

## Hong Kong (China)

Hong Kong (China) (“Hong Kong”) has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, Hong Kong did not receive any recommendations.

Hong Kong can legally issue four types of rulings within the scope of the transparency framework. In practice, Hong Kong issued rulings within the scope of the transparency framework as follows:

- One past ruling;
- For the calendar year 2017: no future rulings, and
- For the year in review: no future rulings.

The Inland Revenue Department of Hong Kong may publish some advance rulings on its website in redacted form.<sup>1</sup>

As no exchanges were required to take place, no peer input was received in respect of the exchanges of information on rulings received from Hong Kong.

## Introduction

This peer review covers Hong Kong's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

### A. The information gathering process

Hong Kong can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>2</sup> (ii) cross-border unilateral APAs and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

#### ***Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)***

For Hong Kong, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2015 but before 1 April 2017; or (ii) on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015.

In the prior year peer review report, it was determined that Hong Kong's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Hong Kong's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

#### ***Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)***

For Hong Kong, future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

In the prior year peer review report, it was determined that Hong Kong's undertakings to identify future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Hong Kong's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard. It is noted that during the year in review, on 13 July 2018, Hong Kong enacted the Inland Revenue (Amendment) (No. 6) Ordinance 2018, which codifies Hong Kong's APA regime. The information gathering process for APAs is described in the prior year review report and meets the ToR.

#### ***Review and supervision (ToR I.4.3)***

In the prior year peer review report, it was determined that Hong Kong's review and supervision mechanism was sufficient to meet the minimum standard. Hong Kong's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

#### ***Conclusion on section A***

Hong Kong has met all of the ToR for the information gathering process and no recommendations are made.

## B. The exchange of information

### ***Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)***

Hong Kong has the necessary domestic legal basis to exchange information spontaneously. Hong Kong notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

Hong Kong is party to international agreements permitting spontaneous exchange of information, including double tax agreements in force with 33 jurisdictions.<sup>3</sup> In addition, by a declaration deposited with the OECD on 29 May 2018, China (People's Republic of) extended the application of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[4]</sup>) ("the Convention") to Hong Kong (China).<sup>4</sup> The Convention entered into force in Hong Kong on 1 September 2018. Pursuant to the Convention, Hong Kong is able to undertake spontaneous exchange of information on tax rulings which relate to taxable periods beginning or charges to tax arising on or after 1 January 2019 under the transparency framework.

### ***Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)***

In the prior year peer review report, it was determined that Hong Kong's process for the completion and exchange of templates was sufficient to meet the minimum standard. Hong Kong's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

As Hong Kong did not issue any rulings in scope of the transparency framework in the relevant period, Hong Kong was not required to exchange any information on rulings in the year in review and no data on the timeliness of exchanges can be reported.

### ***Conclusion on section B***

Hong Kong has the necessary legal basis for spontaneous exchange of information and a process for completing the templates in a timely way. Hong Kong has met all of the ToR for the exchange of information process and no recommendations are made.

## C. Statistics (ToR IV)

As there were no rulings required to be exchanged by Hong Kong for the year in review, no statistics can be reported.

## D. Matters related to intellectual property regimes (ToR I.4.1.3)

Hong Kong does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</sup>) were imposed.

## Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made.

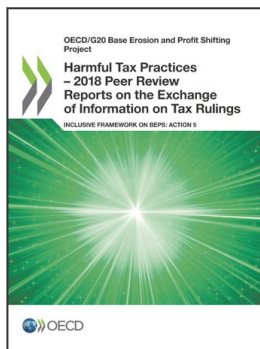
## Notes

<sup>1</sup> <https://www.ird.gov.hk/eng/ppr/arc.htm>.

<sup>2</sup> With respect to the following preferential regimes: 1) profits tax concession for corporate treasury centres; 2) profits tax concession for professional reinsurers; 3) profits tax concession for captive insurers; 4) profits tax exemptions for ship operators; and 5) profits tax concessions for aircraft lessors and aircraft leasing managers.

<sup>3</sup> Hong Kong has bilateral agreements with Austria, Bailiwick of Guernsey, Belarus, Belgium, Canada, China (People's Republic of), Finland, France, Hungary, India, Indonesia, Ireland, Italy, Japan, Jersey, Korea, Latvia, Malta, Mexico, Netherlands, New Zealand, Pakistan, Portugal, Qatar, Romania, Saudi Arabia, South Africa, Spain, Switzerland, Thailand, United Arab Emirates, United Kingdom and Viet Nam.

<sup>4</sup> Parties to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm).



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