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Singapore vs. Hong Kong

A Jurisdiction Analysis

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SINGAPORE | HONGKONG
20 YEARS IN PRACTICE



AGENDA

1. General Background
2. Non-Tax Factors
3. Tax Factors
4. Conclusion



GENERAL BACKGROUND

Singapore & Hong Kong



- **Area**

- Singapore: 697 km²
- Hong Kong: (80 km²/1,104 km²)



- **Population**

- Singapore: 5.2 million
 - median age: 38.4
- Hong Kong: 7.1 million
 - median age: 41.1





Singapore vs. Hong Kong – General



Factor	Singapore 	Hong Kong 
Ease of Company Formation	24 hours	4 days
Time Zone	GMT + 8 hours	
Business Language	English	
Foreign Exchange Controls	None	
Availability of Service Providers	Plentiful	
Economically and Politically Stable	Very	
Legal System	Common law	
World Bank Survey:		
Ease of Doing Business	1	2
Starting a Business	3	5
Registering Property	28	89
Getting Credit	3	3
Protecting Investors	2	3
Paying Taxes	5	4
Trading Across Borders	1	2
Enforcing Contracts	12	9
Resolving Insolvency	4	19

Singapore vs. Hong Kong – Tax

Criteria	Singapore 	Hong Kong 
Tax System	Territorial with remittance	Pure territorial
No. of Tax Treaties	76	30
Participation Exemption	No WHT on dividend distribution	
Advance Rulings	Available	
GST (VAT)	7%	None
Corporate Income Tax Rate	Up to 17% (S\$5m – ETR 16.5%)	Flat 16.5%
Double Tax Relief	Ordinary Credit Method (FTC Pooling)	Ordinary Credit Method (No Pooling)
Capital Gains Tax	None	

Setting Up and Ongoing Requirements

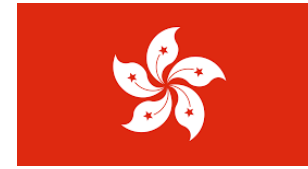


Singapore

- Setting up
 - Minimum one **Singapore ordinarily resident director (Natural)**
 - Singapore resident company secretary (Natural)
 - Singapore Registered Office (No PO Box)
 - Control and Management in SG => Singapore Tax Resident
 - Minimum share capital - SGD1
 - No restriction on foreign ownership
- Ongoing requirements
 - Audit (if not an EPC*)
 - Annual Preparation of Financial Statements (SFRS ~ IFRS)
 - Annual Tax return submission (waiver possible - dormant)
 - **Proposed new regulations in upcoming Companies Act to reduce audit requirements**

*<20 s/h'rs and non-corporate shareholder and <\$5m revenue

Setting Up and Ongoing Requirements



Hong Kong

- Setting up
 - Minimum one director (natural, can be non-resident)
 - Resident Company Secretary (Corporate or Individual)
 - Local Registered Office (No PO Box)
 - No definition of tax residence (as per DTA) [Inc (HK); M&C (O/S)]
 - Minimum share capital - HK\$1
 - Business registration certificate
 - No restriction on foreign ownership
- Ongoing requirements
 - Audit
 - AGM/Annual Return
 - Profits tax return



TAX FACTORS

Tax System



Singapore

- Only income sourced in Singapore
- Foreign sourced income remitted into Singapore (unless exempted)

Hong Kong

- Only income sourced in Hong Kong

Singapore: Remittance



- (a) any amount from any income derived from outside Singapore which is **remitted to, transmitted or brought** into, Singapore
- (b) any amount from any income derived from outside Singapore which is **applied in or towards satisfaction of any debt** incurred in respect of a trade or business carried on in Singapore; and
- (c) any amount from any income derived from outside Singapore which is applied to **purchase any movable property which is brought into Singapore**

Dividend Income (Received)

Singapore



- **Singapore sourced income**
 - Exempt from taxation (one-tier corporate tax system)
- **Foreign sourced income**
 - Exempt from taxation unless remitted or FSIE

Hong Kong



- **Hong Kong sourced income**
 - Exempt from taxation
- **Foreign sourced income**
 - Exempt even if remitted

Singapore: Foreign-Sourced Income Exemption Scheme



- Exempt even if remitted
- Dividends, branch profits, service income
- Dividend (underlying tax or dividend tax)
- Conditions:
 - Headline Corporate Income Tax tax rate of at least 15% in foreign jurisdiction
 - Subject to tax in foreign jurisdiction, except *inter alia*:
 - if it is not taxed due to a formal tax incentive (e.g. substantive business activities carried out in that jurisdiction)
 - Beneficial tax exemption (Scheme would be beneficial to resident taxpayers)

Dividend Income (Paid)

Singapore



Hong Kong



- No dividend withholding tax

Interest Income (Received)

Singapore



- **Singapore sourced income**
 - Taxable
- **Foreign sourced income**
 - Exempt from taxation unless remitted

Hong Kong



- **Hong Kong sourced income**
 - Exempt unless in carrying on such a business (financial institution)
- **Foreign sourced income**
 - Exempt from taxation even if remitted

Interest Income (Paid)

Singapore



- **Withholding tax**
 - 15% gross
 - Deemed sourced in Singapore
 - (Unless reduced by treaties)

Hong Kong



- **Withholding tax**
 - No interest withholding tax
 - No deduction is allowed of interest paid to a non-financial institution if the recipient is not subject to tax in HK on the interest

Royalty Income (Received)

Singapore



- **Singapore sourced income**
 - Taxable
- **Foreign sourced income**
 - Exempt from taxation unless remitted

Hong Kong



- **Hong Kong sourced income**
 - Taxable
- **Foreign sourced income**
 - Exempt from taxation

Royalty Income (Paid)

Singapore



- **Withholding tax**
 - 10% gross
 - Deemed sourced in Singapore (deductible)
 - Unless reduced by treaties

Hong Kong



- **Withholding tax**
 - 30% of 16.5% gross
 - 100% of 16.5% (associated company & previously owned by a person carrying on business in Hong Kong)
 - Deemed sourced in Hong Kong (deductible)
 - Unless reduced by treaties

Examples: Foreign-Sourced Income Exemption Scheme

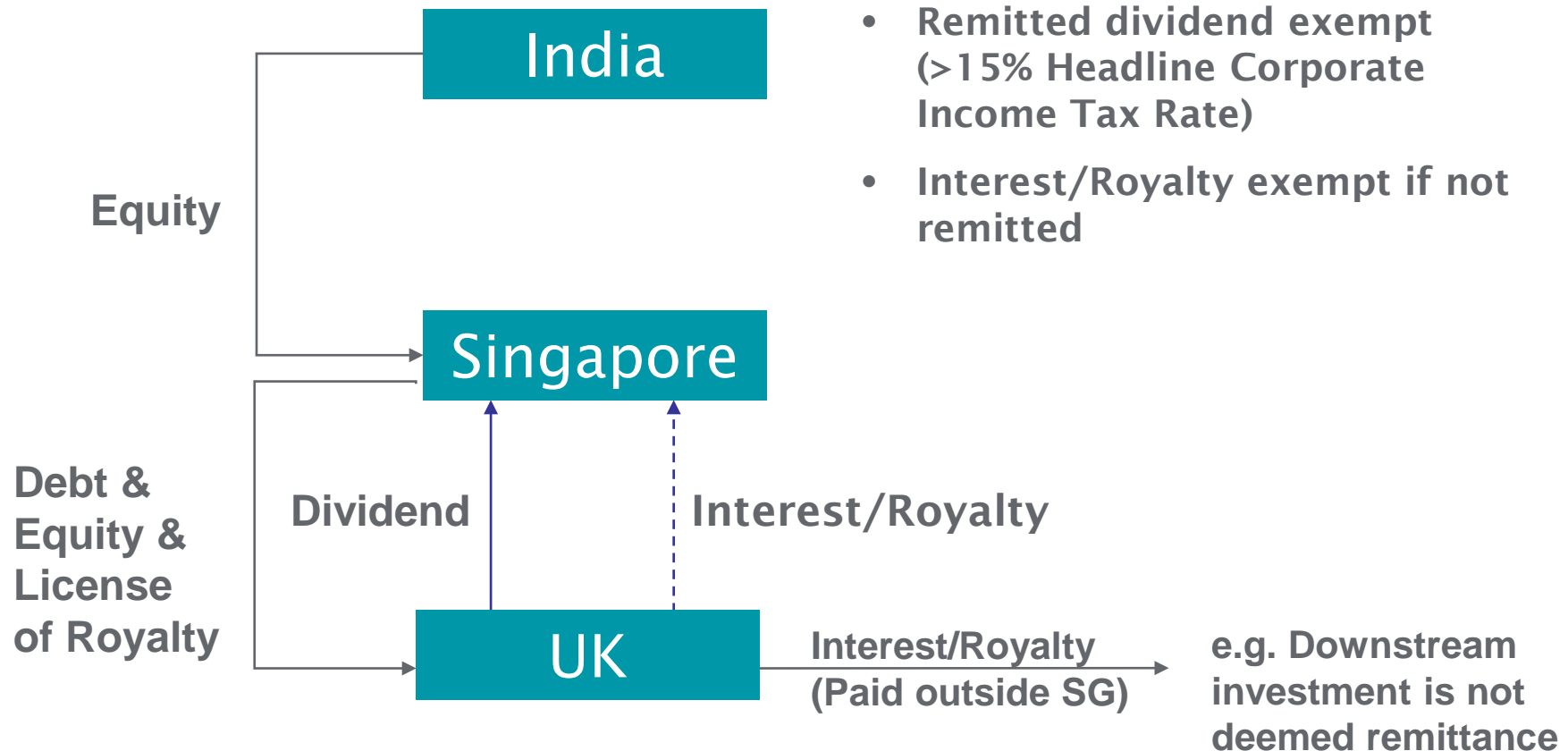
- Conditions:
 - Headline Corporate Income Tax rate of at least 15% in foreign jurisdiction
 - Subject to tax in foreign jurisdiction, except *inter alia*:
 - if it is not taxed due to a formal tax incentive (e.g. substantive business activities carried out in that jurisdiction)
 - Beneficial tax exemption (Scheme would be beneficial to resident taxpayers)

Condition 1: Headline Rate > 15%

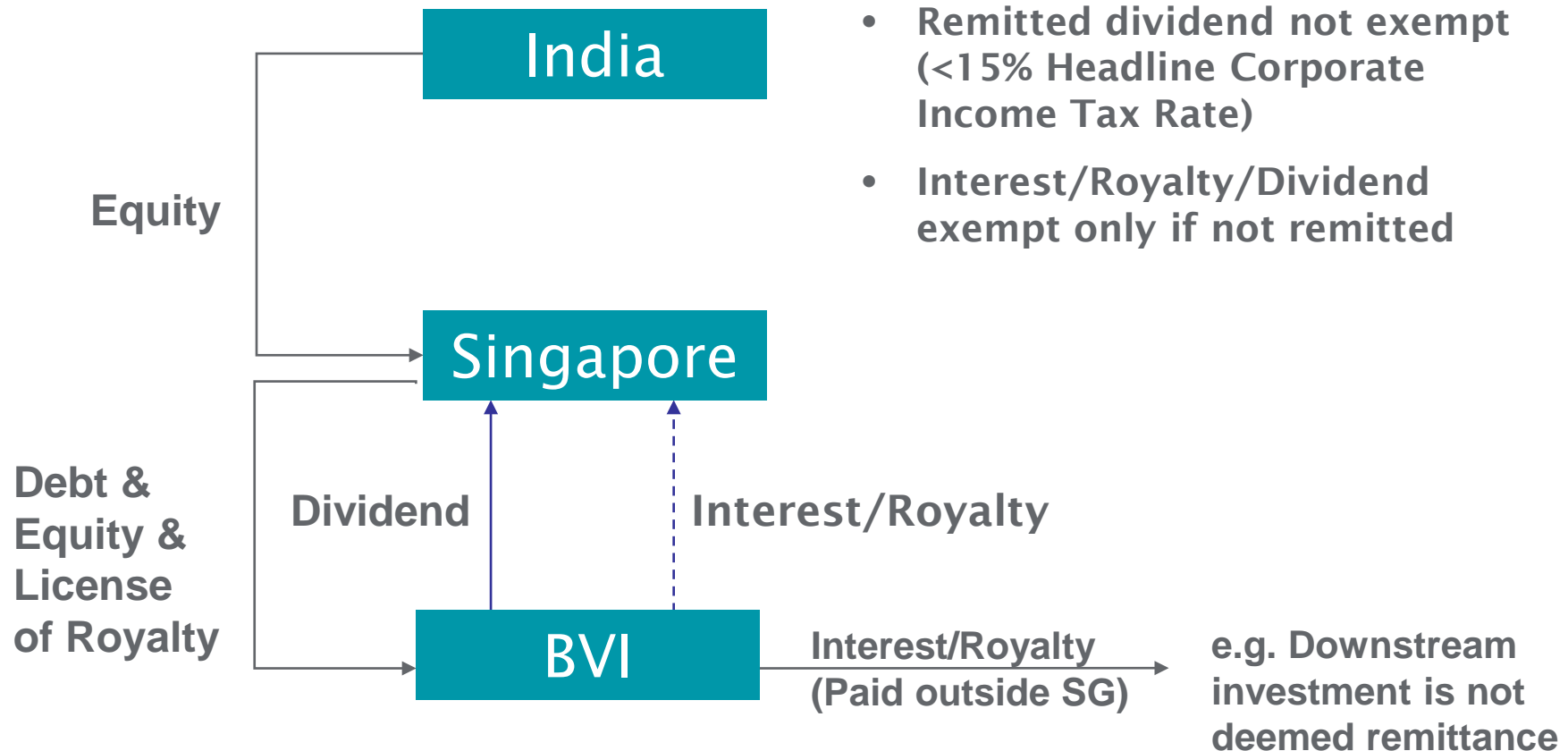
- Highest tax rate in the jurisdiction for specified entity
 - E.g. Labuan entity (3%) vs. Malaysia entity (25%)



Condition 1: Headline Rate > 15%



Condition 1: Headline Rate < 15%



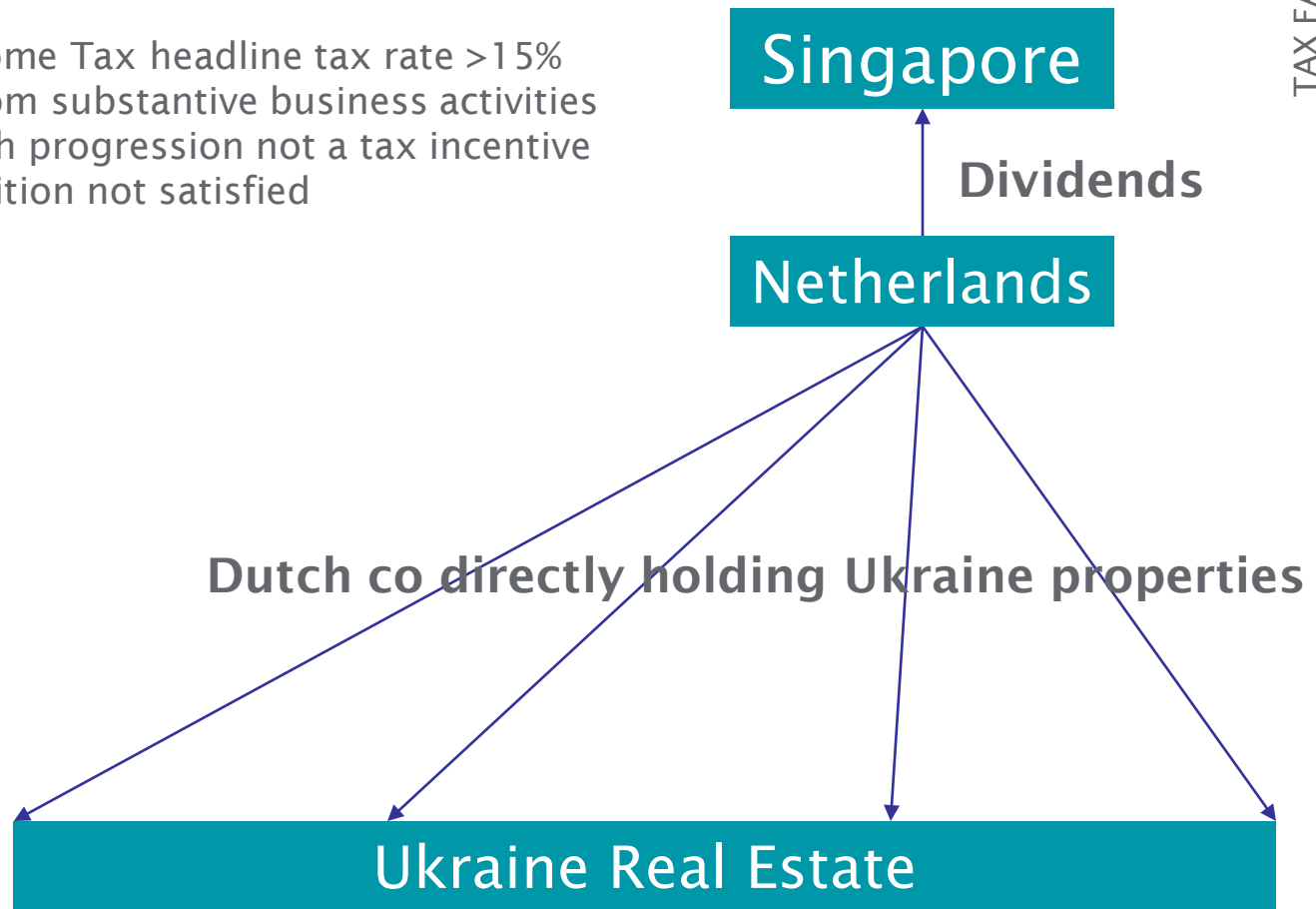


Condition 2: Subject to Tax Test

- Tax of any amount
- Exceptions:
 - Tax exemption due to substantive business activities (“tax incentive”)
- Section 13(12)

Condition 2: Subject to Tax Test

- Dutch Corporate Income Tax headline tax rate >15%
- Income generated from substantive business activities
- Dutch exemption with progression not a tax incentive
- “Subject to tax” condition not satisfied



Taxes on Non-residents

Singapore



- **Deeming provisions:**
 - Rental income
 - Technical service fees
 - Directors' fees
 - Charter fees
- **Payments deductible in Singapore Co./PE**

Hong Kong



- **Rental income**
 - Location of property
- **Technical service fees**
 - Where relevant services are performed
- **Directors' fees (if central management and control in HK)**
 - taxable
- **Charter fees**
 - Only in Hong Kong waters

Taxes on Non-residents (WHT Rates)



Singapore



- Rental income (15%)
[Not final tax]
- Technical service fees (Corporate Tax Rate)
[Not final tax]
- Directors' fees (20%)
- Charter fees
0% (ships)/2% (aircrafts)

Hong Kong



- No withholding tax provisions on such fees
- BUT
- Reporting to IRD
 - Non-resident must file tax return

Tax Incentives

Singapore



- Productivity and Innovation Credit
- Foreign Tax Credit Pooling
- Fund Management
- Marine Sector
- Global Trader
- Operational Headquarters
- Financial Services

Hong Kong



- **None but:**
 - More certainty of source rules (case law)
 - No remittance based taxation
 - Tax exemption granted to non-resident funds operating in Hong Kong under certain conditions

Singapore Tax Incentives



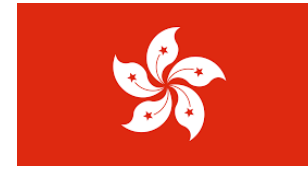
- Productivity and Innovation Credit
 - Up to 68% saving on expenditure relating to R&D, IP, IT and training of employees
 - 60% cash payout (up to S\$100,000 expenditure)
- Foreign Tax Credit Pooling
 - Greater flexibility in the use of foreign tax credits
 - Reduce tax payable
 - Simplify tax compliance

Singapore Tax Incentives (cont'd)



- Fund management activities
 - 5% or 10% Corporate Income Tax rates
- Marine sector
 - Full tax exemption on prescribed income of Singapore-flagged or foreign-flagged ships
- Global Trader Program
 - 5% or 10% Corporate Income Tax rates
- Operational Headquarters
 - 5% or 15% Corporate Income Tax rates

Hong Kong: Source Case Law

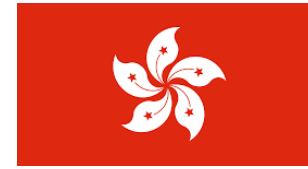


Operations Test

- “All profits from business transacted in Hong Kong, whether directly or through an agent”
 - ✓ “What the taxpayer has done to earn profit in question” and “where has he done it”?
- Focus of the effective causes of profit
 - ✓ Where is the geographical location of the taxpayer’s profit producing activities?
- ✓ Commercial answer: Practical realities?

[ING Baring, Hang Seng Bank]

Hong Kong IRD Position



- DIPN 21: Locality of profits – cases don't cover all situations
- Evidence:
 - Expenses (Travelling/hotel)
 - Agents (Agency agreement)
- Advance Rulings available
- Subject to tax overseas?

Capital Gains



Singapore



Hong Kong



- No Capital Gains Tax
- Tax if trading in nature
 - Badges of Trade
- Safe Harbour

Badges of Trade

- Intention at time of purchase
- Period of ownership
- Frequency of similar transactions
- Reasons for sale
- Means of financing the acquisition



Singapore: Safe Harbour



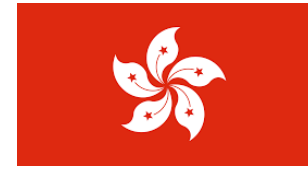
- Gains derived from the disposal of equity investments by companies will not be taxed, if:
 - (i) the divesting company holds a minimum shareholding of 20% in the company whose shares are being disposed; and
 - (ii) the divesting company maintains the minimum 20% shareholding for a minimum period of 24 months just prior to the disposal.

Singapore: General Anti-avoidance (S33)



- Tax authorities can disregard or vary the arrangement, make adjustments to counteract any tax advantage
- Exception: any arrangement:
 - Bona fide commercial reasons
 - Main purpose \neq avoidance/reduction of tax
- AQQ

Hong Kong: General Anti-avoidance



- Use of “Artificial or fictitious transactions” to reduce amount tax payable (S61)
- Implementation of transactions with the sole or dominant purpose of producing a tax benefit (S61A)
- Sale of loss companies (S61B)
- IRD can disregard the transactions to remove the tax benefit gained (S61&S61A)

Tax Treaties

Singapore



- 76 in force
- 5 full treaties pending
- 5 revised full treaty pending

Hong Kong



- 30 full tax treaties concluded, 28 in force
- 0 full treaties pending
- No limitation of relief provisions

Tax Treaties (Geographical Split)

Singapore



Region	In Force	Pending
Americas	4	1
Asia-Pacific	19	1
Europe	42	1
Middle East & Africa	11	2
Total	76	5

Hong Kong



Region	In Force	Pending
Americas	2	0
Asia-Pacific	8	0
Europe	18	0
Middle East & Africa	2	0
Total	30	0

Tax Treaties (Americas)

Singapore



4 in force (1)

A to Z

Barbados

Canada

Mexico

Panama

Ecuador (p)

Hong Kong



2 in force

A to Z

Canada

Mexico

Tax Treaties (Asia-Pacific)

Singapore



19 in force (1)

A to P	P to Z
Australia	Papua New Guinea
Bangladesh	South Korea
Brunei	Sri Lanka
China	Taiwan
Fiji	Thailand
Indonesia	Uzbekistan
Kazakhstan	Vietnam
Malaysia	
Mongolia	Laos (pending)
Myanmar	
New Zealand	
Pakistan	

Hong Kong



8 in force

A to P	P to Z
	South Korea
Brunei	
China	
	Thailand
Indonesia	
	Vietnam
Malaysia	
New Zealand	

Tax Treaties (Europe)

Singapore



42 in force (1)

A to G	H to M	N to Z
Albania	Hungary	Norway
Austria	India	Philippines
Belarus	Ireland	Poland
Belgium	Isle of Man	Portugal
Bulgaria	Israel	Romania
Cyprus	Italy	Russia
Czech Rep.	Japan	Slovak Rep.
Denmark	Jersey	Slovenia
Estonia	Latvia	Spain
Finland	Liechtenstein	Sweden
France	Lithuania	Switzerland
Georgia	Luxembourg	Turkey
Germany	Malta	Ukraine
Guernsey	Netherlands	United Kingdom
	San Marino (p)	

Hong Kong



18 in force

A to G	H to M	N to Z
	Hungary	
Austria		
	Ireland	
Belgium		Portugal
	Italy	
Czech Rep.	Japan	
	Jersey	
		Spain
	Liechtenstein	
France		Switzerland
	Luxembourg	
	Malta	
Guernsey	Netherlands	United Kingdom

Tax Treaties (Middle East & Africa)

Singapore



11 in force (2)

A to Z

Bahrain

Egypt

Kuwait

Libya

Mauritius

Morocco

Oman

Qatar

Saudi Arabia

South Africa

UAE

Rwanda (p)

Seychelles (p)

Hong Kong



2 in force

A to Z

Kuwait

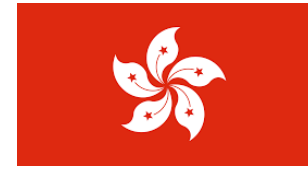
Qatar

Singapore: Certificate of Residence



- Control and management - not defined under Law
- Conditions:
 - Foreign-owned company which is an investment-holding company with purely passive sources of income or receiving only foreign-sourced income is NOT eligible to seek a CoR, unless:
 - ✓ Such company can furnish the reasons for setting up an office in Singapore and provide evidence to substantiate that its control and management is in Singapore
- Manage and control the company from, and regularly hold board meetings in Singapore

Hong Kong: Certificate of Residence



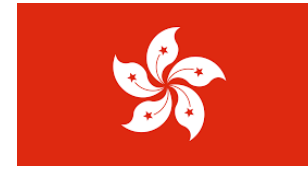
- Company incorporated or constituted in Hong Kong
- Company incorporated or constituted outside Hong Kong but managed or controlled in Hong Kong
- **Hong Kong-Mainland China CDTA:**
 - CoR for Hong Kong companies
 - Copy of the Hong Kong certificate of incorporation

Singapore Exchange of Information



- Information will be provided if request is reasonable and specific

Hong Kong Exchange of Information



- No Court Order required
- Enter into tax information exchange agreements where necessary
- Enhance the existing EOI arrangements under CDTAs

Singapore: Limitation of Relief Clause



- In many of Singapore's tax treaties
 - Treaty benefits to apply only on the amount of income remitted in Singapore
 - Avoids double non-taxation
 - E.g. of tax treaties without LOB clause: Austria, Cyprus, Georgia, Italy, Kazakhstan, Malta, Slovak Republic, Ukraine, Uzbekistan

Singapore – India Treaty: LOB



- Exemption on capital gains from disposal of shares
- Treaty benefit remains in force so long as the same benefit is provided in the India-Mauritius treaty

Singapore – India Treaty: LOB (cont'd)



- Company must not be a shell/conduit company i.e.:
 - Negligible or nil business operations;
 - No real and continuous business activities;
 - Operating Expenditure < SGD200,000 or Indian Rs 50,00,000 in the preceding period of 24 months from the date the gains arise.
 - Not publicly traded
- Affairs not arranged for the primary purpose to take advantage of the benefits of this Protocol

Conclusion: It Depends



Singapore



+ve

- Incentives: PIC, Funds /Global Trader /HQ)
- Large number of treaties
- Lower effective tax rate
- Audit exemption
- Safe harbour (CGT)

-ve

- Remittance based taxation
- Withholding taxes

Hong Kong



+ve

- Pure territorial system
- Some treaties better (e.g. Indonesia)
- Case Law (sourcing rules)
- No GST
- Low/No WHT
- No resident director required

-ve

- Lack of incentives
- Lack of treaties/New treaties

Services:

- International & Domestic Tax
- Company Formation & Administration
- Trusts & Foundations
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- Funds & Family Offices
- Accounting & Financial Reporting

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