

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE REPUBLIC OF SINGAPORE)(AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM SHIPPING OR AIRCRAFT OPERATIONS) ORDER

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA)(AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM SHIPPING AND AIR TRANSPORT) 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 Republic of Singapore)(Avoidance of Double Taxation on Income from Shipping or Aircraft Operations) Order (“the Singapore Order”), at *Annex A*, and the Specification of Arrangements (Government of the Democratic Socialist Republic of Sri Lanka)(Avoidance of Double Taxation on Income from Shipping and Air Transport) Order (“the Sri Lanka Order”), at *Annex B*, should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”). The two Orders implement the Agreement for the Avoidance of Double Taxation on Income of an Enterprise Operating Ships or Aircraft in International Traffic signed with the

Government of the Republic of Singapore (“the Agreement with Singapore”) on 28 November 2003 and the Agreement for the Avoidance of Double Taxation with respect to Taxes on Income derived from Shipping and Air Transport signed with the Government of the Democratic Socialist Republic of Sri Lanka (“the Agreement with Sri Lanka”) on 26 March 2004 respectively.

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 Agreements with Singapore and Sri Lanka, it is necessary to declare by orders that arrangements have been made with the Government of the Republic of Singapore and with the Government of the Democratic Socialist Republic of Sri Lanka respectively on double taxation relief in respect of income of an enterprise operating ships or aircraft in international traffic, so as to put the arrangements into effect. We therefore propose to make the Orders for the Agreements.

OTHER OPTIONS

3. There are no other options.

THE ORDER

4. **Section 1** of the Orders 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 Republic of Singapore and the Government of the Democratic Socialist Republic of Sri Lanka respectively, 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 Orders sets out the text of the Articles containing the arrangements.

LEGISLATIVE TIMETABLE

5. The legislative timetable will be -

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. For aircraft operation, the revenue foregone on non-resident aircraft operator will be compensated by the revenue of resident aircraft operators brought to charge in Hong Kong by operation of section 23C(2A) of the Inland Revenue Ordinance. Therefore, the revenue implication, if any, will be insignificant.

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 Singapore and Sri Lanka respectively. It will also help strengthen Hong Kong's status as an international maritime centre. Airlines of Hong Kong, Singapore and Sri Lanka will benefit from the avoidance of double taxation. The Agreements will also enhance Hong Kong's status as an international aviation hub.

PUBLIC CONSULTATION

9. The Maritime Industry Council and Hong Kong airlines providing scheduled services to Singapore and to Sri Lanka have been consulted and they welcome 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 airline and shipping operations, airlines and shipping operators are more susceptible to double taxation than other taxpayers. It is therefore the 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, and to conclude avoidance of double taxation agreements for revenues arising from the operation of ships in international traffic with our shipping partners. We have concluded such relief arrangements on airline income with Bangladesh, Belgium, Canada, Croatia, Denmark, Estonia, Germany, Israel, the Macao Special Administrative Region, the Mainland of China, Mauritius, the Netherlands, New Zealand, Norway, the Republic of Korea, Russia, Sweden and the United Kingdom. On the shipping side, 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. The Agreements are the first two agreements for avoidance of double taxation in respect of both air services and shipping.

12. The Agreement with Singapore provides that -

- (a) income derived from the operation of ships or aircraft in international traffic, and gains derived from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, by an enterprise of a Contracting Party, including income or gains from the participation in a pool, a joint business or an international operating

agency, shall be exempt from taxes imposed in the other Contracting Party; and

- (b) remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Contracting Party, except when the remuneration is derived by a resident of the other Contracting Party, in which case the remuneration may also be taxed in that other Contracting Party.

13. The Agreement with Sri Lanka provides that -

- (a) profits of an enterprise of a Contracting Party derived from the operation of aircraft 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) profits of an enterprise of a Contracting Party derived in the area of the other 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, may be taxed in the area of the other Contracting Party but the tax so charged shall be reduced by an amount equal to fifty per centum thereof; and
- (c) remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in the area of that Contracting Party.

14. In accordance with Article 5 of the Agreements, the respective Agreements will enter into force on the date of the later of the relevant notifications (informing the other Contracting Party the completion of the procedures required by its law for bringing the respective Agreements into force), and thereupon have effect in Hong Kong for any year of assessment beginning on or after 1 April in the calendar year next following that in which

the respective Agreement enters into force.

ENQUIRY

15. 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 REPUBLIC OF SINGAPORE)(AVOIDANCE OF
DOUBLE TAXATION ON INCOME FROM
SHIPPING OR AIRCRAFT
OPERATIONS) 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 Republic of Singapore 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 Republic; 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 Hong Kong Special Administrative Region of the People's Republic of China and the Republic of Singapore for the Avoidance of Double Taxation on Income of an Enterprise Operating Ships or Aircraft in International Traffic done in duplicate at Singapore on 28 November 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 HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC
OF CHINA AND THE REPUBLIC OF SINGAPORE FOR THE
AVOIDANCE OF DOUBLE TAXATION ON INCOME OF
AN ENTERPRISE OPERATING SHIPS OR AIRCRAFT
IN INTERNATIONAL TRAFFIC

Article 1**TAXES COVERED**

1. The existing taxes to which this Agreement shall apply are:
 - (a) in the case of the Hong Kong Special Administrative Region, profits tax and salaries tax;
 - (b) in the case of Singapore, the income tax.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting Party after the signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph (1) of this Article. The competent authorities 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 “a Contracting Party” means the Hong Kong Special Administrative Region or Singapore, as the context requires;
- (b) the term “Contracting Parties” means the Hong Kong Special Administrative Region and Singapore;
- (c) the term “person” includes an individual, a company and any other body of persons, whether incorporated or unincorporated;
- (d) the term “an enterprise of a Contracting Party” means an enterprise carried on by -
 - (i) a company or body of persons managed and controlled in the Hong Kong Special Administrative Region or Singapore, as the case may be; or
 - (ii) an individual who:
 - (aa) in the case of the Hong Kong Special Administrative Region is a permanent or temporary resident for the purpose of the Inland Revenue Ordinance;
 - (bb) in the case of Singapore is a resident for the purpose of Singapore income tax;
- (e) 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;
- (f) 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 Singapore, the Minister for Finance or his authorised representative;

(g) the term “income” includes revenues, gross receipts and profits from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise including:

(i) profits from rental on a bareboat charter basis of ships or aircraft where the rental is incidental to the operation of ships or aircraft in international traffic;

(ii) income or profits from the sale of tickets or similar documents and the provision of services connected with such transport where such provision of services is incidental to the operation of ships or aircraft in international traffic, either for the enterprise itself or for any other enterprise;

(iii) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, where the use, maintenance or rental is incidental to the operation of ships or aircraft in international traffic;

(iv) interest on funds deposited directly in connection with the operation of ships or aircraft in international traffic.

2. As regards the application of this 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 law of that

Contracting Party concerning the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 3

SHIPPING AND AIR TRANSPORT

1. Income derived from the operation of ships or aircraft in international traffic by an enterprise of a Contracting Party shall be exempt from taxes imposed on income in the other Contracting Party.

2. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be exempt from taxes imposed in the other Contracting Party.

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

4. Remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Contracting Party. However, if the remuneration is derived by a resident of the other Contracting Party, it may also be taxed in that other Contracting Party.

Article 4
MUTUAL AGREEMENT PROCEDURE

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

Article 5
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 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 any year of assessment beginning on or after 1 April in the calendar year next following that in which this Agreement enters into force;
- (b) in Singapore, in respect of tax chargeable for any year of assessment beginning on or after 1 January in the second calendar year next following the year in which this Agreement enters into force.

Article 6
TERMINATION

This Agreement shall remain in force indefinitely but either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year after the

expiration of five years from the date of its entry into force. 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 Singapore, in respect of tax chargeable for any year of assessment beginning on or after 1 January in the second calendar year next following the year in which notice is given.

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

An agreement dated 28 November 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 Republic of Singapore for the avoidance of double taxation on income from shipping or aircraft operations ("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.

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA)
(AVOIDANCE OF DOUBLE TAXATION ON INCOME
FROM SHIPPING AND AIR TRANSPORT) 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 Democratic
Socialist Republic of Sri Lanka 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 Republic; 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
Democratic Socialist Republic of Sri Lanka for the Avoidance of
Double Taxation with respect to Taxes on Income derived from
Shipping and Air Transport done in duplicate at Sri Lanka on 26
March 2004 in the English and Sinhala languages, the English 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 DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES
ON INCOME DERIVED FROM SHIPPING
AND AIR TRANSPORT

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 and salaries tax (hereinafter referred to as "Hong Kong Special Administrative Region tax");
 - (b) in the case of the Democratic Socialist Republic of Sri Lanka,
the income tax (hereinafter referred to as "Sri Lanka tax").

- (2) This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of

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 taxation laws and which may affect the application of this Agreement.

ARTICLE 2

General Definitions

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

- (a) the terms "a Contracting Party" and "the other Contracting Party" mean the Hong Kong Special Administrative Region of the People's Republic of China or the Democratic Socialist Republic of Sri Lanka, as the context requires;
- (b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) the term "competent authority" means:
 - (i) 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;

(ii) in the case of Sri Lanka, the Commissioner
General of Inland Revenue;

(d) the term "enterprise of a Contracting Party" means:

(i) in the case of the Hong Kong Special
Administrative Region, a business carried on by a
person as an operator of ships or aircraft, and

(A) where the person is an operator of aircraft,
that person is a company incorporated and
has its principal place of business in the
Hong Kong Special Administrative Region; or

(B) where the person is an operator of ships,
the business is controlled or managed in the
Hong Kong Special Administrative Region or
the person is a company incorporated in the
Hong Kong Special Administrative Region;

(ii) in the case of Sri Lanka,

(A) Sri Lankan Airlines, or other designated
airline(s) of Sri Lanka, operating air
services in accordance with the Agreement

between the Government of Hong Kong and the Government of the Democratic Socialist Republic of Sri Lanka concerning Air Services signed on 24 February 1993; or

- (B) a business for the operation of ships carried on by a company or body of persons, where the company or body of persons has its registered or principal office in Sri Lanka, or where the control and management of the business are exercised in Sri Lanka;

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

- (f) the term "operator" includes an owner or a charterer;

- (g) the term "person" includes an individual, a company, a trust, or any body of persons, whether incorporated or unincorporated, and, in the case of the Hong Kong Special Administrative Region, also a partnership;

- (h) the term "profits" includes revenues, gross receipts or income from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or

merchandise including:

- (i) profits from the lease of ships or aircraft provided that such lease is incidental to the operation of ships or aircraft in international traffic;
- (ii) profits from the sale of tickets or similar documents and the provision of services connected with such transport either for the enterprise itself or on behalf of any other enterprise provided that the provision of services is incidental to the operation of ships or aircraft in international traffic;
- (iii) interest on funds directly connected with the operation of ships or aircraft in international traffic;

- (i) the term "tax" means Hong Kong Special Administrative Region tax or Sri Lanka tax, as the context requires.

(2) As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the law in force in the area of that Contracting Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Contracting Party

prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 3

Avoidance of Double Taxation

(1) Profits of an enterprise of a Contracting Party derived from the operation of aircraft in international traffic shall be taxable only in the area of that Contracting Party.

(2) Profits of an enterprise of a Contracting Party derived in the area of the other Contracting Party from the operation of ships in international traffic may be taxed in the area of the other Contracting Party but the tax so charged shall be reduced by an amount equal to fifty per centum thereof.

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

(4) Remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in the area of that Contracting Party.

(5) Subject to the provisions of the law of the Hong Kong Special Administrative Region regarding the allowance as 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 hereof), tax paid under the law of Sri Lanka and in accordance with this Agreement, whether directly or by deduction, on profits of an enterprise of the Hong Kong Special Administrative Region derived in Sri Lanka from the operation of ships in international traffic shall be allowed as a credit against any Hong Kong Special Administrative Region tax payable in respect of the same profits, provided that the amount of credit shall not exceed the amount of Hong Kong Special Administrative Region tax attributable to such profits.

(6) Subject to the provisions of the law of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax paid in a jurisdiction outside Sri Lanka (which shall not affect the general principle hereof), tax paid under the law of the Hong Kong Special Administrative Region and in accordance with this Agreement, whether directly or by deduction, on profits of an enterprise of Sri Lanka derived in the Hong Kong Special Administrative Region from the operation of ships in international traffic shall be allowed as a credit against any Sri Lanka tax payable in respect of the same profits, provided that the amount of credit shall not exceed the amount of Sri Lanka tax attributable to such profits.

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. They may also consult together for the avoidance of double taxation in cases not provided for in this Agreement.

ARTICLE 5

Entry into Force

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. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect for any year of assessment beginning on or after 1 April in the calendar year next following that in which this Agreement enters into force.

ARTICLE 6

Termination

This Agreement shall remain in force indefinitely but either Contracting Party may terminate this Agreement by giving written notice of termination to the other Contracting Party at least six months before the end of any calendar year after the fifth year following that in which it enters into force. In such event, this Agreement shall cease to have effect for any year of assessment beginning on or after 1 April in the calendar year next following that in which notice is given.

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

An agreement dated 26 March 2004 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 Democratic Socialist Republic of Sri Lanka for the avoidance of double taxation with respect to taxes on income derived from shipping and air transport ("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.