Tax Dispute Resolution Timelines - Hong Kong

National Procedures

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# Last Updated

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# 1. When is the first appeal deadline following disagreement of the assessment made by the tax authorities?

One month from the date of the notice of assessment.

# 2. What is the appealing procedure?

**First stage:** This is the compulsory administrative level. Where an assessment is issued, the taxpayer will have the right to object to the assessment within one month of the date of the notice of assessment. This requires the filing of a written notice setting out the grounds on which the taxpayer objects to the assessment. Any objections will be considered by the original assessor in the first instance. If the assessor is of the view that no changes should be made, the assessor will transfer the file to the Inland Revenue Department's (IRD) Appeal Section (a separate unit within the IRD), which will review the matter de novo and prepare a statement of facts and draft reasons for consideration by the commissioner/deputy commissioner. The commissioner/deputy commissioner will issue a determination together with reasons in writing to the taxpayer.

**Second stage:** Judicial procedures:

If the taxpayer wishes to appeal the determination of the commissioner/deputy commissioner, the taxpayer may appeal to the Board of Review, an independent tribunal that acts as a trial court, within one month of the date of the commissioner's written determination (though it is possible for the taxpayer and the IRD to agree that the case will be heard directly by the Court of First Instance). Appeals against the Board of Review's decision can be made to the Court of First Instance and subsequently to the Court of Appeal and Court of Final Appeal on questions of law.

# 3. What is the average time for reaching a final national decision?

4 - 6 years

If the taxpayer appeals through every level, the average proceedings should take one to two years at the administrative level and two years each for the subsequent appeals at the Board of Review and the courts.

# 4. How do the national tax dispute resolution proceedings interact with the international tax dispute resolution proceedings?

a. **Start:** A case can be presented to the IRD while domestic remedies are still available or pending. It is a strategic decision to identify the right point in time to start the mutual agreement procedure (MAP). The time limit specified in the MAP article in treaties concluded by Hong Kong is generally three years from the date of the first notification of the action that results or is likely to result in double taxation.

b. **Conduct of the proceedings:** The MAP is in addition to a taxpayer's rights to object and appeal an assessment (as discussed in Item 2 above). Where an objection is lodged, the IRD will concurrently consider a case presented under the MAP Article and an objection lodged under the Inland Revenue Ordinance (IRO). Where an appeal is lodged, the MPA process and appellate proceedings can run concurrently.

c. **Completion of proceedings:** The agreement reached for an issue covered by the MAP will be implemented, provided that the taxpayer accepts the agreement (such an acceptance will be regarded as a settlement agreement between the taxpayer and the commissioner).

If the taxpayer does not accept the agreement, the IRD will close the case without implementing any agreement. The commissioner will proceed to determine the taxpayer's objection under the IRO.

Where a decision or order has been made by the Board of Review or the courts, although the MAP process can still continue, the IRD will abide by the decision or order. Where, under the decision or order, taxation in Hong Kong is in accordance with the double tax treaty (DTA), any subsequent endeavors of the IRD under the MAP will be limited to demonstrating that relief should be provided in the other DTA jurisdiction.

d. **Other actions:** If the MAP fails, arbitration proceedings could be possible, provided that the DTA includes an arbitration provision.

Some of the DTAs concluded by Hong Kong provide residents with the right to refer to arbitration any issues on which no agreement is reached under the MAP within the time limits prescribed under the MAP article, unless a decision on these issues has already been rendered by a court or an administrative tribunal of either party to the DTA.

Unless the taxpayer does not accept the mutual agreement that implements the arbitration decision, such a decision will be binding on Hong Kong and the other DTA jurisdiction. If the taxpayer rejects the outcome of the arbitration, it may continue to seek a remedy under the IRO and under the domestic laws of the other DTA jurisdiction.

# 5. Are administrative appeal procedures compulsory or optional prior to a judicial procedure?

Compulsory

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