

## LEGISLATIVE COUNCIL BRIEF

### Inland Revenue Ordinance (Chapter 112)

#### SPECIFICATION OF ARRANGEMENTS (THE MAINLAND OF CHINA) (AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) ORDER

#### INTRODUCTION

At the meeting of the Executive Council on 17 October 2006, the Council ADVISED and the Chief Executive ORDERED that the Specification of Arrangements (the Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income) Order (the Order), at A Annex A, should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (the Ordinance). The Order implements the Arrangement with the Mainland of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Arrangement) signed on 21 August 2006.

#### JUSTIFICATIONS

2. In the 1998-99 Budget Speech, the then Financial Secretary announced that, as a business facilitation initiative, the Government would actively negotiate a Comprehensive Agreement for Avoidance of Double Taxation (“CDTA”)<sup>1</sup> with trade

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<sup>1</sup> Due to the constitutional relationship between the Mainland and the HKSAR, we conclude “arrangements” instead of agreements with the Mainland. The abbreviation “CDTA” used in this paper refers to “Comprehensive **Arrangement** for Avoidance of Double Taxation” in regard to the Mainland. The same abbreviation refers to “Comprehensive **Agreement** for Avoidance of Double Taxation” in regard to foreign jurisdictions.

and economic partners in the hope of minimising exposure of residents of each place to double taxation. So far, we have entered into a CDTA with Belgium in December 2003, and with Thailand in September 2005.

3. In relation to the Mainland, we entered into a limited Double Taxation Arrangement (DTA) in February 1998, covering three main aspects which were susceptible to double taxation at the time. These included: (a) business profits of an enterprise which operates through a permanent establishment; (b) shipping, air and land transport income; and (c) income from personal services.

4. Over the past few years, there have been requests from the local business community for the expansion of the scope of the limited DTA to cover other aspects, such as capital gains and passive income. Some pointed out that the absence of a provision on passive income in the limited DTA may expose Hong Kong investors to the risk of higher tax if the Mainland reverts to the published withholding tax rate of 20%. (Currently, some passive income is taxed at a concessionary rate of 10% in certain circumstances). There were also proposals to turn the limited DTA into a CDTA, which might help Hong Kong secure lower withholding tax rates for its residents.

5. The State Administration of Taxation (SAT) of the Mainland also expressed its interest in turning the existing limited DTA into a CDTA. One of the major reasons for doing so is that a CDTA normally contains a provision for exchange of information, which is not included in the existing limited DTA. An Exchange of Information Article would assist the tax authorities of both sides, i.e. the SAT and the Inland Revenue Department alike, in their investigation into tax evasion/avoidance cases involving cross-boundary investment and in counteracting tax evasion activities. However, the information to be exchanged is limited to information that is necessary for carrying out the provisions of the CDTA or of the domestic laws of both sides concerning taxes covered by the CDTA. To guard against abuse and leakage of the information exchanged, the information obtained will be kept confidential. Both the Mainland and Hong Kong tax laws have provisions to govern the keeping of confidentiality on tax information. A brief note on the exchange of information is at Annex B.

6. A summary of the main provisions of the CDTA is at Annex C. The Arrangement seeks to expand the scope of the existing limited DTA, and to avoid instances of double taxation encountered by Hong Kong and Mainland resident investors engaging in cross-border economic activities.

#### Economic benefits of entering into a CDTA with the Mainland

7. Hong Kong adopts the territorial concept of taxation whereby only income sourced from Hong Kong is subject to tax. In most cases, income derived from sources outside Hong Kong by a local resident is 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 is not likely to occur.

8. 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.

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

10. 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 the 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, the relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

#### Benefits of the CDTA

11. The CDTA will bring some tax savings to Hong Kong residents. For instance, Hong Kong residents who derive royalty income on the Mainland are now subject to withholding tax of between 10% and 20%. Under the CDTA, the withholding tax rate will be reduced to 7% in all cases. Hong Kong residents who derive interest income on the Mainland are now subject to withholding tax of between

10% and 20%. Under the CDTA, interest derived by the government or institutions recognized by both tax authorities will be exempted; for all other cases, the withholding tax rate will be reduced to 7%. As regards dividends, the withholding tax rate will be reduced from the current maximum rate of 20% to between 5% and 10%. However, if the aforesaid indirect income belongs to a permanent establishment on the Mainland, the income will form part of the business profits of the permanent establishment and will be subject to tax on the Mainland in accordance with the income tax law.

12. Moreover, under the CDTA, gains derived by Hong Kong residents on transfers of shares in Mainland companies, except in specified circumstances, will only be taxed in Hong Kong.

13. Overall, the CDTA 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 Hong Kong enterprises to do business/invest on the Mainland, and vice versa.

14. In addition to the actual tax savings for taxpayers of Hong Kong, the CDTA will achieve the following -

- (a) create a higher level of certainty and stability for potential investors, as the allocation of taxing rights between the Mainland and Hong Kong as well as the relief and limits on tax rates on the different types of passive income are set out clearly in the CDTA, which will take effect once the relevant procedures of the parties have been completed, so that the terms of the arrangement would not lightly be set aside by subsequent unilateral tax policy changes of either party ; and
- (b) provide for exchange of information between the tax authorities of the Mainland and of Hong Kong. Information can be used to resolve difficulties which might arise in connection with cross-border taxation.

15. Hong Kong is keen to establish a network of CDTAs with its major trading and investment partners. 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

16. 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 Arrangement with the Mainland, it is necessary to declare by order that arrangements with the Mainland of China on double taxation relief have been made, so as to put the arrangements into effect.

## **OTHER OPTIONS**

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

## **THE ORDER**

18. **Section 1** of the Order declares that arrangements have been made with the Mainland of China for double taxation relief in relation to income tax and any tax of a similar character imposed by the laws of the Mainland of China and that those arrangements should take effect. **Section 2** states that the arrangements are those in Articles 1 to 27 of the Arrangement, as well as paragraphs 1 to 3 of its Protocol, whose texts are both specified in the **Schedule** to the Order.

## **LEGISLATIVE TIMETABLE**

19. The legislative timetable will be -

Publication in the Gazette	27 October 2006
Tabling in the Legislative Council	1 November 2006

## **IMPLICATIONS OF THE PROPOSAL**

20. The proposal has financial, economic and civil service implications as set out in Annex D. 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. The limited DTA will cease to have effect on the date on which the

Arrangement applies in relation to the relevant types of tax. The proposal has no productivity, environmental or sustainability implications.

## **PUBLIC CONSULTATION**

21. When the Government first announced its policy to conclude CDTAs with our key trading and investment partners in 1998, this was welcomed by the business sector. When consulted on the Exchange of Information Article in 2002 and 2005, the International Business Committee generally indicated support for the Government's efforts to negotiate and conclude CDTAs with other economies. 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**

22. A spokesman will be available to answer media and public enquiries. Inland Revenue Department is now preparing the Departmental Interpretation and Practice Notes on the Arrangement. Answers to the frequently asked questions are also uploaded on the Department's website to facilitate the easy understanding of the Arrangement by the public.

## **ENQUIRY**

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

**Financial Services and the Treasury Bureau**  
**25 October 2006**

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## **SPECIFICATION OF ARRANGEMENTS (THE MAINLAND OF CHINA) (AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) ORDER**

### **ANNEXES**

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|---------|--|
| Annex A | Specification of Arrangements (The Mainland of China)(Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income) Order |
| Annex B | Background Note on Exchange of Information   |
| Annex C | Summary of Main Provisions on Income   |
| Annex D | Financial, Economic and Civil Service Implications of the Proposal   |

**SPECIFICATION OF ARRANGEMENTS (THE MAINLAND OF  
CHINA)(AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES  
ON INCOME) ORDER**

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**SPECIFICATION OF ARRANGEMENTS (THE MAINLAND  
OF CHINA)(AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES  
ON 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 specified in section 2 have been made 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 Mainland of China; 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 –

- (a) Articles 1 to 27 of the instrument entitled “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》”, whose English translation is “Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, done in duplicate in the Hong Kong Special Administrative Region on 21 August 2006 in the Chinese language, the text and an English

translation<sup>1</sup> of which Articles are reproduced in Part 1 of the Schedule; and

- (b) Paragraphs 1 to 3 of the Protocol to that instrument, the text and an English translation<sup>2</sup> of which Paragraphs are reproduced in Part 2 of the Schedule.

## SCHEDULE

[s. 2]

### PART 1

#### ARTICLES 1 TO 27 OF THE ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

#### 第一條

#### 人的範圍

本安排適用於一方或者同時為雙方居民的人。

#### 第二條

#### 稅種範圍

一、 本安排適用於由一方或其地方當局對所得徵收的所有稅收，不論其徵收方式如何。

二、 對全部所得或某項所得徵收的稅收，包括對來自轉讓動產或不動產的收益徵收的稅收以及對資本增值徵收的稅收，應視為對所得徵收的稅收。

<sup>1</sup> The English translation of the instrument is prepared by the Department of Justice in accordance with the Chinese text of the instrument.

<sup>2</sup> The English translation of the Protocol is prepared by the Department of Justice in accordance with the Chinese text of the instrument.

三、 本安排適用的現行稅種是：

(一) 在內地：

1. 個人所得稅；
2. 外商投資企業和外國企業所得稅。

(二) 在香港：

1. 利得稅；
2. 薪俸稅；
3. 物業稅，

不論是否按個人入息課稅徵收。

四、 本安排也適用於本安排簽訂之日後徵收的屬於增加或者代替現行稅種的相同或者實質相似的稅收，以及適用於將來徵收而又屬於本條第一款或第二款所指的任何其它稅收。雙方主管當局應將各自稅法所作出的實質變動，在其變動後的適當時間內通知對方。

五、 現有稅收連同本安排簽訂後徵收的稅收，以下分別稱為“內地稅收”或“香港特別行政區稅收”。

### 第三條

#### 一般定義

一、 在本安排中，除上下文另有解釋的以外：

- (一) “一方”和“另一方”的用語，按照上下文，是指內地或者香港特別行政區；
- (二) “稅收”一語按照上下文，是指內地稅收或者香港特別行政區稅收；
- (三) “人”一語包括個人、公司、信託、合夥和其它團體；
- (四) “公司”一語是指法人團體或者在稅收上視同法人團體的實體；

- (五) “企業”一語適用於所有形式的經營活動；
- (六) “一方企業”和“另一方企業”的用語，分別指一方居民經營的企業和另一方居民經營的企業；
- (七) “海運、空運和陸運”一語是指一方企業以船舶、飛機或陸運車輛經營的運輸，不包括僅在另一方各地之間以船舶、飛機或陸運車輛經營的運輸；
- (八) “主管當局”一語，在內地是指國家稅務總局或其授權的代表；在香港特別行政區是指稅務局局長或其獲授權的代表，或任何獲授權執行現時可由稅務局局長執行的職能或類似職能的人士或機構；
- (九) “經營”一語包括專業性勞務活動和其它獨立性活動。

二、 在本安排中，“內地稅收”或“香港特別行政區稅收”不包括根據任何一方關於本安排憑藉第二條而適用的稅收的法律所徵收的任何罰款或利息。

三、 一方在實施本安排時，對於未經本安排明確定義的用語，除上下文另有解釋的以外，應當具有當時該一方適用於本安排的稅種的法律所規定的含義，稅法對有關術語的定義優先於其它法律對同一術語的定義。

#### 第四條

##### 居民

一、 在本安排中，“一方居民”一語，有以下定義：

- (一) 在內地，是指按照內地法律，由於住所、居所、總機構所在地、實際管理機構所在地，或者其它類似的標準，在內地負有納稅義務的人。但是，該用語不包括僅由於來源於內地的所得，在內地負有納稅義務的人；
- (二) 在香港特別行政區，指：
  1. 通常居於香港特別行政區的個人；
  2. 在某課稅年度內在香特別行政區逗留超過 180 天或在連續兩個課稅年度(其中一個是有關的課稅年度)內在香特別行政區逗留超過 300 天的個人；

3. 在香港特別行政區成立為法團的公司，或在香港特別行政區以外地區成立為法團而通常是在香港特別行政區進行管理或控制的公司；
4. 根據香港特別行政區的法律組成的其它人，或在香港特別行政區以外組成而通常是在香港特別行政區進行管理或控制的其它人。

二、 由於第一款的規定，同時為雙方居民的個人，其身份應按以下規則確定：

- (一) 應認為是其有永久性住所所在一方的居民；如果在雙方同時有永久性住所，應認為是與其個人和經濟關係更密切(重要利益中心)所在一方的居民；
- (二) 如果其重要利益中心所在一方無法確定，或者在任何一方都沒有永久性住所，應認為是其有習慣性居處所在一方的居民；
- (三) 如果其在雙方都有，或者都沒有習慣性居處，雙方主管當局應通過協商解決。

三、 由於第一款的規定，除個人以外，同時為雙方居民的人，應認為是其實際管理機構所在一方的居民。

## 第五條

### 常設機構

一、 在本安排中，“常設機構”一語是指企業進行全部或部分營業的固定營業場所。

二、 “常設機構”一語特別包括：

- (一) 管理場所；
- (二) 分支機構；
- (三) 辦事處；
- (四) 工廠；

- (五) 作業場所；
- (六) 礦場、油井或氣井、採石場或者其它開採自然資源的場所。

三、“常設機構”一語還包括：

- (一) 建築工地，建築、裝配或安裝工程，或者與其有關的監督管理活動，但僅以該工地、工程或活動連續六個月以上的為限；
- (二) 一方企業直接或者通過僱員或者僱用的其它人員，在另一方為同一個項目或者相關聯的項目提供的勞務，包括諮詢勞務，僅以在任何十二個月中連續或累計超過六個月的為限。

四、雖有本條上述規定，“常設機構”一語應認為不包括：

- (一) 專為儲存、陳列或者交付本企業貨物或者商品的目的而使用的設施；
- (二) 專為儲存、陳列或者交付的目的而保存本企業貨物或者商品的庫存；
- (三) 專為另一企業加工的目的而保存本企業貨物或者商品的庫存；
- (四) 專為本企業採購貨物或者商品，或者搜集信息的目的所設的固定營業場所；
- (五) 專為本企業進行其它準備性或輔助性活動的目的所設的固定營業場所；
- (六) 專為本款第(一)項至第(五)項活動的結合所設的固定營業場所，但這種結合所產生的該固定營業場所的全部活動應屬於準備性質或輔助性質。

五、雖有本條第一款和第二款的規定，當一個人(除適用第六款規定的獨立代理人以外)在一方代表另一方的企業進行活動，有權並經常行使這種權力以該企業的名義簽訂合同，這個人為該企業進行的任何活動，應認為該企業在該一方設有常設機構。除非這個人通過固定營業場所進行的活動限於第四款的規定，按照該款規定，不應認為該固定營業場所是常設機構。

六、一方企業僅通過按常規經營本身業務的經紀人、一般佣金代理人或者任何其它獨立代理人在另一方進行營業，不應認為在該另一方設有常設機構。但如果這個代理人的活動全部或幾乎全部代表該企業，不應認為是本款所指的獨立代理人。

七、 一方居民公司，控制或被控制於另一方居民公司或者在該另一方進行營業的公司(不論是否通過常設機構)，此項事實不能據以使任何一方公司構成另一方公司的常設機構。

## 第六條

### 不動產所得

一、 一方居民從位於另一方的不動產取得的所得(包括農業或林業所得)，可以在該另一方徵稅。

二、 “不動產”一語應當具有財產所在地的一方的法律所規定的含義。該用語在任何情況下應包括附屬於不動產的財產，農業和林業所使用的牲畜和設備，有關房地產的一般法律規定所適用的權利，不動產的用益權，以及由於開採或有權開採礦藏、資源和其它自然資源取得的不固定或固定收入的權利。船舶和飛機不應視為不動產。

三、 本條第一款的規定應適用於從直接使用、出租或者任何其它形式使用不動產取得的所得。

四、 本條第一款和第三款的規定也適用於企業的不動產所得。

## 第七條

### 營業利潤

一、 一方企業的利潤應僅在該一方徵稅，但該企業通過設在另一方的常設機構在該另一方進行營業的除外。如果該企業通過設在該另一方的常設機構在該另一方進行營業，其利潤可以在該另一方徵稅，但應僅以屬於該常設機構的利潤為限。

二、 除適用本條第三款的規定以外，一方企業通過設在另一方的常設機構在該另一方進行營業，應將該常設機構視同在相同或類似情況下從事相同或類似活動的獨立分設企業，並視同該常設機構與其所隸屬的企業完全獨立地進行交易。在上述情況下，該常設機構可能得到的利潤，在各方應歸屬於該常設機構。

三、 在確定常設機構的利潤時，應當允許扣除其進行營業發生的各項費用，包括行政和一般管理費用，不論其發生於該常設機構所在一方或者其它任何地方。但是，常設機構使用專利或者其它權利支付給企業總機構或該企業其它辦事處的特許權使用費、報酬或其它類似款項，提供具體服務或管理的佣金，以及向

其借款所支付的利息，銀行企業除外，都不得作任何扣除(屬於償還代墊實際發生的費用除外)。同樣，在確定常設機構的利潤時，也不考慮該常設機構從企業總機構或該企業其它辦事處取得的因使用專利和其它權利的特許權使用費、報酬或其它類似款項，因提供具體服務或管理的佣金，以及因貸款給該企業總機構或該企業其它辦事處所取得的利息，銀行企業除外(屬於償還代墊實際發生的費用除外)。

四、 如果一方習慣於以企業總利潤按一定比例分配給所屬各單位的方法，或是按照其法律規定的其它方法，來確定常設機構的利潤，則第二款規定並不妨礙該一方按上述方法確定其應納稅的利潤。但是，採用的方法所得到的結果，應與本條所規定的原則一致。

五、 不應僅由於常設機構為企業採購貨物或商品，將利潤歸屬於該常設機構。

六、 在上述各款中，除有適當的和充分的理由需要變動外，每年應採用相同的方法確定歸屬於常設機構的利潤。

七、 利潤中如果包括本安排其它各條單獨規定的所得項目時，本條規定不應影響其它各條的規定。

## 第八條

### 海運、空運和陸運

一、 一方企業在另一方以船舶、飛機或陸運車輛經營海運、空運和陸運運輸所取得的收入和利潤，該另一方應予免稅(在內地包括營業稅)。

二、 本條第一款的規定也適用於參加合夥經營、聯合經營或者參加國際經營機構取得的收入和利潤，但僅限於在上述經營中按參股比例取得的收入和利潤部分。

## 第九條

### 聯屬企業

一、 當：

(一) 一方企業直接或者間接參與另一方企業的管理、控制或資本，或者



- (二) 同一人直接或者間接參與一方企業和另一方企業的管理、控制或資本，

在上述任何一種情況下，兩個企業之間的商業或財務關係不同於獨立企業之間的關係，因此，本應由其中一個企業取得，但由於這些情況而沒有取得的利潤，可以計入該企業的利潤，並據以徵稅。

二、 一方將另一方已徵稅的企業利潤包括在該一方企業的利潤內(該部分利潤是按照兩個獨立企業在相同情況下本應由該一方企業所取得)，並加以徵稅時，該另一方應對這部分利潤所徵收的稅額作出適當的調整。在確定上述調整時，應對本安排其它規定予以注意，如有必要，雙方主管當局應相互協商。

## 第十條

### 股息

- 一、 一方居民公司支付給另一方居民的股息，可以在該另一方徵稅。
- 二、 然而，這些股息也可以在支付股息的公司是其居民的一方，按照該一方法律徵稅。但是，如果股息受益所有人是另一方的居民，則所徵稅款不應超過：
- (一) 如果受益所有人是直接擁有支付股息公司至少 25% 資本的公司，為股息總額的 5% ；
- (二) 在其它情況下，為股息總額的 10% 。

雙方主管當局應協商確定實施限制稅率的方式。

本款不應影響對該公司就支付股息的利潤所徵收的公司利潤稅。

三、 本條“股息”一語是指從股份或者非債權關係分享利潤的權利取得的所得，以及按照分配利潤的公司是其居民的一方的法律，視同股份所得同樣徵稅的其它公司權利取得的所得。

四、 如果股息受益所有人是一方居民，在支付股息的公司是其居民的另一方，通過設在該另一方的常設機構進行營業，據以支付股息的股份與該常設機構有實際聯繫的，不適用本條第一款和第二款的规定。在這種情況下，適用第七條的规定。

五、 一方居民公司從另一方取得利潤或所得，該另一方不得對該公司支付的股息或未分配的利潤徵收任何稅收，即使支付的股息或未分配的利潤全部或部分發生於該另一方的利潤或所得。但是，支付給該另一方居民的股息或者據以支付股息的股份與設在另一方的常設機構有實際聯繫的除外。

## 第十一條

### 利息

一、 發生於一方而支付給另一方居民的利息，可以在該另一方徵稅。

二、 然而，這些利息也可以在該利息發生的一方，按照該一方的法律徵稅。但是，如果利息受益所有人是另一方的居民，則所徵稅款不應超過利息總額的7%。雙方主管當局應協商確定實施限制稅率的方式。

三、 雖有本條第二款的規定，發生於一方而為另一方政府或由雙方主管當局認同的機構取得的利息，應在該一方免稅。

四、 本條“利息”一語是指從各種債權取得的所得，不論其有無抵押擔保或者是否有權分享債務人的利潤；特別是從公債、債券或者信用債券取得的所得，包括其溢價和獎金。由於延期支付的罰款，不應視為本條所規定的利息。

五、 如果利息受益所有人是一方政府、地方當局或一方居民，在利息發生的另一方，通過設在該另一方的常設機構進行營業，據以支付該利息的債權與該常設機構有實際聯繫的，不適用本條第一款、第二款和第三款的規定。在這種情況下，適用第七條的規定。

六、 如果支付利息的人為一方政府、地方當局或一方居民，應認為該利息發生在該一方。然而，當支付利息的人不論是否為一方政府、地方當局或一方居民，在一方設有常設機構，支付該利息的債務與該常設機構有聯繫，並由其負擔利息，上述利息應認為發生於該常設機構所在的一方。

七、 由於支付利息的人與受益所有人之間或者他們與其它人之間的特殊關係，以致支付的利息數額不論何種原因超出支付人與受益所有人在沒有上述關係時所能同意的數額時，本條規定應僅適用於後來提及的數額。在這種情況下，對該支付款項的超出部分，仍應按各方的法律徵稅，但應對本安排其它規定予以適當注意。

## 第十二條

### 特許權使用費

- 一、 發生於一方而支付給另一方居民的特許權使用費，可以在該另一方徵稅。
- 二、 然而，這些特許權使用費也可以在其發生的一方，按照該一方的法律徵稅。但是，如果特許權使用費受益所有人是另一方居民，則所徵稅款不應超過特許權使用費總額的 7%。雙方主管當局應協商確定實施該限制稅率的方式。
- 三、 本條“特許權使用費”一語是指使用或有權使用文學、藝術或科學著作(包括電影影片、無線電或電視廣播使用的膠片、磁帶)的版權，專利、商標、設計或模型、圖紙、秘密配方或秘密程序所支付的作為報酬的各種款項，或者使用或有權使用工業、商業、科學設備或有關工業、商業、科學經驗的信息所支付的作為報酬的各種款項。
- 四、 如果特許權使用費受益所有人是一方政府、地方當局或一方居民，在特許權使用費發生的另一方，通過設在該另一方的常設機構進行營業，據以支付該特許權使用費的權利或財產與該常設機構有實際聯繫的，不適用本條第一款和第二款的规定。在這種情況下，適用第七條的规定。
- 五、 如果支付特許權使用費的人為一方政府、地方當局或一方居民，應認為該特許權使用費發生在該一方。然而，當支付特許權使用費的人不論是否為一方政府、地方當局或一方居民，在一方設有常設機構，支付該特許權使用費的義務與該常設機構有聯繫，並由其負擔這種特許權使用費，上述特許權使用費應認為發生於該常設機構所在的一方。
- 六、 由於支付特許權使用費的人與受益所有人之間或他們與其它人之間的特殊關係，以致支付的特許權使用費數額不論何種原因超出支付人與受益所有人在沒有上述關係時所能同意的數額時，本條規定應僅適用於後來提及的數額。在這種情況下，對該支付款項的超出部分，仍應按各方的法律徵稅，但應對本安排其它規定予以適當注意。

## 第十三條

### 財產收益

- 一、 一方居民轉讓第六條所述位於另一方的不動產取得的收益，可以在該另一方徵稅。

二、 轉讓一方企業在另一方的常設機構營業財產部分的動產，包括轉讓常設機構(單獨或者隨同整個企業)取得的收益，可以在該另一方徵稅。

三、 一方企業轉讓從事海運、空運和陸運的船舶或飛機或陸運車輛，或者轉讓屬於經營上述船舶、飛機、陸運車輛的動產取得的收益，應僅在該一方徵稅。

四、 轉讓一個公司股份取得的收益，而該公司的財產主要直接或者間接由位於一方的不動產所組成，可以在該一方徵稅。

五、 轉讓第四款所述以外的任何股份取得的收益，而該項股份相當於一方居民公司至少 25% 的股權，可以在該一方徵稅。

六、 轉讓第一款至第五款所述財產以外的其它財產取得的收益，應僅在轉讓者為其居民的一方徵稅。

#### 第十四條

#### 受僱所得

一、 除適用第十五條、第十七條、第十八條、第十九和第二十條的規定以外，一方居民因受僱取得的薪金、工資和其它類似報酬，除在另一方從事受僱的活動以外，應僅在該一方徵稅。在另一方從事受僱的活動取得的報酬，可以在該另一方徵稅。

二、 雖有本條第一款的規定，一方居民因在另一方從事受僱的活動取得的報酬，同時具有以下三個條件的，應僅在該一方徵稅：

- (一) 收款人在有關納稅年度開始或終了的任何十二個月中在另一方停留連續或累計不超過一百八十三天；
- (二) 該項報酬由並非該另一方居民的僱主支付或代表該僱主支付；
- (三) 該項報酬不是由僱主設在另一方的常設機構所負擔。

三、 雖有本條上述規定，在一方企業經營海運、空運和陸運的船舶、飛機或陸運車輛上從事受僱的活動取得的報酬，應僅在該一方徵稅。

## 第十五條

### 董事費

一方居民作為另一方居民公司的董事會成員取得的董事費和其它類似款項，可以在該另一方徵稅。

## 第十六條

### 藝術家和運動員

一、 雖有第七條和第十四條的規定，一方居民，作為表演家，如戲劇、電影、廣播或電視藝術家、音樂家或作為運動員，在另一方從事其個人活動取得的所得，可以在該另一方徵稅。

二、 雖有第七條和第十四條的規定，表演家或運動員從事其個人活動取得的所得，並非歸屬表演家或運動員本人，而是歸屬於其它人，可以在該表演家或運動員從事其活動的一方徵稅。

## 第十七條

### 退休金

一、 除適用第十八條第二款的規定以外，因以前的僱傭關係支付給一方居民的退休金和其它類似報酬(不論是分次支付或一次支付)，應僅在該一方徵稅。

二、 雖有本條第一款的規定，從以下退休金計劃支付的退休金和其它類似款項(不論是分次支付或一次支付)，即：

- (一) 一方政府或地方當局作為社會保障制度一部分而推行的公共計劃；
- (二) 可讓個別人士參與以確保取得退休福利的安排，且該等安排是按照一方法律為稅務目的而獲認可的，

應僅在實施計劃的一方徵稅。

## 第十八條

### 政府服務

- 一、
  - (一) 一方政府或地方當局對履行政府職責向其提供服務的個人支付退休金以外的薪金、工資和其它類似報酬，應僅在該一方徵稅。
  - (二) 但是，如果該項服務是在另一方提供，而且提供服務的個人是該另一方居民，並且該居民不是僅由於提供該項服務而成為該另一方的居民，該薪金、工資和其它類似報酬，應僅在該另一方徵稅。
- 二、
  - (一) 一方政府或地方當局支付，或者從其建立的或作為僱主給付的基金中支付給向其提供服務的個人的退休金(不論是分次支付或一次支付)，應僅在該一方徵稅。
  - (二) 但是，如果該提供服務的個人是另一方居民，且情況符合本條第一款第二項所述，相應的退休金(不論是分次支付或一次支付)，應僅在該另一方徵稅。
- 三、 第十四條、第十五條、第十六條和第十七條的規定，應適用於向一方政府或地方當局從事的業務提供服務取得的報酬和退休金。

## 第十九條

### 學生

學生是、或者在緊接前往一方之前曾是另一方居民，僅由於接受教育的目的，停留在該一方，對其為了維持生活、接受教育的目的收到的來源於該一方以外的款項，該一方應免予徵稅。

## 第二十條

### 其它所得

- 一、 一方居民取得的各項所得，不論在什麼地方發生的，凡本安排上述各條未作規定的，應僅在該一方徵稅。

二、 第六條第二款規定的不動產所得以外的其它所得，如果所得收款人為一方居民，通過設在另一方的常設機構在該另一方進行營業，據以支付所得的權利或財產與該常設機構有實際聯繫的，不適用本條第一款的規定。在這種情況下，適用第七條的規定。

三、 雖有本條第一款和第二款的規定，一方居民取得的源於另一方的各項收入如在本安排以上各條中未有規定，亦可在該另一方按照該方的法律徵稅。

## 第二十一條

### 消除雙重徵稅方法

一、 在內地，消除雙重徵稅如下：

內地居民從香港特別行政區取得的所得，按照本安排規定在香港特別行政區繳納的稅額，允許在對該居民徵收的內地稅收中抵免。但是，抵免額不應超過對該項所得按照內地稅法和規章計算的內地稅收數額。

二、 在香港特別行政區，消除雙重徵稅如下：

除香港特別行政區稅法給予香港特別行政區以外的任何地區繳納的稅收扣除和抵免的法規另有規定外，香港特別行政區居民從內地取得的各項所得，按照本安排規定在內地繳納的稅額，允許在對該居民徵收的香港特別行政區稅收中抵免。但是，抵免額不應超過對該項所得按照香港特別行政區稅法和規章計算的香港特別行政區稅收數額。

三、 一方居民公司支付給另一方居民公司的股息，而該另一方居民公司直接或間接控制支付股息的公司股份不少於百分之十的，該另一方居民公司可獲得的抵免額，應包括該支付股息公司就產生有關股息的利潤(但不得超過相應於產生有關股息的適當部份)而需要繳納的稅款。

## 第二十二條

### 無差別待遇

一、 一方企業在另一方常設機構的徵稅待遇，不應低於該另一方給予其本地進行同樣活動的企業的徵稅待遇。本規定不應理解為一方由於民事地位、家庭負擔而給予該一方居民的任何扣除、優惠和減免也必須給予該另一方居民。

二、 除適用第九條第一款、第十一條第七款或第十二條第六款規定外，一方企業支付給另一方居民的利息、特許權使用費和其它款項，在確定該企業應納稅利潤時，應與在同樣情況下支付給該一方居民同樣予以扣除。

三、 一方企業的資本全部或部分，直接或間接為另一方一個或一個以上的居民擁有或控制，該企業在該一方負擔的稅收或者有關條件，不應與該一方其它同類企業的負擔或可能負擔的稅收或者有關條件不同或比其更重。

## 第二十三條

### 協商程序

一、 當一個人認為，一方或者雙方所採取的措施，導致或將導致對其不符合本安排規定的徵稅時，可以不考慮各自內部法律的補救辦法，將案情提交本人為其居民的主管當局。該項案情必須在不符合本安排規定的徵稅措施第一次通知之日起，三年內提出。

二、 上述主管當局如果認為所提意見合理，又不能單方面圓滿解決時，應設法同另一方主管當局相互協商解決，以避免不符合本安排的徵稅。達成的協議應予執行，而不受各自內部法律的時間限制。

三、 雙方主管當局應通過協議設法解決在解釋或實施本安排時所發生的困難或疑義，也可以對本安排未作規定的消除雙重徵稅問題進行協商。

四、 雙方主管當局為達成本條第二款和第三款的協議，可以相互直接聯繫。為有助於達成協議，雙方主管當局的代表可以進行會談，口頭交換意見。

## 第二十四條

### 信息交換

一、 雙方主管當局應交換為實施本安排的規定所需要的信息，或雙方關於本安排所涉及的稅種的各自內部法律的規定所需要的信息(以根據這些法律徵稅與本安排不相抵觸為限)，特別是防止偷漏稅的信息。信息交換不受第一條的限制。一方收到的信息應作密件處理，其方式須與處理根據該一方的法律而取得的信息相同，該信息僅應告知與本安排所含稅種有關的查定、徵收、執行、起訴或裁決上訴有關人員或當局(包括法院和行政管理部門)。上述人員或當局應僅為上述目的使用該信息，但可以在公開法庭的訴訟程序或司法裁定(就香港特別行政區而言，包括稅務上訴委員會的裁定)中公開有關信息。



- 二、 第一款的規定在任何情況下，不應被理解為一方有以下義務：
- (一) 採取與該一方或另一方法律和行政慣例相違背的行政措施；
  - (二) 提供按照該一方或另一方法律或正常行政渠道不能得到的信息；
  - (三) 提供洩露任何貿易、經營、工業、商業、專業秘密、貿易過程的信息或者如洩露便會違反公共政策的信息。

## 第二十五條

### 其它規則

本安排並不損害各方施行其關於規避繳稅(不論是否稱為規避繳稅)的當地法律及措施的權利。“規避繳稅的法律及措施”包括為了防止、阻止、避免或抵抗其目的為或是會將稅項利益授予任何人的任何交易、安排或做法的法律和措施。

## 第二十六條

### 生效

本安排應在各自履行必要的批准程序，互相書面通知後，自最後一方發出通知之日起生效。本安排將適用於下述年度中取得的所得：

- (一) 在內地：在安排生效年度的次年一月一日或以後開始的納稅年度；
- (二) 在香港特別行政區：在安排生效年度的次年四月一日或以後開始的課稅年度。

二、 1998年2月11日正式簽署的《內地和香港特別行政區關於對所得避免雙重徵稅的安排》將根據本條第一款規定在本安排對相關稅種開始適用之日起停止有效。

三、 2000年2月2日正式簽署的《內地和香港特別行政區間航空運輸安排》的第十一條第六款將根據本條第一款規定在本安排對相關稅種開始適用之日起停止有效。

## 第二十七條

### 終止

本安排應長期有效。但一方可以在本安排生效之日起滿五年後任何曆年六月三十日或以前，書面通知另一方終止本安排。在這種情況下，本安排從下述年度停止有效：

- (一) 在內地：終止通知發出年度的次年一月一日或以後開始的納稅年度；
- (二) 在香港特別行政區：終止通知發出年度的次年四月一日或以後開始的課稅年度。

(English Translation)

### Article 1

#### **PERSONS COVERED**

This Arrangement shall apply to persons who are residents of One Side or both Sides.

### Article 2

#### **TAXES COVERED**

1. This Arrangement shall apply to taxes on income imposed on behalf of One Side or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on items of income, including taxes on gains from the alienation of movable or immovable property and taxes on capital appreciation.
3. The existing taxes to which this Arrangement shall apply are :

- (1) in the Mainland of China :
  - (i) individual income tax;
  - (ii) foreign investment enterprises income tax and foreign enterprises income tax.
  
- (2) in Hong Kong :
  - (i) profits tax;
  - (ii) salaries tax;
  - (iii) property tax,  
whether or not the tax is charged under personal assessment.

4. This Arrangement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Arrangement in addition to, or in place of, the existing taxes as well as any other taxes falling within paragraph 1 or 2 of this Article which may be imposed in future. The competent authorities of the both Sides shall notify each other of significant changes that have been made in their respective taxation laws within a reasonable period of time after such changes.

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

### Article 3

#### **GENERAL DEFINITIONS**

1. In this Arrangement, unless the context otherwise requires :
  - (1) the terms “One Side” and “the Other Side” mean the Mainland of China or the Hong Kong Special Administrative Region, as the context requires;

- (2) the term “tax” means Mainland tax or Hong Kong Special Administrative Region tax, as the context requires;
- (3) the term “person” includes an individual, a company, a trust, a partnership and any other body of persons;
- (4) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (5) the term “enterprise” applies to the carrying on of business activities of any form;
- (6) the terms “enterprise of One Side” and “enterprise of the Other Side” mean respectively an enterprise carried on by a resident of One Side and an enterprise carried on by a resident of the Other Side;
- (7) the term “shipping, air and land transport” means any transport by a ship, aircraft or land transport vehicle operated by an enterprise of One Side, except when the ship, aircraft or land transport vehicle is operated solely between places in the Other Side;
- (8) the term “competent authority” means, in the case of the Mainland of China, the State Administration of Taxation or its authorized representatives; and 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;
- (9) the term “business” includes the performance of professional services and other activities of an independent character.

2. In the Arrangement, the term “Mainland tax” or “Hong Kong Special Administrative Region tax” does not include any penalty or interest imposed under the laws of any One Side relating to the taxes to which this Arrangement applies by virtue of Article 2.

3. As regards the application of this Arrangement by One Side, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at the time under the laws of that Side concerning the taxes to which this Arrangement applies, and any meaning under the applicable tax laws of that Side prevails over a meaning given to the term under other laws of that Side.

#### Article 4

#### **RESIDENT**

1. In this Arrangement, the term “resident of One Side” means :
  - (1) in the case of the Mainland of China, any person who, under the laws of the Mainland of China, is liable to tax therein by reason of his domicile, residence, place of head office, place of effective management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in the Mainland of China in respect only of income from sources in the Mainland of China;
  - (2) in the case of the Hong Kong Special Administrative Region :
    - (i) an individual who ordinarily resides in the Hong Kong Special Administrative Region;
    - (ii) an 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 2

consecutive years of assessment one of which is the relevant year of assessment;

- (iii) a company incorporated in the Hong Kong Special Administrative Region, or if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
- (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region, or if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region.

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

- (1) he shall be deemed to be a resident only of the Side in which he has a permanent home available to him; if he has a permanent home available to him in both Sides, he shall be deemed to be a resident only of the Side with which his personal and economic relations are closer (“centre of vital interests”);
- (2) if the Side in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Side, he shall be deemed to be a resident only of the Side in which he has an habitual abode;
- (3) if he has an habitual abode in both Sides or in neither of them, the competent authorities of both Sides shall resolve by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Sides, then it shall be deemed to be a resident only of the Side in which its place of effective management is situated.

#### Article 5

### **PERMANENT ESTABLISHMENT**

1. In this Arrangement, 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 :

- (1) a place of management;
- (2) a branch;
- (3) an office;
- (4) a factory;
- (5) a workshop;
- (6) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” also encompasses :

- (1) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 6 months;
- (2) the furnishing of services, including consultancy services, by an enterprise of One Side in the Other Side, directly or through employees or other personnel engaged by the enterprise, but only if

such activities continue (for the same or a connected project) 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 :

- (1) facilities used solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (2) a stock of goods or merchandise belonging to the enterprise kept solely for the purpose of storage, display or delivery;
- (3) a stock of goods or merchandise belonging to the enterprise kept solely for the purpose of processing by another enterprise;
- (4) a fixed place of business established solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (5) a fixed place of business established solely for the purpose of carrying on any other activity of a preparatory or auxiliary character for the enterprise;
- (6) a fixed place of business established solely for any combination of the activities mentioned in subparagraphs (1) to (5) of this paragraph, 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 of this Article, where a person, other than an agent of an independent status to whom paragraph 6 applies, is acting in One Side on behalf of an enterprise of the Other Side, and



the person has, and habitually exercises, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that One Side in respect of any activities which that person undertakes for that enterprise, unless the activities of such person exercised through a fixed place of business are limited to those provided for in paragraph 4 and under the provision of that paragraph such fixed place of business shall not be deemed to be a permanent establishment.

6. An enterprise of One Side shall not be deemed to have a permanent establishment in the Other Side only because it carries on business in that Other Side through a broker, general commission agent or any other agent of an independent status who are acting in the ordinary course of their business. However, when the activities of such an agent are wholly or almost wholly performed on behalf of that enterprise, he shall not be deemed to be an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of One Side controls or is controlled by a company which is a resident of the Other Side, or which carries on business in that Other Side (whether through a permanent establishment or otherwise), shall not of itself constitute any company of any One Side a permanent establishment of a company of the Other Side.

## Article 6

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of One Side from immovable property (including income from agriculture or forestry) situated in the Other Side may be taxed in that Other Side.

2. The term “immovable property” shall have the meaning which it has under the laws of the Side 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 laws in respect of real estate apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the exploring of, or the right to explore, mineral deposits, resources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 of this Article shall also apply to income derived from immovable property of an enterprise.

#### Article 7

### **BUSINESS PROFITS**

1. The profits of an enterprise of One Side shall be taxable only in that Side unless the enterprise carries on business in the Other Side through a permanent establishment situated therein. If the enterprise carries on business in the Other Side through a permanent establishment situated therein, its profits may be taxed in the Other Side, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of One Side carries on business in the Other Side through a permanent establishment situated therein, there shall in each Side 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the

business of the permanent establishment including executive and general administrative expenses so incurred, whether in the Side in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts (other than reimbursement of actual expenses) paid by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any 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 determining the profits of a permanent establishment, for amounts (other than reimbursement of actual expenses) charged by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any 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. Insofar as it has been customary in One Side to determine the profits to be attributed to a permanent establishment by apportioning the total profits of the enterprise to its various units or by any other methods provided for in the laws, nothing in paragraph 2 shall preclude that Side from determining the profits to be taxed by such method. However, the result of adopting such method shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, 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 for a deviation.

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

#### Article 8

### **SHIPPING, AIR AND LAND TRANSPORT**

1. Income and profits derived by an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport shall be exempt from tax (including business tax in the Mainland of China) in the Other Side.

2. The provisions of paragraph 1 of this Article shall also apply to income and profits derived from participation in partnership business, joint venture business or international business agency, to the extent of the income and profits that is proportional to the shareholding of such business.

#### Article 9

### **ASSOCIATED ENTERPRISES**

1. Where :

- (1) an enterprise of One Side participates directly or indirectly in the management, control or capital of an enterprise of the Other Side;  
or
- (2) the same person participates directly or indirectly in the management, control or capital of an enterprise of One Side and an enterprise of the Other Side,

in any of the above situations, the commercial or financial relations between the two enterprises are different from those between independent enterprises. Accordingly, any profits which would have accrued to one of the enterprises but by reason of those relations have not so accrued may be included in the profits of that enterprise and taxed as such.

2. Where One Side includes in the profits of an enterprise of that Side – and taxes accordingly – profits of an enterprise that have been charged to tax in the Other Side and such profits are profits which would have accrued to the enterprise of that One Side had the 2 enterprises been independent enterprises under the same conditions, the Other Side shall make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the competent authorities of both Sides shall, if necessary, consult each other.

#### Article 10

#### **DIVIDENDS**

1. Dividends paid by a company which is a resident of One Side to a resident of the Other Side, may be taxed in that Other Side.

2. However, such dividends may also be taxed in the Side of which the company paying the dividends is a resident, and according to the laws of that Side, but if the beneficial owner of the dividends is a resident of the Other Side, the tax so charged shall not exceed:

- (1) where the beneficial owner is a company directly owning at least 25% of the capital of the company which pays the dividends, 5% of the gross amount of the dividends;
- (2) in any other case, 10% of the gross amount of the dividends.

The competent authorities of both Sides shall by mutual agreement settle the mode of application of these limitations.

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 or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares under the laws of the Side of which the company making the distribution is a resident.

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

5. Where a company which is a resident of One Side derives profits or income from the Other Side, that Other Side may not impose any tax on the dividends paid by or undistributed profits of the company even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that Other Side, except insofar as such dividends are paid to a resident of that Other Side or insofar as the shareholding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that Other Side.

## Article 11

**INTEREST**

1. Interest arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.
2. However, such interest may also be taxed in the Side in which it arises and according to the laws of that Side, but if the beneficial owner of the interest is a resident of the Other Side the tax so charged shall not exceed 7% of the gross amount of the interest. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in One Side is exempt from tax in that Side if it is received by the Government of the Other Side or any other institutions mutually recognized by the competent authorities of both Sides.
4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not it is secured by mortgage or whether or not it carries a right to participate in the debtor’s profits, and in particular, income from bonds, debentures and Government securities, including premiums and prizes attaching to such bonds, debentures or securities. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being the Government of One Side, a local authority thereof or a resident of that Side, carries on business in the Other Side 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 that permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Side when the payer is the Government of that Side, a local authority thereof or a resident of that Side. However, where the person paying the interest, whether or not he is the Government of a Side, a local authority thereof or a resident of a Side, has in a Side a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Side in which the permanent establishment is situated.

7. Where, by reason of a special relation between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of interest paid exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relation, 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 of each Side, but due regard shall still be had to the other provisions of this Arrangement.

## Article 12

### **ROYALTIES**

1. Royalties arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.

2. However, such royalties may also be taxed in the Side in which they arise and according to the laws of that Side, but if the beneficial owner of the royalties is a resident of the Other Side the tax so charged shall not exceed 7% of the gross amount of the royalties. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of



literary, artistic or scientific works including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being the Government of One Side, a local authority thereof or a resident of that Side, carries on business in the Other Side 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 that permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Side when the payer is the Government of that Side, a local authority thereof or a resident of that Side. However, where the person paying the royalties, whether or not he is the Government of a Side, a local authority thereof or a resident of a Side, has in a Side a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Side in which the permanent establishment is situated.

6. Where, by reason of a special relation between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of royalties paid exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relation, 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 of each Side, but due regard shall still be had to other provisions of this Arrangement.

## Article 13

**CAPITAL GAINS**

1. Gains derived by a resident of One Side from the alienation of immovable property referred to in Article 6 and situated in the Other Side may be taxed in that Other Side.
2. Gains derived from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of One Side has in the Other Side, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that Other Side.
3. Gains derived by an enterprise of One Side from the alienation of ships or aircraft or land transport vehicles operated in shipping, air and land transport or movable property pertaining to the operation of such ships, aircraft or land transport vehicles, shall be taxable only in that Side.
4. Gains derived from the alienation of shares in a company the assets of which are comprised, directly or indirectly, mainly of immovable property situated in One Side may be taxed in that Side.
5. Gains derived from the alienation of shares, other than the shares referred to in paragraph 4, of not less than 25% of the entire shareholding of a company which is a resident of One Side may be taxed in that Side.
6. Gains derived from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Side of which the alienator is a resident.

## Article 14

**INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only in that Side unless the employment is exercised in the Other Side. If the employment is exercised in the Other Side, such remuneration as is derived therefrom may be taxed in that Other Side.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of One Side in respect of an employment exercised in the Other Side shall be taxable only in that One Side if all the following 3 conditions are satisfied:

- (1) the recipient is present in the Other Side 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;
- (2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the Other Side;
- (3) the remuneration is not borne by a permanent establishment which the employer has in the Other Side.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, an aircraft or a land transport vehicle operated in shipping, air and land transport by an enterprise of One Side shall be taxable only in that Side.

## Article 15

**DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of One Side in his capacity as a member of the board of directors of a company which is a resident of the Other Side may be taxed in that Other Side.

## Article 16

**ARTISTES AND SPORTSPERSONS**

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

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

## Article 17

**PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (whether a payment in lump sum or by instalments) paid to a resident of One Side in consideration of past employment shall be taxable only in that Side.

2. Notwithstanding the provisions of paragraph 1 of this Article, pensions and other payments (whether a payment in lump sum or by instalments) made under a pension scheme which is:

- (1) a public scheme which is part of the social security system implemented by the Government of One Side or a local authority thereof;
- (2) an arrangement in which individuals may participate to secure retirement benefits and which is recognized for tax purposes in One Side,

shall be taxable only in the Side in which the scheme is implemented.

#### Article 18

### **GOVERNMENT SERVICE**

1. (1) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of One Side or a local authority thereof to an individual in respect of services rendered to that Government or authority, in the discharge of government functions, shall be taxable only in that Side.  
  
(2) However, if the services are rendered in the Other Side and the individual is a resident of that Other Side who did not become a resident of that Other Side by reason only of the rendering of such services, such salaries, wages and other similar remuneration shall be taxable only in that Other Side.
2. (1) Any pension (whether a payment in lump sum or by instalments) paid by, or paid out of funds created or contributed as employer by, the Government of One Side or a local authority thereof to an individual in respect of services rendered to that Government or authority shall be taxable only in that Side.  
  
(2) However, if the individual who rendered the services is a resident of the Other Side and the case falls within subparagraph (2) of

paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that Other Side.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to remunerations and pensions received in respect of services rendered in connection with a business carried on by the Government of One Side or a local authority thereof.

#### Article 19

### **STUDENTS**

Payments which a student who is or was immediately before visiting One Side a resident of the Other Side and who is present in the One Side solely for the purpose of his education receives for the purpose of his maintenance and education shall not be taxed in that One Side, provided that such payments arise from sources outside that One Side.

#### Article 20

### **OTHER INCOME**

1. Items of income of a resident of One Side, wherever arising, not dealt with in the foregoing Articles of this Arrangement shall be taxable only in that Side.
2. The provisions of paragraph 1 of this Article 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 of One Side, carries on business in the Other Side through a permanent establishment situated therein and a 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 of this Article, items of income of a resident of One Side not dealt with in the foregoing Articles of this Arrangement and arising in the Other Side may also be taxed in that Other Side.

#### Article 21

### **METHODS FOR ELIMINATION OF DOUBLE TAXATION**

1. In the Mainland of China, double taxation shall be eliminated as follows :

Tax paid in the Hong Kong Special Administrative Region in accordance with the provisions of this Arrangement in respect of income derived from sources in the Hong Kong Special Administrative Region by a resident of the Mainland of China shall be allowed as a credit against Mainland tax imposed on that resident. However, the amount of the credit shall not exceed the amount of Mainland tax in respect of that item of income computed in accordance with the tax laws and regulations of the Mainland of China.

2. In the Hong Kong Special Administrative Region, double taxation shall be eliminated as follows:

Subject to the provisions of the tax laws of the Hong Kong Special Administrative Region relating to the allowance of a deduction and a credit for tax paid in any territory outside the Hong Kong Special Administrative Region, tax paid in the Mainland of China in accordance with the provisions of this Arrangement in respect of any item of income derived from sources in the Mainland of China by a resident of the Hong Kong Special Administrative Region shall be allowed as a credit against Hong Kong Special Administrative Region tax imposed on that resident. However, the amount of the credit shall not exceed the amount of Hong Kong Special Administrative Region tax in respect of that item of income computed in accordance with the tax laws and regulations of the Hong Kong Special Administrative Region.

3. Where a resident company of One Side pays dividends to a resident company of the Other Side and that resident company of the Other Side, directly or indirectly, controls not less than 10% of the shares of the company which pays the dividends, the credit that the resident company of the Other Side is entitled to shall include the tax paid by the company which pays the dividends in respect of the profits from which such dividends are derived (but not exceeding the appropriate portion of profits incidental to the derivation of such dividends).

## Article 22

### **NON-DISCRIMINATION**

1. The taxation on a permanent establishment which an enterprise of One Side has in the Other Side shall not be less favourably levied in that Other Side than the taxation levied on enterprises of that Other Side carrying on the same activities. The provisions of this Article shall not be construed as obliging One Side to grant to residents of the Other Side any deduction, reliefs and reductions on account of the civil status or family responsibilities which it grants to its own residents.

2. 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 One Side to a resident of the Other Side 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 of that One Side.

3. Enterprises of One Side, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the Other Side, shall not be subjected in the One Side 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 One Side are or may be subjected.

### Article 23

#### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of One Side or both Sides result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic laws of those Sides, present his case to the competent authority of the Side of which he is a resident. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provision of this Arrangement.
2. The above-mentioned 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 Side, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of both Sides.
3. The competent authorities of both Sides shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement, and may also consult together for the elimination of double taxation in cases not provided for in this Arrangement.
4. The competent authorities of both Sides may communicate with each other directly for the purposes of reaching an agreement under paragraphs 2 and 3 of this Article. For the purpose of reaching an agreement, representatives of the competent authorities of both Sides may meet and exchange their opinions verbally.

## Article 24

**EXCHANGE OF INFORMATION**

1. The competent authorities of both Sides shall exchange such information as is necessary for carrying out the provisions of this Arrangement or of the domestic laws of both Sides concerning taxes covered by this Arrangement insofar as the taxation thereunder is not contrary to this Arrangement and, in particular, information for the prevention of fiscal evasion. The exchange of information is not restricted by Article 1. Any information received by One Side shall be treated as secret in the same manner as information obtained under the domestic laws of that Side 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 covered by this Arrangement. 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.

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

- (1) to carry out administrative measures at variance with the laws and the administrative practice of that Side or of the Other Side;
- (2) to supply information which is not obtainable under the laws or in the normal course of the administration of that Side or of the Other Side;
- (3) 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.

#### Article 25

### **MISCELLANEOUS PROVISIONS**

Nothing in this Arrangement shall prejudice the right of either Side to apply its domestic laws and measures concerning tax avoidance, whether or not described as such. For the purpose of this Article, “laws and measures concerning tax avoidance” includes any laws and measures for preventing, prohibiting, avoiding or resisting any transaction, arrangement or practice, the purpose or effect of which is to confer a tax benefit on any person.

#### Article 26

### **ENTRY INTO FORCE**

1. This Arrangement shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications. The provisions of this Arrangement shall apply to income derived in the following years :

- (1) in the Mainland of China: taxable years beginning on or after 1 January in the calendar year next following the year in which this Arrangement enters into force;
- (2) in the Hong Kong Special Administrative Region: years of assessment beginning on or after 1 April in the calendar year next following the year in which this Arrangement enters into force.

2. The Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income signed on 11 February 1998 shall cease to have effect on the date on which this

Arrangement applies to the relevant types of tax in accordance with paragraph 1 of this Article.

3. Paragraph 6 of Article 11 of the Air Services Arrangement between the Mainland of China and the Hong Kong Special Administrative Region signed on 2 February 2000 shall cease to have effect on the date on which this Arrangement applies to the relevant types of tax in accordance with paragraph 1 of this Article.

#### Article 27

### **TERMINATION**

This Arrangement shall remain in force indefinitely, but One Side may give the Other Side written notice of termination on or before 30 June in any calendar year beginning after the expiration of a period of 5 years from the date of its entry into force. In such event this Arrangement shall cease to have effect from:

- (1) in the Mainland of China: the taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given;
- (2) in the Hong Kong Special Administrative Region: the year of assessment beginning on or after 1 April in the calendar year next following the year in which the notice is given.

## PART 2

### PARAGRAPHS 1 TO 3 OF THE PROTOCOL TO THE ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

一、 就第三條第二款，對香港特別行政區而言，“罰款或利息”包括但不限於因拖欠香港特別行政區稅項而加收並連同欠款一併追討的款項，以及因違反或沒有遵守香港特別行政區的稅務法律而評定的補加稅。

二、 就第十三條第四款而言，“財產”一詞應理解為財產的價值，而“主要”一詞，應理解為不少於 50%。

三、 就第二十四條第一款而言，如未經原本提供信息的一方同意，不得為任何目的將收到的信息向其他司法管轄區披露。

#### (English Translation)

1. For the purpose of paragraph 2 of Article 3, the term “penalty or interest”, in relation to the Hong Kong Special Administrative Region, includes (but not limited to) any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith, as well as any additional tax assessed for infringement of or failure to comply with its tax laws.

2. For the purpose of paragraph 4 of Article 13, the term “assets” shall be read as the value of the assets, and the term “mainly” shall be read as “not less than 50%”.

3. For the purpose of paragraph 1 of Article 24, information may not be disclosed to any other jurisdiction for any purpose without the consent of the Side which furnished the information in the first place.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

### **Explanatory Note**

The Mainland of China and the Hong Kong Special Administrative Region entered into an arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (“Arrangement”) together with a protocol to the Arrangement (“Protocol”) on 21 August 2006. This Order specifies the arrangements in Articles 1 to 27 of the Arrangement and Paragraphs 1 to 3 of the Protocol 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.

**Background note on Exchange of Information**

Under the background of globalisation, it is an international trend for all regions to strengthen co-operation in various respects. The exchange of taxpayers' information can help ascertain the exact tax liability of a taxpayer. It can also help combat cross-border tax evasions.

2. The information that can be exchanged is restricted to the tax as covered in the "New Arrangement" including profits tax, salaries tax and property tax and the information necessary for the implementation of the "New Arrangement" such as relating to withholding tax of dividend and interest. Moreover, the authorities will not take any administrative measures in violation of either party's laws and administrative practice with a view to obtaining information for exchange. Neither will they provide any information that may lead to the leaking of commercial secrets, or any information that, if exposed, will lead to the violation of public policy.

3. In order to ensure that the taxpayer's information is not abused, the "New Arrangement" provides that information obtained by one Side from the other Side shall be treated as confidential. The level of confidentiality shall be the same as that the first-mentioned Side treats any information it has obtained in accordance with its law. In other words, Hong Kong will keep any information it has obtained from the Mainland confidential and will only disclose it to the authorised persons or authorities responsible for the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered under the "New Arrangement".

4. In Hong Kong, under section 4 of the Inland Revenue Ordinance, except in the performance of his duties under the Ordinance, every person who has been appointed under or who is or has been employed in carrying out or in assisting any persons to carry out the provisions of the Inland Revenue Ordinance shall preserve and

aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under the Inland Revenue Ordinance.

5. Under the Mainland's tax law 《中華人民共和國稅收征收管理法》（簡稱征管法）第八條, the taxpayers and withholding agents have the right to demand the tax authorities to keep confidentiality of the taxpayers' information. The tax authorities are obliged to do so in accordance with the laws. Also State Tax Administration document 《國際稅收情報交換工作規程》（國稅發[2006] 70 號）stipulates the keeping of confidentiality for information on taxation.

6. Under international law, each side is obliged to implement the "New Arrangement", including the article on the exchange of information, in good faith. The relevant article, as noted earlier, mandates the keeping by both sides of confidentiality of any information exchanged for tax treaty purposes.

7. To dispel any further doubts, both Sides have stated in the Protocol that information obtained from the other Side may not be given to a third tax jurisdiction unless consent is obtained from the Side providing the information.

8. Under Article 24 of the "New Arrangement", only the competent authorities of Hong Kong and the Mainland can exchange information. Articles 3 and 24 of the "New Arrangement" provide that the State Administration of Taxation of the Mainland or its authorised representatives were the competent authorities. In other words, local authorities are not allowed to ask the Hong Kong competent authorities to provide information. This would help consistency in implementation of the relevant article.

9. The Mainland signed 88 treaties with other tax jurisdictions consisting an article of exchange of information. The first of such treaties was signed in 1983. In their long experience (over 20 years) of implementing those treaties, we have not heard of any incident where the Mainland has not kept confidentiality of the information obtained from other tax-treaty partners. Under the circumstances,



the confidentiality of a taxpayer's information is ensured by the presence of secrecy provision in the domestic tax laws of both sides and in the "New Arrangement".

## **Expansion of the Arrangement for the Avoidance of Double Taxation between the Mainland and the Hong Kong Special Administrative Region**

### **Summary of Main Provisions on Income**

The “New Arrangement” between the Mainland and Hong Kong will cover the following types of taxes: (i) individual income tax, and (ii) foreign investment enterprises income tax and foreign enterprises income tax in respect of the Mainland; and in respect of Hong Kong, (i) profits tax, (ii) salaries tax, and (iii) property tax.

2. The “New Arrangement” deals with the taxing of income of the resident of one side (“residence jurisdiction”) derived from the other side (“source jurisdiction”).

#### **Exclusive taxing right**

3. Where the right to tax income is allocated exclusively to one side under the “New Arrangement” (the residence jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the “New Arrangement” that **the following types of income shall only be taxed in the residence jurisdiction:**

- (a) profits of an enterprise, unless the enterprise carries on business in the source jurisdiction through a permanent establishment (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on) situated therein;
- (b) income and profits from operation of ships, aircraft and land transport vehicles in shipping, air and land transport;
- (c) gains from the alienation of shares in a company, unless (i) the assets of that company are comprised mainly of immovable property situated in the source jurisdiction; or (ii) the shares alienated are equal to or exceed 25% of the shareholding of that company which is a resident of the source jurisdiction;
- (d) income from employment, unless the employment is exercised in the source jurisdiction;

- (e) income from employment exercised aboard a ship, aircraft or land transport vehicle operated in shipping, air and land transport;
- (f) non-government pensions, unless the pensions are made under a public scheme which is part of the social security system of the source jurisdiction or under a retirement scheme which is recognized for tax purpose in the source jurisdiction;
- (g) gains from the alienation of assets not expressly dealt with in the “New Arrangement”; and
- (h) other income not expressly dealt with in the “New Arrangement” except where the income is derived from the source jurisdiction.

4. Non-government pensions made under a public scheme which is part of the social security system of the source jurisdiction or under a retirement scheme which is recognized for tax purpose in the source jurisdiction **are taxable only in the source jurisdiction**. Also, employment remuneration and pensions paid by the government of one side are, in general, **taxable only in that side (source jurisdiction)**.

### **Shared taxing rights**

5. Where both tax jurisdictions are given the right to tax the same item of income, the residence jurisdiction is required under the “New Arrangement” to give double taxation relief to its residents for any income doubly assessed (i.e. the **source jurisdiction has the primary right to tax** and the **residence jurisdiction is left with a secondary right**). It is provided in the “New Arrangement” 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 situated therein, to the extent that such profits are attributable to that permanent establishment;
- (b) income generated from immovable property situated in the source jurisdiction and gains from the alienation of such property;
- (c) gains from the alienation of shares of a company the assets of which are comprised mainly of immovable property situated in the source jurisdiction;

- (d) gains from the alienation of shares of not less than 25% of the shareholding of a company which is a resident of the source jurisdiction;
- (e) indirect 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);
- (f) remuneration from non-government employment exercised in the source jurisdiction;
- (g) directors' fees from a company resident in the source jurisdiction;
- (h) income of artistes and sportspersons who exercise their personal activities in the source jurisdiction;
- (i) other income not expressly dealt with in the "New Arrangement" if it is derived from the source jurisdiction.

6. Both the Mainland and Hong Kong give double taxation relief to a taxpayer through the credit method, i.e. if income taxable in the source jurisdiction is subject to tax in the residence jurisdiction, the tax levied in the source jurisdiction is credited against the tax levied in the residence jurisdiction on such income.

**Financial, Economic and Civil Service Implications  
of the Proposal**

Financial Implications

The Government would have to forgo some revenue which is currently being collected from the following sources:

- (i) Profits derived in Hong Kong by the Mainland resident companies not attributable to permanent establishments in Hong Kong; and
- (ii) Income and profits from shipping, air and land transport services of the Mainland operators.

Moreover, withholding tax charged by the Mainland in respect of royalty income of local businessmen, if chargeable to tax in Hong Kong, will have to be allowed as a credit against the Hong Kong tax payable.

However, the overall financial implications would be insignificant.

Economic Implications

The Arrangement will provide enhanced certainty and stability to investors in respect of cross-border taxation, as well as tax savings to Hong Kong residents. This would encourage investment and business activities between the Mainland and Hong Kong, and also facilitate foreign capital to invest in the Mainland via Hong Kong, thereby increasing the attractiveness of Hong Kong as a place for investment and business and strengthening the status of Hong Kong as an international financial centre.

Civil Service Implications

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