

**MEMORANDUM OF UNDERSTANDING ON THE
EXCHANGE OF COUNTRY-BY-COUNTRY REPORTS
WITH THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE’S PUBLIC OF
CHINA FOR THE FISCAL YEARS 2016 AND 2017**

Whereas the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”) has Specified Double Taxation Agreements which are or will be in force and effect with the Governments of the jurisdictions listed in Annex 1 to this Memorandum of Understanding (the “Other Jurisdictions”) that permit the exchange of Country-by-Country Reports;

Whereas Hong Kong intends to allow MNE Groups headquartered in Hong Kong (“Hong Kong MNE Groups”) to voluntarily file their Country-by-Country Reports for the fiscal years 2016 and 2017 (the “Fiscal Years”) with Hong Kong, and exchange such reports with the Other Jurisdictions;

Whereas the Other Jurisdictions will require the filing of Country-by-Country Reports for MNE Groups headquartered in the Other Jurisdictions for any of the Fiscal Years;

Whereas the Other Jurisdictions will not apply local filing with respect to Hong Kong MNE Groups for the Fiscal Years provided that the relevant MNE Groups have voluntarily filed their Country-by-Country Reports with Hong Kong for the Fiscal Years and the Country-by-Country Reports have been exchanged with the Other Jurisdictions pursuant to this Memorandum of Understanding;

Now, therefore, the Competent Authority of Hong Kong and the Competent Authorities of the Other Jurisdictions have agreed as follows:

I. Definitions

1. For the purposes of this Memorandum of Understanding, capitalised terms not otherwise defined in this Memorandum of Understanding shall have the meaning given to them in the Final Report on BEPS Action 13, published in 2015.
2. Specified Double Taxation Agreements shall mean the double taxation agreements concluded by the Government of Hong Kong with the Governments of the Other Jurisdictions listed in Annex 1 to this Memorandum of Understanding.

II. Exchange of Country-by-Country Reports

1. Pursuant to the exchange of information provision of the Specified Double Taxation Agreements, Hong Kong will exchange the Country-by-Country Reports for the Fiscal Years that have been voluntarily filed with Hong Kong with the Other Jurisdictions in which, on the basis of the information in the Country-by-Country Reports, one or more Constituent Entities of the MNE Group are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment.

2. Hong Kong will exchange the Country-by-Country Reports that have been voluntarily filed by Hong Kong MNE Groups with Hong Kong for the fiscal year 2016 no later than 18 months after the last day of that fiscal year of the relevant MNE Group, and the Country-by-Country Reports that have been voluntarily filed by Hong Kong MNE Groups with Hong Kong for the fiscal year 2017 no later than 15 months after the last day of that fiscal year of the relevant MNE Group.
3. Hong Kong will exchange the Country-by-Country Reports through the OECD Common Transmission System using the CbC XML Schema.

III. Confidentiality, Data Safeguards and Appropriate Use

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Specified Double Taxation Agreements, including the provisions limiting the use of the information exchanged.
2. In addition to the restrictions in paragraph 1, the use of the information will be further limited to the permissible uses described in this paragraph. In particular, information received by means of the Country-by-Country Report will be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis. The information will not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. It is acknowledged that information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, transfer pricing adjustments will not be based on the Country-by-Country Report. Inappropriate adjustments in contravention of this paragraph made by local tax administrations will be conceded in any competent authority proceedings. Notwithstanding the above, there is no prohibition on using the Country-by-Country Report data as a basis for making further enquiries into the MNE Group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, appropriate adjustments to the taxable income of a Constituent Entity may be made.

IV. Term

1. This Memorandum will be in effect between the Competent Authorities of Hong Kong and an Other Jurisdiction on the later of the following dates: (a) the date on which the second of the two Competent Authorities has declared by written and signed declaration that this Memorandum of Understanding is to apply to the relevant Specified Double Tax Convention; and (b) the date on which the relevant Specified Double Taxation Agreement has entered into force and is in effect.
2. The Competent Authority of Hong Kong will notify its declaration pursuant to paragraph 1 to the Competent Authority of each Other Jurisdiction with respect to which it has signed such a declaration.
3. The Competent Authority of each Other Jurisdiction will notify its declaration pursuant to paragraph 1 to the Competent Authority of Hong Kong.
4. In any case, the applicability of this Memorandum of Understanding will cease with respect to all Specified Double Taxation Agreements after 31 March 2020.

5. The Competent Authority of Hong Kong may terminate the applicability of this Memorandum of Understanding with respect to one, several or all Specified Double Taxation Agreements by giving notice of termination in writing to the Competent Authorities of the Other Jurisdictions concerned. The Competent Authority of each Other Jurisdiction may terminate the applicability of this Memorandum of Understanding with respect to the Specified Double Taxation Agreement by giving notice of termination in writing to the Competent Authority of Hong Kong. A termination will become effective on the first day of the month following the notice of termination. In the event of termination, all information previously received under this Memorandum of Understanding will remain confidential and subject to the terms of the Specified Double Taxation Agreement, as well as the appropriate use restrictions set out in Section III.2. above.

**ANNEX 1 –
Specified Double Taxation Agreements**

	Title	Jurisdiction	Date of Signature	Date of Entry into force
1	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Austria	25 May 2010	1 Jan 2011
2	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Belgium	10 Dec 2003	7 Oct 2004
3	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Canada	11 Nov 2012	29 Oct 2013
4	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion	France	21 Oct 2010	1 Dec 2011
5	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Guernsey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Guernsey	28 Mar 2013 and 22 Apr 2013	5 Dec 2013
6	Agreement between the Government of the Hong Kong Special	Hungary	12 May 2010	23 Feb 2011

	Title	Jurisdiction	Date of Signature	Date of Entry into force
	Administrative Region of the People's Republic of China and the Government of the Republic of Hungary for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income			
7	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Indonesia	23 Mar 2010	28 Mar 2012
8	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Ireland	22 Jun 2010	10 Feb 2011
9	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion	Italy	14 Jan 2013	10 Aug 2015
10	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Japan	9 Nov 2010	14 Aug 2011
11	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Jersey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with	Jersey	15 Feb 2012 and 22 Feb 2012	3 Jul 2013

	Title	Jurisdiction	Date of Signature	Date of Entry into force
	respect to Taxes on Income			
12	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Korea	8 Jul 2014	27 Sep 2016
13	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Latvia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Latvia	13 Apr 2016	Not applicable
14	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Principality of Liechtenstein for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Liechtenstein	12 Aug 2010	8 Jul 2011
15	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Luxembourg	2 Nov 2007	20 Jan 2009
16	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Malta	8 Nov 2011	18 Jul 2012
17	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the	Mexico	18 Jun 2012	7 Mar 2013

	Title	Jurisdiction	Date of Signature	Date of Entry into force
	Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income			
18	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Netherlands	22 Mar 2010	24 Oct 2011
19	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Pakistan	17 Feb 2017	Not applicable
20	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Portugal	22 Mar 2011	3 Jun 2012
21	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Romania	18 Nov 2015	21 Nov 2016
22	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Russia	18 Jan 2016	29 Jul 2016
23	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the	South Africa	30 Sep 2014 and 16 Oct 2014	20 Oct 2015

	Title	Jurisdiction	Date of Signature	Date of Entry into force
	Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income			
24	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Spain	1 Apr 2011	13 Apr 2012
25	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains	United Kingdom	21 Jun 2010	20 Dec 2010