

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

**SPECIFICATION OF ARRANGEMENTS
(GOVERNMENT OF THE RUSSIAN FEDERATION
CONCERNING AIR SERVICES) (DOUBLE TAXATION) ORDER**

INTRODUCTION

At the meeting of the Executive Council on 11 May 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that under section 49 of the Inland Revenue Ordinance, the Specification of Arrangements (Government of the Russian Federation Concerning Air Services) (Double Taxation) Order, at the Annex, should be made to implement double taxation relief for airline income between Hong Kong and the Russian Federation (Russia).

Annex

BACKGROUND AND ARGUMENT

2. It is our policy to include provisions on double taxation relief for airline income in Air Services Agreements negotiated between the Hong Kong Special Administrative Region (HKSAR) and our bilateral aviation partners. We have concluded and implemented such relief arrangements on airline income with the Republic of Korea, New Zealand, Canada, the Netherlands, Germany, the United Kingdom, Belgium, Israel and Mauritius.

3. With the specific authorisation of the Central People's Government under Article 133 of the Basic Law, we signed an Air Services Agreement with the Government of Russia on 22 January 1999. The Agreement covers in its Article 12 (the Article) arrangements for double taxation relief in respect of airline income. The Article includes the following provisions -

- (a) income or profits derived from the operation of aircraft in international traffic by an airline of one contracting party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that contracting party, shall be taxable only in the area of that contracting party;

- (b) capital and assets of an airline of one contracting party relating to the operation of aircraft in international traffic shall be taxable only in the area of that contracting party; and
- (c) gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft derived by an airline of one contracting party shall be taxable only in the area of that contracting party.

4. Under section 49 of the Inland Revenue Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. Following the signature of the Air Services Agreement with the Government of Russia, it is necessary to declare by order that arrangements with the Government of Russia on double taxation relief in respect of airline income have been made, so as to put the arrangements into effect. The arrangements will apply in the year of assessment beginning in the calendar year following the calendar year in which both parties have notified each other in writing that all the internal procedures to bring the Article into force have been completed.

THE ORDER

5. **Clause 1** of the Order declares that arrangements for double taxation relief in respect of airline income have been made with the Government of Russia and should take effect. **Clause 2** states that the arrangements, which are included as Article 12 of the Air Services Agreement between the Government of the HKSAR and the Government of Russia, are specified in the Schedule to the Order, and that the Article should be construed in accordance with the terms of the Agreement. **The Schedule** to the Order sets out the details of the arrangements.

PUBLIC CONSULTATION

6. The Hong Kong airline designated under the Air Services Agreement with Russia was in attendance at the negotiations with the Government of Russia.

HUMAN RIGHTS IMPLICATIONS

7. The Department of Justice advises that the proposed legislation has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

8. Based on the current levels of uplifts and the profitability of the airlines concerned, the double taxation relief arrangements have no immediate financial implications. There are no staffing implications.

LEGISLATIVE TIMETABLE

9. The legislative timetable is -

Publication in the Gazette	21 May 1999
Tabling in the Legislative Council	26 May 1999

PUBLICITY

10. We will issue a press release on 19 May.

ENQUIRIES

11. In case of enquiries about this Brief, please contact Miss Amy Tse, Principal Assistant Secretary for the Treasury (Revenue), at 2810 2370.

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF
THE RUSSIAN FEDERATION CONCERNING AIR
SERVICES) (DOUBLE TAXATION) ORDER**

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

1. Declaration under section 49

For the purposes of section 49 of the Ordinance it is declared that the arrangements referred to in section 2 have been made with the Government of the Russian Federation with a view to affording relief from double taxation in relation to income tax and tax of a similar character imposed by the laws of that Federation, and that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements mentioned in section 1 are in Article 12 of the Air Services Agreement between the Government of Hong Kong and the Government of the Russian Federation done in duplicate at Hong Kong on 22 January 1999 in the English and Russian languages as specified in the Schedule and having effect according to the tenor of that Agreement.

SCHEDULE

[s. 2]

ARTICLE 12

of the

AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND
THE GOVERNMENT OF THE RUSSIAN FEDERATION

"ARTICLE 12
Avoidance of Double Taxation

- (1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party, shall be taxable only in the area of that Contracting Party.

- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be taxable only in the area of that Contracting Party.

- (3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft derived by an airline of one Contracting Party shall be taxable only in the area of that Contracting Party.

- (4) For the purposes of this Article:
 - (a) the term "income or profits" includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, personal belongings, goods, mail or merchandise in international traffic including:
 - (i) the charter or rental of aircraft;
 - (ii) the sale of tickets or similar documents, and the provision of services connected with such

- carriage, either for the airline itself or for any other airline; and
 - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
 - (b) the term "international traffic" means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
 - (c) the term "airline of one Contracting Party" means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of the Russian Federation, an airline the substantial ownership and effective control of which are vested in the Government of the Russian Federation or nationals of the Russian Federation;
 - (d) the term "competent authority" means, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative, or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions, and, in the case of the Russian Federation, the Ministry of Finance of the Russian Federation or its authorised representative.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this

Article. Article 16 (Settlement of Disputes) shall not apply to any such dispute.

(6) This Article shall enter into force on the date of the last written notification confirming that the Contracting Parties have fulfilled all the internal procedures for the entry into force of this Article and the Article shall be applied:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which the Article enters into force;
- (b) in the Russian Federation, for any tax year or period beginning on or after 1st January in the calendar year next following that in which the Article enters into force.

(7) Where either Contracting Party notifies to the other Contracting Party the termination of this Agreement under Article 18, this Article shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which the notice of termination is given;
- (b) in the Russian Federation, for any tax year or period beginning on or after 1st January in the calendar year next following that in which the notice of termination is given.

(8) The provisions of Article 18 (Termination) and Article 20 (Entry into Force) shall not be applicable to this Article.

(9) This Article shall cease to have effect in the event that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties.".

Clerk to the Executive Council

COUNCIL CHAMBER

11 May 1999

Explanatory Note

This Order specifies the arrangement contained in Article 12 of the Air Services Agreement between the Government of Hong Kong and the Government of the Russian Federation done at Hong Kong on 22 January 1999, as set out in the Schedule, as a double taxation relief arrangement under section 49 of the Inland Revenue Ordinance (Cap. 112).