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Tax alert

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Hong Kong-Switzerland comprehensive double taxation agreement enters into force

Hong Kong initially signed a comprehensive double taxation agreement (DTA) with Switzerland on 6 December 2010. This DTA was subsequently abrogated and replaced on 4 October 2011. The formal ratification procedures of the DTA were completed on 15 October 2012.

The DTA will have effect in Switzerland, in respect of taxes withheld at source on amounts paid or credited, on or after 1 January 2013; and, in respect of other taxes, for taxation years beginning on or after 1 January 2013. The DTA will have effect in Hong Kong for any year of assessment beginning on or after 1 April 2013. Hong Kong now has 21 DTA's in force.

The withholding tax on dividends, interest and royalties under the DTA with Switzerland is as follows.

	Switzerland Non-treaty Withholding Rate	Treaty Withholding Rate [1]
Dividends	35%	0[2] / 10%
Interest	35%	0%
Royalties	0	3%

(1) The DTA requires the recipient of the dividends, interest or royalties to be the beneficial owner of the income. The DTA also contains provisions to deny relief in back-to-back arrangements involving conduit companies.

(2) The withholding tax on dividends is reduced to nil where the beneficial owner is (i) a company (other than a partnership), which holds at least 10 percent of the capital of the company paying the dividends; or (ii) a pension fund or pension scheme; or (iii) the Hong Kong Monetary Authority.

The DTA will help investors better assess their potential tax liabilities from cross-border economic activities, foster closer economic and trade links between Switzerland and Hong Kong, and provide added incentives for companies in Switzerland to do business or invest in Hong Kong, and vice versa.

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However, investors wishing to enjoy the beneficial treatment on dividends under the DTA through setting up a Hong Kong intermediate holding company should be mindful of the anti-treaty shopping provision in the dividends article. As discussed above, the anti-treaty provision operates to deny the 0 percent rate if a Hong Kong company receiving dividends from a Swiss company transfers *all or substantially all* of such income *at any time or in any form* to another person not eligible for the same or more favourable treaty benefit enjoyed by the Hong Kong company.

In view of the rigorous anti-treaty provision in the dividends article of the Swiss DTA, a Hong Kong intermediate holding company wishing to enjoy the reduced withholding tax rate should ensure it has sufficient substance.

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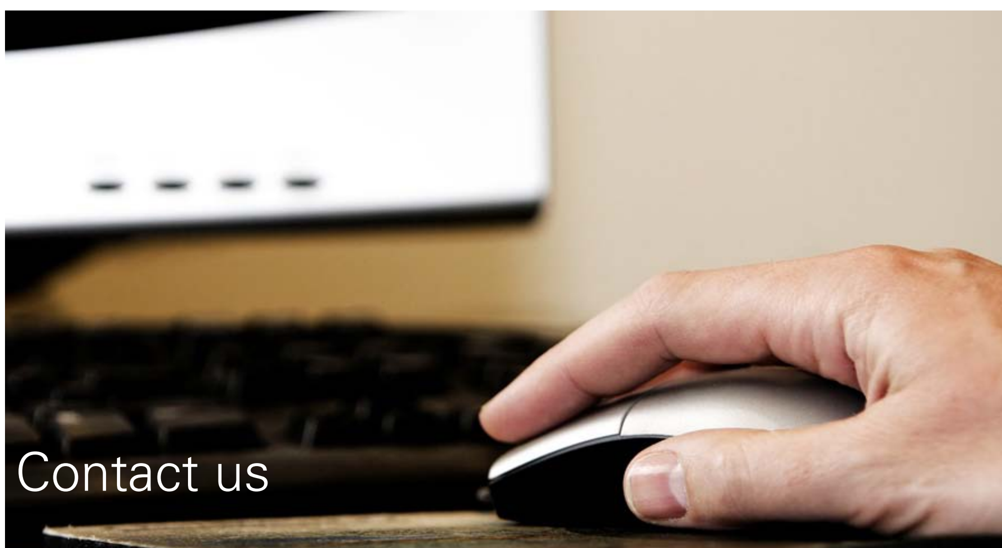

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