

The double taxation treaty between Italy and Hong Kong comes into force

By virtue of two Decrees of the Italian Ministry of the Economy and Finances, dated 18 November 2015 and published in the Italian Official Gazette no. 279 of 30 November 2015, the Italian Government has removed the Hong Kong Special Administrative Region of the People's Republic of China (**Hong Kong**) from the lists relating to certain jurisdictions considered to be tax havens (**Black Lists**) pursuant to certain provisions of the Italian consolidated law on income tax (**Consolidated Law**).

In particular, the amended Black Lists were referred to by the following tax provisions:

1. article 110 of the Consolidated Law, regarding the non-deductibility of costs deriving from transactions carried out between Italian tax resident entities and entities resident in countries that do not grant an adequate exchange of information with Italy (so called "non-cooperative" countries); and
2. article 167 of the Consolidated Law, regarding the applicability of a special "transparency" regime in the hands of Italian tax resident entities for income accrued by controlled foreign companies resident in certain low tax jurisdictions (so called **CFCs**)¹.

Italian law no. 208 of 28 December 2015 (the "**2016 Financial Law**"), which came into force on 1 January 2016, actually repealed (i) the provisions of article 110 of the Consolidated Law relating to the non-deductibility of costs incurred with entities resident in non-cooperative jurisdictions and (ii) references to the specific list entailed by a special Ministerial Decree in order to assess if a country is a black-list country for the purposes of the CFC.

Therefore, as from the fiscal year 2016, the Black Lists which the amended provisions referred to should be considered effectively inapplicable, although this point has not yet been officially clarified.

The removal of Hong Kong from the Black Lists follows the coming into force of the Agreement for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion ("**DTA**"), which was entered into between Italy and Hong Kong on 14 January 2013 and ratified by the Italian Parliament by virtue of law no. 96 of 18 June 2015, which came into force on 10 August 2015.

The DTA, based on the OECD model tax convention against double taxation, provides, inter alia, a specific clause concerning the exchange of information between Hong Kong and Italy, which allowed to Hong Kong to be removed from the Black Lists.

¹ Set out in the Italian Ministerial Decree of 21 November 2001

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The main benefits deriving from the DTA shall, inter alia, include:

1. a significant reduction of the rates of certain withholding taxes applicable in Italy to specific payments made to Hong Kong resident entities². These are:

Tax	Applicable (domestic) rate	Reduced rate (under DTA)
Dividends	26%	10%
Interest	26%	12,5%
Royalties	30% ³	15%

2. the introduction of an ad hoc rule (so called "tie-breaker rule") designed to minimise cases of double tax residency;
3. specific criteria applicable for evaluating whether an enterprise that is resident in a contracting State may be considered a permanent establishment in the other contracting State, as well as how the business income tax is levied on permanent establishments.

For sale of completeness, we note that Hong Kong is not yet included in the list of jurisdictions that allow for an adequate exchange of information with Italy provided in the Ministerial Decree of 4 September 1996 (so called **White List**). The White List is provided for the purpose of the application of special tax regimes on certain financial incomes.

In light of the removal of Hong Kong from the Black Lists of the non-cooperative jurisdictions and in view of the coming into force of the DTA, which ensures an exchange of information for tax purposes, Hong Kong is expected to be formally included in the White List.

² Subject to certain requirements set out in the DTA being met.

³ In certain cases the chargeable amount is reduced to 75% with a final corporate tax rate of 22.5% on the relevant income item.