

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

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

INTRODUCTION

A At the meeting of the Executive Council on 3 May 2011, 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 and Capital) (French Republic) 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 France for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion signed on 21 October 2010 (the French Agreement).

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. Although 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 French Agreement

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

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

6. In the absence of a CDTA, Hong Kong residents receiving dividends from France not attributable to a permanent establishment there are subject to French withholding tax currently at 25%. Under the French Agreement, such withholding tax will be capped at 10%. Also, currently Hong Kong residents receiving royalties from France are subject to withholding tax at 33.33% in France. Under the French Agreement, the withholding tax on royalties will be capped at 10%. The French withholding tax on interest for Hong Kong residents will be reduced from the current rate of 18% to 10%. The withholding tax rate will be further reduced to nil if the recipient is the HKSAR Government, the Hong Kong Monetary Authority (HKMA), or a financial establishment mutually agreed by both sides, or if the interest is

paid on a loan directly or indirectly financed or guaranteed by the HKMA.

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

8. Overall speaking, the French 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 France to do business with or invest in Hong Kong, and vice versa.

Exchange of Information Article under the French 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 in any CDTA that we have signed when we submit the CDTA for ratification.

10. The French 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. It 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 French Agreement;
- (c) the information sought should be foreseeably relevant, i.e. there will be no fishing expedition;
- (d) confidentiality requirements and restrictions on the usage of the

information exchanged are as set out in the sample EoI Article;

- (e) information will only be disclosed to the tax authorities and not for release to 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 French Agreement, it is necessary for the Chief Executive in Council to declare by order that arrangements with France on double taxation relief have been made, so as to put the French 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 French 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 France 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 French Agreement as well as Paragraphs 1 to 13 of the Protocol to the French Agreement, the text of which Articles and Paragraphs are specified in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

14. The legislative timetable is as follows –

Publication in the Gazette

13 May 2011

Tabling at Legislative Council

18 May 2011

Commencement of the Order

7 July 2011

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 French Agreement on 21 October 2010. A spokesman will be available to answer media and public enquiries.

BACKGROUND

D

18. The French Agreement is the fifteenth CDTA concluded by Hong Kong with another jurisdiction. A summary of the main provisions of the French Agreement is at Annex 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, with Liechtenstein in August 2010, with France in October 2010, with Japan in November 2010, with New Zealand and Switzerland in December 2010, with Portugal in March 2011 and with Spain in April 2011.

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
11 May 2011

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

ANNEXES

Annex A	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (French Republic) 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 France

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (French Republic) Order

Section 1

1

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (French Republic) 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 7 July 2011.

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 the French Republic 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

- (1) 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 French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion” (which title is translated into Chinese as “《中

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (French Republic) Order

Section 3

2

華人民共和國香港特別行政區政府與法蘭西共和國政府避免就收入及資本稅項雙重課稅和防止逃稅協定》” in this Order), done in duplicate at Paris on 21 October 2010 in the English and French languages; and

- (b) Paragraphs 1 to 13 of the protocol to the agreement, done in duplicate at Paris on 21 October 2010 in the English and French languages.
- (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 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 French Republic for the Avoidance
of Double Taxation with respect to Taxes on Income
and on Capital and the Prevention of Fiscal Evasion**

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 and on capital imposed on behalf of a Contracting Party or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 the Agreement shall apply are in particular:

(a) in the case of France:

- (i) the income tax ("l'impôt sur le revenu");
- (ii) the corporation tax ("l'impôt sur les sociétés");
- (iii) the contributions on corporation tax ("les contributions sur l'impôt sur les sociétés");
- (iv) the tax on salaries ("la taxe sur les salaires");
- (v) widespread social security contributions ("contributions sociales généralisées") and contributions for the reimbursement of the social debt ("contributions pour le remboursement de la dette sociale");

(vi) the wealth tax ("l'impôt de solidarité sur la fortune");

including any withholding tax, prepayment or advance payment with respect to the aforesaid taxes;

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

- (i) profits tax;
- (ii) salaries tax;

(iii) property tax;

whether or not charged under personal assessment.

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes as well as any other taxes falling within the provisions of the Agreement which a Contracting Party may impose in future. The existing taxes, together with the taxes so imposed, are hereinafter referred to as "French tax" or "Hong Kong Special Administrative Region tax" respectively. The competent authorities of the Contracting Parties shall notify each other of substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term "Contracting Party" or "Party" means France or the Hong Kong Special Administrative Region, as the context requires;
 - (b) (i) the term "France" means the European and overseas departments of the French Republic including the territorial sea, and any area beyond the territorial sea over which the French Republic has sovereign rights and exercises its jurisdiction in accordance with international law;

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

- (c) the term "person" includes an individual, a company and any other body of persons;
- (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purpose;
- (e) the term "enterprise" applies to the carrying on of any business;
- (f) 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;
- (g) 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;
- (h) the term "competent authority" means:
 - (i) in the case of France, the Minister in charge of finance or his authorised representative;
 - (ii) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions;

- (i) the term "business" includes the performance of professional services and of other activities of an independent character;
 - (j) the term "public law entity" means a statutory body which performs public functions, but does not include such a body when carrying on industrial or commercial activities.
2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws in force of that Party for the purposes of the taxes to which the 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 any person who, under the laws in force of that Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Party and any local authority thereof and the public law entities of that Party or local authority. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in 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 Contracting Party of which he is a national (in the case of France) or in which he has the right of abode (in the case of the Hong Kong Special Administrative Region);
 - (d) if he is a national of France and has also the right of abode in the Hong Kong Special Administrative Region, or if he neither is a national of France nor has the right of abode in the Hong Kong Special Administrative Region, 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - (g) a building site or a construction, assembly, dredging or installation project which exists for more than six months.
3. An enterprise shall be deemed to have a permanent establishment in a Contracting Party and to carry on business through that permanent establishment if:
 - (a) it carries on supervisory activities in that Party for more than six months in connection with a building site, or a

- construction, assembly, dredging or installation project which is being undertaken in that Party; or
- (b) it furnishes services, including consultancy services, directly or through employees or other personnel engaged by it for such purpose, but only where activities of that nature continue within that Party for a period of more than six months.
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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, 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.

Article 6

Income from Immovable Property

1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting Party in which such immovable property is situated.
2. For the purposes of this Agreement, 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 explore for or 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.
5. Where ownership of shares, interest or other rights in a company, trust or other institution entitles the owner to the enjoyment of immovable property situated in a Contracting Party and held by that company, trust or other institution, the income that the owner derives from the direct use, letting or use in any other form of his right of enjoyment may be taxed in that Party. The provisions of

this paragraph shall apply notwithstanding the provisions of Article 7.

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 independent enterprise engaged in the same or similar activities under the same or similar conditions.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting Party in which the permanent establishment is situated or elsewhere. No such deduction shall be allowed in respect of amounts, if any, paid (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 respect of a

financial institution, by way of interest on moneys 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 respect of a financial institution, by way of interest on moneys 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, nothing in paragraph 2 shall preclude that Party from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment 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. 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.
7. For the purposes of the preceding paragraphs of this Article, 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.

Article 8

Shipping and Air Transport

1. Profits derived from the operation of ships or aircraft in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.
2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.
3. For the purpose of this Article, the term "profits" includes 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:
 - (a) profits derived from the lease of ships or aircraft on a "bare-boat" charter or "dry lease" basis, where such charter or lease is incidental to the operation of ships or aircraft in international traffic;
 - (b) profits derived from the sale of tickets or similar documents for and the provision of services connected with such transport, either for the enterprise itself or on behalf of any other enterprise, provided that such sale or provision is incidental to the operation of ships or aircraft in international traffic;
 - (c) interest income generated in a Contracting Party from funds required for the business in that Party of operating ships or aircraft in international traffic;

- (d) profits derived from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic, provided that such activities are 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 if that other Party considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose 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. (a) 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 10 per cent of the gross amount of the dividends.

(b) 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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income treated as a distribution by the taxation laws of the Contracting 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, 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.
5. 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.
6. 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 Contracting

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.

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

(a) in the case of France:

- (i) to the Government of the French Republic;
- (ii) to the Bank of France;
- (iii) in respect of a debt-claim or of a loan guaranteed or insured or subsidised by the Government of the French Republic or by one other person acting on behalf of the Government of the French Republic;
- (iv) to a financial establishment appointed by the Government of the French Republic and mutually agreed upon by the competent authorities of the two Contracting Parties;

(b) 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) on a loan directly or indirectly financed or guaranteed by the Hong Kong Monetary Authority;

(iv) to a 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.

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, including income from government securities and income from bonds or debentures, and 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 and 2 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 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, having regard to the debt-claim for which it is paid, exceeds 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 Contracting Party.
2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Contracting Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
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 films or tapes used for radio or television broadcasting, 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 when the payer is a resident of that Party. Where, however, the person paying the royalties, whether a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the obligation 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, having regard to the use, right or information for which they are paid, exceeds 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. (a) 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.

(b) Gains derived by a resident of a Contracting Party from the alienation of shares, interest or other rights in a company, trust or other institution deriving more than 50 per cent of their asset value, directly or indirectly, from immovable property referred to in Article 6 and situated in the other Contracting Party, or of rights connected with such immovable property, may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares, interest or other rights:
 - (i) quoted on such stock exchange as may be agreed between the Parties;
 - (ii) alienated or exchanged in the framework of a reorganisation of a company, a merger, a scission or a similar operation; or
 - (iii) in a company more than 50 per cent of whose asset value is derived from immovable property in which it carries on its business.
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. Notwithstanding the provisions of paragraph 1, gains from the alienation of shares or rights forming part of a substantial participation in the capital of a company which is a resident of a Contracting Party may be taxed in that Party. It is considered that there is a substantial participation where the alienator, alone or with related persons, has, directly or indirectly, shares or rights, the whole of which entitles him to 25 per cent or more of the profits of the company.
4. Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting Party or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.
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.
6. 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 alienation in respect of which the gain is realised, to take advantage of this Article by means of that alienation.

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; and
 - (d) the remuneration is taxable in the first-mentioned Party according to the laws of that 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 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in the capacity of 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 Athletes

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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, whether a resident of a Contracting Party or not, 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 athlete are exercised.

Article 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting Party may be taxed in the Contracting Party where they arise.
2. Pensions shall be deemed to arise in a Contracting Party if paid by or out of a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, where such pension fund or institution is recognised for tax purposes or regulated in accordance with the laws of that Contracting Party.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or a local authority thereof, or by one of their public law entities to an individual in respect of services rendered to that Party, local authority or public law entities 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 in question 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 France, is a national thereof; or
 - (ii) did not become a resident of that Party solely for the purpose of performing the services.
- 2.- Any pension paid by, or out of funds created by, a Contracting Party or a local authority thereof or by one of their public law entities, to an individual in respect of services rendered to that Party, local authority or public law entity shall be taxable only in that Party.
 3. The provisions of Articles 14, 15, 16 and 17 shall, instead of paragraphs 1 and 2 of this Article, apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting Party or a local authority thereof, or by one of their public law entities.

Article 19

Students

Payments which a student, trainee or business apprentice 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 or training, receives for the purpose of his maintenance, education or training, shall not be taxable in that Party, provided that such payments arise from sources outside that Party.

Article 20

Other Income

1. Items of income beneficially owned by 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 beneficial owner 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 paragraphs 1 and 2, items of income not dealt with in the foregoing Articles of this Agreement derived by a resident of a Contracting Party from sources in the other Contracting Party may also be taxed in that other Party, and according to the laws of that Party.

Article 21

Capital

1. (a) Capital represented by immovable property referred to in Article 6 may be taxed in the Contracting Party in which such immovable property is situated.
- (b) Capital represented by shares or other rights in a company, a trust or a comparable institution, the assets or property of

which consist more than 50 per cent of their value of, or derive from more than 50 per cent of their value, directly or indirectly through the interposition of one or more other companies, trusts or comparable institutions, immovable property referred to in Article 6 and situated in a Contracting Party or of rights connected with such immovable property may be taxed in that Party. For the purposes of this provision, immovable property directly used by an entity to carry on its own business shall not be taken into account.

2. Capital represented by 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, may be taxed in that other Party.
3. Capital represented by property forming part of the business property of an enterprise of a Contracting Party and consisting of ships and aircraft operated by such enterprise in international traffic and of movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Party.
4. All other elements of capital of a resident of a Contracting Party shall be taxable only in that Party.
5. Notwithstanding the provisions of paragraphs 3 and 4 of this Article, elements of capital which are taxable in a Contracting Party according to those paragraphs may also be taxed in the other Contracting Party if they are not taxed in the first-mentioned Contracting Party under the ordinary rules of its tax law.

Article 22

Elimination of Double Taxation

1. In the case of France, double taxation shall be avoided as follows:

(a) Notwithstanding any other provision of this Agreement, income which may be taxed or shall be taxable only in the Hong Kong Special Administrative Region in accordance with the provisions of the Agreement shall be taken into account for the computation of French tax where such income is not exempted from corporation tax according to French law. In that case, the Hong Kong Special Administrative Region tax shall not be deductible from such income, but the resident of France who is the beneficial owner shall, subject to the conditions and limits provided for in sub-paragraphs (i) and (ii), be entitled to a tax credit against French tax. Such tax credit shall be equal:

- (i) in the case of income other than that mentioned in sub-paragraph (ii), to the amount of French tax attributable to such income provided that the resident of France is subject to Hong Kong Special Administrative Region tax in respect of such income;
- (ii) in the case of income subject to the corporation tax referred to in Article 7 and paragraph 2 of Article 13 and in the case of income referred to in Articles 10, 11 and 12, paragraphs 1 and 3 of Article 13, paragraph 3 of Article 14, Article 15, paragraphs 1 and 2 of Article 16 and paragraphs 1 and 3 of Article 20, to the amount of tax paid in the Hong Kong Special Administrative Region in accordance with the provisions of those

Articles; however, such tax credit shall not exceed the amount of French tax attributable to such income.

- (b) A resident of France who owns capital which may be taxed in the Hong Kong Special Administrative Region according to paragraphs 1, 2 or 3 of Article 21 shall also be taxable in France in respect of such capital. The French tax shall be computed by allowing a tax credit equal to the amount of the tax paid in the Hong Kong Special Administrative Region on such capital. However, such tax credit shall not exceed the amount of French tax attributable to such capital.
- (c) (i) It is understood that the term "amount of French tax attributable to such income" as used in sub-paragraph (a) means:
 - where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;
 - where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income.
- (ii) It is understood that the term "amount of tax paid in the Hong Kong Special Administrative Region" as used in sub-paragraph (a) means the amount of Hong Kong Special Administrative Region tax effectively and definitively borne in respect of the items of income concerned, in accordance with the provisions of the

Agreement, by a resident of France who is taxed on those items of income according to the French law.

2. In the case of the Hong Kong Special Administrative Region, double taxation shall be avoided as follows:

Subject to the provisions of the laws in force in the Hong Kong Special Administrative Region from time to time which relate to the allowance of a credit against the 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), French tax paid under the law of France and in accordance with this Agreement, whether directly or by deduction, in respect of income, profits or gains derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in France, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of those income, profits or gains, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of the same income, profits or gains in accordance with the tax laws of the Hong Kong Special Administrative Region.

Article 23

Non-Discrimination

1. Individuals who, in the case of France, are French nationals, and, in the case of the Hong Kong Special Administrative Region, have the right of abode, 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 individuals who are nationals (in the case of France), or have the right of abode (in the case of the Hong Kong

Special Administrative Region) in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation of a permanent establishment that 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 be deductible, for the purpose of determining the taxable profits of that enterprise, 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.
5. (a) Contributions borne by an individual who renders employment services in a Contracting Party to a pension scheme recognised for tax purposes in the other Contracting Party shall be deductible, to the extent that they are not effectively allowed in the other Party, in determining the individual's taxable income in the first-mentioned Party ("that

Party”), in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that Party, provided that:

- (i) the individual was not a resident of that Party and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension scheme was substituted) immediately before he began to render employment services in that Party; and
 - (ii) the pension scheme is accepted by the competent authority of that Party as generally corresponding to a pension scheme recognised as such for tax purposes by that Party.
- (b) For the purposes of sub-paragraph (a):
- (i) the term “pension scheme” means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the employment services referred to in sub-paragraph (a); and
 - (ii) a pension scheme is “recognised for tax purposes” in a Party if the contributions to the scheme would qualify for tax relief in the Party concerned.
6. The exemptions and other advantages provided by the tax laws of a Contracting Party for the benefit of that Party or its local authorities or of their public law entities which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting Party or its local authorities or to their public law entities which carry on the same or similar activity.

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 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 of which he is a national (in the case of France) or in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region). 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 the 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 the Agreement. Any agreement so reached shall be implemented notwithstanding any time limits in the 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 the Agreement. In particular, they may consult together to endeavour to agree to the same allocation of income between associated enterprises mentioned in Article 9. They may also consult together for the elimination of double taxation in cases not provided for in the 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 of 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 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.
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;
 - (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 26

Members of Government Missions

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

Article 27

Miscellaneous

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.

Article 28

Entry into Force

1. Each of the Contracting Parties shall notify to the other in writing the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the first day of the month following the day when the later of these notifications has been received.
2. The provisions of the Agreement shall thereupon have effect:
 - (a) in France:

- (i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the Agreement enters into force;
 - (ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the Agreement enters into force;
 - (iii) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the Agreement enters into force;
- (b) 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 Agreement enters into force.

Article 29

Termination

1. This Agreement shall remain in force indefinitely. However, after a period of five calendar years from the date on which the Agreement enters into force, either Contracting Party may terminate it by giving written notice of termination at least six months before the end of any calendar year.
2. In such event, the Agreement shall cease to have effect:
 - (a) in France:

- (i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the notice of termination is given;
 - (ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given;
 - (iii) in respect of the other taxes, for taxation the taxable event of which occurs after the calendar year in which the notice of termination is given;
- (b) 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.

(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. 本協定適用於代締約方或其地區主管當局課徵的收入及資本稅項，不論該等稅項以何種方式徵收。
2. 對總收入、總資本或收入或資本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，須視為收入及資本稅項。
3. 以下稅項尤其屬本協定所適用的現有稅項：
 - (a) 就法國而言：
 - (i) 所得稅("l'impôt sur le revenu")；
 - (ii) 公司稅("l'impôt sur les sociétés")；
 - (iii) 公司稅繳款("les contributions sur l'impôt sur les sociétés")；
 - (iv) 薪俸稅("la taxe sur les salaires")；
 - (v) 普及社會保障繳款("contributions sociales généralisées")及償付社會債務的繳款("contributions pour le remboursement de la dette sociale")；

(vi) 財富稅("l'impôt de solidarité sur la fortune")；

包括關於上述稅項的任何預扣稅、預扣款或預付款；

(b) 就香港特別行政區而言：

(i) 利得稅；

(ii) 薪俸稅；

(iii) 物業稅；

不論是否按個人入息課稅徵收。

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本協定的規定所指的任何其他稅項。現有稅項連同如此課徵的稅項，以下分別稱為“法國稅項”或“香港特別行政區稅項”。締約雙方的主管當局須將其各別稅務法律的重大改變，通知對方的主管當局。

第三條

一般定義

1. 就本協定而言，除文意另有所指外：

(a) “締約方”或“一方”一詞指法國或香港特別行政區，按文意所需而定；

(b) (i) “法國”一詞指法蘭西共和國的歐洲及海外行政區，包括其領海，以及法蘭西共和國按照國際法擁有主權並行使其司法管轄權的位於其領海以外的任何地區；

(ii) “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；

(c) “人”一詞包括個人、公司及任何其他團體；

(d) “公司”一詞指任何法團或就稅收而言視作法團的任何實體；

(e) “企業”一詞適用於任何業務的經營；

(f) “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；

(g) “國際運輸”一詞指由締約方的企業營運的船舶或航空器所進行的任何載運，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；

(h) “主管當局”一詞：

(i) 就法國而言，指主管財政的部長或其獲授權代表；

- (ii) 就香港特別行政區而言，指稅務局局長或其獲授權代表，或任何獲授權執行現時可由局長執行的職能或類似職能的人士或機構；
 - (i) “業務”一詞包括進行專業服務及其他具獨立性質的活動；
 - (j) “公法實體”一詞指執行公共職能的法定團體，但在該等團體正進行工業或商業活動時，則不包括該等團體。
2. 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現行法律所具有的涵義，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”一詞指符合下述說明的人：根據該方的現行法律，該人因其居籍、居所、管理工作地點或任何性質類似的其他準則，而有在該方繳稅的法律責任；該詞亦包括該方及其任何地區主管當局以及該方或該等地區主管當局的公法實體。然而，該詞並不包括任何僅就來自在該方的來源的收入而有在該方繳稅的法律責任的人。
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下述規定斷定：

- (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屬其國民（就法國而言）的締約方或他擁有居留權（就香港特別行政區而言）的締約方的居民；
 - (d) 如該人既屬法國的國民亦擁有香港特別行政區的居留權，或該人既不屬法國的國民亦沒有香港特別行政區的居留權，則締約雙方的主管當局須透過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經營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；
 - (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；
 - (g) 任何存在超過 6 個月的建築工地或建築、裝配、挖掘或安裝工程。
3. 在下述情況下，某企業須當作在某締約方設有常設機構，並透過該常設機構經營業務：
- (a) 該企業在該方進行與建築工地或與在該方進行的建築、裝配、挖掘或安裝工程有關連的監督管理活動超過 6 個月；或
 - (b) 該企業直接提供服務(包括顧問服務)，或透過僱員或其他由該企業為提供服務(包括顧問服務)而聘用的人員提供該等服務，但屬該等性質的活動須在該方持續一段超過 6 個月的時間。
4. 儘管有本條以上各款的規定，“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項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，而該人在某締約方擁有以該企業名義訂立合約的權限，並慣常在某締約方行使該權限，則該企業須當作就該人為該企業所進行的任何活動在該締約方設有常設機構；但如該人的活動局限於第 4 款所述的活動(該等活動即使透過某固定營業場所進行也不會令該固定營業場所根據該款規定成為常設機構)，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。然而，如該代理人的活動全部或幾乎全部屬代表該企業而進行，則該代理人不會被視為本款所指的具獨立地位的代理人。

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. 來自位於某締約方的不動產的收入(包括來自農業或林業的收入)可在該締約方徵稅。
2. 就本協定而言，“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勘探或開採礦藏、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 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。
4. 第 1 及 3 款的規定亦適用於來自企業的不動產的收入。

5. 凡擁有任何公司、信託或其他機構的股份、權益或其他權利的人因該項擁有權而有權享用該公司、信託或其他機構持有的位於某締約方的不動產，則該擁有人自直接使用、出租或以任何其他形式使用其享用權而取得的收入可在該方徵稅。儘管有第七條的規定，本款的規定仍然適用。

第七條

營業利潤

1. 某締約方的企業的利潤只可在該方徵稅，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。
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企業開支(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締約方或其他地方招致的。如該常設機構為得以使用專利或其他權利而向有關企業的總辦事處或該企業的任何其他辦事處支付特許權使用費、費用或其他類似款項，或就所提供的特定服務或為管理而向有關企業的總辦事處或該企業的任何其他辦事處支付佣金，或就借予該常設機構的款項而向有關企業的總辦事處或該企業的任何其他辦事處支付利息(金

融機構除外)，則所支付的任何款額(作為實際開支的付還除外)，不准扣除。同樣地，如某常設機構以使用專利權或其他權利作交換而向有關企業的總辦事處或該企業的任何其他辦事處收取特許權使用費、費用或其他類似款項，或就所提供的特定服務或為管理而向有關企業的總辦事處或該企業的任何其他辦事處收取佣金，或(金融機構除外)就借予有關企業的總辦事處或該企業的任何其他辦事處而向該總辦事處或其他辦事處收取利息，則向該總辦事處或其他辦事處所收取的任何款額(作為實際開支的付還除外)，在斷定該常設機構的利潤時，不得被計算在內。

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，而斷定可歸因於有關常設機構的利潤，則第 2 款並不阻止該方按此習慣的分攤方法斷定該等應課稅的利潤；但採用的分攤方法，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. 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。
7. 就本條上述各款而言，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可歸因於有關常設機構的利潤。

第八條

航運及空運

1. 某締約方的企業自營運船舶或航空器從事國際運輸而取得的利潤，只可在該方徵稅。
2. 第 1 款的規定亦適用於自參與聯營、聯合業務或國際營運機構而取得的利潤。
3. 就本條而言，“利潤”一詞包括營運船舶或航空器從事國際運輸以載運乘客、牲畜、貨物、郵件或商品所得的收益及收入總額，包括：
 - (a) 自以包船或包機形式出租空船舶或空航空器而取得的利潤，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；
 - (b) 自出售與上述載運有關連的船票或機票或類似文件以及提供與上述載運有關連的服務(不論是為有關企業本身或代表其他企業而出售或提供的)而取得的利潤，但該等出售或服務的提供須屬附帶於營運船舶或航空器從事國際運輸的；
 - (c) 為在某締約方營運船舶或航空器從事國際運輸所需的資金在該方所孳生的利息收入；
 - (d) 自使用、維修或出租用於從事國際運輸以載運貨物或商品的貨櫃而取得的利潤，但該等活動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前述一方的該企業的，則若該另一方認為有充份理由作出調整，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，而為此目的，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. 由屬某締約方的居民的的公司支付予另一締約方的居民的股息，可在該另一方徵稅。
- 2. (a) 然而，如支付股息的公司屬某締約方的居民，上述股息亦可在該締約方按照該方的法律徵稅，但如該等股息的實益擁有者是另一締約方的居民，則如此徵收的稅款，不得超過該等股息總額的百分之十。
(b) 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. “股息”一詞用於本條中時，指來自股份、分享利潤股份或分享利潤權利、礦務股份、創辦人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締約方的居民，而按該締約方的稅務法律，某項收入須視為利潤派發，則“股息”亦包括該項收入。
- 4. 凡就某股份支付的股息的實益擁有者是某締約方的居民，支付該股息的公司則是另一締約方的居民，而該擁有者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 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。

6. 任何與產生或轉讓孳生股息的股份或其他權利有關的人，如其主要目的或其中一個主要目的是藉着產生或轉讓該股份或其他權利而利用本條，則本條的規定不適用。

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締約方的法律徵稅，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。
3. 儘管有本條第 2 款的規定，在某締約方產生的利息如符合以下說明，則可在該方獲豁免繳稅：
 - (a) 就法國而言：
 - (i) 支付予法蘭西共和國政府；
 - (ii) 支付予法蘭西銀行；

- (iii) 就由法蘭西共和國政府或代表法蘭西共和國政府行事的其他人擔保或投保或資助的債權或貸款而支付；
 - (iv) 支付予經締約雙方的主管當局相互議定的由法蘭西共和國政府指定的財務機構；
 - (b) 就香港特別行政區而言：
 - (i) 支付予香港特別行政區政府；
 - (ii) 支付予香港金融管理局；
 - (iii) 就由香港金融管理局直接或間接提供資本或保證的貸款而支付；
 - (iv) 支付予經締約雙方的主管當局相互議定的由香港特別行政區政府指定的財務機構。
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)，包括來自政府證券和來自債券或債權證的收入，及該等證券、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 及 2 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(不論他是否某締約方的居民)在某締約方設有常設機構，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，以致就有關債權所支付的利息的款額，在顧及該債權下，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。
8. 任何與產生或轉讓孳生利息的債權有關的人，如其主要目的或其中一個主要目的是藉着產生或轉讓該債權而利用本條，則本條的規定不適用。

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締約方的法律徵稅；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十。

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(包括電影影片及電台或電視廣播使用的膠片或磁帶)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，而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(不論是否某締約方的居民)在某締約方設有常設機構，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，以致就有關使用、權利或資料所支付的特許權使用費的款額，在顧及該使用、權利或資料下，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。
7. 如特許權使用費是就某權利而支付的，而與產生或轉讓該權利有關的任何人，如其主要目的或其中一個主要目的是藉着產生或轉讓該權利而利用本條，則本條的規定不適用。

第十三條

資本收益

1. (a) 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而取得的收益，可在該另一締約方徵稅。
- (b) 如某締約方的居民自轉讓某公司、信託或其他機構的股份、權益或其他權利而取得收益，而該公司、信託或機構超過百分之五十的資產值是直接或間接來自第六條提述且位於另一締約方的不動產的，或自轉讓與上述不動產有關連的權利而取得收益，則該收益可在該另一締約方徵稅。然而，本款不適用於自轉讓以下的股份、權益或其他權利而取得的收益：
 - (i) 在雙方議定的證券交易所上市的股份、權益或其他權利；
 - (ii) 在一間公司重組、合併、分拆或類似行動的框架內轉讓或交換的股份、權益或其他權利；或
 - (iii) 符合以下說明的公司的股份、權益或其他權利：該公司有超過百分之五十的資產值，是來自其經營業務所在的不動產。
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，則自轉讓該動產而取得的收益，包括自轉讓該機構(單獨轉讓或隨同整個企業轉讓)而取得的收益，可在該另一方徵稅。

3. 儘管有第 1 款的規定，如轉讓人自轉讓股份或權利獲得收益，而該股份或權利是該轉讓人對屬締約一方居民的公司的資本的重大參與，則該收益可在該方徵稅。凡轉讓人(不論單獨或連同有關人士)直接或間接擁有股份或權利，而該等股份或權利的總和使該轉讓人有權享有有關公司百分之二十五或以上的利潤，轉讓人即屬對該公司的資本有重大參與。
4. 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而取得的收益，或自轉讓與上述船舶或航空器的營運有關的動產而取得的收益，只可在該方徵稅。
5. 凡有第 1、2、3 及 4 款所提述的財產以外的任何財產被轉讓，而有關轉讓人是某締約方的居民，則自該項轉讓而取得的收益，只可在該方徵稅。
6. 任何與將收益變現的轉讓有關的人，如其主要目的或其中一個主要目的是藉着該轉讓而利用本條，則本條的規定不適用。

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而取得的薪金、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，則自該受僱工作而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；及
 - (d) 根據首述一方的法律，該報酬可在該方徵稅。
3. 儘管有本條以上各款的規定，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，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類似付款，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(不論該人是否締約方的居民)，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. 除第十八條第 2 款另有規定外，作為過往的受僱工作的代價而支付予某締約方的居民的退休金及其他類似報酬，可在該退休金及報酬產生所在的締約方徵稅。
2. 如任何退休金是從或由某退休基金或其他提供可讓個人參與以確保取得退休福利的退休金計劃的類似機構支付的，而該退休基金或機構已按照某締約方的法律為稅務目的而獲認可或受規管，則該退休金須當作是在該締約方產生。

第十八條

政府服務

1. (a) 某締約方或其地區主管當局或它們的其中一個公法實體就提供予該方、地區主管當局或公法實體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，而有關的個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；而就法國而言，屬法國的國民；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. 某締約方或其地區主管當局或它們的其中一個公法實體就提供予該方、地區主管當局或公法實體的服務而向任何個人支付的任何退休金，或就上述服務而從該方、地區主管當局或公法實體所設立的基金支付予任何個人的任何退休金，只可在該方徵稅。
3. 第十四、十五、十六及十七條的規定，取替本條第 1 及 2 款而適用於就在與某締約方或其地區主管當局或它們的其中一個公法實體經營的業務有關連的情況下所提供的服務而取得的薪金、工資及其他類似報酬，以及退休金。

第十九條

學生

如學生、實習人員或業務學徒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或培訓，則該學生、實習人員或業務學徒為了維持其生活、教育或培訓的目的而收取的款項，如是在首述一方以外的來源產生，則不可在該方徵稅。

第二十條

其他收入

1. 由某締約方的居民實益擁有的各項收入，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，而該收入的實益擁有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 及 2 款的規定，某締約方的居民自位於另一締約方的來源而取得的各項收入，如在本協定位於本條之前的各條中未有規定，則亦可按該另一締約方的法律在該方徵稅。

第二十一條

資本

1. (a) 第六條所提述的不動產所代表的資本如位於某締約方，則可在該方徵稅。
- (b) 如某公司、信託或相若的機構的資產或財產的價值，有超過百分之五十是由位於某締約方並屬第六條所提述的不動產或與該等不動產有關連的權利所組成的，或有超過百分之五十是直接或間接(通過在中間加入的一間或多於一間公司、信託或相若的機構)來自上述不動產或權利的，則該公司、信託或機構的股份或在該公司、信託或機構中的其他權利所代表的資本，可在該方徵稅。就本規定而言，直接由某實體用於經營其業務的不動產不須考慮。
2. 如任何動產構成某常設機構的業務財產的一部分，而該常設機構是某締約方的企業在另一締約方設立的，則該動產所代表的資本，可在該另一方徵稅。
3. 如任何財產構成某締約方的企業的業務財產的一部分，而該財產是由該企業營運從事國際運輸的船舶及航空器，以及關乎該等船舶及航空器的營運的動產所組成的，則該財產所代表的資本，只可在該方徵稅。
4. 某締約方的居民的所有其他資本組成部分，只可在該方徵稅。

5. 儘管有本條第 3 及 4 款的規定，如某資本組成部分按照本條第 3 及 4 款可在某締約方徵稅，但如根據該方的稅務法律的一般規則沒有在該方被徵稅，則該資本組成部分亦可在另一締約方徵稅。

第二十二條

消除雙重課稅

1. 就法國而言，雙重課稅須按以下方式避免：
 - (a) 儘管有本協定的任何其他規定，凡按照本協定的規定可在或只可在香港特別行政區徵稅的收入，如按照法國法律未被豁免繳付公司稅，則在計算法國稅項時，該收入須計算在內。在該情況下，香港特別行政區稅項不得從該收入中扣除，但作為實益擁有人的法國居民，在第(i)及(ii)節的條件及限制的規限下，有權對法國稅項享有稅收抵免：
 - (i) 就第(ii)節所述的收入以外的收入而言，該稅收抵免等同於可歸因於該收入的法國稅項的款額，但先決條件是該法國居民須就該收入繳付香港特別行政區稅項；
 - (ii) 就須繳付第七條及第十三條第 2 款所提述的公司稅的收入而言，以及就第十、十一及十二條、第十三條第 1 及 3 款、第十四條第 3 款、第十五條、第十六條第 1 及 2 款及第二十條第 1 及 3 款所提述的收入而言，該稅收抵免等同於按照該等條文的規定在香港特別行政區支付的稅項的款額；然而，該稅收抵免不得超過可歸因於該收入的法國稅項的款額。

(b) 任何法國居民如擁有按照第二十一條第 1、2 或 3 款可在香港特別行政區徵稅的資本，該法國居民亦須就該資本在法國被徵稅。在計算法國稅項時，容許給予稅收抵免，該稅收抵免等同於在香港特別行政區就該資本繳付的稅項的款額。然而，該稅收抵免不得超過可歸因於該資本的法國稅項的款額。

(c) (i) 按締約雙方理解，(a)段的“可歸因於該收入的法國稅項的款額”指：

- (如該收入的稅項是按比例比率計算)有關的淨收入的款額乘以實際適用於該收入的比率；
- (如該收入的稅項是按累進比例計算)有關的淨收入的款額乘以有關比率，該有關比率是指實際上須就按照法國法律應課稅的總淨收入而支付的稅項與該總淨收入的款額之比例。

(ii) 按締約雙方理解，(a)段的“在香港特別行政區支付的稅項的款額”指：某按照法國法律就有關的收入項目被徵稅的法國居民，按照本協定的規定就該收入項目實質上及最終負擔的香港特別行政區稅項的款額。

2. 就香港特別行政區而言，雙重課稅須按以下方式避免：

在不抵觸香港特別行政區不時有效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，如已根據法國法律和按照本協定，就屬香港特別行政區居民的人自法國的

來源而取得收入、利潤或收益繳付法國稅項，則不論是直接繳付或以扣除的方式繳付，所繳付的法國稅項須容許用作抵免就該收入、利潤或收益而須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等收入、利潤或收益計算所得的香港特別行政區稅項的款額。

第二十三條

反歧視條文

1. 任何個人如就法國而言屬法國國民，而就香港特別行政區而言享有居留權，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；有別於(就法國而言)屬國民的個人，或有別於(就香港特別行政區而言)享有居留權的個人，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。
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前述一方的居民一樣。

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：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。
5. (a) 在符合下列條件的前提下，凡某名個人在某締約方(“該方”)提供受僱服務，在斷定該人在該方的須課稅收入時，該人所負擔的向在另一締約方為稅務目的而獲認可的退休金計劃作出的供款，在該供款在該另一方實質上不容許扣除的範圍內，可予扣除；扣除的方法及須遵守的條件和限制，與向在該方為稅務目的而獲認可的退休金計劃作出的供款一樣：
- (i) 該人並非該方的居民，而他在緊接開始在該方提供受僱服務之前，正參與該退休金計劃(或被該退休金計劃所取代的類似的另一退休金計劃)；及
- (ii) 該退休金計劃獲該方的主管當局接納為一個大致上相當於為稅務目的而獲該方認可的退休金計劃的退休金計劃。
- (b) 就(a)段而言：
- (i) “退休金計劃”一詞指一項有關的個人所參與的為確保就(a)段所提述的受僱服務而取得退休福利的安排；及
- (ii) 如向退休金計劃作出的供款在某方符合資格獲得稅務寬免，則該計劃屬在該方“為稅務目的而獲認可”。

6. 某締約方的稅務法律為該方或其地區主管當局或它們的進行非業務活動的公法實體而提供的豁免及其他利益，亦根據相同的條件分別適用於另一締約方或其地區主管當局或它們的進行相同或類似活動的公法實體。

第二十四條

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；如其案件屬第二十三條第 1 款的情況，而他屬某締約方的國民(就法國而言)，或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)，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。任何如此達成的協議均須予以執行，不論締約雙方的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。尤其是，締約雙方的主管當局可致力就第九條提述的有關收入在相聯企業之間的一致分配達成協議。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本條以上各款所述的協議而直接與對方聯絡。

第二十五條

資料交換

1. 凡資料屬可預見攸關實施本協定的規定的資料，或可預見攸關施行或強制執行關於代締約雙方或其政治分部或地區或區域主管當局課徵的所有種類和名目的稅項的當地法律(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，締約雙方的主管當局須交換該等資料。該等資料交換不受第一條的規定所限制。
2. 某締約方根據第 1 款收到的任何資料均須保密處理，其方式須等同於處理根據該方的當地法律而取得的資料，該資料只可向以下人員或當局披露：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)。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中披露該資料。
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作出以下作為的責任：
 - (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) 提供會披露任何貿易、業務、工業、商業或專業秘密或貿易程序的資料，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，則另一締約方即使未必為其本身的稅務目的而需要該資料，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，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無關其本土利益而拒絕提供該資料。
5. 在任何情況下，第 3 款的規定均不得解釋為容許某締約方純粹因以下理由而拒絕提供該資料：該資料是由某銀行、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，或該資料關乎某人的擁有權權益。

第二十六條

政府代表團成員

本協定並不影響政府代表團(包括領館)成員或國際組織的常駐代表團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。

第二十七條

雜項條文

本協定並不損害每一締約方應用其關於規避繳稅(不論是否稱為規避繳稅)的當地法律及措施的權利。

第二十八條

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。本協定自收到上述通知的較後一份當日之後的下個月份的第一天起生效。
2. 本協定的條文一旦生效，隨即：
 - (a) 在法國：
 - (i) 就在來源預扣的收入稅項而言，對在本協定生效的公曆年後的須課稅款額具有效力；
 - (ii) 就並非在來源預扣的收入稅項而言，對關乎在本協定生效的公曆年後開始的任何公曆年或會計年度收入(視屬何情況而定)具有效力；
 - (iii) 就其他稅項而言，對須課稅事件是在本協定生效的公曆年後發生的課稅具有效力；

(b) 在香港特別行政區：

就香港特別行政區稅項而言，對在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具有效力。

第二十九條

終止協定

1. 本協定無限期有效，但任何締約方均可在本協定生效日期起 5 個公曆年後，藉在任何公曆年結束前最少六個月前發出書面終止通知，終止本協定。
2. 在該情況下，本協定：
 - (a) 在法國：
 - (i) 就在來源預扣的收入稅項而言，不再對在該終止通知發出的公曆年後的須課稅款額具有效力；
 - (ii) 就並非在來源預扣的收入稅項而言，不再對關乎在該終止通知發出的公曆年後開始的任何公曆年或會計年度收入(視屬何情況而定)具有效力；
 - (iii) 就其他稅項而言，不再對須課稅事件是在該終止通知發出的公曆年後發生的課稅具有效力；
 - (b) 在香港特別行政區：

就香港特別行政區稅項而言，不再對在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具有效力。

Part 2

Paragraphs 1 to 13 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 French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion

1. Notwithstanding the provisions of Article 1, a resident of a Contracting Party may not benefit from the provisions of the Agreement to the extent that he carries on business in a tax free zone situated in that Party or enjoys in that Party an offshore tax treatment. It is understood that this does not preclude a resident of a Contracting Party from benefiting from the provisions of the Agreement by reason of the adoption of a territorial source principle in the taxation system of that Party.
2. In respect of sub-paragraph (a) of paragraph 3 of Article 2, the tax on salaries is regulated by the provisions of the Agreement applicable to business profits.
3. The term "Hong Kong Special Administrative Region tax" as defined in paragraph 4 of Article 2 does not include any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith, and "additional tax" under section 82A of the Inland Revenue Ordinance.

4. The term "resident of a Contracting Party" as defined in paragraph 1 of Article 4 shall include, where that Party is France, any partnership or group of persons, subject under French domestic law to a tax regime being substantially similar to that of a partnership, which has its place of effective management in France and of which all shareholders, associates or other members are personally liable to tax therein in respect of their part of the profits of those partnerships or groups of persons pursuant to French domestic laws.
5. In respect of paragraph 1 of Article 4, in the case of the Hong Kong Special Administrative Region, the term "resident of a Contracting Party" shall mean:
 - (a) any individual who ordinarily resides in the Hong Kong Special Administrative Region in a year of assessment;
 - (b) 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;
 - (c) any 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;
 - (d) any other person constituted under the laws in force in 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.

The last sentence of that paragraph does not preclude a person from being treated as a resident of a Contracting Party by reason of a territorial source principle in the taxation system of that Party.

6. It is understood that the term "immovable property" as defined in paragraph 2 of Article 6 includes options and similar rights in connection with such property.
7. In respect of Article 7:
 - (a) where an enterprise of a Contracting Party 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 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, in particular 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 only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting Party where it is situated. The profits related to the part of the contract which is carried out in the Contracting Party where the place of effective management of the enterprise is situated shall be taxable only in that Party.
8. It is understood that, in respect of Article 12, payments received as a consideration for technical services, including studies or surveys

of a scientific, geological or technical nature, or for engineering services including preparation of blueprints, or for consultant or supervisory services, are not payments received as a consideration for information concerning industrial, commercial or scientific experience. It is also understood that payments received as a consideration for the right to distribute software do not represent a royalty as long as they do not include the right to reproduce this software. Such payments would be dealt with as commercial income in accordance with Article 7.

9. In respect of paragraph 1 of Article 13:
 - (a) The following stock exchanges have been agreed between the Contracting Parties for the purposes of sub-paragraph (b)(i):
 - regulated stock exchanges of members of the European Union
 - The Stock Exchange of Hong Kong Limited
 - (b) In the case of France, the operations referred to in sub-paragraph (b)(ii) are limited to those of similar nature as the ones defined in the 90/434/CEE directive adopted by the Council of Ministers of the European Union on 23 July 1990.
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.

11. Where under any provision of the Agreement any income is relieved from tax in a Contracting Party and, under the domestic law in force in the other Contracting Party, a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Party and not by reference to the full amount thereof, then the relief to be allowed under the Agreement in the first-mentioned Party shall apply only to so much of the income as is taxed in the other Party.
12. Each of the Contracting Parties shall keep the right of taxing in accordance with its domestic law any income of its residents, the exclusive taxing right of which is allocated to the other Contracting Party under the Agreement, but which is not taken into account in the tax base in that other Party, in cases where such double exemption results from a divergent classification of the income concerned.
13. The competent authorities of the Contracting Parties may settle jointly or separately administrative measures necessary to carry out the provisions of the Agreement.

(Chinese Translation)

1. 儘管有第一條的規定，任何締約方的居民在他於位處該方的免稅區經營業務或在該方享有離岸稅務待遇的範圍內，不可受惠於本協定的規定。按締約雙方理解，此規定並不阻止任何締約方的居民因該方的稅務制度採納了地域來源原則而受惠於本協定的規定。
2. 就第二條第 3 款(a)段而言，薪俸稅受本協定中適用於營業利潤的規定所規管。

3. 在第二條第 4 款界定的“香港特別行政區稅項”一詞不包括任何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”。
4. 在第四條第 1 款界定的“締約方的居民”一詞，如該方是法國，則包括任何符合以下說明的合夥或團體：根據法國當地法律，該合夥或團體是須遵從一個與合夥的課稅制度實質上類似的課稅制度的，而其實際管理工作地點位於法國，且依據法國當地法律，其所有股東、相聯者或其他成員，均須就他們在該合夥或團體所得的利潤個人負上繳稅的法律責任。
5. 就第四條第 1 款而言，“締約方的居民”一詞對香港特別行政區而言，指：
 - (a) 任何在某課稅年度內通常居於香港特別行政區的個人；
 - (b) 任何在某課稅年度內在香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)內在香特別行政區逗留超過 300 天的個人；
 - (c) 任何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通常在香港特別行政區內受管理或控制的公同；
 - (d) 任何根據香港特別行政區的現行法律組成的其他人，或在香港特別行政區以外組成而通常在香港特別行政區內受管理或控制的其他人。

該款最後一句並不阻止任何人因某締約方的稅務制度中的地域來源原則而獲視為該方的居民。

6. 按締約雙方理解，在第六條第 2 款界定的“不動產”一詞包括與不動產有關的認購權及類似權利。
7. 就第七條而言：
 - (a) 凡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締約方出售貨物或商品或經營業務，該常設機構的利潤不得以該企業所收取的總額為基準而斷定，而須只以可歸因於該常設機構為該等出售或業務而進行的實際活動的報酬為基準而斷定；
 - (b) 就合約而言，尤其是工業、商業或科學設備或處所或公共工程的測量、供應、安裝或建築的合約，凡企業在某締約方設有常設機構，該常設機構的利潤不得以該合約的總額為基準而斷定，而須只以該合約中實際由該常設機構在該締約方執行的部分為基準而斷定。凡企業的實際管理工作地點位於某締約方，則該合約中在該方所執行的部分所涉及的利潤，只可在該方徵稅。
8. 按締約雙方理解，就第十二條而言，作為技術服務(包括屬科學、地質或技術性質的研究或測量)或工程服務(包括準備藍圖)或顧問或監督服務的代價而收取的付款，並非作為關於工業、商業或科學經驗的資料的代價而收取的付款。締約雙方亦理解，作為分發電腦軟件的權利的代價而收取的付款，只要不包括複製該軟件的權利，則不屬特許權使用費。該等付款會按照第七條作為商業收入處理。

9. 就第十三條第 1 款而言：

(a) 締約雙方就(b)(i)段而議定的證券交易所如下：

- 受歐洲聯盟成員規管的證券交易所
- 香港聯合交易所有限公司

(b) 就法國而言，(b)(ii)段所提述的行動，局限於性質與在歐洲聯盟部長理事會於 1990 年 7 月 23 日採納的 90/434/CEE 指令中所界定行動類似的行動。

10. 按締約雙方理解，第二十五條並不訂立締約雙方之間自動或自發交換資料的責任。就同一條而言，締約雙方亦理解，被要求提供的資料不得向第三司法管轄區披露。就香港特別行政區而言，可在當中披露資料的司法裁定包括稅務上訴委員會的決定。
11. 凡根據本協定的任何規定，某收入在締約一方獲寬免繳稅，而根據另一締約方當地的現行法律，某人須就該收入中滙寄至該另一方或在該另一方收到的款額(而非該收入的全數)課稅，則根據本協定容許在首述一方享有的寬免，僅適用於該筆收入中在該另一方被徵稅的部分。
12. 就締約一方的居民的收入而言，若根據本協定對該收入的專有徵稅權利被分配予另一締約方，但該收入並沒有被納入該另一方的稅基之內，因而出現因對有關收入的不同分類而導致雙重豁免的情況，則在此情況下，每一締約方均保留按照其當地法律對其居民的收入徵稅的權利。

13. 締約雙方的主管當局可共同或各自決定，執行本協定的規定所須
的行政措施。

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the French Republic signed an agreement for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion (*Agreement*) together with a protocol to the Agreement (*Protocol*) on 21 October 2010. This Order specifies the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 13 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 the English and French languages. 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 the French Republic, have effect in relation to any tax of the Republic that is the subject of that provision.

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 1¹.
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;

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 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.

* * * *

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.

* * * *

**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 French resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping and air services profits of French operators. However, the overall financial implications would be insignificant.

Economic Implications

2. The French Agreement will facilitate business development between Hong Kong and France and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and France 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 France under the French Agreement. IRD has obtained the approval of the Finance Committee of the Legislative Council to create a supernumerary directorate post for three years with effect from 1 April 2011 to support the implementation of CDTA-related initiatives.

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

Summary of Main Provisions

1. The CDTA with France (the French 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 France –
 - (i) income tax;
 - (ii) corporation tax;
 - (iii) contributions on corporation tax;
 - (iv) tax on salaries;
 - (v) widespread social security contributions; and
 - (vi) wealth tax.

2. The French 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 French Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the French 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) income from employment, unless the employment is exercised in the source jurisdiction;
- (d) capital gains not expressly dealt with in the French Agreement;
- (e) other income not expressly dealt with in the French Agreement except where the income (excluding capital gains) is derived from the source jurisdiction;
- (f) capital represented by property forming part of the business property and consisting of ships and aircraft operated in international traffic and of movable property pertaining to the operation of such ships and aircraft; and
- (g) all other elements of capital not expressly dealt with in the French Agreement.

4. 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 French 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 French 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 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 dividends, 10%
 - for interest, 10%, and exempt if paid to the Governments, the Central bank, the financial establishment appointed by the Governments and mutually agreed upon by the competent authorities of the two Contracting Parties; and
 - for royalties, 10%;
- (d) gains from alienation of movable property forming part of the business property of a permanent establishment in the source jurisdiction or shares of a company (except quoted shares) deriving more than 50% of their asset value directly or indirectly from immovable property;
- (e) remuneration from non-government employment 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) 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;
- (i) non-government pensions;
- (j) capital represented by immovable property situated in the source jurisdiction; capital represented by shares or other rights in a company, the assets or property of which consist more than 50 per cent of their value of immovable property situated in the source jurisdiction, and capital represented by movable property forming part of the business property of a permanent establishment in the source jurisdiction; and
- (k) other income (excluding capital gains) not expressly dealt with in the French 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 France will provide double taxation relief for its residents by the credit method.