

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (THE MAINLAND OF CHINA CONCERNING AIR SERVICES) (DOUBLE TAXATION) ORDER

INTRODUCTION

Annex

At the meeting of the Executive Council on 9 May 2000, the Council **ADVISED** and the Chief Executive **ORDERED** that the Specification of Arrangements (The Mainland of China Concerning Air Services) (Double Taxation) Order, at the Annex, should be made under section 49 of the Inland Revenue Ordinance, so that the arrangements for double taxation relief in respect of airline income between the Mainland and Hong Kong could take effect.

BACKGROUND AND ARGUMENT

Double Taxation Relief for Airline Income

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, Mauritius and Russia.

3. On 11 February 1998, the HKSAR concluded a general “Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income” (the DTA Arrangement). An Order under section 49 of the Inland Revenue Ordinance was made by the Chief Executive in Council on 24 February 1998 to implement this Arrangement. The DTA Arrangement contains an article which provides that revenue and profits from the operation of aircraft carried on by an enterprise of one side on the other side shall be exempt from tax on the other side. The Arrangement came into effect on 10 April 1998.

4. We signed an Air Services Arrangement with the General Administration of Civil Aviation of China on 2 February 2000. The Air Services Arrangement contains a provision on double taxation relief in respect of airline income. The provision provides that -

- (a) property of a designated airline of one side relating to the operation of aircraft in the area of the other side shall be exempt from all taxes on the other side; and
- (b) other matters relating to avoidance of double taxation shall be dealt with in accordance with the provisions of Article 2 of the DTA Arrangement.

Article 2 of the DTA Arrangement provides that revenue and profits from the operation of aircraft carried on by an enterprise of one side on the other side shall be exempt from tax on the other side. This also applies to revenue and profits derived from the participation in a pool, a joint business or an international operating agency. The Air Services Arrangement therefore seeks in effect to extend Article 2 of the DTA Arrangement to cover property of an airline of one side relating to the operation of aircraft in the area of the other side.

5. 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 Arrangement with the Mainland, it is necessary to declare by order that the latest arrangements with the Mainland on double taxation relief in respect of airline income (paragraph 4 above) have been made, so as to put such arrangements into effect.

THE ORDER

6. **Section 1** declares that arrangements for double taxation relief in respect of airline income have been made with the government of a territory outside Hong Kong and should take effect. **Section 2** states that the arrangements, which are included as paragraphs 6 and 7 of Article 11 of the Air Services Arrangement, are specified in the Schedule to the Order, and that the Article should be construed in accordance with the terms of the Arrangement. **The Schedule** to the Order sets out the details of the arrangements.

PUBLIC CONSULTATION

7. Hong Kong Dragon Airlines, the only Hong Kong airline operating flights to the Mainland of China, has been consulted on details of the double taxation relief arrangements. It has expressed support for the arrangements.

HUMAN RIGHTS IMPLICATIONS

8. The proposed legislation has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

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

LEGISLATIVE TIMETABLE

10. The legislative timetable is -

Publication in the Gazette	19 May 2000
Tabling in the Legislative Council	24 May 2000

PUBLICITY

11. We will issue a press release on 17 May.

ENQUIRIES

12. In case of enquiries about this Brief, please contact Ms. Esther Leung, Principal Assistant Secretary for the Treasury (Revenue), at 2810 2370.