

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY)(AVOIDANCE OF DOUBLE TAXATION ON SHIPPING INCOME) ORDER

INTRODUCTION

At the meeting of the Executive Council on 16 November 2004, the Council ADVISED and the Chief Executive ORDERED that the Specification of Arrangements (Government of the Federal Republic of Germany)(Avoidance of Double Taxation on Shipping Income) Order (“the Order”), at Annex, should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”). The Order implements the Agreement for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital of Shipping Enterprises (the Agreement) signed with the Government of the Federal Republic of Germany on 13 January 2003.

JUSTIFICATIONS

2. Under section 49 of the Inland Revenue Ordinance (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 Government of the Federal Republic of Germany, it is necessary to declare by order that arrangements with the Federal Republic of Germany on double taxation relief in respect of income and capital of shipping enterprises have been made, so as to put the arrangements into effect. We therefore propose to make the Order for the Agreement.

BACKGROUND

10. Due to the international nature of shipping operations, shipping operators are more susceptible to double taxation than other taxpayers. It is therefore our objective to conclude avoidance of double taxation agreements for revenues arising from the operation of ships in international traffic with our shipping partners. We concluded the first double taxation relief arrangements on shipping income with the United States of America in 1989. In 1998, we amended our legislation to provide reciprocal tax exemption for shipping income so that Hong Kong ship operators can benefit from the tax relief offered by places with similar reciprocal tax exemption legislation. For other shipping partners who do not provide reciprocal tax exemption in their legislation, we negotiate with them double taxation relief agreements for shipping income, in order to alleviate the tax burden of our ship operators in those places. Subsequently, we concluded double taxation relief agreements on shipping income with the United Kingdom, the Netherlands, Germany and Norway in October 2000, November 2000, January 2003 and October 2003 respectively.

11. The Agreement concluded with the Federal Republic of Germany in January 2003 provides that -

- (a) profits of an enterprise of a Contracting Party from the operation of ships in international traffic, including profits from the participation in a pool, a joint business or an international operating agency, shall be taxable only in the area of that Contracting Party;
- (b) capital represented by ships operated by an enterprise of a Contracting Party in international traffic and by movable property pertaining to the operation of such ships shall be taxable only in the area of that Contracting Party; and
- (c) gains from the alienation of ships operated by an enterprise of a Contracting Party in international traffic and from movable property pertaining to the operation of such ships shall be taxable only in the area of that Contracting Party.

12. In accordance with its Article 5, the Agreement will enter into force on the date of the later of the notifications (informing the other Contracting Party the completion of the procedures required by its law for bringing the Agreement into force), and thereupon have effect in Hong Kong for any year of assessment beginning on or after 1 April 1998.

ENQUIRY

13. In case of enquiries about this Brief, please contact Mr Vincent TANG, Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue)(Special Duty), at 2810 3757.

Financial Services and the Treasury Bureau
19 November 2004

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE FEDERAL
REPUBLIC OF GERMANY) (AVOIDANCE OF DOUBLE TAXATION
ON SHIPPING INCOME) ORDER**

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

1. Declaration under section 49

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

- (a) that the arrangements referred to in section 2 have
been made with the Government of the Federal
Republic of Germany 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 Federal Republic; and
- (b) that it is expedient that those arrangements should
have effect.

2. Arrangements specified

The arrangements mentioned in section 1 are in Articles 1 to
6 of the Agreement between the Government of the Hong Kong Special
Administrative Region of the People's Republic of China and the
Government of the Federal Republic of Germany for the Avoidance of
Double Taxation with Respect to Taxes on Income and on Capital of
Shipping Enterprises, done in duplicate at Hong Kong on 13 January
2003 in the English and German languages as specified in the
Schedule and having effect according to the tenor of that

Agreement.

SCHEDULE

[s. 2]

ARTICLES 1 TO 6

of the

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND ON CAPITAL OF SHIPPING
ENTERPRISES

"Article 1

Taxes covered

(1) This Agreement shall apply to all taxes on income and on capital levied within the area of the Contracting Parties according to their laws irrespective of the manner in which they are levied.

(2) The existing taxes to which this Agreement shall apply are in particular:

a) in the case of the Federal Republic of Germany:

Einkommensteuer (income tax),
Körperschaftsteuer (corporation tax), and
Gewerbesteuer (trade tax),
including the supplements levied thereon;

b) in the case of the Hong Kong Special
Administrative Region:

profits tax.

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

Article 2

General definitions

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

a) the term "area" means:

aa) in respect of the Federal Republic of Germany, the territory of the Federal Republic of Germany, as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, insofar as the Federal

Republic of Germany exercises there sovereign rights and jurisdiction in conformity with international law and its national legislation for the purposes of exploring, exploiting, conserving and managing the living and non-living natural resources;

bb) in respect of the Hong Kong Special Administrative Region, Hong Kong Island, Kowloon, and the New Territories;

b) the terms "a Contracting Party" and "the other Contracting Party" mean the Government of the Federal Republic of Germany or the Government of the Hong Kong Special Administrative Region, as the context requires;

c) the term "competent authority" means:

aa) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers;

bb) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized

representative or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions;

- d) the term "person" means an individual or a company;
- e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- f) the term "enterprise of a Contracting Party" means:
 - aa) in the case of the Federal Republic of Germany an enterprise carried on by a person who, under German law, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature;
 - bb) in the case of the Hong Kong Special Administrative Region an enterprise carried on by an individual who is a permanent resident in the Hong Kong Special Administrative Region or a company which is managed and controlled

in the Hong Kong Special Administrative Region.

Where by reason of this sub-paragraph an enterprise is an enterprise of both Contracting Parties, the competent authorities of the Contracting Parties shall determine its status by mutual agreement;

- g) the term "international traffic" means any transport by a ship operated by an enterprise of a Contracting Party, except when the ship is operated solely between places in the area of the other Contracting Party.

(2) As regards the application of this Agreement at any time in the area of 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 the area of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws in the area of that Party prevailing over a meaning given to the term under other laws in the area of that Party.

Article 3

Shipping transport

(1) Profits of an enterprise of a Contracting Party from the

operation of ships in international traffic shall be taxable only in the area of that Contracting Party.

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

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

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

(5) For the purposes of this Article, the term "profits of an enterprise of a Contracting Party from the operation of ships in international traffic" includes:

a) revenues and gross receipts from the operation of ships for the transport of persons, livestock, goods, mail or merchandise;

b) profits from the lease of ships on charter

fully equipped, manned and supplied or on a bare-boat basis;

- c) profits from the use or rental of containers (including trailers and ancillary equipment used for transporting the containers);
- d) interest on funds directly connected with that operation.

Article 4

Mutual agreement procedure

The competent authorities of the Contracting Parties shall endeavour to resolve by consultation any difficulties or doubts arising as to the interpretation or application of this Agreement. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement.

Article 5

Entry into force

Each Contracting Party shall notify the other Contracting Party that their respective requirements for the entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the date on which the last notification is received and shall thereupon have effect:

- a) in the Federal Republic of Germany:
 - aa) in the case of taxes withheld at source, in respect of amounts paid on or after 1 January 1998;
 - bb) in the case of other taxes, in respect of taxes levied for periods beginning on or after 1 January 1998;
- b) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1 April 1998.

Article 6

Termination

(1) This Agreement shall remain in force indefinitely but either Contracting Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year. In such event, this Agreement shall cease to have effect:

- a) in the Federal Republic of Germany:
 - aa) in the case of taxes withheld at source, in respect of amounts paid on or after

the first day of January of the calendar year next following that in which notice is given;

bb) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice is given;

b) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after the first day of April of the calendar year next following that in which notice is given.

(2) A written notice of termination given by either Contracting Party shall be deemed to have been given on the date of receipt of such notice by the other Contracting Party."

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

An agreement dated 13 January 2003 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 Federal Republic of Germany for the avoidance of double taxation with respect to shipping enterprises. This Order specifies Articles 1 to 6 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.