

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF DENMARK) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM SHIPPING OPERATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 7 June 2005, the Council ADVISED and the Acting Chief Executive ORDERED that the Specification of Arrangements (Government of the Kingdom of Denmark) (Avoidance of Double Taxation on Income from Shipping Operation) Order (“the Order”), at *Annex*, should be made under section 49 of the Inland Revenue Ordinance (“the Ordinance”). The Order seeks to implement the Agreement for the Avoidance of Double Taxation with respect to Taxes on Income from Shipping Transport (“the Agreement”) signed with the Government of the Kingdom of Denmark on 9 December 2004.

JUSTIFICATIONS

2. Under section 49 of the 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 Agreement with

Denmark, it is necessary to declare by order that arrangements with the Government of the Kingdom of Denmark on double taxation relief with respect to taxes on income from shipping transport have been made, so as to put the arrangements into effect. We therefore propose to make the Order for the Agreement.

OTHER OPTIONS

3. There are no other options.

THE ORDER

4. **Section 1** declares that arrangements referred to in section 2 for double taxation relief in respect of income tax and any tax of a similar character have been made with the Government of the Kingdom of Denmark and should take effect. **Section 2** states that the arrangements are specified in the Schedule to the Order. The **Schedule** sets out the details of the arrangement.

LEGISLATIVE TIMETABLE

5. The legislative timetable will be -

Publication in the Gazette	17 June 2005
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Tabling in the Legislative Council	22 June 2005
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IMPLICATIONS OF THE PROPOSAL

6. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation. It has no productivity, environmental, civil service or sustainability implications.

7. Based on the current level of uplifts of the relevant shipowners, the

financial implications of the double taxation relief arrangements will not be significant. The proposal will be beneficial to Hong Kong shipowners as it will exempt them from paying tax in respect of cargo loaded in Denmark. It will also help strengthen Hong Kong's status as an international maritime centre.

PUBLIC CONSULTATION

8. The Hong Kong Shipowners Association has been consulted and it welcomes the Agreement.

PUBLICITY

9. We will issue a press release on 15 June 2005. A spokesman will be available to answer media and public enquiries.

BACKGROUND

10. Due to the international nature of shipping operations, shipping operators are more susceptible to double taxation than other taxpayers. It is therefore our objective to conclude avoidance of double taxation agreements for revenues arising from the operation of ships in international traffic with our shipping partners. We concluded the first double taxation relief arrangements on shipping income with the United States of America in 1989. In 1998, we amended our legislation to provide reciprocal tax exemption for shipping income so that Hong Kong ship operators can benefit from the tax relief offered by places with similar reciprocal tax exemption legislation. For other shipping partners who do not provide reciprocal tax exemption in their legislation or despite the existence of such legislation prefer conclusion of a bilateral agreement, we negotiate with them double taxation relief agreements for shipping income, in order to alleviate the tax burden of our ship operators in those places. Subsequently, we concluded double taxation relief agreements on shipping income with the United Kingdom, the Netherlands, Germany, Norway and Denmark in October 2000, November 2000, January 2003, October 2003 and December 2004 respectively. The Government has also signed limited double taxation agreements covering both shipping and aviation sectors with Singapore and Sri Lanka in November 2003 and March 2004

respectively.

11. The Agreement concluded with the Kingdom of Denmark in December 2004 provides that -

- (a) profits of an enterprise of a Contracting Party from the operation of ships in international traffic, including profits from the participation in a pool, a joint business or an international operating agency, shall be taxable only in that Contracting Party; and
- (b) gains by an enterprise of a Contracting Party from the alienation of ships operated in international traffic or of movable property pertaining to the operation of such ships shall be taxable only in that Contracting Party.

12. In accordance with its Article 6, the Agreement shall enter into force on the date of the later of the notifications from each of the Contracting Parties (informing the other Party the completion of the procedures required by its law for bringing the Agreement into force), and thereupon have effect in Hong Kong from the year of assessment beginning on or after 1 April in the calendar year in which the Agreement enters into force.

ENQUIRY

13. In case of enquiries about this Brief, please contact Mr Vincent TANG, Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue)(Special Duty), at 2810 3757.

Financial Services and the Treasury Bureau
15 June 2005

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF
THE KINGDOM OF DENMARK)(AVOIDANCE OF DOUBLE
TAXATION ON INCOME FROM SHIPPING OPERATION)
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 –

- (a) that the arrangements specified in section 2 have been made with the Government of the Kingdom of Denmark 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 the Kingdom; and
- (b) that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements specified for the purposes of section 1(a) are the arrangements in Articles 1 to 7 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Denmark for the Avoidance of Double Taxation with respect to Taxes on Income from Shipping Transport done in duplicate at Hong Kong on 9 December 2004 in the English language, the text of which Articles is reproduced in the Schedule.

SCHEDULE

[s. 2]

ARTICLES 1 TO 7 OF THE AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC
OF CHINA AND THE KINGDOM OF DENMARK FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT
TO TAXES ON INCOME FROM SHIPPING TRANSPORT

ARTICLE 1

Scope of the Agreement

This Agreement shall apply to enterprises of the Contracting Parties that operate ships in international traffic.

ARTICLE 2

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the term “a Contracting Party” means the Hong Kong Special Administrative Region or Denmark, as the context requires;
 - b) the term “Hong Kong Special Administrative Region” means the Hong Kong Special Administrative Region of the People's Republic of China and includes Hong Kong Island, Kowloon, the New Territories and the waters of Hong Kong;
 - c) the term “Denmark” means the Kingdom of Denmark, excluding the Faroe Islands and Greenland;
 - d) the term “enterprise of a Contracting Party” means:

- (i) in the case of the Hong Kong Special Administrative Region, a business carried on by a person and
 - the business is normally controlled or managed in the Hong Kong Special Administrative Region, or
 - the person is a company incorporated in the Hong Kong Special Administrative Region;
 - (ii) in the case of Denmark, a business carried on by a person who, under the laws of Denmark, is liable to tax by reason of domicile, residence, place of management and any other criterion of a similar nature;
- e) the term “international traffic” means any transport by a ship operated by an enterprise of a Contracting Party, except when the ship is operated solely between places in the other Contracting Party;
- f) the term “person” includes an individual, a company and any other body of persons, and, in the case of the Hong Kong Special Administrative Region, a partnership;
- g) the term “competent authority” means:
 - (i) in the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative or any person or body authorised to perform any function at present exercisable by the Commissioner or similar functions;

- (ii) in Denmark, the Minister for Taxation or his authorised representative.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Contracting Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 3

Taxes Covered

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

2. The existing taxes to which this Agreement shall apply are:

- (a) in the case of the Hong Kong Special Administrative Region,
profits tax, whether or not charged under personal assessment;
- (b) in the case of Denmark,
 - (i) the income tax to the State
(indkomstkatten til staten);
 - (ii) the income tax to the municipalities
(den kommunale indkomstskat);
 - (iii) the income tax to the county municipalities
(den amtskommunale indkomstskat).

3. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 2 of this Article, as well as any other taxes falling within the provisions of this Agreement which a Contracting Party may impose in the future. The competent authorities of the Contracting parties shall notify each other of any significant changes that have been made in their respective taxation laws and which may effect the application of the Agreement.

4. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter respectively referred to as “Hong Kong Special Administrative Region tax” and “Danish tax”.

ARTICLE 4

Shipping Transport

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

2. Profits from the operation of ships in international traffic include:

- (a) profits derived from the rental of ships on a full (time or voyage) basis, or on a bareboat basis, provided that in the case of a bareboat rental, the rental is incidental to the operation of ships in international traffic;
- (b) profits derived from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise in international traffic if such use, maintenance or rental is incidental to the operation of ships in international traffic;
- (c) profits from the sale of tickets or similar documents and the provision of services connected with such operation where such provision of services is incidental to the operation of ships in international traffic, either for the enterprise itself or for another enterprise;

(d) interest on funds directly connected with the operation of ships in international traffic.

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

4. Gains derived by an enterprise of a Contracting Party from the alienation of ships operated in international traffic or of movable property (including containers and trailers, barges and related equipment for the transport of containers) pertaining to the operation of such ships shall be taxable only in that Contracting Party.

ARTICLE 5

Mutual Agreement Procedure

The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

ARTICLE 6

Entry into Force

1. Each of the Contracting Parties shall notify the other when the procedures required by its law for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

(a) in the Hong Kong Special Administrative Region: in respect of Hong Kong Special Administrative Region tax, from the year of

assessment beginning on or after 1 April in the calendar year in which the Agreement enters into force;

- (b) in Denmark, in respect of Danish tax, from the income year beginning on or after 1 January in the calendar year in which the Agreement enters into force.

ARTICLE 7

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year, after the fifth year in which the Agreement enters 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, from the year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;
- (b) in Denmark, in respect of Danish tax, from the income year beginning on or after 1 January in the calendar year next following that in which the notice is given.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

Explanatory Note

An agreement dated 9 December 2004 has been made between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Denmark for the avoidance of double taxation with respect to income from shipping transport ("Agreement"). This Order specifies the arrangements in Articles 1 to 7 of the Agreement as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.