

L.N. 68 of 2011

**Specification of Arrangements (Government of the Grand
Duchy of Luxembourg) (Avoidance of Double Taxation
on Income and Capital and Prevention of Fiscal
Evasion) (Amendment) Order 2011**

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

1. Commencement

This Order comes into operation on 7 July 2011.

**2. Specification of Arrangements (Government of the Grand Duchy
of Luxembourg) (Avoidance of Double Taxation on Income and
Capital and Prevention of Fiscal Evasion) Order amended**

The Specification of Arrangements (Government of the Grand
Duchy of Luxembourg) (Avoidance of Double Taxation on
Income and Capital and Prevention of Fiscal Evasion) Order
(Cap. 112 sub. leg. BA) is amended as set out in sections 3 to 6.

3. Section 2 amended

(1) Section 2—

Re-number the section as section 2(1).

(2) Section 2(1)—

Repeal

“section 49”

Substitute

“section 49(1)”.

(3) Section 2(1)(a)—

Repeal

“section 3”

Substitute

“section 3(1)”.

(4) After section 2(1)—

Add

“(2) For the purposes of section 49(1A) of the Ordinance, it is declared—

(a) that the arrangements specified in section 3(2) have been made with the Government of the Grand Duchy of Luxembourg 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 Grand Duchy of Luxembourg; and

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

4. Section 3 amended

(1) Section 3—

Renumber the section as section 3(1).

(2) Section 3(1)—

Repeal

“section 2(a)”

Substitute

“section 2(1)(a)”.

(3) Section 3(1)—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

- (4) After section 3(1)—

Add

- “(2) The arrangements specified for the purposes of section 2(2)(a) are the arrangements in Articles 1 to 5 of the protocol to the Agreement between the Hong Kong Special Administrative Region of the People’s Republic of China and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, done in duplicate at Hong Kong on 11 November 2010 in the English and French languages.
- (3) The English text of Articles 1 to 5 of the protocol referred to in subsection (2) is reproduced in Schedule 2; a Chinese translation of the Articles is also set out in that Schedule.”.

5. Schedule heading amended

The Schedule, heading—

Repeal

“SCHEDULE”

Substitute

“Schedule 1”.

6. Schedule 2 added

After Schedule 1—

Add

“Schedule 2

[s. 3]

**Articles 1 to 5 of the Protocol to the Agreement
between the Hong Kong Special Administrative
Region of the People’s Republic of China and the
Grand Duchy of Luxembourg for the Avoidance
of Double Taxation and the Prevention of Fiscal
Evasion with respect to Taxes on Income and
on Capital**

ARTICLE 1

Paragraph 5 of Article 5 (Permanent Establishment) of the Agreement shall be deleted and replaced by the following:

- “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.”

ARTICLE 2

A paragraph 5 shall be added in Article 24 (Mutual Agreement Procedure) of the Agreement:

“5. Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Party. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting Parties and shall be implemented notwithstanding any time limits in the domestic laws of these Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.”

ARTICLE 3

Article 25 (Exchange of Information) of the Agreement shall be deleted and replaced by the following:

“Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.
2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE 4

Each of the Contracting Parties shall notify the other Contracting Party in writing of the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and its provisions shall have effect:

(a) in the Hong Kong Special Administrative Region:

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

(b) in Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following that in which the Protocol enters into force;

(ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

ARTICLE 5

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable unless otherwise agreed by the Contracting Parties.”.

(Chinese Translation)

第一條

刪去本協定第五條(常設機構)第5款,代以:

“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簽訂合約的權限，並慣常在該締約方行使該權限，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 (該等活動即使透過固定營業場所進行也不會令該固定營業場所根據該款的規定成為常設機構)，則屬例外。”

第二條

於本協定第二十四條 (雙方協商程序) 加入第 5 款：

“5. 凡，

- (a) 任何人根據第 1 款，以某締約方或締約雙方的行動已導致對該人作出不符合本協定規定的課稅為理由，將案件呈交某締約方的主管當局，而
- (b) 在案件呈交予另一締約方的主管當局的兩年之內，締約雙方的主管當局未能依據第 2 款達成協議解決該個案，

則如該人要求，因該個案而產生的任何尚未解決的爭議點須提交仲裁。但如已有任何締約方的法院或行政審裁處就該等尚未解決的爭議點作出裁定，該等爭議點不得提交仲裁。除非某名直接受該個案影響的人不接受實施有關仲裁裁定的共同協議，否則該裁定對締約雙方均具約束力，而儘管在締約雙方的當地法律中有任何時限，該裁定須予以實施。締約雙方的主管當局須藉共同協議，確定施行本款的方式。”

第三條

刪去本協定第二十五條 (資料交換)，代以：

“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或施行或強制執行締約雙方關乎本協定所涵蓋的稅項的當地法律(但以根據該等法律作出的課稅不違反本協定者為限), 締約双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。不得為任何目的將資料向任何第三司法管轄區披露。
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) 實施有悖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。”

第四條

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議定書生效的程序。本議定書自上述通知的較後一份的日期起生效，其條文：

- (a) 在香港特別行政區：

就香港特別行政區稅項而言，對在本議定書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；

- (b) 在盧森堡大公國：

- (i) 就在來源預扣的稅項而言，對在本議定書生效的公曆年的翌年 1 月 1 日或之後取得的收入具有效力；

- (ii) 就其他收入稅項及資本稅項而言，對就於本議定書生效的公曆年的翌年 1 月 1 日或之後開始的任何課稅年度而須徵收的稅項具有效力。

第五條

本議定書構成本協定整體的一部分，除非締約雙方另有協議，否則本議定書在本協定有效期間有效，並在本協定適用期間適用。”。

Specification of Arrangements (Government of the Grand Duchy of Luxembourg)
(Avoidance of Double Taxation on Income and Capital and Prevention
of Fiscal Evasion) (Amendment) Order 2011

B2699

L.N. 68 of 2011

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

3 May 2011

Explanatory Note

Under the Specification of Arrangements (Government of the Grand Duchy of Luxembourg) (Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) Order (Cap. 112 sub. leg. BA) (*principal order*), the arrangements in Articles 1 to 29 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (*Agreement*) dated 2 November 2007 are declared to be double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112).

2. The Government of Hong Kong and the Government of the Grand Duchy of Luxembourg entered into a protocol (*Protocol*) to amend the Agreement on 11 November 2010. This Order amends the principal order by adding new provisions that declare the arrangements in Articles 1 to 5 of the Protocol to be additional double taxation relief arrangements.
3. The effects of the new provisions are—
 - (a) that the arrangements in Articles 1 to 5 of the Protocol 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 Grand Duchy of Luxembourg, have effect in relation to any tax of the Grand Duchy of Luxembourg that is the subject of that provision.
4. The Order also makes consequential amendments to the principal order.