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**Paper for the House Committee Meeting
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**Legal Service Division Report on
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AVOIDANCE OF DOUBLE TAXATION

Inland Revenue Ordinance (Cap. 112)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order (L.N. 89)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of the Netherlands) Order (L.N. 90)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Indonesia) Order (L.N. 91)

L.N. 89 to L.N. 91 are made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (the Ordinance) to give effect to the following comprehensive agreements for avoidance of double taxation (CDTAs) respectively:

- (a) the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSARG) and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 20 March 2010 (the Brunei Agreement);
- (b) the Agreement between HKSARG and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 22 March 2010 (the Dutch Agreement); and
- (c) the Agreement between HKSARG and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 23 March 2010 (the Indonesian Agreement).

2. Under section 49(1A) 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.

3. According to the LegCo Briefs issued by the Financial Services and the Treasury Bureau on 30 June 2010 on the above Orders, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Despite that many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, the existence of a CDTA will provide enhanced certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

4. L.N. 89 declares that for the purposes of section 49(1A) of the Ordinance, the arrangements specified in Articles 1 to 28 of the Brunei Agreement and Paragraphs 1 and 2 (including the chapeau immediately before these Paragraphs) of the Protocol to the Agreement have been made as double taxation relief arrangements and it is expedient that those arrangements should have effect.

5. L.N. 90 declares that for the purposes of section 49(1A) of the Ordinance, the arrangements specified in Articles 1 to 30 of the Dutch Agreement and Articles I to XI of the Protocol to the Agreement have been made as double taxation relief arrangements and it is expedient that those arrangements should have effect.

6. L.N. 91 declares that for the purposes of section 49(1A) of the Ordinance, the arrangements specified in Articles 1 to 29 of the Indonesian Agreement and Paragraphs 1 to 5 of the Protocol to the Agreement have been made as double taxation relief arrangements and it is expedient that those arrangements should have effect.

7. The provisions in the Brunei Agreement, the Dutch Agreement and the Indonesian Agreement set out the allocation of taxing rights between HKSARG and the respective jurisdictions and the relief on tax rates on different types of income. Each of the above Agreements contains an article on exchange of information which is based on the Organisation for Economic Cooperation and Development (OECD) 2004 version of the Exchange of Information (EoI) Article. During the scrutiny of the Inland Revenue (Amendment) (No. 3) Bill 2009, the Administration presented a sample EoI Article to the Bills Committee vide LC Paper No. CB(1)106/09-10(02). According to paragraph 9 of the LegCo Brief for L.N. 89 (File Ref: FIN CR 44/10/2041/46) and paragraph 10 of the LegCo Brief for L.N. 91 (File Ref: FIN CR 42/10/2041/46), the Brunei Agreement and the Indonesian Agreement have adopted all the safeguards in the sample EoI Article. In respect of the Dutch Agreement, according to paragraphs 10 and 11 of the LegCo Brief for L.N. 90 (File Ref: FIN CR 2/10/2041/46), the EoI Article therein has adopted some of the safeguards in the

sample EoI Article. However, in relation to the disclosure of information concerning tax covered by the Agreement, the Administration had requested to confine the disclosure to the Dutch tax authorities as provided in the sample EoI Article, but not their "oversight body". The Dutch side insisted that the reference to "oversight body" in the EoI Article is necessary to cater for submission of information relating to cases being considered by "de Algemene Rekenkamer" (the Court of Audit) or "de Nationale Ombudsman" (the National Ombudsman). The Administration considered this a justifiable request and had therefore accepted the Dutch proposal. Members may refer to the LegCo Briefs for further details.

8. The effects of the declarations set out in paragraphs 4 to 6 above are -
 - (a) that the arrangements have effect in relation to tax under the Ordinance despite anything in any enactment; and
 - (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of Brunei Darussalam, the Kingdom of the Netherlands and the Republic of Indonesia, have effect in relation to any tax of the respective jurisdictions that is the subject of that provision.
9. L.N. 89 to L.N. 91 will come into operation on 18 November 2010.
10. The Panel on Financial Affairs has not been consulted on L.N. 89 to L.N. 91.
11. No difficulties have been observed in the legal and drafting aspects of L.N. 89 to L.N. 91.

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