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# LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

## INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (REPUBLIC OF INDONESIA) ORDER

## INTRODUCTION

At the meeting of the Executive Council on 22 June 2010, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Indonesia) Order ("the Order"), at **Annex A**, should be made under section 49(1A) of the Inland Revenue Ordinance, Cap. 112 ("the Ordinance"). The Order implements the Agreement between the Hong Kong Special Administrative Region and the Republic of Indonesia ("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").

A

## JUSTIFICATIONS

### Benefits of Comprehensive Agreements for Avoidance of Double Taxation

2. Double taxation refers to the imposition of comparable taxes in more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation

hinders the exchange of goods and services, movements of capital, technology and human resources, and poses an obstacle to the development of economic relations between economies. As a business facilitation initiative, it is our policy to enter into Comprehensive Agreements for Avoidance of Double Taxation ("CDTAs") with our trading and investment partners so as to minimise double taxation.

3. Hong Kong adopts the territorial concept of taxation whereby only income sourced from Hong Kong is subject to tax. 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.

**Benefits of the Indonesian Agreement**

4. In the absence of the Indonesian Agreement, profits of Indonesian companies doing business through a permanent establishment, such as a branch, in Hong Kong are fully taxed in both places. Under the Indonesian Agreement, double taxation is avoided in that any Hong Kong tax paid by Indonesian companies shall be allowed as a deduction from the tax payable in respect of the same income in Indonesia.

5. Under the Indonesian Agreement, the income received by a Hong Kong resident from non-Indonesian employment exercised in Indonesia will be exempted from Indonesia income tax if his aggregate stay in any relevant 12-month period does not exceed 183 days, and vice versa.

6. In the absence of a CDTA, Hong Kong residents receiving dividends from Indonesia not attributable to a permanent establishment there are subject to an Indonesia withholding tax, which is currently at 20%. Under the Indonesian Agreement, this will be reduced to 10%. If the recipient is a company holding at least 25% of the share capital of the paying company, the withholding tax rate will be further reduced to

5%. Also, Hong Kong residents receiving royalties from Indonesia are subject to a current withholding tax of 20% in Indonesia. Under the Indonesian Agreement, the royalties withholding tax will be capped at 5%. The Indonesia interest withholding tax on Hong Kong residents will be reduced from the current rate of 20% to 10%.

7. Hong Kong airlines operating flights to Indonesia will be taxed at Hong Kong's corporation tax rate (which is lower than that of Indonesia). Profits from international shipping transport earned by Hong Kong residents that arise in Indonesia, which are currently subject to tax there, will enjoy 50% reduction in tax under the Indonesian Agreement.

8. Overall speaking, the Indonesian Agreement sets out clearly the allocation of taxing rights between the two jurisdictions and the relief on tax rates on different types of income. It will help investors of the two economies to better assess their potential tax liabilities from cross-border economic activities, foster closer economic and trade links between the two places, and provide added incentives for enterprises of Indonesia to do business with or invest in Hong Kong, and vice versa.

**Exchange of Information Article under the Indonesian Agreement**

9. The Inland Revenue (Amendment) Ordinance 2010 which enables Hong Kong to adopt the Organisation for Economic Cooperation and Development ("OECD") 2004 version of the Exchange of Information ("EoI") Article in our CDTAs came into operation in March 2010. During the scrutiny of the relevant bill, the Government presented a sample EoI Article (at **Annex B**) to the Bills Committee and undertook to highlight any deviation from the text with any CDTA that we have signed when we submit the CDTA for ratification.

B

10. The Indonesian Agreement, which contains an EoI Article ("the Article") based on the OECD 2004 EoI version, has adopted all the safeguards in the sample EoI Article, in particular -

(a) the Article does not create obligations as regards automatic or spontaneous exchanges of information between the Contracting Parties;

(b) the scope of information exchange is confined to taxes covered by the Indonesian Agreement;

(c) the information sought should be foreseeably relevant, i.e. no fishing expeditions;

(d) confidentiality requirements and restrictions on the usage of the information exchanged are as set out in the sample EoI Article;

(e) disclosure of information is confined to the tax authorities but not their oversight body;

(f) the information requested shall not be disclosed to a third jurisdiction; and

(g) there is no obligation to supply information under certain circumstances as set out in the sample EoI Article.

**Legal Basis**

11. 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. Following the signing of the Indonesian Agreement, it is necessary for the Chief Executive in Council to declare by order that arrangements with Indonesia on double taxation relief have been made, so as to put the Indonesian Agreement into effect.

**OTHER OPTIONS**

12. An Order made by the Chief Executive in Council under section 49(1A) of the Ordinance is the only way to give effect to the Indonesian Agreement. There is no other option.

## THE ORDER

13. **Section 2** of the Order declares that the arrangements specified in section 3 for double taxation relief in relation to income tax and any tax of a similar character imposed by the laws of Indonesia have been made and that those arrangements should take effect. **Section 3** states that the arrangements are those in Articles 1 to 29 of the Indonesian Agreement as well as Paragraphs 1 to 5 of the Protocol to the Indonesian Agreement, the text of which Articles and Paragraphs are specified in the **Schedule** to the Order.

## LEGISLATIVE TIMETABLE

14. The legislative timetable will be -

| | |
|---|---|
| Publication in the Gazette | 2 July 2010 |
| Tabling at Legislative Council | 7 July 2010 |
| Commencement of the Order | 18 November 2010 |

## IMPLICATIONS OF THE PROPOSAL

15. The proposal has financial, economic and civil service implications as set out in **Annex C**. The proposal 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 or sustainability implications.

C

## PUBLIC CONSULTATION

16. The business and professional sectors have all along supported our policy to conclude more CDTAs with our trading and investment partners.

## PUBLICITY

17. Publicity was arranged for the signing of the Indonesian Agreement on 23 March 2010. A spokesman will be available to answer media and public enquiries.

## BACKGROUND

18. The Indonesian Agreement is the eighth CDTA concluded by Hong Kong with another jurisdiction. A summary of the main provisions of the Indonesian Agreement is at **Annex D**.

D

19. We entered into a CDTA with Belgium in December 2003, with Thailand in September 2005, with the Mainland of China in August 2006, with Luxembourg in November 2007, with Vietnam in December 2008 and with Brunei, the Netherlands and Indonesia in March 2010.

## ENQUIRY

20. In case of enquiries about this Brief, please contact Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

**Financial Services and the Treasury Bureau**
**30 June 2010**

**LEGISLATIVE COUNCIL BRIEF**

Inland Revenue Ordinance
(Chapter 112)

**INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (REPUBLIC OF INDONESIA) ORDER**

**ANNEXES**

| | |
|---|---|
| Annex A | Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Indonesia) Order |
| Annex B | Sample Exchange of Information Article |
| Annex C | Financial, Economic and Civil Service Implications of the Proposal |
| Annex D | Summary of the main provisions of the Comprehensive Double Taxation Agreement Between Hong Kong and Indonesia |

# INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (REPUBLIC OF INDONESIA) ORDER

(Made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112))

**1. Commencement**

This Order comes into operation on 18 November 2010.

**2. Declaration under section 49(1A)**

For the purposes of section 49(1A) of the Ordinance, it is declared –

(*a*) that the arrangements specified in section 3 have been made with the Government of the Republic of Indonesia 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 Republic; and

(*b*) that it is expedient that those arrangements should have effect.

**3. Arrangements specified**

The arrangements specified for the purposes of section 2(*a*) are the arrangements in –

(*a*) Articles 1 to 29 of the agreement titled "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 Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" and "《中華人民共和國香港特別行政區政府與印度尼西亞共和國政府就收入稅項避免雙重課稅和防止逃稅協

定》" in the Chinese translation, done in duplicate at Jakarta on 23 March 2010 in the English language, the text of which Articles is reproduced in Part 1 of the Schedule; and

(*b*) Paragraphs 1 to 5 of the Protocol to that Agreement, the text of which Paragraphs is reproduced in Part 2 of the Schedule.

SCHEDULE [s. 3]

# PART 1

## ARTICLES 1 TO 29 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 INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

### CHAPTER I

### SCOPE OF THE AGREEMENT

Article 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

## Article 2

## TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are:

   (a) in the case of the Hong Kong Special Administrative Region,
   (i) profits tax;
   (ii) salaries tax; and
   (iii) property tax;
   whether or not charged under personal assessment;

   (b) in the case of the Republic of Indonesia,
   the income tax.

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as “Hong Kong Special Administrative Region tax” or “Indonesian tax”, as the context requires.

## CHAPTER II

## DEFINITIONS

### Article 3

### GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) (i) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region apply;

(ii) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws, and parts of the continental shelf, exclusive economic zone and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the United Nations Convention on the Law of the Sea 1982;

(b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(c) the term "competent authority" means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative;

(ii) in the case of Indonesia, the Minister of Finance or his authorized representative;

(d) the term "Contracting Party" or "Party" means the Hong Kong Special Administrative Region or Indonesia, as the context requires;

(e) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party except when the ship or aircraft is operated solely between places in the other Contracting Party;

(g) the term "national", in relation to Indonesia means:

(i) any individual possessing the nationality of Indonesia; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in Indonesia;

(h) the term "person" includes an individual, a company, a partnership and any other body of persons;

(i) the term "tax" means the Hong Kong Special Administrative Region tax or Indonesian tax, as the context requires.

2. In this Agreement, the terms "Hong Kong Special Administrative Region tax" and "Indonesian tax" do not include any penalty or interest imposed under the laws of either Contracting Party relating to the taxes to which this Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 4

## RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means:

   (a) in the case of the Hong Kong Special Administrative Region,

      (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;

      (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

      (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

      (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

      (v) the Government of the Hong Kong Special Administrative Region;

   (b) in the case of Indonesia, any person who, under the laws of Indonesia, is liable to tax therein by reason of his domicile, residence, place of management, place of registration, or any other criterion of a similar nature, and also includes the Government of

that Party and any political subdivision or local authority or statutory body thereof. This term, however, does not include any person who is liable to tax in Indonesia in respect only of income from sources in Indonesia.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer ("centre of vital interests");

(b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

(c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Indonesia);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Indonesia, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Indonesia, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

## Article 5

## PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

   (a) a place of management;

   (b) a branch;

   (c) an office;

   (d) a factory;

   (e) a workshop;

   (f) a farm or plantation; and

   (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also encompasses:

   (a) a building site or a construction or assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last for a period of more than 183 days;

   (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period;

(c) a drilling rig or working ship used for exploration or exploitation of natural resources which is present or operating for more than 183 days.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent

establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has, and habitually exercises, in the first-mentioned Contracting Party an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or

(b) has no such authority, but habitually maintains in the first-mentioned Party a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise of a Contracting Party shall not be deemed to have a permanent establishment in the other Contracting Party merely because it carries on business in that other Contracting Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

# CHAPTER III

# TAXATION OF INCOME

## Article 6

## INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## Article 7

## BUSINESS PROFITS

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise

may be taxed in the other Party, but only so much of them as is attributable to:

(a) that permanent establishment;

(b) sales in that other Party of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

(c) other business activities carried on in that other Party of the same or similar kind as those effected through that permanent establishment,

provided that (b) or (c) shall not apply where an enterprise is able to demonstrate that the sales or business activities were carried out for reasons other than obtaining benefits under this Agreement.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (other than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the permanent

establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged, (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of banking enterprise, by way of interest on money lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 8

## SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting Party from the operation of aircraft in international traffic shall be taxable only in that Party.

2. Profits of an enterprise of a Contracting Party derived in the other Contracting Party from the operation of ships in international traffic may be taxed in the other Contracting Party but the tax so charged shall be reduced by an amount equal to 50 per cent thereof.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:

   (a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including:

      (i) income derived from the lease of ships or aircraft on a bareboat charter basis where such lease is incidental to the operation of ships or aircraft in international traffic;

      (ii) income derived from the sale of tickets and the provision of services connected with such transport whether for the enterprise itself or for any other enterprise, provided that in the case of provision of services, such provision is incidental to the operation of ships and aircraft in international traffic;

   (b) interest on funds directly connected with the operation of ships or aircraft in international traffic;

(c) profits from the lease of containers by the enterprise, when such lease is incidental to the operation of ships or aircraft in international traffic.

## Article 9

## ASSOCIATED ENTERPRISES

1. Where:

(a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed:

   (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

   (b) 10 per cent of the gross amount of the dividends in all other cases.

   The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of these limitations.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident, through a permanent establishment situated

therein, or performs in that other Party independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Notwithstanding any other provisions of this Agreement where a company which is a resident of a Contracting Party has a permanent establishment in the other Contracting Party, the profits of the permanent establishment may be subjected to an additional tax in that other Party in accordance with its law, but the additional tax so charged shall not exceed 5 per cent of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other Party.

6. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

## Article 11

## INTEREST

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Party, if it is paid:

   (a) in the case of the Hong Kong Special Administrative Region:

      (i) to the Government of the Hong Kong Special Administrative Region;

      (ii) to the Hong Kong Monetary Authority;

      (iii) to a statutory body, institution, or financial establishment appointed by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the two Contracting Parties;

   (b) in the case of Indonesia:

      (i) to the Government of the Republic of Indonesia;

      (ii) to Bank Indonesia (the Central Bank of Indonesia);

(iii) to Pusat Investasi Pemerintah (the Centre for Government Investment);

(iv) to Lembaga Pembiayaan Ekspor Indonesia (the Indonesia Eximbank);

(v) to a statutory body, institution, or financial establishment appointed by the Government of the Republic of Indonesia and mutually agreed upon by the competent authorities of the two Contracting Parties.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party, in which the interest arises, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment or fixed base or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such

interest shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claims in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

## Article 12

## ROYALTIES

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of these limitations.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes or disc used for radio or television broadcasting,

any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or

assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

## Article 13

## CAPITAL GAINS

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party or of movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares:

   (a) alienated or exchanged in the framework of a reorganisation of a company, a merger, a scission or a similar operation; or

   (b) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

## Article 14

## INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting Party in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting Party except in the following circumstances, when such income may also be taxed in the other Contracting Party:

   (a) if he has a fixed base regularly available to him in the other Contracting Party for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting Party; or

   (b) if his stay in the other Contracting Party is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting Party may be taxed in that other Contracting Party.

2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, dentists, lawyers, engineers, architects and accountants.

## Article 15

## DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

   (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned, and

   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and

   (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party, may be taxed in that Party.

## Article 16

## DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors or similar organ of a

company which is a resident of the other Contracting Party may be taxed in that other Party.

## Article 17

## ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting Party by artistes or sportspersons if the visit to that Party is wholly or mainly supported by public funds of one or both of the Contracting parties or political subdivisions or local authorities thereof. In such a case, the income is taxable only in the Contracting Party in which the artiste or the sportsperson is a resident.

## Article 18

## PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or past self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) made under a pension or retirement scheme which is:

(a) a public scheme which is part of the social security system of a Contracting Party; or

(b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,

shall be taxable only in that Contracting Party.

## Article 19

## GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party, or a political subdivision, or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Indonesia, is a national thereof; or

(ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. (a) Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

(b) However, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions (including a lump sum payment), and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Contracting Party or a political subdivision or a local authority thereof.

## Article 20

## STUDENTS

Payments which a student who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Party solely for the purpose of his education receives for the purpose of his maintenance or education shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

## Article 21

## OTHER INCOME

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Alimony or other maintenance payment paid by a resident of a Contracting Party to a resident of the other Contracting Party shall, to the extent it is not allowable as a deduction to the payer in the first-mentioned Party, be taxable only in that Party.

4. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting Party may also be taxed in that other Party.

## CHAPTER IV

## METHODS FOR ELIMINATION OF DOUBLE TAXATION

### Article 22

### METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Indonesian tax paid under the laws of Indonesia and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources

in Indonesia, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

2. Where a resident of Indonesia derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Indonesia shall allow as deduction from the tax on the income of that resident an amount equal to the income tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed the part of the income tax as computed before the deduction is given, which is attributable as the case may be, to the income which may be taxed in Indonesia.

## CHAPTER V

## SPECIAL PROVISIONS

### Article 23

### NON-DISCRIMINATION

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Indonesia, are nationals of Indonesia, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Indonesia) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall,

notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. Stateless persons who are residents of a Contracting Party shall not be subjected in either Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode in the Party (where the Party is the Hong Kong Special Administrative Region) or nationals of the Party (where the Party is Indonesia) in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

5. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

6. In this Article the term "taxation" means taxes which are the subject of this Agreement.

## Article 24

## MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party in which, in the case of the Hong Kong Special Administrative Region, he has the right of abode or is incorporated or otherwise constituted or, in the case of Indonesia, of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the

sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## Article 25

## EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review. Information shall not be disclosed to any third jurisdiction for any purpose.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## Article 26

## MEMBERS OF GOVERNMENT MISSIONS

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts under the general rules of international law or under the provisions of special agreements.

Article 27

MISCELLANEOUS RULES

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such.

## CHAPTER VI

## FINAL PROVISIONS

Article 28

ENTRY INTO FORCE

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall thereupon have effect:

   (a) in the Hong Kong Special Administrative Region:

   in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which this Agreement enters into force;

   (b) in Indonesia:

   (i) in respect of taxes withheld at source: for amounts paid or credited on or after 1 January in the calendar year next following the date on which this Agreement enters into force; and

(ii) in respect of other taxes: for any tax year commencing on or after 1 January in the calendar year next following the date on which this Agreement enters into force.

Article 29

TERMINATION

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year after the period of five years from the date on which the Agreement enters into force. In such event, this Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;

(b) in Indonesia:

(i) in respect of taxes withheld at source: for amounts paid or credited on or after 1 January in the calendar year next following the date on which the notice is given; and

(ii) in respect of other taxes: for any tax year commencing on or after 1 January in the calendar year next following the date on which the notice is given.

# PART 2

## PARAGRAPHS 1 TO 5 OF THE PROTOCOL TO 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 INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

1. With reference to Article 2, paragraph 3(b):

   The term "income tax" means taxes as defined in the Indonesian Income Tax Law.

2. With reference to Article 3, paragraph 2:

   In the case of the Hong Kong Special Administrative Region, penalty or interest include any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax" under Section 82A of the Inland Revenue Ordinance.

3. With reference to paragraphs 1 and 2 of Article 7:

   (a) where an enterprise of one of the two Contracting Parties sells goods or merchandise or carries on business in the other Contracting Party through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business;

   (b) in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment, the profits of such permanent establishment shall

not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting Party where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting Party of which the enterprise is a resident.

4. With reference to Article 10:

The provisions of paragraph 5 shall not affect the provisions contained in any production sharing contracts relating to oil and gas, and contracts of works for other mining sectors, concluded by the Government of the Republic of Indonesia or its relevant state oil and gas company or any other entity thereof with a person who is a resident of the Hong Kong Special Administrative Region.

5. With reference to Article 25:

It is understood that the Article does not create obligations as regards automatic or spontaneous exchanges of information between the Contracting Parties.

Clerk to the Executive Council

COUNCIL CHAMBER

2010

## 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 Indonesia signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income ("Agreement") together with a protocol to the Agreement ("Protocol") on 23 March 2010. This Order specifies the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 5 of the Protocol as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect.

2. The effects of the declaration are –

(*a*) that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) 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 the Republic of Indonesia, have effect in relation to any tax of the Republic that is the subject of that provision.

**Annex B**

## Extracts of Hong Kong's Sample CDTA Text

### ARTICLE 25

### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their political subdivisions or local or territorial authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1[1].

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

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[1] Article 1: "PERSONS COVERED: This Agreement shall apply to persons who are residents of one or both of the Contracting Parties."

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contacting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

* * * *

**PROTOCOL**

At the time of signing of the Agreement between the Government of Country A and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion, the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

1-9. …..

10. It is understood that Article 25 does not create obligations as regards automatic or spontaneous exchanges of information between the Contracting Parties. In respect of the same Article, it is also understood that information requested shall not be disclosed to a third jurisdiction. In the case of the Hong Kong Special Administrative Region, the judicial decisions in which information may be disclosed include the decisions of the Board of Review.

* * * *

**Annex C**

# Financial, Economic and Civil Service Implications of the Proposal

## Financial Implications

The Government would have to forgo some revenue which is currently being collected in respect of profits of Indonesian resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping and air services profits of Indonesian operators. However, the overall financial implications would be insignificant.

## Economic Implications

2. The Indonesian Agreement will facilitate business development between Hong Kong and Indonesia and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Indonesia by providing enhanced certainty and stability to the tax liabilities of investors.

## Civil Service Implications

3. There will be additional work for the Inland Revenue Department ("IRD") in handling requests for EoI from Indonesia under the Indonesian Agreement. The additional workload will be absorbed by redeployment of staff within IRD.

**Annex D**

**Comprehensive Double Taxation Agreement ("CDTA")**
**Between Hong Kong and Indonesia**

Summary of Main Provisions

1. The CDTA with Indonesia (the "Indonesian Agreement") covers the following types of taxes:

(a) in respect of Hong Kong – (i) salaries tax;
(ii) profits tax; and
(iii) property tax;

(b) in respect of Indonesia – income tax.

2. The Indonesian Agreement deals with the taxing of income of the resident of one Contracting Party ("resident jurisdiction") derived from another Contracting Party ("source jurisdiction").

**Exclusive taxing right**

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Indonesian Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Indonesian Agreement that the following types of income shall only be taxed in the resident jurisdiction:

(a) profits of an enterprise, unless the enterprise carries on business in the source jurisdiction through a permanent establishment therein (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on);

(b) profits from operation of aircraft in international traffic and gains from alienation of ships or aircraft operated in international traffic;

(c) income from employment, unless the employment is exercised in the source jurisdiction;

(d) income of entertainers and sportspersons who conduct their professional activities in the source jurisdictions and their visit is wholly or mainly supported by public funds of either source or resident jurisdiction or both;

(e) non-government pensions, unless the pensions are made under a public scheme which is part of the social security system of the source jurisdiction or under a retirement scheme which is recognized for tax purpose in the source jurisdiction or under the social security legislation of the source jurisdiction;

(f) capital gains not expressly dealt with in the Indonesian Agreement; and

(g) other income not expressly dealt with in the Indonesian Agreement except where the income (excluding capital gains) is derived from the source jurisdiction.

4. Non-government pensions made under a public scheme which is part of the social security system of the source jurisdiction or under a retirement scheme which is recognized for tax purpose in the source jurisdiction or under the social security legislation of the source jurisdiction are taxable only in the source jurisdiction. Besides, employment income and pensions paid by the government of a Contracting Party are, in general, taxable only in that Party (source jurisdiction).

**Shared taxing rights**

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Indonesian Agreement to give double taxation relief to its resident for any income doubly assessed (i.e. the source jurisdiction has the primary right to tax

and the resident jurisdiction is left with a secondary right). It is provided in the Indonesian Agreement that the following types of income may be taxed in both jurisdictions:

(a) income generated from immovable property and gains from the alienation of such property situated in the source jurisdiction;

(b) profits of an enterprise which carries on business in the source jurisdiction through a permanent establishment, to the extent that such profits are attributable to the permanent establishment, and gains from the alienation of the business property of such permanent establishment;

(c) profits from operation of ships in international traffic;

(d) passive income of dividends, interest and royalties received from residents of a source jurisdiction. The source jurisdiction's right to tax is subject to a specified limit in tax rates:
- for dividend, 5% if the beneficial owner is a company (other than a partnership) which holds at least 25% of the capital of the paying company and 10% in all other cases;

- for interest, 10%;

- for royalties, 5%;

(e) gains from alienation of immovable property or shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property;

(f) remuneration from non-government employment exercised in the source jurisdiction;

(g) directors' fees from a company resident in the source jurisdiction;

(h) income of entertainers and sportspersons who conduct their professional activities in the source jurisdiction; and

(i) other income (excluding capital gains) not expressly dealt with in the agreement if it is derived from the source jurisdiction.

6. In general, in case of shared taxing rights, double taxation relief may be given to a taxpayer either through the exemption method, where income taxable in the source jurisdiction is exempted from taxation in the resident jurisdiction; or through the credit method, where income taxable in the source jurisdiction is subject to tax in the resident jurisdiction but the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income. Both Hong Kong and Indonesia will provide double taxation relief for its residents by the credit method.