

L.N. 128 of 2010

**Specification of Arrangements (The Mainland of China)
(Avoidance of Double Taxation and the Prevention of
Fiscal Evasion with respect to Taxes on Income)
(Third Protocol) Order**

(Made by the Chief Executive in Council under section 49(1A) of the
Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order comes into operation on 9 December 2010.

2. Declaration under section 49(1A)

For the purposes of section 49(1A) of the Ordinance, it is
declared—

(a) that the arrangements specified in section 3(1) have
been made 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 the Mainland
of China; and

(b) that it is expedient that those arrangements should
have effect.

3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a)
are the arrangements in Articles 1 and 2 of the instrument
titled “《內地和香港特別行政區關於對所得避免雙重徵稅
和防止偷漏稅的安排》第三議定書” (which title is translated
into English as “The Third Protocol to the Arrangement
between the Mainland of China and the Hong Kong
Special Administrative Region for the Avoidance of Double

Specification of Arrangements (The Mainland of China) (Avoidance of Double
Taxation and the Prevention of Fiscal Evasion with respect to Taxes
on Income) (Third Protocol) Order

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Section 3

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Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” in this Order), done in duplicate at Beijing on 27 May 2010 in the Chinese language.

- (2) The Chinese text of the Articles is reproduced in the Schedule; an English translation of the Articles is also set out in that Schedule.
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Schedule

[s. 3]

Articles 1 and 2 of The Third Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

第一條

取消《安排》第二十四條，用下列規定代替：

“一、雙方主管當局應交換可以預見的與執行本《安排》的規定相關的信息，或與執行雙方徵收本《安排》所涉及的稅種的各自內部法律相關的信息（以根據這些法律徵稅與本《安排》不相抵觸為限）。信息交換不受第一條的限制。

二、一方根據第一款收到的任何信息，都應和根據該一方的法律所獲得的信息一樣作密件處理，僅應告知與第一款所指稅種有關的查定、徵收、執行、起訴或裁決上訴有關的人員或當局（包括法院和行政管理部門）。上述人員或當局應僅為上述目的使用該信息，但可以在公開法庭的訴訟程序或司法裁定（就香港特別行政區而言，包括稅務上訴委員會的裁定）中公開發有關信息。

三、第一款和第二款的規定在任何情況下不應被理解為一方有以下義務：

（一）採取與該一方或另一方的法律和行政慣例相違背的行政措施；

（二）提供按照一方或另一方的法律或正常行政渠道不能得到的信息；

(三) 提供泄露任何貿易、經營、工業、商業、專業秘密或貿易過程的信息，或者如泄露便會違反公共政策的信息。

四、如果一方根據本條請求信息，另一方應使用其信息收集手段去取得所請求的信息，即使另一方可能並不因其稅務目的需要該信息。前句所確定的義務受第三款的限制，但是這些限制在任何情況下不應理解為允許一方僅因該信息沒有本土利益而拒絕提供。

五、本條第三款的規定任何情況下不應理解為允許一方僅因信息由銀行、其他金融機構、名義代理人、代理人或受託人所持有，或因信息與某人的所有權權益有關，而拒絕提供。”

第二條

本議定書應在各自履行必要的批准程序，互相書面通知後，自最後一方發出通知之日起生效。

(English Translation)

Article 1

To repeal Article 24 of the Arrangement and substitute:

“1. The competent authorities of both Sides shall exchange such information as is foreseeably relevant for carrying out the provisions of this Arrangement or to the administration or enforcement of the domestic laws of both Sides concerning taxes covered by this Arrangement, insofar as the taxation thereunder is not contrary to this Arrangement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by One Side shall be treated as secret in the same manner as information obtained under the domestic laws of that Side 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, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on One Side the obligation:

(1) to carry out administrative measures at variance with the laws and administrative practice of that Side or of the Other Side;

(2) to supply information which is not obtainable under the laws or in the normal course of the administration of that Side or of the Other Side;

(3) 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.

4. If information is requested by One Side in accordance with this Article, the Other Side shall use its information gathering measures to obtain the requested information, even though that Other Side 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 One Side 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 of this Article be construed to permit One Side 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 2

This Protocol shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

28 September 2010

Explanatory Note

The Mainland of China and the Hong Kong Special Administrative Region entered into an arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (“Arrangement”) together with a protocol to the Arrangement on 21 August 2006. They entered into a further protocol to the Arrangement on 30 January 2008 (i.e. Second Protocol). On 27 May 2010, they entered into another protocol (i.e. Third Protocol) to the Arrangement at Beijing.

2. This Order specifies the arrangements on Articles 1 and 2 of the Third Protocol as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The Third Protocol was signed in Chinese. The English text set out in the Schedule is a translation.
3. The effects of the declaration are—
 - (a) that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) despite anything in any enactment; and
 - (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the Mainland of China, have effect in relation to any tax of the Mainland that is the subject of that provision.