

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Cap 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF ON INCOME FROM AIRCRAFT OPERATIONS) (FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA) ORDER

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

INTRODUCTION

At the meeting of the Executive Council on 10 November 2009, the Council ADVISED and the Chief Executive ORDERED that the following orders should be made under section 49 of the Inland Revenue Ordinance –

- (a) the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Federal Democratic Republic of Ethiopia) Order at **Annex A**; and
- (b) the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Maldives) Order at **Annex B**.

Annex A

Annex B

JUSTIFICATIONS

2. Under section 49(1) of the Inland Revenue Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory.

3. The Government of the Hong Kong Special Administrative Region (HKSARG) and the Government of the Federal Democratic Republic of Ethiopia signed an Agreement between the HKSARG of the People's Republic of China and the Government of the Federal Democratic Republic of Ethiopia Concerning Air Services (the Ethiopian Agreement) in October 2006, which contains a provision on avoidance of double taxation. In June 2009, the HKSARG and the Government of the Republic of Maldives signed an Agreement between the HKSARG of the People's Republic of China and the Government of the Republic of Maldives Concerning Air Services (the Maldives Agreement), which also contains a provision on avoidance of double taxation.

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

The Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Federal Democratic Republic of Ethiopia) Order (The Ethiopian Order)

5. **Section 1** provides that the Ethiopian Order comes into operation on 18 January 2010. **Section 2** 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 Federal Democratic Republic of Ethiopia and that such arrangements should take effect. **Section 3** states that the arrangements are specified in the Schedule to the Ethiopian Order. The **Schedule** sets out the article containing the arrangements in the Ethiopian Agreement.

The Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Maldives) Order (The Maldives Order)

6. **Section 1** provides that the Maldives Order comes into operation on 18 January 2010. **Section 2** 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 Maldives and that such arrangements should take effect. **Section 3** states that the arrangements are specified in the Schedule to the Maldives Order. The **Schedule** sets out the article containing the arrangements in the Maldives Agreement.

LEGISLATIVE TIMETABLE

7. The Orders will be gazetted on 20 November 2009 and tabled in the Legislative Council on 25 November 2009.

IMPLICATIONS OF THE PROPOSAL

8. 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 and its subsidiary legislation. They have no civil service, productivity, sustainability or environmental implications.

9. 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. Therefore, the revenue implication, if any, will be insignificant.

10. As to economic implications, aircraft operators of Hong Kong, Ethiopia and the Maldives 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

11. The relevant Hong Kong aircraft operators have been consulted on the double taxation relief arrangements in the context of air services consultations. They support the arrangements.

PUBLICITY

12. We will issue a press release on 18 November 2009. A spokesperson will be available to handle enquiries.

BACKGROUND

13. Due to the international nature of airline operations, airlines are more susceptible to double taxation than other taxpayers. It is therefore the Government policy to negotiate double taxation relief arrangements for airline income with our aviation partners, either by including an article on avoidance of double taxation (DTA article) in the bilateral air services agreements (ASAs) or by concluding standalone DTA agreements. Apart from Ethiopia and the Maldives, we have concluded such relief arrangements on airline income with Bangladesh, Belgium, Canada, Croatia, Denmark, Estonia, Finland, Germany, Iceland, Israel, Jordan, Kenya, Kuwait, the Mainland of China, the Macao Special Administrative Region, Mauritius, Mexico, 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.

14. DTA articles in the ASAs usually provide that -

- (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/joint air transport operation 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.

15. 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

16. Any enquiry on this brief should be directed to Ms Jenny Chan, Principal Assistant Secretary (Transport) (telephone number: 2189 7718).

Transport and Housing Bureau
18 November 2009

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

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

1. Commencement

This Order comes into operation on 18 January 2010.

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 Federal Democratic Republic of Ethiopia 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 Federal Democratic Republic of Ethiopia; 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 Federal Democratic Republic of Ethiopia concerning Air Services done in duplicate at Hong Kong on 24 October 2006 in the English language. The text of that 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 FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA CONCERNING AIR
SERVICES

ARTICLE 11

**Avoidance of Double Taxation from Exercise of International Air
Transportation Activities**

- (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 exempt from income tax, profits tax and all other taxes on income or 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 of every kind and description 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 shall be exempt from any tax on gains imposed in the area of the other 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; 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 Federal Democratic Republic of Ethiopia, an airline substantially owned and effectively controlled by the Government of the Federal Democratic Republic of Ethiopia or its nationals;

(d) the term “competent authority” means, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative, or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions, and, in the case of the Federal Democratic Republic of Ethiopia, the Minister of Finance and Economic Development or his/her authorised representative.

(5) 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 Article. Article 20 (Settlement of Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 24 (Entry into Force) each Contracting Party shall notify the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last written notification. The Article shall then be applied :

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st 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 Federal Democratic Republic of Ethiopia, for any year of assessment beginning on or after 7th July in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.

(7) 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 1st April in the calendar year next following that in which notice is given;
- (b) in the Federal Democratic Republic of Ethiopia, for any year of assessment beginning on or after 7th July in the calendar year next following that in which notice is given.

(8) The provisions of this Article shall cease to have effect in the event that 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

2009

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Federal Democratic Republic of Ethiopia signed an agreement concerning air services on 24 October

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.

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

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

1. Commencement

This Order comes into operation on 18 January 2010.

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 Republic of Maldives 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 of Maldives; 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 9 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 Republic of Maldives concerning Air Services done in duplicate at Hong Kong on 11 June 2009 in the English language. The text of that Article is reproduced in the Schedule.

SCHEDULE

[s. 3]

ARTICLE 9 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 REPUBLIC OF MALDIVES CONCERNING AIR SERVICES

Article 9

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 exempt from income tax, profits tax and all other taxes on income or 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 of every kind and description 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 shall be exempt from any tax on gains imposed in the area of the other 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:
- (iv) the charter or rental of aircraft;
 - (v) 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; and
 - (vi) 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 Republic of Maldives, an airline substantially owned and effectively controlled by the Government of the Republic of Maldives or its nationals;
- (d) the term “competent authority” means, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative, or any person or body authorised to perform any functions at present exercisable

by the Commissioner or similar functions, and, in the case of the Republic of Maldives, the Ministry of Finance and Treasury or any person or body authorised to perform any functions at present exercisable by the Ministry or similar functions.

(5) 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 Article. Article 19 (Settlement of Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 23 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last written notification. The Article shall then be applied :

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st 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 Republic of Maldives, for any year of assessment beginning on or after 1st January in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.

(7) Notwithstanding Article 21 (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 1st April in the calendar year next following that in which notice is given;
- (b) in the Republic of Maldives, 1st January in the calendar year next following that in which notice is given.

(8) This Article shall not have effect so long as 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

2009

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 Maldives signed an agreement concerning air services on 11 June 2009 ("Agreement"). This Order specifies the arrangements in Article 9 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.