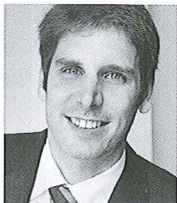


聚焦中瑞、港瑞避免双重征税协定

Focus on Sino-Swiss and Hong Kong-Swiss DTAs



Christoph Niederer
菲谢尔律师事务所
合伙人、税务团队主管
Partner and Head of
the Tax Team
VISCHER



吴帆
Wu Fan
菲谢尔律师事务所
顾问
Counsel
VISCHER

VISCHER

SWISS LAW AND TAX

Schützengasse 1
Postfach 1230
8021 Zürich

电话 Tel: +41 58 211 34 00
传真 Fax: +41 58 211 34 10

Christoph Niederer
电话 Tel: +41 58 211 34 37
电子邮件 E-mail: cniederer@vischer.com
吴帆 Wu Fan
电话 Tel: +41 58 211 36 45
电子邮件 E-mail: FWu@vischer.com

www.vischer.com

我们在本刊十月份的专栏文章中简要指出, 中瑞于2013年9月25日签署了新的避免双重征税协定(DTA)。它将取代现有的1991年协定, 一旦获得批准, 预计于2015年1月1日开始实施。

新中瑞协定

信息交换

新《中瑞避免双重征税协定》的关键点之一, 是财税信息交换执行国际经济合作与发展组织(OECD)标准。这一重要进步将提高跨国财政事务的透明度, 并使两国得以请求对方为评估本国境内纳税人提供所需的信息, 如来自银行、政府机构或公司的信息。

股息

根据新《中瑞避免双重征税协定》, 股息的最高预扣税将是5%, 如果股息受益人是公司(出于财政透明考虑, 合伙企业和个人除外)、居住于缔约国另一方并且直接持有派息公司至少25%的资本。这项措施旨在进一步减少对跨国附属公司的双重征税。在所有其他情况下, 对股息的最高税率为10%, 这与现行的1991年双重征税协定一样。

如果股息的受益人是另一方缔约国本身、其行政区、中央银行或地方当局以及缔约国双方共同认定的机构和基金, 缔约国一方应对该项股息完全免税。就中国而言, 这类机构包括: 中国投资公司和全国社会保障基金理事会。

特许权使用费收益

在中国, 中国公司向瑞士个人或公司支付的特许使用费的预扣税税率为9%, 而

对无协定国家, 此项税率为个人20%, 公司10%。因此, 新的《中瑞避免双重征税协定》将特许使用费的预扣税税率从10%降到了9%。由于瑞士对特许使用费不征收预扣税, 该协定主要使中国企业受益。

利息支付

新《中瑞避免双重征税协定》没有降低现行的利息支付预扣税, 最高税率仍维持在10%。不过, 瑞士对一般贷款不征收利息预扣税, 只对银行利息或债券利息按35%的标准征收预扣税(在不存在避免双重征税协定的情况下)。与股息支付类似, 利息支付的受益人如果是另一方缔约国、其行政区或国有机构, 是不征收预扣税所得的。

国际运输服务

新《中瑞避免双重征税协定》将免除瑞士从事船舶或飞机运输的国际运营商在中国的营业税和增值税, 并且它们提供的这类服务可得到与中国公司同等程度的进项税抵免。反之亦然, 这个规则同样适用于中国的航运公司和航空公司。我们预计这个重要的税收减免将增加中瑞双边旅游及商业活动。

港瑞《避免双重征税协定》

2012年瑞士和香港之间的有关所得税避免双重征税协定。瑞士和香港之间的避免双重征税协定于2012年10月15日生效, 在信息交流方面它也执行国际经济合作与发展组织的标准。香港-瑞士DTA在瑞士于2013年1月1日、在香港于2013年4月1日开始实施。在此之前, 香港和瑞士之间不存在DTA。

股息

根据香港-瑞士避免双重征税协定, 股息所得税最高税率为10%, 但支付给在另一方缔约国持有派息人至少10%股权资本的关联公司(合伙企业或个人除外)的股息免税。同样的规则也分别适用于对养老金或退休金计划、香港金融管理局和瑞士国家银行的支付。然而, 根据香港本地税法, 香港的实体所支付的股息免征任何预扣税。因此, 香港和瑞士避免双重课税协议的规定主要有利于香港投资者投资于瑞士。

应税利息

仅在受益人居住国对利息征税。由于香港利息支付不征收任何预扣税, 这一规定的受益人是居住在香港而投资瑞士债券的债权人。

特许权使用费收益

根据香港和瑞士避免双重征税协议, 这两个国家的税务机关对特许使用费征收的预扣税最高税率为3%。对非居民支付的特许使用费的实际税率, 根据香港本地税法, 公司为4.95%或16.5%, 个人为4.5%或15%——根据无形资产的受益人和所有人的不同而定。香港-瑞士DTA显著减少了从香港支付到瑞士的特许使用费的预扣税。如前所述, 瑞士不征收特许使用费预扣税。

正如瑞士-香港避免双重征税协定有利于香港-瑞士投资, 新的中瑞避免双重征税协定将提高中瑞投资的税务效率。尤其是瑞士投资者在中国内地的投资将可以直接享受到5%的股息预扣税率, 而再无需采用借道香港的结构——税务架构常常是有难度的。■

As briefly indicated in our October column, on 25 September 2013 the new Sino-Swiss double taxation treaty (DTA) on income taxes was signed. It will replace the existing 1991 treaty and is, once ratified, expected to come into effect on 1 January 2015.

Exchange of information

As one of the key points, the new Sino-Swiss DTA implements the international Organisation for Economic Co-operation and Development (OECD) standard on the exchange of fiscal information.

This important step will improve transnational transparency with regard to fiscal matters, and will allow both countries to request information – for example, from banks, governmental bodies or corporations – needed for the assessment of a taxpayer in the requesting state.

Dividends

Under the new Sino-Swiss DTA the maximum withholding tax on dividends will be 5%, if the beneficiary of the dividends is a company – other than, due to fiscal transparency, a partnership or individual – resident in the other treaty state and directly holding at least 25% of the capital of the dividend-paying company. This measure aims to further reduce the double taxation for transnational affiliate companies. In all other cases, dividends will be taxed at a maximum rate of 10%, as is the case under the current DTA from 1991.

If the beneficial owner of the dividends is the other contracting state itself, a political subdivision, the central bank, or a local authority including institutions and funds agreed on by the two contracting states, a full relief from withholding tax will be provided. In the case of China, such institutions include the China Investment Corporation (CIC) and the National Council for Social Security Fund.

Royalties benefits

In China, royalties paid by a Chinese company to a Swiss individual or company will be subject to a withholding tax rate of 9% – versus 20% for individuals and 10% for companies

domiciled in countries without treaty. Hence, the new Sino-Swiss DTA will reduce the royalty withholding tax rate from 10% to 9%.

As Switzerland levies no withholding tax on royalties, the treaty benefits primarily Chinese companies.

Interest payments

The new Sino-Swiss DTA will not provide for lower withholding tax on interest payments than the existing treaty, the maximum withholding tax on interest payments remaining at 10%. Nevertheless, Switzerland does not impose withholding tax on regular loans, other than on interest paid by a bank or interest on bonds taxed at, without double tax treaty, 35%. As with regard to dividend payments, no withholding tax will be imposable on interest paid to the contracting state, one of its subdivisions, or a state-owned agency.

International transport services

The new Sino-Swiss DTA will exempt Swiss international operators of ships or aircraft from Chinese business tax and value-added tax (VAT) and for them the input tax attributable to supplies will be creditable to the same extent as for Chinese companies. The same applies vice versa for Chinese shipping companies and airlines. We expect that this important tax relief will increase Sino-Swiss travel and business activities.

The HK-Swiss DTA

The 2012 treaty between Switzerland and Hong Kong for the avoidance of double taxation with respect to income taxes. The DTA between Switzerland and Hong Kong came into force on 15 October 2012 and also implemented the international OECD standards on exchange of information. The Hong Kong-Swiss DTA entered into effect for Switzerland on 1 January 2013 and for Hong Kong on 1 April 2013. No DTA between Hong Kong and Switzerland existed prior to the current treaty.

Dividends

Under the Hong Kong-Swiss DTA, dividends are taxed at a maximum rate of 10%, but dividends to affiliate

companies – other than to partnerships or individuals – in the other contracting party holding at least 10% of the dividend payer are exempt. The same rule applies for payments to pension funds or pension schemes, to the Hong Kong Monetary Authority and to the Swiss National Bank, respectively.

However, according to domestic tax law, dividends paid by a Hong Kong entity are exempt from any withholding tax. Therefore, the Hong Kong-Swiss DTA provision benefits mainly Hong Kong investors investing in Switzerland.

Taxable interest

Interest will only be taxed in the country of residence of the beneficial owner. Since Hong Kong does not impose any withholding tax on interest payments, the beneficiaries of this provision are creditors resident in Hong Kong investing in Swiss bonds.

Royalties benefits

Under the Hong Kong-Swiss DTA, the tax authorities of both countries may levy withholding tax on royalties at a maximum rate of 3%. As according to Hong Kong domestic tax law royalty payments to non-residents are taxable at an effective rate of 4.95%, or 16.5% for companies and 4.5% or 15% for individuals – depending on the beneficiary and the original owner of the intangibles – the Hong Kong-Swiss DTA significantly reduces withholding taxation of royalties paid from Hong Kong to Switzerland.

As mentioned previously above, Switzerland levies no withholding tax on royalty payments.

As the Swiss-Hong Kong DTA did for Hong Kong-Swiss investments, the new Sino-Swiss DTA will improve tax efficiency of Sino-Swiss investments. For Swiss investors, it will in particular no longer be necessary to structure their mainland investments via Hong Kong – often difficult for conduit rules – to avail themselves of 5% withholding tax on dividends. ■

Christoph Niederer is Swiss-Far East lawyer, partner and head of the tax team at the Swiss law firm VISCHER, and Wu Fan is counsel at VISCHER.