

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

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

INTRODUCTION

At the meeting of the Executive Council on 24 February 2004, the Council ADVISED and the Chief Executive ORDERED that the Specification of Arrangements (Government of the Republic of Croatia Concerning Air Services) (Avoidance of Double Taxation) Order, at Annex, should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (the Ordinance). The Order implements the article on double taxation relief in respect of airline income and profits (the Article) in the Air Services Agreement (the ASA) signed with the Republic of Croatia on 7 June 2002.

JUSTIFICATIONS

2. 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 ASA with the Government of the Republic of Croatia, it is necessary to declare by order that arrangements with the Republic of Croatia on double taxation relief in respect of airline income and profits have been made, so as to put the arrangements into effect. We therefore propose to make the Order for the Article.

OTHER OPTIONS

3. There are no other options.

THE ORDER

4. **Section 1** declares that arrangements for double taxation relief in respect of income tax and any tax of a similar character have been made with the Government of the Republic of Croatia and should take effect. **Section 2** states that the arrangements are in Article 9 of the ASA and should have effect according to the tenor of the Article. The **Schedule** sets out the details of the arrangements.

LEGISLATIVE TIMETABLE

5. The legislative timetable will be -

Publication in the Gazette	5 March 2004
Tabling in the Legislative Council	10 March 2004

IMPLICATIONS OF THE PROPOSAL

6. 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 Ordinance and its subsidiary legislation. It has no productivity, environmental, civil service or sustainability implications.

7. There are no financial implications as currently there are no air services between Hong Kong and Croatia. The proposal will provide an incentive for airlines to operate air services between Hong Kong and Croatia. It will enhance Hong Kong's status as an international aviation hub.

PUBLIC CONSULTATION

8. The Hong Kong airline concerned has been consulted during the discussion of the avoidance of double taxation article. It supports the double taxation relief arrangement.

PUBLICITY

9. We will issue a press release on 5 March 2004. A spokesman will be available to answer media and public enquiries.

BACKGROUND

10. It is Government's policy to include provisions on double taxation relief for airline income in bilateral air services agreements negotiated between the HKSAR and our aviation partners. We have concluded and made orders under section 49 of the Ordinance to implement such relief arrangements on airline income with Bangladesh, Belgium, Canada, Denmark, Estonia, Germany, Israel, the Mainland of China, Mauritius, the Netherlands, New Zealand, Norway, the Republic of Korea, Russia, Sweden and the United Kingdom.

11. The ASA with the Republic of Croatia concluded on 7 June 2002 contains an article (Article 9) on double taxation relief in respect of airline income and profits. The Article provides that -

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

12. In accordance with paragraph (6) of Article 9 of the ASA, each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of the Article and the Article shall enter into force on the date of the last written notification. The Article shall then apply, in the case of the HKSAR, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the ASA or the Article enters into force, whichever is the later. The ASA entered into force on 30 January 2003. The Croatian Government will notify us after its internal procedures for bringing the Article into force are completed.

ENQUIRY

13. 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
5 March 2004

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

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

1. Declaration under section 49

For the purposes of section 49 of the Ordinance, it is
declared -

- (a) that the arrangements referred to in section 2 have
been made with the Government of the Republic of
Croatia with a view to affording relief from double
taxation in relation to income tax and any tax of a
similar character imposed by the laws of the
Republic; and
- (b) that it is expedient that those arrangements should
have effect.

2. Arrangements specified

The arrangements mentioned in section 1 are in Article 9 of
the Air Services Agreement between the Government of the Hong Kong
Special Administrative Region of the People's Republic of China
and the Government of the Republic of Croatia done in duplicate at
Zagreb on 7 June 2002 in the English and Croatian languages as
specified in the Schedule and having effect according to the tenor
of that Agreement.

SCHEDULE

[s. 2]

ARTICLE 9

of the

AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT
OF THE REPUBLIC OF CROATIA

Article 9

Avoidance of Double Taxation

(1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.

(2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other Contracting Party.

(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the

operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

(4) For the purposes of this Article:

(a) the term "income or profits" includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:

(i) the charter or rental of aircraft;

(ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline; and

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

(b) the term "international traffic" means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;

(c) the term "airline of one Contracting Party" means, in the case of the Hong Kong Special Administrative

Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of the Republic of Croatia, an airline substantially owned and effectively controlled by the Government of the Republic of Croatia or its nationals;

(d) the term "competent authority" means, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative, or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions, and, in the case of the Republic of Croatia, the Ministry of Finance or their authorised representative.

(5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 16 (Settlement of Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 20 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last written notification. The Article shall then be applied:

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

(b) in the Republic of Croatia, for any year of assessment beginning on or after 1st January in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.

(7) Notwithstanding Article 18 (Termination) where notice of denunciation of this Agreement is given under that Article, this Article shall cease to have effect:

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

(b) in the Republic of Croatia, for any year of assessment beginning on or after 1st January in the calendar year next following that in which notice is given.

(8) This Article shall cease to have effect in the event

that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties.".

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

An air services agreement dated 7 June 2002 has been made between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Croatia. This Order specifies Article 9 of the Agreement as a double taxation relief arrangement under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect.