

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE MACAO SPECIAL ADMINISTRATIVE REGION)(AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 12 October 2004, the Council ADVISED and the Chief Executive ORDERED that the Specification of Arrangements (Government of the Macao Special Administrative Region)(Avoidance of Double Taxation on Income from Aircraft Operation) Order (“the Order”), at Annex, should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”). The Order implements the section on double taxation relief in respect of airline income and profits (“the section”) in the Air Services Arrangement (“the Arrangement”) signed with the Government of the Macao Special Administrative Region (“MSAR”) on 13 October 2003

JUSTIFICATIONS

2. 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 Arrangement, it is necessary to declare by order that arrangements with the Government of the MSAR on double taxation relief in respect of income from air services have been made, so as to put the arrangements into effect. We therefore propose to make the Order for the Arrangement.

OTHER OPTIONS

3. There are no other options.

THE ORDER

4. **Section 1** of the Order declares that arrangements specified 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 MSAR and should take effect. **Section 2** specifies the arrangements in the Articles of the Arrangement as double taxation relief arrangements under section 49 of the Ordinance. The **Schedule** to the Order sets out the text of the Articles containing the arrangement.

LEGISLATIVE TIMETABLE

5. The legislative timetable will be -

Publication in the Gazette 21 October 2004

Tabling in the Legislative Council 27 October 2004

IMPLICATIONS OF THE PROPOSAL

6. The proposed Order 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.

Financial Implications

7. The revenue foregone on non-resident aircraft operators will be compensated by the revenue of resident aircraft operators brought to charge in Hong Kong by operation of section of 23C(2A) of the Ordinance. Therefore, the revenue implication, if any, will be insignificant.

Economic Implications

8. Aircraft operators of Hong Kong and Macao will benefit from the avoidance of double taxation. The Arrangement will also enhance Hong Kong's status as an international aviation hub.

PUBLIC CONSULTATION

9. The Arrangement has been made available to the public.

PUBLICITY

10. We will issue a press release on 21 October 2004. A spokesman will be available to answer media and public enquiries.

BACKGROUND

11. Due to the international nature of airline operations, airlines are more susceptible to double taxation than other taxpayers. It is therefore Government's policy to include provisions on double taxation relief for airline income in bilateral air services agreements/arrangements negotiated between the HKSAR and our aviation partners. We have concluded such relief arrangements on airline income with Bangladesh, Belgium, Canada, Croatia, Denmark, Estonia, Germany, Israel, the Mainland of China, Mauritius, the Netherlands, New Zealand, Norway, the Republic of Korea, Russia, Sweden and the United Kingdom. We have also concluded agreements with Singapore and Sri Lanka on the avoidance of double taxation on income from air services and shipping transportation.

12. The Arrangement contains a section (Section 10) on double taxation relief in respect of airline income and profits. The Section provides that -

- (a) income or profits derived from the operation of aircraft in air services by an airline of a Party, including participation in a pool, a joint business or international operating agency, will be exempt from income tax, profits tax and all other taxes imposed in the area of the other Contracting Party;
- (b) on the basis of reciprocity, capital and assets of an airline of a Party relating to the operation of aircraft in air services will be exempt from all taxes on capital and assets imposed in the area of the other Party; and
- (c) gains from the alienation of aircraft operated in air traffic and movable property pertaining to the operation of such aircraft which are received by an airline of a Party will be exempt from any tax on gains imposed in the area of the other Party.

13. In accordance with paragraph (6) of Section 10 of the Arrangement, each Party shall notify the other the completion of the procedures required by its law for the bringing into effect of the Section and the Section shall come into effect on the date of the last written notification. The Section shall then apply, in the case of the HKSAR, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the Arrangement or the Section comes into effect, whichever is the later. The Arrangement entered into force on 13 October 2003.

ENQUIRY

14. 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
21 October 2004

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THE MACAO SPECIAL ADMINISTRATIVE REGION)
(AVOIDANCE OF DOUBLE TAXATION ON INCOME
FROM AIRCRAFT OPERATION) ORDER**

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(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 Macao Special Administrative Region with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of that territory; 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 Section 10 of the Air Services Arrangement between the Hong Kong Special Administrative Region and the Macao Special Administrative Region done in duplicate at Hong Kong on 13 October 2003 in the Chinese language, the English translation of the text of which Section is reproduced in the Schedule.

SCHEDULE

[s. 2]

SECTION 10 OF THE AIR SERVICES ARRANGEMENT BETWEEN THE
HONG KONG SPECIAL ADMINISTRATIVE REGION AND THE
MACAO SPECIAL ADMINISTRATIVE REGION

Section 10

Avoidance of Double Taxation

- (1) For the purposes of this Section, unless the context otherwise requires:
- (a) the term “an airline of a Party” means an airline incorporated and having its principal place of business in the area* of that Party;
 - (b) the term “income or profits” means revenues and gross receipts derived from the operation of aircraft in air services for the transport of persons, livestock, goods, mail or merchandise including:
 - (i) the charter or rental of aircraft;
 - (ii) the sale of tickets or similar documents and the provision of services connected with such transport either for the airline itself or for any other airline;
 - (iii) interest on funds directly connected with the operation of aircraft in air services;
 - (c) the term “competent authority” means, in the case of Hong Kong, the Commissioner of Inland Revenue or his authorized representative or any person or body authorized to perform any

functions at present exercisable by the Commissioner, or similar functions and, in the case of Macao, the Director of Finance Bureau (*Direcção dos Serviços de Finanças*) or his authorized representative.

- (2) Income or profits derived from the operation of aircraft in air services by an airline of a Party, including any income or profits attributable to its participation in a pool, a joint business or international operating agency, will be exempt from income tax, profits tax and all other taxes imposed in the area of the other Party.
- (3) On the basis of reciprocity, capital and assets of an airline of a Party relating to the operation of aircraft in air services will be exempt from all taxes on capital and assets imposed in the area of the other Party.
- (4) Gains from the alienation of aircraft operated in air services and movable property pertaining to the operation of such aircraft which are received by an airline of a Party will be exempt from any tax on gains imposed in the area of the other Party.
- (5) The competent authorities of the Parties will endeavour to resolve by consultation any difficulties or doubts arising as to the interpretation or application of this Section.
- (6) Notwithstanding Section 21 (Commencement) each Party will notify the other the completion of the procedures required by its law for the bringing into effect of this Section. This Section will come into effect on the date of the last written notification and thereupon have effect:
 - (a) in Hong Kong, for any year of assessment beginning on or after 1 April in the calendar year next following that in which this

Arrangement* or this Section comes into effect, whichever is the later;

- (b) in Macao, for any tax year beginning on or after 1 January in the calendar year next following that in which this Arrangement or this Section comes into effect, whichever is the later.

(7) Where this Arrangement is terminated under Section 20 (Duration), this Section will cease to have effect:

- (a) in Hong Kong, for any year of assessment beginning on or after 1 April in the calendar year next following that in which this Arrangement is terminated;

- (b) in Macao, for any tax year beginning on or after 1 January in the calendar year next following that in which this Arrangement is terminated.

(8) This Section will not have effect so long as an arrangement for the avoidance of double taxation with respect to taxes on income, profits, capital and gains providing for similar exemptions to those in this Section has effect between the Parties.

* Note: Section 1 of the Air Services Arrangement reads in part as follows:

“For the purpose of this Arrangement, unless the context otherwise requires:

...

- (b) the term “area”, in relation to Hong Kong, means the land and waters more particularly delineated in the map of the administrative division of the Hong Kong Special Administrative Region as promulgated in Order No. 221 of the State Council, and in relation to Macao, means the land and waters more particularly delineated in the map of the administrative division of the Macao Special Administrative Region as promulgated in Order No. 275 of the State Council;

...

- (d) the term “this Arrangement” includes the Annex hereto and any amendments to it or to this Arrangement.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

An air services arrangement dated 13 October 2003 has been made between the Government of the Hong Kong Special Administrative Region and the Government of the Macao Special Administrative Region (“Arrangement”). This Order specifies the arrangements in Section 10 of the Arrangement 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.