

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Cap 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF ON INCOME FROM AIRCRAFT OPERATIONS) (THE REPUBLIC OF THE FIJI ISLANDS) ORDER

INTRODUCTION

At the meeting of the Executive Council on 11 May 2010, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (The Republic of the Fiji Islands) Order, at Annex, should be made under section 49 of the Inland Revenue Ordinance.

JUSTIFICATIONS

2. Under section 49(1) of the Inland Revenue Ordinance (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.

3. The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of The Republic of the Fiji Islands signed an Agreement on air services in December 2009 (the Fijian Agreement), which contains a provision on avoidance of double taxation.

4. It is necessary to declare by order that the arrangements in the Fijian 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) (The Republic of the Fiji Islands) Order (the Fijian Order)

5. **Section 1** provides that the Fijian Order comes into operation on 19 July 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 the Fiji Islands and that such arrangements should take effect. **Section 3** states that the arrangements are specified in the Schedule to the Fijian Order. The **Schedule** sets out the article containing the arrangements for double taxation relief in the Fijian Agreement.

LEGISLATIVE TIMETABLE

6. The Fijian Order will be gazetted on 20 May 2010 and tabled in the Legislative Council on 26 May 2010.

IMPLICATIONS OF THE PROPOSAL

7. 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 Ordinance and its subsidiary legislation. The Fijian Order has no civil service, productivity, sustainability or environmental implications.

8. 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 Ordinance. Therefore, the revenue implication, if any, will be insignificant.

9. As to economic implications, aircraft operators of Hong Kong and Fiji 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

10. 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

11. We will issue a press release on 19 May 2010. A spokesperson will be available to handle enquiries.

BACKGROUND

12. Due to the international nature of airline operations, airlines are more susceptible to double taxation than other taxpayers. It is therefore the Government's 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 The Republic of the Fiji Islands, we have concluded such relief arrangements on airline income with Bangladesh, Canada, Croatia, Denmark, Estonia, Ethiopia, Finland, Germany, Iceland, Israel, Jordan, Kenya, Kuwait¹, Laos, the Macao Special Administrative Region, the Maldives, Mauritius, Mexico, the Netherlands², 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. Moreover, Hong Kong has concluded comprehensive agreements for the avoidance of double taxation with such trading partners as Belgium, Thailand, the Mainland of China, Luxembourg, Vietnam, Brunei, the Netherlands, Indonesia, Hungary and Kuwait.

¹ Hong Kong signed on 13 May 2010 an agreement with Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, including airline income. The agreement will come into force after the completion of ratification procedures on both sides, after which the standalone DTA agreement on airline income between Hong Kong and Kuwait shall cease to have effect.

² Hong Kong signed on 22 March 2010 an agreement with the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, including airline income. The agreement will come into force after the completion of ratification procedures on both sides, after which the standalone DTA agreement on airline income between Hong Kong and the Netherlands shall cease to have effect.

13. DTA articles in 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.

14. 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 a DTA Article.

ENQUIRIES

15. Any enquiry on this brief should be directed to Mr Francis Cheng, Principal Assistant Secretary (Transport) (telephone number: 2189 7719).

Transport and Housing Bureau
19 May 2010

**INLAND REVENUE (DOUBLE TAXATION RELIEF
ON INCOME FROM AIRCRAFT OPERATIONS)
(THE REPUBLIC OF THE FIJI ISLANDS) 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 19 July 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 the Fiji Islands 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 the Fiji Islands; 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 titled “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 the Fiji Islands concerning Air Services” and “《中華人民共和國香港特別行政區政府與斐濟群島共和國政府關於民用航空運輸的協定》” in the Chinese translation, done in duplicate at Hong Kong on 3 December 2009 in the English language. The text of that Article is reproduced in the Schedule.

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 THE FIJI ISLANDS 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:
 - (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 Republic of the Fiji Islands, an airline substantially owned and effectively controlled by the Government of The Republic of the Fiji Islands 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 the Fiji Islands, the Minister of Finance or his 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 16 (Settlement of Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 20 (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 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 this Agreement or this Article enters into force, whichever is the later;
- (b) in The Republic of the Fiji Islands, for any year of assessment beginning on or after 1 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 18 (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 the Fiji Islands, 1 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

2010

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 the Fiji Islands signed an agreement concerning air services on 3 December 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) despite anything in any enactment.