

(FIN CR 16/10/2041/46 (01))

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance

(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE REPUBLIC OF ESTONIA CONCERNING AIR SERVICES) (DOUBLE TAXATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 3 July 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that the Specification of Arrangements (Government of the Republic of Estonia Concerning Air Services) (Double Taxation) Order at the Annex, should be made under section 49 of the Inland Revenue Ordinance, to declare the coming into effect of the arrangements for double taxation relief in respect of airline income and profits between the Republic of Estonia and Hong Kong.

BACKGROUND AND ARGUMENT

Double Taxation Relief for Airline Income

2. It is our policy to include provisions on double taxation relief for airline income in bilateral air services agreements negotiated between the HKSAR and our aviation partners. We have concluded and implemented such relief arrangements on airline income with Bangladesh, Belgium, Canada, Denmark, Germany, Israel, Mauritius, the Netherlands, New Zealand, Norway, the Republic of Korea, Russia, Sweden and the United Kingdom.

3. The HKSAR entered into an Air Services Agreement with the Republic of Estonia on 30 April 2001. The Agreement contains, under Article 9, a provision on double taxation relief in respect of airline income and profits. The provision provides that -

- (a) income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party;
- (b) capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other Contracting Party; and
- (c) gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

4. Under section 49 of the Inland Revenue Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. Following the

signature of the Air Services Agreement with the Republic of Estonia, it is necessary to declare by order that arrangements with the Republic on double taxation relief in respect of airline income and profits have been made, so as to put the arrangements into effect. We therefore propose to make an order for the said arrangements. In accordance with Article 9 of the Agreement, the arrangements will apply, in the case of the HKSAR, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the Air Services Agreement or Article 9 enters into force, whichever is the later.

THE ORDER

5. **Section 1** of the Order declares that arrangements for double taxation relief in respect of airline income and profits have been made with the Government of the Republic of Estonia and should take effect. **Section 2** states that the arrangements, which are included in Article 9 of the Air Services Agreement, are specified in the Schedule to the Order, and that the Article should be construed in accordance with the terms of the Agreement. **The Schedule** to the Order sets out the details of the arrangements.

PUBLIC CONSULTATION

6. Hong Kong airlines have been consulted on the double taxation relief article and have expressed support for the relief arrangements.

HUMAN RIGHTS IMPLICATIONS

7. The proposed legislation has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

8. The double taxation relief arrangements have no immediate financial implications. There are no staffing implications.

LEGISLATIVE TIMETABLE

9. The legislative timetable is -

Publication in the Gazette 6 July 2001

Tabling at the Legislative Council 11 July 2001

PUBLICITY

10. We will issue a press release on 6 July 2001.

ENQUIRIES

11. In case of enquiries about this Brief, please contact Ms. Esther Leung, Principal Assistant Secretary for the Treasury (Revenue), at 2810 2370.

Finance Bureau

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF
THE REPUBLIC OF ESTONIA CONCERNING AIR
SERVICES) (DOUBLE TAXATION) ORDER**

(Made by the Chief Executive in Council under section 49 of the
Inland Revenue Ordinance (Cap. 112))

1. Declaration under section 49

For the purposes of section 49 of the Ordinance, it is declared that the arrangements referred to in section 2 have been made with the Government of the Republic of Estonia with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the Republic, and that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements mentioned in section 1 are in Article 9 of the 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 Estonia concerning Air Services done in duplicate at Tallinn on 30 April 2001 in the English language as specified in the Schedule and having effect according to the tenor of that Agreement.

SCHEDULE

[s. 2]

ARTICLE 9

of the

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
ESTONIA CONCERNING AIR SERVICES

"Article 9

Avoidance of Double Taxation

- (1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.
- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other Contracting Party.
- (3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.
- (4) For the purposes of this Article:
 - (a) the term "income or profits" includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
 - (i) the charter or rental of aircraft;
 - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline; and
 - (iii) interest on funds directly connected with the operation of aircraft in international traffic;

- (b) the term "international traffic" means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (c) the term "airline of one Contracting Party" means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of Estonia, an airline substantially owned and effectively controlled by the Government of Estonia or its nationals;
- (d) the term "competent authority" means, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative, or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions, and, in the case of Estonia, National Tax Board or their authorized representative.

(5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 17 (Settlement of Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 21 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last written notification. The Article shall then be applied:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later;
- (b) in Estonia, for any year of assessment beginning on or after 1st January in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.

(7) Notwithstanding Article 19 (Termination) where notice of termination of this Agreement is given by one of the Contracting Parties in writing under that Article, this Article shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given;
- (b) in Estonia, for any year of assessment beginning on or after 1st January in the calendar year next following that in which notice is given.

(8) This Article shall cease to have effect in the event that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties."

Clerk to the Executive Council

COUNCIL CHAMBER

3 July 2001

Explanatory Note

This Order declares under section 49 of the Inland Revenue Ordinance (Cap. 112) that it is expedient for the purpose of affording relief from double taxation that the arrangements specified in Article 9 of the 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 Estonia concerning Air Services done at Tallinn on 30 April 2001 should have effect in relation to tax under that Ordinance.