

LN054-e

L. N. 54 of 2001

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."

CHENG Mei-sze, Maisie

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.