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財經事務及庫務局
(庫務科)
香港下亞厘畢道
中區政府合署

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15 June 2011

Ms Anita Sit
Clerk to Subcommittee
Subcommittee on Five Orders Made under Section 49
of the Inland Revenue Ordinance and Gazetted on 13 May 2011
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms Sit,

**Subcommittee on Five Orders Made under Section 49 of the Inland Revenue Ordinance and Gazetted on 13 May 2011**

**Follow-up to meeting on 8 June 2011**

Thank you for your letter of 8 June 2011. Our response to your letter is set out in the following paragraphs.

2. A tax treaty between two jurisdictions normally results in reduced tax rates on passive incomes such as dividends, interest and royalties. In the respective article on dividends, interest and royalties, it specifies a maximum tax rate which a source jurisdiction can apply to the dividends, interest or royalties earned by a resident of the other jurisdiction. For instance, in the Comprehensive Agreement for the Avoidance of Double Taxation (CDTA) between Hong Kong and France, it is provided in Articles 10, 11 and 12 that the tax charged by France on Hong Kong residents receiving dividends, interest or royalties from France (not attributable to a permanent establishment there) shall not exceed 10 per cent of the gross amount of the dividends, interest or royalties.

3. The provisions of these articles do not lay down the mode of taxation on passive incomes in the source jurisdiction but only provide for the agreed applicable rate. The source jurisdiction is therefore free to apply its own laws and in particular, to levy the tax either by deduction at source by way of withholding tax or require individual assessment. In many jurisdictions, non-resident withholding tax on dividends, interest and royalties is a final tax, i.e. treated as discharging the recipient's tax liability, and no tax return or additional tax is required if the only income derived by the non-residents from that jurisdiction is from dividends, interest and royalties. In any event, where a treaty partner has charged withholding tax on the passive income of a Hong Kong resident at the rate provided in the CDTA, the Hong Kong resident should be regarded as having fulfilled his tax payment obligation in that jurisdiction with respect to that passive income.

Yours sincerely,

( Ms Joan Hung )
for Secretary for Financial Services
and the Treasury

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