

DECLARATION

I, Selby Thembile HLATI, on behalf of the Competent Authority of Republic of South Africa declare that the:

*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 Republic of China for the fiscal years 2017 and 2018
("Memorandum of Understanding")*

attached to this Declaration, shall be applicable to the Specified Double Taxation Agreement between the Government of Republic of South Africa and the Government of the Hong Kong Special Administrative Region of the People's Republic of China.

By means of the present Declaration, the Competent Authority of Republic of South Africa is to be considered a signatory of the Memorandum of Understanding with respect to the Competent Authority of the Hong Kong Special Administrative Region of the People's Republic of China as of

The Memorandum of Understanding will become applicable in respect of the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Republic of South Africa in accordance with paragraph 1 of Section V of the Memorandum of Understanding.

Signed in on

**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 REPUBLIC
OF CHINA FOR THE FISCAL YEARS 2017 AND 2018**

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 information for tax purposes including Country-by-Country Reports;

Whereas Hong Kong allows MNE Groups with Ultimate Parent Entities resident in Hong Kong to voluntarily file their Country-by-Country Reports for the fiscal year commencing in 2017 (“Fiscal Year 2017”) and requires MNE Groups with Ultimate Parent Entities or Surrogate Parent Entities resident in Hong Kong to file their Country-by-Country Reports as from the fiscal year commencing in 2018 (“Fiscal Year 2018”) with Hong Kong, and will exchange such reports with the Other Jurisdictions;

Whereas the Other Jurisdictions require the filing of Country-by-Country Reports for MNE Groups headquartered in the Other Jurisdictions for Fiscal Year 2017 and/or Fiscal Year 2018;

Whereas the Other Jurisdictions will not apply local filing with respect to MNE Groups MNE Groups with Ultimate Parent Entities or Surrogate Parent Entities resident in Hong Kong for Fiscal Year 2017 and Fiscal Year 2018 provided that the relevant MNE Groups have filed their Country-by-Country Reports with Hong Kong for the relevant fiscal years and the Country-by-Country Reports have been exchanged with the Other Jurisdictions pursuant to this Memorandum of Understanding;

Whereas Hong Kong will not apply local filing with respect to MNE Groups headquartered in each of the Other Jurisdictions for Fiscal Year 2018, provided that the relevant MNE Groups have filed their Country-by-Country Reports for the relevant fiscal year with the Other Jurisdiction in which they are headquartered and the Country-by-Country Reports have been exchanged with Hong Kong 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 consolidated report, entitled “Transfer Pricing Documentation and Country-by-Country Reporting”, on Action 13 of the OECD/G20 Action Plan on Base Erosion and Profit Shifting, 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, the Competent Authority of Hong Kong will exchange the Country-by-Country Reports that have been filed with Hong Kong for Fiscal Year 2017 and Fiscal Year 2018 with the Competent Authority of each of the Other Jurisdictions, provided that, on the basis of the information in the Country-by-Country Reports, one or more Constituent Entities of the MNE Groups are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment, in the Other Jurisdiction concerned.
2. Pursuant to the exchange of information provision of the Specified Double Taxation Agreements, the Competent Authority of each of the Other Jurisdictions will exchange the Country-by-Country Reports that have been filed with the Other Jurisdiction concerned for Fiscal Year 2018 with the Competent Authority of Hong Kong, provided that, on the basis of the information in the Country-by-Country Reports, one or more Constituent Entities of the MNE Groups are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment, in Hong Kong.
3. The Competent Authority of Hong Kong and the Competent Authorities of the Other Jurisdictions will exchange the Country-by-Country Reports referred to in paragraphs 1 and 2 of this Section no later than 15 months after the last day of the relevant fiscal year of the MNE Group.
4. The Competent Authority of Hong Kong and the Competent Authorities of the Other Jurisdictions 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 of this Section, 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.
3. To the extent permitted under applicable law, the Competent Authority of Hong Kong will notify the Competent Authority of the Other Jurisdiction concerned, or vice versa, immediately regarding any cases of non-compliance with the rules set out in paragraphs 1 and 2 of this Section, including any remedial actions, as well as any measures taken in respect of non-compliance with the above-mentioned paragraphs.

IV. Consultations

1. In cases foreseen by the mutual agreement procedure provision of the Specified Double Taxation Agreement, the Competent Authority of Hong Kong and the Competent Authority of the Other Jurisdiction concerned shall consult each other and endeavour to resolve the situation by mutual agreement.
2. If any difficulties in the implementation or interpretation of this Memorandum of Understanding arise, the Competent Authority of Hong Kong may request consultations with the Competent Authority of the Other Jurisdiction concerned, or vice versa, to develop appropriate measures to ensure that this Memorandum of Understanding is fulfilled. In particular, a Competent Authority shall consult with the other Competent Authority before the first-mentioned Competent Authority determines that there is a systemic failure to exchange Country-by-Country Reports with the other Competent Authority.

V. Term

1. This Memorandum of Understanding will be in effect between the Competent Authority of Hong Kong and the Competent Authority of the Other Jurisdiction concerned on the later of the following dates: (a) the date on which the second of the two Competent Authorities has notified the other Competent Authority by a written and signed declaration to confirm that this Memorandum of Understanding is to apply to the relevant Specified Double Taxation Agreement; 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 of this Section to the Competent Authority of each of the Other Jurisdictions with respect to which it has signed such a declaration.
3. The Competent Authority of each of the Other Jurisdictions will notify its declaration pursuant to paragraph 1 of this Section 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 2021.
5. The Competent Authority of Hong Kong may temporarily suspend the exchange of information under this Memorandum of Understanding by giving notice in writing to the Competent Authority of the Other Jurisdiction concerned that it has determined that there is or has been significant non-compliance by the Competent Authority of the Other Jurisdiction concerned with this Memorandum of Understanding. The Competent Authority of any of the Other Jurisdictions may temporarily suspend the exchange of information under this Memorandum of Understanding by giving notice in writing to the Competent Authority of Hong Kong that it has determined that there is or has been significant non-compliance by the Competent Authority of Hong Kong with this Memorandum of Understanding. Before making such a determination, the Competent Authority of Hong Kong and the Competent Authority of the Other Jurisdiction concerned shall consult with each other. For the purposes of this paragraph, significant non-compliance means non-compliance with paragraphs 1 and 2 of Section III and paragraph 1 of Section IV of this Memorandum of Understanding, including the provisions of the Specified Double Taxation Agreement, as well as a failure by the Competent Authority to provide timely or adequate information as required under this Memorandum of Understanding. A suspension will have immediate effect and will last until the Competent Authority that has committed the significant non-compliance establishes in an acceptable manner that there has been no significant non-compliance or that the Competent Authority has adopted relevant measures that address the significant non-compliance.
6. 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 the Other Jurisdictions concerned 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. Such termination will become effective on the first day of the month following the expiration of a period of 6 months after the date of 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 paragraph 2 of Section III of this Memorandum of Understanding.

7. Any previous memorandum of understanding on the exchange of Country-by-Country Reports between Hong Kong and the Other Jurisdictions concerned (the "Previous Memorandum of Understanding") shall cease to have effect with respect to the Country-by-Country Reports for Fiscal Year 2017 from the date on which this Memorandum of Understanding shall have effect in accordance with paragraph 1 of this Section (the "Effective Date"). To avoid doubt, the provisions of the Previous Memorandum of Understanding shall continue to have effect with respect to the Country-by-Country Reports for the fiscal year commencing in 2016, and the Country-by-Country Reports for Fiscal Year 2017 which have been exchanged pursuant to the Previous Memorandum of Understanding before the Effective Date.

**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 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	Hungary	12 May 2010	23 Feb 2011

	Title	Jurisdiction	Date of Signature	Date of Entry into force
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 respect to Taxes on Income	Jersey	15 Feb 2012 and 22 Feb 2012	3 Jul 2013
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	Latvia	13 Apr 2016	24 Nov 2017

	Title	Jurisdiction	Date of Signature	Date of Entry into force
	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			
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 Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Malaysia	25 Apr 2012	28 Dec 2012
17	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
18	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Mexico	18 Jun 2012	7 Mar 2013
19	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	Netherlands	22 Mar 2010	24 Oct 2011

	Title	Jurisdiction	Date of Signature	Date of Entry into force
	respect to Taxes on Income			
20	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	New Zealand	1 Dec 2010	9 Nov 2011
21	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	24 Nov 2017
22	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
23	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
24	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
25	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 South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	South Africa	30 Sep 2014 and 16 Oct 2014	20 Oct 2015
26	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Spain for the Avoidance	Spain	1 Apr 2011	13 Apr 2012

	Title	Jurisdiction	Date of Signature	Date of Entry into force
	of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income			
27	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Swiss Federal Council for the Avoidance of Double Taxation with respect to Taxes on Income	Switzerland	4 Oct 2011	15 Oct 2012
28	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