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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF BELGIUM)(AVOIDANCE OF DOUBLE TAXATION ON INCOME AND CAPITAL AND PREVENTION OF FISCAL EVASION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 3 February 2004, the Council ADVISED and the Chief Executive ORDERED that the Specification of Arrangements (Government of the Kingdom of Belgium)(Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) Order (the Order), at Annex A, should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (the Ordinance) to implement the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (the Agreement) signed with the Kingdom of Belgium on 10 December 2003.

A

JUSTIFICATIONS

2. The Agreement is the first comprehensive agreement for avoidance of double taxation (CDTA) concluded by Hong Kong with another economy. A summary of the main provisions of the Agreement is at Annex B. The Agreement

B

seeks to eliminate double taxation instances encountered by Hong Kong and Belgian investors and employees in connection with cross border economic activities.

3. Double taxation refers to the imposition of comparable taxes in more than one tax jurisdiction in respect of the same source of income. It is generally recognised in the international community that double taxation hinders the exchange of goods and services, and movements of capital, technology and human resources and poses an obstacle to the development of economic relations between economies.

Benefits of CDTAs

4. Hong Kong adopts the territorial concept of taxation, whereby only income sourced in Hong Kong is subject to tax whereas income derived from sources outside Hong Kong by a local resident is in most cases not taxed in Hong Kong. In addition, Hong Kong does not levy withholding taxes on most types of passive income such as dividends and interest. Under such circumstances, double taxation may not occur.

5. Double taxation may occur where a foreign jurisdiction taxes its own residents on income derived from Hong Kong. However, many jurisdictions provide their own residents with unilateral tax relief for Hong Kong tax paid on income derived herefrom, thus avoiding or reducing double taxation of foreign residents in most cases.

6. Nothwithstanding the above, there are still many advantages for Hong Kong to conclude CDTAs with our trading and investment partners.

7. Compared with tax relief granted unilaterally by certain jurisdictions with respect to double taxation suffered by their residents, the existence of a CDTA which sets out in agreement terms the allocation of taxing rights between two places as well as the ways in which double taxation is to be eliminated will provide enhanced certainty and stability to investors. In addition, relief provided under a CDTA may exceed the level provided unilaterally by the tax jurisdiction.

Benefits of the Agreement

8. In the absence of a CDTA, profits earned by Belgian residents in Hong Kong are subject to both Hong Kong and Belgian taxes. Profits derived by Belgian companies from Hong Kong by doing business here through a permanent establishment (such as a branch) are subject to both Hong Kong profits tax and

Belgian income tax. Belgian tax authorities provide a relief of 50% reduction in Belgian income tax for such income derived by Belgian individuals on a unilateral basis but this relief is not available to Belgian companies. Under the Agreement, Belgium will eliminate double taxation by providing full exemption to Belgian residents (companies and individuals alike) for such income.

9. Besides, in the absence of a CDTA, royalties received by a Hong Kong resident from Belgium not attributable to a permanent establishment in Belgium are subject to a Belgian withholding tax, which is currently at 15% on the gross amount of royalties less a 15% fixed deduction. Under the Agreement, the Belgian withholding tax will be reduced to 5% of the gross amount of royalties (without the 15% fixed deduction). In the case of interest received by a Hong Kong resident from Belgium which is not attributable to a permanent establishment in Belgium, in the absence of a CDTA, the interest is subject to a withholding tax which is currently at 15% of the gross amount of interest. Under the Agreement, the Belgian withholding tax will be reduced to 10%. In the case of profits from international shipping transport earned by a Hong Kong resident that arises in Belgium, in the absence of a CDTA, the income is subject to income tax in Belgium. Under the Agreement, such income will be exempted from Belgian income tax.

10. A table comparing the current tax treatment (without Agreement) and that under the Agreement for different types of income is at Annex C. Some examples on the actual tax savings pursuant to the Agreement are set out in Annex D.

C

D

11. In addition to the actual tax savings for taxpayers of Belgium and Hong Kong, the Agreement will achieve the following-

(a) Provide a further level of certainty and stability to potential investors, as the allocation of taxing rights between Hong Kong and Belgium as well as the relief regarding/limits on tax rates on the different types of income are set out clearly in the bilateral agreement, which will have binding effect once the ratification procedures have been completed, so that subsequent unilateral tax policy changes would not override the terms of the Agreement; and

(b) The formal relationship and dialogue established with the Belgian tax authorities as provided under the Agreement can be used to resolve difficulties which might arise in connection with cross-border taxation.

12. Overall, the Agreement will help investors better assess their potential tax liabilities from economic activities, foster closer economic and trade links between the two places, and provide added incentives for Belgian enterprises to do business/invest in Hong Kong, and vice versa.

13. Hong Kong is keen to establish a network of double taxation avoidance agreements with our major trading and investment partners. The Agreement with Belgium represents an important milestone in our efforts in this area. Such a network will put us on a par with other places in the region that already have one, thereby further enhancing our competitiveness in attracting investment.

Legal Basis

14. Under section 49 of the 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 Agreement with the Kingdom of Belgium, it is necessary to declare by order that arrangements with the Kingdom of Belgium on double taxation relief have been made, so as to put the arrangements into effect. We therefore propose to make the Order for the Agreement.

OTHER OPTIONS

15. An Order made by the Chief Executive in Council under section 49 of the Ordinance is the only way to give effect to the Agreement. There is no other option.

THE ORDER

16. **Section 1** of the Order declares that arrangements referred to in section 2 for double taxation relief in relation to income tax and any tax of a similar character have been made with the Government of the the Kingdom of Belgium and should take effect. **Section 2** states that the arrangements are specified in the Schedule to the Order. The **Schedule** to the Order sets out the details of the arrangements. Article 28 of the Schedule provides that the Agreement shall take effect from the beginning of the tax year (1 April 2004 for HKSAR taxes and 1 January 2004 for Belgian taxes).

LEGISLATIVE TIMETABLE

17. The legislative timetable will be -

Publication in the Gazette	6 February 2004
Tabling in the Legislative Council	11 February 2004

IMPLICATIONS OF THE PROPOSAL

18. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Inland Revenue Ordinance and its subsidiary legislation. It has no productivity and environmental implications.

Financial Implications

19. The Government would have to forgo some revenue which is currently being collected in respect of profits of Belgian businessmen not attributable to a permanent establishment in Hong Kong, shipping profits of Belgian operators and royalty income of local businessmen from Belgium. However, as the scope of these activities is unlikely to be substantial, the financial implications would be insignificant.

Economic Implications

20. The Agreement will facilitate business development between Hong Kong and Belgium and contribute positively to the economic development of Hong Kong. Hong Kong's economic activities in Belgium will have their tax liability reduced and vice versa.

Civil Service Implications

21. There will be additional work for the Inland Revenue Department (IRD) in handling requests for exchange of information from Belgium under the Agreement. This will be absorbed by redeployment within IRD.

Sustainability Implications

22. The proposal does not have significant sustainability implications, but would facilitate establishment of Belgian businesses in Hong Kong.

PUBLIC CONSULTATION

23. The Government first announced its policy to conclude CDTAs with our key trading and investment partners in the 1998-99 Budget. This was welcomed by the business sector. When consulted on the Exchange of Information Article in 2002, the International Business Committee generally indicated support for the Government's efforts to negotiate and conclude CDTAs with other countries. Some members of the Committee expressed the view that the lack of CDTAs could be an obstacle to foreign investment coming into Hong Kong.

PUBLICITY

24. We will issue a press release. A spokesman will be available to answer media and public enquiries.

BACKGROUND

Hong Kong's Plan to Conclude a Network of Comprehensive Agreements on Avoidance of Double Taxation

25. Since the Government announced Hong Kong's intention to discuss CDTAs with our major trading partners, we have approached around thirty major trading partners. Belgium was the first country with which we conducted negotiations and successfully concluded a CDTA.

26. We will continue to take forward CDTA discussions with other major trading partners.

Limited Double Taxation Arrangements/Agreements

27. Separately, we have concluded a double taxation avoidance arrangement covering major types of income with the Mainland in 1998. In circumstances where CDTA discussions cannot be proceeded with immediately, we seek to conclude limited double taxation avoidance arrangements for revenues arising from the operation of ships/aircraft in international traffic with our shipping/aviation partners. We have now concluded 18 double taxation avoidance arrangements on airline income, five agreements on shipping income and one agreement on airline and shipping income. The relief arrangements for airlines with Belgium will be subsumed in the Agreement. A list of the double taxation arrangements/agreements already concluded is at Annex E.

E

ENQUIRY

28. In case of enquiries about this Brief, please contact Miss Erica NG, Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue), at 2810 2370.

Financial Services and the Treasury Bureau
6 February 2004

Annex A

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF BELGIUM) (AVOIDANCE OF DOUBLE TAXATION ON INCOME AND CAPITAL AND PREVENTION OF FISCAL EVASION) ORDER

CONTENTS

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF BELGIUM) (AVOIDANCE OF DOUBLE TAXATION ON INCOME AND CAPITAL AND PREVENTION OF FISCAL EVASION) 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 –

(a) the arrangements referred to in section 2 have been made with the Government of the Kingdom of Belgium 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

(b) it is expedient that those arrangements should have effect.

2. Arrangements specified

(1) The arrangements mentioned in section 1 are in –

(a) Articles 1 to 29 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, done in duplicate at Hong Kong on 10 December 2003 in the English language, as specified in Part 1 of the Schedule; and

(b) Paragraphs 1 to 8 of the Protocol to that Agreement, as specified in Part 2 of the Schedule.

(2) Those arrangements have effect according to the tenor of that Agreement and Protocol.

SCHEDULE [s. 2]

PART 1

ARTICLES 1 TO 29

of the

AGREEMENT BETWEEN THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

"**CHAPTER I**

SCOPE OF THE AGREEMENT

Article 1

Persons covered

This Agreement shall apply to persons who are residents in one or both of the Contracting Parties.

Article 2

Taxes covered

1. This Agreement shall apply to taxes on income and on capital imposed by a Contracting Party or by its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are :

   (a) in the case of the Hong Kong Special Administrative Region :

      (i) profits tax ;
      (ii) salaries tax ;

(iii) property tax,

whether or not charged under personal assessment ;

(b) in the case of Belgium :

(i) the individual income tax ;
(ii) the corporate income tax ;
(iii) the income tax on legal entities ;
(iv) the income tax on non-residents ;
(v) the supplementary crisis contribution,

including the prepayments and, subject to paragraph 2 of Article 3, the surcharges on these taxes and prepayments.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within the provisions of paragraph 2 which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any substantial changes that have been made in their respective taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as “Hong Kong Special Administrative Region tax” or “Belgian tax” respectively.

CHAPTER II

DEFINITIONS

Article 3

General definitions

1. For the purposes of this Agreement, unless the context otherwise requires :

(a) (i) the term “Hong Kong Special Administrative Region” means the Hong Kong Special Administrative Region of the People’s Republic of China ; used in a geographical sense, it means the land and sea comprised within the boundary of the Hong Kong Special Administrative Region, including Hong Kong Island, Kowloon, the New Territories and the waters of Hong Kong ;

(ii) the term “Belgium” means the Kingdom of Belgium ; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights with respect to the exploration for and exploitation of the natural resources of the seabed and subsoil thereof and the above-lying waters ;

(b) the term “business” includes the performance of professional services and of other activities of an independent character ;

(c) the term “company” means any body corporate, or any partnership or other entity that is treated as a body corporate for tax purposes in the Contracting Party in which it is a resident ;

(d) the term “competent authority” means :

(i) 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 ;

(ii) in the case of Belgium, the Minister of Finance or his authorised representative ;

(e) the term “Contracting Party” means the Hong Kong Special Administrative Region or Belgium, as the context requires ;

(f) the term “enterprise” applies to the carrying on of any business ;

(g) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident in a Contracting Party and an enterprise carried on by a resident in the other Contracting Party ;

(h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party except when the ship or aircraft is operated solely between places in the other Contracting Party ;

(i) the term “person” includes an individual, a company and any other body of persons and, in the case of Hong Kong Special Administrative Region, includes an estate, a trust and a partnership.

2. In the Agreement, the terms “Hong Kong Special Administrative Region tax” and “Belgian tax” do not include any penalty or interest imposed

under the laws in force in either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.

3. In the application of the provisions of the 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 in force in that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws in force in that Party prevailing over a meaning given to the term under other laws in force in that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term “a resident in a Contracting Party” means any person who, under the laws in force in that Party, is liable to tax therein by reason of his domicile, residence, place of management or incorporation or any other criterion of a similar nature, and also includes that Party and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in that Party or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident in both Contracting Parties, then his status shall be determined as follows :

   (a) he shall be deemed to be a resident only in the Party in which he has a permanent home available to him ; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only in the Party with which his personal and economic relations are closer (“centre of vital interests”) ;

   (b) if the Party in which he has his centre of vital interests cannot be determined, or he has not a permanent home available to him in either Party, he shall be deemed to be a resident only in the Party in which he has an habitual abode ;

   (c) if he has an habitual abode in both Parties or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident in both Contracting Parties, then it shall be deemed

to be a resident only in the Party in which its place of effective management is situated.

Article 5

Permanent establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially :

   (a) a place of management ;
   (b) a branch ;
   (c) an office ;
   (d) a factory ;
   (e) a workshop ;
   (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ; and
   (g) a building site or a construction, assembly, installation or dredging project which exists for more than six months in any 12-month period.

3. An enterprise shall be deemed to have a permanent establishment in a Contracting Party and to carry on business through that permanent establishment if :

   (a) it carries on supervisory activities in that Party for more than 6 months in any 12-month period in connection with a building site, or a construction, assembly, installation or dredging project which is being undertaken in that Party ; or

   (b) it furnishes services, including consultancy services, through employees or other personnel engaged by it for such purpose, but only where activities of that nature continue within that Party for a period or periods aggregating more than 6 months within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include :

   (a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise ;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery ;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, a person acting in a Contracting Party on behalf of an enterprise of the other Contracting Party – other than an agent of an independent status to whom paragraph 6 applies – shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Party if :

(a) the person has, and habitually exercises in that Party, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise or to those activities mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph ; or

(b) a stock of goods or merchandise belonging to the enterprise from which the person habitually fills orders on behalf of the enterprise is maintained in that Party.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business**.**

7. The fact that a company which is a resident in a Contracting Party controls or is controlled by a company which is a resident in the other Contracting Party, or which carries on business in that other Party (whether through a

permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

Article 6

Income from immovable property

1. Income derived by a resident in a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term “immovable property” shall have the meaning which it has under the laws in force in the Contracting Party in which the property in question is situated. The term shall in any case include : property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to explore for or work, mineral deposits, quarries, sources and other natural resources ; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. Any property or right referred to in paragraph 2 shall be regarded as situated where the land, standing timber, mineral deposits, quarries, sources or natural resources, as the case may be, are situated or where the exploration or working may take place.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

Article 7

Business profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise

carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred), whether in the Contracting Party in which the permanent establishment is situated or elsewhere. No such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Nothing in paragraph 2 shall preclude a Contracting Party from determining the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other methods as may be prescribed by the laws of that Party ; the method so adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purpose of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

Article 8

Shipping and air transport

1. Profits derived from the operation of ships or aircraft in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purpose of this Article, profits from the operation in international traffic of ships or aircraft shall include in particular :

   (a) revenue and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including :

      (i) income derived from the lease by the enterprise of ships or aircraft on a charter basis fully equipped, manned and supplied, used in international traffic ;

      (ii) income derived by the enterprise from the sale of tickets and other similar documents for and the provision of services connected with such transport for the enterprise itself or for any other enterprise ;

      (iii) interest on funds directly connected with the operation of ships or aircraft in international traffic ;

   (b) profits derived from the lease by the enterprise on a bare boat charter basis of ships or aircraft used in international traffic, when such lease is an occasional source of income for such enterprise ;

   (c) profits derived from the lease of containers by the enterprise, when such lease is supplementary or incidental to its operations in international traffic.

Article 9

Associated enterprises

1. Where :

   (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party ; or

   (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

   and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make such an adjustment as it considers appropriate to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident in a Contracting Party to a resident in the other Contracting Party may be taxed in that other Party.

2. However, such dividends may also be taxed in the Contracting Party in which the company paying the dividends is a resident and according to the

laws in force in that Party, but if the beneficial owner of the dividends is a resident in the other Contracting Party, the tax so charged shall not exceed :

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends ;

(b) 15 per cent of the gross amount of the dividends in all other cases.

Notwithstanding the preceding provisions of this paragraph, dividends shall not be taxed in the Contracting Party in which the company paying the dividends is a resident if the beneficial owner of the dividends is a company which is a resident in the other Party and which at the moment of the payment of the dividends holds, for an uninterrupted period of at least 12 months, shares representing directly at least 25 per cent of the capital of the company paying the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares and other income assimilated to income from shares by the tax laws in force in the Contracting Party in which the company making the distribution or payment is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident in a Contracting Party, carries on business in the other Contracting Party in which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident in a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident in that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident in the other Contracting Party may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises, and according to the laws in force in that Party, but if the beneficial owner of the interest is a resident in the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting Party in which it arises if it is :

   (a) Interest on commercial debt-claims – including debt-claims represented by commercial paper – resulting from deferred payments for goods, merchandise or services supplied by an enterprise ;

   (b) Interest paid in respect of a loan granted, guaranteed or insured or a credit extended, guaranteed or insured under a scheme organized by a Contracting Party or one of its political subdivisions or local authorities in order to promote the export ;

   (c) Interest on debt-claims or loans of any nature – not represented by bearer instruments – paid to banking enterprises ;

   (d) Interest on deposits made by an enterprise with a banking enterprise ;

   (e) Interest paid to the other Contracting Party or one of its political subdivisions or local authorities.

4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, including income from government securities and income from bonds or debentures, and premiums and prizes attaching to such securities, bonds or debentures. However, the term “interest” shall not include for the purpose of this Article penalty charges for late payment or interest regarded as dividends under paragraph 3 of Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident in a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of

which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident in that Party. Where, however, the person paying the interest, whether or not he is a resident in a Contracting Party, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, for whatever reason, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws in force in each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident in the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws in force in that Party, but if the beneficial owner of the royalties is a resident in the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident in a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein, and the right or property in

respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident in that Party. Where, however, the person paying the royalties, whether or not he is a resident in a Contracting Party, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

6 Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, for whatever reason, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws in force in each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 13

Capital gains

1. Gains derived by a resident in a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other Party.

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

4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company more than 50 per cent of the value of which is derived directly or indirectly from immovable property situated in the other

Contracting Party, may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation :

(a) of shares quoted on a recognised stock exchange of one of the Parties ; or

(b) of shares alienated or exchanged in the framework of a reorganisation of a company, of a merger, of a scission or of a similar operation ; or

(c) of shares more than 50 per cent of the value of which is derived from immovable property in which the company carries out its activity.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting Party in which the alienator is resident.

Article 14

Income from employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident in a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident in a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if :

(a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident in the other Party, and

(c) the remuneration is not borne by a permanent establishment which the employer has in the other Party, and

(d) the remuneration is taxable in the first-mentioned Party according to the laws in force in that Party.

3. Notwithstanding the preceding paragraphs of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party may be taxed in that Party.

Article 15

Directors' fees

1. Directors' fees and other similar payments derived by a resident in a Contracting Party in his capacity as a member of the board of directors or a similar organ of a company which is a resident in the other Contracting Party may be taxed in that other Party.

2. Remuneration derived by a person referred to in paragraph 1 from a company which is a resident in a Contracting Party in respect of the discharge of day-to-day functions of a managerial, technical, commercial or financial nature may be taxed in accordance with the provisions of Article 14, as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the "employer" were references to the company.

Article 16

Artistes and sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident in a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of the personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 17

Pensions and annuities

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident in a Contracting Party in consideration of past employment, and annuities, may be taxed in the Contracting Party in which they arise. This provision shall also apply to pensions and other similar remuneration paid by a Contracting Party under social security laws in force in that Party or paid under a public scheme in force in that Party in order to supplement the benefits of such social security laws.

2. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

3. Any alimony or other maintenance payment paid by a resident in a Contracting Party to a resident in the other Contracting Party shall be taxable only in the first-mentioned Party. To the extent such payments are not allowed as a relief to the payer in the first-mentioned Party, they shall be deemed to be taxed in that Party for the purposes of Article 22.

4. Pensions shall be deemed to arise in a Contracting Party if paid by or out of a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, where such pension fund or institution is recognised for tax purposes or regulated in accordance with the laws of that Party.

Article 18

Government service

1. Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident in that Party who did not become a resident in that Party solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

3. The provisions of the preceding paragraphs of this Article shall not apply to salaries, wages and other similar remuneration or to pensions in respect of services rendered in connection with any trade or business carried on by a Contracting Party or a political subdivision or local authority thereof. In that case, the provisions of Article 14, 15, 16 or 17 as the case may be, shall apply.

Article 19

Students

Payments which a student, trainee or business apprentice who is or was immediately before visiting a Contracting Party a resident in the other Contracting Party, and who is present in the first-mentioned Party solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training, shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

Article 20

Other income

1. Items of income of a resident in a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident in a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income not dealt with in the foregoing Articles of this Agreement derived by a resident in a Contracting Party from sources in the other Contracting Party may also be taxed in that other Party, and according to the law of that other Party.

CHAPTER IV

TAXATION OF CAPITAL

Article 21

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident in a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party may be taxed in that other Party.

3. Capital represented by ships and aircraft owned and operated by an enterprise of a Contracting Party in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.

4. All other elements of capital of a resident in a Contracting Party shall be taxable only in that Party.

CHAPTER V

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 22

Methods for elimination of double taxation

1. In the case of the Hong Kong Special Administrative Region, double taxation shall be avoided as follows :

   (a) Subject to the provisions of the laws in force in the Hong Kong Special Administrative Region from time to time which relate to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Belgian tax paid under the law of Belgium and in accordance with this Agreement, whether directly or by deduction, in respect of income, profits or gains derived by a person who is a resident in the Hong Kong Special Administrative Region

from sources in Belgium, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of the same income, profits or gains, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of the same income, profits or gains in accordance with the tax laws of the Hong Kong Special Administrative Region.

(b) Income, profits or gains derived by a resident in the Hong Kong Special Administrative Region which, under any provision of the Agreement, may be taxed in Belgium shall, for the purposes of sub-paragraph (a), be deemed to be income, profits or gains from sources in Belgium.

2. In the case of Belgium, double taxation shall be avoided as follows :

(a) Where a resident in Belgium derives elements of income, not being dividends, interest or royalties, which may be taxed in the Hong Kong Special Administrative Region in accordance with the provisions of this Agreement, and which are taxed there, Belgium shall exempt such elements of income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

(b) Dividends derived by a company which is a resident in Belgium from a company which is a resident in the Hong Kong Special Administrative Region shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.

Where a resident in Belgium derives from a company which is a resident in the Hong Kong Special Administrative Region dividends which are included in his aggregate income for Belgian tax purposes and which are not exempted from the corporate income tax according to this sub-paragraph, Belgium shall deduct from the Belgian tax relating to these dividends, Hong Kong Special Administrative Region tax levied on these dividends in accordance with Article 10. This deduction shall not exceed that part of the Belgian tax which is proportionally relating to these dividends.

(c) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident in Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, Hong Kong Special Administrative Region tax levied on that income shall be allowed as a credit against Belgian tax proportionally relating to such income.

(d) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident in Belgium through a permanent establishment situated in the Hong Kong Special Administrative Region, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in the Hong Kong Special Administrative Region by reason of compensation for the said losses.

CHAPTER VI

SPECIAL PROVISIONS

Article 23

Non-discrimination

1. Persons who, in the case of Belgium, are Belgian nationals and, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals (in the case of Belgium) or persons who have the right of abode or are incorporated or otherwise constituted therein (in the case of the Hong Kong Special Administrative Region) of that other Party in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents in the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident in the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions

as if they had been paid to a resident in the first-mentioned Party. Similarly, any debts of an enterprise of a Contracting Party to a resident in the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident in the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents in the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

Article 24

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws in force in those Parties, present his case to the competent authority of the Contracting Party in which he is a resident, or if his case comes under paragraph 1 of Article 23 to that of the Contracting Party in which he is considered to be a national (in the case of Belgium) or in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws in force in the Contracting Parties.

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

4. The competent authorities of the Contracting Parties may agree on administrative measures necessary to carry out the provisions of the

Agreement and particularly on the proofs to be furnished by residents in either Contracting Party in order to benefit in the other Party from the exemptions or reductions of tax provided for in the Agreement.

5. The competent authorities of the Contracting Parties shall communicate with each other directly for the purpose of giving effect to the provisions of the Agreement.

Article 25

Exchange of information

1. The competent authorities of the Contracting Parties shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws in force in that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review. Information received shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting Party originally furnishing the information.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting Party the obligation :

   (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting Party ;

   (b) to supply information which is not obtainable under the laws in force in either Contracting Party or in the normal course of the administration of either Party ;

   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 26

Members of government missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

Article 27

Miscellaneous rules

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to the Agreement.

CHAPTER VII

FINAL PROVISIONS

Article 28

Entry into force

1. Each Contracting Party shall notify the other Contracting Party of 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 receipt of the later of these notifications.

2. The provisions of the Agreement shall have effect :

   (a) in the Hong Kong Special Administrative Region :

   - in respect of Hong Kong Special Administrative Region tax for any year of assessment beginning on or after 1 April 2004 ;

   (b) in Belgium :

- in respect of taxes due at source on income credited or payable on or after 1 January 2004 ;

- in respect of other taxes charged on income of taxable periods beginning on or after 1 January 2004 ;

- in respect of taxes on capital charged on elements of capital existing on or after 1 January 2004.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving to the other Contracting Party written notice of termination not later than 30 June of any calendar year from the fifth year following that in which the Agreement entered into force. In such event, the Agreement shall cease to have effect :

(a) in the Hong Kong Special Administrative Region :
- in respect of Hong Kong Special Administrative Region tax for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice of termination is given ;

(b) in Belgium :
- in respect of taxes due at source on income credited or payable on or after 1 January in the calendar year next following that in which the notice of termination is given ;

- in respect of other taxes charged on income of taxable periods beginning on or after 1 January in the calendar year next following that in which the notice of termination is given ;

- in respect of taxes on capital charged on elements of capital existing on or after 1 January in the calendar year next following that in which the notice of termination is given.”.

PART 2

PARAGRAPHS 1 TO 8

of the

PROTOCOL TO THE AGREEMENT BETWEEN THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

"1. Ad Article 3, paragraph 2 :

In the case of the Hong Kong Special Administrative Region, "penalty or interest" includes, without limitation, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith, and additional tax assessed for infringement of or failure to comply with its tax laws.

2. Ad Article 4, paragraph 1 :

In the case of the Hong Kong Special Administrative Region the term "resident of a Contracting Party" means :

(a) any individual who ordinarily resides in the Hong Kong Special Administrative Region in a year of assessment ;

(b) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment ;

(c) a company incorporated in the Hong Kong Special Administrative Region or if incorporated outside the Hong Kong Special Administrative Region having its central management and control in the Hong Kong Special Administrative Region ;

(d) any other person constituted under the laws in force in the Hong Kong Special Administrative Region or if constituted outside the Hong Kong Special Administrative Region having its central management and control in the Hong Kong Special Administrative Region.

The last sentence of that paragraph does not preclude a person from being treated as a resident in a Contracting Party by reason of a territorial source principle in the taxation system of that Party.

3. Ad Article 7 and Article 11 :

In the case of the Hong Kong Special Administrative Region, the term "banking enterprise" means a financial institution.

4. Ad Article 11, paragraph 3 :

With respect to Belgium, the provisions of sub-paragraph (b) apply in any case to :

- interest on a loan or credit for which a financial support is granted after advice of the Committee for financial support to export ("Finexpo") ;

- interest on a loan or credit granted by the Association for the coordination of medium-term financing of Belgian export ("Creditexport") ;

- interest on a loan or a credit insured by the National Office of Del Credere.

5. Ad Article 14, paragraph 1 :

An employment is exercised in a Contracting Party when the activity in respect of which the salaries, wages and other similar remuneration are paid**,** is effectively carried on in that Party. This means that the employee is physically present in that Party for carrying on the activity there.

6. Ad Article 15, paragraph 2 :
The provisions of this paragraph shall also apply, in the case of Belgium, to remuneration received by a resident in the Hong Kong Special Administrative Region in respect of that resident's personal activity as a partner of a company, other than a company with share capital, which is a resident of Belgium.

7. Ad Article 22, paragraph 2, sub-paragraph (a) :

(a) Without prejudice to paragraph 3 of Article 17, elements of income which a resident in Belgium receives shall not be deemed to be taxed in the Hong Kong Special Administrative Region when these

elements of income are not included in the basis on which Hong Kong Special Administrative Region tax is due. Consequently elements of income which are considered to be not taxable by the laws in force in the Hong Kong Special Administrative Region or which such laws exempt from Hong Kong Special Administrative Region tax, shall not be considered to be taxed.

(b) Dividends paid in respect of a holding effectively connected with a permanent establishment situated in the Hong Kong Special Administrative Region through which a resident in Belgium carries on business, interest paid in respect of a debt-claim effectively connected with such permanent establishment, and royalties paid in respect of a right or property effectively connected with such permanent establishment, shall be exempted from taxation in Belgium in accordance with the provisions of paragraph 2(a) of Article 22.

8. Ad Article 27 :

With respect to the Hong Kong Special Administrative Region, “laws and measures concerning tax avoidance” includes sections 5B(2), 9(1A), 9A, 15(1)(j), 15(1)(k), 15(1)(1), 16(2), 16E(2A), 16E(2B), 18D(2A), 20, 21A(1)(a), 22B, 38B, 39E, 61, 61A and 61B of the Inland Revenue Ordinance, Chapter 112 of the Laws of Hong Kong.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2004

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 the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, done at Hong Kong on 10 December 2003, and the Protocol to that Agreement should have effect.

Annex B

HK/Belgium CDTA:
Summary of Main Provisions

The CDTA with Belgium covers the following types of taxes: (i) profits tax, (ii) salaries tax, and (iii) property tax in respect of Hong Kong; and in respect of Belgium (i) individual income tax, (ii) corporate income tax, (iii) income tax on legal entities, (iv) income tax on non-residents, and (v) supplementary crisis contribution.

2. The Agreement deals with the taxing of income of the resident of one Contracting Party ("resident jurisdiction") derived from another Contracting Party ("source jurisdiction").

Exclusive taxing right

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Agreement that **the following types of income shall only be taxed in the resident jurisdiction**:

(a) profits of an enterprise, unless the enterprise carries on business in the source jurisdiction through a permanent establishment therein (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on);

(b) profits from operation of ships and aircraft in international traffic;

(c) income from employment, unless the employment is exercised in the source jurisdiction;

(d) capital gains not expressly dealt with in the Agreement; and

(e) other income not expressly dealt with in the Agreement except where the income (excluding capital gains) is derived from the source jurisdiction.

4. Employment income and pensions paid by the government of a Contracting Party are, in general, **taxable only in that Party (source jurisdiction)**.

Shared taxing rights

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Agreement to give double taxation relief to its resident for any income doubly assessed (i.e. the **source jurisdiction has the primary right to tax** and the **resident jurisdiction is left with a secondary right**). It is provided in the Agreement that **the following types of income may be taxed in both jurisdictions**:

(a) profits of an enterprise which carries on business in the source jurisdiction through a permanent establishment, to the extent that such profits are attributable to the permanent establishment, and gains from the alienation of the business property of such permanent establishment;

(b) income generated from immovable property and gains from the alienation of such property situated in the source jurisdiction;

(c) passive income of dividends, interest and royalties received from residents of a source jurisdiction (the source jurisdiction's right to tax is subject to a specified limit in tax rates: for dividends, 0% or 5% if the recipient is a company which holds at least 25% or 10% respectively of the paying company's capital, and 15% in all other cases; for interest, 10%; for royalties, 5%);

(d) income of artistes and sportsmen who conduct their professional activities in the source jurisdiction;

(e) remuneration from non-government employment exercised in the source jurisdiction or exercised aboard a ship or aircraft operated in international traffic;

(f) directors' fees from a company resident in the source jurisdiction;

(g) non-government pensions; and

(h) other income (excluding capital gains) not expressly dealt with in the Agreement if it is derived from the source jurisdiction.

6. In general, in cases of shared taxing rights, double taxation relief may be given to a taxpayer either through the exemption method, where income taxable in the source jurisdiction is exempted from taxation in the resident jurisdiction; or through the credit method, where income taxable in the source jurisdiction is subject to tax in the resident jurisdiction, but the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income. Hong Kong will provide double taxation relief for its residents by the credit method. For Belgium, the relief method will depend on the nature of the income in question.

Annex C

HK/Belgium CDTA:
Comparison on current tax treatment and treatment under the Agreement

A. Belgian residents deriving income from HK

		Existing	Under CDTA
1.	**Business profits** (a) attributable to permanent establishment (PE) in HK	HK: taxed. Belgium: fully taxed but for individuals, taxed at 50% of the normal tax rate, if taxed in HK.	HK: taxed. Belgium: exempt.
	(b) not attributable to PE in HK	HK: taxed. Belgium: fully taxed but for individuals, taxed at 50% of the normal tax rate, if taxed in HK.	HK: not taxed. Belgium: taxed.
2.	**Dividends** paid by a company in HK to a Belgian resident.	HK: no withholding tax. Belgium: (a) if attributable to PE in HK, treated as business profits, see 1(a) above; (b) if not attributable to PE in HK, fully taxed unless qualified for the participation exemption.	HK: no change. Belgium: no change.
3.	**Interest** arising in HK paid to a Belgian resident.	HK: no withholding tax. However, if interest income attributable to a PE in HK, treated as business profits, see 1(a) above. Belgium: (a) if attributable to a PE in HK, treated as business profits, see 1(a) above; (b) if not attributable to a PE in HK, taxed on its net amount, i.e. after deduction of expenses and HK tax is credited on Belgian tax proportionally relating	HK: no change. Belgium: (a) if interest is attributable to a PE in HK, the amount will be exempted (with the PE); (b) otherwise, no change.

		to the interest in case of business income.	
4.	**Royalties** paid by HK company to a Belgian resident	HK: withholding tax at 5.25%. However, if attributable to a PE in HK, treated as business profits, see 1(a) above. Belgium: (a) if attributable to a PE in HK, treated as business profits, see 1(a) above; (b) if not attributable to a PE in HK, taxed on the net amount with a fixed foreign tax credit of 15/85 of the income received in case of business income.	HK: withholding tax limited to 5% of gross amount of royalties. However, if attributable to a PE in HK, treated as business profits, see 1(a) above. Belgium: (a) if royalties are attributable to a PE in HK, the amount will be exempted (with the PE); (b) otherwise, no change.
5.	Income from **immovable property** in HK	HK: taxed. Belgium: fully taxed but for individuals, taxed at 50% of the normal tax rate, if taxed in Hong Kong.	HK: no change. Belgium: exempted.
6.	**Air transport**	Under the limited airline income DTA: HK: exempt. Belgium: taxed.	Limited airline income DTA subsumed under CDTA. No change to effect.
7.	**Shipping**	HK: taxed on HK uplift. Belgium : taxed.	HK: exempt. Belgium: taxed.
8.	**Employment income**	HK: (a) HK employment : taxed (see footnote 1). (b) Non-HK employment: taxed based on services in HK. Belgium: taxed at 50% of the tax due, if taxed in HK.	HK: taxed in respect of employment exercised in HK irrespective of whether HK employment or not (may be exempted if all 4 conditions in Article 14 are satisfied) (see footnote 2). Belgium: exempt if taxed in HK; if not taxed in HK, taxed.

B. HK residents deriving income from Belgium

		Existing	**Under CDTA**
1.	**Business profits** (a) attributable to PE in Belgium	HK: generally not taxed; if taxed, no relief for Belgian tax paid. Belgium: taxed.	HK: generally not taxed; if taxed, Belgian tax allowable as credit. Belgium: no change.
	(b) not attributable to PE in Belgium	HK: generally not taxed; if taxed, no relief for Belgian tax paid. Belgium: not taxed or taxed based on domestic law.	HK: generally not taxed; if taxed, Belgian tax allowable as credit. Belgium: not taxed.
2.	**Dividends** paid by a company in Belgium to a HKSAR resident.	HK: not taxed. Belgium: (a) if attributable to a PE in Belgium, treated as business profits, see 1(a) above; (b) if not attributable to a PE in Belgium, withholding tax at 15%/25%.	HK: no change. Belgium: (a) if attributable to a PE in Belgium, treated as business profits, see 1(a) above; (b) if not attributable to a PE in Belgium, - no withholding tax if HKSAR resident company holds at least 25% of capital of Belgian company; - withholding tax capped at 5% if HKSAR resident company holds at least 10% of the capital of Belgian company; - withholding tax capped at 15% in all other cases.
3.	**Interest** arising in Belgium paid to a HKSAR resident.	HK: (a) if attributable to a PE in Belgium, not taxed; (b) if not attributable to a PE in Belgium, not taxed unless recipient is a financial institution, taxed as business profits with Belgian tax paid allowed as deduction.	HK: (a) no change if attributable to a PE in Belgium; (b) if not attributable to a PE in Belgium, not taxed unless recipient is a financial institution, taxed as business profits with Belgian tax paid allowed as a credit.

		Belgium: (a) if attributable to a PE in Belgium, taxed as business profits; (b) if not attributable to a PE in Belgium, withholding tax at 15%.	Belgium: (a) if attributable to a PE in Belgium, treated as business profits, see 1(a) above; (b) if not attributable to a PE in Belgium, withholding tax limited to 10% of gross amount of interest or exemption for interest dealt with in article 11, §3.
4.	**Royalties** paid by Belgian company to a HKSAR resident	HK: (a) if attributable to a PE in Belgium, generally not taxed; (b) if not attributable to a PE in Belgium, taxed or not taxed based on facts of the case. Belgium: (a) if attributable to a PE in Belgium, taxed as business profits; (b) if not attributable to a PE in Belgium, withholding tax at 15% on gross royalties less 15% fixed deduction.	HK: (a) if attributable to a PE in Belgium, generally not taxed; if taxed, Belgian tax paid allowed as credit; (b) if not attributable to a PE in Belgium, taxed or not taxed based on facts of the case; if taxed, Belgian tax paid allowed as a credit. Belgium: (a) if attributable to a PE in Belgium, treated as business profits, see 1(a) above; (b) if not attributable to a PE in Belgium, withholding tax limited to 5% of gross amount of royalties.
5.	Income from **immovable property** in Belgium	HK: not taxed. Belgium: taxed.	No change.
6.	**Air transport**	Under the limited airline income DTA: HK : taxed. Belgium: exempt.	Limited airline income DTA subsumed under CDTA. No change to effect.
7.	**Shipping**	HK: not taxed. Belgium: taxed.	HK: not taxed. Belgium: exempt.

8.	**Employment income**	HK: (a) HK employment : taxed (see footnote 1) (b) Non-HK employment: taxed based on services in HK. Belgium: taxed in accordance with domestic law.	HK: (a) HK employment : taxed (see footnote 1) or taxed in full with tax credit; (b) Non-HK employment: taxed based on services in HK. Belgium: taxed in respect of employment exercised in Belgium only(may be exempted if all 4 conditions in Article 14 are satisfied) (see footnote 2).

Footnote 1: Section 8(1A)(c) of the Inland Revenue Ordinance provides for exclusion of the income derived by a person (Belgian or HK resident alike) from services rendered in Belgium where such income is taxed in Belgium and such tax has been paid.

Footnote 2: Under Article 14(2), remuneration derived by a resident in Contracting Party A in respect of an employment exercised in Contracting Party B shall be taxable only in Contracting Party A if:

(a) the recipient is present in Party B for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident in Party B, and

(c) the remuneration is not borne by a permanent establishment which the employer has in Party B, and

(d) the remuneration is taxable in Party A according to its laws in force.

Annex D

HK/Belgium CDTA:
Examples on Double Taxation Relief

Notes:

EUR1 = HK$9
Tax rates for Belgium are based on assessment year 2003. Surcharges are not included.
The corporation tax rate for Hong Kong is based on year of assessment 2003/04.

Example 1 - Belgian company having a branch in Hong Kong

Company A, a Belgian resident, carries on business in Hong Kong through a branch (the only overseas establishment of A). For the year ended 31 December 2004, the branch derives assessable profits of HK$360,000 (or EUR40,000) from Hong Kong. The total profits of Company A (including the Hong Kong branch profits) is EUR85,000.

(a) Tax liability in the absence of CDTA

(i) In Hong Kong for the branch profits of HK$360,000 (year of assessment 2004/05)
= HK$360,000 x 17.5% = **HK$63,000**

(ii) In Belgium for the total profit of EUR85,000 (including EUR40,000 Hong Kong branch profits)

Taxable profits	EUR85,000	
Tax at progressive rates(28% to 36%)		EUR28,600
Net tax payable		**EUR28,600**
		[HK$257,400]

Total tax liability = HK$(63,000 + 257,400) = HK$320,400

(b) Tax liability under CDTA

(i) In Hong Kong for the branch profits of HK$360,000: same as above, i.e. at **HK$63,000**

(ii) In Belgium for the total profits of EUR85,000 (including EUR40,000 Hong Kong branch profits)

Taxable profits (EUR85,000 – 40,000)	EUR45,000
Net tax payable (EUR45,000 at progressive rates 28% to 36%)	**EUR14,200 [HK$127,800]**

Total tax liability = HK$(63,000 + 127,800) = HK$190,800

TAX SAVINGS = HK$320,400 - HK$190,800 = HK$129,600 (or 40.45%)

Example 2 - Belgian individual deriving income from employment and immovable property in Hong Kong

Mr B, a Belgian resident, is employed by a Belgian company as the Finance Manager for the Asian Region and frequently travels to Hong Kong on business. For the year ended 31 March 2005, he stays in Hong Kong for 209days. His income for the year ended 31 March 2005 is EUR70,000 (HK$630,000). Mr B has bought a flat in Hong Kong and rented it out. The rental income for the year ended 31 March 2005 is HK$112,500 (EUR12,500). Mr B is single.

(a) Tax liability in the absence of CDTA

(i) In Hong Kong

Salaries tax

Assessable income (HK$630,000 x $^{209}/_{365}$)	HK$360,000[1]	
less personal allowance	(HK$100,000)	
Net chargeable income	HK$260,000	
Tax at progressive rates		HK$41,200

Property tax

Assessable value	HK$112,500	
less 20% deductions	(HK$ 22,500)	
Net assessable value	HK$ 90,000	
Tax at 16% standard rate		HK$14,400
Net tax payable		**HK$55,600 [EUR6,177]**

(ii) In Belgium for taxable period 1 January to 31 December 2004 (assuming income same as year ended 31 March 2005)

Taxable income	EUR82,500	
less tax paid in Hong Kong	(EUR6,177)	
less basic allowance	(EUR5,480)	
	EUR70,843	
Tax at progressive rates (25% to 55%)		EUR33,645
[Average tax rate is $^{33,645}/_{70,843}$ = 47.49%]		
less double taxation relief (50% reduction of the Belgian tax on income already taxed in Hong Kong)		(EUR11,638)

[1] The income attributable to services in Hong Kong by reference to days of presence is HK$360,739. For this example, we shall round down the assessable income to HK$360,000 i.e. EUR 40,000.

Net tax payable **EUR22,007**
[HK$198,063]

Total tax liability = HK$(55,600 + 198,063) = HK$ 253,663

(b) Tax liability under CDTA

(i) In Hong Kong for salaries income and property income: same as above, i.e. at **HK$55,600**

(ii) In Belgium for the total income of EUR82,500(including Hong Kong income of (360,000 + 112,500)/9=EUR52,500)

Taxable Income
EUR[82,500-52,500 – 1,993 (basic allowance attributable to Belgian income)] EUR28,007

Net tax payable at 47.49%[2] **EUR13,300**
[HK$119,700]

Total tax liability = HK$(55,600 + 119,700) = HK$175,300

TAX SAVINGS = HK$ 253,663 - HK$ 175,300 = HK$ 78,363
(or 30.89%)

[2] The income derived from Hong Kong (in this case the portion of salaries and the rental income from property) is exempt from tax in Belgium. However, the relevant income has to be included in computing the applicable tax rate. Therefore, the average tax rate of 47.49% remains unchanged.

Example 3 - Hong Kong resident company receiving dividends from a Belgian resident company

Company C, a Hong Kong resident with no establishment overseas, holds 15% of the share capital of Company D, a resident of Belgium. Company D pays dividends of EUR15,000 (HK$135,000) to Company C on 1 September 2004.

(a) Tax liability of Company C in the absence of CDTA

(i) In Hong Kong - not taxed.

(ii) In Belgium, withholding tax at 25%, i.e. **EUR3,750**.

(b) Tax liability of Company C under CDTA

(i) No change, i.e. not taxed.

(ii) In Belgium, withholding tax limited to 5%, i.e. **EUR750**.

TAX SAVINGS = EUR3,750 - EUR750 = HK$27,000 (EUR3,000) (or 80%)

Example 4 - Hong Kong resident company receiving royalties from a Belgian resident company

Company E, a Hong Kong resident with no establishment overseas, receives royalties of HK$900,000 (EUR100,000) from Company F, a resident of Belgium, for the accounting year ended 31 December 2004. Company E has no other sources of income during the relevant year and incurs expenses of HK$500,000 excluding the withholding tax charged in Belgium.

(a) Tax liability of Company E in the absence of a CDTA

(i) In Hong Kong (for year of assessment 2004/05)

Royalty revenue	HK$900,000	
less expenditure	(HK$500,000)	
Assessable profits	HK$400,000	
Profits tax at 17.5%		**HK$70,000**

(ii) In Belgium

Gross income	EUR100,000	
less fixed deduction (at 15%)	(EUR15,000)	
Net income subject to withholding tax	EUR85,000	
Withholding tax (at 15%)		**EUR12,750**
		[HK$114,750]

Total tax liability = HK$(70,000 + 114,750) = HK$ 184,750

(b) Tax liability of Company E under CDTA

(i) In Hong Kong

Royalty revenue	HK$900,000	
less expenditure	(HK$500,000)	
Assessable profits	HK$400,000	
Profits tax at 17.5%		HK$70,000
less credit of Belgian withholding tax		(HK$45,000) (see (ii))
Net tax payable		**HK$25,000**

(ii) In Belgium

Gross income	EUR100,000	
Withholding tax limited at 5%(no deduction as lower withholding rate applies)		**EUR5,000 [HK$45,000]**

Total tax liability = HK$(25,000 + 45,000) = HK$70,000

TAX SAVINGS = HK$184,750 - HK$70,000 = HK$114,750 (or 62.11%)

Example 5 - Hong Kong individual working in Belgium

Mr G, a Hong Kong resident, is employed by Company H, a consultancy company resident in Hong Kong. He is assigned to provide services to a client in Belgium. He travels to Belgium occasionally from June to December 2004 and stays there for an aggregate period of 100 days. His remuneration for the year ended 31 March 2005 amounts to HK$328,500 (EUR36,500). Mr G is single.

(a) Tax liability of Mr G in the absence of CDTA

(i) Salaries tax liability in Hong Kong

Assessable income	HK$328,500	
less exemption under section 8(1A)(c) of Inland Revenue Ordinance (HK$328,500 x $^{100}/_{365}$)	(HK$90,000)	
less personal allowance	(HK$100,000)	
Net chargeable income	HK$138,500	**HK$16,900**

Net tax payable at progressive rates

(ii) Income tax liability in Belgium

Taxable income(36,500 x $^{100}/_{365}$)	EUR10,000	
Net tax payable (at progressive rates 25% to 40%)		**EUR 2,771 [HK$ 24,939]**

Total tax liability = HK$(16,900 + 24,939)= HK$ 41,839.

(b) Tax liability of Mr G under CDTA

(i) In Hong Kong,

Assessable income	HK$328,500	
less personal allowance	(HK$100,000)	
Net chargeable income	HK$228,500	
Net tax payable at progressive rates		**HK$34,900**

(ii) In Belgium, income exempt from tax, i.e. **EUR 0**.

Total tax liability = HK$34,900

Tax savings = HK$ 41,839 - HK$34,900 = HK$ 6,939
(or 16.59%)

Annex E

Arrangements/Agreements on Avoidance of Double Taxation for Hong Kong

Comprehensive Arrangement for Avoidance of Double Taxation

1. The Mainland of China

Arrangement for Avoidance of Double Taxation on Airline Income

1. Bangladesh
2. Belgium
3. Canada
4. Croatia
5. Denmark
6. Estonia
7. Germany
8. Israel
9. The Macao SAR
10. The Mainland of China
11. Mauritius
12. The Netherlands
13. New Zealand
14. Norway
15. The Republic of Korea
16. Russia
17. Sweden
18. The United Kingdom

Agreement for Avoidance of Double Taxation on Shipping Income

1. The United States of America
2. The United Kingdom
3. The Netherlands
4. Germany
5. Norway

Agreement for Avoidance of Double Taxation on Airline and Shipping Income

1. Singapore