2008 年第 89 號法律公告

《安排指明(中國內地)(對所得避免雙重徵税和防止偷漏税) (第二議定書)令》

(由行政長官會同行政會議根據《稅務條例》 (第 112 章) 第 49 條作出)

1. 生效日期

本命令自 2008 年 5 月 22 日起實施。

2. 根據第 49 條作出的宣布

為施行本條例第 49 條,現宣布——

- (a) 第 3(1) 條所指明的安排已予訂立,旨在就中國內地的法律所施加的入息 税及任何相類似性質的税項給予雙重課税寬免;及
- (b) 該等安排的生效是屬於有利的。

3. 指明的安排

- (1) 為第 2(a) 條的目的而指明的安排,是載於指明文書的第二議定書中的第一至 六條的安排。
 - (2) 指明文書的第二議定書條文的文本及英文譯本載錄於附表。*
 - (3) 在本條中——
- "指明文書" (specified instrument) 指在 2006 年 8 月 21 日在香港特別行政區以中文一式兩份簽訂的、名為《內地和香港特別行政區關於對所得避免雙重徵税和防止偷漏税的安排》而英文譯名為 "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income"的文書 ";

^{*} 該第二議定書的英文譯本由律政司根據該第二議定書的中文文本擬備。

[#] 文書中的第一至二十七條及文書的議定書中的第1至3段,見《安排指明(中國內地)(對所得避免雙重徵稅和防止偷漏稅)令》(第112章,附屬法例AY)。

"第二議定書"(Second Protocol) 指在 2008 年 1 月 30 日在北京以中文一式兩份簽訂的、名為《內地和香港特別行政區關於對所得避免雙重徵税和防止偷漏税的安排第二議定書》而英文譯名為"The Second Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income"的文書。

附表 [第3條]

《內地和香港特別行政區關於對所得避免雙重徵税和 防止偷漏税的安排第二議定書》

內地和香港特別行政區,修訂 2006 年 8 月 21 日在香港簽訂的《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》(以下簡稱《安排》),達成協議如下:

第一條

取消《安排》第二條第三款(一)項的規定,用下列規定代替:

- "(一) 在內地:
- 1. 個人所得税;
- 2. 企業所得税。"

第二條

取消《安排》第四條第一款(一)項的規定,用下列規定代替:

"(一) 在內地,是指按照內地法律,由於住所、居所、成立地、實際管理機構所在地,或者其他類似的標準,在內地負有納税義務的人。但是,該用語不包括僅由於來源於內地的所得,在內地負有納税義務的人;"

第三條

取消《安排》第五條第三款(二)項中"六個月"的規定,用"一百八十三天"代替。

第四條

《安排》第十三條第四款及議定書第二條提及的公司財產不少於百分之五十由位於 一方的不動產所組成,按以下規定執行:

在股份持有人轉讓公司股份之前三年內,該公司財產至少百分之五十曾經為不動產。

第五條

取消《安排》第十三條第五款的規定,用下列規定代替:

"五、 除第四款外,一方居民轉讓其在另一方居民公司資本中的股份或其他權利 取得的收益,如果該收益人在轉讓行為前的十二個月內,曾經直接或間接參與該公司 至少百分之二十五的資本,可以在該另一方徵稅。"

第六條

本議定書應在各自履行必要的批准程序,互相書面通知後,自最後一方發出通知之日起生效。

下列代表,經正式授權,已在本議定書上簽字為證。

本議定書於2008年1月30日在北京簽訂,一式兩份,每份都用中文寫成。

中華人民共和國 香港特別行政區 財經事務及庫務局局長陳家強 中華人民共和國國家稅務總局副局長王力

(英文譯本)

The Mainland of China and the Hong Kong Special Administrative Region agreed to amend the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" ("the Arrangement"), done in the Hong Kong Special Administrative Region on 21 August 2006, as follows:

Article 1

To repeal subparagraph (1) of paragraph 3 of Article 2 of the Arrangement and substitute:

- "(1) in the Mainland of China:
 - (i) individual income tax;
 - (ii) enterprise income tax.".

Article 2

To repeal subparagraph (1) of paragraph 1 of Article 4 of the Arrangement and substitute:

"(1) in the case of the Mainland of China, any person who, under the laws of the Mainland of China, is liable to tax therein by reason of his domicile, residence, place of establishment, place of effective management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in the Mainland of China in respect only of income from sources in the Mainland of China;".

Article 3

To amend subparagraph (2) of paragraph 3 of Article 5 of the Arrangement by repealing "6 months" and substituting "183 days".

Article 4

The provision in paragraph 4 of Article 13 of the Arrangement, as read with paragraph 2 of the Protocol, which refers to a company the assets of which comprise not less than 50% immovable property situated in One Side, shall be implemented in accordance with the following provision:

Not less than 50% of the assets of the company must consist of immovable property at any time within the 3 years before the alienation of the shares of the company by the holder of the shares.

Article 5

To repeal paragraph 5 of Article 13 of the Arrangement and substitute:

"5. Gains derived by a resident of One Side from the alienation of shares, other than the shares referred to in paragraph 4, or other rights in the capital of a company

which is a resident of the Other Side may be taxed in that Other Side if, at any time within the 12 months before the alienation, the recipient of the gains had a participation, directly or indirectly, of not less than 25% of the capital of the company."

Article 6

This Protocol shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.

In witness whereof the undersigned, being duly authorized, have signed this Protocol.

Done in duplicate in Beijing on 30 January 2008 in the Chinese language.

The Hong Kong Special Administrative Region of the People's Republic of China Secretary for Financial Services and the Treasury K C CHAN The People's Republic of China State Administration of Taxation Deputy Commissioner WANG Li

> 行政會議秘書 林植廷

行政會議廳 2008 年 4 月 15 日

註 釋

中國內地和香港特別行政區 ("雙方")於 2006年8月21日訂立關於對所得避免雙重徵稅和防止偷漏稅的安排 ("該安排")以及該安排的議定書。雙方於 2008年1月30日在北京簽訂該安排的另一議定書 ("第二議定書")。本命令指明第二議定書第一至六條所載的安排為《稅務條例》(第112章)第49條所指的雙重課稅寬免安排,並宣布該等安排的生效是屬於有利的。作出宣布的效力是即使任何成文法則另有規定,該等安排對根據《稅務條例》(第112章)徵收的稅項仍屬有效。