CLIFFORD
CHANCE

Briefing note | November 2016

The Russia-Hong Kong double taxation agreement has now come into effect

The treaty will apply from 1 January 2017 with respect to Russian taxes and from 1 April 2017 with respect to Hong Kong taxes.

The Agreement between the Russian Federation and Hong Kong and the Protocol to it (the "**HK Treaty**") were published on the official promulgation web-portal (www.pravo.gov.ru) on 28 November 2016.

The HK Treaty is the first Russian double taxation agreement with a jurisdiction other than an independent state (i.e. special administrative region of the PRC) which is included into the Russian tax "black lists" of non-cooperating jurisdictions and low-tax offshore zones.

It is anticipated that the treaty and potential exclusion of Hong Kong from the "black lists" will open new opportunities for Russian and foreign investors in utilising not only treaty benefits, but also some of the incentives under Russian domestic legislation, such as participation exemption with respect to dividends, Eurobond withholding tax exemptions and certain provisions of Russian CFC rules.

Please see below key features of the new treaty in comparison with the existing tax regime.

	Now (Russian domestic rates apply)	***From 1 January 2017 (for payments from Russia) From 1 April 2017 (for payments from Hong Kong)***
Interest	20%	**0%**
Dividends	15%	**5%** provided a recipient of the dividends: ▪ is a company (other than a partnership), and ▪ holds directly at least 15 per cent of the capital of the company paying the dividends **10%** in all other cases
Royalties	20%	**3%**
Capital gains	20%	**0%** as a general rule **20%** ▪ when the gains are derived from alienation of immovable property ▪ when the gains are derived from alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property the exceptions of the rule are: – when the shares of a company are quoted on the stock exchange, which was agreed between Russia and Hong Kong

		– when the shares are alienated or exchanged in the framework of reorganisation, merger, de-merger or a similar operation – when a company which shares are alienated carries on its business in the immovable property
Aircraft lease rentals	10% / 20%	**0%** provided this is a bareboat charter and the lease is incidental to the operation of aircraft in international traffic
Other income	20%	**0%**
Tax residency form	Tax residency certificates issued by the competent authority of Hong Kong should be accepted in Russia (both in courts and administrative bodies) without being legalised or apostilled	
Anti-abuse protection	Advanced anti-abuse protection: ▪ "special relationship" provisions ▪ special anti-abuse provisions for dividends, interest, royalties and capital gains (i.e. "no benefits if the main purpose or one of the main purposes of an arrangement is to take advantage of the treaty") in addition to "special relationship" ▪ it is the first Russian double tax treaty which contains an anti-abuse provision in the article on capital gains ▪ special rule which allows the parties to the HK Treaty to apply internal laws and measures concerning tax avoidance with no regards to existence of such a measure in the HK Treaty	

Authors

Alexander Anichkin
Partner

E: alexander.anichkin
@cliffordchance.com

Dmitry Tolkachev
Senior Associate

E: dmitry.tolkachev
@cliffordchance.com