立法會財經事務委員會資料文件

香港/比利時全面性避免雙重徵稅協定

引言

本文件旨在告知議員，香港與比利時已訂立一份全面性避免雙重徵稅協定，以及政府計劃制定法例，實施該協定。

背景

2. 香港特別行政區與比利時王國就收入和資本避免雙重徵稅及防止逃稅協定(該協定)(載於*附件 A*)，於二零零三年十二月十日簽訂。這是香港與其他經濟體系訂立的首份全面性避免雙重徵稅協定(全面性協定)。該協定的目的，在於消除香港與比利時投資者及僱員在跨境經濟活動方面可能遇到的雙重徵稅的情況。

3. 雙重徵稅是指同一項收入在一個以上的稅收管轄區被徵收相類似的稅項。國際間均認同雙重徵稅會對商品和服務交流，以及資金、科技和人才的流動造成障礙，並且窒礙經濟體系之間的經貿關係發展。

香港建立全面性協定網絡的計劃

4. 數年前，政府公布有意與主要貿易伙伴議定全面性協定。其後，我們曾與其中一些伙伴進行磋商。比利時是與我們完成全面性協定商討的第一個國家。

5. 此外，我們在一九九八年已與內地訂立避免雙重徵稅的安排。在不能即時就全面性協定展開磋商的情況下，我們嘗試與香港的航運／空運伙伴訂立僅限於國際航運／空運業務收入的避免雙重徵稅安排。我們已簽訂了 18 份限於空運的避免雙重徵稅安排、5 份限於航運的

避免雙重徵稅協定及 1 份限於空運與航運的避免雙重徵稅協定。之前與比利時就空運達成的雙重徵稅寬免安排，將會納入全面性協定內。有關的避免雙重徵稅安排／協定列於**附件 B**。

全面性協定的效益

6. 香港採用地域來源原則徵稅，即只就得自香港的收入課稅，所以香港居民從香港以外來源所得的收入，在大多數情況下不須在香港課稅。此外，香港就多數被動性的收入(如股息及利息) 均不徵收預扣稅。在這些情況下，雙重徵稅不會發生。

7. 然而，當外國向其居民就在香港產生的收入徵稅，便可能出現雙重徵稅的情況。不過，許多地區均會向其居民就已在香港繳稅的收入提供單方面的稅收寬免，以避免雙重徵稅或減低雙重徵收的稅款。

8. 儘管如此，香港與貿易及投資伙伴訂立全面性協定仍有許多好處。

9. 與某些地區就其居民遭受到雙重徵稅而提供的單方面稅收寬免比較，全面性協定明確劃分兩地之間的徵稅權及訂明避免雙重徵稅的方法，會為投資者提供更明確和穩定的投資環境。此外，就某些稅收管轄區而言，全面性協定下的寬免可較其本身的單方面寬免更為優厚。

該協定的效益

10. 在沒有全面性協定的情況下，比利時居民須就其在香港賺取的利潤在香港及比利時繳稅。比利時居民公司在香港透過常設機構(如分支機構)賺取的利潤須在香港及比利時課稅。若比利時的個人居民取得相類似收入，比利時稅局會就有關收入的稅款提供 50%的寬免，而有關寬免不適用於居民公司。在該協定下，比利時居民公司及個人的有關收入將獲得全數豁免，以避免雙重徵稅。

11. 此外，在沒有全面性協定的情況下，香港居民在比利時賺取(非歸因於常設機構)的專利權費收入，在減去 15%的定額扣減後須繳交15%的預扣稅。在該協定下，預扣稅率將降至 5%(不設 15%的定額扣減)。香港居民在比利時賺取(非歸因於常設機構)的毛利息收入，在沒有全面性協定的情況下，須繳交 15%的預扣稅。在該協定下，預扣稅率將降至 10%。香港居民從比利時國際航運賺取的利潤，在沒有全面性協定的情況下，須在比利時課稅。在該協定下，有關收入將獲豁免在比利時課稅。

12. 該協定的主要條文摘要載於**附件 C**。**附件 D** 列表比對在現時沒有協定和在有協定下，對源於兩地的一些收入的稅務處理方法。根據該協定的處理方法可實際節省稅款的例子則載於**附件 E**。

13. 除了可為比利時與香港納稅人帶來實質稅款節省外，該協定亦會帶來下列益處:

(a) 為未來投資者提供一個更明確和穩定的投資環境，理由是雙邊協定明確劃分了協定雙方的徵稅權，以及訂明一些收入的稅率上限。由於該協定經批准後具約束力，即使日後其中一方的稅務政策單方面作出變更，亦不會凌駕於該協定的條款之上。

(b) 透過該協定與比利時稅局建立的正式關係及對話渠道，可用以解決可能產生與跨境徵稅有關的難題。

14. 整體來說，該協定有助投資者評估其經濟活動所須承擔的稅務負擔，有助加強兩地的經濟貿易連繫，以及鼓勵比利時企業在港營商或投資，反之亦然。

15. 香港十分希望與主要的貿易及投資伙伴建立避免雙重徵稅協定的網絡。與比利時訂立該協定，是我們這方面工作的一個重要里程碑。

藉着這個全面性協定網絡，我們能與區內已經建立這類網絡的其他地方看齊，從而進一步增強本港在吸引投資方面的競爭力。

協定的影響

對財政的影響

16. 政府將要放棄目前徵收的部分稅收，當中涉及比利時商人並非從香港的常設機構所得的利潤、比利時航運營運者的利潤，以及本地商人從比利時所得的專利權費收入。然而，由於這些活動的規模並不龐大，故此對財政不會造成重大影響。

對公務員隊伍的影響

17. 稅務局將因為須處理比利時根據該協定所提出的資料交換要求有新增工作。稅務局可透過內部重行調配，應付這項工作。

對經濟的影響

18. 該協定可促進香港與比利時的商業活動，並有利於香港的經濟發展。香港商人在比利時從事經濟活動的稅務負擔將得以減輕，反之亦然。

對可持續發展的影響

19. 該協定對可持續發展並無重大影響，但可推動比利時商人在香港設立業務。

公眾諮詢

20. 政府在一九九八至九九年度財政預算案中，首次公布與香港的主要貿易及投資伙伴訂立全面性協定的政策。商界人士對這項建議表示歡迎。政府在二零零二年進行諮詢時，國際商貿委員會大致對政府與

其他國家磋商及訂立有關協定，表示支持。部份委員表示欠缺全面性協定網絡可能會窒礙外國對香港的投資。

未來路向

21. 根據《稅務條例》(第 112 章)第 49 條的規定，如行政長官會同行政會議藉命令宣布，已與香港以外地區的政府訂立該命令中所指明的安排，旨在就該地區的法律所施加的入息稅及其他相類似性質的稅項給予雙重課稅寬免，而該等安排的生效是屬於有利的，則該等安排會對根據該條例所徵收的稅項具有效力。我們現正根據《稅務條例》第 49 條擬備命令，使該協定得以實施。該命令屬於附屬法例，需要通過立法會非正面審議的程序。

22. 在雙方批准程序完成後，該協定將自下一課稅年度起生效(香港稅項由二零零四年四月一日起適用，而比利時稅項則由二零零四年一月一日起適用)。

財經事務及庫務局
二零零三年十二月
(FIN CR 10/2041/46)

附件

附件 A　　香港／比利時全面性避免雙重徵稅協定

附件 B　　香港簽訂的安排／協定一覽表

附件 C　　協定的主要條文摘要

附件 D　　在現時沒有協定和有協定下的稅務處理方法比對

附件 E　　根據協定的處理方法可實際節省稅款的例子

附件 **A**

AGREEMENT

BETWEEN

THE HONG KONG SPECIAL ADMINISTRATIVE REGION

OF THE PEOPLE'S REPUBLIC OF CHINA

AND

THE KINGDOM OF BELGIUM

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE'S REPUBLIC OF CHINA

AND

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

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

Have agreed as follows :

CHAPTER I

SCOPE OF THE AGREEMENT

Article 1

Persons covered

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

Article 2

Taxes covered

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

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

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

   (a) in the case of the Hong Kong Special Administrative Region :

      (i) profits tax ;
      (ii) salaries tax ;
      (iii) property tax,

      whether or not charged under personal assessment ;

(b) in the case of Belgium :

(i) the individual income tax ;
(ii) the corporate income tax ;
(iii) the income tax on legal entities ;
(iv) the income tax on non-residents ;
(v) the supplementary crisis contribution,

including the prepayments and, subject to paragraph 2 of Article 3, the surcharges on these taxes and prepayments.

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, as well as any other taxes falling within the provisions of paragraph 2 which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any substantial changes that have been made in their respective taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as “Hong Kong Special Administrative Region tax” or “Belgian tax” respectively.

CHAPTER II

DEFINITIONS

Article 3

General definitions

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

(a) (i) the term “Hong Kong Special Administrative Region” means the Hong Kong Special Administrative Region of the People’s Republic of China ; used in a geographical sense, it means the land and sea comprised within the boundary of the Hong Kong Special Administrative Region, including Hong Kong Island, Kowloon, the New Territories and the waters of Hong Kong ;

(ii) the term “Belgium” means the Kingdom of Belgium ; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights with respect to the exploration for and exploitation of the natural resources of the seabed and subsoil thereof and the above-lying waters ;

(b) the term “business” includes the performance of professional services and of other activities of an independent character ;

(c) the term “company” means any body corporate, or any partnership or other entity that is treated as a body corporate for tax purposes in the Contracting Party in which it is a resident ;

(d) the term “competent authority” means :

(i) 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 ;

(ii) in the case of Belgium, the Minister of Finance or his authorised representative ;

(e) the term “Contracting Party” means the Hong Kong Special Administrative Region or Belgium, as the context requires ;

(f) the term “enterprise” applies to the carrying on of any business ;

(g) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident in a Contracting Party and an enterprise carried on by a resident in the other Contracting Party ;

(h) 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 ;

(i) the term “person” includes an individual, a company and any other body of persons and, in the case of Hong Kong Special Administrative Region, includes an estate, a trust and a partnership.

2. In the Agreement, the terms “Hong Kong Special Administrative Region tax” and “Belgian tax” do not include any penalty or interest imposed under the laws in force in either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.

3. In the application of the provisions 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 laws in force in that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws in force in that Party prevailing over a meaning given to the term under other laws in force in that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term “a resident in a Contracting Party” means any person who, under the laws in force in that Party, is liable to tax therein by reason of his domicile, residence, place of management or incorporation or any other criterion of a similar nature, and also includes that Party and any political subdivision or local authority thereof. This term, however, does not include any person who is

liable to tax in that Party in respect only of income from sources in that Party or capital situated therein.

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

(a) he shall be deemed to be a resident only in 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 in 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 he has not a permanent home available to him in either Party, he shall be deemed to be a resident only in the Party in which he has an habitual abode ;

(c) if he has an habitual abode in both Parties or in neither of them, 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 in both Contracting Parties, then it shall be deemed to be a resident only in the Party in which its place of effective management is situated.

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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources ; and
(g) a building site or a construction, assembly, installation or dredging project which exists for more than six months in any 12-month period.

3. An enterprise shall be deemed to have a permanent establishment in a Contracting Party and to carry on business through that permanent establishment if :

(a) it carries on supervisory activities in that Party for more than 6 months in any 12-month period in connection with a building site, or a construction, assembly, installation or dredging project which is being undertaken in that Party ; or

(b) it furnishes services, including consultancy services, through employees or other personnel engaged by it for such purpose, but only where activities of that nature continue within that Party for a period or periods aggregating more than 6 months within any 12-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, display, or delivery 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, display or delivery ;

(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, a person acting in a Contracting Party on behalf of an enterprise of the other Contracting Party – other than an agent of an independent status to whom paragraph 6 applies – shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Party if :

(a) the person has, and habitually exercises in that Party, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise or to those activities 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) a stock of goods or merchandise belonging to the enterprise from which the person habitually fills orders on behalf of the enterprise is maintained in that Party.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that 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**.**

7. The fact that a company which is a resident in a Contracting Party controls or is controlled by a company which is a resident in 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.

CHAPTER III

TAXATION OF INCOME

Article 6

Income from immovable property

1. Income derived by a resident in 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 laws in force in 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 explore for or 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 apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. Any property or right referred to in paragraph 2 shall be regarded as situated where the land, standing timber, mineral deposits, quarries, sources or natural resources, as the case may be, are situated or where the exploration or working may take place.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

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 or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred), whether in the Contracting Party in which the permanent establishment is situated or elsewhere. No such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Nothing in paragraph 2 shall preclude a Contracting Party from determining the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other methods as may be prescribed by the laws of that Party ; the method so adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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.

7. For the purpose of the preceding paragraphs of this Article, 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.

Article 8

Shipping and air transport

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

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

3. For the purpose of this Article, profits from the operation in international traffic of ships or aircraft shall include in particular :

(a) revenue and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including :

(i) income derived from the lease by the enterprise of ships or aircraft on a charter basis fully equipped, manned and supplied, used in international traffic ;

(ii) income derived by the enterprise from the sale of tickets and other similar documents for and the provision of services connected with such transport for the enterprise itself or for any other enterprise ;

(iii) interest on funds directly connected with the operation of ships or aircraft in international traffic ;

(b) profits derived from the lease by the enterprise on a bare boat charter basis of ships or aircraft used in international traffic, when such lease is an occasional source of income for such enterprise ;

(c) profits derived from the lease of containers by the enterprise, when such lease is supplementary or incidental to its operations in international traffic.

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 such an adjustment as it considers appropriate 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 in a Contracting Party to a resident in the other Contracting Party may be taxed in that other Party.

2. However, such dividends may also be taxed in the Contracting Party in which the company paying the dividends is a resident and according to the laws in force in that Party, but if the beneficial owner of the dividends is a resident in the other Contracting Party, the tax so charged shall not exceed :

   (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends ;

(b) 15 per cent of the gross amount of the dividends in all other cases.

Notwithstanding the preceding provisions of this paragraph, dividends shall not be taxed in the Contracting Party in which the company paying the dividends is a resident if the beneficial owner of the dividends is a company which is a resident in the other Party and which at the moment of the payment of the dividends holds, for an uninterrupted period of at least 12 months, shares representing directly at least 25 per cent of the capital of the company paying 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 and other income assimilated to income from shares by the tax laws in force in the Contracting Party in which the company making the distribution or payment is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident in a Contracting Party, carries on business in the other Contracting Party in which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident in 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 in that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment 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 in 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 in force in that Party, but if the beneficial owner of the interest is a resident in 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, interest shall be exempted from tax in the Contracting Party in which it arises if it is :

   (a) Interest on commercial debt-claims – including debt-claims represented by commercial paper – resulting from deferred payments for goods, merchandise or services supplied by an enterprise ;
   (b) Interest paid in respect of a loan granted, guaranteed or insured or a credit extended, guaranteed or insured under a scheme organized by a Contracting Party or one of its political subdivisions or local authorities in order to promote the export ;

   (c) Interest on debt-claims or loans of any nature – not represented by bearer instruments – paid to banking enterprises ;

   (d) Interest on deposits made by an enterprise with a banking enterprise ;

   (e) Interest paid to the other Contracting Party or one of its political subdivisions or local authorities.

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, including income from government securities and income from bonds or debentures, and premiums and prizes attaching to such securities, bonds or debentures. However, the term “interest” shall not include for the

purpose of this Article penalty charges for late payment or interest regarded as dividends under paragraph 3 of Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident in a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident in that Party. Where, however, the person paying the interest, whether or not he is a resident in a Contracting Party, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment 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, for whatever reason, exceeds the amount which might have been expected to 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 in force in 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 in 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 in force in that Party, but if the beneficial owner of the

royalties is a resident in the other Contracting Party, the tax so charged shall not exceed 5 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 consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, 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 in a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident in that Party. Where, however, the person paying the royalties, whether or not he is a resident in a Contracting Party, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment 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, for whatever reason, exceeds the amount which might have been expected to 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 in force in each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 13

Capital gains

1. Gains derived by a resident in 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) 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 Contracting Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company more than 50 per cent of the value of which is derived directly or indirectly from immovable property situated in the other Contracting Party, may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation :

   (a) of shares quoted on a recognised stock exchange of one of the Parties ; or

   (b) of shares alienated or exchanged in the framework of a reorganisation of a company, of a merger, of a scission or of a similar operation ; or

   (c) of shares more than 50 per cent of the value of which is derived from immovable property in which the company carries out its activity.

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 in which the alienator is resident.

Article 14

Income from employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident in 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 in 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 12-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 in the other Party, and

   (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party, and

   (d) the remuneration is taxable in the first-mentioned Party according to the laws in force in that Party.

3. Notwithstanding the preceding paragraphs 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 may be taxed in that Party.

Article 15

Directors' fees

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

2. Remuneration derived by a person referred to in paragraph 1 from a company which is a resident in a Contracting Party in respect of the discharge of day-to-day functions of a managerial, technical, commercial or financial nature may be taxed in accordance with the provisions of Article 14, as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the "employer" were references to the company.

Article 16

Artistes and sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident in a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of the personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 17

Pensions and annuities

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident in a Contracting Party in consideration of past employment, and annuities, may be taxed in the Contracting Party in which they arise. This provision shall also apply to pensions and other similar remuneration paid by a Contracting Party under social security laws in force in that Party or paid under a public scheme in force in that Party in order to supplement the benefits of such social security laws.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Any alimony or other maintenance payment paid by a resident in a Contracting Party to a resident in the other Contracting Party shall be taxable only in the first-mentioned Party. To the extent such payments are not allowed as a relief to the payer in the first-mentioned Party, they shall be deemed to be taxed in that Party for the purposes of Article 22.

4. Pensions shall be deemed to arise in a Contracting Party if paid by or out of a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, where such pension fund or institution is recognised for tax purposes or regulated in accordance with the laws of that Party.

Article 18

Government service

1. Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party. 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 in that Party who did not become a resident in that Party solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

3. The provisions of the preceding paragraphs of this Article shall not apply to salaries, wages and other similar remuneration or to pensions in respect of services rendered in connection with any trade or business carried on by a Contracting Party or a political subdivision or local authority thereof. In that case, the provisions of Article 14, 15, 16 or 17 as the case may be, shall apply.

Article 19

Students

Payments which a student, trainee or business apprentice who is or was immediately before visiting a Contracting Party a resident in 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 20

Other income

1. Items of income of a resident in 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 in a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income not dealt with in the foregoing Articles of this Agreement derived by a resident in a Contracting Party from sources in the other Contracting Party may also be taxed in that other Party, and according to the law of that other Party.

CHAPTER IV

TAXATION OF CAPITAL

Article 21

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident in a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.

2. Capital represented by 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 may be taxed in that other Party.

3. Capital represented by ships and aircraft owned and operated by an enterprise of a Contracting Party in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.

4. All other elements of capital of a resident in a Contracting Party shall be taxable only in that Party.

CHAPTER V

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 22

Methods for elimination of double taxation

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

   (a) Subject to the provisions of the laws in force in the Hong Kong Special Administrative Region from time to time which relate 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), Belgian tax paid under the law of Belgium and in accordance with this Agreement, whether directly or by deduction, in respect of income, profits or gains derived by a person who is a resident in the Hong Kong Special Administrative Region from sources in Belgium, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of the same income, profits or gains, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of the same income, profits or gains in accordance with the tax laws of the Hong Kong Special Administrative Region.

(b) Income, profits or gains derived by a resident in the Hong Kong Special Administrative Region which, under any provision of the Agreement, may be taxed in Belgium shall, for the purposes of sub-paragraph (a), be deemed to be income, profits or gains from sources in Belgium.

2. In the case of Belgium, double taxation shall be avoided as follows :

(a) Where a resident in Belgium derives elements of income, not being dividends, interest or royalties, which may be taxed in the Hong Kong Special Administrative Region in accordance with the provisions of this Agreement, and which are taxed there, Belgium shall exempt such elements of income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

(b) Dividends derived by a company which is a resident in Belgium from a company which is a resident in the Hong Kong Special Administrative Region shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.

Where a resident in Belgium derives from a company which is a resident in the Hong Kong Special Administrative Region dividends which are included in his aggregate income for Belgian tax purposes and which are not exempted from the corporate income tax according to this sub-paragraph, Belgium shall deduct from the Belgian tax relating to these dividends, Hong Kong Special Administrative Region tax levied on these dividends in accordance with Article 10. This deduction shall not exceed that part of the Belgian tax which is proportionally relating to these dividends.

(c) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident in Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, Hong Kong Special Administrative Region tax levied on that income shall be allowed as a credit against Belgian tax proportionally relating to such income.

(d) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident in Belgium through a permanent establishment situated in the

Hong Kong Special Administrative Region, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in the Hong Kong Special Administrative Region by reason of compensation for the said losses.

CHAPTER VI

SPECIAL PROVISIONS

Article 23

Non-discrimination

1. Persons who, in the case of Belgium, are Belgian 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 (in the case of Belgium) or persons who have the right of abode or are incorporated or otherwise constituted therein (in the case of the Hong Kong Special Administrative Region) of that other Party in the same circumstances, in particular with respect to residence, are or may be subjected.

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 in 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, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident in 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 in the first-mentioned Party. Similarly, any debts of an enterprise of a Contracting Party to a resident in the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident in 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 in 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.

Article 24

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 domestic laws in force in those Parties, present his case to the competent authority of the Contracting Party in which he is a resident, or if his case comes under paragraph 1 of Article 23 to that of the Contracting Party in which he is considered to be a national (in the case of Belgium) or in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region). 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 domestic laws in force in 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.

4. The competent authorities of the Contracting Parties may agree on administrative measures necessary to carry out the provisions of the Agreement and particularly on the proofs to be furnished by residents in either Contracting Party in order to benefit in the other Party from the exemptions or reductions of tax provided for in the Agreement.

5. The competent authorities of the Contracting Parties shall communicate with each other directly for the purpose of giving effect to the provisions of the Agreement.

Article 25

Exchange of information

1. The competent authorities of the Contracting Parties shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic 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. Any information received by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws in force in 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 the first sentence. 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, including, in the case of the Hong Kong Special

Administrative Region, the decisions of the Board of Review. Information received shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting Party originally furnishing the information.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting Party the obligation :

(a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting Party ;

(b) to supply information which is not obtainable under the laws in force in either Contracting Party or in the normal course of the administration of either 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).

Article 26

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 27

Miscellaneous rules

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to the Agreement.

CHAPTER VII

FINAL PROVISONS

Article 28

Entry into force

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

2. The provisions of the Agreement shall have effect :

   (a) in the Hong Kong Special Administrative Region :

   - in respect of Hong Kong Special Administrative Region tax for any year of assessment beginning on or after 1 April 2004 ;

   (b) in Belgium :

   - in respect of taxes due at source on income credited or payable on or after 1 January 2004 ;

   - in respect of other taxes charged on income of taxable periods beginning on or after 1 January 2004 ;

   - in respect of taxes on capital charged on elements of capital existing on or after 1 January 2004.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving to the other Contracting Party written notice of termination not later than 30 June of any calendar year from the fifth year following that in which the Agreement entered into force. In such event, the Agreement shall cease to have effect :

(a) in the Hong Kong Special Administrative Region :

- in respect of Hong Kong Special Administrative Region tax for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice of termination is given ;

(b) in Belgium :

- in respect of taxes due at source on income credited or payable on or after 1 January in the calendar year next following that in which the notice of termination is given ;

- in respect of other taxes charged on income of taxable periods beginning on or after 1 January in the calendar year next following that in which the notice of termination is given ;

- in respect of taxes on capital charged on elements of capital existing on or after 1 January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Hong Kong, this 10th day of December 2003, in the English language.

FOR THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA :

FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM :

PROTOCOL

At the time of signing the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (the "Agreement") the Governments of the Contracting Parties have agreed upon the following provisions which shall form an integral part of the Agreement.

1. Ad Article 3, paragraph 2 :

   In the case of the Hong Kong Special Administrative Region, "penalty or interest" includes, without limitation, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith, and additional tax assessed for infringement of or failure to comply with its tax laws.

2. Ad Article 4, paragraph 1 :

   In the case of the Hong Kong Special Administrative Region the term "resident of a Contracting Party" means :

   (a) any individual who ordinarily resides in the Hong Kong Special Administrative Region in a year of assessment ;

   (b) 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 ;

   (c) a company incorporated in the Hong Kong Special Administrative Region or if incorporated outside the Hong Kong Special Administrative Region having its central management and control in the Hong Kong Special Administrative Region ;

(d) any other person constituted under the laws in force in the Hong Kong Special Administrative Region or if constituted outside the Hong Kong Special Administrative Region having its central management and control in the Hong Kong Special Administrative Region.

The last sentence of that paragraph does not preclude a person from being treated as a resident in a Contracting Party by reason of a territorial source principle in the taxation system of that Party.

3. Ad Article 7 and Article 11 :

In the case of the Hong Kong Special Administrative Region, the term “banking enterprise” means a financial institution.

4. Ad Article 11, paragraph 3 :

With respect to Belgium, the provisions of sub-paragraph (b) apply in any case to :

- interest on a loan or credit for which a financial support is granted after advice of the Committee for financial support to export (“Finexpo”) ;

- interest on a loan or credit granted by the Association for the coordination of medium-term financing of Belgian export (“Creditexport”) ;

- interest on a loan or a credit insured by the National Office of Del Credere.

5. Ad Article 14, paragraph 1 :

An employment is exercised in a Contracting Party when the activity in respect of which the salaries, wages and other similar remuneration are paid**,** is effectively carried on in that Party. This means that the employee is physically present in that Party for carrying on the activity there.

6. Ad Article 15, paragraph 2 :

The provisions of this paragraph shall also apply, in the case of Belgium, to remuneration received by a resident in the Hong Kong Special Administrative Region in respect of that resident's personal activity as a partner of a company, other than a company with share capital, which is a resident of Belgium.

7. Ad Article 22, paragraph 2, sub-paragraph (a) :

(a) Without prejudice to paragraph 3 of Article 17, elements of income which a resident in Belgium receives shall not be deemed to be taxed in the Hong Kong Special Administrative Region when these elements of income are not included in the basis on which Hong Kong Special Administrative Region tax is due. Consequently elements of income which are considered to be not taxable by the laws in force in the Hong Kong Special Administrative Region or which such laws exempt from Hong Kong Special Administrative Region tax, shall not be considered to be taxed.

(b) Dividends paid in respect of a holding effectively connected with a permanent establishment situated in the Hong Kong Special Administrative Region through which a resident in Belgium carries on business, interest paid in respect of a debt-claim effectively connected with such permanent establishment, and royalties paid in respect of a right or property effectively connected with such permanent establishment, shall be exempted from taxation in Belgium in accordance with the provisions of paragraph 2(a) of Article 22.

8. Ad Article 27 :

With respect to the Hong Kong Special Administrative Region, "laws and measures concerning tax avoidance" includes sections 5B(2), 9(1A), 9A, 15(1)(j), 15(1)(k), 15(1)(1), 16(2), 16E(2A), 16E(2B), 18D(2A), 20, 21A(1)(a), 22B, 38B, 39E, 61, 61A and 61B of the Inland Revenue Ordinance, Chapter 112 of the Laws of Hong Kong.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Hong Kong, this 10th day of December 2003, in the English language.

FOR THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA :	**FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM :**

附件 B

香港已訂立的避免雙重徵稅安排/協定

全面性避免雙重徵稅安排

1. 中國內地

限於空運的避免雙重徵稅安排

1. 孟加拉
2. 比利時
3. 加拿大
4. 克羅地亞
5. 丹麥
6. 愛沙尼亞
7. 德國
8. 以色列
9. 澳門特區
10. 中國內地
11. 毛里求斯
12. 荷蘭
13. 新西蘭
14. 挪威
15. 韓國
16. 俄羅斯
17. 瑞典
18. 英國

限於航運的避免雙重徵稅協定

1. 美國
2. 英國
3. 荷蘭
4. 德國
5. 挪威

限於空運與航運的避免雙重徵稅協定

1. 新加坡

附件 C

香港/比利時全面性避免雙重徵稅協定(全面性協定)

主要條文摘要

與比利時訂立的全面性協定涵蓋以下的稅項：就香港而言，有(i)利得稅、(ii)薪俸稅及(iii)物業稅；而就比利時而言，則有(i)個人入息稅、(ii)公司所得稅、(iii)法律實體所得稅、(iv)非居民的入息稅及(v)附加危機稅。

2. 協定處理締約一方居民(“居民地”)從締約另一方(“來源地”)所取得的收入的徵稅的事宜。

<u>獨有徵稅權</u>

3. 假若協定把收入的徵稅權單獨分配予締約的一方(居住地或來源地)，則不會出現雙重徵稅情況。協定訂明**以下各類收入僅可在居住地徵稅**：

(a) 企業所得利潤，但企業通過設在來源地的常設機構進行業務的除外(即企業進行全部或部分業務的固定營業場所)；

(b) 以船舶及飛機經營國際運輸業務所得的利潤；

(c) 受僱的收入，但在來源地從事受僱工作除外；

(d) 並未在協定內明確予以處理的資本收益；以及

(e) 並未在協定內明確予以處理的其他收入，除非有關收入(不包括資本收益)得自來源地。

4. 締約一方的政府所支付的受僱收入及退休金，通常僅在**該一方(來源地)徵稅**。

<u>共有徵稅權</u>

5. 倘若兩個徵稅地區就同一項收入具有徵稅權，按協定的規定，居民地必須就其居民任何被雙重徵稅的收入提供雙重徵稅寬免(即**來源地擁有首先徵稅權**，而**居民地則只有第二徵稅權**)。協定訂明**以下各類收入可在兩地徵稅**：

(a) 企業通過常設機構在來源地進行業務所得的利潤，但以得自該常設機構的利潤為限，以及自轉讓該常設機構的業務產業所得的收益；

(b) 得自位於來源地的不動產所得的收入及自轉讓該等產業所得的收益；

(c) 自來源地居民所取得的被動性收入，即股息、利息及版權費 (來源地的徵稅權須受指明的稅率上限所規限：就股息而言，如收款人為公司並持有支付股息公司最少 25%或 10%的資本，稅率分別定為 0%或 5%，而其他情況一概為 15%；就利息而言，稅率為 10%；至於版權費，稅率為 5%)；

(d) 藝術家及運動員在來源地進行專業活動所得的收入；

(e) 在來源地受僱於非政府機構或受僱於從事國際運輸的船舶或飛機上工作所取得的報酬；

(f) 得自來源地居民公司所得的董事費；

(g) 非政府機構的退休金；以及

(h) 並未在協定內明確予以處理的其他收入(不包括資本收益)，而有關收入得自來源地。

6. 一般而言，如兩地均擁有徵稅權，納稅人可藉以下其中一種方式獲得雙重徵稅寬免：豁免方式，即來源地的應課稅收入在居住地可獲豁免課稅；或抵免方式，即來源地的應課稅收入在居住地須予課稅，但在來源地所徵收的稅款，在居民地就該等收入徵收的稅款中獲得抵免。香港將會藉抵免方式為居民提供雙重徵稅寬免，比利時則視乎有關收入的性質而決定寬免方式。

附件 D

香港/比利時全面性避免雙重徵稅協定(全面性協定)

在現時沒有協定和在有協定下稅務處理方法的比對

A. 比利時居民從香港賺取的收入

		現時情況	根據全面性協定
1.	營業利潤 (a) 可歸因於設於香港的常設機構	香港：徵稅。 比利時：徵稅，但如屬個人經營所得及已在香港課稅，按原來稅率的50%徵稅。	香港：徵稅。 比利時：獲豁免徵稅。
	(b) 不可歸因於設於香港的常設機構	香港：徵稅。 比利時：徵稅，但如屬個人經營所得及已在香港課稅，按原來稅率的50%徵稅。	香港：不徵稅。 比利時：徵稅。
2.	香港公司付予比利時居民的股息	香港：不設預扣稅。 比利時： (a) 如股息可歸因於設於香港的常設機構，則視作營業利潤，見上文第1(a)項； (b) 如股息不可歸因於設於香港的常設機構，除非符合參與豁免的資格，否則就全數徵稅。	香港：維持不變。 比利時：維持不變
3.	比利時居民得自	香港：不設預扣稅。不過，如利息收入可歸因	香港：維持不變。

	香港的利息	於設於香港的常設機構，則視作營業利潤，見上文第 1(a)項。 比利時： (a) 如利息可歸因於設於香港的常設機構，則視作營業利潤，見上文第 1(a)項； (b) 如利息不可歸因於設於香港的常設機構，則按其淨額(即扣除開支後的款額)徵稅。如屬營業收入，可以稅收抵免方式相應寬免該等收入。	比利時： (a) 如利息可歸因於設於香港的常設機構，該筆款項獲豁免課稅(該機構獲豁免課稅)； (b) 維持不變。
4.	香港公司付予比利時居民的版權費	香港：預扣 5.25%稅款，但版權費如可歸因於設於香港的常設機構，則視作營業利潤，見上文第 1(a)項。 比利時： (a) 如版權費可歸因於設於香港的常設機構，則視作營業利潤，見上文第 1(a)項； (b) 如版權費不可歸因於設於香港的常設機構，及屬營業收入，則按淨額徵稅，並獲一項固定以收入 15/85 計算的外地稅收抵免。	香港：按版權費總額預扣 5%稅款，但版權費如可歸因於設於香港的常設機構，則視作營業利潤，見上文第 1(a)項。 比利時： (a) 如版權費可歸因於設於香港的常設機構，該筆款項獲豁免課稅(該機構獲豁免課稅)； (b) 維持不變。
5.	從香港的不動產	香港：徵稅。	香港：維持不變。

	所得的收入	比利時：徵稅，但如屬個人所得及已在香港課稅，按原來稅率的 50%徵稅；	比利時：獲豁免徵稅。
6.	空運	根據限於航空公司收入的避免雙重徵稅協定： 香港：獲豁免徵稅。 比利時：徵稅。	限於航空公司收入的避免雙重徵稅協定會納入全面性協定內。協定生效後維持不變。
7.	航運	香港：就在香港起運收入徵稅。 比利時：徵稅。	香港：獲豁免徵稅。 比利時：徵稅。
8.	受僱的收入	香港： (a) 香港受僱工作：徵稅（見附註 1）； (b) 並非香港受僱工作：就在香港工作期間所得收入徵稅。 比利時：如已在香港課稅，按應繳稅款的 50%徵稅。	香港：就在香港工作期間所得收入(不論是否香港受僱工作)全部徵稅(如符合第 14 條的全部四項條件，則可獲豁免徵稅)(見附註 2)。 比利時：如已在香港課稅，可獲豁免徵稅；如沒有在香港課稅，則須徵稅。

B. 香港居民從比利時賺取的收入

		現時情況	根據全面性協定
1.	業務利潤 (a) 可歸因於設於比利時的	香港：通常無須徵稅；但如須徵稅，不能就在比利時所繳稅款給予寬免。	香港：通常無須徵稅；但如須徵稅，在比利時所繳稅款可予抵免。

	常設機構	比利時：徵稅。	比利時：維持不變。
	(b) 不可歸因於設於比利時的常設機構	香港：通常無須徵稅，但如須徵稅，不能就在比利時所繳稅款給予寬免。 比利時：不徵稅或根據當地法例徵稅。	香港：通常無須徵稅；但如須徵稅，容許其在比利時所繳稅款用作抵免。 比利時：不徵稅。
2.	比利時的公司付予香港特區居民的股息	香港：不徵稅。 比利時： (a) 如股息可歸因於設於比利時的常設機構，則視作營業利潤，見上文第1(a)項； (b) 如股息不可歸因於設於比利時的常設機構，須徵收15%／25%預扣稅。	香港：維持不變。 比利時： (a) 如股息可歸因於設於比利時的常設機構，則視作營業利潤，見上文第1(a)項； (b) 如股息不可歸因於設於比利時的常設機構，而 — 香港特區居民公司持有比利時的公司資本不少於25%，則無須徵收預扣稅； — 香港特區居民公司持有比利時的公司資本不少於10%，則預扣稅額上限為5%； — 在其他情況下，預扣稅額上限一概為15%。
3.	香港特區居民得自比利時的利息	香港： (a) 如利息可歸因於設於比利時的常設機	香港： (a) 如利息可歸因於設於比利時的常設機

		構，無須徵稅； (b) 如利息不可歸因於設於比利時的常設機構，無須徵稅，但收款人屬金融機構則除外，須視作營業利潤徵稅，而在比利時所繳稅款可獲扣減。 <u>比利時</u>： (a) 如可歸因於設於比利時的常設機構，則視作營業利潤徵稅； (b) 如不可歸因於設於比利時的常設機構，須徵收 15%預扣稅。	構，維持不變； (b) 如利息不可歸因於設於比利時的常設機構，無須徵稅，但收款人屬金融機構則除外，須視作營業利潤徵稅，而在比利時所繳稅款可獲抵免。 <u>比利時</u>： (a) 如可歸因於設於比利時的常設機構，則視作營業利潤徵稅，見上文第 1(a)項； (b) 如不可歸因於設於比利時的常設機構，須徵收預扣稅，並以利息總額的 10% 為限。如是第 11(3)條所屬的利息，則可獲豁免徵稅。
4.	比利時公司付予香港特區居民的版權費	<u>香港</u>： (a) 如可歸因於設於比利時的常設機構，一般無須徵稅； (b) 如不可歸因於設於比利時的常設機構，徵稅與否視乎個案的情況而定。	<u>香港</u>： (a) 如可歸因於設於比利時的常設機構，一般無須徵稅；如須徵稅，在比利時所繳稅款可獲抵免； (b) 如不可歸因於設於比利時的常設機構，徵稅與否視乎個案的情況而定；如須徵稅，在比利時所繳稅款可獲抵免。

		比利時： (a) 如可歸因於設於比利時的常設機構，則視作營業利潤徵稅； (b) 如不可歸因於設於比利時的常設機構，須就版權費總額減去 15%的固定扣減額，徵收 15%作預扣稅。	比利時： (a) 如可歸因於設於比利時的常設機構，則視作營業利潤徵稅，見上文第 1(a)項； (b) 如不可歸因於設於比利時的常設機構，須徵收預扣稅，並以版權費總額的 5%為限。
5.	從比利時的不動產所得的收入	香港：不徵稅。 比利時：徵稅。	維持不變。
6.	空運	根據限於航空公司收入的避免雙重徵稅協定： 香港：徵稅。 比利時：獲豁免徵稅。	限於航空公司收入的避免雙重徵稅協定會納入全面性協定內。協定生效後維持不變。
7.	航運	香港：不徵稅。 比利時：徵稅。	香港：不徵稅。 比利時：獲豁免徵稅。
8.	受僱的收入	香港： (a) 香港受僱工作：徵稅(見附註 1)； (b) 並非香港受僱工作：根據在香港提供的服務徵稅。 比利時：根據當地法例徵稅。	香港： (a) 香港受僱工作：徵稅(見附註 1)或按收入總額徵稅，但有稅收抵免； (b) 並非香港受僱工作：根據在香港提供的服務徵稅。 比利時：只就在比利時工作期間所得收入徵稅(如符合第 14 條的全部四項條件，則可獲豁免

			徵稅)(見附註 2)。

附註 1： 《稅務條例》第 8(1A)(c)條訂明入息不包括任何人(比利時或香港居民)由於在比利時提供服務所取得的入息，而該等入息已在比利時課稅及該人已繳交有關稅款。

附註 2： 根據第 14(2)條，若符合以下條件，則協定甲方的居民在協定乙方工作期間所取得的受僱報酬，只需要在甲方繳稅：

(a) 受薪人士在有關課稅期的首日或最後一日計算的任何 12 個月期間，在乙方停留連續或累計不超過 183 天；以及

(b) 該項報酬由並非乙方居民的僱主或其代表支付；以及

(c) 該項報酬不是由僱主設在乙方的常設機構所負擔；以及

(d) 根據甲方的有效法例，該項報酬須要在甲方課稅。

附件 E

香港／比利時全面性避免雙重徵稅協定
避免雙重徵稅寬免示例

備註：

1 歐元＝9 港元
比利時稅率是以 2003 稅務年度爲基礎，不包括該國徵收的附加費。
香港公司稅率是以 2003/04 課稅年度爲基礎。

例 1：在香港設有常設機構的比利時公司

A 公司是比利時居民，在香港設立分支機構(A 公司的唯一海外機構)經營業務。該分公司截至 2004 年 12 月 31 日爲止的年度在香港取得的應評稅利潤是 360,000 港元(即 40,000 歐元)。A 公司的利潤總額(包括香港分公司利潤)是 85,000 歐元。

(a) 沒有避免雙重徵稅協定下的稅務負擔

(i) 香港分支機構的 360,000 港元利潤(2004/05 課稅年度)
＝360,000 港元× 17.5%＝**63,000 港元**。

(ii) 比利時公司的利潤總額 85,000 歐元(包括香港分支機構的 40,000 歐元)

應課稅利潤	85,000 歐元
按遞進稅率計(28%至 36%)	28,600 歐元
應繳稅款實額	**28,600 歐元**
	[257,400 港元]

稅務負擔總額＝(63,000＋257,400)港元＝320,400 港元

(b) 按避免雙重徵稅協定計算稅務負擔

(i) 香港分支機構的 360,000 港元利潤：同上，即**港元 63,000**

(ii) 比利時公司的利潤總額 85,000 歐元(包括香港分公司的 40,000 歐元)

應課稅利潤(85,000 – 40,000)歐元	45,000 歐元
應繳稅款實額	
[45,000 歐元利潤按遞進稅率(28% - 36%)計算]	**14,200 歐元**
	[127,800 港元]

稅務負擔總額＝(63,000＋127,800)港元＝190,800 港元

節省稅款＝320,400 港元－190,800 港元＝129,600 港元(即 40.45%)

例 2－比利時個別人士在香港從事受僱工作和自座落香港的不動產取得收入

B 先生是比利時居民，受僱於一家比利時公司爲亞洲區財務經理，經常來港公幹。在截至 2005 年 3 月 31 日爲止的年度內，他在香港停留 209 天。他在截至 2005 年 3 月 31 日爲止的年度的收入是 70,000 歐元(630,000 港元)。B 先生在香港購置並出租了一個單位，在截至 2005 年 3 月 31 日爲止的年度的租金收入是 112,500 港元(即 12,500 歐元)。B 先生未婚。

(a) 沒有避免雙重徵稅協定下的稅務負擔

(i) 在香港

薪俸稅		
應評稅入息		
(港元 630,000× $^{209}/_{365}$)	360,000[1] 港元	
減：個人免稅額	(100,000 港元)	
應課稅入息淨額	260,000 港元	
按遞進稅率課稅		41,200 港元
物業稅		
應評稅值	112,500 港元	
減：20%扣除額	(22,500 港元)	
應評稅值	90,000 港元	
按 16%標準稅率課稅		14,400 港元
應繳稅款淨額		**55,600 港元**
		[6,177 歐元]

(ii) 比利時的稅收期是 2004 年 1 月 1 日至 12 月 31 日(假設收入與截至 2005 年 3 月 31 日相同)

應課稅收入	82,500 歐元	
減香港繳付的稅款	(6,177 歐元)	
*減*基本免稅額	(5,480 歐元)	
	70,843 歐元	
按遞進稅率課稅(25%至 55%)		33,645 歐元
[平均稅率是 $^{33,645}/_{70,843}$＝47.49%]		

[1] 根據身處當地天數計算，在香港服務所得收入是 360,739 港元，在本例子，應評稅入息向下調整爲 360,000 港元, 即 40,000 歐元。

減避免雙重徵稅寬免－扣減就在香港已完稅的入息的比利時稅款的 50% (11,638 歐元)

應繳稅款實額 **22,007 歐元**
[198,063 港元]

稅務負擔總額＝ (55,600＋198,063) 港元＝253,663 港元

(b) 按避免雙重徵稅協定計算稅務負擔

(i) 香港的薪俸稅和物業稅：同上，即 **55,600 港元**。

(ii) 比利時的收入總額 82,500 歐元 (包括香港收入(360,000＋112,500 / 9)歐元＝52,500 歐元)

應課稅收入 [82,500－52,500-1,993 (歸屬於比利時收入的基本免稅額)] 28,007 歐元

應繳稅款淨實額 47.49%[2] **13,300 歐元**
[119,700 港元]

稅務負擔總額＝ (55,600+119,700)港元＝175,300 港元

節省稅款＝253,663 港元－175,300 港元＝78,363 港元 (即 30.89%)

[2] 得自香港的收入(這裏指薪俸稅和得自物業的租金收入)可豁免比利時稅項，但有關收入須按適用的稅率計稅，因此，平均稅率 47.49%維持不變。

例 3－香港居民公司自比利時居民公司取得股息

C 公司是香港居民，在海外沒有開設分支機構。C 公司持有一家比利時居民 D 公司的 15%股份。D 公司在 2004 年 9 月 1 日向 C 公司派發股息 15,000 歐元(135,000 港元)。

(a) 沒有避免雙重徵稅協定下 C 公司的稅務負擔

(i) 在香港－無須繳稅。

(ii) 在比利時－扣存 25%作稅款，即 **3,750 歐元**。

(b) 按避免雙重徵稅協定計算，C 公司的稅務負擔

(i) 在香港－不變，即無須繳稅。

(ii) 在比利時－扣存稅款最高限額爲 5%，即 **750 歐元**。

節省稅款＝3,750 歐元－750 歐元＝27,000 港元(3,000 歐元)(即 80%)

例 4－香港居民公司自比利時居民公司取得版權費

E 公司是香港居民，在海外沒有開設分支機構。E 公司在截至 2004 年 12 月 31 日的會計年度從比利時居民 F 公司取得版權費 900,000 港元 (100,000 歐元)。E 公司在有關年度沒有其他收入來源，並支出費用 500,000 港元，未包括在比利時所扣存的稅款。

(a) 沒有避免雙重徵稅協定下 E 公司的稅務負擔

(i) 在香港(2004/05 課稅年度)

版權費收入	900,000 港元	
*減*開支	(500,000 港元)	
應評稅利潤	400,000 港元	
利得稅(以 17.5%計)		**70,000 港元**

(ii) 在比利時

收入總額	100,000 歐元	
*減：*固定扣除額(15%)	(15,000 歐元)	
須扣存稅款的淨收入額	(85,000 歐元)	
扣存稅款(15%)		**12,750 歐元**
		[114,750 港元]

稅務負擔總額＝(70,000＋114,750)港元＝184,750 港元

(b) 按避免雙重徵稅協定計算 E 公司的稅務負擔

版權費收入	900,000 港元	
*減*開支	(500,000 港元)	
應評稅利潤	400,000 港元	
利得稅(以 17.5%計)		70,000 港元
*減*比利時扣存稅款的抵免		(45,000 港元) (見(ii))
應繳稅款淨額		**25,000 港元**

(ii) 在比利時

收入總額	100,000 歐元

稅項扣存上限爲 5%	**5,000 歐元**
(較低扣存率適用，所以沒有扣除)	**[45,000 港元]**

稅務負擔總額＝(25,000＋45,000)港元＝70,000 港元

節省稅款＝184,750 港元－70,000 港元＝114,750 港元(即 62.11%)

例 5－香港個別人士在比利時從事受僱工作

G 先生是香港居民，受僱於 H 顧問公司，該公司是一家香港居民公司。他被公司派往比利時爲一個客戶提供服務。他在 2004 年 6 月至 12 月期間曾前往比利時工作，在比利時停留時間合計 100 天。他在截至 2005 年 3 月 31 日的年度的薪酬爲 328,500 港元(36,500 歐元)。G 先生未婚。

(a) 沒有避免雙重徵稅協定下 G 先生的稅務負擔

(i) 香港薪俸稅

應評稅入息	328,500 港元
減根據《稅務條例》第 8(1A)(c)條的豁免 (328,500× $^{100}/_{365}$ 港元)	(90,000 港元)
*減*個人免稅額	(100,000 港元)
應課稅入息淨額	138,500 港元

按遞進稅率課稅 **16,900 港元**

(ii) 比利時的所得稅

應課稅收入(36,500× $^{100}/_{365}$)	10,000 歐元

應繳稅收入淨額(遞進稅率 25%至 40%) **2,771** 歐元
[24,939 港元]

稅務負擔總額＝ (16,900＋24,939) 港元＝41,839 港元

(b) 根據避免雙重徵稅協定計算下 G 先生的稅務負擔

(i) 在香港

應評稅入息	328,500 港元
減個人免稅額	(100,000 港元)
應課稅入息淨額	228,500 港元
按遞進稅率計課稅	34,900 港元

(ii) 在比利時，收入豁免繳稅，即**歐元 0**

應繳稅款總額＝34,900 港元

節省稅款＝41,839 港元－34,900 港元＝6,939 港元(即 16.59%)