

## **LEGISLATIVE COUNCIL BRIEF**

Inland Revenue Ordinance  
(Chapter 112)

**SPECIFICATION OF ARRANGEMENTS (SWISS FEDERAL COUNCIL) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER**

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE REPUBLIC OF FINLAND) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER**

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE STATE OF KUWAIT) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER**

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE REPUBLIC OF KENYA) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER**

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE REPUBLIC OF ICELAND) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER**

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER**

## **INTRODUCTION**

At the meeting of the Executive Council on 7 June 2005, the Council ADVISED and the Acting Chief Executive ORDERED that -

- (a) the Specification of Arrangements (Swiss Federal Council) (Avoidance of double taxation on Income from Aircraft Operation) Order, at *Annex A*,
- (b) the Specification of Arrangements (Government of the Republic of Finland) (Avoidance of double taxation on Income from Aircraft Operation) Order, at *Annex B*,
- (c) the Specification of Arrangements (Government of the State of Kuwait) (Avoidance of double taxation on Income from Aircraft Operation) Order, at *Annex C*,
- (d) the Specification of Arrangements (Government of the Republic of Kenya) (Avoidance of double taxation on Income from Aircraft Operation) Order, at *Annex D*,
- (e) the Specification of Arrangements (Government of the Republic of Iceland) (Avoidance of double taxation on Income from Aircraft Operation) Order, at *Annex E*, and
- (f) the Specification of Arrangements (Government of the Hashemite Kingdom of Jordan) (Avoidance of double taxation on Income from Aircraft Operation) Order, at *Annex F*,

("the Orders") should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (the Ordinance). The Orders seek to implement the articles on avoidance of double taxation ("DTA Articles") in the Air Services Agreements ("ASAs") with Switzerland, Finland, Kuwait, Kenya, Iceland and Jordan.

## **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. By way of exchange of letters, the Hong Kong Special Administrative Region ("the HKSAR") has reached agreement with Switzerland and Finland in July and September 2004 respectively to amend the respective ASAs previously signed with Hong Kong to include a DTA Article. Separately, the

HKSAR entered into ASAs with Kuwait, Kenya, Iceland and Jordan on 7 April, 21 May, 9 August and 28 August 2004 respectively. Following the above, it is necessary to declare by order that arrangements with the Swiss Federal Council, the Government of the Republic of Finland, the Government of the State of Kuwait, the Government of the Republic of Kenya, the Government of the Republic of Iceland and the Government of the Hashemite Kingdom of Jordan 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 Orders.

### **OTHER OPTIONS**

3. There are no other options.

### **THE ORDER**

4. **Section 1** of each of the Orders declares that the 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 respective countries and should take effect. **Section 2** states that the arrangements are specified in the respective Schedules to the Orders. The **Schedule** sets out the text of the Articles containing the arrangements.

### **LEGISLATIVE TIMETABLE**

5. The legislative timetable will be -

|                                    |              |
|------------------------------------|--------------|
| Publication in the Gazette         | 17 June 2005 |
| Tabling in the Legislative Council | 22 June 2005 |

### **IMPLICATIONS OF THE PROPOSAL**

6. The proposed Orders are 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 the respective countries will benefit from the avoidance of double taxation. The ASAs will also enhance Hong Kong's status as an international aviation hub.

### **PUBLIC CONSULTATION**

9. Aircraft operators have been consulted on the double taxation relief arrangement. The ASAs will also be made available to the public.

### **PUBLICITY**

10. We will issue a press release on 15 June 2005. 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, Finland, Germany, Iceland, Israel, Jordan, Kenya, Kuwait, the Mainland of China, the Macao Special Administrative Region, Mauritius, the Netherlands, New Zealand, Norway, the Republic of Korea, Russia, Sweden, Switzerland 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. Each of the ASAs contains an article on double taxation relief in respect of airline income and profits. The Article 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 service, a joint business or international operating agency, shall be exempt from income tax, profits tax and all other taxes on income or profits 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 shall 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 shall be exempt from any tax on gains imposed in the area of the other Party.

13. In accordance with the articles of the ASAs, each Party shall notify the other the completion of the procedures required by its law for the bringing into effect of the DTA Articles. For the ASA with Switzerland, the DTA Article shall enter into force on the date of the last notification and have effect in the HKSAR for any year of assessment beginning on or after 1 April in the calendar year in which the Article enters into force. For the ASA with Finland, the DTA Article shall enter into force on the first day of the second calendar month next following the later of such notifications and shall thereupon have effect in respect of income, profits and gains arising on or after the first day of January 2002 and on capital and assets held on or after that date. For the ASAs with the other four countries, the DTA Articles shall enter into force on the date of the last written notification for each of the ASA and shall have effect in the HKSAR for any year of assessment beginning on or after 1 April in the calendar year next following that in which the respective ASAs or DTA articles enter into force, whichever is the later.

## **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  
15 June 2005

## **ANNEXES**

- Annex A**      **Specification of Arrangements (Swiss Federal Council) (Avoidance of double taxation on Income from Aircraft Operation) Order**
- Annex B**      **Specification of Arrangements (Government of the Republic of Finland) (Avoidance of double taxation on Income from Aircraft Operation) Order**
- Annex C**      **Specification of Arrangements (Government of the State of Kuwait) (Avoidance of double taxation on Income from Aircraft Operation) Order**
- Annex D**      **Specification of Arrangements (Government of the Republic of Kenya) (Avoidance of double taxation on Income from Aircraft Operation) Order**
- Annex E**      **Specification of Arrangements (Government of the Republic of Iceland) (Avoidance of double taxation on Income from Aircraft Operation) Order**
- Annex F**      **Specification of Arrangements (Government of the Hashemite Kingdom of Jordan) (Avoidance of double taxation on Income from Aircraft Operation) Order**

**SPECIFICATION OF ARRANGEMENTS (SWISS FEDERAL COUNCIL) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT 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 Swiss Federal Council 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 Switzerland; 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 Article 10 bis of the Agreement between the Government of Hong Kong and the Swiss Federal Council concerning Air Services done in duplicate at Hong Kong on 26 January 1988 in the English and French languages. That Article 10 bis, the English text of which is reproduced in the Schedule, was added to the Agreement by an exchange of letters between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Swiss Federal Council on 7 June 2004 and 21 July 2004.

## SCHEDULE

[s. 2]

ARTICLE 10 BIS OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF HONG KONG AND THE SWISS  
FEDERAL COUNCIL CONCERNING AIR SERVICES

**ARTICLE 10 bis****Avoidance of Double Taxation**

- (1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint business or an international operating agency, shall be taxable only in that Contracting Party.
- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be taxable only in that Contracting Party.
- (3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be taxable only in that Contracting Party.
- (4) For the purposes of this Article:
  - (a) the term “income or profits” includes revenues and gross receipts from the operation of aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including:



- (i) income and profits derived from the charter or rental of aircraft provided that such charter or rental is incidental to the operation of aircraft in international traffic;
    - (ii) interest on funds directly connected with the operation of aircraft in international traffic, but limited to interest on such funds as are reasonably necessary to manage the local operation in the area of the other Contracting Party;
  - (b) the term “international traffic” means any transport by an aircraft except when the aircraft is operated solely between places in the other Contracting Party;
  - (c) the term “airline of one Contracting Party” means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of Switzerland, an airline whose place of effective management is situated in Switzerland;
  - (d) the term “competent authority” means, 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, and, in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 17 (Settlement of

Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 21 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last notification and shall thereupon have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year in which this Article enters into force;
- (b) in Switzerland, for any taxable year beginning on or after 1st January in the calendar year in which this Article enters into force.

(7) Notwithstanding Article 19 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given;
- (b) in Switzerland, for any taxable year beginning on or after 1st January in the calendar year next following that in which notice is given.

(8) This Article shall cease to have effect in the event that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

### **Explanatory Note**

The Government of Hong Kong and the Swiss Federal Council signed an agreement concerning air services on 26 January 1988 (“Agreement”). The Agreement was amended by an exchange of letters on 7 June 2004 and 21 July 2004 to include, among other things, a provision on double taxation relief. This Order specifies the arrangements in that provision 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.

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF  
THE REPUBLIC OF FINLAND) (AVOIDANCE OF  
DOUBLE TAXATION ON INCOME FROM  
AIRCRAFT 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 Republic of Finland 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 the Republic; 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 Article 8A of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Finland concerning Air Services done in duplicate at Hong Kong on 14 January 2000 in the English language. That Article 8A, the text of which is reproduced in the Schedule, was added to the Agreement by an exchange of letters between the two Governments on 9 September 2004 and 13 September 2004.

## SCHEDULE

[s. 2]

ARTICLE 8A OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF THE PEOPLE'S  
REPUBLIC OF CHINA AND THE  
GOVERNMENT OF THE  
REPUBLIC OF FINLAND  
CONCERNING  
AIR SERVICES

**Article 8A****Avoidance of Double Taxation**

(1) Income and profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income and profits imposed in the area of the other Contracting Party.

(2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes on capital and assets imposed in the area of the other Contracting Party.

(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party, the income and profits of which according to paragraph (1) are exempt from income tax, profits tax and all other taxes on income and profits imposed in the area of the other Contracting Party, shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

(4) For the purposes of this Article:

- (a) the term “income and profits” includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
  - (i) the charter or rental of aircraft if such charter or rental is incidental to the operation of aircraft in international traffic;
  - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, for the airline itself or for other airlines, but in the latter case only if such sale or provision of services are incidental to the operation of aircraft in international traffic; and
  - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (b) the term “international traffic” means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (c) the term “airline of one Contracting Party” means,

- (i) in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region; and
    - (ii) in the case of Finland, any airline which, under the laws of Finland, is liable to tax therein by reason of domicile, residence, place of management, place of incorporation (including registration required by internal law), or any other criterion of a similar nature;
  - (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; and
    - (ii) in the case of Finland, the Ministry of Finance, its authorised representative or the authority which by the Ministry of Finance, is designated as a competent authority for the purposes of this Article.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 16 (Settlement of Disputes) shall not apply to any such dispute.
- (6) Notwithstanding Article 20 (Entry into Force) each Contracting Party shall in writing notify the other of the completion of the relevant procedures required by its law to bring this Article into force. This Article shall enter into

force on the first day of the second calendar month next following the later of such notifications and shall thereupon have effect in respect of income, profits and gains arising on or after the first day of January 2002 and on capital and assets held on or after that date.

(7) Notwithstanding Article 18 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect, in relation to income, profits and gains arising as well as capital and assets held, on or after the first day of January in the calendar year next following the expiry of a period of six months after the date when such notice is given.

(8) This Article shall not have effect so long as an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article has effect between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

### **Explanatory Note**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Finland signed an agreement concerning air services on 14 January 2000 ("Agreement"). The Agreement was amended by an exchange of letters on 9 September 2004 and 13 September 2004 to include a provision on double taxation relief. This



Order specifies the arrangements in that provision 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.

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF  
THE STATE OF KUWAIT) (AVOIDANCE OF DOUBLE  
TAXATION ON INCOME FROM AIRCRAFT  
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 State of Kuwait 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 the State; 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 Article 11 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the State of Kuwait concerning Air Services done in duplicate at Kuwait on 7 April 2004 in the English language, the text of which Article is reproduced in the Schedule.

## SCHEDULE

[s. 2]

ARTICLE 11 OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF THE PEOPLE'S  
REPUBLIC OF CHINA AND THE  
GOVERNMENT OF THE  
STATE OF KUWAIT  
CONCERNING  
AIR SERVICES

**ARTICLE 11****Avoidance of Double Taxation**

- (1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.
- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other Contracting Party.

- (3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.
- (4) For the purposes of this Article:
- (a) the term “income or profits” includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
    - (i) the charter or rental of aircraft;
    - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline; and
    - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
  - (b) the term “international traffic” means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party.
  - (c) the term “airline of one Contracting Party” means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in Hong Kong Special Administrative Region and, in the case of the State of Kuwait, an airline substantially owned and effectively controlled by the Government of the State of Kuwait or its nationals;

- (d) the term “competent authority” means, 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, and, in the case of the State of Kuwait, the Ministry of Finance or their authorised representative.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 19 shall not apply to any such dispute.
- (6) Notwithstanding Article 23 each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last written notification. The Article shall then be applied:
  - (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later;
  - (b) in the State of Kuwait, for any year of assessment beginning on or after 1st April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.
- (7) Notwithstanding Article 21 where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:
  - (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given;

- (b) in the State of Kuwait, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given.
- (8) This Article shall cease to have effect in the event that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

### **Explanatory Note**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the State of Kuwait signed an agreement concerning air services on 7 April 2004 ("Agreement"). This Order specifies the arrangements in Article 11 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.

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF  
THE REPUBLIC OF KENYA) (AVOIDANCE OF DOUBLE  
TAXATION ON INCOME FROM AIRCRAFT  
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 Republic of Kenya 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 the Republic; 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 Article 10 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Kenya concerning Air Services done in duplicate at Hong Kong on 21 May 2004 in the English language, the text of which Article is reproduced in the Schedule.

## SCHEDULE

[s. 2]

ARTICLE 10 OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF THE PEOPLE'S  
REPUBLIC OF CHINA AND THE  
GOVERNMENT OF THE  
REPUBLIC OF KENYA  
CONCERNING  
AIR SERVICES

**ARTICLE 10**

**Avoidance of Double Taxation**

(1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.

(2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other Contracting Party.



(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

(4) For the purposes of this Article:

- (a) the term “income or profits” includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
  - (i) the charter or rental of aircraft;
  - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline; and
  - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (b) the term “international traffic” means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (c) the term “airline of one Contracting Party” means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of Kenya, an airline substantially owned and effectively controlled by the Government of Kenya or its nationals;

- (d) the term “competent authority” means, 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, and, in the case of Kenya, the Minister for Finance or any person or body authorised to perform any functions at present exercisable by the Minister for Finance or similar functions.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 19 (Settlement of Disputes) shall not apply to any such dispute.
- (6) Notwithstanding Article 23 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last written notification. The Article shall then be applied:
- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later;
  - (b) in Kenya, for any year of assessment beginning on or after 1st July in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.
- (7) Notwithstanding Article 21 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given;
  - (b) in Kenya, for any year of assessment beginning on or after 1st July in the calendar year next following that in which notice is given.
- (8) This Article shall cease to have effect in the event that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

### **Explanatory Note**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Kenya signed an agreement concerning air services on 21 May 2004 ("Agreement"). This Order specifies the arrangements in Article 10 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.

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF  
THE REPUBLIC OF ICELAND) (AVOIDANCE OF DOUBLE  
TAXATION ON INCOME FROM AIRCRAFT  
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 Republic of Iceland 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 the Republic; 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 Article 10 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Iceland concerning Air Services done in duplicate at Reykjavik on 9 August 2004 in the English and Icelandic languages, the English text of which Article is reproduced in the Schedule.

## SCHEDULE

[s. 2]

ARTICLE 10 OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF THE PEOPLE'S  
REPUBLIC OF CHINA AND THE  
GOVERNMENT OF THE  
REPUBLIC OF ICELAND  
CONCERNING  
AIR SERVICES

**ARTICLE 10**

**Avoidance of Double Taxation**

(1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.

(2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other Contracting Party.

(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

(4) For the purposes of this Article:

- (a) the term “income or profits” includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
  - (i) the charter or rental of aircraft;
  - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline; and
  - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (b) the term “international traffic” means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (c) the term “airline of one Contracting Party” means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of Iceland, an airline substantially owned and effectively controlled by the Government of Iceland or its nationals;

- (d) the term “competent authority” means, 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, and, in the case of the Republic of Iceland, the Ministry of Finance, or their authorised representative.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 18 (Settlement of Disputes) shall not apply to any such dispute.
- (6) Notwithstanding Article 22 (Entry into Force) each Contracting Party shall notify the other (in writing) of the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the latter notification. The Article shall then be applied:
- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later;
  - (b) in the Republic of Iceland, for any year of assessment beginning on or after 1st January in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.
- (7) Notwithstanding Article 20 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given;
  - (b) in the Republic of Iceland, 1st January in the calendar year next following that in which notice is given.
- (8) This Article shall not have effect so long as an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article has effect between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

### **Explanatory Note**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Iceland signed an agreement concerning air services on 9 August 2004 ("Agreement"). This Order specifies the arrangements in Article 10 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.



**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF  
THE HASHEMITE KINGDOM OF JORDAN) (AVOIDANCE  
OF DOUBLE TAXATION ON INCOME FROM  
AIRCRAFT 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 Hashemite Kingdom of Jordan 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 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 Article 9 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Hashemite Kingdom of Jordan concerning Air Services done in duplicate at Amman on 28 August 2004 in the English and Arabic languages, the English text of which Article is reproduced in the Schedule.

## SCHEDULE

[s. 2]

ARTICLE 9 OF THE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF THE PEOPLE'S  
REPUBLIC OF CHINA AND THE  
GOVERNMENT OF THE  
HASHEMITE KINGDOM  
OF JORDAN  
CONCERNING  
AIR SERVICES

**Article 9**

**Avoidance of Double Taxation**

(1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.

(2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other Contracting Party.

(3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be exempt from any tax on gains imposed in the area of the other Contracting Party.

(4) For the purposes of this Article:

- (a) the term “income or profits” includes revenues and gross receipts from the operation of aircraft for the carriage of persons, livestock, goods, mail or merchandise in international traffic including:
  - (i) the charter or rental of aircraft;
  - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline; and
  - (iii) interest on funds directly connected with the operation of aircraft in international traffic;
- (b) the term “international traffic” means any carriage by an aircraft except when such carriage is solely between places in the area of the other Contracting Party;
- (c) the term “airline of one Contracting Party” means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of Jordan, an airline substantially owned and effectively controlled by the Government of Jordan or its nationals;

- (d) the term “competent authority” means, 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, and, in the case of Jordan, the Minister of Finance or their authorised representative.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 16 (Settlement of Disputes) shall not apply to any such dispute.
- (6) Notwithstanding Article 20 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last written notification. The Article shall then be applied:
- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later;
  - (b) in Jordan, for any year of assessment beginning on or after 1st January in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.
- (7) Notwithstanding Article 18 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:
- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given;

- (b) in Jordan, for any year of assessment beginning on or after 1st January in the calendar year next following that in which notice is given.
- (8) This Article shall cease to have effect in the event that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

### **Explanatory Note**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Hashemite Kingdom of Jordan signed an agreement concerning air services on 28 August 2004 ("Agreement"). This Order specifies the arrangements in Article 9 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.