



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2179 5848)
1 December 2011

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury)
Financial Services and the Treasury Bureau
Room 2416, 24/F, Central Government Offices
2 Tim Mei Avenue,
Tamar
Hong Kong

Dear Ms KWAN,

**Inland Revenue (Double Taxation Relief and
Prevention of Fiscal Evasion with respect to Taxes on Income) Orders
re the Portuguese Republic, Kingdom of Spain and Czech Republic Orders
(L.N. 155 - L.N. 157)**

Thank you for your letter of 29 November 2011.

In reply to our enquiry on the Article on Entry into Force, you stated that "...the Inland Revenue Department will publish an announcement on its website for public information. The announcement has no legislative effect and does not need to be published as Legal Notice in the Gazette." As the relevant Comprehensive Agreements for Avoidance of Double Taxation would only become operational until certain procedures have been completed, it appears that their actual commencement should have legislative effect in the same way that commencement notices have legislative effect in that the instruments they seek to commence are subsidiary legislation. This is analogous to the commencement of other legislation.

Section 49(1A) of the Inland Revenue Ordinance (Cap. 112), under which the captioned Orders are made, provides –

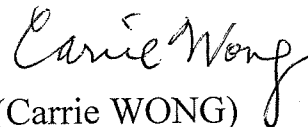
"If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, those arrangements shall have effect [即屬有效] and, in particular –

- (a) shall have effect in relation to tax under this Ordinance despite anything in any enactment; and
- (b) for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, shall have effect in relation to any tax of that territory that is the subject of that provision."

In gist, the section provides that if an Order is made, the arrangements specified in the Order "shall have effect". However, as the Orders are now made, the commencement dates which are provided only relate to the commencement of the Orders. The entry into force of the relevant arrangements may well be after the commencement of the Orders, which does not seem to tally with the plain meaning of section 49(1A).

In the light of our concern over the legislative effect of the entry into force of the arrangements and to better reflect the meaning of section 49(1A), would the Administration consider, as one of the options, to appoint a commencement date for each of the Orders when its date of entry into force is ascertained.

Yours sincerely,



(Carrie WONG)

Assistant Legal Adviser

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