File Ref: (TsyB R2 183/800-1-1/17/0 (C))
(TsyB R2 183/800-1-1/65/0 (C))

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (KINGDOM OF CAMBODIA) ORDER

SPECIFICATION OF ARRANGEMENTS (THE MAINLAND OF CHINA) (AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (FIFTH PROTOCOL) ORDER

INTRODUCTION

At the meeting of the Executive Council on 17 September 2019, the Council ADVISED and the Chief Executive ORDERED that the following two orders should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) ("IRO") –

(a) Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Cambodia) Order ("Cambodia Order") (at **Annex A**); and

A

(b) Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fifth Protocol) Order ("Mainland Order") (at **Annex B**).

B

2. The Cambodia Order implements the Comprehensive Avoidance of Double Taxation Agreement which Hong Kong signed with Cambodia in June 2019 ("Cambodia CDTA"), whereas the Mainland Order implements the Fifth Protocol to the Comprehensive Avoidance of Double Taxation Arrangement which Hong Kong signed with the Mainland in July 2019 ("Mainland Fifth Protocol").

JUSTIFICATIONS

Benefits of Comprehensive Avoidance of Double Taxation Agreements/Arrangements ("CDTAs") in General

3. Double taxation refers to the imposition of comparable taxes by more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation hinders the exchange of goods and services as well as movements of capital, technology and human resources, and undermines the development of economic relations between economies. As a business facilitation initiative, it is our policy to enter into CDTAs with our trading and investment partners so as to minimise double taxation.

4. Hong Kong adopts the territorial principle of taxation whereby only income sourced from Hong Kong is subject to tax. A local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation. Double taxation may however occur where a foreign jurisdiction taxes its residents' income derived from Hong Kong. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax paid on income derived therefrom, CDTAs will enhance the certainty in respect of the elimination of double taxation. Besides, the tax relief available under CDTAs may exceed the level provided unilaterally by the jurisdictions concerned.

Benefits of the Cambodia CDTA

5. The Cambodia CDTA sets out the allocation of taxing rights between Hong Kong and Cambodia and the relief on tax rates on different types of income. It will help investors better assess their potential tax liabilities from cross-border economic activities, foster economic and trade links, and provide incentives for enterprises of Cambodia to conduct business or invest in Hong Kong, and vice versa.

6. In the absence of the Cambodia CDTA, profits of Hong Kong companies conducting business through a permanent establishment in Cambodia may be taxed in both Hong Kong and Cambodia if the income is Hong Kong-sourced. Moreover, income earned by Cambodian residents in Hong Kong is subject to tax in both Hong Kong and Cambodia.

7. Under the Cambodia CDTA, any Cambodian tax paid by Hong Kong residents in respect of income derived from sources in Cambodia will be allowed as a credit against the Hong Kong tax payable on the same income, subject to the provisions of our tax laws. Also, Hong Kong tax paid by Cambodian residents will be allowed as a deduction from Cambodian tax in respect of the same income.

8. Income derived by a Hong Kong resident, which is not paid by (or on behalf of) and borne by a Cambodian entity, from employment exercised in Cambodia will be exempt from tax in Cambodia if the resident's aggregate stay in Cambodia in any relevant 12-month period does not exceed 183 days.

9. Profits from international shipping transport earned by enterprises of Hong Kong arising from Cambodia, which are currently subject to tax in Cambodia, will enjoy 50% tax reduction in Cambodia under the Cambodia CDTA. Hong Kong air carriers operating flights to Cambodia will only be taxed in Hong Kong at Hong Kong's corporation tax rate[1], which is lower than that of 20% in Cambodia.

10. Respective caps on the withholding tax rates applicable to Hong Kong residents under the Cambodia CDTA are summarised below –

Caps on withholding tax rates set out in the Cambodia CDTA ***(current applicable tax rates in Cambodia)***			
Interest	**Royalties**	**Dividends**	**Fees for technical services**
0%[2]/10% (14%)	10% (14%)	10% (14%)	10% (14%)

[1] Under the two-tiered profits tax rates regime of Hong Kong, a corporation is subject to profits tax at 8.25% for the first $2 million of assessable profits. For assessable profits above $2 million, the applicable profits tax rate is 16.5%.

[2] The withholding tax will be exempt if the interest is paid to the Hong Kong Special Administrative Region ("HKSAR") Government, the Hong Kong Monetary Authority, the Exchange Fund or a financial establishment appointed by the HKSAR Government and mutually agreed upon by the competent authorities of Hong Kong and Cambodia.

Benefits of the Mainland Fifth Protocol

11. The Mainland Fifth Protocol amends the CDTA signed by Hong Kong with the Mainland of China in August 2006 and its four related Protocols (hereinafter referred to as "Mainland CDTA").

12. The Mainland Fifth Protocol primarily adds a new Teachers and Researchers Article ("Teachers Article") to the Mainland CDTA with a view to promoting academic exchange and co-operation in research and development ("R&D") between Hong Kong and the Mainland. Under the Teachers Article, if an individual employed by a recognised educational or scientific research institution of Hong Kong visits the Mainland and stays there for the primary purpose of teaching or conducting research at a recognised educational or scientific research institution of the Mainland, his/her remuneration for such teaching or research to the extent it is paid by or on behalf of his/her Hong Kong employer shall be exempt from tax in the Mainland for a period not exceeding three years, provided that such remuneration is subject to tax in Hong Kong and (in relation to remuneration for research) the research is undertaken in the public interest. A reciprocal arrangement will apply to eligible Mainland teachers and researchers who visit Hong Kong. The Teachers Article will reduce the tax burden of eligible teachers and researchers who work across the boundary and, in particular, facilitate R&D co-operation in the Greater Bay Area.

13. In addition, the Mainland Fifth Protocol amends the Mainland CDTA to provide additional safeguards against treaty abuse (including an explicit statement in the preamble that, amongst others, the Mainland CDTA is not intended to generate double non-taxation through tax evasion or avoidance) and artificial avoidance of the permanent establishment status. Such technical amendments seek to ensure that the Mainland CDTA follows the latest international tax standards promulgated by the Organisation for Economic Co-operation and Development ("OECD") to combat base erosion and profit shifting ("BEPS")[3] by multinational enterprises.

[3] BEPS refers to tax avoidance strategies of multinational enterprises in exploiting the gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity.

Exchange of Information ("EoI")

14. Every CDTA entered into by Hong Kong contains an EoI Article to facilitate exchange of tax information for meeting the requirements of the OECD. In order to protect taxpayers' privacy and confidentiality of any information exchanged, the Government will continue to adopt highly prudent safeguard measures in our CDTAs.

15. Under the Cambodia CDTA, the following safeguards would be adopted –

(a) the information sought should be foreseeably relevant, i.e. there will be no fishing expeditions;

(b) information received by the tax authorities concerned should be treated as confidential;

(c) information will only be disclosed to the tax authorities concerned, and a specific provision is included at the request of the Cambodian side to provide that the Cambodian tax authority may disclose information to the Legislature of Cambodia and government bodies of Cambodia with a supervisory function over tax administration and enforcement;

(d) information requested should not be disclosed to a third jurisdiction; and

(e) there is no obligation to supply information under certain circumstances, for example, where the supply of information would disclose any trade, business, industrial, commercial or professional secret or trade process (including such information covered by legal professional privilege).

The scope of tax types for the purpose of EoI is confined to the taxes covered by the Cambodia CDTA.

16. The Mainland Fifth Protocol does not amend the EoI provisions in the Mainland CDTA.

Legal Basis

17. Under section 49(1A) of the IRO, if the Chief Executive in Council ("CE-in-C"), by order, declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect. Under section 49(1B) of the IRO, only arrangements made for the purposes of affording relief from double taxation; exchanging information in relation to any tax imposed by the laws of Hong Kong or any territory concerned; and/or implementing an initiative of international tax co-operation may be specified in an order under section 49(1A) of the IRO. To bring the Cambodia CDTA and the Mainland Fifth Protocol into effect, it is necessary for the CE-in-C to declare by order that the arrangements with Cambodia and the Mainland on double taxation relief have been made.

OTHER OPTIONS

18. Orders made by the CE-in-C under section 49(1A) of the IRO are the only way to give effect to the Cambodia CDTA and the Mainland Fifth Protocol. There is no other option.

THE CAMBODIA ORDER AND THE MAINLAND ORDER

19. **Section 3** of the Cambodia Order declares that the arrangements in the Cambodia CDTA have been made and that it is expedient that those arrangements should have effect. The text of the Cambodia CDTA is set out in the **Schedule** to the Cambodia Order.

20. **Section 3** of the Mainland Order declares that the arrangements in the Mainland Fifth Protocol have been made and that it is expedient that those arrangements should have effect. The text of the Mainland Fifth Protocol is set out in the **Schedule** to the Mainland Order.

LEGISLATIVE TIMETABLE

21. The legislative timetable is as follows –

Publication in the Gazette	4 October 2019
Tabling at Legislative Council ("LegCo")	First LegCo sitting after the publication in the Gazette
Commencement of the Orders	6 December 2019

IMPLICATIONS OF THE PROPOSALS

22. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. The proposals will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. They have no environmental, gender or productivity implications, and no sustainability implications other than those set out in the economic implications paragraph in **Annex C**. The financial, economic, civil service and family implications of the proposals are set out in **Annex C**.

C

PUBLIC CONSULTATION

23. The business and professional sectors have all along supported our policy to conclude more CDTAs with the trading and investment partners of Hong Kong. The heads of universities have also urged the Government to conclude a Teachers Article with the Mainland.

PUBLICITY

24. We issued press releases on the signing of the Cambodia CDTA and the Mainland Fifth Protocol on 26 June and 19 July 2019 respectively. A spokesperson is available to answer enquiries.

BACKGROUND

25. As at 30 September 2019, we have signed CDTAs with 42 jurisdictions, including Cambodia. A list of Hong Kong's CDTA partners is at **Annex D**. A summary of the main provisions of the Cambodia CDTA is at **Annex E**.

D
E

26. The Mainland and Hong Kong signed a CDTA and its First Protocol in August 2006[4]. They entered into force in December 2006 and have effect in Hong Kong for any year of assessment beginning on or after 1 April 2007. The Second, Third and Fourth Protocols to the CDTA were subsequently signed in January 2008, May 2010 and April 2015 respectively[5]. They entered into force and have effect in Hong Kong in June 2008, December 2010 and December 2015 respectively. A summary of the main provisions of the Mainland Fifth Protocol is at **Annex F**.

F

27. We will continue to expand our CDTA network and seek to conclude CDTAs with the economies along the Belt and Road in particular. Our goal is to bring the total number of CDTAs to 50 over the next few years.

ENQUIRIES

28. In case of enquiries about this Brief, please contact Mr Stephen Lo, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810-2317.

Financial Services and the Treasury Bureau
2 October 2019

---

[4] They were given effect in Hong Kong by the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) Order (Cap. 112 sub. leg. AY).

[5] They were given effect in Hong Kong by the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Second Protocol) Order (Cap. 112 sub. leg. BB), the 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 (Cap. 112 sub. leg. BR) and the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fourth Protocol) Order (Cap. 112 sub. leg. CU) respectively.

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (KINGDOM OF CAMBODIA) ORDER

SPECIFICATION OF ARRANGEMENTS (THE MAINLAND OF CHINA) (AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (FIFTH PROTOCOL) ORDER

ANNEXES

Annex A	-	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Cambodia) Order
Annex B	-	Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fifth Protocol) Order
Annex C	-	Financial, Economic, Civil Service and Family Implications of the Proposals
Annex D	-	List of Jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements/Arrangements
Annex E	-	Summary of the Main Provisions 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 Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Cambodia) 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 6 December 2019.

2. Interpretation

In this Order—

Agreement (《協定》) means the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done in duplicate in June 2019 in the English language;

Protocol (《議定書》) means the protocol to the Agreement, done in duplicate in June 2019 in the English language.

3. Declaration under section 49(1A)

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

(a) that the arrangements in the Agreement and the Protocol have been made; and

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

(2) The English text of the Agreement is reproduced in the English text of Part 1 of the Schedule. A Chinese translation of the Agreement is set out in the Chinese text of that Part.

(3) The English text of the Protocol is reproduced in the English text of Part 2 of the Schedule. A Chinese translation of the Protocol is set out in the Chinese text of that Part.

Schedule

[s. 3]

Part 1

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party or its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular:

   (a) in the case of Cambodia,

      (i) Tax on Income including Withholding Tax, Minimum Tax, Additional Profit Tax on Dividend Distribution and Capital Gains Tax; and

      (ii) Tax on Salary;

   (hereinafter referred to as "Cambodian tax");

   (b) in the case of the Hong Kong Special Administrative Region,

      (i) Profits Tax;

      (ii) Salaries Tax; and

(iii) Property Tax;

whether or not charged under personal assessment;

(hereinafter referred to as "Hong Kong Special Administrative Region tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) (i) the term "Cambodia" means the territory of the Kingdom of Cambodia, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limits of the territorial sea and airspace over which the Kingdom of Cambodia exercises, in accordance with international law, sovereign rights or jurisdiction;

(ii) the term "Hong Kong Special Administrative Region" means any place where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(c) the term "competent authority" means:

(i) in the case of Cambodia, the Minister of Economy and Finance or his authorised representative; and

(ii) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative;

(d) the term "Contracting Party" or "Party" means Cambodia or the Hong Kong Special Administrative Region, as the context requires;

(e) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;

(g) the term "national" for Cambodia means:

(i) any individual possessing the nationality of Cambodia; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in Cambodia; and

(h) the term "person" includes an individual, a company, a trust, a partnership and any other body of persons.

2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means:

(a) in the case of Cambodia, any person who, under the laws of Cambodia, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management, principal place of business or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Cambodia in respect only of income from sources in Cambodia;

(b) in the case of the Hong Kong Special Administrative Region,

(i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;

(ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

(iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(c) in the case of either Contracting Party, the Government of that Party and any local authority thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his

personal and economic relations are closer (centre of vital interests);

(b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

(c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party of which he is a national (in the case of Cambodia) or in which he has the right of abode (in the case of the Hong Kong Special Administrative Region);

(d) if he is a national of Cambodia and has also the right of abode in the Hong Kong Special Administrative Region, or if he is not a national of Cambodia nor does he have the right of abode in the Hong Kong Special Administrative Region, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then the competent authorities of the Contracting Parties shall resolve the question by mutual agreement.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a warehouse, in relation to a person providing storage facilities for others;

(g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

(h) a farm or plantation.

3. The term "permanent establishment" also encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise of a Contracting Party through employees or

other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the other Contracting Party for a period or periods aggregating more than 183 days in any twelve-month period; and

(c) the carrying on of activities (including the operation of substantial equipment) in the other Contracting Party for the exploration or for exploitation of natural resources for a period or periods aggregating more than 90 days in any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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 in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has and habitually exercises in the first-mentioned Party an authority to conclude contracts in the name of 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; or

(b) has no such authority, but habitually maintains in the first-mentioned Party a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise of a Contracting Party shall not be deemed to have a permanent establishment in the other Contracting Party merely because it carries on business in that other Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are

devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries,

sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

5. Nothing in this Article shall affect the application of any law of a Contracting Party relating to tax imposed on income from insurance, other than re-insurance, of non-resident insurers with a permanent establishment in the Contracting Party.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

International Transport

1. Profits of an enterprise of a Contracting Party from the operation of aircraft in international traffic shall be taxable only in that Party.

2. Profits of an enterprise of a Contracting Party derived in the other Contracting Party from the operation of ships in international traffic

may be taxed in the other Contracting Party but the tax so charged shall be reduced by an amount equal to 50 per cent thereof.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

   (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or

   (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

   and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of

the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment

as income from shares by the laws of the Party of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Party, if it is paid to:

(a) in the case of Cambodia,

(i) the Government of the Kingdom of Cambodia;

(ii) the National Bank of Cambodia;

(iii) the Rural Development Bank;

(iv) the National Social Security Fund;

(v) a financial establishment appointed by the Government of the Kingdom of Cambodia and mutually agreed upon by the competent authorities of the two Contracting Parties;

(b) in the case of the Hong Kong Special Administrative Region,

(i) the Government of the Hong Kong Special Administrative Region;

(ii) the Hong Kong Monetary Authority;

(iii) the Exchange Fund;

(iv) a financial establishment appointed by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the two Contracting Parties.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as any other amounts treated as income from money lent by the taxation laws of the Contracting Party in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed

base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use,

any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner

in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 13

Fees for Technical Services

1. Fees for technical services arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such fees for technical services may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the fees for technical services is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

3. The term "fees for technical services" as used in this Article means payments of any kind received as a consideration for the rendering of any managerial, technical or consultancy services, including the provision of technical services by an enterprise or other personnel, but does not include payments for services to which the provisions of paragraph 1(a) of Article 15, paragraph 1(b) of Article 15 or Article 16 of this Agreement apply.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting Party, carries on business in the other Contracting

Party in which the fees for technical services arise through a permanent establishment situated therein, and the fees for technical services are effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the liability to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of the Agreement.

Article 14

Capital Gains

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party or of movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

Article 15

Independent Personal Services

1. Subject to the provisions of Article 13, income derived by an individual who is a resident of a Contracting Party in respect of professional services or other activities of an independent character shall be taxable only in that Party except in the following circumstances, when such income may also be taxed in the other Contracting Party:

   (a) if he has a fixed base regularly available to him in the other Contracting Party for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting Party; or

   (b) if his stay in the other Contracting Party is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; in that case, only so much of the income as is derived from his activities performed in that other Party may be taxed in that other Party.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a

Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

(a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

Article 17

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

Article 18

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting Parties shall not be taxed in the Contracting Party in which the activities are exercised if the visit to that Party is wholly or substantially supported by funds of either Contracting Party or a local authority or public institution thereof.

Article 19

Pensions and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) paid under a pension or retirement scheme which is:

   (a) a public scheme which is part of the social security system of a Contracting Party or a statutory body thereof; or

   (b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,

   shall be taxable only in that Contracting Party.

Article 20

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party or a local authority thereof to an individual in respect of services rendered to that Party or authority shall be taxable only in that Party.

   (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

      (i) in the case of Cambodia, is a national thereof and in the case of the Hong Kong Special Administrative Region, has the right of abode therein; or

      (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. (a) Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party or a local authority thereof to an individual in respect of services rendered to that Party or authority shall be taxable only in that Party.

   (b) However, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within sub-paragraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages, pensions (including a lump sum payment), and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Contracting Party or a local authority thereof.

Article 21

Students

Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

Article 22

Other Income

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting Party may also be taxed in that other Party.

Article 23

Methods for Elimination of Double Taxation

1. In the case of Cambodia, double taxation shall be eliminated as follows:

   Where a resident of Cambodia derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Cambodia shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the Cambodian tax, as computed before the deduction is given, which is attributable to that income.

2. In the case of the Hong Kong Special Administrative Region, double taxation shall be eliminated as follows:

   Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), tax paid in Cambodia under the laws of Cambodia and in accordance with the Agreement, whether directly or by deduction, in respect of

income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Cambodia, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

3. For the purposes of this Article, the term "tax paid" shall be deemed to include the amount of tax which would have been paid if the tax had not been exempted or reduced in accordance with the relevant incentives designed to promote economic development in the laws or connected regulations of either Contracting Party. The provisions of this paragraph shall be effective for a period of 10 years starting from the entry into force of the Agreement. However, the period may be extended by mutual agreement of the competent authorities of the Contracting Parties.

Article 24

Non-Discrimination

1. Persons who, in the case of Cambodia, are Cambodian nationals, and, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Party (where that other Party is Cambodia) or persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that

other Party is the Hong Kong Special Administrative Region) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

5. The provisions of this Article shall apply to the taxes which are covered by Article 2 of this Agreement.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the laws of those Parties, present his case to the competent authority of either Contracting Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

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 laws of the Contracting Parties concerning taxes covered by the 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 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 there is no tax interest in such information to that Party.

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 27

Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

Article 28

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.

2. The Agreement shall have effect:

(a) in Cambodia,

(i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the Agreement enters into force; and

(ii) in respect of other Cambodian taxes, in relation to income arising on or after the first day of January following the calendar year in which the Agreement enters into force; and

(b) in the Hong Kong Special Administrative Region,

in respect of Hong Kong Special Administrative Region tax, for any taxable periods beginning on or after the first day of

April following the calendar year in which the Agreement enters into force.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year commencing after the expiration of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

(a) in Cambodia,

(i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the notice of termination is given; and

(ii) in respect of other Cambodian taxes, in relation to income arising on or after the first day of January following the calendar year in which the notice of termination is given; and

(b) in the Hong Kong Special Administrative Region,

in respect of Hong Kong Special Administrative Region tax, for any taxable periods beginning on or after the first day of April following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Phnom Penh on 20th day of June 2019 and at Hong Kong on 26th day of June 2019, in the English language.

[SIGNED]

Part 2

Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

At the time of signing the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (the "Agreement"), the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

1. With reference to the Agreement, it is understood that nothing in the Agreement shall prejudice the right of each Contracting Party to

apply its laws and measures concerning tax avoidance, whether or not described as such.

2. With reference to Article 26 (Exchange of Information), it is understood that the Cambodian competent authority may disclose information in accordance with its confidentiality provisions and Article 26 to the Legislature of Cambodia (National Assembly and Senate) and government bodies of Cambodia with a supervisory function over tax administration and enforcement, including the Office of the Council of Ministers, Ministry of Economy and Finance, Ministry of Interior, Ministry of National Assembly-Senate Relations and Inspection, and National Audit Authority.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Phnom Penh on 20th day of June 2019 and at Hong Kong on 26th day of June 2019, in the English language.

[SIGNED]

Clerk to the Executive Council

COUNCIL CHAMBER

2019

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Kingdom of Cambodia signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (***Agreement***) together with a protocol to the Agreement (***Protocol***) in June 2019.

2. This Order specifies the arrangements in the Agreement and the Protocol (***arrangements***) as 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 Agreement and the Protocol were done in the English language and are reproduced in the English text of the Schedule to this Order. Chinese translations of the Agreement and the Protocol are set out in the Chinese text of the Schedule to this Order.

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 the arrangements that requires disclosure of information concerning tax of Cambodia, have effect in relation to any tax of Cambodia that is the subject of that provision.

Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fifth 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 6 December 2019.

2. Interpretation

In this Order—

Fifth Protocol (《第五議定書》) means The Fifth 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 (a translation of "《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》第五議定書"), done in duplicate at Beijing on 19 July 2019 in the Chinese language.

3. Declaration under section 49(1A)

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

(a) that the arrangements in the Fifth Protocol have been made; and

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

(2) The Chinese text of the Fifth Protocol is reproduced in the Chinese text of the Schedule. An English translation of the Fifth Protocol is set out in the English text of the Schedule.

Schedule

[s. 3]

The Fifth 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

(English Translation)

The Mainland of China and the Hong Kong Special Administrative Region have agreed to amend 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" (hereafter the "Arrangement"), done at Hong Kong on 21 August 2006, and the related protocols as follows:

Article 1

To repeal the Preamble to the Arrangement and substitute:

"The Mainland of China and the Hong Kong Special Administrative Region, desiring to further develop their economic relationship and to enhance their co-operation in tax matters, intending to eliminate double taxation with respect to taxes on income without creating

opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining tax reliefs provided in this Arrangement for the indirect benefit of residents of third tax jurisdictions), have agreed as follows:"

Article 2

To repeal paragraph 3 of Article 4 of the Arrangement and substitute:

"3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Sides, the competent authorities of both Sides shall endeavour to determine by mutual agreement the Side of which such person shall be deemed to be a resident for the purposes of this Arrangement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Arrangement, except to the extent and in such manner as may be agreed upon by the competent authorities of both Sides."

Article 3

1. To repeal paragraphs 5 and 6 of Article 5 of the Arrangement and substitute:

"5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in One Side on behalf of an enterprise and, in doing so, habitually concludes

contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

(1) in the name of the enterprise; or

(2) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

(3) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that One Side 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 the fixed place of business a permanent establishment under the provisions of that paragraph.

6. Paragraph 5 shall not apply where the person carries on business in One Side as an independent agent and acts in that One Side on behalf of an enterprise of the Other Side in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which that person is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise."

2. To add paragraph 8 to Article 5 of the Arrangement:

"8. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has

control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50% of the beneficial interest in the other (or, in the case of a company, more than 50% of the voting rights and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50% of the beneficial interest (or, in the case of a company, more than 50% of the voting rights and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise."

Article 4

To repeal paragraph 4 of Article 13 of the Arrangement, paragraph 2 of the Protocol to the Arrangement and Article 4 of the Second Protocol to the Arrangement, and substitute the following for paragraph 4 of Article 13 of the Arrangement:

"4. Gains derived by a resident of One Side from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the Other Side if, at any time during the three years preceding the alienation, these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property, as defined in Article 6, situated in that Other Side."

Article 5

1. To repeal paragraph 1 of Article 14 of the Arrangement and substitute:

"1. Subject to the provisions of Articles 15, 17, 18, 18A, 19 and 20, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only in that One Side unless the employment is exercised in the Other Side. If the employment is exercised in the Other Side, such remuneration as is derived therefrom may be taxed in that Other Side."

2. To add to the Arrangement:

"Article 18A

Teachers and Researchers

1. Where an individual is employed by a university, college, school in One Side or by an educational institution or scientific research institution recognized by the Government of One Side and is, or was immediately before visiting the Other Side, a resident of that One Side and is present in that Other Side for the primary purpose of teaching or research at a university, college, school in that Other Side or at an educational institution or scientific research institution recognized by the Government of that Other Side, the remuneration derived by the individual in respect of such teaching or research, to the extent it is paid by, or on behalf of, the employer of that One Side, shall not be taxed in that Other Side for a period of three years, provided that such remuneration is subject to tax in that One Side.

2. The period of "three years" provided in paragraph 1 of this Article shall begin on the date of the individual's first arrival in the Other Side for the above purpose or the date from which the provisions begin to apply under paragraph 2 of Article 7 of this Protocol, whichever is the later.

3. Paragraph 1 of this Article shall not apply to income derived from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons."

Article 6

To repeal Article 4 of the Fourth Protocol to the Arrangement and add to the Arrangement:

"Article 24A

Entitlement to Benefits under the Arrangement

Notwithstanding the other provisions of this Arrangement, a benefit under this Arrangement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Arrangement."

Article 7

1. 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.

2. The provisions of this Protocol shall apply:

(1) in the Mainland of China, to income derived in the taxable years beginning on or after 1 January in the calendar year next following the year in which this Protocol enters into force;

(2) in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April in the calendar year next following the year in which this Protocol enters into force.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Beijing on the 19th day of July 2019 in the Chinese language.

[SIGNED]

Clerk to the Executive Council

COUNCIL CHAMBER

2019

Explanatory Note

The Mainland of China and the Hong Kong Special Administrative Region (***both Sides***) 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. Both Sides entered into the Second Protocol, the Third Protocol and the Fourth Protocol to the Arrangement on 30 January 2008, 27 May 2010 and 1 April 2015 respectively. On 19 July 2019, both Sides further entered into the Fifth Protocol to the Arrangement (***Fifth Protocol***).

2. This Order specifies the arrangements in the Fifth Protocol (***arrangements***) as 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 Fifth Protocol was done in the Chinese language and is reproduced in the Chinese text of the Schedule to this Order. An English translation of the Fifth Protocol is set out in the English text of the Schedule to this Order.

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 the arrangements that requires disclosure of information concerning tax of the Mainland of China, have effect in relation to any tax of the Mainland of China that is the subject of that provision.

Annex C

Financial, Economic, Civil Service and Family Implications of the Proposals

Financial Implications

The Government would forgo a very small sum of revenue which is currently being collected in respect of profits of Cambodian resident companies not attributable to a permanent establishment in Hong Kong, shipping and air services profits of Cambodian operators, as well as income of visiting teachers and researchers from the Mainland.

Economic Implications

2. The Cambodia CDTA will facilitate business activities between Hong Kong and Cambodia, and contribute to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Cambodia by providing enhanced certainty to the tax liabilities of businessmen and investors.

3. The Mainland Fifth Protocol will promote academic exchange and facilitate co-operation in R&D between Hong Kong and the Mainland, which will be conducive to our economic development.

Civil Service Implications

4. There will be additional work for the Inland Revenue Department in handling requests for exchange of information from Cambodia under the Cambodia CDTA, which will be absorbed within existing resources as far as possible. Where necessary, additional manpower resources will be sought with justifications in accordance with the established resource allocation mechanism.

Family Implications

5. Given that the tax burden of some individuals may be relieved under the Cambodia CDTA and the Mainland Fifth Protocol, the proposals may have positive impact on the financial situation of these families.

Annex D

List of jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements/Arrangements
(as at 30 September 2019)

	Jurisdictions	Month of Signing
1	Belgium	December 2003
2	Thailand	September 2005
3	Mainland China	August 2006
4	Luxembourg	November 2007
5	Vietnam	December 2008
6	Brunei	March 2010
7	The Netherlands	March 2010
8	Indonesia	March 2010
9	Hungary	May 2010
10	Kuwait	May 2010
11	Austria	May 2010
12	The United Kingdom	June 2010
13	Ireland	June 2010
14	Liechtenstein	August 2010
15	France	October 2010
16	Japan	November 2010
17	New Zealand	December 2010
18	Portugal	March 2011
19	Spain	April 2011
20	The Czech Republic	June 2011
21	Switzerland	October 2011
22	Malta	November 2011
23	Jersey	February 2012
24	Malaysia	April 2012
25	Mexico	June 2012
26	Canada	November 2012
27	Italy	January 2013
28	Guernsey	April 2013
29	Qatar	May 2013
30	Korea	July 2014

31	South Africa	October 2014
32	United Arab Emirates	December 2014
33	Romania	November 2015
34	Russia	January 2016
35	Latvia	April 2016
36	Belarus	January 2017
37	Pakistan	February 2017
38	Saudi Arabia	August 2017
39	India	March 2018
40	Finland	May 2018
41	Cambodia[#]	June 2019
42	Estonia[#]	September 2019

[#] The CDTAs with Cambodia and Estonia have not yet entered into force pending completion of the ratification procedures.

Annex E

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("Cambodia CDTA")

Summary of Main Provisions

The Cambodia CDTA covers the following types of taxes:

(a) in respect of Hong Kong –	(i)	profits tax;
	(ii)	salaries tax; and
	(iii)	property tax.
(b) in respect of Cambodia –	(i)	tax on income including withholding tax, minimum tax, additional profit tax on dividend distribution and capital gains tax; and
	(ii)	tax on salary.

2. The Cambodia CDTA deals with the taxing of income of the resident of one contracting party ("resident jurisdiction") derived from another contracting party ("source jurisdiction").

Exclusive Taxing Rights

3. Where the right to tax income is allocated exclusively to one contracting party under the Cambodia CDTA (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Cambodia CDTA that the following types of income shall only be taxed in the resident jurisdiction –

(a) profits of an enterprise, unless the enterprise carries on business in the source jurisdiction through a permanent establishment situated therein (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on);

(b) profits of an enterprise from the operation of aircraft in international traffic, and gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft;

(c) income from professional services, including services performed in the source jurisdiction, except where the services are performed through a fixed base in the source jurisdiction or where the person stays in the source jurisdiction for a period or periods amounting to or exceeding in the aggregate 183 days in any relevant 12-month period;

(d) remuneration from non-government employment, including employment exercised in the source jurisdiction, provided that, amongst others, the employee is present in the source jurisdiction for a period or periods not exceeding in the aggregate 183 days in any relevant 12-month period;

(e) remuneration from non-government employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of the resident jurisdiction;

(f) income of entertainers and sportspersons from their professional activities performed in the source jurisdiction under a cultural agreement or arrangement between the two jurisdictions, if the visit to the source jurisdiction is wholly or substantially supported by funds of either jurisdiction;

(g) pensions from non-government employment, except those paid under a public scheme which is part of the social security system of the source jurisdiction or a retirement benefits scheme which is recognised for tax purposes in the source jurisdiction;

(h) capital gains not expressly dealt with in the Cambodia CDTA; and

(i) other income not expressly dealt with in the Cambodia CDTA, except where the income is derived from the source jurisdiction.

4. Pensions from non-government employment paid under a public scheme which is part of the social security system of the source jurisdiction or a retirement benefits scheme which is recognised for tax purposes in the source jurisdiction are taxable only in the source jurisdiction. Employment income and pensions paid by the Government of a contracting party are, in general, taxable only in that party (source jurisdiction).

Shared Taxing Rights

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Cambodia CDTA to give double taxation relief to its resident for any income doubly assessed (i.e. the source jurisdiction has the primary right to tax and the resident jurisdiction is left with a secondary right). It is provided in the Cambodia CDTA that the following types of income may be taxed in both jurisdictions –

(a) income from immovable property situated in the source jurisdiction, and gains from the alienation of such property;

(b) profits of an enterprise which carries on business in the source jurisdiction through a permanent establishment situated therein (to the extent that such profits are attributable to the permanent establishment), and gains from the alienation of movable property forming part of the business property of such permanent establishment;

(c) profits of an enterprise derived in the source jurisdiction from the operation of ships in international traffic, but the tax charged in the source jurisdiction is reduced by 50%;

(d) passive income of dividends, interest and royalties received from residents of source jurisdiction. The source jurisdiction's right to tax is subject to specified caps on the withholding tax rates as follows:

- for dividends, 10%;

- for interest, 0% if the interest is paid to the Government of either Hong Kong or Cambodia, the Hong Kong Monetary Authority, the Exchange Fund, the National Bank of

Cambodia, the Rural Development Bank, the National Social Security Fund, or a financial establishment appointed by the Government of Hong Kong or Cambodia and mutually agreed upon by the competent authorities of Hong Kong and Cambodia; and 10% in all other cases;

- for royalties, 10%;

(e) fees for technical services arising in the source jurisdiction whose right to tax is limited to 10% of the gross amount of the fees;

(f) gains from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the source jurisdiction;

(g) income from professional services performed in the source jurisdiction where the services are performed through a fixed base therein (to the extent that such income is attributable to the fixed base) or where the person stays in the source jurisdiction for a period or periods amounting to or exceeding in the aggregate 183 days in any relevant 12-month period, and gains from the alienation of movable property pertaining to a fixed base available to the person for the purpose of performing services;

(h) remuneration from non-government employment exercised in the source jurisdiction, where, amongst others, the employee is present in the source jurisdiction for a period or periods exceeding in the aggregate 183 days in any relevant 12-month period;

(i) directors' fees from a company resident in the source jurisdiction;

(j) income of entertainers and sportspersons from their professional activities performed in the source jurisdiction, except where the activities are performed under a cultural agreement or arrangement between the two jurisdictions and the visit to the source jurisdiction is wholly or substantially supported by funds of either jurisdiction; and

(k) other income not expressly dealt with in the Cambodia CDTA if it is derived from the source jurisdiction.

6. In general, in case of shared taxing rights, double taxation relief may be given to a taxpayer either through the exemption method, where income taxable in the source jurisdiction is exempt from taxation in the resident jurisdiction; or through the credit method, where income taxable in the source jurisdiction is subject to tax in the resident jurisdiction but the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income. Both Hong Kong and Cambodia will provide double taxation relief for its residents by the credit method.

Annex F

The Fifth 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 ("Mainland Fifth Protocol")

The Mainland Fifth Protocol incorporates into 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 and its previous four Protocols ("Mainland CDTA") measures to prevent treaty abuse and artificial avoidance of permanent establishment status, so as to follow the latest international standards on combating base erosion and profit shifting.

2. To prevent treaty abuse, the Mainland Fifth Protocol:

(a) amends the preamble of the Mainland CDTA to include an express statement that the common intention of the Mainland and Hong Kong is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements); and to refer to a desire to further develop their economic relationship and to enhance cooperation in tax matters;

(b) modifies the rule in the Mainland CDTA for determining residence in cases of dual residence of a person other than an individual to provide that the competent authorities of the Mainland and Hong Kong shall endeavour to determine by mutual agreement the side of which such person shall be deemed to be a resident for the purposes of the Mainland CDTA;

(c) modifies the scope of the provision in the Mainland CDTA which deals with the taxation of capital gains from the alienation of shares deriving their value principally from immovable property to cover taxation of capital gains from the alienation of shares and comparable interests, such as interests in a partnership or trust, deriving more than 50% of their value directly or indirectly from immovable property at

any time during the three years preceding the alienation;

(d) amends an anti-abuse rule in the Mainland CDTA to provide that a benefit under the Mainland CDTA shall not be granted if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Mainland CDTA.

3. The Mainland Fifth Protocol amends the Permanent Establishment Article in the Mainland CDTA to address the artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies. The new provisions amend the conditions of the existing provisions under which an enterprise of one side is deemed to have a permanent establishment in the other side in respect of any activities which a person other than an independent agent undertakes for the enterprise.

4. The Mainland Fifth Protocol adds a Teachers and Researchers Article to the Mainland CDTA. Where an eligible teacher or researcher is employed in one side and is present in the other side for the primary purpose of teaching or conducting research, his remuneration for such teaching or research to the extent it is paid by or on behalf of his employer shall not be taxed in that other side for a period not exceeding three years, provided that such remuneration is subject to tax in the side where he is employed and (in relation to remuneration for research) the research is undertaken in the public interest.