

(FIN CR 1/10/2041/46 (98))

(FIN CR 2/10/2041/46 (00))

## LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance

(Chapter 112)

### SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND) (AVOIDANCE OF DOUBLE TAXATION ON SHIPPING INCOME) ORDER

### SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS) (AVOIDANCE OF DOUBLE TAXATION ON SHIPPING INCOME) ORDER

#### INTRODUCTION

At the meeting of the Executive Council on 20 February 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that -

(a) the Specification of Arrangements (Government of the United Kingdom of Great Britain and Northern Ireland) (Avoidance of Double Taxation on Shipping Income) Order, at Annex A; and

A

(b) the Specification of Arrangements (Government of the Kingdom of the Netherlands) (Avoidance of Double Taxation on Shipping Income) Order, at Annex B,

B

should be made under section 49 of the Inland Revenue Ordinance, to declare the coming into effect of the agreements with the United Kingdom and the Netherlands on double taxation relief in respect of shipping income.

## **BACKGROUND AND ARGUMENT**

### **Double Taxation Relief for Shipping Income**

2. Due to the international nature of shipping operations, shipping operators are more susceptible to double taxation than other taxpayers. It is therefore our objective to conclude avoidance of double taxation agreements for revenues arising from the operation of ships in international traffic with our shipping partners. We concluded a double taxation relief arrangement on shipping with the United States of America in 1989. In 1998, we amended our legislation to provide reciprocal tax exemption for shipping income so that Hong Kong ship operators can benefit from the tax relief offered by places with similar reciprocal tax exemption legislation. For other shipping partners who do not provide reciprocal tax exemption in their legislation, we negotiate with them double taxation relief agreements for shipping income, in order to alleviate the tax burden of our ship operators in those places.

3. In the year 2000, the HKSAR entered into two separate agreements for avoidance of double taxation on shipping revenues - one with the United Kingdom on 25 October, and another with the Netherlands on 2 November. The agreements provide in effect that -

- (a) income and profits derived from the operation of ships in international traffic by an enterprise of a Contracting Party, including participation in a pool, a joint business or an international operating agency, shall be taxable only in the area

of that Contracting Party;

- (b) capital and assets and movable property of an enterprise of a Contracting Party relating to the operation of ships in international traffic shall only be taxable in the area of that Contracting Party; and
- (c) gains from the alienation of ships operated in international traffic and movable property pertaining to the operation of such ships which are received by an enterprise of a Contracting Party shall only be taxable in the area of that Contracting Party.

4. The agreement with the Netherlands also provides that remuneration in respect of an employment exercised aboard a ship operated in international traffic by an enterprise of a Contracting Party shall be taxable only in the area of that Contracting Party when documentary evidence is produced that tax has been paid in the area of that Contracting Party.

5. 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 conclusion and signing of the agreements with the United Kingdom and the Netherlands, it is necessary to declare by order that arrangements with them on double taxation relief in respect of shipping income and profits have been made, so as to put the arrangements into effect. We therefore propose to make a separate order for each named country.

6. The agreements with the United Kingdom and the Netherlands will enter into force on the date of the later of the notifications (informing the other Contracting Party the completion of the procedures required by its law for bringing the agreement into force), and thereupon have effect in Hong Kong for any year of assessment beginning on or after 1 April in the calendar year following that in which the agreement enters into force. The Netherlands' agreement also provides that upon request by an enterprise of a Contracting Party, the agreement shall have effect in Hong Kong for any year of assessment beginning on or after 1 April 1998, and in the Netherlands for taxable years and periods beginning on or after 1 January 1998. This reflects the fact that both Hong Kong and the Netherlands have in place in their domestic laws provisions providing for the reciprocal exemption of shipping income and profits.

## **THE ORDERS**

7. **Section 1** of the Orders declares that arrangements for double taxation relief in respect of shipping income and profits have been made with the government of the named country and should take effect. **Section 2** states that the arrangements are specified in the Schedule to the Orders. **The Schedules** to the Orders set out the details of the arrangements.

## **PUBLIC CONSULTATION**

8. The Hong Kong Shipowners Association has been consulted. It welcomes the agreements.

## **HUMAN RIGHTS IMPLICATIONS**

9. The Orders have no human rights implications.

## **FINANCIAL AND STAFFING IMPLICATIONS**

10. Based on the current levels of uplifts and profitability of the relevant shipowners, the financial implications of the double taxation relief arrangements are not considered significant. There are no staffing implications.

## **LEGISLATIVE TIMETABLE**

11. The legislative timetable is -

Publication in the Gazette                      2 March 2001

Tabling in the Legislative Council    7 March 2001

## **PUBLICITY**

12. We will issue a press release on 28 February 2001.

## **ENQUIRIES**

13. 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 UNITED  
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND)  
(AVOIDANCE OF DOUBLE TAXATION ON SHIPPING  
INCOME) 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 United Kingdom of Great Britain and Northern Ireland 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 Kingdom, and that it is expedient that those arrangements should have effect.

**2. Arrangements specified**

The arrangements mentioned in section 1 are in Articles 1 to 6 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation on revenues arising from the business of shipping transport done in duplicate at Hong Kong on 25 October 2000 in the English language as specified in the Schedule and having effect according to the tenor of that Agreement.

## SCHEDULE

[s. 2]

## ARTICLES 1 TO 6

of the

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM  
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE  
PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE  
OF DOUBLE TAXATION ON REVENUES ARISING FROM  
THE BUSINESS OF SHIPPING TRANSPORT

**"ARTICLE 1****Taxes covered**

- (1) This Agreement shall apply to taxes on income and on capital.
- (2) The existing taxes to which this Agreement shall apply are in particular:
  - (a) in the case of the United Kingdom:
    - (i) the income tax;
    - (ii) the corporation tax; and
    - (iii) the capital gains tax;
  - (b) in the case of the Hong Kong Special Administrative Region, profits tax.
- (3) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting Party after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes which have been made in their respective taxation laws.

**ARTICLE 2****General definitions**

- (1) For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "area" in respect of the United Kingdom means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised and in respect of the Hong Kong Special Administrative Region includes Hong Kong Island, Kowloon and the New Territories;
  
- (b) the term "competent authority" means:
  - (i) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;
  
  - (ii) 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;
  
- (c) the term "Contracting Party" means the United Kingdom of Great Britain and Northern Ireland or the Hong Kong Special Administrative Region, as the context requires;
  
- (d) the term "enterprise of a Contracting Party" means:
  - (i) in the case of the United Kingdom of Great Britain and Northern Ireland a business carried on by a person who, under the law of the United Kingdom of Great Britain and Northern Ireland, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature;
  
  - (ii) in the case of the Hong Kong Special Administrative Region a business carried on by a person as an operator of ships and which is managed and controlled in the Hong Kong Special Administrative Region.



For the purposes of this sub-paragraph, the Government of a Contracting Party shall be deemed to be an individual resident of that Contracting Party, and an enterprise of one Contracting Party shall not at the same time be an enterprise of the other Contracting Party;

- (e) the term "international traffic" means any transport by a ship operated by an enterprise of a Contracting Party, except when the ship is operated solely between places in the area of the other Contracting Party;
- (f) the term "person" includes an individual, a company and any other body of persons, but does not include a partnership.

(2) As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

### **ARTICLE 3**

#### **Shipping transport**

(1) Profits of an enterprise of a Contracting Party from the operation of ships in international traffic shall be taxable only in the area of that Party.

(2) For the purposes of this Article, profits from the operation of ships in international traffic include:

- (a) revenues and gross receipts from the operation of ships for the transport of persons, livestock, goods, mail or merchandise;
- (b)
  - (i) profits from the rental on a full (time or voyage) or bareboat basis of ships; and
  - (ii) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships in international traffic; and

(c) interest on funds directly connected with that operation.

(3) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

(4) Gains derived by an enterprise of a Contracting Party from the alienation of ships operated in international traffic by that enterprise, or movable property pertaining to the operation of such ships, shall be taxable only in the area of that Party.

(5) Capital of an enterprise of a Contracting Party represented by ships operated by that enterprise in international traffic, or by movable property pertaining to the operation of such ships, shall be taxable only in the area of that Party.

#### **ARTICLE 4**

##### **Mutual agreement procedure**

The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

#### **ARTICLE 5**

##### **Entry into force**

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next

following that in which this Agreement enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Agreement enters into force;

(b) 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 enters into force.

## **ARTICLE 6**

### **Termination**

This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year. In such event, this Agreement shall cease to have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(b) 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."

Clerk to the Executive Council

COUNCIL CHAMBER

20 February 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 Articles 1 to 6 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation on revenues arising from the business of shipping transport done at Hong Kong on 25 October 2000 should have effect.

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM  
OF THE NETHERLANDS) (AVOIDANCE OF DOUBLE  
TAXATION ON SHIPPING INCOME) 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 Kingdom of the Netherlands 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 Kingdom, and that it is expedient that those arrangements should have effect.

**2. Arrangements specified**

The arrangements mentioned in section 1 are in Articles 1 to 7 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of the Netherlands for the avoidance of double taxation on income, profits, gains or capital of an enterprise operating ships in international traffic done in duplicate at Hong Kong on 2 November 2000 in the English language as specified in the Schedule and having effect according to the tenor of that Agreement.

SCHEDULE

[s. 2]

ARTICLES 1 TO 7

of the

AGREEMENT BETWEEN THE HONG KONG SPECIAL ADMINISTRATIVE  
REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE KINGDOM OF  
THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION  
ON INCOME, PROFITS, GAINS OR CAPITAL OF AN  
ENTERPRISE OPERATING SHIPS IN  
INTERNATIONAL TRAFFIC

**"ARTICLE 1**

**Taxes covered**

- (1) The existing taxes to which this Agreement shall apply are:
  - (a) in the case of the Hong Kong Special Administrative Region:  
profits tax,  
salaries tax;
  - (b) in the case of the Netherlands:  
de inkomstenbelasting (income tax),  
de loonbelasting (wages tax),  
de vennootschapsbelasting (company tax),  
de vermogensbelasting (capital tax).

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting Party after the signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph (1) of this Article. The competent authorities shall notify each other of any substantial changes which have been made in their respective taxation laws.

**ARTICLE 2**

**General definitions**

- (1) For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Contracting Party" means the Hong Kong Special Administrative Region or the Kingdom of the Netherlands, as the context requires;
- (b) the term "Contracting Parties" means the Hong Kong Special Administrative Region and the Kingdom of the Netherlands;
- (c) the term "area of a Contracting Party" means:
  - (i) in the case of the Kingdom of the Netherlands, the part of the Kingdom that is situated in Europe;
  - (ii) in the case of the Hong Kong Special Administrative Region, Hong Kong Island, Kowloon and the New Territories;
- (d) the term "person" includes an individual, a corporation, a partnership, or any other body of persons, whether incorporated or unincorporated, and in the case of the Hong Kong Special Administrative Region a trust;
- (e) the term "an enterprise of a Contracting Party" means:
  - (i) in the case of the Hong Kong Special Administrative Region a business carried on by a person as an owner or a charterer of ships and the business is controlled or managed in the Hong Kong Special Administrative Region;
  - (ii) in the case of the Netherlands an enterprise carried on by a person, who under the law of the Netherlands is liable to tax therein by reason of his domicile, residence, place of effective management or any other criterion of a similar nature;
- (f) the term "international traffic" means any transport by a ship operated by an enterprise of a Contracting Party except when the ship is operated solely between places in the area of the other Contracting Party;
- (g) 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 the Netherlands, the Minister of Finance or his authorized representative;

- (h) the term "income or profits" means revenues and gross receipts from the operation of ships for the transport of persons, livestock, goods, mail or merchandise. This term shall also include:
  - (i) the income or profits from the lease of ships on a bareboat basis or containers;
  - (ii) the income or profits from the sale of tickets and from the provision of services;
  - (iii) interest on funds,

insofar as such income or profits are directly connected with and incidental to the operation of ships in international traffic.

(2) As regards the application of this Agreement at any time by a Contracting Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that Contracting Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the terms under other laws of that Contracting Party.

### **ARTICLE 3**

#### **Shipping transport**

(1) Income or profits derived from the operation of ships in international traffic by an enterprise of a Contracting Party shall be exempt from all taxes imposed on income or profits in the area of the other Contracting Party.

(2) Capital and assets of an enterprise of a Contracting Party relating to the operation of ships in international traffic shall be exempt from all taxes on capital and assets imposed in the area of the other Contracting Party.

(3) Gains from the alienation of ships operated in international traffic and movable property pertaining to the operation of such ships which are received by an enterprise of



a Contracting Party shall be exempt from all taxes on income or gains in the area of the other Contracting Party.

(4) The provisions of paragraphs (1) and (3) of this Article shall also apply to income, profits or gains from the participation in a pool, a joint business, a partnership or an international operating agency.

(5) Remuneration in respect of an employment exercised aboard a ship operated in international traffic by an enterprise of a Contracting Party shall be taxable only in the area of that Contracting Party when documentary evidence is produced that tax has been paid in the area of that Contracting Party.

#### **ARTICLE 4**

##### **Mutual agreement procedure**

The competent authorities of the Contracting Parties shall endeavour to resolve by consultation any difficulties or doubts arising as to the interpretation or application of this Agreement. Consultation requested by the Competent authority of a Contracting party shall begin within six months from the date of the receipt of such request.

#### **ARTICLE 5**

##### **Territorial extension**

(1) This Agreement may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of the Netherlands Antilles and Aruba, if the country concerned imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged.

(2) Unless otherwise agreed the termination of the Agreement shall not also terminate any extension of the Agreement to any country to which it has been extended under this Article.

## **ARTICLE 6**

### **Entry into force**

(1) Each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect for any year of assessment or taxable year and period beginning on or after the first day of January of the calendar year next following that in which the Agreement has entered into force.

(2) Upon request of an enterprise of a Contracting party the provisions of the Agreement shall have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1 April 1998;
- (b) in the Netherlands for taxable years and periods beginning on or after the first day of 1998.

## **ARTICLE 7**

### **Termination**

This Agreement shall remain in force indefinitely but either Contracting Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event, this Agreement shall cease to have effect for any year of assessment or taxable year and period beginning on or after the end of the calendar year in which notice is given."

Clerk to the Executive Council

COUNCIL CHAMBER

20 February 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 Articles 1 to 7 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of the Netherlands for the avoidance of double taxation on income, profits, gains or capital of an enterprise operating ships in international traffic done at Hong Kong on 2 November 2000 should have effect.