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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) (IRELAND) ORDER

INTRODUCTION

At the meeting of the Executive Council on 28 September 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) (Ireland) 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 ("HKSAR") and Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 22 June 2010 ("the Irish 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 Irish Agreement

4. In the absence of the Irish Agreement, profits of Hong Kong trading companies doing business through a permanent establishment, such as a sales outlet, in Ireland may be taxed in both places if the income is Hong Kong sourced. Under the Irish Agreement, double taxation is avoided in that any Irish tax paid by the companies shall be allowed as a deduction from the tax payable in Hong Kong.

5. Under the Irish Agreement, the income received by a Hong Kong resident, which is not paid by (or on behalf of) and borne by an Irish entity, from employment exercised in Ireland will be exempted from Irish income tax if his aggregate stay in Ireland in any relevant 12-month period does not exceed 183 days.

6. In the absence of the Irish Agreement, Hong Kong residents receiving dividends from Ireland not attributable to a permanent establishment there are subject to an Irish withholding tax, which is currently at 20%. Under the Irish Agreement, this will be exempted. Also, Hong Kong residents receiving royalties from Ireland are subject to a current withholding tax of 20% in Ireland. Under the

Irish Agreement, the royalties withholding tax will be capped at 3%. The Irish interest withholding tax on Hong Kong residents will be reduced from the current rate of 20% to 10%. The withholding tax rate will be further reduced to nil if the recipient is the HKSAR Government, the Hong Kong Monetary Authority, a recognized institution, a bank and a recognized pension fund, or if the interest is paid by a bank or is paid in respect of sale on credit of equipment, merchandise or service.

7. Under the Irish Agreement, profits from international shipping transport earned by Hong Kong residents that arise in Ireland, which are currently subject to tax there, will enjoy tax exemption under the Irish Agreement.

8. Overall speaking, the Irish Agreement between Hong Kong and Ireland 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 Ireland to do business with or invest in Hong Kong, and vice versa.

Exchange of Information Article under the Irish 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 (***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 Irish Agreement, which contains an EoI Article ("the Article") based on the OECD 2004 version, has adopted all the safeguards in the sample EoI Article, in particular -

(a) the Article only obliges the Contracting Parties to exchange information upon receipt of specific request and does not require the Contracting Parties to exchange information on

an automatic or spontaneous basis;

(b) the scope of information exchange is confined to taxes covered by the Irish 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 Irish Agreement, it is necessary for the Chief Executive in Council to declare by order that arrangements with Ireland on double taxation relief have been made, so as to put the Irish 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 Irish 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 Ireland have been made

and that those arrangements should take effect. **Section 3** states that the arrangements are those in Articles 1 to 27 of the Irish Agreement as well as Paragraphs 1 to 5 of the Protocol to the Irish 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	15 October 2010
Tabling at Legislative Council	20 October 2010
Commencement of the Order	9 December 2010

IMPLICATIONS OF THE PROPOSAL

C

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.

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 Irish Agreement on 22 June 2010. A spokesman will be available to answer media and public enquiries.

BACKGROUND

18. The Irish Agreement is the thirteenth CDTA concluded by Hong Kong with another jurisdiction. A summary of the main provisions of the 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, with Brunei, the Netherlands and Indonesia in March 2010, with Hungary, Kuwait and Austria in May 2010, with the United Kingdom and Ireland in June 2010 and with Liechtenstein in August 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
13 October 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) (IRELAND) ORDER

ANNEXES

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Ireland) 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 9 December 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(1) have been made with the Government of Ireland 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 Ireland; 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—

(a) Articles 1 to 27 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 Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" (which title is translated into Chinese as "《中華人民共和國香港特

別行政區政府與愛爾蘭政府就收入稅項避免雙重課稅和防止逃稅協定》" in this Order), done in duplicate at Dublin on 22 June 2010 in the English language; and

(b) Paragraphs 1 to 5 of the protocol to the agreement, done in duplicate at Dublin on 22 June 2010 in the English language.

(2) The English text of the Articles is reproduced in Part 1 of the Schedule; a Chinese translation of the Articles is also set out in that Part.

(3) The English text of the Paragraphs is reproduced in Part 2 of the Schedule; a Chinese translation of the Paragraphs is also set out in that Part.

Schedule [s. 3]

Part 1

Articles 1 to 27 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

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 by each Contracting Party, 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 Ireland,

(i) income tax;

(ii) income levy;

(iii) corporation tax; and

(iv) capital gains 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 to any other taxes falling within paragraphs 1 and 2 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 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 "Irish tax", as the context requires.

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 "Ireland" includes any area outside the territorial waters of Ireland which has been or may hereafter be designated, under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;

(b) the term "business" includes the performance of professional services and of other activities of an independent character;

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

(d) the term "competent authority" means:

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

(ii) in the case of Ireland, the Revenue Commissioners or their authorised representative;

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

(f) the term "enterprise" applies to the carrying on of any business;

(g) 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;

(h) 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;

(i) the term "national", in relation to Ireland means:

(i) any individual possessing citizenship of Ireland; and

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

(j) the term "person" includes an individual, a company, a trust and any other body of persons, and, in the case of the Hong Kong Special Administrative Region, includes a partnership;

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

2. In this Agreement, the terms "Hong Kong Special Administrative Region tax" and "Irish tax" do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, 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) 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 centrally managed and 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 centrally managed and controlled in the Hong Kong Special Administrative Region;

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

(c) in the case of either Contracting Party, the Government of that Party.

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 Ireland);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Ireland, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Ireland, 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; and

(f) 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, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise directly or 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.

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, display or delivery 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, display or delivery;

(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 on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for 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.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that 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.

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.

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. Any property or right referred to in paragraph 2 shall be regarded as situated where the land, standing timber, mineral deposits, quarries, sources or natural resources, as the case may be, are situated or where the working may take place.

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

5. The provisions of paragraphs 1 and 4 shall also apply to the income from immovable property of an enterprise.

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 that permanent establishment.

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 permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

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, where such an apportionment could not be made on the basis of the information available to that Contracting Party, the profits to be so attributed are to be determined 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 ships or aircraft in international traffic shall be taxable only in that Party.

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

3. 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 such sale or 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 shall be taxable only in that other Party, provided such resident is the beneficial owner of the dividends.

2. 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.

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

3. The provisions of paragraph 1 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. 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 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.

Article 11

INTEREST

1. Interest arising in a Contracting Party and paid to a resident in 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 in force in that Party, but if the beneficial owner of the interest is a resident in 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 this limitation.

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting Party of which the recipient is a resident if the beneficial owner of the interest is a resident of that Party and:

(a) in the case of Ireland is the Government or is:

(i) the Central Bank of Ireland;

(ii) the National Treasury Management Agency;

(iii) the National Pension Reserve Fund;

(iv) the National Assets Management Agency; and

(v) a statutory body, institution or fund wholly or mainly owned or appointed by the Government of Ireland as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of the Hong Kong Special Administrative Region is the Government or is:

(i) the Hong Kong Monetary Authority; and

(ii) a statutory body, institution or fund wholly or mainly owned or appointed by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

(c) is a bank or similar financial institution, or the interest is paid by a bank or similar financial institution;

(d) if the interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service;

(e) is established in that Party to provide benefits under pension arrangements recognised for tax purposes in that Party.

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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment 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 reason, 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.

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 3 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 this limitation.

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 and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission), any patent, trade mark, design or model, plan, secret formula or process, 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party where 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment 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 reason, 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.

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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), 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 their 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 quoted on a recognised stock exchange.

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

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, 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 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 shall be taxable only in that Party.

Article 15

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

Article 16

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7 and 14, 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 sportsman, 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 17

PENSIONS

1. Pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment under a pension or retirement scheme or fund which is:

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

   (b) a scheme or fund to secure retirement benefits which is recognised for tax purposes in a Contracting Party,

shall be taxable only in the Contracting Party referred to in subparagraph (a) or (b) hereof.

2. Pensions and other similar remuneration (including a lump sum payment), other than those referred to in paragraph 1, paid to a resident of a Contracting Party in consideration of past employment shall be taxable only in that Party.

3. This Article is subject to the provisions of paragraph 2 of Article 18.

Article 18

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party to an individual in respect of services rendered to that Party in the discharge of functions of a governmental nature 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 Ireland, is a national thereof; or

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

2. (a) Pensions and other similar remuneration (including a lump sum payment) paid, or paid out of funds created or contributed to, by the Government of a Contracting Party to an individual in respect of services rendered to that Party in the discharge of functions of a governmental nature 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, any corresponding pension and other similar remuneration (including a lump sum payment) shall be taxable only in that other Contracting Party.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions and other similar remuneration (including a lump sum payment) in respect of services rendered in connection with a business carried on by the Government of a Contracting Party.

Article 19

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 20

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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraph 1, 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.

Article 21

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), Irish tax paid under the laws of Ireland 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 Ireland, 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. Subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof),

(a) Hong Kong Special Administrative Region tax payable under the laws of the Hong Kong Special Administrative Region and in accordance with this Agreement, whether directly or by deduction, on profits, income or gains from sources within the Hong Kong Special Administrative Region, (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or gains by reference to which Hong Kong Special Administrative Region tax is computed;

(b) in the case of a dividend paid by a company which is a resident of the Hong Kong Special Administrative Region to a company which is a resident of Ireland and which controls directly or indirectly 5 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Hong Kong Special Administrative Region tax creditable under the provisions of subparagraph (a)) Hong Kong Special Administrative Region tax payable by the company in respect of the profits out of which such dividend is paid.

3. For the purposes of paragraphs 1 and 2, profits, income and capital gains owned by a resident of a Contracting Party which may be taxed in the other Contracting Party in accordance with this Agreement shall be deemed to be derived from sources in that other Contracting Party.

4. Where in accordance with any provision of the Agreement income derived by a resident of a Contracting Party is exempt from tax in that Party, such Party may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 22

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 Ireland, are Irish nationals, 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 Ireland) 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. 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.

3. 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.

4. 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.

Article 23

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 22, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Ireland). 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 24

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 the decisions of the Board of Review in the case of the Hong Kong Special Administrative Region, and of the Appeal Commissioners in the case of Ireland. 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 (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 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 25

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 26

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 bringing 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 the first day of April in the calendar year next following that in which this Agreement enters into force;

(b) in Ireland:

(i) in respect of income tax, income levy and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force.

Article 27

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. 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 the first day of April in the calendar year next following that in which the notice is given;

(b) in Ireland:

(i) in respect of income tax, income levy and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

(Chinese Translation)

第一條

所涵蓋的人

本協定適用於屬締約一方的居民或同時屬締約雙方的居民的人。

第二條

所涵蓋的稅項

1. 本協定適用於每一締約方課徵的收入稅項，不論該等稅項以何種方式徵收。

2. 對總收入或收入的組成部分課徵的所有稅項，包括對自轉讓動產或不動產所得的收益、企業支付的工資或薪金總額以及資本增值所課徵的稅項，須視為收入稅項。

3. 本協定適用於以下現有稅項：

(a) 就香港特別行政區而言，

(i) 利得稅；

(ii) 薪俸稅；及

(iii) 物業稅；

不論是否按個人入息課稅徵收；

(b) 就愛爾蘭而言，

(i) 所得稅；

(ii) 所得徵費；

(iii) 公司稅；及

(iv) 資產增值稅。

4. 本協定亦適用於在本協定的簽訂日期後，在現有稅項以外課徵或為取代現有稅項而課徵的任何與現有稅項相同或實質上類似的稅項，以及適用於締約方將來課徵而又屬第 1 及 2 款所指的任何其他稅項。締約雙方的主管當局須將其稅務法律的任何重大改變，通知對方的主管當局。

5. 現有稅項連同在本協定簽訂後課徵的稅項，以下稱為"香港特別行政區稅項"或"愛爾蘭稅項"，按文意所需而定。

第三條

一般定義

1. 就本協定而言，除文意另有所指外：

(a) (i) "香港特別行政區"一詞指香港特別行政區的稅務法律所適用的任何地區；

(ii) "愛爾蘭"一詞包括符合以下描述而位於愛爾蘭領海以外的地區：已經或今後可能會根據愛爾蘭關於專屬經濟區和大陸架的法律而獲指定為愛爾蘭可在其內在符合國際法下行使主權和管豁權的地區；

(b) "業務"一詞包括進行專業服務及其他具獨立性質的活動；

(c) "公司"一詞指任何法團或就稅收而言視作法團的任何實體；

(d) "主管當局"一詞：

(i) 就香港特別行政區而言，指稅務局局長或其獲授權代表；

(ii) 就愛爾蘭而言，指收入局局長或其獲授權代表；

(e) "締約方"或"一方"一詞指香港特別行政區或愛爾蘭，按文意所需而定；

(f) "企業"一詞適用於任何業務的經營；

(g) "締約方的企業"及"另一締約方的企業"兩詞分別指締約方的居民所經營的企業和另一締約方的居民所經營的企業；

(h) "國際運輸"一詞指由締約方的企業營運的船舶或航空器進行的任何載運，但如該船舶或航空器只在另一締約方內的不同地點之間營運，則屬例外；

(i) "國民"一詞，就愛爾蘭而言，指：

(i) 擁有愛爾蘭公民身分的任何個人；及

(ii) 藉愛爾蘭現行的法律而取得法人、合夥或組織地位的任何法人、合夥或組織；

(j) "人"一詞包括個人、公司、信託及任何其他團體；而就香港特別行政區而言，包括合夥；

(k) "稅項"一詞指香港特別行政區稅項或愛爾蘭稅項，按文意所需而定。

2. 在本協定中，"香港特別行政區稅項"及"愛爾蘭稅項"兩詞不包括根據任何締約方有關法律所徵收的任何罰款或利息；而就香港特別行政區而言，有關罰款或利息包括因拖欠香港特別行政區稅項而加收並連同欠款一併追討的款項及《稅務條例》第82A 條所指的"補加稅"。有關法律，是指關乎本協定適用(屬憑藉第二條而適用)的稅項的法律。

3. 在締約方於任何時候施行本協定時，凡有任何詞語在本協定中並無界定，則除文意另有所指外，該詞語須具有它當其時根據該方就本協定適用的稅項而施行的法律所具有的涵義，而在根據該方適用的稅務法律給予該詞語的任何涵義與根據該方的其他法律給予該詞語的涵義兩者中，以前者為準。

第四條

居民

1. 就本協定而言，"締約方的居民"一詞：

(a) 就香港特別行政區而言，指，

(i) 通常居住於香港特別行政區的任何個人；

(ii) 在某課稅年度內在香港特別行政區逗留超過 180 天或在連續兩個課稅年度(其中一個是有關的課稅年度)內在香港特別行政區逗留超過 300 天的任何個人；

(iii) 在香港特別行政區成立為法團的公司，或在香港特別行政區以外成立為法團而在香港特別行政區內受中央管理及控制的公司；

(iv) 根據香港特別行政區的法律組成的任何其他人，或在香港特別行政區以外組成而在香港特別行政區內受中央管理及控制的任何其他人；

(b) 就愛爾蘭而言，指根據愛爾蘭的法律，因其居籍、居所、管理工作地點，或任何性質類似的其他準則而有在愛爾蘭繳稅的法律責任的人。然而，該詞並不包括僅就以愛爾蘭為來源的收入而有在愛爾蘭繳稅的法律責任的任何人；

(c) 就任何締約方而言，指該方政府。

2. 如任何個人因第 1 款的規定而同時屬締約雙方的居民，則該人的身分須按照以下規定斷定：

(a) 如該人在其中一方有可供他使用的永久性住所，則該人須當作只是該方的居民；如該人在雙方均有可供他使用的永久性住所，則該人須當作只是與其個人及經濟關係較為密切的一方("重要利益中心")的居民；

(b) 如無法斷定該人在哪一方有重要利益中心，或該人在任何一方均沒有可供他使用的永久性住所，則該人須當作只是他的慣常居所所在的一方的居民；

(c) 如該人在雙方均有或均沒有慣常居所，則該人須當作只是他擁有居留權(就香港特別行政區而言)的一方或他屬其國民(就愛爾蘭而言)的一方的居民；

(d) 如該人既擁有香港特別行政區的居留權亦屬愛爾蘭的國民，或該人既沒有香港特別行政區的居留權亦不屬愛爾蘭的國民，則締約雙方的主管當局須共同協商解決該問題。

3. 如並非個人的人因第 1 款的規定而同時屬締約雙方的居民，則該人須當作僅屬其實際管理工作地點所處的一方的居民。

第五條

常設機構

1. 就本協定而言，"常設機構"一詞在企業透過某固定營業場所進行全部或部分業務的情況下，指該固定營業場所。

2. "常設機構"一詞尤其包括：

(a) 管理工作地點；

(b) 分支機構；

(c) 辦事處；

(d) 工廠；

(e) 作業場所；及

(f) 礦場、油井或氣井、石礦場或任何其他開採自然資源的場所。

3. "常設機構"一詞亦包括：

(a) 建築工地或建築、裝配或安裝工程，或與之有關連的監督管理活動，但僅限於該工地、工程或活動持續 6 個月以上的情況；

(b) 企業提供的服務(包括顧問服務)，該等服務可由該企業直接提供，亦可透過僱員或其他由該企業為提供該等服務而聘用的人員提供，但前提是屬該等性質的活動須於任何十二個月的期間內，在締約方(為同一個項目或相關連的項目)持續一段超過 183 天的期間或累計超過 183 天的多段期間。

4. 儘管有本條上述的規定，"常設機構"一詞須當作不包括：

(a) 純粹為了貯存、陳列或交付屬於有關企業的貨物或商品的目的而使用設施；

(b) 純粹為了貯存、陳列或交付的目的而維持屬於有關企業的貨物或商品的存貨；

(c) 純粹為了由另一企業作加工的目的而維持屬於有關企業的貨物或商品的存貨；

(d) 純粹為了為有關企業採購貨物或商品或收集資訊的目的而維持固定營業場所；

(e) 純粹為了為有關企業進行任何其他屬準備性質或輔助性質的活動而維持固定營業場所；

(f) 純粹為了(a)至(e)段所述的活動的任何組合而維持固定營業場所，但該固定營業場所因該活動組合而產生的整體活動，須屬準備性質或輔助性質。

5. 儘管有第 1 及 2 款的規定，如某人(第 6 款適用的具獨立地位的代理人除外)代表某企業行事，並在某締約方擁有並慣常行使以該企業名義訂立合約的權限，則就該人為該企業所進行的任何活動而言，該企業須當作在該方設有常設機構，但如該人的活動局限於第 4 款所述的活動(假若該等活動透過固定營業場

所進行，則根據該款的規定，該固定營業場所不會成為常設機構)，則屬例外。

6. 凡某企業透過經紀、一般佣金代理人或任何其他具獨立地位的代理人在某締約方經營業務，則只要該等人士是在其業務的通常運作中行事的，該企業不得僅因它如此經營業務而被當作在該方設有常設機構。

7. 如屬某締約方的居民的某公司，控制屬另一締約方的居民的其他公司或在該另一締約方(不論是透過常設機構或以其他方式)經營業務的其他公司，或受該其他公司所控制，此項事實本身並不會令上述其中一間公司成為另一間公司的常設機構。

第六條

來自不動產的收入

1. 某締約方的居民自位於另一締約方的不動產取得的收入(包括自農業或林業取得的收入)，可在該另一方徵稅。

2. "不動產"一詞具有該詞根據有關財產所處的締約方的法律而具有的涵義。該詞在任何情況下須包括：附屬於不動產的財產、用於農業及林業的牲畜和設備、關於房地產的一般法律規定適用的權利、不動產的使用收益權，以及作為開採或有權開採礦藏、石礦、源頭及其他自然資源的代價而取得不固定或固定收入的權利；船舶、船艇及航空器不得視為不動產。

3. 第 2 款所提述的任何財產或權利須視為位於有關土地、未伐的木材、礦藏、石礦、源頭或自然資源(視屬何情況而定)的所在地，或位於可進行開採的地方。

4. 第 1 款的規定適用於自直接使用、出租或以任何其他形式使用不動產而取得的收入。

5. 第 1 及 4 款的規定亦適用於來自企業的不動產的收入。

第七條

營業利潤

1. 某締約方的企業的利潤僅在該方徵稅，但如該企業透過位於另一締約方的常設機構在該另一方經營業務則除外。如該企業如前述般經營業務，其利潤可在該另一方徵稅，但以該等利潤中可歸因於該常設機構的利潤為限。

2. 在符合第 3 款的規定下，如某締約方的企業透過位於另一締約方的常設機構在該另一方經營業務，則須在每一締約方將該常設機構在某些情況下可預計獲得的利潤歸因於該機構，該等情況是指假設該常設機構是一間可區分且獨立的企業，在相同或類似的條件下從事相同或類似的活動，並在完全獨立的情況下，與首述企業進行交易。

3. 在斷定某常設機構的利潤時，為該常設機構的目的而招致的開支(包括如此招致的行政和一般管理開支)須容許扣除，不論該等開支是在該常設機構所處的一方或其他地方招致的。

4. 如某締約方習慣上是按照將某企業的總利潤分攤予其不同部分的基準而斷定須歸因於有關常設機構的利潤，或(在不能夠基於該締約方可取用的資料作出該項分攤的情況下)按照該方的法律訂明的其他方法的基準而斷定須如此歸因的利潤，則第 2 款並不阻止該締約方按此分攤方法或其他方法斷定該等應課稅的利潤；但採用的方法，須令所得結果符合本條所載列的原則。

5. 不得僅因為某常設機構為有關企業採購貨物或商品，而將利潤歸因於該常設機構。

6. 就上述各款而言，除非有良好而充分的理由需要改變方法，否則每年須採用相同的方法斷定須歸因於有關常設機構的利潤。

7. 如利潤包括在本協定其他條文另有規定的收入項目，該等條文的規定不受本條的規定影響。

第八條

航運和空運

1. 某締約方的企業自營運船舶或航空器從事國際運輸所得的利潤，僅在該方徵稅。

2. 第 1 款的規定亦適用於來自參與聯營、聯合業務或國際營運機構的利潤。

3. 就本條而言，來自營運船舶或航空器從事國際運輸的利潤尤其包括：

(a) 營運船舶或航空器從事國際運輸以載運乘客、禽畜、貨物、郵件或商品所得的收益及收入總額，包括 —

(i) 來自以包船或包機形式出租空船舶或空航空器所得的收入，但該等出租須屬附帶於營運船舶或航空器從事國際運輸的；

(ii) 來自為有關企業本身或為任何其他企業出售與上述載運有關連的船票或機票以及提供與上述載運有關連的服務的收入，但該等出售或服務的提供須屬附帶於營運船舶及航空器從事國際運輸的；

(b) 與營運船舶或航空器從事國際運輸有直接關連的資金所孳生的利息；

(c) 來自有關企業出租貨櫃的利潤，但該等出租須屬附帶於營運船舶或航空器從事國際運輸的。

第九條

相聯企業

1. 凡

(a) 某締約方的企業直接或間接參與另一締約方的企業的管理、控制或資本，或

(b) 相同的人直接或間接參與某締約方的企業的和另一締約方的企業的管理、控制或資本，

而在上述任何一種情況下，該兩間企業之間在商業或財務關係上訂立或施加的條件，是有別於互相獨立的企業之間所訂立的條件的，則若非因該等條件便本應會產生而歸於其中一間企業、但因該等條件而未有產生而歸於該企業的利潤，可計算在該企業的利潤之內，並據此徵稅。

2. 凡某締約方將某些利潤計算在該方的某企業的利潤之內，並據此徵稅，而另一締約方的某企業已在該另一方就該等被計算在內的利潤課稅，如假設上述兩間企業之間訂立的條件正如互相獨立的企業之間所訂立的條件一樣，該等被計算在內的利潤是會產生而歸於首述一方的該企業的，則該另一方須就其對該等利潤徵收的稅額，作出適當的調整。在釐定上述調整時，須充分顧及本協定的其他規定，而締約雙方的主管當局在有必要的情況下須共同磋商。

第十條

股息

1. 凡屬某締約方的居民的公司向另一締約方的居民支付股息，而後者是該股息的實益擁有人，則該股息只可在該另一方徵稅。

2. "股息"一詞用於本條中時，指來自股份或其他分享利潤的權利(但並非債權)的收入；如作出派發的公司屬某方的居民，而按該方的法律來自其他法團權利的收入，須與來自股份的收入受到相同的稅務待遇，則"股息"亦包括該等來自其他法團權利的收入。

如某公司從利潤中支付股息，本款並不影響就該等利潤對該公司徵稅。

3. 凡就某股份支付的股息的實益擁有人是某締約方的居民，支付該股息的公司則是另一締約方的居民，而該擁有人在該另一締約方內透過位於該另一方的常設機構經營業務，且持有該股份是與該常設機構有實際關連的，則第 1 款的規定並不適用。在此情況下，第七條的規定適用。

4. 如某公司是某締約方的居民，並自另一締約方取得利潤或收入，則該另一方不得對該公司就某股份支付的股息徵稅(但在有關股息是支付予該另一方的居民的範圍內，或在持有該股份是與位於該另一方的常設機構有實際關連的範圍內，則屬例外)，而即使支付的股息或未派發利潤的全部或部分，是在該另一方產生的利潤或收入，該另一方亦不得對該公司的未派發利潤徵收未派發利潤的稅項。

第十一條

利息

1. 產生於某締約方而支付予另一締約方的居民的利息，可在該另一方徵稅。

2. 然而，在某締約方產生的上述利息，亦可在該締約方按照該方的法律徵稅，但如該等利息的實益擁有人是另一締約方的居民，則如此徵收的稅款不得超過該等利息總額的百分之十。締約雙方的主管當局須藉雙方協商確定實施該限制稅率的方式。

3. 儘管有第 2 款的規定，如收取第 1 款提述的利息的人是某締約方的居民，且符合以下說明，則該等利息只可在該方徵稅：該利息的實益擁有人是該方的居民，及：

(a) 就愛爾蘭而言，是政府或：

(i) 愛爾蘭中央銀行；

(ii) 愛爾蘭國庫管理機構；

(iii) 愛爾蘭國家養老金儲備基金；

(iv) 愛爾蘭國有資產管理署；及

(v) 經締約雙方的主管當局不時議定的由愛爾蘭政府完全擁有或指定或主要由愛爾蘭政府擁有或指定的法定團體、機構或基金；

(b) 就香港特別行政區而言，是政府或：

(i) 香港金融管理局；及

(ii) 經締約雙方的主管當局不時議定的由香港特別行政區政府完全擁有或指定或主要由香港特別行政區政府擁有或指定的法定團體、機構或基金；

(c) 是銀行或類似的金融機構，或該等利息是由銀行或類似的金融機構支付的；

(d) 該等利息是就以信貸方式出售任何設備、商品或服務所引起的債務而支付的；

(e) 在該方設立的、以根據在該方為稅務目的而獲認可的退休金安排提供利益。

4. "利息"一詞用於本條中時，指來自任何類別的債權的收入，不論該債權是否以按揭作抵押，亦不論該債權是否附有分享債務人的利潤的權利，並尤其指來自政府證券和來自債券或債權證的收入，包括該等證券、債券或債權證所附帶的溢價及獎賞。就本條而言，逾期付款的罰款不被視作利息。

5. 凡就某項債權支付的利息的實益擁有人是某締約方的居民，並在該利息產生所在的另一締約方內，透過位於該另一締約方的常設機構經營業務，而該債權是與該常設機構有實際關連的，則第 1、2 及 3 款的規定並不適用。在此情況下，第七條的規定適用。

6. 如就某項債務支付利息的人是某締約方的居民，則該利息須當作是在該方產生。但如支付利息的人在某締約方設有常設機構(不論他是否某締約方的居民)，而該債務是在與該機構有關連的情況下招致的，且該利息是由該機構負擔的，則該利息須當作是在該機構所在的一方產生。

7. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致所支付的利息的款額，無論因何理由屬超出支付人與實益擁有人在沒有上述關係時會同意的款額，則本條的規定只適用於該會同意的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵稅。

第十二條

特許權使用費

1. 產生於某締約方而支付予另一締約方的居民的特許權使用費，可在該另一方徵稅。

2. 然而，在某締約方產生的上述特許權使用費亦可在該締約方按照該方的法律徵稅；但如該等特許權使用費的實益擁有人是另一締約方的居民，則如此徵收的稅款不得超過該等特許權使用費總額的百分之三。締約雙方的主管當局須藉雙方協商確定實施該限制稅率的方式。

3. "特許權使用費"一詞用於本條中時，指作為使用或有權使用文學作品、藝術作品或科學作品(包括電影影片及磁帶紀錄，或電台或電視廣播使用的其他媒體，或其他複製或傳送方式)的任何版權、任何專利、商標、設計或模型、圖則、秘密程式或程序的代價，或作為取得關於工業、商業或科學經驗的資料的代價，因而收取的各種付款。

4. 凡就某權利或財產支付的特許權使用費的實益擁有人是某締約方的居民，並在該特許權使用費產生所在的另一締約方內，透過位於該另一方的常設機構經營業務，且該權利或財產是與該常設機構有實際關連的，則第 1 及 2 款的規定並不適用。在此情況下，第七條的規定適用。

5. 如支付特許權使用費的人是某締約方的居民，則該特許權使用費須當作是在該方產生。但如支付特許權使用費的人在某締約方設有常設機構(不論他是否某締約方的居民)，而支付該特許權使用費的法律責任，是在與該機構有關連的情況下招致的，且該特許權使用費是由該機構負擔的，則該特許權使用費須當作是在該機構所在的一方產生。

6. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致所支付的特許權使用費的款額，無論因何理由屬超出支付人與實益擁有人在沒有上述關係時會同意的款額，則本條的規定只適用於該會同意的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵稅。

第十三條

資本收益

1. 某締約方的居民自轉讓位於另一締約方並屬第六條所提述的不動產所得的收益，可在該另一方徵稅。

2. 如某動產屬某常設機構的業務財產的一部分，而該機構是某締約方的企業在另一締約方設立的，則自轉讓該動產所得的收益，包括自轉讓該機構(單獨或隨同整個企業)所得的收益，可在該另一方徵稅。

3. 某締約方的企業自轉讓被營運從事國際運輸的船舶或航空器所得的收益，或自轉讓與上述船舶或航空器的營運有關的動產所得的收益，只可在該方徵稅。

4. 如某締約方的居民自轉讓公司的股份而取得收益，而該等股份超過百分之五十的價值是直接或間接來自位於另一締約方的不動產的，則該收益可在該另一方徵稅。然而，本款不適用於來自轉讓在認可證券交易所上市的股份的收益。

5. 凡有關轉讓人是某締約方的居民，自轉讓第 1、2、3 及 4 款所提述的財產以外的任何財產所得的收益，只可在該方徵稅。

第十四條

來自受僱工作的入息

1. 除第十五、十七及十八條另有規定外，某締約方的居民自受僱工作取得的薪金、工資及其他類似報酬，只可在該方徵稅，但如受僱工作是在另一締約方進行則除外。如受僱工作是在另一締約方進行，則自該受僱工作取得的報酬可在該另一方徵稅。

2. 儘管有第 1 款的規定，某締約方的居民自於另一締約方進行的受僱工作而取得的報酬如符合以下條件，則只可在首述一方徵稅：

(a) 收款人在於有關的課稅期內開始或結束的任何十二個月的期間中，在該另一方的逗留期間(如多於一段期間則可累計)不超過 183 天，及

(b) 該報酬由一名並非該另一方的居民的僱主支付，或由他人代該僱主支付，及

(c) 該報酬並非由該僱主在該另一方設有的常設機構所負擔。

3. 儘管有本條上述各款的規定，自於某締約方的企業所營運從事國際運輸的船舶或航空器上進行受僱工作而取得的報酬，只可在該方徵稅。

第十五條

董事酬金

某締約方的居民以其作為屬另一締約方的居民的公司的董事會的成員身分所取得的董事酬金及其他同類付款，可在該另一方徵稅。

第十六條

藝人及運動員

1. 儘管有第七及十四條的規定，某締約方的居民作為演藝人員(例如戲劇、電影、電台或電視藝人，或樂師)或作為運動員在另一締約方以上述身分進行其個人活動所取得的收入，可在該另一方徵稅。

2. 演藝人員或運動員以其演藝人員或運動員的身分在某締約方進行個人活動所取得的收入，如並非歸於該演藝人員或運動員本人，而是歸於另一人，則儘管有第七及十四條的規定，該收入可在該締約方徵稅。

第十七條

退休金

1. 凡作為過往的受僱工作或過往的自僱工作的代價而根據退休金計劃或退休計劃或基金向某締約方的居民支付退休金及其他類似報酬(包括整筆付款)，而該計劃或基金屬：

(a) 一項公共計劃，而該公共計劃是某締約方的社會保障制度的一部分；或

(b) 一項確保取得退休福利、且在某締約方為稅務目的而獲認可的計劃或基金，

則該退休金及其他類似報酬(包括整筆付款)，只可在(a)或(b)段所提述的締約方徵稅。

2. 不屬第 1 款所提述者的退休金及其他類似報酬(包括整筆付款)，如是因過往的受僱工作而支付予某締約方的居民的，只可在該方徵稅。

3. 本條受第十八條第 2 款的規定所規限。

第十八條

政府服務

1. (a) 某締約方的政府就提供予執行政府職能的該方的服務而向任何個人支付的薪金、工資及其他類似報酬(退休金除外)，只可在該方徵稅。

(b) 然而，如該等服務是在另一締約方提供，而該人屬該另一方的居民，並且，

(i) 就香港特別行政區而言，擁有香港特別行政區的居留權；而就愛爾蘭而言，屬愛爾蘭的國民；或

(ii) 不是純粹為提供該等服務而成為該另一方的居民，

則該等薪金、工資及其他類似報酬只可在該另一方徵稅。

2. (a) 某締約方的政府就提供予執行政府職能的該方的服務而向任何個人支付的退休金及其他類似報酬(包括整筆付款)，或就提供予執行政府職能的某締約方的服務而從該方的政府所設立或供款的基金支付予任何個人的退休金及其他類似報酬(包括整筆付款)，只可在該方徵稅。

(b) 然而，如提供有關服務的個人是另一締約方的居民，且有關個案屬第 1 款(b)段所述者，則相應的退休金及其他類似報酬(包括整筆付款)，只可在該另一締約方徵稅。

3. 第十四、十五、十六及十七條的規定，適用於就在與某締約方的政府所經營的業務有關連的情況下提供的服務而取得的薪金、工資、退休金及其他類似報酬(包括整筆付款)。

第十九條

學生

如學生在緊接前往某締約方之前是或曾是另一締約方的居民，而他逗留在首述一方純粹是為了接受教育，則該學生為了維持其生活或教育的目的而收取的款項，如是在首述一方以外的來源產生，則不得在該方徵稅。

第二十條

其他收入

1. 某締約方的居民的各項收入無論在何處產生，如在本協定位於本條之前的各條中未有規定，均只可在該方徵稅。

2. 就某權利或財產支付的收入如非來自第六條第 2 款所界定的不動產的收入，而收款人是某締約方的居民，並在另一締約方內透過位於該另一方的常設機構經營業務，且該權利或財產是與該機構有實際關連的，則第 1 款的規定不適用於該收入。在此情況下，第七條的規定適用。

3. 儘管有第 1 款的規定，由某締約方的居民支付予另一締約方的居民的生活費或其他贍養費，在該等款項於首述一方不容許作為付款人的稅項扣除的範圍內，只可在該方徵稅。

第二十一條

消除雙重課稅的方法

1. 在不抵觸香港特別行政區的法律中關乎容許在香港特別行政區以外的管轄區繳付的稅項用作抵免香港特別行政區稅項的規定(該等規定並不影響本條的一般性原則)的情況下，如已根據愛爾蘭的法律和按照本協定，就屬香港特別行政區居民的人自愛爾蘭的來源取得的收入繳付愛爾蘭稅項，則不論是直接繳付或以扣除的方式繳付，所繳付的愛爾蘭稅項須容許用作抵免須就該收入而繳付的香港特別行政區稅項，但如此獲容許抵免的款額，不得超過按照香港特別行政區的稅務法律就該收入計算所得的香港特別行政區稅項的款額。

2. 在不抵觸愛爾蘭的法律中關乎容許在愛爾蘭以外的地區須繳付的稅項用作抵免愛爾蘭稅項的規定(該等規定並不影響本條的一般性原則)的情況下，

(a) 如根據香港特別行政區的法律和按照本協定，須就自香港特別行政區的來源取得的利潤、收入或收益而繳付香港特別行政區稅項，則不論是直接繳付或以扣除的方式繳付(就股息而言，如該股息是就某項利潤支付的，不包括須就該項利潤而繳付的稅項)，所繳付的香港特別行政區稅項須容許用作抵免參照該等利潤、收入或收益計算的愛爾蘭稅項；

(b) 就由屬香港特別行政區居民的公司("前者")就其利潤支付予屬愛爾蘭居民的公司("後者")的股息而言，如後者直接或間接持有前者最少百分之五的表決權，則上述抵免，亦須考慮(在根據(a)段的規定可予抵免的香港特別行政區稅項之外)前者須就該利潤而繳付的香港特別行政區稅項。

3. 為第 1 及 2 款的目的，某締約方的居民擁有的利潤、收入和資本收益，如可按照本協定在另一締約方徵稅，須當作是自該另一締約方的來源取得的。

4. 凡按照本協定任何規定，某締約方居民所取得的收入獲豁免無須在該方徵稅，該方在計算該居民其餘收入的稅項的款額時，仍可將獲豁免的收入計算在內。

第二十二條

反歧視條文

1. 任何人如就香港特別行政區而言享有該處的居留權或在該處成立為法團或以其他方式組成，而就愛爾蘭而言屬愛爾蘭國民，則該人在另一締約方不得受符合以下說明的任何課稅或與之有關連的任何規定所規限：該課稅是有別於在該另一方(如該另一方是香港特別行政區)享有該處的居留權或在該處成立為法團或以其他方式組成的人，或有別於屬該另一方(如該另一方是愛爾蘭)的國民，在相同情況下(尤其是在居住方面)須接受或可接受的課稅及與之有關連的規定，或較之為嚴苛。儘管有第一條的規定，本規定亦適用於並非締約一方或雙方的居民的人。

2. 某締約方的企業設於另一締約方的常設機構在該另一方的課稅待遇，不得遜於進行相同活動的該另一方的企業的課稅待遇。凡某締約方以公民身分或家庭責任的理由，而為課稅的目的授予其本身的居民任何個人免稅額、稅務寬免及扣減，本條的規定不得解釋為使該締約方有責任將該免稅額、稅務寬免及扣減授予另一締約方的居民。

3. 除第九條第 1 款、第十一條第 7 款或第十二條第 6 款的規定適用的情況外，某締約方的企業支付予另一締約方的居民的利息、特許權使用費及其他支出，為斷定該企業的須課稅利潤的

目的，須根據相同的條件而可予扣除，猶如該等款項是支付予首述一方的居民一樣。

4. 如某締約方的企業的資本的全部或部分，是由另一締約方的一名或多於一名居民直接或間接擁有或控制，則該企業在首述一方不得受符合以下說明的任何課稅或與之有關連的任何規定所規限：該課稅是有別於首述一方的其他類似企業須接受或可接受的課稅及與之有關連的規定，或較之為嚴苛。

第二十三條

雙方協商程序

1. 如任何人認為任何締約方或締約雙方的行動導致或將導致對他作出不符合本協定規定的課稅時，則無論該等締約方的當地法律的補救辦法如何，該人如屬某締約方的居民，可將其案件呈交該締約方的主管當局；如其案件屬第二十二條第 1 款的情況，而他享有某締約方的居留權或在某締約方成立為法團或以其他方式組成(就香港特別行政區而言)，或他屬某締約方的國民(就愛爾蘭而言)，則他可將其案件呈交該締約方的主管當局。該案件必須於就導致不符合本協定規定課稅的行動發出首次通知之時起計的三年內呈交。

2. 如有關主管當局覺得所提反對屬有理可據，而它不能獨力達致令人滿意的解決方案，它須致力與另一締約方的主管當局共同協商解決該個案，以避免不符合本協定的課稅。任何達成的協議均須予以執行，不論締約雙方的當地法律所設的時限為何。

3. 締約雙方的主管當局須致力共同協商，解決就本協定的詮釋或適用而產生的任何困難或疑問。締約雙方的主管當局亦可共同磋商，以消除在本協定沒有訂明的情況下的雙重課稅。

4. 締約雙方的主管當局可為達成以上各款條文所述的協議而直接(包括透過由締約雙方的主管當局或其代表組成的聯合委員會)與對方聯絡。

第二十四條

資料交換

1. 締約雙方的主管當局須交換可預見攸關實施本協定的規定或施行或強制執行締約雙方關乎本協定所涵蓋的稅項的當地法律的規定(但以根據該等法律作出的課稅不違反本協定者為限)的資料。該項資料交換不受第一條的規定所限制。

2. 某締約方根據第 1 款收到的任何資料須保密處理，其方式須與處理根據該方的當地法律而取得的資料相同，該資料只可向與第 1 款所提述的稅項的評估或徵收、執行或檢控有關，或與關乎該等稅項的上訴的裁決有關的人員或當局(包括法院及行政機關)披露。該等人員或當局只可為該等目的使用該資料。他們可在公眾法庭的法律程序中或在司法裁定(就香港特別行政區而言，包括稅務上訴委員會的裁定；及就愛爾蘭而言，包括上訴委員的裁定)中披露該資料。不得為任何目的向任何第三司法管轄區披露資料。

3. 在任何情況下，第 1 及 2 款的規定均不得解釋為向某締約方施加採取以下行動的責任：

(a) 實施有異於該締約方或另一締約方的法律及行政慣例的行政措施；

(b) 提供根據該締約方或另一締約方的法律或在該締約方或另一締約方的正常行政運作過程中不能獲取的資料；

(c) 提供會將任何貿易、業務、工業、商業或專業秘密或貿易程序披露的資料，或提供若遭披露即屬違反公共政策的資料。

4. 如某締約方按照本條請求提供資料，則即使另一締約方未必為其本身的稅務目的而需要該等資料，該另一方仍須以其收集資料措施取得所請求的資料。前述句子所載的責任須受第 3 款的限制所規限，但在任何情況下，該等限制不得解釋為容許某締約方純粹因資料對其本土利益無關而拒絕提供該等資料。

5. 在任何情況下，第 3 款的規定不得解釋為容許某締約方純粹因資料是由某銀行、其他金融機構、代名人或以代理人或受信人身分行事的人所持有，或純粹因資料關乎某人的擁有權權益而拒絕提供該等資料。

第二十五條

政府代表團成員

本協定並不影響政府代表團(包括領館)成員根據國際法的一般規則或特別協定的規定享有的財政特權。

第二十六條

協定的生效

1. 每一締約方均須以書面通知另一締約方已完成其法律規定的使本協定生效的程序。本協定自上述通知的較後一份的日期起生效。

2. 本協定的條文一旦生效，隨即就下述年度具有效力：

(a) 在香港特別行政區：

就香港特別行政區稅項而言，於本協定生效的公曆年的翌年 4 月 1 日或之後開始的任何課稅年度；

(b) 在愛爾蘭：

(i) 就所得稅、所得徵費及資產增值稅而言，於本協定生效的公曆年的翌年 1 月 1 日或之後開始的任何課稅年度；

(ii) 就公司稅而言：於本協定生效的公曆年的翌年 1 月 1 日或之後開始的任何財政年度。

第二十七條

終止協定

本協定維持有效，直至被任何締約方終止為止。任何締約方均可在任何公曆年完結的最少六個月之前，藉向另一締約方發出書面終止通知，終止本協定。凡有該情況，本協定不再就下述年度具有效力：

(a) 在香港特別行政區：

就香港特別行政區稅項而言，於有關通知發出的公曆年的翌年 4 月 1 日或之後開始的任何課稅年度；

(b) 在愛爾蘭：

(i) 就所得稅、所得徵費及資產增值稅而言：於有關通知發出的公曆年的翌年 1 月 1 日或之後開始的任何課稅年度；

(ii) 就公司稅而言：於有關通知發出的公曆年的翌年 1 月 1 日或之後開始的任何財政年度。

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 Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

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

(a) A partnership in the Hong Kong Special Administrative Region is a taxable entity.

(b) Nothing in this Agreement shall be construed as preventing Ireland from taxing amounts included in the income of a resident of Ireland with respect to a partnership in which the resident is a partner.

2. With reference to Article 4:

A Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits.

3. With reference to Article 13, paragraph 4:

Ireland confirms that, in accordance with section 584 of the Taxes Consolidation Act 1997 and subject to the provisions of that section, a reorganisation or reduction of a company's share capital shall not be treated as involving any disposal of the original shares or any acquisition of the new holding or any part of it; but the original shares (taken as a single asset) and the new holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

4. With reference to Article 13, paragraph 5:

Where

(a) an individual domiciled in Ireland ceases to be a resident in Ireland,

(b) disposes of property acquired prior to the first day of the year in which he ceased to be resident in Ireland as mentioned in subparagraph (a) above, and

(c) then becomes resident again in Ireland within 5 years of ceasing to be so resident,

the provisions of paragraph 5 shall not affect the right of Ireland to tax the individual according to its law by reference to that disposal but the amount of the tax charged shall not exceed the amount of tax that would be charged on the amount of any gain arising on a deemed disposal by the individual of that property at market value on the day immediately before the first day of the year in which he ceased to be resident in Ireland as mentioned in subparagraph (a) above.

5. With reference to Article 24:

It is understood that this Article does not require the Contracting Parties to exchange information on an automatic or spontaneous basis.

(Chinese Translation)

1. 就第三條第 1(j)款而言：

(a) 在香港特別行政區的合夥是應課稅實體。

(b) 如某愛爾蘭居民是某合夥的合夥人，本協定的規定不得解釋為阻止愛爾蘭向就該合夥而對該居民的收入所包括的款額徵稅。

2. 就第四條而言：

在愛爾蘭設立的公共契約性基金，為批予稅收協定利益的目的須視為非稅務法人，而不得視為愛爾蘭的居民。

3. 就第十三條第 4 款而言：

愛爾蘭確認按照《1997 年稅收合併法案》第 584 條及在該條的規限下，重組或減少某公司的股本，不得視為涉及處置原本的股份或涉及獲取新股份或其任何部分；但原本的股份(視為單一資產)及新股份(視為單一資產)須視為同一資產，且是在取得原本股份時取得的。

4. 就第十三條第 5 款而言：

凡

(a) 以愛爾蘭為居籍的個人不再是愛爾蘭居民，

(b) 處置在他如上述(a)段所述般不再是愛爾蘭居民的年份的首天之前取得的財產，及

(c) 在他不再是愛爾蘭居民五年內，再成為愛爾蘭居民，

則第 5 款的規定，不影響愛爾蘭就處置上述財產而按照其法律向該人徵稅，但所徵稅項的款額，不得超過以下款額：假如該人當作在緊接如上述(a)段所述般不再是愛爾蘭居民的年份的首天之前以市價處置該財產，使可就該項處置產生的收益的款額而課徵的稅項的款額。

5. 就第二十四條而言：

按締約雙方理解，該條並不規定締約雙方自動或自發交換資料。

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 Ireland 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 22 June 2010. This Order specifies the arrangements in Articles 1 to 27 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. The Agreement and Protocol were signed in English. The Chinese texts set out in the Schedule are translations.

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 Ireland, have effect in relation to any tax of Ireland 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 Irish resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping and air services profits of Irish operators. However, the overall financial implications would be insignificant.

Economic Implications

2. The Irish Agreement will facilitate business development between Hong Kong and Ireland and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Ireland 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 exchange of information from Ireland under the Irish Agreement. The additional workload will be absorbed by redeployment of staff within IRD.

Annex D

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

Summary of Main Provisions

1. The CDTA with Ireland ("the Irish 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 Ireland – (i) income tax;
(ii) income levy;
(iii) corporation tax; and
(iv) capital gains tax.

2. The Irish 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 Irish Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Irish 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 ships and aircraft in international

traffic and gains from alienation of ships or aircraft operated in international traffic;

(c) dividends income;

(d) interest income where the beneficial owner is the Government, or a specified institution, or a bank, or a recognised pension fund; interest paid by a bank or paid in respect of sale on credit of equipment, merchandise or service;

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

(f) remuneration from non-government employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of the resident jurisdiction;

(g) capital gains not expressly dealt with in the Irish Agreement;

(h) non-government pensions, other than those paid out from a public scheme of or a pension fund recognized for tax purposes in the source jurisdiction; and

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

4. Employment income and pensions paid by the government of a Contracting Party are, in general, taxable only in that Party (source jurisdiction). Non-government pensions paid out from a public scheme of or a pension fund recognized for tax purposes in the source jurisdiction are taxable only in the 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 Irish 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 Irish 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) passive income of 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 interest, 10% (other than those specified under paragraph 3(d) above);

- for royalties, 3%;

(d) gains from alienation of immovable property or shares of a company (except quoted shares) deriving more than 50% of its asset value directly or indirectly from immovable property situated in the source jurisdiction;

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

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

(g) income of entertainers and sportspersons who conduct their

professional activities in the source jurisdiction; and

(h) 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 Ireland will provide double taxation relief for its residents by the credit method.