

《2011 年安排指明 (盧森堡大公國政府) (避免就收入及資本雙重課稅
和防止逃稅) (修訂) 令》

B2676

2011 年第 68 號法律公告

第 1 條

2011 年第 68 號法律公告

《2011 年安排指明 (盧森堡大公國政府) (避免就收入及
資本雙重課稅和防止逃稅) (修訂) 令》

(由行政長官會同行政會議根據《稅務條例》(第 112 章) 第 49 條作出)

1. 生效日期

本命令自 2011 年 7 月 7 日起實施。

2. 修訂《安排指明 (盧森堡大公國政府) (避免就收入及資本雙重課
稅和防止逃稅) 令》

《安排指明 (盧森堡大公國政府) (避免就收入及資本雙重課稅和
防止逃稅) 令》(第 112 章，附屬法例 BA) 現予修訂，修訂方式列
於第 3 至 6 條。

3. 修訂第 2 條

(1) 第 2 條——

將該條重編為第 2(1) 條。

(2) 第 2(1) 條——

廢除

“第 49 條”

代以

“第 49(1) 條”。

(3) 第 2(1)(a) 條——

廢除

“第 3 條”

代以

“第 3(1) 條”。

(4) 在第 2(1) 條之後——

加入

“(2) 為施行本條例第 49(1A) 條，現宣布——

(a) 已與盧森堡大公國政府訂立第 3(2) 條所指明的安排，
旨在就該國的法律所施加的入息稅及其他相類似性
質的稅項給予雙重課稅寬免；而

(b) 該等安排的生效是屬於有利的。”。

4. 修訂第 3 條

(1) 第 3 條——

將該條重編為第 3(1) 條。

(2) 第 3(1) 條——

廢除

“第 2(a) 條”

代以

“第 2(1)(a) 條”。

(3) 第 3(1) 條——

廢除

“附表”

《2011 年安排指明 (盧森堡大公國政府) (避免就收入及資本雙重課稅
和防止逃稅) (修訂) 令》

B2680

2011 年第 68 號法律公告

第 5 條

代以

“附表 1”。

(4) 在第 3(1) 條之後——

加入

“(2) 為第 2(2)(a) 條的目的而指明的安排，是載於在 2010 年 11 月 11 日在香港以英文和法文一式兩份簽訂的《中華人民共和國香港特別行政區與盧森堡大公國就收入及資本稅項避免雙重課稅和防止逃稅協定》的議定書的第一至五條的安排。

(3) 第 (2) 款提述的議定書的第一至五條的英文本載錄於附表 2；而其中文譯本亦於該附表列明。”。

5. 修訂附表標題

附表，標題——

廢除

“附表”

代以

“附表 1”。

6. 加入附表 2

在附表 1 之後——

加入

“附表 2

[第 3 條]

《中華人民共和國香港特別行政區與盧森堡大公國
就收入及資本稅項避免雙重課稅和防止
逃稅協定》的議定書第一至五條

ARTICLE 1

Paragraph 5 of Article 5 (Permanent Establishment) of the Agreement shall be deleted and replaced by the following:

- “5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.”

ARTICLE 2

A paragraph 5 shall be added in Article 24 (Mutual Agreement Procedure) of the Agreement:

“5. Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Party. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting Parties and shall be implemented notwithstanding any time limits in the domestic laws of these Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.”

ARTICLE 3

Article 25 (Exchange of Information) of the Agreement shall be deleted and replaced by the following:

“Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.
2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party 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 referred to in paragraph 1. 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. Information shall not be disclosed to any third jurisdiction for any purpose.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
 - (c) 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 (*ordre public*).
4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE 4

Each of the Contracting Parties shall notify the other Contracting Party in writing of the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and its provisions shall have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the Protocol enters into force;

(b) in Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following that in which the Protocol enters into force;

(ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

ARTICLE 5

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable unless otherwise agreed by the Contracting Parties.”.

(中文譯本)

第一條

刪去本協定第五條 (常設機構) 第 5 款，代以：

“5. 儘管有第 1 及 2 款的規定，如某人 (第 6 款適用的具獨立地位的代理人除外) 代表某企業行事，而該人在某締約方擁有以該企業名義簽訂合約的權限，並慣常在該締約方行使該權限，則該企業須當作就該人為該企業所進行的任何活動在該締約方設有常設機構；但如該人的活動局限於第 4 款所述的活動 (該等活動即使透過固定營業場所進行也不會令該固定營業場所根據該款的規定成為常設機構)，則屬例外。”

第二條

於本協定第二十四條 (雙方協商程序) 加入第 5 款：

“5. 凡，

- (a) 任何人根據第 1 款，以某締約方或締約雙方的行動已導致對該人作出不符合本協定規定的課稅為理由，將案件呈交某締約方的主管當局，而
- (b) 在案件呈交予另一締約方的主管當局的兩年之內，締約雙方的主管當局未能依據第 2 款達成協議解決該個案，

則如該人要求，因該個案而產生的任何尚未解決的爭議點須提交仲裁。但如已有任何締約方的法院或行政審裁處就該等尚未解決的爭議點作出裁定，該等爭議點不得提交仲裁。除非某名直接受該個案影響的人不接受實施有關仲裁裁定的共同協議，否則該裁定對締約雙方均具約束力，而儘管在締約雙方的當地法律中有任何時限，該裁定須予以實施。締約雙方的主管當局須藉共同協議，確定施行本款的方式。”

第三條

刪去本協定第二十五條 (資料交換)，代以：

“第二十五條

資料交換

1. 凡資料屬可預見攸關實施本協定的規定或施行或強制執行締約雙方關乎本協定所涵蓋的稅項的當地法律 (但以根據該等法律作出的課稅不違反本協定者為限)，締約双方的主管當局須交換該等資料。該等資料交換不受第一條的規定所限制。
2. 某締約方根據第 1 款收到的任何資料，均須保密處理，其方式須等同於處理根據該方的當地法律而取得的資料，該資料只可向以下人員或當局披露：與第 1 款所提述的稅項的評估或徵收、執行或檢控有關，或與關乎該等稅項的上訴的裁決有關的人員或當局 (包括法院及行政機關)。該等人員或當局只可為該等目的使用該資料。他們可在公眾法庭的法律程序中或在司法裁定中披露該資料。不得為任何目的將資料向任何第三司法管轄區披露。
3. 在任何情況下，第 1 及 2 款的規定均不得解釋為向某締約方施加作出以下作為的責任：
 - (a) 實施有悖於該締約方或另一締約方的法律及行政慣例的行政措施；
 - (b) 提供根據該締約方或另一締約方的法律或在該締約方或另一締約方的正常行政運作過程中不能獲取的資料；
 - (c) 提供會披露任何貿易、業務、工業、商業或專業秘密或貿易程序的資料，或提供若遭披露即屬違反公共政策的資料。
4. 如某締約方按照本條請求提供資料，則另一締約方即使未必為其本身的稅務目的而需要該資料，仍須以其收集資料措施

取得所請求的資料。前述句子所載的責任，受第3款的限制所規限，但在任何情況下，該等限制不得解釋為容許某締約方純粹因資料無關其本土利益而拒絕提供該資料。

5. 在任何情況下，第3款的規定均不得解釋為容許某締約方純粹因以下理由而拒絕提供該資料：該資料是由某銀行、其他金融機構、代名人或以代理人或受信人身分行事的人所持有，或該資料關乎某人的擁有權權益。”

第四條

每一締約方均須以書面通知另一締約方已完成其法律規定的使本議定書生效的程序。本議定書自上述通知的較後一份的日期起生效，其條文：

- (a) 在香港特別行政區：

就香港特別行政區稅項而言，對在本議定書生效的公曆年的翌年4月1日或之後開始的任何課稅年度具有效力；

- (b) 在盧森堡大公國：

- (i) 就在來源預扣的稅項而言，對在本議定書生效的公曆年的翌年1月1日或之後取得的收入具有效力；

- (ii) 就其他收入稅項及資本稅項而言，對就於本議定書生效的公曆年的翌年1月1日或之後開始的任何課稅年度而須徵收的稅項具有效力。

第五條

本議定書構成本協定整體的一部分，除非締約雙方另有協議，否則本議定書在本協定有效期間有效，並在本協定適用期間適用。”。

《2011 年安排指明 (盧森堡大公國政府) (避免就收入及資本雙重課稅
和防止逃稅) (修訂) 令》

B2698

2011 年第 68 號法律公告

行政會議秘書
陳詠雯

行政會議廳

2011 年 5 月 3 日

註釋

根據《安排指明(盧森堡大公國政府)(避免就收入及資本雙重課稅和防止逃稅)令》(第112章, 附屬法例BA)(《**主體命令**》), 於2007年11月2日所訂立的《中華人民共和國香港特別行政區與盧森堡大公國就收入及資本稅項避免雙重課稅和防止逃稅協定》(《**協定**》)中的第一至二十九條的安排, 被宣布為《稅務條例》(第112章)第49條所指的雙重課稅寬免安排。

2. 香港政府及盧森堡大公國政府於2010年11月11日訂立議定書(《**議定書**》)以修訂《協定》。本命令修訂《主體命令》, 加入新條文, 宣布《議定書》第一至五條的安排為附加的雙重課稅寬免安排。
3. 該等新條文的效力是——
 - (a) 即使任何成文法則另有規定, 《議定書》第一至五條的安排對根據《稅務條例》(第112章)徵收的稅項仍屬有效; 及
 - (b) 就該等安排中規定須披露關乎盧森堡大公國的稅項資料的條文而言, 該等安排對作為該條文標的之該國的稅項有效。
4. 本命令亦對《主體命令》作出相應修訂。