

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF NORWAY)(AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM SHIPPING OPERATION) 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 Kingdom of Norway)(Avoidance of Double Taxation on Income from Shipping Operation) 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 on Income, Profits or Capital from Shipping Transportation (“the Agreement”) signed with the Government of the Kingdom on 16 October 2003.

JUSTIFICATIONS

2. Under section 49 of the Inland Revenue Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. Following the

signature of the Agreement, it is necessary to declare by order that arrangements with the Government of the Kingdom of Norway on double taxation relief in respect of income, profits or capital from shipping transportation have been made, so as to put the arrangements into effect. We therefore propose to make the Order for the Agreement.

OTHER OPTIONS

3. There are no other options.

THE ORDER

4. **Section 1** of the Order declares that arrangements specified in section 2 for double taxation relief in respect of income tax and any tax of a similar character have been made with the Government of the Kingdom of Norway and should take effect. **Section 2** specifies the arrangements in the Articles of the Agreement as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance. The **Schedule** to the Order sets out the text of the Articles containing the arrangement.

LEGISLATIVE TIMETABLE

5. The legislative timetable will be -

Publication in the Gazette 19 November 2004

Tabling in the Legislative Council 24 November 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 Inland Revenue Ordinance and its subsidiary legislation. It has no productivity, environmental, civil service or sustainability implications.

Financial Implications

7. Based on the current level of uplifts of the relevant shipowners, the financial implications of the double taxation relief arrangements will not be significant.

Economic Implications

8. The proposal will be beneficial to Hong Kong shipowners as it will exempt them from paying tax in respect of cargo loaded in Norway. It will also help strengthen Hong Kong's status as an international maritime centre.

PUBLIC CONSULTATION

9. The Hong Kong Shipowners Association has been consulted and it welcomes the Agreement.

PUBLICITY

10. We will issue a press release on 19 November 2004. A spokesman will be available to answer media and public enquiries.

BACKGROUND

11. 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 or despite existence of such legislation prefer conclusion of a bilateral agreement, 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. We also signed agreements with Singapore and Sri Lanka for the avoidance of double taxation on income from air services and shipping transportation.

12. The Agreement provides that -

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

13. 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 the year of assessment beginning on or after 1 April in the year in which the Agreement enters into force.

ENQUIRY

14. 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 KINGDOM OF NORWAY)(AVOIDANCE OF DOUBLE
TAXATION ON INCOME FROM SHIPPING OPERATION)
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 specified in section 2 have been made with the Government of the Kingdom of Norway with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of the Kingdom; and
- (b) that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements specified for the purposes of section 1(a) are the arrangements 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 Kingdom of Norway for the Avoidance of Double Taxation on Income, Profits or Capital from Shipping Transportation done in duplicate at Hong Kong on 16 October 2003 in the English language, the text of which Articles is reproduced in the Schedule.

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
KINGDOM OF NORWAY FOR THE AVOIDANCE OF DOUBLE
TAXATION ON INCOME, PROFITS OR CAPITAL FROM
SHIPPING TRANSPORTATION

ARTICLE 1**Taxes covered**

- (1) The existing taxes to which this Agreement shall apply are:
- (a) in the case of the Hong Kong Special Administrative Region:
profits tax;
 - (b) in the case of Norway:
 - (i) the National Tax on Income (inntektsskatt til Staten);
 - (ii) the County Municipal Tax on Income (inntektsskatt til fylkeskommunen);
 - (iii) the Municipal Tax on Income (inntektsskatt til kommunen);
 - (iv) the National Tax on Capital (formuesskatt til Staten);
 - (v) the Municipal Tax on Capital (formuesskatt til kommunen).

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

ARTICLE 2

General definitions

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

(a) the term “Contracting Party” means the Hong Kong Special Administrative Region or the Kingdom of Norway, as the context requires;

(b) the term “person” includes a corporation, a partnership, a trust or any other body of persons, whether incorporated or unincorporated;

(c) the term “enterprise of a Contracting Party” means:

(A) in the case of the Hong Kong Special Administrative Region, a business carried on by a person as an owner of ships, and

(i) the business is managed and controlled in the Hong Kong Special Administrative Region; or

(ii) the person is a company incorporated in the Hong Kong Special Administrative Region;

(B) in the case of Norway, any enterprise which, under the laws of Norway, is liable to tax therein by reason of domicile, residence, place of management or any other criterion of a similar nature;

(d) the term “international traffic” means any transport by a ship, except when the ship is operated solely between places in the area of the other Contracting Party;

(e) the term “competent authorities” means:

(i) the Commissioner of Inland Revenue of the Hong Kong Special Administrative Region or his authorized representative or any person or body authorized to perform any functions or similar functions at present exercisable by him; and

(ii) the Minister of Finance of the Kingdom of Norway or his authorized representative.

(2) As regards the application of this Agreement by a Contracting Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party concerning the taxes to which this Agreement applies.

ARTICLE 3

Shipping transport

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

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

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

(4) Gains from the alienation of ships operated in international traffic and movable property pertaining to the operation of such ships which are received by an enterprise of a Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

(5) For the purposes of this Article, the term “income or profits derived from the operation of ships in international traffic” includes revenues and gross receipts from the operation of ships for the transport of persons, livestock, goods, mail or merchandise including the lease of ships operated in international traffic on a full (time or voyage) or bareboat basis.

ARTICLE 4

Mutual agreement procedure

The competent authorities shall endeavour to resolve by consultation any difficulties or doubts arising as to the interpretation or application of this Agreement.

ARTICLE 5
Entry into force

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

(a) in the Hong Kong Special Administrative Region:

for the year of assessment beginning on or after 1 April in the year in which this Agreement enters into force;

(b) in Norway:

for the calendar year (including accounting periods beginning in any such year) in which this Agreement enters into force.

ARTICLE 6
Termination

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

(a) in the Hong Kong Special Administrative Region:

for any year of assessment beginning on or after 1 April in the calendar year next following that in which notice is given;

(b) in Norway:

for any calendar year (including accounting periods beginning in such year) next following that in which the notice is given.

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

An agreement dated 16 October 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 Kingdom of Norway for the avoidance of double taxation on income, profits or capital from shipping transportation ("Agreement"). This Order specifies the arrangements in Articles 1 to 6 of the Agreement as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.