

L.N. 89 of 2008

**SPECIFICATION OF ARRANGEMENTS (THE MAINLAND
OF CHINA) (AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME)
(SECOND PROTOCOL) ORDER**

(Made by the Chief Executive in Council under section 49 of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order shall come into operation on 22 May 2008.

2. Declaration under section 49

For the purposes of section 49 of the Ordinance, it is declared—

- (a) that the arrangements specified in section 3(1) have been made 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 Mainland of China; and
- (b) that it is expedient that those arrangements should have effect.

3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a) are the arrangements in Articles 1 to 6 of the Second Protocol to the specified instrument.

(2) The text and an English translation of the Second Protocol to the specified instrument are reproduced in the Schedule.*

(3) In this section—

“Second Protocol” (第二議定書) means the instrument entitled “《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第二議定書》”, whose English translation is “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”, done in duplicate in Beijing on 30 January 2008 in the Chinese language;

* The English translation of the Second Protocol is prepared by the Department of Justice in accordance with the Chinese text of the Second Protocol.

“specified instrument” (指明文書) means the instrument entitled “《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》”, whose English translation is “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”, done in duplicate in the Hong Kong Special Administrative Region on 21 August 2006 in the Chinese language[#].

SCHEDULE

[s. 3]

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

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. 個人所得稅；
2. 企業所得稅。”

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，在內地負有納稅義務的人。但是，該用語不包括僅由於來源於內地的所得，在內地負有納稅義務的人；”

[#] See the Specification of Arrangements (The Mainland of China)(Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) Order (Cap. 112 sub. leg. AY) for Articles 1 to 27 of the instrument and paragraphs 1 to 3 of the Protocol to the instrument.

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

(English Translation)

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

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
15 April 2008

Explanatory Note

The Mainland of China and the Hong Kong Special Administrative Region (“the Parties”) entered into an arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (“the Arrangement”) together with a protocol to the Arrangement on 21 August 2006. The Parties signed a further protocol to the Arrangement (“the Second Protocol”) in Beijing on 30 January 2008. This Order specifies the arrangements in Articles 1 to 6 of the Second Protocol 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.