

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

**SPECIFICATION OF ARRANGEMENTS
(GOVERNMENT OF THE REPUBLIC OF MAURITIUS
CONCERNING AIR SERVICES) (DOUBLE TAXATION) ORDER**

INTRODUCTION

At the meeting of the Executive Council on 2 February 1999, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that under section 49 of the Inland Revenue Ordinance, the Specification of Arrangements (Government of the Republic of Mauritius 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 Republic of Mauritius (Mauritius).

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 and Israel.

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 Mauritius on 3 July 1998. The Agreement contains an article on double taxation relief in respect of airline income. The relief article includes the following provisions -

- (a) revenues, gross receipts, 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 revenues, receipts, 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 all taxes 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 subject to tax only in the area of that 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 Mauritian Government, it is necessary to declare by order that arrangements with Mauritius on double taxation relief in respect of airline income have been made, so as to put the arrangements into effect. The arrangements should apply as from 3 July 1998, that is, the date of the entry into force of the Agreement.

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 Mauritian Government and should take effect. **Clause 2** states that the arrangements, which are included as Article 9 of the Air Services Agreement between the HKSAR and Mauritius, 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 Mauritius was in attendance at the negotiations with the Mauritian 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 Mauritian airlines, 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	12 February 1999
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Tabling at the Legislative Council	3 March 1999
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PUBLICITY

10. We will issue a press release on 10 February.

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 REPUBLIC
OF MAURITIUS 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 Republic of Mauritius concerning Air Services done in duplicate at Hong Kong on 3 July 1998 in the English language 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 REPUBLIC OF MAURITIUS
CONCERNING AIR SERVICES**

Done, in duplicate, at Hong Kong on the 3rd day of July 1998 in the English language.

“ARTICLE 9

Avoidance of Double Taxation

(1) Revenues, gross receipts, 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 revenues, receipts, 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 all taxes 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 subject to tax only in the area of that Contracting Party.

(4) For the purpose of this Article:

- (a) the term “revenues, gross receipts, income or profits derived from the operation of aircraft in international traffic” shall include revenues, gross receipts, income or profits from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise including:
 - (i) the lease of aircraft on a charter basis;
 - (ii) the sale of tickets for and the provision of services connected with such carriage, either for the airline itself or for any other airline;
 - (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 Republic of Mauritius, an airline substantially owned and effectively controlled by the Government of the Republic of Mauritius or its nationals.

(5) This Article shall not have effect as long as an Agreement for the avoidance of double taxation with respect to taxes on income providing for similar exemptions shall be in force between the Contracting Parties.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2 February 1999

Explanatory Note

This Order specifies 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 Republic of Mauritius concerning Air Services done at Hong Kong on 3 July 1998 as a double taxation relief arrangement under section 49 of the Inland Revenue Ordinance (Cap. 112).