will come into force. The effective dates for each country are as follows:

- ❖ Malaysia – For any year of assessment beginning on or after the first day of January in the calendar year following the year in which the DTA enters into force. For example, say the DTA enters into force on 20 December, 2012, the provisions of the DTA shall take effect from the year of assessment 2013.
- ❖ Hong Kong - For any year of assessment beginning on or after the first day of April in the calendar year following the year in which the DTA enters into force.