

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Cap 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF ON INCOME FROM AIRCRAFT OPERATIONS) (UNITED MEXICAN STATES) ORDER

INLAND REVENUE (DOUBLE TAXATION RELIEF ON INCOME FROM AIRCRAFT OPERATIONS) (REPUBLIC OF FINLAND) ORDER

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE REPUBLIC OF FINLAND) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) (REVOCATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 10 June 2008, the Council ADVISED and the Chief Executive ORDERED that the following orders should be made under section 49 of the Inland Revenue Ordinance (Cap 112) ó

- A
- (a) the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (United Mexican States) Order (õthe Mexican Orderö), at **Annex A**;
- B
- (b) the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Finland) Order (õthe Finland Orderö), at **Annex B**; and

- (c) the Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) (Revocation) Order (the Revocation Order), at **Annex C** (the Orders).

JUSTIFICATIONS

2. Under section 49(1) of the Inland Revenue Ordinance (Cap 112), 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. Under section 49(4) of the Inland Revenue Ordinance (Cap 112), any order made under section 49(1) may be revoked by a subsequent order.

3. The Government of the Hong Kong Special Administrative Region (HKSARG) entered into an Agreement Concerning Air Services between the HKSARG of the People's Republic of China and the Government of the United Mexican States (the Mexican Agreement) in November 2006, which contains a provision on avoidance of double taxation. In November 2007, the HKSARG and the Government of the Republic of Finland also signed an Agreement for the Avoidance of Double Taxation with respect to Taxes on Income from Aircraft Operation (the Finland Agreement).

4. It is necessary to declare by order that the arrangements in the Mexican Agreement and the Finland Agreement on double taxation relief in respect of income from air services have been made, so as to put the arrangements into effect.

5. The double taxation relief arrangements agreed with Finland were originally covered in a double taxation avoidance (DTA) article to be included in our air services agreement with Finland (the ASA with Finland). Cap 112 sub. leg. AR was made in 2005 to specify the arrangements in the DTA article as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap 112) and to declare that the arrangements should have effect.

6. After the making of the Order, we received a notification from the Government of the Republic of Finland that it would not be able to approve the insertion of the DTA article in the ASA with Finland. In response to its proposal and after consultation with the Department of Justice

and the Inland Revenue Department, we negotiated and entered into the Finland Agreement, which is a standalone air services DTA agreement modelled on the DTA article. We therefore consider it necessary to revoke Cap 112 sub. leg. AR.

The Orders

7. **Section 2** of the Mexican Order declares that the arrangements specified in section 3 for double taxation relief in respect of income tax and any tax of a similar character have been made with the Government of the United Mexican States and that such arrangements should take effect. **Section 3** states that the arrangements are specified in the Schedule to the Mexican Order. The **Schedule** sets out the article containing the arrangements in the Mexican Agreement.

8. **Section 2** of the Finland Order declares that the arrangements specified in section 3 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 Finland and that such arrangements should take effect. **Section 3** states that the arrangements are specified in the Schedule to the Finland Order. The **Schedule** sets out the text of the Finland Agreement.

9. The Revocation Order, upon coming into operation, revokes Cap. 112 sub. leg. AR.

LEGISLATIVE TIMETABLE

10. The Orders will be gazetted on 20 June 2008 and tabled in the Legislative Council on 25 June 2008.

IMPLICATIONS OF THE PROPOSAL

11. The Orders are 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 (Cap 112) and its subsidiary legislation. They have no civil service, productivity, sustainability or environmental implications.

12. As to financial implications, the revenue forgone on non-resident aircraft operators 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 (Cap 112). Therefore, the revenue implication, if any, will be insignificant.

13. As to economic implications, aircraft operators of Hong Kong, Mexico and Finland will benefit from the avoidance of double taxation. Double taxation relief arrangements should help lower cost of operation, improve income and indirectly efficiency as well.

PUBLIC CONSULTATION

14. The Hong Kong aircraft operator holding the relevant licence to operate services to Mexico and Finland has been consulted on the double taxation relief arrangements. It supports the arrangements.

PUBLICITY

15. We will issue a press release on 18 June 2008. A spokesperson will be available to handle enquiries.

BACKGROUND

16. Due to the international nature of airline operations, airlines are more susceptible to double taxation than other taxpayers. It is therefore Government's policy to negotiate double taxation relief arrangements for airline income with our aviation partners, either by including a DTA article in the bilateral air services agreements (ASAs) or by concluding standalone DTA agreements. Apart from Mexico and Finland, we have concluded such relief arrangements on airline income with Bangladesh, Belgium, Canada, Croatia, Denmark, Estonia, Germany, Iceland, Israel, Jordan, Kenya, Kuwait, the Mainland of China, the Macao Special Administrative Region, Mauritius, the Netherlands, New Zealand, Norway, the Republic of Korea, Russia, Sweden, Switzerland and the United Kingdom. We have also concluded agreements with Singapore and Sri Lanka on the avoidance of double taxation on income from air services and shipping transportation.

17. DTA articles in the ASAs usually provide that ó
- (a) income or profits derived from the operation of aircraft in air services by an airline of a Party, including participation in a pool service, a joint business or international operating agency, shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Party;
 - (b) on the basis of reciprocity, capital and assets of an airline of a Party relating to the operation of aircraft in air services shall be exempt from all taxes on capital and assets imposed in the area of the other Party; and
 - (c) gains from the alienation of aircraft operated in air traffic and movable property pertaining to the operation of such aircraft which are received by an airline of a Party shall be exempt from any tax on gains imposed in the area of the other Party.
18. In accordance with the ASAs, each Party shall notify the other of the completion of the procedures required by its law for the bringing into effect of the DTA Articles.

ENQUIRIES

19. Any enquiry on this brief should be directed to Mr Sam Hui, Principal Assistant Secretary (Transport) (telephone number: 2810 2674).

Transport and Housing Bureau
18 June 2008

**INLAND REVENUE (DOUBLE TAXATION RELIEF
ON INCOME FROM AIRCRAFT OPERATIONS)
(UNITED MEXICAN STATES) ORDER**

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

1. Commencement

This Order shall come into operation on 26 November 2008.

2. Declaration under section 49

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

- (a) that the arrangements specified in section 3 have been made with the Government of the United Mexican States 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 States; and
- (b) that it is expedient that those arrangements should have effect.

3. Arrangements specified

The arrangements specified for the purposes of section 2(a) are the arrangements in Article 11 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 United Mexican States concerning Air Services done in duplicate at Hong Kong on 20 November 2006 in the English and Spanish languages, the English text of which Article is reproduced in the Schedule.

SCHEDULE

[s. 3]

ARTICLE 11 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 UNITED MEXICAN STATES
CONCERNING AIR SERVICES

ARTICLE 11

Avoidance of Double Taxation

- (1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party, shall be taxable only in the area of that Contracting Party.
- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be taxable only in the area of that Contracting Party.
- (3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be taxable only in the area of that Contracting Party.
- (4) For the purposes of this Article:

- (a) the term "income or profits" includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
 - (i) the charter or rental of aircraft;
 - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline, but in the latter case only if such sales or provisions of services are incidental to the operation of aircraft in international traffic; and
 - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (b) the term "international traffic" means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (c) the term "airline of one Contracting Party" means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of the United Mexican States, any airline which under the laws of the United Mexican States is liable to tax therein by reason of domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. This term, however, does not include any airline which is liable to tax in that Contracting Party in respect only of income from sources in that Party;

(d) the term "competent authority" means, 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, and, in the case of the United Mexican States, the Ministry of Finance and Public Credit or his authorized representative.

(5) Income, profits or gains referred to in the preceding paragraphs do not include income, profits or gains derived by the provision of overnight accommodation.

(6) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any dispute regarding the interpretation or application of this Article. Article 20 (Settlement of Disputes) shall not apply to any such dispute.

(7) The taxes to which this Article shall apply are:

- (a) the federal income tax in the United Mexican States; and
- (b) the profits tax in the Hong Kong Special Administrative Region.

This Article shall also apply 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 significant changes that have been made in their taxation laws.

(8) Notwithstanding Article 24 (Entry into Force) the Government of the Hong Kong Special Administrative Region shall notify the Government of the United Mexican States of the completion of the procedures required by its law for the bringing into force of this Article and the Article shall thereupon enter into force on the date of the notification. The Article shall then be applied:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later;
- (b) in the United Mexican States, for any taxation year beginning on or after the first day of January in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.

(9) Notwithstanding Article 22 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which notice is given;
- (b) in the United Mexican States, for any taxation year beginning on or after the first day of January in the calendar year next following that in which notice is given.

(10) This Article shall cease to have effect if an Agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, has effect between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Mexican States signed an agreement concerning air services on 20 November 2006 (the "Agreement"). This Order specifies the arrangements in Article 11 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 the declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.

**INLAND REVENUE (DOUBLE TAXATION RELIEF
ON INCOME FROM AIRCRAFT OPERATIONS)
(REPUBLIC OF FINLAND) ORDER**

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

1. Commencement

This Order shall come into operation on 26 November 2008.

2. Declaration under section 49

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

- (a) that the arrangements specified in section 3 have been made with the Government of the Republic of Finland 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.

3. Arrangements specified

The arrangements specified for the purposes of section 2(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 Finland for the Avoidance of Double Taxation with respect to Taxes on Income from Aircraft Operation done in duplicate at Hong Kong on 19 November 2007 in the English language. The text of those Articles is reproduced in the Schedule.

SCHEDULE

[s. 3]

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 FINLAND FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON
INCOME FROM AIRCRAFT OPERATION

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 (hereinafter referred to as "Hong Kong Special Administrative Region tax");
 - (b) in the case of Finland:
the corporate income tax, (hereinafter referred to as "Finnish 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 "the Hong Kong Special Administrative Region" and "Finland" mean the Hong Kong Special Administrative Region of the People's Republic of China and the Republic of Finland respectively;
- (b) the term "a Contracting Party" means the Hong Kong Special Administrative Region or Finland, as the context requires;
- (c) the term "income and profits" includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
 - (i) the charter or rental of aircraft if such charter or rental is incidental to the operation of aircraft in international traffic;
 - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, for the airline itself or for other airlines, but in the latter case only if such sale or provision of services are incidental to the operation of aircraft in international traffic; and
 - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (d) the term "international traffic" means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (e) the term "airline of one Contracting Party" means,

- (i) in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region; and
 - (ii) in the case of Finland, any airline which, under the laws of Finland, is liable to tax therein by reason of domicile, residence, place of management, place of incorporation (including registration required by internal law), or any other criterion of a similar nature;
- (f) the term "competent authority" means,
 - (i) 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
 - (ii) in the case of Finland, the Ministry of Finance, its authorised representative or the authority which by the Ministry of Finance, is designated as a competent authority for the purposes of this Agreement.

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

any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the terms under other laws of that Contracting Party.

Article 3

Avoidance of Double Taxation

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

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

(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party, the income and profits of which according to paragraph (1) are exempt from income tax, profits tax and all other taxes on income and profits imposed in the area of the other Contracting Party, shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

Article 4

Mutual Agreement Procedure

The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Agreement.

Article 5

Entry into Force

Each Contracting Party shall in writing notify the other of the completion of the relevant procedures required by its law to bring this Agreement into force. This Agreement shall enter into force on the date on which the last notification is received and shall thereupon have effect:

- (a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, from the year of assessment beginning on or after 1 April 2002;
- (b) in Finland, in respect of Finnish tax, from the tax year beginning on or after 1 January 2002.

Article 6

Termination

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

- (a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, from the year of

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

- (b) in Finland, in respect of Finnish tax, from the tax year beginning on or after 1 January in the calendar year next following that in which the notice is given.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Finland signed an agreement for the avoidance of double taxation with respect to taxes on income from aircraft operation on 19 November 2007 (the 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 the 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 REPUBLIC OF
FINLAND) (AVOIDANCE OF DOUBLE
TAXATION ON INCOME FROM
AIRCRAFT OPERATION)
(REVOCATION) ORDER**

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

1. Commencement

This Order shall come into operation on 26 November 2008.

2. Order revoked

The Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) Order (Cap. 112 sub. leg. AR) is revoked.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

The object of this Order is to revoke the Specification of Arrangements (Government of the Republic of Finland) (Avoidance of Double Taxation on Income from Aircraft Operation) Order (Cap. 112 sub. leg. AR).