

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF BELGIUM CONCERNING AIR SERVICES) (DOUBLE TAXATION) ORDER

INTRODUCTION

Annex

At the meeting of the Executive Council on 13 October 1998, the Council **ADVISED** and the Chief Executive **ORDERED** that under section 49 of the Inland Revenue Ordinance, the Specification of Arrangements (Government of the Kingdom of Belgium Concerning Air Services) (Double Taxation) Order, at the Annex, should be made to implement double taxation relief for airline income between Hong Kong and Belgium.

BACKGROUND AND ARGUMENT

2. It is our policy to include, on a case by case basis, provisions on double taxation relief for airline income in Air Services Agreements negotiated between the Hong Kong Special Administrative Region 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 and the United Kingdom.

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 Kingdom of Belgium (Belgium) on 6 April 1998. The Agreement contains an article on double taxation relief in respect of airline income. The relief 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, which are subject to tax in the area of that contracting party, shall be exempt from taxes on income or profits imposed in the area of the other contracting party;
- (b) capital and assets of an airline of one contracting party relating to the operation of aircraft in international traffic shall be exempt from taxes on capital and assets imposed in the area of the other contracting party; and
- (c) gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one contracting party shall be exempt from tax on gains imposed in the area of the other contracting party.

4. Under section 49 of the Inland Revenue Ordinance interpreted in accordance with the provisions of the Hong Kong Reunification 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 Belgian Government, it is necessary to declare by order that arrangements with Belgium on double taxation relief in respect of airline income have been made, so as to put the arrangements into effect. The arrangements shall apply as from the 1998-99 year of assessment.

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 Belgian Government and should take effect. **Clause 2** states that the arrangements, which are included as Article 9 of the Air Services Agreement between the Hong Kong Special Administrative Region and Belgium, 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 Belgium was in attendance at the negotiations with the Belgian Government.

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 current levels of uplifts and the relative profitability of the respective Hong Kong and Belgian airlines, the double taxation relief arrangements have no immediate financial implications. There are no staffing implications.

PUBLICITY

9. We will issue a press release on 21 October. The Order will be gazetted on 23 October and tabled in the Legislative Council on 4 November.

ENQUIRIES

10. 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 KINGDOM OF BELGIUM 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 a territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements mentioned in section 1 are in Article 9 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 Belgium concerning Air Services done in duplicate at Brussels on 6 April 1998 as specified in the Schedule and having effect according to the tenor of that Agreement.

SCHEDULE

[s. 2]

ARTICLE 9

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 BELGIUM
CONCERNING AIR SERVICES

Done, in duplicate, at Brussels on the 6th day of April 1998 in the English language.

“ARTICLE 9

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 exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.

(2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and

description on capital and assets imposed in the area of the other Contracting Party.

(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other 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, 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 Belgium, an airline substantially owned and effectively controlled by the Government of Belgium or its nationals;
- (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 Belgium, the Ministry of Finance or their 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) Notwithstanding Article 20 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall thereupon have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April 1998;
- (b) in Belgium, for any year of assessment beginning on or after 1st April 1998.

(7) Notwithstanding Article 18 (Termination) where notice of termination of this Agreement is given under that Article, 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 notice is given;
- (b) in Belgium, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given.

(8) 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

13 October 1998

Explanatory Note

This Order specifies Article 9 of the Agreement between the Government of the Hong Kong Special Administration Region of the People’s Republic of China and the Government of the Kingdom of Belgium concerning Air Services done at Brussels on 6 April 1998 as a relief from double taxation arrangement under section 49 of the Inland Revenue Ordinance (Cap. 112).