

(FIN CR 14/10/2041/46 (00))

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance

(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH CONCERNING AIR SERVICES) (DOUBLE TAXATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 16 January 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that the Specification of Arrangements (Government of the People's Republic of Bangladesh 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 with the People's Republic of Bangladesh on double taxation relief in respect of airline income and profits.

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 the Republic of Korea, New

Zealand, Canada, the Netherlands, Germany, the United Kingdom, Belgium, Israel, Mauritius, Russia, Denmark, Norway and Sweden.

3. The HKSAR entered into an Air Services Agreement with the People's Republic of Bangladesh on 24 October 2000. 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 People's Republic of Bangladesh, 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, in respect of any year of assessment beginning on or after 1 April in the calendar year in which the Contracting Parties have notified each other the completion of the legal procedures for bringing the Article into force.

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 People's Republic of Bangladesh 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. The Hong Kong airline designated under the Air Services Agreement has been consulted during the discussion of the double taxation relief article. It has expressed support for the relief arrangement.

HUMAN RIGHTS IMPLICATIONS

7. The proposed legislation has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

8. Based on the current level of uplifts of the airlines concerned, 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 23 January 2001

Tabling in the Legislative Council 7 February 2001

PUBLICITY

10. We will issue a press release on 22 January 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 PEOPLE'S
REPUBLIC OF BANGLADESH 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 People's Republic of Bangladesh 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 People's Republic of Bangladesh, 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 People's Republic of Bangladesh concerning Air Services done in duplicate at Hong Kong on 24 October 2000 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 PEOPLE'S REPUBLIC OF
BANGLADESH 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 the People's Republic of Bangladesh, an airline substantially owned and effectively controlled by the Government of the People's Republic of Bangladesh 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 authorised representative, or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions, and, in the case of the People's Republic of Bangladesh, Ministry of Finance or its authorised 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 16 (Settlement of Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 20 (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 thereupon 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 in which this Agreement enters into force or the year in which the Contracting Parties have notified each other the completion of the above-mentioned procedures, whichever is the later;
- (b) in the People's Republic of Bangladesh, for any financial year beginning on or after 1st July in the calendar year in which this Agreement enters into force or the year in which the Contracting Parties have notified each other the completion of the above-mentioned procedures, whichever is the later.

(7) Notwithstanding Article 18 (Termination) where notice of termination of this Agreement is given 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 the People's Republic of Bangladesh, for any financial year beginning on or after 1st July 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

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 People's Republic of Bangladesh concerning Air Services done at Hong Kong on 24 October 2000 should have effect in relation to tax under that Ordinance.