

# Client Alert

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## **New Bilateral Income Tax Treaty Grants Favorable Tax Status to Cross-Border Transactions between Belgium and China**

On October 7, 2009, China and Belgium entered into the new Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the "New Treaty"). The New Treaty came into force on December 29, 2013, and would apply to incomes arising as from January 1, 2014, or incomes pertaining to fiscal years beginning as from January 1, 2014. With its effectiveness, the New Treaty replaces the earlier 1985 Treaty (as amended in 1996) between the two countries.

In China, the New Treaty applies to (i) the individual income tax and (ii) the enterprise income tax. In Belgium, this treaty applies to (i) the individual income tax, (ii) the corporate income tax, (iii) the tax on legal entities, (iv) the tax on nonresidents and (v) the supplementary crisis contribution. In each case, it also applies to any prepayments of these taxes, and to any surcharges on these taxes and prepayments.

This New Treaty is one of the most favorable tax treaties that China has ever entered into. It brings about many changes to the original arrangements under the 1985 Treaty. For example, a more favorable withholding tax rate (5 percent) on dividend distributions can be applied when certain conditions are met, instead of the older rate of 10 percent that was applicable under the 1985 Treaty. The withholding tax rate on royalties has been reduced from 10 percent under the 1985 Treaty to 7 percent (this is the lowest rate on the tax treaties that China has signed). With these reductions, ownership interests in Chinese subsidiaries held by Belgian companies (and vice versa) are now placed in a significantly more tax-favorable position. The use of IP rights in various transactions between the two countries is now also more strongly encouraged. The New Treaty also includes a number of other changes and clarifications of old uncertainties, which improve and enhance the overall tax framework between the two countries.

With this New Treaty in place, Belgium could play a role, similar to that which Hong Kong and Singapore currently enjoy, as a tax-efficient jurisdiction for the establishment of offshore holding companies for Chinese inbound and outbound investments. Also, Chinese companies may now consider using Belgian vehicles to structure their investments in Europe.

With offices in both Brussels and Beijing, Hunton & Williams LLP is very favorably positioned to assist clients in establishing and operating the advantageous ownership structures that are now possible as a result of the New Treaty. Our fully coordinated cross-office team is capable of forming holding companies in both Belgium and China, and of executing acquisition transactions in both jurisdictions.

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