

L.N. 172 of 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—

- (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.

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
10 June 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 ("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.