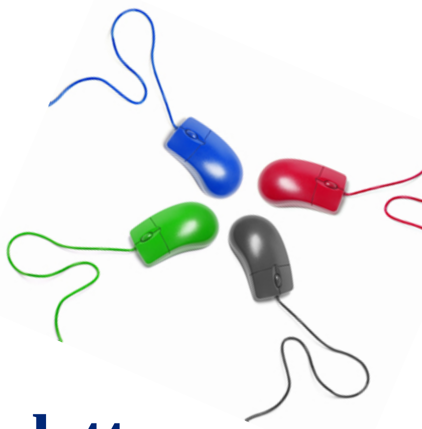

Strategic Regions Tax Newsletter

Deloitte Tohmatsu Tax Co.

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China

New China-UK tax treaty enters into force

The long-awaited new double tax treaty (New DTA) between China and the UK entered into force on 13 December 2013. The New DTA, originally signed in London on 27 June 2011 and amended by a protocol signed in Beijing on 27 February 2013, replaces the treaty and protocol dating from 1984 and 1996, respectively. The New DTA has effect as follows:

(1) In China

- In respect of profits, income and capital gains arising in any tax year beginning on or after 1 January 2014.

(2) In the UK

- In respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 2014; and
- In respect of corporation tax, for any financial year beginning on or after 1 April 2014.

The key features of the New DTA include the following:

- A reduced 5% withholding tax (WHT) rate on certain dividends (down from 10%), 6% in respect of certain royalties (down from 7%), and measures to limit the double taxation of capital gains and "other income."

	UK domestic law	China domestic law	New DTA
Dividends	0%	10%	5/10/15%[1]
Interest	20%	10%	10%

1 The 5% rate applies where dividends are paid to a company that holds directly at least 25% of the capital of the payer company. The 15% rate applies where the dividends are paid out of income or gains derived from immovable property by a tax-exempt investment vehicle that is required to distribute most of its income or gains annually. The rate in all other cases is 10%.

Royalties	20%	10%	6/10%[2]
Capital gains	0%[3]	10%	0/10%[4]

- An update to the definition of a permanent establishment to include a service PE.
- A "miscellaneous rule" that specifically enables the tax authorities to apply their domestic general anti-avoidance rules, notwithstanding the provisions of the DTA.
- Additional anti-treaty shopping clauses in the dividend, interest, royalty and other income articles that deny treaty benefits where the main purpose, or one of the main purposes, of an arrangement is to take advantage of the relevant DTA article.
- Elimination of the technical fees article.
- Several other changes to bring the new DTA more into line with the OECD model treaty.

It should be noted that, with the exception of an amendment introduced in the protocol, the New DTA is unchanged from the DTA signed on 27 June 2011. The protocol amended the dividends article (article10) to ensure that the reduced WHT rates would apply only to companies that hold **directly** at least 25% of the capital of the company paying the dividends. The previous version of the DTA included the term **indirectly**. This change makes the treaty consistent with the OECD model treaty and most of China's existing tax treaties.

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2 The 10% rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment, but only on 60% of the gross amount; otherwise, the rate is 10%.
3 Non-UK residents generally are not subject to UK tax on capital gains unless the underlying asset is used for purposes of a trade carried on in the UK through a permanent establishment. Note that non-UK residents may be subject to capital gains tax on high value residential property (currently where the value exceeds GBP 2 million).
4 UK resident shareholders that hold less than a 25% interest in the capital of an enterprise may be exempt from the 10% withholding tax on capital gains provided that: (1) in the 12 months before the disposal, the shareholding did not exceed a 25% interest; and (2) the gains do not arise from the alienation of shares that derive more than 50% of their value from immovable property in China.

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